

Added at Agenda
Session 4-29-14

Legistar ID
2014-0204

AGENDA REQUEST

FOR: COUNCIL MEETING OF May 6, 2014

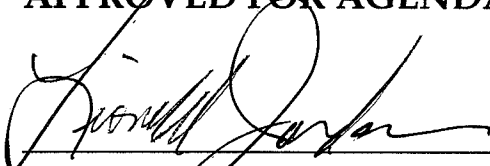
FROM:

**Mayor Jordan
Kit Williams, City Attorney**

ORDINANCE OR RESOLUTION TITLE AND SUBJECT:

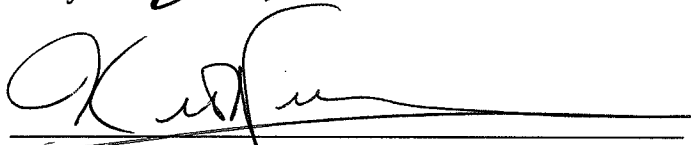
A RESOLUTION TO ACCEPT BIOBASED REALTY, LLC'S OFFER OF \$200,000.00 AS SATISFACTION OF THE CITY'S RIGHT TO RECEIVE A PORTION OF THE INCREASED SALES PRICE OF THE RAW LAND SOLD TO BIOBASED REALTY, LLC IF SUCH LAND IS SOLD WITHIN TEN YEARS

APPROVED FOR AGENDA:



Mayor Lionel Jordan

4/29/14
Date



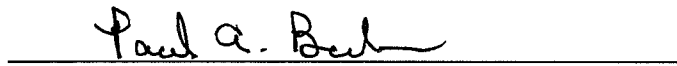
City Attorney Kit Williams

April 28, 2014
Date



Chief of Staff Don Marr

4-28-14
Date



Finance Director Paul Becker

4-28-2014
Date



DEPARTMENTAL CORRESPONDENCE



OFFICE OF THE CITY ATTORNEY

Kit Williams City Attorney

Blake Pennington Assistant City Attorney

Patti Mulford Paralegal

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

Handwritten signature of Kit Williams

DATE: April 28, 2014

RE: Authorization of "early" sale of BioBased Realty LLC's land to the University of Arkansas

In early March, BioBased Realty, LLC contacted me to see if the City of Fayetteville would agree to BioBased Realty, LLC's proposed sale of its property (purchased from the City in mid-2006) to the University of Arkansas.

The City of Fayetteville sold about 19 acres of its old Water and Sewer Headquarters and pipe storage yard along Cato Springs and Razorback Road to BioBased Realty, LLC pursuant to Ordinance No. 4787 passed on November 1, 2005. The Real Estate Sales Contract authorized by the ordinance was fully executed on November 4, 2005. Closing occurred and the City of Fayetteville received \$940,000.00 in mid-2006. The City of Fayetteville offered what it believed was a somewhat discounted price for the land in order to put this important land on the corner of Cato Springs and Razorback Road to a more valuable and productive use and to encourage the innovative and eco-friendly BioBased Technologies to build a high tech lab building and hopefully production facilities. BioBased did build the lab building but did not build a production facility. For the last several years, BioBased Realty has rented its lab building to the University which the University has used partly

as a component in its technology business incubator efforts. The University now would like to purchase the lab building and all remaining raw land from BioBased Realty.

Since the City believed that it was selling its land at a discount, I wrote into the agreement a provision in which the City of Fayetteville's interest would be protected if BioBased Realty LLC sought to sell the property within ten years. The City of Fayetteville would be entitled to 75% of the increased raw land value if sold within 5 years and to 40% if sold within 10 years. **The ten year period will expire in 2016 when the City would no longer be entitled to any portion of the increased value of the land.** Fortunately, BioBased Realty would like to sell now. The Mayor, Senior City Staff and I met with BioBased Realty and University officials to discuss this proposition.

I asked for and received appraisals that BioBased Realty and the University of Arkansas had done during their negotiations over the sale of this property. BioBased's attorney suggested using the University's appraisal and initially offered \$36,000.00. I pointed out that his computations had omitted one of the two parcels. He agreed and raised the amount due to \$166,000.00 through an email dated March 7, 2014. However, because the two appraisals (one for the U of A and one for BioBased Realty) valued the raw land differently, I explained that the City would need to strictly follow the contract's terms and obtain a truly "independent appraisal of the land's value (not to include the value of any building thereon)...." (Paragraph 14).

Accordingly the City selected, paid for and obtained its own independent appraisal from a company that had not worked on this property for either the University or BioBased Realty, LLC. We received the independent appraisal on April 16, 2014. Applying the Real Estate Sales Contract formula to the independent appraisal's valuation yielded a figure of \$292,000.00 which I relayed to BioBased Realty, LLC. If this amount had been acceptable to BioBased Realty, LLC, no City Council action would be required. However, BioBased Realty, LLC says that it is already losing money on this sale and cannot pay the \$292,000.00 called for in this contract.

Today BioBased Realty, LLC's Co-Managing Member Phil Phillips did offer a **settlement figure of \$200,000.00**. Only the City Council can agree to an amount not strictly in conformity with the Real Estate Sales Contract. The

U of A and BioBased need to close this land sale soon and have therefore requested to present this to the City Council on May 6, 2014. Attached is Ordinance No 4787, the Real Estate Sales Contract and email from Phil Phillips of BioBased Realty, LLC.

CONCLUSION

The issue for the City Council is whether or not it is in the best interest of our Citizens and our City to accept this \$200,000.00 offer. Factors to recommend City Council approval are summarized below:

1. We have been informed by BioBased Realty that because its building will not sell for what it cost to build, BioBased Realty must actually bring in a substantial sum of its investors' money to pay off its debt when the property is sold to the U of A. It can only afford to offer the City this additional \$200,000.00 to sell the property now.
2. If this settlement is not agreed to, BioBased Realty, LLC can legally wait a couple of years to sell the property and the City would receive **NOTHING.**
3. We are more than half way through the 5 to 10 years second period so that it is reasonable to be willing to reduce our 40% entitlement by less than one third. Our citizens would still receive 68.5% of the most we could have been entitled to for a sale in year six based upon how our appraiser valued the property.
4. Our citizens will receive **\$34,000.00 (17%) more** than what we would have received if the University of Arkansas' appraisal had been used at the full 40% level.
5. This rapid sale is desired by and will be beneficial to our City's largest and most important employer and economic engine, the University of Arkansas. It can only **help and assist the University foster new high tech innovation and industry for our City.**

ORDINANCE NO. 4787

AN ORDINANCE WAIVING THE REQUIREMENTS OF §34.27, CODE OF FAYETTEVILLE AND APPROVING A REAL ESTATE SALES CONTRACT WITH BIOBASED TECHNOLOGIES IN THE AMOUNT OF \$940,000.00 FOR THE PURCHASE OF THE WATER & SEWER OPERATIONS CENTER ON CATO SPRINGS ROAD; DESIGNATING THE PROCEEDS FOR ECONOMIC DEVELOPMENT PURPOSES; AND APPROVING A BUDGET ADJUSTMENT IMPLEMENTING THE DESIGNATION.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

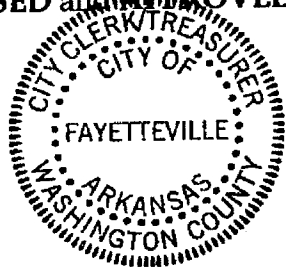
Section 1. That the City Council of the City of Fayetteville, Arkansas hereby waives the requirements of § 34.27, Code of Fayetteville, and approves a Real Estate Sales Contract with BioBased Technologies in the amount of \$940,000.00 for the purchase of the Water & Sewer Operations Center on Cato Springs Road. A copy of the contract is attached hereto marked Exhibit "A" and made a part hereof.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby designates the proceeds of this sale for Economic Development purposes.

Section 3. That the City Council of the City of Fayetteville, Arkansas hereby approves a Budget Adjustment implementing said designation of proceeds.

Section 4. That the City Council of the City of Fayetteville, Arkansas hereby authorizes the Mayor and City Clerk to execute said contract with BioBased Technologies.

PASSED and APPROVED this 1st day of November, 2005.



APPROVED:

By: *Dan Coody*
DAN COODY, Mayor

ATTEST:

By: *Sandra Smith*
SONDRA SMITH, City Clerk



REAL ESTATE SALES CONTRACT

1. The City of Fayetteville, Arkansas offers to sell and BioBased Realty, LLC offers to buy, subject to obtaining acceptable financing and other terms and conditions set forth in this contract, approximately 19.5 acres including all of Parcel 765-03017-000 and Parcel 756-15399-010 except for a one acre parcel where the Children's House is currently located and a right of way easement where the Children's House driveway is not located. This property is more particularly described in Exhibit "A" attached hereto and made a part hereof.

SEE ATTACHED EXHIBIT "A" FOR PROPERTY DESCRIPTION

2. **Purchase Price:** Subject to the following conditions, BioBased Realty, LLC shall pay for the property at closing, the total cash payment of Nine Hundred Forty Thousand Dollars (\$940,000.00).
3. Conveyance will be made BioBased Realty by general Warranty Deed, except it shall be subject to recorded instruments and easements, if any, which do not materially affect the value of the property. Such conveyance shall include mineral rights owned by the City of Fayetteville.
4. The City of Fayetteville shall furnish a policy of title insurance in the amount of the purchase price from a title insurance company as selected by the City of Fayetteville. The City of Fayetteville shall pay the cost of the title insurance.
5. The City of Fayetteville agrees to allow BioBased Realty, if BioBased Realty so desires, at BioBased Realty's expense, to survey the property. The City of Fayetteville agrees to cure any title problems which may result from any differences between the recorded legal descriptions of the property and the survey description. Said title problems, if any, must be solved prior to closing to the satisfaction of the City of Fayetteville. The City of Fayetteville shall provide at its expense a survey of the one acre tract for Children House and right of way easement as depicted on Exhibit "B".
6. Taxes and special assessments due on or before closing shall be paid by the City of Fayetteville. Insurance, general taxes, ad valorem taxes, special assessments and rental payments shall be prorated as of closing.
7. The closing date shall be within one hundred twenty (120) after approval of this offer by the City Council, which can be extended by agreement of the Mayor for an additional sixty (60) days. If such date of closing falls on a weekend or holiday, it will be held the following working day.
8. Possession of the property shall be delivered to BioBased Realty on the date of closing.
9. The City of Fayetteville hereby grants permission for BioBased Realty or their designates to enter the above described property and improvements for the purpose of inspection and/or surveying.
10. Risk of loss or damage to the property by fire or other casualty occurring up to the time of closing is assumed by the City of Fayetteville.

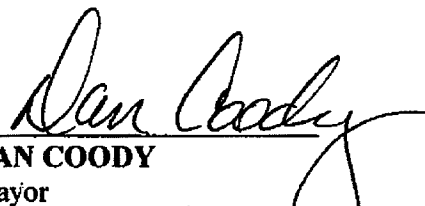
11. The City of Fayetteville shall disclose to BioBased Realty any and all environmental hazards of which the City of Fayetteville has actual knowledge. Upon acceptance of all conditions and terms of this Offer and Acceptance, the City of Fayetteville shall bare the costs of any and all testing for the existence of environmental hazards, including Phase I environmental study and a Phase II study if necessary. Should the existence of environmental hazards be discovered, the City of Fayetteville shall either cure such at its expense or BioBased Realty may terminate this contract.
12. The City of Fayetteville will remove at its expense the existing buildings (not including Children's House) and debris in coordination with BioBased Realty prior to or immediately after closing.
13. Prior to closing, BioBased Realty in conjunction with BioBased Technologies/BioBased Systems will provide the City of Fayetteville with a Master Plan layout of the property acceptable to the City Council. BioBased Realty or BioBased Technologies/BioBased Systems shall take all reasonable action to ensure that any minor possible odor or pollution emissions do not affect surrounding areas. BioBased agrees to build in scrubbers to protect air quality where reasonably appropriate. Each building's general design (including construction materials) shall be presented to the City Council for its approval prior to the building's construction. Normal city developmental requirements such as Large Scale Development standards, etc. shall still be required.
14. If any portion of the land conveyed by this contract is sold by BioBased Realty within the first five years of the date of closing, an independent appraisal of the land's value (not to include the value of any building thereon) shall be performed. BioBased Realty shall pay 75% of the increase in appraised value of the land (with prorated sales cost deducted) to the City of Fayetteville. BioBased Realty shall pay the City of Fayetteville 40% of the increase in appraised value of the land (with prorated sales costs deducted) for any sales after 5 years until 10 years from the closing date.
15. BioBased Realty is granted an option to purchase the remaining acre where Children's House is located eight years after the closing date. BioBased Realty may exercise this option to purchase at any time during the year following the eight year period after the closing date. BioBased Realty and the City agree the price shall be determined at that time as follows:
 - (a) The property including improvements thereon shall be appraised by an independent appraiser.
 - (b) BioBased Realty shall receive an offset from the appraisal value using the following formula: For every full \$100,000.00 in annual payroll paid to BioBased Technologies/Systems and related companies' employees working in Fayetteville over the Two Million Dollar annual payroll estimated for 2008, BioBased Realty shall receive a reduction of \$25,000.00 from the appraised value of this remaining acre.
 - (c) Reductions allowed in paragraph (b) shall not reduce the final price for this acre parcel below \$60,000.00.

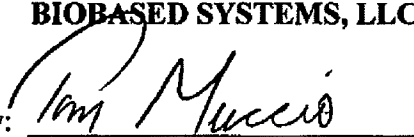
(d) The City of Fayetteville may sell to BioBased Realty this acre at any mutually agreeable time prior to the expiration of the eight year period upon terms agreeable to both parties.

16. This agreement shall be governed by the laws of the State of Arkansas.
17. This agreement, when executed by both BioBased Realty and the City of Fayetteville shall contain the entire understanding and agreement of the parties with respect to the matters referred to herein and shall supersede all price or contemporaneous agreements, representations and understanding with respect to such matters, and no oral representations or statements shall be considered a part hereof.

CITY OF FAYETTEVILLE
A Municipal Corporation


BIOBASED REALTY, LLC
BIOBASED TECHNOLOGIES, LLC
BIOBASED SYSTEMS, LLC

By: 
DAN COODY
Mayor

By: 
TOM MUCCIO
CEO

Date: 11/04/05

Date: 10-21-05

Attest:

Sondra Smith, City Clerk

Agent or Witness:


Date: 11/04/05

Date: 10-21-05

Williams, Kit

From: Phil Phillips <phil@aadvan.com>
Sent: Monday, April 28, 2014 10:29 AM
To: Williams, Kit
Subject: Fwd: BioBased

Kit:

Ken Shemin provided me with your email dated April 16, 2014 regarding the proposed payment to the City of Fayetteville in the amount of \$292,000.00 based upon an increase in the value of the raw land of \$730,000.00.

While I totally understand the City's position, BioBased Realty does not have the funds to pay this amount. In fact, as I previously stated in our meeting, certain members of BioBased Realty will be required to provide the funds to the entity to make *any* payment to the City. As we further discussed, if we cannot agree on an amount, it may be necessary for BioBased Realty to defer all or part of the sale to the University of Arkansas until after July 26, 2016 simply due to the economic reality of the situation.

In order to facilitate a resolution of the matter, BioBased Realty is offering the sum of \$200,000.00 to be paid at closing.

Time is of the essence. You have been extremely cooperative in the past and we would appreciate your assistance in attempting to have this proposal placed on the agenda for the May 6, 2014 city council meeting.

Phil Phillips

CO-Managing Member

Bio Based Realty, LLC

RESOLUTION NO. _____

A RESOLUTION TO ACCEPT BIOBASED REALTY, LLC'S OFFER OF \$200,000.00 AS SATISFACTION OF THE CITY'S RIGHT TO RECEIVE A PORTION OF THE INCREASED SALES PRICE OF THE RAW LAND SOLD TO BIOBASED REALTY, LLC IF SUCH LAND IS SOLD WITHIN TEN YEARS

WHEREAS, the City of Fayetteville and BioBased Realty, LLC entered into a Real Estate Sales Contract on November 4, 2005 wherein BioBased purchased about 19 acres of City property for \$940,000.00; and

WHEREAS, paragraph 14 of this contract required that BioBased Realty, LLC share a declining percentage of any increased sale value of the raw land purchased from the City if BioBased Realty, LLC sells this property within ten years; and

WHEREAS, BioBased Realty, LLC desires to sell this property to the University of Arkansas and has offered this City \$200,000.00 as its fair share of the increased value; and

WHEREAS, the City Council has determined that it is in the best interest of Fayetteville citizens to accept this offer of \$200,000.00 as full satisfaction of the contractual duties of BioBased Realty, LLC pursuant to paragraph 14 of the Real Estate Sales Contract.

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 accepts the offer of \$200,000.00 from BioBased Realty, LLC as full satisfaction of the City's right to receive a portion of the increased sales price of the raw land sold to BioBased Realty, LLC if such land is sold within ten years and authorizes Mayor Jordan to sign any documentation needed to effectuate this agreement.

PASSED and APPROVED this 6th day of May 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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