

**CONTRACT FOR ECONOMIC DEVELOPMENT SERVICES BETWEEN THE  
BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY AND THE BROKEN  
ARROW ECONOMIC DEVELOPMENT CORPORATION**

This Contract is made and entered into this 17<sup>th</sup> day of March, 2015, by and between the Broken Arrow Economic Development Corporation, an Oklahoma non-profit corporation, hereinafter referred to as "BAEDC," and the Broken Arrow Economic Development Authority, hereinafter referred to as "BAEDA" a public trust, whose sole beneficiary is the City of Broken Arrow.

WHEREAS, BAEDA has adopted an economic development strategy for the City of Broken Arrow; and

WHEREAS, this strategy specifically outlines activities and efforts needed to encourage and facilitate economic development in the community by attracting new retail sales businesses, commercial businesses and industries to the Broken Arrow area, and by promoting the economic health and expansion of existing retail sales businesses, commercial businesses and industries within Broken Arrow and diversifying the City's economy; and

WHEREAS, BAEDA is an Oklahoma public trust, the sole beneficiary of which is the City of Broken Arrow (the "City" which term, when used in such context, shall also mean and refer to the area within the territorial limits of the City); and

WHEREAS, BAEDA was created under a certain Trust Indenture dated November 19, 1973, as amended March 11, 1982, August 4, 1983, and March 18, 2014 (the "Authority Trust Indenture"), as a public trust for the use and benefit of its sole beneficiary, the City, under authority of and pursuant to Title 60, Oklahoma Statutes, §§176, *et seq.*; and

WHEREAS, among the Authority Trust Indenture's stated purposes are those of promoting and encouraging development of industry and commerce within and without the territorial limits of the City by instituting, furnishing, providing, and supplying property, improvements and services for the City and for the inhabitants, owners and occupants of the property, and governmental, industrial, commercial and mercantile entities, establishments, and enterprises within and without the City; promoting the general convenience, general welfare and public safety of the residents of the City; acquiring by purchase real property useful in instituting, furnishing, providing, or supplying any of the aforementioned property, improvements and services; complying with the terms and conditions of contracts made in connection with or for the acquiring of any of said properties; receiving funds, property and other things of value from, among others, the City; and participating in State and other programs which are to the advantage of BAEDA and the City; and BAEDA has determined that its undertakings and the performance of its obligations under this Agreement are authorizing and proper functions of the BAEDA's Trust Indenture; and

WHEREAS, a declared goal of BAEDA is to encourage and facilitate economic development within and near the City by attracting new industry and commercial businesses to the Broken Arrow area, and to promote the economic health and expansion of existing industry and commercial businesses within the City; and

WHEREAS, BAEDA recognizes that the BAEDC's fulfillment of the provisions of this Contract will have additional and indirect economic benefits within and near the City, in Tulsa and Wagoner Counties and in the State through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, and predicated and/or providing training and employment opportunities in services, sales and management skills; and

WHEREAS, the Oklahoma Supreme Court has held that Economic Development is a legitimate public purpose for which public funds may be expended and that economic development in the City will allow the City to expand the type and scope of its services, including enhanced public improvements, police protection, fire protection and recreational facilities; and

WHEREAS, BAEDA desires, through the Contract with the BAEDC, to increase the revenue of the community of Broken Arrow and of its inhabitants and to provide employment for the inhabitants of the community of Broken Arrow; and

WHEREAS, it is in the best interest of the City for the BAEDC to continue certain programs and services including expansion and creation of programs and incentives supporting expansion and retention of existing industries; and

WHEREAS, as established by the monthly reports of the BAEDC, the marketing efforts of the BAEDC have resulted in significant interest from developers both within and outside of the state, as well as the expansion and retention of existing businesses and jobs; and

WHEREAS, services to be performed are contractual services of a professional nature for valid consideration.

WHEREAS, both the City and the BAEDA deem it appropriate to approve the execution and delivery of this Agreement in the interest of providing for the implementation of economic development activities and the program contained in this Contract and have determined such actions are in the best interests of the City and the health, safety, and welfare of the City and residents within and near the City;

NOW, THEREFORE, in consideration of the covenants and mutual obligations set forth and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree as follows:

**SECTION 1: PARAMETERS OF CONTRACT AND  
RESPONSIBILITIES OF THE BAEDC**

It is expressly understood that the remuneration paid by BAEDA to the BAEDC shall be compensation for specific professional services rendered pursuant to the terms of this Contract. No BAEDA funds shall be used for any other purpose. The BAEDC shall perform certain Economic Development services for the benefit of the BAEDA and the City of Broken Arrow and shall strive toward the fulfillment of the Economic goals and objectives it has adopted. Specifically, the BAEDC shall perform the following:

## **I. RETAIL & RESTAURANT DEVELOPMENT**

The BAEDC shall proactively recruit retail establishments, including restaurants, for which the City is a feasible location and which fill sales tax gaps and address areas of significant sales tax leakage. The BAEDC shall also actively work to retain and assist in the expansion of existing retailers that serve the City. Specifically, the BAEDC shall perform the following functions:

1. Target recruitment of suitable retailers for whom Broken Arrow is a fit and that fill sales tax gaps and address areas of sale tax leakage. Specifically, the BAEDC shall perform the following functions:
  - a. Perform local market analyses and research retailers to ensure specific retailer needs prior to contact to ensure the feasibility of location within the City.
  - b. Utilize sales tax gap analyses to ensure the proposed retailers fill a sales tax gap.
  - c. Develop a targeted list of retail and restaurant venues that will be actively recruited to the Broken Arrow area through direct contact, collaboration with developers and the City's economic development staff.
  - d. Utilize ICSC resources (e.g. Value Retail Directory, conferences, etc.) to target and recruit viable retailers.
2. Build relationships with retail site consultants and real estate professionals. Specifically the BAEDC shall:
  - a. Attend retail conferences to network with site location consultants & real estate professionals and inform them of the benefits of the City for their businesses.
  - b. Create local developer committees to build relationships and collaborate on upcoming developments.
  - c. Ensure site location consultants have quick and easy access to information on retail incentives and TIF districts.
3. Market the City as a retail growth hub to retail professionals, developers, and restaurants. Specifically, the BAEDC shall:
  - a. Create a strong web presence, including information on the website that will assist retail site consultants in locating stores in the City.

- b. Continue to build a social media presence, including “following” and “liking” appropriate developers and real estate professionals and posting latest accolades for the City.
  - c. Create collateral pieces when appropriate to be used as mailers, at conferences, and sent to retail professionals (i.e. Grounds for Development).
  - d. Create an Economic Development e-newsletter that will have retail-specific information for presentation to retail site selectors, real estate professionals, and developers.
  - e. Attend retail conferences to recruit retailers and market the City.
4. Collaborate with City Staff to ensure most effective recruitment efforts. Specifically, the BAEDC shall:
- a. Collaborate with the City's Economic Development Coordinator on retail recruitment efforts.
  - b. Maintain and strengthen relationships with local business owners in the Tulsa area in order to recruit second and third locations of their boutique businesses to the City.
  - c. Review Sales Tax leakage studies and work to address areas of weakness.
  - d. Maintain strong relationships with partners and resource providers in order to better assist area retailers.
  - e. Connect Broken Arrow companies and consumers with Broken Arrow vendors, in order to retain as much business as possible within the City's economy.
  - f. Provide Broken Arrow-specific workforce resources, in addition to regional and state resources.
  - g. Provide educational opportunities to help existing companies maintain their competitiveness and attract new customers.

## **II. BUSINESS RETENTION & EXPANSION**

There are more than 250 manufacturers currently located within the City resulting in the third largest concentration of manufacturers in the state, behind Oklahoma City and Tulsa. In order to retain and grow these and our other City employers, the BAEDC shall:

1. Regularly meet and work with existing businesses.
2. Maintain strong relationships with partners and resource providers in order to better assist area employers.

3. Connect City companies with City suppliers, in order to retain as much business as possible within the City's economy.
4. Provide Broken Arrow-specific workforce resources, in addition to regional and state resources.
5. Provide educational opportunities to help existing companies maintain their competitive edge.
6. Create and facilitate C-level peer advisory groups for existing companies.
7. Advocate for business friendly legislation at the state and local levels.
8. Provide appropriate communication/marketing to existing businesses about resources and opportunities.

### **III. BUSINESS ATTRACTION**

The BAEDC shall pursue an economically responsible recruitment strategy that focuses on companies that offer high-paying jobs that have an overall positive impact on the City. Specifically, the BAEDC shall:

1. Build and maintain good relationships with the Oklahoma Department of Commerce and the Tulsa Regional Chamber of Commerce.
2. Build and maintain good relationships with area commercial realtors.
3. Create a website specifically for the BAEDC and its market.
4. Join and participate in the events of the Oklahoma Governor's Economic Development Team.
5. Continue membership in Tulsa's Future.
6. Build and maintain working relationships with site location consultants, via conferences, networking events, and trade shows.
7. Ensure the City of Broken Arrow is fully informed about potential projects.
8. Create a Broken Arrow Labor Study with information on under-employed as well as unemployed.

### **IV. ENTREPRENEURIALISM**

The BAEDC will strive to promote the healthy growth of local entrepreneurs. Specifically, the BAEDC shall:

1. Connect entrepreneurs with resources.

2. Host SCORE events, for start-up and existing companies to facilitate communication and consultation with seasoned business executives.
3. Maintain a relationship with the business incubators in the region, so that upon completion, businesses will look to Broken Arrow to establish their businesses.
4. Provide appropriate learning opportunities for start-up companies.

#### **V. ECONOMIC OUTLOOK**

The BAEDC shall continually monitor trends within the economy, as well as external economic trends. Specifically, the BAEDC shall develop a Feasibility Study for new Economic Outlook analyses and:

1. Review and revise the Economic Development strategic plan, including target industries for recruitment.
2. Review and revise the Broken Arrow labor survey, that will help clarify the City's workforce, as well as promote it to others.

#### **VI. TOURISM**

The BAEDC recognizes that tourism is an important part of the City's economic development program. To assist the city with tourism for the City, the BAEDC shall:

1. Work cooperatively with the City's Tourism Director to advance the City's tourism program.
2. Join and actively participate in the VisitTulsa, the Tulsa Metropolitan Area's regional tourism initiative.
3. Research, facilitate and advocate for tourism opportunities in the City.

#### **SECTION 2: INDEPENDENT CONTRACTOR STATUS OF BAEDC**

It is expressly understood that the BAEDC is retained by BAEDA to perform Economic Development services on behalf of BAEDA and that the BAEDC is an independent contractor of BAEDA for the purposes of carrying out its obligations under this Contract. The BAEDC understands and agrees that its performance under this Contract is to serve the general public for the promotion of Economic Development for the City of Broken Arrow, Oklahoma. Both parties agree that this is a reimbursement-for-services contract.

The parties agree that all persons working for the BAEDC under this agreement shall be employees of the BAEDC and shall not be considered employees of the City or BAEDA. This agreement shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between BAEDA and the BAEDC nor any officer, employee, contractor or representative of the BAEDC. No joint employment is created by this

Agreement, and each BAEDC employee shall be so advised. The hiring, discharge, supervision and management of all employees of the BAEDC, including, but not limited to the determination of the numbers and qualifications of employees required to perform the duties of the BAEDC under this agreement, the establishment and administration of wage scales, rates of compensation, provision of benefits including, but not limited to Workers' Compensation and retirement, conditions of employment and job descriptions with respect to all employees shall be the right and obligation of the BAEDC.

### **SECTION 3: FILING OF TAX DOCUMENTS**

The BAEDC shall be responsible for maintaining its designation as a non-profit corporation in accordance with U.S. Internal Revenue Service regulations and guidelines. The BAEDC shall also be responsible for and obligated to prepare and file all returns and documents required under the Federal Insurance Contribution Act and the Federal Unemployment Act, any other federal or state legislation, and of all withholding tax returns required for employees of the BAEDC engaged in this Economic Development Contract. The BAEDC shall be responsible for the payment of all amounts required to be paid under any federal or state legislation and for all applicable taxes.

### **SECTION 4: RECORDS AND AUDIT**

The BAEDC shall be responsible for the maintenance of full books of accounts with correct entries of all expenditures in the administration of this Economic Development Contract. Books of accounts and related invoices shall be the property of the BAEDC, but shall be open to the inspection of BAEDA upon responsible notice. The parties agree that the BAEDA shall have the right to annually cause an audit by an independent auditor to be made of the records of the BAEDC to the extent that they involve directly or indirectly the expenditure of funds appropriated to the BAEDC by BAEDA pursuant to this agreement.

### **SECTION 5: REIMBURSEMENT AND ACTIVITY REPORTS**

On or before the 30<sup>th</sup> day of each month, the BAEDC shall submit to BAEDA a Monthly Activity Report detailing services and activities that accurately state the progress made in implementing the terms, conditions and scope of work required by this Contract. This Monthly Activity Report shall accompany an invoice requesting reimbursement of actual expenses not to exceed \$32,292.00 per month.

### **SECTION 6: NONDISCRIMINATION**

The BAEDC, for themselves and their successors, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, creed, color, age, sex, handicap, or national origin shall be excluded from participation in, denied the benefit of, this Contract; and (2) that in carrying out the terms and conditions of this Contract, no otherwise qualified person, with or without reasonable accommodation, shall be subjected to discrimination on the grounds of handicap.

**SECTION 7: COMPLIANCE WITH LAWS**

The BAEDC agrees to conduct its business under the terms of this Contract in such a manner that it does not violate any federal, state, or local laws or regulations applicable to the conduct of its operations under the terms of this Contract.

**SECTION 8: TERM AND TERMINATION OF CONTRACT**

This Contract shall be in full force and effect from July 1, 2015, through June 30, 2018. It is the intent of BAEDA that this Contract shall remain in effect for the term specified unless modified by mutual consent of the parties. It is acknowledged that the reimbursement provided for herein for fiscal years 2017 and 2018 are on a year-to-year basis subject to annual appropriation. It shall be a default and cause for termination if the BAEDC fails to keep, observe or perform any material agreements, terms or provisions of this Contract and such default continues for a period of thirty (30) days after written notice by BAEDA to the BAEDC. In the event of default, BAEDA has no further obligations under the terms of this Contract. This Contract, however, be terminated by either party by thirty (30) days written notice.

**SECTION 9: LOBBYIST**

If BAEDA should become interested in utilizing the services of the lobbyist employed by the BAEDC, that matter will be negotiated separately from this Agreement.

**SECTION 10: BIDDING**

The BAEDC is encouraged to institute a policy of seeking competitive bids relating to the expenditure of funds whenever possible. It is recognized that bidding is not always possible or practical, but to the extent that the BAEDC finds it advantageous, it is encouraged to seek competitive bids.

**SECTION 11: RIGHT TO SUBCONTRACT**

It is understood and agreed that the BAEDC may itself perform its obligations and duties relating to economic development or that it may subcontract certain portions of its duties and responsibilities to other parties. However, in the event that certain duties are subcontracted, the BAEDC will remain responsible to BAEDA for the results.

**SECTION 12: NOTICES**

Whenever a notice is required to be given under the terms of this Contract, such notice shall either be personally delivered or mailed by certified mail, return receipt requested, to the following addresses:

City Manager  
City of Broken Arrow  
P. O. Box 610

Wesley Smithwick, President  
Broken Arrow Economic Development Corporation  
210 North Main Street, Suite C

**SECTION 13: INTERPRETATION OF LAW**

This Contract shall be construed in accordance with the laws of the State of Oklahoma. Exclusive Original Jurisdiction and venue for any action relating to this Contract shall be solely in Tulsa County District Court of Oklahoma.

**SECTION 14: ASSIGNMENT**

Neither party shall assign this Contract or any interest herein without the express written consent of the other party.

**SECTION 15: CONSTRUCTION**

Captions and headings in this Contract are for reference and identification purposes only and in no way alter, modify, amend, limit or restrict the contractual obligations of the parties. This Agreement constitutes the entire understanding between the parties, and supersedes all proposals and all other communications with respect to this Contract.

**SECTION 16: AMENDMENTS**

Amendments to this Contract shall only be made upon the written approval of the parties.

**SECTION 17: SEVERABILITY**

If any part of this Contract is found to be unenforceable by a court, the balance of this Contract will be unaffected.

Approved as to Form:

Broken Arrow Economic Development Authority

Lesli Myers  
Deputy City Attorney

By: [Signature]  
Chairman

Date:

Attest:

March 17, 2015



[Signature]  
City Clerk (Seal)

Broken Arrow Economic Development Corporation

By: [Signature]  
President

State of Oklahoma    )  
                                  ) ss:  
County of Tulsa     )

Before me, a Notary Public, on this 17<sup>th</sup> day of March, 2015, personally appeared Wes Smithwick, known to me to be the President of the Broken Arrow Economic Development Corporation and the identical person who executed the within and foregoing instrument, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

Jan 19, 2016

[Signature]  
Notary Public