

RESOLUTION NO. 1514

**A RESOLUTION AUTHORIZING FINANCING OF A BUILDING
IN AN AGGREGATE PRINCIPAL AMOUNT OF NOT MORE
THAN \$600,000.**

WHEREAS, Oregon Revised Statutes Section 271.390 permits the City to enter into financing agreements for real and personal property and permits the City to secure the financing with all or any portion of its lawfully available revenues; and,

WHEREAS, the City desires to finance the acquisition and remodeling of the Public Works Building; and,

WHEREAS, the City has received proposals from commercial banks to provide financing for the Project, and Bank of America National Trust and Savings Association has offered the most favorable terms to the City;

NOW, THEREFORE, THE CITY WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. Definitions.

The following capitalized terms used in this resolution shall have the meanings defined for those terms in this Section:

“Act” means Oregon Revised Statutes Section 271.390

“Bank” means Bank of America National Trust and Savings Association, its affiliates or successors as owners of the Note.

“City” means the City of Wilsonville, Oregon.

“City Official” means the Finance Director of the City or a person designated by the Finance Director to act on behalf of the City under this resolution

“Code” means the United States Internal Revenue Code of 1986, as amended.

“Loan Agreement” means the financing agreement authorized by the Act and Section 1 of this resolution.

“Note” means the City’s Note (1998 Building Financing) which evidences the amount due under the Loan Agreement.

“Operating Revenues” means the revenues (other than property taxes) which the City receives from its road maintenance operations, fleet maintenance operations, storm water maintenance operations and water system operations.

“Project” means the acquisition, remodelling, equipping and furnishing of the Public Works Building.

Section 2. Financing Authorized.

The City is hereby authorized to enter into the Loan Agreement and issue the Note in an aggregate principal amount of not more than \$600,000.

Section 3. Security.

- (a) The City shall pay the amounts due under the Loan Agreement and the Note from the Operating Revenues.
- (b) To provide additional security for the Note, the City agrees to pay the Note from any and all of its legally available funds. The City hereby pledges its full faith and credit to pay the amounts due under the Note. The Loan Agreement and Note shall not constitute “voluntary floating indebtedness” for purposes of Section 38 of the City Charter because the Note is expected to be paid entirely from the Operating Revenues.
- (c) The Loan Agreement and the Note shall not be secured by a lien on any City property.

Section 4. Tax-Exemption.

The City covenants not to take any action or omit any action if the taking or omission would cause interest paid on the Note to be includable in gross income under the Code.

Section 5. Designation as Qualified Tax Exempt Obligations.

The City reasonably expects that it and its subordinate entities will not issue more than \$10,000,000 of tax-exempt obligations during calendar year 1998. The City hereby designates the Note as a “qualified tax-exempt obligation” pursuant to Section 265(b)(3) of the Code.

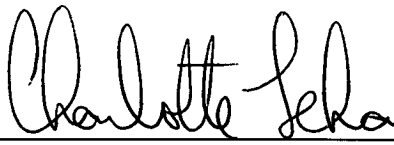
Section 6. Delegation.

The City Official may, on behalf of the City and without further action by the Council:

- (a) establish the final principal amount, repayment schedule, interest rate, redemption terms, payment terms and dates, and other terms of the Loan Agreement and the Note, subject to the limitations of this resolution and the Act,

- (b) negotiate the terms of, and execute and deliver an agreement to sell the Note to the Bank or its affiliates;
- (c) execute and deliver the Loan Agreement and the Note, in substantially the form attached to this resolution as Exhibit A, but with any changes which the City Official may approve; and,
- (d) take any other action and execute any other documents in connection with the Note which the City Official finds will be advantageous to the City.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 21st day of September, 1998, and filed with the Wilsonville City Recorder on that date.



CHARLOTTE LEHAN, Mayor

ATTEST:



SANDRA C. KING, CMC, City Recorder

SUMMARY OF VOTES:

Mayor Lehan	<u>Yes</u>
Councilor Helser	<u>Yes</u>
Councilor Barton	<u>Yes</u>
Councilor Kirk	<u>Yes</u>
Councilor Luper	<u>Yes</u>

Appendix A
**UNITED STATES OF AMERICA
STATE OF OREGON
CITY OF WILSONVILLE, OREGON
NOTE
(1998 Building Financing)**

The City of Wilsonville, Oregon, (the "City"), for value received acknowledges itself indebted and hereby promises to pay to the order of Bank of America National Trust and Savings Association, the principal amount of SIX HUNDRED THOUSAND DOLLARS (\$600,000.00) in 120 equal monthly installments of \$6,305.44, including interest at the rate of 4.80 percent per annum, calculated on 30/360 day basis. Payments shall be made on the ___ day of each month, commencing ____, 1998, as provided in the Loan Agreement (1998 Building Financing) between the City and Bank of America National Trust and Savings Association which is dated ____, 1998 (the "Loan Agreement"). All principal and interest on this Note are due and payable on ____, 2008.

This Note is payable primarily from the Operating Revenues as provided in City Resolution No. ____ (the "Resolution") which authorizes the Loan Agreement and this Note. In addition, this Note is payable from all legally available funds of the City, and the city has pledged its full faith and credit to pay this Note. The Loan Agreement and this Note are not secured by a lien on any property of the City.

This Note has been executed pursuant to the Loan Agreement. The provisions of the Resolution and the Loan Agreement are incorporated herein by reference; capitalized terms used but not defined in this Note have the meanings defined for such terms in the Loan Agreement.

If an Event of Default occurs, the Bank may declare the unpaid principal amount of the Note immediately due and payable, with interest at the Loan Rate to the date of payment, and exercise other remedies as provided in the Loan Agreement.

If legal action is taken by the holder of this Note to enforce the provisions of this Note, the Resolution, or the Loan Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs, including fees and costs at trial, on appeal or otherwise.

This Note is executed by the City to finance the acquisition of land and a building in full and strict accordance and compliance with all of the provisions of the Constitution and Statutes of the State of Oregon. The Loan Agreement and this Note are not secured by a lien on any property of the City.

This Note is subject to optional prepayment as provided in the Loan Agreement.

The City has designated this Note and the Loan Agreement as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code.

IT IS HEREBY CERTIFIED, RECITED, AND DECLARED that all conditions, acts, and things required to exist, to happen, and to be performed precedent to and in the issuance of this Note have existed, have happened, and have been performed in due time, form, and manner as

required by the Constitution and Statutes of the State of Oregon; and that this Note and all other obligations of such City, are within every debt limitation and other limit prescribed by such Constitution and Statutes.

IN WITNESS WHEREOF, the City has caused this Note to be signed on its behalf by it's duly City Official, as of this ___ day of September, 1998.

CITY OF WILSONVILLE, OREGON

By: _____
City Official

Exhibit A

Form of Loan Agreement (1998 Building Financing)

This Loan Agreement is entered into between the City of Wilsonville, Oregon, and Bank of America National Trust and Savings Association as of this ___ day of ____, 1998.

Section 1. Definitions.

For purposes of this Loan Agreement the following capitalized terms shall have the following meanings, unless the context clearly requires otherwise:

“Bank” means Bank of America National Trust and Savings Association or its successors.

“City Official” means the Finance Director of the City or a person designated by the Finance Director to act on behalf of the City under this Resolution.

“City” means the City of Wilsonville, Oregon.

“Event of Default” means the declaration by the Bank of an event of default as a result of a determination by the Bank that there has been: (i) a failure to pay principal or interest on the Note when due, as provided in the Note and this Loan Agreement; or (ii) a failure by the City to comply with any of its obligations, or to perform any of its duties, under this Loan Agreement, or the Note, which failure continues, and is not cured, for a period of more than 30 days after the Bank has made written demand on the City to cure such failure; or, (iii) a material misrepresentation by the City in this Loan Agreement or the Note.

“Fiscal Year” means the period beginning July 1 of each year and ending on the next succeeding June 30, or as otherwise defined by Oregon Law.

“Loan Agreement” means this Loan Agreement (1998 Building Financing).

“Note” means the note evidencing the amounts owed under this Loan Agreement, which shall be in substantially the form attached hereto as Appendix A.

“Operating Revenues” means the revenues (other than property taxes) which the City receives from its road maintenance operations, fleet maintenance operations, storm water maintenance operations and water system operations.

“Project” means the acquisition, remodeling, equipping and furnishing of the Public Works Building.

“Resolution” means City Resolution No. ____, adopted September 21, 1998, authorizing this Loan Agreement and the Note.

Section 2. Recitals.

The City Council has adopted the Resolution which authorizes the City to enter into a loan agreement to finance the Project in a maximum amount of \$600,000.

Section 3. Loan Agreement.

- (a) The Bank hereby agrees to make a loan to the City under this Loan Agreement in the amount of \$600,000.00.
- (b) The City hereby agrees to repay that amount in 120 equal monthly installments of \$6,305.44, including interest at the rate of 4.80 percent per annum, calculated on 30/360 day basis. Payments shall be made on the ___ day of each month, commencing ____, 1998.
- (c) All amounts due under this Loan Agreement and the Note shall be paid no later than ____, 2008.

Section 4. Prepayment.

- (a) The unpaid principal amount of the Note, plus accrued interest, may be prepaid at any time in whole or in part at the option of the City but at the following premiums (expressed as a percentage of the principal amount which is prepaid) during the following periods:

<u>Period Premium is in Effect</u>	<u>Premium</u>
First twelve months of the loan term (____, 1998 through ____, 1999:	Three percent.
Second twelve months of the loan term (____, 1999 through ____, 2000:	Two percent.
Third twelve months of the loan term (____, 2000 through ____, 2001:	One percent.
____, 2001 and thereafter:	No premium.

- (b) Payments by the City to the Bank shall be applied first, to pay accrued interest, and second, to reduce the unpaid principal amount of the Note.

Section 5. Security for Loan Agreement; Release of Security.

The City shall pay the amounts due under this agreement from the Operating Revenues. To provide additional security for this Loan Agreement, if the Operating Revenues are not sufficient to pay the amounts due under this Loan Agreement, the City agrees to pay those amounts from all its legally available funds, and the City pledges its full faith and credit to pay amounts due under this Loan Agreement and Note. This Loan Agreement and the Note are not secured by a lien on any property of the City.

Section 6. Deposit and Use of Loan Agreement Proceeds.

The City shall deposit the proceeds of this Loan Agreement in a separate account (the "Proceeds Account"), and shall use those proceeds solely to finance the Project and costs associated with this Loan Agreement, and to pay amounts due under this Loan Agreement. The City hereby pledges the amounts in the proceeds account to pay the amounts due under this Loan Agreement.

Section 7. Tax Covenants.

The City covenants to operate the facilities financed with the Note, to invest the proceeds of the Note, and to pay any required rebates to the United States, so that the Note is not a "private activity bond" under Section 141 of the Internal Revenue Code of 1986, as amended (the "Code"), the Note is not an "arbitrage bond" under Section 148 of the Code, and interest due on the Note is excludable from gross income under Section 103 of the Code.

Section 8. Default.

If an Event of Default occurs, the Bank may: declare the unpaid principal amount of the Note immediately due and payable, with interest through the date of payment at the Loan Rate; or exercise any remedy available at law or in equity. No remedy shall be exclusive. The Bank may waive any Event of Default, but no such waiver shall extend to a subsequent Event of Default.

Section 9. Fees, Costs and Expenses.

- (a) **Bank Fees.** The City shall pay the Bank an origination fee of \$1,500.
- (b) **Bank Costs of Enforcement.** If the Bank incurs any expenses in connection with enforcing this Loan Agreement, or if the Bank takes collection action under this Loan Agreement, the City shall pay to the Bank, on demand, the Bank's reasonable costs and reasonable attorneys' fees, whether at trial, on appeal or otherwise, including any allocated costs of in-house counsel.
- (c) **Other Fees and Costs.** The City shall pay the fees and costs of Bond Counsel, and any other expenses and costs which the City incurs in connection with this Loan Agreement. The Bank shall pay all of the Bank's costs and expenses.

Section 10. Representations, Warranties and Agreements of the City.

By executing this Loan Agreement in the space provided below, the City represents and warrants to, and agrees with the Bank that:

- (a) The City is duly created and existing under the laws of the State of Oregon, has all necessary power and authority to enter into this Loan Agreement and perform its duties under the Resolution and this Loan Agreement, and that the Resolution, this Loan Agreement and the Note will constitute legal, valid and binding obligations of the City which are enforceable in accordance with their terms.
- (b) The acceptance of this Loan Agreement, the adoption of the Resolution and the execution and delivery of the Note will not conflict in any material respect with, or constitute a material breach of or default under, any law, charter provision, court decree, administrative regulation, resolution, ordinance or other agreement to which the City is a party or by which it is bound.
- (c) There is no action, suit, proceeding or investigation at law or in equity before or by any court or government City or body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the acceptance of this Loan Agreement, the adoption of the Resolution or the execution and delivery of the Note, or the collection

and application of the funds as contemplated by the Resolution and this Loan Agreement, which, in the reasonable judgment of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under this Loan Agreement.

- (d) To the extent permitted by law, the City agrees to indemnify and hold harmless the Bank and all of its agents and employees against any and all losses, claims, damages, liabilities and expenses arising out of any statement made by the City to the Bank, its agents or employees, which relates to this Loan Agreement or the Note, and which is untrue or incorrect in any material respect.
- (e) The execution and delivery of the Note will not cause the City to violate any constitutional, charter or statutory debt limitations to which it is subject, including, without limitation, that the City will not permit the aggregate amount of certain general obligation bonded indebtedness to exceed 3.00% of the real market value of all taxable property within the City, as required by ORS 287.004.
- (f) The City has developed and budgeted for a comprehensive program to address the "Year 2000 problem" (that is, the inability of computers, as well as embedded microchips in non-computing devices, to perform properly date-sensitive functions with respect to certain dates prior to and after December 31, 1999). The City has implemented that program substantially in accordance with its timetable and budget and reasonably anticipates that it will substantially avoid the year 2000 problem as to all computers, as well as embedded microchips in non-computing devices, that are material to the City's business, properties or operations. The City has developed feasible contingency plans adequate to ensure uninterrupted and unimpaired operations in the event of failure of its own or a third party's systems or equipment due to the Year 2000 problem, including those of vendors, customers, and suppliers, as well as a general failure of or interruption in its communications and delivery infrastructure.

Section 11. Financial Statements; Notice of Adverse Developments; Budgets.

While this Loan Agreement is in effect:

- (a) The City shall provide the Bank promptly with a copy of each of the City's final, annual audited financial statements within 210 days after the end of each fiscal year.
- (b) The City shall provide the Bank with a copy of each of the City's final, adopted budget within 45 days after adoption.
- (c) The City shall promptly notify the Bank if: any event occurs which is likely, in the reasonable judgment of the City, to have a material adverse effect on the financial condition of the City; or any litigation is filed against the City which seeks recovery of more than \$100,000 from the City and which is not covered by insurance.

Section 12. Conditions to the Obligations of the Bank.

The Bank may refuse to purchase the Note unless, on or prior to the date of closing, the Bank shall have received:

- (a) a copy of the duly authorized Resolution, and a signed original of the Note Purchase Agreement and the Note;
- (b) an opinion of Note Counsel to the effect that:
 - (i) the Resolution, the Note Purchase Agreement, and the Note are and will be valid and legally binding obligations of the City, enforceable against the City in accordance with their terms;
 - (ii) the interest payable on the Note is excludable from gross income under the Code and from Oregon personal income taxation;
 - (iii) the Note is not a "private activity bond" within the meaning of Section 141 of the Code; and
 - (iv) the Note has been designated by the City as a qualified tax-exempt obligation under Section 265(b)(3)(B) of the Code;
- (c) the certificate of a duly authorized officer of the City to the effect that:
 - (i) there is no action, suit, proceeding or investigation at law or in equity before or by any court or government, city or body pending or, to the best of the knowledge of the City, threatened against the City to restrain or enjoin the adoption of the Resolution or the execution and delivery of the Note Purchase Agreement and the Note, or the collection and application of funds as contemplated by the Note Purchase Agreement or the Note, which, in the reasonable judgment of the City, would have a material and adverse effect on the ability of the City to pay the amounts due under the Note, and
 - (ii) the adoption of the Resolution and the execution and delivery of the Note Purchase Agreement and the Note do not and will not conflict in any material respect with or constitute on the part of the City a breach of or default under any law, charter provision, court decree, administrative regulation, resolution, ordinance or other agreement or instrument to which the City is a party or by which it is bound;
- (d) a copy of the City's audited financial statements for the past three years and its adopted budget for the current year; and
- (e) such additional legal opinions, certificates, proceedings, instruments or other documents as the Bank or the City's Note Counsel may reasonably request to evidence compliance by the City with the legal requirements for execution and delivery of the Note Purchase Agreement and the Note and the due performance or satisfaction by the City of all agreements then to be performed and all conditions then to be satisfied by the City.

Section 13. Arbitration.

- (a) This Section concerns the resolution of any controversies or claims between the City and the Bank, including but not limited to those that arises from:

- (i) This Loan Agreement and the Note (including any renewals, extensions or modifications of this Loan Agreement):
 - (ii) Any document, agreement, or procedure related to or delivered in connection with this Loan Agreement and the Note;
 - (iii) Any violation of this Loan Agreement and the Note; or
 - (iv) Any claims for damages resulting from any business conducted between the City and the Bank relating to this Loan Agreement, including claims for injury to persons, property or business interest (torts).
- (b) At the request of the City or the Bank, any such controversies or claims will be settled by arbitration in accordance with the United States Arbitration Act. The United States Arbitration Act will apply even though this Loan Agreement provides that Oregon law governs it.
- (c) Arbitration proceedings will be administered by the American Arbitration Association and will be subject to its commercial rules of arbitration.
- (d) For purposes of the application of the statute of limitations, the filing of an arbitration pursuant to this paragraph is the equivalent of the filing of a lawsuit, and any claim or controversy, which may be arbitrated under this paragraph, is subject to any applicable statute of limitations. The arbitrators will have the authority to decide whether any such claim or controversy is barred by the statute of limitations and, if so, to dismiss the arbitration on that basis.
- (e) If there is a dispute as to whether an issue is arbitrable, the arbitrators will have the authority to resolve any such dispute.
- (f) The decision that results from an arbitration proceeding may be submitted to any authorized court of law to be confirmed and enforced.
- (g) This provision does not limit the right of the City or the Bank to:
- (i) exercise self-help remedies such as setoff;
 - (ii) act in a court of law, before, during or after the arbitration proceeding to obtain:
 - (iii) a provisional or interim remedy; and/or
 - (iv) additional or supplementary remedies.
- (h) The pursuit of or a successful action for interim, additional or supplementary remedies, or the filing of a court action, does not constitute a waiver of the right of the City or the Bank, including the suing party, to submit the controversy or claim to arbitration if the other party contests the lawsuit.

Section 14. Notices.

Any notices required to be given pursuant to this commitment letter or this Loan Agreement shall be given to the following addresses:

City: Mr. Gary Wallis, Finance Director
City of Wilsonville
30000 Town Center Loop East
Wilsonville, Oregon 97070

Bank: Bank of America National Trust and Savings Association
Public Finance 8832
121 S.W. Morrison Street, Suite 700
Portland, Oregon 97204

Section 15. Survival; Loan Agreement Constitutes Contract.

The City or the Bank may not assign this Loan Agreement. All representations, warranties, and agreements contained in this Loan Agreement shall survive the execution, delivery and payment of this Loan Agreement. This Loan Agreement and the Note shall constitute a contract between the City and the Bank. The Bank's extension of credit hereunder is expressly made in reliance on such contract.

Section 16. Applicable Law.

This Loan Agreement shall be governed and interpreted in accordance with the laws of the State of Oregon.

Section 17. Severability and Waivers.

If any part of this Loan Agreement is not enforceable, the rest of this Loan Agreement may be enforced. The Bank retains all rights, even if it makes a loan after default. If the Bank waives a default, it may enforce a later default. Any consent or waiver under this Loan Agreement must be in writing.

Section 18. Counterparts.

This Loan Agreement may be executed simultaneously in several counterparts, each of which shall be an original and all of which shall constitute one and the same agreement.

Section 19. Written Agreements.

Under Oregon law, most agreements, promises and commitments made by the Bank after October 3, 1989, concerning loans and other credit extensions which are not for personal, family or household purposes or secured solely by the borrower's residence must be in writing, express consideration and be signed by the Bank to be enforceable.

DATED as of this ___ day of September, 1998.

**BANK OF AMERICA NATIONAL TRUST
AND SAVINGS ASSOCIATION**

By: _____
Authorized Officer

CITY OF WILSONVILLE, OREGON

By: _____
City Official