A RESOLUTION ESTABLISHING A POLICY AND PROCEDURES FOR ISSUING INDUSTRIAL REVENUE BONDS BY THE CITY OF OTTAWA, KANSAS

[Pursuant to K.S.A. 12-1740 et seq.]

WHEREAS, The City of Ottawa, Kansas ("City"), desires to be proactive in the promotion and stimulation of economic growth in the City of Ottawa, Franklin County, Kansas area, and

WHEREAS, The issuance of industrial revenue bonds by the City is perceived to be of assistance in aiding financially in the industrial and economic development of the City of Ottawa, and

WHEREAS, The Governing Body of the City of Ottawa, Kansas, has authority to issue industrial revenue bonds pursuant to K.S.A. 12-1740 et seq., and

WHEREAS, The Governing Body deems it advisable to develop a policy and procedure for the issuance of such bonds;

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF OTTAWA, KANSAS, that

Section 1. Policy. (a) The Governing Body shall evaluate all requests to issue industrial revenue bonds for the purposes allowed by law and shall approve the issuance of the bonds when, in its opinion, the project to be financed in whole or in part by the proceeds of the bonds is reasonably expected to promote, stimulate and develop the general economic welfare of the City through promotion and advancement of physical and mental health, industrial, commercial, agricultural, natural resources and recreational development in the City, to encourage and assist in the location of new business and industry in the City and the expansion, relocation or retention of existing business, industry and health facilities; and to promote the economic stability of the City by providing greater employment opportunities, diversification of industry and improved physical and mental health of the citizens of the City, and is deemed to be in the best interests of the City.

In evaluating a request for the issuance of industrial revenue bonds, the Governing Body shall consider whether the proposed bond issue will help achieve the following objectives:

1. Add substantially to employment in the City or preserve existing jobs in the City.
2. Help produce diversification of the local economy.
3. Create a positive impact on an area of the City where economic assistance is needed.
4. Expand the type of job skills available to the job market in the City or use of key skills of locally unemployed persons.
5. Create economic growth through the production of goods and/or services which will be exported from the City or which will replace goods and/or services which are currently imported to the City.
6. Increase the property tax base of both residential and commercial properties to further support the costs of municipal services provided by the City and increase the credit worthiness of the City by enhancing the tax base.
7. Open up other property for future development due to extension of utilities associated with the project.

(b) In evaluating an application for the issuance of industrial revenue bonds, the Governing Body shall also consider the positive or negative influence for the City of the following factors:

1. Whether the issuance of the requested bonds would grant an unfair advantage to the applicant over other firms providing the same or similar services in the City.
2. Whether the land used for the project fits the land use and development plans of the City.
3. Whether the applicant is requesting property tax abatement and whether such applicant is willing to pay payments in lieu of taxes.
4. Whether the applicant proposes to use existing resources within the City (contractors, suppliers, sources of funding, services, etc.) for the development of the proposed project.
5. Whether the proposed project includes refinancing any existing debt.

Section 2. Requirements of Proposal; Fees; Origination Fee. The potential applicant should arrange for a pre-application meeting with the City's Finance Team, comprised of the City Manager, City Clerk/Finance Director, and the City's Bond Counsel, or their appointees, to explore the applicant's interest prior to formally submitting an application. All applicants are required to complete the standard application form. At least 15 days before the proposal is expected to be considered by the Governing Body, the applicant shall submit five (5) completed copies of the application form to the City along with a non-refundable application fee of $1,250. A closing fee of $750 shall be remitted to the City on or prior to the day of the bond closing. Such fees shall be received into the City's General Fund and used to defray costs of the City associated with issuing industrial revenue bonds and for other lawful purposes.

The applicant is also responsible for payment of other professional fees incurred by the city, including, but not limited to, city bond counsel, financial advisors, and any fees imposed by the city attorney in connection with the issuance of the bonds.

Each applicant approved for issuance of industrial revenue bonds shall pay to the City an origination fee in an amount equal to 1% of the total industrial revenue bond issuance. Payment of the origination fee is a requirement for issuing industrial revenue bonds. Origination fees collected by the City shall be received into the Economic Development Fund to be used for the purpose of promoting and furthering local economic development activities.

Section 3. Conditions of Approval. Approval of industrial revenue bonds is subject to the following:

Publicly offered bonds: Applicant must provide reasonable assurance that the bonds are secure and marketable and that the bond issue complies with applicable state and federal law. The City may require credit enhancement such as a letter of credit, bond insurance, personal guarantees or other pledges of collateral, a bond reserve account or any combination of these.

Privately placed bonds: Applicant must provide reasonable assurance that the bonds are secure and marketable to sophisticated investors, approved by the City, and that the bond issue complies with applicable state and federal laws.

Secondary market disclosure: Applicant must agree to provide ongoing secondary market disclosure to bond investors of material information regarding the security for the bonds to the extent required by law.

Required City advisors: The City requires the use of its designated bond counsel, Logan Riley Carson & Kaup, L.C., c/o Dorothea Riley. The City reserves the right to approve the selection of other participants in the bond issue including, but not limited to, the underwriter and trustee/fiscal agent. The City, in its discretion, may retain additional independent advisors or counsel to assist the City in analyzing the legality or other merit of the proposed bond issue.

Reimbursement of City costs: The applicant must pay for or reimburse the City for all legal, financial and administrative work performed in connection with the bond issue as determined by the City. All post-closing costs (i.e. default, transfer of ownership, transfer of bonds, redemption, remarketing issues, etc.) will be billed to the applicant for reimbursement to the City.

Environmental and planning: The proposed project must be non-polluting and consistent with all applicable planning and community development policies and regulations. The City may require the applicant to perform at least a Phase I environmental audit of the project site and take any remedial action necessary.

Pirating: Generally, it is the City's policy to discourage applications for tax abatement and/or other incentives that deliberately encourage and cause the pirating of existing business from other Kansas communities. The City intends to avoid participating in "bidding wars" between Kansas counties or cities competing for the location or expansion of existing businesses.

Taxes: The applicant must not have any delinquent property taxes within Franklin County.

Section 4. Tax Abatement.
The City has authority under Kansas law to exempt certain property from ad valorem taxation for a maximum 100% for 10 years, as an economic development incentive. If an applicant desires to be considered for tax abatement the applicant must complete the appropriate application form. Only new real and personal property not already on the City tax rolls is eligible except as provided for in the case of vacant buildings that have been vacant for a considerable period of time as outlined in Section 5.

If an application for abatement is made, the Governing Body shall determine whether the requested tax abatement should be granted and if so, the amount to be abated. The amount of the tax abatement shall be determined at the discretion of the Governing Body, based on its review of the application, consideration of the factors listed in Section 6, and generally following the schedule provided below.

Calendar year following Issuance of Bonds	% of Property Tax Abated
Year 1	95%
Year 2	85%
Year 3	75%
Year 4	65%
Year 5	55%
Year 6	45%
Year 7	35%
Year 8	25%
Year 9	15%
Year 10	5%
Thereafter	0%

The Governing Body's authority is discretionary and applications may be considered on a case-by-case basis. The Governing Body is under no obligation to approve any requested tax abatement and reserves the right to deviate from the policies contained herein and the schedule above (though not the procedures) if, in the opinion of the Governing Body, circumstances warrant such deviation.

If the City has approved tax abatement, it will submit an application for the tax abatement to the Kansas Board of Tax Appeals for approval of the tax abatement after the issuance of the bonds in accordance with State law. If such approval is denied no tax abatement may be granted. If the applicant fails to pay required payment in lieu of taxes, which were a condition for granting the abatement, or fails to provide data requested by the City, or fails to comply with terms of the performance agreement, the City may modify and/or revoke the abatement.

Section 5. Payment in Lieu of Taxes.
a) Any applicant receiving a tax abatement shall be required to make a payment in lieu of taxes equal to the amount of property tax paid or that was payable for the most recent year before acquisition of the property by the applicant business, construction of new facilities, or added improvements to buildings. This policy ensures that entities within the taxing jurisdiction affected by the abatement will receive the same tax revenue from the abated property as was received before the tax abatement granted by the City. If vacant buildings are purchased or leased by a new or expanding business, or the market value of the property decreases, this requirement may be waived in whole or in part, at the discretion of the Governing Body.

b) The incremental payment of taxes on new development based upon the tax abatement schedule in Section 4 (or as determined by the Governing Body) shall be considered an additional payment in lieu of taxes over and above the minimum payment described above. The payment terms will be determined before the City approves the resolution of intent for the bonds or takes other official action with respect to the bonds.

Section 6. Kansas Retailer's Sales Tax. Under the existing provisions of K.S.A. 79-3606, subsections (b) and (d) and other applicable laws, sales of certain tangible personal property or services purchased in connection with the IRB-financed improvements may be entitled to exemption from the tax imposed by the Kansas Retailers' Sales Tax Act.

Section 7. Cost-Benefit Analysis. In determining whether a tax abatement should be granted, the Governing Body shall examine the cost-benefit to the City by considering various factors, including, but not limited to, the following:

1. The increase in appraised value of the subject property.
2. The sales and income tax revenue that may result from the project.
3. The number of new jobs, earnings and benefits that will be provided to employees of the applicant.
4. The cost of providing City services for the new residents associated with the applicant business.
5. The cost of infrastructure enhancements for new residents associated with the applicant business.
6. The cost to the local school districts to provide facilities and to educate the students of the new residents associated with the applicant business.
7. Other public or private expenditures associated with attracting the new business.
8. The degree to which the applicant business improves the diversification of the local economy.
9. The kinds of jobs created in relation to the skills available in the local labor market.
10. The potential of the business for future expansion and additional job creation.
11. The beneficial impacts the business may have by creating other new jobs and businesses and the utilization of local products and services in the operations of the applicant business.
12. The beneficial impact the business will have on a particular area of the City.
13. The compatibility of the location of the business with land use and development plans of the City, the affected areas within the City and the availability of existing infrastructure and essential public services.

Section 8. Initial Review and Public Hearing. Each application shall receive an initial review by the Finance Team to determine whether (a) the application is complete and sufficient for review, and (b) the applicant's business is eligible for tax abatement under the applicable laws. If an application is incomplete, the City shall notify the applicant noting what changes or additions are necessary.

If the application is found complete and is for a purpose that appears to be authorized by law, the City Manager shall place the item before the Governing Body for its review, and suggest a public hearing be scheduled.

The City shall not grant any tax abatement prior to conducting a public hearing. Notice of the public hearing shall be published at least seven days prior to the hearing in the official city newspaper. The city clerk shall notify by certified mail the applicable taxing authorities within Franklin County advising them of the time and place of the public hearing. The applicant business shall be invited, but not required, to attend the public hearing.

Section 9. Administrative Letter of Intent: The city manager is authorized to issue administrative letters of intent when requested by the applicant upon a finding that the public interest requires confidentiality in order to successfully negotiate the location of the prospective business within the city. Such administrative letters of intent are not binding on the Governing Body, and shall be superseded by any action taken by, or resolution of intent adopted by the Governing Body.

Section 10. Governing Body Resolution of Intent: The Governing Body may issue a resolution of intent, setting forth in general terms its proposed plans for granting tax abatement and any conditions of performance. Such resolution of intent is an expression of good faith, and in no way binds the City to grant the tax abatement. Such resolution of intent shall expire six months after issuance, but may be renewed. A public hearing shall not be required prior to the issuance of a resolution of intent. No other group or individual shall be authorized to speak for and commit the Governing Body to the granting of such abatement. A resolution of intent issued by the Governing Body supersedes any letter of intent issued by the city manager.

Section 11. Performance Agreement. To provide reasonable assurance that the projected benefits to the City will be realized, the agreement for payment in lieu of taxes shall include a performance agreement requiring the applicant to maintain certain standards of performance (i.e. minimum job levels, minimum capital investment, etc.) while the abatement is in place.

Section 12. Annual Review. Each performance agreement is subject to annual review and determination by the Finance Team that the conditions originally qualifying the business for the exemption continue to exist, and the specific conditions of the performance agreement have been met. A non-refundable fee of $250 is required no later than January 15 of each year for the term of the tax abatement to cover costs associated with conducting the review. If conditions substantially change the Finance Team shall provide such information to the Governing Body, along with any recommended actions. Any business granted tax abatement shall notify the City of any substantive change in the use of tax exempt property.

Section 13. Special Assessments. Any tax abatement granted under this policy shall not affect the liability of such property for any special assessments levied or to be levied against such property.

Section 14. Effective Date. This policy shall take effect upon its adoption by the Governing Body on the

_____ day of _____ 2001, and apply to all applications for industrial revenue bonds issued after

such date.

_____
Mayor

Attest:

_____
Scott D. Bird, City Clerk