

City Council Agenda Items
and
Contracts, Leases or Agreements

5/15
~~3/6~~ 2012

City Council Meeting Date
Agenda Items Only

Chris Brown ^{CB}
Submitted By

Engineering
Division

Development Services
Department

Action Required:

Approval of a Resolution authorizing the settlement of The Spirits Shop, Inc. Condemnation Case for a total of \$16,900.

\$ 6,200.00

Cost of this request

\$ 185,515.00

Category / Project Budget

Transportation Bond Program

Program Category / Project Name

4470.9470.5810.00

Account Number

\$ 130,781.23

Funds Used to Date

Land Acquisition

Program / Project Category Name

06035.2250

Project Number

\$ 54,733.77

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item

Budget Adjustment Attached

[Signature]
Department Director

4-27-2012
Date

Previous Ordinance or Resolution # _____

[Signature]
City Attorney

4-27-12
Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Bucher
Finance and Internal Services Director

4-27-2012
Date

Received in City 4-27-12 A 11:49 RCVD
Clerk's Office

[Signature]
Chief of Staff

4-27-12
Date

Received in
Mayor's Office

[Signature]
Mayor

4/27/12
Date

ENTERED
4/27/12
[Signature]

Comments:

CITY COUNCIL AGENDA MEMO

City Council Meeting of May 15, 2012

To: Mayor Jordan and City Council

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

From: Chris Brown *CB*

Date: April 27, 2012

Subject: Approval of a Resolution authorizing the settlement of The Spirits Shop, Inc. Condemnation Case for a total of \$16,900.

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.

Prior to construction work by AHTD, the City and local public utilities must relocate existing utility lines out of the widening area. In order to accomplish this work, it was necessary to acquire utility easements adjacent to the right of way. City was not able to negotiate a compensation agreement with the Spirits Shop, therefore, the City Council authorized acquisition by condemnation at its March 6, 2012 meeting, and the City Attorney subsequently filed a complaint with the Circuit Court to acquire the necessary easement. The order of possession was received on this property after the complaint was filed and the City deposited \$10,700 with the Court as just compensation.

On April 24th, after a meeting between Mr. Donald Johnston, representing the Spirits Shop, and City of Fayetteville staff, Assistant City Attorney Jason Kelley provided a settlement offer to The Spirits Shop in the amount of \$16,900, contingent on City Council approval. Mr. Johnston has accepted this offer, as indicated by the attached letter.

RECOMMENDATION:

Staff recommends approval of a Resolution authorizing settlement of the Spirits Shop condemnation case and authorizing an additional payment of \$6,200 to The Spirits Shop. This is a fair and equitable settlement to both the City and the property owners, and avoids further staff time and litigation expense on this case.

BUDGET IMPACT:

Payment of the additional amount to The Spirits Shop will be made from the Garland Avenue Water and Sewer Relocations project of the Transportation Bond Program. There are adequate funds available for this payment.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH THE SPIRITS SHOP, INC., CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE N. GARLAND AVENUE IMPROVEMENT PROJECT, IN THE TOTAL AMOUNT OF \$16,900.00

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 The Spirits Shop, Inc., in a total amount of \$16,900.00, as full and final settlement of condemnation litigation (City of Fayetteville v. The Spirits Shop, Inc., Washington County Circuit Court Case No. CV 2012-654-7) filed as part of the N. Garland Avenue 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 \$6,200.00 over and above the \$10,700.00 placed on deposit with the court.

PASSED and APPROVED this 15th day of May, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

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

FOR PURPOSES OF SETTLEMENT NEGOTIATIONS ONLY.

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

April 24, 2012

The Spirits Shop, Inc.
c/o Donald Johnston
VIA Facsimile 479-521-1650

Re: City of Fayetteville v. The Spirits Shop, Inc., Wash. Co. Case No. CV 12-654-7

Dear Mr. Johnston:

As we discussed during our meeting today with City representatives Chris Brown and Matt Casey, the City is willing to settle the above-referenced condemnation case concerning the easement along North Garland owned by The Spirits Shop, Inc. for a total of \$16,900.00, subject to approval of the Mayor and City Council of Fayetteville.

If this is acceptable, please have an authorized representative of The Spirits Shop, Inc. indicate acceptance on the bottom of this letter and feel free to return fax it to me at 479-575-8315. Should you desire to accept, we will begin working on preparing the settlement approval paperwork and presenting the agreement to the Mayor and City Council for their approval as soon as possible.

This offer will expire if not accepted by 9:00 a.m., Monday, April 30, 2012.

Sincerely,

Jason B. Kelley
Assistant City Attorney

cc: C. Brown
M. Casey

ACCEPTED:

Authorized Representative, The Spirits Shop, Inc.
Donald Johnston

Date: 4-25-12

Takings Aerial



