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April 5, 2011

Via E-mail and First Class Mail Stephen L. McCaleb (smccaleb@derryberrylaw.com)

Stephen L. McCaleb
Derryberry & Naifeh, LLP
4800 North Lincoln Boulevard
Oklahoma City, Oklahoma 73105

Re: Rabin-Hurst v. BRTA, Open Records and Open Meeting cases

Dear Steve:

We enjoyed meeting with you a couple of weeks ago. We are encouraged and hope to resolve this case without further delay or conflict. Since our meeting, our clients compiled the list of documents requested and observed at the meeting to have been given to the BRTA, but not provided to-date and prepared proposed Judgments and Final Orders to conclude the cases.

The documents, that remain requested but not produced, are:

- *BRTA Regular Meeting, 1/6/2010, including documents pertaining to:*
 - *Minutes for BRTA Meeting 12/2/2009*
 - *Minutes for BRTA Meeting 12/18/2009*
 - *Minutes for BRTA Meeting 12/22/2009*
 - *YTD Financials, including revised BRTA Financial Statements¹*
 - *Agenda Item #1. Incentive for Dancing Bear Ingredients: Application forms, descriptions, financials and incentive review minutes*

¹ The City's Financial Director and Treasurer for the BRTA, Mike Bailey, provided this document to the BRTA. Additionally, Jean Lewis, lead Financial Auditor for the accounting firm of Archambo & Muggenberg, presented the BRTA's 2008 and 2009 Audited Financial Reports with other unknown documents related to the Financial Reports.

– Addendum Item #1. BRTA Audit Management Letter and letters referenced in the Audit Report.²

- *BRTA Regular Meeting, 2/3/2010. Documents pertaining to:*
 - Minutes for BRTA Meeting 12/22/2009*
 - YTD Financials*
 - Agenda Item #1. BDC Loan*
 - Any other documents contained in the Information packet relating to the meeting³*

- *BRTA Regular Meeting, 5/5/2010. Documents pertaining to:*
 - Agenda Item #1. Development Financing Assistance Project Plan for Dancing Bear Ingredients.⁴*

- *BRTA Regular Meeting, 7/7/2010. Documents pertaining to:*
 - Agenda Item #2. Employee Leasing Agreements, including amendments/revisions, for (1) the Main Street Manager, and (2) the Downtown Development Director. The Agenda was not specific enough to invoke an executive session, and the BRTA failed to follow the proper procedure for invoking an executive session.*

- *BRTA Regular Meeting, 8/11/2010. Documents pertaining to:*
 - Agenda Item #4. Certificate of Incorporation for Bartlesville Main Street⁵.*

- *All Invoices/Statements (both billed and paid/unpaid) and proof of payment of BRTA litigation fees, expenses, and costs related to the Rabin-Hurst Open Meeting and Open Records cases.*

Since these requests were previously made and the documents not provided, please provide these documents within 2 weeks of receiving this letter.

As stated previously, we take your clients' settlement offer seriously, and in good faith, we crafted a proposal for the entry of Agreed Judgments and Final Orders in the cases. Notably, the Orders contain joint stipulations and categorize the violations as inadvertent. The Orders are contingent upon execution and performance of the other. We are not interested in settling these cases piecemeal.

² We received the audit report but not the accompanying documents.

³ Our clients received only the Agenda.

⁴ Dan McMahan provided the Plan to the BRTA during the meeting. A copy was in the information packet. However, since Mr. McMahan went to the trouble of handing out a copy during the meeting, a revised/amended Plan may have been introduced during the meeting.

⁵ Members of the BRTA reference this document during the meeting.

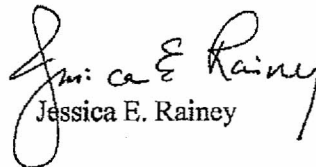
The Open Records Order lays out the attorney fees in the amount of \$11,642.40. Without a doubt, violations occurred and have yet to be cured. The Open Records Act affords our clients with the collection of reasonable attorney fees, and payment of those fees is critical. Should this case continue, these fees and the costs will necessarily continue.

Likewise, our clients, acting in the best interest of the public's right to know and hold its government accountable, incurred substantial attorneys' fees in the Open Meeting Act case. The fees to date are in excess of \$20,000.00. While we appreciate that the Open Meeting Act does not provide for attorneys' fees, the BRTA should bear responsibility for its actions. We feel it only fair that the BRTA pay \$2,500 of the attorney fees which are categorized as damages in the Order. The Oklahoma courts recognize an exception to the "American Rule" when a party acts in "bad faith, vexatiously, wantonly or for oppressive reasons," or "if the successful litigant has conferred a benefit on a class of persons." *Pinnacle Rehabilitation Hosp. v. Rivera-Villareal*, 2008 OK CIV APP 115, ¶12, 215 P.3d 823, quoting *Bond v. Fox Bldg. Supply*, 1992 OK 19, ¶13, 826 P.2d 559. If this case continues, we will argue to the court that the Treadway e-mail and the Trustees subsequent actions warrant attorney fees under these exceptions.

Please review the enclosed. We welcome further discussions to settle this case to the mutual satisfaction of the parties. Nevertheless, we think it is only fair to warn you that our clients have considered the option to file a police report on the violations; they are refraining to do so at this time with the hope that a mutual resolution is attainable. Our clients also expressed a desire for the BRTA trustees to attend an Open Meeting/Open Records Seminar. I am enclosing a copy of the flyer for the Attorney General's free Open Records/Open Meeting seminars held throughout the state. The attendance of this seminar may also help improve the public's perception of the BRTA.

If you have any questions or concerns, please let me know. We look forward to meeting and discussing these matters with you further.

Sincerely,


Jessica E. Rainey

Enclosures

JER/kla

Cc: Clients
JST

IN THE DISTRICT COURT IN AND FOR WASHINGTON COUNTY
STATE OF OKLAHOMA

JOEL RABIN and SHARON HURST,)
)
 Plaintiffs,)
)
 vs.) Case No. CV-2010-85
)
 BARTLESVILLE REDEVELOPMENT TRUST)
 AUTHORITY ("BRTA"), a public trust; WALTER)
 ALLISON, in his official capacity as Trustee of the) Judge Russell C. Vaclaw
 BRTA; JON BACCUS, in his official capacity as)
 Trustee of the BRTA; RANDY BLUHM, in his)
 official capacity as Trustee of the BRTA; SHERRY)
 MUSSELMAN COX, in her official capacity as)
 Trustee of the BRTA; TOM GORMAN, in his) Open Meeting Case
 official capacity as Trustee of the BRTA; DAVID)
 OAKLEY, JR., in his official capacity as Trustee)
 of the BRTA; and DONNA SKELLY, in her)
 official capacity as Trustee of the BRTA,)
)
 Defendants.)

AGREED JUDGMENT AND FINAL ORDER

There comes before the Honorable Russell C. Vaclaw, Judge of the District Court of Washington County, State of Oklahoma, this Agreed Judgment and Final Order ("Order") based on the parties' stipulation as to the facts and law governing this action in which the Plaintiffs, Joel Rabin and Sharon Hurst (collectively, "Rabin-Hurst"), filed against the Defendant Bartlesville Redevelopment Trust Authority ("BRTA") and its trustees, Walter Allison, Jon Baccus, Randy Bluhm, Sherry Musselman Cox, Tom Gorman, David Oakley, Jr., and Donna Skelly ("Trustees"), solely in their official capacity as trustees of the BRTA violations of the Oklahoma Open Meeting Act ("OMA"), 25 O.S. § 301 *et seq.*

The Parties stipulate to the following:

1. The BTRA is a public trust created and established for the benefit of the City of Bartlesville, Oklahoma, with its stated purpose:

to assist the Beneficiary [City of Bartlesville], the United States, the State of Oklahoma, its municipalities, agencies, private agencies and citizens in promoting, stimulating and encouraging the development and redevelopment of the residential, commercial and industrial areas of the Beneficiary, to foster and promote an improved economic climate within the Beneficiary,

and to otherwise promote the general welfare and prosperity of the Beneficiary, . . .

2. As a public trust, the BRTA is a public body under the laws of the State of Oklahoma, and as such is bound to comply with the OMA, and the Trustees are charged with ensuring that the BRTA complies with the OMA.

3. The BRTA and its Trustees acknowledge that as a public body, the OMA requires "[a]ll meetings¹ of public bodies . . . shall be open to the public." Furthermore, the OMA only allows for closed executive sessions in narrowly prescribed circumstances and not when convenient or desired by BRTA or its Trustees.

4. Before the BRTA special meeting² held on August 11, 2010, the BRTA posted an Agenda and filed it with in the Office of the City Clerk. The Agenda provided, in pertinent part, as follows:

1. Consideration and Possible Action Regarding the Holding of an Executive Session Pursuant to 25 O.S. Section 307(B)(4) to Discuss Pending and/or Impending Investigations, Claims or Actions Affecting the BRTA. ("Item 1")

The Agenda did not specify any further information as to the content or discussion to be held during the executive session nor disclose a description of the "pending or impending investigations" to allow the public to determine the business and purpose of the executive session.

5. Before an executive session is held, the OMA requires the BRTA through its Trustees to "identify the items of business and purposes of the executive session." The BRTA and its Trustees acknowledge that the Agenda was not specific enough to comply with the OMA. This failure was inadvertent.

6. The day immediately preceding the August 11, 2010, special meeting, BRTA's employee, Pat Treadway, sent an email to the Trustees expressly stating that Item 1's executive session was not to discuss an investigation and that BRTA's attorney, Dan McMahan drafted the language as stated in the Agenda.

7. Furthermore, when the majority of the Trustees met and conducted the August 11, 2010, special meeting, the only open discussion of Item 1 was to vote on whether to conduct the executive session as stated in the Agenda. After voting to conduct the executive session, all discussions were closed to the public.

¹ "Meeting" means the conduct of business of a public body by a majority of its members being personally together. 25 O.S. § 304(1).

² 25 O.S. § 304(4) defines a "special meeting" as "any meeting of a public body other than a regularly scheduled meeting or emergency meeting."

8. In order to conduct an executive session pursuant to "25 O.S. Section 307(B)(4)" as stated in the Agenda, BRTA through its Trustees had an obligation to determine prior to entering the executive session whether executive session was for:

Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest (emphasis added).

9. The BRTA and its Trustees acknowledge a failure to determine in an open session prior to entering the executive session whether the proposed executive session would seriously impair its ability "to process [a] claim or conduct a pending investigation, litigation, or proceeding in the public interest." This failure was inadvertent.

10. The BRTA and its Trustees acknowledge that a failure to properly enter into executive session under the OMA requires the BRTA to disclose fully the discussions held during August 11, 2010, executive session. Within 30 days of the entry of this Judgment and Final Order, the BRTA and its Trustees will issue a statement to the public and local press describing fully and in as much detail as practical to allow the public to understand what occurred, during the August 11, 2010, executive session. After the public statement, BRTA will hold a special meeting of sufficient and reasonable length in which the public may ask questions regarding what was discussed during the August 11, 2010, executive session. The special meeting shall take place within 14 days of the issuance of the public statement.

11. The BRTA and its Trustees acknowledge that the failure under the OMA renders all actions, including any votes which may have taken place after the executive session, ultimately dealing with the subject matter discussed during the August 11, 2010, executive session are invalid and void as a matter of law.

12. Furthermore, the BRTA and its Trustees acknowledge its general inadvertent failure to keep regular minutes of its proceedings, open and otherwise. However, this failure was inadvertent. The BRTA and its Trustees acknowledge the OMA requires the recording of regular minutes of its proceedings, open or otherwise, and they agree to hereafter comply fully with the OMA's minute keeping requirement.

13. The BRTA and its Trustees shall comply with the strict provisions of the OMA and foster an environment of openness with its citizens to whom it serves.

14. Because Rabin-Hurst were forced to file this Open Meeting action in the public's interest, the BRTA agrees to pay part of Rabin-Hurst's fees in the amount of \$2,500.00 as damages and costs incurred.

15. This Open Meeting case is a companion case to the Washington County District Court case No. CV-2010-80 Open Records case. The parties enter into this Order with the intent of settling these public interest cases together. The parties are also stipulating and agreeing to the entry of an Agreed Judgment and Final Order in the Open Records case. The stipulations and Orders in each case are contingent upon the entry of an Agreed Judgment and Final Order in both cases. The BRTA and its Trustees understands and will abide by the Orders entered in each case.

16. Based upon the preceding stipulations, Rabin-Hurst do not contest that BRTA's violations of the OMA were inadvertent, so long as, the BRTA strictly complies with the OMA and with the Final Orders entered in both public interest cases.

The COURT THEREFORE FINDS, ORDERS, AND DECREES the following:

1. The BRTA and its Trustees violated the OMA by failing to keep regular minutes of its proceedings, open and otherwise, by failing to give notice in the Agenda to sufficiently apprise the public of the business and purpose of the August 11, 2010, proposed executive session, and by entering into executive session without complying with the OMA's requirements and for an a purpose not allowed under the OMA.

2. These failures to comply with the OMA were inadvertent.

3. Within 30 days of the entry of this Judgment and Final Order, BRTA and its Trustees will issue a statement to the public and local press describing fully and in as much detail as practical to allow the public to understand what occurred, during the August 11, 2010, executive session. After the public statement, BRTA will hold a special meeting of sufficient and reasonable length in which the public may ask questions regarding what was discussed during the August 11, 2010, executive session. The special meeting shall take place within 14 days of the issuance of the public statement.

4. The failure to enter into an executive session in compliance with the OMA renders all actions, including any votes which may have taken place after the executive session, ultimately dealing with the subject matter discussed during the August 11, 2010, executive session, invalid and void as a matter of law.

5. BRTA and its Trustees shall comply with the strict provisions of the OMA and foster an environment of openness with its citizens to whom it serves. Judgment for the Plaintiffs is GRANTED, and they are awarded costs as the prevailing party plus \$2,500.00 in consequential damages for filing this case in the public's interest.

IT IS SO ORDERED.

Dated this _____

District Judge Russell C. Vaclaw

Submitted and Approved by:

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Jessica E. Rainey, OBA #18296
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Attorney for Defendants,
Redevelopment Trust Authority and its Trustees

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IN THE DISTRICT COURT IN AND FOR WASHINGTON COUNTY
STATE OF OKLAHOMA

JOEL RABIN and SHARON HURST,)
)
 Plaintiffs,)
)
 vs.) Case No. CV-2010-80
)
 BARTLESVILLE REDEVELOPMENT TRUST)
 AUTHORITY ("BRTA"), a public trust; WALTER)
 ALLISON, in his official capacity as Trustee of the) Judge Russell C. Vaclaw
 BRTA; JON BACCUS, in his official capacity as)
 Trustee of the BRTA; RANDY BLUHM, in his)
 official capacity as Trustee of the BRTA; SHERRY)
 MUSSELMAN COX, in her official capacity as) Open Records Case
 Trustee of the BRTA; TOM GORMAN, in his)
 official capacity as Trustee of the BRTA; DAVID)
 OAKLEY, JR., in his official capacity as Trustee)
 of the BRTA; and DONNA SKELLY, in her)
 official capacity as Trustee of the BRTA,)
)
 Defendants.)

AGREED JUDGMENT AND FINAL ORDER

There comes before the Honorable Russell C. Vaclaw, Judge of the District Court of Washington County, State of Oklahoma, this Agreed Judgment and Final Order ("Order") based on the parties' stipulation as to the facts and law governing this action filed by Plaintiffs, Joel Rabin and Sharon Hurst (collectively, "Rabin-Hurst"), filed against the Defendant Bartlesville Redevelopment Trust Authority ("BRTA") and its trustees, Walter Allison, Jon Baccus, Randy Bluhm, Sherry Musselman Cox, Tom Gorman, David Oakley, Jr., and Donna Skelly ("Trustees"), solely in their official capacity as trustees of the BRTA for violations of the Open Records Act, ("ORA"), 51 O.S. §24A.1 *et seq.*

The Parties stipulate to the following:

1. The BTRA is a public trust created and established for the benefit of the City of Bartlesville, Oklahoma, with its stated purpose:

to assist the Beneficiary [City of Bartlesville], the United States, the State of Oklahoma, its municipalities, agencies, private agencies and citizens in promoting, stimulating and encouraging the development and redevelopment of the residential, commercial and industrial areas of the Beneficiary, to foster and promote an improved economic climate within the Beneficiary,

and to otherwise promote the general welfare and prosperity of the Beneficiary, . . .

2. As a public trust, the BRTA is a public body under the ORA and is required by law comply with the ORA, and the Trustees are charged with ensuring that the BRTA complies with the ORA.

3. The BRTA and its Trustees acknowledge that Oklahoma has determined that an open government is a good government:

As the Oklahoma Constitution recognizes and guarantees, all political power is inherent in the people. Thus, it is the public policy of the State of Oklahoma that the people are vested with the inherent right to know and be fully informed about their government. . . . The purpose of this act is to ensure and facilitate the public's right of access to and review of government records so they may efficiently and intelligently exercise their inherent political power. . . . Except where specific state or federal statutes create a confidential privilege, persons who submit information to public bodies have no right to keep this information from public access nor reasonable expectation that this information will be kept from public access; provided, the person, agency or political subdivision shall at all times bear the burden of establishing such records are protected by such a confidential privilege. 51 O.S. §24A.2

4. Rabin-Hurst made numerous ORA requests to BRTA for copies of the information packets and hard copy documents handed out at the regularly and specially scheduled public meetings of the BRTA, during the period of January 1, 2010, to August 24, 2010. As of the date when this case was filed, the BRTA and its Trustees had failed to respond to these ORA requests in a timely fashion as required by the ORA. The BRTA's and its Trustees' failure to respond in a timely fashion was inadvertent.

5. After the filing of this lawsuit, the BRTA and its Trustees supplied Rabin-Hurst or are in the process of supplying all of the information and documents requested.

6. The BRTA and its Trustees agree to comply strictly with the provisions of the ORA and foster an environment of openness with its citizens whom it serves.

7. Pursuant to 51 O.S. §24A.17 of the ORA, Rabin-Hurst are entitled to Judgment against the BRTA and its Trustees, in their official capacity, and Rabin-Hurst shall recover their reasonable attorneys' fees in the amount of \$11,642.40 and costs to Rabin-Hurst as the prevailing party.

8. This Open Records case is a companion case to the Washington County District Court case No. CV-2010-85 Open Meeting case. The parties enter into this Order with the intent of settling these public interest cases together. The parties are also stipulating and agreeing to the entry of an Agreed Judgment and Final Order in the Open Meeting case.

The stipulations and Orders in each case are contingent upon the entry of an Agreed Judgment and Final Order in both cases. The BRTA and its Trustees understands and will abide by the Orders entered in each case.

9. Based upon the preceding stipulations, Rabin-Hurst do not contest that BRTA's violations of the ORA were inadvertent, so long as, the BRTA produces all requested information and documents to Rabin-Hurst and strictly complies with the ORA and with the Final Orders entered in both public interest cases.

The COURT THEREFORE FINDS, ORDERS, AND DECREES that the following:

1. In failing to respond to Rabin-Hursts' Open Records requests, BRTA through its Trustees violated the ORA.
2. These failures to comply with the ORA were inadvertent.
3. BRTA and its Trustees shall hereafter fully comply with the strict provisions of the ORA and foster an environment of openness with its citizens to whom it serves.
4. Pursuant to 51 O.S. §24A.17 of the ORA, Rabin-Hurst are entitled to Judgment against the BRTA and its Trustees, in their official capacity, and awards reasonable attorneys' fees in the amount of \$11,642.40 and costs to Rabin-Hurst as the prevailing party.

IT IS SO ORDERED.

Dated this _____.

District Court Judge Russell C. Vaclaw

Submitted and Approved by:

J Schaad Titus, OBA #9034
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Attorneys for Plaintiffs,
Joel Rabin and Sharon Hurst

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Attorney for Defendants,

Bartlesville Redevelopment
Trust Authority and its Trustees

OPEN MEETING and RECORDS SEMINARS

FREE

Led by
Oklahoma Attorney General
DREW EDMONDSON
and Assistant Atty. Gen.
GAY TUDOR



**Attorney General
DREW EDMONDSON**

Attorney General Drew Edmondson, the Oklahoma Press Association, Oklahoma Newspaper Foundation and FOI Oklahoma invite you to attend any of these free sessions designed to deal directly with your questions and concerns about Oklahoma's Open Meeting and Records Acts.

Anyone who deals directly with open meetings and records will benefit from this opportunity to discuss those issues with the Attorney General.

of public meetings will be explored in depth, and your questions will be welcomed. Mark your calendar and plan to attend.

No registration required.
All workshops are free.

*AG Edmondson's workshops are brought to you
with the cooperation of*

Oklahoma Press Association
Oklahoma Newspaper Foundation
and FOI Oklahoma, Inc.

Local organizations will also be invited, including city council representatives, county offices, and school board representatives. Requirements on access to public records and the conduct

If you have questions, please contact
the Oklahoma Press Association at (405) 499-0026

MEETING DATES & LOCATIONS – ALL SESSIONS FROM 1 TO 4 P.M.

**AUG. 6
MUSKOGEE**
Indian Capital
Technology Center
Seminar Center
2403 N. 41st Street East
Muskogee, OK

**AUG. 11
WOODWARD**
High Plains
Technology Center
Seminar Center
3921 34th Street
Woodward, OK

**AUG. 18
CLAREMORE**
Northeast Technology Center
Seminar Center
1901 N. Hwy. 88
Claremore, OK

**AUG. 20
ALTUS**
Southwest Technology Center
Seminar Center
711 W. Tamarack Rd.
Altus, OK

**AUG. 31
TECUMSEH**
City Hall
Auditorium
114 N. Broadway St.
Tecumseh, OK

**SEPT. 1
TULSA**
Tulsa Select Hotel
Second Floor, American Ballroom
5000 East Skelly Drive
Tulsa, OK

**SEPT. 10
ELK CITY**
Elks Inn
(formerly Holiday Inn)
Banquet Rooms
101 Meadowridge
Elk City, OK

**SEPT. 15
POTEAU**
Carl Albert State College
Second Floor Ballroom
Costner-Balentine Student Center
1507 S. McKenna Street
Poteau, OK

**SEPT. 17
OKLAHOMA CITY**
Metro Technology Center
Conference Center Auditorium
1900 Springlake Drive
Oklahoma City, OK

**SEPT. 29
PONCA CITY**
Pioneer Technology Center
Seminar Center
2101 N. Ash Street
Ponca City, OK

**OCT. 1
DUNCAN**
Red River Technology Center
Room 1, Auditorium
3300 W. Bois D'Arc
Duncan, OK

*Maps and other information
available at
www.OkPress.com/Seminars*