

BEFORE THE METRO COUNCIL

A RESOLUTION FOR THE PURPOSE OF) Resolution No. 01-3033
AUTHORIZING THE EXECUTION AND DELIVERY)
OF A LEASE PURCHASE AGREEMENT,) Introduced by Mike Burton
DECLARING INTENT TO REIMBURSE) Executive Officer
EXPENDITURES, AND RELATED MATTERS)

WHEREAS, the Council of Metro, which is located Washington, Multnomah and Clackamas Counties, Oregon (the "District") finds:

A. The District is authorized pursuant to the Constitution and laws of the State of Oregon, specifically Oregon Revised Statutes Section 279.101, the 1992 Metro Charter, and the Metro Code 8.01 (the "Acts") to enter into lease-purchase agreements to finance authorized projects; and

B. It is in the best interest of the District to authorize and enter into a Lease-Purchase Agreement to finance the acquisition of computer equipment and software (the "Project") and to pay all costs incidental thereto; and

C. The District anticipates incurring expenditures ("Expenditures") to finance the costs of the Project and wishes to declare its official intent to reimburse itself for the Expenditures made on the Project from the proceeds of obligations, the interest on which shall be excludable from gross income under Section 103 of the Internal Revenue Code of 1986, as amended (the "Code"); and

D. It is in the best interest of the District to enter into the Lease-Purchase Agreement with Wells Fargo Brokerage Services, LLC (the "Bank");

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. Authorization. The Council hereby authorizes the execution and delivery of a Lease-Purchase Agreement (the "Lease-Purchase Agreement") to acquire the Project. The aggregate principal amount of the Lease-Purchase Agreement shall not exceed \$215,000. The true interest cost of this lease-purchase financing shall not exceed five percent (5.00%) per annum.

2. Designation of Authorized Representative. Pursuant to ORS 279.101 and Metro Code Section 8.01.0110, the District hereby authorizes the Executive Officer or his designee (the "Authorized Representative") to act on behalf of the District and determine the remaining terms of the Lease-Purchase Agreement as specified in Section 4.

3. Delegation of Final Terms of Lease-Purchase Agreement and Additional Documents. The Authorized Representative is hereby authorized, on behalf of the District, to:

a. establish the dated date, interest payment dates, interest rates (not to exceed the true interest cost stated in Section 1.a. of this Resolution), the principal maturities and final principal amount, not to exceed \$215,000;

b. make changes to the Lease-Purchase Agreement which the Authorized Representative determines to be in the best interests of the District, and to execute and deliver the Lease-Purchase Agreement; and

c. enter into any other agreements and to execute any other certificates or documents, and take any actions, which are necessary to finance the Project in accordance with this Resolution.

4. Declaring Intent to Reimburse. The District hereby declares its official intent to reimburse itself with proceeds of the Lease-Purchase Agreement for any of the expenditures incurred by it prior to the issuance of the Lease-Purchase Agreement.

5. Maintenance of Tax-Exempt Status. The District hereby covenants for the benefit of the Bank to use the Lease-Purchase Agreement proceeds and the Project financed with Lease-Purchase Agreement proceeds, and to otherwise comply with all provisions of the Internal Revenue Code of 1986, as amended (the "Code") which are required for the interest component of lease payments payable under the Lease-Purchase Agreement to be excluded from gross income for federal income tax purposes, as provided in the Lease-Purchase Agreement. The District makes the following specific covenants with respect to the Code:

i. The District will not take any action or omit any action if it would cause the Lease-Purchase Agreement to become arbitrage bonds under Section 148 of the Code.

ii. The District shall operate the Project financed with the Lease-Purchase Agreement so that the Lease-Purchase Agreement does not become a private activity bond within the meaning of Section 141 of the Code.

iii. The District shall comply with appropriate reporting requirements.

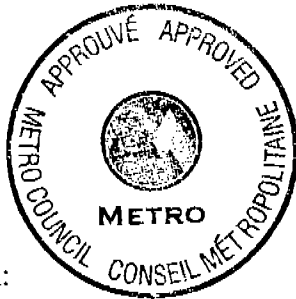
iv. The District shall pay, when due, all rebates and penalties with respect to the Lease-Purchase Agreement which are required by Section 148(f) of the Code.

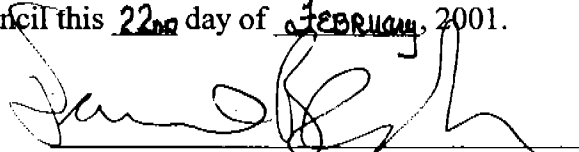
The covenants contained in this Section 6 and any covenants in the closing documents for the Lease-Purchase Agreement shall constitute contracts with the Bank, and shall be enforceable by them. The Authorized Representative may enter into covenants on behalf of the District to protect the tax-exempt status of the Lease-Purchase Agreement.

6. Bank Designation. The District designates the Lease-Purchase Agreement as a "qualified tax-exempt obligation" pursuant to Section 265(b)(3) of the Code. The District does not

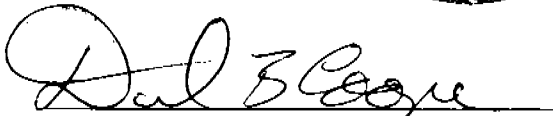
reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during calendar year 2001.

ADOPTED by the Metro Council this 22nd day of FEBRUARY, 2001.




David Bragdon, Presiding Officer

Approved as to Form:


Daniel B. Cooper, General Counsel

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Attachment

Wells Fargo Brokerage Services, LLC
Capital Lease for Information Technology Equipment
Equipment List

	<u>Unit Cost</u>	<u>Units</u>	<u>Expected Cost</u>
FILE SERVICES			
740 Multi-Protocol Appliance "head"	51,910.00	1	51,910.00
Software Protocols/Licenses	19,105.20	1	19,105.20
Additional Parts & Warranty	8,246.00	1	8,246.00
Additional Shelf (DRC)	4,050.00	1	4,050.00
Additional Drives (DRC)	1,620.00	7	11,340.00
Training & Installation	5,713.60	1	5,713.60
<i>Subtotal</i>			<i>\$100,364.80</i>
NETWORK INFRASTRUCTURE			
Upgrade Network Interfaces	5,005.00	1	5,005.00
Installation Rack	550.00	1	550.00
<i>Subtotal</i>			<i>\$5,555.00</i>
COMPUTER SERVICES			
AS 4x00 533MHZ Processor	4,235.00	1	4,235.00
AS 4100 1 GB RAM	4,941.00	1	4,941.00
Gigabit Network Card	1,600.00	1	1,600.00
<i>Subtotal</i>			<i>\$10,776.00</i>
WEB SERVICES			
Server-Metro Main	9,995.00	1	9,995.00
Server-IntraMet	9,995.00	1	9,995.00
<i>Subtotal</i>			<i>\$19,990.00</i>
DESKTOPS			
Special Application Workstations	3,435.00	14	48,090.00
DRC Demonstation Laptop	3,599.00	1	3,599.00
HP 1055CM Plotter	9,995.00	2	19,990.00
Network Plotter Server	6,540.00	1	6,540.00
<i>Subtotal</i>			<i>\$78,219.00</i>
TOTAL			<i>\$214,904.80</i>

LEASE-PURCHASE
AGREEMENT
(Computer Equipment and Software)

by and between

Wells Fargo Brokerage Services, LLC

as Lessor

and

METRO, located in Washington,
Multnomah and Clackamas Counties, Oregon

as Lessee

Dated February 23, 2001

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LEASE-PURCHASE AGREEMENT

This Lease-Purchase Agreement dated February 23, 2001 (the "Agreement") entered into between Wells Fargo Brokerage Services, LLC ("Lessor") and Metro, located in Washington, Multnomah and Clackamas Counties, Oregon ("Lessee"), a body corporate and politic duly organized and existing under the laws of the State of Oregon ("State") and the 1992 Metro Charter;

WITNESSETH:

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 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 OR 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 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. The general revenue credit payable from non-restricted revenues of the Lessee is pledged to payment of the Rental Payments. Lessee shall use all non-restricted revenues available to it under current Oregon law, in effect on the date of this Agreement, to generate funds sufficient to permit the Lessee to make Lease payments. Lessee shall make Rental Payments for the full Lease Term, 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 on or prior to the due 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:

Wells Fargo Brokerage Services, LLC
Public Finance Division – Lease Accounting
NW – 8210 P.O. Box 1450
Minneapolis, MN 55485-8210

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, subject to Lessor's interest under this Agreement; 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 priority 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; FINANCIAL STATEMENTS, YEAR 2000 COMPLIANCE AND NOTICES

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 or another approved provider.

Section 8.02 Taxes Other Governmental Charges and Utility Charges. The parties to this Agreement contemplate that the Equipment will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Equipment will be exempt from all property taxes. The Rental Payments payable by Lessee under this Agreement have been established to reflect the savings resulting from this exemption from taxation. Lessee will take such actions which may be necessary under ORS 307.112 to claim such exemption. 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 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, the Lessee shall not make any material alterations, modifications or attachments to the Equipment. Any such alterations or modifications shall become part of the Equipment and shall become subject to this Agreement.

Section 8.06 Financial Statements. Within 210 days after the end of each of its fiscal years, Lessee will provide Lessor with a copy of each of Lessee's final, audited financial statements. Lessee will provide Lessor with each final, proposed budget which is prepared, and each budget which is adopted, within 30 days of proposal or adoption.

Section 8.07 Lessor Notice. Lessee will provide Lessor with written notice of any litigation over \$100,000 which would materially change the Lessee'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 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, then (a) Lessee shall complete the work and pay any cost in excess of the amount of Net Proceeds (in which event Lessee shall not be entitled to any reimbursement therefor from Lessor, not shall Lessee be entitled to any diminution in Rental Payments required hereunder), (b) Lessee shall exercise its option to purchase the Equipment pursuant to Article XI, or (c) Lessee shall defease this Agreement pursuant to Article XV.

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. In the event that the interest portion of the Rental Payments received by the Lessor cease to be exempt from federal income taxation for any reason, the interest rate per annum used to compute the Rental Payments in Exhibit G shall immediately be increased by 3.0 % .

ARTICLE XI.

OPTION TO PURCHASE

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

(a) at the end of the Lease Term upon payment in full of all Rental Payments in accordance with Exhibit G hereof and all other amounts due hereunder, and upon payment of one dollar (\$1.00) to Lessor; 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 applicable Purchase Price.

ARTICLE XII.

ASSIGNMENT, SUBLEASING, INDEMNIFICATION MORTGAGING AND SELLING

Section 12.01 Assignment or Sale by Lessor.

(a) This Agreement, and the right of Lessor to receive 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.

Section 12.03 Release and Indemnification Covenants. To the extent permitted by the laws and Constitution of the State of Oregon, Lessee shall protect, hold harmless and indemnify Lessor, its officers, directors, employees, agents and assigns, 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, judgment 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.

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) the then applicable Purchase Price and (ii) the 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 or attorney fees); and

(c) Terminating this Agreement, by written notice to Lessee, accelerate all outstanding Rental Payments, in which case Lessee agrees to pay to Lessor the then applicable Purchase Price 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:

Wells Fargo Brokerage Services, LLC
41 E 100 South, 3rd Floor
Salt Lake City, UT 84111
Attn: Tye Burgess

Metro
600 NE Grand Avenue
Portland, Oregon 97232
Attn: Financial Planning Manager

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.

ARTICLE XV.

DEFEASANCE

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.

WARNING

Unless Lessor provides Lessee with evidence of insurance coverage as required by this Agreement, Lessor may purchase insurance at Lessee's expense to protect Lessor's interest. This insurance may, but need not, also protect Lessee's interest. If the Equipment becomes damaged, the coverage that Lessor purchases may not pay any claim Lessee makes or any claim made against Lessee. Lessee may later cancel this coverage by providing evidence that Lessee has obtained property coverage elsewhere.

Lessee is responsible for the cost of any insurance purchased by Lessor. The cost of this insurance may be charged to Lessee as additional rental under this Agreement. If the cost is charged to Lessee, this added amount will bear interest at the rate applicable to this Agreement. The effective date of coverage may be the date Lessee's prior coverage lapsed or the date Lessee failed to provide proof of coverage.

The coverage Lessor purchases may be considerably more expensive than insurance Lessee can obtain on its own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

LESSOR:

WELLS FARGO BROKERAGE SERVICES, LLC
41 E. 100 SOUTH, 3RD FLOOR
SALT LAKE CITY, UT 84111

By : _____

Title:

LESSEE:

METRO, LOCATED IN WASHINGTON, MULTNOMAH AND
CLACKAMAS COUNTIES, OREGON

By : _____

Title: Chief Financial Officer

Exhibit A

List of Closing Documents

1. Exhibit B: Certificate of Incumbency
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. Exhibit H: Bank Qualified Designation
8. Form 80386/GC

REGIONAL FACILITIES AND OPERATIONS COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 01-3033, FOR THE PURPOSE OF AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE PURCHASE AGREEMENT, DECLARING INTENT TO REIMBURSE EXPENDITURES, AND RELATED MATTERS

Date: 22 February 2001

Presented by: Councilor Hosticka

Committee Recommendation: At its February 15, 2001, meeting, the Regional Facilities and Operations Committee voted 3-0 to recommend Council adoption of Resolution No. 01-3033. Voting in favor: Councilors Hosticka, Park, and Burkholder. Voting against: None. Absent: None.

Background: Kathy Rutkowski, Financial Planning Staff, presented the staff report. She explained that this is a capital lease to purchase hardware and software for the Information Technology department (IT). Metro has used this type of purchasing mechanism in the past for large capital purchases, because it allows us to spread the costs over time. Wells Fargo is the lowest bidder. She also stated that the annual interest rate will be 4.92%, with annual debt payments of approximately \$80,000 per year. The project has been approved in Metro's Capital Improvement Plan, and payments will be included in next year's budget.

Committee Issues/Discussion: Councilor Park asked if the 533mhz processor would be sufficient in terms of speed. David Biedermann, IT Director, responded that it would; that the equipment was carefully chosen to meet the GIS needs of the Data Resource Center (DRC) and its applications for at least a three-year period. Mark Bosworth, from DRC, stated that the chip set in the machine is specialized and more than adequate for their needs.

Councilor Burkholder asked if Metro was certain it was purchasing the right equipment for its needs, and whether there was an advantage to going with a lease versus an outright purchase. Mr. Biedermann responded that both the DRC and IT feel confident that the machine is the best mix for both present and longer-term needs, and that it is configured to allow for expansion. He also stated that the architecture of the machine is part of the long-term solution to joining the disparate networking systems currently at Metro. Mr. Biedermann further stated that, although it would be desirable to purchase outright, DRC does not have the funds to do so.

Councilor Hosticka asked for confirmation that the three-year term of the lease agreement would not exceed the useful life of the equipment. Mr. Biedermann responded that the machine is expected to exceed the three-year term of the lease. Councilor Hosticka then asked if there would be any salvage value. Mr. Bosworth and Mr. Biedermann both replied that Metro prides itself upon recycling all its machines throughout the organization to prolong useful life and reduce expenditures for equipment over time.

Councilor Bragdon asked if any kind of technical support would be included with the lease? Mr. Biedermann replied that a maintenance agreement would be included.

Key Public Testimony: There was none.

STAFF REPORT

CONSIDERATION OF RESOLUTION 01-3033 FOR THE PURPOSE OF AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE/PURCHASE AGREEMENT, DECLARING INTENT TO REIMBURSE EXPENDITURES, AND RELATED MATTERS.

February 1, 2001

Presented by: Tony Mounts

Description

This resolution approves a lease financing agreement with Wells Fargo Brokerage Services, LLC for the lease/purchase of computer hardware and software for the Planning (Transportation and Growth Management) and Information Technology Departments as authorized in the FY 2000-01 Capital Improvement Plan.

Existing Law

Metro is authorized pursuant to the Constitution and laws of the State of Oregon, specifically Oregon Revised Statutes section 279.101, the 1992 Metro Charter, and the Metro Code 8.01 (the "Acts") to enter into lease/purchase agreements to finance authorized projects.

Background

Purchase - This purchase represents a substantial upgrade of Metro's core file system server, as well as a key strategic purchase of technical workstations to prepare for the next generation of Geographic Information Systems software. Incremental upgrades to the network, GIS map plotters, as well as DRC web services will also be implemented.

Following the direction of the IT Steering Committee, Metro is consolidating its core file services on one network operating system. This will be made possible by this upgrade to the data warehouse file server. Incremental upgrades to the Network switches that connect the GIS computer server and the data warehouse file server will substantially increase the performance of these core systems. This will benefit all users of these two resources.

A new Central Processing Unit (CPU) and more memory will be added to the GIS computer server. This will help accommodate new storefront clients who are accessing the computer resource via applications delivered through the DRC web site. A new server will increase reliability and speed of this site.

ESRI, Metro's GIS vendor, is launching a new generation of software based on an entirely new architecture for GIS. These new desktop workstations are designed to take advantage of this new platform. The machines being replaced will be reassigned to

other desktops in Planning as part of a planned 'recycling' effort to update desktops on a regular basis.

An equipment list of items to be purchased is attached to the staff report.

Financing - In the past, Metro has used capital leasing as the mechanism to finance large equipment purchases particularly computer equipment. We propose to finance this project with a three-year capital lease purchase. Metro's Financial Advisor received three quotes for this transaction. The lowest quote was from Wells Fargo Brokerage Services, LLC.

Under the lease/purchase arrangement, the interest rate quoted will remain in force during the term of the financing. True Interest Cost (TIC) includes both interest expenses and all other expenses paid. The current anticipated TIC is 4.92 percent. This rate is lower than other lease rates available at this time. The total principal amount of this capital lease will not exceed \$215,000.

The capital lease will be repaid over a three-year period with annual principal payments and semi-annual interest payments. Total annual debt service payment will be approximately \$80,000.

Metro 2001 Computer Equipment Lease Bid Verification					
Debt Service Schedule					
Maturity	Principal	Coupon	Interest	Debt Service	Fiscal Year Debt Service
2/15/01					
8/15/01			5,053.93	5,053.93	
2/15/02	69,932.23	4.920%	5,289.00	75,221.23	80,275.16
8/15/02			3,568.67	3,568.67	
2/15/03	71,652.56	4.920%	3,568.67	75,221.23	78,789.90
8/15/03			1,806.01	1,806.01	
2/15/04	73,415.21	4.920%	1,806.01	75,221.22	77,027.23
	<u>\$215,000.00</u>		<u>\$21,092.29</u>	<u>\$236,092.29</u>	<u>\$236,092.29</u>

Estimate, final debt service schedule may differ slightly

This project was included in the Growth Management and Transportation Departments' Capital Improvement Plan for FY 2000-01. Funds for the capital purchase are included in the FY 2000-01 budget. Debt Service payments on the lease will not begin until FY 2001-02.

Budget Impact

The FY 2000-01 adopted budget anticipated the purchase of the computer hardware/software as authorized in the FY 2000-01 Capital Improvement Plan. No additional budget impact is anticipated for the current fiscal year. Debt service payments on the capital lease will not begin until FY 2001-02. The Planning Department budget, as proposed by the Executive Officer, includes the expenditure authority for the debt service on this capital lease.

Outstanding Questions

With the centralization of Information Technology and the consolidation of network servers, certain portions of this purchase may be deemed beneficial to the agency as a whole. As a result, the debt service payments on the capital lease may be split between the Planning Department and the Information Technology Department. If this occurs, modifications to the FY 2001-02 Information Technology Department and the cost allocation plan may be necessary.

Executive Officer's Recommendation

The Executive Officer recommends approval of Resolution 01-3033, authorizing the execution and delivery of a lease purchase agreement for computer hardware and software.

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