

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING) Resolution No. 91-1535
THE EXECUTION OF AN OPTION) Introduced by Rena Cusma,
AGREEMENT WITH INTEL CORPORATION) Executive Officer

WHEREAS, in April 1991 the Council of the Metropolitan Service District authorized the lease of approximately 8.26 acres of land located at the intersection of Southwest 209th Avenue and the Tualatin Valley Highway in Aloha, Oregon to Intel Corporation; and

WHEREAS, the above land was originally purchased by the Metropolitan Service District in 1986 as a site for a solid waste transfer station; and

WHEREAS, the Metropolitan Service District finds the above land surplus to its needs; and

WHEREAS, the Intel Corporation desires to enter into an agreement which would provide Intel the option to purchase the above property at an agreed price before April 1993 in accordance with the provisions of the attached Option Agreement; NOW THEREFORE,

BE IT RESOLVED, that

1. The Council of the Metropolitan Service District authorizes the Executive Officer to enter into the Option Agreement with Intel Corporation attached at Exhibit A; and

2. The Council of the Metropolitan Service District authorizes the Executive Officer to sell the subject property to Intel Corporation upon the election by that firm to exercise its option.

ADOPTED by the Council of the Metropolitan Service District this _ day of _____, 1991.

NOT ADOPTED

Tanya Collier, Presiding Officer

OPTION AGREEMENT

This option agreement ("Agreement") is made and entered into as of the ____ day of _____, 1991 ("Effective Date") by and between Metropolitan Service District, a municipal corporation and public body of the State of Oregon ("Seller"), and Intel Corporation, a Delaware corporation ("Buyer"), with escrow instructions to Chicago Title ("Escrow Holder").

RECITALS

- A. Seller is the owner of approximately 8.26 acres of real property, located at the southeast corner of SW 209th and Tualatin-Valley Highway, in the City of Aloha, County of Washington, State of Oregon as more particularly described in Exhibit "A" attached hereto ("Property").
- B. Seller and Buyer are parties to a lease for the Property dated May 3, 1991 ("Lease").
- C. Seller desires to grant to Buyer and Buyer desires to obtain from Seller an option to purchase the Property.

NOW, THEREFORE, the parties agree as follows:

1.0 OPTION

1.1 Grant of Option. Seller hereby grants to Buyer the exclusive right and option to purchase the Property at any time prior to April 30, 1993 (the "Option Term"). The Option shall be exercised, if at all, by written notice from Buyer to Seller stating Buyer's election to acquire the Property pursuant to this Agreement (the "Option Notice"). Upon Buyer's delivery of the Option Notice, Seller will be obligated to sell to Buyer and Buyer will be obligated to purchase from Seller at the Closing (the "Closing" and the "Closing Date" as defined in Paragraph 5.2 below) the Property.

1.2 Option Consideration. As consideration for the Option, Buyer shall deliver to Seller One Thousand Dollars (\$1,000) (the "Option Consideration") concurrently with the execution of this Agreement.

2.0 PURCHASE PRICE

2.1 Purchase Price. The purchase price ("Purchase Price"), upon execution of this Agreement, shall be Nine Hundred Twenty-Five Thousand Dollars (\$925,000), and shall remain at that level throughout the initial eight months of the Agreement. Thereafter, and until such time as the Agreement expires, the price shall be increased to Nine Hundred Seventy Thousand Dollars (\$970,000).

2.2 Payment of Purchase Price. The Purchase Price shall be paid as follows:

- (a) Application of the Option Consideration;
- (b) Application of the total sum of rent payments made by Buyer to Seller pursuant to the Lease; and
- (c) Buyer's delivery to Escrow Holder of the balance of the Purchase Price in the form of immediately available funds (including via wire transfer) on or before the Closing Date.

3.0 TITLE TO PROPERTY AND TITLE INSURANCE

At the Closing Seller shall convey to Buyer fee simple title to the Property by execution and delivery of a statutory warranty deed, subject only to nondelinquent real property taxes and such other matters which may be acceptable to Buyer. On the Closing Date, Buyer shall receive from Escrow Holder an ALTA extended coverage title insurance policy in the amount of the Purchase Price insuring title vested in Buyer or its nominees, subject only to the exceptions shown in the preliminary title report to which Buyer did not object pursuant to Paragraph 4.0 hereof.

4.0 BUYER'S CONTINGENCIES

Buyer's obligation to purchase the Property is expressly conditioned upon fulfillment prior to the Closing of each of the following conditions:

- (a) Title Report. Buyer's receipt and approval of a preliminary title report covering the Property and copies of all exceptions to title listed therein. Buyer shall have ten (10) days after receipt of the preliminary title report within which to notify Seller of Buyer's disapproval of any exceptions shown in the title report. In the event of such disapproval Seller shall have until the Close of Escrow within which to attempt to eliminate any disapproved exceptions from the policy of title insurance to be issued in favor of Buyer. Failure of Buyer to disapprove any exceptions within said ten (10) business days shall be deemed an approval of the preliminary title report; and
- (b) Representations. The Seller's representations and warranties contained in this Agreement are true and correct as and when made.

If any of the foregoing conditions are not satisfied, Buyer shall have the right at its sole election to either waive the condition in question and proceed with the purchase of the Property or, in the alternative, to terminate this Agreement.

5.0 CLOSING AND ESCROW

- 5.1 Escrow. Escrow has been opened for the consummation of this transaction with Escrow Holder. Buyer and Seller shall deliver a fully executed copy of this Agreement to the Escrow Holder. Buyer and Seller agree to execute such additional or supplementary escrow

instructions as may be appropriate to implement the terms of this Agreement and to close this transaction.

5.2 Closing Date. This transaction shall close 30 days after Buyer's delivery of the Option Notice ("Closing Date").

6.0 DELIVERIES TO ESCROW HOLDER

6.1 By Seller. On or before the Closing Date, Seller shall deliver the following into escrow:

(a) Deed. A statutory warranty deed, duly executed and acknowledged in recordable form by Seller, conveying the Property to Buyer or its nominees subject only to nondelinquent property taxes and other matters which may be acceptable to Buyer.

(b) FIRPTA Affidavit. An affidavit to Buyer certifying that Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code, in the form required by that statute and related regulations.

(c) Proof of Authority. Such proof of Seller's authority and authorization to enter into this Agreement and consummate the transaction contemplated hereby, and such proof of the power and authority of the individual(s) executing and/or delivering any instruments, documents, or certificates on behalf of Seller

to act for and bind Seller, as may be reasonably required by the Escrow Holder and/or Buyer.

6.2 By Buyer. On or before the Closing Date, Buyer shall deliver the following into escrow:

(a) Purchase Price. The amount due Seller, pursuant to Paragraph 2.0 of this Agreement.

(b) Prorations. The amount due Seller, if any, after the prorations are computed in accordance with Paragraph 8.0 of this Agreement.

7.0 CLOSING COSTS

Buyer shall pay for all premiums for the title insurance policy. Buyer and Seller shall each pay one-half (1/2) of all of the Washington County transfer tax, all escrow fees and costs, and the fee for recording the deed. Buyer and Seller shall each pay its own legal and professional fees and fees of other consultants incurred by Buyer and Seller.

8.0 PRORATIONS AND ADJUSTMENTS

All revenues and all expenses of the Property, including presently existing taxes, assessments, and improvement bonds shall be prorated as of the Closing Date.

9.0 DISBURSEMENTS AND OTHER ACTIONS BY ESCROW HOLDER

At Closing, the Escrow Holder shall do the following:

- (a) Funds. Disburse all funds deposited with Escrow Holder by Buyer in payment of the Purchase Price as follows:
 - (1) Deduct all items chargeable to the account of Seller pursuant to Paragraph 8.0.
 - (2) Disburse the balance of the Purchase Price to Seller promptly upon Closing.
 - (3) Disburse the remaining balance of the funds, if any, to Buyer promptly upon Closing.
- (b) Recording. Cause the deed and any other documents which the parties hereto may mutually direct to be recorded in the official records of Washington County and obtain conformed copies thereof for distribution to Buyer and Seller.
- (c) Title Policy. Direct Chicago Title to issue the title policy to Buyer.
- (d) Disbursement of Documents to Buyer. Disburse to Buyer the FIRPTA affidavit, the deed after recordation thereof, and any

other documents (or copies thereof) deposited into escrow by Seller pursuant hereto.

10.0 REPRESENTATIONS AND WARRANTIES OF SELLER

In addition to any express agreements of Seller contained herein, the following constitute covenants, representations, and warranties of Seller to Buyer:

(a) Seller's Authority. Seller is a duly organized and validly existing Metropolitan Service District under the laws of the State of Oregon and is in good standing under the laws of the State of Oregon; this Agreement and all documents executed by Seller which are to be delivered to Buyer are or at the Closing will be duly authorized, executed, and delivered by Seller, and are or at the the Closing will be legal, valid and binding obligations of Seller and do not and at the Closing will not violate any provisions of any agreement or judicial order to which Seller is a party or to which it is a subject.

(b) Real Estate and Legal Matters.

(1) Seller is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code.

- (2) There is no litigation, claim, arbitration, pending or to the best of Seller's knowledge, threatened, with regard to the Property or its operation.
- (3) No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending or, to the best of Seller's knowledge, threatened against Seller nor are any of such proceedings contemplated by Seller.
- (4) Seller is the legal fee simple title-holder of the Property and has good, marketable, and insurable title thereto, free and clear of all liens, encumbrances, claims, covenants, conditions, restrictions, easements, rights of way, options, judgements, or other matters, except as disclosed by the preliminary title report.

(c) Compliance with Laws. Seller represents, warrants, and covenants as follows:

- (1) No action is pending against Seller regarding any state or federal environmental standards or requirements as they pertain to the Property.
- (2) There is not any violation of any other law, ordinance, rule, or administrative or judicial order affecting the Property, nor is there any condemnation, zoning change,

or other proceeding or action pending, threatened, or contemplated by any governmental body, authority, or agency that will in any way affect the size of, use of, improvements on, construction on or access to the Property.

- (3) Buyer has performed its own tests and studies of the Property and, to the extent of those tests and studies, has knowledge of the environmental condition of the Property, and the presence or absence of any Hazardous Materials on or in the Property. Buyer was also a previous owner of the Property, currently leases the Property, and has knowledge of the Property through its current lease and previous ownership. Seller does not, therefore, extend any warranties or covenants regarding the environmental condition of the Property or compliance with state, federal, or local environmental standards or requirements. No express or implied warranties, guarantees, or representations have been made by Seller regarding the environmental condition of the Property, condition of structures on the Property, or Hazardous Materials on or in the Property. In exercising this option, Buyer agrees to accept the Property in its present condition, AS IS.
- (4) The term "Hazardous Materials" as used in this Agreement shall include, without limitation, asbestos,

gasoline, petroleum products, explosives, radioactive materials, polychlorinated biphenyls or related or similar materials, or any other substance or material defined as a hazardous or toxic substance or material by any federal, state, or local law, ordinance, rule or regulation.

(d) General Representation and Indemnity. Seller's representations and warranties contained herein are true and accurate, and are not misleading. Seller's representations and warranties contained herein shall be continuing and shall be true and correct as of the date of Closing. Seller agrees to defend, indemnify and hold Buyer harmless from all claims, damages, costs and expenses (including attorney's fees) attributable, directly or indirectly, to the breach by Seller of any obligation hereunder or the inaccuracy of any representation or warranty made by Seller herein or in any instrument delivered pursuant hereto or in connection with the transaction contemplated hereby.

11.0 BUYER'S REPRESENTATIONS AND WARRANTIES

In addition to any express agreements of Buyer contained herein, the following constitute representations and warranties of Buyer to Seller:

(a) Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware and is in good standing

under the laws of the State of Oregon; this Agreement and all documents executed by Buyer which are to be delivered to Seller at the Closing are or at the Closing will be duly authorized, executed, and delivered by Buyer, and are or at the Closing will be legal, valid and binding obligations of Buyer, and do not and at the Closing will not violate any provisions of any agreement or judicial order to which Buyer is a party or to which it is subject.

12. RISK OF LOSS: CONDEMNATION

In the event all or any material portion of the Property is damaged, destroyed, or condemned or threatened with condemnation prior to the Closing, Buyer may terminate this Agreement. In such event escrow will be terminated and this Agreement shall have no further force or effect whatsoever. If a nonmaterial portion of the Property is destroyed or condemned prior to Closing, Buyer may elect to terminate this Agreement or to close this transaction as provided for herein, including payment to the Seller of the Purchase Price.

13.0 NOTICES

Any notice, instruction, or communication required or permitted to be given under this Agreement to either party shall be in writing (which may include telex, telegram, telecopier, or other similar form of reproduction) and shall be deemed given when actually received or, if earlier, five days after deposit in the United States Mail by

certified or express mail, return receipt requested, postage prepaid,
addressed to such party at the following address:

To Buyer: Intel Corporation
3535 Garrett Drive, M/S GR1-21
Santa Clara, California 95052
Attn: Suzanne Rogers
FAX: (408) 765-1809

To Seller: Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398
Attn: Todd Sadlo
FAX: (503) 273-5554

To Escrow Holder: Barbara Campbell
Chicago Title Insurance Company of Oregon
Pioneer Tower, Suite 930
888 SW Fifth Avenue
Portland, Oregon 97204

Either party may change its address for purposes of this Section by
giving the other party written notice of the new address in the
manner set forth above.

14.0 BROKER

Buyer shall pay a brokerage commission to Coldwell Banker Commercial Group, Inc. in connection with this transaction in accordance with the terms of a separate agreement. Buyer and Seller hereby acknowledge that no other broker's commission or finder's fee is payable in connection with the sale of the Property. Buyer and Seller each agrees to indemnify, hold harmless, and defend the other from and against all liability, claims, demands, damages or costs of any kind arising from or connected with any broker's or finder's fee claimed to be due any person arising from any statement, representation or agreement made by the indemnitor with respect to this transaction.

15.0 DOCUMENTS

Buyer and Seller agree to execute such additional instruments and documents and to take all actions pursuant to the provisions hereof as may be necessary or appropriate to consummate the transaction herein contemplated.

16.0 ASSIGNMENT

Buyer shall have the right to assign its rights and obligations under this Agreement to any wholly-owned subsidiary without the prior consent of Seller.

17.0 MEMORANDUM OF OPTION

The parties agree to execute concurrently with this Agreement a short-form Memorandum of Option in the form attached hereto as Exhibit B. Buyer agrees to record the Memorandum following its execution.

18.0 MISCELLANEOUS

18.1 Partial Invalidity. If any term or provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.2 Waivers. No waiver by a party of any provision of this Agreement shall be considered a waiver of any other provision or any subsequent breach of the same or any other provision, including the time for performance of any such provision.

18.3 Survival. All warranties, covenants, and other obligations contained in this Agreement shall survive delivery of the deed.

18.4 Successors and Assigns. This Agreement inures to the benefit of and is binding upon the parties and their permitted successors and assigns.

18.5 Attorneys' Fees. If either party files any action or brings any proceeding against the other arising out of this Agreement, or is made a party to any action or proceeding brought by the Escrow Holder, then in that event, the prevailing party shall be entitled to have and recover from the other party all costs and expenses of the suit, including attorneys' fees.

18.6 Entire Agreement. This Agreement (including any exhibits attached hereto) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior discussions, negotiations, and agreements with respect hereto. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations hereunder be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein.

18.7 Captions. The captions heading each paragraph and subparagraph of this Agreement are for convenience of the parties and shall not be considered to limit, expand, or define the contents of the respective paragraph.

18.8 Governing Law. This Agreement shall be governed by and construed according to the laws of the State of Oregon.

18.9 Statutory Notice. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING

STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE. THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year hereinabove written.

BUYER:
INTEL CORPORATION
a Delaware corporation

SELLER:
METROPOLITAN SERVICE DISTRICT
a municipal corporation

Signature

Signature

Printed Name

Printed Name

Title

Title

EXHIBIT A

ATTACHMENT TO
OPTION AGREEMENT
BETWEEN
METROPOLITAN SERVICE DISTRICT
AND
INTEL CORPORATION

Description of Premises

Being a portion of A.J. Masters Donation Land Claim No. 46 in Sections 11 and 12, Township 1 South, Range 2 West, of the Willamette Meridian, in the County of Washington and State of Oregon, described as follows:

Beginning at a point on the South boundary line of the Oregon Central Railroad Company right of way, said point being West 22.55 chains and South 1°30' West, 27.17 chains from the Northeast corner of said Donation Land Claim No. 46; running thence South 1°30' West, 3.85 chains; thence West 14.40 chains; thence North 1°30' West 187.9 feet to the Northeast corner of that certain tract conveyed to John Frank, Jr., et ux, by deed recorded January 11, 1956, in Book 377, Page 486, Washington County Deed Records; thence West along the North line of said Frank tract 273.0 feet to the West line of said Donation Land Claim about 275.0 feet to the South boundary line of said right of way; thence South 81°30'0" East along the South boundary line of said right of way to the place of the beginning.

SAVE AND EXCEPT that portion conveyed to Washington County, as set forth by instrument recorded October 20, 1977, Fee No. 77-13933, Mortgage Records of Washington County.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503/221-1646

Memorandum

To: Councilor Tanya Collier, Presiding Officer
From: Councilor Judy Weyer *JW* Chair, Solid Waste Committee
Date: December 18, 1991
Re: Referral of Resolution No. 91-1535

Resolution No. 91-1535 was originally referred to the Solid Waste Committee for its consideration. The resolution proposes that Metro enter into an option agreement with Intel Corporation, under which Intel would have the exclusive right to buy a parcel of property that Metro had purchased at a possible transfer station site. The parcel is located at 209th and Tualatin Valley Highway in Washington County.

The Solid Waste Committee considered the resolution at the December 17 meeting. After discussion with staff, the committee members agreed that it was no longer necessary for Metro to retain the property as a possible transfer station site. But during the committee's review, several issues were raised concerning financial aspects of the proposed option agreement. These issues included:

- 1) whether Metro should obtain an independent appraisal of the property prior to entering into a sale option agreement,
- 2) concern that the proposed sale price was near the low end of the estimated per square foot value for the land provided in a "broker's opinion" solicited by Metro,
- 3) concern that Metro was permitting Intel to apply all of its current lease payments for the property toward reducing the purchase price, and
- 4) a general concern that Metro's ultimate sale price may not be much higher than the original purchase price.

As a result of these concerns, I would appreciate if you would refer the resolution to the Finance Committee for further consideration. The Solid Waste Committee unanimously supports this request.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 91-1535, FOR THE PURPOSE OF AUTHORIZING THE EXECUTION OF AN OPTION AGREEMENT WITH INTEL CORPORATION

Date: December 2, 1991

Presented by: Neil Saling

Background

In October 1986, Metro purchased a tract of land consisting of approximately 8.26 acres from Intel Corporation for a sum of \$810,000. That tract of land, located at the intersection of Southwest 209th Avenue and Tualatin Valley Highway, was to be the site for the Metro West Transfer Station. The property came with two tenants whose leases on 1.21 acres were continued until this year. Metro paid taxes only on those portions of the property occupied by the tenants.

In April 1991, the Council authorized through Resolution No. 91-1423 the lease of the entire tract to Intel Corporation. Although Intel desired to purchase the property, the Executive Officer was unwilling to relinquish title to the property until such time as the establishment of a Metro West Transfer Station (or Stations) was resolved between Metro and Washington County.

During the term of its lease, Intel has determined that approximately 1.5 acres of the property are wetlands which must be accommodated by any construction on the site. The wetlands determination was made by CH2M-Hill in conjunction with Intel planning for utilization of the tract. There is no evidence in Metro records of the recognition of these wetlands at the time of the Metro purchase.

Analysis

The proposed Option Agreement which has been negotiated with Intel Corporation would permit purchase of the property during the initial eight months of the option for a sum of nine hundred twenty-five thousand dollars (\$925,000). After that period and until April 1, 1993, the purchase price would be \$970,000. Payments made by Intel to Metro under the existing lease agreement would be applied to the purchase price.

The original purchase price for the tract was \$2.25 per square foot; the proposed sale price is \$2.57 per square foot. Evaluation of 175 industrial land sales in Southwest Portland through October 1991 shows no clear trends in land cost. A summary of these sales is shown below:

Southwest Portland Land Sales
(Dollars per Square Foot)

	All Sales	Unimproved Property
1986	2.64	1.74
1987	2.22	1.79
1988	2.15	1.45
1989	1.90	1.76
1990	2.17	1.40
1991	2.03	1.90
TOTAL	2.14	1.69

Based upon the location, orientation and level of improvement, the proposed sale price appears fair and appropriate. The Executive Officer believes that the utility of the land as an alternate location for a Metro West Transfer Station has now diminished to the point that the land can be considered excess to Metro's needs.

Recommendation

The Executive Officer recommends approval of Resolution No. 91-1535