



City of Broken Arrow

Request for Action

File #: 19-400, Version: 1

**Broken Arrow Economic Development Authority
Meeting of: 04-02-2019**

Title:

Approval of and authorization to execute a Professional Services Agreement between the Broken Arrow Economic Development Authority and Albright, Rusher & Hardcastle, P.C., to provide counsel and legal services regarding the vacation of an alley located in Block Eighteen of the Original Township of Broken Arrow, pursuant to an Economic Development Agreement with Milestone Capital, LLC

Background:

The Broken Arrow Economic Development Authority (“BAEDA”) owns real property located at 305 North Main Street East in Block 18, Original Town of Broken Arrow (the “Property”). On August 1, 2017, BAEDA, the City and Milestone Capital, LLC (“Milestone”) entered into an Economic Development Agreement whereby, among other things, BAEDA agreed to lease the Property to Milestone, the City agreed to make certain improvements to infrastructure, and Milestone agreed to construct a four-story building consisting of residential, retail, restaurant and office uses and related appurtenances (the “Milestone Agreement”).

The Milestone Project will be built over a portion of an existing alley. On August 21, 2018, the City Council passed Ordinance #3536 closing the t-shaped alley on the Property. As part of the construction of the Milestone Project, it will be necessary to vacate a portion, although not all, of the closed t-shaped alley. A closure and a vacation are two different events. The City Council can close a roadway or easement, subject to it being reopened if it becomes necessary, by ordinance. However, if a roadway or easement is vacated, the underlying land is permanently transferred to the person/s owning the abutting land/s. The roadway or easement is permanently extinguished. In order to vacate an alley (a type of roadway), an owner of property abutting the alley must file a District Court action, comply with the applicable statute, and obtain a court order vacating the alley.

Because the owner of all of the property abutting the alley is BAEDA, BAEDA will need to be the plaintiff in the District Court action to vacate the alley. The defendants will be the City, its franchise holders, utility companies with easements, and possibly others. So, we are in the unique position of BAEDA suing the City and the City Attorney’s Office has a conflict of interest in representing both sides in litigation.

The Milestone Agreement provides, on page 14, at Paragraph 6.3(c), that Milestone will be responsible to “prepare the separate instrument for vacation of the alley and if necessary, to seek court approval thereof.” Milestone has agreed to pay the legal fees of an attorney engaged by BAEDA to file suit for vacation of the alley. Because the City Attorney’s Office has a conflict, Milestone was asked to propose an attorney. Milestone proposed that BAEDA engage James Rusher of Albright, Rusher & Hardcastle. The City Attorney’s Office has no objection to working with Mr. Rusher toward closure of the alley in accordance with the Milestone Agreement.

Mr. Rusher’s Engagement Letter includes the following provision: “. . . Milestone will be responsible for payment of all fees and expenses regarding the services of Firm. The Firm agrees to look solely to Milestone

for payment of the fees and expenses. The Client [BAEDA] will not be responsible for payment of the fees and expenses.”

Cost: No Cost

Funding Source: No Source

Requested By: Trevor A. Dennis, City Attorney

Approved By: Michael L. Spurgeon, City Manager

Attachments: Professional Services Agreement
Resume of James W. Rusher

Recommendation:

Approve the Professional Services Agreement with Albright, Rusher & Hardcastle, P.C., and authorize its execution.