



ADDENDUM  
to the City Council Agenda  
for November 13, 2018

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D. DISCUSSION ITEMS.

4. Discussion and consideration of an ordinance amending certain provisions of Ordinance no. 3291 creating Increment District Number Two, City of Midwest City, Oklahoma (the “Sooner Rose Increment District”) relating to the apportionment of sales taxes from within the Sooner Rose Increment District; amending that certain “project plan relating to Increment District Number Two, City of Midwest City, Oklahoma (Sooner Rose Increment District)” relating to the apportionment of sales taxes from the Warren Theatre facility; providing for severability; declaring an emergency; and containing other provisions relating thereto. (City Manager - G. Henson)





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MEMORANDUM

TO: Honorable Mayor and Council

FROM: J. Guy Henson, City Manager

DATE: November 13, 2018

SUBJECT: Discussion and consideration of an ordinance amending certain provisions of Ordinance no. 3291 creating Increment District Number Two, City of Midwest City, Oklahoma (the "Sooner Rose Increment District") relating to the apportionment of sales taxes from within the Sooner Rose Increment District; amending that certain "project plan relating to Increment District Number Two, City of Midwest City, Oklahoma (Sooner Rose Increment District)" relating to the apportionment of sales taxes from the Warren Theatre facility; providing for severability; declaring an emergency; and containing other provisions relating thereto.

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Attached is an ordinance that amends the Sooner Rose TIF, which clarifies that the new three quarters of a penny sales tax generated within the TIF District will not be used to service the Sooner Rose TIF debt. This amendment is being recommended by Dan McMahan to clarify the percentage of sales tax being apportioned under the Sooner Rose Increment District.

Staff recommends approval.

J. GUY HENSON  
City Manager

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AMENDING CERTAIN PROVISIONS OF ORDINANCE NO. 3291 CREATING INCREMENT DISTRICT NUMBER TWO, CITY OF MIDWEST CITY, OKLAHOMA (THE “SOONER ROSE INCREMENT DISTRICT”) RELATING TO THE APPORTIONMENT OF SALES TAXES FROM WITHIN THE SOONER ROSE INCREMENT DISTRICT; AMENDING THAT CERTAIN “PROJECT PLAN RELATING TO INCREMENT DISTRICT NUMBER TWO, CITY OF MIDWEST CITY, OKLAHOMA (SOONER ROSE INCREMENT DISTRICT)” RELATING TO THE APPORTIONMENT OF SALES TAXES FROM THE WARREN THEATRE FACILITY; PROVIDING FOR SEVERABILITY; DECLARING AN EMERGENCY; AND CONTAINING OTHER PROVISIONS RELATING THERETO.**

**WHEREAS**, on March 28, 2017, the City Council of the City of Midwest City, Oklahoma (hereinafter, the “City”) adopted Ordinance No. 3291 establishing “Increment District Number Two, City of Midwest City, Oklahoma” (hereinafter, the “Sooner Rose Increment District”), and approving that certain “Project Plan Relating to Increment District Number Two, City of Midwest City, Oklahoma (Sooner Rose Increment District)” (hereinafter, the “Project Plan”); and

**WHEREAS**, subsequent to the adoption of Ordinance No. 3291, the City Council of the City adopted Ordinance No. 3308 providing for the additional levy of sales taxes within the City and specifying the uses for which such sales taxes could be used; and

**WHEREAS**, the City Council desires to clarify the provisions of Ordinance No. 3291, in order to remove any ambiguities which may have resulted from the adoption of Ordinance No. 3308.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MIDWEST CITY, OKLAHOMA, TO-WIT:**

**SECTION 1. Amending Certain Provisions of Ordinance No. 3291 Creating Increment District Number Two, City Of Midwest City, Oklahoma (the “Sooner Rose Increment District”) Relating To The Apportionment Of Sales Taxes From Within The Sooner Rose Increment District.** Section 7 of Ordinance No. 3291 is hereby amended in its entirety, to read as follows:

**SECTION 7. Apportioning Incremental Sales Tax Revenues.** *In accordance with the provisions of the Local Development Act, a portion of the increments of sales taxes levied by the City of Midwest City, and generated within the Sooner Rose Increment District, as such increments are hereinafter determined and defined (hereinafter, the “Sales Tax Increment Revenues”), are hereby apportioned and set aside from all other sales taxes levied within the Sooner Rose Increment District, to be used for:*

- (i) the payment of principal, interest and premium, if any, on any tax apportionment bonds or notes, issued pursuant to Section 863 of the Local Development Act;*

(ii) the payment of “project costs” (as defined in the Local Development Act) incurred in connection with the development or construction of those projects listed in this Project Plan; and

(iii) the reimbursement of the City, or any agency thereof (including the Authority), which has paid “project costs” from funds which were not increments derived from the Sooner Rose Increment District, but only to the extent that such sums were actually paid.

*For purposes of determining the incremental portion of the sales taxes generated within the Sooner Rose Increment District, the Finance Director 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 Sooner Rose Increment District between January 1, 2016 and December 31, 2016. If necessary for such certification, said base amount may be determined using reasonable estimates prepared by the Finance Director.*

*The Sales Tax Increment Revenues, which are subject to apportionment hereunder, shall be an amount equal to:*

(i) the sum of: (a) the annual amount of taxable sales generated from within the Sooner Rose Increment District, less those taxable sales generated within the Warren Theatre Facility for the same period, multiplied by 0.0088; and (b) the annual amount of all taxable sales generated from within the Warren Theatre Facility multiplied by .0385; less

(ii) the annual amount of taxable sales used in determining the “base sales tax amount”.

*The apportionment of Sales Tax Increment 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 this Project Plan, and the payment of all outstanding principal and accrued interest on any tax apportionment bond or notes issued hereunder; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond twenty (20) years from the original effective date of this Ordinance establishing the Sooner Rose Increment District, unless such period is modified by subsequent action of the City Council.*

*In the event that a portion of the principal of or interest on any bonds or notes issued in connection herewith, remains unpaid as of the twentieth (20th) anniversary of the original effective date of any ordinance establishing this district, then, the Sooner Rose Increment District shall not terminate until the increment apportioned during the twentieth (20th) year is actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the twentieth (20th) anniversary of the original effective date of the ordinance establishing this district.*

Any provisions of Ordinance No. 3291 which are not so amended shall continue in full force and effect.

**SECTION 2. Approving and Adopting the Third Amendment to Project Plan Relating to Increment District Number Two, City of Midwest City, Oklahoma.** The Third Amendment to Project Plan, is hereby adopted and approved in the form attached hereto as Exhibit “A”.

**SECTION 3. Continuing Existence of Increment District Number Two, City of Midwest City, Oklahoma.** Increment District Number Two, City of Midwest City, Oklahoma, previously established pursuant to Ordinance No. 3291, shall continue in existence in accordance with the provisions of the Project Plan, as amended, and the Oklahoma Local Development Act, subject only to those changes herein described.

**SECTION 4. Providing for 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.

PASSED AND approved by the City Council of the City of Midwest City, Oklahoma this \_\_\_\_ day of \_\_\_\_\_, 2018.

THE CITY OF MIDWEST CITY, OKLAHOMA

\_\_\_\_\_  
MATTHEW D. DUKES, II, Mayor

ATTEST:

\_\_\_\_\_  
SARA HANCOCK, City Clerk

APPROVED as to form and legality this \_\_\_\_ day of \_\_\_\_\_, 2018:

\_\_\_\_\_  
HEATHER POOLE, City Attorney

**SECTION 5. Emergency.** It being immediately necessary for the preservation of the peace, health and safety, and the public good of the City of Midwest City, and the inhabitants thereof, that the provisions of this ordinance be put into full force and effect, an emergency is hereby declared to exist, by reason whereof this ordinance shall take effect and be put in full force and effect from and after the date of its passage.

EMERGENCY CLAUSE PASSED AND APPROVED by the Mayor and the Council of the City of the City of Midwest City,

Oklahoma, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

CITY OF MIDWEST CITY, OKLAHOMA

\_\_\_\_\_  
MATTHEW D. DUKES II, Mayor

ATTEST:

\_\_\_\_\_  
SARA HANCOCK, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
HEATHER POOLE, City Attorney

EXHIBIT "A"

THIRD AMENDMENT TO  
PROJECT PLAN RELATING TO  
INCREMENT DISTRICT NUMBER TWO, CITY OF MIDWEST CITY, OKLAHOMA

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**THIRD AMENDMENT TO PROJECT PLAN  
RELATING TO INCREMENT DISTRICT NUMBER TWO,  
CITY OF MIDWEST, OKLAHOMA  
(SOONER ROSE INCREMENT DISTRICT PROJECT)**  
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Submitted By The

**CITY OF MIDWEST CITY, OKLAHOMA**

And The

**MIDWEST CITY MEMORIAL HOSPITAL AUTHORITY**

**DATED: November 1, 2018**



## INTRODUCTION

At the December 22nd, 2016 special meeting of the Midwest City Memorial Hospital Authority (hereinafter, the “Authority”), the Trustees of the Authority approved an agreement with Sooner Investment Group, Inc., an Oklahoma corporation (hereinafter, the “Developer”), to explore the possibility of expanding the Sooner Rose Shopping Center located at S.E. 15th Street and South Sooner Road. This expansion would include the construction and development of approximately 160,000 square feet of restaurant, entertainment and retail space adjacent to the two existing stores currently operating at that site (hereinafter, the “Project”). Due to the magnitude of the Project, and the significant public benefits which will accrue from it, the Developer has requested that the City of Midwest City, Oklahoma (hereinafter, the “City”) and the Authority provide development financing assistance in connection with the Project. Under the Developer’s proposal, the development financing assistance would be used to defray part of the extensive infrastructure, site development and building costs required in the development and construction of the Project.

On January 10, 2017, the City Council of the City adopted Resolution No. 2017-02, authorizing and directing the Midwest City Local Development Act Review Committee to analyze the Developer’s proposal and to determine whether the area described in the proposal would qualify as an “increment district” pursuant to the provisions of the Oklahoma Local Development Act, Title 62, Sections 850 et seq. of the Oklahoma Statutes (hereinafter, the “Local Development Act”), and to make other recommendations and findings as required by the Local Development Act.

On March 28, 2017, the City Council of the City adopted Ordinance No. 3291 establishing “Increment District No. Two, City of Midwest City, Oklahoma” (the “Sooner Rose Increment District”), and approving and adopting the “Project Plan Relating to Increment District Number Two, City of Midwest City, Oklahoma (Sooner Rose Increment District Project)” (the “Project Plan”), pursuant to the provisions of the Oklahoma Local Development Act, Title 62, Sections 850 et seq. of the Oklahoma Statutes, as amended (the “Local Development Act”).

On July 27, 2017, the Authority issued its “Bond Anticipation Notes, Series 2017 (Taxable) (Sooner Rose Increment District Project)” in the principal amount of \$16,475,000 (the “Series 2017 Notes”) to fund the initial project costs associated with the Sooner Rose Increment District and the projects described in the Project Plan.

On June 29, 2018, the Authority issued its “Tax Apportionment Refunding Bonds, Taxable Series 2017 (Sooner Rose Increment District Project)” in the principal amount of \$19,250,000 (the “Series 2018 Bonds”) to refund the Series 2017 Notes and to pay costs of issuance relating thereto.

This “Third Amendment to Project Plan Relating to Increment District Number Two, City of Midwest City, Oklahoma (Sooner Rose Increment District Project)” (hereinafter, the “Third Amendment to Project Plan”) was prepared by the staff of and consultants retained by the City, with the assistance of the Authority and the Company, to clarify issues relating to the apportionment of certain municipal sales taxes generated within the Sooner Rose Increment District. Any statements contained herein or in the appendices and exhibits hereto, involving

matters of opinion, estimates or projections, whether or not expressly so stated, are intended as such and not as representations of fact. Summaries of documents referred to herein do not purport to be complete or definitive, and all references made to such documents are qualified in their entirety by reference to the complete document. The information contained herein has been compiled from sources believed to be reliable, as of the date hereof. Such information is subject to change and/or correction, at any time prior to the adoption of this Third Amendment to Project Plan by the City.

*SECTION 1. Article IV of the Project Plan, captioned "METHODS OF FINANCING PROJECT COSTS, EXPECTED SOURCES OF REVENUES, AND TIME WHEN COSTS OR MONETARY OBLIGATION ARE TO BE INCURRED" is hereby amended to read in its entirety, as follows:*

**"IV. METHODS OF FINANCING PROJECT COSTS, EXPECTED SOURCES OF REVENUES, AND TIME WHEN COSTS OR MONETARY OBLIGATIONS ARE TO BE INCURRED**

**A. Methods of Financing**

It is expected that all project costs described above (along with principal on any tax apportionment bonds or notes) will be paid from one of the following sources:

(i) proceeds from the following:

(a) "Midwest City Memorial Hospital Authority Bond Anticipation Notes, Series 2017 (Taxable) (Sooner Rose Increment District Project)" in the approximate amount of \$17,000,000.00 (hereinafter, the "Series 2017 Notes"); and/or

(b) "Midwest City Memorial Hospital Authority Tax Apportionment Refunding Bonds, Taxable Series 2018 (Sooner Rose Increment District Project)" in the approximate amount of \$19,250,000.00 (hereinafter, the "Bonds"); and/or

(ii) from such other funds of the City or the Authority as may be lawfully used for the purposes hereinabove stated.

**B. Expected Sources of Revenues**

The payment of project costs (including principal on any tax apportionment bonds or notes) will be made from the following source(s) of revenues:

(1) **Ad Valorem Taxes** - In accordance with the provisions of the Local Development Act, increments of ad valorem taxes generated within the Sooner Rose Increment District, as such increments are determined and defined by the Local Development Act, are to be apportioned and set aside from all other ad valorem taxes levied within the Sooner Rose Increment District, to be used exclusively for:

- (i) the payment of “project costs” (as defined in the Local Development Act) incurred in connection with the development or construction of those projects listed in this Project Plan;
- (ii) the reimbursement of the City, or any agency thereof, which has paid “project costs” from funds which were not derived from the Sooner Rose Increment District, but only to the extent that such sums were actually paid; and
- (iii) the payment of principal and interest as it comes due under the Bonds.

(Such revenues being hereinafter referred to as the “Ad Valorem Increment Revenues”).

The apportionment of ad valorem taxes 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 this Project Plan, and the payment of all outstanding principal and accrued interest due on any “tax apportionment bonds or notes” issued hereunder; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond twenty (20) years from the Effective Date (hereinafter defined) of the Sooner Rose Increment District, unless such period is modified by subsequent action of the City Council.

In the event that a portion of the principal of or interest on any “tax apportionment bonds or notes” issued in connection herewith, remains unpaid as of the twentieth (20th) anniversary of the Effective Date of district, then, the Sooner Rose Increment District shall not terminate until the increment apportioned during the twentieth year is actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the twentieth (20th) anniversary of the Effective Date of this district.

Pursuant to the Local Development Act, the Ad Valorem Increment Revenues apportioned hereunder shall be transferred by the respective taxing authorities to a special fund to be known as the “Sooner Rose Increment District Apportionment Fund” (hereinafter, the “Apportionment Fund”), which fund will be held by and be the property of, the Midwest City Memorial Hospital Authority (except that such fund may also be held by a trustee acting on behalf of the Authority). No portion of such increments and no portion of the Apportionment Fund shall constitute a part of the general fund of the City. All Ad Valorem Increment Revenues so collected shall be placed into a separate account created within the Apportionment Fund and pledged as security for the payment of the Bonds. (Such account being hereinafter referred to as the “Ad Valorem Increment Revenue Account”).

**(2) City Sales and Use Taxes** - In accordance with the provisions of the Local Development Act, increments of sales and uses taxes levied by the City of Midwest City, and generated within the Sooner Rose Increment District, as such increments are hereinafter determined and defined, are to be apportioned and set aside from all other sales and use taxes levied within the Sooner Rose Increment District, to be used exclusively for:

(i) payment of “project costs” (as defined in the Local Development Act) incurred in connection with the development, acquisition or construction of those projects listed in the Project Plan; and

(ii) reimbursement to the City, or any agency thereof which has paid “project costs” from funds which were not increments derived from the Sooner Rose Increment District, but only to the extent that such sums were actually paid; and

(iii) the payment of principal and interest as it comes due under the Bonds.

(Such revenues being hereinafter referred to as the “Sales Tax Increment Revenues”).

For purposes of determining the incremental portion of the sales and use taxes generated within the Sooner Rose Increment District, the Finance Director of the City shall certify as the “base sales and use tax amount” the annual sales and use taxes received by the City that were generated within the area comprising the Sooner Rose Increment District between January 1, 2016 and December 31, 2016. If necessary for such certification, said base amount may be determined using reasonable estimates prepared by the Finance Director.

The Sales Tax Increment Revenues shall be determined, as follows:

(i) that amount of sales and use taxes which are generated from the following:

(a) All use tax revenues generated from the taxable sales of construction materials sourced to any tract located within the Sooner Rose Increment District; and

(b) A portion of the sales tax revenues generated from the taxable sales occurring within the Warren Theatre Facility, which portion is equal to 3.85% of such taxable sales; and

(c) A portion of the sales tax revenue generated from the taxable sales occurring within the Sooner Rose Increment District, other than from the Warren Theater Facility, which portion is equal to 0.88% of such taxable sales;

(ii) reduced by the “base sales and use taxes” as determined by the Finance Director of the City.

All such sales and use tax revenue, as computed above, shall be considered to be the “increment” subject to apportionment by this section.

The apportionment of sales and use taxes 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 this Project Plan, and the payment of all outstanding principal, accrued interest, and premium due on any “tax apportionment bonds or notes” issued hereunder; provided, however, that in no case shall the apportionment of revenues pursuant hereto extend beyond twenty (20) years from the Effective Date of the Sooner Rose Increment District, unless such period is modified by subsequent action of the City Council.

In the event that a portion of the principal of or interest on any “tax apportionment bonds or notes” issued in connection herewith, remains unpaid as of the twentieth (20th) anniversary of the Effective Date of this district, then, the Sooner Rose Increment District shall not terminate until the increment apportioned during the twentieth year is actually received by the Apportionment Fund, even if the receipt of such revenues occurs subsequent to the twentieth anniversary of the Effective Date of this district.

Pursuant to the Local Development Act, the Sales Tax Increment Revenues apportioned hereunder shall be transferred by the City of Midwest City to the Apportionment Fund. No portion of such increments and no portion of the Apportionment Fund shall constitute a part of the general fund of the City. All Sales Tax Increment Revenues so collected shall be placed into a separate account created within the Apportionment Fund and pledged as security for the payment of the Bonds. (Such account being hereinafter referred to as the “Sales Tax Increment Revenue Account”).

**C. Time When Costs Or Monetary Obligations Are To Be Incurred.**

Except as otherwise provided, all costs associated with the projects described herein (with the exception of financing costs) will be incurred within thirty-six (36) months of the Effective Date of the Sooner Rose Increment District. Financing costs will be incurred during the remaining term of the Sooner Rose Increment District.

**D. Return of Excess Revenues.**

The City estimates that the annual totals of all Ad Valorem Increment Revenues and Sales Tax Increment Revenues (hereinafter, collectively, the “Aggregate Increment Revenues”) will likely exceed the amount of principal and interest due to be paid on the Bonds. During the term of the Sooner Rose Increment District, all excess Ad Valorem Increment Revenues and Sales Tax Increment Revenues will be used as set forth below:

**(1) Ad Valorem Taxes** - In the event that: (i) the total of all Aggregate Increment Revenues exceed, in any given Bond Year, the amount of principal and interest next due on the Bonds; and (ii) the total of all Ad Valorem Increment Revenues exceed one-half of the amount of principal and interest due on the Bonds, then any Ad Valorem Increment Revenues in excess of one-half of the debt service requirements relating to the Bonds for such Bond Year shall be used, as follows:

FIRST, for the payment of principal, interest and premium, if any, on the Bonds but only to the extent necessary to pay such amounts after first utilizing all monies available from the Sales Tax Increment Revenue Account within the Apportionment Fund; and

SECOND, to redeem the Bonds in the order and manner as may be required by the terms of the Bonds.

**(2) Sales Taxes** - In the event that: (i) the total of all Aggregate Increment Revenue exceeds, in any given Bond Year, the amount of principal and interest next due on the Bonds; and (ii) the total of all Sales Tax Increment Revenues exceed one-half of the amount of principal and interest due on the Bonds, then any Sales Tax Increment Revenues in excess of one-half of the debt service requirements relating to the Bonds for such Bond Year shall be used, as follows:

FIRST, for the payment of principal, interest and premium, if any, on the Bonds but only to the extent necessary to pay such amounts after first utilizing all monies available from the Ad Valorem Increment Revenue Account within the Apportionment Fund; and

SECOND, for reimbursement of the Authority of its: (i) “direct administrative costs” in an amount not to exceed \$10,000 annually; and (ii) “professional service costs” (both as defined in the Local Development Act) incurred during the prior year in connection with this Project Plan;

THIRD, , to redeem outstanding Bonds in the order and manner as may be required by the terms of the Bonds.

If the total of all Aggregate Increment Revenues does not exceed, in any given Bond Year, the amount of principal and interest next due on the Bonds, then all Ad Valorem Increment Revenues and Sales Tax Increment Revenues shall be retained in the Apportionment Fund and used to pay the debt service requirements on the Bonds.