

City Council Agenda Items  
and  
Contracts, Leases or Agreements

~~3/6/2012~~ 3-5-13

City Council Meeting Date  
Agenda Items Only

Chris Brown <sup>CB</sup>  
Submitted By

Engineering  
Division

Development Services  
Department

Action Required:

Approval of a Resolution authorizing settlement of the Condemnation Case with Glen David Wilson on Garland Avenue (North to Melmar) Water and Sewer Relocation Project.

\$ -  
Cost of this request

\$ -  
Category / Project Budget

Transportation Bond Program  
Program Category / Project Name

-  
Account Number

\$ -  
Funds Used to Date

Land Acquisition  
Program / Project Category Name

-  
Project Number

\$ -  
Remaining Balance

Sales Tax Capital Improvements  
Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature]  
Department Director

02-14-2013  
Date

Previous Ordinance or Resolution # \_\_\_\_\_

[Signature]  
City Attorney

2-15-13  
Date

Original Contract Date: \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

Paul a. Behn  
Finance and Internal Services Director

2-15-2013  
Date

Received in City Clerk's Office  
02-14-13 P04:39 RCV-  
[Signature]

[Signature]  
Chief of Staff

\_\_\_\_\_  
Date

Received in Mayor's Office  
ENTERED  
3/15/13  
[Signature]

[Signature]  
Mayor

2/19/13  
Date

Comments:

## CITY COUNCIL AGENDA MEMO

City Council Meeting of March 5, 2013

**To:** Mayor Jordan and City Council

**Thru:** Don Marr, Chief of Staff  
Jeremy Pate, Director of Development Services *JR*

**From:** Chris Brown *CB*

**Date:** February 14, 2013

**Subject:** Approval of a Resolution authorizing settlement of the Condemnation Case with Glen David Wilson on Garland Avenue (North to Melmar) Water and Sewer Relocation Project.

### PROPOSAL:

Improvements to Garland Avenue (Highway 112) are planned as part of a City of Fayetteville and Arkansas State Highway and Transportation Department (AHTD) partnering project. Our agreement with AHTD provides that the City is responsible for 50% of the construction cost, up to \$1.5 million, and all of the cost of right of way acquisition and relocation of utility facilities.

Construction of roadway improvements, including construction of a 4-lane roadway with intermittent medians, bike lanes, pedestrian sidewalks, and three new signals, will be administered by AHTD. This construction is currently in the very preliminary stages, and is planned for completion in mid-2014.

Prior to the roadway construction, all utilities, including those owned by the City of Fayetteville Water and Sewer Division, were relocated out of the limits of the planned roadway construction. In order to complete the relocation, utility easements were needed from several property owners, including property owned by the Glen David Wilson Trust and Linda Hinkle. This property includes the Harp's Grocery Store and the vacant lot to the north of Harp's.

City staff was unable to acquire the necessary easement on this property by negotiation; therefore, it was necessary to acquire it by condemnation. The City Council authorized condemnation in March of 2012, and the City Attorney filed the condemnation complaint with the Circuit Court and received the Order of Possession soon thereafter. A deposit of \$30,700, representing the appraised value of the easement, was made into the Registry of the Court at the time of filing.

Since that time, City staff and representatives of Mr. Wilson have worked together to come to a proposed settlement, which is detailed in the attached document. If approved by the City Council, the settlement provisions will include:

- 1) The property owners agree to dedicate a utility easement (at no cost to the City) just outside the right of way of Garland Avenue. This easement was intended to be dedicated as part of the development of the Harp's store, but the easement document was never recorded. The easement area has been used by utilities since the store was built, and the signatures of the property owners on the easement document simply confirms and ratifies the easement.
- 2) The City agrees to vacate the right of way of Mount Comfort Road, as depicted by the cross-hatched areas in the attached Exhibit "B". This vacation will occur after Mount Comfort Road is re-aligned to Holly Street, and the existing area of Mount Comfort is no longer needed for public street purposes. A utility easement will be retained as needed for use by public utilities.
- 3) The City will receive the \$30,700 deposited with the Court back, to be returned in the project account.

**RECOMMENDATION:**

Staff recommends approval of the settlement..

**BUDGET IMPACT:**

This action will reduce the cost of the project by \$30,700.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH GLEN DAVID WILSON, TRUSTEE, TIMOTHY HINKLE, TRUSTEE, AND LINDA HINKLE REGARDING CONDEMNATION LITIGATION FILED AS PART OF THE N. GARLAND AVENUE WIDENING AND IMPROVEMENT PROJECT

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the agreement with Glen David Wilson, Trustee, Timothy Hinkle, Trustee and Linda Hinkle, as full and final settlement of condemnation litigation (City of Fayetteville v. Wilson, et al., Washington County Circuit Court Case No. CV 2012-656-2) filed as part of the N. Garland Avenue Widening and Improvement Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby understands its obligation to adopt at a future date a street vacation of portions of Mt. Comfort Road and James Street as described in the settlement.

**PASSED and APPROVED** this 5<sup>th</sup> day of March, 2013.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer



Kit Williams  
City Attorney

Jason B. Kelley  
Assistant City Attorney

### MEMORANDUM

TO: MAYOR & CITY COUNCIL

FROM: JASON KELLEY, ASST. CITY ATTORNEY

A handwritten signature in black ink, appearing to read "Jason B. Kelley".

CC: KIT WILLIAMS, CITY ATTORNEY

DATE: FEBRUARY 15, 2013

RE: GLEN DAVID WILSON, ET. AL, CONDEMNATION SETTLEMENT PROPOSAL

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I am pleased to present a very advantageous condemnation settlement related to the necessary taking of a utility easement on the "Harps property" along N. Garland Avenue which will result in the city obtaining an easement deed and saving nearly \$31,000.00 on the Project.

In 2012, the Council authorized our office to file an eminent domain lawsuit to obtain a utility easement on the property as part of the N. Garland Avenue Widening and Improvement Project. The City's appraiser valued the taking at \$30,700.00, which was the sum placed on court deposit when the lawsuit was filed. During negotiation and after historical research, it was agreed by the parties that a 25 foot utility easement along the property and adjacent to the Garland Avenue right-of way was to have been dedicated to the City as part of the original large-scale development approval for the Harps construction in the late 1980s. No record exists showing this was ever formally accomplished. In exchange for all the current property owners signing a utility easement deed to the City clarifying the 25 foot easement, the City agreed, subject to your approval, to vacate the portions of Mt. Comfort Road and James Street which the City and Highway Department had already planned to destroy and remove as part of the realignment of the Mt. Comfort Road/Garland Avenue intersection at Holly Street. The City will retain a utility easement along the vacated area for utilities already in place in the area.

In short, this settlement allows the City to obtain the necessary easement (which we already should have had) for the N. Garland Avenue Widening and Improvement Project without additional monetary cost to the Project, so long as we vacate the portions of Mt. Comfort and James Street we already planned to destroy and remove. *The \$30,700.00 currently on court deposit would be returned to the City.*

Assuming this settlement is accepted by you, a separate street vacation agenda item will be presented in the future which the Council will be contractually obligated to adopt, since it will be an approved term of settlement in the condemnation litigation. Needless to say, I recommend the approval of this settlement.

SETTLEMENT FRAMEWORK

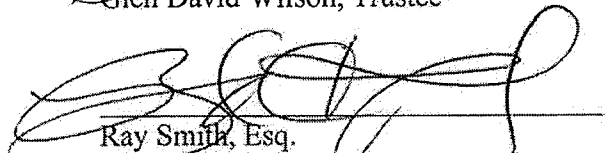
The City of Fayetteville, subject to approval of its Mayor and City Council, and Glen David Wilson, Trustee, hereby enter into this settlement framework for purposes of settling all issues related to utility easement acquisition at issue in eminent domain litigation currently pending in Washington County Circuit Court Case No. CV 12-656-2 (City of Fayetteville v. Wilson, Trustee et al.). The settlement framework is as follows:

1. Glen David Wilson, Trustee (hereinafter "Wilson") agrees to execute a General Utility Easement Deed and to assist in obtaining the signatures of Timothy Hinkle and Linda Kay Hinkle (hereinafter "Hinkles"), to an agreed upon and existing twenty-five foot (25') utility easement along property jointly owned by Wilson and the Hinkles. A copy of the easement deed and description is attached to this settlement framework as Exhibit "A".


2. The City of Fayetteville (hereinafter "Fayetteville"), agrees to vacate portions of the current Mount Comfort Road and James Street, described as Tracts A and B in the attached Exhibit "B", within ninety (90) days of activation of the new traffic signal at the newly relocated Mount Comfort Road and Garland Avenue intersection which is being constructed as part of the Garland Avenue Widening and Improvement Project (hereinafter the "Project"). Wilson and Fayetteville agree that Fayetteville will retain utility easements through Tracts A and B for existing utilities currently located in the area to be vacated. Fayetteville states that the re-alignment of James Street and Mount Comfort Road to connect to Holly Street as part of the Project will render Tracts A and B of no use to the public for street right of way.

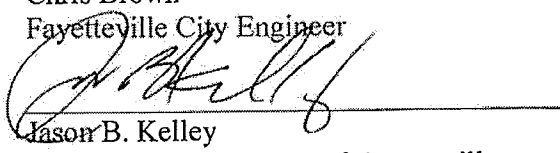
3. Wilson and Fayetteville agree that once the General Utility Easement Deed (Exhibit "A") is fully executed by Wilson and the Hinkles and delivered to Fayetteville, that the parties will agree to a dismissal of the pending eminent domain suit, Washington County Circuit Court Case No. CV 12-656-2. Any court registry deposit for estimated compensation related to the litigation shall be returned by the court to Fayetteville.

  
Glen David Wilson, Trustee

  
Ray Smith, Esq.  
Attorney for Glen David Wilson, Trustee

Date: 02.01.03

  
Chris Brown  
Fayetteville City Engineer

  
Jason B. Kelley  
Assistant City Attorney of Fayetteville

Date: 1-30-13

Garland Avenue Improvements  
Parcel No. 765-13768-000

## GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT Glen David Wilson, Trustee, Glen David Wilson Trust Agreement of 2001, u/t/d July 13, 2001 (1/2 interest), Linda Kay Hinkle (1/4 Interest) and Timothy C. Hinkle, Trustee of the Timothy C. Hinkle Trust u/d/t December 1, 1995 (1/4 interest), hereinafter called GRANTOR, for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, does hereby GRANT, SELL and CONVEY unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, a permanent easement for the purpose of construction, maintenance, repair and/or replacement, enlargement and operations of roadway, drainage, sidewalks, and general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas, electrical power, telephone, fiber optic cable(s) and television communication line or lines, and appurtenances thereto, on over, across, and under the following described land situated in the County of Washington, State of Arkansas, to-wit:

PROPERTY DESCRIPTION: (Deed Ref. 2007-00023583, seventh description, and Deed Refs. 2002-094498 and 2007-42911)

Part of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section Eight (8), Township Sixteen (16) North, Range Thirty (30) West in Washington County, Arkansas, and being more particularly described as follows, to-wit: From the Southeast (SE) corner of said forty-acre tract, run North 190.0 feet; thence West 36.80 feet to the POINT OF BEGINNING; thence running West 401.51 feet; thence North 0°39'00" East 376.94 feet; thence East 2.48 feet; thence North 89°59'14" East 369.56 feet to a point on the right-of-way line of Mt. Comfort Road, thence along the right-of-way of Mt. Comfort Road and Highway 112 the following: South 20°44'29" East 71.16 feet; thence South 310.46 feet to the POINT OF BEGINNING, and containing 3.437 acres, more or less, subject to easements and rights-of-way, if any.

PERMANENT EASEMENT DESCRIPTION:

A part of the Southeast Quarter (SE $\frac{1}{4}$ ) of the Northeast Quarter (NE $\frac{1}{4}$ ) of Section 8, Township 16 North, Range 30 West and being more particularly described as follows, to-wit: Commencing at the Northeast corner of said Section 8, thence South 02°36'57" West 2,079.97 feet, thence North 87°23'03" West 70.51 feet to the Westerly right-of-way of Arkansas State Highway 112 (Garland Avenue), thence along said right-of-way South 05°21'15" East 20.83 feet, to the Point of Beginning; thence continuing along said right-of-way South 05°21'15" East 3.20 feet; thence South 74°00'01" East 13.35 feet; thence South 02°04'14" West 101.10 feet; thence South 01°23'28" West 189.75 feet; thence North 88°18'37" West 5.0 feet; thence South 05°06'45" West 34.83 feet; thence South 32°15'42" East 21.79 feet; thence leaving said right-of-way North 87°38'26" West 24.79 feet; thence North 02°04' 49" East 349.92 feet to the Point of Beginning and containing 5,381 square feet, more or less.

Together with the rights, easements, and privileges in or to said lands which may be required for the full enjoyment of the rights herein granted.

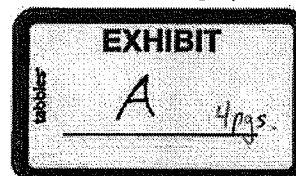
TO HAVE AND TO HOLD unto said Grantee, its successors and assigns, until the use of said permanent easement is relinquished, abandoned or vacated and so long as such pipe line or lines, electrical power, telephone and/or television lines or cables, manholes and/or appurtenances thereto shall be maintained, together with free ingress to and egress from the real estate first herein above described for the uses and purposes herein above set forth.

The said Grantor is to fully use and enjoy the said premises except for the purposes hereinbefore granted to the said Grantee, which hereby agrees to bury all pipes, lines and/or cables where feasible, to a sufficient depth so as not to interfere with cultivation of soil, and that manholes will be constructed flush with the surface of the ground except in bottom lands where they shall be at a height above water.

The Grantor agrees no to erect any buildings or structures in said permanent easement.

The Grantee shall have the right to construct additional pipe lines, electric power lines, telephone and/or television lines or cables upon the above described easement at any time in the future and agrees to pay any damages as a result of such future construction as set out in this easement.

The consideration first above recited as being paid to Grantor by Grantee is in full satisfaction of every right hereby granted. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto.



GENERAL UTILITY EASEMENT  
Page 2 of 3

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the 1<sup>st</sup> day of Feb., 2013.

Glen David Wilson Trust Agreement of 2001,  
u/t/d July 13, 2001

By: *Glen David Wilson*  
Glen David Wilson, Trustee

\_\_\_\_\_  
Linda Kay Hinkle

Timothy C. Hinkle Trust u/d/t December 1, 1995

By: \_\_\_\_\_  
Timothy C. Hinkle, Trustee

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
COUNTY OF WASHINGTON ) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Glen David Wilson, Trustee, Glen David Wilson Trust Agreement of 2001, u/t/d July 13, 2001**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 1<sup>st</sup> day of February, 2013.

MY COMMISSION EXPIRES:



*Lisa Neeley*  
Notary Public

ACKNOWLEDGMENT

STATE OF ARKANSAS )  
COUNTY OF WASHINGTON ) ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Linda Kay Hinkle**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that she had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public



GENERAL UTILITY EASEMENT  
Page 3 of 3

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**ACKNOWLEDGMENT**

STATE OF ARKANSAS  
COUNTY OF WASHINGTON

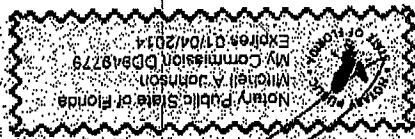
}  
ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Timothy C. Hinkle, Trustee of the Timothy C. Hinkle Trust u/d/t December 1, 1995**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public



*[Signature]*  
Notary Public

1/14/2014  
MY COMMISSION EXPIRES

WITNESS my hand and seal on this 16 day of JANUARY, 2013.  
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Linda Kay Hinkle, to me well known as the person who executed the foregoing document, and who stated and acknowledged that she had signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.  
STATE OF ARKANSAS }  
COUNTY OF WASHINGTON } COCKER  
ACKNOWLEDGMENT

WITNESS my hand and seal on this 16 day of JANUARY, 2013.  
BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared Glenn David Wilson, Trustee, Glenn David Wilson, Trust Agreement of 2001, and Linda Kay Hinkle, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he had signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.  
STATE OF ARKANSAS }  
COUNTY OF WASHINGTON }  
ACKNOWLEDGMENT

By Timothy C. Hinkle, Trustee  
Timothy C. Hinkle Trust u/d/ December 1, 1995

By Glenn David Wilson, Trustee  
Glenn David Wilson Trust Agreement of 2001  
16 day of JANUARY, 2013

WITNESS the execution hereof on this the 16 day of JANUARY, 2013.  
I am hereby undersigned and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

*Fax 479-575-8315*

**GENERAL UTILITY EASEMENT**  
Page 2 of 3

It is hereby understood and agreed that the party securing this document in behalf of the Grantee is without authority to make any covenant or agreement not herein expressed.

WITNESS the execution hereof on this the 16<sup>th</sup> day of January, 2013.

Glen David Wilson Trust Agreement of 2001,  
u/d July 13, 2001

By: Glen David Wilson, Trustee

Linda Kay Hinkle

Timothy C. Hinkle Trust u/d/t December 1, 1995

By: Timothy C. Hinkle, Trustee  
Timothy C. Hinkle, Trustee

**ACKNOWLEDGMENT**

STATE OF ARKANSAS  
COUNTY OF WASHINGTON

} ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Glen David Wilson, Trustee, Glen David Wilson Trust Agreement of 2001, u/d July 13, 2001**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public

**ACKNOWLEDGMENT**

STATE OF ARKANSAS  
COUNTY OF WASHINGTON

} ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Linda Kay Hinkle**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that she had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

MY COMMISSION EXPIRES:

\_\_\_\_\_  
Notary Public

**GENERAL UTILITY EASEMENT**  
Page 3 of 3

**ACKNOWLEDGMENT**

STATE OF Pennsylvania  
COUNTY OF Huntingdon

}

ss.

BE IT REMEMBERED, that on this date, before the undersigned, a duly commissioned and acting Notary Public within and for said County and State, personally appeared **Timothy C. Hinkle, Trustee of the Timothy C. Hinkle Trust u/d/t December 1, 1995**, to me well known as the person who executed the foregoing document, and who stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

WITNESS my hand and seal on this 16th day of January, 2013.

MY COMMISSION EXPIRES:

May 11, 2014

Amber D. Reed  
Notary Public

COMMONWEALTH OF PENNSYLVANIA

Notarial Seal  
AMBER D. REED, Notary Public  
Huntingdon Boro, Huntingdon County  
My Commission Expires May 11, 2014



Not to Scale

GLEN DAVID WILSON TRUST  
 765-08235-000

SE, NE  
 8-16-30

GLEN DAVID WILSON TRUST  
 765-13768-000  
 Inst. No. 2007-23583

P.O.C.  
 NE Corner  
 SEC. 8  
 T-18-N, R-30-W

2079.97'

S 02°25'57" W

GARLAND AVENUE

Section Line

CL

S 05°21'15" E - 20.03'

P.O.B.

N 87°23'03" W - 70.51'

S 05°21'15" E - 3.20'

S 74°00'01" E - 13.35'

S 02°04'14" W - 101.10'

PROP. R/W

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EXHIBIT  
 JAN. 2013

UTILITY EASEMENT  
 GLEN DAVID  
 WILSON TRUST



PROP. UTILITY  
 EASEMENT—5,381 Sq. Ft.

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S 05°05'45" W

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N 87°38'28" W - 24.79'

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MT. COMFORT ROAD

