

City of Fayetteville Item Review Form

2014-0062

Legistar File Number

2/18/14

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

Chris Brown

Submitted By

Development Services

Department

Action Required:

A Resolution to approve the Fourth Amendment to the Land Sale Agreement with Kum and Go, L.C., to share in the costs of widening Highway 16 and to extend the Closing Date to no later than April 21, 2014.

Does this item have a cost? Yes

| | | |
|---|--|-----------------------------|
| _____ | _____ | _____ |
| Cost of this request | Category or Project Budget | Program or Project Name |
| _____ | _____ | _____ |
| Account Number | Funds Used to Date | Program or Project Category |
| _____ | \$0.00 | _____ |
| _____ | _____ | _____ |
| Project Number | Remaining Balance | Fund Name |
| Budgeted Item? <input type="checkbox"/> | Budget Adjustment Attached? <input type="checkbox"/> | |

V20130812

01-31-14A11:08 RCVD

Previous Ordinance or Resolution # _____

Original Contract Number: _____

Comments:

Paul a. Bucher 2-3-14

Paul a. Bucher

Steve Mann 2-4-14
Scott Jordan

dmw

ENTERED
2/3/14
[Signature]

CITY COUNCIL AGENDA MEMO

Council Meeting of February 18, 2014

To: Mayor and City Council

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

From: Chris Brown, City Engineer *CB*

Date: January 31, 2014

Subject: **A Resolution to approve the Fourth Amendment to the Land Sale Agreement with Kum and Go, L.C., to share in the costs of widening Highway 16 and to extend the Closing Date to no later than April 21, 2014.**

BACKGROUND:

The City's agreement with Kum and Go, L.C. for Kum and Go's purchase of a portion of City property adjacent to Highway 16 was approved by the City Council in February, 2013. As the project has progressed, multiple amendments have been brought forward addressing various issues that have come to light. Recently, the Arkansas State Highway and Transportation Department (AHTD), during their review of the permit request for the Kum and Go, indicated that an additional lane on Highway 16 at the intersection of Huntsville and Happy Hollow would be required due to the planned installation of the new street/driveway into the Kum and Go. As noted on the attached site plan, this street/driveway will create a 4-way intersection at Happy Hollow and Huntsville, and this additional lane would serve as a turning lane for traffic turning off of Highway 16 at the intersection.

After several discussions with the AHTD, Engineering staff recommended to the Mayor that a cost share with the AHTD be proposed. In December, a letter (attached) was sent to the AHTD proposing this cost share. The AHTD has recently responded positively to this request, and will design the improvements for incorporation into their active construction project on Highway 16. The AHTD will expect a payment of 50% of the cost of the change order for the additional lane before they will begin the work. Once the actual cost is known, staff will present the amount to the City Council for approval of a payment to the AHTD.

PROPOSAL:

The City's current agreement with Kum and Go is to share 50/50 in the cost of the new street/access drive between Highway 16 and Ray Avenue, and in the cost of signal improvements that are necessary as part of this access drive construction. The proposed fourth amendment to the agreement will add the cost of the widening of highway 16 to the cost share agreement. If this amendment is approved, the City's responsibility will be 25% of the cost of the work, with the AHTD and Kum and Go paying the remaining 50% and 25%, respectively.

Additionally, due to the delays in getting this issue resolved and other factors, Kum and Go has requested an extension of the closing date to not later than April 21, 2014.

RECOMMENDATION:

Staff recommends approval of the Fourth Amendment to the Land Sale Agreement.

BUDGET IMPACT:

The total cost of the road widening has been estimated to be up to \$250,000. Therefore, the City's portion, after cost shares with the AHTD and Kum and Go, is estimated to be \$62,500. The actual cost will be known after the AHTD completes the Change Order with their construction contractor.

RESOLUTION NO. _____

A RESOLUTION TO APPROVE THE FOURTH AMENDMENT TO LAND SALE AGREEMENT WITH KUM & GO, L.C. TO EXTEND THE CLOSING DATE TO NO LATER THAN APRIL 21, 2014 AND TO AGREE TO EQUALLY SHARE THE CITY'S PORTION OF THE COSTS OF A DEDICATED LEFT TURN LANE

WHEREAS, the City of Fayetteville agreed to sell and Kum & Go, L.C. agreed to buy a lot of slightly under two acres for \$1,155,001.00 pursuant to the First Amendment to Land Sale Agreement approved by the City Council by Resolution No. 26-13 on February 5, 2013; and

WHEREAS, Kum & Go, L.C. and the City agreed to cost share 50/50 the design and construction costs for the agreed upon new street from the intersection of Happy Hollow and Huntsville to Ray Avenue and agreed that the Closing Date would be in early December at the option of Kum & Go, L.C.; and

WHEREAS, the City requested and Kum & Go, L.C. agreed to extend the period allowed for the demolition of the old Tyson factory for about an additional two and a half months to enable the City to sell the building for salvage for a substantial savings for our taxpayers; and

WHEREAS, Kum & Go, L.C. has agreed to a further 50/50 cost share of the City's portion of its 50/50 cost share with the Arkansas Highway and Transportation Department for any expenses related to the dedicated left turn lane needed for intersection of Happy Hollow and Huntsville which accesses both City and Kum & Go, L.C. property and requested an extension of Closing until April 21, 2014.

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 the Fourth Amendment to the Land Sales Agreement attached to this Resolution and authorizes Mayor Jordan to sign this amended Agreement.

PASSED and APPROVED this 18th day of February 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

FOURTH AMENDMENT TO LAND SALE AGREEMENT

THIS FOURTH AMENDMENT TO LAND SALE AGREEMENT (hereinafter, the "Amendment") is made and entered into effective the _____ day of February, 2014, by and between the CITY OF FAYETTEVILLE, AR, a municipal corporation ("City" or "Fayetteville"), and KUM & GO, L.C., an Iowa limited liability company ("Kum & Go"), WITNESSETH:

WHEREAS, Kum & Go and City have entered into that certain Purchase Agreement (the "Agreement") whereby City has agreed to sell and Kum & Go has agreed to buy certain real estate situated in Fayetteville, Arkansas; and

WHEREAS, Kum & Go and City have entered into the First Amendment to Land Sale Agreement on February 5, 2013; and

WHEREAS, Kum & Go and City have entered into the Second Amendment to Land Sale Agreement on March 19, 2013; and

WHEREAS, Kum & Go and City have entered into the Third Amendment to Land Sale Agreement on September 17, 2013; and

WHEREAS, Kum & Go and City desire to amend this Agreement for a fourth time as set forth herein.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, it is agreed as follows:

1. Extension of Time for Closing. Kum & Go, L.C. and the City of Fayetteville agree that upon Kum & Go, L.C.'s request to extend the Closing Date pursuant to Paragraph 7 of the Land Sale Agreement, Kum & Go, L.C. shall have the right to extend the Closing Date to not later than April 21, 2014.

2. Dedicated Left Turn Lane on Huntsville Road. The Arkansas Highway and Transportation Department has agreed to design and construct a dedicated left turn lane into the City's development site at the old Tyson Plant property if the City pays 50% of these costs. The City and Kum & Go, L.C. now

agree to equally share the City of Fayetteville's 50% cost share with the Arkansas Highway and Transportation Department.

3. Ratification. Except as modified by this Fourth Amendment, all terms within the Agreement and its First, Second and Third Amendments are ratified and confirmed by the parties.

4. Counterparts, Facsimile. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same agreement. For purposes of executing this Agreement, a facsimile signature shall be as effective as an actual signature.

IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to be executed all on or as the day and year first above written.

KUM & GO, L.C.

CITY OF FAYETTVILLE, AR

By: Niki DePhillips
NIKI DePHILLIPS,
SVP Store Development

By: _____
LIONELD JORDAN
Mayor

ATTEST:

By: _____
SONDRA E. SMITH
City Clerk/Treasurer



THE CITY OF FAYETTEVILLE, ARKANSAS
ADMINISTRATION
113 West Mountain
Fayetteville, AR 72701
P (479) 575-8330 F (479) 575-8257

www.accessfayetteville.org

December 10, 2013

Mr. Frank Vozel, P.E.
Deputy Director/Chief Engineer
Arkansas State Highway and Transportation Department
P.O. Box 2261
Little Rock, AR 72203-2261

Re: Highway 16/Huntsville Rd. Intersection

Dear Mr. Vozel:

As you may know, the City of Fayetteville has entered into a contract with Kum and Go, LLC to sell a portion of City property near the intersection of Huntsville Road and Happy Hollow, on State Highway 16. As part of the project, a new street is planned to be constructed to create a 4-way intersection at Highway 16 and Huntsville Road. The intersection currently is a three way intersection that was constructed by the City in 2006, and includes a 4-lane cross section on Highway 16. Additionally, the Department is widening Highway 16 to the east of this intersection, in partnership and cooperation with the City, with the City paying \$5 million toward the approximately \$12 million cost of the project.

Kum and Go, LLC has been pursuing Department approval of the intersection layout, so that they can begin design work on the traffic signal modifications necessary as part of the new leg to be added to the intersection. The Department has recently determined that it will be necessary to add a fifth lane at the intersection, to provide a dedicated left turn lane for both travel directions on Highway 16.

While we agree with the concept, and recognize that this design will create a better intersection, it seems that the Department should share in the cost of this work, just as the City has invested heavily in the cost of the work on the nearby widening project. This work will resolve a weakness in the transportation network that, absent the development project, would have remained after the Highway 16 widening project was completed. We have estimated the cost of the widening to be approximately \$200,000 to \$250,000, based on the unit costs from the Department's current contract with Sweetser Construction, and we would propose that this cost be shared equally between the Department and the City. (This does not include the cost of the signal relocation, which will be borne by the developer and/or the City).

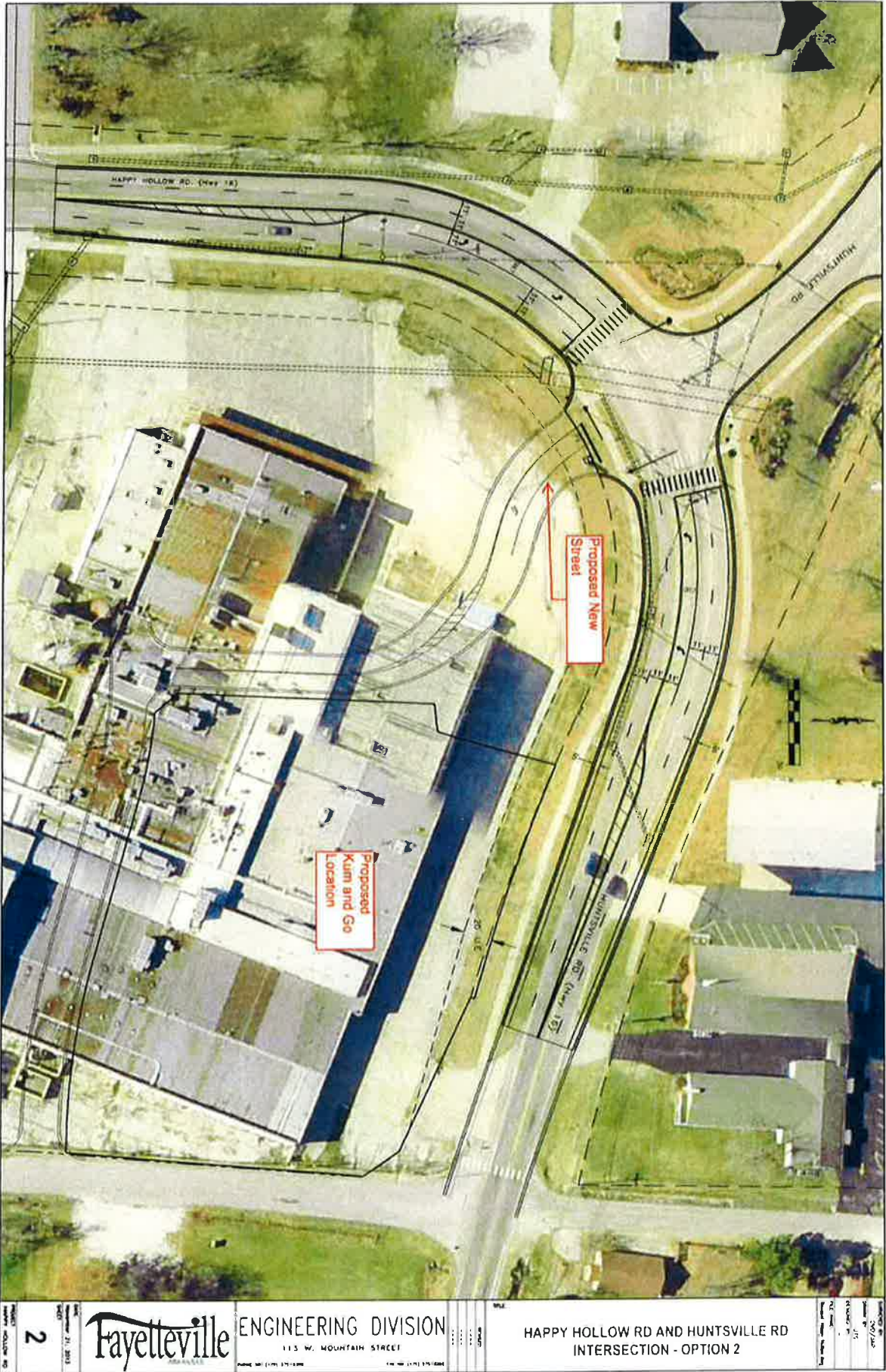
In closing, we sincerely appreciate the partnership that we have enjoyed with the Department during my Administration. We are continuing to look for ways to partner with the Department on facilities owned by the Department that are used by our citizens, including using STP-A funds that recently have become available. We hope that you feel the same, and will recognize this opportunity to work together to strengthen our transportation network in the City.

Sincerely,

A handwritten signature in blue ink that reads "Lioneld Jordan".

Lioneld Jordan
Mayor

Cc: Commissioner Dick Trammel, Ark. Highway Commission



| | | | |
|---|--|--|-----------------|
| 2 | Fayetteville ENGINEERING DIVISION 115 W. MOUNTAIN STREET FAYETTEVILLE, NC 28404 PHONE: (704) 371-1100 FAX: (704) 371-1000 | HAPPY HOLLOW RD AND HUNTSVILLE RD INTERSECTION - OPTION 2 | DATE: 11/17/11 |
| | | | SCALE: AS SHOWN |

ARKANSAS STATE HIGHWAY COMMISSION



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ARMOREL

DICK TRAMMEL
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THOMAS B. SCHUECK
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SCOTT E. BENNETT, P.E.
DIRECTOR OF
HIGHWAYS AND TRANSPORTATION

P.O. Box 2261
LITTLE ROCK, ARKANSAS 72203-2261
PHONE (501) 569-2000 • VOICE/TTY 711 • FAX (501) 569-2400
WWW.ARKANSASHIGHWAYS.COM • WWW.IDRIVEARKANSAS.COM

January 23, 2014

The Honorable Lioneld Jordan
Mayor of Fayetteville
113 West Mountain
Fayetteville, AR 72701

Dear Mayor Jordan:

Reference is made your letter concerning improvements to the Highway 16 and Huntsville Road intersection in Fayetteville.

As you stated, the Department has reviewed the proposed intersection layout and has determined that a dedicated left turn lane for both travel directions on Highway 16 is necessary. You also stated that the estimated cost for this improvement is \$250,000. The City has proposed a partnering arrangement of sharing this cost equally with the Department.

As you are aware, a widening project is underway on Highway 16 on selected sections between Armstrong Avenue and Stone Bridge Road (Job 040578). The City is responsible for 50 percent of the cost of Job 040578 up to \$5,000,000. The Department is agreeable to adding construction of a dedicated left turn lane at the subject intersection to Job 040578 by change order and for paying one-half of the cost. The City will be billed for their portion after the change order is negotiated but prior to execution. This will increase the City's contribution to Job 040578 to approximately \$5,125,000. We agree that this additional work will improve operations on Highway 16 and enhance safety. Also, it is a natural addition to Job 040578.

Thank you for your interest in Arkansas' transportation system. If you have any questions, please let me know.

Sincerely,

Handwritten signature of Scott E. Bennett in black ink.

Scott E. Bennett
Director of Highways
and Transportation

c: Highway Commission
Deputy Director and Chief Engineer
Assistant Chief Engineers
Transportation Planning and Policy
Programs and Contracts
District 4
Job 040578 "C" File

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