

RESOLUTION NO. 16-358

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS DETERMINING THE ADVISABILITY OF ISSUING INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, RENOVATION AND EQUIPPING OF AN EXISTING MANUFACTURING FACILITY LOCATED IN SAID CITY; AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.

WHEREAS, the City of Wichita, Kansas (the "City") is a municipal corporation, duly created, organized and existing under the Constitution and laws of the State of Kansas (the "State"); and

WHEREAS, the City Council (the "Governing Body") of the City desires to promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the City is authorized to issue revenue bonds for such purposes; and

WHEREAS, the Governing Body determines it to be advisable and in the interest and for the welfare of the City and its inhabitants that revenue bonds of the City be authorized and issued, in one or more series, to provide funds to pay the costs of the acquisition, renovation and equipping of an existing manufacturing facility (the "Project") located in the City; and

WHEREAS, the Project shall be leased by the City to BEH 8219 Irving, LLC, a Kansas limited liability company (the "Tenant") and subleased by the Tenant to MAX Aerostructures, LLC, a Kansas limited liability company (the "Subtenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

Section 1. Public Purpose. The Governing Body hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the City, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State.

Section 2. Authorization to Acquire Project; Intent to Issue Bonds. The City is hereby authorized to proceed with the acquisition, renovation and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$6,000,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. Conditions to Issuance of Bonds. The issuance of the Bonds is subject to: (a) the Tenant's and Subtenant's written acceptance of a Letter of Intent containing the City's conditions to the issuance of the Bonds in accordance with the City's Economic Development Incentive Policy (the "Letter of Intent"); (b) the successful negotiation and sale of the Bonds to a purchaser or purchasers to be determined by the Tenant and acceptable to the City (the "Purchaser"), which sale shall be the responsibility of the

Tenant and not the City; (c) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the City, the Tenant and the Purchaser; (d) the obtaining of all necessary governmental approvals to the issuance of the Bonds; and (e) the commitment to and payment by the Tenant or Purchaser of all expenses relating to the issuance of the Bonds, including, but not limited to: (i) expenses of the City and the City Attorney; (ii) any underwriting or placement fees and expenses; (iii) all legal fees and expenses of Bond Counsel; and (iv) all recording and filing fees, including fees of the Kansas Board of Tax Appeals.

Section 4. Property Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-201a the Project, to the extent purchased or constructed with the proceeds of the Bonds, should be eligible for an exemption from payment of ad valorem property taxes for a period up to ten calendar years commencing with the year following the year in which the Bonds are issued, provided proper application is made therefor. The Governing Body hereby conditionally approves an 100% ad valorem property tax exemption on the Bond-financed property, for a five year term, with an additional five year term to be considered thereafter, at the discretion of the Governing Body, all subject to the Tenant's and Subtenant's ongoing compliance with the City's Economic Development Incentive Policy. Prior to making such determination the Governing Body has conducted the public hearing and reviewed the analysis of costs and benefits of such exemption required by the Act.

Section 5. Sales Tax Exemption. The Governing Body hereby determines that pursuant to the provisions of K.S.A. 79-3601 *et seq.* (the "Sales Tax Act"), particularly 79-3606(b) and (d) and other applicable laws, sales of tangible personal property or services purchased in connection with construction of the Project and financed with proceeds of the Bonds are entitled to exemption from the tax imposed by the Sales Tax Act; provided proper application is made therefore. In the event that the Bonds are not issued for any reason, the Tenant will not be entitled to a sales tax exemption under the terms of the Sales Tax Act and will remit to the State Department of Revenue all sales taxes that were not paid due to reliance on the sales tax exemption certificate granted hereunder.

Section 6. Reliance by Tenant; Limited Liability of City. It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds; provided that the such expenditures incurred prior to the issuance of the Bonds are at the risk of the Tenant that the Bonds will actually be issued. Proceeds of the Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the City from the Project and not from any other fund or source. The City shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the City shall have no liability to the Tenant.

Section 7. Execution and Delivery of Documents. The Mayor is hereby authorized to execute the Letter of Intent, and the City Clerk is authorized to deliver executed copies of this Resolution and the Letter of Intent to the Tenant and Subtenant. After the Tenant and Subtenant have demonstrated compliance with the provisions of the Letter of Intent, the Mayor and City Clerk are authorized to execute a bond purchase agreement with the Purchaser and the Tenant for the sale of the Bonds in a form satisfactory to the City Attorney and Bond Counsel.

Section 8. Further Action. The Mayor, City Clerk and other officials and employees of the City, including the City Attorney and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including, but not limited to: (a) cooperate with the Tenant in filing an application for a sales tax exemption certificate with the Kansas Department of Revenue with respect to Bond-financed property; and (b) execution on behalf of

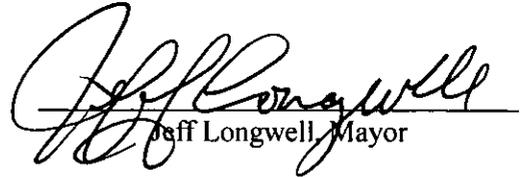
the City of the information statement regarding the proposed issuance of the Bonds to be filed with the State Board of Tax Appeals pursuant to the Act.

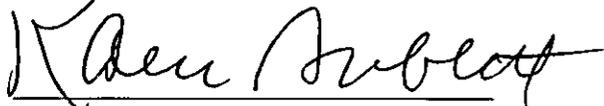
Section 9. Effective Date. This resolution shall become effective upon adoption by the Governing Body and shall remain in effect until December 31, 2018, unless extended by affirmative vote of a majority of the Governing Body.

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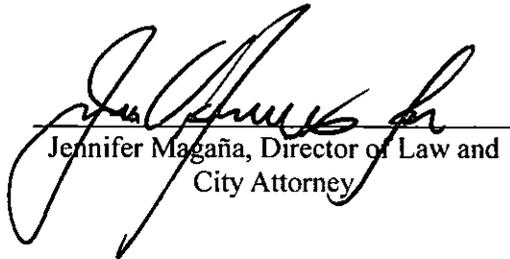
ADOPTED by the City Council of the City of Wichita, Kansas, on September 13, 2016.




Jeff Longwell, Mayor


Karen Sublett, City Clerk

APPROVED AS TO FORM:


Jennifer Magaña, Director of Law and
City Attorney

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution adopted by the City Council of the City of Wichita, Kansas on September 13, 2016, as the same appears of record in my office.

DATED: September 13, 2016.


Karen Sublett, City Clerk

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