

FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT

The **FIRST AMENDMENT TO ECONOMIC DEVELOPMENT AGREEMENT** (the "First Amendment") made effective as of this 17th day of June, 2015, 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**, 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 **SHAWN AND GRETCHEN WHISTLER, HUSBAND AND WIFE ("WHISTLER")**. Terms used and not otherwise defined in the First Amendment shall be defined in the Agreement.

WITNESSETH:

WHEREAS, on June 17, 2013, the Authority, the City and Whistler entered into an Economic Development Agreement ("Agreement") whereby the City purchased right-of-way, a small tract north of the right-of-way, a permanent drainage easement, and a temporary construction easement located on the property described in the Agreement owned by Whistler for the purpose of extending Hillside Drive; and

WHEREAS, the Agreement contained several construction requirements with a completion date within two (2) years of the date of execution of the Agreement; and

WHEREAS, the Authority, the City and Whistler jointly agree to waive the remaining Construction Obligations of the City and Authority and agree, instead, to allow Whistler to convert the two existing outdoor advertising signs owned or controlled by Whistler from a changeable copy format to a digital format.

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 the recital involving construction requirements: The recital involving the construction requirements of the City and Authority, identified as the second full recital on Page 2 of the Agreement, is hereby deleted in its entirety and replaced with the following:

WHEREAS, in connection with such reasonable expectations and following extensive negotiations with Whistler, the Authority and the City have determined that it is necessary and appropriate for the Authority and the City to provide the following in exchange for the dedication of the right-of-way and easements necessary for the construction of Hillside Drive across Whistler's property and a fee simple dedication necessary for the construction of a detention pond:

1. Place fill material from the Hillside Drive project onto Whistler's property onto an area south of the PSO easement identified in Exhibit "A."
2. Ensure that the usable parcel on the south end of the property will be provided at least two (2) curb cuts, so long as standard planning practices, such as dedication of mutual access easements, are accomplished;
3. A letter agreement from the City which provides that neither on-site detention nor fees-in-lieu of detention will be required on the Site; and
4. Pay \$350,000.00 for the required dedications.

A.2 Amendment to Article II, Section 2.3, Construction: Article II, Section 2.3 is hereby deleted in its entirety and replaced with the following:

Construction:

The Authority agrees to do the following: (a) clear, including, without limitation all trees from the Site, grade and place fill material from the Hillside Drive project onto an area south of the PSO easement identified in Exhibit "A" on the Site; (b) ensure that the usable parcel on the south end of the property will be provide at least two (2) curb cuts, so long as standard planning practices, such as dedication of mutual access easements, are accomplished; and (c) cause the City to issue a letter agreement which provides that neither on-site detention nor fees-in-lieu of detention will be required on the Site.

A.3 Amendment to Article III, Section 3.2 Grading: Article III, Section 3.2 is hereby deleted in its entirety and replaced with the following:

3.2 Grading. Whistler expressly agrees that the material placed by the City will come exclusively from the Hillside Drive Project, will not constitute select fill, and will not be compacted to a specific density. Whistler further agrees to use reasonable and customary measures to prevent erosion on the Site.

A.4 Amendment to Article IV: Article IV is hereby amended to include Section 4.3 to read in its entirety as follows:

4.3 Outdoor Advertising Signs: Whistler is hereby authorized to convert both faces of the outdoor advertising sign (Structure No. W34) located on the east side of the Site (the "Hillside Sign") and both faces of the outdoor advertising sign (Structure No. W32) located at the Elm exit from the Broken Arrow Expressway (the "Elm Sign") from a changeable copy format to a digital format. Both outdoor advertising signs shall be converted to digital format no later than December 31, 2017, and shall not exceed 480 square feet of display surface area per sign face (the display surface area presently existing). Further, except for the foregoing, any other modifications to the Hillside Sign or the Elm Sign are subject to the Broken Arrow Zoning Code and the Broken Arrow Code of Ordinances. Notwithstanding the foregoing, the parties acknowledge and agree that once development or redevelopment of the Site is complete, the Hillside Sign may be raised and or modified to insure that the Hillside Sign is 50ft above the finished grade of the Site at the base of the Hillside Sign.

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.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by its duly authorized official(s), on 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 ____ day of _____, 2016.

Municipal Counselor

BROKEN ARROW ECONOMIC
DEVELOPMENT AUTHORITY,
an Oklahoma public trust

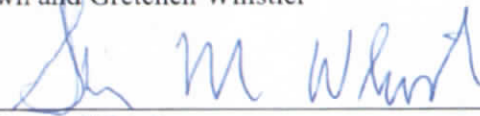
ATTEST: (S E A L)

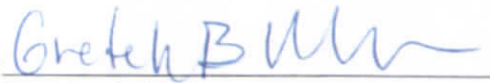
By: _____
Chairman

By: _____
Secretary

SW
CW

Shawn and Gretchen Whistler

By: 
Shawn Whistler

By: 
Gretchen Whistler

