

Added at Agenda Session 6-10-14

City of Fayetteville Item Review Form

2014-0258

Legistar File Number

6/17/14

City Council Meeting Date - Agenda Item Only  
N/A for Non-Agenda Item

Chris Brown

Submitted By

Development Services

Department

Action Required:

A Resolution Approving a Settlement with Dale and Martha Benedict for Purchase of Right of Way for the Van Ashe Drive Project.

Does this item have a cost?  Yes

\$5,000.00

Cost of this request

\$1,421,819.00

Category or Project Budget

Van Ashe (Garland to Gregg)

Program or Project Name

4520.9555.5805.00

Account Number

Funds Used to Date

Street Improvements

Program or Project Category

06035.2500

Project Number

\$1,416,819.00

Remaining Balance

Street Sales Tax 2013

Fund Name

Budgeted Item?  Yes

Budget Adjustment Attached?

V20130812

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

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

ENTERED  
6/10/14 DM

ENTERED  
6/10/14  
PT

Comments:

*[Signature]* 6/10/14

Paul G. Archer 6-10-2014

*[Signature]* 6-10-14  
*[Signature]*

## CITY COUNCIL AGENDA MEMO

### MEETING OF JUNE 17, 2014

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Jeremy Pate, Director of Development Services  
Chris Brown, City Engineer

**FROM:** Matt Casey, Engineering Design Manager *MC*

**DATE:** June 9, 2014

**SUBJECT:** Approval of a Settlement with Dale and Martha Benedict for Purchase of Right of Way for the Van Ashe Drive Project

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#### RECOMMENDATION:

Staff recommends approval of a Resolution authorizing the settlement of the Benedict Condemnation Case.

#### BACKGROUND:

Van Ashe Drive is currently under construction from Gregg Ave. to Garland Ave. as a part of the Transportation Improvement Bond Program. Right of way acquisition was required from many of the property owners along the route. In order to move forward with the project to bidding and construction, condemnation action on some of the properties was approved by the City Council on November 19, 2013. The City Attorney filed condemnation suits for these properties, and received Orders of Possession from the Circuit Court so that the project could move forward.

#### DISCUSSION:

In the case of the Benedict's property, \$3,400.00, representing the City's appraised value for the right of way was deposited with the Court at the time of the filing. Since that time, staff has corresponded with the Benedict's attorney, and they have agreed to accept an additional \$1,600.00 to the appraised value of \$3,400.00 for the right of way and drainage easement. The total amount of compensation would be \$5,000.00. In addition, the City has agreed to construct a driveway to this property that will replace the existing driveway that will be removed with the intersection construction.

This item is being walked on to the agenda at the recommendation of the City Attorney in order to quickly act on the settlement offer.

#### BUDGET/STAFF IMPACT:

The payment for land acquisition will be made from the project budget allocated for the Van Ashe Drive project, which is funded by the Transportation Bond Fund.

#### Attachments:

Driveway Exhibit



## DEPARTMENTAL CORRESPONDENCE

OFFICE OF THE  
CITY ATTORNEY

Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Patti Mulford  
Paralegal

TO: Mayor Jordan  
City Council

FROM: Blake Pennington, Assistant City Attorney

A handwritten signature in blue ink, appearing to be "BP", written over the printed name of Blake Pennington.

DATE: June 10, 2014

RE: Approval of Settlement with Dale and Martha Benedict for  
Purchase of Right of Way for the Van Ashe Drive Construction  
Project

We join City Engineer Chris Brown's request to walk the proposed settlement onto the agenda for the June 17, 2014 City Council meeting. Pursuant to City Council Rules of Order and Procedure #A.7, I am providing an explanation for our request for expedited consideration by the Council.

Our office has reached a tentative settlement with the Benedicts and we now ask for Council approval to finalize the agreement. Our office would prefer to conclude all litigation as quickly as possible once the parties have reached a tentative agreement.

The proposed settlement agreement provides for payment of \$5,000.00, which is \$1,400.00 more than we had originally deposited with the Court. We believe this is a reasonable amount of compensation for the property that is being taken for this project.

The settlement also authorizes the City to relocate an existing driveway entrance on the north side of the Benedicts' property away from the intersection of Highway 112 and Van Ashe. Engineering has determined that the current entrance is too close to the intersection of Highway 112 and Van Ashe and needs to be closed for safety reasons. We want to ensure that the Benedicts continue to have full access to their property and the Benedicts have agreed to allow us to move the entrance further to the west.

We strongly recommend City Council approval of this proposed settlement offer.

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

A RESOLUTION TO AUTHORIZE A SETTLEMENT AGREEMENT WITH DALE AND MARTH A BENEDICT CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE VAN ASCHE DRIVE CONSTRUCTION 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 authorizes an agreement with Dale and Martha Benedict to include payment in the amount of \$5,000.00, as well as the relocation of a driveway entrance on the north side of their property, as full and final settlement of condemnation litigation (City of Fayetteville v. Benedict, Washington County Circuit Court Case No. CV-2013-2266-7) filed as part of the Van Ashe Drive Construction Project.

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby approves payment of an additional \$1,600.00, over and above the \$3,400.00 placed on deposit with the court, and further approves the relocation of the driveway entrance.

**PASSED and APPROVED** this 17<sup>th</sup> day of June, 2014.

APPROVED:

ATTEST:

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

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

Van Ashe Drive Right-of-Way  
Part of Parcel No. 765-15830-001

### WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT Dale L. Benedict and Martha Benedict, husband and wife, husband and wife, 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, do hereby grant, bargain, sell and convey unto the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called GRANTEE, and unto Grantee's successors and assigns, the following described land situated in the County of Washington, State of Arkansas, to-wit:

A part of the Northwest Quarter (NW¼) of the Southeast Quarter (SE¼) of Section Twenty-eight (28), Township Seventeen (17) North, Range Thirty (30) West, Washington County, Arkansas, being more particularly described as follows:

Beginning at the Northeast Corner of said forty (40) acre tract; thence along the Easterly line of said tract South 02°32'56" West 219.10 feet; thence leaving said Easterly line North 87°53'46" West 40.03 feet to the existing Westerly right-of-way of Garland Avenue (AR State Hwy. 112); thence continuing North 87°53'46" West 9.79 feet to the proposed Westerly right-of-way of Garland Avenue (AR State Hwy. 112); thence along said proposed right-of-way North 02°06'14" East 10.00 feet; thence continuing along said proposed right-of-way North 00°49'19" East 123.97 feet; thence continuing along said proposed right-of-way North 43°38'06" West 56.32 feet; thence North 88°09'04" West 258.81 feet; thence North 03°39'24" East 11.23 feet to the existing Southerly right-of-way of AR State Hwy 112; thence North 02°47'30" East 40.00 feet to the Northerly line of said 40 acre tract; thence along said Northerly line South 87°12'30" East 352.68 feet to the Point of Beginning, containing 26,889 square feet, more or less, consisting of 21,287 square feet in existing city maintained right-of-way and 5,602 square feet in new proposed right-of-way.

TO HAVE AND TO HOLD the said lands and appurtenances hereunto belonging unto the said Grantee and Grantee's successors and assigns, forever. And the said Grantors, hereby covenant that they are lawfully seized of said lands and premises; that the same is unencumbered, and that the Grantors will forever warrant and defend the title to the said lands against all legal claims whatever.

WITNESS the execution hereof on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

REVENUE STAMPS AFFIDAVIT

The foregoing deed has the correct amount of Revenue Stamps affixed to it or is exempt from such stamps.

\_\_\_\_\_  
Dale L. Benedict

Signed: \_\_\_\_\_  
City of Fayetteville  
113 W. Mountain  
Fayetteville, AR 72701

\_\_\_\_\_  
Martha Benedict

ACKNOWLEDGMENT

STATE OF ARKANSAS                    )  
  )     ss.  
COUNTY OF WASHINGTON            )

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 Dale L. Benedict and Martha Benedict, husband and wife, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that they had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

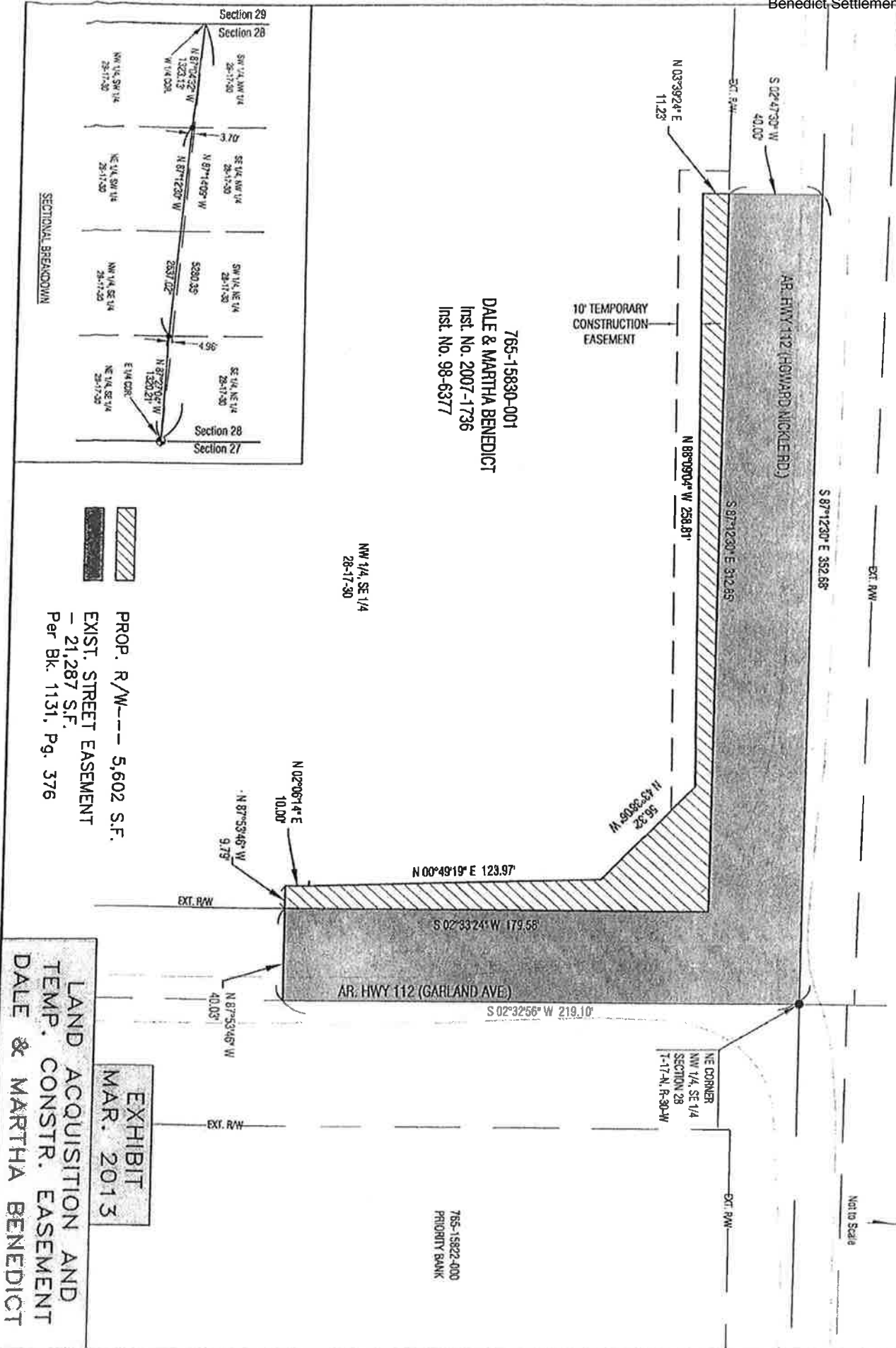
WITNESS my hand and seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

MY COMMISSION EXPIRES:

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

765-15806-000  
 RATHNAM PANNER  
 & CHITRA SELVAM

765-15165-000  
 JOHNSON CORNER LLC



765-15830-001  
 DALE & MARTHA BENEDICT  
 Inst. No. 2007-1736  
 Inst. No. 98-6377

NW 1/4, SE 1/4  
 28-17-30



PROP. R/W----- 5,602 S.F.  
 EXIST. STREET EASEMENT  
 - 21,287 S.F.  
 Per Bk. 1131, Pg. 376

EXHIBIT  
 MAR. 2013

LAND ACQUISITION AND  
 TEMP. CONSTR. EASEMENT  
 DALE & MARTHA BENEDICT

765-15822-000  
 PRIORITY BANK

Van Ashe Drive Right-of-Way  
Parcel No. 765-15830-001

## TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Dale L. Benedict and Martha Benedict, husband and wife**, hereinafter called GRANTORS, 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, do 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 temporary construction and grading easement on, over, and through the following described land situated in the County of Washington, State of Arkansas, for the sole purposes necessary for construction of Van Ashe Drive Improvements, to-wit:

PROPERTY DESCRIPTION: (Deed Book 1412 at Page 935)

Part of the NE¼ of the SW¼ and part of the NW¼ of the SE¼ of Section 28, Township 17 North, Range 30 West of the 5<sup>th</sup> Principal Meridian, all in Washington County, Arkansas, more particularly described as follows, to-wit: Commencing at the Northwest corner of the NE¼ of the SW¼ of said Section 28, Township 17 North, Range 30 West, thence along the centerline of Highway 112, South 89 degrees 35 minutes 36 seconds East 941.81 feet to the POINT OF BEGINNING, thence along the centerline of Highway 112 South 89 degrees 35 minutes 36 seconds East 1704.36 feet, thence along the centerline of Highway 112 South 801.84 feet, thence North 89 degrees 28 minutes 28 seconds West 1984.09 feet, thence North 179.25 feet, thence along an existing fence North 02 degrees 04 minutes 03 seconds West 154.99 feet; thence along an existing fence which is the South property line of the Sandlin property North 89 degrees 42 minutes 25 seconds East 299.39 feet, thence along an existing fence which is the East property line of the Sandlin property North 01 degrees 45 minutes 19 seconds West 460.28 feet to the POINT OF BEGINNING, containing 33.397 acres, more or less.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A ten (10) foot temporary construction and grading easement of equal and uniform width located along the South side of the proposed new right-of-way of Arkansas Highway 112, as shown on the attached Exhibit. This temporary construction and grading easement contains 2,853 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.

This temporary construction and grading easement as conditioned above, shall terminate when the hereinabove referenced project has been completed by the contractor and accepted by the City of Fayetteville, Arkansas.

It is expressly understood that the above temporary construction and grading easement shall exclude any permanent structure(s) which may be located or under construction within said temporary construction easement area during the construction of this project.

TO HAVE AND TO HOLD the same unto the said Grantee, its successors and assigns, 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 consideration first above recited as being paid to the 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.

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

WITNESS the execution hereof on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
Dale L. Benedict

\_\_\_\_\_  
Martha Benedict







**PLEASE RETURN TO:**

CITY OF FAYETTEVILLE  
113 W. MOUNTAIN  
FAYETTEVILLE, AR 72701  
(479) 444-3407  
FAX: (479) 575-8202

**VENDOR FORM**

Vendor # \_\_\_\_\_  
(For Office Use Only)

According to the Federal Income Tax Law, the City is required to obtain the information listed below from all individuals and companies with whom we do business. Failure to comply may subject you and/or your company to certain penalties, as well as withholding tax.

Please complete the following:

- \_\_\_\_\_ Sole Proprietorship
- \_\_\_\_\_ Corporation
- \_\_\_\_\_ Partnership
- \_\_\_\_\_ Tax-exempt organization under Section 501(a)
- \_\_\_\_\_ Foreign Government
- Individual
- \_\_\_\_\_ Other (please explain)

Tax Identification Number:

\_\_\_\_\_ Federal employer identification number

**OR**

\_\_\_\_\_ Social Security number (for individual or sole proprietors)

\_\_\_\_\_ Name associated with above Social Security number

I certify that the above information is true and correct.

Dale L. and Martha J. Benedict  
Name of Individual or Business

P.O. Box 1927  
Address

Fayetteville, AR 72704  
City, State, Zip Code

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

N/A  
Title

Please mail or FAX this completed form to the City of Fayetteville at the above address or FAX number.



BENEDICT DRIVEWAY

