



City of Broken Arrow
Meeting Agenda
Broken Arrow Economic Development
Authority

Chairperson Craig Thurmond

Vice Chair Scott Eudey

Trustee Johnnie Parks

Trustee Debra Wimpee

Trustee Christi Gillespie

Tuesday, August 6, 2019

Council Chambers
220 South 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. [19-63](#) Approval of the Broken Arrow Economic Development Authority Meeting
Minutes of July 16, 2019

Attachments: [07-16-2019 BAEDA Minutes](#)

- B. [19-962](#) Approval of the Special Broken Arrow Economic Development Authority
Meeting Minutes of July 22, 2019

Attachments: [07-22-2019 Special BAEDA Minutes](#)

- C. [18-1452](#) Approval of the Broken Arrow Economic Development Authority Claims
List for August 06, 2019

Attachments: [08 06 19 BAEDA CL](#)

4. Consideration of Items Removed from Consent Agenda

5. General Authority Business

- A. [19-1006](#) Consideration, discussion, and possible approval of and authorization to
execute the Professional Services Agreement with Catalyst Commercial to
continue to assist the City in revitalization strategy of the Elm and New
Orleans area

Attachments: [CATALYST COMMERCIAL AGREEMENT 8 2 2019.pdf](#)

6. Remarks and Updates by City Manager and Staff

7. Executive Session - NONE

8. 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

Request for Action

File #: 19-63, Version: 1

**Broken Arrow Economic Development Authority
Meeting of: 08-06-2019**

Title:

Approval of the Broken Arrow Economic Development Authority Meeting Minutes of July 16, 2019

Background:

Minutes recorded for the Broken Arrow Economic Development Authority Meeting.

Cost: 0.00

Funding Source: City Clerk Operation Fund

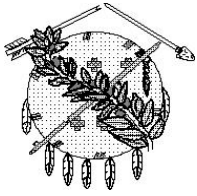
Requested By: Russell Gale, Assistant City Manager of Administration

Approved By: City Manager's Office

Attachments: 07-16-19 BAEDA Meeting minutes

Recommendation:

Approve the minutes of July 16, 2019 for the Broken Arrow Economic Development Authority meeting.



City of Broken Arrow
Minutes
Broken Arrow Economic Development Authority

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairperson Craig Thurmond
Vice Chair Scott Eudey
Trustee Johnnie Parks
Trustee Debra Wimpee
Trustee Christi Gillespie

Monday, July 16, 2019

Council Chambers

1. Call to Order

Chairperson Craig Thurmond called the meeting to order at approximately 9:14 p.m.

2. Roll Call

Present: 5 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

3. Consideration of Consent Agenda

- A. 19-61 Approval of the Broken Arrow Economic Development Authority Meeting Minutes of June 17, 2019**
- B. 19-903 Approval of and authorization to execute Budget Amendment Number 1 for Fiscal Year 2020**
- C. 18-1449 Approval of the Broken Arrow Economic Development Authority Claims List for July 16, 2019**

Chairperson Thurmond asked if there were any items to be removed from the Consent Agenda. There were none.

MOTION: A motion was made by Scott Eudey, seconded by Christi Gillespie.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 5 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

4. Consideration of Items Removed from Consent Agenda

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

5. General Authority Business

- A. 19-907 Presentation and consideration, discussion and possible direction regarding the Economic Development Agreement by and among Broken Arrow Economic Development Authority, an Oklahoma Public Trust and SoundMind Behavioral Health Hospital, LLC, an Oklahoma Limited Liability Company; and other provisions relating thereto**

Economic Development Manager Norm Stephens reported on December 19, 2017 the Authority approved the sale of 14 acres of Authority (BAEDA) owned land to SoundMind Behavioral Hospital for a cost of \$1.2 million dollars. He reported SoundMind agreed to build a 72 bed freestanding adult geriatric psychiatric hospital designed to serve patients 55 years and older. He stated SoundMind estimated they would employ no less than 150 skilled individuals with an annual payroll of \$5.4 million in 2019, increasing to \$8.1 million in 2021. He stated SoundMind believed it would invest in excess of \$18 million dollars into the property. He stated SoundMind had applied for three extensions during the process: the first was due to issues with the lending institution, the second due to extended negotiations with CenterPointe

to be hospital operator, and the third was due to negotiations with CenterPointe failing.

Mr. Stephens reported on March 12, 2019, he was contacted by Mr. Steve Easley who had been retained by SoundMind to assist with the behavioral hospital contract negotiations, to find a company to manage the hospital, and to review the investment numbers. He stated Mr. Easley indicated the previously agreed to price of \$1.2 million dollars was too high and he was going to ask for a cost reduction. He stated Mr. Easley, a few months later, indicated he had a Letter of Intent (LOI) signed by Signature Healthcare Services L.L.C on June 4, 2019 and requested the land price to be reduced to \$300,000 dollars. He indicated he attempted to negotiate the price with Mr. Easley; however, Mr. Easley indicated if the price could not be reduced to \$300,000 dollars the doctors at SoundMind would walk away from the deal. He stated at this point Mr. Easley and the doctors at SoundMind agreed Signature Healthcare Services would employ approximately 150 to 170 full time employees including contract labor doctors. He stated Mr. Easley estimated the cost for the construction of the hospital was approximately \$14 million dollars while annual payroll would be approximately \$4.17 million dollars in the first year and \$6.7 million dollars in the second year. He stated Signature Healthcare signed the LOI for a 20 year contract. He indicated according to the new contract SoundMind would reimburse BAEDA in the amount of \$500.00 per employee, if the workforce fell below 150 full time employees. He stated, additionally, SoundMind would be contractually obligated to construct an office building in excess of 10,000 square feet on a portion of the 14 acres within two years of opening SoundMind Behavioral Hospital. He explained if this did not happen SoundMind would reimburse the Authority in the amount of \$500,000 dollars. He noted BAEDA could agree to these terms or demand the \$1.2 million dollars, at which point he would begin the search for a new buyer. He commented he did not often receive calls expressing interest in this property. He stated Mr. Easley was present for questions.

Trustee Gillespie asked what the value of the property was. Mr. Stephens responded the low appraisal was \$701,000 dollars and the high appraisal was \$1 million dollars. Trustee Gillespie stated she worried if BAEDA settled it would set a poor precedent. Mr. Stephens commented if he had brought this new deal before the Authority originally he believed the Authority might have considered agreement.

Vice Chair Eudey asked why SoundMind required a 75% reduction in land purchase price. Mr. Stephens responded Mr. Easley would be better suited to answer this question.

Mr. Steve Easley reported he had many investments in Broken Arrow. He noted he was brought into this project in October of 2017 as an employee of Cowen Construction. He discussed the history of the project up to today. He reported the SoundMind doctors had invested over \$1 million dollars collectively in this project up to this point, including expenses spent obtaining the Certificate of Need. He stated he understood the need for jobs in South Broken Arrow and as a result decided to become more involved in this project. He stated he negotiated the (LOI) Letter of Intent with Signature Healthcare who had 16 freestanding behavioral health hospitals throughout the United States. He stated the doctors of SoundMind were required to release any profit potential on the operations side of the contract and now only had profit potential through the real estate. He noted he had a SoundMind lease agreement with Signature Healthcare prepared for signature. He noted SoundMind would own 51% of the building and Signature Healthcare would own 49% of the building. He stated the lease agreement indicated SoundMind would receive \$0 dollars in rent the first year and 50 cents on the dollar in the second year, which would be paid back in full in the 25th month of the lease. He explained this was the only deal he could negotiate. The SoundMind doctors were taking 51% of the risk and receiving 0% of the profit through the construction and until the 25th month of the project. He stated he was not a partner in this deal and he wished he had been able to negotiate a higher purchase price. He stated the project would bring 150 jobs to Broken Arrow, and Phase II would bring in additional jobs. He discussed the construction cost being \$14 million rather than \$15.5 million dollars. He stated he was prepared to fund Phase II of the

project if necessary; however, he believed there would be plenty of funds available for Phase II once Phase I was completed. He stated he understood this was large discount; however, he did not see another way to bring in 150 jobs to South Broken Arrow.

Trustee Wimpee stated these jobs were considered daytime jobs which were important. Vice Chair Eudey stated he had a trust issue at this point and he worried, if BAEDA agreed to the new terms, the project might not come to fruition. Discussion ensued regarding the deal with SoundMind, Signature Healthcare's involvement and reputation, the risk the doctors were taking compared to possible returns, SoundMind being under the constraints of the Certificate of Need, the full construction documents being required for submittal for the Certificate of Need, and SoundMind walking away if there was not a 75% reduction in purchase price (from \$1.2 million dollars to \$300,000 dollars).

City Manager Spurgeon stated he did not like the idea of the price cut; however, he spoke with the City Attorney and he felt comfortable the City could justify the agreement. He stated he believed Mr. Easley could bring this project to fruition and 150 new jobs would come to South Broken Arrow. He asked the Authority to consider approval.

Discussion ensued regarding the land being worth more than \$300,000 dollars, the precedent which would be set, the project increasing land value in the surrounding area, and reticence not being with Mr. Easley, but with the project. Vice Chair Eudey asked what guarantee there was for success. Trustee Gillespie concurred and worried the investors had lost confidence in the project. Mr. Easley indicated Signature Healthcare had full confidence in its ability to manage the hospital successfully; however, the doctors of SoundMind were fatigued. He stated this project had been essentially dead until he had stepped in.

Trustee Parks asked what Mr. Easley's role would be if this deal was made. Mr. Easley stated Cowen Construction would develop the property; however, he would be involved only until construction began. Trustee Parks noted the purchase price should be considered as the difference between \$700,000 dollars (appraisal value) and \$300,000 dollars. He stated the question came down to whether BAEDA was willing to forgo the \$400,000 dollars in exchange for 150 jobs. He stated he was willing to forgo the \$400,000 dollars; however, he had lost confidence in this project. Mr. Easley stated if BAEDA approved the new sale price, tomorrow he would obtain signatures of the lease and operating agreement, at which point the bank would move forward with construction financing, the construction plans would be completed within three months, the Certificate of Need would be met and construction would begin.

Chairperson Thurmond asked how binding the 20 year lease with Signature Healthcare was. Mr. Easley indicated more binding than the lease was the fact that Signature Healthcare would own 49% of the property. He reported Signature Healthcare was established in 2001, operated 16 similar facilities, had never closed a facility and was only expanding. Vice Chair Eudey asked if the (LOI) Letter of Intent was binding. Mr. Easley stated no (LOI) Letter of Intent was truly binding; however, the lease was binding and the operating agreement was binding.

Vice Chair Eudey stated while he was uncomfortable with this deal, if he approved it would be due to his faith in the City Manager's word, Mr. Stephen's word and Mr. Easley's word as a well known investor and business person in Broken Arrow. He explained BAEDA was steward of this property for the benefit of tax payers and residents; BAEDA would be taking a risk in agreeing to the \$400,000 dollar price reduction for the property. Mr. Easley stated he understood.

City Manager Spurgeon asked if the decision could be contingent upon seeing the executed agreements. City Attorney Trevor Dennis responded in the affirmative. He explained based upon the representations Mr. Easley made SoundMind was in breach of contract. He stated he wished to see in writing SoundMind indicating the project was dead at which point the

Authority could opt to do an incentivized Economic Development Agreement in which BAEDA was subsidizing the project. He explained BAEDA acquired this property in 2009 and paid \$1.25 dollars per square foot for 25.48 acres (about \$1.3 million dollars). He stated this portion of the property was 14.15 acres, 616,674 square feet, and SoundMind had agreed to a purchase price of \$1.94 dollars per square foot which would have yielded a profit. He explained this new deal would reduce the price to \$0.48 cents per square foot which would be a loss. He stated the City could expend public funds for economic development. He reported Oklahoma Supreme Court repeatedly recognized the need for communities to retain economic business and jobs, and as long as economic development agreements met constitutional requirements such agreements were valid. He stated he was not saying BAEDA should or should not pursue this; however, from a legal perspective it was acceptable to sell property at a loss for the purpose of economic development. He stated Mr. Bob Ball, an economist from Tulsa Chamber of Commerce, reviewed the economic impacts of this project which included 150 jobs, up to 208 jobs including indirect and induced jobs, extension of the Norfolk Road to be dedicated to the City, construction of the 72 bed psychiatric hospital, training for the Broken Arrow Police Department, work with community nonprofit organizations to help indigent individuals, as well as collaboration with schools and other local entities to assist the underserved adults in Broken Arrow.

Mr. Stephens explained Mr. Bob Ball was the Economist for the Tulsa Chamber of Commerce. He reported Mr. Ball estimated the 150 jobs at the specialty hospital would support 58 more jobs throughout the specialty hospital economy, meaning every 10 jobs at the specialty hospital supported 3.8 more jobs in the Broken Arrow economy; economic activity of 150 jobs at the hospital supported \$11.2 million dollars in income earned at the hospital and elsewhere in the Broken Arrow economy; economic activity of 150 jobs at the specialty hospital supported the production of \$14 million dollars in goods and services throughout the Broken Arrow economy, of which 70% was contributed directly by the specialty hospital; the 150 jobs supported the collection of \$119,671 dollars in local sales tax and \$95,426 dollars in property taxes; and due to this being a specialty hospital it was considered a destination location.

City Attorney Dennis asked the Authority to consider if the above projections were enough of an economic influence on Broken Arrow's economy to move forward with this project. He stated he believed legally it was defensible; meaning, he did not feel the court would find it manifestly arbitrary, capricious or unreasonable.

Vice Mayor Eudey asked if the proposed Phase II office building would support the hospital. Mr. Easley responded in the negative; it would be opened up to retail or medical or office. He stated he believed it would be medical which would provide a medical type complex in the area, especially with Endicott Dental nearby.

Vice Chair Eudey stated he was a bit "deal fatigued" at this point as well, but would make the motion to move forward; however, if this Agreement fell through the Authority would look elsewhere for property investment and purchase. Trustee Parks noted he had been prepared to vote against this Item; he expected Mr. Easley to stay the course and see this Agreement through.

MOTION: A motion was made by Scott Eudey, seconded by Johnnie Parks.

Move to direct Staff, Mr. Easley and appropriate individuals to negotiate an agreement consistent with what was presented subject to final approval by City Council

The motion carried by the following vote:

Aye: 5 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

6. Remarks and Updates by City Manager and Staff

City Manager Michael Spurgeon stated Staff and the Broken Arrow Economic Development Corporation (BAEDC) were working to put together a prospectus as the Rose District had been

designated an “opportunity zone” within the State of Oklahoma. He stated with regard to South Broken Arrow he believed it was time to consider a sealed proposal for development of the property across the street from SoundMind. He noted a sealed proposal brought Broken Arrow the MileStone project. He stated he asked the BAEDC to assist with the sealed proposal.

7. Executive Session

There was no Executive Session.

8. Adjournment

The meeting adjourned at approximately 10:01 p.m.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to adjourn

The motion carried by the following vote:

Aye: 5 - Christi Gillespie, Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

Attest:

Chairperson

Secretary



City of Broken Arrow

Request for Action

File #: 19-962, **Version:** 1

**Broken Arrow Economic Development Authority
Meeting of: 08-06-2019**

Title:

Approval of the Special Broken Arrow Economic Development Authority Meeting
Minutes of July 22, 2019

Background:

Minutes recorded for the Special Broken Arrow Economic Development Authority Meeting.

Cost: 118.56 Approx.

Funding Source: City Clerk Operation Fund

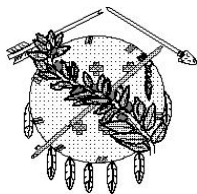
Requested By: Russell Gale, Assistant City Manager of Administration

Approved By: City Manager's Office

Attachments: 07-22-2019 Special BAEDA Meeting minutes

Recommendation:

Approve the minutes of July 22, 2019 for the Special Broken Arrow Economic Development Authority meeting.



City of Broken Arrow
Minutes
Broken Arrow Economic Development Authority

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairperson Craig Thurmond
Vice Chair Scott Eudey
Trustee Johnnie Parks
Trustee Debra Wimpee
Trustee Christi Gillespie

Monday, July 22, 2019

Council Chambers

1. Call to Order

Chairperson Craig Thurmond called the meeting to order at approximately 11:00 a.m.

2. Roll Call

Present: 4 - Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond
Absent: 1 Christi Gillespie

3. Pledge of Allegiance to the Flag

Chairperson Thurmond led the Pledge of Allegiance to the Flag.

4. General Authority Business

A. 19-923 Consideration, discussion and possible approval and authorization to execute a Promotion and Ancillary Rights Agreement with Holden Productions, Inc., to host a boxing event in the Rose District that will be aired on the Showtime Network

Director of Tourism Lori Hill reported due to the connections Business Retention and Development Coordinator Brent Brassfield had with Holden Productions, Inc., Broken Arrow had the opportunity to host a Showtime Boxing Event which was scheduled to take place Friday August 23, 2019. She stated the primary space being considered for this event was the intersection of Commercial and Main with an alternate location of Central Park Community Center (in case of inclement weather). She reported five professional bouts would take place during the event. She noted the Event was presented to the Convention and Visitors Bureau (CVB) as a part of the funding process; the CVB approved an amount not to exceed \$40,000 dollars for the cost of tables, chairs, port-a-johns, marketing, lighting, sound equipment, airport transportation, and fighter meals. She introduced Mr. Brent Brassfield.

Development Coordinator Brent Brassfield explained his relationship with Holden Productions and discussed how this opportunity came about. He stated the Event could be highly beneficial for the City of Broken Arrow; this was worldwide televised event and would bring positive attention to the City of Broken Arrow. He noted Broken Arrow could recuperate costs by selling the press conference, selling the weigh-in, having food vendors, etc. He stated Trey Morrison was an up and coming heavyweight who would be fighting at this event; Mr. Morrison was an Oklahoma native and a tremendous draw in Tulsa.

Vice Chair Eudey asked about Broken Arrow's financial responsibility. Deputy City Attorney Kimberly Slinkard responded it was estimated the cost to the City would be approximately \$107,000 dollars plus Police and Fire. Trustee Wimpee asked if this amount included the hotel rooms, boxing ring, ushers, etc. Deputy City Attorney Slinkard responded in the affirmative.

Vice Chair Eudey asked what the return of investment might be. Mr. Brassfield responded most of the draw would be from Tulsa; Broken Arrow bars and restaurants would be packed, and the City of Broken Arrow had the opportunity to sell events such as an after event party, press conference, VIP party, etc. Trustee Parks stated he was not overly concerned with the amount of money which could be made, but rather the amount of national exposure for the Rose District. He asked if the legal department had reviewed the contract. Deputy City Attorney Slinkard responded in the affirmative. City Attorney Trevor Dennis stated he was comfortable with the contract from a legal perspective. He noted there was work to be done in terms of implementation of this Event.

Assistant City Manager Norm Stephens stated he felt it was important for the Authority to understand Staff would work diligently to recuperate the cost expenditures; however, there was no guarantee 100% of costs would be recuperated. He noted the merchants in the Rose District desired more marketing exposure and this Event would certainly provide excellent exposure. Chairperson Thurmond noted it was impossible to quantify the returns and marketing exposure. Mr. Brassfield concurred. He stated the Rose District was beautiful and deserved attention. Trustee Wimpee agreed the Event would shine a light on Broken Arrow and the Rose District and would likely promote return visits.

Mr. Brassfield stated this was not a “fight,” it was an Event, and it was not just a single event, but many: the weigh-in, the press conference, the main event, etc. He stated Mr. Tony Holden had agreed to lead the City through the process in an effort to ensure the City of Broken Arrow was able to make the most of this opportunity.

Trustee Wimpee stated she was excited about this Event, but worried there was not enough time to properly promote the Event. She stated there needed to be an “all hands on deck” constant promotion effort. Mr. Brassfield agreed. He noted Mr. Holden had a relationship with Tulsa’s sports editor. Assistant City Manager Norm Stephens agreed with Trustee Wimpee. He stated he was working toward ensuring customers had access to businesses with the road closures. Trustee Wimpee stated it was important for residents to be aware of the road closures. Mr. Brassfield stated the road closure would not be necessary until Wednesday evening. Trustee Wimpee asked Staff to talk with the merchants, highlight the positives of this event, and encourage merchants to promote the event in-house through social media. Mr. Brassfield agreed.

Chairperson Thurmond asked if man hours and overtime were included in the \$107,000 dollar total. Deputy City Attorney Slinkard responded in the negative. Chairperson Thurmond stated he did not believe this would a money making or break even event; however, the earned media, the promotion of the Rose District, and possible return tourism would be excellent.

City Manager Michael Spurgeon stated having experienced several events similar to this, he understood the amount of exposure to the community was not quantifiable, but would definitely encourage return tourism. He agreed with Chairperson Thurmond this would not be a break even event; it was an opportunity to showcase the Community of Broken Arrow. Mr. Brassfield noted he received positive feedback from the merchants in the Rose District regarding the Event.

Trustee Parks asked if there were economic development funds available for this Event. City Manager Spurgeon responded in the affirmative.

Vice Chair Eudey stated he liked the idea of the Event; however, he was uncomfortable approving a contract he received 10 minutes prior to the Meeting. He stated he felt it seemed all risk fell on the City.

Chairperson Thurmond asked how long Ms. Slinkard had been working on the contract.

Deputy City Attorney Slinkard responded she received the contract last Thursday. She stated she agreed the burden was 100% on the City; the City was taking all the risk. She indicated the terms of the contract were relatively nonnegotiable; however, she was able to negotiate some caps on the costs, such as electrical and lighting. Discussion ensued regarding the contract, the negotiations, the positive aspects of the event, the possibility of sponsors, and today's meeting being the turning point: if approved Staff would move into high gear regarding the event. Discussion continued regarding the date of the event being August 23, 2019, the contract not indicating the date of the event and only indicating the City was to make the area exclusively available to Showtime for three days beginning August 21, 2019.

Vice Chair Eudey stated he was not implying Broken Arrow's attorneys were not excellent and did not have the best interests of the City in mind. He explained he was cautious as he was being asked to spend \$107,000 dollars (and possibly more) of the City's money.

Trustee Wimpee asked about the possibility of sidewalk vendors. Mr. Brassfield responded he felt sidewalk vendors were an excellent idea. He suggested the Event could be festival-like.

Trustee Parks stated he wished the date of the event was included in the contract. Trustee Wimpee noted the date of the event would be on all marketing. City Attorney Dennis reported the contract would be amended to reflect the date and time of the event.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.
Move to approve and authorize execution of a Promotion and Ancillary Rights Agreement with Holden Productions, Inc., to host a boxing event in the Rose District that will be aired on the Showtime Network, and include the amended date of August 23, 2019

The motion carried by the following vote:

Aye: **4 -** Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

5. Remarks and Updates by City Manager and Staff

There were no Remarks and Updates by City Manager and Staff.

6. Adjournment

The meeting adjourned at approximately 11:39 a.m.

MOTION: A motion was made by Debra Wimpee, seconded by Scott Eudey.

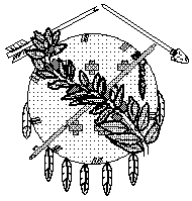
Move to adjourn

The motion carried by the following vote:

Aye: **4 -** Debra Wimpee, Johnnie Parks, Scott Eudey, Craig Thurmond

Chairperson

Secretary



City of Broken Arrow

Request for Action

File #: 18-1452, **Version:** 1

PREPARED 8/02/19, 11:57:08
PROGRAM GM314L
CITY OF BROKEN ARROW

ACCOUNTS PAYABLE BY FUND/ DUE DATE

PAGE 60

FUND	087 BAEDA						
DATE	VENDOR	VENDOR	VOUCHER	I NVOI CE	ACCOUNT		AMOUNT
DUE	NO	NAME	NO	NO	NO		
7/18/2019	7873	KI VELL, RAYMENT AND FRANCIS, P.	003408	BI LL00326183	087-1700-419.30-87		80.00
			003418	BI LL00326183	087-1700-419.30-87		160.00
			003419	BI LL00326183	087-1700-419.30-87		40.00
					7/18/2019 TOTAL -		280.00
					CUMULATI VE TOTAL -		280.00
7/26/2019	11778	HOLDEN PRODUCTI ONS I NC	000723	8/23/2019	087-1700-419.30-87		50,000.00
					7/26/2019 TOTAL -		50,000.00
					FUND 087 TOTAL -		50,280.00



City of Broken Arrow

Request for Action

File #: 19-1006, **Version:** 1

**Broken Arrow Economic Development Authority
Meeting of: 08-06-2019**

Title:

Consideration, discussion, and possible approval of and authorization to execute the Professional Services Agreement with Catalyst Commercial to continue to assist the City in revitalization strategy of the Elm and New Orleans area

Background:

On February 20th, 2018 the Broken Arrow City Council approved a contract with Catalyst Commercial to do a study of the Elm and New Orleans area.

The draft of the plan has been produced. The Council had decided to move forward with the creation of the Elm Place and New Orleans Advisory Committee. The committee is composed of twelve (12) members who will thoroughly review Catalyst's report and assist the City Council's decision-making on what priorities and what public improvements should be completed to revitalize the intersection. Likewise, what approaches should be taken to stimulate additional and private investment in the area.

Catalyst will be contracted to assist with helping guide the committee as it moves forward.

Cost: \$30,000

Funding Source: General Government (BAEDA)

Requested By: Larry R. Curtis, Acting Director of Community Development

Approved By: **City Manager's Office**

Attachments: Agreement for Professional Services and Contract

Recommendation:

Approve the Professional Service Agreement with Catalyst Commercial

**AGREEMENT FOR PROFESSIONAL SERVICES CONTRACT
BETWEEN THE CITY OF BROKEN ARROW AND CATALYST COMMERCIAL, INC.
FOR DEVELOPING AN ACTIVATION STRATEGY, ELM & NEW ORLEANS**

This Agreement for Professional Services (“Agreement”) is made by and between the City of Broken Arrow, Oklahoma (“City”) and Catalyst Commercial, Inc., a Texas corporation (“Professional”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS:

WHEREAS, the City desires to engage the services of the Professional as an independent contractor, and not as an employee, to provide the services described in Exhibit “A” (the “Scope of Services”) to assist the City in developing an activation **strategy of the Elm/101 Plan** (the “Project”); and

WHEREAS, the Professional desires to render professional services for the City on the terms and conditions set forth in this Agreement;

NOW THEREFORE, in exchange for the mutual covenants set forth herein, and other valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

**Article I
Term**

1.1 This Agreement shall commence on the last date of execution hereof (“Effective Date”) and continue until completion of the services, unless sooner terminated as provided herein.

1.2 Either Party may terminate this Agreement by giving thirty (30) days prior written notice to the other Party. In the event of such termination the Professional shall deliver to City all market ready versions of: final documents, data, studies, surveys, drawings, maps, models, reports, photographs or other items completed by the Professional in connection with this Agreement. Professional shall be entitled to compensation for any services completed, or portion thereof, in accordance with this Agreement prior to such termination. Professional may maintain copies of all work product produced in the performance of this Agreement for purposes of its marketing and advertising.

**Article II
Scope of Service**

2.1 The Professional shall perform the services in connection with the Project as set forth in the Scope of Services. Any and all changes in the cost, scope of services, deliverables and their delivery dates will be introduced as a Change Order to this Agreement that will be executed by Professional and by the City before such changes are binding. If there is no such execution, any such changes are and may be held to be invalid by Professional or the City. In the case where both

parties have not executed the Change Order, Professional shall not be bound to provide any services outside the scope of this Agreement and any increased cost necessary to perform such additional work and the resultant deliverables will be solely borne by the City. All rates for the term of this Agreement and all change orders referencing this Agreement will not increase unless specifically addressed in a mutually agreed to change order to this Agreement.

2.2 The Parties acknowledge and agree that any and all opinions provided by the Professional in connection with the Scope of Services represent the professional judgment of the Professional, in accordance with the professional standard of care applicable to the services performed hereunder.

Article III Schedule of Work

The Professional agrees to complete the required services in accordance with the Project Schedule outlined in Exhibit "A".

Article IV Compensation and Method of Payment

4.1 Professional will be compensated in accordance with the payment schedule and amounts set forth in the Scope of Services, not to exceed a total amount of Thirty Thousand Dollars and 00/100 (\$30,000.00). Unless otherwise provided herein, payment to the Professional shall be monthly based on the Professional's monthly progress report and detailed monthly itemized statement for services that shows the names of the Professional's employees, agents, contractors performing the services, the time worked, the actual services performed, the rates charged for such service, reimbursable expenses, the total amount of fee earned to date and the amount due and payable as of the current statement, in a form reasonably acceptable to the City. Monthly statements shall include authorized expenses with supporting itemized invoices and documentation. The City shall pay such monthly statements within thirty (30) days after receipt unless otherwise provided herein.

4.2 In addition to the fee for Scope of Services the City shall be responsible for all direct expenses related to the services provided pursuant to this Agreement including, but not limited to, travel, copying and facsimile charges, and telephone, not to exceed rates as set forth in Exhibit "B".

Article V Devotion of Time; Personnel; and Equipment

5.1 The Professional shall devote such time as reasonably necessary for the satisfactory performance of the services under this Agreement. Should the City require additional services not included under this Agreement, the Professional shall make reasonable effort to provide such additional services within the time schedule without decreasing the effectiveness of the performance of services required under this Agreement, and shall be compensated for such

additional services on a time and materials basis, in accordance with Professional's standard hourly rate schedule, or as otherwise agreed between the Parties.

5.2 To the extent reasonably necessary for the Professional to perform the services under this Agreement, the Professional shall be authorized to engage the services of any agents, assistants, persons, or corporations that the Professional may deem proper to aid or assist in the performance of the services under this Agreement. The Professional shall provide written notice to and approval from the City prior to engaging services not referenced in the Scope of Services. The cost of such personnel and assistance shall be included as part of the total compensation to be paid Professional hereunder, and shall not otherwise be reimbursed by the City unless provided differently herein.

5.3 The City shall provide facilities, equipment and personnel necessary to enable Professional to perform the services required under this Agreement unless otherwise provided herein.

5.4 The Professional shall submit monthly progress reports and attend progress calls as may be reasonably required by the City from time to time based upon Project demands. Each progress report shall detail the work accomplished and special problems or delays experienced on the Project during the previous report period, and the planned work activities and special problems or delays anticipated for the next report period.

Article VI Miscellaneous

6.1 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

6.2 Assignment. The Professional may not assign this Agreement without the prior written consent of City. In the event of an assignment by the Professional to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

6.3 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

6.4 Governing Law. The laws of the State of Oklahoma shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Tulsa County, Oklahoma. The Parties agree to submit to the personal and subject matter jurisdiction of said court.

6.5 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

6.6 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

6.7 Independent Contractor. It is understood and agreed by and between the Parties that the Professional, in satisfying the conditions of this Agreement, is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Professional pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Professional shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement.

6.8 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other Party or address as either Party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If intended for City:

Attn: Michael L. Spurgeon,
City Manager
City of Broken Arrow, Oklahoma
PO Box 610
Broken Arrow, OK 74013

With a copy to:

Farhad K. Daroga
Placemaking Manager
Department of Community Development
City of Broken Arrow
P.O. Box 610
Broken Arrow, OK 74013

If intended for Professional:

Catalyst Commercial, Inc.
Attn: Jason Claunch
8750 N Central Expressway,
Suite 1020
Dallas, Texas 75231

6.9 Insurance.

- (a) Professional shall during the term hereof maintain in full force and effect the following insurance: (i) a comprehensive general liability policy of insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the Professional's performance of services pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage; (ii) policy of automobile liability insurance covering any vehicles owned and/or operated by Professional, its officers, agents, and employees, and used in the

performance of this Agreement with policy limits of not less than \$500,000.00 combined single limit and aggregate for bodily injury and property damage; (iii) if applicable, statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Professional's employees involved in the provision of services under this Agreement with policy limit of not less than \$500,000.00; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limit of not less than \$2,000,000.00 per claim and \$2,000,000.00 in the aggregate. The Professional shall provide written notice to the City of any material change of or to the insurance required herein.

- (b) A certificate of insurance evidencing the required insurance shall be submitted prior to commencement of services and upon request by the City.

6.10 Debarment and Suspension.

- (a) Professional certifies that neither this company nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency, the State of Oklahoma or any of its departments or agencies.
- (b) If during the contract period the principal becomes debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation, the principal shall immediately inform the City.
- (c) For contracts that are financed by Federal or State grants, the principal agrees that this section will be enforced on each of its subcontractors, and will inform the City of any violations of this section by subcontractors to the contract.
- (d) The certification in this section is a material representation of fact relied upon by the City in entering into this contract.

6.11 Indemnification. **NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS, DAMAGE, OR INJURY OF ANY KIND OR CHARACTER TO ANY PERSON OR PROPERTY ARISING FROM THE ACTIONS AND OMISSIONS OF THE OTHER PARTY PURSUANT TO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ALL CLAIMS AGAINST THE OTHER PARTY, ITS OFFICERS, AGENTS AND EMPLOYEES FOR DAMAGE TO ANY PROPERTY OR INJURY TO, OR DEATH OF, ANY PERSON ARISING AT ANY TIME AND FROM ANY CAUSE OTHER THAN THE NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH PARTY OR BREACH OF SUCH PARTY'S OBLIGATIONS HEREUNDER.**

6.12 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist

of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

6.13. Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

6.14. ENTIRE AGREEMENT/ MODIFICATION. This Agreement, including **Exhibit “A”**, attached, is the entire agreement between the parties and supersedes all prior negotiations, agreements and understanding relating to the subject matter of this Agreement. This Agreement may only be modified or amended in writing. Email communication constitutes a writing if intended by both parties to be a writing under this paragraph.

6.15. ASSIGNMENT. City understands that it may not assign this Agreement or its rights hereunder, or delegate any or all of its duties under this Agreement without written authorization from Professional. Except for the use of sub-contractors to perform services, Professional understands that it may not assign this Agreement or its rights hereunder, without written authorization from City.

6.16. LEGAL EXPENSES. In the event that legal action is taken by either party to enforce any rights or remedies under this Agreement, it is hereby agreed that the successful or prevailing party shall be entitled to receive any costs, disbursements and reasonable attorney’s fees.

6.17. SEVERABILITY. In the event that any one or more of the provisions contained in this Agreement shall be held invalid, illegal or unenforceable in any respect, this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had never been contained herein, and the enforceability of the remaining provisions contained herein shall not be impaired thereby.

6.18. BINDING EFFECT. The parties to this Agreement further agree that the promises, covenants, and conditions herein shall be binding upon the parties to this Agreement, their heirs, assigns, successors, administrators, and representatives.

6.19. LIMITATION OF LIABILITY. Contractor’s liability for any cause or combination of causes is, in the aggregate, limited to an amount no greater than the fee paid to Contractor hereunder or available insurance coverage delineated herein, whichever is greater.

6.20. GOVERNING LAW. It is understood and agreed by the parties that this Agreement shall be governed by and enforced in accordance with the laws of the State of Oklahoma.

6.21. RELATIONSHIP OF PARTIES. It is understood by the parties that Professional is an independent Professional with respect to City, and not an employee of City. Professional will be responsible for reporting and payment of all of its tax obligations related to the payments hereunder.

6.22. AMENDMENTS. This Agreement may be amended only by an instrument in writing and signed by the parties hereto.

6.23. NOTICES. Any notices required or permitted to be given under this Agreement shall be in writing and may be given by personal service or by depositing a copy thereof in the United States mail, registered or certified, postage prepaid, to the last known address of such party, or via electronic communication (including e-mail and Internet or intranet websites) under the following provisions, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

6.24. COUNTERPARTS. This Agreement may be executed in multiple counterpart copies, each of which will be considered an original and all of which constitute one and the same instrument. Any counterpart transmitted by facsimile or electronic mail shall have the same force and effect as an original.

6.25. WAIVER OF CONTRACTUAL RIGHTS. The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

6.26. NO PREJUDICE. Professional, and its sub Professionals (if any) shall not be barred from representing or providing services to the private sector for additional services during or after the termination of this Agreement for any engagements related to this work. Furthermore, City acknowledges that Jason Claunch, principal for Professional is a licensed real estate broker (TREC #0456163). No additional fees shall be due to Professional, from City, except according to the fees set forth herein in connection with any intermediary services provided by Professional.

[Signature Page to Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers or representatives on the dates set forth below.

Approved as to form:

City of Broken Arrow, Oklahoma
A Municipal Corporation

Assistant City Attorney

By: _____
Michael L. Spurgeon
City Manager

Attest:

Date _____

City Clerk [Seal]

Catalyst Commercial, Inc.
8750 North Central Expressway, Suite 1020
Dallas, Texas 75231

By: _____
Jason Claunch

Attest:

Corporate Secretary (Seal)
Date: _____

VERIFICATIONS

State of Oklahoma)
County of Oklahoma)

Before me, a Notary Public, on this __ day of February 2018, personally appeared _____ known to me to be the (Corporate Officer, or Other: _____) (Please circle or specify) of Catalyst Commercial, Inc. and 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 for the uses and purposes therein set forth.

My Commission Expires: _____ Notary Public _____
Commission #: _____

EXHIBIT “A”
(SCOPE OF SERVICES)

1. Catalyst shall prepare for and participate in bi-monthly meetings (Estimated 12 meetings) with the City of Broken Arrow and the Elm and New Orleans Advisory Committee to facilitate discussions and develop a market-based action plan for the Elm and New Orleans district. This shall include Principal and support staff for facilitating meetings and post-meeting follow up (140 hrs.).

EXHIBIT "B"

Other Direct Expenses for Prime and All Subcontractors			
Type	Unit	Fixed Cost	Maximum Cost
Travel			
Lodging/Hotel	day/person		Current State Rate
Lodging/Hotel Taxes/Fees	day/person		Current State Rate
Meals	day/person		Current State Rate
Mileage	mile	\$ 0.56	
Rental Car (Includes taxes and fees)	day		\$ 75.00
SUV or Van Rental (includes taxes and fees)	day		\$ 125.00
Lease Vehicle	month		\$ 1,500.00
Rental Car Fuel	gallon		\$ 4.99
Toll Charges	each		\$ 5.00
Air Travel (Coach)	Rd Trip/person		\$ 800.00
Air Travel - In State - Short Notice (Coach)	Rd Trip/person		\$ 700.00
Air Travel - 2-Wks Notice (Coach)	Rd Trip/person		\$ 400.00
Air Travel - Out of State - Short Notice (Coach)	Rd Trip/person		\$ 1,400.00
Air Travel - Out of State 2 Wks+ Notice (Coach)	Rd Trip/person		\$ 850.00
Luggage (with air travel)	One-way trip/person		\$ 50.00
Parking	day		\$ 20.00
Parking	week		\$ 100.00
Taxi/Cab fare	each/person		\$ 40.00
Airport Shuttle	each/person		\$ 60.00
Shipping/Postage			
Postage & shipping	month		\$ 250.00
Shipping (Standard)	each		\$ 1,000.00
Standard Postage	letter	Current Postal Rate	
Overnight Mail - letter	each		\$ 25.00
Overnight Mail - oversized box	each		\$ 30.00
Courier	each		\$ 40.00
Certified Mailings	each	Current Postal Rate	
Copying/Printing			
Photocopies (B/W) (8.5"x11")	each		\$ 0.15
Photocopies (B/W) (11"x17")	each		\$ 0.30

EXHIBIT "B"

PROFESSIONAL SERVICES AGREEMENT, ELM & NEW ORLEANS

PAGE10 OF 11

EXHIBIT "B"

Photocopies Color (8.5"x11")	each		\$ 1.00
Photocopies Color (11"x17")	each		\$ 2.00
Plots (Color on Bond)	square foot		\$ 8.00
Color Graphics on Foam Core	each		\$ 100.00
Report Binding	each		\$ 100.00
Flyer Printing	each		\$ 1.00
Postcard Printing	each		\$ 1.00
Public Notices	\$500		\$500
Public Notices - Mass mailing	each		\$ 8,250
Meeting signage	each		\$ 75.00
Mailing list	each		\$1,500
Photographer	each		\$1,500
Labor			
Principal	hour		\$300
Sr. Consultant	hour		\$180
Consultant	hour		\$125
Admin	hour		\$80