CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559

543-2297—Area Code 907

RESOLUTION # 724

A RESOLUTION OF THE CITY OF BETHEL AUTHORIZING THE ACQUISITION OF CERTAIN EQUIPMENT AND THE EXECUTION OF AN EQUIPMENT LEASE/PURCHASE AGREEMENT WITH THE NATIONAL BANK OF ALASKA LEASING CORPORATION.

WHEREAS, it is deemed necessary and to the best interests of Bethel, Alaska (Municipality), and its inhabitants that the Municipality acquire certain equipment as described herein (Equipment);

WHEREAS, in order to provide funds to pay the cost of the Equipment it is deemed necessary and advisable that the Municipality lease the Equipment with an option to purchase for a purchase price not to exceed the amount of Two Hundred Ninety Thousand Four Hundred and Fifty Dollars ($290,450).

WHEREAS, it is necessary to establish the form, terms, conditions and covenants of the lease and to make provision for establishing payment dates, prepayment rights and maturity thereof;

WHEREAS, the Municipality has received a proposal to lease the Equipment from National Bank of Alaska Leasing Corporation (NBA Leasing Corporation) subject to the terms and conditions contained in the Equipment Lease/Purchase Agreement presented to this meeting (Agreement).

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Bethel:

Section 1: Authorization of Agreement and Purposes of Issuance. For the purpose of raising funds to pay the costs of the Equipment described in Schedule A to the Agreement, the Agreement is hereby authorized.

Section 2: Description of the Agreement. The Agreement shall mature, bear interest and be payable as stated in the Agreement.

Section 3: Date and Execution of Agreement. The Agreement shall be executed in the name of the Municipality by its Mayor. The Agreement shall be dated as of the day of its delivery to NBA Leasing Corporation.

Section 4: Covenants. The Municipality hereby covenants to comply with all of the terms and conditions contained in the Agreement. The Municipality specifically covenants and agrees to take all action necessary to acquire the Equipment.

Section 5: Authorization of Officers. The Mayor, Manager, Chief Fiscal Officer and the Clerk are, and each of them is, authorized and directed to do and perform all things and determine all matters not determined by this Resolution or to be determined by a subsequent ordinance or resolution of the Municipality, to the end that the Municipality may carry out its obligations under the Agreement and this Resolution.

Section 6: Agreement. The Municipality hereby authorizes the lease of the Equipment from NBA Leasing Corporation at a price of the principal amount thereof, at the interest rate and upon the terms and conditions stated in the Agreement. The Agreement is approved and the Mayor or Manager is hereby authorized to execute and deliver the Loan Agreement on behalf of the Municipality.

Section 7: No Recourse Other Than Revenues. No recourse shall be had for the payment of the principal of or the interest on the Agreement or for any claim based thereon or on this Resolution against any member of the Council or officer of the Municipality or any person executing the Agreement. The Agreement is not and shall not be in any way a debt or liability of the State of Alaska or of any political subdivision thereof, except the Municipality, and does not and shall not create or constitute any

indebtedness or obligations, either legal, moral or otherwise, of said state or of any political subdivision thereof, except the Municipality and neither said state, nor any political subdivision thereof, except the Municipality, shall be liable on the Agreement, and the Agreement is not an shall not be payable out of any funds other than those of the Municipality.

Section 8: Manner and Medium of Payment. The principal of and the interest on the Agreement shall be paid, in lawful money of the United States of America, only to the NBA Leasing Corporation. Each principal and interest payment shall be paid by check or draft made payable to the NBA Leasing Corporation thereof, or, in the event the Mayor, in his discretion determines to do so, by wire transfer or automatic deduction from any Municipality account held by the NBA Leasing Corporation.

Section 9: Obligations of the Municipality Unconditional. The obligations of the Municipality to pay the principal of and interest on the Agreement and to perform and observe the other covenants on its part contained in this Resolution shall be absolute and unconditional, and shall not be subject to diminution by setoff, counterclaim, abatement or otherwise until such time as the principal of and interest on the Agreement shall have been fully paid or provision for the payment thereof shall have been made in accordance with this Resolution.

Section 10: Representations and Warranties of the Municipality. The Municipality does hereby represent and warrant that it does not anticipate the issuance of more than $10,000,000 in aggregate principal amount of qualified tax exempt bonds in the year of the execution of the Agreement as such bonds are defined by Section 265(b)(3) of the Internal Revenue Code of 1986.

Section 11: Tax-Exempt Status of Agreement and Designation of Municipality. The Municipality covenants that it will not use any of the proceeds of the Agreement in such manner, or take or omit to take any other action in such manner, as to impair the exemption of interest on the Agreement from federal income taxation. The Agreement is hereby designated as a "qualified tax exempt obligation" in accordance with Section 265(b)(3) of the Internal Revenue Code of 1986. The Municipality further covenants that no part of the proceeds of the Agreement or any other funds of the Municipality shall at any time be used directly or indirectly to acquire securities or obligations, the acquisition of which would cause the Agreement to be or become "arbitrage bond" as defined in Section 148 of the Internal Revenue Code of 1986. The Municipality shall not permit any of the proceeds of the Agreement or any products purchased with such proceeds, to be used in any manner that would cause the Agreement to constitute a "private activity bond" within the meaning of Section 141 of the Internal Revenue Code of 1986.

Section 12: Expenditure of Agreement Proceeds. All of the proceeds of the Agreement shall be expended solely for the payment of the costs of the Equipment and related expenses and for payment of expenses incurred in this financing.

Section 13: Contract--Savings Clause. The covenants of the Municipality contained in this Resolution and in the Agreement shall constitute a contract between the Municipality and the NBA Leasing Corporation. If any one or more of the covenants or agreements provided in this Resolution to be performed on the part of the Municipality shall be declared by any Court of competent jurisdiction and final appeal, (if any appeal be taken) to be contrary to law, then such covenant or covenants, agreements or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements in this Resolution and shall in no way affect the validity of the other provisions of this Resolution or the Agreement.

Section 14: Immediate Effect. This Resolution shall take effect immediately upon its adoption.

PASSED AND APPROVED THIS 8th **DAY OF** December, **1992.**

VOTE: 6-yeas; 0-nays

James H. Feaster III

James H. Feaster III, Mayor

ATTEST:

Jane Elam

Jane Elam, City Clerk