

RESOLUTION NO. 2013-16

A RESOLUTION OF THE GOVERNING BODY OF THE CITY OF BALDWIN CITY, KANSAS DETERMINING THE ADVISABILITY OF ISSUING TAXABLE INDUSTRIAL REVENUE BONDS FOR THE PURPOSE OF FINANCING THE ACQUISITION, CONSTRUCTION, INSTALLATION AND EQUIPPING OF A COMMERCIAL FACILITY TO BE LOCATED IN SAID CITY, DOUGLAS COUNTY, KANSAS AND THE CITY OF LAWRENCE, KANSAS

WHEREAS, the City of Baldwin City, Kansas (the "Issuer") desires to promote, stimulate and develop the general economic welfare and prosperity of the Issuer, and thereby to further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas; and

WHEREAS, pursuant to the provisions of the Kansas Economic Development Revenue Bond Act, as amended and codified in K.S.A. 12-1740 *et seq.* (the "Act"), the Issuer is authorized to issue revenue bonds for such purposes, and it is hereby found and determined to be advisable and in the interest and for the welfare of the Issuer and its inhabitants that revenue bonds of the Issuer in the principal amount of not to exceed \$5,000,000 be authorized and issued, in one or more series, to provide funds to pay the costs of the acquisition, construction, installation and equipping of a commercial facility to provide internet services (the "Project") in the Issuer, such Project to be leased by the Issuer to Dawn Fiber, LLC, a Kansas limited liability company, or assigns (the "Tenant").

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF BALDWIN CITY, KANSAS:

Section 1. **Public Purpose.** The governing body of the Issuer hereby finds and determines that the Project will promote, stimulate and develop the general economic welfare and prosperity of the Issuer, and thereby further promote, stimulate and develop the general economic welfare and prosperity of the State of Kansas.

Section 2. **Authorization to Acquire Project; Intent to Issue Bonds.** The Issuer is hereby authorized to proceed with the acquisition, construction, installation and equipping of the Project and to issue its revenue bonds, in one or more series, in an aggregate principal amount not to exceed \$5,000,000 (the "Bonds") to pay the costs thereof, subject to satisfaction of the conditions of issuance set forth herein.

Section 3. **Conditions to Issuance of Bonds.** The issuance of the Bonds is subject to: (i) the passage of an ordinance authorizing the issuance of the Bonds; (ii) the successful negotiation of a Trust Indenture, Guaranty Agreement, Lease, Bond Purchase Agreement or other legal documents necessary to accomplish the issuance of the Bonds, the terms of which shall be in compliance with the Act and mutually satisfactory to the Issuer and the Tenant; (iii) the successful negotiation and sale of the Bonds to a purchaser or purchasers yet to be determined (the "Purchaser"), which sale shall be the responsibility of the Tenant and not the Issuer; (iv) the receipt of the approving legal opinion of Gilmore & Bell, P.C. ("Bond Counsel") in form acceptable to the Issuer, the Tenant and the Purchaser; (v) the obtaining of all necessary governmental approvals to the issuance of the Bonds; (vi) the commitment to and payment of all expenses of the Issuer,

any underwriting fees and expenses and all legal fees and expenses of Bond Counsel and the Issuer's counsel relating to the issuance of the Bonds by the Purchaser, and all fees of the Kansas Court of Tax Appeals; and (vii) the approval of the issuance of the Bonds by the governing bodies of the City of Lawrence, Kansas and Douglas County, Kansas, in accordance with the provisions of K.S.A. 12-1741a.

Section 4. **Notices.** The Clerk is hereby authorized and directed to publish an appropriate notice of intent to issue the Bonds and to enter into a Lease with the Tenant pursuant to the provisions of the Act and to publish a notice of public hearing with respect to the granting of a complete or partial property tax exemption as required by Kansas law.

Section 5. **Reliance by Tenant; Limited Liability of Issuer.** It is contemplated that in order to expedite acquisition of the Project and realization of the benefits to be derived thereby, the Tenant may incur temporary indebtedness or expend its own funds to pay costs of the Project prior to the issuance of the Bonds. Proceeds of Bonds may be used to reimburse the Tenant for such expenditures made not more than 60 days prior to the date this Resolution is adopted, and as provided by §1.150-2 of the U.S. Treasury Regulations. The Bonds herein authorized and all interest thereon shall be paid solely from the revenues to be received by the Issuer from the Project and not from any other fund or source. The Issuer shall not be obligated on such Bonds in any way, except as herein set out. In the event that the Bonds are not issued, the Issuer shall have no liability to the Tenant.

Section 6. **Further Action.** The Clerk is hereby authorized to deliver an executed copy of this Resolution to the Tenant and to the governing bodies of the City of Lawrence, Kansas and Douglas County, Kansas. The Mayor, Clerk and other officials and employees of the Issuer, including the Issuer's counsel and Bond Counsel, are hereby further authorized and directed to take such other actions as may be appropriate or desirable to accomplish the purposes of this Resolution, including preparation of the cost benefit study required by the Act and the execution on behalf of the Issuer of the information statement regarding the proposed issuance of the Bonds to be filed with the State Court of Tax Appeals pursuant to the Act.

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ADOPTED by the governing body of the City of Baldwin City, Kansas on October 21, 2013.



Maury Rose
Mayor

Attest:

Colin Bick
Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the Issuer adopted by the governing body on October 21, 2013, as the same appears of record in my office.

DATED: October 21, 2013.

Colin Bick
Clerk