

**City Council Agenda Items
and
Contracts, Leases or Agreements**

8/20/2013

City Council Meeting Date
Agenda Items Only

David Jurgens
Submitted By

Utilities Capital Projects
Division

Utilities
Department

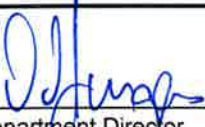





Action Required:

Resolution approving a settlement agreement with Bill R. and Doris A. Kisor concerning condemnation litigation filed as part of the Highway 265 (Crossover Road) water and sewer relocation project for \$13,950.00. This amount is \$10,650.00 above the \$3,300.00 previously placed on deposit with the court.

\$ 10,650	\$ 793,956	W&S Relocations-2009 Bond Proceeds
Cost of this request	Category / Project Budget	Program Category / Project Name
5400.5640.5808.00	\$ 621,945	Water & Wastewater
Account Number	Funds Used to Date	Program / Project Category Name
08072-1102	\$ 172,011	Water & Sewer
Project Number	Remaining Balance	Fund Name

Budgeted Item

Budget Adjustment Attached

 Department Director	<u>1 Aug 13</u> Date	Previous Ordinance or Resolution # <u>141-12</u>
 City Attorney	<u>8-2-13</u> Date	Original Contract Date: <u>7/3/2012</u>
<u>Paul A. Beck</u> Finance and Internal Services Director	<u>8-2-2013</u> Date	Original Contract Number: _____
 Chief of Staff	<u>8-2-13</u> Date	<div data-bbox="899 1442 1482 1579" style="border: 1px solid black; padding: 5px;"> Received in City Clerk's Office 08-01-13A11:52 ROVD  </div> <div data-bbox="899 1610 1482 1747" style="border: 1px solid black; padding: 5px;"> Received in Mayor's Office  </div>
 Mayor	<u>8/5/13</u> Date	

Comments:

www.accessfayetteville.org

To: Fayetteville City Council

Thru: Mayor Lioneld Jordan
 Don Marr, Chief of Staff

From: David Jurgens, Utilities Director
 Fayetteville Water and Sewer Committee

Date: July 31, 2013

Subject: Approval of an easement settlement agreement with Bill and Doris Kisor on Highway 265 (Crossover Rd)

RECOMMENDATION

Staff recommends approval of a settlement agreement with Bill R. and Doris A. Kisor concerning condemnation litigation filed as part of the Highway 265 (Crossover Road) water and sewer relocation project for \$13,950.00. This amount is \$10,650.00 above the \$3,300.00 previously placed on deposit with the court, and is \$7,375 above the City's highest previous offer.

BACKGROUND

The Arkansas Highway and Transportation Department (AHTD) is widening Highway 265 (Crossover Road) from Joyce Boulevard north to the City Limits. Due to AHTD's acquisition of additional right-of-way to widen the road, utility lines have been relocated outside of the expanded right-of-way. These utility easements are adjacent to the new highway right-of-way and/or existing utility easements. On July 3, 2012, in order to not delay the project, the City Council approved condemnation proceedings against several properties, including the Kisors. Negotiations with property owners continued; of the original seven that were submitted for condemnation, all have been settled out of court; the Kisors was the last open case.

DISCUSSION

After continued negotiations and through meetings with Mr. Kisor and their attorney, staff and the Kisors have reached the attached settlement agreement. It is \$25,050 below the Kisors' appraisal for the easement. The amount was calculated as shown below. The settlement amount is based on the AHTD settlement amount, adjusted for two items, shown below, plus the \$1,500 appraisal cost that the Kisor's incurred.

- Proportionately reduced to reflect the smaller area our easement occupied, and
- Modified because we were only acquiring an easement, whereas the AHTD was purchasing the land in full. The City generally pays 25% of full fee simple for easements, as we only obtain limited rights to the land, and the property owner retains ownership. We also generally pay 10% of full fee simple price for temporary construction easement, which ends when the project is completed.

Both sides feel this negotiated settlement is fair and reasonable. Water and sewer construction is completed.

Valuation Source	Price
Kisors' Appraisal	\$ 39,000
City's Appraisal	\$ 3,300
AHTD Settlement (adjusted as shown above)	\$ 12,450

BUDGET IMPACT

This settlement for \$13,950.00 is \$10,650.00 increase above the \$3,300.00 previously placed on deposit with the court. The additional \$10,650.00 is available within the approved project budget.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH BILL AND DORIS KISOR CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE N. CROSSOVER ROAD UTILITIES IMPROVEMENT PROJECT IN A TOTAL AMOUNT OF \$13,950.00

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 an agreement with Bill and Doris Kisor, in a total amount of \$13,950.00, as full and final settlement of condemnation litigation (City of Fayetteville v. Kisor, et ux., Washington County Circuit Court Case No. CV 2012-2237-7) filed as part of the N. Crossover Road Utilities Improvement Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby approves payment of an additional \$10,650, over and above the \$3,300.00 placed on deposit with the court.

PASSED and APPROVED this 20th day of August, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

REECE MOORE PENDERGRAFT LLP

Attorneys at Law
A LIMITED LIABILITY PARTNERSHIP
Established 2005

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Lee Moore
Joseph D. Reece
Kenneth N. Hall*
John P. Neihouse, P.A.**
Larry McCredy
Denton E. Woods
Alex G. Miller

August 1, 2013

RECEIVED

AUG 02 2013

CITY ATTORNEY'S OFFICE

Mr. Jason B. Kelley
Assistant City Attorney
113 W. Mountain, Suite 302
Fayetteville, AR 72701

RE: *City of Fayetteville, Arkansas v. Bill Kisor and Doris Kisor*
Washington County Circuit Court, Case No. CV-12-2237-7

Dear Jason:

I am in receipt of your letter dated July 30, 2013. Please let this letter confirm that my clients have agreed to accept the sum of \$13,950.00 as total just compensation for the takings at issue in this matter. Further, my clients understand that this agreement is conditioned upon approval by the Fayetteville City Counsel which is scheduled to be considered on August 20, 2013.

Thank you for your assistance and cooperation.

Sincerely,


Larry McCredy

LMc/kgb

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

JASON B. KELLEY
Assistant City Attorney

Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315
TDD (479) 521-1316



113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

July 30, 2013

Larry McCreedy, Esq.
Reece Moore Pendergraft, LLP
P.O. Box 1788
Fayetteville, AR 72702

Re: City of Fayetteville v. Kisor, et ux., Wash. Co. Case No. CV 12-2237-7

Dear Larry:

Please allow this letter to serve as confirmation of the settlement agreement your client and the City of Fayetteville have made, subject to approval of the Mayor and City Council, in full and final settlement of the above-referenced condemnation litigation.

The City and your client agreed to \$13,950.00 as total just compensation for the takings at issue. This settlement will be presented to the Fayetteville City Council for its consideration at its August 20, 2013, meeting. Assuming it is approved, I will then begin the process of having a check issued. We can work out the timing details of dismissal paperwork, deed execution, etc., at that time.

Please confirm your understanding of this agreement so that it can be presented to the City Council for its consideration. We appreciate you and your clients' willingness to reach an acceptable resolution to this matter.

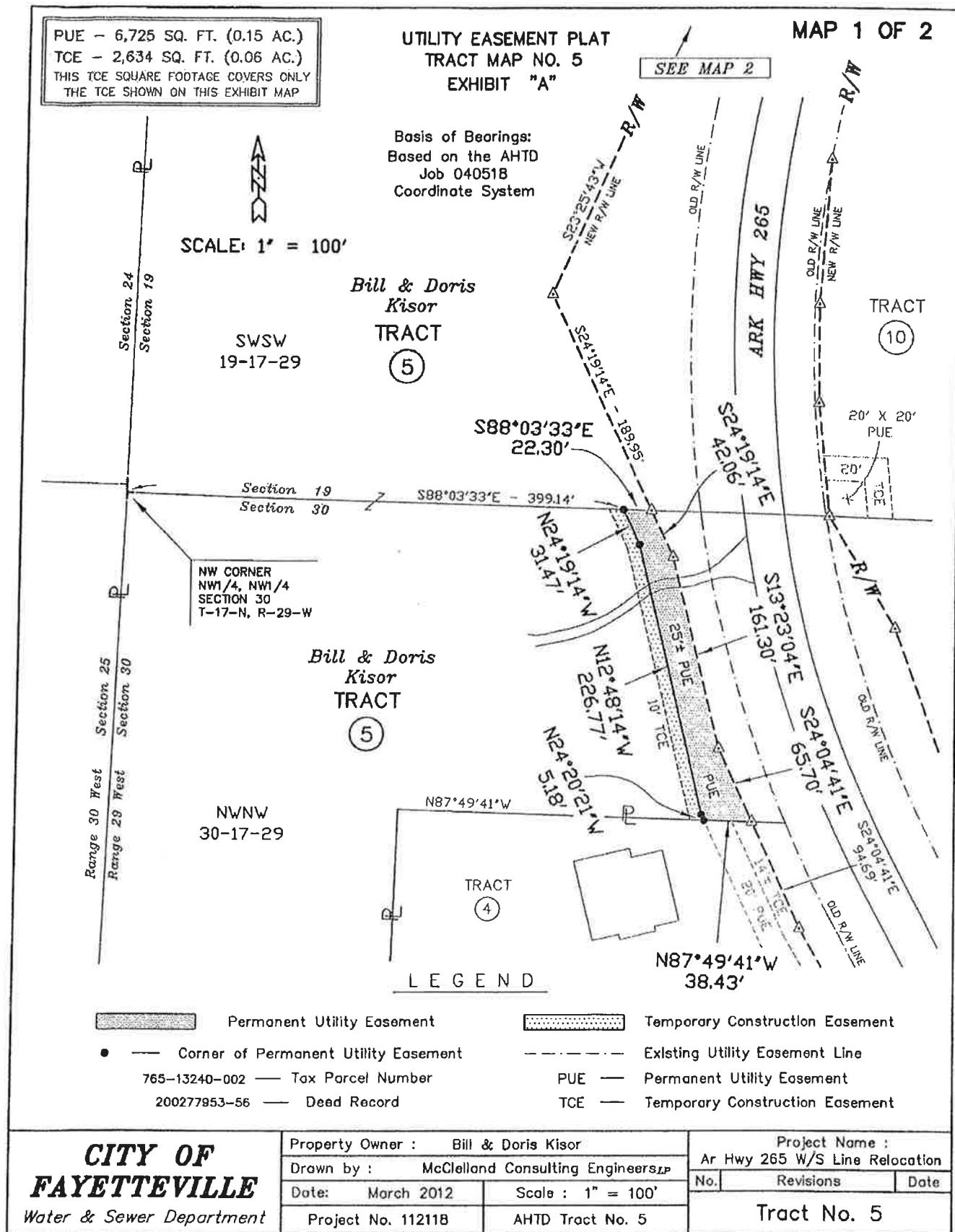
Sincerely,

A handwritten signature in black ink, appearing to read "Jason B. Kelley". The signature is fluid and cursive, with a large loop at the end.

Jason B. Kelley
Assistant City Attorney

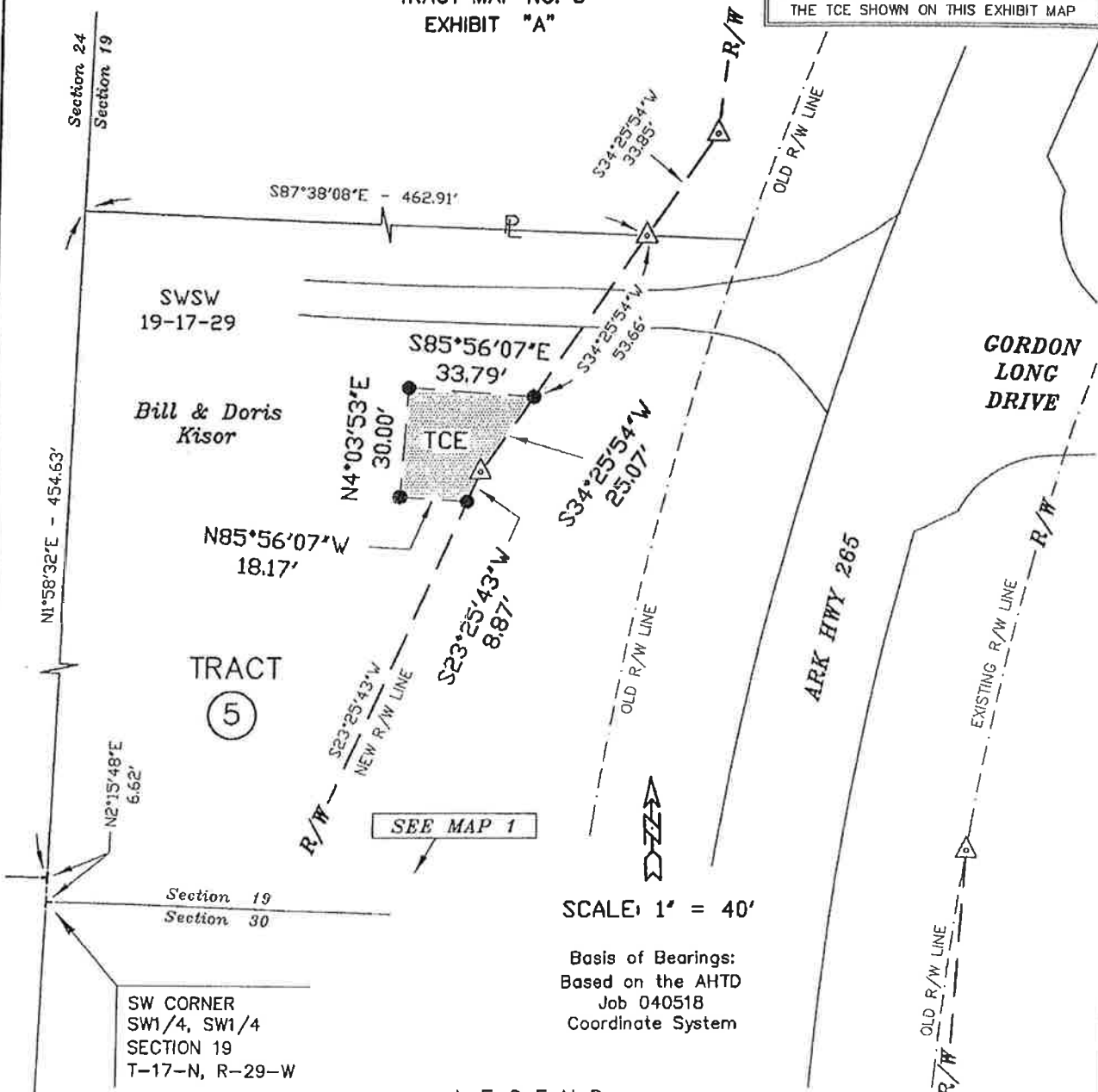
cc: D. Jurgens





MAP 2 OF 2 **TEMPORARY CONSTRUCTION EASEMENT PLAT**
TRACT MAP NO. 5
EXHIBIT "A"

TCE - 758 SQ. FT. (0.02 AC.)
 THIS TCE SQUARE FOOTAGE COVERS ONLY
 THE TCE SHOWN ON THIS EXHIBIT MAP



SCALE: 1" = 40'

Basis of Bearings:
 Based on the AHTD
 Job 040518
 Coordinate System

LEGEND

- Temporary Construction Easement
- Corner of Permanent Utility Easement
- Existing Utility Easement Line
- PUE — Permanent Utility Easement
- TCE — Temporary Construction Easement
- 765-13234-000 — Tax Parcel Number
- 2002-36547 — Deed Record

CITY OF
FAYETTEVILLE
 Water & Sewer Department

Property Owner : Bill & Doris Kisor	
Drawn by : McClelland Consulting Engineers	
Date: March 2012	Scale : 1" = 40'
Project No. 112118	AHTD Tract No. 5

Project Name : Ar Hwy 265 W/S Line Relocation		
No.	Revisions	Date
Tract No. 5		