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

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

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

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

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

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

Section 1. Pursuant to K.S.A. § 10-1101, et seq., the lease purchase agreement between the City and Municipal Services Group, Inc., in which Municipal Services Group, Inc. will finance three million eight hundred sixty-nine thousand four hundred fifty-seven
dollars and eighteen cents ($3,869,457.18) including interest for the purchase of an
Enterprise Resource Planning (ERP) software system in accordance with the terms and
conditions set forth in the Master Lease Agreement and Individual Payment Schedule No. 1
which are attached hereto and specifically incorporated herein is hereby authorized and
approved.

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

Section 3. Resolution No. 8051 is hereby rescinded.

ADOPTEO and APPROVED by the Governing Body of the City of Topeka on June 9,

CITY OF TOPEKA, KANSAS

William W. Bunten, Mayor

ATTEST:

Brenda Younger, City Clerk

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