

ORDINANCE NO. 2000-088

AUTHORIZING THE CITY OF COLUMBIA, SOUTH CAROLINA, TO EXECUTE AND DELIVER AN EQUIPMENT LEASE PURCHASE AGREEMENT IN THE AMOUNT OF NOT EXCEEDING \$5,000,000 BETWEEN THE CITY AND THE LESSOR THEREOF TO DEFRAY THE COST OF ACQUIRING CERTAIN EQUIPMENT; AND OTHER MATTERS RELATING THERETO.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLUMBIA, SOUTH CAROLINA, IN COUNCIL ASSEMBLED, AS FOLLOWS:

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SECTION 1. The City Council of the City of Columbia, South Carolina, hereby finds and determines:

(a) The City of Columbia, South Carolina (the "City"), is an incorporated municipality located in Richland and Lexington Counties, South Carolina (the "County"), and as such has all powers granted to municipalities by the Constitution and general laws of this State.

(b) Section 5-7-40 of the Code of Laws of South Carolina, 1976, as amended, empowers all municipalities to own and possess real and personal property and such municipalities may lease any such property.

(c) The City desires to enter into a Lease Purchase Agreement (the "Lease Agreement") with Bank of America, N.A. (the "Lessor") for the purposes of financing the purchase of certain equipment, to wit: new computer facilities including software and installation charges (the "Equipment").

(d) The Lease Agreement will be subject to annual appropriation by the Council.

(e) Pursuant to a Request for Proposals distributed to various banks and financial institutions, the City received the following proposals regarding the Lease Agreement authorized by this Ordinance, as follows:

<u>Name of Bank</u>	<u>Interest Rate</u>
Bank of America, N.A.	4.52%
Wachovia	4.715
First Union National Bank	4.76%
SunTrust	4.83%
Branch Banking and Trust	5.01%
Carolina First Bank	5.24%
Municipal Trade Capital, Inc.	5.47%

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(f) It is in the best interest of the City to acquire the Equipment by entering into the Lease Agreement with the Lessor. The Lease Agreement will enable the City to purchase the Equipment for use by various departments within City government, which is necessary to the proper functioning of the City.

SECTION 2. Acceptance of Proposal. The proposal of Bank of America, N.A., dated December 15, 2000, a copy of which is attached hereto as *Exhibit A*, to provide the financing for the lease/purchase transaction authorized by this Ordinance is hereby approved and accepted. The Lease Agreement shall be in an amount not exceeding \$5,000,000. The Mayor of the City is hereby authorized to execute such proposal on behalf of the City.

SECTION 3. Approval of Transaction. The Council does hereby approve leasing the Equipment by the City from the Lessor pursuant to the Lease Agreement.

SECTION 4. Approval of Lease Agreement. The form, terms and provisions of the Lease Agreement be and hereby are approved and all of the terms, provisions and conditions thereof are hereby incorporated herein by reference as if the Lease Agreement were set out in this Ordinance in its entirety. A copy of the Lease Agreement shall be filed with the minutes of the meeting of City Council at which this Ordinance was enacted. The Mayor of the City be and he is hereby authorized, empowered and directed to execute, acknowledge and deliver, and the City Manager or City Clerk is hereby authorized, empowered and directed to attest the Lease Agreement in the name and on behalf of the City. The Lease Agreement is to be in substantially the form now before this meeting and hereby approved, or with such changes therein as shall be approved by the Mayor and City Manger, the Mayor's and City Manager's or City Clerk's execution thereof to constitute conclusive evidence of approval of any and all changes or revisions therein from the form of Lease Agreement now before this meeting.

SECTION 5. Authorization. The Mayor, the City Manager and the City Clerk, for and on behalf of the City, are fully empowered and authorized to take such further action and to execute and deliver such additional documents as may be necessary to effect the execution and delivery of the Lease Agreement in accordance with the terms and conditions therein set forth, and the transactions contemplated hereby and thereby, and the action of such officers in executing and delivering any of such documents, in such form as the Mayor and the City Manager shall approve, is hereby fully authorized.

SECTION 6. Federal Tax Covenant. The City, as lessee, agrees and covenants that it will comply with all applicable provisions of Section 103 and Sections 141 through 150 of the Internal Revenue Code of 1986, as amended (the "Code"), and any regulations promulgated thereunder, to maintain the exclusion from gross income for federal income tax purposes of the interest portion of the Lease Payments (as defined in the Lease Agreement) under the Lease Agreement; and to that end the City shall:

comply with the applicable provisions of Section 103 and Sections 141 through 150 of

the Code and any regulations promulgated thereunder so long as the Lease Agreement is outstanding;

establish such funds, make such calculations and pay such amounts in the manner and at the times required in order to comply with the requirements of the Code relating to required rebates of certain amounts to the United States;

make such reports of such information at the times and places required by the Code; and

not take any action which will, or fail to take any action which failure will, cause interest components of the Lease Payments to become includable in the gross income of the Lessor for federal income tax purposes pursuant to the provisions of the Code and regulations promulgated thereunder in effect on the date of original issuance of the Lease Agreement.

The City covenants that, in accordance with Section 265(b)(3) of the Code, it is hereby designating the Lease Agreement as a "qualified tax-exempt obligation" and that it does not reasonably anticipate that it will issue more than \$10,000,000 in tax-exempt obligations which are not "private activity bonds" during calendar year 2000, all within the meaning of Section 265(b) of the Code.

The City will timely file Form 8038-G in accordance with the applicable regulations of the Internal Revenue Service.

SECTION 7. Filings with Central Repository. In compliance with Section 11-1-85 of the South Carolina Code, the City covenants that it will file or cause to be filed with a central repository for further availability in the secondary bond market when requested: (a) a copy of the annual audit of the City within thirty (30) days of the City's receipt thereof; and (b) within thirty (30) days of the occurrence thereof, relevant information of an event which, in the opinion of the City, adversely affects more than five (5%) of the City's revenue or its tax base.

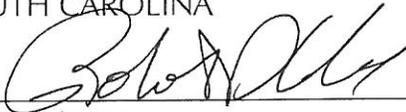
SECTION 8. Effective Date.

This Ordinance shall become effective upon its enactment.

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Enacted by the City Council of the City of Columbia, South Carolina, this 20th day of December, 2000.

CITY COUNCIL OF THE CITY OF COLUMBIA,
SOUTH CAROLINA

By: 
Mayor

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(SEAL)

ATTEST:


Clerk

Date of First Reading: ^{11 p.m.} 12/15/2000
Date of Second Reading: 12/20/2000

EXHIBIT A

Copy of Proposal of Bidder



December 15, 2000

PROPOSAL FOR 2000 LEASE PURCHASEMr. Mike West, City Manager
City of Columbia
1737 Main Street
Columbia, South Carolina 29217-0147

Dear Mr. West:

In response to your Request for Proposals dated December 1, 2000 (the "Request"), Bank of America, N.A. ("Bank of America") is pleased to offer a proposal to City of Columbia, South Carolina for lease purchase financing for certain personal property on the following terms and conditions:

1. LESSEE: City of Columbia, South Carolina.
2. LEASE AMOUNT: \$5,000,000, which must be fully-funded on the date of closing into an acquisition or escrow fund acceptable to Bank of America.
3. TERM: From the date of closing through and including April 1, 2006.
4. PURPOSE: To finance the cost of equipment described in the Request (collectively, the "Equipment").
5. INTEREST RATE: 4.52 % per annum fixed. Interest shall be computed on the basis of a 360-day year and actual number of days elapsed.

THE INTEREST RATE ON THE LEASE PURCHASE AGREEMENT IS SET TO APPROXIMATE A PARTICULAR PERCENTAGE YIELD TO BANK OF AMERICA BASED IN PART UPON FEDERAL AND STATE TAX LAWS AND REGULATIONS IN EFFECT AS OF THE DATE OF CLOSING, AND REFLECTS OUR UNDERSTANDING THAT THE INTEREST COMPONENT ON THE LEASE PURCHASE AGREEMENT WILL BE EXEMPT FROM FEDERAL INCOME TAXES UNDER THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "TAX CODE") AND THAT THE LEASE PURCHASE CONSTITUTES A "QUALIFIED TAX EXEMPT OBLIGATION" WITHIN THE MEANING OF SECTION 265(B) OF THE TAX CODE. BANK OF AMERICA WILL INCLUDE LANGUAGE IN THE LEASE PURCHASE DOCUMENTS WHICH WILL ASSURE SUCH YIELD. ADDITIONALLY, AS OF THE EFFECTIVE DATE OF ANY CHANGE IN FEDERAL OR STATE LAW OR REGULATIONS OR THE OCCURRENCE OF AN EVENT (I) WHICH CHANGES BANK OF AMERICA'S MAXIMUM STATUTORY TAX RATE, (II) WHICH RESULTS IN IMPOSITION OF A SPECIAL TAX OR OTHERWISE NEGATIVELY AFFECTS BANK OF AMERICA'S COST RELATIVE TO THIS TRANSACTION, (III) WHICH ADVERSELY AFFECTS THE DEDUCTIBILITY FOR TAX PURPOSES OF ANY AMOUNT ATTRIBUTABLE, DIRECTLY OR INDIRECTLY, TO THE PURCHASE AND COST OF HOLDING OR CARRYING THE LEASE PURCHASE AGREEMENT, OR (IV) WHICH CAUSES ALL OR PART OF THE PAYMENTS ON THE LEASE PURCHASE TO BECOME TAXABLE TO BANK OF AMERICA, THE ANNUAL INTEREST RATE APPLICABLE TO THE LEASE PURCHASE SHALL BE CHANGED, RETROACTIVELY IF NECESSARY, OR THE LESSEE WILL REIMBURSE BANK OF AMERICA, AT BANK OF AMERICA'S OPTION, SO THAT BANK OF AMERICA WILL RECEIVE A RETURN ON THE PRINCIPAL AMOUNT OF THE LEASE PURCHASE, NET OF ALL TAXES, CHARGES, DISALLOWANCES OF DEDUCTIBILITY, EQUAL TO THE TAX EXEMPT YIELD WHICH BANK OF AMERICA ANTICIPATED TO RECEIVE ON THIS LEASE PURCHASE ARRANGEMENT. UPON AN

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OCCURRENCE OF A DETERMINATION OF TAXABILITY, THE LESSEE WILL IMMEDIATELY REIMBURSE BANK OF AMERICA FOR ANY REDUCTION IN BANK OF AMERICA'S TAX-EXEMPT YIELD ON THE LEASE PURCHASE RESULTING FROM THE DETERMINATION OF TAXABILITY. BANK OF AMERICA, AT ITS OPTION, MAY WAIVE AN EVENT OF DEFAULT CAUSED BY ANY BREACH OF THIS COVENANT AND INCREASE THE ANNUAL INTEREST RATE TO COMPENSATE FOR ANY REDUCTION IN THE TAX-EXEMPT YIELD CAUSED BY ANY SUCH BREACH.

6. PAYMENTS: All accrued amounts of the interest component of the Lease payments shall be due and payable on April 1, 2001. Equal fully-amortizing installments of the principal and interest components of the Lease payments in the approximate amount of \$1,141,665.25 shall be due and payable on April 1, 2002 and each April 1 thereafter through and including April 1, 2006. See Schedule A attached hereto for a detailed computation of the annual principal and interest components of the Lease. A final payment of all amounts owing under the Lease Purchase shall be due and payable on April 1, 2006. Lessee shall authorize Bank of America to effectuate all payments by "auto debit" from an account established at Bank of America.

7. PREPAYMENT: Prepayments may be made in whole or in part at any time; provided, all prepayments of principal shall be applied in the inverse order of maturity, or in such other order as Bank of America shall determine in its sole discretion; provided, further, if there is a prepayment, whether by consent of Bank of America, or because of acceleration or otherwise, Lessee shall, within 15 days of any request by Bank of America, pay to Bank of America, unless prohibited by applicable law, any loss or expense which Bank of America may incur or sustain as a result of such prepayment. For the purposes of calculating the amounts owed only, it shall be assumed that Bank of America actually funded or committed to fund the lease through the purchase of an underlying deposit in an amount and for a term comparable to the lease, and such determination by Bank of America shall be conclusive, absent a manifest error in computation.

8. COLLATERAL: Perfected, first priority security interest in (i) the Equipment and all products and accessories thereto and proceeds thereof; and (ii) any acquisition or escrow fund.

9. CONDITIONS PRECEDENT: At or prior to closing, the Lessee will cause to be delivered, in form and substance satisfactory to Bank of America, such standard form Bank of America lease purchase and collateral documents as Bank of America may reasonably require including: (i) a lease purchase agreement; (ii) a security agreement; (iii) unqualified legal opinions from the Lessee's bond counsel and local counsel addressing such matters of law as Bank of America may desire, including, but not limited to, the opinions described on Exhibit A; (iv) certificates to ensure tax-exempt status of the lease purchase arrangement; (v) a formal ordinance of the governing body of the Lessee authorizing the transaction and naming the individuals officers authorized to execute the lease purchase agreement and any documents related thereto; and (vii) a closing certificate addressing various issues related to non-litigation, arbitration, the Freedom of Information Act, State Treasurer filing and IRS Form 8038-G filing. BANK OF AMERICA SPECIFICALLY RESERVES THE RIGHT TO APPROVE THE FORMS AND CONDITIONS OF THE LEASE PURCHASE AGREEMENT.

10. WARRANTIES AND AGREEMENTS: The Lessee will provide at closing, in form satisfactory to Bank of America, customary warranties, agreements and representations including but not limited to the following: (i) the Lessee and all of its subordinated entities will incur in the aggregate no more than \$10,000,000 of this type of indebtedness in this calendar year; (ii) the Lessee has obtained the proper authorization to execute and deliver the lease purchase agreement and all other related documents necessary to complete the transaction; (iii) Bank of America will have a valid first lien position on the Equipment and any project fund; (iv) the Lessee is a municipal corporation and is validly existing under the Constitution and the laws of the State of South Carolina; (v) the lease purchase agreement and all related documents when executed will constitute legal, valid, binding and enforceable obligations of the Borrower in accordance with their

terms; (vi) the Equipment is essential for carrying on the governmental functions of the Lessee; and (vii) there has been no material adverse change in the financial condition of Borrower since the date of the last annual financial statements provided to Bank of America.

11. PRINCIPAL COVENANTS: Lessee will: (i) provide Bank of America with its annual audited financial statements within 150 days of fiscal year end; and (ii) provide Bank of America with its annual operating budget when accepted and approved. (iii) maintain a debt service coverage ratio of at least 1.2 to 1.0 for each fiscal year.

12. COSTS; OTHER TERMS: Other terms or requirements are as follows: (i) the Lessee will be responsible for maintenance, freight, any taxes other than state sales tax and physical damage insurance naming Bank of America, N.A. as loss payee; (ii) an acquisition or escrow fund arrangement is available from Bank of America at no additional cost to facilitate this transaction, and the terms of, and investments related to, any such acquisition or escrow fund arrangement shall be acceptable to Bank of America in its sole discretion; and (iii) the Lessee shall pay all fees and expenses of Bank of America's Legal Counsel in an amount of up to \$2,500.00.

13. OTHER CONDITIONS PRECEDENT: Bank of America shall not be obligated to close if: (i) legislation shall be enacted or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House of the Congress by any committee of such House or announced by the chairman of any such committee to which such legislation has been referred for consideration, a joint announcement of the Chairman of the House Ways and Means Committee and the Senate Finance Committee and the Secretary of the Treasury shall have been made, a decision by a court of the United States or the United States Tax Court shall be rendered, or a filing, regulation or statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed to be made with respect to the federal taxation upon the Lease Purchase Agreement, or upon interest on obligations of the general character of the Lease Purchase Agreement, or other action or events shall have transpired which may have the purpose or effect, directly or indirectly, of changing the federal income tax consequences of any of the transactions contemplated in connection herewith and, in the reasonable opinion of Bank of America, materially adversely affects the advance amount under the Lease Purchase, or (ii) any legislation, ordinance, rule or regulation shall be introduced in or be enacted by any governmental body, department or agency in the State of South Carolina (the "State") or a decision by a court within the State shall be rendered which, in Bank of America's opinion, materially affects the advance amount under the Lease Purchase or the amount of or ability to pledge the security for the Lease Purchase Agreement, or (iii) there shall exist any event which in Bank of America's reasonable judgment makes untrue or incorrect in any material respect any statement or information delivered to Bank of America with respect to the Lease Purchase Agreement, or (iv) there shall have occurred any outbreak or escalation of hostilities involving the United States or the declaration by the United States of a national emergency or war if the affect of any such event specified in this clause, or (v) a general banking moratorium shall have been declared by either federal or state authorities, or (vi) there shall have occurred since the date of this commitment any material adverse change in the affairs of the Lessee.

14. EXPIRATION OF COMMITMENT: This commitment will expire on December 21, 2000, if not accepted in writing by that date or extended in writing by Bank of America. If this commitment is accepted in writing by the date set forth above, the Lessee must close the Lease Purchase by the date set forth in Section 15 below.

15. CLOSING DATE: The Lease Purchase must be closed and funded on or before December 31, 2000.

16. INCORPORATION OF TERMS: The terms and conditions of the Request of Bank of America are incorporated herein by reference.

Unless otherwise provided in the lease purchase agreement executed by the Lessee and Bank of America, the provisions contained herein will survive the closing of the subject transaction.

Mr. Mike West
December 15, 2000
Page 4

This commitment letter is not intended to be all inclusive, and other standard terms and conditions may be included in the lease purchase agreement and related documents.

If accepted, this letter should be signed by an authorized official of the Lessee in the space provided on the enclosed copy, and that copy returned to the undersigned. If you have any questions, please call me at (803) 255-7455.

Sincerely,

BANK OF AMERICA, N.A.



Michael J. Thacker
Senior Vice President

Accepted this _____ day of December, 2000.

CITY OF COLUMBIA, SOUTH CAROLINA

By: _____
Title: _____

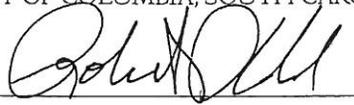


EXHIBIT A

REQUIRED OPINIONS

1. The Lessee is a municipal corporation created under the laws of the State of South Carolina and has the legal power and authority to enter the Lease Agreement, the Security Agreement and the transaction contemplated thereby.

2. The Ordinance adopted by the Lessee on _____, 2000 authorizing the transactions contemplated by the Lease Agreement was duly and validly adopted, has not been amended, modified or repealed and is in full force and effect.

3. The execution, delivery and performance by Lessee under the Lease Agreement and the Security Agreement have been duly authorized by all necessary action on the part of Lessee.

4. Each of the Lease Agreement and the Security Agreement have been duly executed and delivered; constitutes a legal, valid and binding obligation of Lessee enforceable in accordance with its terms, except as set forth herein; and creates a valid and perfected security interest in the Project and any acquisition fund in favor of Lessor securing all obligations of Lessee under the Lease Agreement. Payments under the Lease are payable from Lessee's *ad valorem* taxes. The obligations of Lessee under the Lease Agreement and the Security Agreement are subject to the provisions of applicable bankruptcy, insolvency, reorganization, moratorium and similar laws, now or hereafter in effect, relating to or affecting the enforcement of creditors' rights. Such obligations are also subject to usual equitable principles, which may limit the specific enforcement of certain remedies but which do not affect the validity of such documents.

5. To the best of our knowledge after due inquiry, the entering into and performance of the Lease Agreement and the Security Agreement will not violate any charter, governance documents, judgment, order, law or regulation applicable to Lessee or result in any breach of any indenture, mortgage, deed of trust, bank loan, credit agreement or other instrument by which Lessee is a party or by which it or its assets may be bound. To the best of our knowledge after due inquiry, the Lease Agreement and the Security Agreement constitute the only security instruments or other encumbrances granted by the Lessee upon the Project.

6. To the best of our knowledge after due inquiry, (i) there is no controversy or litigation of any nature now pending or threatened, restraining or enjoining the execution or delivery of the Lease Agreement, or in any way questioning or affecting the validity of the Lease Agreement or any proceedings of the Lessee taken with respect to the execution or delivery thereof, or the security provided for the payment of Lessee's obligations thereunder; (ii) there is no controversy or litigation of any nature now pending or threatened against the Lessee relating to or questioning or affecting the organization or existence of the Lessee or the title to office of the officers thereof, or the power of the Lessee to own and operate its property or conduct its business as presently conducted and (iii) there are no actions, suits or proceedings pending or threatened against or affecting the Lessee in any court or before any governmental commission, board or authority, which, if adversely determined, will have a material, adverse affect on the ability of the Lessee to perform its obligations under the Lease Agreement and the Security Agreement.

7. All approvals, consents, authorizations, certifications and other orders of any governmental authority, board, agency or commission having jurisdiction, or filings with any such entities, which would be necessary for the Project, and which are required to have been obtained or to have been filed by the Closing Date, have been obtained or filed.

8. The Lease Agreement does not violate the usury statutes of the State of South Carolina.

9. The interest component of the Lease Agreement (a) is not included in gross income for federal income tax purposes and (b) is not an item of tax preference for purposes of the federal alternative minimum income tax imposed on individuals and corporations; however, with respect to corporations (as defined for federal income tax purposes) such interest is taken into account in determining adjusted current earnings for purposes of computing the alternative minimum income tax on corporations. The Lessee's failure to comply with the Covenants could cause the interest component of the Lease Agreement to be included in gross income for federal income tax purposes retroactively to the date of the Lease Agreement. The Lease Agreement is a "qualified tax-exempt obligation" within the meaning of Code Section 265(b)(3).

10. Under the laws of the State of South Carolina (the "State"), the interest component of the Lease Agreement shall be exempt from all income taxation by the State, except for estate and transfer taxes. Section 12-11-20 of the Code of Laws of South

Carolina 1976, as amended, however, imposes upon every bank engaged in business in the State a fee or franchise tax computed on the entire net income of such bank which includes such as the interest component of the Lease Agreement.