

City Council Agenda Items  
and  
Contracts, Leases or Agreements

11/8/2012

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 the settlement of the Margot Khavinson Condemnation Case on the Highway 112 (Garland Avenue) Project for a total of \$18,000.

\$ 10,000.00

Cost of this request

\$ 227,987.00

Category / Project Budget

Transportation Bond Program

Program Category / Project Name

4470.9470.5810.00

Account Number

\$ 197,148.42

Funds Used to Date

Land Acquisition

Program / Project Category Name

06035.2250

Project Number

\$ 30,838.58

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item

Budget Adjustment Attached

*[Signature]*  
Department Director

10-18-12  
Date

Previous Ordinance or Resolution #

*[Signature]*  
City Attorney

10-19-12  
Date

Original Contract Date:

Original Contract Number:

*[Signature]*  
Finance and Internal Services Director

10-19-2012  
Date

Received in City Clerk's Office 10-13-12 P04:45 RCVD

*[Signature]*  
Chief of Staff

10-19-12  
Date

*[Signature]*

*[Signature]*  
Mayor

10/22/12  
Date

Received in Mayor's Office



Comments:

## CITY COUNCIL AGENDA MEMO

City Council Meeting of November 8, 2012

**To:** Mayor Jordan and City Council

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

**From:** Chris Brown *CB*

**Date:** October 18, 2012

**Subject:** Approval of a Resolution authorizing the settlement of the Margot Khavinson Condemnation Case for a total of \$18,000.

### **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 were required to 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. During the negotiations, Ms. Khavinson passed away, and her descendants took up the negotiations. The City was not able to negotiate a compensation agreement with Ms. Khavinson's heirs; 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 \$8,000 with the Court as just compensation.

On October 17, 2012, City staff participated in a mediation conference with Oscar Blass, son of Ms. Khavinson, representing her estate, and Brenda Austin, Attorney for the estate. During this conference, a settlement agreement was developed, subject to approval by the City Council, whereby the City agrees to pay a total of \$18,000 for the necessary easement

### **RECOMMENDATION:**

Staff recommends approval of a Resolution authorizing settlement of the Margot Khavinson condemnation case and authorizing an additional payment of \$10,000. 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 estate of Margot Khavinson 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 MARGOT KHAVINSON ESTATE, CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE N. GARLAND AVENUE WIDENING AND IMPROVEMENT PROJECT IN THE TOTAL AMOUNT OF \$18,000.00

**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 Margot Khavinson estate, in a total amount of \$18,000.00 as full and final settlement of condemnation litigation (City of Fayetteville v. Blass, as personal representative of Khavinson, Washington County Circuit Court Case No. CV 2012-665-4) 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 approves payment of an additional \$10,000.00 over and above the \$8,000.00 placed on deposit with the court.

**PASSED and APPROVED** this 8<sup>th</sup> day of November, 2012.

APPROVED:

ATTEST:

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

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

MEDIATION SETTLEMENT AGREEMENT

We, having participated in mediation on 10-17-12, and being satisfied that we have reached a fair and reasonable settlement, hereby agree as follows:

In full settlement of a lawsuit City of Fayetteville vs. Oscar Blass, AS Personal Representative of The Estate of Margot Khavinson Wash. Co. CV 12-665-4 The City of Fayetteville agrees to pay \$18,000 plus full costs of mediation and agree to level the easement area and reseed it with grass and gravel the driveway. Oscar Blass in his capacity as personal representative agrees to accept said sum in full and final settlement of all issues in the lawsuit. This agreement is subject to approval by the Fayetteville City Council and the Probate Judge.

We recognize that James M. Hall has not given us legal advice or legal counsel, and that we have had the right to consult with an attorney at any time and to have an attorney review the terms of this Agreement before it is signed. We intend the above Agreement to be a legally binding and enforceable settlement agreement.

We intend the above Agreement to be a legally binding and enforceable settlement contract.

Date this 17<sup>th</sup> day of October, 2012.

Brida Austin, atty for A John Kelley, atty for City

Oscar Blass II  
Oscar Blass

Chris Brown  
Chris Brown, for City

James M. Hall, mediator

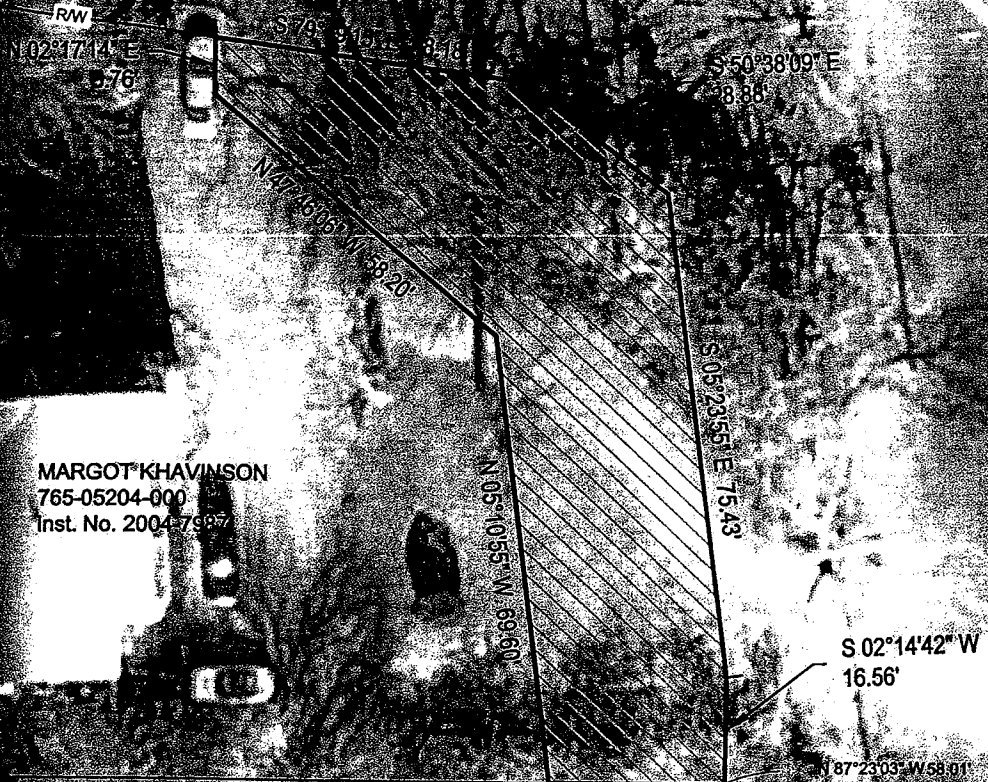
Not to Scale

DEANE ST

GARLAND AVENUE

MARGOT KHAVINSON  
765-05204-000  
Inst. No. 2004-7987

GRANT & LINDSEY BERRY  
765-13560-000  
Inst. No. 2009-34022




 PROP. UTILITY  
EASEMENT—3,956 Sq. Ft.

EXHIBIT  
SEP. 2011

UTILITY EASEMENT  
MARGOT KHAVINSON

