



# City of Broken Arrow

## Request for Action

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**File #: 17-2643, Version: 1**

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**Broken Arrow City Council  
Meeting of: 09-05-2017**

**To: Mayor and City Council  
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.