

RESOLUTION NO. 8168

A RESOLUTION introduced by City Manager Norton N. Bonaparte, Jr., relating to the lease purchase of an Enterprise Resource Planning (ERP) system for the City of Topeka and rescinding Resolution No. 8051.

WHEREAS, the City has a need for an Enterprise Resource Planning (ERP) software system; and

WHEREAS, Municipal Services Group, Inc. arranges for the financing of lease purchase agreements for municipal purchases; and

WHEREAS, the City desires to enter into a lease purchase agreement with Municipal Services Group, Inc., which will result in the authorization and approval of the lease purchase of an ERP software system to be financed by Municipal Services Group, Inc., in the amount of three million eight hundred sixty-nine thousand four hundred fifty-seven dollars and eighteen cents (\$3,869,457.18) including interest extending through January 15, 2014; and

WHEREAS, on August 28, 2007, the Council of the City of Topeka authorized the City Manager to enter into a lease purchase agreement with Municipal Services Group, Inc. to finance the lease purchase of an ERP software system; and

WHEREAS, subsequent to the Council authorization, the City Manager of the City of Topeka executed said lease purchase agreement which was given City of Topeka Contract No. 37729 and had an effective date of September 1, 2007; and

WHEREAS, subsequent to execution of Contract No. 37729, it was discovered that certain terms in the lease purchase agreement may not have complied with specific requirements of the Kansas Cash Basis Law, K.S.A. 10-1101, *et seq.*; and

26 WHEREAS, the City and Municipal Services Group, Inc. mutually agreed to enter
27 into a new agreement which complied with the requirements of the Kansas Cash Basis
28 Law, K.S.A. 10-1101, *et seq.*; and

29 WHEREAS, on April 1, 2008, the Council of the City of Topeka adopted Resolution
30 No. 8051 which approved and authorized the City Manager to execute a lease purchase
31 agreement with Municipal Services Group, Inc. to finance the purchase of an ERP software
32 system; and

33 WHEREAS, said Resolution was vetoed by the Mayor on April 4, 2008, and on April
34 15, 2008, the Council voted to override the Mayor's veto by a vote of 7 for and 2 against;
35 and

36 WHEREAS, subsequent to the adoption of Resolution No. 8051 a decision was
37 entered in Shawnee District Court Case 08-C-339, *State of Kansas, ex rel, Hecht v. City of*
38 *Topeka*, holding the lease purchase agreement was not a valid, legally enforceable contract
39 due to the fact that the City's charter ordinance provided the mayor with veto authority but
40 did not provide the Council the authority to override the veto; and

41 WHEREAS, the Governing Body approved Charter Ordinance No. 98 on February
42 24, 2009, which was approved by a majority of electors at the election held on April 7,
43 2009. Said Charter Ordinance expressly gave the Council the authority to override a
44 mayoral veto and clarified on which matters the Mayor may vote.

45 NOW, THEREFORE, BE IT RESOLVED, by the Governing Body of the City of
46 Topeka, Kansas, that

47 Section 1. Pursuant to K.S.A. § 10-1101, *et seq.*, the lease purchase agreement
48 between the City and Municipal Services Group, Inc., in which Municipal Services Group,
49 Inc. will finance three million eight hundred sixty-nine thousand four hundred fifty-seven

50 dollars and eighteen cents (\$3,869,457.18) including interest for the purchase of an
51 Enterprise Resource Planning (ERP) software system in accordance with the terms and
52 conditions set forth in the Master Lease Agreement and Individual Payment Schedule No. 1
53 which are attached hereto and specifically incorporated herein is hereby authorized and
54 approved.

55 Section 2. The City Manager is authorized to execute a lease purchase
56 agreement with Municipal Services Group, Inc. that complies with K.S.A. 10-1101, *et seq.*,
57 as set forth herein with an effective date of September 1, 2007.

58 Section 3. Resolution No. 8051 is hereby rescinded.

59 ADOPTED and APPROVED by the Governing Body of the City of Topeka on June 9,
60 2009.

61 CITY OF TOPEKA, KANSAS

62
63
64 _____
65 William W. Bunten, Mayor

66 ATTEST:

67 _____
68 Brenda Younger, City Clerk
69
70

71 ***The resolution was approved by the Governing Body by a vote of 6-4-0. The attempt***
72 ***to veto by the Mayor was of no legal effect because the Mayor pursuant to City of***
73 ***Topeka Charter Ordinance No. 98 Section 2(a)(ix) does not have the ability to veto an***
74 ***item upon which he was entitled to vote. The resolution shall go into effect without***
75 ***the signature of the Mayor pursuant to City of Topeka Ordinance No. 19258, Section***
76 ***1(a)(1).***