



City of Broken Arrow
Meeting Agenda
Broken Arrow Economic Development
Authority

Chairperson Craig Thurmond

Vice Chair Scott Eudey

Trustee Mike Lester

Trustee Johnnie Parks

Trustee Debra Wimpee

Tuesday, September 5, 2017

Council Chambers
220 S. 1st Street
Broken Arrow, OK

**TIME: Follows City Council meeting which begins at 6:30 p.m. and the Broken Arrow
Municipal Authority meeting which follows City Council.**

1. Call to Order

2. Roll Call

3. Consideration of Consent Agenda

- A. [17-1696](#) Approval of Broken Arrow Economic Development Authority Meeting
Minutes of August 15, 2017

Attachments: [08-15-2017 BAEDA Minutes](#)

- B. [17-2651](#) Approval of and authorization to execute a First Amendment to Economic
Development Agreement by and among the Broken Arrow Economic
Development Authority, the City of Broken Arrow, Oklahoma, and
Milestone Capital, L.L.C.

Attachments: [First Amendment Milestone EDA](#)

- C. [17-2652](#) Approval of and authorization to execute a First Amendment to a certain
Lease Agreement and Option to Purchase by and among the Broken Arrow
Economic Development Authority and Milestone Capital, L.L.C.

Attachments: [First Amendment Milestone Lease](#)

- D. [16-1582](#) Approval of the Broken Arrow Economic Development Authority Claims
List for September 05, 2017

Attachments: [09-05-17 BAEDA CL](#)

4. Consideration of Items Removed from Consent Agenda

5. General Authority Business

- A. [17-2644](#) Consideration, discussion, and possible approval of and authorization to
execute a Third Amendment to Economic Development Agreement by and

among the Broken Arrow Economic Development Authority, the City of Broken Arrow, Oklahoma, and Stoney Creek Hospitality Corporation

Attachments: [8-21-17 3rd amendment signed by James Thompson](#)

6. Executive Session -- NONE

7. Adjournment

NOTICE:

If you wish to speak at this evening's meeting, please fill out a "Request to Speak" form. The forms are available from the City Clerk's table or at the entrance door. Please turn in your form prior to the start of the meeting. Topics are limited to items on the currently posted agenda, or relevant business.

All cell phones and pagers must be turned OFF or operated SILENTLY during meetings.

Exhibits, petitions, pictures, etc., shall be received and deposited in case files to be kept at the Broken Arrow City Hall. If you are a person with a disability and need some accommodation in order to participate in this meeting, please contact the City Clerk at 918-259-2400 Ext. 5418 to make arrangements.

POSTED this _____ day of _____, _____, at _____
a.m./p.m.

City Clerk



City of Broken Arrow

Fact Sheet

File #: 17-1696, **Version:** 1

**Broken Arrow Economic Development Authority
Meeting of: September 5, 2017**

To: Chairman and Authority Members

From: Office of the City Clerk

Title: Approval of Broken Arrow Economic Development Authority Meeting Minutes of August 15, 2017

Background: Minutes recorded for the Broken Arrow Economic Development Authority Meeting

Cost: \$0

Prepared By: Lisa Blackford, City Clerk

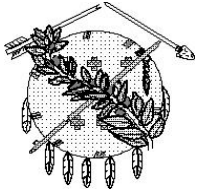
Reviewed By: Russell Gale, Assistant City Manager of Administration

Beth Anne Childs, City Attorney

Approved By: Michael L. Spurgeon, City Manager

Attachments: Broken Arrow Economic Development Authority minutes of August 15, 2017

Recommendation: Approval of the minutes of August 15, 2017 for the Broken Arrow Economic Development Authority meeting



City of Broken Arrow

City Hall
220 S 1st Street
Broken Arrow OK
74012

Minutes Broken Arrow Economic Development Authority

Chairperson Craig Thurmond
Vice Chair Scott Eudey
Trustee Mike Lester
Trustee Johnnie Parks
Trustee Debra Wimpee

Tuesday, August 15, 2017

Council Chambers

1. Call to Order

Chairman Craig Thurmond called the meeting to order at approximately 7:50 p.m.

2. Roll Call

Present: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

3. Consideration of Consent Agenda

Chairman Thurmond asked if there were any items to remove from the Consent Agenda. There being none, he asked for a motion.

MOTION: A motion was made by Mike Lester, seconded by Scott Eudey.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

A. 17-1693 **Approval of Broken Arrow Economic Development Authority Meeting Minutes of August 1, 2017. No Claims List for Broken Arrow Economic Development Authority for August 15, 2017.**

4. Consideration of Items Removed from Consent Agenda

There were no items removed from the Consent Agenda. No action was required or taken.

5. Public Hearings, Appeals, Presentations, Recognitions, Awards

There were no Public Hearings, Appeals, Presentations, Recognitions, or Awards.

6. General Authority Business

There was no General Authority Business.

7. Executive Session

There was no Executive Session.

8. Adjournment

The meeting adjourned at approximately 7:51 p.m.

MOTION: A motion was made by Scott Eudey, seconded by Mike Lester.

Move to adjourn.

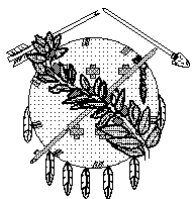
The motion carried by the following vote:

Aye: 5 - Debra Wimpee, Johnnie Parks, Mike Lester, Scott Eudey, Craig Thurmond

Attest:

Chairman

Secretary



City of Broken Arrow

Fact Sheet

File #: 17-2651, Version: 1

Broken Arrow Economic Development Authority

Meeting of: 09-05-2017

To: Chairman and Authority Members

From: Office of the City Attorney

Title:

Approval of and authorization to execute a First Amendment to Economic Development Agreement by and among the Broken Arrow Economic Development Authority, the City of Broken Arrow, Oklahoma, and Milestone Capital, L.L.C.

Background:

On February 12, 2016, the City purchased 1.864 acres located at 305 North Main street in the amount of \$600,000.00 plus attorney's fees and related costs. Due to the dilapidated condition of the structures and appurtenances located on the Real Property, the City entered into a construction contract with ARK Wrecking Company of Oklahoma, Inc. for demolition in the amount of \$87,140.00, said demolition being completed in 2016. It was initially contemplated that the City would either use the property for its own purposes or declare it surplus and transfer it to the Broken Arrow Economic Development Authority (the "Authority") for sale in the amount of the City's investment (approximately \$701,151.40), and as part of a comprehensive economic development activity. In order to assist the City Council and the Trustees of the Authority with evaluation of all potential options, the Broken Arrow Economic Development Corporation ("BAEDC") issued two (2) different Requests for Proposals (RFP's) for development of the property. Responses to the first RFP were received and evaluated in 2016. After due consideration, investors negotiating with the BAEDC and the City advised that they could not advance development of the property without significantly decreasing the size and scope of the proposed development. Following this development, the BAEDC issued a second RFP with the recognition that a long term lease of the land or additional incentives would be necessary to maximize the size, scope and quality of any development.

In February of 2017, Cowen Construction ("Cowen") submitted a comprehensive response to the RFP. On March 21, 2017, the City Council authorized the City Manager to enter into formal negotiations with Cowen for a comprehensive economic development package. Cowen is a premier General Contractor that has been in business for over 121 years. Thereafter, Milestone Capital, LLC., (the "Developer") an Oklahoma Limited Liability Company formed by representatives of Cowen for purposes of developing the property, have agreed to construct a four story building with mixed uses. The project will consist of approximately 31,660 Square Feet of retail, restaurant and office space on the street level of the building. It will also consist of approximately 89,420 square feet of one (1) and two (2) bedroom residential units located on the upper three (3) floors of the building. Developer's investment is estimated to be \$17,474,799.00, plus an additional \$577,742.00 in engineering, design and surveying costs. Of this figure, it is estimated that the City will receive \$260,549.00 in sales and use taxes for the materials necessary for construction. Sales taxes realized by the City are expected to exceed \$150,000.00 annually. Taxes on the improvements are expected to exceed \$250,000.00 annually. In part by reason of the property being made available and the Authority making certain improvements to infrastructure, Developer has agreed to undertake this project.

Resolution Number 1019 of the Broken Arrow City Council declared this property surplus and authorized execution of a General Warranty Deed transferring the property to the Authority. This was accomplished for economic development purposes and, specifically as set forth in the Economic Development Agreement between the City, the Authority and the Developer. Through Resolution Number 1021, the Broken Arrow Economic Development Authority accepted the General Warranty Deed.

The Economic Development Agreement provides that the Authority will lease the real property to the Developer for a term of 99 years. The Developer will build the project consistent with the parameters set forth above. The Authority will also upgrade the waterline serving the project, extend the downtown streetscape to encompass the project, and relocate utilities on the site. Resolution Number 1041 of the Authority formally approves a comprehensive Lease with the Developer. The Lease also provides for an option to purchase by the Developer for the amount of the City's investment within a five (5) year period of time and once the project is substantially complete. After that time, it provides for acquisition for fair market value. Importantly, any proceeds of sale would need to be returned to their original funding source.

On August 1, 2017, the Authority approved Resolution No. 1040, authorizing execution of the Economic Development Agreement between the City and the Broken Arrow Economic Development Authority and Milestone, LLC. After further review and discussions with the Developer, Staff is recommending amending the Agreement to clarify the terms regarding the infrastructure improvements to be performed by the Authority. Specifically, the relocation of the sewer line and waterline will be determined by the City's Director of Engineering and Construction. It is contemplated that the sewer line will be located east of the Developer's facilities which will necessitate the line being located under a portion of the Developer's parking lot. The Amendment also states that the aerial power, cable lines, and sanitary sewer line shall be relocated and substitute services available on or before February 15, 2018, subject to Developer receiving approval to plan site by October 15, 2017.

Cost: As set forth in the Economic Development Agreement

Prepared By: Beth Anne Childs, City Attorney

Reviewed By: Legal Department
Engineering and Construction Department
Assistant City Manager - Operations

Approved By: Michael L. Spurgeon, City Manager

Attachments: First Amendment to Economic Development Agreement

Recommendation: Approve the First Amendment to Economic Development Agreement and authorize its execution.

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT

The **FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT** (the "First Amendment") made effective as of this 5th day of September, 2017, by and between BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, an Oklahoma public trust (together with its successors and assigns, the "Authority"), THE CITY OF BROKEN ARROW, OKLAHOMA, an Oklahoma municipal corporation (together with its successors and assigns, the "City", which term, when used in such context, shall also mean and refer to the areas within the territorial limits of the City), and Milestone Capital L.L.C., an Oklahoma limited liability company (together with its successors and assigns, "Developer"). Terms used and not otherwise defined in the First Amendment shall be defined in the August 1, 2017 Agreement.

WITNESSETH:

WHEREAS, on August 11, 2017, the Authority, the City and the Developer entered into an Economic Development Agreement ("Agreement") and a Lease Agreement and Option to Purchase (the "Lease") whereby the Developer agreed to undertake a Project that will consist of approximately 31,660 Square Feet of retail, restaurant and office space and approximately 89,420 Square Feet of ninety (90), one (1) and two (2) bedroom residential units on property owned by the Authority and located at 305 North Main Street in Broken Arrow, Oklahoma; and

WHEREAS, the Agreement required the Authority to construct or cause to be constructed certain infrastructure improvements including a waterline and also to relocate certain utilities; and

WHEREAS, amendment of the Agreement is necessary to clarify the intent of the parties and specifically to provide for use of a booster pump for the provision of water and relocation of a sanitary sewer line; and

WHEREAS, amendment of the Agreement will advance the goals of the City and the Authority to retain and expand employment, attract private investment, enhance the tax base of the City, stimulate economic growth and improve the quality of life in the City, strengthen the community and permit the City to expand the type and scope of its services, including enhancing public improvements, and expanding the provision of police and fire protection therein; and

WHEREAS, both the City and the Authority deem it appropriate to approve the execution and delivery of this First Amendment in the interest of providing for the implementation of the Project and have determined such actions are in the best interest of the City and the health, safety, and welfare of the City and residents within and near the City; and

NOW, THEREFORE, in consideration of the covenants and mutual obligations set out herein and in the Agreement, and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree to the following Amendments:

ARTICLE A
AMENDMENTS TO AGREEMENT

A.1 Amendment to Section 4.4 of the Agreement: Section 4.4, Infrastructure Improvements by Authority, is hereby amended to read in its entirety as follows:

- (a) Streetscape. The Authority shall construct or cause to be constructed improvements on Main Street from Detroit Street to south side of Elgin Street consistent with the streetscape improvements previously constructed in the Rose District ("Streetscape"). Subject to the foregoing requirement, the Streetscape shall be constructed under the control of the City Manager, but in cooperation with Developer's representatives. The Streetscape shall be completed on or before the Substantial Completion Date.
- (b) Waterline. The Authority shall construct or cause to be constructed a 12" waterline from Greely Street to Detroit Street, with the precise location to be determined by the City's Director of Engineering and Construction. The waterline shall be completed on or before March 31, 2018.
- (c) Relocation Aerial Power, Cable Lines and Sanitary Sewer Line. The Authority shall re-route or cause to be re-routed existing aerial power, cable lines, and sanitary sewer line within the Real Property to an acceptable location to be determined by the City's Director of Engineering and Construction. It is contemplated that the sewer line will be located east of the Developer's facilities which will necessitate the line being located under a portion of the Developer's parking lot. The aerial power, cable lines, and sanitary sewer line shall be relocated by a date mutually agreed upon by the Authority and the Developer.
- (d) Easements. The Authority shall obtain and cause the preparation and recording of appropriate easements providing access in, over, across and above the Real Property as may be reasonably necessary for immediately contiguous utility improvements in the interest of making all utility connections efficient, convenient, accessible and available to Developer.

ARTICLE B
CONTINUING TERMS OF AGREEMENT

B.1 Except as amended hereby, all terms of the Agreement remain in full force and effect without modification or change. The Agreement, as amended by this Amendment, is in all respects ratified and confirmed, and the Agreement, as so amended by this Amendment, shall be read, taken and construed as one and the same instrument.

IN WITNESS WHEREOF, each of the parties have caused this Agreement to be executed by its duly authorized officials and its official seal to be impressed hereon, as of the date first above written.

DATED this 5th day of September, 2017.

THE CITY OF BROKEN ARROW,
a municipal corporation

ATTEST: (S E A L)

By: _____
Mayor

By: _____
City Clerk

Reviewed as to form and legality.

Assistant City Attorney

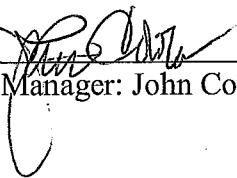
BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY,
an Oklahoma public trust

ATTEST: (S E A L)

By: _____
Chairman

By: _____
Secretary

MILESTONE CAPITAL, L.L.C.

By:  _____
Manager: John Cowen

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for said County and State, on the _____ day of _____, 2017, personally appeared John Cowen, Manager of Milestone Capital, LLC., to me known to be 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, and as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.
(S E A L)

Notary Public
My commission expires:
My number is:



City of Broken Arrow

Fact Sheet

File #: 17-2652, Version: 1

Broken Arrow Economic Development Authority

Meeting of: 09-05-2017

To: Mayor and City Council
From: Office of the City Attorney

Title: Approval of and authorization to execute a First Amendment to a certain Lease Agreement and Option to Purchase by and among the Broken Arrow Economic Development Authority and Milestone Capital, L.L.C.

Background:

On February 12, 2016, the City purchased 1.864 acres located at 305 North Main Street in the amount of \$600,000.00, plus attorney's fees and related costs. Due to the dilapidated condition of the structures and appurtenances located on the property, the City entered into a construction contract with ARK Wrecking Company of Oklahoma, Inc. for demolition in the amount of \$87,140.00, said demolition being completed in 2016. It was initially contemplated that the City would either use the property for its own purposes or declare it surplus and transfer it to the Broken Arrow Economic Development Authority (the "Authority") for sale in the amount of the City's investment (approximately \$701,151.40), and as part of a comprehensive economic development activity. In order to assist the City Council and the Trustees of the Authority with evaluation of all potential options, the Broken Arrow Economic Development Corporation (the "BAEDC") issued two (2) different Requests for Proposals (RFP's) for development of the property. Responses to the first RFP's were received and evaluated in 2016. After due consideration, investors negotiating with the BAEDC and the City advised that they could not advance development of the property without significantly decreasing the size and scope of the proposed development. Following this development, the BAEDC issued a second RFP with the recognition that a long term lease of the land or additional incentives would be necessary to maximize the size, scope and quality of any development.

In February of 2017, Cowen Construction ("Cowen") submitted a comprehensive response to the RFP. On March 21, 2017, the City Council authorized the City Manager to enter into formal negotiations with Cowen for a comprehensive economic development package for the property. Cowen is a premier General Contractor that has been in business for over 121 years. Thereafter, Milestone Capital, LLC., (the "Developer") an Oklahoma Limited Liability Company formed by representatives of Cowen for purposes of developing the Real Property, have agreed to construct a four-story building with mixed uses. The project will consist of approximately 31,660 Square Feet of retail, restaurant and office space on the street level of the building. It will also consist of approximately 89,420 square feet of one (1) and two (2) bedroom residential units located on the upper three (3) floors of the building. Developer's investment is estimated to be \$17,474,799.00, plus an additional \$577,742.00 in engineering, design and surveying costs. Of this figure, it is estimated that the City will receive \$260,549.00 in sales and use taxes for the materials necessary for construction of the Facilities and the Project. Sales taxes realized by the City are expected to exceed \$150,000.00 annually. Taxes on the improvements are expected to exceed \$250,000.00 annually. In part by reason of the property being made available and the Authority making certain improvements to infrastructure, Developer has agreed to undertake

this project.

Resolution Number 1019 of the Broken Arrow City Council declared this property surplus and authorized execution of a General Warranty Deed transferring the property to the Authority. This was accomplished for economic development purposes and, specifically as set forth in the Economic Development Agreement between the City, the Authority and the Developer. By Resolution Number 1021, the Broken Arrow Economic Development Authority accepted the General Warranty Deed.

The Economic Development Agreement referenced above provides that the Authority will lease the real property to the Developer for a term of 99 years. The Developer will build the project consistent with the parameters set forth above. The Authority will also upgrade the waterline serving the site, extend the downtown streetscape to encompass the project, and relocate on-site utilities. Resolution Number 1041 of the Authority formally approves a comprehensive Lease with the Developer. It also provides for an option to purchase by the Developer for the amount of the City's investment within a five (5) year period of time and once the project is substantially complete. After that time, it provide for acquisition for fair market value as defined in the Lease. Importantly, any proceeds of sale would need to be returned to their original funding source.

On August 1, 2017, the Authority approved Resolution No. 1041, authorizing execution of the Lease Agreement and Option to Purchase between the City and the Broken Arrow Economic Development Authority and Milestone, LLC. After further review and discussions with the Developer, Staff is recommending amending the Agreement to clarify the terms regarding the infrastructure improvements to be performed by the Authority. Specifically, the relocation of the sewer line and waterline will be determined by the City's Director of Engineering and Construction. It is contemplated that the sewer line will be located east of the Developer's facilities which will necessitate the line being located under a portion of the Developer's parking lot. The Amendment also states that the aerial power, cable lines, and sanitary sewer line shall be relocated and substitute services available on or before February 15, 2018, subject to Developer receiving approval to plan site by October 15, 2017.

Cost: As set forth in the Lease Agreement and Option to Purchase

Prepared By: Beth Anne Wilkening, City Attorney

Reviewed By: Legal Department
Finance Department
Engineering and Construction Department
Assistant City Manager - Operations

Approved By: Michael L. Spurgeon, City Manager

Attachments: First Amendment to Lease Agreement and Option to Purchase

Recommendation: Approve First Amendment to Lease and Option to Purchase and authorize its execution.

FIRST AMENDMENT TO LEASE AGREEMENT AND OPTION TO PURCHASE

THIS FIRST AMENDMENT TO LEASE AGREEMENT AND OPTION TO PURCHASE (the "Lease") is made effective as of the 5th day of September, 2017 (The "Effective Date"), by and between BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, an Oklahoma public trust of which the City of Broken Arrow is the sole beneficiary (together with its successors, the "Authority"), as lessor, and Milestone Capital, L.L.C., an Oklahoma Limited Liability Company (together with its successors and assigns "Developer").

WITNESSETH:

WHEREAS, on August 11, 2017, the Authority, the City and the Developer entered into an Economic Development Agreement ("Agreement") and a Lease Agreement and Option to Purchase (the "Lease") whereby the Developer agreed to undertake a Project that will consist of approximately 31,660 Square Feet of retail, restaurant and office space and approximately 89,420 Square Feet of ninety (90), one (1) and two (2) bedroom residential units on property owned by the Authority and located at 305 North Main Street in Broken Arrow, Oklahoma; and

WHEREAS, the Lease required the Authority to construct or cause to be constructed certain infrastructure improvements including a waterline and also to relocate certain utilities; and

WHEREAS, amendment of the Lease is necessary to clarify the intent of the parties and specifically to provide for use of a booster pump for the provision of water and relocation of a sanitary sewer line; and

WHEREAS, amendment of the Lease will advance the goals of the City and the Authority to retain and expand employment, attract private investment, enhance the tax base of the City, stimulate economic growth and improve the quality of life in the City, strengthen the community and permit the City to expand the type and scope of its services, including enhancing public improvements, and expanding the provision of police and fire protection therein; and

WHEREAS, both the City and the Authority deem it appropriate to approve the execution and delivery of this First Amendment to the Lease in the interest of providing for the implementation of the Project and have determined such actions are in the best interest of the City and the health, safety, and welfare of the City and residents within and near the City; and

NOW, THEREFORE, in consideration of the covenants and mutual obligations set out herein and in the Lease, and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree to the following Amendments:

ARTICLE A: AMENDMENTS TO LEASE

A.1 Amendment to Section 5.6 of the Lease: Section 5.6, Infrastructure Improvements by Authority, is hereby amended to read in its entirety as follows:

- (a) Streetscape. The Authority shall construct or cause to be constructed improvements on Main Street from Detroit Street to south side of Elgin Street consistent with the streetscape improvements previously constructed in the Rose District ("Streetscape"). Subject to the foregoing requirement, the Streetscape shall be constructed under the control of the City Manager, but in cooperation with Developer's representatives. The Streetscape shall be completed on or before the Substantial Completion Date.
- (b) Waterline. The Authority shall construct or cause to be constructed a 12" waterline from Greely Street to Detroit Street, with the precise location to be determined by the City's Director of Engineering and Construction. The waterline shall be completed on or before March 31, 2018.
- (c) Relocation Aerial Power, Cable Lines and Sanitary Sewer Line. The Authority shall re-route or cause to be re-routed existing aerial power, cable lines, and sanitary sewer line within the Real Property to an acceptable location to be determined by the City's Director of Engineering and Construction. It is contemplated that the sewer line will be located east of the Developer's facilities which will necessitate the line being located under a portion of the Developer's parking lot. The aerial power, cable lines, and sanitary sewer line shall be relocated by a date mutually agreed upon by the Authority and the Developer.
- (d) Easements. The Authority shall obtain and cause the preparation and recording of appropriate easements providing access in, over, across and above the Real Property as may be reasonably necessary for immediately contiguous utility improvements in the interest of making all utility connections efficient, convenient, accessible and available to Developer.

ARTICLE B CONTINUING TERMS OF LEASE

B.1 Except as amended hereby, all terms of the Lease remain in full force and effect without modification or change. The Lease, as amended by this Amendment, is in all respects ratified and confirmed, and the Lease, as so amended by this Amendment, shall be read, taken and construed as one and the same instrument.

IN WITNESS WHEREOF, each of the parties have caused this Lease to be executed by its duly authorized officials and its official seal to be impressed hereon, as of the date first above written.

DATED this 5th day of September, 2017.

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY,
an Oklahoma public trust

ATTEST: (S E A L)

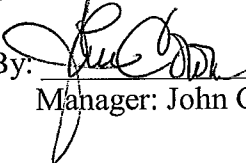
By _____
Chairman

By _____
Secretary

Reviewed as to form and legality:

Assistant City Attorney

MILESTONE CAPITAL, LLC.

By:  _____
Manager: John Cowen

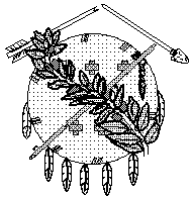
[illegible]

Before me, the undersigned, a Notary Public in and for said County and State, on the _____ day of _____, 2017, personally appeared John Cowen, Manager of Milestone Capital, LLC., to me known to be 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, and as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

(S E A L)

Notary Public
My commission expires:
My number is:



City of Broken Arrow

Fact Sheet

File #: 16-1582, **Version:** 1

PREPARED 9/01/17, 9:03:18
PROGRAM GM314L
CITY OF BROKEN ARROW

ACCOUNTS PAYABLE BY FUND/ DUE DATE

PAGE 59

FUND 087 BAEDA

DATE DUE	VENDOR NO	VENDOR NAME	VOUCHER NO	I NVOI CE NO	ACCOUNT NO	AMOUNT
8/30/2017	9744	SIG-BROKEN ARROW, LTD	001920	SEPT 2017	087-1700-419.50-72	90,850.17
8/30/2017	10288	SPROUTS FARMERS MARKET, INC	001919	SEPT 2017	087-1700-419.50-72	76,081.10
8/30/2017	10289	HILLSIDE DEVELOPMENT	001914	SEPT 2017	087-1700-419.50-72	76,081.10
					8/30/2017 TOTAL -	243,012.37
					FUND 087 TOTAL -	243,012.37



City of Broken Arrow

Fact Sheet

File #: 17-2644, Version: 1

Broken Arrow Economic Development Authority

Meeting of: 09-05-2017

To: Chairman and Authority Members
From: Office of the City Attorney

Title:
Consideration, discussion, and possible approval of and authorization to execute a Third Amendment to Economic Development Agreement by and among the Broken Arrow Economic Development Authority, the City of Broken Arrow, Oklahoma, and Stoney Creek Hospitality Corporation

Background:

In May of 2004, the citizens of Broken Arrow approved a General Obligation Bond Issue. One project in that General Obligation Bond Issue was the acquisition, construction, equipping and furnishing of a Conference Center. In 2014, Broken Arrow voters approved re-purposing the bonds to provide for acquisition of land only for the hotel and conference center. In January of 2015, following issuance of the bonds, the City acquired 14.97 acres along the Broken Arrow Expressway.

On November 4, 2014, the Authority approved a Resolution which approved an Economic Development Agreement between the Authority, the City of Broken Arrow, and Stoney Creek Hospitality Corporation. The Agreement provided for the City's acquisition of the land for lease to Stoney Creek and the Authority's payment of the sum of \$5,550,000.00 in economic development incentives. It was contemplated that the incentives would primarily consist of payments for design work on the land, site work, and infrastructural improvements. Payment of the incentives is subject to the City's approval of Stoney Creek's engineers and other consultants, as well as compliance with the Oklahoma Public Competitive Bidding Act. It is a pay-for-performance Agreement, which contemplates reimbursement following approval of the City's project manager. Specifically, items to be included in the development incentives include payment for testing and inspection, architecture and engineering design, grading, construction of public water, sanitary sewer, and stormwater systems, construction of ingress and egress, parking, lighting, sidewalks and landscaping. Should the incentives not be exhausted with the aforementioned items, Stoney Creek is entitled to seek reimbursement for retaining walls, outdoor patios, signage, monument features and technology infrastructure.

The Resolution also approved a Ground Lease between the City and Stoney Creek. The Lease provided for an initial term of 75 years. It allowed one, 24-year extension. Stoney Creek will pay the sum of \$1 per year for each year of the Lease. Obviously, this is a nominal sum intended to incentivize Stoney Creek to locate the conference center in the City. Both the Lease and the Agreement required Stoney Creek to construct a hotel consisting of approximately 150,000 square feet and containing approximately 170 guest rooms. They also required construction of a 35,000-40,000 square foot conference center. The hotel must offer food service, bar and lounge services, state-of-the-art business technology, and an indoor-outdoor pool facility based upon an "urban lodge" design. The total cost of the hotel and conference center, including furniture, fixtures, equipment

and leaseholder improvements is projected to be \$23,550,000.00.

On October 20, 2015, a First Amendment to Economic Development Agreement was approved by the Authority. One of the primary objectives of the First Amendment was to update the attachments to the original Agreement. The attachments consisted of the Legal Description, the Ground Lease and the Master Site Plan. Another primary objective was to move the payment obligations of the development incentives from the Broken Arrow Economic Development Authority to the City. This change was recommended due to the availability of Vision 2025 surplus funds. As such, all requirements previously set forth in the Agreement regarding appropriation and encumbrance were no longer necessary. Finally, the Amendment requires the City to pay its proportional share of a Mutual Access Drive from West Albany Street to the western boundary of the City's property. Funding for the Mutual Access Drive was from Vision Surplus, but was not part of the \$5,550,000.00 in development incentives

On March 1, 2016, a Second Amendment to Economic Development Agreement was approved by this Authority. This Amendment increased the development incentives from \$5,550,000.00 to \$6,335,573.33. This increase was a result of a payment in the amount of \$206,473.33 for the Mutual Access Drive being moved from Section 5.5 of the Agreement to incorporation into the development incentives. This particular request was made by PMG, the program manager for Vision 2025, and did not increase the overall dollar amount paid from this funding source. The second increase in the amount of \$579,100.00 was the result of significant cost overruns for rock excavation. The increase did not reflect the entirety of the cost to Stoney Creek, but was to only assist in offsetting the \$1.9 million current overrun on the entire project.

Attached for the Authority's consideration is a Third Amendment to Economic Development Agreement. This Amendment provides that the City shall be responsible for constructing all Albany Street Corridor Improvements and Traffic Signalization, including constructing or modifying left turn lanes at Stone Wood Drive, and the main entrance and east entrance to the Development, traffic signal installation at Stone Wood Drive, and a pedestrian signal and sidewalks at Bass Pro Drive.

Staff recommends that the Authority approve the Third Amendment to Economic Development Agreement and authorize its execution.

Cost: \$0

Prepared By: Beth Anne Childs, City Attorney

Reviewed By: Assistant City Manager- Operations
Finance Department
Legal Department

Approved By: Michael L. Spurgeon, City Manager

Attachments: Third Amendment to Economic Development Agreement

Recommendation:

Approve the Third Amendment to Economic Development Agreement and authorize its execution.

THIRD AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT

This Third Amendment to Economic Development Agreement (the "Third Amendment") made effective of this 5th day of September, 2017, by and between BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, an Oklahoma public trust (together with its successors and assigns, "BAEDA"), THE CITY OF BROKEN ARROW, OKLAHOMA, an Oklahoma municipal corporation (together with its successors and assigns, 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 STONEY CREEK INVESTORS OF BROKEN ARROW, L.L.C., AN IOWA LIMITED LIABILITY COMPANY as successor in interest to STONEY CREEK HOSPITALITY CORPORATION, an Iowa Corporation (together with its successors and assigns, "Developer"). Terms used and not otherwise defined in this Third Amendment shall be defined in the 2014 Agreement.

WITNESSETH:

WHEREAS, on November 4, 2014, BAEDA, the City and the Developer entered into an Economic Development Agreement ("2014 Agreement") whereby the Developer proposed a Phased Community Convention Center Complex Development to be undertaken by the Developer at its cost (except as provided in the 2014 Agreement, referred to as the Project's First Phase in the 2014 Agreement). The second phase called for the City and the Developer to establish an adjacent exposition center and additional parking and related facilities approximately three (3) years after completion of the Project's First Phase, known as the Project's Second Phase under the 2014 Agreement, all on lands to be owned by the City and leased to Developer; and

WHEREAS, advancement of the Project resulted in the need to amend the 2014 Agreement in order to more fully document the intent of the parties and to resolve issues necessitated by construction of the Project (as defined in Article I of the 2014 Agreement); and

WHEREAS, the First Amendment to Economic Development Agreement ("First Amendment") was approved by BAEDA and the City on October 20, 2015, and provided for, among other things, payment of the City's proportional share of construction of a Mutual Access Drive and funding sources; and

WHEREAS, the Second Amendment to Economic Development Agreement ("Second Amendment") was approved by BAEDA and the City on March 1, 2016, and provided for reimbursement of significant cost overruns for rock excavation on the site in excess of \$579,100.00; and

WHEREAS, amendment of the 2014 Agreement will advance the goals of the City and BAEDA to retain and expand employment, attract private investment, enhance the tax base of the City, stimulate economic growth and improve the quality of life in the City, strengthen the community and permit the City to expand the type and scope of its services, including enhancing public improvements, and expanding the provision of police and fire protection therein; and

WHEREAS, both the City and BAEDA deem it appropriate to approve the execution and delivery of this Third Amendment in the interest of providing for the implementation of the Project

and have determined such actions are in the best interest of the City and the health, safety, and welfare of the City and residents within and near the City; and

NOW, THEREFORE, in consideration of the covenants and mutual obligations set out herein and in the 2014 Agreement, as amended, and other consideration, the sufficiency of which the parties hereby acknowledge, the parties hereto hereby covenant and agree to the following Amendments:

ARTICLE A

AMENDMENTS TO 2014 AGREEMENT

A.1 Amendment to Section 5.9 of the Agreement: Section 5.9 Traffic Impact Analysis, Traffic Signalization and Development fees, is hereby amended to read in its entirety as follows:

5.9 Traffic Impact Analysis, Albany Street Corridor Improvements, Traffic Signalization, and Development Fees: At its sole cost, the City shall be responsible for obtaining a Traffic Impact Analysis for West Albany Street from North Elm Place to North 9th Street. The City shall be responsible for constructing all Albany Street Corridor Improvements and Traffic Signalization, including constructing or modifying left turn lanes at Stone Wood Drive, and the main entrance and east entrance to the Development, traffic signal installation at Stone Wood Drive, and a pedestrian signal and sidewalks at Bass Pro Drive, all in accordance with the project bid awarded by the City to Magnum Construction, Inc., on April 18, 2017. All City Development Fees for the Project's First Phase under the 2014 Agreement shall be waived.

A.2 Addition to Section 5.10 to the Agreement: Section 5.10, Zoning, shall read in its entirety as follows:

5.10 Zoning: The City and BAEDA represent and warrant to the Developer that the Project is and will be in full compliance with the City zoning and use requirements.

ARTICLE B

CONTINUING TERMS OF AGREEMENT

B.1 Except as amended hereby, all terms of the 2014 Agreement, as amended, remains in full force and effect without modification or change. The 2014 Agreement, as amended by this Amendment and prior amendments, is in all respects ratified and confirmed, and the Agreement, as so amended by this Amendment, shall be read, taken and construed as one and the same instrument.

IN WITNESS WHEREOF, each of the parties has caused this Third Amendment to be executed by its duly authorized officials and its official seal to be impressed hereon, as of the date first above written.

THE CITY OF BROKEN ARROW,
a municipal corporation

ATTEST:

(S E A L)

By: _____
Mayor

By: _____
City Clerk

Reviewed as to form and legality this ____ 5th day of _____ September, 2017.

Municipal Counselor

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY,
an Oklahoma public trust

ATTEST:

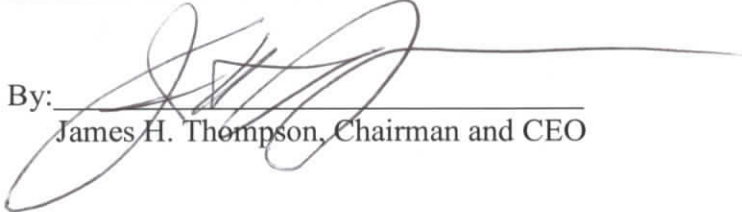
(S E A L)

By: _____
Chairman

By: _____
Secretary

STONE CREEK INVESTORS OF
BROKEN ARROW, L.L.C., AN IOWA
LIMITED LIABILITY COMPANY

By: _____
James H. Thompson, Chairman and CEO



STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of _____, 2017, personally appeared Craig Thurmond, Mayor of THE CITY OF BROKEN ARROW, a municipal corporation, to me known to be 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, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.
(S E A L)

Notary Public
My commission expires:
My number is:

STATE OF OKLAHOMA,)
) ss.
COUNTY OF TULSA)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of _____, 2017, personally appeared Craig Thurmond, the Chairman, and Liza Bryce, the Secretary of BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, a public trust, to me known to be the identical persons who executed the within and foregoing instrument for and on behalf of said public trust and acknowledged to me that they executed the same as their free and voluntary acts and deeds, and as the free and voluntary act and deed of said public trust for the uses and purposes therein set forth.


Given under my hand and seal the day and year above written.
(S E A L)

Notary Public
My commission expires:
My number is:

STATE OF Oklahoma)
) ss.
COUNTY OF Nowata)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of Jim Thompson, 2017, personally appeared Jim Thompson the Chairman and CEO of Stoney Creek Investors of Broken Arrow, L.L.C., an Iowa Limited Liability Company, to me known to be 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, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.


Notary Public

My commission expires: August 10, 2019
My number is: #15007427

(S E A L)



