

To: Board of Education

From: Kathy Johnson, director, finance, ext. 2376  
Kyle Hayden, assistant superintendent, business & operations, ext. 4309

Re: Post-Issuance Tax Compliance Services Agreement

Date: April 7, 2016

Background:

With each bond issue sale and equipment lease there is an array of compliance requirements including an IRS arbitrage calculation that must be completed. Gilmore and Bell, P.C., the company that provides bond counsel for the district, has historically been contracted for these services.

Recommendation:

Since Gilmore and Bell, P.C. has worked with the district on each bond transaction and the Apple equipment leases, administration recommends that the board continue to use them to provide assistance with essential post issuance tax compliance. The following services are required on outstanding bond issues and equipment leases and will be performed per contract agreement.

Outstanding Bond Issue & Refinancing Issues	Annual	Total over 5Yrs - not to exceed amount
Series 2006	\$1,000	\$ 5,000
Series 2012-A	900	4,500
Series 2013-A	1,400	7,000
Series 2014-A	1,400	7,000
Series 2016-A	1,400	7,000
<b>Total Bond Issues</b>	<b>\$6,100</b>	<b>\$30,500</b>
Series 2009 – Certificates (HSOAF)	600	3,000
2014 Apple Lease	700	2,100
2016 Apple Lease	700	2,100
<b>Total Leases</b>	<b>\$2,000</b>	<b>\$ 7,200</b>
<b>GRAND TOTAL</b>	<b>\$8,100</b>	<b>\$37,700</b>

Account: 0123170000.53450 – Board of Education Legal Services

Motion:

"I move the Board of Education approve a Post-Issuance Tax Compliance Services Agreement with Gilmore & Bell, P.C., with a scope of services as described in Exhibit B of the services agreement at an annual cost of \$8,100, not to exceed \$37,700 over a five (5) year period."

## POST-ISSUANCE TAX COMPLIANCE SERVICES AGREEMENT

**THIS POST-ISSUANCE TAX COMPLIANCE SERVICES AGREEMENT** dated as of [Document Date] (this “**Agreement**”), between the **UNIFIED SCHOOL DISTRICT NO. 497, DOUGLAS COUNTY, KANSAS (LAWRENCE)**, a unified school district organized under the laws of the State of Kansas (the “**Contracting Party**”), and **GILMORE & BELL, P.C.**, a professional corporation (“**Gilmore & Bell**”).

**WHEREAS**, the Contracting Party has received the proceeds of municipal securities listed on **Exhibit A** (the “**Bonds**”) and consequently the Contracting Party is required to comply with a variety of ongoing Federal tax law compliance requirements; and

**WHEREAS**, the Contracting Party has determined that it would like to engage Gilmore & Bell to perform the compliance services identified on **Exhibit B** in connection with the Bonds, and Gilmore & Bell has agreed to perform such services in accordance with the terms of this Agreement.

In consideration of the mutual covenants and agreements herein, the Contracting Party and Gilmore & Bell agree as follows:

### ***Section 1. Scope of Services to be Provided.***

Gilmore & Bell agrees to perform the tax compliance services described on **Exhibit B** (the “**Services**”). The Services to be performed by Gilmore & Bell under this Agreement will be limited to those services expressly described on **Exhibit B**. Additional Bond issues may be incorporated into this Agreement and Services will be provided for additional Bond issues upon execution by the Contracting Party of a certificate similar to the form attached as **Exhibit C**.

Gilmore & Bell does not provide investment advice, advice relating to any municipal financial products or financial advice relating to the issuance of municipal securities, and nothing contained in this Agreement or any services provided by Gilmore & Bell under this Agreement shall constitute advice to the Contracting Party with respect to municipal financial products or the issuance of municipal securities (other than legal advice), all within the meaning of Section 15B(e) of the Securities Exchange Act of 1934, as amended.

### ***Section 2. Staffing.***

Gilmore & Bell will provide the necessary attorneys, legal assistants and financial analysts to perform the Services. The primary points of contact for this engagement are as follows:

#### Gilmore & Bell:

Rachel Orr  
Telephone: 816-218-7540  
EMAIL: [rorr@gilmorebell.com](mailto:rorr@gilmorebell.com)

Gina Riekhof  
Telephone: 816-221-1000  
EMAIL: [griekhof@gilmorebell.com](mailto:griekhof@gilmorebell.com)

#### Contracting Party:

Katharine S. Johnson  
Telephone: 785-832-5000 x 2376  
EMAIL: [KJohnson@usd497.org](mailto:KJohnson@usd497.org)

### **Section 3. Fees.**

*Series 2006-A Bonds* – Gilmore & Bell’s fee for arbitrage computation services for the Series 2006-A Bonds is \$1,000 per year for each year the project fund remained funded within the computation period beginning June 29, 2011 through June 29, 2016. The total fee, in an amount not to exceed \$5,000, is payable to Gilmore & Bell upon completion of the final arbitrage computation.

*Series 2009 Certificates* – Gilmore & Bell’s fee for Services for the Series 2009 Certificates is \$3,000 for the five year contract term commencing on the date of this Agreement. This amount is payable to Gilmore & Bell annually at a rate of \$600 per year as further described below.

*Series 2012-A Bonds* – Gilmore & Bell’s fee for Services for the Series 2012-A Bonds is \$4,500 for the five year contract term commencing on the date of this Agreement. This amount is payable to Gilmore & Bell annually at a rate of \$900 per year as further described below.

*Series 2013-A Bonds* – Gilmore & Bell’s fee for Services for the Series 2013-A Bonds is \$7,000 for the five year contract term commencing on the date of this Agreement. This amount is payable to Gilmore & Bell annually at a rate of \$1,400 per year as further described below.

*Series 2014-A Bonds* – Gilmore & Bell’s fee for Services for the Series 2014-A Bonds is \$7,000 for the five year contract term commencing on the date of this Agreement. This amount is payable to Gilmore & Bell annually at a rate of \$1,400 per year as further described below.

*Series 2014 Apple Lease* – Gilmore & Bell’s fee for arbitrage computation services for the Series 2014 Apple Lease is \$700 per year for each year the escrow fund remained funded within the computation period beginning June 24, 2014 through June 24, 2017. If all lease proceeds were spent prior to October 2014, no arbitrage computation is required for the Series 2014 Apple Lease. The total fee, in an amount not to exceed \$2,100, is payable to Gilmore & Bell upon completion of the final arbitrage computation.

*Series 2016-A Bonds* – Gilmore & Bell’s fee for Services for the Series 2016-A Bonds is \$7,000 for the five year contract term commencing on the date of this Agreement. This amount is payable to Gilmore & Bell annually at a rate of \$1,700 per year as further described below.

*Series 2016 Apple Lease* – Gilmore & Bell’s fee for arbitrage computation services for the Series 2016 Apple Lease is \$700 per year for each year the escrow fund remains funded within the computation period beginning March 24, 2016 through March 24, 2019. If all lease proceeds are spent prior to June 30, 2016, no arbitrage computation is required for the Series 2016 Apple Lease. The total fee, in an amount not to exceed \$2,100, is payable to Gilmore & Bell upon completion of the final arbitrage computation.

The total annual fee for the Series 2009 Certificates, Series 2012-A Bonds, Series 2013-A Bonds, Series 2014-A Bonds, and the Series 2016-A Bonds will be \$5,700, payable on each January 1, unless this Agreement has been terminated in accordance with Section 5. Fees for the Series 2006-A Bonds and the Series 2014 Apple Lease as stated above will be payable upon completion and delivery of the final arbitrage computation. A statement for our services will be provided at these times. In addition, Gilmore & Bell expects to be reimbursed for all out-of-pocket third-party expenses made on the Contracting Party’s behalf.

**Section 4. *Furnishing of Information; Records.***

The Contracting Party agrees to provide to Gilmore & Bell, preferably in electronic format, any information and documentation requested by Gilmore & Bell which is necessary to complete the engagement. All completed reports will be provided to the Contracting Party in electronic format (paper copies are available upon request). Unless alternate arrangements are made in advance, any papers, records or electronic media provided to Gilmore & Bell may be disposed of at the discretion of Gilmore & Bell. For various reasons, including the minimization of unnecessary storage expenses, Gilmore & Bell reserves the right to dispose of any documents or other materials related to the Services provided.

**Section 5. *Term of Agreement; Termination.***

The initial term of this Agreement shall be from the date of this Agreement through January 31, 2021. The Contracting Party and Gilmore & Bell may renew this Agreement on mutually agreeable terms annually thereafter. This Agreement may be terminated at any time by either party with 30 days written notice to the other party. Upon termination of this Agreement, the Contracting Party will pay all fees and expenses for Services completed but unpaid at the time of termination.

**Section 6. *Electronic Transactions; Counterparts.***

The transaction described herein may be conducted and related documents may be stored by electronic means. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**Section 7. *Governing Law.***

This Agreement shall be governed by and construed in accordance with the laws of the State of Kansas.

**Section 8. *No Conflicts; No Prohibition of Future Roles.***

Gilmore & Bell served as bond counsel to the Contracting Party in connection with the issuance of the Bonds, which engagement ended as of the completion of the financing and delivery of the closing transcript. This representation relates only to post-issuance Federal income tax compliance by the Contracting Party for the Bonds, and the parties agree that nothing arising out of this limited engagement is anticipated to create a conflict of interest that would preclude Gilmore & Bell from acting as bond counsel, disclosure counsel, underwriter counsel or special tax counsel in any future securities offering by or on behalf of the Contracting Party.

**Section 9. *Amendments.***

This Agreement may be amended in writing by the mutual agreement of the parties.

(Balance of this page left blank intentionally.)

**IN WITNESS WHEREOF**, the parties hereto have each caused this Post-Issuance Tax Compliance Services Agreement to be executed by their duly authorized officers as of the date below.

Dated: \_\_\_\_\_

**UNIFIED SCHOOL DISTRICT NO. 497,  
DOUGLAS COUNTY, KANSAS  
(LAWRENCE)**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**GILMORE & BELL, P.C.**

By: \_\_\_\_\_

## EXHIBIT A

### LIST OF MUNICIPAL SECURITIES

#### General Obligation Bonds:

- \$84,630,000 General Obligation Refunding and Improvement Bonds, Series 2006-A (the “**Series 2006-A Bonds**”)
- \$9,890,000 General Obligation Refunding Bonds, Series 2012-A (the “**Series 2012-A Bonds**”)
- \$36,000,000 General Obligation Bonds, Series 2013-A (the “**Series 2013-A Bonds**”)
- \$36,000,000 General Obligation Bonds, Series 2014-A (the “**Series 2014-A Bonds**”)
- \$44,045,000 General Obligation Refunding and Improvement Bonds, Series 2016-A (the “**Series 2016-A Bonds**”)

#### Lease Purchase Obligations:

- \$4,250,000 Certificates of Participation (Athletic Facilities Equipment – Phase II), Series 2009 (the “**Series 2009 Certificates**”)
- \$1,583,351.65 Schedule No. PUB13793 dated June 24, 2014 to Master Lease Purchase Agreement, dated June 24, 2014, entered into between the Unified School District No. 497, Douglas County, Kansas (Lawrence), and Apple, Inc. (the “**Series 2014 Apple Lease**”)
- \$2,356,928 Schedule No. PUB15590 dated as of March 24, 2016 to Master Lease Purchase Agreement dated June 24, 2014, entered into between the Unified School District No. 497, Douglas County, Kansas (Lawrence), and Apple, Inc. (the “**Series 2016 Apple Lease**”)

## **EXHIBIT B**

### **SCOPE OF SERVICES**

#### **Arbitrage Computation Services**

Gilmore & Bell will provide the Contracting Party with annual interim rebate estimates for the Bonds as well as an installment date rebate calculation in accordance with the terms of the applicable tax agreement for the Bonds. To the extent this Agreement remains in effect, Gilmore & Bell will provide installment rebate calculations each fifth bond year after the installment calculation to the extent necessary for Bonds that remain outstanding.

As part of the annual calculation services Gilmore & Bell will:

- Quantify any accrued rebate liability as of each annual calculation date based on information provided to us and performed in accordance with procedures described in a written explanation of the arbitrage computation that will be provided to the Contracting Party;
- Identify any noted accounting/record keeping problems that may adversely affect the Contracting Party's ability to comply with the arbitrage regulations;
- Assist the Contracting Party in making timely accounting elections and track expenditure of proceeds for purposes of meeting applicable arbitrage rebate spending exceptions in appropriate situations; and
- If required, perform yield reduction payment calculations and quantify any accrued yield reduction payment liability.

In addition to providing the calculation described above, as part of the installment date calculation services Gilmore & Bell will:

- Provide a legal opinion stating that the calculation was prepared in accordance with applicable United States Treasury Regulations; and
- Prepare Form 8038-T for filing with the Internal Revenue Service if a rebate payment or yield reduction payment is required.

To prepare the calculations, Gilmore & Bell will need for the Contracting Party to provide investment and expenditure information for all funds and accounts requested by Gilmore & Bell that contain "gross proceeds" of the applicable Bonds.

#### **Final Written Allocation Services**

With the exception of the Series 2006-A Bonds, the Series 2012-A Bonds, the Series 2014 Apple Lease, and the Series 2016 Apple Lease, Gilmore & Bell will assist the Contracting Party in compiling the records necessary to account for the expenditure of Bond proceeds, and upon completion of the project financed by the Bonds, prepare a written report (the "**Close Out**") for the Bonds. As part of this effort Gilmore & Bell will:

- Prepare a final written allocation of Bond proceeds memorandum for the Contracting Party to memorialize the use and expenditure of Bond proceeds;
- Provide a summary allocation of total sources (including Bond proceeds and investment earnings attributable to investment of Bond proceeds) to total uses of Bond proceeds for costs of the project financed by the Bonds;
- Review the overall costs of the project financed by the Bonds and assist the Contracting Party in preparing a final Bond financed asset list reconciled to available records of investment and expenditure of Bond proceeds; and
- Provide a form “compliance checklist” to assist the Contracting Party in monitoring the ongoing post-issuance requirements related to the Bonds. For example, the compliance checklist will include questions that the Contracting Party can use to solicit information from employees and staff concerning the use of the Bond financed projects on an annual basis.

To prepare the Close Out, Gilmore & Bell will need for the Contracting Party to provide trustee requisitions or a ledger of expenditures with the following information: payee, check or wire transfer date, payment amount, general description of expenditure purpose either by narrative description or reference to capital account to which the payment will be allocated.

#### **Ongoing Annual Compliance Check Services**

Gilmore & Bell will provide the Contracting Party with guidance to track the ongoing post-issuance compliance requirements applicable to the Bond issue on an annual basis. As part of this effort Gilmore & Bell will:

- Provide annual email reminders to the Contracting Party to complete the compliance checklist for the Bonds;
- Review agreements and provide guidance to the Contracting Party regarding arrangements that may cause private business use of the Contracting Party’s financed projects, or otherwise jeopardize the tax-advantaged status of the Bonds; and
- Perform any private business use or other computations and, if necessary, assist the Contracting Party in following the procedures described in the Treasury Regulations to remediate the noncompliance.

#### **Services Outside the Scope of the Agreement**

Services to assist the Contracting Party with responding to an examination by the Internal Revenue Service or to provide a supplemental tax opinion, as required by the applicable financing documents, are outside the scope of this Agreement but may be provided to the Contracting Party pursuant to a separate engagement agreed upon by the parties.



**EXHIBIT C**

**ADDENDUM [NUMBER] TO POST-ISSUANCE TAX COMPLIANCE SERVICES AGREEMENT**

**UNIFIED SCHOOL DISTRICT NO. 497, DOUGLAS COUNTY, KANSAS (LAWRENCE)**  
**[\$[Par Amount]**  
**[Bond Issue Name]**  
**Series [20\_\_]**

The Unified School District 497, Douglas County, Kansas (Lawrence) (the “Contracting Party”) previously entered into the Post-Issuance Tax Compliance Services Agreement, dated [Document Date] (the “Agreement”) with Gilmore & Bell, P.C. to perform the tax compliance services described therein. Capitalized terms used herein shall have the same meaning defined within the Agreement. The Contracting Party is executing this certificate to confirm the addition of the above-referenced financing (the “Series [20\_\_] Bonds”) to the Agreement.

Gilmore & Bell’s fee for Services for the Series [20\_\_] Bonds is \$[Total Fee] for a five year contract term commencing on [Issue Date or Date of Addendum], unless terminated in accordance with Section 5 of the Agreement.

This amount (the “Fee”) is payable to Gilmore & Bell as follows: The portion of the Fee allocable to initial set up and advice regarding record keeping and fund investment and disbursement is \$[Initial Fee], payable to Gilmore & Bell [\*\*on the issue date of the Series [20\_\_] Bonds\*\*][\*\*upon execution of this certificate\*\*]. The balance of the Fee is payable to Gilmore & Bell on each subsequent anniversary of the issue date of the Series [20\_\_] Bonds at a rate of \$[Annual Fee] per year. In addition, Gilmore & Bell expects to be reimbursed for all out-of-pocket third-party expenses made on the Contracting Party’s behalf.

Dated: \_\_\_\_\_

**UNIFIED SCHOOL DISTRICT NO.  
497, DOUGLAS COUNTY, KANSAS  
(LAWRENCE)**

By: \_\_\_\_\_  
Title: \_\_\_\_\_

**ACKNOWLEDGED:**

By: \_\_\_\_\_  
Gilmore & Bell, P.C.