

Broken Arrow and the health, safety, and welfare of the City and residents within and near the City

Background:

The Broken Arrow Industrial Trust (the “Trust”) was created pursuant to a Trust Indenture dated November 1, 1962. The Broken Arrow City Council accepted sole and exclusive beneficial interest in the Trust on the same date. According to the indenture, the Trust was formed for the purpose of permitting the City of Broken Arrow to own, acquire, construct, reconstruct, extend, equip, improve, maintain, sell, lease, contract concerning or otherwise deal in or dispose of any lands, buildings or facilities of any and every nature that can be used in acquiring or developing industry within or near the city of Broken Arrow in accordance with the Local Industrial Development Act.

The Trust Indenture provides for three Trustees. One Trustee is the person who occupies the Office of the City Manager. The other two are appointed by the Board of Directors of the Broken Arrow Chamber of Commerce and must be residents of the City. The two resident Trustees as of the date of the Trust Indenture were Charles Fisher and Joe Foster. These individuals have either passed away or relocated outside the City limits.

Until last week, this particular Trust had not functioned as a body corporation in many years. It was brought to the Legal Department’s attention as a result of the 9th Street Roadway expansion. The space currently occupied by PACCAR is owned by the Trust. It is the subject of a Lease dated January 31, 1963, and an Amendment dated March 24, 1964. The leased property is not located along 9th Street, but is comprised of the building behind it.

The Terms of the Trust Indenture require that the Board of Directors of the Broken Arrow Chamber of Commerce appoint successors for those Trustees who are unable to serve. The Board recently appointed Chamber President Wes Smithwick and Mr. Ted Cundiff serve as Trustees. The City Manager has expressed his desire for the members of the City Council to serve as the Trustees for the Broken Arrow Industrial Trust. In order to accomplish this, the Indenture needs to be amended. Other amendments should also be made to update the language of the Indenture and also to expand the duties and functions of the Trustees.

On July 25, 2017, the Broken Arrow Industrial Trust met in a special meeting. A presentation was made giving background of the Trust and the current assets. The Trustees also approved a Resolution amending the Trust Indenture. A copy of this Resolution is attached for the Council’s review. The First Amendment provides for clarification of the language describing the trust estate, provides that the Trustees shall be the members of the Broken Arrow City Council, as said Council is from time to time constituted, and provides that the Mayor of the City of Broken Arrow shall be the Chairman of the Trust and the Vice-Mayor shall be the Vice-Chairman of said Trust. It also provides for the clarification and expansion of the powers and duties of the Trustees in accordance with the purposes set forth in said Trust Indenture, and adds a new section providing for a secretary, treasurer, and manager of the trust. Finally, it reaffirms and re-accepts the Trust created for and provided for and agrees to carry out the provisions of the Trust Indenture and all amendments thereto.

Resolution No. 1029 provides for the Council to consent to the Amendment to the Indenture. Staff recommends that the Council approve Resolution No. 1029 and authorize its execution.

Cost: **\$0**

Prepared By: **Beth Anne Childs, City Attorney**

Reviewed By: Legal Department

Approved By: Michael L. Spurgeon, City Manager

Attachments: Resolution No. 1028

Resolution No. 1029

First Amendment to Trust Indenture

Recommendation: Approve Resolution No. 1029 and authorize its execution.