
WICHITA REPRESENTATION AGREEMENT

This Wichita Representation Agreement ("Agreement") is made and entered into as of the 24th day of October, 2017 by and between Beacon Sports Capital Partners, LLC, a corporation registered to do business in Kansas ("Beacon Sports"), 1233 Highland Avenue, Suite B, Needham, MA 02492 and the City of Wichita, KS, City Hall, 455 N Main Street, Wichita, KS 67202 ("Wichita").

WITNESSETH:

This Agreement is made with reference to the following facts:

A. Beacon Sports is engaged in the business of providing investment banking and financial advisory services to professional sports franchises, municipalities and companies in the United States;

B. Wichita is seeking to enter into an agreement for an affiliated Minor League Baseball ("MiLB") team to relocate to Wichita and play its home games in a new ballpark located in the City (hereinafter defined as the "Assignment");

C. Wichita desires to retain Beacon Sports as its advisor and exclusive representative for the Assignment, and perform such other advisory services as are mutually agreed upon between the two parties.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto agree as follows:

1. **ENGAGEMENT.** Wichita hereby retains Beacon Sports as its Advisor and exclusive representative for the Assignment.
2. **DUTIES OF BEACON SPORTS.** Beacon Sports shall act as a liaison and intermediary for Wichita. Beacon Sports agrees that it is not an agent of Wichita and may not bind or obligate Wichita in any way. Both Beacon Sports and Wichita agree to keep each other informed as to the status of all contacts, discussions, and negotiations with any prospective team owner, prospective buyer/investor, and MiLB officials. Beacon Sports will use its best efforts and endeavor to assist Wichita in obtaining and having present to it qualified offers on terms that are acceptable to Wichita, but makes no representation regarding the successful outcome of this Assignment. Beacon Sports will perform the following on behalf of Wichita:

Beacon Sports specifically agrees to:

- With market intelligence from experienced architects, construction companies and project managers in the MiLB space, assist in preparing a preliminary capital budget for the new Ballpark prior to the Request for Qualification and Proposal processes and signing of the MOU referenced below;
- Prepare and draft a non-binding Memorandum of Understanding between the City and chosen MiLB owner outlining such items as a.) terms and conditions of a venue lease agreement, b.) capital requirements of both the City and Team ownership for the new ballpark, c.) contingencies like financing, MiLB and City Council approvals, d.) estimated cost and configuration of the proposed ballpark, and e.) real estate development options surrounding the new ballpark for the MiLB team ownership;
- Assist the City in the formal MiLB baseball approval process for relocation of a MiLB team to Wichita. This may include preparing presentations and attending meetings along with City representative with MiLB executives, League Presidents and key MiLB owners in the relocation approval process;
- On behalf of the City, assist in formal stadium lease negotiations with a selected MiLB team ownership that may include items such as a.) term, b.) amount of rent/revenue sharing, c.) amount of Team's investment in the new ballpark, d.) obligations for maintenance, capital repairs and improvements at the Ballpark, e.) real estate development rights surrounding the new ballpark, f.) concessions agreements, g.) parking agreements and ,h.) any pertinent marketing/advertising agreements including the sale of naming and pouring rights. Beacon's objective would be to assist in finalizing a lease agreement that limits the City's financial exposure in a prudent manner;
- At the appropriate time identify individuals and parties for a local ownership/investment group in the MiLB team; and,
- Any other services mutually agreed upon.

3. **TERM.** The initial term of this Agreement ("Initial Term") shall commence on the date set forth above and terminate one year thereafter. The entire time period that this Agreement is in effect, and any portion thereof, shall be referred to herein as the "Term".

4. **TERMINATION.** Wichita may terminate this Agreement for convenience, without cause, by delivering a written termination notice stating the effective termination date, which may not be less than 30 days following the date of delivery.

5. **COMPENSATION.** In consideration of the financial and other advisory services to be performed by Beacon Sports hereunder, Wichita agrees to pay Beacon Sports a rate of \$300.00 per hour each for the services of Richard W. Billings, Jr. and Gerald Sheehan, and \$175.00 per hour for the services of Christopher C. Billings. Beacon

Sports will submit detailed invoices including its services performed to Wichita on a monthly basis. Wichita will remit payment to Beacon Sports within thirty days (30) after receipt of such invoices.

Wichita also agrees to reimburse Beacon Sports for all its **pre-approved** out-of-pocket expenses relating to its services hereunder, including travel, and lodging, etc., within thirty (30) days after receipt by Wichita of appropriate documentation supporting these expenses.

The parties agree that compensation for achieving satisfactory progress in completing the tasks as described above shall not exceed \$50,000.

Should the parties mutually agree to additional efforts either as described above or other tasks identified, the parties agree that compensation (including expense reimbursement) for this additional performance shall not exceed \$50,000. Such an agreement would take the form of a separate document and subject to the parties' further negotiations and City Council approval.

Compensation and reimbursement of out-of-pocket expenses to Beacon Sports in excess of \$50,000 requires the further written approval of Wichita City Council.

6. **CONFIDENTIALITY.** Subject to and except where any legal requirements are imposed on Beacon Sports compelling disclosure, except for disclosures to Team owners and MiLB officials or their representatives, and except to the extent such information is generally available to the public at large other than as a result of disclosure by Beacon Sports, or received by Beacon Sports from a source not known by Beacon Sports to be bound by a duty of confidentiality with respect to such information, Beacon Sports shall consider all information received from Wichita pursuant to this Agreement as proprietary and confidential. Similarly, subject to and except where any legal requirements are imposed on Beacon Sports compelling disclosure, except for disclosures to MiLB officials and team owners or their representatives, and except to the extent such information is generally available to the public at large other than as a result of disclosure by Wichita or received by Wichita from a source not known by Wichita to be bound by a duty of confidentiality with respect to such information, Wichita shall consider all information received from or at the direction of Beacon Sports pursuant to this Agreement regarding Beacon Sports and MiLB as proprietary and confidential, subject to Wichita's obligations under the Kansas Open Records Act and the order of any court with lawful jurisdiction.

7. **MUTUAL REPRESENTATIONS AND WARRANTIES.**

(i) Beacon Sports warrants and represents that (a) it has full authority to make and perform this Agreement in accordance with its terms; (b) the making or performance of this Agreement by Beacon Sports will not violate any rights of, agreements with, or obligations to any third parties; (c) Beacon Sports will comply with all applicable laws, rules and regulations relating to the Agreement; and (d) Beacon Sports will not circumvent or otherwise frustrate the intent of this Agreement.

(ii) Wichita warrants and represents that (a) it has full authority to make and perform this Agreement in accordance with its terms; (b) the making or performance of this Agreement by Wichita will not violate any rights of, agreements with or obligations to any third parties; (c) Wichita will comply with all applicable laws, rules and regulations relating to the Agreement; and (d) Wichita will not circumvent or otherwise frustrate the intent of this Agreement.

8. **MUTUAL INDEMNIFICATION.** Beacon Sports and Wichita each agree the party at fault shall hold the other party harmless from and against and shall indemnify fully, if applicable, from any and all losses, claims, damages, liabilities, costs, expenses and fees, including, without limitation, reasonable attorneys' and paralegals' fees incurred in the context of any court, arbitration, administrative or other proceeding, together with the costs incurred in such proceeding (individually and collectively, "Costs") arising from or relating to breach of this Agreement by such indemnifying party.
9. **PUBLIC ANNOUNCEMENTS.** Notwithstanding anything contained in this Agreement to the contrary, subject to regulatory restrictions, the parties agree that any announcement of any agreement relating to Assignment during the term of this agreement (excluding any thirty-day period following a Notice of Intent to Terminate) shall be made jointly and mutually by the parties. If a successful closing under the Assignment occurs after the term of this agreement and as a result of this agreement, absent a notice of termination by Wichita, Beacon Sports may publicly announce and/or advertise any agreement hereunder for which a closing has occurred but first shall notify Wichita in writing of its intent to publicly announce and/or advertise any agreement hereunder for which a closing has occurred. Wichita shall mention the role of Beacon Sports favorably in key public announcements it may make regarding any completed Assignment hereunder absent a Notice of Termination by Wichita.
10. **NONDISCRIMINATION BY CONTRACTOR.** During the performance of this Agreement, the Consultant agrees that it will not discriminate against any employee participant or applicant for services because of race, color, religion, sex, age, disability, ancestry or national origin. The City's anti-discrimination

requirements, provided as Exhibit A, are made a part of this Agreement by reference.

- 12. **INDEPENDENT CONTRACTOR.** Consultant acknowledges that services rendered under this Agreement shall be performed by him as an independent contractor. Consultant is responsible for the payment of all federal, state, and local income taxes related to his fees for service
- 13. **GOVERNING LAW.** This Agreement and all matters related hereto shall be governed by the internal laws of the State of Kansas without reference to conflicts of laws principles or principles of community.
- 14. **NOTICES.** Any notice from one party to the other sent and received within the United States, shall be sent (a) via first class certified mail, return receipt requested or (b) via nationally-recognized overnight courier capable of verifying delivery, marked for next business day delivery and shall be deemed received upon the earlier of (i) the date of actual receipt, (ii) the date such mail is refused (iii) the date such mail is returned or (iv) three (3) days following deposit with the U.S. Postal Service. Notices sent or received outside the United States shall be sent via internationally-recognized overnight courier capable of verifying delivery, marked for second business day delivery and shall be deemed received upon the earlier of (i) the date of actual receipt or (ii) two (2) business days following deposit with such courier. Herein, "business day" means a day on which such courier is open for business within the jurisdiction to which notice is delivered. Notices shall be in writing, addressed to the person to be noticed at the address below or to such other person and/or address as may be designated from time to time in writing by such party to be noticed, and all applicable courier or postage fees shall be prepaid by the noticing party .

If to Beacon Sports Capital Partners. LLC:

1233 Highland Avenue, Suite B
Needham, MA 02492
Attention: Gerald G. Sheehan.
Phone: (781) 449-4996

If to Client

City Hall, 455 N Main Street
Wichita, KS 67202
Attn: Scot Rigby
Phone: (316) 269-4702

- 15. **SEVERABILITY.** The invalidity or illegality of any provision or term contained in or made a part of this Agreement shall not affect the validity of the remainder of this Agreement.
- 16. **ENTIRE AGREEMENT/CONSTRUCTION.** This Agreement contains all of the terms agreed upon by the parties with respect to the subject matter hereof, and there are no representations or understandings between the parties except as provided

herein. This Agreement may not be amended or modified in any way except by writing duly executed by both parties. This Agreement may not be assigned by either party except upon prior written agreement by the other party. Furthermore, both parties have negotiated the terms of this Agreement and have had the opportunity to engage counsel to review the same. Accordingly, this Agreement shall not be construed more strongly in favor or against either party hereto. The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.

- 17. **WAIVER.** No waiver of a breach of or default under any provision of this Agreement shall be deemed a waiver of any other breach or default under the same or any other provision of this Agreement.
- 18. **FAX COUNTERPARTS.** The parties may enter this Agreement by signing any one or more counterparts, all of which shall constitute one and the same instrument. This Agreement shall become effective when one or more counterparts shall have been executed by each party and delivered to each other party. This Agreement may be delivered to such other parties via fax. Any party's faxed signature shall be deemed an original and binding signature as of the date set forth above.
- 19. **HEADINGS.** The headings in this Agreement are inserted for convenience only and shall not affect the construction hereof.
- 20. **AUTHORITY.** The signatories to this Agreement are the duly authorized agents of the parties hereto, and the transactions effected hereby have been duly authorized by all appropriate action of each party.

THE PARTIES HERETO have caused this Agreement to be executed as of the date indicated above.

BEACON SPORTS CAPITAL PARTNERS, LLC

CITY OF WICHITA, KANSAS

BY: _____
Gerald G. Sheehan
President

BY: _____
Jeff Longwell, Mayor