

PURSUANT TO THE LEGAL NOTICE AS IS REQUIRED BY THE OKLAHOMA OPEN MEETING ACT INCLUDING THE POSTING OF NOTICE AND AGENDA AS IS REQUIRED BY THE TERMS THEREOF, THE CITY COUNCIL OF THE CITY OF BROKEN ARROW, OKLAHOMA, MET IN REGULAR SESSION ON THE 16<sup>TH</sup> DAY OF JANUARY, 2024, AT 6:30 O'CLOCK P.M.

PRESENT:

ABSENT:

(OTHER PROCEEDINGS)

Thereupon, the following Ordinance was introduced and caused to be read by Title by the City Clerk. Councilmember \_\_\_\_\_ moved passage of the Ordinance and Councilmember \_\_\_\_\_ seconded the motion. The motion carrying with it the approval of said Ordinance was approved by the following vote:

AYE:

NAY:

THEREUPON, Councilmember \_\_\_\_\_ moved that an emergency be declared and that the Ordinance become effective immediately. Councilmember \_\_\_\_\_ seconded the motion. The motion was adopted by the following vote:

AYE:

NAY:

The Ordinance so approved is as follows:

[Ordinance No. \_\_\_\_ begins on following page]

ORDINANCE NO. 3816

AN ORDINANCE OF THE CITY OF BROKEN ARROW, OKLAHOMA (THE "CITY") APPROVING UTILIZATION OF APPORTIONED TAX REVENUES AUTHORIZED BY STATEWIDE VOTE ADOPTING ARTICLE 10, SECTION 6C OF THE OKLAHOMA CONSTITUTION AND IMPLEMENTED BY THE LOCAL DEVELOPMENT ACT, 62 O.S. §850, ET SEQ.; APPROVING AND ADOPTING THE SUNSET AT BROKEN ARROW ECONOMIC DEVELOPMENT PROJECT PLAN AND EXPRESSING INTENT TO CARRY OUT THE PROJECT PLAN; RATIFYING AND CONFIRMING THE ACTIONS, RECOMMENDATIONS AND FINDINGS OF THE REVIEW COMMITTEE AND THE PLANNING COMMISSION; CREATING AND ESTABLISHING INCREMENT DISTRICT NO. 5, CITY OF BROKEN ARROW; DESIGNATING AND ADOPTING THE INCREMENT DISTRICT BOUNDARIES AND THE PROJECT AREA BOUNDARIES; ADOPTING CERTAIN FINDINGS; RESERVING TO THE CITY THE AUTHORITY TO MAKE MINOR AMENDMENTS TO THE PROJECT PLAN; AUTHORIZING THE CITY COUNCIL OF THE CITY TO CARRY OUT AND ADMINISTER THE PROJECT PLAN; ESTABLISHING A TAX APPORTIONMENT FUND; AUTHORIZING DIRECTIONS FOR PROSPECTIVE APPORTIONMENT OF TAX INCREMENTS; ESTABLISHING AN ALLOCATION OF USE FOR TAX INCREMENTS; DECLARING APPORTIONMENT FUNDS TO BE FUNDS OF THE CITY AND LIMITING THE PLEDGE OF APPORTIONED INCREMENTS TO INCREMENTS ACTUALLY APPORTIONED BY THE CITY; AUTHORIZING THE CITY COUNCIL OF THE CITY, OR A PUBLIC TRUST DESIGNATED THEREBY, TO IMPLEMENT THE PROJECT PLAN UTILIZING APPORTIONED TAX INCREMENTS TO PAY OR REIMBURSE PROJECT COSTS DIRECTLY AND/OR TO ISSUE BONDS OR NOTES, IF FEASIBLE AND DESIRABLE, TO PAY PROJECT COSTS AND TO RETIRE SAID BONDS OR NOTES FROM APPORTIONED TAX INCREMENTS; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

WHEREAS, by statewide vote, the people of the State of Oklahoma adopted Article 10, §6C as an amendment to the Constitution of the State of Oklahoma to allow the Legislature to authorize cities, towns and counties to use local taxes for specific public investments, for assistance in development financing and as a revenue source for other public entities in the area, and to direct the apportionment of local taxes to plan, finance and carry out development of areas determined by the governing body of the city, town or county to be unproductive, undeveloped, underdeveloped or blighted; and

WHEREAS, the Legislature has enacted the Local Development Act, 62 Okla. Stat. §850, *et seq.* (the "Local Development Act"), for purpose of furthering the provisions of Article 10, §6C of the Oklahoma Constitution; and

WHEREAS, the Sunset at Broken Arrow Economic Development Project Plan (the "Project Plan") supports the achievement of the economic development objectives of the City of

Broken Arrow, Oklahoma (the “City”) in accordance with previously approved strategies and plans to incentivize capital investment in facilities to serve as a catalyst for expanding employment in the area, attract major investment in the area, preserve and enhance the tax base and make possible investment, development, and economic growth that would be difficult or impossible without the project and the apportionment of sales and use taxes and hotel taxes from within the Increment District; and

WHEREAS, the Project Plan calls for the creation of Increment District No. 5, City of Broken Arrow (the “Increment District”); and

WHEREAS, the Planning Commission of the City (the “Planning Commission”) has adopted its Resolution (attached hereto as Exhibit “D”) declaring that the Project Plan is in compliance with the Comprehensive Plan of the City and recommending the approval of the Project Plan to the City Council of the City; and

WHEREAS, the Tax Increment District Review Committee (the “Review Committee”), comprised of individuals representing each of the taxing jurisdictions in which the proposed increment district is located, as well as the public at large, has considered the financial impacts of the proposed Project Plan on each such taxing jurisdiction and has found that the proposed project will have a positive financial impact on the affected taxing entities and existing business activities within the Increment District; and

WHEREAS, the affected taxing entities comprising the Review Committee include the City; and

WHEREAS, the Review Committee has reviewed the proposed Increment District in accordance with the criteria specified in the Local Development Act, and has found that the proposed Increment District is undeveloped within the meaning of Article 10, §6C of the Oklahoma Constitution and the Local Development Act, and is located in a reinvestment area (as defined in Section 853(17) of the Act) and is therefore eligible for assistance under the Local Development Act; and

WHEREAS, the Review Committee has found that approval of the Project Plan is appropriate and has recommended its approval to the City Council of the City without amendment, evidenced by its Resolution (attached hereto as Exhibit “E”); and

WHEREAS, the Board of County Commissioners of Wagoner County, Oklahoma (the “County”) has adopted its Resolution No. (attached hereto as Exhibit “F”) declaring support for the Project Plan and authorizing the apportionment of certain County sales tax increments in connection therewith; and

WHEREAS, tax apportionment financing is a necessary component in generating economic development in the proposed project area and the Increment District; and

WHEREAS, investment, development and economic growth will be difficult within the proposed project area and proposed Increment District, but possible if the Project Plan is adopted; and

WHEREAS, the Project Plan will use the tools provided by the Local Development Act only in an area where investment, development and economic growth would not otherwise occur, and

WHEREAS, the Project Plan provides tools that will supplement and not supplant or replace nominal public functions and services; and

WHEREAS, the establishment of the Increment District will be used in conjunction with existing programs and other locally implemented economic development efforts in order to encourage economic development in the proposed project area; and

WHEREAS, the boundaries of the Increment District do not dissect any similar area or create an unfair competitive advantage; and

WHEREAS, the City Council of the City recognizes the need for residential and neighborhood treatment as well as commercial/industrial development; and

WHEREAS, maximum effort has been made to allow full public knowledge and participation in the application of the Local Development Act in the review and approval of the Project Plan, including creation of the Increment District; and

WHEREAS, all required notices have been given and all required hearings have been held in connection with the proposed Project Plan, as prescribed in the Local Development Act, the Oklahoma Open Meeting Act, 25 Okla. Stat. §301 *et seq.*, and other applicable law; and

WHEREAS, implementation of the Project Plan will be facilitated by designation of a public trust with the City as its beneficiary (referred to herein as the “Authority”), to assist the City in carrying out and administering the Project Plan and exercising all powers necessary thereto except those powers reserved by the City herein; and

WHEREAS, implementation of the Project Plan will be facilitated by reserving to the City the authority to make minor amendments to the Project Plan, as provided in the Local Development Act; and

WHEREAS, implementation of the Project Plan will be facilitated by authorizing the Authority to pay or reimburse authorized Project Costs pursuant to Section IX of the Project Plan from apportioned tax increments, and/or issue its tax apportionment notes or bonds (referred to herein as the “TIF Bonds”) payable from apportioned tax increments; and

WHEREAS, it is in the best interests of the City and its citizens to approve the Project Plan, including the establishment of the Increment District.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROKEN ARROW, OKLAHOMA:

Section 1. Utilization of Local Development Act. In order to undertake redevelopment of an undeveloped or underdeveloped area within the City, the City elects to utilize Article 10, §6C of the Constitution of the State of Oklahoma, adopted by statewide vote and implemented by the

Local Development Act, which authorizes the use of local taxes for specific public investments, assistance in development financing and as a revenue source for other public entities in the area and which provides for the direction of apportionment of local taxes to plan, finance, and carry out development of unproductive, undeveloped, underdeveloped, or blighted areas as determined by the governing body of a city, town, or county.

Section 2. Project Plan Approval. The Project Plan is hereby approved and adopted as recommended by the Planning Commission and the Review Committee. As used in this Ordinance, “Sunset at Broken Arrow Economic Development Project Plan” or “Project Plan” shall mean the document entitled “Sunset at Broken Arrow Economic Development Project Plan” dated December 7, 2023, and adopted this January 16, 2024, and attached hereto as Exhibit “A”. It is the intent of the City to carry out the Project Plan as provided by this Ordinance.

Section 3. Ratification of Actions. All actions, findings and recommendations made or taken in connection with the Project Plan by the Planning Commission and the Review Committee are hereby ratified and confirmed, including, but not limited to, the designation and selection of representatives to the Review Committee from the taxing jurisdictions and the public at large, recommendations for approval, and the findings of conformance with the Comprehensive Plan, eligibility of the Increment District and financial impact upon the taxing jurisdictions.

Section 4. Increment District Creation. The Increment District is hereby created as of the date of the adoption of this Ordinance. For identification purposes, the name of the Increment District shall be “Increment District No. 5, City of Broken Arrow”.

Section 5. Increment District and Project Area Boundaries. The boundaries of Increment District No. 5, City of Broken Arrow contain an area generally described as the area north of New Orleans Street (E. 101<sup>st</sup> Street) between west of County Line Road and the Broken Arrow Events Park, and then including the undeveloped property along the Creek Turnpike south of New Orleans Street (E. 101<sup>st</sup> Street) to west of County Line Road, all within the City of Broken Arrow, Oklahoma, and the specific Increment District legal description is hereby designated and adopted as described in Exhibit “B”. The boundaries of the Project Area (the area within which project activities will take place, including construction of the supporting public improvements) contain an area comprising Sections Twenty Four (24), Twenty Five (25), and Thirty Six (36), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Meridian, Tulsa County, State of Oklahoma, and Sections Nineteen (19), Twenty (20), Twenty Nine (29), Thirty (30), Thirty One (31), and Thirty Two (32), Township Eighteen (18) North, Range Fifteen (15) East of the Indian Meridian, Wagoner County, State of Oklahoma. The Project Area is bordered on the south by East 121<sup>st</sup> Street S., on the east by S. 225<sup>th</sup> E Avenue (S. Evans Road), on the north by 91<sup>st</sup> South (E. Washington St.), and on the west by S. 177<sup>th</sup> E. Ave. (S. Lynn Lane Road), and the specific Project Area legal description is hereby designated and adopted as described in Exhibit “C”.

Section 6. Findings. The City Council hereby finds that:

- (a) The Increment District is located within a reinvestment area as defined by the Local Development Act;

- (b) The proposed improvements and incentives (as set forth in the Project Plan) within the Increment District are likely to enhance the value of other real property in the area and to promote the general public interest;
- (c) The guidelines of paragraphs 1 and 2 of Section 852 of the Local Development Act shall be followed;
- (d) The aggregate net assessed value of the taxable property in all increment districts within the City, as determined pursuant to Section 862 of the Local Development Act, does not exceed 25% of the total net assessed value of taxable property within the City;
- (e) The aggregate net assessed value of the taxable property in all increment districts within the City, as determined pursuant to Section 862 of the Local Development Act, does not exceed 25% of the total assessed net value of any affected school districts located within the City;
- (f) The land area of all increment districts within the City does not exceed 25% of the total land area of the City; and
- (g) The Project Plan is feasible and conforms to the Comprehensive Plan of the City, as amended.

Section 7. Right to Amend Project Plan. The City reserves to itself the authority to make minor amendments to the Project Plan in accordance with the definition provided in Section 858(D) of the Local Development Act. Notwithstanding the foregoing, the Review Committee may be reconvened at the direction of the City Council at any time following adoption of this Ordinance to consider and recommend any appropriate amendments to the Project Plan.

Section 8. City and Authority the Designated Public Entities. The City Council of the City is hereby designated and authorized as the public entity to carry out and administer the provisions of the Project Plan and to exercise all powers necessary or appropriate thereto, including, without limitation, those powers described in Section 854 of the Local Development Act. Upon designation by the City Council of the City, the Authority shall assist in carrying out and administering the provisions of the Project Plan and shall be authorized to exercise all powers necessary or appropriate thereto pursuant to Section 854 of the Local Development Act, except for approval of the Project Plan and those powers enumerated in paragraphs 1, 2, 3, 4, 7, 13, and 16 of that section, which powers shall be reserved to the City Council of the City.

Section 9. Tax Apportionment Fund. There is hereby created a fund called the “Increment District No. 5, City of Broken Arrow, Tax Apportionment Fund” (referred to herein as the “Apportionment Fund”), which fund will be held by and be the property of the City (except that such fund may also be held by the Authority or a trustee acting on behalf of the Authority). All monies apportioned pursuant to Section 10 shall be deposited in the Apportionment Fund. No portion of the TIF Revenues described in Section 10 and no portion of the Apportionment Fund shall constitute a part of the general fund of the City.

Section 10. Apportionment of Tax Increments.

(a) The apportionment of the City Sales Tax Increment Revenues, the County Sales Tax Increment Revenues, the Hotel Tax Increment Revenues, the Leverage Act Increment Revenues, and the Fee by Agreement Increment Revenues (each as defined herein, and collectively referred to as the “TIF Revenues”) shall continue for that period required for the payment of the Project Costs, or a period not to exceed twenty-five (25) full fiscal years (ending June 30, 2049, and referred to as the “Expiration Date”), whichever is less.

(b) The apportionment of the TIF Revenues pursuant to this section shall terminate upon the final payment of, or reimbursement for, all Project Costs incurred in connection with the projects listed in the Project Plan, and the payment of all outstanding principal, accrued interest, and premium due on the TIF Bonds; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond the Expiration Date.

(c) In the event that any portion of the principal of or interest on the TIF Bonds, issued in connection herewith, or any amount due and owing for payment or reimbursement under a development agreement entered into by the City, remains unpaid as of the Expiration Date, then the Increment District shall not terminate until the increment apportioned during the term of the Increment District is actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the Expiration Date.

(d) For purposes of this section, “Amphitheater Project” shall mean the estimated 12,500 seat outdoor entertainment venue with a dedicated stage for a diverse array of performances and outdoor live music concerts, including any appurtenant facilities directly related to the operation of said outdoor entertainment venue. For purposes of this Section “Additional Development Projects” shall mean any development within the Increment District other than the Amphitheater Project.

(e) *City Sales Tax Increment Revenues (TIF Revenues)*. In accordance with the provisions of the Local Development Act, one hundred percent (100%) of the incremental City sales and use tax revenue derived from the Amphitheater Project, and fifty percent (50%) of the incremental City sales and use tax revenue derived from the Additional Development Projects (representing an amount equivalent to a one and seven hundred seventy-five thousandths percent (1.775%) sales and use tax based on a total of 3.55% sales and use tax levied by the City as of the date of the Project Plan pursuant to Chapter 22, Article II, Section 22-6 *et seq.*, of the Broken Arrow Code of Ordinances (the “Code of Ordinances”), as such Code of Ordinances may be amended, replaced, extended, superseded, terminated, or otherwise modified from time to time, including with regards to the total amount of applicable City sales and use tax rate (referred to as the “City Sales Tax Increment Revenues”) are to be apportioned and set aside from all other sales and use taxes levied within the Increment District; provided that all such City Sales Tax Increment Revenues shall be pledged as security for the payment of the TIF Bonds or otherwise used to pay (or reimburse the payment of) Project Costs authorized pursuant to Section IX of the Project Plan; provided, however, the City Sales Tax Increment Revenues shall be reduced by the amount of sales tax revenues generated by any existing businesses (currently located within the City, but outside the boundaries of the Increment District) that cease operations at their existing location and relocate to within the Increment District, but provided further, said reduction shall not be applied to any existing businesses that open

an additional location within the Increment District for so long as all other existing location(s) remain open for business. Said amount of reduction (collectively, the “City Transfer Adjustment”) shall be calculated based on the sales tax collections during the twelve month period prior to closing the previous location. The City Sales Tax Increment Revenues are to be used exclusively for:

- (i) the payment of principal, interest and premium, if any, on any TIF Bonds issued pursuant to Section 863 of the Local Development Act (including pledging as security for such payments);
- (ii) the payment, if required, of amounts necessary to satisfy or replenish any reserve requirement established with respect to any TIF Bonds;
- (iii) the payment of Project Costs incurred in connection with the development, construction, or implementation of the TIF Projects; and
- (iv) the reimbursement of a third party developer (pursuant to a development agreement with the City or the Authority), including any interest component (pursuant to a development agreement with the City and/or the Authority), the City, or any agency thereof (including the Authority), which has paid Project Costs from funds which were not increments derived from the Increment District, but only to the extent that such sums were actually paid or, in the case of reimbursement of a third party developer, constitute an interest component on sums that were actually paid.

Provided, however, the remaining unapportioned incremental City sales and use tax revenues derived from the Additional Development Projects within the Increment District, as of the date of the Project Plan representing the equivalent of 1.775% of the total 3.55% sales and use tax levied by the City, shall be retained by the City and utilized on a pro rata basis for any lawful purpose consistent with the aforementioned Code of Ordinances. For purposes of determining the incremental portion of the sales and use taxes generated within or sourced to the Increment District, the Mayor of the City shall certify as the “base sales tax amount” the annual sales taxes received by the City that were generated within the area comprising the Increment District between January 1, 2023, and December 31, 2023. One hundred percent (100%) of the incremental City sales and use tax revenue derived from the Amphitheater Project, and fifty percent (50%) of the incremental City sales and use tax revenue derived from the Additional Development Projects and received by the City which are in excess of such base amount, net of any City Transfer Adjustment, shall be considered to be the “increment” subject to apportionment by this section. In addition to sales and use tax generated from retail sales, the City Sales Tax Increment Revenues shall include one hundred percent (100%) of the sales and use tax generated from actual construction occurring within the Increment District (whether attributable to the Amphitheater Project or the Additional Development Projects). The City shall establish procedures related to the calculation and determination of construction related sales and use tax revenue qualifying as City Sales Tax Increment Revenues. Such procedures shall stipulate that construction related City Sales Tax Increment Revenues be derived only from new construction activities occurring within the Increment District. The City shall be entitled to rely on certifications of actual construction costs provided by a third party developer(s)



or related parties in connection with determining any applicable City Sales Tax Increment Revenues.

(f) *County Sales Tax Increment Revenues (TIF Revenues)*. In accordance with the provisions of the Local Development Act, one hundred percent (100%) of the incremental County sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2024-2027, seventy five percent (75%) of the incremental County sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2028-2029, fifty percent (50%) of the incremental sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2030-2031, and twenty five percent (25%) of the incremental County sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2032-2033, based on a total of 1.3% sales tax levied by the County as of the date of the Project Plan pursuant to Resolution 2006-078 and Resolution 2017-005 (collectively, the “County Sales Tax Resolution”), as such County Sales Tax Resolution may be amended, replaced, extended, superseded, terminated, or otherwise modified from time to time, including with regards to the total amount of applicable County sales tax rate (referred to as the “County Sales Tax Increment Revenues”) are to be apportioned and set aside from all other sales taxes levied within the Increment District; provided that all such County Sales Tax Increment Revenues shall be pledged as security for the payment of the TIF Bonds or otherwise used to pay (or reimburse the payment of) Project Costs authorized pursuant to Section IX of the Project Plan; provided, however, the County Sales Tax Increment Revenues shall be reduced by the amount of sales tax revenues generated by any existing businesses (currently located within the County, but outside the boundaries of the Increment District) that cease operations at their existing location and relocate to within the Increment District, but provided further, said reduction shall not be applied to any existing businesses that open an additional location within the Increment District for so long as all other existing location(s) remain open for business. Said amount of reduction (collectively, the “County Transfer Adjustment”) shall be calculated based on the sales tax collections during the twelve month period prior to closing the previous location. The County Sales Tax Increment Revenues are to be used exclusively for:

- (i) the payment of principal, interest and premium, if any, on any TIF Bonds issued pursuant to Section 863 of the Local Development Act (including pledging as security for such payments);
- (ii) the payment, if required, of amounts necessary to satisfy or replenish any reserve requirement established with respect to any TIF Bonds;
- (iii) the payment of Project Costs incurred in connection with the development, construction, or implementation of the TIF Projects; and
- (iv) the reimbursement of a third party developer (pursuant to a development agreement with the City or the Authority), including any interest component (pursuant to a development agreement with the City and/or the Authority), the City, or any agency thereof (including the Authority), which has paid Project Costs from funds which were not increments derived from the Increment District, but only to the

extent that such sums were actually paid or, in the case of reimbursement of a third party developer, constitute an interest component on sums that were actually paid.

Provided, however, the remaining unapportioned incremental County sales tax revenues derived within the Increment District, shall be retained by the County and utilized on a pro rata basis for any lawful purpose consistent with the aforementioned County Sales Tax Resolution. The Increment District shall not capture any of the County sales tax revenue generated after December 31, 2033. For purposes of determining the incremental portion of the sales taxes generated within or sourced to the Increment District, the County shall utilize the “base sales tax amount” as certified by the City, adjusted proportionately for the difference in the rate of tax levy. One hundred percent (100%) of the incremental County sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2024-2027, seventy five percent (75%) of the incremental County sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2028-2029, fifty percent (50%) of the incremental sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2030-2031, and twenty five percent (25%) of the incremental County sales tax revenue (but not including use tax revenue) derived from the Increment District in the calendar years 2032-2033, and received by the County which are in excess of such base amount, net of any County Transfer Adjustment, shall be considered to be the “increment” subject to apportionment by this section. In addition to sales tax generated from retail sales, the County Sales Tax Increment Revenues shall include the same annual corresponding percentage of the sales tax generated from actual construction occurring within the Increment District. The County shall establish procedures related to the calculation and determination of construction related sales tax revenue qualifying as County Sales Tax Increment Revenues. Such procedures shall stipulate that construction related County Sales Tax Increment Revenues be derived only from new construction activities occurring within the Increment District. The County shall be entitled to rely on certifications of actual construction costs provided by a third party developer(s) or related parties in connection with determining any applicable County Sales Tax Increment Revenues.

In accordance with the requirements of Section 861(A)(2)(c) of the Local Development Act, the County has specifically consented to the capture of the County Sales Tax Increment Revenues, subject to the limitations expressed herein, as evidenced by Resolution No. 2024-002 of the Board of County Commissioners adopted January 2, 2024, a copy of which is attached hereto as Exhibit “G”.

(g) *Hotel Tax Increment Revenues (TIF Revenues)*. In accordance with the provisions of the Local Development Act, one hundred percent (100%) of the incremental City hotel/motel tax revenues derived from the Increment District, representing all of the total four percent (4.0%) hotel/motel tax levied by the City pursuant to Chapter 22, Article VI, Section 22-111 *et seq.*, of the Broken Arrow Code of Ordinances, as such Code of Ordinances may be amended, replaced, extended, superseded, terminated, or otherwise modified from time to time, including with regards to the total amount of City hotel/motel tax rate (collectively, the “Hotel Tax Increment Revenues”) are to be apportioned and set aside from all other hotel/motel taxes levied within the Increment District; provided that

all of the generated increment shall be pledged as security for the payment of the TIF Bonds or otherwise used to pay (or reimburse the payment of) Project Costs authorized pursuant to Section IX of the Project Plan. The Hotel Tax Increment Revenues are to be used exclusively for:

- (i) the payment of principal, interest and premium, if any, on any TIF Bonds issued pursuant to Section 863 of the Local Development Act (including pledging as security for such payments);
- (ii) the payment, if required, of amounts necessary to satisfy or replenish any reserve requirement established with respect to any TIF Bonds;
- (iii) the payment of Project Costs incurred in connection with the development, construction, or implementation of the TIF Projects; and
- (iv) the reimbursement of a third party developer (pursuant to a development agreement with the City or the Authority), including any interest component (pursuant to a development agreement with the City and/or the Authority), the City, or any agency thereof (including the Authority), which has paid Project Costs from funds which were not increments derived from the Increment District, but only to the extent that such sums were actually paid or, in the case of reimbursement of a third party developer, constitute an interest component on sums that were actually paid.

For purposes of determining the incremental portion of the hotel/motel taxes generated within the Increment District, the Mayor of the City shall certify as the “base lodging tax amount” the annual hotel/motel taxes received by the City that were generated within the area comprising the Increment District between January 1, 2023, and December 31, 2023. All hotel/motel tax revenue generated within the Increment District and received by the City which are in excess of such base amount, shall be considered to be the “increment” subject to apportionment by this section.

(h) *Leverage Act Increment Revenues (TIF Revenues)*. In accordance with the provisions of the Local Development Act, one hundred percent (100%) of the incentive matching payments made by the State of Oklahoma pursuant to the Oklahoma Local Development and Enterprise Zone Incentive Leverage Act, 62 O.S. §840, *et seq.* (the “Leverage Act”), based on sales and use tax and hotel/motel tax increments dedicated to the Increment District, as such amounts are hereinafter determined (collectively, the “Leverage Act Increment Revenues”) are to be apportioned and set aside from all other taxes levied within the Increment District; provided that all of the generated increment shall be pledged as security for the payment of the TIF Bonds or otherwise used to pay (or reimburse the payment of) Project Costs authorized pursuant to Section IX of the Project Plan. The Leverage Act Increment Revenues are to be used exclusively for:

- (i) the payment of principal, interest and premium, if any, on any TIF Bonds issued pursuant to Section 863 of the Local Development Act (including pledging as security for such payments);

- (ii) the payment, if required, of amounts necessary to satisfy or replenish any reserve requirement established with respect to any TIF Bonds;
- (iii) the payment of Project Costs incurred in connection with the development, construction, or implementation of the TIF Projects; and
- (iv) the reimbursement of a third party developer (pursuant to a development agreement with the City or the Authority), including any interest component (pursuant to a development agreement with the City and/or the Authority), the City, or any agency thereof (including the Authority), which has paid Project Costs from funds which were not increments derived from the Increment District, but only to the extent that such sums were actually paid or, in the case of reimbursement of a third party developer, constitute an interest component on sums that were actually paid.

The City is hereby authorized to make application to the State of Oklahoma for sales and use tax and hotel/motel tax matching payments pursuant to the Leverage Act, and shall establish procedures related thereto. It is hereby recognized that any Leverage Act Increment Revenues represent a substantial economic benefit to the City and the development of the Project, and the City and the Authority shall take all reasonable actions necessary to maximize the Leverage Act Increment Revenues..

(i) *Fee by Agreement Increment Revenues (TIF Revenues)*. In accordance with the provisions of the Local Development Act, one hundred percent (100%) of any additional fees by agreement, as said fees may be applied from time to time to real or personal property, taxable sales or use transactions, or hotel/motel occupancy, and as such amounts are hereinafter determined and defined (collectively, the “Fee by Agreement Increment Revenues”) are to be apportioned and set aside from all other taxes levied within the Increment District; provided that all of the generated increment shall be allocated to pay (or reimburse the payment of) Project Costs authorized pursuant to Section IX of the Project Plan. The Fee by Agreement Increment Revenues are to be used exclusively for:

- (v) the payment of principal, interest and premium, if any, on any TIF Bonds issued pursuant to Section 863 of the Local Development Act (including pledging as security for such payments);
- (vi) the payment, if required, of amounts necessary to satisfy or replenish any reserve requirement established with respect to any TIF Bonds;
- (vii) the payment of Project Costs incurred in connection with the development, construction, or implementation of the TIF Projects; and
- (viii) the reimbursement of a third party developer (pursuant to a development agreement with the City or the Authority), including any interest component (pursuant to a development agreement with the City and/or the Authority), the City, or any agency thereof (including the Authority), which has paid Project Costs from funds which were not increments derived from the Increment District, but only to the

extent that such sums were actually paid or, in the case of reimbursement of a third party developer, constitute an interest component on sums that were actually paid.

Pursuant to Section 861 of the Local Development Act, the City may, from time to time, enter into agreements with individuals or entities located or doing business within the Increment District for the imposition of additional fees levied on real or personal property, taxable sales or use transactions, and/or hotel/motel occupancy. Any of said amounts shall be apportioned as set forth herein. It is hereby recognized that any Fee by Agreement Increment Revenues represent in essence a user fee imposed upon those individuals and business entities that choose to locate or do business within the Increment District, and that said revenues represent a component essential to the payment of Project Costs contemplated herein. As of the date of the Project Plan, the City contemplates that the developer of the Amphitheater Project will assess and collect a one percent (1.0%) fee on all taxable sales in connection with the Amphitheater Project, and remit those funds to the City.

(j) *Use of TIF Revenues.* During the term of the Increment District, TIF Revenues (excluding such portions allocated to affected taxing entities) shall be utilized as follows:

- (i) The payment of principal, accrued interest, and premium, if any, due on the TIF Bonds;
- (ii) If applicable, transfers to any debt service reserve established in connection with the TIF Bonds in such amounts as may be necessary to restore the reserve to its prescribed levels;
- (iii) The payment and/or reimbursement of authorized Project Costs (including any interest component pursuant to a development agreement);
- (iv) If applicable, the prepayment of principal on any TIF Bonds until such time as all TIF Bonds are retired; and
- (v) Upon retirement of all TIF Bonds (if any) and payment of all Project Costs (including any interest component pursuant to a development agreement), (a) any remaining City Sales Tax Increment Revenues and/or Hotel Tax Increment Revenues shall be transferred to the City for deposit into the General Fund or to the appropriate special fund, and (b) any remaining County Sales Tax Increment Revenues shall be transferred to the County for deposit into the General Fund or to the appropriate special fund, in each case consistent with the provisions of the Local Development Act. Any remaining Leverage Act Increment Revenues and Fee by Agreement Increment Revenues shall be treated appropriately as sales and use tax revenue or hotel/motel tax revenue, and shall be transferred as set forth in (a) and (b) herein, or, if required by the Leverage Act, shall be returned to the State of Oklahoma.

Section 11. Increments Constitute City Funds; Uses. From and after apportionment, the apportioned increments shall constitute funds of the City (except that such funds may also be held

by the Authority or a trustee acting on behalf of the Authority). Apportioned increments may be used for the payment of Project Costs; provided, however, the pledge of apportioned increments toward payment of such Project Costs shall be limited to increments actually apportioned by the City and any security instruments shall provide that except as provided for in this Ordinance, the City has no legal obligation or promise to apportion additional increments in future years. The City and the Authority shall have the authorization to carry out certain provisions of the Project Plan, as authorized in Section VIII of the Project Plan, to incur and pay or reimburse Project Costs (including any interest, capitalized interest, and other related financing costs) pursuant to Section IX of the Project Plan and also, if feasible and desirable, to issue tax apportionment bonds or notes, incur the costs of issuance of such bonds, and accumulate appropriate reserves, if any, in connection with such bonds, and to retire said bonds or notes from apportioned tax increments.

Section 12. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional, such portion shall not affect the validity of the remaining portions of this Ordinance.

Section 13. Emergency. It is immediately necessary for the preservation of the public health, peace and safety of the City of Broken Arrow, Oklahoma, and the inhabitants thereof that the provisions of this Ordinance become operative immediately and therefore, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately from and after its passage and approval.

Section 14. Necessary Action. The Mayor or Vice Mayor and City Clerk or Deputy City Clerk be and hereby are authorized and empowered to execute and deliver for and on behalf of the City any and all other documents or instruments reasonably necessary to accomplish the implementation of the Project Plan.

[Remainder of Page Left Blank Intentionally]

PASSED AND APPROVED AND THE EMERGENCY CLAUSE RULED UPON SEPARATELY THIS 16<sup>TH</sup> DAY OF JANUARY, 2024.

CITY OF BROKEN ARROW,  
OKLAHOMA

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

STATE OF OKLAHOMA    )  
  )SS  
COUNTY OF TULSA        )

I, the undersigned, City Clerk of the City of Broken Arrow, Oklahoma, do hereby certify that the above and foregoing is a true, full and correct copy of an excerpt from the minutes of a meeting of the City Council of said City held on the date above stated, all as recorded in the official minutes of such meeting. I further certify that the “Open Meeting Law” was complied with for such meeting.

GIVEN UNDER MY HAND THIS 16<sup>TH</sup> DAY OF JANUARY, 2024.

(SEAL)

\_\_\_\_\_

City Clerk



**EXHIBIT “A”**

**SUNSET AT BROKEN ARROW  
ECONOMIC DEVELOPMENT PROJECT PLAN**

[On file with the City Clerk of the City of Broken Arrow, Oklahoma]

**EXHIBIT "B"**

**INCREMENT DISTRICT LEGAL DESCRIPTION**

**INCREMENT DISTRICT NO. 5, CITY OF BROKEN ARROW**

[TO BE PROVIDED]

**EXHIBIT “C”**

**PROJECT AREA LEGAL DESCRIPTION**

**INCREMENT DISTRICT NO. 5, CITY OF BROKEN ARROW PROJECT AREA**

An area located entirely in Tulsa County, Oklahoma, more particularly described as follows:

Sections Twenty Four (24), Twenty Five (25), and Thirty Six (36), Township Eighteen (18) North, Range Fourteen (14) East of the Indian Meridian, Tulsa County, State of Oklahoma.

An area located entirely in Wagoner County, Oklahoma, more particularly described as follows:

Sections Nineteen (19), Twenty (20), Twenty Nine (29), Thirty (30), Thirty One (31), and Thirty Two (32), Township Eighteen (18) North, Range Fifteen (15) East of the Indian Meridian, Wagoner County, State of Oklahoma.

**EXHIBIT “D”**

**RESOLUTION OF THE PLANNING COMMISSION  
OF THE CITY OF BROKEN ARROW**

Resolution dated December 14, 2023

[Copy on file with the City Clerk of the City of Broken Arrow, Oklahoma]

**EXHIBIT “E”**

**RESOLUTION OF THE TAX INCREMENT DISTRICT REVIEW COMMITTEE**

Resolution dated December 7, 2023

[Copy on file with the City Clerk of the City of Broken Arrow, Oklahoma]

**EXHIBIT “F”**

**RESOLUTION OF THE WAGONER COUNTY BOARD OF COMMISSIONERS**

Resolution No. 2024-002 dated January 2, 2024

[Copy on file with the City Clerk of the City of Broken Arrow, Oklahoma]