

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

1/15/2013

City Council Meeting Date
Agenda Items Only

Paul A Becker

Submitted By

Finance and Internal Services

Division

Finance and Internal Services

Department

Action Required:

The City has received an offer for the purchase 1.87 acres of City Property known as the old Tyson Property at 1851 E. Huntsville Road. Kum & Go L.C. has made an offer to purchase said property for \$900,000 .They also have agreed to reimburse the City for the costs of demolition of the existing structure including the foundation, footings and pavement removal. Kum & Go L.C. proposes to construct a convenience store that sells petroleum on the property. The City administration recommends acceptance of this offer.

N/A	\$ -	
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

Paul a. Becker 1-2-2012
Department Director Date

Previous Ordinance or Resolution # _____

K. [Signature] 1-2-13
City Attorney Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Becker 1-2-2013
Finance and Internal Services Director Date

Received in City Clerk's Office 01-02-13 P12:36 RCVD
Kim G.

[Signature] 1-2-13
Chief of Staff Date

Received in Mayor's Office
ENTERED 1/2/13
PH

[Signature] 1/2/13
Mayor Date

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr Chief of Staff

From: Paul A Becker

Date: January 2, 2013

Subject: Sale of 1.87 acres of the former Tyson Property to Kum & Go L.C.

PROPOSAL: The Tyson Property was purchased by the City in 2004 for \$1.1 million. The total parcel was 11.17 acres. In addition to property required for right of way for Highway 16 widening, the City constructed a fire station on a portion of the property.

The City has received an offer to purchase 1.87 acres of the remaining property from Kum & Go L.C. for \$900,000 and 25% (up to \$100,000) of the costs of demolition of the existing structure including the foundation, footings and pavement removal.

If the City Council chooses to accept this offer, the City would receive enough to tear down and remove a hazardous structure. Still retain in excess of 8 acres of the property and after road improvement costs still have some cash for future appropriation. An additional benefit would be a new business on the tax rolls.

RECOMMENDATION: The City administration recommends the City Council accept the purchase offer from Kum & Go.

BUDGET IMPACT: The City would receive sufficient funds to remove the old Tyson building and hopefully has some left over for future appropriation..



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
Jeremy Pate, Development Services Director

FROM: Kit Williams, City Attorney

DATE: December 18, 2012

RE: Tyson Property Purchase and Proposed Sale of 2 Acres

On November 16, 2004, Mayor Coody and Finance Director Steve Davis presented an Offer and Acceptance Contract and a Donation Contract to purchase 11.17 acres on Highway 16 East and Happy Hollow Road for \$1,100,000.00 to the Fayetteville City Council. I could find no memo from the administration supporting this purchase in the City Clerk's Agenda packet file, but have attached the City Council minutes in which the purchase was partially justified as a potential savings of \$100,000.00 in right-of-way costs for the widening of Highway 16 East, as well as to eliminate the land costs for a new fire station. There was some talk about being able to use the Tyson Mexican Original taco/corn chip factory building for fire, police or other city services, but that later proved not feasible. I believe that the only thing that factory was put to use for was warehousing of Hurricane Katrina donations.

The City Council voted almost unanimously to purchase this 11 acres and later built Fire Station Five on a western portion of this land. After reductions for the land to build the fire station and right-of-way dedications slightly more than ten acres remains. However, the

Tyson/Mexican Original Factory became an eyesore and has been vandalized and stripped of its valuable metals by thieves. Our police frequently have been called to the site for ongoing problems and safety issues. Mayor Jordan and many aldermen have expressed the need to demolish the building so the site could eventually be attractively developed. Strategic Planning even presented scenarios for site development on this ten acres. One major problem was always money - full building and foundation demolition and all pavement removal cost was roughly estimated at \$475,000.00 by the contractor who built our Courts/Prosecutor building. With the City Budget cut over Two Million Dollars, wages frozen and more than twenty previously budgeted city positions left vacant, there was no extra money for a demolition project.

A few months ago, Kum & Go, L.C. representatives spoke to Mayor Jordan and senior staff about acquiring a building site for one of their convenience store/gas stations on the Tyson Property. Kum & Go, L.C. has rapidly expanded into Washington and Benton Counties opening or constructing more than a dozen new and attractive stores the last few years. Mayor Jordan said he would certainly entertain such proposal which could help Fayetteville demolish the old factory.

Kum & Go, L.C. initially proposed to buy the entire remaining 10 acres for \$985,000.00 which would be reduced by about \$40,000.00 for their realtor's fee. All required rights-of-way, green space, etc. would further reduce the amount paid to the City for all of our property. There were other terms in this initial offer that the City could not accept.

Rather than simply rejecting this first proposal, the Mayor authorized me to develop a counterproposal for his approval. I obtained the actual amounts Kum & Go, L.C. had paid for its many new acquisitions for its new stores in Washington and Benton Counties. I analyzed these acquisition costs on a per square foot, per acre, and per store basis. This data showed that we had been offered much less per acre than what had been paid to every other seller. I do not fault or criticize Kum & Go, L.C. for this. Businesses always seek to get the best deal possible. It is our responsibility to ensure our taxpayers get fair value for their assets.

Mayor Jordan, in consultation with Chief of Staff Don Marr and Finance Director Paul Becker then authorized me to convey a counterproposal to Kum & Go, L.C. in which we would sell them either a single two acre lot or both two acre lots (at a less per acre cost) that front Highway 16 East, cost share the demolition expense of the Tyson factory, and cost share a street entry into this 10 acre parcel from the signaled intersection.

Kum & Go, L.C. graciously worked with us and chose to purchase the two acre lot on the East side of the property. After further negotiation, Kum & Go, L.C. agreed to pay \$900,000.00 for this 1.87 acre lot, cost share 50/50 with the City to build the center street from the signaled intersection to the intersection with the street running along the southern portion of this lot to Ray Avenue. We hope these streets when completed will help the neighborhood served by Ray to more easily go East on Martin Luther King or Highway 16 during the morning rush hour.

Kum & Go L.C. also agreed to pay 25% of the costs (to be capped at \$100,000.00) for the demolition of the old Tyson factory, its foundation and footings and all pavement removal. I believe the Mayor and many Aldermen will be glad that we can finally remove the unattractive hulk and return some of this property into productive use.

If the City Council agrees to this sale, then the City will be able to demolish the factory, build needed streets, net several hundred thousand dollars, be able to sell a very commercially viable two acre lot fronting Highway 16 East and keep a 4.7 acre lot on the South side of the lot for City uses (Police, Parks and Recreation HQ, Transportation, etc.).

I want to thank Mayor Jordan for his leadership and determination during this negotiation. He has ensured that our citizens will receive fair value for their property while remaining fair and friendly to Kum & Go.

RESOLUTION NO. 183-04

A RESOLUTION APPROVING AN OFFER AND ACCEPTANCE CONTRACT BETWEEN THE CITY OF FAYETTEVILLE AND TYSON FOODS, INC. FOR THE PURCHASE OF PROPERTY LOCATED AT 1851 EAST HUNTSVILLE ROAD IN THE AMOUNT OF \$1,100,000.00 AND A DONATION CONTRACT; AND APPROVING A BUDGET ADJUSTMENT IN THE AMOUNT OF \$4,000.00 TO COVER APPRAISAL AND CLOSING COSTS.

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 Offer and Acceptance contract between the City of Fayetteville and Tyson Foods, Inc. for the purchase of property located at 1851 East Huntsville Road in the amount of \$1,100,000.00, and a Donation contract. Copies of the Offer and Acceptance contract marked Exhibit "A," and the Donation contract marked Exhibit "B," are attached hereto and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment in the amount of \$4,000.00 to cover appraisal and closing costs.

PASSED AND APPROVED this 16th day of November 2004.

APPROVED:

By: 

DAN COODY, Mayor

ATTEST:

By: 

SONDRA SMITH, City Clerk



RESOLUTION NO. _____

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO SELL ABOUT TWO ACRES OF THE TYSON FACTORY PROPERTY ON HUNTSVILLE ROAD FOR \$900,000.00 TO KUM & GO, L.C., TO AGREE TO COST SHARE WITH KUM & GO ROADS OR DRIVEWAYS WITHIN THE TYSON PROPERTY ADJOINING THIS TWO ACRE PARCEL AND THE DEMOLITION OF THE FACTORY, AND TO RECOMMEND REZONING THIS PARCEL TO NEIGHBORHOOD COMMERCIAL OR OTHER ZONING DISTRICT SATISFACTORY TO KUM & GO, L.C.

WHEREAS, the City of Fayetteville used portions of the Tyson factory's lot obtained in 2004 for Highway 16 East right-of-way needs and for the construction of a new fire station; and

WHEREAS, now Kum & Go, L.C. has offered to purchase about two acres of the remaining ten acres to be used for a Kum & Go gas station/convenience store; and

WHEREAS, the City Administration and Kum & Go, L.C. have worked out a proposed agreement in which Kum & Go, L.C. would pay \$900,000.00 for this two acre parcel and the City and Kum & Go would cost share 50/50 for the streets or driveways within the ten acre parcel on the west and south sides of the two acre parcel, Kum & Go would cost share 25% (up to \$100,000.00) for the demolition of the old factory and both parties would agree to the broad terms of the Concept Plat submitted by Kum & Go, L.C.

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 has determined that for the purposes of this proposed sale to Kum & Go, L.C., the parcel of about two acres should be rezoned to Neighborhood Commercial or other zoning district agreeable to Kum & Go, L.C. prior to its conveyance.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby authorizes Mayor Jordan to sign a Land Sale Agreement with Kum & Go, L.C. for the parcel shown on the concept plat (slightly less than two acres) for \$900,000.00 and sign the deed conveying such parcel to Kum & Go, L.C.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby agrees: to cost share 50/50 with Kum & Go, L.C. for streets or driveways running from the intersection of Happy Hollow and Huntsville through the property (on the west side of the two acre lot) and along the southern border of this parcel to Ray Avenue; to cost share 75/25 (up to \$100,000.00)

for the demolition and removal of the Tyson factory; to agree not to sell any other city-owned property within one mile of this parcel for use of another convenience store/gas station, liquor store or tobacco store; and to agree to the development of this parcel in the general form shown in the Concept Plat attached to the Land Sale Agreement.

PASSED and **APPROVED** this 15th day of January, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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



REVISED LETTER OF INTENT

December 14, 2012

To: City of Fayetteville, Fayetteville AR

In response to the City of Fayetteville's letter, dated December 5, 2012, the purpose of this letter (the "**Letter**") is to set forth certain nonbinding understandings between City of Fayetteville ("**Seller**"), and KUM & GO, L.C., an Iowa limited liability company ("**Buyer**").

This Letter reflects our mutual understanding of the matters described in it, but each party acknowledges that the provisions of this Letter are not intended to create or constitute any legally binding obligation between Seller and Buyer, and neither party shall have any liability to the other party with respect to this Letter unless or until a definitive agreement has been executed and delivered by and between the parties. If a definitive agreement is not executed and delivered by and between the parties for any reason, no party to this Letter shall have any liability to the other based upon, arising from, or relating to the provisions set forth in this Letter.

Premises:	Locally known as 1851 E. Huntsville Rd, Fayetteville, Arkansas. Approximately +/- 81,612 sf (1.87± acres) as shown as Lot 1 on the visual depiction is attached hereto on Exhibit "A." The actual legal description shall be substituted herein following receipt by Buyer of a title commitment for the Premises.
Purchase Price:	The Purchase Price of the Premises shall be <u>\$ \$900,000.</u>
Closing:	One-hundred and eighty (180) days from execution of purchase agreement with Buyer having 3 options to extend the Closing Date by 60 days each, upon the exercise of each such option, 1/3 of the Escrow Deposit shall become non-refundable to Buyer, but shall be applicable to the Purchase Price.
Conveyance:	Seller shall convey marketable and insurable title to the Premises by general warranty deed, free and clear of all liens, restrictions and encumbrances except as provided in the Purchase Agreement.

Buyer's Due Diligence / Inspections:	Buyer shall have until the Closing Date in order to conduct its "due diligence" inspections and to determine the suitability of the Premises for Buyer's intended use and/or development. During such period, Buyer shall be entitled to enter upon the Premises to conduct such testing/inspections as Buyer deems necessary for Buyer's intended use of the Premises. Buyer shall be permitted to terminate the purchase agreement by notice to Seller at any time until the closing, as it may be extended. Further, in the event that more than sixty (60) days have elapsed since the Closing Date and Buyer has not terminated the agreement or otherwise elected to proceed to closing as provided therein, then at any time thereafter Seller may, by written notice to Buyer, cancel and terminate the agreement, unless Buyer within ten (10) days of such notification waives the conditions precedent in writing and elects to proceed with the closing.
Environmental:	Seller warrants to the best of its knowledge and belief that (i) there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Premises, (ii) the Premises does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and (iii) Seller has done nothing to contaminate the Premises with hazardous wastes or substances. Seller warrants that the property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks.
Abstract/Title Insurance:	Seller shall provide Buyer with its most recent abstract and/or title commitment. Buyer shall order a title commitment on the Premises, as soon as practicable following the full execution of the purchase agreement contemplated by this letter of intent, through Escrow Agent for an ALTA Form B owner's policy (2006 version, if available), with extended coverage, or a comparable form, from a title insurance company approved by Buyer in the amount of the purchase price, covering the date of this Agreement, and shall provide to Buyer the basic owner's title insurance commitment within twenty (20) days of the effective date. If the

	<p>report on title, binder or commitment discloses any defects in title (other than liens or encumbrances of a definite or ascertainable amount which may be paid at closing from the proceeds due Seller), Seller shall have thirty (30) days from the date of Buyer's notice of such defects to make a good faith effort to cure such defects and to furnish a report showing the defects cured or removed. If such defects are not cured within thirty (30) days, Buyer may terminate this agreement or may, at its election, take title subject to any such defects. The cost of the title commitment and the cost of the owner's title policy shall be borne by Seller. The cost of any lender's title policy and extended owner's title insurance coverage shall be borne by the Buyer.</p>
Escrow Deposit:	<p>Within ten (10) days after the date of the signature of the full execution of the purchase agreement contemplated by this letter of intent, Buyer shall deposit with the Escrow Agent the sum of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500) ("Escrow Deposit").</p>
Escrow Agent/Title Company:	<p>Waco Title, Fayetteville, Arkansas</p>
Use Restriction:	<p>Seller and its affiliates shall restrict the use of any and all real estate owned or controlled by Seller and its affiliates within one mile of the Premises for a period of twenty (20) years from being used for the following uses:</p> <ol style="list-style-type: none"> a. A gasoline station, including any type of business that sells diesel fuel, ethanol fuel, bio-fuel or any other type of fuel used to power motorized vehicles designed primarily for use on public streets and highways. b. A convenience store. c. A cigar, tobacco or pipe shop. d. A business that generates more than fifty percent (50%) of its gross revenue from the sale of beer or liquor products for off premise consumption.

Real Estate Brokers/Commissions:	CBRE NW Arkansas, David Erstine, represents Buyer as Buyer's Broker. Buyer's broker commission to be paid by Buyer at closing (or pursuant to a separate agreement).
Seller's Work:	<p>Seller, at Seller's cost and expense not to exceed one-half (50%), shall construct or contribute funds for the construction of adequate streets, per the design standards of the City of Fayetteville, along the western and southern boundaries of Lot 1, including the intersection of the two planned streets, as shown on Exhibit "A". Buyer shall be responsible for the cost and expense of the remaining one-half (50%) of the street construction costs excluding any land cost;</p> <p>Prior to Closing, Seller, at Seller's cost and expense, shall raze any existing building and site improvements on the Premises. At the later of Closing or the completion of such work, Buyer shall reimburse the lesser of twenty-five (25%) or \$100,000 to the City for such work;</p>
Buyer's Work:	<p>Buyer shall, at Buyer's sole cost and expense, complete any such City required street improvements, as typically required, on the eastern boundary of Lot 1 and as shown on Exhibit "A", along Ray Avenue;</p> <p>Buyer shall, at Buyer's sole cost and expense, complete the construction of the Regional Detention Pond ("Pond") as shown on Exhibit "A". Said Pond shall serve Lots 1 & 2 as shown on Exhibit "A". The Pond shall meet City design requirements and include a low impact development design.</p>
Purchase Agreement:	Within ten (10) days of the full execution of this letter of intent, Buyer shall prepare and present to Seller a draft of a binding purchase agreement on a form substantially similar to Exhibit "B" attached hereto, as altered by the terms and conditions set forth herein.

Very truly yours,

KUM & GO, L.C.

By: 
Real Estate Development Rep.

Agreed and accepted this _____ day of _____, 20__.

City of Fayetteville

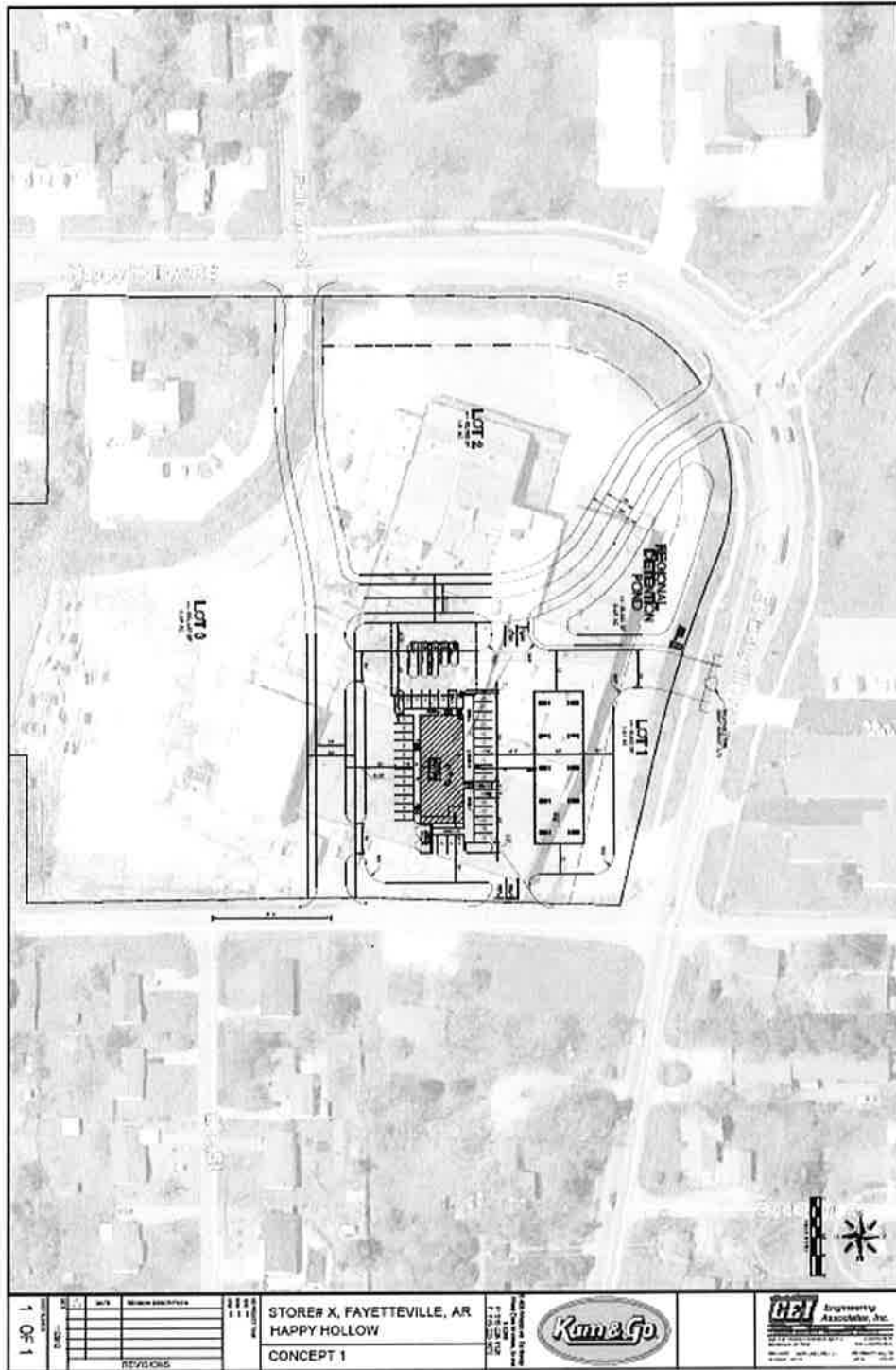
By: _____

Print: _____

Its: _____

EXHIBIT "A"

VISUAL DEPICTION





Kit Williams
City Attorney

Jason B. Kelley
Assistant City Attorney

TO: Mayor Jordan
City Council

FROM: Kit Williams, City Attorney

A handwritten signature in blue ink, appearing to read "Kit Williams", with a long horizontal flourish extending to the right.

DATE: January 8, 2013

RE: Concept Plat from CEI for Kum & Go

Attached please find "Concept 4" for the Lot proposed to be sold to Kum & Go, L.C. It has agreed to remove the direct driveway access onto Huntsville and eliminate one of the curb cuts onto the southern drive or street. The lot is still less than 2 acres, but is now shown to be about 1.94 acres.

One thing that needs to be clarified is that **only City of Fayetteville owned property** within a mile of this site would be restricted from being sold to be used as a convenience store/gas station. **There would be no such restrictions for privately owned property.** This restriction would primarily affect the other possible commercial lot along Happy Hollow (Highway 16 East) which is part of the 10 acre Tyson factory parcel.



DATE	REVISION DESCRIPTION

REVISIONS

STORE XXX, FAYETTEVILLE, AR
HAPPY HOLLOW
CONCEPT 4

4800 Westwood Parkway
 West Orem, Idaho
 P: 801.226.0108
 F: 801.226.0872



GEI Engineering Associates, Inc.

1000 E. 1000 S. Suite 100
 Provo, UT 84604
 P: 801.734.1000
 F: 801.734.1001
 www.geiinc.com