

RESOLUTION NO. 1260

A RESOLUTION OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY APPROVING AND AUTHORIZING EXECUTION OF A CERTAIN ECONOMIC DEVELOPMENT AGREEMENT FOR THE SALE OF REAL PROPERTY, BY AND AMONG THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, AN OKLAHOMA PUBLIC TRUST, THE SOLE BENEFICIARY OF WHICH IS THE CITY OF BROKEN ARROW, OKLAHOMA, AND SOUNDMIND BEHAVIORAL HEALTH HOSPITAL, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY, FOR THE SALE OF APPROXIMATELY 14 ACRES, LOCATED NEAR NORTH OF THE CREEK TURNPIKE AND WEST OF ASPEN AVENUE IN TULSA COUNTY, OKLAHOMA, IN THE SUM OF THREE HUNDRED THOUSAND DOLLARS (\$300,000.00); TO EFFECT SUCH SALE, DESIGNATING REPRESENTATIVES OF THE AUTHORITY FOR PURPOSES OF GRANTING CERTAIN APPROVALS AND EXECUTING CERTAIN INSTRUMENTS AS REQUIRED UNDER AND IN CONNECTION WITH SAID AGREEMENT; AND OTHER PROVISIONS RELATING THERETO

WHEREAS, SoundMind is an Oklahoma limited liability company whose founding mission is to provide accessible and affordable comprehensive inpatient psychiatric care for adults and seniors in crises; and

WHEREAS, SoundMind intends to utilize innovative, outcome based treatment modalities, and trailblazing community discharge strategies in the provision of its services; and

WHEREAS, the proposed Chief Executive Officer of SoundMind (the “CEO”) is an experienced health care administrator with over forty (40) years of experience, including behavioral health services; and

WHEREAS, the CEO is in the process of recruiting a multidisciplinary team of recognized clinical and research behavioral health professionals, including psychiatrists specializing in geriatrics, , psychologists specializing in geriatrics and behavioral health diagnostics tool applications and analysis, family and internal medicine physicians, occupational therapists, specialty social workers, therapists, nurses, mental health technicians, community educators, dietitians, and various administrative support staff; and

WHEREAS, SoundMind intends to utilize a whole person, outcome driven conceptual framework with success driven therapeutic modalities and services designed to make a measurable difference in the lives of people it serves by using validated clinical instruments and individualized therapeutic modalities that produce meaningful outcomes; and

WHEREAS, population needs studies support the need for additional beds in specialty hospitals like SoundMind in the service areas; and

WHEREAS, reductions in financial reimbursements and firmer regulatory standards resulted in the closure of many hospital inpatient psychiatric units; in fact, since 2000, there has been a decline of 386 inpatient psychiatric and chemical dependency beds throughout Tulsa County; and

WHEREAS, recent changes in the way behavioral health care is paid for by insurers should mark a reversal from recent years in which hospitals had no interest in providing inpatient psychiatric beds, and under the new payment models new freestanding specialty psychiatric hospitals are opening rapidly throughout the United States, but due to the inconvenience, cost and relevant laws, in Oklahoma, new psychiatric hospitals are developing at a much slower rate in Oklahoma; and

WHEREAS, SoundMind presented evidence to the Oklahoma State Department of Health demonstrating the need for a freestanding psychiatric and chemical dependency hospital in Tulsa County; and

WHEREAS, community providers backed the project through letters of support sent to the Commissioner of Mental Health, mental health agencies, including the Tulsa/Arkansas Alzheimer's Association and the National Alliance on Mental Illness, and Tulsa hospitals, including local nursing homes, psychiatrists, family practice and internal medicine physicians; and

WHEREAS, an overwhelming demand for adult inpatient psychiatric beds was validated through independent market studies which was conducted through surveys, industry research, and statistical analysis of the Tulsa County service area; and

WHEREAS, construction and operation of SoundMind's Specialty Hospital will increase the number of available adult/geriatric psychiatric beds and improve access for an underserved population; and

WHEREAS, in addition to core inpatient behavioral health services, SoundMind will be licensed as a specialty psychiatric hospital with an acute evaluation center (emergency room) and an area for intensive outpatient services; and

WHEREAS, as part of its long-term strategy, SoundMind will consider implementation at a future date of emergency services complying with the Oklahoma Administrative Code in the form of an urgent care, including diagnostic x-ray services with radiology technologists and clinical laboratory services, as well as a certified reference laboratory; and

WHEREAS, SoundMind will also provide a continuum of follow-up services such as partial hospital and intensive outpatient, individual outpatient, utilizing a similar conceptual framework for analyzing factors that influence therapy effectiveness, monitored and measured for outcomes; and

WHEREAS, SoundMind's strategic service development will include the development of clinics that focus and market SoundMind as clinically proficient and/or experts in Alzheimer's and dementia clinic/research, and Neurological disease clinic/research; and

WHEREAS, SoundMind will also focus on contracted behavioral health services to provide inpatient crises treatment for mentally ill individuals requiring hospitalization; and

WHEREAS, operation of SoundMind will provide crises treatment for mentally ill individuals, as well as assisting the Broken Arrow Police Department in responding to individuals suffering from mental health crises; and

WHEREAS, SoundMind has further expressed its intent to create a nonprofit foundation to provide resources for indigent individuals by seeking funding through individual and corporate donations, grants, and research, alliances with local organizations to develop a cohesive continuum of mental health services, and collaborating with community agencies, mental health advocacy groups, schools and universities to meet the needs of the underserved adults; and

WHEREAS, SoundMind has received a Certificate of Need (the “CON”) from the Oklahoma State Department of Health to establish a seventy-two (72) bed freestanding adult and geriatric psychiatric hospital designed to serve those fifty-five (55) and older, to include an acute evaluation center (emergency room) and an area for intensive outpatient services (the “Facility”), as fully set out and evaluated in CN #17-069, attached hereto and incorporated herein as Exhibit “A”; and

WHEREAS, SoundMind estimates that the average patient stay will be between seven (7) and twelve (12) days; and

WHEREAS, in the fall of 2017, the City of Broken Arrow’s Economic Development Coordinator, (the “E.D. Coordinator”) was approached by representatives of SoundMind who expressed an interest in purchasing property located north of the Creek Turnpike around Aspen Avenue for construction of the Facility and related appurtenances; and

WHEREAS, the Authority owns unencumbered fee title to certain lands within the City, portions of which are suitable for construction of the Facility and located north of the Creek Turnpike and west of Aspen Avenue (the “Aspen Property”), said lands being acquired in 2009, consisting of 25.48 acres of real property, and purchased for the sum of \$1,390,609.35; and

WHEREAS, on several occasions in the late fall of 2017, the Authority considered the above recited series of events, with regard to SoundMind, the appraisal of various tracts of lands owned by the Authority, and a proposed economic development agreement with SoundMind in Executive Session, said sessions necessary to protect the confidentiality of the business and otherwise in full compliance with the Oklahoma Open Meeting Act; and

WHEREAS, thereafter, on December 5, 2017, and in open public session the Authority directed the City Manager to move forward with formal negotiations with SoundMind for a comprehensive Economic Development Agreement, including the sale of a portion of the Aspen Property and development in a manner meeting the City’s sales tax generation and economic development objectives therefor; and

WHEREAS, on January 2, 2018, The Broken Arrow Economic Development Authority authorized an Economic Development Agreement with SoundMind Behavioral Health Hospital,

LLC, for the sale of approximately 14.1569 acres of BAEDA owned land located north of the Creek Turnpike and West of Aspen Avenue, for the sum of \$1,200,000.00; and

WHEREAS, the Economic Development Agreement stipulated that SoundMind shall diligently undertake the preparation of a Master Site Plan and Planned Unit Development for submission to the City and the Authority for approval. SoundMind successfully completed the PUD process in July 2018.

WHEREAS, the Closing on the property was scheduled for October 2, 2018; however, an issue with SoundMind's lending institution required the closing be delayed due to their request for additional information from SoundMind. The Authority granted the Extension to Agreement thereby requiring closing on the property to take place by or before December 31, 2018; and

WHEREAS, on December 19, 2018, Masood Kasim with SoundMind Behavioral Hospital requested an additional 60 day extension to the agreement due to the ownership of SoundMind have been negotiating with CenterPoint Behavioral Health Center to serve as the operator of the specialty hospital. The second extension to the agreement required SoundMind to close on the land no later than March 1, 2019; and

WHEREAS, on January 23, 2019, the Economic Development Manager met with Masood Kasim and Dr. Iftikhar Hussain to discuss a third extension to the agreement for purchase and sale of real estate. Dr. Hussain explained negotiations recently broke down between SoundMind and Center Pointe, forcing SoundMind to search for another partner for the behavioral hospital. The Authority granted a third extension to the agreement requiring SoundMind to close on the land no later than August 30, 2019; and

WHEREAS, SoundMind reached an agreement with Signature Healthcare Services, LLC based in Corona, California, to serve as the operator of the specialty hospital. Signature Healthcare is one of the largest privately held psychiatric hospital companies in the country, serving thousands of patients every year. SHS delivers mental health and substance abuse treatment through its hospitals located in California, Illinois, Massachusetts, Nevada, Arizona, and Texas. All facilities are accredited by CMS and The Joint Commission, the highest authorities in healthcare; and

WHEREAS, on March 12, 2019, Mr. Steve Easley contacted Broken Arrow Economic Development Manger to discuss SoundMind Behavioral Health Hospital. Mr. Easley explained he had been retained by the Owners of SoundMind and that he was working with Signature Healthcare Services to partner with SoundMind on the construction and operation of the Hospital. Mr. Easley explained he felt he could finalize the transaction; however, the cost of the land was extremely problematic. Mr. Easley reasoned, due to the total cost of the project and equity requirements, the project at the original amount is not feasible and thus cannot be accomplished. Reducing the land cost still results in a high risk to the investor's project; however, it is one that can be financed and move forward in a timely manner, which is demanded by the deadlines on the Certificate of Need with the State of Oklahoma; and

WHEREAS, SoundMind informed the Authority in a letter dated July 29, 2019 that SoundMind was in default of the agreement as they would be unable to close on the property by August 30,

2019 at the purchase price of \$1,200,000 as it was not financially feasible. The letter also states that SoundMind is surrendering the \$50,000 held by BAEDA in escrow and requested that good faith negotiations begin for a new Economic Development Agreement; and

WHEREAS, per the Authority's direction, Staff started negotiations with SoundMind for a new Economic Development Agreement; and

WHEREAS, specifically, upon the terms and conditions set forth herein, the Authority desires to sell and SoundMind desires to purchase approximately 14.1569 acres located north of the Creek Turnpike and West of Aspen Avenue (the "Real Property," as defined herein) for the sum of \$300,000.00; and

WHEREAS, SoundMind reported it will employ 150 full time employees. The primary Doctors for SoundMind will be contract employees of Signature Healthcare. This is a common practice by hospital groups to lower their insurance expenses and the hospitals' exposure to liability. The Doctors are included in the overall full time employee count, due to working full time at the hospital, even though they are contract employees.

WHEREAS, as further consideration for the Authority's sale of the Real Property to SoundMind, SoundMind has further agreed to the following:

- i. To obtain approval for a Planned Unit Development (the "PUD" as defined herein) in accordance with the provisions of this Agreement, the CON, and specifically prohibiting the exclusive treatment of drug and alcohol rehabilitation, said PUD being approved prior to closure on the Real Property; and
- ii. To a deed restriction in accordance with the provisions of this Agreement, the CON, and specifically prohibiting the exclusive treatment of drug and alcohol rehabilitation, and as substantially set out in the General Warranty Deed; and
- iii. To construct an extension of Norfolk Road through the Project area in accordance with City Standards and Applicable Codes, as approved through the platting process; and
- iv. To dedicate through the platting process right-of-way for continuation of Norfolk Road from the southern-most point of the roadways on the Real Property as shown on Exhibit "B" westerly to the west property line, to be constructed at the expense of the Authority and in the Authority's sole discretion; and
- v. To use commercially reasonable efforts to obtain necessary approvals and construct the Facility in strict accordance with all Applicable Codes, containing appropriate security measures, and in substantial compliance with the project parameters attached hereto as Exhibit "C;" and
- vi. To provide the Broken Arrow Police Department annual training and assistance in responding to individuals suffering from mental health crises; and
- vii. To create a nonprofit foundation to provide resources for indigent individuals to develop a cohesive continuum of mental health services; and
- viii. To collaborate with community agencies, mental health advocacy groups, schools and universities to meet the needs of underserved adults.
- ix. To construct phase two per the requirements of Section 5.13.

WHEREAS, a Specialty Hospital supports a total of \$11.2 million in income earned at the hospital and elsewhere in the Broken Arrow economy; and

WHEREAS, a Specialty Hospital's job creation of 150 jobs supports the collection of approximately \$119,000 in local sales taxes and approximately \$95,000 property taxes annually through-out the Broken Arrow economy. This job creation also supports a total of 58 more jobs through-out the City of Broken Arrow economy; and

WHEREAS, the Authority recognizes that the development and realization of the Project are reasonably expected to provide direct economic benefits within and near the City in retaining and likely increasing City sales tax receipts; increasing ad valorem tax revenues to be derived by the City, Tulsa County, Oklahoma, Independent School District No. 3 of Tulsa County, Oklahoma, and other local and area governmental entities from time to time benefiting therefrom; generally enhancing property values, both residential and commercial, within the City; and otherwise contributing significantly to the economic well-being of the citizens and residents within and near the City, and those of Tulsa County and the State of Oklahoma (the "State"); and

WHEREAS, the Authority also recognizes that the Project is reasonably expected to provide additional and indirect economic benefits within and near the City, in Tulsa County and in the State through, including without limitation, diversifying the local economy, providing economic stimulus for additional employment and other development, providing economic benefits to low and moderate income individuals, and providing training opportunities in the medical field, services, sales, and management skills; and

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

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

WHEREAS, the Authority also recognizes that the sale of the Real Property will generate \$300,000.00 in revenues which can be used to promote economic development within the City and in accordance with the Authority's stated purposes; and

WHEREAS, the Authority deems it appropriate to approve the execution and delivery of this Agreement in providing for the implementation of the Project and determines such actions are in the best interests of the City and the health, safety, and welfare of the City and residents within and near the City.

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE BROKEN ARROW ECONOMIC DEVELOPMENT AUTHORITY, THAT

1. The Contract for Sale and Exchange of Real Estate is hereby approved and shall be executed substantially in the form thereof submitted at the meeting at which this Resolution was approved and as finally approved by the Chairman or Vice Chairmen, as the case may be, and shall be executed for and on behalf of the, Chairman or Vice Chairmen as the case may be, and attested by the City Clerk, and on behalf of the other parties thereto by their respective authorized officers.
2. The transfer of the real property as described in the attached Exhibit "A" to SoundMind Behavioral Hospital, LLC is hereby approved and authorized. The Chairman or Vice Chairman is hereby authorized to execute a General Warranty Deed or any other Deed or instrument necessary to accomplish this transfer.
3. All prior transfers made in connection with preparations for and the preparation of the Contract for Sale and Exchange of Real Estate, including, without limitation, those made for the payment of legal services, engineering fees and costs, surveys, appraisals, and inspection payments are hereby approved and ratified.
4. It is the intention of the Authority Members that the officers of the City and the City shall, and they are hereby ex officio authorized and directed to do any and all lawful acts and deeds to effectuate and carry out the provisions and the purposes of this Resolution, including acceptance of the General Warranty Deed, and approval and execution of the Agreement for the Purchase and Sale of Real Property, and such other instruments and documents as are related thereto.

APPROVED AND ADOPTED by the Broken Arrow Economic Development Authority at a regular meeting thereof, advance public notice of which was duly given and at which a majority of said Trustees were present, this 20th day of August, 2019.

CHAIRMAN

ATTEST:

(seal) Secretary

APPROVED AS TO FORM:

Deputy City Attorney

EXHIBIT "A"

A tract of land that is a part of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section Thirty-three (33), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows: Commencing at the Southeast Corner of South-east Quarter of said Section Thirty-three (33); Thence along the East line of said Southeast Quarter, N01°18'33"W a distance of 2574.83 feet; Thence S88°41'27"W a distance of 42.72 feet to a point on the right of way for the Oklahoma Turnpike Authority as recorded in Book 6305, Page 1920 at the Office of the Tulsa County Clerk being the Point of Beginning; Thence along the Southerly right of way of West Norfolk Drive, dedicated by "ASPEN CREEK TOWNE CENTRE I", Plat #6475 as filed at the Office of the Tulsa County Clerk, S88°34'50"W a distance of 17.29 feet; Thence continuing along said Southerly right of way, N46°21'44"W a distance of 35.32 feet; Thence continuing along said Southerly right of way, S88°34'50"W a distance of 166.32 feet; Thence continuing along said Southerly right of way on a tangent curve to the left, having a radius of 310.00 feet, an arc length of 263.77 feet, a central angle of 48°45'02", a chord bearing of S64°12'19"W, and a chord length of 255.88 feet; Thence along the Southwesterly boundary of said "ASPEN CREEK TOWNE CENTRE I", N50°10'12"W a distance of 234.77 feet to the Northwest Corner of the Northeast Quarter of the Southeast Quarter (NE/4 NE/4 SE/4) of said Section Thirty-three (33); Thence along the North line of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of said Section Thirty-three (33), S88°36'00"W a distance of 48.45 feet; Thence S51°56'46"W a distance of 337.17 feet; Thence S16°07'11"W a distance of 528.32 feet; Thence S78°45'41"W a distance of 178.59 feet; Thence N88°49'30"W a distance of 8.61 feet to a point on the West line of the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of said Section Thirty-three (33); Thence along said West line, S01°16'42"E a distance of 80.07 feet to a point on the Northerly right of way of said Oklahoma Turnpike Authority; Thence continuing along said right of way, S88°49'30"E a distance of 13.89 feet; Thence continuing along said right of way, N78°45'41"E a distance of 860.65 feet; Thence continuing along said right of way, N82°52'35"E a distance of 350.14 feet; Thence continuing along said right of way, N05°47'20"E a distance of 564.41 feet to the Point of Beginning.

Having an area of 616676 square feet, 14.1569 acres

Bearings based on the Oklahoma State Plane North Zone Grid.

Said tract wholly contained within a tract of land described in Correction General Warranty Deed, Document # 2009066088 recorded 06/29/2009, Tulsa County.