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Law Department

CITY CLERK
OMAHA, NEBRASKA

DATE: September 24, 2014
TO: Honorable President and Members of the City Council
FROM: Bernard J. in den Bosch, Deputy City Attorney
SUBJECT: Amendment of the Whole

The attached Amendment of the Whole is introduced at the request of the Omaha Public Building Commission. The Thirteenth Supplemental Agreement originally called for the issuance of up to twenty-five million dollars (\$25,000,000) of new bonds. This amendment reduces that amount to fifteen million dollars (\$15,000,000) for the same purposes originally stated.

Respectfully submitted,



Bernard J. in den Bosch
Deputy City Attorney

BJB:de

Attachment

MOTION BY COUNCILMEMBER _____

I hereby move that Council Document No. _____, Current Series, be amended in the whole by deleting the existing Ordinance in its entirety and substituting in lieu thereof the attached Ordinance.

APPROVED AS TO FORM:



DEPUTY CITY ATTORNEY 9/24/14
DATE

RECEIVED
2014 SEP 24 PM 4:17
CITY CLERK
OMAHA, NEBRASKA

ORDINANCE NO. _____

AN ORDINANCE approving the Thirteenth Supplemental Agreement among the City of Omaha, the County of Douglas and the Omaha-Douglas Public Building Commission to provide for the issuance of up to fifteen million dollars (\$15,000,000) of new bonds, in one or more series, to pay costs for general alterations, renovations, changes, refurbishments, reconstructions and improvements to the Civic Center and Hall of Justice and for the acquisition of an existing facility and constructing and equipping renovations, changes refurbishments, reconstructions and improvements to such facility to become part of the Civic Center as additional office facilities and to determine the division of responsibility for payment of the new bonds and to provide for an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. The Mayor of the City of Omaha is hereby authorized to sign, and its City Clerk to attest, the Thirteenth Supplemental Agreement attached hereto.

Section 2. This Ordinance, being legislative in character, shall be in full force and take effect fifteen (15) days after the date of its passage.

INTRODUCED BY COUNCILMEMBER

APPROVED BY:

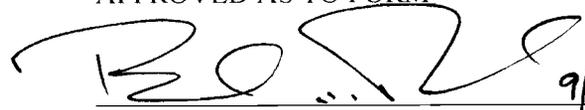
MAYOR OF THE CITY OF OMAHA DATE

PASSED _____

ATTEST:

CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM



DEPUTY CITY ATTORNEY DATE 9/24/14

ORDINANCE NO. _____

AN ORDINANCE approving the Thirteenth Supplemental Agreement among the City of Omaha, the County of Douglas and the Omaha-Douglas Public Building Commission to provide for the issuance of up to fifteen million dollars (\$15,000,000) of new bonds, in one or more series, to pay costs for general alterations, renovations, changes, refurbishments, reconstructions and improvements to the Civic Center and Hall of Justice and for the acquisition of an existing facility and constructing and equipping renovations, changes refurbishments, reconstructions and improvements to such facility to become part of the Civic Center as additional office facilities and to determine the division of responsibility for payment of the new bonds and to provide for an effective date.

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PUBLICATIONS

PUBLICATION OF HEARING

Date _____

PUBLICATION OF ORDINANCE

Date _____

PRESENTED TO COUNCIL

1st Reading _____

Hearing _____

Final Reading _____

BUSTER BROWN
City Clerk

THIRTEENTH SUPPLEMENTAL AGREEMENT

This Thirteenth Supplemental Agreement, made and entered into as of the 1st day of October, 2014, by and between the City of Omaha, a municipal corporation of the State of Nebraska (hereinafter referred to as the "City"), and The County of Douglas, a county of the State of Nebraska (hereinafter referred to as "County") and the Omaha-Douglas Public Building Commission, a body politic and corporate and an instrumentality of the State of Nebraska (hereinafter referred to as the "Commission").

WITNESSETH:

WHEREAS, the City and the Commission on May 9, 1972 entered into a Lease Agreement (hereinafter referred to as the "City-Commission Civic Center Lease Agreement"), whereby the Commission (a) agreed to carry out the construction and equipping of a city-county building (hereinafter referred to as the "Civic Center") on the block in the City of Omaha bounded on the north by Farnam Street, on the west by 19th Street, on the south by Harney Street and on the east by 18th Street, for the joint use by the City and the County, and (b) leased and demised as lessor to the City as lessee such space within the Civic Center as may be required by the City for the use of City officials and their staffs, with such space for exclusive City use to amount to not less than 100,000 square feet; and

WHEREAS, the County and the Commission on May 9, 1972 entered into a corresponding Lease Agreement (hereinafter referred to as the "County-Commission Civic Center Lease Agreement"), whereby the Commission (a) agreed to carry out the construction and equipping of the Civic Center on the aforesaid block, and (b) leased and demised as lessor to the County as lessee such space within the Civic Center as may be

required by the County for use of County officials and their staffs with such space for exclusive County use to amount to not less than 60,000 square feet; and

WHEREAS, the City, the County and the Commission on May 9, 1972 entered into a Lease Agreement (hereinafter referred to as the "City-County-Commission Hall of Justice Lease Agreement"), whereby (a) the Commission agreed to continue to proceed with the renovation of the Douglas-County Courthouse into a court facility (hereinafter referred to as the "Hall of Justice") for the joint use by the City and County, creating therein space suitable to house the civil and criminal courts of the County and providing space on the first floor of said Courthouse for Drivers' School to be operated by the City and space on the second floor to house the City Municipal Criminal Courts, together with supporting and related offices, and (b) the County leased and demised as lessor unto the City as lessee, and the City agreed to lease, so long as said courts are the responsibility of the City, such space within said facility as may be required by the City for the use of City Municipal Courts, together with supporting and related offices, and Drivers' School; and

WHEREAS, the City and the Commission on May 9, 1972 entered into an agreement (hereinafter referred to as the "City-Commission Hall of Justice Agreement") whereby the City agreed to pay the Commission annually (i) an amount sufficient to amortize the amount of revenue bonds issued by the Commission which are used to pay for the remodeling of those portions of the aforesaid Douglas County Courthouse into the Hall of Justice for exclusive use by the City (less certain credits due the City as provided in Part I of said agreement) and (ii) 20% of the amount necessary to amortize the bonds of the Commission used for renovation cost of common areas in the Hall of Justice; and

WHEREAS, the County and the Commission on May 9, 1972 entered into an agreement (hereinafter referred to as the "County-Commission Hall of Justice Agreement"), whereby the County agreed to pay the Commission annually (i) an amount sufficient to amortize the amount of revenue bonds issued by the Commission which are used to pay for the remodeling of those portions of the aforesaid Douglas County Courthouse into the Hall of Justice for exclusive use by the County (less certain credits due the County as provided in Part I of said agreement) and (ii) 80% of the amount necessary to amortize the bonds of the Commission used for renovation cost of common areas in the Hall of Justice; and

WHEREAS, each of the foregoing agreements was amended and supplemented by a supplemental agreement (hereinafter referred to as the "First Supplemental Agreement") made and entered into as of July 25, 1972 among the City, the County and the Commission, whereby the foregoing agreements were amended and supplemented so as to reflect the details of the financing by the Commission of the construction of the Civic Center and/or the remodeling of the Hall of Justice, such financing being represented by the \$25,000,000 principal amount of Public Building Commission Bonds of the Commission, dated August 1, 1972 (the "1972 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a supplemental agreement (hereinafter referred to as the "Second Supplemental Agreement") made and entered into as of May 11, 1976 among the City, the County and the Commission, whereby the foregoing agreements were amended and supplemented so as to reflect the details of the financing by the Commission for alterations, additions, expansions, renovations, remodeling and changes to the Civic

Center (the "1976 Project"), such financing being represented by the \$6,000,000 principal amount of Public Building Commission Bonds of the Commission, dated as of May 1, 1976 (the "1976 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a supplemental agreement (hereinafter referred to as the "Third Supplemental Agreement") made and entered into as of August 25, 1987 among the City, the County and the Commission, whereby the foregoing agreements were amended and supplemented so as to reflect the details of the financing by the Commission for alterations, additions, expansions, renovations, remodeling and changes to the Civic Center and the Hall of Justice (the "1987 Project"), such financing being represented by the \$1,750,000 principal amount of Public Building Commission Bonds of the Commission, dated as of October 1, 1987 (the "1987 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a supplemental agreement (hereinafter referred to as the "Fourth Supplemental Agreement") made and entered into as of December 1, 1992 among the City, the County and the Commission, whereby the foregoing agreements were amended and supplemented so as to reflect the details of the financing by the Commission for alterations, additions, expansions, renovations, remodeling and changes to the Civic Center and the Hall of Justice (the "1992 Project") and the refunding of the 1972 Bonds and the 1976 Bonds, such financing being represented by the \$11,405,000 principal amount of Public Building Commission Bonds of the Commission, dated as of December 1, 1992 (the "1992 Bonds");

WHEREAS, each of the foregoing agreements was further amended and supplemented by a supplemental agreement (hereinafter referred to as the "Fifth Supplemental Agreement") made and entered into as of August 23, 1995 among the City, the County and the Commission; and

WHEREAS, each of the foregoing agreements was further amended by a supplemental agreement (hereinafter referred to as the "Sixth Supplemental Agreement") made and entered into as of August 1, 1998 among the City, the County and the Commission, whereby each of the foregoing agreements were amended and supplemented so as to reflect that the 1992 Project has been completed and to reflect the details of the financing by the Commission for improvements to the Civic Center and the Hall of Justice (the "1998 Project") such financing being represented by the \$6,800,000 principal amount of Public Building Commission Bonds of the Commission dated as of August 1, 1998 (the "1998 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a supplemental agreement (hereinafter referred to as the "Seventh Supplemental Agreement") to reflect that the Commission agreed to acquire real estate and construct and equip thereon a parking garage and storage facility and make improvements to the Civic Center and to the Hall of Justice (the "2000 Project") such financing being represented by the \$18,000,000 principal amount of Public Building Commission Bonds of the Commission dated as of May 1, 2000 (the "2000 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a supplemental agreement (hereinafter referred to as the "Eighth Supplement Agreement") to reflect that the Commission agreed to expand the parking

garage and make improvements to the Civic Center and to the Hall of Justice (the "2001 Project") such financing being represented by the \$10,200,000 principal amount of Public Building Commission Bonds of the Commission dated as of May 1, 2001 (the "2001 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a Supplemental Agreement (hereinafter referred to as the "Ninth Supplemental Agreement") to reflect the details of the financing by the Commission to redeem and refund the 1998 Bonds and the 2002 Bonds, such financing being represented by the \$21,215,000 principal amount of Public Building Commission Bonds of the Commission dated as of September 1, 2005 (the "2005 Bonds"); and

WHEREAS each of the foregoing agreements was further amended and supplemented by a Supplemental Agreement (hereinafter referred to as the "Tenth Supplemental Agreement") to reflect the details of the financing by the Commission for several refurbishments and reconstitutions and improvements to the Civic Center and the Hall of Justice (the "2008 Project") represented by the \$8,150,000 principal amount of Public Building Commission Bonds of the Commission dated as of August 6, 2008 (the "2008 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a Supplemental Agreement (hereinafter referred to as the "Eleventh Supplemental Agreement") to reflect the details of the financing by the Commission for general refurbishments and reconstruction and additions to the Civic Center and to the Hall of Justice (the "2010 Project") such financing being represented by the \$10,000,000

principal amount of Public Building Commission Bonds of the Commission dated as of June 24, 2010 (the "2010 Bonds"); and

WHEREAS, each of the foregoing agreements was further amended and supplemented by a Supplemental Agreement (hereinafter referred to as the "Twelfth Supplemental Agreement") to reflect the details of the financing by the Commission to redeem and refund the 2001 Bonds (the "2010 Refunding Project") represented by \$7,455,000 principal amount of Public Building Commission Refunding Bonds of the Commission dated September 9, 2010 (the "2010 Refunding Bonds") and to establish the responsibility of the City and the County for the payment of principal and interest on the 2010 Refunding Bonds and to reflect other agreements of the parties.

WHEREAS, the parties desire to amend the foregoing agreements to reflect the details of the financing by the Commission of (a) the costs of constructing and equipping general alterations renovations, changes, refurbishments, reconstructions and improvements to the Civic Center and the Hall of Justice, and (b) the acquisition of an existing facility and the costs of constructing and equipping renovations, changes, refurbishments, reconstructions and improvements to such facility to become part of the Civic Center as additional office facilities (the "2014 Project") such financing to be represented by not more than \$15,000,000 principal amount of Public Building Commission Bonds to be issued in one or more series (the "2014 Bonds").

NOW, THEREFORE, in consideration of the foregoing recitals which are hereby made a contractual part hereof and the promises and covenants herein made by each of the parties hereto and the respective benefits to accrue to said parties and for other good and valuable consideration, it is covenanted and agreed by the parties hereto as follows:

I.

The term "Agreements" when used hereafter in this instrument shall mean collectively the agreements described in the hereto. References hereafter to any particular one of such agreements shall be in accordance with the manner of references thereto set forth in the particular recital describing such agreement.

II.

Based on present estimates of cost, the Commission proposes to issue its Public Building Commission Bonds, Series 2014, in one or more series in an aggregate principal amount not to exceed \$15,000,000 which such bonds and the actual principal amount of each series thereof will be approved by the City and the County prior to issuance (each series of such 2014 Bonds as issued are hereinafter collectively, referred to as the "2014 Bonds"). The 2014 Bonds shall be issued by the Commission pursuant to the resolutions adopted by the Commission on July 19, 1972 and supplemental resolutions adopted by the Commission on May 3, 1976, October 1, 1987, November 12, 1992, August 1, 1998, April 21, 2000, April 5, 2001, August 11, 2005, August 6, 2008, June 3, 2010, August 19, 2010 and to be adopted after October 1, 2014 (hereinafter referred to as the "Bond Resolution"). Each series of the Bonds shall bear such date or dates, mature at such time or times, bear interest at such rate or rates, be in denominations and be subject to terms of redemption and at such redemption premiums, as the Bond Resolution may provide. Each series of the 2014 Bonds shall be sold to Ameritas Investment Corp. by virtue of a private sale for such price or prices as the Commission shall determine and the proceeds of the sale thereof shall be applied to finance the 2014 Project.

Inasmuch as the proceeds of the 2014 Bonds are to be applied to finance the 2014 Project the following references in the following agreements shall be deemed to refer to, and be construed as referring to, the 2014 Bonds:

1. The references in the second paragraph of Section XV of the City-Commission Civic Center Lease Agreement, and in the second sentence of Section XV of the County-Commission Civic Center Lease Agreement, to "bonds issued by the Commission in connection with the construction of said building";

2. The references in Section XVI of the City- Commission Civic Center Lease Agreement, and in Section XVI of the County-Commission Civic Center Lease Agreement, to "bonds issued in connection with the construction of said facility";

3. The references in Section XVII of the City- Commission Civic Center Lease Agreement, and in Section XVII of the County-Commission Civic Center Lease Agreement, to "Bonds of the Commission referred to herein";

4. The references in Section XIX of the City- Commission Civic Center Lease Agreement, in Section XIX of the County-Commission Civic Center Lease Agreement and in Section XX of the City-County-Commission Hall of Justice Lease Agreement to "bonds for the construction of the City-County Building and/or remodeling of the Hall of Justice"; and

5. The references in Section III of the City- Commission Hall of Justice Agreement, and in Section III of the County-Commission Hall of

Justice Agreement, to "bonds of the Commission referred to herein"; and (b) references in the City-County-Commission Hall of Justice Lease Agreement, the City-Commission Hall of Justice Agreement and the County-Commission Hall of Justice Agreement to revenue bonds, bonds or bond monies used in renovating the Hall of Justice (or portions thereof), or words of similar import, shall be deemed to refer to, and be construed as referring to the 2014 Bonds; and (c) all references in the Agreement to the "City-County Building", "City-County Facility", "City-County Complex" or "Civic Center" shall include the 2014 Project including, without limitations, the acquired facility.

III.

The parties agree that the 2014 Project and the 2014 Bonds have been approved by each of them.

IV.

The term "Bonds" or "revenue bonds" as used in Sections III of the City-Commission Civic Center Lease Agreement shall be deemed to refer to, and be construed as referring to the 2014 Bonds.

V.

The City, the County and the Commission hereby agree, with respect to the 2014 Bonds, that: (a) the City shall be responsible for and pay annual rentals under the Agreements in an amount not less than the percent agreed to in (c) below of the amount necessary per year to pay the principal of and interest on all of the 2014 Bonds, when due; and (b) the County shall be responsible for and pay annual rentals under the Agreements in an amount not less than the percent agreed to in (c) below of the amount necessary per

year to pay the principal of and interest on all of the 2014 Bonds, when due; and (c) the percents agreed to for the 2014 Bonds are as follows:

City Responsibility

30%

County Responsibility

70%

The City, the County and the Commission further agree that the percentage responsibility of the City and the County for the 2014 Bonds may, by agreement of the City, the County and the Commission, deviate by plus or minus 10 percentage points from the above percents as long as the total responsibility of the City and the County always equals 100%. The City, the County and the Commission further agree that the percentage responsibility of the City and the County for any Additional Bonds (as defined in the Bond Resolution) shall always be determined and agreed to on a case by case basis and the foregoing agreed to percentage responsibility shall not be controlling in any future determinations or agreements. The City and the County ratify and confirm their individual and separate liability and obligation to pay rentals to the Commission with respect to costs of operation, maintenance and repair of the Civic Center and the Hall of Justice.

VI.

Supplemental to the Agreements in the form executed and as hereinbefore amended, or modified, and any provision thereof to the contrary notwithstanding, the City and the County each hereby agrees that, so long as any of the 2014 Bonds are outstanding and unpaid, or until due provision shall have been made for such payment in accordance with Article XI of the Bond Resolution, none of the Agreements may be terminated, nor may that part of the rentals and other payments owing to the Commission thereunder required for and attributable to the principal of and interest on the 2014 Bonds

be abated or reduced, for any reason whatsoever, including, without limitation, damage to or destruction of either the Civic Center or the Hall of Justice, or failure of the Commission or of the County or of the City, as the case may be, to perform their respective duties under the Agreements as to operation, maintenance and repair of the Civic Center or the Hall of Justice, as the case may be. The City, the County and the Commission further agree that this Agreement shall continue until (a) all of the Commission's liabilities have been met and all Bonds have been paid, in full, or such liabilities and Bonds have been otherwise discharged and (b) the governing bodies of the City and the County jointly have determined that the Commission is no longer needed. Subject to the foregoing limitations on the termination of the Agreements and the abatement of reduction of rentals, the City and the County may enforce all their respective rights under the Agreements by such lawful proceedings as they deem advisable.

VII.

In the event any covenant, phrase, clause, paragraph, section, condition or provision contained in this supplemental agreement is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, phrase, clause, paragraph, section, condition or provision shall in no way affect any other covenant, phrase, clause, paragraph, section, condition or provision herein contained.

VIII.

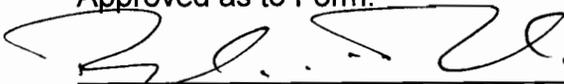
This Thirteenth Supplemental Agreement has been executed in several counterparts, each of which may be considered as an original.

IN WITNESS WHEREOF, the City of Omaha by its Mayor and City Clerk and The County of Douglas by its Chairman of its Board of Commissioners and County Clerk and the Omaha-Douglas Public Building Commission by its proper officers have each caused their respective names to be signed to this instrument and their respective seals to be affixed and attested thereto as of the day and year first above written.

CITY OF OMAHA, NEBRASKA

ATTEST: By _____
Mayor

City Clerk

Approved as to Form:
 9/24/14
Assistant City Attorney

THE COUNTY OF DOUGLAS, NEBRASKA

ATTEST: By _____
Chairman

County Clerk

Approved as to Form:

Deputy County Attorney

OMAHA-DOUGLAS PUBLIC BUILDING COMMISSION

ATTEST: By _____
Chairman

Secretary