

RESOLUTION NO. 1056

A RESOLUTION AUTHORIZING FINANCE DIRECTOR TO ENTER INTO LEASE-PURCHASE AGREEMENT WITH BANK OF AMERICA AND FUNDING AND REDESIGNATING LEASE-PURCHASE AGREEMENT TO BE TAX EXEMPT UNDER INTERNAL REVENUE CODE.

WHEREAS, the City of Wilsonville, pursuant to Resolution No. 1037, "A Resolution Selecting the Proposal of Therefore Systems, Inc. for the Purchase of a Financial Information Hardware and Software System for the City of Wilsonville and Approving Lease/Option Financing by Bank of America for Said System", has determined that a true and very real need exists for the acquisition of the Equipment described in the Lease-Purchase Agreement, marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the Finance Director, under the authority granted pursuant to Resolution No. 1037, having followed the Oregon Attorney General's Model Rules for Public Contracting, has arranged for the acquisition of the Equipment and entered into the Lease-Purchase Agreement with Bank of America;


NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council of the City of Wilsonville adopts, approves and ratifies the terms and conditions for the Lease-Purchase with Bank of America, as set forth in Exhibit A and entered into by the Finance Director, Tom Jowaiszas, on behalf of the City and further authorizes his entering into on behalf of the City any related documents necessary to the consummation of the transaction contemplated by the Lease-Purchase Agreement;

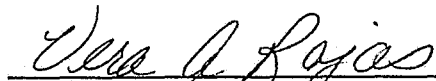
2. The City Council finds and represents that the reasonably anticipated amount of qualified tax-exempt obligations which have been and will be issued by the Lessee does not exceed \$10,000,000 for the calendar year within which this Lease-Purchase Agreement is entered and hereby designates this Lease-Purchase Agreement is to be a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting

thereof this 18th day of October, 1993, and filed with the Wilsonville City Recorder this same date.


GERALD A. KRUMMEL, Mayor

ATTEST:


VERA A. ROJAS, CMC/AAE, City Recorder

SUMMARY of Votes:

Mayor Krummel	<u>AYE</u>
Councilor Carter	<u>AYE</u>
Councilor Hawkins	<u>ATE</u>
Councilor Lehan	<u>AYE</u>
Councilor Van Eck	<u>AYE</u>

LEASE-PURCHASE AGREEMENT

by and between the

Bank of America Oregon

as Lessor

and

City of Wilsonville, Oregon

as Lessee

Dated October 22, 1993

TABLE OF CONTENTS

	Page
ARTICLE I. COVENANTS OF LESSEE	1
ARTICLE II. DEFINITIONS	2
ARTICLE III. LEASE OF EQUIPMENT	3
ARTICLE IV. LEASE TERM	3
ARTICLE V. ENJOYMENT OF EQUIPMENT	3
Section 5.01. <u>Quiet Enjoyment</u>	3
Section 5.02. <u>Use of the Facilities</u>	3
Section 5.03. <u>Right of Inspection</u>	3
Section 5.04. <u>Disclaimer of Warranties</u>	3
Section 5.05. <u>Vendors' Warranties</u>	4
ARTICLE VI. RENTAL PAYMENTS	4
Section 6.01. <u>Rental Payments to Constitute a Binding Contractual Obligation of Lessee</u>	4
Section 6.02. <u>Payment of Rental Payments</u>	4
Section 6.03. <u>Interest and Principal Components</u>	4
Section 6.04. <u>Rental Payments</u>	4
Section 6.05. <u>Late Payment Interest Supplement</u>	5
ARTICLE VII. TITLE TO EQUIPMENT; SECURITY INTEREST	5
Section 7.01. <u>Title to Equipment; Security Interest</u>	5
Section 7.02. <u>Liens and Encumbrances to Title</u>	5
ARTICLE VIII. MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES	5
Section 8.01. <u>Maintenance of Equipment by Lessee</u>	5
Section 8.02. <u>Taxes, Other Governmental Charges and Utility Charges</u>	6
Section 8.03. <u>Provisions Regarding Insurance</u>	6
Section 8.04. <u>Advances</u>	6
Section 8.05. <u>Modifications</u>	6
ARTICLE IX. DAMAGE, DESTRUCTION AND CONDEMNATION; USE OF NET PROCEEDS	6
Section 9.01. <u>Damage, Destruction and Condemnation</u>	6
Section 9.02. <u>Insufficiency of Net Proceeds</u>	7
ARTICLE X. TAX COVENANT	7

ARTICLE XI. OPTION TO PURCHASE	7
Section 11.01. <u>Purchase Rights</u>	7
ARTICLE XII. ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING	8
Section 12.01. <u>Assignment or Sale by Lessor</u>	8
Section 12.02. <u>No Sale, Assignment or Subleasing by Lessee</u>	8
Section 12.03. <u>Release and Indemnification Covenants</u>	8
ARTICLE XIII. EVENTS OF DEFAULT AND REMEDIES	9
Section 13.01. <u>Events of Default</u>	9
Section 13.02. <u>Remedies On Default</u>	10
Section 13.03. <u>No Remedy Exclusive</u>	10
Section 13.04. <u>Force Majeure</u>	10
ARTICLE XIV. MISCELLANEOUS	11
Section 14.01. <u>Notices</u>	11
Section 14.02. <u>Binding Effect</u>	11
Section 14.03. <u>Severability</u>	11
Section 14.04. <u>Amendments</u>	11
Section 14.05. <u>Execution in Counterparts</u>	11
Section 14.06. <u>Applicable Law</u>	11
Section 14.07. <u>Captions</u>	11
Section 14.08. <u>Audited Statements</u>	11
Section 14.09. <u>Lessor Notice</u>	11
ARTICLE XV. DEFEASANCE	12
ARTICLE XVI. ARBITRATION	12
<u>EXHIBITS</u>	
Exhibit A - List of Closing Documents	A-1
Exhibit B - Certificate of Lessee	B-1
Exhibit C - Insurance Coverage Requirements	C-1
Exhibit D - Description of the Equipment	D-1
Exhibit E - Resolution of Governing Body	E-1
Exhibit F - Opinion of Lessee's Counsel	F-1
Exhibit G - Schedule of Payments	G-1

LEASE-PURCHASE AGREEMENT

This Lease-Purchase Agreement dated October 11, 1993 (the "Agreement") entered into between Bank of America Oregon, a chartered bank in Oregon ("Lessor"), and City of Wilsonville ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of Oregon ("State");

W I T N E S S E T H:

WHEREAS, Lessor desires to lease the Equipment, as hereinafter defined, to Lessee, and Lessee desires to lease the Equipment from Lessor, subject to the terms and conditions of and for the purposes set forth in this Agreement; and

WHEREAS, Lessee is authorized under the Constitution and laws of the State to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises hereinafter contained, the parties hereby agree as follows:

ARTICLE I.

COVENANTS OF LESSEE

Lessee represents, covenants and warrants, for the benefit of Lessor and its assignees, as follows:

- (a) Lessee is a public body corporate and politic duly organized and existing under the Constitution and laws of the State with full power to enter into this Agreement and the transaction contemplated hereby, and to perform all of its obligations hereunder.
- (b) Lessee has delivered to Lessor each of the closing documents (the "Closing Documents") listed on Exhibit A in conjunction with the delivery of this Agreement.

ARTICLE II.

DEFINITIONS

"Agent" means any agent for the Registered Owners, if any, to which all or a part of Lessor's right, title and interest in, to and under this Agreement may be assigned for the benefit of Registered Owners.

"Code" means the Internal Revenue Code of 1986, as amended, and to the extent applicable, the regulations and rulings issued thereunder.

"Commencement Date" is the date when the term of this Agreement begins and Lessee's obligation to pay rent accrues, which date shall be the date first above written.

"Equipment" means the property described in Exhibit D and which is the subject of this Agreement.

"Lease Participation Certificates" means certificates evidencing a right to receive a pro rata share of Rental Payments and Purchase Price payments.

"Lease Term" means the period between the date hereof and the last day of the fiscal year which includes the due date of the last Rental Payment.

"Purchase Price" shall be equal to the sum of (a) the Early Purchase Price, as shown on Exhibit G to be the applicable price after the last prior Rental Payment is and has been made, (b) accrued interest thereon, which shall be computed by a per diem calculation of the interest portion of the next due Rental Payment, divided by the number of days between such due date and the prior immediate due date, multiplied by the number of days elapsing between the two as of the date of payment, (c) any unpaid charges for or interest on late payments, and (d) any other amounts payable to Lessor hereunder as reimbursements or repayments for advances.

"Registered Owners" means the registered owners of Lease Participation Certificates, if any, shown in the registration books maintained by the Agent.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Exhibit G of this Agreement.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer.

ARTICLE III.

LEASE OF EQUIPMENT

Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment, in accordance with the provisions of this Agreement, to have and to hold for the Lease Term.

ARTICLE IV.

LEASE TERM

This Agreement shall be in effect and shall commence as of the Commencement Date and will remain in effect throughout the Lease Term. The Lease Term will terminate upon the first to occur of: (a) the exercise by Lessee of the option to purchase the Equipment under Article XI; (b) Lessor's election to terminate this Agreement upon a default under Article XIII; or (c) the payment by Lessee of all sums required to be paid by Lessee under Article XV.

ARTICLE V.

ENJOYMENT OF EQUIPMENT

Section 5.01. Quiet Enjoyment. Lessor hereby covenants to provide Lessee during the Lease Term with quiet use and enjoyment of the Equipment.

Section 5.02. Use of the Facilities. Lessee will not install, use, operate or maintain the Equipment improperly, carelessly, in violation of any applicable law or in a manner contrary to that contemplated by this Agreement.

Section 5.03. Right of Inspection. During the Lease Term, the Lessor and its officers, employees and agents shall have the right at all reasonable times during business hours to enter into and upon the property of the Lessee for the purpose of inspecting the Equipment.

Section 5.04. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY NOR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR FITNESS FOR USE OF THE EQUIPMENT, OR ANY OTHER WARRANTY WITH RESPECT THERETO AND, AS TO THE LESSOR, THE LESSEE LEASES THE EQUIPMENT "AS IS." In no event shall the Lessor be liable for any loss or damage, including incidental, indirect, special or consequential damage, in connection with or arising out of this Agreement or the existence, furnishing, functioning or the Lessee's use of any item or products or services provided for in this Agreement.

Section 5.05. Vendors' Warranties. Lessee may assert claims and rights that the Lessor may have against any Vendor of any portion of the Equipment.

ARTICLE VI.

RENTAL PAYMENTS

Section 6.01. Rental Payments to Constitute a Binding Contractual Obligation of Lessee. Lessor and Lessee understand and intend that the obligation of Lessee to pay Rental Payments hereunder shall constitute a binding contractual obligation of Lessee. Lessee reasonably believes that funds can be obtained sufficient to make all Rental Payments during the Lease Term and hereby covenants that it will do all things lawfully within its power to obtain, maintain and properly request and pursue funds from which the Rental Payments may be made, including making provisions for such payments to the extent necessary in each budget submitted for the purpose of obtaining funding, using its best efforts to have such portion of the budget approved and exhausting all available administrative reviews and appeals in the event such portion of the budget is not approved. Lessee shall make Rental Payments for the full Lease Term if funds are legally available therefor, and in that regard Lessee represents that the Equipment will be used for one or more authorized governmental or proprietary functions essential to its proper, efficient and economic operation.

Section 6.02. Payment of Rental Payments. Lessee shall pay Rental Payments to Lessor or to its assignee in the amounts and at least ten (10) business days prior to the dates set forth in Exhibit G hereto. Each installment of Rental Payment payable hereunder shall be paid in lawful money of the United States of America in immediately payable funds to or upon the order of the Lessor at:

Bank of America Oregon
Public Finance #8832
P.O. Box 3066
Portland, Oregon 97208

Section 6.03. Interest and Principal Components. A portion of each Rental Payment is paid as interest, and the balance of each Rental Payment is paid as principal. Exhibit G hereto sets forth the interest component and the principal component of each Rental Payment during the Lease Term.

Section 6.04. Rental Payments. The obligations of Lessee to make Rental Payments, and to perform and observe the covenants and agreements contained herein, shall be unconditional in all events notwithstanding any dispute between Lessee and Lessor, any Vendor or any other person. Lessee shall not assert any right of set-off or counterclaim against its obligation to make payments under this Agreement.

Section 6.05. Late Payment Interest Supplement. On each occasion, if any, when a payment is not made by Lessee as provided in 6.02 above, Lessee shall pay Lessor a Late Payment Interest Supplement equal to five percent (5.0%) of the amount due as described in Exhibit G hereto. This amount shall be in addition to the scheduled payment ordinarily due. Lessee agrees that the customary business records of Lessor shall conclusively determine the applicability of this Section 6.05 and that any receipt of payment on or after the dates described in Exhibit G shall constitute a late payment for purposes of this Section 6.05. Lessor's right to receive Late Payment Interest Supplement shall be in addition to all other rights and remedies provided in this Agreement.

ARTICLE VII.

TITLE TO EQUIPMENT; SECURITY INTEREST

Section 7.01. Title to Equipment; Security Interest. Upon acceptance of the Equipment by Lessee hereunder, title to the Equipment will vest in Lessee; provided, however, that (i) upon the occurrence of an Event of Default hereunder, and as long as such Event of Default is continuing; or (ii) in the event that the purchase option has not been exercised prior to the Expiration Date, title will immediately vest in Lessor or its Assignee. In order to secure all of its obligations hereunder, Lessee hereby (i) grants to Lessor a first and prior security interest in any and all right, title and interest of Lessee in the Equipment and in all additions, attachments, accessions, and substitutions thereto, and on any proceeds therefrom; (ii) agrees that this Agreement may be filed as a financing statement evidencing such security interest; and (iii) agrees to execute and deliver all financing statements, certificates of title and other instruments necessary or appropriate to evidence such security interest.

Section 7.02. Liens and Encumbrances to Title. Lessee shall promptly discharge any mechanics' or materialmen's liens placed on the Equipment by any agent, contractor or supplier of the Lessee.

ARTICLE VIII.

MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 8.01. Maintenance of Equipment by Lessee. Lessee will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair, working order and condition. If requested by Lessor, Lessee will enter into a maintenance contract for the Equipment with Vendor.

Section 8.02. Taxes, Other Governmental Charges and Utility Charges. In the event that the use, possession or acquisition of the Equipment is found to be subject to taxation in any form (except for income taxes of Lessor), government charges or utility charges and expenses, Lessee will pay all such taxes and charges as they come due.

Section 8.03. Provisions Regarding Insurance. At its own expense Lessee shall cause all risk physical damage insurance to be carried and maintained (and evidenced by certificates delivered to Lessor throughout the Lease Term) in the amounts and for the coverages set forth on Exhibit C, provided that the amount of all risk physical damage insurance shall not be less than the then applicable Early Purchase Price. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement.

Section 8.04. Advances. In the event Lessee shall fail to maintain the full insurance coverage required by this Agreement or shall fail to keep the Equipment in good repair and operating condition, Lessor may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and all amounts so advanced therefor by Lessor shall be repaid to Lessor, together with interest thereon at the rate specified hereafter.

Section 8.05. Modifications. Without the prior written consent of the Lessor, which consent shall not be unreasonably withheld, the Lessee shall not make any material alterations, modifications or attachments to the Equipment.

ARTICLE IX.

DAMAGE, DESTRUCTION AND CONDEMNATION: USE OF NET PROCEEDS

Section 9.01. Damage, Destruction and Condemnation. If (a) the Equipment or any portion thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of the Equipment or any part thereof is taken under the exercise of the power of eminent domain, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied either to the prompt repair, restoration, modification or replacement of the Equipment or, at Lessee's option, to the payment in full of the Early Purchase Price. Any balance of the Net Proceeds remaining after such work or purchase has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article IX, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorney's fees) incurred in the collection of such claims or award.

Section 9.02. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any repair, restoration, modification or replacement, Lessee shall (a) complete the work and pay any cost in excess of the amount of Net Proceeds, (b) Lessee shall pay to Lessor the Purchase Price or (c) in the event that Lessee is obligated to make such payment with respect to less than all of the Equipment, Lessor will provide Lessee with the pro rata amount of the Lease Payment and the Concluding Payment (as set forth in Exhibit G) to be made by Lessee with respect to that part of the Equipment which has suffered the Event of Loss.

ARTICLE X.

TAX COVENANT

It is the intention of the Lessee and the Lessor that the interest portion of the Rental Payments received by the Lessor be and remain exempt from federal income taxation. Lessee covenants that it will take any and all action necessary to maintain the exemption from federal income taxation of the interest portion of the Rental Payments, and that it will not perform any act or enter into any agreement or use or permit the use of the Equipment or any portion thereof in a manner that shall have the effect of terminating the exemption from federal income taxation of the interest portion of the Rental Payments, including (without limitation) leasing all or any portion of the Equipment or contracting to a third party for the use or operation of all or any portion of the Equipment if entering into such lease or contract would have such effect.

ARTICLE XI.

OPTION TO PURCHASE

Section 11.01. Purchase Rights. Lessee shall be entitled to purchase the Equipment:

(a) upon payment in full of all Rental Payments in accordance with Exhibit G hereof and all other amounts due hereunder; or

(b) upon written notice delivered at least 30 days in advance of a proposed date for payment, and upon the payment on such date of the Early Purchase Price as described in Exhibit G hereof.

ARTICLE XII.

ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01. Assignment or Sale by Lessor.

(a) This Agreement, and the obligations of Lessee to make payments hereunder, may be sold, assigned or otherwise disposed of in whole or in part to one or more successors, grantors, holders, assignees or subassignees by Lessor and, to the extent of their interest, by any Registered Owner, without the necessity of obtaining the consent of Lessee; provided that (i) any assignment, other than an assignment to or by a Registered Owner, shall not be effective until Lessee has received written notice signed by the assignor, of the name, address and tax identification number of the assignee, and (ii) any assignment to or by a Registered Owner shall not be effective until it is registered on the registration books kept by the Agent. During the term of this Agreement, Lessee as register of all assignees (other than Registered Owners) shall keep a complete and accurate register of all such assignments in form necessary to comply with Section 149(a) of the Code.

(b) Upon receipt of the document evidencing the assignment, as provided for in (a) above, Lessee agrees to make all payments to the assignee designated in the assignment or, in the case of Registered Owners, to the Agent, notwithstanding any claim, defense, set off or counterclaim whatsoever (whether arising from a breach of this Agreement or otherwise) that Lessee may from time to time have against Lessor or Vendor. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, which may be reasonably requested by Lessor or assignee to protect its interests in the Equipment and in this Agreement.

(c) Lessee hereby agrees that Lessor may sell or offer to sell this Agreement (i) through Lease Participation Certificates, whereby two or more interests are created in the Agreement, the Equipment or the Rental Payments; or (ii) with other similar instruments, agreements and obligations through a pool, trust, limited partnership, or other entity. If this Agreement or any part thereof is sold, assigned or otherwise disposed, any such assignee or purchaser shall have the right of set-off against the Lessee.

Section 12.02. No Sale, Assignment or Subleasing by Lessee. Lessee agrees that this Agreement and the interest of Lessee in the Equipment may not be sold, assigned or encumbered by Lessee without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

Section 12.03. Release and Indemnification Covenants. To the extent permitted by the laws and Constitution of the State, and not to exceed the limits of public liability insurance

coverage as set forth in Exhibit C hereto, Lessee shall protect, hold harmless and indemnify Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof (other than Lessor's own negligence or willful conduct), and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Agreement, the ownership of any item of the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any item of the Equipment resulting in damage to property or injury to or death to any person. The indemnification arising under this paragraph shall survive the termination of this Agreement.

ARTICLE XIII.

EVENTS OF DEFAULT AND REMEDIES

Section 13.01. Events of Default. The following constitute "Events of Default" under this Agreement:

(a) failure by the Lessee to pay any Rental Payment or other payment required to be paid hereunder when due; or

(b) failure by the Lessee to maintain insurance on the Equipment in accordance with Section 8.03 hereof; or

(c) failure by the Lessee to observe and perform any other covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice is given to the Lessee by the Lessor, specifying such failure and requesting that it be remedied; provided, however, that if the failure stated in such notice cannot be corrected within such 30-day period, the Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Lessee within the applicable period and diligently pursued until the default is corrected; or

(d) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(e) An order, judgement or decree shall be entered by any court of competent

jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

The foregoing provisions of this Section are subject to the provisions of Section 6.06 hereof.

Section 13.02. Remedies On Default. Whenever any Event of Default shall have occurred and be continuing, the Lessor shall have the right, at its sole option without any further demand or notice, to take any one or any combination of the following remedial steps:

(a) Without terminating this Agreement, and by written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current budget year of Lessee to be due, including without limitation delinquent rental payments from prior budget years;

(b) With or without terminating this Agreement, Lessor may enter the premises where the Equipment is located and retake possession of the Equipment or require Lessee at Lessee's expense to promptly return any or all of the Equipment to the possession of Lessor at such place within the United States as Lessor shall specify, and sell or lease the Equipment or, for the account of Lessee, sublease the Equipment, continuing to hold Lessee liable for the difference between (i) a sum sufficient to exercise Lessee's option to terminate this Agreement under Section 11.01(b) as well as any other sums due hereunder, and (ii) the new proceeds of any such sale, lease or sublease (after deducting all expenses of Lessor in exercising its remedies under this Agreement, including without limitation all expenses of taking possession, removing, storing, recondition, selling, leasing, or subleasing the Equipment and all brokerage, auctioneer's or attorney's); and

(c) Terminating this Agreement, by written notice to Lessee, accelerate all outstanding Rental Payments, in which case Lessee agrees to pay to Lessor a sum sufficient to exercise Lessee's option to terminate this Agreement under Section 11.01(b) as well as any other sums due hereunder; and upon such payment by Lessee, Lessor's right, title and interest in the Equipment shall terminate.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

Section 13.04. Force Majeure. If by reason of force majeure Lessee is unable in whole or in part to carry out its agreement on its part herein contained, other than the obligations on the part of Lessee contained in Article VI and Section 8.03 hereof, Lessee shall not be deemed

in default during the continuance of such inability. The term "force majeure" as used herein shall mean, without limitation, the following: acts of God, strikes, lockouts or other industrial disturbances; acts of public enemies, orders or restraints of any kind of the government of the United States of America or the State or any of their departments, agencies or officials, or any civil or military authority; insurrections; riots; landslides; earthquakes; fires; storms; droughts; floods; or explosions.

ARTICLE XIV.

MISCELLANEOUS

Section 14.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses set forth below:

Bank of America
Public Finance #8832
P.O. Box 3066
Portland, Oregon 97208

City of Wilsonville
30000 S.W. Town Center Loop East
Wilsonville, Oregon 97070

Section 14.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 14.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 14.04. Amendments. All amendments hereto must be in writing.

Section 14.05. Execution in Counterparts. This Agreement may be executed in several counterparts.

Section 14.06. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

Section 14.07. Captions. Titles and Captions are not a part of this Agreement.

Section 14.08. Audited Statements. Lessee will submit audited financial statements to Lessor within 180 days after the end of Lessee's Fiscal Year.

Section 14.09. Lessor Notice. Lessee will provide Lessor with written notice of any litigation over \$100,000 which would materially change the City's financial condition or

operation, any substantial dispute with any government authority or law enforcement authority and any material adverse changes in its financial condition or operations.

ARTICLE XV.

DEFEASANCE

The Lessee's obligation to pay the Purchase Price will be deemed to be paid and the Lessee's obligations under this Agreement will be discharged and satisfied upon the deposit by the Lessee with the Lessor of (a) moneys sufficient to pay the Purchase Price or (b) obligations which are directly insured or guaranteed by the United States or, with the prior written consent of the Lessor, any other obligations in which any sinking fund for bonds issued by the Lessee may legally be invested, the principal of and interest on which when due will provide sufficient moneys for such payment.

ARTICLE XVI.

ARBITRATION

Section 16.01. Arbitration Generally. This Article XVI concerns the resolution of any controversies or claims between the Lessor and the Lessee, including but not limited to those that arise from:

- (a) This Agreement (including any modifications of this Agreement);
- (b) Any document, agreement or procedure related to or delivered in connection with this Agreement;
- (c) Any violation of this Agreement; or
- (d) Any claims for damages resulting from any business conducted between the Lessee and the Lessor, including claims for injury to persons, property or business interests (torts).

Section 16.02. Arbitration Act. At the request of the Lessee or the Lessor, 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 Agreement provides that it is governed by Oregon law.

Section 16.03. Arbitration Rules. Arbitration proceedings will be administered by the American Arbitration Association and will be subject to its commercial rules of arbitration.

Section 16.04. Statute of Limitations. 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.

Section 16.05. Authority to Arbitrate. If there is a dispute as to whether an issue is arbitrable, the arbitrators will have the authority to resolve any such dispute.

Section 16.06. Enforcement of Arbitration. The decision that results from an arbitration proceeding may be submitted to any authorized court of law to be confirmed and enforced.

Section 16.07. Arbitration Not Limitation. This provision does not limit the right of the Lessee or Lessor to:

- (a) exercise self-help remedies such as set-off;
 - (b) foreclose against or sell any real or personal property collateral;
- or
- (c) act in a court of law, before, during or after the arbitration proceeding to obtain:
 - (1) a provisional or interim remedy; and/or
 - (2) additional or supplementary remedies.


Section 16.08. No Waiver. The pursuit of or a successful action for provisional, interim, additional or supplementary remedies, or the filing of a court action, does not constitute a waiver of the right of the Lessee or Lessor, including the suing party, to submit the controversy or claim to arbitration if the other party contests the lawsuit.

IN WITNESS WHEREOF, Lessor has executed this Agreement in its corporate name, attested by its duly authorized officers, and Lessee has caused this Agreement to be executed in its corporate name, attested by its duly authorized officers. All of the above occurred as of the date first written on the heading hereof.

LESSOR:

BANK OF AMERICA OREGON

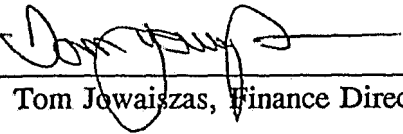
Attest:

By: 
Title: Vice President

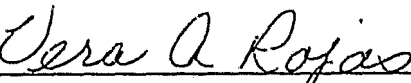
By: _____
Title: _____

LESSEE:

CITY OF WILSONVILLE

By: 
Tom Jowaiszas, Finance Director

Attest:

By: 
Vera A. Rojas, CMC/AAE, City Recorder

Approved as to Legal Form:

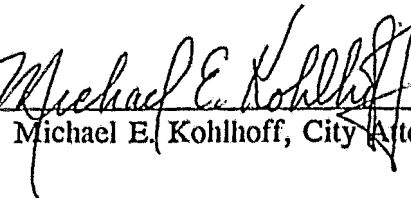
By: 
Michael E. Kohlhoff, City Attorney

Exhibit A

List of Closing Documents

1. Exhibit B: Certificate of Lessee
2. Exhibit C: Insurance Coverage Requirements
3. Exhibit D: Equipment Description
4. Exhibit E: Resolution of Lessee's Governing Body
5. Exhibit F: Opinion of Lessee's Counsel
6. Exhibit G: Schedule of Payments
7. Form 8038G/GC
8. UCC -1 Financing Statements
9. Instruments of Title to Equipment, if necessary

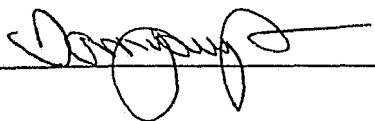
EXHIBIT B

Certificate of Lessee

THE UNDERSIGNED, a duly authorized representative of the City of Wilsonville the named Lessee under that certain Lease-Purchase Agreement dated October 11, 1993 with Bank of America Oregon as Lessor (the "Agreement") hereby certifies as follows and in accordance with the requirements of the Agreement. Capitalized terms used herein have the same meaning as in the Agreement:

A. INCUMBENCY OF OFFICERS AND SIGNATURES:

I hold the position noted under my signature, and I have all authority necessary to execute and deliver this Certificate. The following officers of the Lessee are duly elected or appointed, and the signatures opposite their names are true and correct, and where required, have been filed with the appropriate officials of the State:



Title: Finance Director

Title: _____

B. ESSENTIAL USE:

1. The Equipment will be used by the following governmental agency or authority of the Lessee (the "Agency") for the specific purpose of: providing the Agency with a financial information system.

2. The Equipment is essential for the functioning of the Agency and is immediately needed by the Agency. Such need is neither temporary nor expected to diminish during the Lease Term. The Equipment is expected to be used by the Agency for a period in excess of the Lease Term.

3. Funds are expected to come from the General Fund of the Lessee.

C. TAX AND SECTION 148 MATTERS:

1. This Certificate is being executed and delivered pursuant to Section 148 ("Section 148") of the Code and Sections 1.103-13, 1.103-14 and 1.103-15 of the Income Tax Regulations issued under the Internal Revenue Code of 1954, as amended (the "Arbitrage Regulations"). I

am the officer of the Lessee responsible for the execution and administering of the Agreement.

2. The Lessee covenants and agrees that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the proceeds of the Agreement or of any moneys, securities or other obligations which may be deemed to be proceeds of the Agreement pursuant to Section 148 or the Arbitrage Regulations (collectively, the "Bond Proceeds") that would cause the Agreement to be an "arbitrage bond" within the meaning of Section 148 and the Arbitrage Regulations and that it will comply with those provisions of Section 148 and the Arbitrage Regulations as may be applicable to the Agreement as long as the Agreement remains outstanding and unpaid.

3. The Lessee covenants that it shall provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Agreement, as may be necessary or appropriate from time to time to comply with, or to evidence the Lessee's compliance with the covenants set forth herein.

4. Lessee reasonably expects that there will be no "proceeds" subsequent to the date hereof (as defined in Subsection (b) of Section 1.148-1 of the Income Tax Regulations) of the Agreement.

5. None of the proceeds of the Agreement or the investment earnings thereon will be used (directly or indirectly) in any trade or business carried on by any person other than a "governmental unit" within the meaning of Section 141(b)(6) of the Code.

6. None of the proceeds of the Agreement are to be used (directly or indirectly) to make or finance any loans to nongovernmental entities.

7. The Lessee expects that moneys will be appropriated annually for the payment of the Rental Payments under the Agreement. Rental Payments will be paid directly from the general fund of the Lessee. Moneys used to pay debt service will not be separately identified as such within the general fund, will not be invested as a separate account and will not be independently pledged to the repayment of the Agreement.

8. The Lessee does not expect to sell or otherwise dispose of the Equipment at a date which is significantly earlier than the last Rental Payment pursuant to the Agreement.

D. SECTION 265(b)(3) MATTERS:

1. Lessee, by this certificate, hereby designates the Agreement as a "qualified tax-exempt obligation" under Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

2. Lessee does not reasonably anticipate that the amount of obligations to be issued by the Lessee during the current calendar year, exempt under Section 148 of the Code (other than

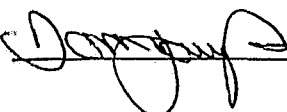
"private activity bonds," as defined in Section 141 of the Code), will exceed \$10,000,000 (such obligations to be referred to as "Exempt Government Obligations").

3. Lessee (a) maintains a register or list of Exempt Government Obligations, (b) files when required Form 8038G or Form 8038GC, and (c) therefore can certify that the total Exempt Government Obligations issued to date in the current calendar year, including the Agreement, is \$1,878,824.08.

This Certificate is based upon facts, circumstances, estimates and expectations of the Lessee as of the date on which the Agreement was executed, and to the best of my knowledge and belief, as of this date, such facts, circumstances and estimates are true and correct and such expectations are reasonable.

IN WITNESS WHEREOF, I have executed and delivered this certificate as of the 11 day of October, 1993.

WITNESS:

Name: 

Name: _____

Title: Finance Director

Title: _____

EXHIBIT C

Insurance Coverage Requirements

TO: Bank of America Oregon
1001 S.W. Fifth Avenue
Portland, Oregon 97204

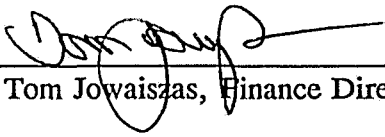
FROM: City of Wilsonville
30000 S.W. Town Center Loop East
Wilsonville, Oregon 97070

SUBJECT: INSURANCE COVERAGE REQUIREMENTS

No. 1 The City of Wilsonville is insured as a member of the City County Insurance Services (CCIS), a self-insurance trust pool of city and county governments. The City has a \$2 million combined, single limit coverage. The City has provided a copy of the Equipment provided for in this Agreement to CCIS to provide coverage as set forth in Section 8.03 of this Agreement.

The City of Wilsonville has no intent to change its coverage from CCIS to another company or entity, but in the event it were to do so, the City of Wilsonville would provide Bank of America Oregon with 30 days prior notice and would take all lawful steps necessary to continue coverage in keeping with Section 8.03 of this Agreement.

CITY OF WILSONVILLE

By: 

Tom Jowaiszas, Finance Director

Dated: October 11, 1993

Exhibit D

Description of the Equipment

	<u>Page</u>
Attached: "Proposed Executive Summary"	3
"Proposed Software Investment"	5&6
"Proposed Hardware Investment"	7-9

Proposed Investment Summary

Application Software and Hardware

<u>Description</u>	<u>Acquisition</u>
Therefore's Financial Applications	55,000
ADMINS/V32 Language and Data Inquiry Toolkit (16 users)	43,000
Hardware, Operating System	56,517
Hardware and Operating System Installation and Training	Included
Electronic Mail	Included
Application Installation	Included
Unlimited Application Training	Included
Travel and Misc. Expenses	No Charge
Data Conversion	Included
Forms Design	Included
Customizations	Included
Project Management	Included
System Management Consultation	Included
Acquisition Sub-Total	154,517
¹ Allowance from ∴ Therefore Systems, Inc.™	(16,885)
Acquisition Total	\$ 137,632
9 Months Application Maintenance	5,156
9 Months ADMINS Maintenance	4,838
1st Year Hardware Maintenance	5,012
GRAND TOTAL YEAR ONE	\$ 152,638

¹ This allowance is based upon the proposed configuration: the combination of all software and hardware components. If the final configuration is reduced, the allowance will be adjusted accordingly and this quoted allowance figure will no longer be valid.

2. PROPOSED SOFTWARE INVESTMENT

Therefore Systems, Inc. Applications

Purchase and Maintenance

The amounts for the software licenses listed below *include* conversion, training and installation costs — all at one fixed price. No hidden costs — no per-diem. The amounts listed below are for a 16 concurrent-user application license. If there is a need for more, the price would change accordingly.

Line#	Description	License	Annual Maint.
1.	Fund Accounting and Journal Vouchers	9,225	1,153
2.	Cost Accounting	6,589	824
3.	Budget Preparation	6,589	824
4.	Accounts Payable/Encumbrances	4,612	577
5.	Purchasing and Receiving	4,612	577
6.	Utility Billing System	7,907	988
7.	Cash Receipting System	5,271	659
8.	Miscellaneous A/R — Transit Tax System	5,271	659

9.	Fixed Asset Accounting System	6,589	824
10.	Payroll	7,000	875
11.	Business Licenses	6,589	824
12.	LID Billing dropped	0	0
	Applications Sub-Total	\$70,254	\$8,784
	Discount when Hardware and Software are purchased from ∴ Therefore Systems, Inc.™	<15,254>	<1,909>
	Sub-Total Investment for Applications	\$ 55,000	\$ 6,875
	Maintenance Prorated for 9 months		x.75
	Total Investment for Applications	\$ 55,000	\$ 5,156

ADMINS/V32 Purchase and Maintenance

1.	ADMINS/V32 16 user Run-Time License Data Inquiry Toolkit, Inquiry Tools, Report Writers, Financial Analyzer, Data Editors, Data Dictionary, Screen Builders	43,000	6,450
	Sub-Total Investment for 16 User ADMINS/V32	\$ 43,000	\$ 6,450
	Maintenance Prorated for 9 months		x.75
	Total Investment for 16 User ADMINS/V32	\$ 43,000	\$ 4,838

3. PROPOSED HARDWARE INVESTMENT

Hardware Purchase

<u>Line#</u>	<u>Description</u>	<u>#</u>	<u>Unit</u>	<u>Extension</u>	<u>Total</u>
1.	DEC 3000-400S 32 MB Memory, 1.05 GB Disk, 4 GB Load/Archive Unit, CD-ROM 24 communication ports, and misc. cables	1	24,310	24,310	24,310
2.	16 concurrent-user OpenVMS operating system.	1	4,866	4,866	4,866
3.	VT420, dual-session, monochrome video terminal (white, green or amber)	3	509	1,527	1,527
4.	Racal Vadic 9600 Baud Modem	11	800	8,800	8,800
5.	Digital LN08 Laser Printer 13 Pages-Per-Minute	1	3,599	3,599	3,599
6.	Cash Drawer by Indiana Cash Register locking cash drawer, with locking money tray	2	500	1,000	1,000

7.	Receipt Printer by StarMicroics printer with validation kit	2	600	1,200	1,200
8.	KeaTerm 420 Terminal Emulation (One 10-packs)	1	1,840	1,840	1,840
12.	Macintosh Terminal Emulation	7	150	1,050	1,050
13.	OCR hardware	1	2,600	2,600	2,600
14.	Freight	1	450	450	450
15.	Insurance	1	275	275	275
16.	T4Start™ Services Which includes Hardware and Operating System Installation and Training: Complete on site installation Initial Software Media and Documentation Initial Operating System Software Installation THERE4SetUP providing on-site consulting services in order to familiarize staff with the operating system and hardware. One year Media and Documentation Distribution Service - Ensures client has access to the latest software versions and documen- tation relating to the system hardware and operating system.	1	5,000	5,000	5,000
	Total investment for Hardware				\$56,517

Hardware/Operating System Maintenance

The following figures are the annual costs for hardware and operating system maintenance for the first year of operation, commencing upon installation. For an additional 10% fee the service level may be upgraded from a 4 to a 2 hour guaranteed response time.

<u>Line#</u>	<u>Description</u>	<u>Quantity</u>	<u>Unit</u>	<u>Total</u>
1.	DEC 3000-400 32 MB Memory, 1.05 GB Disk, Load/Archive Units, 32 communication ports, and misc. cables	1	3,662	3,662
2.	16 concurrent-user OpenVMS operating system.	1	360	360
4.	VT420, dual-session, monochrome video terminal (white, green or amber)	3	42	126
5.	Digital LN08 Laser Printer 13 Pages-Per-Minute	1	864	864
	Total Annual Hardware Maintenance			\$5,012

Exhibit E

RESOLUTION NO. 1056

A RESOLUTION AUTHORIZING FINANCE DIRECTOR TO ENTER INTO LEASE-PURCHASE AGREEMENT WITH BANK OF AMERICA AND FUNDING AND REDESIGNATING LEASE-PURCHASE AGREEMENT TO BE TAX EXEMPT UNDER INTERNAL REVENUE CODE.

WHEREAS, the City of Wilsonville, pursuant to Resolution No. 1037, "A Resolution Selecting the Proposal of Therefore Systems, Inc. for the Purchase of a Financial Information Hardware and Software System for the City of Wilsonville and Approving Lease/Option Financing by Bank of America for Said System", has determined that a true and very real need exists for the acquisition of the Equipment described in the Lease-Purchase Agreement, marked Exhibit A, attached hereto and incorporated by reference as if fully set forth herein; and

WHEREAS, the Finance Director, under the authority granted pursuant to Resolution No. 1037, having followed the Oregon Attorney General's Model Rules for Public Contracting, has arranged for the acquisition of the Equipment and entered into the Lease-Purchase Agreement with Bank of America;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council of the City of Wilsonville adopts, approves and ratifies the terms and conditions for the Lease-Purchase with Bank of America, as set forth in Exhibit A and entered into by the Finance Director, Tom Jowaiszas, on behalf of the City and further authorizes his entering into on behalf of the City any related documents necessary to the consummation of the transaction contemplated by the Lease-Purchase Agreement;

2. The City Council finds and represents that the reasonably anticipated amount of qualified tax-exempt obligations which have been and will be issued by the Lessee does not exceed \$10,000,000 for the calendar year within which this Lease-Purchase Agreement is entered and hereby designates this Lease-Purchase Agreement is to be a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Internal Revenue Code.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting

thereof this 18th day of October, 1993, and filed with the Wilsonville City Recorder this same date.

GERALD A. KRUMMEL, Mayor

ATTEST:

VERA A. ROJAS, CMC/AAE, City Recorder

SUMMARY of Votes:

Mayor Krummel _____
Councilor Carter _____
Councilor Hawkins _____
Councilor Lehan _____
Councilor Van Eck _____

City of
WILSONVILLE
in OREGON

Exhibit F

Opinion of Lessee's Counsel

30000 SW Town Center Loop E
Wilsonville, Oregon 97070
FAX (503) 682-1015
(503) 682-1011

Lessee: City of Wilsonville
30000 SW Town Center Loop East
Wilsonville, OR 97070

October 13, 1993

Bank of America Oregon
1001 SW Fifth Avenue
Portland, OR 97204

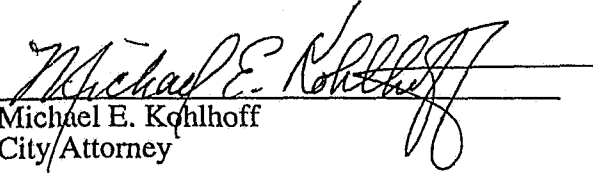
Gentlemen:

As counsel for City of Wilsonville ("Lessee"), I have examined duly executed originals of the Lease-Purchase Agreement (the "Agreement") dated October 11, 1993, between Lessee and Bank of America Oregon ("Lessor"), and the proceedings taken by Lessee to authorize and execute the Agreement. Based upon the examination and upon such other examination as I have deemed necessary or appropriate, I am of the opinion that:

1. Lessee is a public body corporate and politic, legally existing under the laws of the State of Oregon.
2. The Agreement has been duly authorized, executed and delivered by Lessee, pursuant to constitutional, statutory and/or home rule provision which authorizes this transaction and Resolution No. 1056 attached as Exhibit E to the Agreement.
3. The Agreement is a legal, valid and binding obligation of Lessee, enforceable in accordance with its terms. In the event the Lessor obtains a judgment against Lessee in money damages, as a result of an event of default under the Agreement, Lessee will be obligated to pay such judgment.
4. Applicable public bidding requirements have been complied with.
5. To the best of my knowledge, no litigation is pending or threatened in any court or other tribunal, state or federal, in any way questioning or affecting the validity of the resolution or the Agreement.
6. The signatures of the officers of Lessee which appear on the Agreement are true and genuine; I know said officers and know them to hold the offices set forth below their names.

7. The Lessee is a political subdivision within the meaning of Section 148 of the Internal Revenue Code and the related regulations and rulings and the portion of payments identified as interest charges will not be includable in Federal gross incomes under statutes, regulations, court decisions and rulings existing on the date of this opinion and consequently, will be exempt from present Federal income taxes and income tax of the State of Oregon.

Respectfully submitted,



Michael E. Kohlhoff
City Attorney

mek:dp

BANK OF AMERICA OREGON

Payment Schedule for City of Wilsonville
Five (5) Year - Annual Payments

Rate: 5.15% Principal: 137,632.00
Total Cost: 151,790.07

Pmt Number =====	Nominal Due Date =====	Beginning Principal =====	Pmt Amount =====	to Principal =====	to Interest =====	Early Purchase Price =====
1	15-Oct-93	137,632.00	30,358.01	30,358.01	0.00	133,428.78
2	15-Oct-94	107,273.99	30,358.01	24,833.40	5,524.61	110,375.95
3	15-Oct-95	82,440.58	30,358.01	26,112.32	4,245.69	85,582.74
4	15-Oct-96	56,328.26	30,358.01	27,457.11	2,900.91	58,946.36
5	15-Oct-97	28,871.15	30,358.01	28,871.15	1,486.86	30,358.01