City of Broken Arrow

Request for Action

File #: 17-2650, **Version:** 1

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

To: **Mayor and City Council**
From: **Office of the City Attorney**
Title:
Approval of and authorization to execute a First Amendment to Economic Development Agreement by and among the Broken Arrow Economic Development Authority, the City of Broken Arrow, Oklahoma, and Milestone Capital, L.L.C.

Background:

On February 12, 2016, the City purchased 1.864 acres located at 305 North Main street in the amount of $600,000.00 plus attorney's fees and related costs. Due to the dilapidated condition of the structures and appurtenances located on the Real Property, the City entered into a construction contract with ARK Wrecking Company of Oklahoma, Inc. for demolition in the amount of $87,140.00, said demolition being completed in 2016. It was initially contemplated that the City would either use the property for its own purposes or declare it surplus and transfer it to the Broken Arrow Economic Development Authority (the "Authority") for sale in the amount of the City's investment (approximately $701,151.40), and as part of a comprehensive economic development activity. In order to assist the City Council and the Trustees of the Authority with evaluation of all potential options, the Broken Arrow Economic Development Corporation ("BAEDC") issued two (2) different Requests for Proposals (RFP's) for development of the property. Responses to the first RFP were received and evaluated in 2016. After due consideration, investors negotiating with the BAEDC and the City advised that they could not advance development of the property without significantly decreasing the size and scope of the proposed development. Following this development, the BAEDC issued a second RFP with the recognition that a long term lease of the land or additional incentives would be necessary to maximize the size, scope and quality of any development.

In February of 2017, Cowen Construction ("Cowen") submitted a comprehensive response to the RFP. On March 21, 2017, the City Council authorized the City Manager to enter into formal negotiations with Cowen for a comprehensive economic development package. Cowen is a premier General Contractor that has been in business for over 121 years. Thereafter, Milestone Capital, LLC., (the "Developer") an Oklahoma Limited Liability Company formed by representatives of Cowen for purposes of developing the property, have agreed to construct a four story building with mixed uses. The project will consist of approximately 31,660 Square Feet of retail, restaurant and office space on the street level of the building. It will also consist of approximately 89,420 square feet of one (1) and two (2) bedroom residential units located on the upper three (3) floors of the building. Developer's investment is estimated to be $17,474,799.00, plus an additional $577,742.00 in engineering, design and surveying costs. Of this figure, it is estimated that the City will receive $260,549.00 in sales and use taxes for the materials necessary for construction. Sales taxes realized by the City are expected to exceed $150,000.00 annually. Taxes on the improvements are expected to exceed $250,000.00 annually. In part by reason of the property being made available and the Authority making certain improvements to infrastructure, Developer has agreed to undertake this project.

Resolution Number 1019 of the Broken Arrow City Council declared this property surplus and authorized execution of a General Warranty Deed transferring the property to the Authority. This was accomplished for economic development purposes and, specifically as set forth in the Economic Development Agreement between the City, the Authority and the Developer. Through Resolution Number 1021, the Broken Arrow Economic Development Authority accepted the General Warranty Deed.

The Economic Development Agreement provides that the Authority will lease the real property to the Developer for a term of 99 years. The Developer will build the project consistent with the parameters set forth above. The Authority will also upgrade the waterline serving the project, extend the downtown streetscape to encompass the project, and relocate utilities on the site. Resolution Number 1041 of the Authority formally approves a comprehensive Lease with the Developer. The Lease also provides for an option to purchase by the Developer for the amount of the City's investment within a five (5) year period of time and once the project is substantially complete. After that time, it provides for acquisition for fair market value. Importantly, any proceeds of sale would need to be returned to their original funding source.

On August 1, 2017, the City Council approved Resolution No. 1042, authorizing execution of the Economic Development Agreement between the City and the Broken Arrow Economic Development Authority and Milestone, LLC. After further review and discussions with the Developer, Staff is recommending amending the Agreement to clarify the terms regarding the infrastructure improvements to be performed by the Authority. Specifically, the relocation of the sewer line and waterline will be determined by the City's Director of Engineering and Construction. It is contemplated that the sewer line will be located east of the Developer's facilities which will necessitate the line being located under a portion of the Developer's parking lot. The Amendment also states that the aerial power, cable lines, and sanitary sewer line shall be relocated and substitute services available on or before February 15, 2018, subject to Developer receiving approval to plan site by October 15, 2017.

Cost:	**As set forth in the Economic Development Agreement**
Prepared By:	**Beth Anne Childs, City Attorney**
Reviewed By:	**Legal Department** **Engineering and Construction Department** **Assistant City Manager - Operations**
Approved By:	**Michael L. Spurgeon, City Manager**
Attachments:	**First Amendment to Economic Development Agreement**

Recommendation:
Approve the First Amendment to Economic Development Agreement and authorize its execution.