

A RESOLUTION AUTHORIZING THE MAYOR)
AND RECORDER TO ENTER INTO AN)
AGREEMENT FOR PURCHASE OF MINI-)
COMPUTER.)

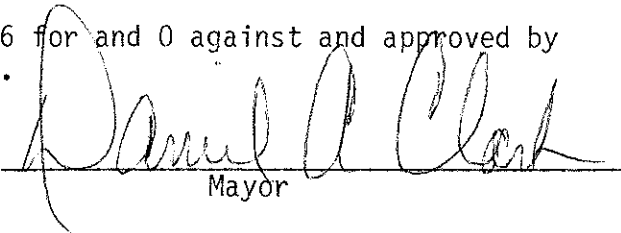
RESOLUTION NO. 34
for 1979

BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF LEBANON AS FOLLOWS:

Section 1: That the Mayor and Recorder of the City of Lebanon are hereby authorized and directed to enter into an agreement with SERVICE DATA PROCESSING, LTD for the purchase of a Mini-Computer, in the amount of \$52,750.

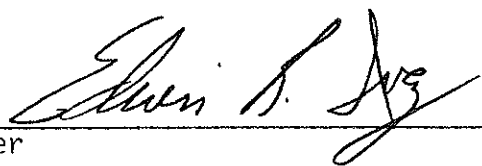
A copy of said agreement is attached hereto and made a part hereof.

Passed by the Council by a vote of 6 for and 0 against and approved by the Mayor this 10th day of October, 1979.



Mayor

ATTEST:



Recorder

MEMORANDUM AGREEMENT

THIS AGREEMENT made and entered into this 10th day of October, 1979, between SERVICE DATA PROCESSING. LTD., hereinafter referred to as Vendor, and THE CITY OF LEBANON, OREGON, a municipal corporation, hereinafter referred to as the City.

W I T N E S S E T H:

WHEREAS, the City requested proposals for a computer system, including the development of software, for the City Finance Office; and

WHEREAS, Vendor has represented to the City that it can provide the City with a computer system suitable for the City's needs; and,

WHEREAS, the parties hereto wish to enter into an agreement pursuant to which Vendor shall render services and supplies in connection with the computer system to be provided to the City as set forth herein;

NOW THEREFORE, the parties hereto agree as follows:

1. Basic Agreement. Vendor agrees to perform for the City certain technical, analytical and design tasks, equipment procurement and/or manufacture, installation and acceptance testing for the computer system under the terms and conditions hereinafter set forth for which the City agrees to pay for the services and supplies of Vendor in accordance with the terms hereof.

2. The following Exhibits are incorporated in this agreement by this reference:

<u>NAME:</u>	<u>EXHIBIT</u>
City of Lebanon Request for Proposal dated 8/24/79	1
Service Data Processing, Ltd., Proposal dated 9/17/79	2
Service Data Processing, Ltd., Purchase Contract dated 10/10/79	3
Service Data Processing, Ltd., Maintenance Contract dated 10/10/79	4

3. Statement of Work. Vendor shall furnish the necessary personnel, supplies, travel and all other things necessary to design, install and fully implement a computerized budget preparation/budget history, expenditure and revenue control/allotments, general ledger/financial reporting, purchasing/encumbrance, accounts payable/cash management at the cost of \$12,500 and payroll/labor distribution interface with G.F.S. System at the cost of \$4,000 and to perform the complete computerized system implementation for the City. Said computerized system shall be provided in accordance with the plans and specifications contained in the

exhibits attached hereto. Vendor represents that it has familiarized itself with the operations and workings of the aforesaid systems and are fully cognizant and aware of the City's needs with respect thereto. It is understood and agreed between the parties hereto that the Vendor shall be compensated for the above work in the amounts and terms specified hereafter, and shall be entitled to no other compensation other than that specified in this agreement.

4. Liquidated Damages. It is understood and agreed between the parties hereto that in the event Vendor should fail to perform according to the design, installation and implementation requirements of the City as in the event of non-delivery or non-performance, the City will suffer substantial losses during the time required to select another vendor. In the event Vendor does not comply through non-delivery or total non-performance, after 60 days from the date of written notice by the City to the Vendor, the City shall be entitled to liquidated damages in the sum of \$100.00 per day for each day that Vendor does not comply through non-delivery or non-performance as set forth hereinafter.

Neither Vendor nor the City shall be liable for any damages or penalty for delay in compliance with its obligations under this agreement when such delay is due to the elements, acts of God, acts of civil or military authorities, wars, riots, fires, floods, epidemics, quarantine restrictions, strikes, lock-outs, or differences with workmen, nor for unavailability of information or material to be furnished by the other party within reasonable time after notice thereof, or any other causes beyond the reasonable control of Vendor or City. In the event of any such delay the time of performance shall be extended for a period of time equal to the time lost by reason of the delay.

5. Deliverables. The following items will be delivered on or before the date the system is installed and the performance period begins.

- (a) A general user's manual with specifications and documentation that will include the external design specifications, source language code, coding annotations and documentation concerning implementation of any future changes or modifications to the system.
- (b) An operator's manual
- (c) A data preparation manual (for preparing input data)
- (d) Test data showing the conditions under which the system was tested

6. Ownership. The application system and computer package described herein is being customized for use by the City, and shall become the property of the City. The City will have the right to reproduce all documentation provided by Vendor and

distribute the same without liability to Vendor and Vendor may market this system without the consent to the City of Lebanon. Should the described application system be made available by the City to any other user(s), Vendor reserves the right to act as sole agent of installation of such application software in such other user(s).

7. Privacy. Vendor shall treat all information used during the design, testing, installation and implementation of this system as confidential, and will return or destroy all such information upon completion of the system.

8. Support. Vendor shall provide the City with future options, enhancements or modification to equipment at the prevailing market price. Future enhancements or updates to the Operating System Software will be provided at the installation cost only.

- (a) Vendor shall, upon notification by the City, make any necessary modifications to the application(s) to make them compatible with the operating system. In the event these modifications are made prior to system acceptance, labor and travel costs will be borne by Vendor and the City will provide the machine time to accomplish the changes.
- (b) Vendor shall correct any programming errors in application and system software during the life of said system, at no cost whatsoever to City, except for traveling expenses after the initial installation traveling expenses.
- (c) Vendor shall be deemed notified when contacted by telephone, telegraph, or by letter.
- (d) Vendor shall respond upon notification, and NO LATER THAN 24 hours on-site, should the urgency require, as determined by the City. Response is limited to normal business hours (8:00 a.m. - 5:00 p.m.), Mondays through Fridays, and excludes weekends and legal holidays.
- (e) Vendor shall demonstrate to the satisfaction of the City that adequate annotations are contained in the programs, describing the program actions.

9. The periods of performance of the agreement will be as follows:

- (a) Delivery, installation and testing of hardware and system software, within ninety (90) to one-hundred twenty (120) days from signing of this contract. Vendor will supply the City with a certified copy of the hardware order displaying order date.
- (b) Installation, testing, fully implemented and ready for continuous use by the City, the General Ledger Budget System sixty (60) days from certification of hardware.
- (c) Installation, testing, for use by City, the Payroll System sixty (60) days from installation of General Ledger Budget System.

10. Price and Payment. The price of the computer hardware, application software and operating system software being purchased, including costs of installation, design and personnel, for the implementation of the computerized system set forth hereinabove, is stated in Exhibits 2 and 3. Supplies, travel and all other things necessary for implementation of the system will be governed by this contract.

(a) Payment Schedule. The City of Lebanon shall make payments on the application software as follows:

SOFTWARE SYSTEM	EXTERNAL DESIGN APPROVAL	TEST APPROVAL	ACCEPTANCE BY CITY
1. Budget Preparation/) Budget History) Expenditure and Revenue) Control/Allotment) General Ledger/Financial) Reporting) Purchasing/Encumbrance) Accounts Payable/Cash) Management)	\$4,160	\$4,160	\$4,180
2. Payroll)	1,330	1,330	1,340

It is understood and agreed between the parties hereto that the above headings i.e., "External Design Approval", "Test Approval", and "Acceptance by City", shall be interpreted and construed to mean approval and acceptance by the City. The City covenants and agrees that it will not arbitrarily or capriciously withhold approval of acceptance of the application software.

(b) Equipment and Operating System Software. The City shall make payment for all equipment, including the operating system within fifteen (15) days following successful completion of hardware installation and maintenance certification. The total price for said equipment shall be in accordance with Exhibits 2 and 3. Shipping charges for equipment shall be prepaid by the Vendor and invoiced to the City upon system acceptance. (The City requests the equipment to be sent air freight and agrees to pay the additional costs.)

11. The terms of this agreement may only be changed by a written statement signed by the parties hereto.

12. Acceptance. Acceptance of the products and services itemized in Exhibit 1, attached hereto, shall be based upon the City's verification of compliance with work tasks and description of deliverable items and services as set forth in Exhibit 1

and any subsequent changes to that Exhibit. Acceptance of the total computer system shall be contingent upon the Vendor's ability to meet the standards of performances set forth herein.

13. Standard of Performance. The Vendor shall certify in writing to the City when the system is installed and ready for use. This certification shall be made by Vendor on each of the systems set forth in paragraph 9 upon each one having met the requirements to the total satisfaction of the City and that system is implemented and functioning in a manner suitable and satisfactory to the City. The performance period as specified in paragraph 9 as a period of thirty (30) working days, shall commence upon the date of certification, afterwhich time operational control shall become the responsibility of the City.

- (a) Application and Operating System Software. If the entire computer system as more particularly described hereinabove, meets the throughput requirements defined in Exhibit 1 for a period of not less than thirty (30) working days, it shall be deemed to have met the City's standard of performance subject to the provisions contained hereinafter regarding system availability time.
- (b) System Availability Time. If the system operates on-line at a level of effectiveness of over ninety percent (90%) for a period of thirty (30) consecutive working days from the commencement of the performance period, it shall be deemed to have met the City's standard of performance for the City's computer system. The level of effectiveness is a percentage figure determined by dividing the total system operational time (time the system was available to the user) by the number of hours in the performance period (30 working days at 8 hours a day - 240 hours).
- (c) If successful completion of the performance period has not occurred within forty (40) working days of the certification date, the City shall have the option to terminate the agreement without penalty or continuing the performance tests. The City's option to terminate the agreement shall remain in effect until such time as a successful completion of the performance period is attained. In the event the City elects to terminate this agreement, written notice shall be given to Vendor which states the system's deficiencies, in accordance with the notice clause of this agreement. Upon receipt of such termination notice, the Vendor shall be allowed fifteen (15) days to cure such deficiencies.

14. Warranty.

- (a) Equipment. Vendor warrants that all the equipment included in Exhibit 2, when installed, will be in good working condition and the Vendor will provide for the City standard Service Data Processing maintenance (0900-1700 hours, five days per week, excluding weekends and legal holidays). See Exhibit 4.
- (b) Software. Vendor warrants that all Vendor supplied software, to include the operating system, will be maintained completely at

Vendor's expense, so long as it is being used by the City, including changes necessitated by the failure of any Vendor supplied software to meet the needs and requirements of the City as set forth in the Exhibits attached hereto. Provided however, Vendor shall not be liable for any significant changes beyond the original system design as accepted by the City and in this respect "significant" shall be defined as any additional design, or redesign of the system, which exceeds five percent (5%) of the total time required to initially design the system.

15. Maintenance of Equipment. The City and Vendor shall execute a Service Data Processing standard maintenance contract at the price quoted in Exhibit 2 dated October 10, 1979 and Exhibit 4, to commence subsequent to final certification of the entire computer system by Vendor as more particularly set forth hereinabove, and acceptance of the computer system by the City.

16. Patent and Copyright Protection. Vendor will defend at its own expense any suit which may be brought against the City for the infringements of United States Patents or Copyrights by the equipment or products furnished hereunder and in any such suit will satisfy any final award for such infringement. This is upon the condition that the City shall give the Vendor prompt written notice of such suit and full right and opportunity to conduct a defense thereof, together with full information and all reasonable cooperation and upon further condition that the claimed infringement does not result from the combination of equipment or products furnished hereunder, with other equipment, apparatus or devices not furnished hereunder. If, in the Vendor's opinion, the equipment or products furnished hereunder are likely to, or do become, the subject of a claim of an infringement of the United States Patent, then without diminishing Vendor's obligation to satisfy said final award, Vendor may, at its option, substitute for the alleged infringing equipment or products other equally suitable equipment or products satisfactory to the City or at Vendor's option and expense, obtain the right for the City to continue the use of such equipment or products. If the use of such equipment or products by the City shall be prevented by permanent injunction, the Vendor agrees to take back such equipment or products and refund any sums the City has paid the Vendor under this agreement. Vendor shall be liable for all out-of-pocket costs and consequential damages in the event the use of any of the equipment or products being purchased hereunder by the City shall be prevented by permanent or temporary injunction.

17. Transportation, Installation, Relocation and Return of Equipment.

Shipments to and from the installation site shall be made at City expense by air freight. The Vendor shall prepay the transportation charges and invoice such charges for payment to the City. This amount shall be the Vendor's actual cost. The City shall pay only those rigging and drayage costs incurred in the City's location.

Except in an emergency, equipment purchased under this agreement shall not be moved from the general location in which installed unless the Vendor has been notified thirty (30) days in advance that a move is to be made.

Upon thirty (30) days written indication to the Vendor, equipment may be transferred from one City location to another. The City will provide site preparation at its own expense. The City shall also arrange and pay for all transportation, rigging and drayage costs. The Vendor shall supervise relocation, package and unpacking of equipment. In the event City terminates this agreement the City shall gather said equipment together and shall make the same available to Vendor for removal. Vendor, within thirty (30) days after having received written notice of termination shall remove the equipment from City's premises and shall be responsible for all costs and expenses regarding such removal and transportation.

18. Risk of Loss or Damage. Risk of loss or damage to the equipment being sold hereunder shall remain with the seller until such time as the entire computer system is certified by Vendor as set forth hereinabove and accepted by the City.

19. Vendor's Liability for Injury to Persons or Damage to Property. The Vendor shall be liable for damages arising out of injury to persons (employees of the City, persons designated by the City for training), or any other person designated by the City for any purpose, and persons other than agents or employees of the Vendor and/or damage to the property of the City prior to or subsequent to acceptance, delivery, installation and use of the equipment either at the Vendor's site or at the City's place of business.

20. Governing Laws. The agreement shall be governed by the laws of the State of Oregon.

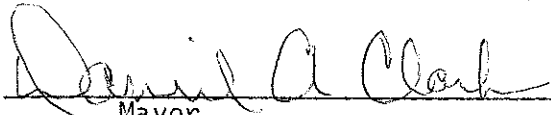
21. Supplies. The purchase price specified herein does not include supplies.

22. Notice. Any notice required to be given by the terms of this agreement shall be deemed to have been given when the same is sent by certified mail, postage prepaid, addressed to the respective parties as follows: Finance Director, City Hall, P. O. Box 247, Lebanon, OR 97355, and/or President, Service Data Processing, Ltd., 2301 N.W. Thurman, Portland, OR 97210.

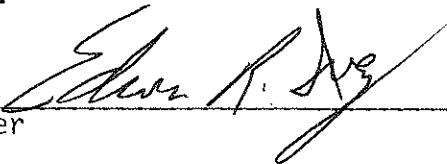
23. Attorneys' Fees. In the event it becomes necessary to commence an action at law or suit in equity to enforce any of the provisions of this agreement, the unsuccessful party in such suit or action shall pay for the benefit of the prevailing party in such suit or action such sums as the court may adjudge as reasonable attorneys' fees to be allowed the prevailing party, and if an appeal is taken from any judgment or decree of such trial court, the unsuccessful party further promises to pay such sum as the appellate court shall adjudge reasonable as the prevailing party's attorneys' fees on such appeal. Said sum shall be in addition to the costs and disbursements provided by statute.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.


CITY OF LEBANON, OREGON

By: 
Mayor

ATTEST:


Recorder

SERVICE DATA PROCESSING, LTD.

By: 

APPLICATION SOFTWARE AGREEMENT

SELLER: Service Data Processing, Ltd.
2301 N.W. Thurman
P. O. Box 10364
Portland, OR 97210

CLIENT:

City of Lebanon
925 Main
Lebanon, Oregon 97355

Service Data Processing, Ltd. hereafter referred to as "SDP", by its acceptance hereof, agrees to provide system analysis and programming services and such support documentation or materials as specified. _____, hereafter referred to as "CLIENT", agrees to purchase the specified software services and materials. City of Lebanon

PROJECT DESCRIPTION ORDER:

Budget Preparation/Budget History	2,500
Expenditure and Revenue Control/Alloments	2,500
General Ledger/Financial Reporting	2,500
Purchasing/Encumbrance	2,500
Accounts Payable/Cash Management	2,500
Payroll /Labor Distribution	4,000

PAYMENT TERMS

CLIENT agrees to pay for services provided by SDP in accordance to the following terms:

ONE THIRD
ONE THIRD
ONE THIRD

CLIENT further agrees to pay 80% of the estimated total charges under this agreement by progressive monthly billings, determined by hours of service rendered. The remaining 20% will be paid upon completion of the project.

CLIENT also agrees to reimburse SDP for disbursement for incidental services such as travel expenses, telephone calls, forms and supplies, transportation out of town, meals and lodging incurred by SDP in rendering the services described in this agreement.

Invoices covering services performed and charges incurred by SDP will be issued on a monthly basis and payable within ten (10) days of the invoice date.

In the event of termination, client agrees to pay for all services performed and disbursements made by SDP up to the effective date of the termination.

CUSTOMER APPROVAL

The applications software and services will be required to be approved at the finish of each of these three check-off points in the development;

1. Design of the system.
2. The parallel or test run.
3. The completed documentation.

At the approval of the third point, the completed documentation, the system will be considered completed and will be turned over as a production running system. A complete set of all documentation developed by SDP pursuant to the services performed hereunder shall be made available to the CLIENT upon completion or termination of each project description order, and shall become the sole property of the client. Any changes or modifications after the date of this agreement to the specified software will be handled as a separate project for approval and billing purposes.

GENERAL PROVISIONS

SDP reserves a marketing right to the system and any ideas and techniques as may be developed during the course of the services provided.

Either party may terminate this agreement for cause by giving 30 days written notice.

SDP shall not be liable for any damages caused by delays in rendering performance thereunder arising from any cause beyond the reasonable control of SDP, nor as a result of strikes or work stoppage.

CITY OF LEBANON, OREGON

SERVICE DATA PROCESSING
NAME McFoloy
TITLE PRESIDENT
DATE 10/17/79

CLIENT
NAME Daniel G. Clark
TITLE Mayor/Recorder
DATE Oct 10, 1979