

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

In the Matter of Approving a Tax Exempt )  
Lease/Purchase Agreement dated )  
10/13/2006 with Key Government Finance, Inc.)  
\_\_\_\_\_)

RESOLUTION NO. 84-2006

WHEREAS, the Columbia County Sheriff's Office is in need of three new patrol vehicles; and

WHEREAS, competitive quotes have been solicited and received for the patrol vehicles in accordance with the intermediate procurement procedure set forth in ORS 279B.070; and

WHEREAS, Key Government Finance, Inc., has offered to finance the purchase of the three patrol vehicles pursuant to the terms of its Tax Exempt Lease/Purchase Agreement dated 10/13/2006, a copy of which is attached hereto and incorporated here in by this reference; and

WHEREAS, the Office of County Counsel has reviewed the Lease/Purchase Agreement and recommends that the Board of County Commissioners approve it;

NOW, THEREFORE, IT IS HEREBY RESOLVED as follows:

1. The Board of County Commissioners approves the Tax Exempt Lease/Purchase Agreement dated 10/13/2006 and authorizes its Chair to execute it and its Board Secretary to attest to it.

2. Bill Potter, Director of General Services is authorized to execute all other necessary documents in connection with the Lease/Purchase Agreement.

DATED this 15 day of October, 2006.

BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

By: [Signature]  
Chair

By: [Signature]  
Commissioner

By: [Signature]  
Commissioner

Approved as to form

By: [Signature]  
Office of County Counsel  
H:\GENSERV\Leasing\key resolution.wpd

**Tax-Exempt Lease/Purchase Agreement, Dated 10/13/2006**

<b>Accepted by Lessor:</b> Key Government Finance, Inc. 1000 South McCaslin Blvd. Superior, CO 80027
By:
Name:
Title:
Date:

<b>Agreed to by Lessee:</b> Columbia County 230 Strand St. St. Helens, OR 97051
By:
Name:
Title:
Date:

**AGREEMENT:** Lessor hereby leases to Lessee and Lessee hereby rents from Lessor all the Property described in Property Schedule incorporated herein by reference, upon the terms and conditions set forth herein and as supplemented by the terms and conditions set forth in the Property Schedule. This Tax-Exempt Lease / Purchase Agreement together with the Property Schedule shall be defined as the Agreement.

**LEASE TERM:** The Lease Term of the Property listed in the Property Schedule shall commence upon the date of acceptance of the Property by Lessee and continue for the time period set forth in the Property Schedule. This Agreement cannot be canceled or terminated by Lessee except as expressly provided herein. This Agreement is a triple net lease.

**LEASE PAYMENTS:** Lessee shall pay rent to Lessor for the Property in the amounts, and on the dates specified, in the Property Schedule. Lessor and Lessee intend that the obligation of Lessee to pay Lease Payments hereunder shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general tax revenues, funds or monies of Lessee.

**NO OFFSET:** SUBJECT TO THE RIGHT TO NON-APPROPRIATE, THE OBLIGATIONS OF LESSEE TO PAY THE LEASE PAYMENTS DUE UNDER THE PROPERTY SCHEDULE AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED IN THIS AGREEMENT SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES. THIS PROVISION SHALL NOT LIMIT LESSEE'S RIGHTS OR ACTIONS AGAINST ANY VENDOR. Lessee shall pay when due all taxes and governmental charges assessed or levied against or with respect to the Property.

**LATE CHARGES:** Should Lessee fail to duly pay any part of any Lease Payment or other sum to be paid to Lessor under this Agreement on the date on which such amount is due hereunder, then Lessee shall pay late charges on such delinquent payment from the due date thereof until paid at the rate of 2% per annum or the highest rate permitted by law, whichever is less.

**MAINTENANCE OF PROPERTY:** At all times during the Lease Term, Lessee shall, at Lessee's own cost and expense, maintain, preserve, and keep the Property in good working order, and condition, and from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals to the Property, which shall become part of the Property. The Property is and will remain personal property. **INSURANCE OF PROPERTY:** All risk of loss to the Property shall be borne by the Lessee. At all times during the Lease Term, Lessee shall, at Lessee's own cost and expense, cause casualty, public liability, and property damage insurance to be carried and maintained (or shall provide Lessor with a certificate stating that adequate self-insurance has been provided) with respect to the Property, sufficient to protect the full replacement value of the Property and to protect from liability in all events for which insurance is customarily available. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term. Any insurance policy to be carried and maintained pursuant to this Agreement shall be so written or endorsed as to make losses, if any, payable to Lessee and Lessor as their respective interests may appear. All such liability insurance shall name Lessor as an additional insured. Each insurance policy carried and maintained pursuant to this Agreement shall contain a provision to the effect that the insurance company shall not cancel the policy or modify it materially or adversely to the interest of the Lessor without first giving written notice thereof to Lessor at least 30 days in advance of such change of status. **QUIET ENJOYMENT AND TERMINATION OF LESSOR'S INTEREST:** To secure Lessee's obligations hereunder, Lessor is granted a security interest in the Property, including substitutions, repairs, replacements and renewals, and the proceeds thereof, which is a first lien thereon. Lessee hereby authorizes Lessor to file all financing statements which Lessor deems necessary or appropriate to establish, maintain and perfect such security interest. Provided there does not exist an Event of Default as defined herein, the Lessee shall have the right of quiet enjoyment of the Property throughout the Lease Term. If Lessee shall have performed all of its obligations and no default shall have occurred and be continuing under this Agreement, and this Agreement shall not have been earlier terminated with respect to the Property, then, at the end of the Lease Term with respect to any item of Property, Lessor's interest in such Property shall terminate. Unless otherwise required by law, title to the Property shall be in the name of Lessee, subject to Lessor's interest hereunder.

**TAX EXEMPTION:** The parties contemplate that interest payable under this Agreement will be excluded from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"). The tax-exempt status of this Agreement provides the inducement for the Lessor to offer financing at the interest rate set forth herein. Therefore, should this Agreement be deemed by any taxing authority not to be exempt from taxation, Lessee agrees that the interest rate shall be adjusted, as of the date of loss of tax exemption, to an interest rate calculated to provide Lessor or its assignee an after tax yield equivalent to the tax exempt rate and Lessor shall notify Lessee of the taxable rate. Provided, however, that the provision of the preceding sentence shall apply only upon a final determination that the interest payments are not excludable from gross income under Section 103(a) of the Code, and shall not apply if the determination is based upon the individual tax circumstances of the Lessor, or a finding that the party seeking to exclude such payments from gross income is not the owner and holder of the obligation under the Code.

**REPRESENTATIONS AND WARRANTIES OF LESSEE:** Lessee hereby represents and warrants to Lessor that: (a) Lessee is a State, possession of the United States, the District of Columbia, or political subdivision thereof as defined in Section 103 of the Code and Treasury Regulations and Rulings related thereto. If Lessee is incorporated, it is duly organized and existing under the Constitution and laws of its jurisdiction of incorporation and will do or cause to be done all things necessary to preserve and keep such organization and existence in full force and effect. (b) Lessee has been duly authorized by the Constitution and laws of the applicable jurisdiction and by a resolution of its governing body (which resolution, if requested by Lessor, is attached hereto), to execute and deliver this Agreement and to carry out its obligations hereunder. (c) All legal requirements have been met, and procedures have been followed, including public bidding, in order to ensure the enforceability of this Agreement. (d) The Property will be used by Lessee only for essential governmental or proprietary functions of Lessee consistent with the scope of Lessee's authority and will not be used in a trade or business of any person or entity, by the federal government or for any personal, family or household use. Lessee's need for the Property is not expected to diminish during the term of the Agreement. (e) Lessee has funds available to pay Lease Payments until the end of its current appropriation period, and it intends to request funds to make Lease Payments in each appropriation period, from now until the end of the term of this Agreement. (f) The Lessee shall comply with all

times with all applicable requirements of the Code, including but not limited to the registration and reporting requirements of Section 149, to maintain the federal tax-exempt status of the Agreement. The Lessee shall maintain a system with respect to this Agreement, which tracks the name, and ownership interest of each assignee who has both the responsibility for administration of, and ownership interest in this Agreement. (g) Lessee's exact legal name is as set forth on the first page of this Agreement. Lessee will not change its legal name in any respect without giving thirty (30) days prior written notice to Lessor.

**INDEMNIFICATION OF LESSOR:** To the extent permitted by law, Lessee shall indemnify and save Lessor harmless from and against all claims, losses, costs, expenses, liability and damages, including legal fees and expenses, arising out of (a) the use, maintenance, condition or management of, the Property by Lessee, (b) any breach or default on the part of Lessee in the performance of any of its obligations under this Agreement or any other agreement made and entered in connection with the lease of the Property, (c) any act of negligence of Lessee, or its successors or assigns, or any of its agents, contractors, servants, employees, or licensees with respect to the Property, (d) the acquisition, delivery, and acceptance of the Property, (e) the actions of any other party including, but not limited to, the ownership, operation, or use of the Property by Lessee, or (f) Lessor's exercise and performance of its powers and duties hereunder. No indemnification will be made for negligence or breach of duty under this Agreement by Lessor, its directors, officers, agents, employees, successors, or assignees. Lessee's obligations under this Section shall remain valid and binding notwithstanding termination or assignment of this Agreement.

**NON-APPROPRIATION:** If sufficient funds are not appropriated to make Lease Payments under this Agreement, this Agreement shall terminate and Lessee shall not be obligated to make Lease Payments under this Agreement beyond the then current fiscal year for which funds have been appropriated. Upon such an event, Lessee shall, no later than the end of the fiscal year for which Lease Payments have been appropriated, deliver possession of the Property to Lessor. If Lessee fails to deliver possession of the Property to Lessor, the termination shall nevertheless be effective but Lessee shall be responsible for the payment of damages in an amount equal to the portion of Lease Payments thereafter coming due that is attributable to the number of days after the termination during which the Lessee fails to deliver possession and for any other loss suffered by Lessor as a result of Lessee's failure to deliver possession as required. Lessee shall notify Lessor in writing within seven (7) days after the failure of the Lessee to appropriate funds sufficient for the payment of the Lease Payments, but failure to provide such notice shall not operate to extend the Lease Term or result in any liability to Lessee.

**ASSIGNMENT BY LESSEE:** Without Lessor's prior written consent, Lessee may not, by operation of law or otherwise, assign, transfer, pledge, hypothecate or otherwise dispose of the Property, this Agreement or any interest therein.

**ASSIGNMENT BY LESSOR:** Lessor may assign, sell or encumber all or any part of this Agreement, the Lease Payments and any other rights or interests of Lessor hereunder. Such assignees may include trust agents for the benefit of holders of certificates of participation.

**EVENTS OF DEFAULT:** Lessee shall be in default under this Agreement upon the occurrence of any of the following events or conditions ("Events of Default"), unless such Event of Default shall have been specifically waived by Lessor in writing: (a) Default by Lessee in payment of any Lease Payment or any other indebtedness or obligation now or hereafter owed by Lessee to Lessor under this Agreement or in the performance of any obligation, covenant or liability contained in this Agreement and the continuance of such default for ten (10) consecutive days after written notice thereof by Lessor to Lessee, or (b) any warranty, representation or statement made or furnished to Lessor by or on behalf of Lessee proves to have been false in any material respect when made or furnished, or (c) actual or attempted sale, lease or encumbrance of any of the Property, or the making of any levy, seizure or attachment thereof or thereon, or (d) dissolution, termination of existence, discontinuance of the Lessee, insolvency, business failure, failure to pay debts as they mature, or appointment of a receiver of any part of the property of, or assignment for the benefit of creditors by the Lessee, or the commencement of any proceedings under any bankruptcy, reorganization or arrangement laws by or against the Lessee.

**REMEDIES OF LESSOR:** Upon the occurrence of any Event of Default and at any time thereafter, Lessor may, without any further notice, exercise one or more of the following remedies as Lessor in its sole discretion shall elect: (a) terminate the Agreement and all of Lessee's rights hereunder as to any or all items of Property; (b) proceed by appropriate court action to personally, or by its agents, take possession from Lessee of any or all items of Property wherever found and for this purpose enter upon Lessee's premises where any item of Property is located and remove such item of Property free from all claims of any nature whatsoever by Lessee and Lessor may thereafter dispose of the Property; provided, however, that any proceeds from the disposition of the Property in excess of the sum required to (i) pay to Lessor an amount equal to the total unpaid principal component of Lease Payments under the Property Schedule, including principal component not otherwise due until future fiscal years, (ii) pay any other amounts then due under the Property Schedule and this Agreement, and (iii) pay Lessor's costs and expenses associated with the disposition of the Property and the Event of Default (including attorneys fees), shall be paid to Lessee or such other creditor of Lessee as may be entitled thereto, and further provided that no deficiency shall be allowed against Lessee; (c) proceed by appropriate court action or actions to enforce performance by Lessee of its obligations hereunder or to recover damages for the breach hereof or pursue any other remedy available to Lessor at law or in equity or otherwise; (d) declare all unpaid Lease Payments and other sums payable hereunder during the current fiscal year of the Lease Term to be immediately due and payable without any presentment, demand or protest and / or take any and all actions to which Lessor shall be entitled under applicable law. No right or remedy herein conferred upon or reserved to Lessor is exclusive of any right or remedy herein or at law or in equity or otherwise provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise, and may be enforced concurrently therewith or from time to time. Lessee agrees to pay to Lessor or reimburse Lessor for, in addition to all other amounts due hereunder, all of Lessor's costs of collection, including reasonable attorney fees, whether or not suit or action is filed thereon. Lessee and Lessor hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement.

**NOTICES:** All notices, and other communications provided for herein shall be deemed given when delivered or mailed by certified mail, postage prepaid, addressed to Lessor or Lessee at their respective addresses set forth herein or such other addresses as either of the parties hereto may designate in writing to the other from time to time for such purpose.

**AMENDMENTS AND WAIVERS:** This Agreement and the Property Schedule executed by Lessor and Lessee constitute the entire agreement between Lessor and Lessee with respect to the Property and this Agreement may not be amended except in writing signed by both parties.

**CONSTRUCTION:** This Agreement shall be governed by and construed in accordance with the laws of the Lessee's State. Titles of sections of this Agreement are for convenience only and shall not define or limit the terms or provisions hereof. Time is of the essence under this Agreement. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns. This Agreement may be simultaneously executed in counterparts, each shall be an original with all being the same instrument.

**Property Schedule to Tax-Exempt Lease/Purchase Agreement**

This **Property Schedule** is entered into pursuant to Tax-Exempt Lease/Purchase Agreement dated as of 10/13/2006 between Lessor and Lessee.

1. **Interpretation.** The terms and conditions of the Tax-Exempt Lease/Purchase Agreement (the "Agreement") are incorporated herein.
2. **Property Description.** The Property subject to this Property Schedule is described in Exhibit A, attached hereto.
3. **Term and Payments.** Lease Term and Lease Payments are per the table below. If the Payment Due Dates are not defined, they shall be defined as the first day of each annual period in the table below commencing with the Acceptance Date as stated in the Certificate of Acceptance, attached as Exhibit B, hereto. If the parties enter into an escrow agreement for the acquisition of the Property, then the escrow agreement shall be attached hereto as Exhibit D. In lieu of the Acceptance Date for commencement of Lease Payments, the date of deposit of the Property Cost into the escrow by Lessor shall be used. Lessee shall have the option to prepay the Lease Payments due under this Property Schedule by paying the Concluding Balance shown in the table below, plus any other amounts due and owing at the time of prepayment, subject to per diem adjustment.
4. **Expiration.** Lessor, at its sole determination, may choose not to accept this Property Schedule if the fully executed, original Agreement (including this Property Schedule and all ancillary documents) are not received by Lessor at its place of business by 11/20/2006.
5. **Property Cost.** The total acquisition cost of the Property is \$92,300.97.
6. **Opinion of Counsel.** Lessee has provided the opinion of its legal counsel substantially in the form as attached as Exhibit C, hereto.

<b>Pay #</b>	<b>Date</b>	<b>Payment</b>	<b>Principal</b>	<b>Interest</b>	<b>Termination Balance</b>
1	1-Nov-2006	24,759.86	24,759.86	0.00	68,891.93
2	1-Nov-2007	24,759.86	21,443.59	3,316.27	47,019.47
3	1-Nov-2008	24,759.86	22,496.47	2,263.39	24,073.07
4	1-Nov-2009	24,759.86	23,601.05	1,158.81	0.00

IN WITNESS WHEREOF, Lessor and Lessee have caused this Property Schedule to be executed in their names by their duly authorized representatives.

<b>Lessor: Key Government Finance, Inc.</b>	<b>Lessee: Columbia County</b>
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
	Attest:By _____
	Name: _____
	Title: _____

EXHIBIT A

Property Description

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(3) 2007 Ford Crown Victoria's

**EXHIBIT B**

**Certificate of Acceptance to Tax-Exempt Lease/Purchase Agreement**

This **Certificate of Acceptance** is pursuant to Tax-Exempt Lease/Purchase Agreement dated as of 10/13/2006 and the related Property Schedule, between Lessor and Lessee (the "Agreement").

1. **Property Acceptance.** Lessee hereby certifies and represents to Lessor that the Property referenced in the Agreement has been acquired, made, delivered, installed and accepted as of the date indicated below. Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes. Lessee will immediately begin making Lease Payments in accordance with the times and amounts specified herein. LESSOR MAKES NO (AND SHALL NOT BE DEEMED TO HAVE MADE ANY) WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN, OPERATION OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE PROPERTY, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE STATE OF TITLE THERETO OR ANY COMPONENT THEREOF, THE ABSENCE OF LATENT OR OTHER DEFECTS (WHETHER OR NOT DISCOVERABLE), AND LESSOR HEREBY DISCLAIMS THE SAME; IT BEING UNDERSTOOD THAT THE PROPERTY IS LEASED TO LESSEE "AS IS" ON THE DATE OF THIS AGREEMENT OR THE DATE OF DELIVERY, WHICHEVER IS LATER, AND ALL SUCH RISKS, IF ANY, ARE TO BE BORNE BY LESSEE.
2. **Bank Qualification.** Lessee designates this Property Schedule as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended. Lessee reasonably anticipates issuing tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds and including all tax-exempt obligations of subordinate entities of the Lessee) during the calendar year this Property Schedule was funded, in an amount not exceeding \$10,000,000.

IN WITNESS WHEREOF, Lessee has caused this Certificate of Acceptance to be executed by their duly authorized representative.

<p><b>Acceptance Date:</b></p> <p><b>Lessee: Columbia County</b></p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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EXHIBIT C

**Lessee's Counsel's Opinion**

**[To be provided on letterhead of Lessee's counsel.]**

[Address to Lessor and Lessee]

RE: Agreement between Key Government Finance, Inc. and Columbia County.

Ladies and Gentlemen: We have acted as special counsel to Columbia County ("Lessee"), in connection with the Tax-Exempt Lease/Purchase Agreement, and Property Schedule dated as of 10/13/2006, between Columbia County, as Lessee, and Key Government Finance, Inc. as Lessor, and any amendment or addendum thereto, if any (together, the "Agreement"). We have examined the law and such certified proceedings and other papers as we deem necessary to render this opinion. B a s e d upon the foregoing, we are of the opinion that, under existing law: 1. Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) the police power. 2. Lessee has all requisite power and authority to enter into the Agreement and to perform its obligations thereunder.3. All proceedings of Lessee and its governing body relating to the authorization and approval of the Agreement, the execution thereof and the transactions contemplated thereby have been conducted in accordance with all applicable open meeting laws and all other applicable state and federal laws. 4. The Agreement has been duly executed and delivered by Lessee and constitute legal, valid and binding obligations of Lessee, enforceable against Lessee in accordance with the terms thereof, except insofar as the enforcement thereof may be limited by any applicable bankruptcy, insolvency, moratorium, reorganization or other laws of equitable principles of general application, or of application to municipalities or political subdivisions such as the Lessee, affecting remedies or creditors' rights generally, and to the exercise of judicial discretion in appropriate cases.5. As of the date hereof, based on such inquiry and investigation as we have deemed sufficient, no litigation is pending, (or, to our knowledge, threatened) against Lessee in any court (a) seeking to restrain or enjoin the delivery of the Agreement; (b) questioning the authority of Lessee to execute the Agreement, or the validity of the Agreement, or the payment of principal of or interest on, the Property Schedule; (c) questioning the constitutionality of any statute, or the validity of any proceedings, authorizing the execution of the Agreement; or (d) affecting the provisions made for the payment of or security for the Agreement. This opinion may be relied upon by Lessor, its successors and assigns, and any other legal counsel who provides an opinion with respect to the Agreement and the Property Schedule. Very truly yours, By: \_\_\_\_\_

**DO NOT SIGN THIS FORM – MUST BE ON LETTERHEAD OF LESSEE'S COUNSEL**