

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**Final Agenda
City of Fayetteville Arkansas
City Council Meeting
January 17, 2012**

A meeting of the Fayetteville City Council will be held on January 17, 2012 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

- 1. 2012 Martin Luther King Brotherhood Award Presentation**
- 2. City of Distinction Award**
- 3. State of the City Address**

Agenda Additions:

- 1. Ricky and Dawn Sparks Settlement Agreement:** A resolution approving a settlement agreement with Ricky Sparks and Dawn Sparks, concerning condemnation litigation filed as part of the Cato Springs Road Improvement Project, in the total amount of \$11,850.00.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 09-12

A. Consent:

1. Approval of the January 3, 2012 City Council meeting minutes. **APPROVED**
2. **T-Hangar Lease Agreements:** A resolution to approve T-Hangar lease agreements throughout 2012 at the current rental rate or as adjusted upward by the Airport Board for all T-Hangars rented at the Fayetteville Executive Airport.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 10-12

3. **South Delta Aviation, Inc.:** A resolution to approve a two year lease for the airport hangar at 4248 South School Avenue to South Delta Aviation, Inc. for a rent of \$3,000.00 per month to begin on June 1, 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 11-12

4. **Arkansas Department of Aeronautics Grant:** A resolution authorizing application for and acceptance of an Arkansas Department of Aeronautics 80/20 Grant in the amount of \$224,000.00 for improvements to the former AATC hangar building at Drake Field.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 12-12

5. **McClelland Consulting Engineers Task Order No. 7:** A resolution approving Task Order No. 7 to the contract with McClelland Consulting Engineers in the amount of \$27,150.00 to design the rehabilitation of the former AATC hangar building at Drake Field, and approving a budget adjustment.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 13-12

6. **Transportation Division Truck Equipment Purchase:** A resolution approving a budget adjustment in the amount of \$6,000.00 to fund the purchase of an extendo-bed, topper and ladder rack for pickup truck unit 2147.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 14-12

7. **Bid #11-65 Central Salt Company:** A resolution awarding Bid #11-65 and authorizing the purchase of crushed rock salt from Central Salt Company in the amount of \$79.85 per ton, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 15-12

8. **Bid #12-01 Time Striping, Inc.:** A resolution awarding bid #12-01 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 16-12

9. **Bid #12-02 Asphalt Striping Service, LLC:** A resolution awarding Bid #12-02 and authorizing the purchase from Asphalt Striping Service, LLC of reflectorized paint markings, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 17-12

10. **Bid #12-03 Fochtman Enterprises, Inc. and Sweetser Construction, Inc.:** A resolution awarding Bid #12-03 and authorizing the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 18-12

11. **Bid #12-04 Les Rogers, Inc.:** A resolution awarding Bid #12-04 and authorizing the purchase of hillside gravel from Les Rogers, Inc. for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 19-12

12. **Bid #12-05 Beaver Lake Concrete, Inc. and Tune Concrete Company:** A resolution awarding Bid #12-05 and authorizing the purchase of concrete from Beaver Lake Concrete, Inc as a primary supplier and Tune Concrete Company as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 20-12

13. **Bid #12-06 Hillside Haulers:** A resolution awarding Bid #12-06 and authorizing the purchase of truck hauling services from Hillside Haulers for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 21-12

14. **Bid #12-07 Aggregate Materials:** A resolution awarding Bid #12-07 and authorizing the purchase of aggregate materials for varying unit prices from various vendors, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 22-12

15. **Bid #12-09 Tomlinson Asphalt Co. and Sweetser Construction, Inc.:** A resolution awarding Bid #12-09 and authorizing the purchase of curb and gutter construction from Tomlinson Asphalt Co., Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, for use in Ozark Regional Transit New Freedom Projects, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 23-12

- 16. Bid #12-10 Drainage Pipe:** A resolution awarding Bid #12-10 and authorizing the purchase of drainage pipe for varying unit prices from various vendors for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 24-12

B. Unfinished Business:

- 1. Bellefont Gardens Tree Preservation Area Modification:** A resolution to approve a modification of the tree preservation area in the Bellefont Gardens development to shift about one-half acre of tree preservation area from Lot 1 to Lot 4. ***This resolution was tabled at the December 6, 2011 City Council meeting to the December 20, 2011 City Council meeting. This resolution was tabled at the December 20, 2011 City Council meeting to the January 17, 2012 City Council meeting.***

THIS ITEM WAS TABLED INDEFINITELY

- 2. Kum & Go Appeal:** A resolution to grant the appeal of Kum & Go, L.C. and to amend and approve its large scale development to match the plat submitted with its appeal letter. ***This appeal was tabled at the December 20, 2011 City Council meeting to the January 3, 2012 City Council meeting. This appeal was tabled at the January 3, 2012 City Council meeting to the January 17, 2012 City Council meeting.***

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 25-12

C. New Business:

- 1. Asphalt Materials:** An ordinance waiving the requirements of formal competitive bidding during calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5476

- 2. Amend Chapter 10 and 150:** An ordinance to enact into the Code of Fayetteville §10.18 Authority and to amend §150.03 Authority in the Unified Development Code.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5477

- 3. Washington County Jail Services Interlocal Agreement:** A resolution to approve the Third Amended Interlocal Agreement for Jail Services with Washington County to increase the booking fee from \$55.00 to \$60.00 per prisoner.

PASSED AND SHALL BE RECORDED AS RESOLUTION NO. 26-12

- 4. Amend Telecommunications Board:** An ordinance amending Article IX Telecommunications Board of the Code of Fayetteville, by redefining the procedures and duties of the Telecommunications Board.

PASSED AND SHALL BE RECORDED AS ORDINANCE NO. 5478

D. City Council Agenda Session Presentations:

City Council Tour:

Announcements:

Adjournment: 9:10 p.m.

NOTICE TO MEMBERS OF THE AUDIENCE

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Below is a portion of the **Rules of Order and Procedure of the Fayetteville City Council** pertaining to City Council meetings:

- (a) **Agenda additions.** A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.
- (b) **Consent Agenda.** Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.
- (c) **Old business and new business.**
 - (i) **Presentations by staff and applicants.** Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aides in a City Council meeting as part of their presentation.
 - (ii) **Public comments.** Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before its meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.
- (d) **Courtesy and respect.** All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

A copy of the complete City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.

Subject:	Roll				
	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Mayor Jordan	✓			

9-0

Subject:	Ricky Sparks & Dawn Sparks Settlement				
Motion To:		Add to the Agenda			Agreement
Motion By:		Ferrell	Boudreaux		
Seconded:		Gray	Ferrell		
Added to the Agenda at the City Council Meeting	Kinion	✓	✓		
	Petty	✓	✓		
	Tennant	✓	✓		
	Ferrell	✓	✓		
	Adams	✓	✓		
	Lewis	✓	✓		
	Gray	✓	✓		
	Boudreaux	✓	✓		
09-12 Passed	Mayor Jordan				

8-0

8-0

Subject:	Consent				
Motion To:		Approve			
Motion By:		Lewis			
Seconded:		Boudreaux			
Minutes Approved <u>Passed</u> 10-12 thru 24-12	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Mayor Jordan				

8-0

Subject:					
Motion To:					
Motion By:					
Seconded:					
	Kinion				
	Petty				
	Tennant				
	Ferrell				
	Adams				
	Lewis				
	Gray				
	Boudreaux				
	Mayor Jordan				

Subject:	Bellefont Gardens Tree Preservation Area Modification				
Motion To:		<i>Table Indef.</i>			
Motion By:		<i>Petty</i>			
Seconded:		<i>Tennant</i>			
B. 1 Unfinished Business <i>Tabled</i> <u><i>Indefinitely</i></u>	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	<i>Absent during the vote.</i>			
	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Mayor Jordan				

7-0

Subject:	Kum & Go Appeal				
Motion To:		<i>Approve median Concept resolution</i>			
Motion By:		<i>Kinion</i>			
Seconded:		<i>Boudreaux</i>			
B. 2 Unfinished Business <u><i>Passed</i></u> 25-12	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Mayor Jordan				

8-0

Subject:		Asphalt Materials			
Motion To:					
		2nd Read	3rd Read	Pass	
Motion By:					
		Ferrell	Lewis		
Seconded:					
		Boudreaux	Adams		
C. 1 New Business <u>Passed</u> 5476	Kinion	✓	✓	✓	
	Petty	Absent during the vote	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Boudreaux	✓	✓	✓	
	Mayor Jordan				
		7-0	8-0	8-0	

Subject:		Amend Chapter 10 and 150			
Motion To:					
		2nd Read	3rd Read	Pass	
Motion By:					
		Gray	Gray		
Seconded:					
		Boudreaux	Boudreaux		
C. 2 New Business <u>Passed</u> 5477	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	N	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Boudreaux	✓	✓	✓	
	Mayor Jordan				
		8-0	8-0	7-1	

Subject:		Washington County Jail Services Interlocal Agreement			
Motion To:		Approve			
Motion By:		Boudreaux			
Seconded:		Lewis			
C. 3 New Business <u>passed</u> 2-6-12	Kinion	✓			
	Petty	✓			
	Tennant	✓			
	Ferrell	✓			
	Adams	✓			
	Lewis	✓			
	Gray	✓			
	Boudreaux	✓			
	Mayor Jordan				

8-0

Subject:		Amend Telecommunications Board			
Motion To:		2nd Read	3rd Read	Pass	
Motion By:		Boudreaux	Boudreaux		
Seconded:		Gray	Ferrell		
C. 4 New Business <u>passed</u> 5-4-78	Kinion	✓	✓	✓	
	Petty	✓	✓	✓	
	Tennant	✓	✓	✓	
	Ferrell	✓	✓	✓	
	Adams	✓	✓	✓	
	Lewis	✓	✓	✓	
	Gray	✓	✓	✓	
	Boudreaux	✓	✓	✓	
	Mayor Jordan				

8-0

8-0

8-0



Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan

THRU: Sondra Smith, City Clerk

FROM: Kit Williams, City Attorney

DATE: January 18, 2012

RE: Resolutions and Ordinances prepared by the City Attorney's Office and passed at the City Council meeting of January 17, 2012

1. **Sparks Condemnation Settlement:** A resolution approving a Settlement Agreement with Ricky Sparks and Dawn Sparks, concerning condemnation litigation filed as part of the Cato Springs Road Improvement Project, in the total amount of \$11,850.00.
2. **T-Hangar Lease Agreements:** A resolution to approve T-Hangar Lease Agreements throughout 2012 at the current rental rate or as adjusted upward by the Airport Board for all T-Hangars rented at the Fayetteville Executive Airport.
3. **South Delta Aviation, Inc.:** A resolution to approve a two year lease for the airport hangar at 4248 South School Avenue to South /Delta Aviation, Inc. for a rent of \$3,000 per month to begin on June 1, 2012.
4. **AR Department of Aeronautics Grant:** A resolution authorizing application for and acceptance of an Arkansas Department of Aeronautics 80/20 grant in the amount of \$224,000.00 for improvements to the former AATC Hangar Building at Drake Field.
5. **McClelland Consulting Engineers Task Order No. 7:** A resolution approving Task Order No. 7 to the contract with McClelland Consulting Engineers in the amount of \$27,150.00 to design the rehabilitation of the former AATC Hangar Building at Drake Field, and approving a budget adjustment.

6. Transportation Division Truck Equipment Purchase: A resolution approving a budget adjustment in the amount of \$6,000.00 to fund the purchase of an extendo-bed, topper and ladder rack for pickup truck unit #2147.

7. Bid #11-65: A resolution awarding Bid #11-65 and authorizing the purchase of crushed rock salt from Central Salt Company in the amount of \$79.85 per ton, as needed through the end of Calendar Year 2012.

8. Bid #12-01: A resolution awarding Bid #12-01 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of 2012.

9. Bid #12-02: A resolution awarding Bid #12-02 and authorizing the purchase from Asphalt Striping Service, LLC of reflectorized paint markings, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

10. Bid #12-03: A resolution awarding Bid #12-03 and authorizing the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, needed through the end of calendar year 2012.

11. Bid #12-04: A resolution awarding Bid #12-04 and authorizing the purchase of hillside gravel from Les Rogers, Inc. for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

12. Bid #12-05: A resolution awarding Bid #12-05 and authorizing the purchase of concrete from Beaver Lake Concrete, Inc. as a primary supplier and Tune Concrete Company as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

13. Bid #12-06: A resolution awarding Bid #12-06 and authorizing the purchase of truck hauling services from Hillside Haulers for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

14. Bid #12-07: A resolution awarding Bid #12-07 and authorizing the purchase of aggregate materials for varying unit prices from various vendors, as needed through the end of calendar year 2012.

15. Bid #12-09: A resolution awarding Bid #12-09 and authorizing the purchase of curb and cutter construction from Tomlinson Asphalt Co., Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, for use in Ozark Regional Transit New Freedom Projects, as needed through the end of calendar year 2012.

16. Bid #12-10: A resolution awarding Bid #12-10 and authorizing the purchase of drainage pipe for varying unit prices from various vendors for use in Ozark Regional Transit New Freedom Projects and other city projects, as needed through the end of calendar year 2012.

17. Kum & Go Appeal: A resolution to grant the appeal of Kum & Go, L.C. and to amend and approve its Large Scale Development to agree with the plat submitted with its appeal letter.

18. Asphalt Materials: An ordinance waiving the requirements of formal competitive bidding during the calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.

19. Amend Chapter 10 and 150: An ordinance to enact into the Code of Fayetteville §10.18 **Authority** and to amend §150.03 **Authority** in the Unified Development Code.

20. Washington County Jail Services Interlocal Agreement: A resolution to approve the Third Amended Interlocal Agreement for Jail Services with Washington County to increase the booking fee from \$55.00 to \$60.00 per prisoner.

21. Amend Telecommunications Board: An ordinance amending Article IX **Telecommunications Board** of the Code of Fayetteville, by redefining the procedures and duties of the Telecommunications Board.

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- (b) **Consent Agenda.** Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.
- (c) **Old business and new business.**
 - (i) **Presentations by staff and applicants.** Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aides in a City Council meeting as part of their presentation.
 - (ii) **Public comments.** Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before its meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.
- (d) **Courtesy and respect.** All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

A copy of the complete City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-10 for and approving the purchase of drainage pipe for varying unit prices as shown on the attached bid tabulation for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

PROPOSAL:

City Council approved an agreement with Ozark Regional Transit on November 3, 2009 (Res. No. 220-09) to utilize \$387,500 in Federal Transit Administration grant funds for sidewalk, transit shelter and bench concrete pad construction. These New Freedom funds will enable the City to construct these amenities in the proximity to bus stops. Sealed formal bids for drainage pipe for ORT were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends a resolution awarding Bid 12-10 for and approving the purchase of drainage pipe for varying unit prices as shown on the attached bid tabulation for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of the materials have been budgeted in the ORT Sidewalks & Pads Grant project. Grant funds are required to be spent by September 1, 2012.

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #12-10 AND AUTHORIZING THE PURCHASE OF DRAINAGE PIPE FOR VARYING UNIT PRICES FROM VARIOUS VENDORS FOR USE IN OZARK REGIONAL TRANSIT NEW FREEDOM PROJECTS AND OTHER CITY PROJECTS, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-10 and authorizes the purchase of drainage pipe for varying unit prices from various vendors, as shown in the attached Exhibit "A", for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

MEMO

To: Mayor and City Council

Thru: Jeremy Pate, Development Services Director JP

From: Chris Brown, City Engineer CB

Date: January 11, 2012

Subject: LSD 11-3966 (Kum and Go at Martin Luther King and Hill Avenue)
Review of Vehicular Traffic and Site Distance Safety Study Provided by Kum and Go

Study Review

The Vehicular Traffic and Site Distance Safety Study developed by Small Arrow Engineering, LLC (SAE), and provided to the City Council at the December 20, 2011 City Council Meeting has been reviewed by Engineering Division staff. The study provides a report of existing site conditions and calculated impacts of the proposed development, and includes recommendations of improvements on Martin Luther King Boulevard to accommodate the proposed development. Upon review, staff notes the following:

- 1) No traffic counts were taken as part of the study; rather, traffic was observed during a two-hour period (4:30 to 6:30 pm) on a Friday afternoon. This observation does not provide a true and complete picture of traffic conditions in the area, specifically relative to traffic commuting to and from the University of Arkansas for classes, and the traffic related to the nearby Fayetteville High School, since traffic was observed only during the afternoon hours, after most classes have dismissed.
- 2) No stacking/queuing analysis or existing level of service was provided; therefore, the stated observed queue lengths provide only a snapshot of traffic operations and, again, do not provide a true picture of queues experienced during an average day.
- 3) The study notes an observed traffic split of 60 percent eastbound to 40 percent westbound. Again, this observation is during a limited time frame, and there is not enough data to assess its validity.
- 4) No crash data was provided in the study.
- 5) The study agrees with staff assertions that vehicles using the proposed driveway could conflict with east bound traffic turning left at Hill Avenue.
- 6) Improvements to Martin Luther King Blvd. recommended by the study include:
 - a. Upgrade of the traffic signal to provide protected left turns from Martin Luther King Boulevard in both directions.
 - b. Modification of the center lane striping between Hill Avenue and the proposed driveway entrance, or alternatively installing mountable medians to reduce the potential for conflicts between left turn movements on the proposed driveway and on existing Hill Avenue.

In summary, the study provided by SAE is too limited in nature to fully assess the existing traffic conditions, and does not include the type of data normally provided in a traffic study. Data such as hourly traffic counts for a period of at least 24 hours, 15 minute counts during the AM and PM peak hours, turning movement counts, observation of queue lengths during the AM and PM peaks, and crash statistics must be collected in order to fully analyze existing levels of service, delay times, stacking lengths, and other intersection conditions, and to accurately predict the effects of the proposed development on traffic in the area.

Having said that, the observed traffic conditions reported in the study are similar to video evidence provided by staff at the December 20, 2011 City Council Meeting, in that eastbound traffic was observed stacking from the Hill Avenue signal all the way to the proposed driveway. The study also recognizes the potential for westbound vehicles turning left into the proposed driveway to conflict with the eastbound left movement at Hill Avenue. It should be noted that the opinions of staff and of the Engineer preparing the study are similar, and are both based on observations of traffic operations at the site. The field of Traffic Engineering certainly has its share of data collection, calculations, and analysis, but the tenets of Traffic Engineering are based on empirical evidence and study of driver behaviors. Therefore, observation of traffic is an important part of a traffic analysis project, and should not be discounted or ignored as evidence.

Analysis of Crash Data

Staff presented a statistic regarding crashes at driveways at the City Council Meeting on December 20th. This statistic, that approximately 50% of crashes at driveways are due to left turns into the driveway, is certainly general in nature. However, a review of various studies dealing with the effect of driveways on traffic accidents can produce similar statistics, all indicating that driveways and associated turning movements have an effect on crash rates. It goes without saying that allowing a left turn into the Kum and Go from MLK Blvd. will cause more crashes than are currently occurring in the vicinity of the driveway, as crash rates are proven to increase as turning movements do so.

To provide more specific data, staff requested crash data from the Arkansas Highway and Transportation Department for MLK Blvd., ¼ mile either side of its intersection with Hill Avenue, and also ¼ mile either side of the Razorback Road intersection. Further analysis of the data is needed to say with certainty what effect the number of driveways and turning movements had on the relative crash rates, but the data clearly shows the much higher incidence of crash rates on the segment around Razorback Road, which is more highly developed and has businesses that generate higher turning volumes than the segment around Hill Avenue. The rate of crashes near Razorback Road (8.28 crashes per million vehicle miles (mvm)) is more than double the rate near Hill Avenue (3.94 crashes/mvm). Summaries of the data and an aerial photo of the two areas are attached.

Furthermore, a comparison of crashes east and west of Razorback Road shows 80 crashes to the west, and 44 to the east of the intersection (with 12 in the intersection itself). As the aerial photo of this location depicts, there are more than twice the number of driveways west of the intersection; this area was developed prior to current access management policies. Again, additional analysis beyond the scope of this review is needed to fully discern the reasons for this, but it cannot be disputed that the relative number of crashes east and west of the intersection is roughly proportional to the corresponding number of driveways.

Recommendation

Because of the potential conflict between vehicles making left turns at Hill Avenue and the proposed driveway, staff recommends that the City Council uphold the Planning Commission's decision to allow a curb cut on Martin Luther King Boulevard with right-in right-out access only.

If the City Council disagrees with the staff recommendation and the Planning Commission's decision and wishes to permit left turns into the driveway, staff recommends that this approval be contingent upon the construction of a median similar to the attached drawing labeled "Median Concept", and as suggested in the applicant's Vehicular Traffic and Site Distance Safety Study. This median, as is the case with any construction within the Highway right of way, would require a permit from the AHTD.

**Summary of Crash Analysis
Highway 180, Section 0
Log Mile .50 – 1.0
Fayetteville, Hwy 180 and Hwy 112 Area
Washington County**

A crash analysis showed that 136 crashes occurred on Highway 180, Section 0 from log mile .50 to log mile 1.00 in Fayetteville for the period January 1, 2008 through December 31, 2010. Further information is shown below.

Crash Severity:

38 nonfatal injury crashes that include:

- 1 serious injury crash
- 10 moderate injury crashes
- 27 possible injury crashes
- 98 property damage only crashes

Crash Type:

Road Surface Condition:

Angle Crashes	59	Dry	113
Rear End Crashes	55	Wet	22
Sideswipe Crashes	16	Ice	1
Single Vehicle Crashes	5		
Backing Crashes	1		

Three Year Average Crash Rate for Study Area:

8.28 crashes per million vehicle miles traveled.

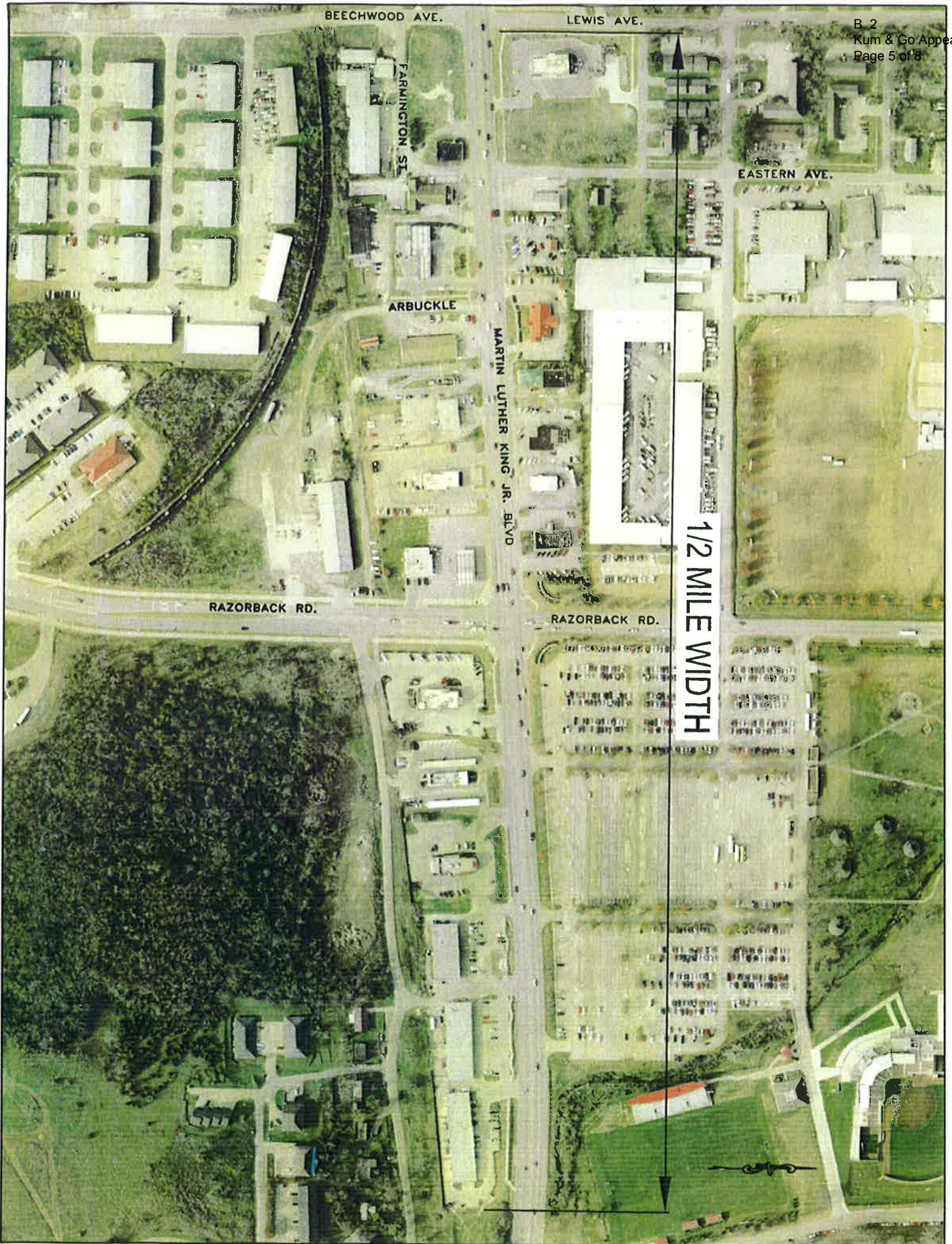
*Statewide 2-year average crash rate is **4.97** crashes per million vehicle miles for an urban, 4-lane undivided, no control of access highway.

Factors Used to Calculate Crash Rate for Study Area:

Avg. AADT	30000
Length	.50 mile
Three Year Average crashes	45.33

*2010 Crash Rates are not yet available so only 2008 and 2009 was used.

12/29/2011P&R:TSS/TE



Summary of Crash Analysis
Highway 180, Section 0
Log Mile 1.10 – 1.60
Fayetteville, Hwy 180 and Hill Road Area
Washington County

A crash analysis showed that 55 crashes occurred on Highway 180, Section 0 from log mile 1.10 to log mile 1.60 in Fayetteville for the period January 1, 2008 through December 31, 2010. Further information is shown below.

Crash Severity:

12 nonfatal injury crashes that include:

1 serious injury crash

1 moderate injury crashes

10 possible injury crashes

43 property damage only crashes

Crash Type:

Road Surface Condition:

Angle Crashes	26	Dry	49
Rear End Crashes	18	Wet	4
Single Vehicle Crashes	6	Ice	2
Sideswipe Crashes	4		
Backing Crashes	1		

Three Year Average Crash Rate for Study Area:

3.94 crashes per million vehicle miles traveled.

*Statewide 2-year average crash rate is **4.97** crashes per million vehicle miles for an urban, 4-lane undivided, no control of access highway.

Factors Used to Calculate Crash Rate for Study Area:

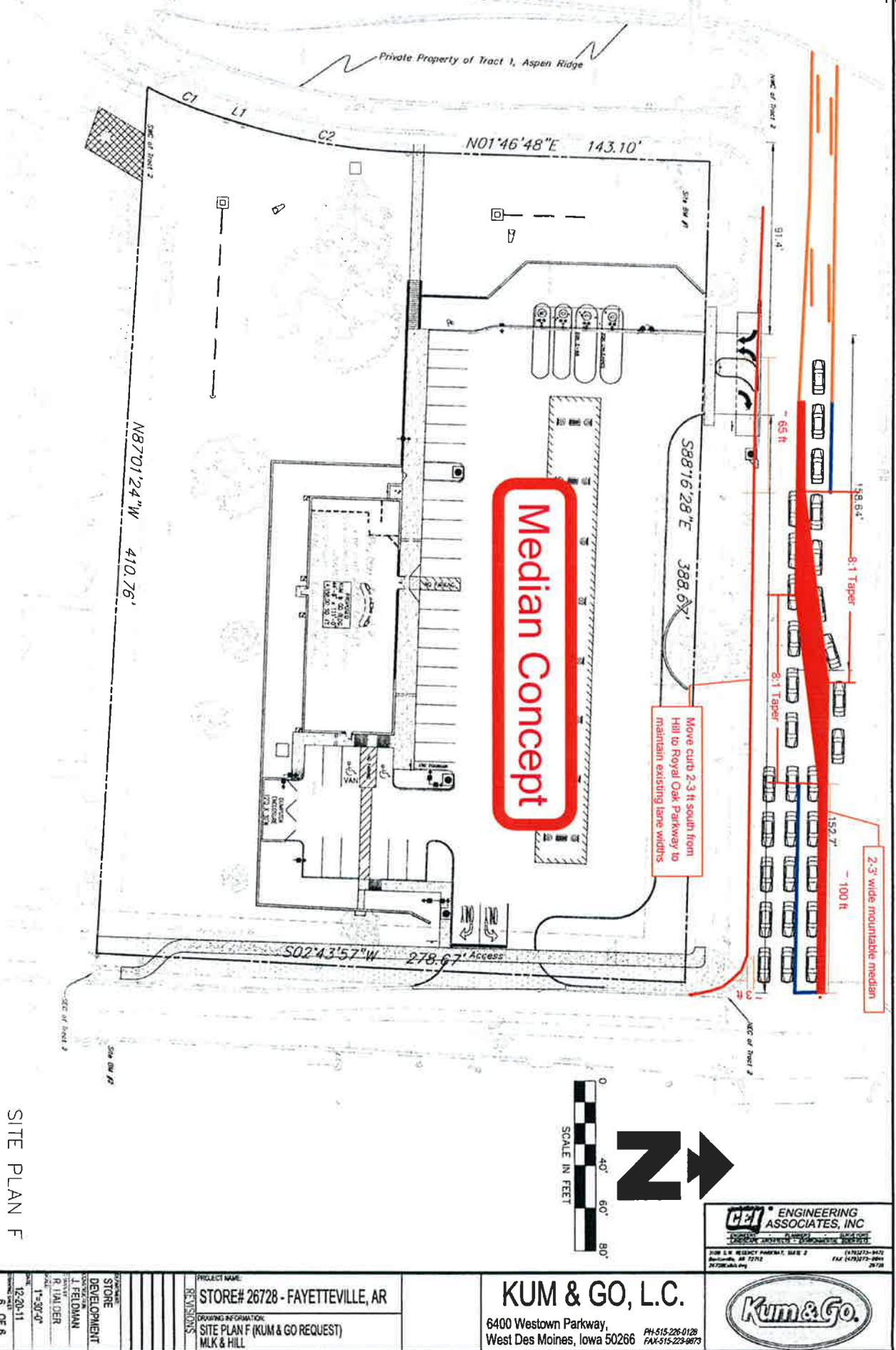
Avg. AADT	25500
Length	.50 mile
Three Year Average crashes	18.33

*2010 Crash Rates are not yet available so only 2008 and 2009 was used.

12/29/2011P&R:TSS/TE



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SITE PLAN F

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

**City of Fayetteville Arkansas
City Council Meeting Minutes
January 17, 2012**

A meeting of the Fayetteville City Council was held on January 17, 2012 at 6:00 p.m. in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Mayor Jordan called the meeting to order.

PRESENT: Alderman Gray, Boudreaux, Kinion, Petty, Tennant, Ferrell, Adams, Lewis, Mayor Jordan, City Attorney Kit Williams, City Clerk Sondra Smith, Staff, Press, and Audience.

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions: None

City Council Meeting Presentations, Reports and Discussion Items:

2012 Martin Luther King Brotherhood Award Presentation

City Attorney Kit Williams presented the 2012 Martin Luther King Brotherhood Award to Lana Broyles.

Mayor Jordan stated that she was so deserving of this award.

City of Distinction Award

Nathan Rutledge and Bob Wright with Crews and Associates presented the City of Fayetteville with the City of Distinction Award for quality of life.

Mayor Jordan thanked them for the award.

State of the City Address

Mayor Jordan gave the State of the City Address. A copy is attached.

Agenda Additions:

Ricky Sparks & Dawn Sparks Settlement Agreement: A resolution approving a settlement agreement with Ricky Sparks and Dawn Sparks, concerning condemnation litigation filed as part of the Cato Springs Road Improvement Project, in the total amount of \$11,850.00.

Chris Brown, City Engineer gave a brief description of the resolution. He stated this is very time sensitive. This is a recommendation to settle the case.

Alderman Ferrell moved to add the resolution to the agenda. Alderman Gray seconded the motion. Upon roll call the motion passed 8-0.

City Attorney Kit Williams thanked the Engineering Department for their work. He also explained the resolution.

Alderman Boudreaux moved to approve the resolution. Alderman Ferrell seconded the motion. Upon roll call the motion passed 8-0.

Resolution 09-12 as recorded in the office of the City Clerk.

Consent:

Approval of the January 3, 2012 City Council meeting minutes.

Approved

T-Hangar Lease Agreements: A resolution to approve T-Hangar lease agreements throughout 2012 at the current rental rate or as adjusted upward by the Airport Board for all T-Hangars rented at the Fayetteville Executive Airport.

Resolution 10-12 as recorded in the office of the City Clerk.

South Delta Aviation, Inc.: A resolution to approve a two year lease for the airport hangar at 4248 South School Avenue to South Delta Aviation, Inc. for a rent of \$3,000.00 per month to begin on June 1, 2012.

Resolution 11-12 as recorded in the office of the City Clerk.

Arkansas Department of Aeronautics Grant: A resolution authorizing application for and acceptance of an Arkansas Department of Aeronautics 80/20 Grant in the amount of \$224,000.00 for improvements to the former AATC hangar building at Drake Field.

Resolution 12-12 as recorded in the office of the City Clerk.

McClelland Consulting Engineers Task Order No. 7: A resolution approving Task Order No. 7 to the contract with McClelland Consulting Engineers in the amount of \$27,150.00 to design the rehabilitation of the former AATC hangar building at Drake Field, and approving a budget adjustment.

Resolution 13-12 as recorded in the office of the City Clerk.

Transportation Division Truck Equipment Purchase: A resolution approving a budget adjustment in the amount of \$6,000.00 to fund the purchase of an extendo-bed, topper and ladder rack for pickup truck unit 2147.

Resolution 14-12 as recorded in the office of the City Clerk.

Bid #11-65 Central Salt Company: A resolution awarding Bid #11-65 and authorizing the purchase of crushed rock salt from Central Salt Company in the amount of \$79.85 per ton, as needed through the end of calendar year 2012.

Resolution 15-12 as recorded in the office of the City Clerk.

Bid #12-01 Time Striping, Inc.: A resolution awarding bid #12-01 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

Resolution 16-12 as recorded in the office of the City Clerk.

Bid #12-02 Asphalt Striping Service, LLC: A resolution awarding Bid #12-02 and authorizing the purchase from Asphalt Striping Service, LLC of reflectorized paint markings, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

Resolution 17-12 as recorded in the office of the City Clerk.

Bid #12-03 Fochtman Enterprises, Inc. and Sweetser Construction, Inc.: A resolution awarding Bid #12-03 and authorizing the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

Resolution 18-12 as recorded in the office of the City Clerk.

Bid #12-04 Les Rogers, Inc.: A resolution awarding Bid #12-04 and authorizing the purchase of hillside gravel from Les Rogers, Inc. for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

Resolution 19-12 as recorded in the office of the City Clerk.

Bid #12-05 Beaver Lake Concrete, Inc. and Tune Concrete Company: A resolution awarding Bid #12-05 and authorizing the purchase of concrete from Beaver Lake Concrete, Inc as a primary supplier and Tune Concrete Company as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

Resolution 20-12 as recorded in the office of the City Clerk.

Bid #12-06 Hillside Haulers: A resolution awarding Bid #12-06 and authorizing the purchase of truck hauling services from Hillside Haulers for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

Resolution 21-12 as recorded in the office of the City Clerk.

Bid #12-07 Aggregate Materials: A resolution awarding Bid #12-07 and authorizing the purchase of aggregate materials for varying unit prices from various vendors, as needed through the end of calendar year 2012.

Resolution 22-12 as recorded in the office of the City Clerk.

Bid #12-09 Tomlinson Asphalt Co. and Sweetser Construction, Inc.: A resolution awarding Bid #12-09 and authorizing the purchase of curb and gutter construction from Tomlinson Asphalt Co., Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, for use in Ozark Regional Transit New Freedom Projects, as needed through the end of calendar year 2012.

Resolution 23-12 as recorded in the office of the City Clerk.

Bid #12-10 Drainage Pipe: A resolution awarding Bid #12-10 and authorizing the purchase of drainage pipe for varying unit prices from various vendors for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

Resolution 24-12 as recorded in the office of the City Clerk.

Alderman Lewis moved to approve the Consent Agenda as read. Alderman Boudreaux seconded the motion. Upon roll call the motion passed unanimously.

Unfinished Business:

Bellefont Gardens Tree Preservation Area Modification: A resolution to approve a modification of the tree preservation area in the Bellefont Gardens development to shift about one-half acre of tree preservation area from Lot 1 to Lot 4. ***This resolution was tabled at the December 6, 2011 City Council meeting to the December 20, 2011 City Council meeting. This resolution was tabled at the December 20, 2011 City Council meeting to the January 17, 2012 City Council meeting.***

Jeremy Pate, Director of Current Planning stated the applicant requested that this be tabled indefinitely.

Alderman Petty moved to table the resolution indefinitely. **Alderman Tennant** seconded the motion.

Alderman Ferrell asked for clarification on what indefinite meant.

City Attorney Kit Williams: The rule is, if it is tabled indefinitely on December 31, it is then deemed denied. It will be alive until then.

Upon roll call the motion passed 7-0. Alderman Adams was absent during the vote.

This resolution was tabled indefinitely

Kum & Go Appeal: A resolution to grant the appeal of Kum & Go, L.C. and to amend and approve its large scale development to match the plat submitted with its appeal letter. ***This appeal was tabled at the December 20, 2011 City Council meeting to the January 3, 2012 City Council meeting. This appeal was tabled at the January 3, 2012 City Council meeting to the January 17, 2012 City Council meeting.***

Jeremy Pate gave a brief description of the resolution.

Chris Brown gave a traffic study report on the proposed location and spoke on the potential impacts of the driveway. Our recommendation remains a right in and right out. A median could be installed to separate the two left turns. The median proposal would have to be submitted to the Highway Department for approval.

Alderman Lewis: Who submits the proposal to the Highway Department?

Chris Brown: That would be the developer.

Don Marr, Chief of Staff stated our advocacy will be stronger than the letter in terms of our dialogue with the Highway Department because of the importance of this issue.

Alderman Petty: What secondary affects would you anticipate from the installation of the median?

Chris Brown explained the possible affects a median would have.

Alderman Ferrell: So the applicant is okay with waiting to see what the State Highway Department does with this compromise?

Chris Brown: Right, that is a typical process. Any work on the State Highway, they get approval to do it, but then they have the extra step of getting the permitting through the Highway Department.

Alderman Lewis: What if the project does not go through?

City Attorney Kit Williams proposed a resolution with a median option. This resolution would grant the appeal in relation to Site Plan F but with the amendment for this median concept. It would have to be built at the developers cost. If the Highway Department does not allow them to build the median they would have the right to come back to the City Council.

Jeremy Pate: Alderman Lewis, in response to your question, if the project does not happen it's likely that we would have never permitted the construction, so if Kum and Go decides that this is not the project for them then that construction would not have occurred either.

Alderman Ferrell pointed out that there were other concerns between I-540 and Hill along MLK that had encumbered access to both sides of the road. He stated that when you go west out towards Ramey Junior High, wouldn't you suspect that there is a very high traffic count there also?

Chris Brown: The number of driveways?

Alderman Ferrell: Yes.

Chris Brown: It's pretty similar from Razorback Road all the way out to I-540.

Alderman Lewis: Did we establish the access management ordinance in 2001?

City Attorney Kit Williams: It was 2007.

Alderman Lewis: So it is fairly new then.

City Attorney Kit Williams: It is, but we have had the provision for large scale development for 37 years and they can be denied if they create or compound a dangerous traffic condition.

Jeremy Pate explained what the access management ordinance did in 2008. He stated it is all in one location so the developer, applicant, or staff can go to one place and find all those standards.

Alderman Gray: What kind of access do we have at the Kum and Go on Township and College?

Jeremy Pate explained the access at that location.

Alderman Gray: So is a left turn allowed on College?

Jeremy Pate: Yes there is.

Alderman Gray: So help me understand how the MLK store differs.

Jeremy Pate explained the differences in the accessibility.

Alderman Gray: How does the traffic count compare?

Jeremy Pate: I would think that Township would be higher than what Hill is today.

Erin Rushing with CEI Engineering asked are there any issues with this resolution if we say we are good with it?

City Attorney Kit Williams: You are talking about the one with the median.

Erin Rushing: Exactly.

Mayor Jordan: It's hard to say, the Council will probably have to hear some public comment and decide from there.

Erin Rushing: On the location at Township and College the separation is 230 feet from the full access drive up to Township. There is also a driveway 30 feet south of that one too.

Mayor Jordan: The point is you're okay with the resolution.

Erin Rushing: We are okay with the resolution and we would like to see how far we can get.

Rob White with Kum & Go stated our traffic engineer does not feel that we need a median for safety concerns. We have 272 feet from Hill. He asked if staff recommended the median.

Jeremy Pate: If the Council wishes to allow an access that is what our recommendation would be to permit a median if a left turn movement is allowed in this location.

Rob White: Our buildings are LEED Certified and we do have a sustainability manager on staff.

Alderman Tennant: What was the percentage of cars you would lose a day if you didn't get the access?

Rob White: It was half of MLK if we do not get a left turn.

Alderman Tennant: Does having a median keep that loss from happening?

Rob White: Yes because we would still be able to make a left in.

A discussion followed on how to bring the resolution to the table.

Alderman Kinion moved to approve the resolution with the median concept. Alderman Boudreaux seconded the motion.

Hunter Means representing the owner of Chambers Bank stated we believe that the applicants are the best use for the property. We are trying to understand the left turn access and providing the median is what we would ask.

Steve Clark, Chamber of Commerce President spoke on the median and stated it is a traffic calming impact. He spoke in favor of the resolution and stated we support the applicant and we urge you as the Council to accept that.

Aubrey Shepherd, a citizen expressed his concerns and pointed out safety issues that would occur should this resolution be passed.

Jeff Beatin, property owner north of the proposed property expressed his concerns with how this might affect the left turn onto his property.

Jeremy Pate: That is something we would need to look at as part of their development of construction plans.

Jeff Beatin: When you were talking about the appeal to it was that a factor that you considered at all?

Jeremy Pate described the details of the appeal that was submitted.

Jeff Beatin: It looked like you looked at the island and decided that it was a good compromise.

Jeremy Pate: I think it is certainly safer than not doing anything.

Jeff Beatin expressed his concerns with putting in a median.

Mayor Jordan: So you are not in favor of the median?

Jeff Beatin: It looks like a solid red line and if you look at the traffic it's all about taking the left at Kum & Go. I'm all for Kum & Go.

Mayor Jordan: First it has to be designed by the engineers. We have no idea on the size of it right now.

Jeff Beatin: I just want to make it clear that there is somebody concerned about turning the other way and no one has even mentioned it.

Alderman Lewis: In the design process how is that addressed in designing a median? Is that the State that considers that?

Jeremy Pate stated it is and they have already mentioned other concerns. He went on to list the concerns.

Alderman Lewis: So it would be the Highway Department that would design it?

Jeremy Pate: No they would not design it. The engineers for this development would design a proposal.

Alderman Lewis: And they would have to approve it.

Jeremy Pate: Correct.

City Attorney Kit Williams: We would have some input on the design also.

Chris Brown: Typically we would review a development plan before it goes to the Highway Department for a permit and that is what I would expect in this case.

City Attorney Kit Williams: Do medians sometimes have breaks in them so that they can make a left turn or does it always require a stacking distance so this would not work?

Chris Brown: That is something we would just have to look at and see how it would work. He went on to explain the various options available.

Alderman Petty: I support the median concept as long as these concerns can be worked out. I won't support a full turn access but I will even personally sponsor a condemnation of the median on Royal Oaks and give you full turn access there if that is an option.

Upon roll call the motion passed unanimously.

Resolution 25-12 as recorded in the office of the City Clerk.

New Business:

Asphalt Materials: An ordinance waiving the requirements of formal competitive bidding during calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.

City Attorney Kit Williams read the ordinance.

Terry Gulley, Transportation Services Director gave a brief description of the ordinance.

Alderman Ferrell asked for clarification on the ordinance.

Terry Gulley explained that it is just so we don't get locked into a one year contract and if the price goes down we have the ability to recoup some of that.

City Attorney Kit Williams further explained the bidding process.

Alderman Ferrell moved to suspend the rules and go to the second reading. Alderman Boudreaux seconded the motion. Upon roll call the motion passed 7-0. Alderman Petty was absent during the vote.

City Attorney Kit Williams read the ordinance.

Alderman Lewis moved to suspend the rules and go to the third and final reading. Alderman Adams seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5476 as Recorded in the office of the City Clerk

Amend Chapter 10 and 150: An ordinance to enact into the Code of Fayetteville §10.18 Authority and to amend §150.03 Authority in the Unified Development Code.

City Attorney Kit Williams read the ordinance.

City Attorney Kit Williams gave a brief description of the ordinance.

Alderman Ferrell: If this had been enacted when we had the Rogers Group Rock Quarry would this have made any difference and prevailed as far as a courts ruling?

City Attorney Kit Williams stated it is very hard to tell but this certainly would have given another option to argue. I did this to try and strengthen the code as best as I can.

Alderman Lewis: I am really supportive of it and I love the idea.

Alderman Ferrell: I certainly do not want the City to become vulnerable to liability when it does not have to, but being a small government man I cannot support this.

Alderman Gray moved to suspend the rules and go to the second reading. Alderman Boudreaux seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Gray moved to suspend the rules and go to the third and final reading. Alderman Boudreaux seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed 7-1. Alderman Ferrell voting no.

Ordinance 5477 as Recorded in the office of the City Clerk

Washington County Jail Services Interlocal Agreement: A resolution to approve the Third Amended Interlocal Agreement for Jail with Washington County to increase the booking fee from \$55.00 to \$60.00 per prisoner.

Police Chief Greg Tabor gave a brief description of the resolution.

Alderman Petty asked why the contract was agreed to at the cost of \$45 per day if the cost is so much higher.

Police Chief Greg Tabor: I am not sure that their cost was that high back when it started in 2005.

Alderman Petty: We were told that back then the cost was above \$60 per day so we have just been raising it periodically to meet that.

Police Chief Greg Tabor: I think that is correct. The Sherriff has given a lot of good examples of how we worked together with different things. I think all those things have contributed to that increase in cost.

Alderman Petty: I do think this is a good deal but I wondered if you could explain again how you have looked into doing some of the booking ourselves.

Police Chief Greg Tabor: That is not possible for us to book people. Basically we would have to have a jail.

City Attorney Kit Williams: We have power under the Arkansas Rules of Criminal Procedure to be able to cite out most misdemeanors without booking them in, is that correct?

Police Chief Greg Tabor: That is correct. He explained the booking requirements.

Alderman Ferrell: I don't think that 5% is a bad jump for doing this and I will support it. It is my understanding that Fayetteville is the only City in the County that pays so that would be something for everyone to visit with your Justice of the Peace about.

Alderman Adams: Speaking to that I think the Sherriff gave a good explanation at Agenda Session about why we are paying and they are not. It might be worth it to hear that again.

Sherriff Tim Helder: We have always been the jail for the small towns. None of the small towns have had their own facility to hold prisoners. I think it is keeping with tradition and we have always provided that service for them. Fayetteville always had a jail and determined to close their jail and enter into this contract.

Alderman Ferrell: I understand tradition and can appreciate it but we are talking dollars and cents here.

Don Marr explained the differences in cost from 2005 to 2011. He stated this is an excellent budget decision to have this contract in place.

Alderman Boudreaux moved to approve the resolution. Alderman Lewis seconded the motion. Upon roll call the resolution passed unanimously.

Resolution 26-12 as recorded in the office of the City Clerk.

Amend Telecommunications Board: An ordinance amending Article IX Telecommunications Board of the Code of Fayetteville, by redefining the procedures and duties of the Telecommunications Board.

City Attorney Kit Williams read the ordinance.

Lindsley Smith, Communications and Marketing Director gave a brief description of the ordinance.

Alderman Adams stated the striking out was very helpful. I appreciate that.

Marvin Hilton, resident of 689 Winball Lane spoke on the importance of telecommunications. He expressed his concerns with portions of the proposed ordinance.

A discussion followed on whether the video can be web streamed live or not.

Blake Pennington, Chair of the Telecommunications Board spoke on the process in creating the proposed ordinance.

Don Marr: The committee Blake Pennington was referring to was a subcommittee of the Telecommunications Board.

Mayor Jordan confirmed the review process of the ordinance and a discussion followed.

Alderman Ferrell: Thank you for your service. I think you were well focused on what the charges were because in the past that wasn't the case.

Alderman Petty: I appreciate what your intentions were and what you came up with. The clause 33.210 (B) (6) is struck out. What was the rational in eliminating that? Do you still a process for identifying novel solutions that the City may find useful or if that was something the board still wanted to do.

Blake Pennington: We really wanted to get away from that. We felt that we have enough of a responsibility just facilitating what goes on at the Television Center.

Alderman Lewis: I think it is really important to define roles. The recommended funding, was that a role that was there before?

Blake Pennington: It was in the ordinance but it was not a duty that we ever fulfilled since I have been on the board.

Alderman Lewis: So really the action would have been giving recommendations regarding contracts. Would that activity continue?

Blake Pennington: Yes, we would still review the contracts that came under the telecommunications role.

Jim Bemis, former member of the Telecommunication Board expressed his concerns with the proposed ordinance. He voiced his concern about losing control at the local level and the control would go to the state level.

Alderman Kinion: Jim, I think all of us support your intent but to me you are saying it needs to be broad and we need to protect all telecommunications. It doesn't look like it restricts anything to me but I could be wrong. Help me understand the disconnect there.

Jim Bemis: I am just saying look at the ordinance and see what it means.

Alderman Kinion: I support everything you are saying. I don't see that striking out a restrictive definition does not actually promote a broader opportunity for this committee by the way it is currently written.

Jim Bemis: What you have is an ordinance that restricts most of the board's duties to television and that is what you are left with.

Aubrey Shepherd, Telecommunications Board member stated I was the only board member who did not vote to send this forward. He expressed his concerns with the ordinance.

Steven Smith, Telecommunications Board member: City staff did not write these changes, our committee did and the board did. We also worked with the City Attorney. This does not reduce transparency. It has nothing to do with which meetings are covered or the Freedom of Information Act. It has to do with the duties of the board. The board has been dysfunctional for a couple of years and has not done its duties. He spoke in favor of the ordinance.

Alderman Petty: Part of the IT assessment was to establish a governance process. I was wondering where we were at at that point and what role we see the Communications Department and the Telecommunications Board playing in that.

Don Marr: We have our first organizational meeting with Plant Moran on February 2nd and we have yet to select which one of you we would like to have participate in that.

Our staff did not write this revision. We are recommending what the committee forwarded because we do not feel it restricts their ability to give advice. We felt the ordinance took away the confusion from board members that they have a management right. Staff does not believe that they have a management right. We believe they have an advisory right. There is never an intention to limit the public participation, input, or accessibility.

Alderman Tennant: I have sat on that board and in my opinion City staff always went above and beyond in reacting to the questions and assertions and even sometimes defending itself in doing things that were asked of it. I am confident in what is happening now. I think Fritz Gisler does a tremendous job. I think definition is really good and the more structure we can get on that board the better it will become. I don't think the board's importance is diminished by this.

Alderman Lewis: There seems to be a perception or fear of limiting access. In reading the language in the proposed ordinance it is completely the opposite. It creates freedom of looking at different issues. These committees are appointed by the Council to help inform the Council.

Alderman Tennant: I appreciate those people who watch what's going on and bring things forward.

Alderman Adams: A lot of time citizens ask what the role of the committee is. I appreciate the effort that has been put in to clarify what this committee does.

Alderman Ferrell: I appreciate when we have citizens that volunteer, especially when they try to take ownership of something but sometimes that can be carried too far. If you do not establish up front and receive recognition from all committee members that they are an advisory capacity only, not policy makers, then this problem will resurge.

Alderman Boudreaux moved to suspend the rules and go to the second reading. Alderman Gray seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Alderman Boudreaux moved to suspend the rules and go to the third and final reading. Alderman Ferrell seconded the motion. Upon roll call the motion passed unanimously.

City Attorney Kit Williams read the ordinance.

Mayor Jordan asked shall the ordinance pass. Upon roll call the ordinance passed unanimously.

Ordinance 5478 as Recorded in the office of the City Clerk

Announcements:

Meeting adjourned at 9:10 p.m.

Lioneld Jordan, Mayor

Lisa Branson, Deputy City Clerk

Added at the City Council
Meeting 01/17/2012 AGENDA REQUEST

FOR: COUNCIL MEETING OF JANUARY 17, 2012

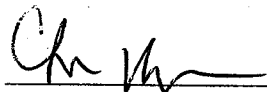
FROM:

JASON KELLEY, ASSISTANT CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution Approving A Settlement Agreement With Ricky Sparks And Dawn Sparks, Concerning Condemnation Litigation Filed As Part Of The Cato Springs Road Improvement Project, In The Total Amount Of \$11,850.00

APPROVED FOR AGENDA:



City Engineer

1/17/12

Date



Assistant City Attorney

1-17-12

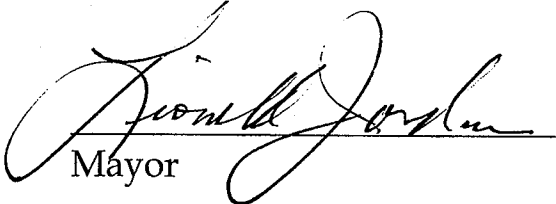
Date



Chief of Staff

1-17-12

Date



Mayor

1/17/12

Date

01-17-12 P04:03 RCVD



CITY COUNCIL AGENDA MEMO

City Council Meeting of January 17, 2012

To: Mayor Jordan and City Council

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

From: Chris Brown *CB*

Date: January 17, 2012

Subject: Approval of a Settlement with Ricky Leon and Dawn Sparks for Purchase of Right of Way and Easements along Cato Springs Road

PROPOSAL:

Cato Springs Road is planned for improvement from South School to Razorback Road 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. 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.

In the case of Mr. and Mrs. Sparks' property, \$5,650, representing the City's appraised value for the right of way and easements, was deposited with the Court at the time of the filing. Since that time, the City Attorney's Office has negotiated with the Sparks family, and a settlement proposal has been developed for review by the City Council. This settlement is in the amount of an additional \$6,200, making the total payment to Mr. and Mrs. Sparks \$11,850. This amount represents the last offer City staff made to the Sparks prior to proceeding to condemnation action.

RECOMMENDATION:

Staff recommends approval of a Resolution authorizing the settlement of the Sparks Condemnation Case, and approving an additional \$6,200 payment to Ricky Leon and Dawn Sparks.

BUDGET IMPACT:

The payment for land acquisition will be made from the project budget allocated for the Cato Springs Road Improvements Project, which is funded by the Transportation Bond Fund.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH RICKY SPARKS AND DAWN SPARKS, CONCERNING CONDEMNATION LITIGATION FILED AS PART OF THE CATO SPRINGS ROAD IMPROVEMENT PROJECT, IN THE TOTAL AMOUNT OF \$11,850.00

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 Ricky Sparks and Dawn Sparks, in a total amount of \$11,850.00 as full and final settlement of condemnation litigation (City of Fayetteville v. Sparks, Washington County Circuit Court Case No. CV 2010-3710-5) filed as part of the Cato Springs Road 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 \$5,650.00 placed on deposit with the court.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

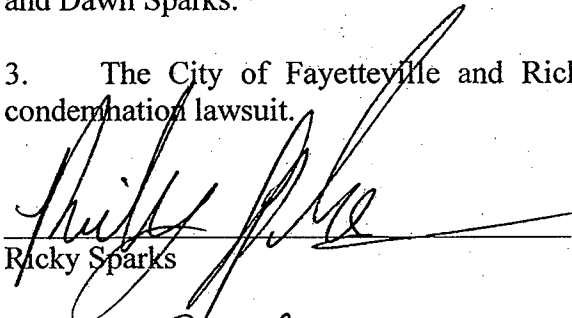
By: _____
LIONELD JORDAN, Mayor

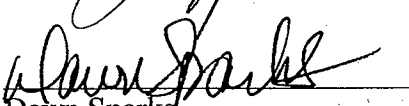
By: _____
SONDRA E. SMITH, City Clerk/Treasurer

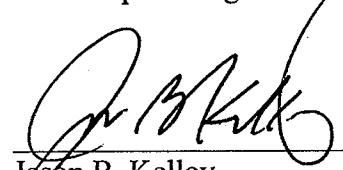
SETTLEMENT FRAMEWORK

Subject to approval of the Mayor and City Council of Fayetteville:

1. Ricky and Dawn Sparks will execute deeds for the interests in property taken by the City of Fayetteville in the pending condemnation case City of Fayetteville v. Sparks, Washington County Circuit Court Case No. CV 10-3710-5.
2. Ricky and Dawn Sparks agree to accept \$11,850.00 as total just compensation for the property taken. Subtracting \$5,650.00 already paid to the Court and received by Ricky and Dawn Sparks, this results in an additional \$6,200.00 payment by the City of Fayetteville to Ricky and Dawn Sparks.
3. The City of Fayetteville and Ricky and Dawn Sparks agree to a dismissal of the condemnation lawsuit.


Ricky Sparks


Dawn Sparks


Jason B. Kelley
Assistant City Attorney of Fayetteville

Holly Jones - Re: Counter offer Sparks

From: Holly Jones
To: dsparks16@cox.net
Date: 11/10/2010 2:06 PM
Subject: Re: Counter offer Sparks
CC: Brown, Chris; Goddard, Jill; Kelley, Jason; Libertini, Paul

Mr. and Mrs. Sparks,

In response to your Counter Offer on the Cato Springs Road Project, we are in agreement with the amount offered for the hedges, cypress, persimmon trees and ponds in the total amount of \$6493.50. However, at this time we are unable to accept your offer of \$18,186.00 for the additional right of way, general utility easement area and rental of the temporary construction and grading easement without written justification such as an appraisal. We are however, prepared to present you with a counter-offer to this amount.

You were originally offered \$3.00 per square foot for your property as appraised by certified Appraiser. Please discuss this offer and with your approval I will have an official letter prepared for \$3.75 per square foot which is \$2510 for the ROW, \$940 for the Utility Easement as reduced to 1000 square feet, \$300 for the TCE, damages as originally offered of \$1600, landscaping above mentioned of \$6500 for a total of **\$11850**. (Keep in mind that the cash value of the concrete driveway that we are building you is approximately \$3500.)

If you are in agreement with this **\$11,850.00**, I will draft an official letter to be signed by Chris and you will be sent a new set of documents to sign with the reduced Utility Easement.

If you are not in agreement with the terms of this counter offer, the City Attorney's Office will proceed as planned. Please respond as soon as possible either way.

Sincerely,

Holly Jones
Land Agent
Engineering Division
hjones@ci.fayetteville.ar.us
ph: (479) 444-3414
fax: (479) 575-8202
TDD (Telecommunications Device for the Deaf): (479) 521-1316

>>> <dsparks16@cox.net> 11/2/2010 4:27 PM >>>
November 2, 2010

Dear Mrs. Holly Jones,

When I met with you Mr. Brown, Mr. Libertini and Mr. Howe a few weeks ago we agreed the city would install the yard drain and widen the driveway from the existing 25 ft to 35 ft wide and 8 inches deep to accommodate the weight of our semi truck and also grade the driveway slope to be more negotiable. I do appreciate that you all came to meet with me. I felt more at ease knowing the sidewalk would be farther from my home. I am still however not feeling "warm and fuzzy" about the general easement. This seems to be a loose term.

Since, we already have electric, cable and fiber optic cables running above ground at the back of our property. We would like to omit the following words of the contract and deed, enlargement of roadway, electrical power, telephone, fiber optic cables and telephone communications line or lines, and appurtenances thereto, on over, across.

I spoke to Mr. Libertini last week about the general easement my concern is that at some point in time the city will come back and change "Utility easement" and add another lane or two plus the sidewalk. Mr. Libertini stated he didn't guarantee that another lane wouldn't be added in the future.

Mr. Libertini and I also talked about the Bald cypress. Instead of cutting it down I would like the city to move it to a city owned piece of property like a park or the square or maybe a fire station or School. Mr. Howe stated with care it could make a full recovery. Since the city has the equipment and knowledge of such care of trees.

I have received an estimate from the nursery on replacement hedges. This includes installation and sales tax. It does not reflect the amount of the value of the mature hedges you will be removing. Hedges come to \$2518.50, Bald Cypress tree, and a fruit bearing Persimmon, removal of 2 ponds \$3975.00

I and my husband have spoken to you about the property values being too low for what you are asking. Our counter offer for RW / PE and Damages we are asking \$18186.00 in addition to the Driveway, yard drain and landscaping.

I will also mail this to your office.

Thank you for your consideration,
Rick and Dawn Sparks
1430 W Cato Springs Road
Fayetteville, AR 72701
479-444-8027

WARRANTY DEED

BE IT KNOWN BY THESE PRESENTS:

THAT **Ricky Sparks and Dawn Sparks, 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 Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West in Washington County, Arkansas, being more particularly described as follows: Commencing at the Southeast (SE) corner of said forty (40) acre tract; thence along the South line of said tract North 87°28'29" West 153.49 feet to the POINT OF BEGINNING being at the Southeast (SE) corner of a property described in Instrument Number 2002-51159 as recorded with the Circuit Clerk with said county; thence continuing along said South line North 87°28'29" West 100.01 feet to the Southwest (SW) corner of said property; thence along the West line of said property North 03°22'32" East 12.28 feet; thence leaving said West line South 87°51'20" East 100.02 feet to the East line of said property; thence along said East line South 03°22'32" West 12.95 feet to the Point of Beginning, containing 1,261 square feet, more or less, consisting of 593 square feet in existing right-of-way and 668 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 the _____ day of _____, 2012.

Ricky Sparks

Dawn Sparks

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 **Ricky Sparks and Dawn Sparks, husband and wife**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that he/she/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 _____, 2012.

Notary Public

MY COMMISSION EXPIRES:

GENERAL UTILITY EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Ricky Sparks and Dawn Sparks, 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, 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, drainage, sidewalks, and general utilities including water and/or sanitary sewer pipe line or lines, manholes, natural gas 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. 2002-051159)

Lots Twenty Four (24) and Twenty Five (25) in Block Six (6), in Meadowvale, a subdivision of the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West.

LESS AND EXCEPT Cato Springs Road right-of-way: A part of the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West in Washington County, Arkansas, being more particularly described as follows: Commencing at the Southeast (SE) corner of said forty (40) acre tract; thence along the South line of said tract North 87°28'29" West 153.49 feet to the POINT OF BEGINNING being at the Southeast (SE) corner of a property described in Instrument Number 2002-51159 as recorded with the Circuit Clerk with said county; thence continuing along said South line North 87°28'29" West 100.01 feet to the Southwest (SW) corner of said property; thence along the West line of said property North 03°22'32" East 12.28 feet; thence leaving said West line South 87°51'20" East 100.02 feet to the East line of said property; thence along said East line South 03°22'32" West 12.95 feet to the Point of Beginning, containing 1,261 square feet, more or less, consisting of 593 square feet in existing right-of-way and 668 square feet in new proposed right-of-way.

PERMANENT EASEMENT DESCRIPTION:

A utility easement, being a part of Lots Twenty Four (24) and Twenty Five (25) in Block Six (6), in Meadowvale, a subdivision of the Southwest Quarter (SW $\frac{1}{4}$) of the Southeast Quarter (SE $\frac{1}{4}$) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West in Washington County, Arkansas, being more particularly described as follows: Commencing at the Southeast (SE) corner of said forty (40) acre tract; thence along the South line of said tract North 87°28'29" West 153.49 feet to the Southeast (SE) corner of a property described in Instrument Number 2002-51159 as recorded with the Circuit Clerk with said county; thence along the East line of said Lot 25 North 03° 22' 32" East 12.95 feet, to the POINT OF BEGINNING; thence continuing North 03° 22' 32" East 10.00 feet; thence leaving said East lot line South 89° 36' 58" West 50.11 feet; thence North 87° 51' 20" West 50.01 feet to a point on the West line of said Lot 24; thence along said West lot line South 03° 22' 32" West 10.00 feet to a point on the North line of the new proposed right-of-way of Cato Springs Road; thence along said North right of way line South 87° 51' 20" East 100.02 feet to the Point of Beginning and containing 1,000 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, 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 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 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.

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 _____ day of _____, 2012.

Ricky Sparks

Dawn Sparks

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 **Ricky Sparks and Dawn Sparks, 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 _____, 2012.

Notary Public

MY COMMISSION EXPIRES:

TEMPORARY CONSTRUCTION AND GRADING EASEMENT

BE IT KNOWN BY THESE PRESENTS:

THAT **Ricky Sparks and Dawn Sparks, 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 street improvements, to-wit:

PROPERTY DESCRIPTION: (Deed Ref. 2002-051159)

Lots Twenty Four (24) and Twenty Five (25) in Block Six (6), in Meadowvale, a subdivision of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West.

LESS AND EXCEPT Cato Springs Road right-of-way: A part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West in Washington County, Arkansas, being more particularly described as follows: Commencing at the Southeast (SE) corner of said forty (40) acre tract; thence along the South line of said tract North 87°28'29" West 153.49 feet to the POINT OF BEGINNING being at the Southeast (SE) corner of a property described in Instrument Number 2002-51159 as recorded with the Circuit Clerk with said county; thence continuing along said South line North 87°28'29" West 100.01 feet to the Southwest (SW) corner of said property; thence along the West line of said property North 03°22'32" East 12.28 feet; thence leaving said West line South 87°51'20" East 100.02 feet to the East line of said property; thence along said East line South 03°22'32" West 12.95 feet to the Point of Beginning, containing 1,261 square feet, more or less, consisting of 593 square feet in existing right-of-way and 668 square feet in new proposed right-of-way.

TEMPORARY CONSTRUCTION AND GRADING EASEMENT DESCRIPTION:

A part of Lots 24 and 25, Block 6 of Meadowvale Subdivision, being a part of the Southwest Quarter (SW¼) of the Southeast Quarter (SE¼) of Section Twenty (20), Township Sixteen (16) North, Range Thirty (30) West in Washington County, Arkansas, being more particularly described as follows: Commencing at the Southeast (SE) corner of said forty (40) acre tract; thence along the South line of said tract North 87°28'29" West 153.49 feet to the Southeast (SE) corner of said property described in said Instrument Number 2002-51159; thence along the East line of said property North 03°22'32" East 12.95 feet; thence leaving said East line North 87°51'20" West 15.02 feet to the POINT OF BEGINNING; thence continuing North 87°51'20" West 38.60 feet; thence North 02°08'40" East 20.00 feet; thence South 87°51'20" East 38.60 feet; thence South 02°08'40" West 20.00 feet to the Point of Beginning, containing 772 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 _____, 2012.

Ricky Sparks

Dawn Sparks

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 **Ricky Sparks and Dawn Sparks, husband and wife**, to me well known as the persons who executed the foregoing document, and who stated and acknowledged that he/she/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 _____, 2012.

Notary Public

MY COMMISSION EXPIRES:

Revised draft resolution. Handed out at the
Jan 17, 2012 CC mts.

RESOLUTION NO. _____

A RESOLUTION TO GRANT THE APPEAL OF KUM & GO, L.C. AND TO
AMEND AND APPROVE ITS LARGE SCALE DEVELOPMENT TO AGREE
WITH THE PLAT SUBMITTED WITH ITS APPEAL LETTER

**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 grants the appeal of Kum & Go, L.C. from some of the terms or conditions imposed by the Planning Commission, but adds the condition that Kum & Go, Inc. must construct and pay for a median in Martin Luther King, Jr, Boulevard as shown in Site Plan F "Median Concept", and amends and approves the Large Scale Development plat to conform with the plat submitted by Kum & Go, L.C. as Site Plan F as further amended as shown by the site Plan F with "Median Concept" in red (both attached to this Resolution) regarding its driveway access onto and from Martin Luther King, Jr. Boulevard and changing the access from Royal Oak from vehicular to pedestrian. All other terms and conditions approved by the Planning Commission when approving LSD 11-3966 (Kum & Go at Martin Luther King and Hill Avenue) shall remain in full force and effect.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby grants Kum & Go, L.C. the right to bring this LSD 11-3966 back to the City Council by giving written notice to the City Clerk within 10 days of its receipt of a decision by the Arkansas Highway and Transportation Department to deny construction of the median for further consideration by the City Council.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

Ward 1 Position 1 – Adella Gray
Ward 1 Position 2 – Brenda Boudreaux
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
Ward 3 Position 2 – Robert Ferrell
Ward 4 Position 1 – Rhonda Adams
Ward 4 Position 2 – Sarah E. Lewis

Tentative Agenda City of Fayetteville Arkansas City Council Meeting January 17, 2012

A meeting of the Fayetteville City Council will be held on January 17, 2012 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

- 1. 2012 Martin Luther King Brotherhood Award Presentation**
- 2. State of the City Address**

Agenda Additions:

A. Consent:

1. Approval of the January 3, 2012 City Council meeting minutes.
- 2. T-Hangar Lease Agreements:** A resolution to approve T-Hangar lease agreements throughout 2012 at the current rental rate or as adjusted upward by the Airport Board for all T-Hangars rented at the Fayetteville Executive Airport.

3. **South Delta Aviation, Inc.:** A resolution to approve a two year lease for the airport hangar at 4248 South School Avenue to South Delta Aviation, Inc. for a rent of \$3,000.00 per month to begin on June 1, 2012.
4. **Arkansas Department of Aeronautics Grant:** A resolution authorizing application for and acceptance of an Arkansas Department of Aeronautics 80/20 Grant in the amount of \$224,000.00 for improvements to the former AATC hangar building at Drake Field.
5. **McClelland Consulting Engineers Task Order No. 7:** A resolution approving Task Order No. 7 to the contract with McClelland Consulting Engineers in the amount of \$27,150.00 to design the rehabilitation of the former AATC hangar building at Drake Field, and approving a budget adjustment.
6. **Transportation Division Truck Equipment Purchase:** A resolution approving a budget adjustment in the amount of \$6,000.00 to fund the purchase of an extendo-bed, topper and ladder rack for pickup truck unit 2147.
7. **Bid #11-65 Central Salt Company:** A resolution awarding Bid #11-65 and authorizing the purchase of crushed rock salt from Central Salt Company in the amount of \$79.85 per ton, as needed through the end of calendar year 2012.
8. **Bid #12-01 Time Striping, Inc.:** A resolution awarding bid #12-01 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.
9. **Bid #12-02 Asphalt Striping Service, LLC:** A resolution awarding Bid #12-02 and authorizing the purchase from Asphalt Striping Service, LLC of reflectorized paint markings, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.
10. **Bid #12-03 Fochtman Enterprises, Inc. and Sweetser Construction, Inc.:** A resolution awarding Bid #12-03 and authorizing the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.
11. **Bid #12-04 Les Rogers, Inc.:** A resolution awarding Bid #12-04 and authorizing the purchase of hillside gravel from Les Rogers, Inc. for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.
12. **Bid #12-05 Beaver Lake Concrete, Inc. and Tune Concrete Company:** A resolution awarding Bid #12-05 and authorizing the purchase of concrete from Beaver Lake Concrete, Inc as a primary supplier and Tune Concrete Company as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

- 13. Bid #12-06 Hillside Haulers:** A resolution awarding Bid #12-06 and authorizing the purchase of truck hauling services from Hillside Haulers for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.
- 14. Bid #12-07 Aggregate Materials:** A resolution awarding Bid #12-07 and authorizing the purchase of aggregate materials for varying unit prices from various vendors, as needed through the end of calendar year 2012.
- 15. Bid #12-09 Tomlinson Asphalt Co. and Sweetser Construction, Inc.:** A resolution awarding Bid #12-09 and authorizing the purchase of curb and gutter construction from Tomlinson Asphalt Co., Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, for use in Ozark Regional Transit New Freedom Projects, as needed through the end of calendar year 2012.
- 16. Bid #12-10 Concrete Drainage Pipe:** A resolution awarding Bid #12-10 and authorizing the purchase of concrete drainage pipe for varying unit prices from various vendors for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

B. Unfinished Business:

- 1. Bellefont Gardens Tree Preservation Area Modification:** A resolution to approve a modification of the tree preservation area in the Bellefont Gardens development to shift about one-half acre of tree preservation area from Lot 1 to Lot 4. ***This resolution was tabled at the December 6, 2011 City Council meeting to the December 20, 2011 City Council meeting. This resolution was tabled at the December 20, 2011 City Council meeting to the January 17, 2012 City Council meeting.***
- 2. Kum & Go Appeal:** A resolution to grant the appeal of Kum & Go, L.C. and to amend and approve its large scale development to match the plat submitted with its appeal letter. ***This appeal was tabled at the December 20, 2011 City Council meeting to the January 3, 2012 City Council meeting. This appeal was tabled at the January 3, 2012 City Council meeting to the January 17, 2012 City Council meeting.***

C. New Business:

- 1. Asphalt Materials:** An ordinance waiving the requirements of formal competitive bidding during calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.
- 2. Amend Chapter 10 and 150:** An ordinance to enact into the Code of Fayetteville §10.18 Authority and to amend §150.03 Authority in the Unified Development Code.
- 3. Washington County Jail Services Interlocal Agreement:** A resolution to approve the Third Amended Interlocal Agreement for Jail Services with Washington County to increase the booking fee from \$55.00 to \$60.00 per prisoner.

- 4. Amend Telecommunications Board:** An ordinance amending Article IX Telecommunications Board of the Code of Fayetteville, by redefining the procedures and duties of the Telecommunications Board.

D. City Council Agenda Session Presentations:

City Council Tour:

Announcements:

Adjournment:

NOTICE TO MEMBERS OF THE AUDIENCE

All interested persons may address the City Council on agenda items of New and Old Business. Please wait for the Mayor to request public comment and then come to the podium, give your name, address, and comments about the agenda item. Please address only the Mayor. Questions are usually answered by the Mayor, Aldermen or Staff after the public comment period is over. Please keep your comments brief and respectful. Each person is only allowed one turn at the microphone for discussion of an agenda item.

All cell phones must be silenced and may not be used within the City Council Chambers.

Below is a portion of the **Rules of Order and Procedure of the Fayetteville City Council** pertaining to City Council meetings:

- (a) **Agenda additions.** A new item which is requested to be added to the agenda at a City Council meeting should only be considered if it requires immediate City Council consideration and if the normal agenda setting process is not practical. The City Council may only place such new item on the City Council meeting's agenda by suspending the rules by two-thirds vote. Such agenda addition shall be heard prior to the Consent Agenda.
- (b) **Consent Agenda.** Consent Agenda items shall be read by the Mayor and voted upon as a group without discussion by the City Council. If an Alderman wishes to comment upon or discuss a Consent Agenda item, that item shall be removed and considered immediately after the Consent Agenda has been voted upon.
- (c) **Old business and new business.**
 - (i) **Presentations by staff and applicants.** Agenda items shall be introduced by the Mayor and, if an ordinance, read by the City Attorney. City staff shall then present a report. An agenda applicant (city contractor, rezoning or development applicant, etc.) may present its proposal only during this presentation period, but may be recalled by an alderman later to answer questions. Staff and applicants may use electronic visual aides in a City Council meeting as part of their presentation.
 - (ii) **Public comments.** Public comment shall be allowed for all members of the audience on all items of old and new business and subjects of public hearings. No electronic visual aid presentations shall be allowed, but the public may submit photos, petitions, etc. to be distributed to the City Council. If a member of the public wishes for the City Clerk to distribute materials to the City Council before its meeting, such materials should be supplied to the City Clerk office no later than 9:00 a.m. on the day of the City Council meeting. Any member of the public shall first state his or her name and address, followed by a concise statement of the person's position on the question under discussion. Repetitive comments should be avoided; this applies to comments made previously either to the City Council or to the Planning Commission when those Planning Commission minutes have been provided to the Aldermen. All remarks shall be addressed to the Mayor or the City Council as a whole and not to any particular member of the City Council. No person other than the Aldermen and the person having the floor shall be permitted to enter into any discussions without permission of the Mayor. No questions shall be directed to an Alderman or city staff member except through the Mayor.
- (d) **Courtesy and respect.** All members of the public, all city staff and elected officials shall accord the utmost courtesy and respect to each other at all times. All shall refrain from rude or derogatory remarks, reflections as to integrity, abusive comments and statements about motives or personalities. Any member of the public who violates these standards shall be ruled out of order by the Mayor, must immediately cease speaking and shall leave the podium.

Interpreters or TDD for hearing impaired are available for all City Council meetings, a 72 hour advance notice is required. For further information or to request an interpreter, please call 575-8330.

A copy of the complete City Council agenda is available at accessfayetteville.org or in the office of the City Clerk, 113 W. Mountain, Fayetteville, Arkansas.

AGENDA REQUEST

FOR: COUNCIL MEETING OF JANUARY 17, 2012

FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

A Resolution To Approve T-Hangar Lease Agreements Throughout 2012 At The Current Rental Rate Or As Adjusted Upward By The Airport Board For All T-Hangars Rented At The Fayetteville Executive Airport

APPROVED FOR AGENDA:



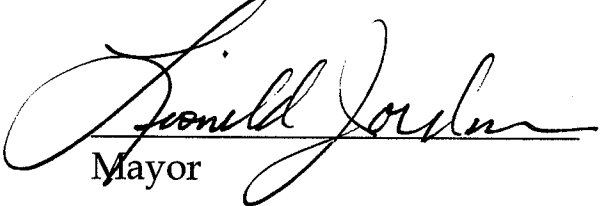
City Attorney

12-30-2011
Date



Chief of Staff

1-3-2012
Date



Mayor

1/3/12
Date

12-30-11P04:22 rec'd

Kim G.



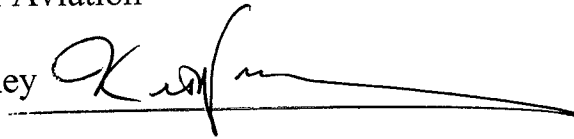
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Don Marr, Chief of Staff
Paul Becker, Finance Director
Terry Gulley, Transportation Services Director
Ray Boudreaux, Director of Aviation

FROM: Kit Williams, City Attorney



DATE: December 30, 2011

RE: T-Hangar lease contract approval for 2012

Because A.C.A. §14-54-302(c) states that: “(t)he execution of all ... lease contracts shall be performed by the mayor ... when authorized by a resolution, in writing, approved by a majority vote of the city council” I believe we should have a City Council Resolution approving all standard T-Hangar lease contracts that are initiated or renewed in 2012.

Therefore, I have presented this Agenda item for the City Council’s consideration.

RESOLUTION NO. _____

**A RESOLUTION TO APPROVE T-HANGAR LEASE AGREEMENTS
THROUGHOUT 2012 AT THE CURRENT RENTAL RATE OR AS
ADJUSTED UPWARD BY THE AIRPORT BOARD FOR ALL T-HANGARS
RENTED AT THE FAYETTEVILLE EXECUTIVE AIRPORT**

WHEREAS, the City through its Aviation Director Ray Boudreaux has constructed numerous T-Hangars at the Fayetteville Executive Airport to serve pilots based at our airport and to provide revenue to the City's Aviation Division so that it has not had to be subsidized from the City's general revenues as other City Departments are funded; and

WHEREAS, the Airport Board working with the City's Aviation Division has set the reasonable rental rates for all such T-Hangar rentals for many years; and

WHEREAS, the lease contracts should be approved by City Council Resolution prior to the Mayor's signature pursuant to state law; and

WHEREAS, it is appropriate to approve the numerous standard lease contracts for the numerous T-Hangers as a group for all of 2012.

**NOW, THEREFORE 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 all T-Hangar leases if in the standard form and for the existing (or increased by the Airport Board) amount that come up for renewal or begin in 2012 and authorize Mayor Jordan or his designee to execute the T-Hangar leases.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

HANGAR RENTAL AGREEMENT

Fayetteville Executive Airport, Drake Field

Lease Application and Accounting Information Form

Name: Company/Leaseholder/Individual: Type Name

Name: Corporate Representatives(s): Type name of Corp officer, Attny, etc.

Home Address: Street Address/PO Box
City, State, Zip code

Mailing Address (if different): Street Address/PO Box
City, State, Zip code

State of Corporation as incorporated:
(Provide Copy of Incorporation Paperwork)

Business and/or Services to Be Provided: Please provide a brief description

Phone/Work: -- Phone/Cell: --

Phone/Home: -- Email:

Emergency Contact Name: Emerg Phone: --

Social Security or Tax I.D No. Date of Birth:

Hangar Number: Aircraft Number: N

Effective Date: Aircraft Make/Model/Year:

Monthly Rental: \$ Aircraft Color Scheme: Ex: White/red

Aircraft Type: Single Engine Airplane

Person conducting the business and/or providing the service if different from above:

Name: Phone: -- E-mail:

Description of tools, equipment, services and inventory required to conduct proposed business and /or service: Please provide a description of the type of tools and equipment used, how services will be delivered to the customer, and types/amounts of materials to be stored including potentially hazardous materials

Hours of Operation: Ex: 8 am-5 pm M-F Total Number of Employees:

I, **Type Name**, agrees to provide the Airport with changes to current address, telephone, aircraft, and insurance information.

Would you like to be included in a T-Hangar Tenant Directory? Yes Please check the information you would like to include in the Directory:

- | | | |
|---|---|---|
| ☐ Name | ☐ Email | ☐ Address |
| ☐ T-Hangar number | ☐ Tail number | ☐ Aircraft type |
| ☐ Telephone # (home) | ☐ Telephone # (work) | ☐ Telephone # (cell) |

LEASE AGREEMENT

The City of Fayetteville, Fayetteville Executive Airport, Drake Field hereby leases to Type Name, a hangar for the above described aircraft on the following terms and conditions. This lease is intended for the private storage of an aircraft. It is not intended to be used for aircraft maintenance, storage of hazardous materials or storage of non-aviation materials.

1. AIRPORT RULES AND ACCESS:

- A. Type Name shall abide by "The Minimum Standards for Fayetteville Executive Airport, Drake Field", City of Fayetteville codes and ordinances, county, state, federal Statutes, Federal Aviation Regulations, and environmental laws.
- B. Hazardous activities such as, but not limited to: smoking, welding, use of spark producing devices (i.e. grinders), painting, doping, open fuel lines or the application of hazardous substances are expressly prohibited.
- C. Type Name shall keep the aircraft storage space clean and free of grease, oil, paper and other debris. All flammables must be stored in a metal container with a tight fitting lid with sump capability at minimum or any other approved containment device. Combustible liquids such as lube oil may be stored in small quantities. (See Airport's Minimum Standards). No additional label is necessary if company label already indicates flammable liquid or type liquid contained. Flammable storage (other than inside the aircraft fuel storage tank) is limited to a maximum of 10 gallons in each Hangar unit. The premises covered by this Agreement shall not be used for the storage of explosive substances or items.
- D. Aircraft shall be removed from a hangar for any activity involving fueling or defueling.
- E. The Airport and its designated agents may enter hangars at any time for inspection. Only locks provided by the Airport may be used on hangar doors.
- F. Flying Clubs shall provide copies of the flying club bylaws, current insurance documents, and current membership roster to be submitted annually to the Airport Administration Office.

2. RENT:

- A. The hangar rent is invoiced in advance and shall be due on the first day of each month. Type Name further agrees to pay upon demand any excise or other tax on the leasehold interest.
- B. The non-payment of rent may be grounds for termination of this Agreement. Type Name will also be subject to a late fee for delinquent rental payment. Delinquent accounts will be sent to a collection agency in accordance with City of Fayetteville's collection/termination policies after 90 days.
- C. The rent stated above is subject to periodic adjustment by the Airport Board. Notice of increase shall be sent out at least thirty days prior to the increase.

3. STRUCTURAL MODIFICATIONS:

- A. No structural or electrical modifications, painting, or alterations will be made to the storage space without the prior written approval of the Airport Director.

B. Type Name shall not attach any hoisting, winching or holding mechanism to any part of the storage space, or pass any such mechanism over the beams or braces thereof.

4. ELECTRICAL APPLIANCES:

A. Limited electrical appliances are allowed in a hangar including portable fans, televisions, refrigerators, radios, dehumidifiers, engine heaters, powered tow bars, battery trickle chargers, and small air compressors. Prohibited appliances include, but are not limited to, air conditioners, electric heaters, hot plates, heat lamps, and stoves. Any appliance not having an explosion-proof motor which generates a glow, flame, or spark must be elevated at least eighteen (18) inches above the floor. No appliances, except refrigerators, dehumidifiers, battery trickle chargers and engine heaters, may remain connected to any electrical receptacle when the hangar is not occupied.

B. Type Name shall not overload electrical circuits. Hangar electrical circuits are designed for 20 amps.

5. MOTOR VEHICLES:

A. Vehicles shall be driven on the airport only by a licensed driver in accordance with policy established in the Airport's Minimum Standards. Type Name shall maintain currency of registration as well as limits of liability and property damage insurance, as mandated by the State of Arkansas, on its vehicle. Type Name will exercise all controls and restraints necessary as to its employees, agents, and invitees so as to comply with this Agreement.

B. Vehicles must be located so as not to block aircraft access route between any hangars, as per the Airport's Minimum Standards. Vehicles will be parked in accordance with the airport parking plan, signage and pavement markings.

6. **ENGINE OPERATION:** No aircraft engine shall be operated inside a hangar or in a negligent manner so that the propeller or exhaust blast may cause injury to persons or damage to property.

7. **PROPERTY DAMAGE/PERSONAL INJURY:** Aircraft and other personal property are stored at Type Name's sole risk. Any insurance protecting Type Name's personal property against fire, theft or damage must be provided by Type Name. Type Name agrees to save the Airport Harmless from any and all liability by reason of the storage or maintenance of said aircraft upon the Fayetteville Executive Airport, Drake Field, or from injury or damage caused to any persons or property by reason of the operations of said aircraft. Insurance requirement shall be in accordance with the Airport's Minimum Standards and a current Certificate of Insurance shall be on file at the Airport Administration Office. This clause shall not be construed to waive that tort immunity as set forth under Arkansas Law.

8. **AIRCRAFT MAINTENANCE:** Maintenance repair work that requires open flame, use of spark producing devices (i.e. grinders), welding, or the use of flammable liquids is not in this Aircraft Storage Hangar. Opening fuel cells and fuel lines is not permitted in a storage hangar.

9. NO COMMERCIAL ACTIVITY: No commercial or revenue-producing activities shall be conducted or permitted from any aircraft storage space without written approval of the Airport Director.

10. NO ASSIGNMENT: The aircraft storage space designated above is rented on a month-to-month basis for aircraft storage only. Such space may not be sublet, assigned or otherwise transferred without the prior written approval of the Airport Director. Only the aircraft identified in this Agreement may be stored in this hangar.

11. TERMINATION:

A. This Agreement shall be deemed a "month-to-month" tenancy and may be terminated by either party upon giving thirty (30) days notice to the other in writing, prior to the end of any such rental period.

B. This Agreement may be terminated by the Airport upon ten (10) days written notice for any violation of the terms or conditions of this Agreement.

12. NOTICE: Any Notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following address for the City/Airport, or for the tenant, the last known address or copy thereof may be posted upon the entryway door of the above mentioned hangar.

CITY OF FAYETTEVILLE

Airport Administration Office
4500 S. School Ave., Suite F
Fayetteville, AR 72701
Phone: 479-718-7642

13. If Type Name fails to make any payment due hereunder within ten (10) days of the date on which such payment is due, the City of Fayetteville may, at its option, terminate this agreement and take possession of such of Type Name personal property as is reasonably necessary to secure payment of the amount due and unpaid.

14. Upon expiration or other termination of this lease, Type Name's rights to use of the demised premises shall cease, and Type Name shall vacate the premises without unreasonable delay.

All fixtures, improvements, equipment, and other property brought, installed, erected or placed by Type Name on the demised premises shall be deemed to be personalty and shall remain the property of Type Name. Type Name shall have the right at any time during the term of this agreement, to remove any or all of such property from the Airport, subject, however, to Type Name's obligations to repair all damages, if any, resulting from such removal. Any and all property not removed by Type Name prior to the expiration of this lease shall thereupon become the property of the City of Fayetteville and title thereto shall thereupon vest in the City of Fayetteville.

15. All covenants, conditions and provisions in this agreement shall extend to and bind the legal representatives, successors and assigns of the respective parties hereto.

Type Name: I have received a copy of "The Minimum Standards for the Fayetteville Municipal Airport Drake Field" _____. (initial)

Mandatory Acknowledgment "By signing this application, acknowledge that I am ultimately responsible for the payment of any and all sums of money arising as a result of this grant of temporary credit."

Signature of Responsible Party

Title

Date

APPROVED:

THE CITY OF FAYETTEVILLE:

Ray Boudreaux, Airport Director Date

Lioneld Jordan, Mayor Date

ATTEST:

**Sondra Smith,
City Clerk and Treasurer**

**Attachment "A" to Hangar Rental Agreement
For Execution by Partners in Aircraft**

I agree to be bound by the terms and conditions of the hangar Rental Agreement

Effective _____ (day/month/year) for Hangar # _____

Lessee Name: _____

Partner #1: _____

Address _____

Signature: _____

Partner #2: _____

Address _____

Signature: _____

Partner #3: _____

Address _____

Signature: _____

Partner #4 _____

Address _____

Signature: _____

2012,
2011,

2010 RENTAL RATES for T-HANGARS:

T-Hangar "A"

#1 thru 10	\$190.00
"A" North & South Storage	\$ 95.00

T-Hangar "B"

#1 thru 14 (no #13)	\$160.00
"B" North Storage	\$ 80.00
"(not rented B-South/airfield generator room)"	

T-Hangar "C"

#1 thru 14 (no #13)	\$160.00
"C: North & South Storage	\$ 80.00

T-Hangar "D"

#1 thru 14 (except D-7 & no #13)	\$160.00
#D-7 (modified)	\$190.00
"D" North Storage	\$ 80.00
"D" South Storage	\$ 55.00

~~(Forest Serv pays \$46 for D-South)~~

T-Hangar "E"

#1-7	\$195.00
#8	\$292.50
"E" North Storage	\$ 97.50
(no "E" South Storage)	

T-Hangar "F"

#1-7	\$195.00
#8	\$227.50
"F" North Storage	\$ 97.50
"F" South Storage	\$ 65.00

~~(Forest Serv pays \$55 for F-South)~~

T-Hangar "G"

#1-8	\$195.00
"G North and South Storage	\$ 97.50

T-hangar "H"

#H-1	\$292.50
#H-4	\$260.00
#H-8	\$227.50
#H-2, 3, 5, 6, & 7	\$195.00
(no storage units this hangar)	

City of Fayetteville Staff Review Form

A. 3
South Delta Aviation, Inc.
Page 1 of 12

City Council Agenda Items and Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
Agenda Items Only

Ray Boudreaux Aviation Transportation
Submitted By Division Department

Action Required:

Action Required: Request approval for a Corporate Hangar Lease with South Delta Aviation, Inc. Attn: Darryl Riddel, 4248 S. School Ave., Fayetteville, AR 72701 (additional address: P. O. Box 2737, West Helena, AR 72390), ph. w) 870-572-9011 & c) 870-995-1323, with signatures of the Mayor and City Clerk.

<u>Cost of this request</u>	<u>\$ -</u>	<u>Program Category / Project Name</u>
<u>5550.0955.4450.00</u>	<u>\$ -</u>	<u>Program / Project Category Name</u>
<u>Account Number</u>	<u>Funds Used to Date</u>	<u>Rent (Corp Hangar)</u>
<u>Project Number</u>	<u>Remaining Balance</u>	<u>Fund Name</u>

Budgeted Item ☐ Budget Adjustment Attached ☐

[Signature] 12-29-11 Previous Ordinance or Resolution # _____
Department Director Date
[Signature] 12-29-11 Original Contract Date: _____
City Attorney Date Original Contract Number: _____

Paul a. Berber 1-3-2012
Finance and Internal Services Director Date

[Signature] 1-4-2012
Chief of Staff Date

[Signature] 1/4/12
Mayor Date

Received in City 12-29-11P12:36 RCVD
Clerk's Office *Kuni g.*

Received in Mayor's Office
ENTERED
12/30/11

Comments:



AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan

THRU: Chief of Staff

THRU: Staff/Contract Review Committee

THRU: Terry Gulley, Transportation Director *TGG*

FROM: Ray M. Boudreaux, Aviation Director *RB*

DATE: December 29, 2011

SUBJECT: Approval of Lease of Large Hangar at 4248 South School Ave to South Delta Aviation, Inc. Signature of the Mayor on Lease.

RECOMMENDATION: Approve Lease of Hangar at 4248 South School Ave. to South Delta Aviation, Inc., Mr. Darryl Riddell, owner. This is the former AATC Hangar that was modified by the City of Fayetteville with classrooms. The lease will begin June 1, 2012 following modifications to remove the classrooms and the repair and motorize the Hangar doors. The project will be funded through an 80/20 Grant through the Arkansas Aeronautics Commission. A signed lease is required by the Commission for application for support to repair the building. The Airport Board approved this action at the December meeting.

BACKGROUND: Mr. Riddell operates South Delta Aviation, Inc. which buys and sells aircraft. The company also does maintenance and repair of aircraft. The former AATC Hangar has been empty since 2007 when the school was taken over by the NWACC. The school was started in 1998 with help from State Aeronautics and the State Economic Development Administration. The City Building Maintenance did most of the construction to remodel the building with classrooms and labs for the school. Mr. Riddell has conditioned his lease on the improvements to the hangar. Plans are for 6 employees initially growing to 15 employees in the first two years. In separate action for the City Council, we have asked for approval of a Task Order with McClelland Consulting Engineers to design the project and to provide Plans and Specs for the project and to provide bidding services. We expect the total project to cost approximately \$200,000.00.

BUDGET IMPACT: The negotiated lease payment is \$3,000.00 per month to begin June 1, 2012. Term of the lease is 2 years with one two year option to renew at a lease rate adjusted by the CPI plus 1%.

Attachments: Staff Review
Lease with South Delta Aviation, Inc.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A TWO YEAR LEASE FOR THE AIRPORT HANGAR AT 4248 SOUTH SCHOOL AVENUE TO SOUTH DELTA AVIATION, INC. FOR A RENT OF \$3,000.00 PER MONTH TO BEGIN ON JUNE 1, 2012

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 attached two year lease for the airport hangar at 4248 South School Avenue to South Delta Aviation, Inc. for a rent of \$3,000.00 per month to begin on June 1, 2012, and authorizes Mayor Jordan to execute the lease.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

ACCOUNTING INFORMATION FOR LEASE AGREEMENT

**South Delta Aviation, Inc.
Fayetteville Executive Airport, Drake Field**

Lessee Name: South Delta Aviation, Inc.

Phone numbers:

Billing Address: Attn: Darryl Riddell

Work: 870-572-9011

4248 S. School Ave.

Cell: 870-995-1323

Fayetteville, AR 72701

Home:

Additional Address: P.O. Box 2737

E-mail: driddell@suddenlinkmail.com

West Helena, AR 72390

Emergency Ph:

wife - Marty Riddell

Emergency Contact: 870-816-4663

Tax I.D. No.: 20-3072840

Social Security No.: _____

Date of Birth: _____

South Delta Aviation, Inc. agrees to provide the Airport with current address, telephone, and insurance information. WR

(tenant's initials)

I have received a copy of "*The Minimum Standards for the Fayetteville Municipal Airport Drake Field*" WR

(tenants initials)

LEASE AGREEMENT

This **LEASE AGREEMENT** made this _____ day of _____, _____, by and between the City of Fayetteville, Arkansas, hereinafter called the City, and South Delta Aviation, Inc., of West Helena, AR herein after called South Delta Aviation.

WHEREAS, the City owns and operates an Airport known as the Fayetteville Executive Airport, Drake Field, herein after referred to as the Airport; and situated in Washington County in the State of Arkansas.

WHEREAS, the City is the owner of an aircraft hangar located at 4248 S. School Avenue, at the Airport: and

WHEREAS, South Delta Aviation desires to lease said aircraft hangar at the airport,

NOW, THEREFORE, the parties, in consideration of the mutual covenants contained herein, hereby agree as follows:

1. LEASED PREMISES. The City leases to South Delta Aviation and South Delta Aviation leases from the City, the aircraft hangar at the airport located at 4248 South School Avenue, Fayetteville, Arkansas 72701, as reflected on Exhibit "A" attached hereto and made a part hereof.

2. USE OF AIRPORT. South Delta Aviation is granted the use, without charge, in common with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time including, but not limited to, the landing field, and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and take-offs.

3. RIGHTS OF INGRESS AND EGRESS. South Delta Aviation shall have at all times the full and free right to ingress to and egress from the demised premises and facilities referred to herein for South Delta Aviation, its employees, customers, passengers, guests, and other invitees. Such rights shall also extend to persons or organizations supplying materials or furnishing services to South Delta Aviation.

4. LEASE TERM. Subject to earlier termination as hereinafter provided, the initial term of this agreement shall be for two (2) years commencing on the 1st day of June, 2012, and ending on the 31st day of May 2014.

The City further agrees to extend this agreement for one additional term of two years. The lease will be automatically renewed at the end of the first term with a rental adjustment at the rate of the increase of the CPI plus one percent using the formula on Lease Attachment #1.

5. RENTAL FEES. South Delta Aviation shall pay \$3,000.00 per month for the initial lease term. The initial lease payment is due and payable upon execution of this lease document. All subsequent lease payments shall be due and payable in advance on or before the first day of each calendar month thereafter. In addition to any remedy available to it hereunder, the City may impose as additional rentals a delinquency charge on all overdue payments, at the maximum rate allowed by law.

6. UTILITIES AND JANITORIAL. South Delta Aviation shall be responsible for the payment of such utilities serving the demised premises, including, but not limited to heat, light, gas, electricity, telephone, and water, sewer and trash removal. Any such services required by South Delta Aviation for their use and purposes shall be their sole and exclusive responsibility and South Delta Aviation agrees to hold the City of Fayetteville, harmless from any responsibilities or liability thereof. South Delta Aviation shall be responsible for all janitorial services to the leased premises.

7. REPAIRS, MAINTENANCE AND APPEARANCE.

A. The City shall maintain and keep in good repair so much of the airport premises as are not under the exclusive control of South Delta Aviation. South Delta Aviation shall at the termination surrender or forfeiture of this lease, return said premises in same or better condition premises were at the beginning of the lease, normal wear and tear excepted.

The City shall be responsible only for major maintenance of the existing equipment, i.e. replacement of heating unit and other equipment in place in the facility which includes, roof, hangar door motors, exterior walls, exterior plumbing, paved ramp and paved parking lot. The City agrees that if the roof or any part of the exterior walls or plumbing of said building thereof shall become defective or damaged at any time during the term due to ordinary wear and tear and not due to negligence of the South Delta Aviation, or South Delta Aviation' agents or invites, upon notice from South Delta Aviation, the City will immediately cause repairs to be made and restore the defective portions to good condition. If the damage is so extensive as to render the aircraft hangar at the airport untenable, the rent payable hereunder shall be proportionally paid up to the time of such damage and shall thenceforth cease until such time as the premises shall be fully restored. If the demised premises are completely destroyed, City may reconstruct the hangar at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or the City may, at its option, cancel this agreement, such cancellation to be effective as of the date the hangar was destroyed, and the rent adjusted as set forth above. Routine maintenance of the hangar doors shall remain the responsibility of the City. South Delta Aviation shall not make any alterations to the controls of the hangar doors.

B. South Delta Aviation shall at all times during the term of this lease keep and maintain in good repair and safe condition the leased premises. South Delta Aviation will at all times maintain the Leased Premises in a clean, orderly, and attractive condition: Not allow the accumulation of rubbish, trash, refuse and any unsightly conditions or fire hazards on the Leased Premises.

C. South Delta Aviation agrees to reimburse the City for all sums and expenses incurred in the repairs or maintenance required or caused to be made pursuant to the regulations and rules of the City as a result of the failure of South Delta Aviation to maintain or repair the demised premises as required.

8. ALTERATIONS AND IMPROVEMENTS. South Delta Aviation shall bear the cost of all improvements or additions made to the interior or exterior of the building on the leased premises. No improvements or additions to any part of the leased premises shall be made by South Delta Aviation without the prior written approval of the Airport Director, whose consent will not be unreasonably withheld, provided they meet all City requirements, to make any alterations, additions and improvements South Delta Aviation deems necessary and desirable to the interior of the leased premises. Any signs or antennas to be erected on or attached to the leased premises must have the prior written approval of the Airport Director and conform to all City Ordinances with appropriate permits issued as necessary.

The City shall make repairs to the hangar doors. The City shall install motor driven door controls as part of the general rehabilitation as mutually agreed upon by the parties.

9. INSURANCE. South Delta Aviation shall maintain in force during the Term and any extended term, public liability and property damage insurance in comprehensive form as reasonably may be required by the City and outlined in the Airport Minimum Standards. The insurance shall be issued by an insurer licensed to do business in the State of Arkansas.

Concurrent with the execution of this Agreement, South Delta Aviation shall provide proof of insurance coverage by providing a Certificate of Lessee's Insurance coverage, a copy of the declarations page on the insurance policy, and a copy of all endorsements. The Certificates of Insurance, or endorsements attached thereto, shall provide that; (a) insurance coverage shall not be canceled, changed in coverage, or reduced in limits without at least thirty (30) days prior written notice to the City; (b) the City and the Airport and their trustees, agents, officers, servants, and employees are named as additional insured; (c) the policy shall be considered primary as regards to any other insurance coverage the City may possess, including any self-insured retention or deductible the City may have, and any other insurance coverage the City may possess shall be considered excess insurance only; (d) the limits of liability required therein are on an occurrence basis.

10. CONDITIONS, RULES AND REGULATIONS. South Delta Aviation agrees to comply with and abide by all terms and conditions set forth in this Lease. South Delta Aviation agrees to observe and obey the City's Ordinances and Regulations with respect to use of the demised

premises and Airport; provided, however, such Ordinances and Regulations shall be consistent with safety and with all city, county, and state rules, regulations, including all current fire codes, and orders of the Federal Aviation Administration with respect to aircraft operations at the Airport, and provided further, such Ordinances and Regulations shall be consistent with the provisions of this agreement or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to the operation of South Delta Aviation' aircraft at the Airport.

"The Minimum Standards for Fayetteville Executive Airport, Drake Field" herein referred to as Airport Minimum Standards at Fayetteville Executive Airport are made part of this lease by reference as if included word for word.

11. USE OF HANGAR. South Delta Aviation agrees that it shall use the premises for the implementation and conducting of an aircraft maintenance and repair business. South Delta Aviation agrees that it shall use the premises for the sale, maintenance and repair of airplanes and equipment necessarily related to the operation and that no other vehicles, equipment or supplies shall be stored on the premises unless expressly agreed to by the City. South Delta Aviation further agrees not to store any flammable material on the demised premises other than a limited supply of oils and agents necessary for the conduct of the sale, maintenance and repair of aircraft on the premises or in any way endanger or violate the provisions of the City's standard commercially available property insurance policy or the requirements of same. Such violations shall constitute a material breach of this Agreement.

12. DAMAGE BY FIRE. If the demised premises are partially damaged by fire or other casualty which is not due to the negligence or fault of the South Delta Aviation, said premises shall be repaired with due diligence by the City at City's expense. If the damage is so extensive as to render such building untenable, the rent payable hereunder shall be proportionally paid up to the time of such damage and shall thenceforth cease until such time as the premises shall be fully restored. If the demised premises are completely destroyed, City may reconstruct the hangar at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or City may, at its option, cancel this agreement, such cancellation to be effective as of the date the hangar was destroyed, and the rent adjusted as set forth above.

13. HAZARDOUS SUBSTANCE. South Delta Aviation shall not cause or permit any Hazardous Substance to be used or stored on or in the Leased Premises except that required in the conducting of the aircraft sales, maintenance and repair business, without first obtaining the City's written consent. If Hazardous Substances are used, stored, generated or disposed of on or in the Leased Premises, or if the Leased Premises or any other Airport property becomes contaminated in any manner for which South Delta Aviation is responsible or legally liable, South Delta Aviation shall indemnify and hold harmless the City from any and all claims, damages, fines, judgements, penalties, costs, liabilities, or losses including, without limitation and decrease in value of the Lease Premises, damages caused by loss or restriction of rentable or usable space as a part of the Leased Premises arising during or after the term hereof and arising as a result of that contamination by South Delta Aviation' agents, employees, and invitees. This

indemnification includes, without limitation, and all cost incurred because of any investigation of the Airport or any cleanup, removal, or restoration mandated by a federal, state, local agency or political subdivision.

14. NON-DISCRIMINATORY CLAUSE. South Delta Aviation agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, religion, national origin, sex, martial status, or handicap in the furnishing, or by refusing to furnish, to such persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the City solely to tenants, their employees, customers, patients, client, guests, and invites.

15. ASSIGNING, SUBLETTING AND ENCUMBERING. South Delta Aviation shall not assign this Agreement in whole or in part, nor sublease all or any part of the Leased Premises, nor permit other persons to occupy said Leased Premises or any part thereof, nor grant any license or concession for all or any part of said Leased Premises, without the prior written consent of the Airport Director, which consent shall not be unreasonably withheld. Any consent by the Airport to an assignment or subletting of this Agreement shall not constitute a waiver of the necessity of obtaining that consent as to any subsequent assignment. Any assignment for the benefit of South Delta Aviation creditors or otherwise by operation of law shall not be effective to transfer or assign South Delta Aviation interest under this Agreement unless the Airport shall have first consented thereto in writing. Neither South Delta Aviation interest in this Agreement, not any estate created hereby in South Delta Aviation nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided in the Bankruptcy Code. If any of the corporate shares of stock of South Delta Aviation are transferred, or if any partnership interests of South Delta Aviation are transferred, by sale, assignment, bequest, inheritance, operation of law, or otherwise, so as to result in a change of the control, assets, value, ownership, or structure of South Delta Aviation, same shall be deemed an assignment for the purposes of this Section 15 and shall require the Airport's prior consent, and South Delta Aviation shall notify the Airport of any such change or proposed change.

16. TERMINATION: The City or South Delta Aviation may terminate this lease at any time by giving the other party 60 days written notice of termination. On the expiration or other termination of this lease South Delta Aviation right to use the demised premises shall cease, and South Delta Aviation shall vacate the premises without unreasonable delay. All property installed, erected, or placed by South Delta Aviation in, on, or about the premises leased hereunder shall be deemed to be personalty and shall remain the property of South Delta Aviation. South Delta Aviation shall have the right at any time during the term of this agreement, or any renewal or extension hereof, and for an additional period of fourteen (14) days after the expiration or other termination of this agreement, to remove any or all of such property, subject, however, South Delta Aviation obligation to repair all damage, if any, resulting from such removal. Any, and all property not removed by South Delta Aviation prior to the

expiration of the aforesaid fourteen (14) day period shall thereupon become a part of the land on which it is located and title hereto shall thereupon vest in the City.

17. The City may enter the premises leased to South Delta Aviation at any reasonable time for any purpose necessary or incidental to the performance of its obligations or South Delta Aviation obligations hereunder.

18. **NOTICES:** Any notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following address:

CITY OF FAYETTEVILLE

SOUTH DELTA AVIATION, INC.

Airport Administration Office
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
Phone: 479-718-7642

South Delta Aviation, Inc.
4248 S. School Avenue
Fayetteville, Arkansas 72701
Phone:

20. This agreement shall be construed under the laws of the State of Arkansas.

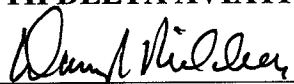
21. All the covenants, conditions, and provisions under this agreement shall extend to and bind the legal representative, successors, and assigns of the respective parties hereof.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

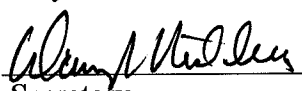
CITY OF FAYETTEVILLE, ARKANSAS

SOUTH DELTA AVIATION, INC.

By: _____
Lioneld Jordan, Mayor Date

By:  _____
Darryl Riddell, President Date

ATTEST

 _____
Secretary Date

By: _____
Sondra Smith, City Clerk & Treasurer Date

City of Fayetteville Staff Review Form

A. 4
Arkansas Department of
Aeronautics Grant
Page 1 of 8

City Council Agenda Items
and
Contracts, Leases or Agreements

1/17/2012

City Council Meeting Date
Agenda Items Only

Ray Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Approval to apply for and accept a grant from the Arkansas Department of Aeronautics for an 80/20 Grant to rehabilitate the former AATC hangar building.

REVENUE

\$224,000.00

Cost of this request

\$

-

Category / Project Budget

Hangar Rehab

Program Category / Project Name

5550.0955.6805.00

Account Number

\$

-

Funds Used to Date

Airport Revenue

Program / Project Category Name

12002 1

Project Number

\$

-

Remaining Balance

Airport

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

Ray G. Gully
Department Director

12-30-11

Date

Previous Ordinance or Resolution #

Original Contract Date:

Chris Shelby
City Attorney

1-3-12

Date

Original Contract Number:

Paul A. Becher
Finance and Internal Services Director

1-3-2012

Date

Received in City 2-30-11 P02:01 RCVD
Clerk's Office

Don Man
Chief of Staff

1-4-2012

Date

Received in
Mayor's Office

Freddie Jordan
Mayor

1/4/12

Date



Comments:

City Council Meeting of: January 17, 2012
Agenda Item Number:



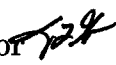
AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

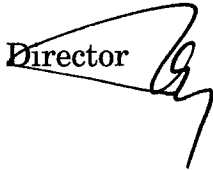
CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan

THRU: Chief of Staff

THRU: Staff/Contract Review Committee

THRU: Terry Gulley, Transportation Director 

FROM: Ray M. Boudreaux, Aviation Director 

DATE: December 29, 2011

SUBJECT: Approval of Application to the Arkansas Aeronautics Commission for an 80/20 Grant to rehab the former Arkansas Aviation Technology Center Hangar for South Delta Aviation, Inc. to conduct aviation business in the building.

RECOMMENDATION: Approve Airport Administration application to the Arkansas Aeronautics Commission for an 80/20 grant for an estimated project cost of \$280,000.00 for the rehab of the former Arkansas Aviation Technology Center (AATC) Hangar for South Delta Aviation, Inc. Signature of the Mayor on the Grant Application

BACKGROUND: The former AATC Hangar has been empty since 2007 when the school was taken over by the NWACC. The school was started around 1998 with help from State Aeronautics and the State Economic Development Administration. The City Building Maintenance did most of the construction to remodel the building with classrooms and labs for the school following a design provided by the U of A. We have a tenant for the building that will have an aviation related business that buys and sells aircraft and conducts maintenance on aircraft. The school modifications must be removed so that the aviation business can use the hangar as it was originally designed. The tenant has signed a lease for the building pending the improvements that will be accomplished with this project.

BUDGET IMPACT: The project will be funded by an 80/20 grant from the Arkansas Aeronautics Commission approximately \$280,000.00 total cost. The

Airport Fund will be obligated to fund the 20% match which could amount to approximately \$56,000.00. The Airport Board approved the project at their December 2011 meeting.

Attachments: Staff Review
Arkansas Aeronautics Commission Grant Application
Lease with South Delta Aviation, Inc.

RESOLUTION NO. _____

A RESOLUTION AUTHORIZING APPLICATION FOR AND ACCEPTANCE
OF AN ARKANSAS DEPARTMENT OF AERONAUTICS 80/20 GRANT IN
THE AMOUNT OF \$224,000.00 FOR IMPROVEMENTS TO THE FORMER
AATC HANGAR BUILDING AT DRAKE FIELD

**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
application for and acceptance of an Arkansas Department of Aeronautics 80/20 Grant in the
amount of \$224,000.00 for improvements to the former AATC hangar building at Drake Field.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

State Airport Aid Application – Page 1

The City/County of Fayetteville, Washington County Arkansas, herein called "Sponsor", hereby makes application to the Arkansas Department of Aeronautics for State funds pursuant to Act 733 of 1977, for the purpose of aiding in financing a project for the development of a municipal airport located in the city of Fayetteville, Arkansas, Washington County.

Date of Request: January, 2012

Name of Airport: Fayetteville Executive Airport, Drake Field

Name and address of City/County Commission
sponsoring request:

Lioneld Jordan, Mayor
City Of Fayetteville

Phone Number: 479-575-8330

Fax Number: 479-575-8257

Person to Contact about project:

Ray M. Boudreaux, Director
Drake Field

Phone Number: 479-718-7642

Cell Number: 479-601-3520

Fax Number: 479-718-7646

Name and address of Engineering Firm
(if applicable):

McClelland Consulting Engineers
1810 N. College
Fayetteville, AR 72703

Contact Person: Wayne Jones

Phone/Fax Number: 479-443-2377/9241

Describe the work to be accomplished: Rehabilitation of hangar for Aviation Business, South Delta Aviation, Inc. Project includes removing modifications made to the building for the former Arkansas Aviation Technical Center, repair and motorization of hangar doors, paint and floor coverings and fire code compliance.

State and Local Project Costs:
Please indicate:

- ☐ 50-50% Match
- ☒ 80-20% Match
- ☐ 90-10% Match
- ☐ 100%

Total Cost of Project \$280,000.00
Local Share/Funds \$56,000.00
Local Share/In-Kind
State Share \$224,000.00

Federal AIP Projects:

AIP Number:

- ☐ 95-5% Match

Total Cost of Project:

Federal Share:

State Share:

Local Share:

State Airport Aid Application – Page 2

Provide the information listed below as it applies to your project:

Funding:

Source of Funds: Arkansas Department of Aeronautics and Fayetteville Executive Airport, Drake Field

Fund Balance _____

Source of In-Kind Services: _____

Estimated starting date of project: March 1, 2012

Estimated completion date of project: May 31, 2012

Project will be for: New Airport Existing Airport

Is land to be leased or purchased? No

Description of land and cost per acre: _____

Provide the Federal AIP Grant Number (if applicable): _____

State Legislators for your area:

State Senator: Senator Sue Madison

State Representative: Representative Uvalde Lindsey

State Airport Aid Application – Page 3

The sponsor agrees to furnish the Arkansas Department of Aeronautics a copy of the legal instrument affecting use of the property for an airport. In application for a new landing site or expansion of existing facility, the FAA Form 7480-1, *Notice of Landing Area Proposal*, must be approved by the FAA before review for grant can be made by the State. Applications for hangar construction or renovation funds must include a signed lease agreement. This agreement must be in compliance with all FAA grant assurances. The application must be based on bids and include a calculated return on investment.

No land, hangars, or buildings purchased with State Grant funds may be sold or disposed of without State Aeronautics Commission prior approval. All requests for sale or disposal of property will be considered on an individual case basis. No hangar (funded by a grant from the Department of Aeronautics) shall be used for non-aviation purposes without State Aeronautics Commission prior approval. All requests for non-aviation use will be considered on a case-by-case basis. Failure to receive prior approval from A.D.A. concerning land and/or building use could result in the commission requesting grant refund from the Sponsor. Additionally, all hgr/building grant applications must include proof of insurance coverage.

No airport accepting State Grant funding may issue an Exclusive Rights lease.

All applications for navigational aids (such as NDB or ILS) must have FAA site approval before a state grant can be approved.

All Grant applications involving Federal Airport Improvement Program (AIP) funding must be accompanied by the approved FAA grant agreement with grant number assigned.

If this project is approved by the Arkansas Department of Aeronautics, and is accepted by the sponsor, it is agreed that all developments and construction shall meet standard FAA construction practices as outlined in the specifications of this agreement. Runways, Taxiways, Parking Ramps, etc. shall have a base and a thickness that will accommodate the weight of aircraft expected to operate at this airport.

All grant applicants (City and/or County) are totally responsible for compliance with all Federal, State, County, and City laws, Statutes, Ordinances, Rules, Regulations, and Executive Orders concerning contracts and purchases for which this grant is approved and issued.

It is understood and agreed that the sponsor shall start this project immediately upon award of grant. It is also agreed that this project shall be completed within one year from the date of acceptance of this grant by the Arkansas Department of Aeronautics. Applications for extension will be entertained if circumstances beyond the sponsor's control occur. Amendment requests are to be made only under extraordinary circumstances.

Funds will be disbursed according to Department procedures and final inspection of completed project (See payment instruction page). Payment of grant funds are contingent upon the Department's annual appropriation.

IN WITNESS WHEREOF, the sponsor has caused this Application for State Airport Aid to be duly executed in its name, this _____ day of _____, 20__.

Lioneld Jordan

Name of Sponsor

Authorized Signature

Mayor

Title

City of Fayetteville Staff Review Form

A. 5
McClelland Consulting Engineers
Task Order No. 7
Page 1 of 12

City Council Agenda Items
and
Contracts, Leases or Agreements

1/17/2012

City Council Meeting Date
Agenda Items Only

Ray Boudreaux

Submitted By

Aviation

Division

Transportation

Department

Action Required:

Approval of Task Order No. 7 with McClelland Consulting Engineers in the amount of \$27,150.00 to design the rehab of the former AATC Hangar Building at Drake Field and application to the State Aeronautics Commission for an 80/20 Grant to complete the work;

\$27,150.00

Cost of this request

\$

-0-

-

Category / Project Budget

HANGAR REHAB

Program Category / Project Name

5550.3960.5314.00

Account Number

\$

-0-

-

Funds Used to Date

AIRPORT CAPITAL

Program / Project Category Name

12002 / 2012

Project Number

\$

-0-

-

Remaining Balance

AIRPORT

Fund Name

Budgeted Item

☐

Budget Adjustment Attached

☐

T. J. Gully
Department Director

12-30-11

Date

Previous Ordinance or Resolution #

Chris Kelly
City Attorney

1-3-12

Date

Original Contract Date:

Original Contract Number:

Paul A. Becker
Finance and Internal Services Director

1-3-2012

Date

Received in City 12-30-11 P02:01 RCVD
Clerk's Office

Don Mar
Chief of Staff

1-4-2012

Date

Received in
Mayor's Office

Frank D. Jordan
Mayor

1/4/12

Date



Comments:



AVIATION DIVISION
FAYETTEVILLE EXECUTIVE AIRPORT • DRAKE FIELD

CITY COUNCIL AGENDA MEMO/STAFF CONTRACT REVIEW MEMO

TO: Mayor Jordan

THRU: Chief of Staff

THRU: Staff/Contract Review Committee

THRU: Terry Gulley, Transportation Director *TG*

FROM: Ray M. Boudreaux, Aviation Director *RB*

DATE: December 29, 2011

SUBJECT: Approval of Task Order Number 7 with McClelland Consulting Engineers to design the rehab of the former AATC Hangar at Drake Field and approve application to the State of Arkansas Aeronautics Commission for an 80/20 Grant.

RECOMMENDATION: Approve Task Order Number 7 with McClelland Consulting Engineers in the amount of \$27,150.00 to design a project to rehabilitate the former AATC Hangar for aviation use and to provide plans and specs, and bidding services for the project. Approve application to the State of Arkansas Aeronautics Commission for an 80/20 Grant for the project estimated to be \$200,000.00 total cost.

BACKGROUND: The former AATC Hangar has been empty since 2007 when the school was taken over by the NWACC. The school was started around 1998 with help from State Aeronautics and the State Economic Development Administration. The City Building Maintenance did most of the construction to remodel the building with classrooms and labs for the school following a design provided by the U of A. We have a tenant for the building that will have an aviation related business that buys and sells aircraft and conducts maintenance on aircraft. The school modifications must be removed so that the aviation business can use the hangar as it was originally designed. The tenant has signed a lease for the building pending the improvements that will be accomplished with this project.

BUDGET IMPACT: The project will be funded by an 80/20 grant from the

Arkansas Aeronautics Commission approximately \$200,000.00 total cost. The Airport Fund will be obligated to fund the 20% match which could amount to approximately \$40,000.00. The Airport Board approved the project at their December 2011 meeting.

Attachments: Staff Review
MCE Task Order No. 7
Lease with South Delta Aviation, Inc.

RESOLUTION NO. _____

A RESOLUTION APPROVING TASK ORDER NO. 7 TO THE CONTRACT WITH MCCLELLAND CONSULTING ENGINEERS IN THE AMOUNT OF \$27,150.00 TO DESIGN THE REHABILITATION OF THE FORMER AATC HANGAR BUILDING AT DRAKE FIELD, AND APPROVING A BUDGET ADJUSTMENT

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 application for and acceptance of an Arkansas Department of Aeronautics 80/20 Grant in the amount of \$224,000.00 for improvements to the former AATC hangar building at Drake Field.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A".

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

**City of Fayetteville, Arkansas
Budget Adjustment Form**

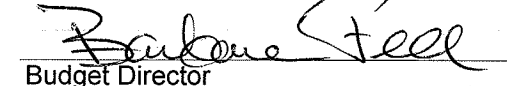
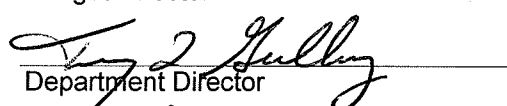
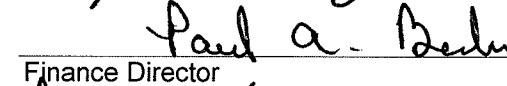
A. 5 V11.0425
McClelland Consulting Engineers
Task Order No. 7
Page 5 of 12

Budget Year BY 2012	Division: Aviation Department: Transportation Services	Request Date 1/17/2012	Adjustment Number 5112
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BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

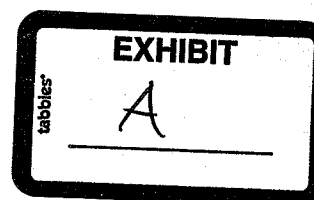
\$27,150.00 is requested in the Hanger Rehab project to cover the cost of design and engineering services throughout the length the project to rehabilitate the former AATC Hanger Building at Drake Field.

Please reduce Use of Fund Balance by \$27,150.00.

 Division Director	<u>12/30/11</u> Date	Prepared By: <u>Ginny Gundlach</u> Reference: _____ ggundlach
 Budget Director	<u>1/3/12</u> Date	Budget & Research Use Only
 Department Director	<u>12-30-11</u> Date	Type: A B C <u>(D)</u> E P
 Finance Director	<u>1-3-2012</u> Date	General Ledger Date _____
 Chief of Staff	<u>1-4-2012</u> Date	Posted to General Ledger Initial _____ Date _____
 Mayor	<u>1/4/12</u> Date	Checked / Verified Initial _____ Date _____

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number	Increase / (Decrease)		Project.Sub Number
		Expense	Revenue	
Professional services	5550.3960.5314.00	27,150		12002 . 2012
Use of fund balance	5550.0955.4999.99	(27,150)		.
				.
				.



December 30, 2011

RECEIVED

DEC 30 2011

AIRPORT

Mr. Ray Boudreaux
Airport Director,
Fayetteville Executive Airport
4500 S. School Suite F
Fayetteville, AR 72701

Re: Task Order No 7
Multi-Purpose Hangar Renovation
Fayetteville Executive Airport

Dear Mr. Boudreaux:

In response to your request, please find three (3) copies of Task Order No 7 for the Multi-Purpose Hangar Renovation Project.

Please advise if you need further information regarding this Task Order.

Sincerely,

McCLELLAND CONSULTING ENGINEERS, INC.



R. Wayne Jones, P.E.
Vice President

Enclosure: Task Order No 7 (3 copies)

TASK ORDER NO. 7

AIRPORT

MULTI-PURPOSE HANGAR RENOVATIONS

FAYETTEVILLE EXECUTIVE AIRPORT

STATE OF ARKANSAS

COUNTY OF WASHINGTON

This Task Order is written pursuant to the basic agreement entitled CITY OF FAYETTEVILLE, AGREEMENT FOR ENGINEERING SERVICES, executed on May 5, 2009. The referenced basic agreement pertains to proposed improvements to Drake Field, Fayetteville's Executive Airport. This Task Order entered into and executed on the date indicated below the signature block, by and between the City of Fayetteville and McClelland Consulting Engineers sets forth the project description, project schedule, and engineering and architectural fees related to the preparation of Construction Documents for the Multi-Purpose Hangar (Brown) Building Renovation at Fayetteville Executive Airport, Drake Field. Our Consultants Wittenberg-Delony Davidson, Inc.; and Engineering Elements, PLLC from their Fayetteville offices will perform most of this task.

SECTION I - PROJECT DESCRIPTION

The project is to consist of: Detailed Architectural and Engineering Design for the Renovation of the Multi-Purpose Hangar Building; final cost estimates; meetings with the Airport Management and Airport Advisory Board to review the desired renovations; and Architectural and Engineering Services associated with the Construction Administration for this project.

SECTION II - PROJECT SCHEDULE

From the time the City of Fayetteville issues the Notice To Proceed (NTP), McClelland Consulting Engineers through its Consultants will endeavor to execute the project construction documents within a eight (8) week time period, as expeditiously as possible, to enable the City of Fayetteville to solicit competitive bids for construction as soon as possible.

SECTION III - SCOPE OF SERVICES

MCE through its Consultant shall, generally, provide those services listed in the basic agreement which are applicable to this specific Task Order. Specifically, this project is likely to include:

A. Development of Construction Documents and Cost Estimates for the following areas:

Prepare CADD Drawings of the existing hangar facility to be used as base plans for the renovation work.

Prepare Renovation drawings and specifications.

Demolition of the latest interior two story addition.

Renovation of the two story offices to include removal of three walls, wall repair, paint walls, new carpet and replace ceiling tiles as needed.

Renovation of hangar, clean and paint steel where required.

Renovation of the rolling hangar doors to include, repair of insulation, install missing interior wall panels, install bird proof weather stripping, install motors for operation of the rolling doors, and repair doors as required.

Any renovations required by the "Tenant" are beyond the scope of this Task Order and will be address by Task Order Amendment or separate Task Order.

- B. Meeting with the Airport Management and their Tenants to discuss design criteria, desired features, and schedule.
- C. Construction Administration and Periodic weekly site visits of the work progress with follow-up reports.
- D. Providing a set of "Record Drawings" at the completion of construction based upon the Contractor's mark-ups.
- E. Reproduction Cost for project documents sets, as required.

SECTION IV - FEES AND PAYMENTS

The following fees are to be paid to MCE as compensation for his services:

A. Project Administration:	hourly rates Not to Exceed	\$ 2,250.
B. Construction Documents & Site Visits:	hourly rates Not to Exceed	\$ 21,300.
Architectural (\$18,800); MEP (\$ 2,500)		
C. Bidding:	hourly rates Not to Exceed	\$ 1,250.
C. Preparation of "Record Drawings":	hourly rates estimated to be	\$ 850.
D. Reproduction Costs (as required):	Actual Cost Not to Exceed	\$ 1,500.

Appendix "A" presents hourly rates for personnel anticipated to be assigned to this project as well as the basis of payments to be made to MCE.

SECTION V - BASIC AGREEMENT IN EFFECT:

Except as amended specifically herein, the basic AGREEMENT FOR ENGINEERING SERVICES shall remain in full force as originally approved and executed.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be duly executed as of the date and year first herein written.

FOR THE CITY OF FAYETTEVILLE:

By: _____
Mayor

Attest: _____

Date: _____

FOR McCLELLAND CONSULTING ENGINEERS, INC.:

By: *R Wayne Jamer*
Vice President

Attest: *Robert W White*

APPENDIX A
TASK ORDER NO. 7
Hourly Rates for Personnel
Fayetteville Executive Airport

<u>CATEGORY</u>	<u>BILLABLE HOURLY RATE</u>
Principal Engineer	\$ 155
Sr. Project Manager	\$ 143
Project Engineer	\$ 135
Project Engineer IV	\$ 127
Project Engineer III	\$ 115
Project Engineer II	\$105
Project Engineer I	\$ 85
Principal Architect	\$ 165
Project Architect	\$ 125
Associate Architect	\$ 110
Architect	\$ 95
Intern Architect	\$ 75
Construction Administrator	\$ 80
Survey Technician	\$ 90
Engineering Technician/Observer IV	\$ 90
Engineering Technician/Observer III	\$ 84
Engineering Technician/Observer II	\$ 65
Engineering Technician/Observer I	\$ 55
Chief Draftsman	\$ 73
Draftsman II	\$ 60
Soils Lab Supervisor	\$ 60
Clerical Support	\$ 50
Mileage	\$ 0.50

City of Fayetteville Staff Review Form

A. 6
Transportation Division Truck
Equipment Purchase
Page 1 of 4

City Council Agenda Items
and
Contracts, Leases or Agreements

January 17, 2012
City Council Meeting Date
Agenda Items Only

Terry Gulley
Submitted By

Transportation
Division

Transportation Services
Department

Action Required:

A resolution approving a budget adjustment in the amount of \$6,000.00 from the Transportation Division to Fleet Operations for the cost of an extendo-bed, topper, and ladder rack for Unit 2147.

\$ 6,000.00
Cost of this request

\$ 302,000.00
Category / Project Budget

Light/Medium Utility Vehicles
Program Category / Project Name

9700.1920.5802.00
Account Number

\$ -
Funds Used to Date

Vehicles and Equipment
Program / Project Category Name

02078 / 2012
Project Number

\$ 302,000.00
Remaining Balance

Shop Fund
Fund Name

Budgeted Item

☐

Budget Adjustment Attached

X

Terry Gulley
Department Director

12-29-11
Date

Previous Ordinance or Resolution #

Paul A. Berlin
City Attorney

1-3-12
Date

Original Contract Date:

Original Contract Number:

Paul A. Berlin
Finance and Internal Services Director

1-4-2012
Date

Received in City Clerk's Office 12-29-11 P04:54 RCVD

Don Mar
Chief of Staff

1-4-2012
Date

Received in Mayor's Office



Donald Jackson
Mayor

1/4/12
Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Don Marr, Chief of Staff *DM*
From: Terry Gulley, Transportation Services Director *TG*
Date: January 17, 2012

Subject: A resolution approving a budget adjustment in the amount of \$6,000.00 from the Transportation Division to Fleet Operations for the cost of an extendo-bed, topper, and ladder rack for Unit 2147.

PROPOSAL:

The City Council approved Res. 167-11 on September 20, 2011 to repeal Res. 59-11, awarding Bid 11-52 and authorizing a contract with George Nunnally Chevrolet, Inc. in the amount of \$16,960.00 for the purchase of a 2012 Chevrolet Colorado pick-up truck (Unit 2147), and approving a budget adjustment.

Transportation Division staff have determined that additional equipment will be necessary for the vehicle to perform necessary functions for the traffic control maintenance program. This will include the addition of an extendo-bed, a topper, and a ladder rack.

RECOMMENDATION:

Staff recommends approving a budget adjustment in the amount of \$6,000.00 for the purchase of an extendo-bed, topper, and ladder rack for Unit 2147.

BUDGET IMPACT:

The attached budget adjustment will transfer funds into a Fleet Operations expense account to cover the additional cost of the customized equipment.

RESOLUTION NO. _____

**A RESOLUTION APPROVING A BUDGET ADJUSTMENT IN THE
AMOUNT OF \$6,000.00 TO FUND THE PURCHASE OF AN EXTENDO-
BED, TOPPER AND LADDER RACK FOR PICKUP TRUCK UNIT 2147**

**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 a budget adjustment, a copy of which is attached as Exhibit "A", in the amount of \$6,000.00 to fund the purchase of an extendo-bed, topper and ladder rack for pickup truck unit 2147.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

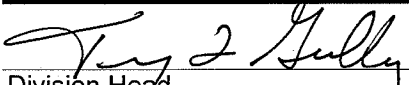
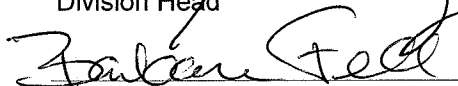
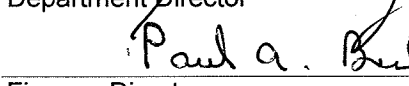
**City of Fayetteville, Arkansas
Budget Adjustment Form**

A. 6 V11.0425
Transportation Division Truck
Equipment Purchase

Budget Year BY 2012	Division: Fleet Operations Department: Transportation Services	Request Date 1/17/2012	Adjustment Number
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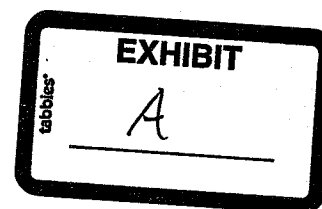
BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION

Res. 59-11 authorized a contract with Landers Dodge of Benton, Arkansas for the purchase of a Dodge Dakota Pickup Truck pursuant to a state procurement contract. It was later discovered that the truck ordered was no longer available. Bid 11-52 was completed for a similar type of vehicle and the low bid came from George Nunnally Chevrolet. The unit being replaced (#2018) was an expansion so the increase is being paid by Transportation (Reference BA 11-216). An additional \$6,000.00 will be required to customize the vehicle (Unit #2147) with an an extendo bed, topper, and ladder rack. This budget adjustment requests the transfer of funds for these items.

 Division Head	<u>1/4/12</u> Date	Prepared By: <u>Ginny Gundlach</u> ggundlach
 Budget Director	<u>1/4/12</u> Date	Reference: _____
 Department Director	<u>1/4/12</u> Date	Budget & Research Use Only
 Finance Director	<u>1-</u> Date	Type: A B C D E P
 Chief of Staff	<u>1-4-12</u> Date	General Ledger Date _____
 Mayor	<u>1/4/12</u> Date	Posted to General Ledger _____ Initial Date
		Checked / Verified _____ Initial Date

TOTAL BUDGET ADJUSTMENT

Account Name	Account Number	6,000	6,000	Project.Sub Number
		Increase / (Decrease) Expense	Revenue	
Transfer to Shop	4270.9270.7602.70	6,000		05042 . 3
Vehicles and equipment	4270.9270.5802.00	(6,000)		05042 . 3
Trans from Replacement	9700.0970.6602.27		6,000	02078 . 2012
Vehicles and equipment	9700.1920.5802.00	6,000		02078 . 2012
				.
				.



City of Fayetteville Staff Review Form

A. 7
 Bid #11-65 Central Salt Company
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 11-65 for and approving the purchase of crushed rock salt from Central Salt Company for a unit price of \$79.85 per ton as needed through the end of calendar year 2012.

\$ 27,947.50
 Cost of this request

\$ 346,294.00
 Category / Project Budget

Materials & Supplies
 Program Category / Project Name

2100.4120.5204.00
 Account Number

\$ -
 Funds Used to Date

Street Maintenance
 Program / Project Category Name

Project Number

\$ 346,294.00
 Remaining Balance

Street
 Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Terry Gulley 12-29-11
 Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 1-3-12
 City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Butler 1-3-2012
 Finance and Internal Services Director Date

Received in City-20-11P03:14 RCVD
 Clerk's Office

[Signature] 1-4-2012
 Chief of Staff Date

Received in
 Mayor's Office

[Signature] 1/4/12
 Mayor Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Don Marr, Chief of Staff
From: Terry Gulley, Transportation Services Director *TG*
Date: January 17, 2012

Subject: A resolution awarding Bid 11-65 for and approving the purchase of crushed rock salt from Central Salt Company for a unit price of \$79.85 per ton as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of de-icing materials is necessary to facilitate transportation and ensure public safety. Sealed formal bids for crushed rock salt were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends approval of a resolution awarding Bid 11-65 for and approving the purchase of crushed rock salt from Central Salt Company for a unit price of \$79.85 per ton as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of these materials have been budgeted in the 2012 Annual Budget & Work Program.

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #11-65 AND AUTHORIZING THE PURCHASE OF CRUSHED ROCK SALT FROM CENTRAL SALT COMPANY IN THE AMOUNT OF \$79.85 PER TON, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #11-65 and authorizes the purchase of crushed rock salt from Central Salt Company in the amount of \$79.85 per ton, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 11-65
DATE: 10/26/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

Bid 11-65, Crushed Rock Salt for Roads

BIDDER	PRICE PER TON	TOTAL BID PRICE
1 Cargil Deicing Technology	\$98.02	\$34,307.00
2 Central Salt Company	\$79.85	\$27,947.50
3 Independent Salt Company	\$87.74	\$30,709.00
4 Morton Salt	No Bid	No Bid
5 North American Salt Company	No Bid	No Bid
6 Oakley Fertilizer Inc.	\$100	\$35,000.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

A handwritten signature in black ink, appearing to read "P. Vice".

P. VICE, PURCH MGR

A handwritten signature in black ink, appearing to read "Julie Paladino".

WITNESS

10/26/2011
DATE

City of Fayetteville Staff Review Form

A. 8
 Bid #12-01 Time Striping, Inc.
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-01 for and approving the purchase of thermal striping from Time Striping, Inc. in varying unit prices as needed through the end of calendar year 2012.

\$ 64,300.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

Transportation Improvements

Trail Improvements

4470.9470.xxxx.xx

Account Number

\$

-

Funds Used to Date

Program / Project Category Name

Various

Project Number

\$

-

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Terry Gulley
 Department Director

12-29-11
 Date

Previous Ordinance or Resolution #

Original Contract Date:

Jan B Kelly
 City Attorney

1-3-12
 Date

Original Contract Number:

Paul A. Bahr
 Finance and Internal Services Director

1-3-2012
 Date

Received in City 12-29-11 P03:13 RCVD
 Clerk's Office

Don Man
 Chief of Staff

1-4-2012
 Date

Received in
 Mayor's Office

Mayor
 Lionel J. Jarman

1/4/12
 Date

Comments:



www.accessfayetteville.org

THE CITY OF FAYETTEVILLE, ARKANSAS
DEPARTMENT CORRESPONDENCE

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TJG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-01 for and approving the purchase of thermal striping from Time Striping, Inc. in varying unit prices as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for thermal striping were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends approval of a resolution awarding Bid 12-01 for and approving the purchase of thermal striping from Time Striping, Inc. in varying unit prices as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-01 AND AUTHORIZING THE PURCHASE FROM TIME STRIPING, INC. OF THERMAL STRIPING, IN VARIABLE AMOUNTS, FOR THE TRANSPORTATION DIVISION AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-01 and authorizes the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-01
 DATE: 12/14/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 12-01, Construction - Thermal Striping

Item #	Description	Estimated Quantity	Time Striping, Inc.	
			Unit Price	TOTAL
1	Hot Truck Applied Thermoplastic White Or Yellow (4") - Per Linear Foot	15,000 LF	\$0.55	\$8,250.00
2	Hot Applied Thermoplastic Arrows - Each	6 EA	\$175.00	\$1,050.00
3	Hot Applied Thermoplastic Words - Each	6 EA	\$200.00	\$1,200.00
4	Hot Applied Thermoplastic Railroad Emblems - Each	1 EA	\$800.00	\$800.00
5	Hot Applied Thermoplastic Handicap Emblems - Each (Blue Background With White Emblem)	2 EA	\$250.00	\$500.00
6	Hot Applied Thermoplastic Pre-Form Sharrows - Each (per MUTCD standard)	170 EA	\$300.00	\$51,000.00
7	Hot 4" Hand Applied Thermoplastic For Parking Spaces - Per Linear Foot	100 LF	\$5.00	\$500.00
8	Hot 12" Hand Applied Thermoplastic Stop Bars - Per Linear Foot	100 LF	\$10.00	\$1,000.00
TOTAL BID BASED ON ESTIMATES =				\$64,300.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

A. Foren, Purchasing Agent

WITNESS

DATE

12/16/11

City of Fayetteville Staff Review Form

A. 9
 Bid #12-02 Asphalt Striping
 Service, LLC
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012
 City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-02 for and approving the purchase of reflectorized paint markings from Asphalt Striping Service, LLC in varying unit prices as needed through the end of calendar year 2012.

\$ 52,554.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

Transportation Improvements

Trail Improvements

4470.9470.xxxx.xx

Account Number

\$ -

Funds Used to Date

Program / Project Category Name

Various

Project Number

\$ -

Remaining Balance

✓ Sales Tax Capital Improvements

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Department Director

Date

Previous Ordinance or Resolution #

Original Contract Date:

Original Contract Number:

City Attorney

Date

Finance and Internal Services Director

Date

Received in City Clerk's Office 12-29-11 P03:14 RCVD

Chief of Staff

Date

Received in
 Mayor's Office

Mayor

Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TGG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-02 for and approving the purchase of reflectorized paint markings from Asphalt Striping Service, LLC in varying unit prices as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for reflectorized paint markings were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends approval of a resolution awarding Bid 12-02 for and approving the purchase of reflectorized paint markings from Asphalt Striping Service, LLC in varying unit prices as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-02 AND AUTHORIZING THE PURCHASE FROM ASPHALT STRIPING SERVICE, LLC OF REFLECTORIZED PAINT MARKINGS, IN VARIABLE AMOUNTS, FOR THE TRANSPORTATION DIVISION AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-02 and authorizes the purchase from Asphalt Striping Service, LLC of reflectORIZED paint markings, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-02
 DATE: 12/14/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 12-02, Construction - Reflectorized Paint Markings

Item	Description	Estimated Quantity	Asphalt Striping Service		Time Striping, Inc.	
			Per Item	Extended	Per Item	Extended
1	Reflectorized Paint Marking <u>White</u> (4") - Per Linear Foot	44,000	\$0.0675	\$ 2,970.00	\$0.09	\$ 3,960.00
2	Reflectorized Paint Marking <u>Yellow</u> (4") - Per Linear Foot	501,000	\$0.066	\$ 33,066.00	\$0.09	\$ 45,090.00
3	Reflectorized Paint Marking Arrows - Per Each	170	\$40.00	\$ 6,800.00	\$75.00	\$ 12,750.00
4	Reflectorized Paint Marking (Words only: Lane, etc.) - Per Each	25	\$80.00	\$ 2,000.00	\$85.00	\$ 2,125.00
5	Reflectorized Paint Marking (Symbols only: Bike, ADA, etc.) - Per Each	130	\$35.00	\$ 4,550.00	\$85.00	\$ 11,050.00
6	Reflectorized Paint Marking <u>Yellow</u> (4" Walk-Behind Trail Striping) - Per Linear Foot	21,120	\$0.15	\$ 3,168.00	\$0.25	\$ 5,280.00
TOTAL BID BASED ON ESTIMATES =				\$ 52,554.00		\$ 80,255.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:


 A. Fofen, Purchasing Agent

WITNESS



DATE

12/16/11

City of Fayetteville Staff Review Form

A. 10
 Bid #12-03 Fochtman Enterprises,
 Inc. and Sweetser Construction, Inc.
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-03 for and approving the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as primary supplier, Sweetser Construction, Inc. as secondary supplier, and authorizing the use of other bidders based on price and availability in variable amounts as needed through the end of calendar year 2012.

\$ 158,500.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

4470.9470.xxxx.xx

Account Number

\$ -

Funds Used to Date

Transportation Improvements

Program / Project Category Name

Various

Project Number

\$ -

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Terry D. Gulley
 Department Director

12-29-11
 Date

Previous Ordinance or Resolution #

John B. Kelley
 City Attorney

1-3-12
 Date

Original Contract Date:

Original Contract Number:

Paul A. Babin
 Finance and Internal Services Director

1-3-2012
 Date

Received in City Clerk's Office
 12-29-11 P03:14 RCVD

Don Man
 Chief of Staff

1-4-2012
 Date

Received in
 Mayor's Office



Lowell Jordan
 Mayor

1/4/12
 Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TGG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-03 for and approving the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as primary supplier, Sweetser Construction, Inc. as secondary supplier, and authorizing the use of other bidders based on price and availability in variable amounts as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for curb and gutter construction were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends approval of a resolution awarding Bid 12-03 for and approving the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier, Sweetser Construction, Inc. as a secondary supplier, and authorizing the use of other bidders based on price and availability in variable amounts as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #12-03 AND AUTHORIZING THE PURCHASE OF CURB AND GUTTER CONSTRUCTION FROM FOCHTMAN ENTERPRISES, INC. AS A PRIMARY SUPPLIER AND SWEETSER CONSTRUCTION, INC. AS SECONDARY SUPPLIER, IN VARIABLE AMOUNTS, AND AUTHORIZING THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-03 and authorizes the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, and authorizes the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



Bid 12-03, Construction - Curb and Gutter

BID: 12-03
 DATE: 12/14/11
 2:00 PM
 CITY OF FAYETTEVILLE

Item #	Description	Estimated Quantity	Fochtman Enterprises, Inc.		Sweetser Construction, Inc.		Tomlinson Asphalt Co., Inc.	
			UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Hand Formed "Type A" Curb and Gutter (per specifications) - Per Linear Foot	5,000	\$9.50	\$47,500.00	\$9.00	\$45,000.00	\$10.50	\$52,500.00
2	Hand Formed "Type D" Curb and Gutter (per specifications) - Per Square Foot	1,000	\$10.50	\$10,500.00	\$9.90	\$9,900.00	\$11.50	\$11,500.00
3	Flatwork - 4" Thick (Sidewalk, Driveway Approaches, Access Ramps) - Each	10,000	\$3.00	\$30,000.00	\$3.15	\$31,500.00	\$2.80	\$28,000.00
4	Flatwork - 6" Thick (Sidewalk, Driveway Approaches, Access Ramps) - Each	10,000	\$3.70	\$37,000.00	\$3.90	\$39,000.00	\$3.80	\$38,000.00
5	Street Repair - 8" Thick (per specifications) - Per Square Foot	2,000	\$5.75	\$11,500.00	\$6.50	\$13,000.00	\$4.00	\$8,000.00
6	Drop Inlet - Max 4' Deep (per specifications) - Each	10	\$1,900.00	\$19,000.00	\$1,800.00	\$18,000.00	\$2,150.00	\$21,500.00
7	4 Foot Inlet Extension (per specifications) - Each	5	\$600.00	\$3,000.00	\$600.00	\$3,000.00	\$500.00	\$2,500.00
TOTAL BID BASED ON ESTIMATES=				\$158,500.00		\$159,400.00		\$162,000.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

A. Foren
 A. Foren, Purchasing Agent

P. Uice
 WITNESS

12/16/11
 DATE

City of Fayetteville Staff Review Form

A. 11
 Bid #12-04 Les Rogers, Inc.
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-04, Hillside Gravel to Les Rogers, Inc. as primary supplier for materials picked up and delivered materials, authorizing the use of other bidders based on price and availability, and approving the purchase of hillside gravel for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

\$ 55,750.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

4470.9470.xxxx.xx

Account Number

\$ -

Funds Used to Date

Transportation Improvements

Program / Project Category Name

Various

Project Number

\$ -

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Terry 2. Gulley
 Department Director

12-29-11
 Date

Previous Ordinance or Resolution #

Jim Bell
 City Attorney

1-3-12
 Date

Original Contract Date:

Original Contract Number:

Paul A. Becker
 Finance and Internal Services Director

1-3-2012
 Date

Received in City 2-29-11 P03:14 RCVD
 Clerk's Office

Don Man
 Chief of Staff

1-4-2012
 Date

Received in
 Mayor's Office

Donald Johnson
 Mayor

1/4/12
 Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-04, Hillside Gravel to Les Rogers, Inc. as primary supplier for materials picked up and delivered materials, authorizing the use of other bidders based on price and availability, and approving the purchase of hillside gravel for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for hillside gravel were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends awarding the hillside gravel bid to Les Rogers, Inc. as primary supplier for materials picked up and delivered materials, authorizing the use of other bidders based on price and availability in the event that the primary supplier cannot supply the necessary materials within the time frame required to complete a project, and approving the purchase of hillside gravel for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in the Sales Tax Capital Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-04 AND AUTHORIZING THE PURCHASE OF HILLSIDE GRAVEL FROM LES ROGERS, INC. FOR VARIABLE UNIT PRICES, AND AUTHORIZING THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-04 and authorizes the purchase of hillside gravel from Les Rogers, Inc. for variable unit prices as specified in the attached Exhibit "A", and authorizes the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-04
 DATE: 12/14/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Bid 12-04, Hillside Gravel

	BIDDER	Red Hillside Gravel (Pickup & Loaded on City Truck - Material Cost Only) Est Qty: 15,000		Red Hillside Gravel (Delivery Price Only - To be Added to the Cost of Material) Est Qty: 10,000		TOTAL BID BASED ON ESTIMATES
		Price/Cubic Yd	TOTAL	Price/Cubic Yd	TOTAL	
1	Fochtman Enterprises, Inc.	\$ 1.40	\$ 21,000.00	\$ 3.60	\$ 36,000.00	\$ 57,000.00
2	Les Rogers Inc.	\$ 1.39	\$ 20,850.00	\$ 3.49	\$ 34,900.00	\$ 55,750.00
3	Northwest Arkansas Quarries	\$ 1.65	\$ 24,750.00	\$ 4.00	\$ 40,000.00	\$ 64,750.00
4	S and R Trucking	\$ 1.40	\$ 21,000.00	\$ 3.50	\$ 35,000.00	\$ 56,000.00
5	Sweetser Construction, Inc.	\$ 1.40	\$ 21,000.00	\$ 3.75	\$ 37,500.00	\$ 58,500.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

A. Foren, Purchasing Agent

WITNESS

DATE

EXHIBIT

A

tabbies

City of Fayetteville Staff Review Form

A. 12
 Bid #12-05 Beaver Lake Concrete,
 Inc. and Tune Concrete Company
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-05, Concrete to Beaver Lake Concrete, Inc. as primary supplier, Tune Concrete Company as secondary supplier, authorizing the use of other bidders based on price and availability and approving the purchase of concrete materials for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

\$ 281,915.00
 Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

4470.9470.xxxx.xx
 Account Number

\$ -
 Funds Used to Date

Transportation Improvements

Program / Project Category Name

Various
 Project Number

\$ -
 Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐

Terry 2. Gulley
 Department Director

12-29-11
 Date

Previous Ordinance or Resolution #

Jim Skellie
 City Attorney

1-3-12
 Date

Original Contract Date:

Original Contract Number:

Paul a. Butler
 Finance and Internal Services Director

1-3-2012
 Date

Received in City Clerk's Office 12-29-11 P03:14 RCVD

Don Man
 Chief of Staff

1-4-2012
 Date

Received in
 Mayor's Office



Mayor
 Lionell Jordan

1/4/12
 Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-05, Concrete to Beaver Lake Concrete, Inc. as primary supplier, Tune Concrete Company as secondary supplier, authorizing the use of other bidders based on price and availability and approving the purchase of concrete materials for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for concrete were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends awarding the concrete bid to Beaver Lake Concrete, Inc. as primary supplier, Tune Concrete Company as secondary supplier, and authorizing the use of other bidders based on price and availability for use on an "as needed" basis, in the event that the primary or secondary suppliers cannot supply the necessary materials or services within the time frame required to complete a project.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in various capital projects within the Sales Tax Capital Improvements fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-05 AND AUTHORIZING THE PURCHASE OF CONCRETE FROM BEAVER LAKE CONCRETE, INC. AS A PRIMARY SUPPLIER AND TUNE CONCRETE COMPANY AS SECONDARY SUPPLIER, IN VARIABLE AMOUNTS, AND AUTHORIZING THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-05 and authorizes the purchase of concrete from Beaver Lake Concrete, Inc. as a primary supplier and Tune Concrete Company as a secondary supplier, in variable amounts as specified in the attached Exhibit "A", and authorizes the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



Bid 12-05, Concrete

BID: 12-05
 DATE: 12/14/11
 TIME: 2:00 PM
 CITY OF FAYETTEVILLE

Item #	Description	Est Qty (cubic yards)	APAC - Central, Inc.		Beaver Lake Concrete, Inc.		GCC/Mid-Continent Concrete		Tune Concrete Company	
			Per Item	Extended	Per Item	Extended	Per Item	Extended	Per Item	Extended
1	3500 PSI 1 1/4" Max. Aggregate Size, 4" Slump	500	\$64.00	\$32,000.00	\$59.00	\$29,500.00	\$62.00	\$31,000.00	\$60.00	\$30,000.00
2	4000 PSI 1 1/4" Max. Aggregate Size, 4" Slump	2,500	\$66.00	\$165,000.00	\$60.50	\$151,250.00	\$63.85	\$159,625.00	\$63.00	\$157,500.00
3	4000 PSI 1 1/4" Max. Aggregate Size With Fiber Reinforcement, 4" Slump	1,000	\$71.00	\$71,000.00	\$64.50	\$64,500.00	\$68.95	\$68,950.00	\$67.00	\$67,000.00
4	5000 PSI 1 1/4" Max. Aggregate Size, 4" Slump	100	\$68.00	\$6,800.00	\$64.00	\$6,400.00	\$68.20	\$6,820.00	\$64.00	\$6,400.00
5	Flowable Fill	50	\$62.00	\$3,100.00	\$54.00	\$2,700.00	\$58.00	\$2,900.00	\$50.00	\$2,500.00
6	Lightweight Concrete	50	\$97.00	\$4,850.00	\$83.00	\$4,150.00	\$0.00	\$0.00	\$75.00	\$3,750.00
7	1% Calcium Chloride Admixture - price to be added to concrete	100	\$2.50	\$250.00	\$2.00	\$200.00	\$2.50	\$250.00	\$2.50	\$250.00
8	2% Calcium Chloride Admixture - price to be added to concrete	60	\$5.00	\$300.00	\$4.00	\$240.00	\$5.00	\$300.00	\$5.00	\$300.00
9	Air Entraining Admixture - price to be added to concrete	2,500	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
10	Hot Water - price to be added to concrete	500	\$3.00	\$1,500.00	\$3.50	\$1,750.00	\$3.00	\$1,500.00	\$3.00	\$1,500.00
11	Chilled Water - price to be added to concrete	500	\$6.00	\$3,000.00	\$3.50	\$1,750.00	\$5.00	\$2,500.00	\$2.00	\$1,000.00
12	3/4" Rock - price to be added to concrete	3,000	\$0.00	\$0.00	\$1.10	\$3,300.00	\$2.00	\$6,000.00	\$1.50	\$4,500.00
13	Exposed Aggregate - price to be added to concrete	50	\$14.00	\$700.00	\$20.00	\$1,000.00	\$15.00	\$750.00	\$8.00	\$400.00
		Est Qty (per ton)	Per Item	Extended	Per Item	Extended	Per Item	Extended	Per Item	Extended
14	Type I Portland Cement	100	\$0.00	\$0.00	\$120.00	\$12,000.00	No Bid		\$120.00	\$12,000.00
15	Concrete Sand	100	\$26.00	\$2,600.00	\$19.50	\$1,950.00	No Bid		\$19.50	\$1,950.00
16	Masonry Sand	50	\$26.00	\$1,300.00	\$19.50	\$975.00	No Bid		\$21.50	\$1,075.00
		Est Qty (each)	Per Item	Extended	Per Item	Extended	Per Item	Extended	Per Item	Extended
17	Mobilization Fee (After Hours & Weekends)	1	\$500.00	\$500.00	\$250.00	\$250.00	\$500.00	\$500.00	\$250.00	\$250.00
18	Colored Concrete Washout Fee (Per Truck)	1	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL BID PRICE=				\$292,900.00		\$281,915.00		\$281,095.00		\$290,375.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

P. Vice

P. VICE, PURCH MGR

WITNESS

DATE

EXHIBIT

A

City of Fayetteville Staff Review Form

A. 13
 Bid #12-06 Hillside Haulers
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-06, Truck Hauling Services to Hillside Haulers as primary supplier, authorizing the use of other bidders based on price and availability, and approving the purchase of truck hauling services for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

\$ 54,490.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

4470.9470.xxxx.xx

Account Number

\$ -

Funds Used to Date

Transportation Improvements

Program / Project Category Name

Various

Project Number

\$ -

Remaining Balance

Sales Tax Capital Improvements

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Terry Gulley
 Department Director

12-29-11
 Date

Previous Ordinance or Resolution #

Joe Kelly
 City Attorney

1-3-12
 Date

Original Contract Date:

Original Contract Number:

Paul A. Becher
 Finance and Internal Services Director

1-3-2012
 Date

Received in City 12-29-11 P03:14 RCVD
 Clerk's Office

Don Man
 Chief of Staff

1-4-2012
 Date

Received in
 Mayor's Office

ENTERED
 1/3/12
[Signature]

Samuel Jordan
 Mayor

1/4/12
 Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-06, Truck Hauling Services to Hillside Haulers as primary supplier, authorizing the use of other bidders based on price and availability, and approving the purchase of truck hauling services for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program. Sealed formal bids for truck hauling services were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends awarding the truck hauling services bid to Hillside Haulers as primary supplier, authorizing the use of other bidders based on price and availability for use on an "as needed" basis in the event that the primary supplier cannot provide the necessary services within the time frame required to complete a project.

BUDGET IMPACT:

Funds for the acquisition of these services have been budgeted in various capital projects within the Sales Tax Capital Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-06 AND AUTHORIZING THE PURCHASE OF TRUCK HAULING SERVICES FROM HILLSIDE HAULERS FOR VARIABLE UNIT PRICES, AND AUTHORIZING THE USE OF OTHER BIDDERS BASED ON PRICE AND AVAILABILITY, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-06 and authorizes the purchase of truck hauling services from Hillside Haulers for variable unit prices as specified in the attached Exhibit "A", and authorizes the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-06
DATE: 12/14/11
2:00 PM
CITY OF FAYETTEVILLE

Bid 12-06, Truck Hauling Services

BIDDER	Estimated Quantity	UNIT PRICE (price per hour)	TOTAL
1 Hillside Haulers	1000 hours	\$54.49	\$54,490.00
2 Les Rogers Inc.	1000 hours	\$64.95	\$64,950.00
3 S and R Trucking	1000 hours	\$60.00	\$60,000.00
4 Sweetser Construction, Inc.	1000 hours	\$70.00	\$70,000.00

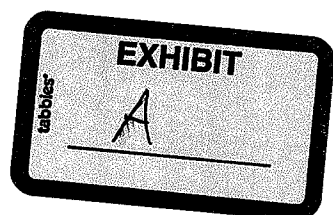
*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

A. FOREN, PURCH AGENT

WITNESS

DATE



City of Fayetteville Staff Review Form

A. 14
 Bid #12-07 Aggregate Materials
 Page 1 of 6

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-07, Aggregate Materials on a line item basis as specified on the attached memo, authorizing the use of other bidders based on price and availability, and approving the purchase of aggregate materials for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

\$ 205,575.00

Cost of this request

Category / Project Budget

Various Capital Projects

Program Category / Project Name

Transportation Improvements

Trail Improvements

4470.9470.xxxx.xx

\$ -

Program / Project Category Name

Account Number

Funds Used to Date

Various

\$ -

Sales Tax Capital Improvements

Project Number

Remaining Balance

Fund Name

Budgeted Item

☒

Budget Adjustment Attached

☐

Terry J. Gulley
 Department Director

12-29-11
 Date

Previous Ordinance or Resolution #

Don Black
 City Attorney

1-3-12
 Date

Original Contract Date:

Original Contract Number:

Paul A. Butler
 Finance and Internal Services Director

1-3-2012
 Date

Received in City Clerk's Office
 12-11P03:14 RCVD

Don Man
 Chief of Staff

1-4-2012
 Date

Received in
 Mayor's Office

1/3/12
 ENTERED

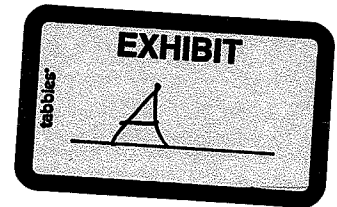
Franklin Jordan
 Mayor

1/4/12
 Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council
Thru: Don Marr, Chief of Staff
From: Terry Gulley, Transportation Services Director *TGG*
Date: January 17, 2012



Subject: A resolution awarding Bid 12-07, Aggregate Materials on a line item basis as specified in this memo, authorizing the use of other bidders based on price and availability, and approving the purchase of aggregate materials for the unit price amounts specified on the attached bid tabulation, as needed through the end of calendar year 2012.

PROPOSAL:

The purchase of bulk construction materials and services is necessary to maintain the City's current infrastructure and to implement the Capital Improvement Program projects outlined in the 2012 Annual Budget & Work Program and five-year Capital Improvement Program.

Sealed formal bids for aggregate materials were publicly read and the results are attached to this memo. The following in-house hauling costs were disclosed in the Invitation to Bid for Bid 12-07, Aggregate Materials.

City Costs:

- i. City Staff – Maintenance Worker III (Truck Driver) = \$14.28 / hour
- ii. 10-Wheel Dump Truck (15 ton capacity) = \$10.36 / hour
- iii. Tri-Axle Dump Truck (18 ton capacity) = \$10.89 / hour
- iv. 10-Wheel Dump Truck (15 tons) + Truck Driver = \$24.64 / hour
- v. Tri-Axle Dump Truck (18 tons) + Truck Driver = \$25.17 / hour

The following mileages were calculated based on the distance from each supplier's location to the City of Fayetteville Transportation Division, utilizing Google Maps:

- APAC – Central, Inc. – 17.1 miles, 22 minutes
- Northwest Arkansas Quarries – 15.5 miles, 27 minutes
- Rogers Group, Inc. (Lowell Quarry) – 15.8 miles, 29 minutes
- Rogers Group, Inc. (Hamstring Quarry) – 10.1 miles, 19 minutes

The following City hauling costs were calculated based on the information shown above and added to the unit price per ton in order to fairly evaluate the bids submitted by each potential supplier. The calculation method consisted of converting the mileage and drive time to a percentage of an hour. The resulting percentages were multiplied by the Tri-Axle Dump Truck + Truck Driver cost and divided the dump truck capacity to arrive at

the cost per ton added to the original unit price in each bid. Based on the aforementioned method of calculation, the following unit costs were added to the unit bid prices for each potential supplier:

- APAC – Central, Inc. – \$0.50 per ton
- Northwest Arkansas Quarries – \$0.63 per ton
- Rogers Group, Inc. (Lowell Quarry – OPT 1) – \$0.67 per ton
- Rogers Group, Inc. (Hamstring Quarry – OPT 2) – \$0.45 per ton

RECOMMENDATION:

Staff recommends awarding the aggregate materials bid on a line item basis as follows:

- | | |
|-------------------------------|--|
| 1. Class 7 Base (SB-2): | Primary Supplier: APAC – Central, Inc.
Secondary Supplier: Northwest Arkansas Quarries |
| 2. Concrete Aggregate – 1.5”: | Primary Supplier: Northwest Arkansas Quarries
Secondary Supplier: APAC – Central, Inc. |
| 3. Concrete Aggregate – ¾”: | Primary Supplier: Northwest Arkansas Quarries
Secondary Supplier: Rogers Group, Inc. (Hamstring Quarry) |
| 4. “B” Stone: | Primary Supplier: Northwest Arkansas Quarries
Secondary Supplier: Rogers Group, Inc. (Hamstring Quarry) |
| 5. Abrasives / Grit: | Primary Supplier: Northwest Arkansas Quarries
Secondary Supplier: Rogers Group, Inc. (Hamstring Quarry) |
| 6. Shot Rock: | Primary Supplier: Rogers Group, Inc. (Hamstring Quarry)
Secondary Supplier: APAC – Central, Inc. |
| 7. Rip Rap – Limestone | Primary Supplier: Northwest Arkansas Quarries
Secondary Supplier: APAC – Central, Inc. |

Secondary suppliers are awarded for use on an “as needed” basis in the event that the primary supplier cannot provide the necessary materials or services within the time frame required to complete a project.

BUDGET IMPACT:

Funds for the acquisition of these materials have been budgeted in various capital projects within the Sales Tax Capital Improvements fund.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-07 AND AUTHORIZING THE PURCHASE OF AGGREGATE MATERIALS FOR VARYING UNIT PRICES FROM VARIOUS VENDORS, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-07 and authorizes the purchase of aggregate materials for varying unit prices from various vendors, as shown in the attached Exhibit "A", as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-07
 DATE: 12/14/11
 2:00 PM
 CITY OF FAYETTEVILLE

Bid 12-07, Aggregate Materials

Item	DESCRIPTION	Estimated Tons	APAC - Central, Inc.		Northwest Arkansas Quarries		Rogers Group Inc.		Stone Gardens, LLC	
			PRICE PER EACH	EXTENDED PRICE	PRICE PER EACH	EXTENDED PRICE	PRICE PER EACH	EXTENDED PRICE	PRICE PER EACH	EXTENDED PRICE
1	Class 7 Base (SB-2) - includes wet and dry	30,000	\$5.25	\$157,500.00	\$5.30	\$159,000.00	\$6.45	\$193,500.00	No Bid	No Bid
2	Concrete Aggregate - 1.5"	500	\$8.75	\$4,375.00	\$7.80	\$3,900.00	No Bid		No Bid	No Bid
3	Concrete Aggregate - 3/4"	500	\$9.00	\$4,500.00	\$8.60	\$4,300.00	\$9.00	\$4,500.00	No Bid	No Bid
4	"B" Stone	2,500	\$6.75	\$16,875.00	\$6.50	\$16,250.00	\$6.75	\$16,875.00	No Bid	No Bid
5	Abrasives / Grit (1/4" chips)	500	\$7.50	\$3,750.00	\$5.25	\$2,625.00	\$6.00	\$3,000.00	No Bid	No Bid
6	Shot Rock	500	\$6.00	\$3,000.00	\$6.00	\$3,000.00	\$6.00	\$3,000.00	No Bid	No Bid
7	Rip Rap - Limestone	1,500	\$16.00	\$24,000.00	\$12.00	\$18,000.00	No Bid		No Bid	No Bid
8	Rip Rap - HARD SANDSTONE: Rock shall have an average diameter ranging from 6 inches to 24 inches. Rock can be quarried, cut or fieldstone material but shall be brown in color. No limestone will be accepted.	400	\$11.00	\$4,400.00	\$25.20	\$10,080.00	No Bid	No Bid	\$29.50	\$11,800.00
TOTAL BASED BID =				\$218,400.00		\$217,155.00		\$220,875.00		\$11,800.00

*NOTICE: Bid award is contingent upon vendor meeting

CERTIFIED:

[Signature]

[Signature]

WITNESS

12/16/11
 DATE

City of Fayetteville Staff Review Form

A. 15
 Bid #12-09 Tomlinson Asphalt Co.
 and Sweetser Construction, Inc.
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012

City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-09 for and approving the purchase of curb and gutter construction for ORT from Tomlinson Asphalt Co., Inc. as primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts as needed for Ozark Regional Transit New Freedom Projects through the end of calendar year 2012.

\$ 199,085.00
 Cost of this request

\$ 243,939.71
 Category / Project Budget

ORT Sidewalks & Pads Grant
 Program Category / Project Name

2100.5530.5216.00
 Account Number

\$ -
 Funds Used to Date

Materials and Supplies
 Program / Project Category Name

09030 / 1
 Project Number

\$ 243,939.71
 Remaining Balance

Street
 Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Terry Gulley 12-29-11
 Department Director Date

Previous Ordinance or Resolution # _____

[Signature] 1-3-12
 City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Butler 1-3-2012
 Finance and Internal Services Director Date

Received in City Clerk's Office 12-29-11 P03:13 RCVD

[Signature] 1-4-2012
 Chief of Staff Date

Received in Mayor's Office

[Signature] 1/4/12
 Mayor Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *TJG*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-09 for and approving the purchase of curb and gutter construction for ORT from Tomlinson Asphalt Co., Inc. as primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts as needed for Ozark Regional Transit New Freedom Projects through the end of calendar year 2012.

PROPOSAL:

City Council approved an agreement with Ozark Regional Transit on November 3, 2009 (Res. No. 220-09) to utilize \$387,500 in Federal Transit Administration grant funds for sidewalk, transit shelter and bench concrete pad construction. These New Freedom funds will enable the City to construct these amenities in the proximity to bus stops. Sealed formal bids for curb and gutter construction for ORT were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends awarding the curb and gutter construction for ORT bid to Tomlinson Asphalt Co., Inc. as primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts as needed for Ozark Regional Transit New Freedom Projects through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of these materials and services have been budgeted in the ORT Sidewalks & Pads Grant project. Grant funds are required to be spent by September 1, 2012.

RESOLUTION NO. _____

A RESOLUTION AWARDDING BID #12-09 AND AUTHORIZING THE PURCHASE OF CURB AND GUTTER CONSTRUCTION FROM TOMLINSON ASPHALT CO., INC. AS A PRIMARY SUPPLIER AND SWEETSER CONSTRUCTION, INC. AS A SECONDARY SUPPLIER, IN VARIABLE AMOUNTS, FOR USE IN OZARK REGIONAL TRANSIT NEW FREEDOM PROJECTS, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-09 and authorizes the purchase of curb and gutter construction from Tomlinson Asphalt Co., Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, for use in Ozark Regional Transit New Freedom Projects, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



BID: 12-09
 DATE: 12/14/11
 2:00 PM
 CITY OF FAYETTEVILLE

Bid 12-09, Construction - Curb and Gutter for ORT

Item #	Description	Estimated Quantity	Units	Sweetser Construction, Inc.		Tomlinson Asphalt Co., Inc.	
				UNIT PRICE	TOTAL	UNIT PRICE	TOTAL
1	Hand Formed "Type A" Curb and Gutter (per specifications) - Contractor supplies form work, concrete materials, labor to place and finish, saw cutting, and joint sealing - Per Linear Foot	6,000	LF	\$9.00	\$54,000.00	\$10.25	\$61,500.00
2	Flatwork - 4" Thick (Sidewalk, Driveway Approaches, Access Ramps) - Contractor supplies form work, concrete materials, labor to place and finish, saw cutting, and joint sealing - Per Square Foot	33,500	SQ FT	\$3.15	\$105,525.00	\$2.75	\$92,125.00
3	Flatwork - 6" Thick (Sidewalk, Driveway Approaches, Access Ramps) - Contractor supplies form work, concrete materials, labor to place and finish, saw cutting, and joint sealing - Per Square Foot	5,800	SQ FT	\$3.90	\$22,620.00	\$3.70	\$21,460.00
4	Drop Inlet - Max 4' Deep (per specifications) - Contractor supplies form work, concrete materials, labor to place and finish, saw cutting, and joint sealing - Per Each	10	EACH	\$1,800.00	\$18,000.00	\$2,150.00	\$21,500.00
5	4' Inlet Extension (per specifications) - Contractor supplies form work, concrete materials, labor to place and finish, saw cutting, and joint sealing - Per Each	5	EACH	\$600.00	\$3,000.00	\$500.00	\$2,500.00
TOTAL BID BASED ON ESTIMATES=					\$203,145.00		\$199,085.00

*NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials.

CERTIFIED:

A. Foren, PURCH AGENT

WITNESS

DATE

P. Ulice

12/16/11

City of Fayetteville Staff Review Form

A. 16
 Bid #12-10 Concrete Drainage Pipe
 Page 1 of 4

City Council Agenda Items
 and
 Contracts, Leases or Agreements

January 17, 2012
 City Council Meeting Date
 Agenda Items Only

Terry Gulley
 Submitted By

Transportation
 Division

Transportation Services
 Department

Action Required:

A resolution awarding Bid 12-10 for and approving the purchase of concrete drainage pipe for varying unit prices as shown on the attached bid tabulation for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

\$ 66,846.24
 Cost of this request

\$ 243,939.71
 Category / Project Budget

ORT Sidewalks & Pads Grant
 Program Category / Project Name

2100.5530.5216.00
 Account Number

\$ -
 Funds Used to Date

Materials and Supplies
 Program / Project Category Name

09030
 Project Number

\$ 243,939.71
 Remaining Balance

Street
 Fund Name

Budgeted Item ☒

Budget Adjustment Attached ☐

Terry 2. Gulley 12-29-11
 Department Director Date

Previous Ordinance or Resolution # _____

1-3-12
 City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Butler 1-3-2012
 Finance and Internal Services Director Date

Received in City 12-29-11 P03:13 RC
 Clerk's Office

1-4-2012
 Chief of Staff Date

Received in
 Mayor's Office



1/4/12
 Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff

From: Terry Gulley, Transportation Services Director *424*

Date: January 17, 2012

Subject: A resolution awarding Bid 12-10 for and approving the purchase of concrete drainage pipe for varying unit prices as shown on the attached bid tabulation for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

PROPOSAL:

City Council approved an agreement with Ozark Regional Transit on November 3, 2009 (Res. No. 220-09) to utilize \$387,500 in Federal Transit Administration grant funds for sidewalk, transit shelter and bench concrete pad construction. These New Freedom funds will enable the City to construct these amenities in the proximity to bus stops. Sealed formal bids for drainage pipe for ORT were publicly read and the results are attached to this memo.

RECOMMENDATION:

Staff recommends a resolution awarding Bid 12-10 for and approving the purchase of concrete drainage pipe for varying unit prices as shown on the attached bid tabulation for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

BUDGET IMPACT:

Funds for the acquisition of the materials have been budgeted in the ORT Sidewalks & Pads Grant project. Grant funds are required to be spent by September 1, 2012.

RESOLUTION NO. _____

A RESOLUTION AWARDING BID #12-10 AND AUTHORIZING THE PURCHASE OF CONCRETE DRAINAGE PIPE FOR VARYING UNIT PRICES FROM VARIOUS VENDORS FOR USE IN OZARK REGIONAL TRANSIT NEW FREEDOM PROJECTS AND OTHER CITY PROJECTS, AS NEEDED THROUGH THE END OF CALENDAR YEAR 2012

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 awards Bid #12-10 and authorizes the purchase of concrete drainage pipe for varying unit prices from various vendors, as shown in the attached Exhibit "A", for use in Ozark Regional Transit New Freedom Projects and other City projects, as needed through the end of calendar year 2012.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Arkansas
Fayetteville

Bid 12-10, Drainage Pipe for ORT New Freedom Project

BID: 12-10
DATE: 12/6/11
TIME: 2:00 PM
CITY OF FAYETTEVILLE

Item #	Size	Measure	Description	Est Qty	Unit of Measure	Unit Price	Extended Price	HD Supply Waterworks	Keeling Company	Scourtek Industries of Fayetteville, Inc.	Water Products
1	15"	Diameter	Circular Reinforced Concrete Pipe, Class III	50	Feet	\$12.92	\$1,162.80	10.30	N/A	N/A	N/A
2	18"	Diameter	Circular Reinforced Concrete Pipe, Class III	180	Feet	\$14.52	\$2,613.60	14.00	N/A	N/A	N/A
3	24"	Diameter	Circular Reinforced Concrete Pipe, Class III	150	Feet	\$23.01	\$4,141.80	20.00	N/A	\$16.25	N/A
4	30"	Diameter	Circular Reinforced Concrete Pipe, Class III	45	Feet	\$33.13	\$1,490.85	30.00	N/A	\$24.00	N/A
5	36"	Diameter	Circular Reinforced Concrete Pipe, Class III	45	Feet	\$45.61	\$2,052.45	44.00	N/A	\$35.95	N/A
6	42"	Diameter	Circular Reinforced Concrete Pipe, Class III	45	Feet	\$56.86	\$2,563.20	52.00	N/A	\$45.40	N/A
7	48"	Diameter	Circular Reinforced Concrete Pipe, Class III	45	Feet	\$72.22	\$3,249.90	66.00	N/A	\$55.15	N/A
8	15"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$286.02	\$592.04	\$269.00	N/A	\$210.00	N/A
9	18"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$324.67	\$649.34	\$294.00	N/A	\$340.00	N/A
10	24"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$368.49	\$736.98	\$334.00	N/A	\$305.00	N/A
11	30"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$410.09	\$820.18	\$372.00	N/A	\$360.00	N/A
12	36"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$980.56	\$1,961.12	\$680.00	N/A	\$675.00	N/A
13	42"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$990.56	\$1,981.12	\$1,798.00	N/A	\$875.00	N/A
14	48"	Diameter	Flared End Section, Circular Reinforced Concrete, Class III	2	Each	\$1,166.65	\$2,333.30	\$1,060.00	N/A	\$1,035.00	N/A
15	14" x 23"	Open A Span	Horizontal Elliptical Reinforced Concrete Pipe, Class III	90	Feet	\$26.10	\$2,349.00	N/A	N/A	\$21.75	N/A
16	19" x 30"	Open A Span	Horizontal Elliptical Reinforced Concrete Pipe, Class III	90	Feet	\$36.40	\$3,276.00	N/A	N/A	\$23.50	N/A
17	24" x 38"	Open B Span	Horizontal Elliptical Reinforced Concrete Pipe, Class III	45	Feet	\$43.90	\$1,975.50	N/A	N/A	\$33.00	N/A
18	29" x 45"	Open B Span	Horizontal Elliptical Reinforced Concrete Pipe, Class III	45	Feet	\$60.14	\$2,706.30	N/A	N/A	\$48.75	N/A
19	34" x 53"	Open A Span	Horizontal Elliptical Reinforced Concrete Pipe, Class III	45	Feet	\$77.95	\$3,507.75	N/A	N/A	\$63.50	N/A
20	38" x 60"	Open A Span	Horizontal Elliptical Reinforced Concrete Pipe, Class III	45	Feet	\$99.12	\$4,460.40	N/A	N/A	\$78.50	N/A
21	14" x 23"	Open A Span	Tapered End Section, Horizontal Elliptical RCP, Class III	2	Each	\$365.33	\$730.66	N/A	N/A	\$300.00	N/A
22	19" x 30"	Open A Span	Tapered End Section, Horizontal Elliptical RCP, Class III	2	Each	\$492.72	\$985.44	N/A	N/A	\$360.00	N/A
23	24" x 38"	Open A Span	Tapered End Section, Horizontal Elliptical RCP, Class III	2	Each	\$548.19	\$1,096.38	N/A	N/A	\$450.00	N/A
24	29" x 45"	Open A Span	Tapered End Section, Horizontal Elliptical RCP, Class III	2	Each	\$1,001.05	\$2,002.10	N/A	N/A	\$600.00	N/A
25	34" x 53"	Open A Span	Tapered End Section, Horizontal Elliptical RCP, Class III	2	Each	\$1,324.13	\$2,648.26	N/A	N/A	\$750.00	N/A
26	38" x 60"	Open A Span	Tapered End Section, Horizontal Elliptical RCP, Class III	2	Each	\$1,560.26	\$3,120.52	N/A	N/A	\$875.00	N/A
27	15"	Diameter	Plastic Pipe	103	Feet	N/A	N/A	\$5.90	6.892	\$5.60	6.93
28	15"	Diameter	Plastic Pipe	500	Feet	N/A	N/A	\$9.33	4,694.50	\$8.05	4,025.00
29	24"	Diameter	Plastic Pipe	500	Feet	N/A	N/A	14.98	7,490.00	14.30	7,150.00
30	30"	Diameter	Plastic Pipe	200	Feet	N/A	N/A	23.90	4,780.00	19.80	3,960.00
31	36"	Diameter	Plastic Pipe	100	Feet	N/A	N/A	28.52	2,852.00	25.65	2,565.00
32	42"	Diameter	Plastic Pipe	60	Feet	N/A	N/A	38.00	2,280.00	22.93	1,375.80
33	48"	Diameter	Plastic Pipe	60	Feet	N/A	N/A	40.85	2,451.00	2,454.08	2,476.80
34	15"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	105.00	212.00	206.30	210.00
35	18"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	142.00	284.00	138.560	282.00
36	24"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	181.00	362.00	177.824	362.00
37	30"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	441.00	882.00	432.384	878.00
38	36"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	467.00	934.00	457.814	930.00
39	42"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	N/A	N/A	N/A	N/A
40	48"	Diameter	Flared End Section, Plastic Pipe	2	Each	N/A	N/A	N/A	N/A	N/A	N/A
Total Bid Price =						\$55,226.99		\$51,285.00	\$27,965.23	\$64,440.25	\$28,143.60

NOTICE: Bid award is contingent upon vendor meeting minimum specifications and formal authorization by City officials

WITNESS

A. FORBEN, PURCH AGENT

CERTIFIED

P. Lee

DATE

12/11/11



City of Fayetteville Staff Review Form

B. 1
Bellefont Gardens Tree
Preservation Area Modification
Page 1 of 14

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

12/6/2011

City Council Meeting Date
Agenda Items Only

Alison Jumper
Submitted By

Park Planning
Division

Parks and Recreation
Department

Action Required:

Tree Preservation Area Modification for Bellafonte Ph. II: Submitted by Appian Centre for Design for property located at Bellefont Gardens Phase II. The property is zoned C-3, Central Business Commercial. The request is to vacate a portion of the 1.66 acre tree preservation area within the Bellafonte Subdivision.

Cost of this request

\$

Category / Project Budget

Program Category / Project Name

Account Number

\$

Funds Used to Date

Program / Project Category Name

Project Number

\$

Remaining Balance

Fund Name

Budgeted Item

Budget Adjustment Attached

Department Director

11-17-2011
Date

Previous Ordinance or Resolution #

Original Contract Date:

City Attorney

11-18-11
Date

Original Contract Number:

Finance and Internal Services Director

11-18-2011
Date

Received in City Clerk's Office 11-17-11 5:17 RCVD

Chief of Staff

11-21-11
Date

Received in Mayor's Office

Mayor

11/23/11
Date



Comments:

Tabled to 1/17/12 CC mtg.
Tabled to 12/20/11 CC mtg.

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

Thru: Don Marr, Chief of Staff
Connie Edmonston, Parks and Recreation Director *CE*
Jeremy Pate, Development Services Director *JP*

From: Alison Jumper, Park Planning Superintendent *AJ*

Date: November 15, 2011

Subject: Tree Preservation Area Modification for Bellefont Gardens Lot 1

BACKGROUND

The subject property is located within the previously approved Bellefont Gardens Phase II Large Scale Development. Lot 1 in its entirety was platted as a tree preservation area to satisfy a portion of the tree preservation requirements for Bellefont Gardens Phase II. This property reverted back to the original investors who are currently requesting the modification.

The applicant's request is to modify tree preservation by removing approximately 0.53 acres within Lot 1 of Bellefont Gardens to allow for the development of the lot, as indicated on Exhibit A. Additionally, the applicant proposed to dedicate approximately 0.5 acres of land located on the western edge adjacent on Lot 4 of Bellefont Gardens Phase I (Exhibit B).

DISCUSSION

The owner has been working with staff to find a agreeable solution. This request proposed includes dedicating a approximately 0.5 acres or 21,800 square feet of tree preservation area to the south. This is dependent on vacating an existing 20' utility easement along the west side of Lot 4 (see Exhibit C). By vacating this easement, a new tree preservation area can be dedicated adjacent to an existing tree preservation area to the west, making a larger contiguous area for habitat.

RECOMMENDATION

Staff recommends vacating a approximately 0.53 acres of the 1.66 acre tree preservation area within Lot 1 of Bellefont Gardens as shown in Exhibit A with the following conditions:

1. The applicant shall vacate the existing 20' utility easement and dedicate approximately 0.5 acres of tree preservation area on Lot 4 of Bellefont Gardens by separate document prior to development approval for Lot 1 Bellefont Gardens.

2. Applicant shall plant approximately (52) 2" caliper large species trees in the new tree preservation area on Lot 4 at the time of development of Lot 1. Trees shall be bonded for three years.
3. The applicant shall coordinate with the adjacent property owner and utilize on street parking on Joyce Boulevard to satisfy parking requirements. No parking shall be proposed on Lot 1.

BUDGET IMPACT

None.

Attachments:

Exhibit A-Vacation proposal

Exhibit B- Proposed concept

Exhibit C- Utility/tree preservation area

Exhibit D-Bellafont Final Plat

Applicant's request

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A MODIFICATION OF THE TREE PRESERVATION AREA IN THE BELLEFONT GARDENS DEVELOPMENT TO SHIFT ABOUT ONE-HALF ACRE OF TREE PRESERVATION AREA FROM LOT 1 TO LOT 4

WHEREAS, the City Council has the authority under §167.04 (L)(2) of the U.D.C. to modify the extent and location of tree preservation areas if it is in the best interests of the City of Fayetteville; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Fayetteville to grant the developer's request to modify the existing tree preservation area.

NOW, THEREFORE 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 modifies the existing tree preservation area for Bellefont Gardens by removing about .53 acres from Lot 1 to allow for development of the lot as shown on Exhibit A and to require dedication of a mitigation of fifty-two (52) 2" caliper large species trees to be planted and bonded by the developer on about .5 acres on Lot 4 in conjunction with the developer vacating an existing 20-foot wide utility easement as shown on Exhibit "B".

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that no development on Lot 1 may be permitted until the vacation of the utility easement, dedication of the one-half acre tree preservation area, planting of the 52 trees and their bonding had been accomplished by the developer and that no parking shall be allowed on Lot 1.

PASSED and APPROVED this 6th day of December, 2011.

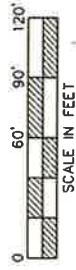
APPROVED:

ATTEST:

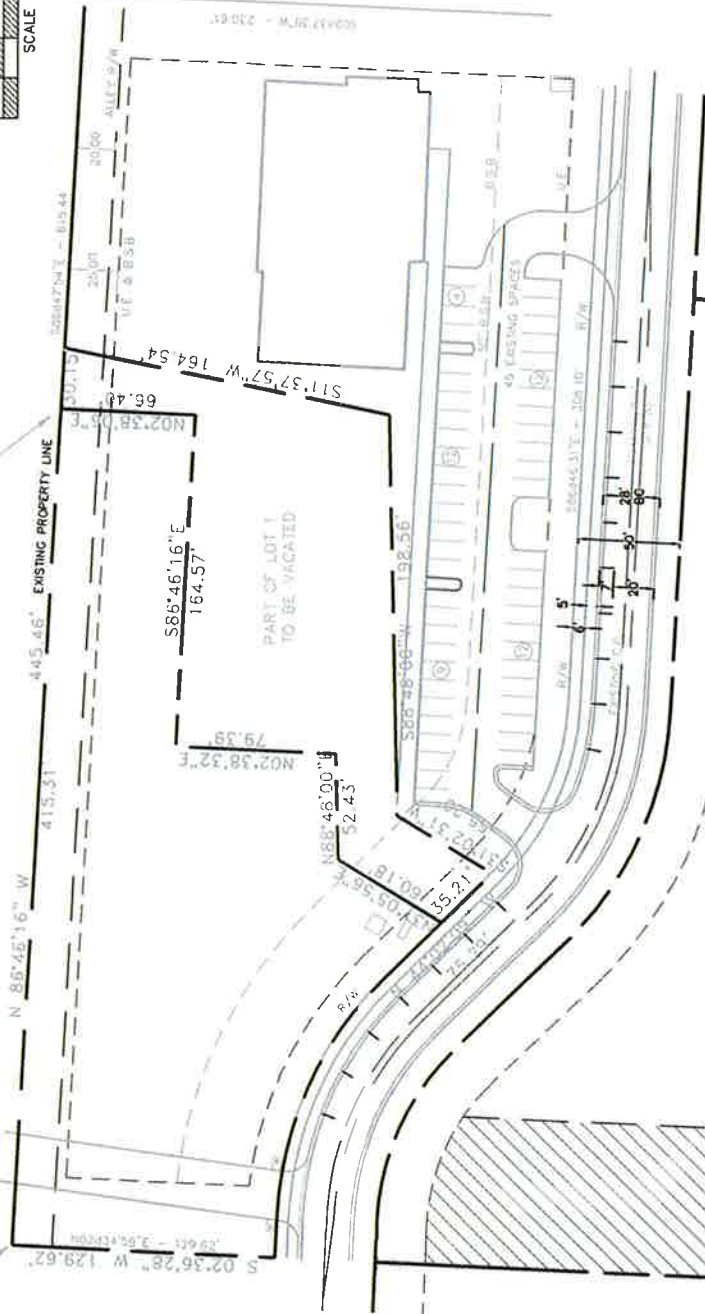
By: _____
LIONELD JORDAN, Mayor

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

NW CORNER
NW 1/4, NW 1/4
SEC 25, T-17-N
PLAT 2005-3303
3" ALUMINUM CAP



P.O.B.
(LOT 1 VACATED)



LEGAL DESCRIPTION (ORIGINAL LOT 1).

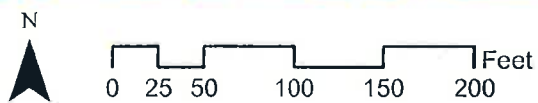
Lot 1 of Bellafront Gardens in Fayetteville, Arkansas, as per plat on file in the Circuit Clerk and Ex-officio Recorder of Washington County, Arkansas.

LEGAL DESCRIPTION (PART OF LOT 1 BEING VACATED):

A part of Lot 1 of Bellafront Gardens in Fayetteville, Arkansas, as per plat on file in the Circuit Clerk and Ex-officio Recorder of Washington County, Arkansas and being more particularly described as follows: Beginning at the NW Corner of said Section 25; thence along the north line of the NW 1/4, S86°46'16"E 415.31 feet to the P.O.B., thence S86°46'16"E 30.15 feet, thence S11°37'57"W 164.54 feet, thence S88°48'00"W 198.56 feet, thence S31°02'31"W 55.20 feet to the North right-of-way of Stearns Street, thence along said right-of-way N44°02'09"W 35.21 feet, thence leaving said right of way N31°05'56"E 60.18 feet, thence N88°48'00"E 52.43 feet, thence N02°38'32"E 79.39 feet, thence S86°46'16"E 164.57 feet, thence N02°38'06"E 66.40 feet to the P.O.B., containing 0.53 acres.

Exhibit A

		Bellafront Gardens Tree Preservation Area Modification Page 5 of 4	
DATE	12/20/11	FILE NO.	14791207-001
COUNCIL PROPOSAL	200 WALT PHILLIPS STREET, SUITE 200 FAYETTEVILLE, AR 72701	FILE NO.	14791207-001
SCALE	1"=60'	FILE NO.	14791207-001
PAGE	2 OF 2	FILE NO.	14791207-001
Bellafront Gardens Tree Preservation Area Modification		Bellafront Gardens Tree Preservation Area Modification	
Bellafront Gardens Tree Preservation Area Modification		Bellafront Gardens Tree Preservation Area Modification	



Bellefont Gardens Exhibit C

[illegible][illegible]

**BELLAFONT PHASE 2A
CONCURRENT PLAT**

02A-374

CH2
ENGINEERING, INC.
2700 Hill Country Road, Suite 100
Austin, TX 78705
Tel: (512) 444-1111
Fax: (512) 444-1112

PITTMAN NURSERY CORPORATION MASTER ORDER FORM 2009

Sales: Lisa Williamson, Sheila McGrey, Ashley White, Pat King, Kelli Clark
 Store Name/Id: _____ P.O.# _____
 Ordered By: _____

Phone: 1-800-553-6661 Fax: 870-234-6640 www.PittmanNursery.com
 Ship Date: _____ Wrap Tags or 10 cent Picture Tags available upon request.

DESCRIPTION	SIZE	PRICE
Linden Little Leaf	#05	9.90
Loquat X Coppertone Loquat Japanese Plum	#05	12.90
Loropetalum Pizzaz Purple	#01	3.90
	#03	7.90
Magnolia Evergreen Alta Little Gem	#01	6.90
Magnolia Southern	#01	3.90
Magnolia Fiscata	#03	9.90
Magnolia Alta Claudia Wannamaker	#05	15.90
DD Blanchard Little Gem Sweet Bay		
Magnolia Southern	#05	12.90
Magnolia Alta Braken's Brown Claudia Wannamaker DD Blanchard Little Gem	#15	42.90
Magnolia Southern Sweet Bay	#15	39.90
Magnolia Alta Broken Leaf Little Gem Southern	#25	62.90
Magnolia Sweet Bay	#25	72.90
Magnolia Broken Leaf Southern	#45	197.50
Magnolia Saucer Ann(Pink) Galaxy (RedPurple) Jane (Purple) Star(White) Susan (Fuchsia)	#05	15.90
Magnolia Saucer Assorted Alexandrina (White-inside/Pink-outside) Ann(Pink) Jane (Purple) Star(White) Susan(Fuchsia)	#15	39.90
Mahonia Bealei - Leatherleaf		
	#01	2.90
	#03	6.90
	#05	8.90
Maple Red Maple (Drummond Red Maple)	#01	2.90
Maple Dwarf Japanese Green	#15	52.90
Maple Emporer I	#03	27.90
	#05	37.90
	#15	129.90
	#25	225.90
Maple Silver	#05	7.90
Maple Red Sugar	#05	8.90
Maple Amur Autumn Blaze Autumn Flame	#05	9.90
Maple Red Sunset October Glory	#05	12.90
Maple Coral Bark X Crimson Queen Dwf. Jap. Blood-good Dwf. Jap. Emporer Emporer	#05	37.90
Maple Amur Autumn Blaze X Crimson Queen October Glory Red Silver Sugar	#15	39.90
Maple Red Sunset	#15	45.90
Maple Crimson Prince Emporer JapBloodgood	#15	129.90

DESCRIPTION	SIZE	PRICE
Maple AutumnBlaze AutumnFlame October Glory Red Sunset Silver Sugar	#25	62.90
Maple Bloodgood X Crimson Queen Dwf. Japanese Garnet	#25	189.90
Maple Dwf. Japanese Emporer	#25	225.90
	#35	267.50
Maple Tamukayama-Weeping Laceleaf	#25	230.90
Maple October Glory Red	#35	92.90
Maple Dwf. Jap. Bloodgood 6-7'	#35	225.90
Maple Emporer I	#35	290.90
Maple Dwf. Jap. Bloodgood	#45	290.90
Maple Dwarf Green Japanese Emporer I (Red)	#45	290.90
Millettia Evergreen Wisteria	#03	7.90
Mimosa	#05	8.90
MockOrange Sweet Mockorange	#01	2.90
Mulberry Fruitless	#25	62.90
Nandina Dwf Firepower X Harbor Dwf	#01	3.90
Nandina Domestica DwfFirepowerX HarbourDwf	#03	6.90
Oak Burr Chinguepin Compton Live Overcup Sawtooth Shumardi Water White	#01	2.90
Oak Compton Shumardi	#03	6.90
Oak Burr CherryBark Chinguepin Compton Live NorthernRed Nuttall Overcup Pin Post Sawtooth Shumardi Water White Willow	#05	9.90
Oak Burr Live NorthernRed Nuttall Overcup Pin SouthernRd Shumardi White Willow	#15	39.90
Oak Cherry Bark Overcup Willow	#35	125.90
Oak Live Pin Willow	#45	225.90
Oleander Red	#01	3.90
	#03	6.90
Osmanthus Sweet Olive	#03	9.90
	#05	12.90
	#15	39.90
Palm Date Palm Windmill Palm	#01	9.90
	#03	12.90
	#05	24.90
	#15	69.90
Palm Sago	#02	14.90
	#05	19.90
	#07	27.90
X Palm Mexican Fan	#02	24.90

Availability and prices are subject to change. Ask about quantity discounts. X=Temporarily out 3/7/2009 Page 5 of 14
 Solid flats only (2 each): 606 flt=36 ct. 4.5"Qt=15 ct. 4"fl=18 ct. Order Quantities: 9", 8", & 1gal. pot=10 each HB=10 each #3g=10 each #5g=5 each



October 20, 2011

City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Re: Bellefont Tree Preservation

Dear Aldermen and Fayetteville Commissioners,

Lot 1 of the Bellefont Subdivision been established as a 1.66 acre Tree Preservation Area of which approximately 80% of the property is covered in trees. Through a series of ill-fated transactions and poor timing, the previous owner defaulted on his loans and Chambers Bank has been the recipient of an unbuildable lot made up of tree preservation.

In order to recoup a portion of its losses, the Bank would like to retain the majority of the tree preservation and create a small lot made up of currently unforested land and some tree canopy. Pending the removal of a utility easement, the owner will plant (52) 2" trees or (60) 1.5" trees and dedicate as easement 21,800 square feet along the west edge of Lot 4. This would mesh well with an existing preservation easement along the east edge of the adjacent lot, which contains what we know as the Lindsey building.

The owner and I have been working for some time now with the City of Fayetteville staff and believe that we have come to an amiable solution. Please review the attached exhibits for the location and size of easements and lots. Feel free to call us with any questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Evan Niehues".

Evan Niehues, RLA

Appian, Inc.

eniehues@appianonline.com

Fayetteville Code of Ordinances

- (5) *Maintenance agreement and landscape establishment guarantee.* All plans requesting on-site mitigation or off-site forestation shall include a binding three year maintenance and monitoring plan, which shall hold the applicant responsible for the health of all planted trees.
- (a) Approval of a plan requesting on-site mitigation or off-site forestation shall be contingent upon the applicant depositing with the city either currency, bond irrevocable letter of credit or other surety, in an amount equal to the estimated cost of materials and labor of trees at the time of planting. The bond, irrevocable letter of credit, or other surety must cover the entire three year maintenance and monitoring period. The applicant shall submit cost estimates to the urban forester.
- (b) Upon completion of the three year landscape establishment period, the urban forester shall inspect the site and determine whether 90% of the trees are healthy and have a reasonable chance of surviving to maturity. Upon such finding, the city shall release the currency, bond, or letter of credit.
- (c) In the absence of such a finding, the applicant shall be notified to replace any unhealthy or dead trees, or take other appropriate action as approved by the urban forester. If the applicant does not take remedial steps to bring the property into compliance, the city shall use the necessary monies from the landscape establishment guarantee to do so.
- (d) In the event trees are injured or destroyed by natural disasters, including but not limited to, tornadoes, straight-line winds, ice storms, fire, floods, hail, or lightning strikes, or through the independent actions of third parties, the applicant shall be relieved of the responsibility of replanting the tree or trees so affected.
- (K) *Tree preservation plan review form.* The urban forester shall use a standardized form for all recommendations or administrative determinations made regarding an applicant's tree preservation plan.
- (1) The form shall clearly indicate whether the urban forester is making a final administrative determination, or a recommendation to the Planning Commission or City Council.
- (2) The form shall also clearly indicate the applicant's plan is "APPROVED," "DISAPPROVED," or "CONDITIONALLY APPROVED," and explain the reasoning therefore.
- (3) A statement shall appear on the form explaining the process by which a final administrative determination may be appealed in accordance with Chapter 155 of the Unified Development Code.
- (4) The urban forester shall sign and date the form, and ensure that a copy becomes part of the permanent file for the project.
- (L) *Continuing preservation and protection under approved tree preservation plans.*
- (1) In order to ensure that an applicant's heirs, successors, assigns, or any subsequent purchasers of the subject property are put on notice as to the existence and extent of an approved tree preservation plan, tree preservation areas shall be clearly depicted on the easement plats for large scale developments and the final plats for nonresidential subdivisions. This shall be accompanied by a narrative statement describing the nature of the protection afforded, and bearing the signature of the urban forester. Lots in residential subdivisions are expressly exempt from these requirements. If it is impractical to include the actual depiction of the canopy to be preserved on the easement plat, or final plat itself, a note cross referencing an accompanying document shall suffice.
- (2) The geographic extent and location of tree preservation areas, once recorded, may only be modified, or abolished with the express approval of the City Council. Applicants requesting such action shall bear the burden of proving to the City Council's satisfaction that such modification or abolition is in the best interest of the City of Fayetteville. Such requests shall be submitted to the urban forester, who shall ask the city clerk to place it on the agenda of the next regularly scheduled City Council meeting.
- (3) Property owners wishing to remove diseased or dead trees from within a recorded tree preservation area shall seek prior approval from the urban forester, who shall determine if such removal is consistent with sound arboricultural and horticultural practices, as well as the intent of this chapter. Any tree so removed shall be replaced with a tree of like or similar species, unless the urban forester determines that natural replacements of

City Council Authority

BELLAFONT TREE PRESERVATION

B. 1
 Bellefont Gardens Tree
 Preservation Area Modification
 Page 12 of 14

*Handed out at the City Council Meeting
 12/16/11*

EXISTING TREE PRESERVATION

EXISTING TREE PRESERVATION

E. STEARNS ST.

N. VINTAGE DR.

PROPOSED TREE PRESERVATION

wild prairie/native trees

maintained lawn

tree lined gravel path

native trees

THIS IS NOT AN EXACT REPRESENTATION OF THE PROPOSED TREE PRESERVATION, BUT A GRAPHIC TO SHOW THE GENERAL PROPOSAL.

	
DATE: 1/15/11 DRAWN BY: J. COOK CHECKED BY: J. COOK APPROVED BY: J. COOK	BELLAFONT TREE PRESERVATION FAYETTEVILLE, ARKANSAS

RESOLUTION NO. _____

A RESOLUTION TO APPROVE A MODIFICATION OF THE TREE PRESERVATION AREA IN THE BELLEFONT GARDENS DEVELOPMENT TO SHIFT ABOUT ONE-HALF ACRE OF TREE PRESERVATION AREA FROM LOT 1 TO LOT 4

WHEREAS, the City Council has the authority under §167.04 (L)(2) of the U.D.C. to modify the extent and location of tree preservation areas if it is in the best interests of the City of Fayetteville; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Fayetteville to grant the developer's request to modify the existing tree preservation area.

NOW, THEREFORE 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 modifies the existing tree preservation area for Bellefont Gardens by removing about .53 acres from Lot 1 to allow for development of the lot as shown on Exhibit A and to require dedication of a mitigation of fifty-two (52) 2" caliper large species trees to be planted and bonded by the developer on about .5 acres on Lot 4 in conjunction with the developer vacating an existing 20-foot wide utility easement as shown on Exhibit "B".

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby determines that no development on Lot 1 may be permitted until the vacation of the utility easement, dedication of the one-half acre tree preservation area, planting of the 52 trees and their bonding had been accomplished by the developer.

PASSED and APPROVED this 6th day of December, 2011.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



ENGINEERS ■ SURVEYORS ■ PLANNERS
LANDSCAPE ARCHITECTS ■ ENVIRONMENTAL SCIENTISTS

3108 S.W. Regency Parkway, Suite 2
Bentonville, AR 72712

479.273.9472 Fax 479.273.0844

B. 2
Kum & Go Appeal
Page 1 of 78

RECEIVED

NOV 22 2011

CITY OF FAYETTEVILLE
CITY CLERK'S OFFICE

DISTRIBUTION:
RER/File
Kum & Go, L.C.

November 22, 2011

City of Fayetteville
City Council
113 W. Mountain Street
Fayetteville, AR 72701
Attn: Planning Department

**Re: Appeal of Planning Commission to deny proposed improvements
Kum & Go, #413
CEI Project No. 26728.0**

To Fayetteville City Council:

Kum & Go, L.C. respectfully request the appeal to be heard in the decision of Planning Commission's vote at the November 14th, 2011 meeting for approval in the Kum & Go Convenience Store Large Scale Development.

The property is located at the southwest corner of Martin Luther King Jr. Blvd and Hill Ave. The property is currently undeveloped and slopes significantly (Approximately 28-feet) from the north property line to the south property line.

Throughout the City approval process, revisions to the overall site layout were requested by two separate subdivision committee reviews in regards to the Large Scale Development plans.

Under the first Subdivision Committee review (October 13, 2011) and as requested by the committee; Kum & Go was to provide a shared access drive from Royal Oak and shift the Martin Luther King Jr. Blvd access east, approximately 25-feet closer to Hill Ave. This request was accepted by Kum & Go and tabled for the next subdivision committee review for approval to these changes.

Following the second Subdivision Committee review (November 3, 2011) and as requested by the committee; Kum & Go was then directed to remove the shared access drive along Royal Oak due to possible issues in traffic movements around the intersection and due to the geometric roadway configuration. As a result to the existing topography; the roadway became superelevated along the median and grades became steep along the access drive located within the site. Furthermore, the adjacent property owner's representative to Hill Place Apartments stated that they were not in favor of a shared access and would not allow for such access through the privately owned median. In addition, the committee

Providing Consolidated Land Development Services

CALIFORNIA ■ ARIZONA ■ TEXAS ■ ARKANSAS ■ MINNESOTA ■ GEORGIA ■ PENNSYLVANIA

*Tabled to the 1/17/12 CC mtg
Tabled to the 1/3/12 CC mtg*

Kum & Go, #13
Project # 26728.0

recommended a $\frac{3}{4}$ access drive with a median which would limit traffic movement to a right-in, left-in, and right-out access only from the Martin Luther King Jr. Blvd proposed access drive. This request was accepted by Kum & Go, revised, and moved forward to Planning Commission, dated November 14, 2011.

Certain restraints have been held to this site in regards to the existing grades, close proximity to the Royal Oak drive, and current City ordinances. Should the site's Finish Floor elevations be lowered to accommodate the shared access drive along Royal Oak, then the MLK Jr. Blvd access drive becomes too steep which in turn limits the access of the delivery trucks. In the case of a right-in only drive; if a potential customer traveling west along MLK Jr. Blvd. chooses not to turn onto Hill Ave. before approaching the site, then the only option left for the driver is a possible "illegal" U-turn or to carrying on further west until finding an appropriate turn-around point.

Following the Planning Commission meeting dated November 14, 2011, Kum and Go has made the following revisions to the site plan (See Exhibit – A).

- The MLK Jr. Blvd. access drive has been shifted to the west approximately 30'. This shift is to address the traffic stacking in the left turn lane along MLK Jr. Blvd. and for those vehicles wanting to proceed north onto Hill Ave.
- A pedestrian sidewalk connection has been included to extend from Royal Oak to the proposed convenience store.

This property is an ideal location for this type of development and is welcomed by the residents of the Hill Place Apartments and is sure to be a convenience to the Fayetteville community. Several business's along the Martin Luther King Jr. Blvd corridor has in the past and recently been provided the convenience of a $\frac{3}{4}$ or a full access drive. For Kum and Go to be denied a full access or even a $\frac{3}{4}$ access drive will only deprive them of the rights or privileges granted to other developments within recent time.

In conclusion, we believe the public health, safety, welfare, and morals would be better served if the Planning Commission's vote were reversed because the highest and best use for this property would be for what the Kum and Go stores represent and the services they provide to a community.

We appreciate your consideration in this matter, and if you have questions or concerns, please do not hesitate to contact me.

Respectfully submitted,



R. Erin Rushing, RLA
Department Leader
CEI Engineering Associates, Inc.

City Clerk - Kum & Go, 413 (CEI Project # 26728.0)

From: <MClotfelter@ceieng.com>
To: <city_clerk@ci.fayetteville.ar.us>
Date: 12/30/2011 3:11 PM
Subject: Kum & Go, 413 (CEI Project # 26728.0)
CC: <ERushing@ceieng.com>

CEI respectfully request that the referenced item for City Council Meeting scheduled for Tuesday, January 3, 2012 be tabled for two weeks. Our client, Kum & Go, L.C., is currently working to resolve issues with the Arkansas State Highway and Transportation Department. If you have any questions or need any additional information, please feel free to contact me at your convenience.

Thank you,

--

Mike Clotfelter
Project Designer

CEI
3108 S.W. Regency Parkway, Suite 2
Bentonville, AR 72712

Phone: 479-273-9472

"We will continually set the national standard for land development services, and we are committed to the growth and success of each other."

CEIENG.COM

Arkansas | California | Georgia | Louisiana | Minnesota | Pennsylvania | Texas

This message could contain confidential information. Unless you are the addressee (or authorized to receive for the addressee), you may not copy, use, or distribute this information. If you have received this message in error, please advise Mike Clotfelter immediately at 1-479-273-9472 or return it promptly by mail.



TO: **Mayor Jordan**
City Council

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

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

FROM: **Kit Williams**, City Attorney

DATE: **December 27, 2011**

RE: **Kum & Go Appeal**
Potential costs to taxpayers if left turn in access is denied

MOTION TO TABLE

When Alderman Ferrell asked if denying the left turn in from Martin Luther King Boulevard was a “deal killer” and Kum & Go’s representative said “Yes,” I became concerned that the City Council’s decision could have costly implications for our taxpayers. This concern was reinforced when the property owner came forward to explain the difficulties in selling this large parcel with 360 feet of street frontage on Martin Luther King Boulevard without at least a full right and left in curb cut on MLK.

What concerned me were clear holdings by the Arkansas Supreme Court that **a city may not take away a property owner’s access easement to an abutting street without the payment of just compensation.**

“Under our decisions, the owner of property abutting upon a street or highway has an easement in such street or highway for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself; and **any subsequent act, by which that easement is substantially impaired for the benefit of the public, is a damage to the lot itself within the meaning of the constitutional provision for which the owner is entitled to compensation.**” *Campbell v. Arkansas State Highway Commission*, 183 Ark. 780, 38 S.W. 2d 753, 753-754 (1931). (emphasis added).

Four decades later, the Arkansas Supreme Court reaffirmed this access easement right as a property right for a lot abutting a street.

“The owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself. *Flake v. Thompson*, 249 Ark. 713, 460 S.W. 2d 789, 795 (1970).

In that case, the City of Little Rock had passed an ordinance that would have denied access to University Avenue to the property owner and argued that it could do so because the property owner had access to another (lower level) city street. The Arkansas Supreme Court held “that the ordinance constituted an unwarranted invasion of private rights and was discriminatory and oppressive, and thus it is unreasonable and arbitrary.” *Id.* at 796

“The property right of ingress and egress of appellants in the easement was one that could not be taken from them by the city, **at least without the payment of just compensation.**” *Id.* (emphasis added).

If denying Kum & Go’s requested left turn in access from MLK would kill this \$3.5 million project and leave the property owner with several acres of prime commercial land which cannot be reasonably sold, this “taking” by the City could be very expensive for our taxpayers. That concern prompted me to ask the City Council to table this appeal not only so our Engineering Department could analyze the rather “thin” traffic study presented by Kum & Go, but so I could properly advise you on the legal and possible financial ramifications of your decision on the appeal.

BACKGROUND OF KUM & GO’S REQUESTED LEFT TURN IN

Kum & Go had to be granted a variance for access onto Martin Luther King Boulevard because its driveway could not be at least 250 feet from both Royal Oak and Hill Avenue. The driveway’s proposed location on Site Plan F (which Kum & Go is requesting you to approve) is 272 feet from Hill Avenue but only 91 feet from Royal Oak. I believe that legally we must allow Kum & Go some access onto Martin Luther King Boulevard along its 389 foot frontage. Both the Planning Department and Planning Commission agree that a driveway should be allowed. The only issue is its precise location and the possible limitation of such access.

The Access Management section of the Unified Development Code specifies when a curb cut can be limited so as not to provide both left and right turns into and out of the property.

“If a parcel on the corner of an arterial or collector street (like this parcel) provides **such a short frontage** along a major street that there is **no safe ingress/egress functional location** on that street, the (City) may deny the curb cut or may limit such curb cut to ingress or egress only.” §166.08 (F)(1)(e). (emphasis added)

The 389 foot street frontage on MLK is certainly not “short”. It appears much longer than the gas station/convenience store frontage at MLK and Razorback which has unlimited curb cuts on both of these major roads and much more center lane car stacking on MLK to turn left onto Razorback than the Hill Avenue intersection. The same is true for the new fast food restaurant on the southeast corner of MLK and Razorback. The City should present clear scientifically established safety dangers of allowing a left turn in from MLK **at this location** before restricting this normal property right which is being allowed to competitors and will likely cause the loss of this land sale to the property owners and the applicant’s multimillion dollar investment in our City.

All are in agreement that there is a safe right turn in and out functional location in the approximate location shown by Site Plan F. The issue is whether a left turn into the property at this location over 90 yards from the Hill Avenue intersection is so dangerous that the City can deny this normal property right of the owner. **Even if such left turn in access can be legally denied, the Arkansas Supreme Court holdings would probably require just compensation for this taking.**

The City could present several types of evidence to factually support its contention that this left turn in access would be too dangerous to allow. City Staff could present evidence of **sight distance problems** with the proposed location. Staff could present a **traffic study** demonstrating certain traffic movements **at this** location (such as left turns in) are so unreasonably dangerous that such access should be denied. This has yet to be presented. The 20-30 second video (that does not even include a complete traffic signal rotation and with no scientific evidence that the traffic shown is the normal volume, direction and speed for that intersection) provides virtually no evidence for the City Council to determine the safety or danger level of the proposed left turn in from MLK. It is less than 4 hundredths of one percent of one day’s traffic history of that intersection. This is not good evidence of what occurs during the remaining 99.96% of the day at that intersection.

General statistics that left turns on major roads cause the most accidents are probably too general to justify a decision to deny a left turn at this location. If there was no center turn lane, there would be increased danger of rear-end accidents. All of us know the caution we must use when driving in the left lane on North College Avenue

between North Street and Maple Avenue to avoid being stopped behind a driver turning left onto Trenton or Prospect or into one of the numerous businesses (including a coffee shop, restaurant and liquor store) along that stretch of four lane (no center turn lane), high volume, 35 m.p.h. street. The same is true on Highway 71B from Martin Luther King to Dickson Street. Fortunately, in the case of Kum & Go on Martin Luther King, there is a center turn lane on Martin Luther King with enough room to “stack” several cars. This is a far safer situation than AutoZone, IGA and many other businesses including service stations on the newly reconfigured and reconstructed portion of North College from Rock Street to Maple which allow full access curb cuts closer to major intersections.

Please keep in mind that our Access Management Ordinance states: “Where a curb cut must access the arterial street, it shall be located a minimum of 250 feet from an intersection or driveway.” I presume that a 250 foot requirement from an intersection was to ensure safety and lack of conflict with such intersection. Kum & Go’s Site Plan F satisfies that safety requirement for the intersection with Hill Avenue. Thus, the City’s reliance upon possible safety concerns because of the Hill Avenue intersection are substantially weakened because this driveway meets the separation requirements of the Access Management Ordinance.

Kum & Go’s proposed driveway does not meet the separation requirement with Royal Oak because it is only 30 yards away. This is where the variance requested by Kum & Go can best be scrutinized for safety issues. Since Royal Oak would be used almost exclusively by residents of this apartment complex, it would be a low volume exit. I doubt if its actual traffic has been counted. This is much less of a safety issue than numerous other curb cuts permitted elsewhere on MLK, Archibald Yell and College Avenue (even on the City rebuilt section of College Avenue). An equal protection of the laws argument concerns me with this case.

REQUIRING FULL DRIVEWAY ACCESS FROM AND ONTO THE ONE LANE – ONE WAY ROYAL OAK

Kum & Go’s proposed gas station/convenience store has two separate access points on MLK and Hill Avenue. To require it to connect to a one lane, one way Royal Oak so that residents do not have to either go to Hill Avenue or turn right onto MLK seems like an over-reach and a potential violation of Constitutional protections given developers. The City can require exactions (more normally known as “costs”) of a developer **in rough proportion to the impact the developer is causing to City infrastructure** (like streets). Thus, the cost to pay for the erection of a new traffic signal as suggested by its own traffic engineer to reduce any stacking issues could be a reasonably proportionate exaction (or cost) required from Kum & Go for this project’s impact on City streets.

Likewise requiring a developer of a large corner lot to have curb cuts on both MLK and Hill for both its customers' convenience and safety and for fire access would likely be within a city's power. However, requiring a **third access** onto and from a one lane, one way street that functions as an apartment complex driveway is much more difficult to justify. This is especially true because this additional driveway would not only be very expensive (hundreds of thousands of dollars) and use significant portions of the developer's land, it would also force the movement of the curb cut on MLK into the 250 foot "danger zone" from the intersection with Hill Avenue (a real city street).

What small amount of traffic (only from the apartments) might use this driveway would cause conflicts with traffic entering from MLK and could encourage illegal cut through traffic if Royal Oak was ever backed up waiting to enter MLK. The City already approved Royal Oak's right turn onto MLK as safe enough to build this "city street". Certainly a right turn into Kum & Go off MLK is also safe and is recommended by Planning and Engineering as safe. So this very expensive driveway from the one lane Royal Oak is being required to replace two "safe" right turns for a very limited number of drivers.

I fear this requirement exceeds the proportionate impact of this development, and thus the City may lack the constitutional power to require this questionable and very expensive third access from and onto the one way, one lane Royal Oak. In addition, all this extra pavement for the driveway seems to run counter to the City Council's express policy supporting low impact development. The sidewalk alternative proposed by Kum & Go is also more compatible with the City Council's adopted policy to move toward a less car dominated, more pedestrian and walkable environment.

CONCLUSION

"We have held that the owner of property abutting upon a street has an easement in such street for the purpose of ingress and egress which attaches to his property and in which he has a right of property as fully as in the lot itself. *Flake v. Thompson, Inc.*, 249 Ark. 713, 460 S.W. 2d 789 (1970). We have also noted that **this property right is not diminished merely because the property owner has alternative means of ingress and egress.** *Wright v. City of Monticello*, 345 Ark. 420, 47 S.W. 3d 851, 857 (2001). (emphasis added).

Even if we have well proven public safety concerns, **"(t)he property right of ingress and egress ... could not be taken from them by the city, at least without the payment of just compensation"**. *Flake v. Thompson*, supra (emphasis added). I appreciate Kum & Go's proposed compromise not to insist on a left out onto MLK

Boulevard because of concerns for the safety of its customers and the proximity of the traffic signal on Hill Avenue. Accepting such a compromise (Kum & Go originally sought a full access including left out onto MLK) would allow this project to be built and prevent a probably successful inverse condemnation case against the City.

In the late 80's and early 90's, the Fayetteville Board of Directors committed illegal exactions (sometimes after being warned) which they justified as "doing the right thing." These decisions cost our taxpayers several million dollars paid to attorneys who sued us successfully arguing that following the Constitution and state law was actually "doing the right thing."

I was on the City Council who had to clean up those messes and authorize the multimillion dollar payments ordered by the Courts for those attorneys. When I became Fayetteville City Attorney in 2001, I made a commitment to myself to do my best to avoid those multimillion dollar mistakes. Because the City Council has heeded my occasional warnings, our taxpayers have not had to pay these exorbitant attorney fees for over a decade.

I ask you once again to carefully consider the law that gives property owners access rights to City streets and be aware that, if you deny an access right in this case, the result could be writing a fairly large check on our taxpayers' account.

TITLE XV UNIFIED DEVELOPMENT CODE

shared between two or more lots. Where a curb cut must access the arterial street, it shall be located a minimum of 250 feet from an intersection or driveway.

Number of Curb Cuts Permitted	
Length of Street Frontage	Maximum Number of Curb Cuts
0-500 ft.	1
501-1000 ft.	2
1001-1500 ft.	3
More than 1500 ft.	4

- (b) Collector Streets. Curb cuts shall be located a minimum of 100 feet from an intersection or driveway. When necessary, curb cuts along collector streets shall be shared between two or more lots.

Number of Curb Cuts Permitted	
Length of Street Frontage	Maximum Number of Curb Cuts
0-100 ft.	1
101-250 ft.	2
251-500 ft.	3
More than 500 ft.	4

- (c) Local and Residential Streets. Curb cuts shall be located a minimum of 50 feet from an intersection or driveway. In no case shall a curb cut be located within the radius return of an adjacent curb cut or intersection. Curb cuts shall be a minimum of fifteen (15') feet from the adjoining property line, unless shared.

Number of Curb Cuts Permitted	
Length of Street Frontage	Maximum Number of Curb Cuts
0-50 ft.	1
51-125 ft.	2
126-250 ft.	3
More than 250 ft.	4

- (d) Residential Subdivisions. In the case of residential subdivisions, curb cuts shall be discouraged along arterial and collector streets. When necessary, curb cuts along arterial and collector streets shall be shared between two or more lots. Curb cuts along all streets shall be located a minimum of five feet (5') from the adjoining property line, unless shared.

- (e) Variance. In order to protect the ingress and egress access rights to a street of an abutting property owner, a variance to the curb cut minimums shall be granted by the Planning Commission to allow an ingress/egress curb cut at the safest functional location along the property. Such a curb cut may be required to be shared with an adjoining parcel if feasible. If a parcel on the corner of an arterial or collector street provides such short frontage along a major street that there is no safe ingress/egress functional location on that street, the Planning Commission may deny the curb cut or may limit such curb cut to ingress or egress only.

- (2) Speed. All streets should be designed to discourage excessive speeds.

(G) Non-conforming Access Features.

- (1) Existing. Permitted access connections in place on the date of the adoption of this ordinance that do not conform with the standards herein shall be designated as nonconforming features and shall be brought into compliance with the applicable standards under the following conditions:

- (a) When new access connection permits are requested;

- (b) Upon expansion or improvements greater than 50% of the assessed property value or gross floor area or volume;

- (c) As roadway improvements allow.

- (H) Easements. Utility and drainage easements shall be located along lot lines and/or street right-of-way where necessary to provide for utility lines and drainage. The Planning Commission may require larger easements for major utility lines, unusual terrain or drainage problems.

- (I) Residential lots. The use and design of lots shall conform to the provisions of zoning where City zoning is in effect. When no City zoning applies, the following standards shall govern unless in conflict with more stringent city, county or state regulations:

- (1) Bulk and area regulations:

Planning Area	
Lot area minimum	10,000 sq. ft.

RESOLUTION NO. _____

**A RESOLUTION TO GRANT THE APPEAL OF KUM & GO, L.C. AND TO
AMEND AND APPROVE ITS LARGE SCALE DEVELOPMENT TO MATCH
THE PLAT SUBMITTED WITH ITS APPEAL LETTER**

**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 grants the appeal of Kum & Go, L.C. from some of the terms or conditions imposed by the Planning Commission and amends and approves the Large Scale Development plat to conform with the plat submitted by Kum & Go, L.C. as Site Plan F (attached to this Resolution) regarding its driveway access onto and from Martin Luther King, Jr. Boulevard and changing the access from Royal Oak from vehicular to pedestrian. All other terms and conditions approved by the Planning Commission when approving LSD 11-3966 (Kum & Go at Martin Luther King and Hill Avenue) shall remain in full force and effect.

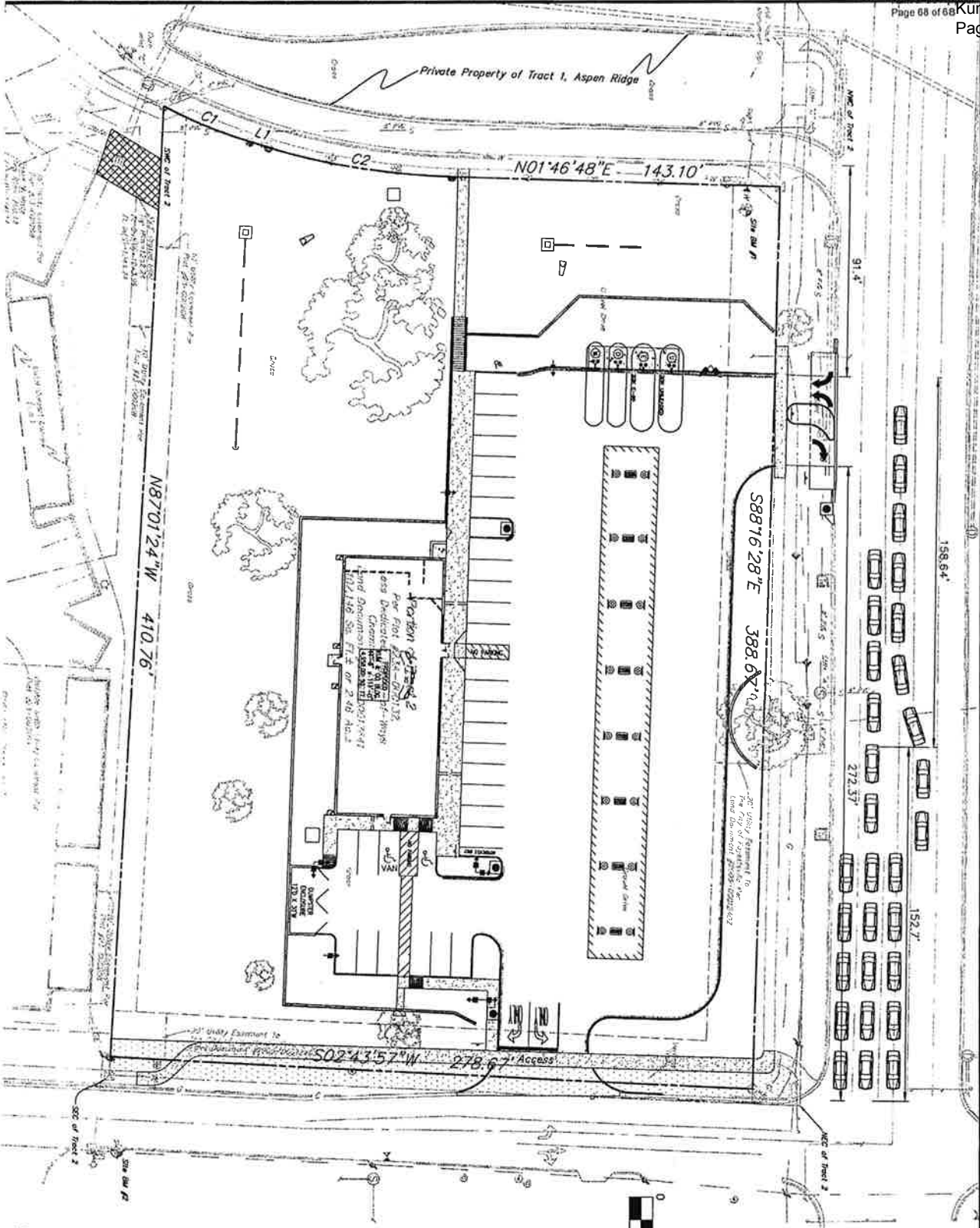
PASSED and APPROVED this 3rd day of January, 2012.

APPROVED:

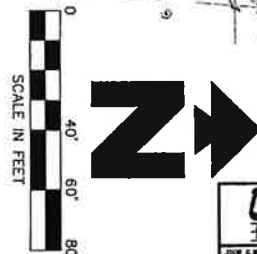
ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



SITE PLAN F



PROJECT NAME: STORE# 26728 - FAYETTEVILLE, AR		KUM & GO, L.C. 6400 Westown Parkway, West Des Moines, Iowa 50266 PH-515-226-0128 FAX-515-223-9873	
DRAWING INFORMATION: SITE PLAN F (KUM & GO REQUEST) MLK & HILL			
DATE: 12-20-11	SCALE: 1"=30'-0"		
DESIGNER: R. HALDER			
CHECKED BY: J. FELDMAN			
APPROVED BY: STORE DEVELOPMENT			
DRAWN BY: CEI ENGINEERING ASSOCIATES, INC.			
PROJECT NO.: 200 E. RESERVE PARKWAY, SUITE 2			
ADDRESS: BARTONVILLE, AR 72718			
PHONE: TEL-501-673-8412			
FAX: FAX-501-673-0844			

CITY COUNCIL AGENDA MEMO

To: Mayor Jordan, City Council

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

From: Andrew Garner, Senior Planner

Date: November 30, 2011

Subject: LSD 11-3966 (Kum and Go at Martin Luther King and Hill Avenue)

RECOMMENDATION

On November 14, 2011 The Planning Commission voted 8-1-0 to approve the subject large scale development for a new Kum and Go gas station at the southwest corner of Martin Luther King Boulevard and Hill Avenue (Commissioners Winston voted "no"). The Planning Commission approved the development including a variance to allow a curb cut onto Martin Luther King Boulevard, a Principal Arterial, when the code does not allow a curb cut, and requiring a connection to the adjacent street to the west, Royal Oak Parkway. The applicant has appealed the decision to allow a right-in, right-out only cut and requiring the connection to Royal Oak Parkway (conditions of approval #'s 1 and 2) to the City Council. The applicant proposes a full access in, right-out only curb cut onto Martin Luther King, and does not wish to provide a connection to Royal Oak Parkway.

Staff recommends in favor of the Planning Commission's decision. As discussed in the attached staff report and as discussed at the Planning Commission meeting (minutes attached), both staff and the Planning Commission found that a full access in driveway onto Martin Luther King Boulevard would result in a traffic safety hazard, and that the connection to Royal Oak Parkway is in line with the City's policies and ordinances for connectivity and cross access.

BACKGROUND

The subject property is located at the southwest corner of Martin Luther King Boulevard (Hwy 62) and Hill Avenue. The property is a disturbed and undeveloped site with 21.2% tree canopy. Adjacent land uses include the Hill Place multi-family complex to the west and south, Brenda's Burgers and the Coors Plant to the east, and a duplex and undeveloped land to the north across Martin Luther King Boulevard.

This site is adjacent to the signalized intersection of Martin Luther King (Hwy 62), a principal arterial street; Hill Avenue, a collector street, and Royal Oak Parkway, a local street. Royal Oak Parkway is a divided road adjacent to the site with the median under private ownership and not within the City right-of-way.

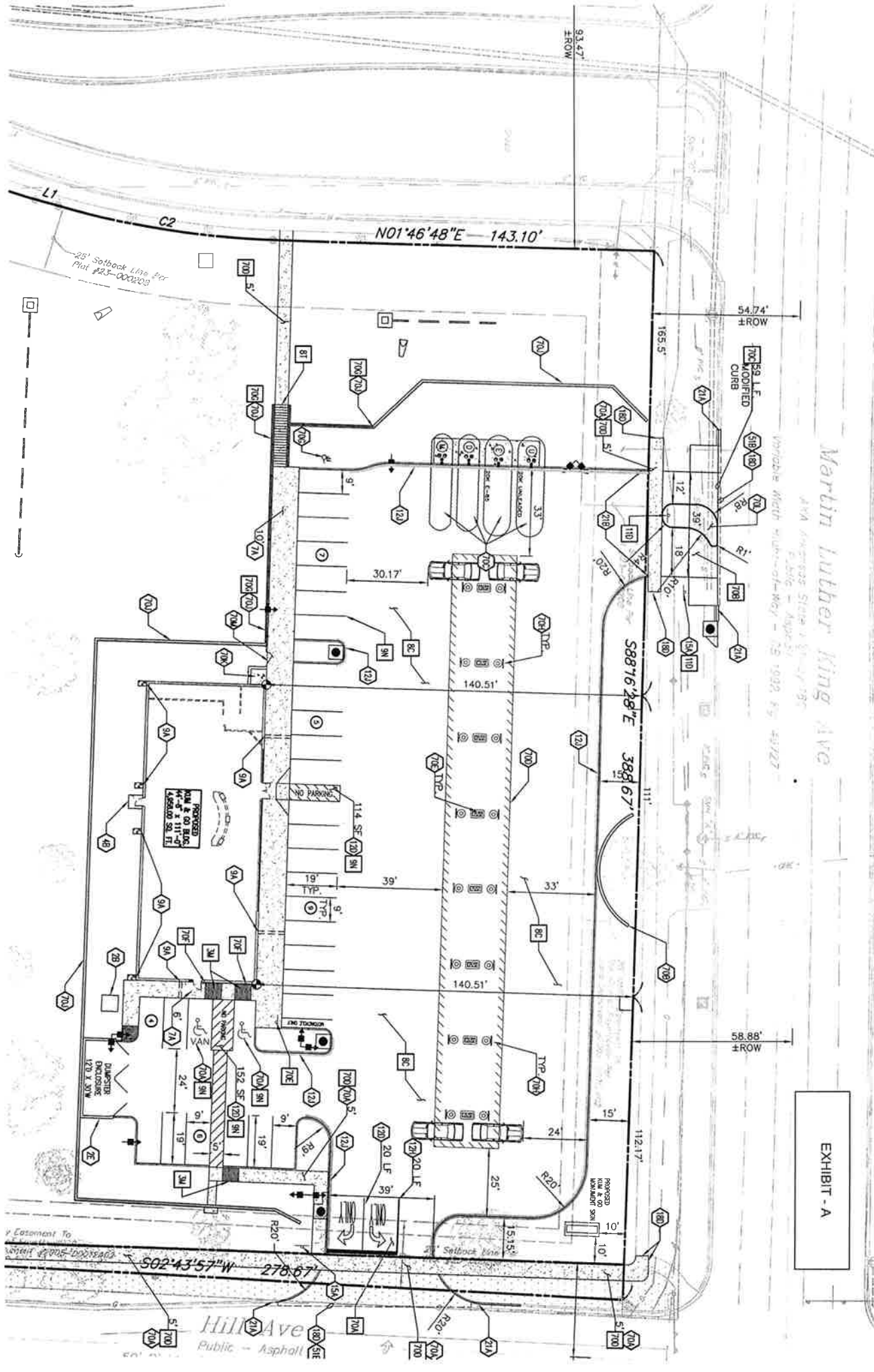
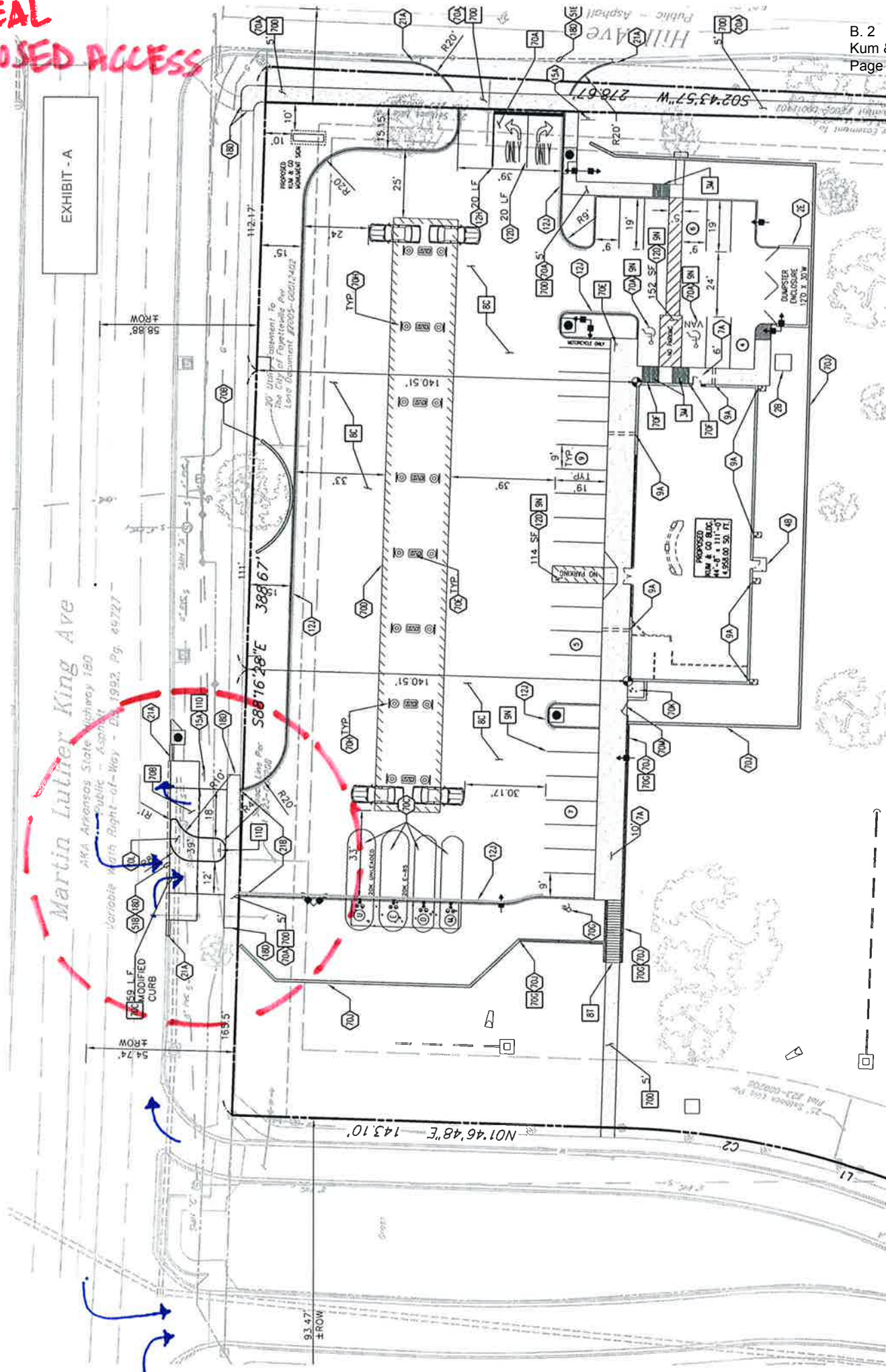


EXHIBIT - A

B. 2
Kum & Go Appeal
Page 15 of 78



DISCUSSION

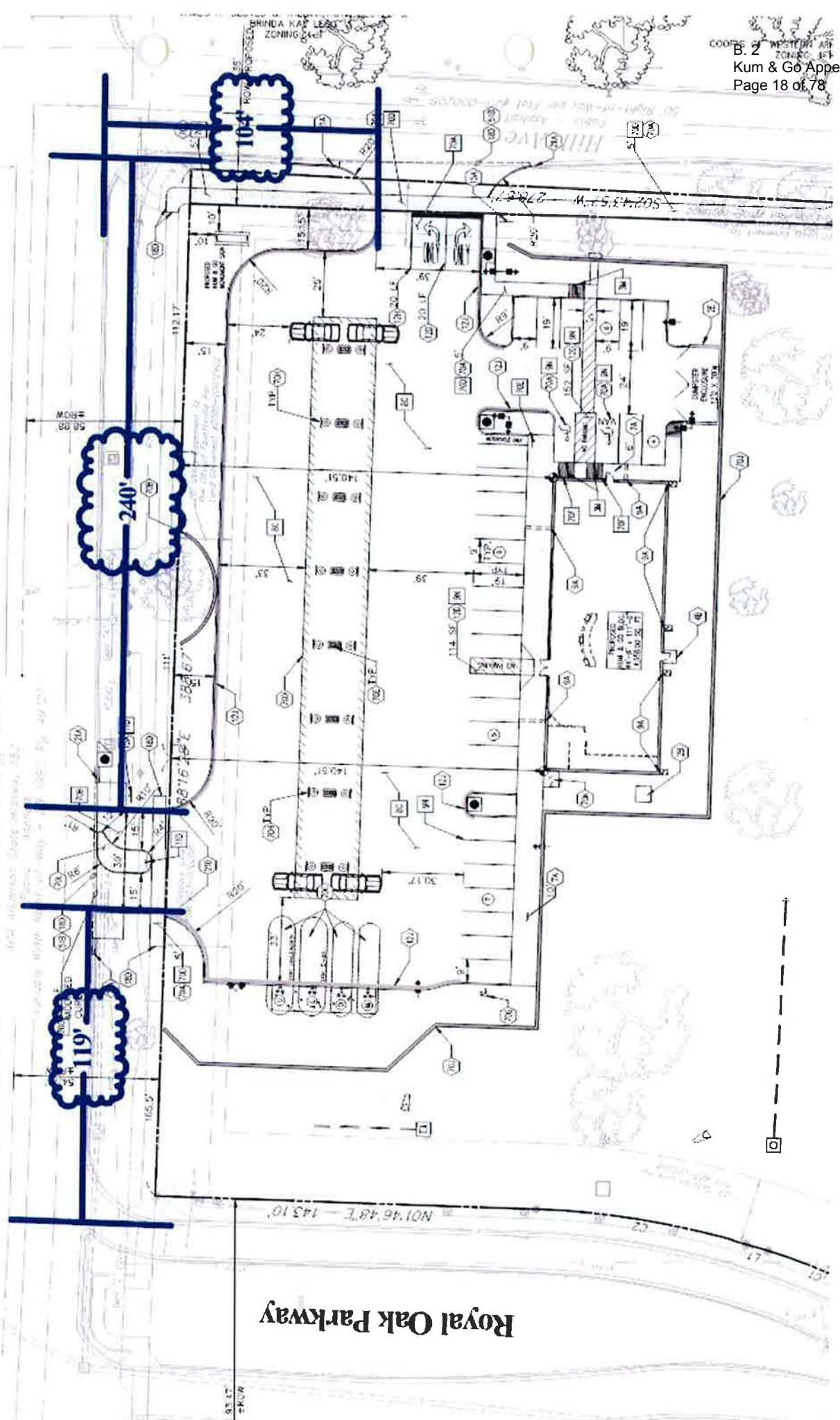
The adjacent property owner to the west and south, Hill Place, has stated in person and in writing that they do not recommend a curb cut for the gas station onto Royal Oak Parkway citing conflicts with the residents of their property. They do request a sidewalk connection from the gas station to Royal Oak Parkway.

BUDGET IMPACT

None.

OFF TRUST
ZOVING: C-2

100' break in turn lane for left turn on Hill



Site Distance Photo:

View from Royal Oak Parkway looking west on Martin Luther King Boulevard



FAYETTEVILLE UNIFIED DEVELOPMENT CODE

166.08 Street Design And Access Management Standards

(F) Access Management. Safe and adequate vehicular, bicycle, and pedestrian access shall be provided to all parcels. Local streets and driveways shall not detract from the safety and efficiency of bordering arterial routes. Property that fronts onto two public streets shall place a higher priority on accessing the street with the lower functional classification, ex. Local and Collector.

(1) *Curb cut minimum distance from intersection or driveway.* For purposes of determining curb cut or street access separation, the separation distance shall be measured along the curb line from the edge of curb cut to the edge of curb cut/intersection. The measurement begins at the point where the curb cut and intersecting street create a right angle, i.e., the intersection of lines drawn from the face-of-curb to face-of-curb. The measurement ends at the point along the street where the closest curb cut or street intersection occurs; again, measured to the point where the curb cut or intersecting streets create a right angle at the intersection of face-of-curb.

(a) Principal and Minor Arterial Streets. Where a street with a lower functional classification exists that can be accessed, curb cuts shall access onto those streets. When necessary, curb cuts along arterial streets shall be shared between two or more lots. Where a curb cut must access the arterial street, it shall be located a minimum of 250 feet from an intersection or driveway.

Number of Curb Cuts Permitted	
Length of Street Frontage	Maximum Number of Curb Cuts
0-500 ft.	1
501-1000 ft.	2
1001-1500 ft.	3
More than 1500 ft.	4

(b) Collector Streets. Curb cuts shall be located a minimum of 100 feet from an intersection or driveway. When necessary, curb cuts along collector streets shall be shared between two or more lots.

Number of Curb Cuts Permitted	
Length of Street Frontage	Maximum Number of Curb Cuts
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251-500 ft.	3
More than 500 ft.	4

(c) Local and Residential Streets. Curb cuts shall be located a minimum of 50 feet from an intersection or driveway. In no case shall a curb cut be located within the radius return of an adjacent curb cut or intersection. Curb cuts shall be a minimum of fifteen (15') feet from the adjoining property line, unless shared.

Number of Curb Cuts Permitted	
Length of Street Frontage	Maximum Number of Curb Cuts
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126-250 ft.	3
More than 250 ft.	4

- (d) Residential Subdivisions. In the case of residential subdivisions, curb cuts shall be discouraged along arterial and collector streets. When necessary, curb cuts along arterial and collector streets shall be shared between two or more lots. Curb cuts along all streets shall be located a minimum of five feet (5') from the adjoining property line, unless shared.
- (e) Variance. In order to protect the ingress and egress access rights to a street of an abutting property owner, a variance to the curb cut minimums shall be granted by the Planning Commission to allow an ingress/egress curb cut at the safest functional location along the property. Such a curb cut may be required to be shared with an adjoining parcel if feasible. If a parcel on the corner of an arterial or collector street provides such short frontage along a major street that there is no safe ingress/egress functional location on that street, the Planning Commission may deny the curb cut or may limit such curb cut to ingress or egress only.

156.03 Development

Certain variances of the development regulations may be applied for as follows:

(A) *General requirements.*

- (1) *Undue hardship.* If the provisions of Development, Chapter 166, are shown by the developer to cause undue hardship as they apply to this proposed development (including, but not limited to financial, environmental, or regulatory) and that the situation is unique to the subject property, the city Planning Commission may grant a variance, on a temporary or permanent basis, to the development from such provision, so that substantial justice may be done and the public interest secured; provided that the variation will not have the effect of nullifying the intent and purpose of the development regulations. No variance shall be granted for any property which does not have access to an improved street.
- (2) *Conditions and safeguards.* In granting variances, the Planning Commission may prescribe appropriate conditions and safeguards to secure substantially the objectives of the standards or requirements so varied.

LSD 11-3966: Large Scale Development (SOUTHWEST CORNER MLK BLVD. & HILL AVE./KUM AND GO, 522): Submitted by CEI ENGINEERING. for property located at the SOUTHWEST CORNER OF MARTIN LUTHER KING BOULEVARD AND HILL AVENUE. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 2.46 acres. The request is for the development of a gas station with sixteen fuel pumps.

Andrew Garner, Senior Planner, gave the staff report including videos and a diagram of traffic flow patterns and staff's concerns with left turn movements into the proposed gas station.

Erin Rushing, applicant, discussed access to Royal Oak Parkway and the background behind the current site plan. He discussed that the drive could be shifted further to the west to provide some additional distance away from the intersection.

Public Comment:

Aubrey Shepherd, discussed that this site has the only remaining trees left from this overall site. He hopes some of the existing soil will remain and that they will plan some steps to store water on the site. He expressed concern with construction traffic of this project combined with the development of the Washington County sale barn site. He discussed that if you are coming west from downtown it is very difficult to turn left onto Hill Avenue.

No more public comment was presented.

Commissioner Chesser asked about the left turn on Hill.

Garner discussed that the recommended condition of approval for dedicated left turn signals to be added to the existing signal should address that issue.

Commissioner Chesser discussed support for the recommendation for right-in, right-out only.

Commissioner Hoskins asked about the turn into the site off of Royal Oak. He discussed concerns with traffic patterns as shown on the video and also agreed with the right-in, right-out only and that full access has lots of issues.

Commissioner Griffin gave background for the second Subdivision Committee recommendation to remove the access on Royal Oak Parkway, including concerns with the median cut and vehicles stacking.

Commissioner Earnest discussed the first Subdivision Committee recommendation to include access on Royal Oak Parkway. He discussed moving the drive on Royal Oak further to the south but there are issues with grade and trees in that area of the site. He stated that we have an excellent access management ordinance that states that where a site has access to lesser classification streets curb cuts shall access those streets. This site has access to the two side streets and connectivity can be secured.

Commissioner Winston asked about access to the site for gas tanker trucks.

Rob Wadley, Kum and Go, discussed gas truck access into the site and the various options and grades for the different driveways. He discussed that the median in Royal Oak Parkway is privately owned and that the owner is not willing to allow a median cut. They are fine to push the driveway on MLK closer to Royal Oak Parkway if needed. They do need a three-quarter access for fuel trucks and food trucks.

Commissioner Winston discussed that he does not see a way to support a full access in for traffic safety reasons.

Commissioner Chesser discussed delivery trucks accessing the site. He sees a major safety concern.

Commissioner Honchell discussed that placement on the hill is a problem. As a planning commissioner safety is one of the things he has to look at. He expressed support for a right-in, right-out only driveway. He asked if an 8-10% slope on a driveway onto Royal Oak Parkway is functional. He also asked about making Royal Oak Parkway a left out.

Glenn Newman, staff engineer, discussed that yes 8-10% would be functional. He discussed that it may be possible to change Royal Oak Parkway to allow a left out, but that he was not sure of the reasons why it was made a right out only and would need to evaluate it. He discussed that we would like to encourage more use on Hill versus Royal Oak because Hill is signalized.

Commissioner Honchell asked about the time of delivery.

Rob Wadley, Kum and Go, discussed that they do not like to deliver during busy times.

Commissioner Winston asked about Aubrey Shepherd's question about the Campus Crest project on the Washington County Sale Barn site.

Garner stated that a development plan is currently under review but we're not sure when or if it will be built.

Erin Rushing, applicant, asked the commission if pedestrian access to Royal Oak Parkway were required would steps be allowed because there is a 10-foot retaining wall.

Commissioner Hoskins asked if the grades of the site could be changed to alter the slopes.

Newman answered 'yes'.

Commissioner Hoskins asked about a driveway connection being proposed between the two ponds.

Newman discussed it was not feasible as the grading plan is currently proposed.

Commissioner Chesser asked about stacking onto Hill Avenue.

Garner discussed stacking onto Hill Avenue and that it was a concern, but that the curb cut meets the minimum.

Motion #1:

Commissioner Winston made a motion to approve LSD 11-3966:

Condition of approval #1: finding in favor of the variance for the curb cut on Martin Luther King Boulevard as recommended by staff with a right-in, right-out only access.

Condition of approval #2.a: finding in favor of requiring sidewalk access from Royal Oak Parkway to the gas station, and that steps are acceptable as part of the sidewalk connection.

Condition of approval #2.b: finding that vehicular access from Royal Oak Parkway to the gas station is not

required.

Finding in favor of all other conditions of approval as recommended by staff in the report.

Commissioner Griffin seconded the motion. **Upon roll call the motion failed with a vote of 4-5-0 (Commissioners Chesser, Honchell, Hoskins, Earnest, and Cabe voting 'no').**

Motion #2:

Commissioner Chesser made a motion to approve LSD 11-3966, finding in favor of all conditions of approval and recommendations made by staff in the staff report including the following:

Condition of approval #1: finding in favor of the variance for the curb cut on Martin Luther King Boulevard as recommended by staff with a right-in, right-out only access.

Condition of approval #2.a: finding in favor of requiring sidewalk access from Royal Oak Parkway to the gas station.

Condition of approval #2.b: finding in favor of requiring vehicular access from Royal Oak Parkway to the gas station.

Finding in favor of all other conditions of approval and variances as recommended by staff in the report.

Commissioner Honchell seconded the motion. **Upon roll call the motion passed with a vote of 8-1-0 (Commissioner Winston voting 'no').**



PC Meeting of November 14, 2011

THE CITY OF FAYETTEVILLE, ARKANSAS

125 W. Mountain St.
Fayetteville, AR 72701
Telephone: (479) 575-8267

PLANNING DIVISION CORRESPONDENCE

TO: Fayetteville Planning Commission
FROM: Andrew Garner, Senior Planner
Glenn Newman, Staff Engineer
THRU: Jeremy Pate, Development Services Director
DATE: ~~November 1, 2011~~ Updated November 15, 2011

LSD 11-3966: Large Scale Development (SOUTHWEST CORNER MLK BLVD. & HILL AVE./KUM AND GO, 522): Submitted by CEI, INC. for property located at the SOUTHWEST CORNER OF MARTIN LUTHER KING BOULEVARD AND HILL AVENUE. The property is zoned C-1, NEIGHBORHOOD COMMERCIAL and contains approximately 2.46 acres. The request is for the development of a gas station with sixteen fuel pumps.

Planner: Andrew Garner

Findings:

Property and background: The subject property is located at the southwest corner of Martin Luther King Boulevard (Hwy 62) and Hill Avenue. The property is a disturbed and undeveloped site with 21.2% tree canopy. Surrounding land use and zoning is depicted on *Table 1*.

Table 1
Surrounding Land Use and Zoning

Direction from Site	Land Use	Zoning
North	Duplex; Undeveloped	C-1, Neighborhood Commercial; RMF-24, Residential Multi-family 24 Units Per Acre
East	Brenda's Burgers; Coors Plant	I-1, Heavy Commercial and Light Industrial
West and South	Multi-family residential (Hill Place complex)	R-PZD Hill Place

Request: The applicant requests large scale development approval to construct a gas station with 16 fuel pumps and a 4,958 sq. ft. convenience store.

Water and Sewer System: The property has access to existing public water and sewer services.

Adjacent streets and right-of-way: This site is adjacent to the signalized intersection of Martin Luther King (Hwy 62), a principal arterial street; Hill Avenue, a collector street, and Royal Oak Parkway, a local street. Adequate right-of-way exists in conformance with the Master Street Plan along Martin Luther King and Royal Oak Parkway. Royal Oak Parkway is a divided road adjacent to the site with the median under private ownership and not within the City right-of-way. Right-of-way dedication in the amount of 35 feet from centerline along Hill Avenue is required.

Street Improvements: Staff recommends the following street improvements: new sidewalk on

Hill Avenue at the Master Street Plan right-of-way line; street lights at intersections and spaced every 300 feet; any damaged or cracked sidewalk on Martin Luther King and Royal Oak Parkway will need to be replaced prior to final occupancy. Because of the high volume of existing traffic on adjacent roadways combined with increased turning movements anticipated with the proposed gas station, staff recommends a dedicated left-turn signal at the Hill/Martin Luther King intersection. Upgrades to the signal to provide dedicated left turns shall be required of the developer with this project, subject to approval by the Arkansas State Highway Department.

Tree Preservation:

Existing Canopy: 21.2%	*Preserved Canopy: 5.1%	Required Canopy: 20%
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*Mitigation Required: See attached memo from Urban Forester.

Access Management/Connectivity: The subject site is bounded by public streets on the north, west and east sides. The north side of the property is adjacent to Martin Luther King (Hwy 62, a principal arterial street), the east side is adjacent to Hill Avenue (a collector street), which is a signalized intersection, and the west side is adjacent to Royal Oak Parkway, which is a local street. The access management ordinance states that access shall be taken from the street with the lower functional classification, in this case Hill Avenue and Royal Oak Parkway. Where a curb cut must access the arterial street, it shall be located a minimum of 250 feet from a driveway or intersection.

These standards were adopted so that new access to development would not create or contribute to unsafe or congested conditions, especially along arterial roadways. As new access points are created, the potential for vehicle conflicts between through traffic and traffic using the access increases. In addition to decreased safety, poorly designed access points increase congestion and traffic delays.

The applicant proposes a 39-foot wide full access in, right-out only, driveway on Martin Luther King, a principal arterial. This access requires a variance for the following reasons:

- The site has available access on two adjacent lower classification streets.
- The proposed curb cut is approximately 119 feet from the intersection of Royal Oak Parkway/Martin Luther King, and 240 feet from the intersection of Martin Luther King/Hill Avenue, when 250-foot separation is required.

At the technical plat review meeting City staff indicated to the applicant that they were not in favor of a full access curb cut onto Martin Luther King due to traffic safety concerns and available access on two adjacent side streets. Staff recommended some options instead a full access curb cut onto Martin Luther King to make the lower classification streets the priority for access consistent with ordinance. The options that were suggested by staff included a full access to Royal Oak Parkway and a right-in only curb cut onto Martin Luther King. Other options included a right-in only access on Martin Luther King and an exit/entrance from the gas station to Royal Oak Parkway.

The applicant has provided a letter (attached) that discusses their consideration of various access

options. The current proposal now includes a full access in and a right-out only curb cut onto Martin Luther King and a full access onto Hill Avenue. The main reasons stated by the applicant for the proposed access onto Martin Luther King include ease of transport truck delivering fuel to the store and concerns with site distance at the intersection of Royal Oak Parkway.

Access Management Variance Recommendation:

Staff does not support the applicant's variance request finding that the proposed curb cut does not meet the intent of the Access Management ordinance that states:

"Property that fronts onto two public streets shall place a higher priority on accessing the street with the lower functional classification, ex. Local and Collector."

The applicant has not designed their site with this ordinance in mind. Rather, the applicant has designed the site by placing a higher priority on accessing the Principal Arterial, rather than the adjacent Local Street, Royal Oak Parkway, and the adjacent Collector Street, Hill Avenue. The primary entrance to this development is proposed off of the Principal Arterial. This is in direct conflict with the Access Management ordinance quoted above.

The ordinance also states:

"Where a street with a lower functional classification exists that can be accessed, curb cuts shall access onto those streets."

The proposal does not provide connectivity to Royal Oak Parkway, in conflict with the ordinance quoted above.

Staff has conducted several site visits to observe traffic flow, site distance, and turning movements in the area. The site has adequate access on two adjacent side streets, including a signalized intersection at Hill Avenue. The proposed full access in and right-out only curb cut on Martin Luther King (MLK) may create a traffic safety hazard due to conflicting turning movements, especially with vehicles turning left into the development conflicting with vehicles turning right out of Royal Oak Parkway, and vehicles traveling at relatively high speed east and west on MLK. There is also a potential danger with westbound vehicles entering the turn lane on MLK to turn left into this development, and eastbound vehicles on MLK entering the turn lane to turn left at the signal on Hill Avenue and potential head-on conflict within the stacking of the intersection. This is depicted on a video clip shown at agenda session and planning commission and indicated on a diagram provided by staff. As observed by staff, vehicles stack in the left eastbound lane on MLK because the right lane is required to turn right at the next intersection. This stacking encourages vehicles to travel down the center turn lane of MLK which will be in direct conflict with vehicles heading westbound and turning left into the gas station.

Public Comment: Staff had two phone conversations and received an email from a representative of Hill Place (the adjacent apartment complex to the south). As indicated in the email and as discussed in person at the November 4th Subdivision Committee meeting, Hill Place does not recommend a curb cut for the gas station onto Royal Oak Parkway citing conflicts with the residents of their property. They do request a sidewalk connection.

Recommendation: Staff recommends approval of **LSD 11-3966** with the following conditions:

Conditions of Approval:

1. Planning Commission determination of a variance from Chapter 166.08(F), access management and curb-cut separation. As described above, the applicant proposes a full access in and right-out only curb cut onto Martin Luther King Boulevard 119 feet from the intersection of Royal Oak Parkway/Martin Luther King, and 240 feet from the intersection of Martin Luther King/Hill Avenue. *Staff recommends denial of the variance based on the findings discussed earlier in this report.*

Staff recognizes that Royal Oak Parkway is constrained for full commercial access to this property because of topography and the existing median. This is a somewhat unique situation and staff feels that a secondary point of access to Martin Luther King Boulevard is warranted based on the size of the parcel and length of street frontage(388 feet). However, in staff's observations any proposal with a curb cut that will allow left in or left out turning movements on MLK will create a dangerous traffic condition. Consistent with Chapter 166.08(F), staff recommends that the proposed curb cut be limited to a right-in and right-out only.

Should the Planning Commission recommend in favor of the proposed curb cut, the applicant may be required to provide a vehicular traffic safety and site distance study prior to construction permits to verify compliance with basic engineering standards, as determined by City Engineering staff. Additionally, upon construction and prior to occupancy, City staff shall be authorized to require the applicant to make minor changes to this driveway such as signage and painting to make the limited access design as functional as possible.

PLANNING COMMISSION DETERMINED IN FAVOR OF A VARIANCE AS RECOMMENDED BY STAFF FOR RIGHT-IN AND RIGHT-OUT ONLY (11-14-11).

2. Planning Commission determination to provide access (connectivity) to Royal Oak Parkway. The City's overall policies and ordinances, including UDC Section 166.08 and 166.14(C)(4), encourage connectivity within and between adjacent developments and local roadways.

According to the adjacent property owner to the south, Hill Place LLC, there are approximately 840 residents on 27 acres within the Hill Place development. Without access to Royal Oak Parkway, drivers or pedestrians that would like to access the proposed gas station from that development will all be forced to use Hill Avenue and potentially wait in a turn lane for a signalized intersection to turn into the gas station, or turn right onto Martin Luther King Boulevard (a principal arterial roadway and state highway) and travel approximately 100 feet then turn right into the gas station. This will unnecessarily result in more potentially dangerous turning movements onto MLK; increase congestion and decrease road capacity.

- a. Sidewalk connection. *Staff recommends that a direct sidewalk connection between Royal Oak Parkway and the gas station be provided, in addition to the sidewalk connection that is already shown from Hill Avenue. This recommendation is based on the volume of pedestrian activity in the vicinity and the proposed convenience store use, in addition to UDC Section 172.04.B. There are 840 University of Arkansas students adjacent to the south in Hill Place. These students are within walking distance of the proposed convenience store that will be selling food and groceries. Hill Place LLC has requested that a sidewalk be provided from Royal Oak Parkway to the gas station.*
- b. Vehicular connection. *Staff recommends that the proposed development provide vehicular access to Royal Oak Parkway consistent with the City's overall policies and ordinances to provide complete, compact, and connected communities, including UDC Section 166.08 and 166.14(C)(4). Staff does not recommend a median cut on Royal Oak Parkway, resulting in a right-in, right-out access on this northbound section of the boulevard street.*

PLANNING COMMISSION DETERMINED IN FAVOR OF A VEHICULAR AND SIDEWALK CONNECTION TO ROYAL OAK PARKWAY (11-14-11).

3. Planning Commission determination of a variance request from Chapter 172.04(E), Parking Lot Design Standards. The applicant has submitted a variance request from the maximum drive aisle width requirement of 24 feet and proposes to utilize a range of drive aisle widths from 30 feet to 33 feet to accommodate turning radius required for large truck parking lot circulation and access to the underground gasoline storage tanks. An Autoturn diagram has been added to the site plan on Sheet 5 of the submitted plat to indicate that the request is justified. *Staff recommends approval of the variance request to exceed the maximum drive aisle width of 24 feet to accommodate the turning radius of the large trucks, as indicated on the diagram.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE VARIANCE (11-14-11).

4. Planning Commission determination of Commercial Design Standards. *Staff recommends in favor of the proposed design finding that the building meets the minimum requirements of the Commercial Design Standards.*

PLANNING COMMISSION DETERMINED IN FAVOR (11-14-11).

5. Planning Commission determination of street improvements. *Staff recommends the following street improvements along this site's three street frontages:*
 - a. *New sidewalk on Hill Avenue at the Master Street Plan right-of-way line.*
 - b. *Street lights at intersections and spaced every 300 feet.*
 - c. *Damaged or cracked sidewalk on Martin Luther King and Royal Oak Parkway shall be replaced prior to final occupancy.*
 - d. *Because of the high volume of existing traffic on adjacent roadways combined with*

increased turning movements anticipated with the proposed gas station, staff recommends addition of signal heads to provide protected left-turns at the Hill/Martin Luther King intersection. Upgrades to the signal to provide protected left turns for northbound, eastbound, and westbound traffic shall be required of the developer with this project, subject to approval by the Arkansas State Highway Department.

PLANNING COMMISSION DETERMINED IN FAVOR (11-14-11).

6. Planning Commission determination of a variance from UDC Section 177.04(C)(1)(b) that requires a maximum run of 12 parking spaces without a tree island. The applicant has indicated that this requirement would place a tree in front of the convenience store blocking view of the gas pumps from the store clerk. *The Urban Forester recommends in favor of the variance finding agreement with the applicant's justification.*

PLANNING COMMISSION DETERMINED IN FAVOR OF THE VARIANCE (11-14-11).

7. Right-of-way dedication in the amount of 35 feet from centerline is required along the project's Hill Avenue Street frontage and shall be dedicated by easement plat or separate document prior to building permit.
8. The number of parking spaces on the large scale development plan exceeds the maximum allowed by City ordinance and is subject to review and approval by the Planning Commission as a Conditional Use Permit (CUP 11-3968). If the conditional use permit is denied the development plans will be required to be modified to meet City ordinance.
9. Denial of the requested access to Martin Luther King Boulevard may require significant revisions to the site plan and project layout. These changes may require a major modification approval from the Planning Commission at a future hearing date.
10. A vegetative screen, as indicated on the submitted landscape plan, shall be installed along the west and southern property line to screen the commercial use from the adjacent residential use.
11. Any fencing shall comply with commercial design and design overlay district standards.
12. All tree preservation, landscape, and fire department conditions included herein shall apply.

Standard conditions of approval:

13. Impact fees for fire, police, water, and sewer shall be paid in accordance with City ordinance.
14. If applicable, a business license shall be obtained prior to opening the business to the public.

15. Plat Review and Subdivision comments (to include written staff comments provided to the applicant or his representative, and all comments from utility representatives: AR Western Gas, SWBT, Ozarks, SWEPCO, Cox Communications).
16. Staff approval of final detailed plans, specifications and calculations (where applicable) for grading, drainage, water, sewer, fire protection, streets (public and private), sidewalks, parking lot(s) and tree preservation. The information submitted for the plat review process was reviewed for general concept only. All public improvements are subject to additional review and approval. All improvements shall comply with City's current requirements.
17. All exterior lights shall comply with the City lighting ordinance. Manufacturer's cut-sheets are required for review and approval prior to issuance of a building permit.
18. All mechanical/utility equipment (roof and ground mounted) shall be screened using materials that are compatible with and incorporated into the structure. **A note shall be clearly placed on the plat and all construction documents indicating this requirement.**
19. Trash enclosures shall be screened on three sides with materials complimentary to and compatible with the principle structure. Elevations of the proposed dumpster enclosure shall be submitted to the Planning and Solid Waste Divisions for review prior to building permit. **A note shall be clearly placed on the plat and all construction documents indicating this requirement.**
20. All existing utilities below 12kv shall be relocated underground. All proposed utilities shall be located underground. **A note shall be clearly placed on the plat and all construction documents indicating this requirement.**
21. All freestanding and wall signs shall comply with ordinance specifications for location, size, type, number, etc. Any proposed signs shall be permitted by a separate sign permit application prior to installation. Freestanding pole signs and electronic message boards (direct lighting) are prohibited in the Design Overlay District.
22. Large scale development shall be valid for one calendar year.
23. Prior to building permit, a cost estimate for all required landscaping is to be submitted to the Landscape Administrator for review. Once approval is gained, a guarantee is to be issued (bond/letter of credit/cash) for 150% of the cost of the materials and installation of the plants. This guarantee will be held until the improvements are installed and inspected, at the time of Certificate of Occupancy.
24. Prior to the issuance of a building permit the following is required:
 - a. Grading and drainage permits
 - b. An on-site inspection by the Landscape Administrator of all tree protection measures prior to any land disturbance.
 - c. Separate easement plat for this project that shall include the tree preservation area

- and all utility easements.
- d. Project Disk with all final revisions
 - e. One copy of final construction drawings showing landscape plans including tree preservation measures submitted to the Landscape Administrator.
 - f. Completion of all required improvements or the placement of a surety with the City (letter of credit, bond, escrow) as required by Section 158.01 "Guarantees in Lieu of Installed Improvements" to guarantee all incomplete improvements. Further, all improvements necessary to serve the site and protect public safety must be completed, not just guaranteed, prior to the issuance of a Certificate of Occupancy.
-

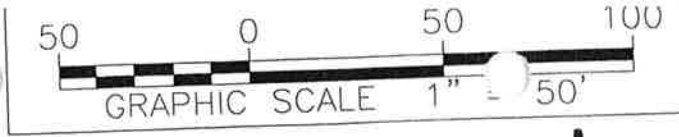
Planning Commission Action: ☒ **Approved** ☐ **Tabled** ☐ **Forwarded**

Meeting Date: November 14, 2011

Motion: Chesser

Second: Honchell

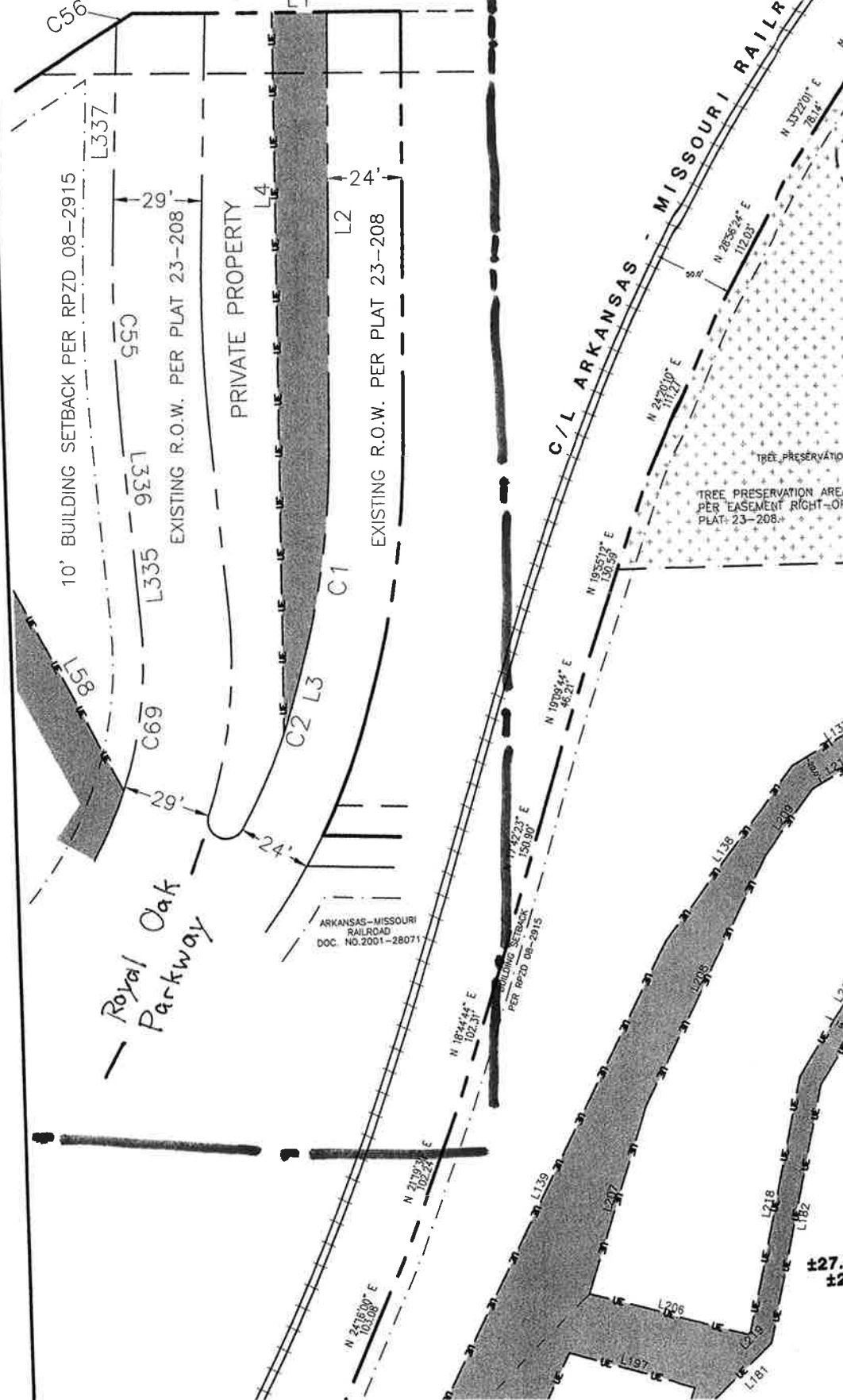
Vote: 8-1-0 (Commissioner Winston voted 'no')



TRACT 3
±0.36 ACRES
CITY OF FAYETTEVILLE
DOC. NO. 2006-8894
785-14859-001

Hill Place
Easement Plat

DETAIL 1
Martin Luther King Blvd -



From: Ron Koretz <rkoretz@bluevistallc.com>
To: Andrew Garner <agamer@ci.fayetteville.ar.us>
Date: 10/21/2011 1:21 PM
Subject: Gas Station in Fayetteville, AR

Andrew -

Thank you for taking time to discuss the proposed new Kum & Go development at the corner of MLK and Hill Avenue. On behalf of the owner of the adjacent Hill Place student housing project, BVP Hill Place, LLC, I would like to have our input placed on the record for the City of Fayetteville Planning Commission.

BVP Hill Place, LLC is not opposed to the Kum & Go development. However, we do strongly oppose an entrance to the new development on Royal Oak Parkway. Such an entrance would present a safety hazard to our 840 residents, many of whom walk to and from school on a daily basis. If such an entrance (a "right-in, right-out" on Royal Oak) to the Kum & Go were in place, many cars would enter south on Royal Oak and make a U-turn in what is our parking lot. The U-turns would take place between two of our residential buildings and our clubhouse, which is the source for heavy daily foot traffic. This is also in the middle of the route student walking to school take. The potential U-turn drivers would make - as an unconventional driving method - is typically unexpected, further putting our residents at risk. Further, this would make what is a quiet, residential side street with heavy foot traffic a highly driven street where cars are entering for commercial purposes.

Therefore, we are in favor of an entrance to the Kum & Go on MLK State Highway 62.

Finally, we would like to have a sidewalk entry from Royal Oak Parkway to the Kum & Go. This would increase safety for our residents when they walk to the gas station and convenience store.

Please let me know if you have any questions.

Ron Koretz,

on behalf of BVP Hill Place, LLC

Ronald W. Koretz | Vice President, Asset Manager

Blue Vista Capital Management, LLC | 111 South Wacker Drive, Suite 3300 | Chicago, Illinois 60606
direct 312.324.6082 | mobile 312.662.8520 | fax 312.578.0139
rkoretz@bluevistallc.com<mailto:rkoretz@bluevistallc.com> | www.bluevistallc.com<http://www.bluevistallc.com/>

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ENGINEERS ■ SURVEYORS ■ PLANNERS
LANDSCAPE ARCHITECTS ■ ENVIRONMENTAL SCIENTISTS

3108 S.W. Regency Parkway, Suite 2
Bentonville, AR 72712
479.273.9472 Fax 479.273.0844

DISTRIBUTION:
RER/File
Kum & Go, L.C.

October 6, 2011

City of Fayetteville
Planning Commission
113 W. Mountain Street
Fayetteville, AR 72701
Attn: Planning Department

**Re: Kum & Go #413 – Variance Request for Driveway Access
Martin Luther King Jr. Blvd & Hill Ave.
Fayetteville, Washington County, Arkansas
CEI Project No. 26728.0**

To Fayetteville Planning Commission:

This is a formal request for a variance from the City of Fayetteville's Unified Development Code (Street Design and Access Management, Ch. 166.08 (F)(1)(a)). This ordinance requires curb cuts or access points to be located where a street with a lower functional classification exists and that can be accessed, curb cuts shall access onto those streets. In this case being Hill Ave. Furthermore, when necessary, curb cuts along arterial streets shall be shared between two or more lots, in this case being Royal Oak.

This requirement cannot be achieved for a shared access point located at the intersection of Martin Luther King Jr. Blvd and Royal Oak. By doing so, it would create a steep grade at the point of ingress/egress to the Kum and Go site due to the existing grade of Royal Oak. In addition to, by providing a shared access at this location would create a challenge to drivers exiting onto Martin Luther King Jr. Blvd. Such a challenge would be the site distance to the west. Currently there is an existing train bridge crossing over Martin Luther King Jr. Blvd with an existing bridge abutment located at the sidewalk. For any one driver exiting from Royal Oak onto Martin Luther King Jr. Blvd, the location of the said abutment may hinder that driver's ability to see on-coming traffic traveling east along Martin Luther King Jr. Blvd.

Due to these existing conditions, we recommend providing a full access to and from the proposed Kum and Go site located along Martin Luther King Jr. Blvd. By providing a full access point at this location will increase the site distance to the west by increasing the distance between the existing train bridge abutment and the proposed access drive and will also improve the site distance to the east in regards to the crest of the roadway along Martin Luther King Jr. Blvd. Furthermore, by providing two access points for the proposed site would thereby create an ease in vehicular movement through the site while assisting in the access of the transport truck during deliveries to the proposed Kum and Go store.

Providing Consolidated Land Development Services

CALIFORNIA ■ ARIZONA ■ TEXAS ■ ARKANSAS ■ MINNESOTA ■ GEORGIA ■ PENNSYLVANIA

Special conditions exists which are unique to this site and which are not applicable to other sites in the same district. Literal interpretation of the provisions of these ordinances would deprive us of rights commonly enjoyed by other properties in the same district under the terms of this ordinance.

These special conditions do not result from the any actions on our part and granting these variance requests will not confer on us any special privilege that is denied by this ordinance to other sites in the same district.

Large Scale Development (LSD) plans have been submitted to the City Planning Department and shall be considered inclusive of this request including any revisions made throughout the review process.

We appreciate your consideration in this matter, and if you have questions or concerns, please do not hesitate to call.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "R. Erin Rushing". The signature is fluid and cursive, with a large, sweeping loop at the end.

R. Erin Rushing, RLA
Department Leader
CEI Engineering Associates, Inc.



ENGINEERS ■ SURVEYORS ■ PLANNERS
LANDSCAPE ARCHITECTS ■ ENVIRONMENTAL SCIENTISTS

3108 S.W. Regency Parkway, Suite 2
Bentonville, AR 72712
479.273.9472 Fax 479.273.0844

DISTRIBUTION:
RER/File

September 15, 2011

City of Fayetteville
Planning Commission
113 W. Mountain Street
Fayetteville, AR 72701
Attn: Alison Jumper, RLA

**Re: Kum & Go #413 – Site Analysis Report
SW Corner of MLK and Hill
Fayetteville, Arkansas
CEI Project No. 26728.0**

To Fayetteville Planning Commission:

The proposed project is at the southwest corner of Martin Luther King Jr. Blvd and Hill Avenue for the intended use of a convenience store and fueling station.

The proposed site is 2.46 acres in size.

The building size proposed is 4958 square feet with a detached fuel station with 8 fuel dispensers. The number of proposed parking spaces is 33.

Currently the site is undeveloped and has been primarily vacate since 2005.

The site is sloping from north to south approximately 25 feet in vertical change and is covered with either granular base rock from an old parking facility and/or un-maintained underbrush. There are numerous trees that are in the center of the site and scattered throughout the property. We are proposing to remove only the trees that are within the interior of the project and protect the trees that are along the exterior property boundaries.

The site layout consists of a convenience store in the middle of the project site, a fuel canopy in front of the convenience store and 3 drive cuts onto adjacent public streets. The primary driveway is at the northwest corner of the site onto MLK as far east as possible. This driveway is located as far west away from the signalized intersection to minimize conflict with the Hill Avenue north bound traffic turning movements. The two secondary drive cuts are on Hill Avenue, which the southern most drive lines up with the front of the store making it easy for the customer to enter and exit the site with as little turning movements as possible. The northern most drive cut is utilized for delivery of goods to the store, trash pick up, and secondary access to Hill.

Within Kum & Go's business model the front of the store always faces the primary access point or major street, which in this case is MLK with secondary access onto Hill. It is a requirement by Kum & Go that the fuel dispensers be located in line with the front of the store so the cashiers at the front counter have full visible access to the fuel dispensers at all times to reduce the potential

for drive-offs so the store can only be shifted minimally off of the centerline of the canopy before it affects this sight line.

In regards to vehicular circulation, again access to the primary street is required as well as a secondary access point required. Adequate vehicular circulation around the fuel dispensers is critical for the patrons utilizing the convenience store, as well as providing adequate buffering around the fuel dispensers themselves for safety purposes. At the main entrance to the store the preferred distance from canopy to the back of the parked cars is 39 feet in order to accommodate not only vehicular traffic entering the parking spaces from three different directions but this area needs to accommodate a 60' long fuel transport truck which will access the site 2-3 times per day.

There are numerous concessions Kum & Go has made to the overall site plan during the design and review process. For starters they pushed the development/impact area north as much as possible to save the trees along the south portion of the property. The site utilizes a dual stormwater detention pond system in order to utilize the areas outside of the limits of the tree canopy for detention storage and save the trees. Other accommodations include the construction of a 6-7 foot tall retaining wall 475 feet in length around the entire south and west side of the developed area to minimize the impact to the root zone of the trees to be saved and limit the area of disturbance.

Along the eastern property line in the middle of the site exists a 42" Hackberry Tree that could not be saved due to its location relative to the front of the store and the need for the secondary driveway onto Hill in this location. Kum & Go looked at alternative locations for the drive, however as mentioned above vehicular circulation parallel to the front of the store is a necessity for the operations, ease of access and safety to the patrons.

Mitigation for trees to be removed include a combination of some additional on-site tree plantings as well as payment to the City tree fund for any additional trees that can not be accommodated within the confines of the site.

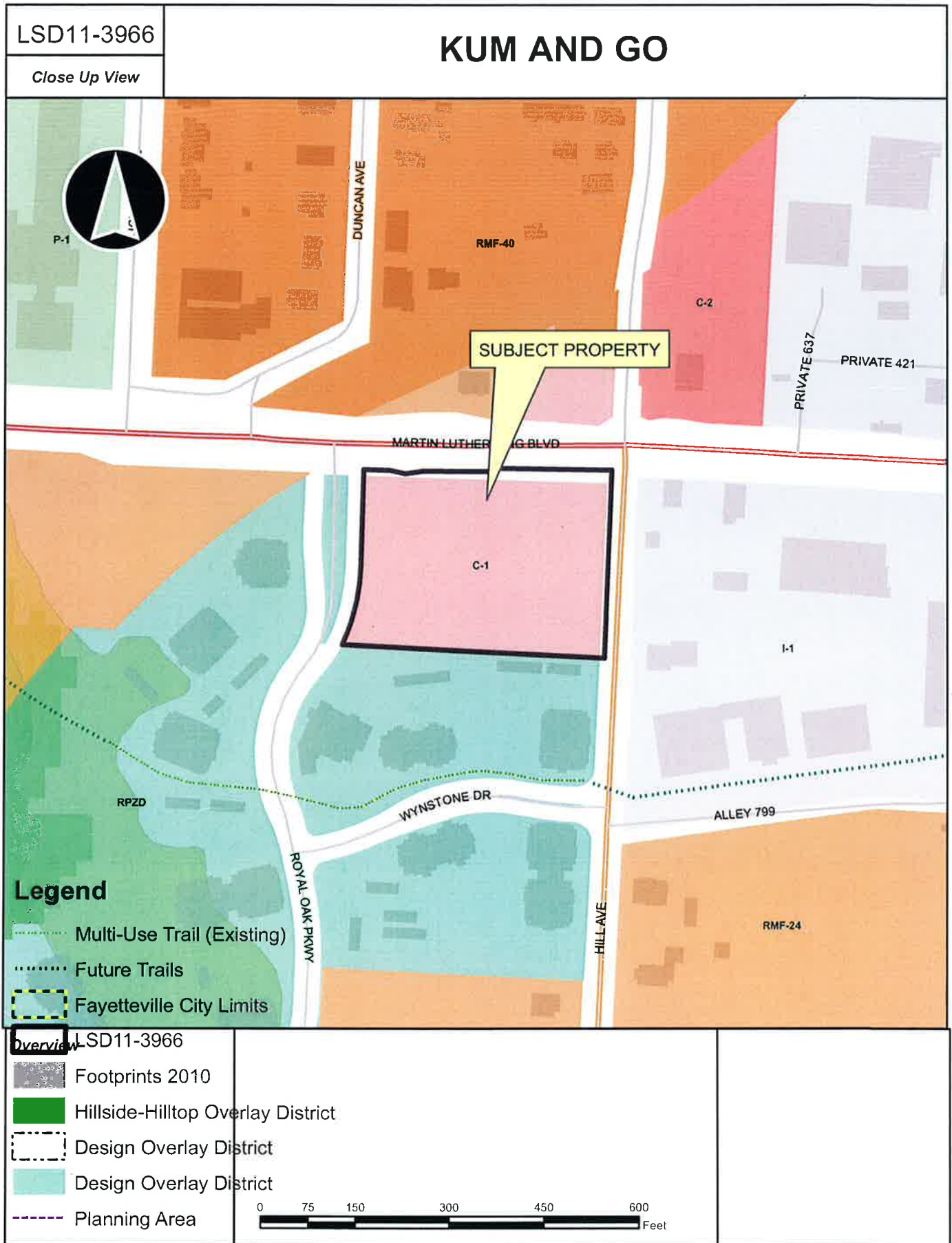
Large Scale Development (LSD) plans have been submitted to the City Planning Department and shall be considered inclusive of this request including any revisions made throughout the review process.

We appreciate your consideration in this matter, and if you have questions or concerns, please do not hesitate to call.

Respectfully submitted,



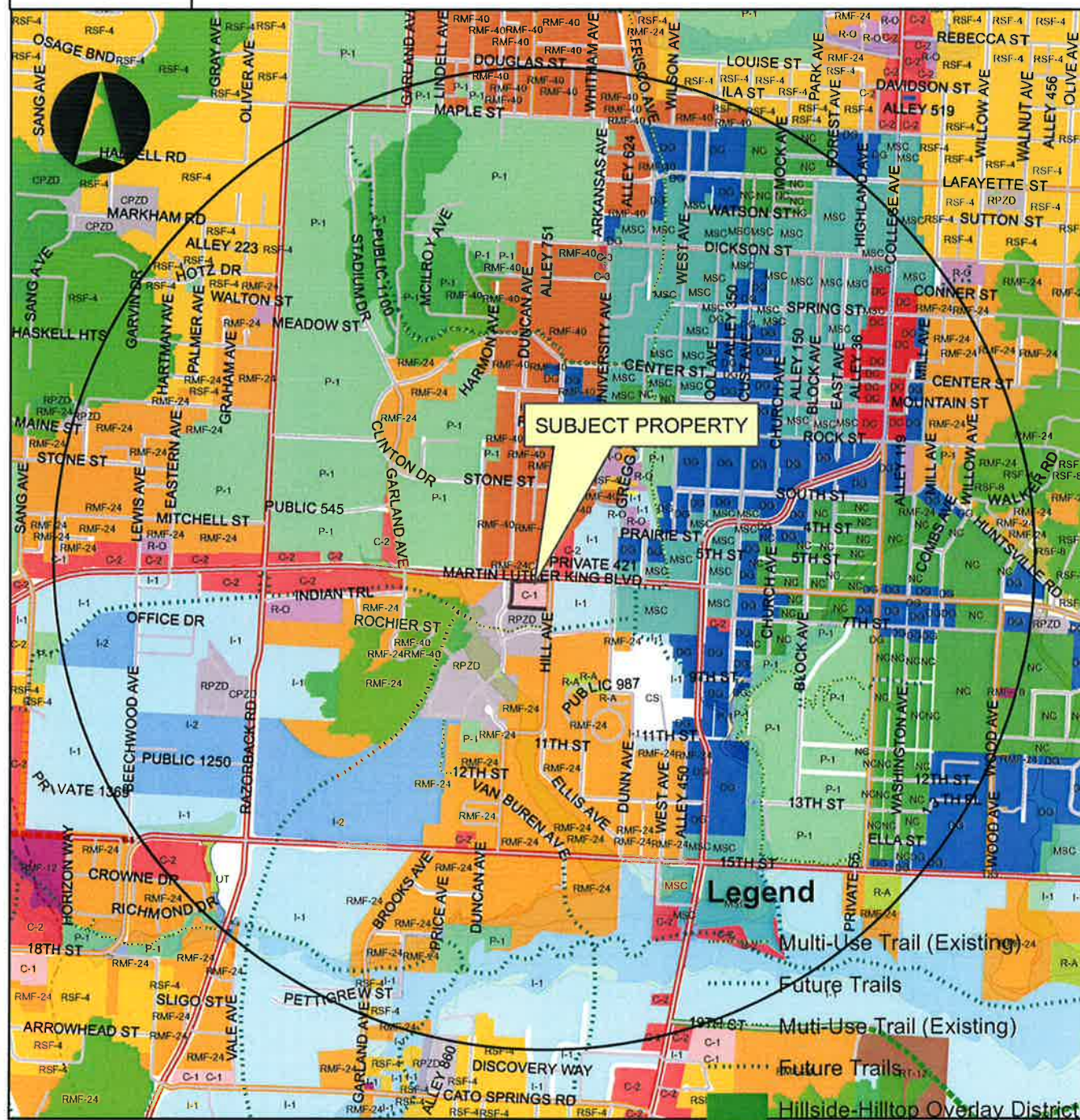
R. Erin Rushing, RLA
Department Leader – Local Development
CEI Engineering Associates, Inc.



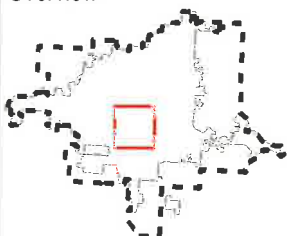
LSD11-3966

KUM AND GO

One Mile View



Overview



Legend

Subject Property

LSD11-3966

Boundary

0

0.25

0.5

1

Miles

LSD 11-3966

Design Overlay District

Planning Area

Fayetteville

Precision

Kum & Go has a vibrant history of growth and innovation. We attribute this success to our outstanding associates and how they approach our business each and every day. Our culture is built upon **seven core values** including:

Caring **FAMILY** **Teamwork**
Discipline *Integrity* **PROFESSIONALISM** *Work Ethic*

These core values heavily influence how Kum & Go is able to provide our customers with positive experiences, friendly services and quality products. We continually seek ways to improve how we interact with our customers. When they stop in our stores, we want to help them get on their way faster and make their lives easier.

At Kum & Go, we make smart decisions by using facts, sound data and timely information. Our research guides us to make these decisions and we take pride in knowing our offerings have been specially selected with our customers in mind.

We follow a simple philosophy when it comes to environmental stewardship and sustainability: *let's make a difference in how we do business and build our stores.*

We strive to be a responsible retailer and a good corporate citizen in the communities in which we serve.

We Go All Out!

Passion

"For those of us who work with Kyle and Sharon on a regular basis, we see first-hand the compassion, caring and commitment that they have toward improving the communities in which Kum & Go does business."

— Dennis N. Folden, Chief Operating Officer

Kum & Go shares 10 percent of our profits with charitable and educational causes each year. Our dedication to giving back extends to a variety of important charitable causes.

In 2010, Kum & Go President and CEO Kyle J. Krause, along with his wife, Sharon received the Outstanding Individual Philanthropist of the Year award by the Association of Fundraising Professionals in Iowa.

Kyle J. Krause, along with his wife, Sharon, were also honored with *The Des Moines Register's* "2010 Iowa Star Award." This prestigious award recognizes central Iowans who have given back to the community and made an extraordinary difference.



People

Customer Testimonials

"The infectious smile and engaging way of Kirby, Smile Project Winner #10, will pick you up... The 22 year-old Sioux City native has only worked at this Kum & Go since July, but she's already taken ownership of her customers' happiness and satisfaction...I've been a regular there for about a month and found her at the counter, holding a caffeine-free diet Pepsi in one hand and a Kit-Kat in the other for me."

— Unsecret Mystery Shopper, West Des Moines, Iowa

"I travel clear across town because of how they treat me as a customer and because I feel like they are my family...that's what I call phenomenal service they were my heroes."

— Letter from Peggy W. of Burlington, Iowa

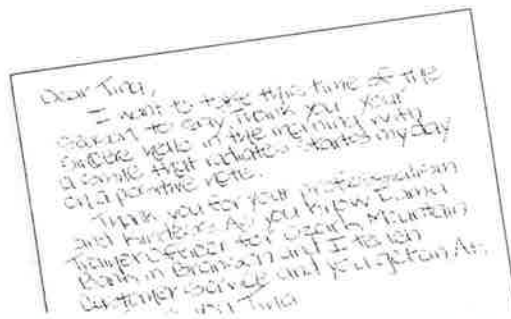


"Thank you for your professionalism and kindness...you get an A+"

— Handwritten Note from Nitabelle S. of Branson, Missouri

"He proceeded to go out in the rain and change her tire...for a customer who had her hands full with two young kids..."

— Email about Mick R. at Store 2091 in West Des Moines, IA



"...Kum & Go, because of that experience, I will stop & shop, as often as possible."

— Online Blog by Dave H.

"Stephanie went over to the man and immediately took action to save his life..."

— Going All Out! Nomination from Kum & Go Associate



Fast Facts

5th

largest privately held,
company-operated
convenience store chain
in the United States

10%

of annual profits go
to charitable and
educational causes
each year

4,000

Kum & Go associates

About Kum & Go

- 400,000 daily customers
- 430+ stores in 11 states
- Inc. 5000: #20 in total revenue
- Forbes ranking: #238

(largest privately held company) 2008 & 2009

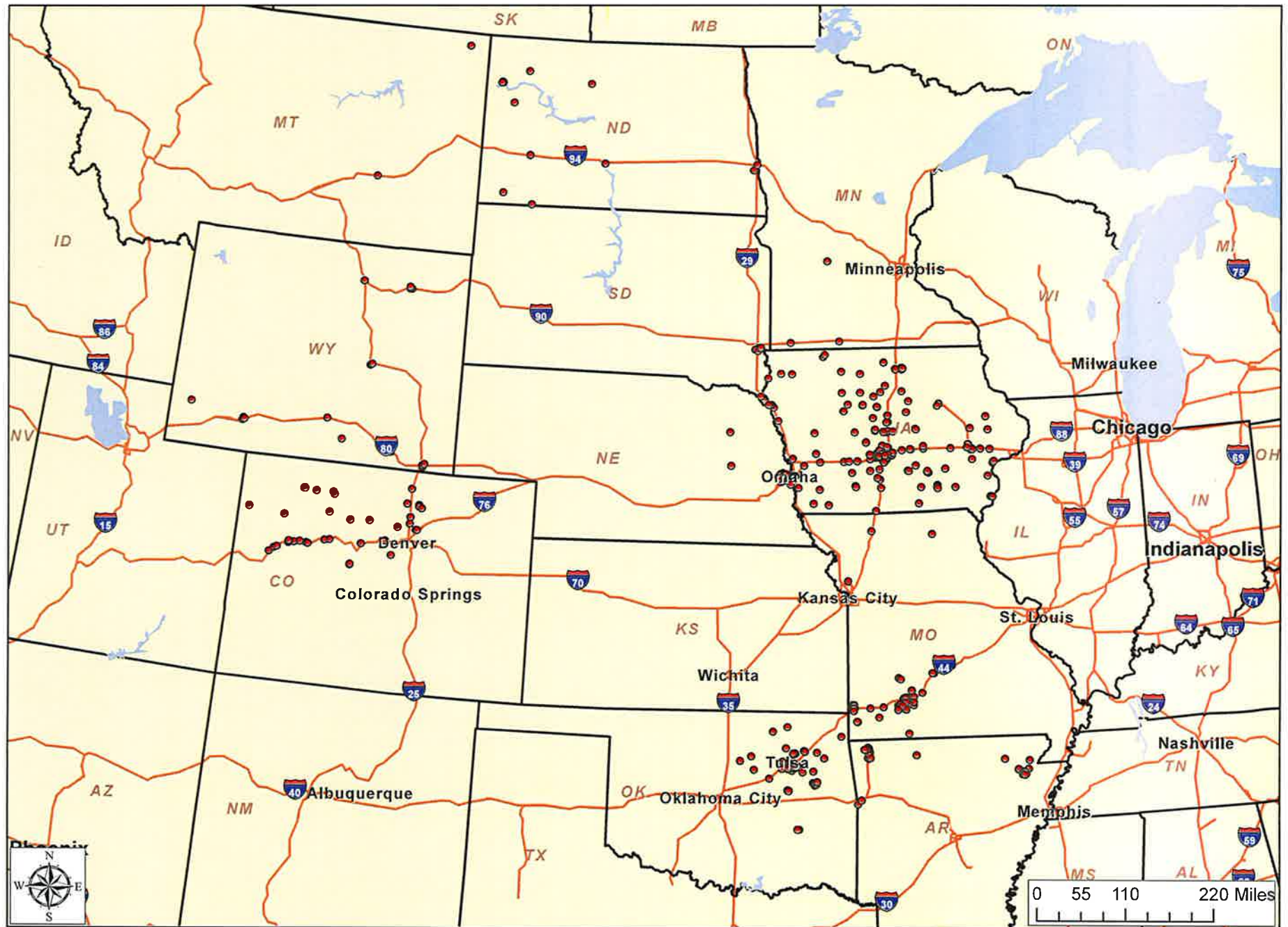
Kum & Go Leads The Way

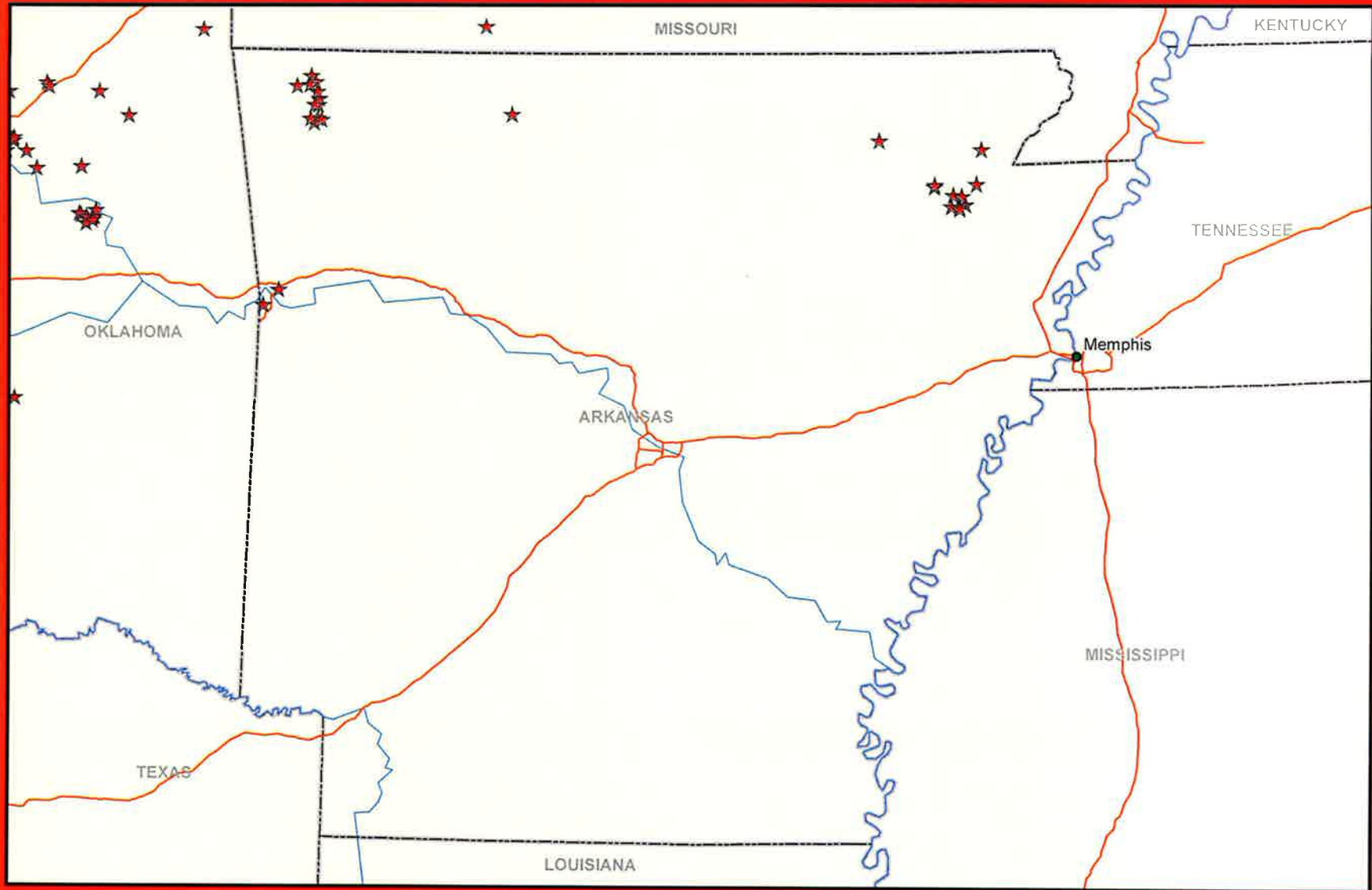
- Largest E85 retailer in the state of Iowa
- One of the first convenient store chains in the nation to offer a 10% ethanol blend
- First convenience store in Iowa to receive LEED certifications for two stores

Kum & Go Recent Recognitions

- | | |
|--|--|
| • "2011 Iowa Star Award"
(Kyle J. and Sharon S. Krause) | <i>The Des Moines Register</i> |
| • "2011 Biodiesel Marketing Award" | <i>Iowa Secretary of Agriculture</i> |
| • "2011 Distinguished Business Leadership Award"
(Kyle J. Krause) | <i>Greater Des Moines Leadership Institute</i> |
| • "2011 Alumnus of the Year – Forty Under 40"
(Kyle J. Krause) | <i>Des Moines Business Record</i> |

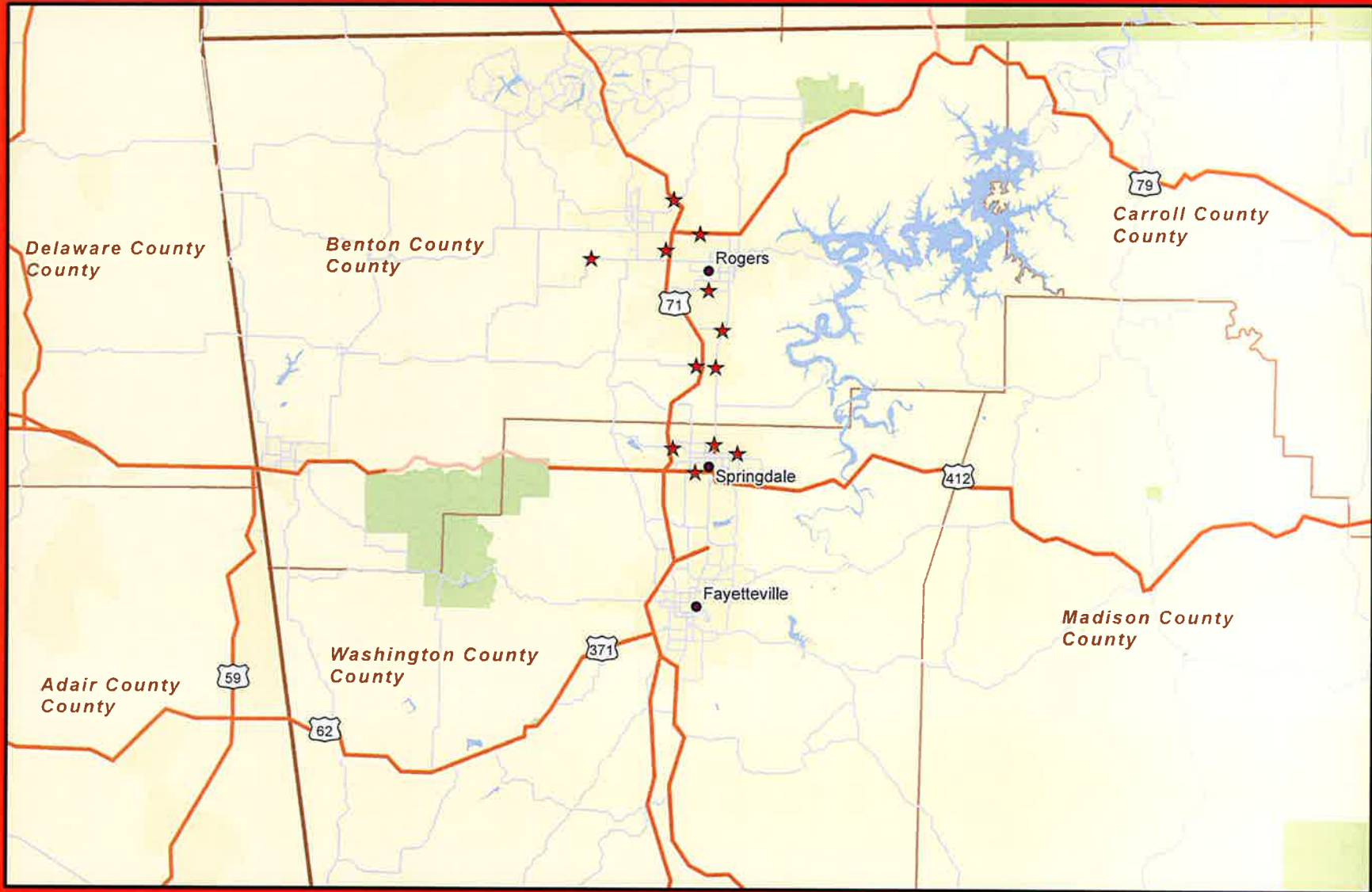
Kum & Go - Locations





Kum & Go Convenience Stores Arkansas





★ Kum & Go

Kum & Go Convenience Stores NW Arkansas



Kum & Go Team

- 2200 Sales Associates
- 800 Sales Managers
- 430 General Managers
- 30 District Supervisors
- 200 Corporate Associates

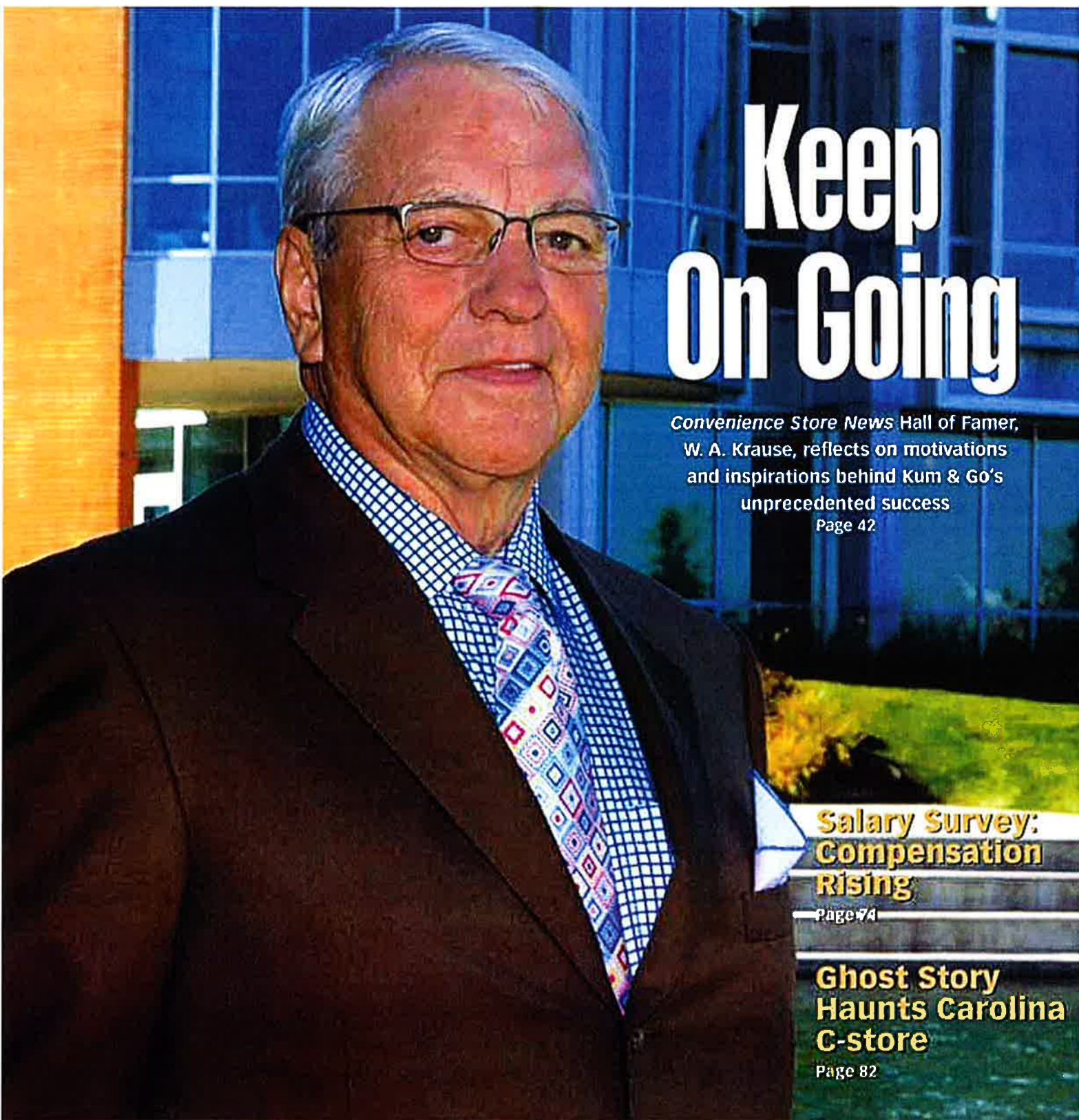
*People make the difference and the difference
is Kum & Go people. ~W.A. Krause*



Convenience Store News

KEEPING THE INDUSTRY AHEAD OF WHAT'S NEXT

December 11, 2006 Volume 42/Number 15

A large portrait of W. A. Krause, an older man with white hair and glasses, wearing a dark suit, a blue and white checkered shirt, and a colorful patterned tie. He is standing in front of a building with large windows.

Keep On Going

Convenience Store News Hall of Famer, W. A. Krause, reflects on motivations and inspirations behind Kum & Go's unprecedented success

Page 42

**Salary Survey:
Compensation
Rising**

Page 74

**Ghost Story
Haunts Carolina
C-store**

Page 82



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Kum & Go Planning 8-10 Stores in Cedar Rapids Area



Construction work continues on a Kum & Go being built near I-380 in North Liberty on Wednesday, December 2, 2009. (Crystal LoGiudice/The Gazette)

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 FACEBOOK Tweet DIGG PRINT THIS ARTICLE 4 COMMENTS Recommend

Story Created: Jul 27, 2011
at 11:59 AM CDT
(Story Updated: Jul 27, 2011 at
11:59 AM CDT)

CEDAR RAPIDS, Iowa - Kum & Go is coming to the Cedar Rapids area in a big way over the next several years.

The West Des Moines-based convenience store chain is planning eight to 10 new locations in Cedar Rapids, Hiawatha and Marion, all incorporating "green" environmentally-friendly design.

Construction is progressing on a Kum & Go at Kirkwood Boulevard and Miller Avenue SW and the Cedar Rapids City Council on Tuesday approved the sale of land to Kum & Go at 16th Avenue and Williams Boulevard SW.

Catherine Huggins, a spokeswoman for Kum & Go, said the store at Kirkwood Boulevard and Miller Avenue SW is expected to open in mid to late September and the 16th Avenue and Williams Boulevard SW location will open in 2012. Huggins said each store will employ between 10 and 15 associates.

"We're excited these sites will feature Kum & Go's new store design," Huggins said. "This new store design was made possible through many ideas and suggestions offered by our associates."

"The new store concept has a greater product offering and fresh food choices such as 'made-to-order' pizzas and bakery items."

Huggins said another distinguishing feature of Kum & Go's new store design is a strong emphasis on "going green" by incorporating sustainable features.

"The focus on sustainability starts at construction and continues through the store's daily operations," Huggins said. "These new stores will be constructed like all new Kum & Go stores with Leadership in Energy and Environmental Design (LEED) building requirements in mind."

"Materials used for the construction will be sustainable, coming from local companies whenever possible. This will include recycled steel and no volatile organic compounds in paint and adhesives."

While Huggins declined to comment on the company's plans for additional locations citing competitive reasons, Cedar Rapids City Manager Jeff Pomeranz has confirmed that Kum & Go has expansion plans for the northern end of the Cedar Rapids-Iowa City Technology Corridor.

"We met with representatives of Kum & Go not long ago and they have a plan for more than 10 stores that they want to bring to the Cedar Rapids market," Pomeranz said. "They've identified the community as a place where they want to have a significant presence."

Scott Olson of Skogman Commercial has been working with Kum & Go representatives on a number of locations. Olson said the convenience store chain is working through the planning and zoning process on locations in Cedar Rapids, Hiawatha and Marion.

Kum & Go operates a store at 3370 Seventh Ave. in Marion as well as locations in Coralville, Iowa City, North Liberty, Tiffin, Tipton, West Branch and Williamsburg. The company employs more than 4,000 associates at over 430 stores in 11 states.

The fifth-largest privately-held, company-operated convenience store chain in the United States ended 2010 with sales of more than \$2 billion.





K U M & G O # 4 1 3 F A Y E T T E V I L L E , A R K A N S A S
S H I F F L E R A S S O C I A T E S A R C H I T E C T S , P . L . C .



K U M & G O # 4 1 3 F A Y E T T E V I L L E , A R K A N S A S
S H I F F L E R A S S O C I A T E S A R C H I T E C T S , P . L . C .

**Proposed Kum & Go Site
Intersection of MLK Blvd & Hill Ave**

B. 2
Kum & Go Appeal
Page 54 of 78





ENGINEERS ■ SURVEYORS ■ PLANNERS
LANDSCAPE ARCHITECTS ■ ENVIRONMENTAL SCIENTISTS

3108 S.W. Regency Parkway, Suite 2
Bentonville, AR 72712
479.273.9472 Fax 479.273.0844

DISTRIBUTION:
RER/File
Kum & Go, L.C.

November 18, 2011

City of Fayetteville
City Council
113 W. Mountain Street
Fayetteville, AR 72701
Attn: Planning Department

**Re: Appeal of Planning Commission to deny proposed improvements
Kum & Go, #413
CEI Project No. 26728.0**

To Fayetteville City Council:

Kum & Go, L.C. respectfully request the appeal to be heard in the decision of Planning Commission's vote at the November 14th, 2011 meeting for approval in the Kum & Go Convenience Store Large Scale Development.

The property is located at the southwest corner of Martin Luther King Jr. Blvd and Hill Ave. The property is currently undeveloped and slopes significantly (Approximately 28-feet) from the north property line to the south property line.

Throughout the City approval process, revisions to the overall site layout were requested by two separate subdivision committee reviews in regards to the Large Scale Development plans.

Under the first Subdivision Committee review (October 13, 2011) and as requested by the committee; Kum & Go was to provide a shared access drive from Royal Oak and shift the Martin Luther King Jr. Blvd access east, approximately 25-feet closer to Hill Ave. This request was accepted by Kum & Go and tabled for the next subdivision committee review for approval to these changes.

Following the second Subdivision Committee review (November 3, 2011) and as requested by the committee; Kum & Go was then directed to remove the shared access drive along Royal Oak due to possible issues in traffic movements around the intersection and due to the geometric roadway configuration. As a result to the existing topography; the roadway became superelevated along the median and grades became steep along the access drive located within the site. Furthermore, the adjacent property owner's representative to Hill Place Apartments stated that they were not in favor of a shared access and would not allow for such access through the privately owned median. In addition, the committee

Providing Consolidated Land Development Services

CALIFORNIA ■ ARIZONA ■ TEXAS ■ ARKANSAS ■ MINNESOTA ■ GEORGIA ■ PENNSYLVANIA

Kum & Go, 413
Project # 26728.0

recommended a $\frac{3}{4}$ access drive with a median which would limit traffic movement to a right-in, left-in, and right-out access only from the Martin Luther King Jr. Blvd proposed access drive. This request was accepted by Kum & Go, revised, and moved forward to Planning Commission, dated November 14, 2011.

Certain restraints have been held to this site in regards to the existing grades, close proximity to the Royal Oak drive, and current City ordinances. Should the site's Finish Floor elevations be lowered to accommodate the shared access drive along Royal Oak, then the MLK Jr. Blvd access drive becomes too steep which in turn limits the access of the delivery trucks. In the case of a right-in only drive; if a potential customer traveling west along MLK Jr. Blvd. chooses not to turn onto Hill Ave. before approaching the site, then the only option left for the driver is a possible "illegal" U-turn or to carrying on further west until finding an appropriate turn-around point.

This property is an ideal location for this type of development and is welcomed by the residents of the Hill Place Apartments and is sure to be a convenience to the Fayetteville community. Several business's along the Marin Luther King Jr. Blvd corridor has in the past and recently been provided the convenience of a full access drive. For Kum and Go to be denied a full access or even a $\frac{3}{4}$ access drive will only deprive them of the rights or privileges granted to other developments within recent time.

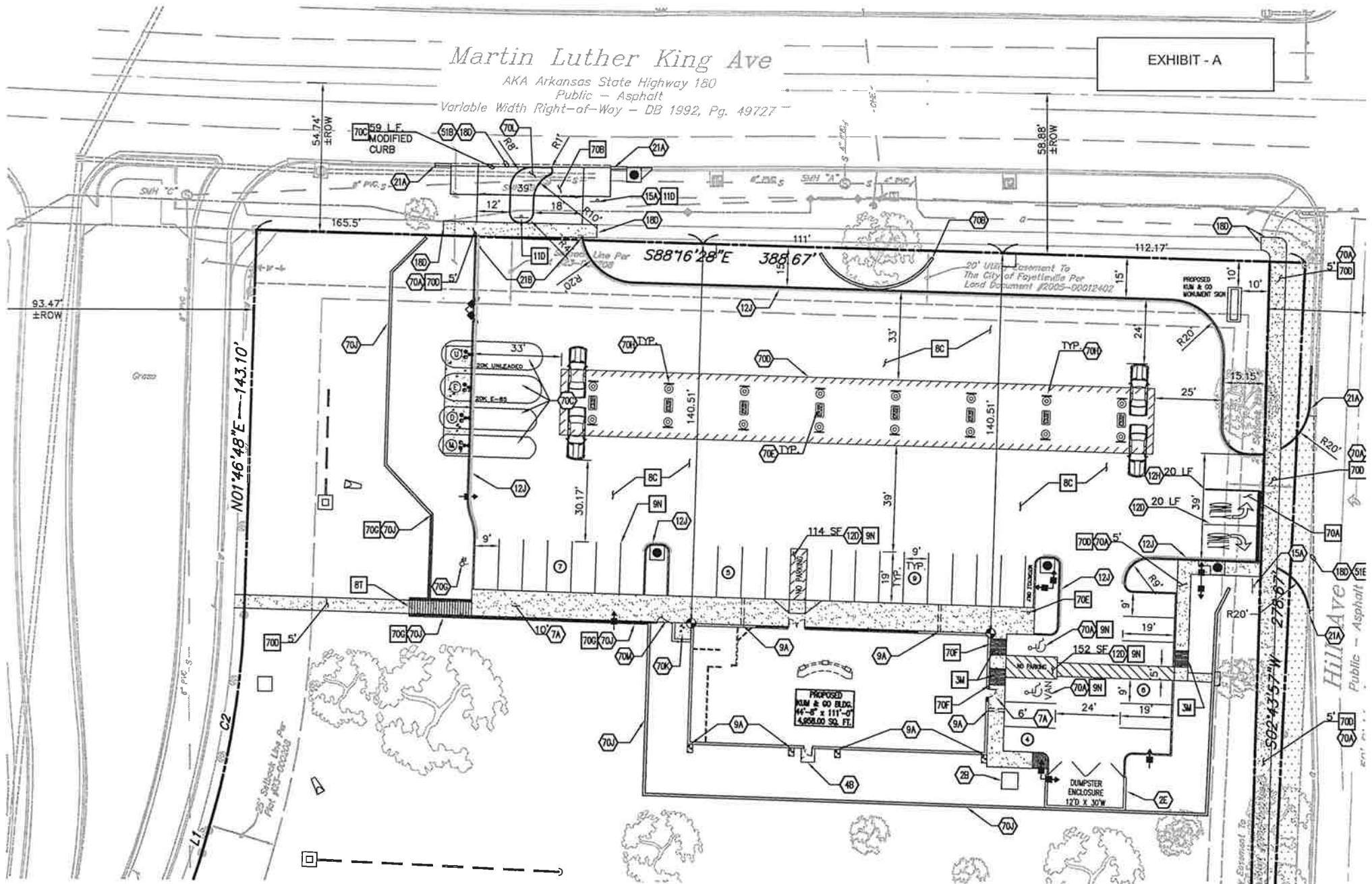
In conclusion, we believe the public health, safety, welfare, and morals would be better served if the Planning Commission's vote were reversed because the highest and best use for this property would be for what the Kum and Go stores represent and the services they provide to a community.

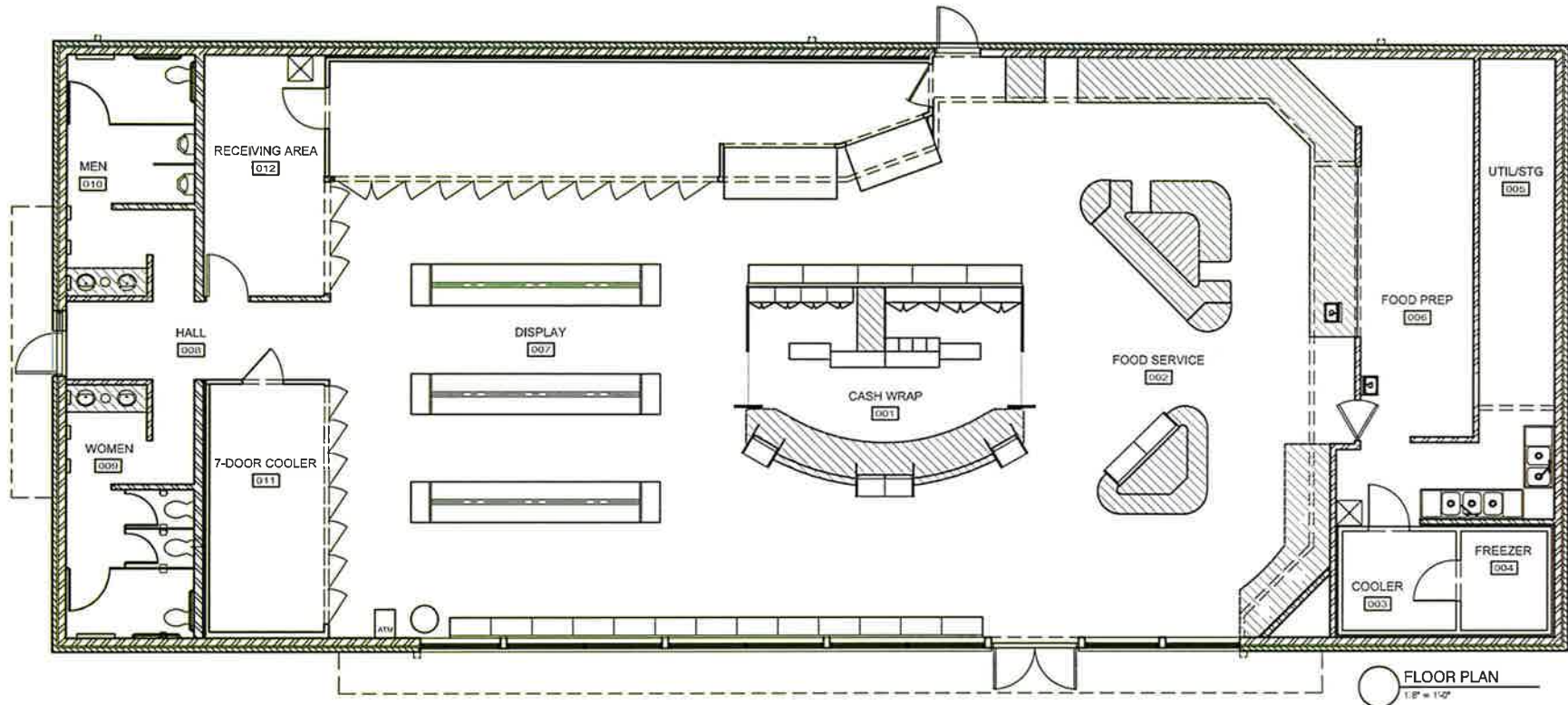
We appreciate your consideration in this matter, and if you have questions or concerns, please do not hesitate to contact me.

Respectfully submitted,



R. Erin Rushing, RLA
Department Leader
CEI Engineering Associates, Inc.





K U M & G O S T O R E P R O T O T Y P E - 4 9 5 8 S Q U A R E F E E T

S H I F F L E R A S S O C I A T E S A R C H I T E C T S , P . L . C .

Going Green

Since 1997, Kum & Go has been a leader in distributing biofuel to customers.



- In December, 2009, Kum & Go became the first convenience store in Iowa to receive LEED certifications for two stores
- The LEED Green Building Rating System encourages global adoption of sustainable green building and development practices





FACT SHEET

Kum & Go's New Eco-Friendly Store Design

- In September 2010, Kum & Go President & CEO Kyle J. Krause announced a bold new store design for his convenience store chain. The new eco-friendly concept will be built throughout the company's geographic footprint. According to Mr. Krause, Kum & Go's new store design was developed with input from Kum & Go associates and includes a variety of sustainable features.
- Mr. Krause emphasized this new eco-friendly store design reinforces Kum & Go's position as a leader on sustainability. "We have a duty to be environmentally responsible. It is a serious responsibility that continually benefits our customers and the communities in which we do business," said Krause.
- The new store concept has a greater product selection and fresh food choices such as "made-to-order" pizzas, deli sandwiches, and baked goods.
- Another distinguishing feature of Kum & Go's new store design is the strong emphasis on "going green" by incorporating sustainable features. The focus on sustainability starts at construction and continues through the store's daily operations.
- The new store design is constructed like all new Kum & Go stores with Leadership in Energy and Environmental Design (LEED) building requirements in mind. Materials used for construction will be sustainable, coming from local companies whenever possible. This also includes recycled steel and no Volatile Organic Compounds (VOCs) in paint and adhesives.
- Kum & Go's new store design is approximately 5,000 square feet of space. As a convenience to customers, a larger parking area is created in front of the store. There are two entrances to improve traffic flow within the store.
- Typically there will be more fuel dispensers at these stores and each store will have improved accessibility to the fuel pumps.
- In addition, a feature new to Kum & Go stores is Solatube skylights. The Solatube skylights provide natural light that decrease the energy used in overhead lighting. LED lights will be used in exterior lighting to reduce energy consumption.
- Advanced refrigeration systems will be installed, increasing energy efficiency through improved technology and LED lighting in the coolers.
- The entire Kum & Go store will be on an automated system that will regulate energy use and lighting systems in order to create a more energy efficient store.

#

Kum & Go Appeal

*Handed out at the City Council Meeting
12-20-11*

VEHICULAR TRAFFIC & SITE DISTANCE SAFETY STUDY
NOVEMBER 2011

PROPOSED KUM AND GO CONVENIENCE STORE #413
INTERSECTION OF MARTIN LUTHER KING BLVD & HILL STREET
FAYETTEVILLE, AR

CLIENT: CEI ENGINEERING ASSOCIATES, INC.



11/23/11

PREPARED BY:



216 SOUTH MAIN STREET
PO BOX 1538
Joplin, MO 64802
PHONE: 417-624-2333 FAX: 417-624-2441

SAE PROJECT No.11151

1.0 Introduction & Objective:

Kum and Go has proposed to locate a convenience store at the southwest corner of the intersection of Martin Luther King Boulevard and Hill Street. CEI Engineering has designed the site improvements and has engaged in the review process with the City of Fayetteville. The City of Fayetteville planning commission and staff have expressed concern about the proposed access on Martin Luther King Boulevard. Small Arrow Engineering (SAE) is in receipt of the Planning Division Correspondence dated November 1, 2011.

The objective of this study is to evaluate the existing traffic and site distance issues as requested by the City of Fayetteville and offer solution that will provide safe access and site distance for the proposed Kum and Go convenience store.

2.0 Description of Existing Conditions:

The proposed convenience store is sited on the southwest corner of the intersection of Martin Luther King Boulevard and Hill Street. Martin Luther King is a five lane arterial street with two east and west bound lanes and a center two way directional turning lane. Sidewalks are present along both sides. The street appears to have excellent stormwater drainage. The Annual Average Daily Traffic (AADT) is 23000 Vehicles Per Day (VPD) as provided by the Arkansas Highway and Transportation Department (AHTD) for the year 2010. The posted speed limit is 35 MPH. Street lighting is present. Horizontal alignment appears to be sufficient with no curves or shifts in the road alignment. Vertical alignment was determined to be within the stopping sight distance of 250 feet for as required by AASHTO "Green Book" geometric guidelines for 35 MPH design speed. A report was prepared utilizing data from Google Earth and analyzing it with AutoCAD Civil 3D. See Appendix A for report and attached drawing plan and profile. Several unused curb cuts and drive entrances are located along the street. It is assumed these are from removed structures or future planned entrances before access management regulations were adopted.

Hill Street is a two lane collector street with intermittent curb and grass shoulder. Sidewalks are present along the west side with a small section on the east side near the intersection. The street appears to have adequate stormwater drainage. The AADT is 2600 VPD. Street lighting is present.

The intersection of Martin Luther King Boulevard and Hill Street is a four leg signalized intersection. It appears to be a fully actuated signal using video detection. The traffic signal is of standard steel mast arm construction. The controller cabinet is located on the northeast corner. Each leg except the north leg of the intersection has a dedicated left turn lane with approximately 150 feet of storage. The north leg is a two lane section without a dedicated turn lane. All legs except the south leg of the intersection have two signal heads. All signal heads are three section heads thus allowing for only permissive left turns. The south leg of Hill Street does have a signal

head that allows for protected left turns. The mast arms on the east and west legs do not appear to extend over the dedicated left turn lanes. The south leg of the intersection is controlled by three signal heads. Two are three section heads and one is a five section head with a protected- permissive left turn. Pedestrian crosswalks and pedestrian signal actuated by push button are present on all legs of the intersection. It appears that the intersection is interconnected with wireless antenna mounted on the northeast signal pole. Signal preemption for emergency or public transportation is not evident. Street lighting is present at the intersection. A bus stop is located on the northeast corner.

The area adjacent to the signal is a mixture of commercial and high density housing. Commercial structures are located or proposed on all four corners. Major trip generators in the area are the University of Arkansas with 22,000 students plus staff and the Hill Place "Smart Student Living". Hill Place is a mix of apartments with between one and four rooms. There are a total of 840 bedrooms in the complex. Access to Hill Place is provided by an entrance off Hill Street as well as Martin Luther King Boulevard. The latter entrance has a right out exit and a left and right movement entrance.

Field observations of the intersection and site were performed on Friday, November 18, 2011 between the hours of 4:30 PM and 6:30 PM. Queues on the left turn lane for the west leg of the intersection on Martin Luther King Boulevard were no more than two cars at any time. All other legs experienced a maximum of three cars. Queues on the thru movement on the west leg backed up as far as the proposed driveway for the Kum and Go convenience store. The signal appeared to be on a 90 second cycle. It appears that excessive green time was given to the north and south leg; however this may be attributed to the signal interconnect system.



Figure 1- View of proposed site and surrounding area

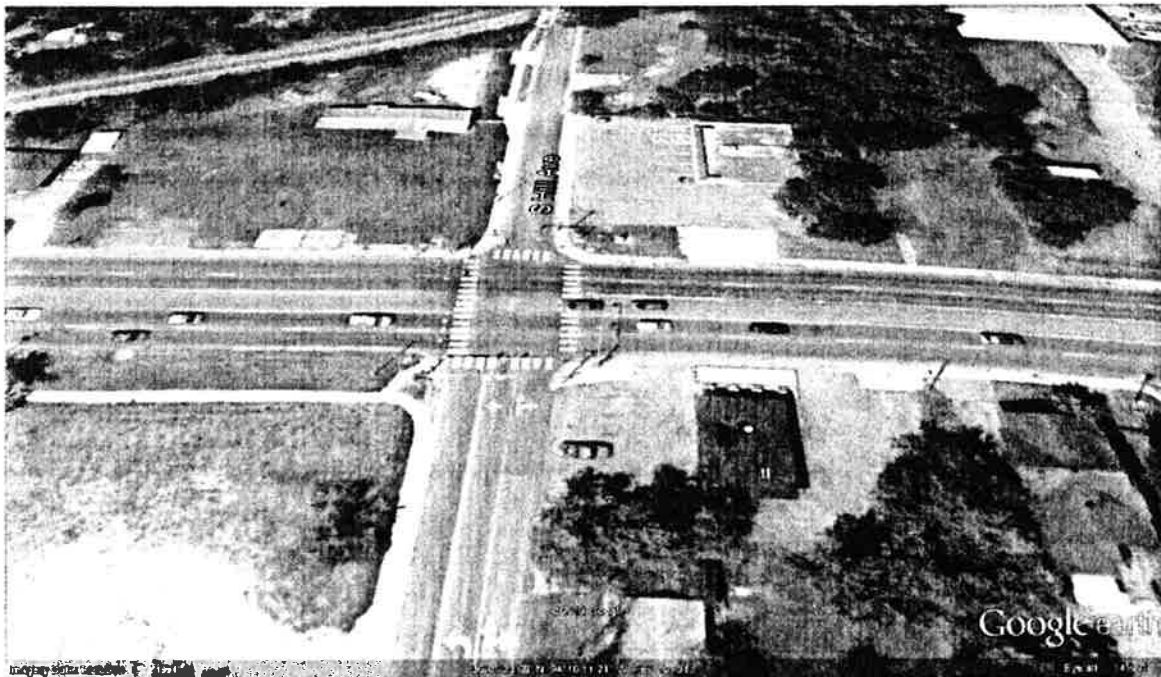


Figure 2- View existing intersection of Martin Luther King Avenue and Hill Street

3.0 Proposed Improvement Impacts:

Kum and Go proposes to build a 5000 square foot convenience store with 8 fuel pumps offering 16 fueling positions. SAE has performed traffic impact studies for a proposed Kum & Go Convenience store of similar size and scope in the City of Fayetteville (Fulbright Expressway and Wedington Drive submitted August 2011). Based on these studies the development should generate 3,398 trips on an average weekday including new and pass by trips. Fifty percent of trips should will be pass by and the remainder destination. Peak hour trips should be approximately 125 vehicles entering and exiting (250 total). Of these ten percent should access the store directly from Hill Street leaving 225 trips movements on and off Martin Luther King Avenue. The observed traffic split is approximately 60 percent east bound and 40 percent westbound (135 trips east bound and 90 trips west bound).

The proposed drive entrance off of Martin Luther King Boulevard allows for a left and right movement in and a right movement out. It is our understanding from the comments that the city is specifically concerned about customers travelling westbound wanting to turn left into the entrance off of Martin Luther King Boulevard conflicting with eastbound traffic queued to turn left at the intersection. CEI has analyzed the traffic flow for westbound delivery vehicles and determined that they would need a left in on Martin Luther King. New customers or campus visitors traveling westbound may use the left in on Martin Luther King drive entrance, because there is not a protected left turn at the signalized intersection. They also have the potential to bypass the store if they miss the left turn at Hill Street. It is assumed regular customers traveling westbound would attempt to use Hill Street to access the site, but would experience delay due to the absence of a protected left turn movement.

As stated above there are 90 trips generated during the peak hour. Assuming the number exiting is leaving during the peak hour 45 movements is expected to enter the store. This equates to 0.75 vehicles per minute arriving. Using a simplified queuing approach assuming a maximum delay of the cycle time of ninety seconds this equates to an expected queue of 1.125 vehicles. Allowing for uneven arrival time this could be rounded up to 2 vehicles queued due to the development. Assuming that delivery vehicles would not arrive during the peak hour forty feet of the center lane would be occupied. Depending on driver behavior fifty to one hundred feet could be used to transition to the center lane giving a total of one hundred forty feet during a peak hour traffic flow. Maximum observed queue rate was two eastbound vehicles turning north. It is not likely that vehicles wanting to go northbound would use Martin Luther King Boulevard since Hill Street would make a more obvious choice.

It is our opinion that given these above stated conditions, an unskilled driver could still potentially conflict with an eastbound left movement as stated in the City of Fayetteville Planning Commission Report.

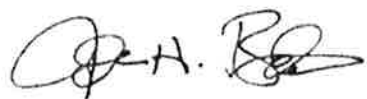
4.0 Recommendations and Conclusions:

As stated in the existing conditions the traffic signal does not have protected left turn movements on Martin Luther King Boulevard. The signals are also not with generally accepted standards because there is not one traffic head per lane. It is recommended that the developer add five section signal heads. It appears that the mast arms are not long enough to center the proposed signal heads on the left turn lanes and will need to be replaced. The upgraded signal would encourage passenger vehicles to use the Hill Street entrance while still allowing delivery vehicles to use the westbound left turn entrance on Martin Luther King Boulevard. It will also shorten queue lengths for the eastbound left turn movement. Delivery drivers should be instructed to arrive in off peak hours.

Crosshatching of the center median lane or a mountable island in the vicinity of the Martin Luther King Boulevard entrance may also be investigated to discourage non-delivery drivers from making a left turn. See Appendix B and attached diagram. We feel that the combination of signal modifications at MLK and Hill Street combined with crosshatching of the center turn lane will allow for use of the left-in entrance on MLK without creating unsafe or excessive turning conflicts.

We trust that this comprehensive analysis of the traffic impact for this proposed development addresses all questions and concerns for the project. Please advise us should you require additional information or have further questions about this matter.

Sincerely,



John H. Bolte, P.E.

Principal

Small Arrow Engineering

SMALL ARROW
ENGINEERING, LLC



Appendix A (PART 1) – AutoCad Site Distance Check

Note that part 1 utilized Google Earth Data. The exact accuracy of this data is not been established to any vertical control. This represents a worst case scenario and sight distance is likely to be better than reported. The highlighted portions did not meet the sight distance using the provided data. Surveyed data was then used in part to 2 establish sight distance A drawing is attached this report showing plan and profile.

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Appendix A (PART 2) – AutoCad Site Distance Check

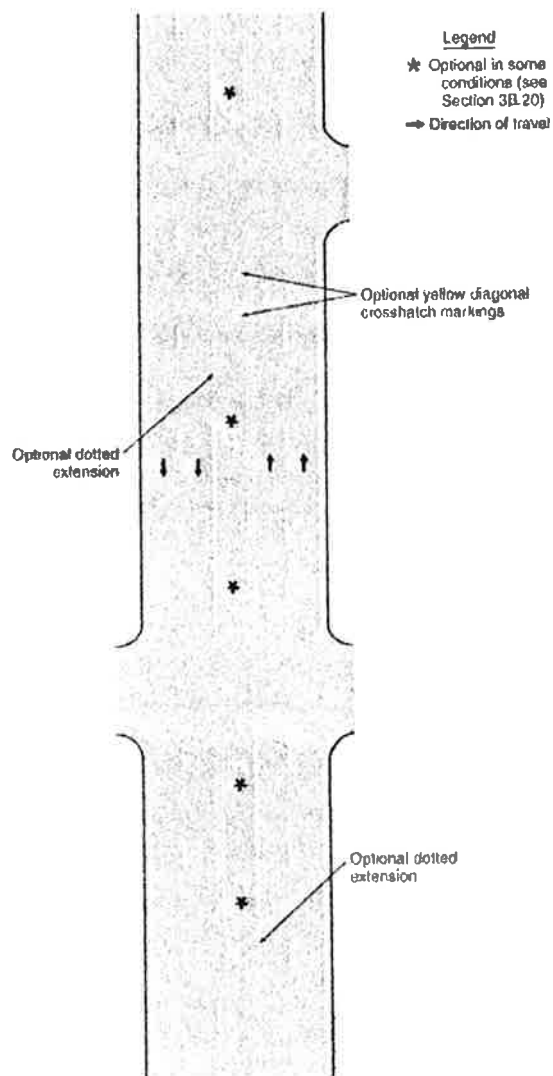
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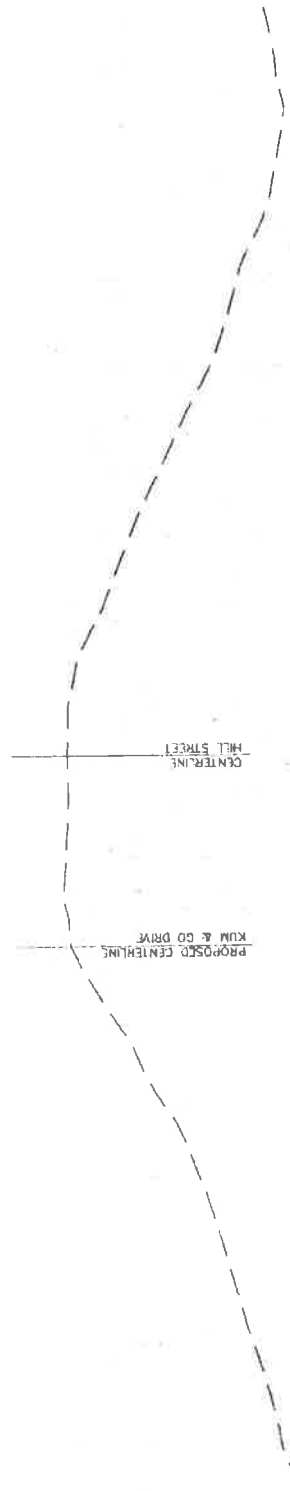
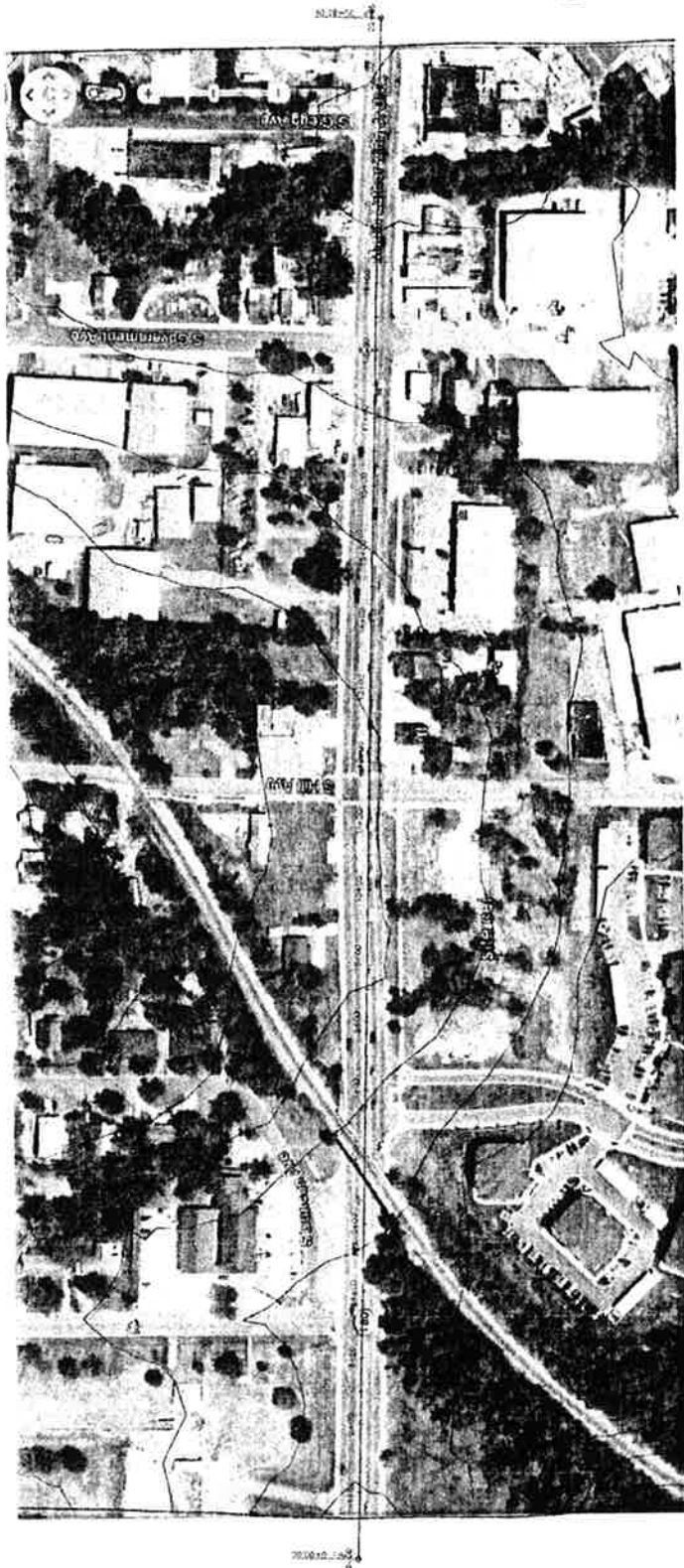
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Site distance is checked from Google Earth Plan and Profile Station 7+25 to 9+45
Approximate station equation is Google Earth 0+00 = Survey data 11+50 West to East

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APPENDIX B -2009 MUTCD Edition Part 3 Figure 3B-2. Examples of Four-or-More Lane, Two-Way Marking Applications



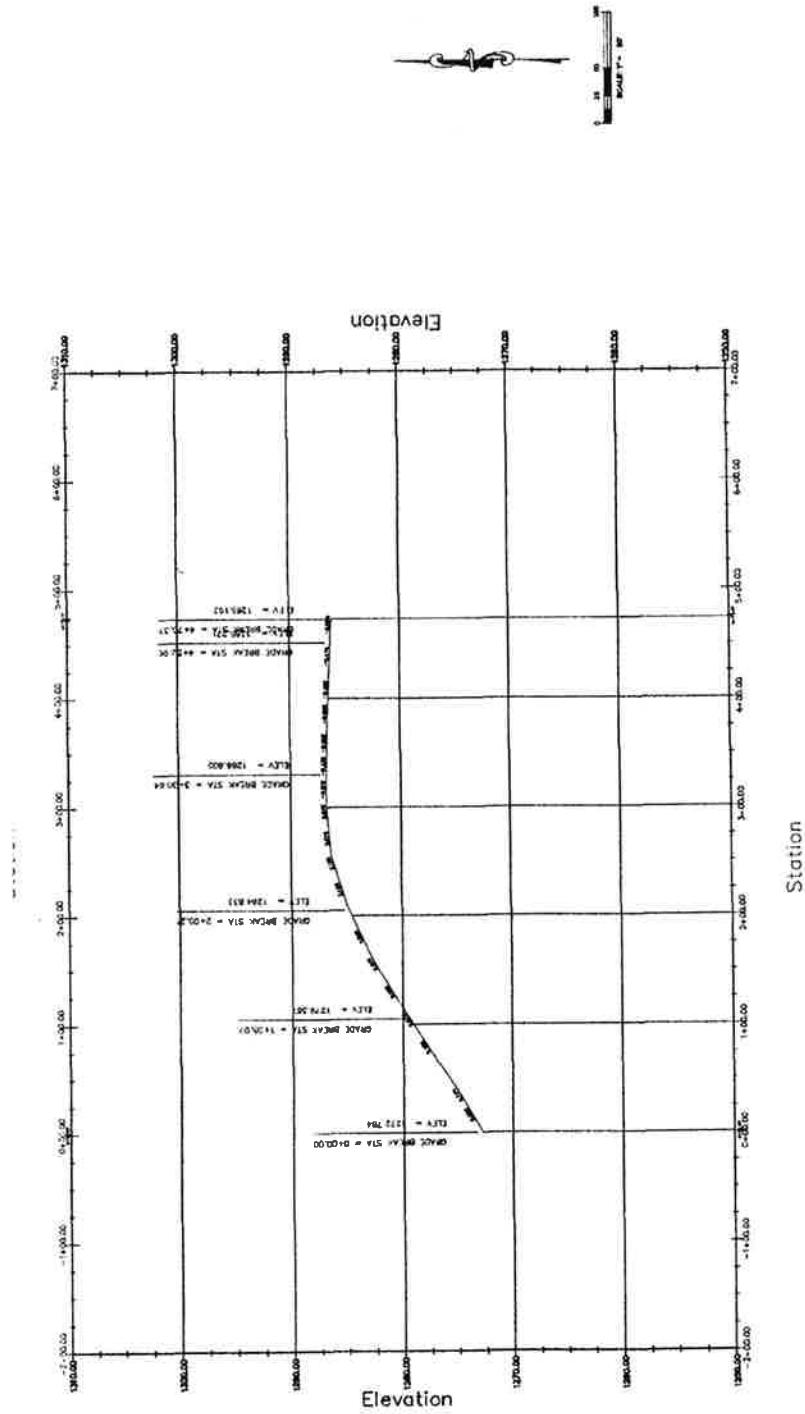


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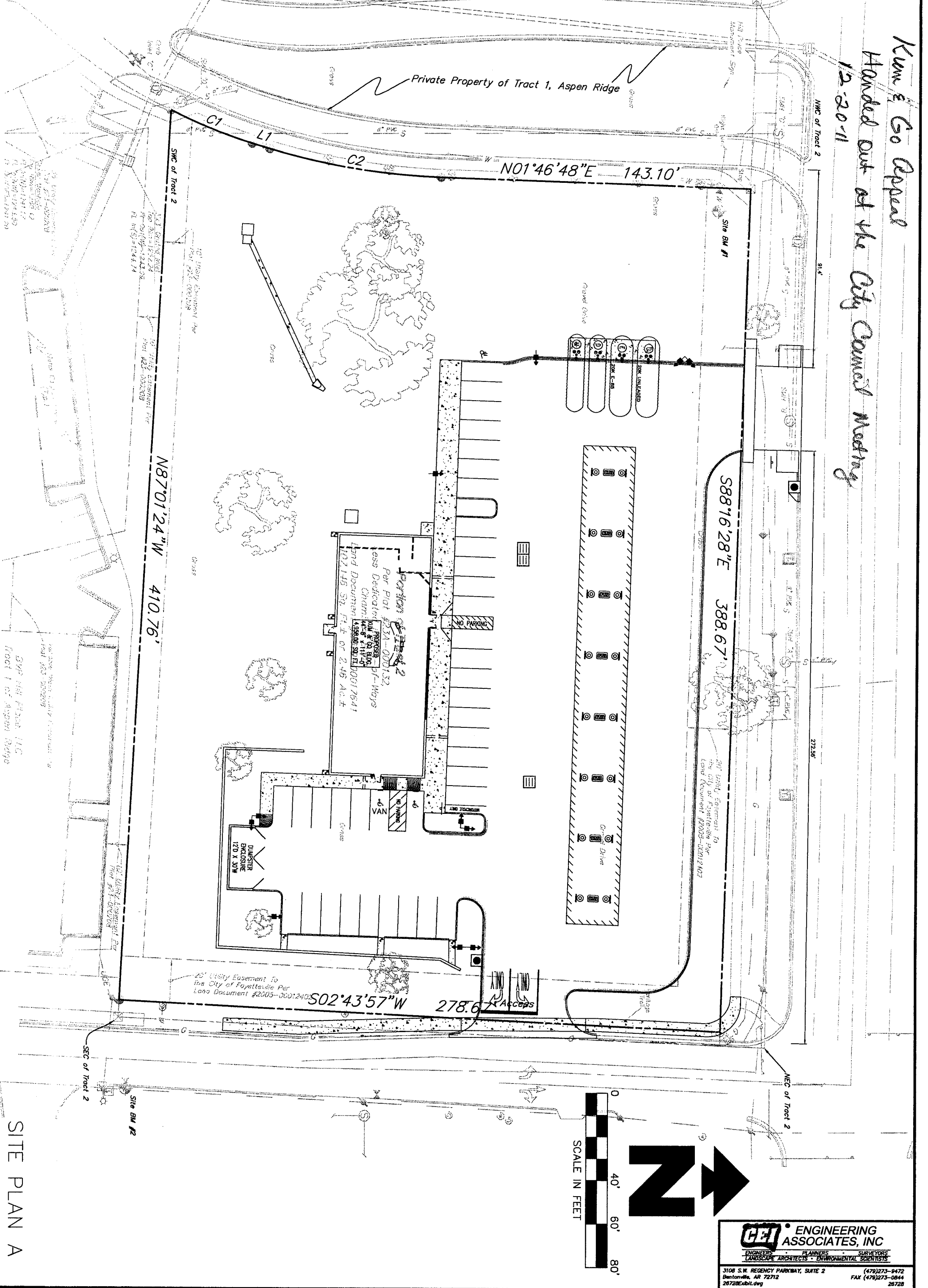
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1248.00	5+00	1248.00	20+00
1248.00	6+00	1248.00	19+00
1248.00	7+00	1248.00	18+00
1248.00	8+00	1248.00	17+00
1248.00	9+00	1248.00	16+00
1248.00	10+00	1248.00	15+00
1248.00	11+00	1248.00	14+00
1248.00	12+00	1248.00	13+00
1248.00	13+00	1248.00	12+00
1248.00	14+00	1248.00	11+00
1248.00	15+00	1248.00	10+00
1248.00	16+00	1248.00	9+00
1248.00	17+00	1248.00	8+00
1248.00	18+00	1248.00	7+00
1248.00	19+00	1248.00	6+00
1248.00	20+00	1248.00	5+00
1248.00	21+00	1248.00	4+00
1248.00	22+00	1248.00	3+00
1248.00	23+00	1248.00	2+00
1248.00	24+00	1248.00	1+00
1248.00	25+00	1248.00	0+00

24" x 36" SHEET
HORIZONTAL 1" = 60'

PLAN AND PROFILE FOR MARTIN LUTHER KING BOULEVARD FROM BUCHANAN AVENUE TO GREGG AVENUE

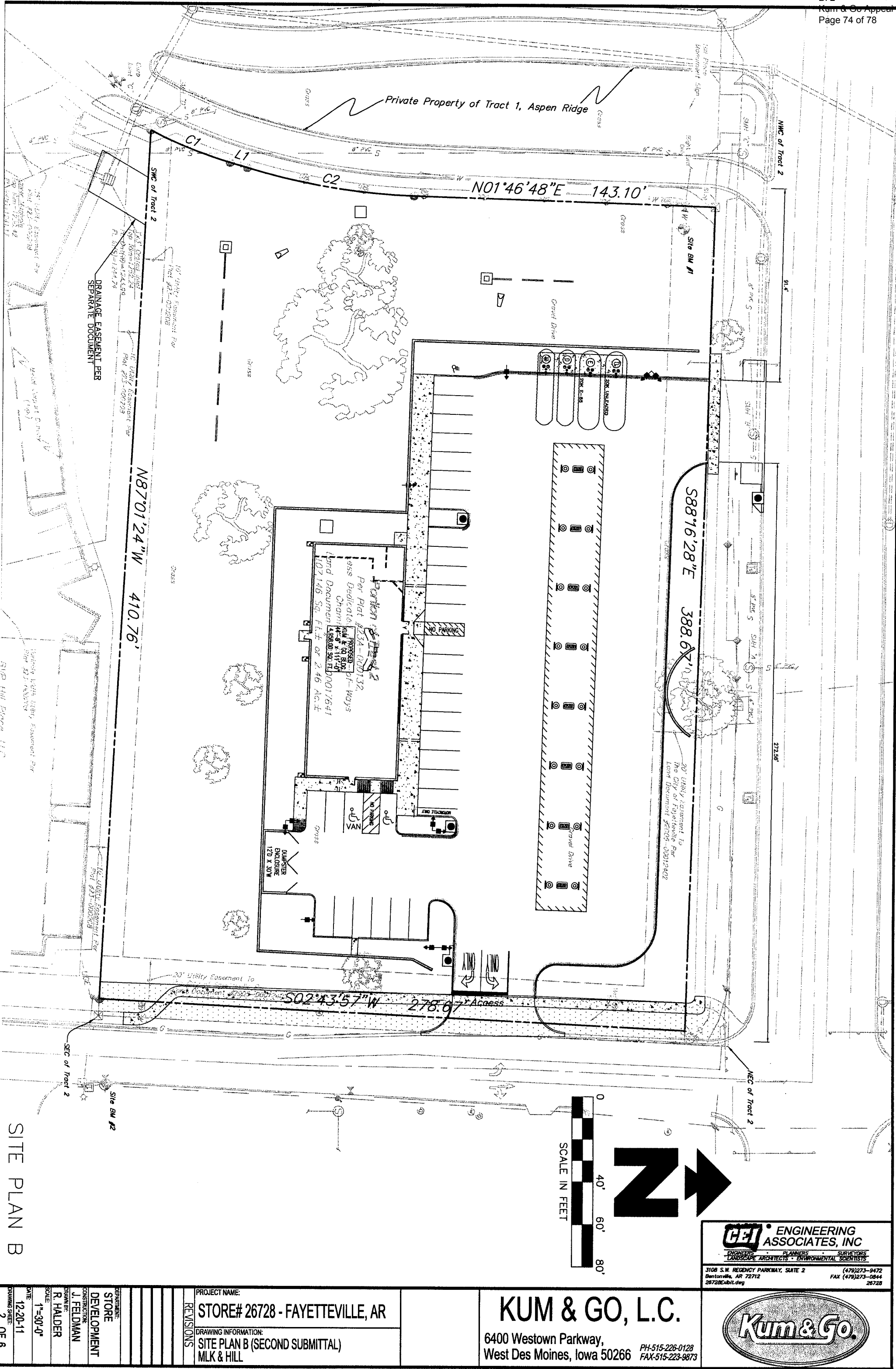


PROFILE VIEW FOR MARTIN LUTHER KING STATION 0+00 = GOOGLE EARTH PLAN AND PROFILE STATION 7+25



SITE PLAN A

PROJECT NAME: STORE# 26728 - FAYETTEVILLE, AR		KUM & GO, L.C. 6400 Westown Parkway, West Des Moines, Iowa 50266 PH-515-226-0128 FAX-515-223-9873	
DRAWING INFORMATION: SITE PLAN A (FIRST SUBMITTAL) MLK & HILL			
REVISIONS:		ENGINEERING ASSOCIATES, INC. ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS ENVIRONMENTAL SCIENTISTS 3108 S.W. REGENCY PARKWAY, SUITE 2 BENTONVILLE, AR 72712 26728Exhibit.dwg (479)273-9472 FAX (479)273-0844 26728	
DATE: 12-20-11	SCALE: 1"=30'-0"	DRAWN BY: R. HALDER	CONSTRUCTION: J. FELDMAN
DEVELOPMENT: STORE		ENGINEER: J. FELDMAN	
1 OF 6			



SITE PLAN B

DRAWING SHEET: 2 OF 6	DATE: 12-20-11	SCALE: 1"=30'-0"	DESIGNED BY: R. HALDER	CHECKED BY: J. FELDMAN	CONSTRUCTION: J. FELDMAN	DEPARTMENT: STORE DEVELOPMENT	PROJECT NAME: STORE# 26728 - FAYETTEVILLE, AR	DRAWING INFORMATION: SITE PLAN B (SECOND SUBMITTAL) MLK & HILL	REVISIONS:

KUM & GO, L.C.

6400 Westown Parkway,
West Des Moines, Iowa 50266

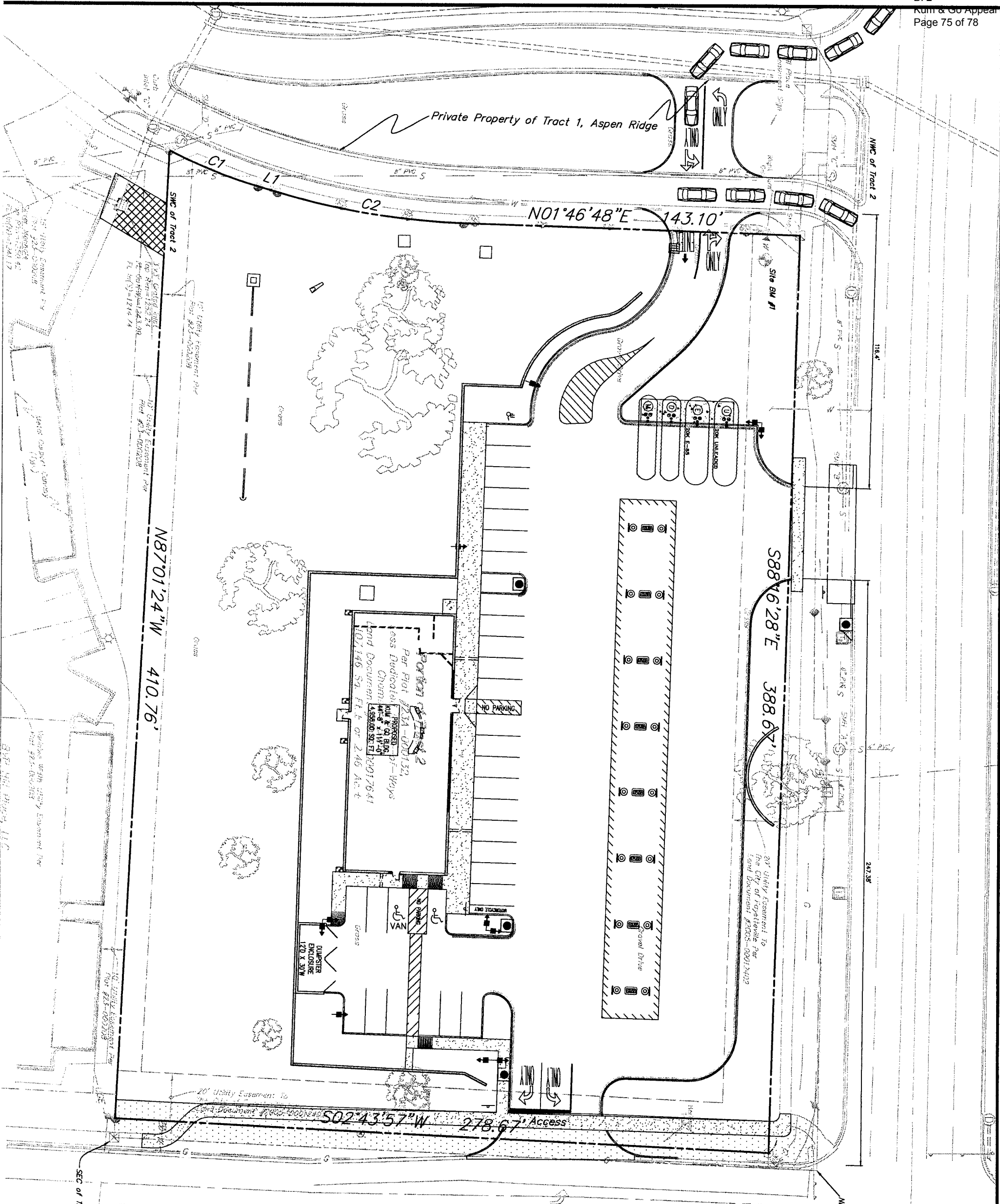
PH-515-226-0128
FAX-515-223-9873

CEI ENGINEERING ASSOCIATES, INC.

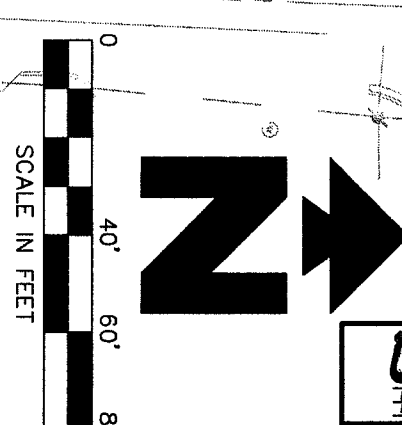
ENGINEERS PLANNERS SURVEYORS
LANDSCAPE ARCHITECTS ENVIRONMENTAL SCIENTISTS

3108 S.W. REGENCY PARKWAY, SUITE 2
BARTONVILLE, AR 72712
26728Exhibit.dwg

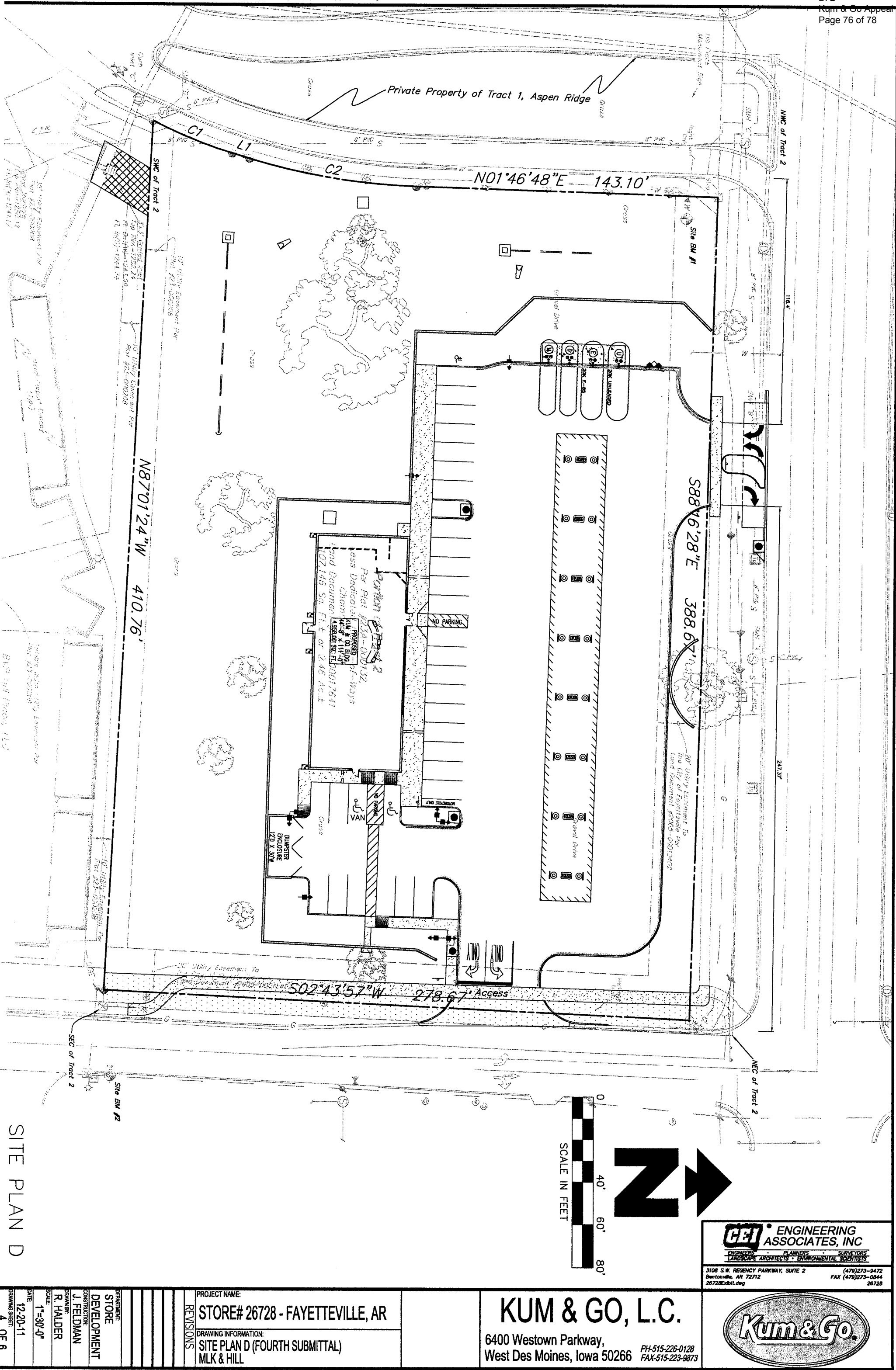
(479)273-9472
FAX (479)273-0844
26728

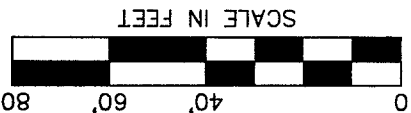
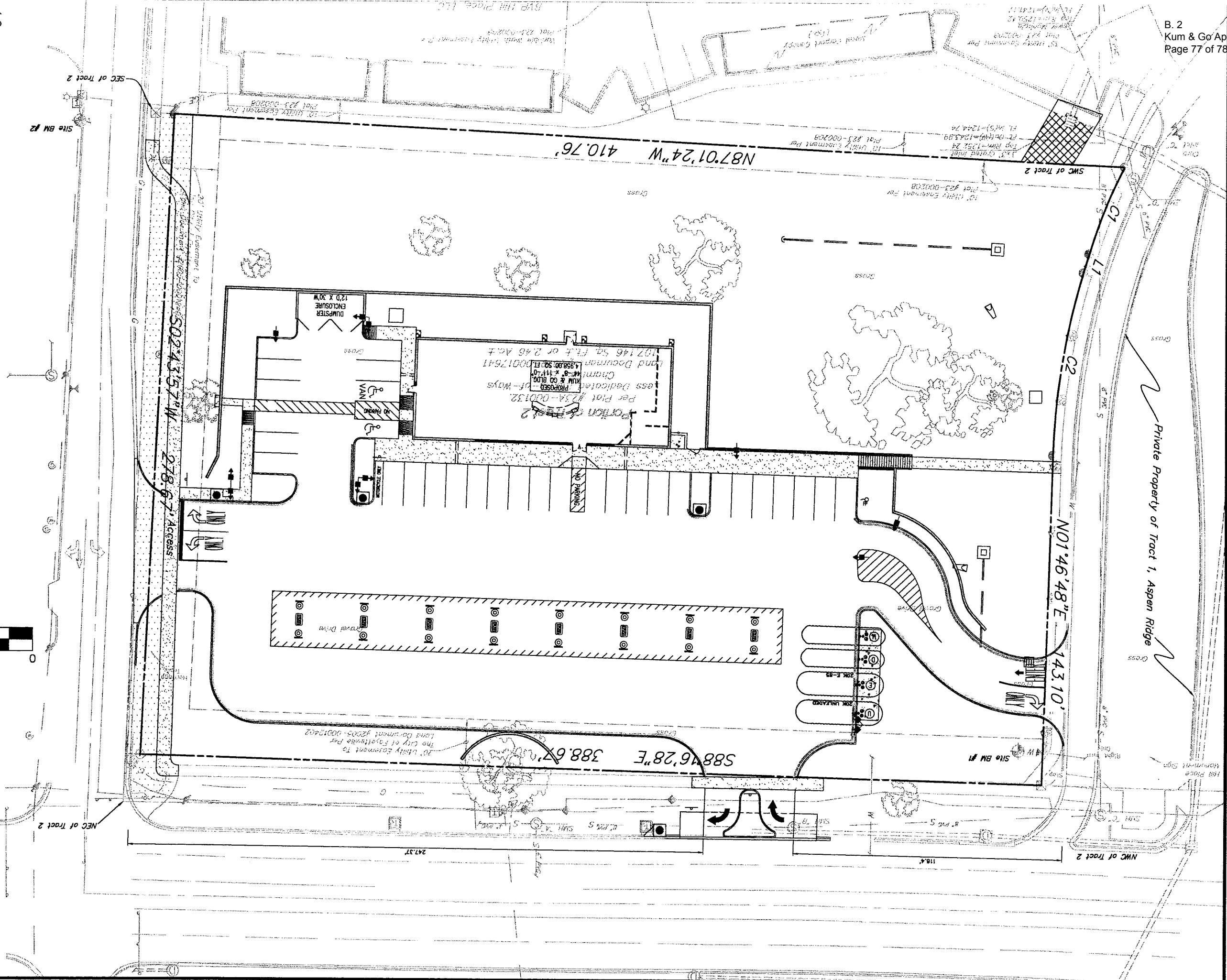


SITE PLAN C



DEPARTMENT: STORE DEVELOPMENT CONSTRUCTOR: J. FELDMAN DRAWN BY: R. HALDER SCALE: 1"=30'-0" DATE: 12-20-11 DRAWING SHEET: 3 OF 6	PROJECT NAME: STORE# 26728 - FAYETTEVILLE, AR DRAWING INFORMATION: SITE PLAN C (THIRD SUBMITTAL) MLK & HILL	KUM & GO, L.C. 6400 Westown Parkway, West Des Moines, Iowa 50266 PH-515-226-0128 FAX-515-223-9873	ENGINEERING ASSOCIATES, INC. ENGINEERS PLANNERS SURVEYORS LANDSCAPE ARCHITECTS ENVIRONMENTAL SCIENTISTS 3108 S.W. REGENCY PARKWAY, SUITE 2 BENTONVILLE, AR 72712 26728Exhibit.dwg (479)273-8472 FAX (479)273-0844 26728 Kum & Go.
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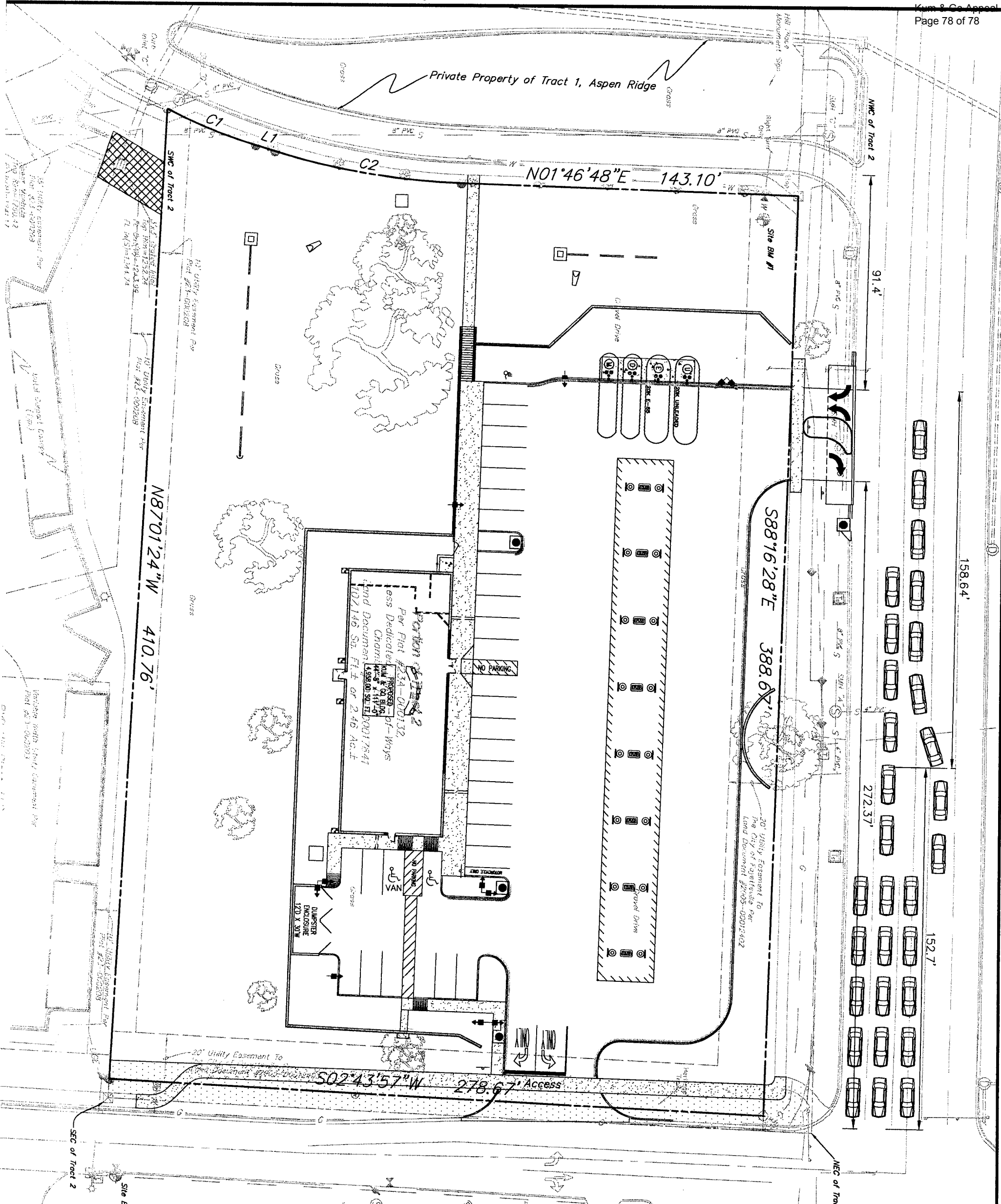


PROJECT NAME:
STORE# 26728 - FAYETTEVILLE, AR
SITE PLAN E (APPROVED BY PLANNING COMMISSION)
DRAWING INFORMATION:
MILK & HILL

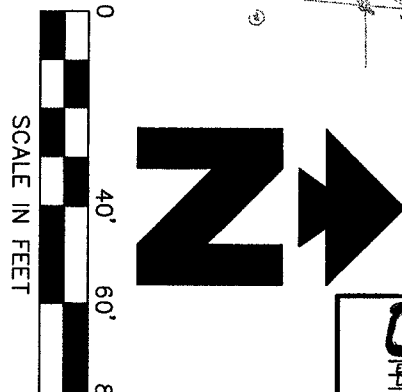
KUM & GO, L.C.
6400 Westown Parkway,
West Des Moines, Iowa 50266
PH: 515-226-0728
FAX: 515-223-9873



DEPARTMENT:
STORE
DEVELOPMENT
CONSTRUCTION:
J. FELDMAN
DRAWN BY:
R. HALDER
SCALE:
1"=30'-0"
DATE:
12-20-11
DRAWING SHEET:
5 OF 6



SITE PLAN F



DRAWING SHEET: 6 OF 6										DATE: 12-20-11										SCALE: 1"=30'-0"										DRAWN BY: R. HALDER										CHECKED BY: J. FELDMAN										CONSTRUCTION:										DEPARTMENT: STORE DEVELOPMENT										REVISIONS:										PROJECT NAME: STORE# 26728 - FAYETTEVILLE, AR										DRAWING INFORMATION: SITE PLAN F (KUM & GO REQUEST) MLK & HILL										KUM & GO, L.C. 6400 Westown Parkway, West Des Moines, Iowa 50266 PH-515-226-0128 FAX-515-223-9873																				26728Exhibit.dwg										26728									
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City of Fayetteville Staff Review Form

C. 1
Asphalt Materials
Page 1 of 4City Council Agenda Items
and
Contracts, Leases or Agreements

1/17/2012

City Council Meeting Date
Agenda Items Only

John Nelson

Submitted By

Transportation

Division

Transportation Services

Department

Action Required:

An ordinance waiving the requirements of formal competitive bidding during calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.

_____	\$ 1,865,000.00	In-House Pavement Improvements
Cost of this request	Category / Project Budget	Program Category / Project Name
4470.9470.5417.00	\$ -	Transportation Improvements
Account Number	Funds Used to Date	Program / Project Category Name
02052.1	\$ 1,865,000.00	Sales Tax Capital Improvements
Project Number	Remaining Balance	Fund Name

Budgeted Item

☒

Budget Adjustment Attached

Terry Gully
Department Director

12-29-11
Date

Previous Ordinance or Resolution # 5301

J. B. Kelly
City Attorney

1-3-12
Date

Original Contract Date:

Original Contract Number:

Paul A. Bueh
Finance and Internal Services Director

1-3-2012
Date

Received in City
Clerk's Office 12-29-11 P03:14 RCVD

Don M...
Chief of Staff

1-4-2012
Date

Received in
Mayor's Office

Donnell J...
Mayor

1/4/12
Date



Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor and City Council

Thru: Don Marr, Chief of Staff
Terry Gulley, Transportation Services Department Director *TGG*

From: John Nelson, Management Accounting Coordinator

Date: December 15, 2011

Subject: Bid Waiver for Asphalt Materials

PROPOSAL:

Staff proposes an ordinance waiving the requirements of formal competitive bidding during calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.

RECOMMENDATION:

Due to the fluctuations in the price of crude oil local asphalt suppliers cannot feasibly guarantee a fixed price over a twelve month period.

Staff recommends bidding asphalt materials on a quarterly basis without the need for further approval of the City Council, awarding the respective low bidder, and allowing for price adjustment requests based on the current bid language.

BUDGET IMPACT:

Funds for the acquisition of asphalt materials are budgeted in the In-House Pavement Improvements and Trail Development capital projects.

ORDINANCE NO. _____

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING DURING CALENDAR YEAR 2012 FOR THE PURCHASE OF ASPHALT MATERIALS FOR USE BY THE TRANSPORTATION DIVISION

WHEREAS, the crude oil market continues to experience extreme price volatility; and

WHEREAS, this volatility has greatly increased the price of asphalt, making normal competitive bidding procedures unworkable, impractical and not feasible; and

WHEREAS, the Transportation Division proposes to solicit bids on a quarterly basis without the need for further approval of the City Council through calendar year 2012.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where annual competitive bidding is not feasible or practical, and therefore through calendar year 2012, waives the requirements of formal competitive bidding for the purchase of asphalt materials, allowing the Transportation Division to solicit bids on a quarterly basis without the need for further approval of the City Council.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

AGENDA REQUEST

12-30-11 P04:03 RCVD

FOR: COUNCIL MEETING OF JANUARY 17, 2012

FROM:

KIT WILLIAMS, CITY ATTORNEY

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

An Ordinance To Enact Into The Code Of Fayetteville §10.18 Authority And To Amend §150.03 Authority In The Unified Development Code

APPROVED FOR AGENDA:


Development Services Director

01-03-2012
Date


City Attorney

12-30-2011
Date



12/30/11


Chief of Staff

1-4-2012
Date


Mayor

1/4/12
Date

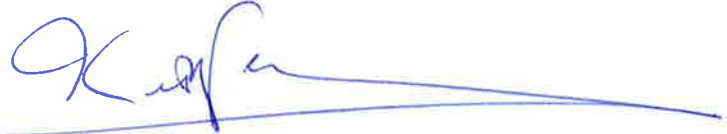
Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

CC: Jeremy Pate, Development Services Director
Andrew Garner, Senior Planner – Current Planning

FROM: Kit Williams, City Attorney



DATE: December 30, 2011

RE: Adoption of Authority Section to ensure the Fayetteville Code is supported by all possible legal authority

To ensure that all sections and regulations of the Code of Fayetteville (to include the Unified Development Code) are supported by all the possible constitutional and statutory authority available to city councils, I recommend that the City Council enact a new **Authority** section within both the Fayetteville Code's and the Unified Development Code's **General Provisions** Chapters. Although the City has not faced a challenge that City Council's power is limited to only a cited statutory authority, I believe we should prevent any such possibility by enacting the broadest statement of constitutional and statutory power for the City in the General Provisions of both the Code of Fayetteville and the Unified Development Code.

Such an enactment now is especially timely as the Arkansas Legislature this year amended the **Powers Over Municipal Affairs** subchapter of the **Government of Cities of the First Class** Chapter of the **Local Government** title. This subchapter has been referred to as the "Home Rule" statute, but has been of limited use because of judicial limitations imposed by the Arkansas Supreme Court known as "Dillon's Rule." Act 1187 of 2011 expressly rejected this limitation by adding subsection (b) to A.C.A. §14-43-602 which reads:

"(b) The rule of decision known as Dillon's Rule is inapplicable to the municipal affairs of municipalities."

Black's Law Dictionary defines "Dillon's Rule: as follows:

"The doctrine that a unit of local government may exercise only those powers that the state expressly grants to it, the powers necessarily and fairly implied from that grant, and the powers that are indispensable to the exercise of the unit of local government."

The legislative express rejection of the Dillon's Rule regarding application of the "Home Rule" statute has provided significantly more power and authority to city councils. The Arkansas Supreme Court sometimes ended its statement of Dillon's Rule by stating that "any substantial doubt about the existence of a power in a municipal corporation must be resolved against it." *White County v. Cities of Judsonia and Kensett*, 369 Ark. 151, 251 S.W. 3d 275, 279 (2007). This corollary to Dillon's Rule has also probably been abrogated by the express repeal of Dillon's Rule by Act 1187.

By enacting into the Code of Fayetteville the new authority granted to cities in Arkansas by Act 1187, we have an additional shield to protect our Fayetteville Code and U.D.C. from a legal attack claiming that the City Council has exceeded its powers when enacting any provision within our Fayetteville Code.

ORDINANCE NO. _____

AN ORDINANCE TO ENACT INTO THE CODE OF FAYETTEVILLE §10.18
AUTHORITY AND TO AMEND §150.03 **AUTHORITY** IN THE UNIFIED
DEVELOPMENT CODE

WHEREAS, it is prudent to enact into the Code of Fayetteville including the Unified Development Code the increased powers granted by the State Legislature to Arkansas cities by its recent amendment of Title 14, Chapter 43, Subchapter 6 **Powers Over Municipal Affairs** which repealed the limitations on municipal authority within the *Dillon's Rule*; and

WHEREAS, a new code section should be enacted in Title 1, General Provisions of the Fayetteville Code to better identify the statutory and constitutional authority to support the City Council's power to enact the Fayetteville Code; and

WHEREAS, §150.03 **Authority** of the Unified Development Code should be amended to more fully cite the constitutional and statutory authority to support the City Council's power to enact the Unified Development Code of the Code of Fayetteville.

**NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby enacts §10.18 **Authority** of the Code of Fayetteville as shown below:

"§10.18 Authority

"The provisions contained within the Code of Fayetteville including the Unified Development Code formerly, currently or hereinafter enacted are based upon, derive authority from and are enacted pursuant to any and all of the power and authority conferred upon cities by the Arkansas Constitution and by the Arkansas General Assembly through its statutes, including, but not limited to, all of Title 14 **Local Government** of the Arkansas Code specifically including but not limited to Subchapter 6, **Power Over Municipal Affairs** of Chapter 43 **Government of Cities of the First Class**, Chapter 54 **Powers of Municipalities**, Chapter 55 **Ordinances of Municipalities**, and

Chapter 56 **Building and Zoning Regulations**; Chapter 75, **Municipal Sales and Use Taxes** of Title 26 **Taxation**; Title 3, **Alcoholic Beverages** and any and all other state statutes or constitutional provisions that provide any authority to the City of Fayetteville to enact ordinances, codes, or regulations within or referenced by the Code of Fayetteville. No specific reference to authority within any code section excludes the general authority of all state law and this section.”

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby amends §150.03 **Authority of the Unified Development Code** so that it will now repeat the exact language of the newly enacted §10.18 **Authority** shown above.

PASSED and **APPROVED** this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

TITLE XV UNIFIED DEVELOPMENT CODE

CHAPTER 150: GENERAL PROVISIONS

150.01 Title

This title shall be known and may be cited as the Unified Development Code, Code of Fayetteville, and may be cited and abbreviated as "UDC."

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

150.02 Purpose

The UDC is adopted for the purpose of implementing the Comprehensive Land Use Plan and any other plans or policies adopted or amended by the City Council, in a manner that furthers the health, safety and general welfare of the people of the community and to provide uniform standards for the development of land and the installation of related improvements. The UDC sets forth the procedures, requirements, and minimum standards intended to promote an appropriate mix of land uses in an orderly manner; enhance aesthetic quality, moderate street congestion, secure safety from events such as fire, flood, erosion and landslides; prevent overcrowding of land; provide adequate light and air; and provide for circulation, recreation, and other public services and facilities. The UDC provides for, but is not limited to, development of land uses which protect established neighborhoods, and commercial and industrial districts; allows compatible infill of established areas; provides flexibility for mixing of uses to achieve traditional neighborhood developments; protects significant environmental resources; and makes a livable community.

(Code 1965, App. C, Art. 1, §A; Ord. No. 1750, 7-6-70; Code 1991, §158.02; Code 1965, §17B-14 Ord. No., 1893, 12-19-72; Code 1991, §160.001; Code 1965, App. A, Art. 13; Ord. No. 1747, 6-29-70; Code 1991, §150.02; Code 1965, §17B-14; Ord. No. 1893, 12-19-72; Ord. No. 4100, §2 (Ex. A), 6-16-98; Ord. No. 4919, 9-05-06)

150.03 Authority

The provisions contained in the UDC are adopted pursuant to the authority conferred on the city by the General Assembly of the State of Arkansas, A.C.A. §14-54-103, General Powers of Cities and Towns; A.C.A. §14-54-104; Additional Powers of Cities of the First Class; and A.C.A. Title 14, Chapter 56, Municipal Building and Zoning Regulations--Planning; as amended.

(Code 1965, App. C, Art. I, §B; Ord. No. 1750, 7-6-70; Code 1991, §159.02; Ord. No. 4100, §2 (Ex. A), 6-16-98)

150.04 Jurisdiction

The city's planning jurisdiction is the area within the corporate boundaries as well as the area described in the planning area boundary description as filed with the City Clerk and Washington County Circuit Clerk's office. Such planning area boundary description may be modified from time to time in accordance with A.C.A. §14-56-413.

(Code 1965, App. C, Art. 1, §C; Ord. No. 1750, 7-6-70; Code 1991, §159.03; Ord. No. 3895, §1, 6-20-95; Code 1991, §163.04(A); Ord. No. 4100, §2 (Ex. A), 6-16-98).

150.05 Relationship To Previous Development Ordinances

The UDC shall be considered a restatement of previously adopted development ordinances and not a new enactment unless otherwise specifically provided. Any situation which was considered nonconforming under the ordinances previously in force does not achieve lawful, conforming status under this chapter merely by the repeal of the previous ordinances to enact the UDC.

(Ord. No. 4100, §2 (Ex. A), 6-16-98).

150.06 Relationship To Other Provisions Of The Code Of Fayetteville

The use of buildings and land shall be subject to all other applicable provisions of the *Code of Fayetteville* regardless of cross references within the UDC. Cross references to other provisions of the *Code of Fayetteville* are for the convenience of the reader. Lack of a cross reference shall not be construed as an indication that other provisions of the *Code of Fayetteville* do not apply.

(Ord. No. 4100, §2 (Ex. A), 6-16-98)

150.07 Conflicts

- (A) *UDC/other code requirements.* The provisions of the UDC shall be held to be minimum requirements. Where requirements of the UDC are at a variance with other requirements within the *Code of Fayetteville*, the highest or most restrictive requirements shall apply.
- (B) *UDC/UDC.* Where a conflict arises between one section of the UDC and another section of the UDC, the most stringent section shall apply.
- (C) *UDC/Comprehensive Land Use Plan.* The regulations contained herein are adopted giving due consideration to the Comprehensive Land Use Plan. Thus, the requirements of the UDC shall take precedence over the policies of the Comprehensive Land Use Plan. Any conflict therewith should not be considered basis for challenge.
- (D) *UDC/private agreements.* The UDC is not intended to abrogate any private agreements, deed restrictions, covenants, easements, or other private agreements on the use of land. Where the UDC is more restrictive or imposes higher standards than the private agreement, the UDC shall control. Where the provisions of a private

City of Fayetteville Staff Review Form

C. 3
Washington County Jail
Services Interlocal Agreement
Page 1 of 6

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

1/17/2012

City Council Meeting Date
Agenda Items Only

Greg Tabor
Submitted By

Support Services
Division

Police
Department

Action Required:

Approve a resolution amending the Washington County Jail Services Interlocal Agreement for the 2012 calendar year and setting the jail fees at \$60.00 per booked prisoner.

\$ 258,000.00

Cost of this request

\$ 269,266.00

Category / Project Budget

Contract Services

Program Category / Project Name

1010-2900-5315.00

Account Number

\$ -

Funds Used to Date

Services and Charges

Program / Project Category Name

\$ 269,266.00

Remaining Balance

General

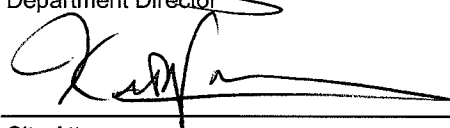
Fund Name

Budgeted Item ☒Budget Adjustment Attached ☐


Department Director

Date

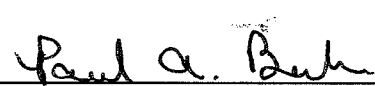
Previous Ordinance or Resolution #


City Attorney

Date

Original Contract Date:

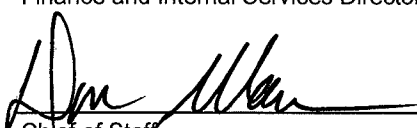
Original Contract Number:


Finance and Internal Services Director

Date

Received in City
Clerk's Office

12-21-11 P.12:06 RCVD


Chief of Staff

Date

Received in
Mayor's Office


Mayor

Date



Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council Members

From: Greg Tabor, Chief of Police 

Date: December 22, 2011

Subject: Washington County Jail Services Interlocal Agreement

PROPOSAL:

The City of Fayetteville and Washington County entered into an Interlocal Agreement for Jail Services on October 19, 2004 with three subsequent amendments in 2005, 2006, and 2010. This agreement allows that Washington County will provide jail space for City of Fayetteville prisoners in exchange of the City paying a set price for each booked prisoner. It is the desire of both Washington County and the City of Fayetteville to amend Section 5 of the Interlocal Agreement for Jail Services to extend the term of this agreement to include the 2012 calendar year and Schedule A to set a price of \$60.00 per prisoner booking.

The 2012 prisoner booking fee of \$60.00 is a 9.1% increase over the 2011 rate of \$55.00 which is consistent with the Interlocal Agreement for Jail Services that specifies the rate per booking shall not be increased by more than ten percent (10%) per year.

RECOMMENDATION:

Staff recommends approval of a resolution amending the Interlocal Agreement for Jail Services for the 2012 calendar year and setting the jail fees at \$60.00 per booked prisoner.

BUDGET IMPACT:

This rate increase will add a projected \$21,500 to our expenses for jail services; however, staff included the anticipated booking fee increase in the approved 2012 budget.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE THIRD AMENDED INTERLOCAL AGREEMENT FOR JAIL SERVICES WITH WASHINGTON COUNTY TO INCREASE THE BOOKING FEE FROM \$55.00 TO \$60.00 PER PRISONER

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 Third Amended Interlocal Agreement for Jail Services with Washington County to increase the booking fee from \$55.00 to \$60.00 per prisoner and authorizes Mayor Jordan to sign this agreement.

PASSED and APPROVED this 3rd day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



MARILYN EDWARDS
County Judge

280 North College, Suite 500
Fayetteville, AR 72701

WASHINGTON COUNTY, ARKANSAS
County Courthouse

December 15, 2011

RECEIVED
DEC 19 2011
CITY OF FAYETTEVILLE
MAYOR'S OFFICE

Mayor Lioneld Jordan
City of Fayetteville
113 W. Mountain Street
Fayetteville, AR 72701

RE: Washington County Jail Services Interlocal Agreement

Dear Mayor Jordan:

Enclosed is a copy of Washington County Ordinance No. 2011-83 entitled, "An Ordinance Amending an Interlocal Agreement for Jail Services with the City of Fayetteville."

Also enclosed are two copies of the Interlocal Agreement that have been signed by County Judge Marilyn Edwards.

Please return one of the agreements to me after it has been signed along with a copy of the City Council's action approving the agreement.

Thank you! Please do not hesitate to contact me if you have any questions.

Sincerely yours,

Karen M. Beeks
Quorum Court Coordinator/Reporter
County Judge's Office

/kb

Encls.

cc: Chief Greg Tabor, Fayetteville Police Department
100-A W. Rock Street, Fayetteville, AR 72701
cc: Kit Williams, City Attorney
113 W. Mountain Street, Room 302-303, Fayetteville, AR 72701
cc: Sheriff Tim Helder

THIRD AMENDED INTERLOCAL AGREEMENT FOR JAIL SERVICES

THIS AGREEMENT, is made pursuant to Ark. Code Ann. §14-14-910, by and between the County of Washington, Arkansas (hereinafter referred to as the "County"), and the City of Fayetteville, Arkansas, (hereinafter referred to as the "City"), herein collectively known as the "Parties".

WITNESSETH:

WHEREAS, the Parties entered into an Interlocal Agreement for Jail Services dated October 19, 2004, which was supplemented by an Addendum on April 19, 2006, and amended on January 10, 2005; and amended again on January 20, 2011.

WHEREAS, the Parties desire to further amend the Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND OBLIGATIONS OF THE PARTIES CONTAINED HEREIN, BE IT AGREED:

1. Effective January 1, 2012, Section 5 of the Interlocal Agreement for Jail Services as amended, is further amended to read as follows:

"5. **DURATION.** The initial term of this Agreement shall commence January 1, 2012, and shall expire on December 31, 2012. The County further agrees to make jail space for City prisoners an operational priority during the initial term and any subsequent term of this Agreement."

2. Effective January 1, 2012, Schedule A of the Interlocal Agreement for Jail Services is further amended to read as follows:

"SCHEDULE A

The current cost of keeping a County Prisoner in jail has been determined to be Sixty Five Dollars (\$65.00) per day, however, due to the fact that citizens of the City are paying a one quarter (¼ %) sales and use tax, and due to the long and ongoing history of sharing resources between the Washington County Sheriff and the Fayetteville Police Department, the County shall charge the City Sixty Dollars (\$60.00) per booked prisoner.

The rate provided for herein shall not increase more than ten percent (10%) in any following years that this Agreement is renewed."

CITY OF FAYETTEVILLE

LIONELD JORDAN, Mayor

ATTEST:

SONDRA E. SMITH, City Clerk

APPROVED as to form:

KIT WILLIAMS, City Attorney

DATE: _____

WASHINGTON COUNTY

MARILYN EDWARDS, County Judge

ATTEST:

KAREN C. PRITCHARD, County Clerk

APPROVED as to form:

GEORGE E. BUTLER, JR., County Attorney

DATE: 12/9/11

FILED

2011 DEC -9 PM 1:43

KAREN COMBS PRITCHARD
CO. & PROBATE CLERK
WASHINGTON CO. ARK

ORDINANCE NO. 2011-83

**BE IT ORDAINED BY THE QUORUM COURT
OF THE COUNTY OF WASHINGTON,
STATE OF ARKANSAS, AN ORDINANCE
TO BE ENTITLED:**

**AN ORDINANCE AMENDING AN INTERLOCAL
AGREEMENT FOR JAIL SERVICES WITH THE
CITY OF FAYETTEVILLE.**

WHEREAS, A.C.A. § 14-14-910 authorizes cities and
counties to enter into contracts to co-operate or join with each other to provide services;
such to specify the responsibilities of all parties; and,

WHEREAS, each of the governing bodies desire to amend
the Interlocal Agreement for Jail Services.

**NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM
COURT OF WASHINGTON COUNTY, ARKANSAS:**

ARTICLE 1. The Amended Interlocal Agreement for Jail
Services attached hereto as Exhibit "A" and incorporated herein as if set out word for
word is hereby approved and the County Judge of Washington County, Arkansas, is
hereby authorized to execute said Amended Interlocal Agreement for and on behalf of
Washington County, Arkansas.


MARILYN EDWARDS, County Judge

12/9/11
DATE


KAREN COMBS PRITCHARD, County Clerk

Sponsor: Butch Pond
Date of Passage: December 8, 2011
Votes For: 12 Votes Against: 0
Abstention: 0 Absent: 1

City Council Agenda Items
and
Contracts, Leases or Agreements01/17/2012City Council Meeting Date
Agenda Items OnlyLindsley Smith

Submitted By

Communication

Division

General Government

Department

Action Required:

A Resolution Approving Telecommunications Board Revisions to Chapter 33: Department Boards, Commissions and Authorities Ordinance Article IX: Telecommunications Board

N/A

Cost of this request

N/A

Category / Project Budget

N/A

Program Category / Project Name

N/A

Account Number

N/A

Funds Used to Date

N/A

Program / Project Category Name

N/A

Project Number

N/A

Remaining Balance

N/A

Fund Name

Budgeted Item ☐Budget Adjustment Attached ☐Lindsley Smith
Department Director12-30-11
Date

Previous Ordinance or Resolution # _____

King
City Attorney12-30-11
Date

Original Contract Date: _____

Original Contract Number: _____

Paul A. Behr
Finance and Internal Services Director1-3-2011
DateReceived in City 12-30-11 P03:47 RCVD
Clerk's OfficeDon Man
Chief of Staff1-4-2012
DateReceived in
Mayor's OfficeFrank Jordan
Mayor1/4/12
Date

Comments:



www.accessfayetteville.org

CITY COUNCIL AGENDA MEMO

To: City Council

Thru: Mayor Lioneld Jordan
Don Marr, Chief of Staff

From: Lindsley Smith, Communication Director *SS*
Fayetteville Communication Department

Date: December 30, 2011

Subject: Revisions to Chapter 33: Department Boards, Commissions and Authorities Ordinance Article IX:
Telecommunications Board

PROPOSAL

In addressing complaints against the Telecommunications Board, the Board found merit in some complaints filed by Mr. Jim Bemis, primarily the inability of Board members to perform certain duties required by the existing ordinance. Also, over the past year and a half in the Board's goal of addressing the complaints, the City Attorney and the Assistant City Attorney, upon request of the Telecommunications Board, were called upon various times to attend Board meetings and assist the Board in understanding its role and duties as a Board. An orientation for Board members was also instituted in 2010 to assist Board members in understanding their roles and the scope of their duties. On September 15, 2011, the Telecommunications Board established an Ordinance Review Committee to address these issues and determine what ordinance changes were needed to improve the efficiency and effectiveness of the Telecommunications Board and clarity of the Board ordinance.

The Telecommunications Board's Ordinance Review Committee met twice and made amendments to the Ordinance, which included incorporating several previous opinions of the City Attorney that clarified language in the existing ordinance regarding the role of the Telecommunications Board.

The Telecommunications Board's Ordinance Review Committee presented its revised ordinance to the full Telecommunications Board for review on October 20, 2011, and the Board voted to send the Board's revised ordinance to the City Attorney for review and comments. The City Attorney made additional comments and recommended changes on November 23 and December 1, 2011.

The following changes were made in the proposed ordinance:

Addition of words:

- "IP television provider" was added to the Telecommunications Board's purview in order to increase the Board's review of agreements in light of recent technological advancements and to try to cover all current providers and anticipate additional future technological changes and providers,

- added the word “year” to the Board’s reporting duty to the City Council, as this word is missing from the original ordinance and necessary for duty clarity and a complete sentence,
- added the words “work with City staff” as to the creation of city policies related to PEG channels, and
- the words “franchisees and access” were added to clarify the telecommunications providers in which the Board would track to assure that they are responding to complaints effectively and timely.

Deletion of words:

- “the current” in reference to the Telecommunications Board,
- “and to coordinate and oversee” when referencing the Board’s role in regard to telecommunications franchise systems and public rights of way,
- the definition of “Telecommunications Infrastructure”,
- deleting the words “as it may be from time to time amended” in reference to the FOIA,
- deleted a role for the Board of advising the City Council about “Funding for the development and maintenance of the City’s telecommunications infrastructure”,
- deleted a duty to “Identify telecommunications needs and solutions in the City and define innovative approaches to the use of expanding digital capacity”,
- the shortening of §33.206 to remove eligibility and attendance requirements that are now controlled by §33.330-§33.332, and
- deletion of the wording “Perform periodic evaluations of contract compliance for all contracts relating to telecommunications” since that was covered earlier in the ordinance for assuring contract compliance.

Word editing:

- changing two uses of “shall” to “should”,
- one use of “shall” changed to “may”,
- changing the word “local” to “Fayetteville”,
- twice changed the word “oversee” to instead say “regularly review”,
- in reference to the Board’s review of franchise agreements the words “between a telecommunications agent and the City” was changed to “by any such provider”,
- “changed “citizens” to “Fayetteville residents” in reference to tracking complaints, and
- “telecommunications agent” was changed to “telecommunications franchisee”.

On December 15, 2011, the ordinance as revised by the Telecommunications Board Committee and City Attorney was then submitted back to the Telecommunications Board, which considered, discussed, and approved the revised ordinance with a recommendation in a 5-1 vote that the revised ordinance be adopted by the City Council.

RECOMMENDATION

Staff recommends approval of Chapter 33, Article IX revisions.

BUDGET IMPACT

This ordinance revision will have no impact on the City’s budget.

ATTACHMENTS--Dec. 1 City Attorney Memo and Exhibit “A” revised ordinance; Exhibit “B” strike-through version of revised ordinance; existing ordinance (Ordinance No. 4504) passed in 2003; City Attorney Memos (11-23-2010, 8-19-2010, 6-3-2008, 2-7-2006).



**LEGAL
DEPARTMENT**

Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Telecommunications Board

CC: Lindsley Smith, Communications & Marketing Director
Fritz Gisler, Government Channel Manager

FROM: Kit Williams, City Attorney

DATE: December 1, 2011

RE: Revision of Article IX Telecommunications Board of Fayetteville Code

I have reviewed the proposed revision of Article IX **Telecommunications Board** of the Fayetteville Code which was submitted to me by the Telecommunications Board. I believe that you have made several well-reasoned and appropriate changes to the current ordinance.

I have made a few suggested changes myself for your consideration. Please see the attached proposed amended copy. Some changes, like the title of the ordinance are merely stylistic rather than substantive. Recently, the City Council enacted uniform rules and procedures, eligibility and attendance requirements for all citizen volunteers serving on City boards, committees and commissions. Therefore, I have drastically shortened §33.206 which is now controlled by §33.330-§33.332.

Under §33.210 **Duties**, I have suggested changes in (6) and (7) to **add** Internet Protocol (IP) television provider (such as AT&T Arkansas) to the existing cable operator and telecommunications franchisee to try to cover all current providers. With further advances and changes in this exploding technological area, we will probably learn of new forms of service and new names for future providers. The City Council will appreciate your advice on the performance and renewal of all such providers.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING ARTICLE IX TELECOMMUNICATIONS
BOARD OF THE CODE OF FAYETTEVILLE, BY REDEFINING THE
PROCEDURES AND DUTIES OF THE TELECOMMUNICATIONS BOARD**

WHEREAS, under the terms and conditions of the cable television franchise agreement the city is given, among other responsibilities, the duty to regulate cable television channels for public access, educational and governmental (PEG) programming; and

WHEREAS, the use of the public rights of way in the City of Fayetteville, Arkansas, includes other telecommunications services as well as cable television services; and

WHEREAS, the City Council of the City of Fayetteville, Arkansas, desires to redefine the scope of the current Telecommunications Board to serve in an advisory capacity regarding telecommunications issues, to promote the use of public information media, and to serve as a coordinating body for issues relating to the provision of different telecommunications services.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE
CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That §33.205 through §33.211, "Telecommunications Board" is hereby repealed and Exhibit "A" attached hereto and made a part hereof, is enacted in its stead.

PASSED and APPROVED this 17th day of January, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

Exhibit "A"

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the Telecommunications Board to advise the City Council on telecommunications issues, telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for Fayetteville residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members should have experience in one or more of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. All members shall serve staggered four-year terms.

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor should designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) The Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) The Telecommunications Board may establish rules and regulations governing its procedures.

(c) The Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*

(d) The Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities and outlining its goals for the next year.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

(6) Performance of any cable operator, IP television provider or telecommunications franchisee serving the City, with regard to customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

(7) Renewal of any franchise agreement by any such provider.

(b) The Telecommunications Board shall have the following duties and responsibilities:

(1) Regularly review the administration of the City's PEG facility;

(2) Regularly review the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG

channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall work with City staff to facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels. A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(3) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by Fayetteville residents to assure that telecommunications franchisees and access providers are responding to complaints in an effective and timely manner.

(4) Promote public awareness, use and viewership of PEG channels;

(5) Promote public awareness of telecommunications policy issues; and,

(6) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications franchisee no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.

Exhibit "B" (strike-through version of revised ordinance)

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the ~~current~~ Telecommunications Board to advise the City Council on telecommunications issues and ~~to coordinate and oversee~~ telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for local Fayetteville residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

~~(4) *Telecommunications Infrastructure.* Telecommunications infrastructure means the shared portions of the telecommunications transmission facilities used by the city, including public rights of way, all transmission mechanisms, and associated equipment and software components necessary for the management and control of the city's information network. Telecommunications facilities include, but are not necessarily limited to: terrestrial radio, optical fiber cables, satellite communications, radio and television stations (traditional broadcast as well as cable and satellite broadcast), and public-switched telephone network.~~

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members ~~shall~~ **should** have experience in any one of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. ~~Members shall be registered voters and residents of the City of Fayetteville, and shall have resided therein for at least six (6) months prior to their~~

~~appointment. Those members serving as of the effective date of this ordinance shall retain their seats until August 15, 2003, at which point all of the positions shall be open for appointment. At the first regular meeting after appointment, the members shall draw lots to determine the length of their initial term. One (1) member shall serve a term of one (1) year; two (2) members shall serve terms of two (2) years; two members shall serve terms of three (3) years; and two (2) members shall serve terms of four (4) years. Thereafter, All members shall serve staggered four-year terms. Vacancies in an unexpired term shall be filled by the City Council for the remainder of the term. Any person who serves two consecutive terms on the Telecommunications Board shall not be eligible for reappointment until one term of office has expired, unless there are an insufficient number of qualified applicants to fill all vacancies.~~

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor shall should designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) the Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) the Telecommunications Board shall may establish rules and regulations governing its procedures.

(c) the Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*, ~~as it may be from time to time amended.~~

(d) the Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities, and outlining its goals for the next year.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

~~(6) Funding for the development and maintenance of the city's telecommunications infrastructure;~~

(7) Performance of any cable, IP television provider or telecommunications operator serving the city, with regard to rates, customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

(8) Renewal of any franchise agreement ~~between a telecommunications agent and the City~~ by any such provider.

(b) ~~Further,~~ the Telecommunications Board shall have the following duties and responsibilities:

(1) ~~Oversee~~ Regularly review the administration of the City's PEG facility;

(2) ~~Oversee~~ Regularly review the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall work with City staff to facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels.

~~(3) Perform periodic evaluations of contract compliance for all contracts relating to telecommunications.~~ A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(4) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by ~~citizens~~ **Fayetteville residents** to assure that telecommunications **franchisees and access** providers are responding to complaints in an effective and timely manner.

(5) Promote public awareness, use and viewership of PEG channels;

~~(6) Identify telecommunications needs and solutions in the City and define innovative approaches to the use of expanding digital capacity;~~

(7) Promote public awareness of telecommunications policy issues; and,

(8) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications agent **franchisee** no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.

ORDINANCE NO. 4504

AN ORDINANCE AMENDING CHAPTER 33, DEPARTMENTS, BOARDS, COMMISSIONS AND AUTHORITIES, OF THE CODE OF FAYETTEVILLE, BY REDEFINING THE COMPOSITION, OFFICERS, STAFFING, PROCEDURES, AND DUTIES OF THE TELECOMMUNICATIONS BOARD.

WHEREAS, under the terms and conditions of the cable television franchise agreement the city is given, among other responsibilities, the duty to regulate cable television channels for public access, educational and governmental (PEG) programming; and,

WHEREAS, the use of the public rights of way in the City of Fayetteville, Arkansas, includes other telecommunications services as well as cable television services; and,

WHEREAS, the City Council of the City of Fayetteville, Arkansas, desires to redefine the scope of the current Telecommunications Board to serve in an advisory capacity regarding telecommunications issues, to promote the use of public information media, and to serve as a coordinating body for issues relating to the provision of different telecommunications services.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That §33.205 through §33.211, "Telecommunications Board" is hereby repealed and Exhibit "A" attached hereto and made a part hereof, is inserted in its stead.

PASSED and APPROVED this 15th day of July, 2003.

APPROVED:

By: _____
DAN COODY, Mayor

ATTEST:

By: _____
SONDRA SMITH, City Clerk

Exhibit "A"

§33.205. Purpose and Intent. It is the purpose and intent of the City Council of the City of Fayetteville to redefine the scope of the current Telecommunications Board to advise the City Council on telecommunications issues and to coordinate and oversee telecommunications franchise systems and use of the public rights of way designated for public access, educational, and governmental (PEG) use in the City of Fayetteville as part of the city's telecommunications infrastructure.

(a) **Definitions.** For the purposes of this ordinance, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

(1) *Education Channels.* Education channels shall provide programming that is educational and informational, with an emphasis on locally-produced programming. Programs may also be instructional, with learning potential for all audiences.

(2) *Government Channels.* Government channels provide citizens with convenient access to the city government. The station shall be operated in an unbiased manner. The goal is to create an informed and involved citizenry. Content will generally be created or acquired by local government employees, elected officials, and volunteers, and will typically provide information about services provided by local, State, and regional governments, issues faced by local governments, and public meeting coverage.

(3) *Public Access Channels.* Public access channels provide a forum for local residents to express themselves. Content may include video and other electronic information produced, directed and engineered by community members. These productions focus on many aspects of community life, ranging from the services and activities of community organizations to the opinions, beliefs and artistic expressions of individuals in the community, or outside productions requested and introduced by community members.

(4) *Telecommunications Infrastructure.* Telecommunications infrastructure means the shared portions of the telecommunications transmission facilities used by the city, including public rights of way, all transmission mechanisms, and associated equipment and software components necessary for the management and control of the city's information network. Telecommunications facilities include, but are not necessarily limited to: terrestrial radio, optical fiber cables, satellite communications, radio and television stations (traditional broadcast as well as cable and satellite broadcast), and public switched telephone network.

§33.206. Composition. The Fayetteville Telecommunications Board shall consist of seven members appointed by the City Council. Members shall have experience in any one of the following areas: telecommunications infrastructure management, public policy development regarding communication and telecommunications issues, television, or other appropriate expertise. Members shall be registered voters and residents of the City of Fayetteville, and shall have resided therein for at least six (6) months prior to their

appointment. Those members serving as of the effective date of this ordinance shall retain their seats until August 15, 2003, at which point all of the positions shall be open for appointment. At the first regular meeting after appointment, the members shall draw lots to determine the length of their initial term. One (1) member shall serve a term of one (1) year; two (2) members shall serve terms of two (2) years; two members shall serve terms of three (3) years; and two (2) members shall serve terms of four (4) years. Thereafter, members shall serve staggered four-year terms. Vacancies in an unexpired term shall be filled by the City Council for the remainder of the term. Any person who serves two consecutive terms on the Telecommunications Board shall not be eligible for reappointment until one term of office has expired, unless there are an insufficient number of qualified applicants to fill all vacancies.

§33.207. Officers. The Telecommunications Board shall elect from its members a chairperson, who shall serve a one-year term and shall be eligible for re-election to a subsequent term or terms. Further, the Telecommunications Board may elect such additional officers and establish any committees as it deems necessary for the proper performance of its duties.

§33.208. Staff Support. The Mayor shall designate city employees to assist the Telecommunications Board in performing its duties and carrying out its responsibilities under this ordinance.

§33.209. Procedures.

(a) the Telecommunications Board shall meet at least once each month and may meet more frequently if necessary to carry out its duties. Four members shall constitute a quorum.

(b) the Telecommunications Board shall establish rules and regulations governing its procedures.

(c) the Telecommunications Board's meetings and records shall be subject to the provisions of the Arkansas Freedom of Information Act, A. C.A. §§25-19-101 *et seq.*, as it may be from time to time amended.

(d) the Telecommunications Board shall provide the City Council an annual report briefly summarizing its previous year's activities, and outlining its goals for the next.

§33.210. Duties.

(a) The Telecommunications Board shall advise the City Council and make recommendations on telecommunications infrastructure issues, including but not limited to the following:

(1) Use and administration of cable TV channels designated for public access, educational, and governmental (PEG) use;

(2) Use and administration of telecommunications facilities and use of public rights of way for telecommunications infrastructure;

(3) Establishment and use of the City's PEG facility;

(4) Any reports submitted to the City by a cable TV operator, PEG channel user, telecommunications agency, or other entities regarding telecommunications matters;

(5) Funding for public access, educational, and governmental (PEG) operations;

(6) Funding for the development and maintenance of the city's telecommunications infrastructure;

(7) Performance of any cable or telecommunications operator serving the city, with regard to rates, customer service, technical standards, programming, and requirements of the applicable franchise agreement; and

(8) Renewal of any franchise agreement between a telecommunications agent and the City.

(b) Further, the Telecommunications Board shall have the following duties and responsibilities:

(1) Oversee the administration of the City's PEG facility;

(2) Oversee the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG channel, the Telecommunications Board shall ensure contract compliance. Whether administered by the city or contracted, the Telecommunications Board shall facilitate the creation of policies regarding cablecast material selection, time guidelines for cablecast material, viewer and facility user complaint/feedback practices, and other such policies regarding the use and administration of the channels.

(3) Perform periodic evaluations of contract compliance for all contracts relating to telecommunications. A summary of all evaluations shall be forwarded to the City Council quarterly for their review.

(4) Facilitate dispute resolution concerning PEG channels, including but not limited to operations, program content, etc.; track the complaints filed by citizens to

assure that telecommunications providers are responding to complaints in an effective and timely manner.

(5) Promote public awareness, use and viewership of PEG channels;

(6) Identify telecommunications needs and solutions in the City and define innovative approaches to the use of expanding digital capacity;

(7) Promote public awareness of telecommunications policy issues; and,

(8) Forward a report to the City Council recommending either renewal or replacement of any cable or telecommunications agent no less than 45 days before the contract's expiration.

(c) The Telecommunications Board shall have authority to establish and disseminate such guidelines and regulations as are necessary to carry out the duties and responsibilities set forth in this section.



www.accessfayetteville.org

Departmental Correspondence

LEGAL
DEPARTMENTKit Williams
City AttorneyJason B. Kelley
Assistant City Attorney

MEMORANDUM

TO: DON MARR, CHIEF OF STAFF
LINDSLEY SMITH, COMMUNICATIONS DIRECTOR
FRITZ GISLER, TELEVISION CENTER MANAGER
TELECOMMUNICATIONS BOARD MEMBERS

FROM: JASON B. KELLEY, ASST. CITY ATTORNEY

DATE: NOVEMBER 23, 2010

RE: PEG CHANNEL LOCATIONS/CABLE DIGITAL CONVERSION/RELATED
FRANCHISE AGREEMENT ISSUES

There have been questions raised concerning Cox Communications, Inc.'s (Cox) announcement that PEG channels will be relocated exclusively to the "basic tier" digital cable service lineup. The company has announced they will be providing, for two years and at no cost to customers, a digital converter box which will permit viewing of PEG channels and other digital channels on "legacy" standard definition, analog tuner televisions. This is what might be called a "first step" in a full digital conversion of cable service. Though no time table has been announced, it is anticipated that cable service, at some point, will become fully digital without the provision of any analog cable service.

By our franchise agreement authorized by federal law, Cox is obligated to provide PEG channel service as part of any "basic tier" of cable service. The "basic tier" is the lowest level of service offered by the company. At a minimum, all Cox cable television service customers have access to "basic tier" channels. No requirement exists that "basic tier" channels be assigned any particular channel number. Accessibility is all that is required, not location. Some confusion arises on this point since many people expect basic channels to be the lowest channel numbers. It must be remembered that there is no correlation between level of service (lowest cost service) and channel number.

It appears Cox is operating within the dictates of the current franchise agreement, particularly given the fact that the company will be offering free digital converter boxes to assure PEG channel access to current "basic tier" analog subscribers. Channel number changes or relocations of PEG channels are not prohibited by our current franchise agreement.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

MEMORANDUM

TO: ANDREA FOREN, PURCHASING AGENT

CC: LINDSLEY SMITH, COMMUNICATIONS DIRECTOR
FRITZ GISLER, CABLE ADMINISTRATION

FROM: JASON B. KELLEY, ASST. CITY ATTORNEY

A handwritten signature in cursive script, appearing to read "J. B. Kelley".

DATE: AUGUST 19, 2010

RE: AUTHORITY OF TELECOMMUNICATIONS BOARD RE: RFPs

Kit asked me to review the City Code related to the authority of the Telecommunications Board, particularly the role of the board, if any, of the process of RFP issuance and award of a contract for operation of the City's public access television channel.

The Telecommunications Board is an advisory board, whose authority is limited to rendering advice to the City Council and administration regarding telecommunications issues. As it relates to any of the City's PEG channels, the Board shall *"oversee the administration of any cable television channels or other telecommunications facilities designated for public access, educational, or governmental (PEG) use, unless the City Council enters into a contract with another entity or institution for such administration. If the city enters into a contract with another entity for administration of a PEG channel, the Telecommunications Board shall ensure contract compliance."* Fayetteville, Ark. Code § 33.210(B)(2) (emphasis added). The Telecommunications Board has no authority to order acceptance or rejection of any RFP related to operation of the City's public access channel. The Board does have the authority to express an opinion on such a matter, to advise the City Council related to the matter, and to ensure contract compliance once a contract is entered, but that is the extent of the Board's authority.

The Board has the responsibility of making a report to the City Council "recommending either renewal or replacement of any cable or telecommunications agent no less than 45 days before the contract's expiration." Fayetteville, Ark. Code § 33.210(B)(8). Again, this is an expression of an opinion, not any binding authority regarding issuance or renewal of any such contract. The provision does not operate as a limitation on the authority of the administration or City Council related to the matter.

Please contact me if I can provide further assistance.

FAYETTEVILLE
THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: **Dan Coody, Mayor**
City Council

CC: **Susan Thomas, Public Information & Policy Advisor**

FROM: **Kit Williams, City Attorney**

A handwritten signature in black ink, appearing to read "Kit Williams", followed by a long horizontal line.

DATE: **June 3, 2008**

RE: **Telecommunications Board Duties**

There has been some issue about the extent of duties placed upon the Telecommunications Board by §33.210 (B)(1) and (2). These subsections state that the Board "shall have the following duties and responsibilities:

"(1) Oversee the administration of the City's PEG facility;

"(2) Oversee the administration of any cable television channels"

There has been some concern that "Oversee the administration" could mean that the ordinance was intended to give the Telecom Board supervisory authority over city employees. As I have tried to explain earlier, the mayor is statutorily empowered to supervise city employees. Thus, the City Council is without legal power to give itself or another body the supervisory authority over employees.

When interpreting a statute or ordinance, "we will give the words in the statute (or ordinance) their ordinary and common usage." Rolling Pines Ltd. V. City of Little Rock, 73 Ark. App. 97, 40 S.W. 3d 828, 832 (2001). So I looked up "oversee" in the Merriam-Webster Collegiate Dictionary, 10th edition (2001). The first definition (most common usage) was "survey, watch." The second definition was "inspect, examine." The third and last (least common usage) was "supervise." (page 828).

Thus, the most basic rule of ordinance interpretation of "oversee" would be to survey or watch, possibly inspect or examine, but not supervise.

Another rule of ordinance construction or interpretation is that the law or ordinance should be interpreted so as to make it legal and constitutional if possible. Bunch v. State, 344 Ark. 730, 43 S.W. 2d 132, 136 (2001).

"(a) The mayor of the city shall be its chief executive officer

"(b) The mayor shall:

"(1) Supervise the conduct of all officers of the city"
A.C.A. §14-43-504 Mayor.

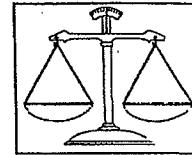
Since the mayor is statutorily empowered to supervise all city employees, an ordinance granting the Telecom Board the power to "oversee the administration" cannot mean to grant any supervisory powers. Instead, "oversee" must be interpreted as its primary, customary meaning to watch or inspect the administration of the PEG facility. This would help the Board fulfill its primary purpose "to advise the City Council on telecommunications issues" §33.205 **Purpose and Intent** Fayetteville Code of Ordinances.

FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

KIT WILLIAMS, CITY ATTORNEY
DAVID WHITAKER, ASST. CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



LEGAL DEPARTMENT

TO: Marvin Hilton, Cable Administrator
CC: Susan Thomas, Public Information & Policy Advisor
FROM: David J. Whitaker, Assistant City Attorney *D. J. Whitaker*
DATE: February 7, 2006
RE: Government Channel Policy, Appeals & Procedures Clarification

You have asked the following questions regarding authority to regulate the PEG access channels:

1. Has the City Council, through Ordinance 4504, delegated autonomous authority to determine the Government Channel programming policy? Otherwise, what is the extent of their authority?
2. Is it necessary and appropriate, under Ordinance 4504 for the City Council to approve the Government channel programming policy?
3. Is it necessary and appropriate for the City Council, under Ordinance 4504, to hear appeals and complaints about the Government Channel programming policy?

As to Question #1: No. While it is true that Ordinance 4504 delegates certain authority to the Telecommunications Board, I can find no language in the ordinance to suggest a grant of "autonomy" to the Board. It is doubtful that, without an express grant of authority from the State Legislature, the City Council could create any separate and autonomous body. "It is well settled that municipal corporations have no inherent powers and can exercise only (1) those expressly given to them by state statute or the Arkansas Constitution, (2) those necessarily implied for the purposes of, or incident to, the express powers, and (3) those indispensable, not merely convenient, to their objects and

purposes." City of Cave Springs v. City of Rogers, 343 Ark. 652, 37 S.W.3d 607 (2001). However, the City Council's (our legislative entity at the municipal level), limited delegation of authority in this instance would appear to comport with the Arkansas Supreme Court's holding that "any power not legislative in character which the legislature may exercise it may delegate." Merritt v. No Fence Dist. No. 2 of Jefferson County, 205 Ark. 1129, 172 S.W.2d 684 (1943). See also Cosgrove v. City of West Memphis, 327 Ark. 324, 938 S.W.2d 827 (1997), (City Council may designate agents to act, within the scope of their agency, on behalf of the city). The City Council, as the governing body of the municipality, retains the power to intervene in matters of public policy, and indeed, could abolish the Telecommunications Board entirely, if it so desired.

As to Question #2: While it is not *necessary*, it is certainly appropriate for the City Council to approve the policies governing all of the access channels. When read in its entirety, Ordinance No. 4504 clearly contemplates an advisory role for the Telecommunications Board. See §33.205; §33.210 (A); and §33.210 (B) (3) & (8), Fayetteville Code of Ordinances. Again, as stated above, the Ordinance contains no express grant of autonomy or exclusivity to the Telecommunications Board in such policy-making. It is, therefore, my conclusion that the City Council may, at its discretion, approve, modify or reject any policies put forward by the Telecommunications Board.

As to Question #3: Again, though not *necessary* under the Ordinance, there is nothing in either the Arkansas Code or the Fayetteville Code of Ordinances that would preclude the City Council, *at its discretion*, from allowing aggrieved citizens an opportunity to seek redress of their grievances before their elected City Council. The striking of the "appeals" language from the Ordinance removed the *statutory requirement* that the Council hear such appeals. It did not deprive them of their discretion.

Mayor Lioneld Jordan
City Attorney Kit Williams
City Clerk Sondra Smith



Aldermen

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Ward 1 Position 2 – Brenda Boudreaux
Ward 2 Position 1 – Mark Kinion
Ward 2 Position 2 – Matthew Petty
Ward 3 Position 1 – Justin Tennant
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**Tentative Agenda
City of Fayetteville Arkansas
City Council Meeting
January 17, 2012**

A meeting of the Fayetteville City Council will be held on January 17, 2012 at 6:00 PM in Room 219 of the City Administration Building located at 113 West Mountain Street, Fayetteville, Arkansas.

Call to Order

Roll Call

Pledge of Allegiance

Mayor's Announcements, Proclamations and Recognitions:

City Council Meeting Presentations, Reports and Discussion Items:

- ✓ 1. 2012 Martin Luther King Brotherhood Award Presentation
- ✓ 2. State of the City Address

Agenda Additions:

A. Consent:

- ✓ 1. Approval of the January 3, 2012 City Council meeting minutes.
- ✓ 2. **T-Hangar Lease Agreements:** A resolution to approve T-Hangar lease agreements throughout 2012 at the current rental rate or as adjusted upward by the Airport Board for all T-Hangars rented at the Fayetteville Executive Airport.

3. **South Delta Aviation, Inc.:** A resolution to approve a two year lease for the airport hangar at 4248 South School Avenue to South Delta Aviation, Inc. for a rent of \$3,000.00 per month to begin on June 1, 2012.
4. **Arkansas Department of Aeronautics Grant:** A resolution authorizing application for and acceptance of an Arkansas Department of Aeronautics 80/20 Grant in the amount of \$224,000.00 for improvements to the former AATC hangar building at Drake Field.
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6. **Transportation Division Truck Equipment Purchase:** A resolution approving a budget adjustment in the amount of \$6,000.00 to fund the purchase of an extendo-bed, topper and ladder rack for pickup truck unit 2147.
7. **Bid #11-65 Central Salt Company:** A resolution awarding Bid #11-65 and authorizing the purchase of crushed rock salt from Central Salt Company in the amount of \$79.85 per ton, as needed through the end of calendar year 2012.
8. **Bid #12-01 Time Striping, Inc.:** A resolution awarding bid #12-01 and authorizing the purchase from Time Striping, Inc. of thermal striping, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.
9. **Bid #12-02 Asphalt Striping Service, LLC:** A resolution awarding Bid #12-02 and authorizing the purchase from Asphalt Striping Service, LLC of reflectorized paint markings, in variable amounts, for the Transportation Division as needed through the end of calendar year 2012.
10. **Bid #12-03 Fochtman Enterprises, Inc. and Sweetser Construction, Inc.:** A resolution awarding Bid #12-03 and authorizing the purchase of curb and gutter construction from Fochtman Enterprises, Inc. as a primary supplier and Sweetser Construction, Inc. as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.
11. **Bid #12-04 Les Rogers, Inc.:** A resolution awarding Bid #12-04 and authorizing the purchase of hillside gravel from Les Rogers, Inc. for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.
12. **Bid #12-05 Beaver Lake Concrete, Inc. and Tune Concrete Company:** A resolution awarding Bid #12-05 and authorizing the purchase of concrete from Beaver Lake Concrete, Inc as a primary supplier and Tune Concrete Company as secondary supplier, in variable amounts, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.

- ✓ **13. Bid #12-06 Hillside Haulers:** A resolution awarding Bid #12-06 and authorizing the purchase of truck hauling services from Hillside Haulers for variable unit prices, and authorizing the use of other bidders based on price and availability, as needed through the end of calendar year 2012.
- ✓ **14. Bid #12-07 Aggregate Materials:** A resolution awarding Bid #12-07 and authorizing the purchase of aggregate materials for varying unit prices from various vendors, as needed through the end of calendar year 2012.
- ✓ **15. Bid #12-09 Tomlinson Asphalt Co. and Sweetser Construction, Inc.:** A resolution awarding Bid #12-09 and authorizing the purchase of curb and gutter construction from Tomlinson Asphalt Co., Inc. as a primary supplier and Sweetser Construction, Inc. as a secondary supplier, in variable amounts, for use in Ozark Regional Transit New Freedom Projects, as needed through the end of calendar year 2012.
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B. Unfinished Business:

- ✓ **1. Bellefont Gardens Tree Preservation Area Modification:** A resolution to approve a modification of the tree preservation area in the Bellefont Gardens development to shift about one-half acre of tree preservation area from Lot 1 to Lot 4. *This resolution was tabled at the December 6, 2011 City Council meeting to the December 20, 2011 City Council meeting. This resolution was tabled at the December 20, 2011 City Council meeting to the January 17, 2012 City Council meeting.*
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- ✓ **1. Asphalt Materials:** An ordinance waiving the requirements of formal competitive bidding during calendar year 2012 for the purchase of asphalt materials for use by the Transportation Division.
- ✓ **2. Amend Chapter 10 and 150:** An ordinance to enact into the Code of Fayetteville §10.18 Authority and to amend §150.03 Authority in the Unified Development Code.
- ✓ **3. Washington County Jail Services Interlocal Agreement:** A resolution to approve the Third Amended Interlocal Agreement for Jail Services with Washington County to increase the booking fee from \$55.00 to \$60.00 per prisoner.

- ✓ 4. **Amend Telecommunications Board:** An ordinance amending Article IX Telecommunications Board of the Code of Fayetteville, by redefining the procedures and duties of the Telecommunications Board.

D. City Council Agenda Session Presentations:

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Adjournment:

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Pre Agenda Meeting 01-04-2012

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City Attorney Kit Williams
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*Tail
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*Kit presented the award
at the January 17, 2012 City Council Meeting*

**2012 CITY OF FAYETTEVILLE:
DR. MARTIN LUTHER KING, JR. BROTHERHOOD AWARD**

Every Martin Luther King Day since I became Fayetteville City Attorney in March of 2001, it has been my pleasure to select a City of Fayetteville employee to receive the Dr. Martin Luther King, Jr. Brotherhood Award. The ten previous recipients all exemplified Dr. King's message of equality, justice and brotherhood.

This year's recipient has worked for the City of Fayetteville and served the citizens of Fayetteville for almost two decades. She has had a unique role within the City government working directly for the Mayor.

Since the citizens of Fayetteville changed our form of city government to Mayor/Council in 1992, Fayetteville has been led by three mayors. These mayors campaigned against each other and did not agree on a tremendous number of issues. But all three mayors: Fred Hanna, Dan Coody and Lioneld Jordan, did agree on one thing: the Mayor's Office simply would not function in the best interests of the citizens of Fayetteville without Lana Broyles as the Mayor's Office Administrator.

Lana is quietly competent in managing the office, consistently excellent in responding to citizen communications, and always reliable in preparing Mayoral Proclamations and letters, arranging the Mayor's travel plans, and managing the Mayor's busy schedule. On top of all that, Lana spearheads and organizes three employee potluck luncheons every year to help foster better morale and communication up and down the line between all city employees and officials.

After the devastating Joplin tornado last year, Lana organized a fun pie-in-a-city-official's-face fundraiser that raised over \$500.00 for the Joplin School District. Lana is fairly shy and never seeks out the limelight, but she still shines radiantly as she embodies and encourages friendliness and equality, and brother and sisterhood throughout our City government. Lana Broyles is a worthy recipient of the 2012 City of Fayetteville Dr. Martin Luther King, Jr. Brotherhood Award.

Sondra Smith - State of the City Speech Date--January 17, 2012

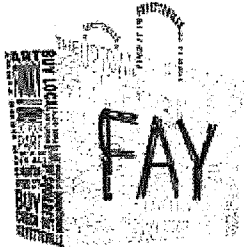
From: Lindsley Smith
To: ssmith@ci.fayetteville.ar.us
Date: 12/7/2011 4:33 PM
Subject: State of the City Speech Date--January 17, 2012
CC: Broyles, Lana; ljordan@ci.fayetteville.ar.us; Marr, Don

Sondra,

The Mayor has confirmed to go with the date in January as the State of the City is usually given even though the Legislature extended the timing on it in the last Legislative Session. As such, it would be the date that you and I identified--January 17--for the Mayor's to give the annual State of the City address. So, the Pension report would be on January 3, and the State of the City would be January 17, which are the dates you had but needed confirmed on the State of the City day.

Lindsley

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