

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A ) RESOLUTION NO. 93-1854  
LEASE/PURCHASE AGREEMENT )  
WHEREBY UNITED STATES ) Introduced by Executive Officer  
NATIONAL BANK OF OREGON LEASES ) Cusma  
AND SELLS CERTAIN EQUIPMENT TO )  
METRO; AND AUTHORIZING THE )  
EXECUTION AND DELIVERY OF THE )  
LEASE/PURCHASE AGREEMENT AND )  
OTHER MATTERS PERTAINING )  
THERETO )

WHEREAS, The Metro Charter and Section 8.01.050 of the Metro Code authorize Metro to finance the acquisition of real and personal property by entering into lease/purchase agreements; and

WHEREAS, The Special Districts Association of Oregon (the "Association") has established its cooperative financing program called the FlexLease Program (the "Program"), which allows special districts in the State of Oregon, as defined by ORS 198.010 (the "Participating Districts"), to better participate in a pooling of the individual Participating Districts' lease/purchase agreements to achieve better interest rates and lower administrative and legal costs; and

WHEREAS, To accomplish the Program the Association has entered into that Master Financing Agreement, dated as of December 12, 1991, as amended by First Amendment to Master Financing Agreement, dated April 29, 1993 (the "Master Financing Agreement"), with United States National Bank of Oregon ("US Bank") pursuant to which lease/purchase financing and refinancing will be made available by US Bank to Participating Districts under the terms set forth in the Master Financing Agreement; and

WHEREAS, Metro desires to finance the property described in Exhibit 2 of the hereinafter defined Lease/Purchase Agreement (the "Equipment") by entering into such Lease/Purchase Agreement with US Bank pursuant to the Program; now, therefore,

BE IT RESOLVED,

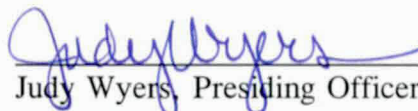
1. Approval of Lease/Purchase Agreement. The form of Lease/Purchase Agreement with US Bank placed on file with the Clerk of the Council in connection with the adoption of this resolution (the "Lease/Purchase Agreement") is hereby approved in substantially the form submitted. Metro's Director of Finance and Management Information (the "Executing Official") is hereby authorized, empowered and directed to execute and deliver, for and on behalf of Metro, the Lease/Purchase Agreement in substantially the form approved but with such modify actions, additions, deletions and other changes as, in the judgment of the Executing Official, are necessary or appropriate and not in conflict with or violation of the requirements of law or the terms of this resolution.

2. Terms of Financing. Metro shall participate in the Program. The total principal component of the rental payments to become due under the Lease/Purchase Agreement shall not exceed \$247,000. The interest rate to be used in calculating the interest components of the rental payments to become due under the Lease/Purchase Agreement shall not exceed the lesser of: (i) interest rate under the program for the term of the financing for the Equipment in the month of closing for the Lease/Purchase Agreement; or (ii) 4.85% per annum. The term of the Lease/Purchase Agreement shall not exceed 3.5 years. Subject to the foregoing limitations, the Executing Official shall approve the final Payment Schedule to the Lease/Purchase Agreement.

3. Further Authority. Metro shall, and the officers and agents of Metro are hereby authorized and directed to, take such action, expend such funds and execute and deliver such other documents, certificates and instruments as may be necessary or desirable to carry and comply with the intent of this Resolution and to carry out, comply with and perform the duties of Metro with respect to the Lease/Purchase Agreement.

4. Authorizing Action; Effective Date. This resolution shall constitute the Authorizing Action with respect to the Lease/Purchase Agreement and financing contemplated thereby, all as provided in Title VIII of the Metro Code. This resolution shall effect immediately upon its adoption by the Metro Council.

ADOPTED by the Metro Council this 28th day of October, 1993.

  
Judy Wyers, Presiding Officer

## LEASE/PURCHASE AGREEMENT

Lease/Purchase Agreement (the "Agreement"), dated as of November 1, 1993, and entered into between United States National Bank of Oregon, a national banking association with its principal office in the State of Oregon ("Lessor"), and the Metropolitan Service District, a body corporate and politic existing under the laws of the State of Oregon ("Lessee").

### W I T N E S S E T H:

WHEREAS, ORS 279.101(1) authorizes the governing body of special districts in the State of Oregon, as defined in ORS 198.010, to enter into binding lease/purchase agreements for the lease with option to purchase of property; and

WHEREAS, the Special Districts Association of Oregon (the "Association") has established its cooperative financing program called the FlexLease Program (the "Program"), which allows districts in the State of Oregon, as defined in ORS 198.010 (the "Participating Districts"), to participate in a pooling of the individual Participation Districts' lease/purchase agreements to achieve better interest rates and lower administrative and legal costs; and

WHEREAS, to accomplish the Program the Association has entered into that certain Master Financing Agreement, dated December 12, 1991, as amended by First Amendment to Master Financing Agreement, dated April 29, 1993 (the "Master Financing Agreement"), with Lessor pursuant to which lease/purchase financing will be made available by Lessor to Participating Districts under the terms set forth in the Master Financing Agreement; and

WHEREAS, Lessor desires to lease the Equipment, as hereinafter described, to Lessee and Lessee desires to lease the Equipment from Lessor pursuant to the Program and 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 the laws of the State of Oregon to enter into this Agreement for the purposes set forth herein;

NOW, THEREFORE, for and in consideration of the premises and covenants hereinafter contained, the parties hereby agree as follows:

### ARTICLE I

Section 1.01. Covenants of Lessee. Lessee represents, covenants and warrants for the benefit of Lessor and any Registered Owners (as hereinafter defined) as follows:

- (a) Lessee is a public body corporate and politic duly organized and existing under the constitution and laws of the State of Oregon with full power and authority to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.
- (b) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic. To the extent Lessee should

merge with another political subdivision under the laws of the State of Oregon, Lessee agrees that as a condition to such merger it will require that the remaining or resulting entity shall be assigned Lessee's rights and shall assume Lessee's obligations hereunder.

- (c) Lessee has been duly authorized to execute and deliver this Agreement by proper action by its governing body, or by other appropriate official approval, and all requirements have been met and procedures have occurred in order to ensure the validity and enforceability of this Agreement (see District's Certificate attached hereto as Exhibit 4) and Lessee has complied with such public bidding requirements as may be applicable to the acquisition by Lessee of the Equipment hereunder.
- (d) During the Lease Term, the Equipment will perform and will be used by Lessee only for the purpose of performing essential governmental uses and public functions of Lessee consistent with the permissible scope of Lessee's authority.
- (e) Lessee will annually provide Lessor with current financial statements, budgets, proof of appropriation for the ensuing budget year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor. (See District's Certificate attached hereto as Exhibit 4).
- (f) Lessee will comply with all applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), including Sections 103 and 148 thereof, and the regulations of the Treasury Department thereunder, from time to time proposed or in effect, in order to maintain the excludability from gross income for federal income tax purposes of the interest component of Rental Payments.
- (g) Lessee covenants and agrees that it will use the proceeds of the Agreement as soon as practicable and with all reasonable dispatch for the purpose for which the Agreement has been entered into, and that no part of the proceeds of the Agreement shall be invested in any securities, obligations or other investments except for the temporary period pending such use nor used, at any time, directly or indirectly, in a manner which, if such use had been reasonably anticipated on the date of issuance of the Agreement, would have caused any portion of the Agreement to be or become "arbitrage bonds" within the meaning of Section 103(b)(2) or Section 148 of the Code and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Agreement.
- (i) Lessee represents and warrants that (i) it is a governmental unit under the laws of the State of Oregon with general taxing powers, (ii) the Agreement is not a private activity bond as defined in Section 141 of the Code, (iii) 95% or more of the net proceeds of the Agreement will be used for local government activities of the Lessee and (iv) all gross proceeds received under the Agreement will be used for governmental purposes within six months after the Commencement Date of the Agreement.
- (j) The execution, delivery and performance of this Agreement and compliance with the provisions hereof by the Lessee does not conflict with or result in a violation or breach or constitute a default under, any resolution, bonds, agreement, indenture, mortgage, note, lease or other instrument to which the Lessee is a party or by which it is bound by any

law or any rule, regulation, order or decree of any court, governmental agency or body having jurisdiction over the Lessee or any of its activities or properties resulting in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any property or assets of the Lessee or to which it is subject. (See District's Certificate attached hereto as Exhibit 4).

- (k) The information provided to Lessor, including financials and the application for the Program, does not contain any untrue statement of a material fact or omit any material fact necessary to make the statements therein, in light of the circumstances in which they were made, not misleading.

## ARTICLE II

Section 2.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease/Purchase Agreement, including the Exhibits attached hereto.

"Commencement Date" is the date when the term of this Agreement and Lessee's obligation to pay rent commences, which date shall be the Commencement Date set forth in Exhibit 3.

"Equipment" means the property described in Exhibit 2 and all replacements, repairs, restorations, modifications and improvements thereof or thereto made pursuant to Section 8.01 or Article IX.

"Lease Participation Certificates" means certificates of participation in the Agreement as provided in Section 12.01.

"Lease Term" means the term set forth in Section 4.01.

"Lessee" means the entity described as such in the first paragraph of this Agreement, its successors and assigns.

"Lessor" means the entity described as such in the first paragraph of this Agreement, its successors and its assigns.

"Registered Owners" means the registered owners of Lease Participation Certificates as shown on the registration books maintained by the Standby Trustee.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Article VI.

"Standby Trustee" is defined in Section 12.01.

"Vendor" means the manufacturer of the Equipment as well as the agents or dealers of the manufacturer from whom Lessee, as agent of Lessor, purchased or is purchasing the Equipment.

### ARTICLE III

Section 3.01. Lease of Equipment. Lessor hereby demises, leases and lets to Lessee, and Lessee rents, leases and hires from Lessor, the Equipment in accordance with this Agreement, for the Lease Term.

### ARTICLE IV

Section 4.01. Lease Term. The term of this Agreement shall commence on the Commencement Date and shall terminate upon payment of the final Rental Payment set forth in Exhibit 3 and the exercise of the Purchase Option set forth in Section 11.01, unless terminated sooner pursuant to this Agreement.

Section 4.02. Delivery, Installation and Acceptance of Equipment. Lessee shall order the Equipment, shall cause the Equipment to be delivered and installed at the location specified on Exhibit 2 to this Agreement and shall pay all delivery and installation costs, if any, in connection therewith. To the extent moneys are deposited with the Standby Trustee in escrow for the acquisition of the Equipment (an "Acquisition Account"), such moneys shall be disbursed from the Acquisition Account as provided in the Master Trust Agreement. All interest earnings on such moneys deposited in the Acquisition Account shall be paid to the Standby Trustee as compensation for services provided in disbursements from the Acquisition Account. When the Equipment is delivered, installed and accepted as to Lessee's specifications, Lessee shall immediately accept the Equipment and evidence said acceptance by executing and delivering to Lessor the Acceptance Certificates substantially in the form attached hereto as Exhibit 1.

### ARTICLE V

Section 5.01. Enjoyment of Equipment. Lessee shall, during the Lease Term, peaceably and quietly have, hold and enjoy the Equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Agreement. Any Registered Owner shall not interfere with such quiet use and enjoyment during the Lease Term so long as Lessee is not in default under this Agreement.

Section 5.02. Location; Inspection. Once installed, the Equipment will not be moved from the location specified in Exhibit 2 to the Lease without Lessor's consent, which shall not be unreasonably withheld. Lessor shall have the right at all reasonable times during business hours to enter into and upon the property of Lessee for the purpose of inspecting the Equipment.

### ARTICLE VI

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 for the full Lease Term. Lessee covenants to include all such Rental Payments due hereunder in its annual budgets and to make the necessary annual appropriation for all such Rental Payments. This Agreement shall not be subject to termination by Lessee in the event Lessee fails to appropriate Rental Payments.

Section 6.02. Payment of Rental Payments. Lessee shall promptly pay Rental Payments, exclusively from legally available funds, in lawful money of the United States of America to Lessor in such amounts and on such dates as described in Exhibit 3 hereto. Payment shall be such that the Lessor or its assigns shall be in receipt of the Rental Payment on the date such Rental Payment is due. In the event



the Lessee shall pay by check or draft, such check or draft must be mailed at least 3 business days prior to the date such Rental Payment is due. In the event Lessee shall pay by wired funds, such funds must be received on the business day prior to the date such Rental Payment is due. Lessee shall pay Lessor a charge on any delinquent Rental Payment at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

Section 6.03. Interest Component. A portion of each Rental Payment is paid as, and represents payment of, interest, and Exhibit 3 hereto sets forth the interest component of each Rental Payment during the Lease Term.

Section 6.04 Defeasance of Rental Payments. Lessee may at any time irrevocably deposit in escrow with Lessor for the purpose of paying all of the principal component and interest component accruing under this Agreement, a sum of cash and securities of the types described in ORS 288.650 in such aggregate amount, bearing interest at such rates and maturing or callable at the holder's option on such dates as shall be required to provide funds sufficient for this purpose. Upon such defeasance, all right, title and interest of Lessor in the Equipment shall terminate. Such investment must comply with federal tax law so that the exclusion from gross income of the interest component of Rental Payments is not adversely effected.

Section 6.05. Rental Payments to be Unconditional. THE OBLIGATIONS OF LESSEE TO MAKE PAYMENT OF THE RENTAL PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE EQUIPMENT OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

## ARTICLE VII

Section 7.01. Title to the Equipment. Upon acceptance of the Equipment by Lessee, title to the Equipment shall vest in Lessee subject to Lessor's rights under this Agreement; provided that title shall thereafter immediately and without any action by Lessee vest in Lessor and Lessee shall immediately surrender possession of the Equipment to Lessor upon (i) any termination of this Agreement without Lessee exercising its option to purchase pursuant to Section 11.01 or (ii) the occurrence of an Event of Default. It is the intent of the parties hereto that any transfer of title to Lessor pursuant to this Section shall occur automatically without the necessity of any bill of sales, certificate of title or other instrument of conveyance. Nevertheless, Lessee shall execute and deliver any such instruments as Lessor may request to evidence such transfer.

Section 7.02. Security Interest. To secure the payment of all of Lessee's obligations under this Agreement, Lessee grants to Lessor a security interest constituting a first lien on the Equipment and on all additions, attachments, accessions thereto, substitutions therefor and on any proceeds therefrom. Lessee agrees to execute such additional documents, certificates of title, financing statements, affidavits, notices and similar instruments, in form satisfactory to Lessor, which Lessor deems necessary or appropriate to establish and maintain its security interest and, upon assignment, the security interest of the Registered Owners or any other assignee of Lessor in the Equipment.

Section 7.03. Personal Property. The Equipment is and will remain personal property and will not be deemed to be affixed to or a part of the real estate on which it may be situated, notwithstanding that the Equipment or any part thereof may be or hereafter become in any manner physically affixed or attached to real estate or any building thereon. If requested by Lessor, Lessee will, at Lessee's expense, furnish a waiver of any interest in the Equipment from any party having an interest in any such real estate or building.

Section 7.04. Property Refinanced. Lessee agrees to cause any and all liens from prior financing with respect to the Equipment described in Exhibit 2, attached hereto, to be released.

Section 7.05 Substitution of Equipment. Lessee may substitute an item of the Equipment under this Agreement with personal property of approximately equal or greater market value and with an equal or greater useful life. Lessee shall be responsible for all costs and expenses, including counsel fees, of Lessor and Standby Trustee for any such substitution.

## ARTICLE VIII

Section 8.01. Maintenance of Equipment by Lessee. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Equipment in good repair and working order. Lessor shall have no responsibility to maintain, repair or make improvements or additions to the Equipment.

Section 8.02. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Equipment free of all levies, liens and encumbrances except those created by this Agreement. 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 necessary under ORS 307.112 to obtain said exemption. Nevertheless, if the use, possession or acquisition of the Equipment is determined to be subject to taxation, Lessee shall pay when due all taxes and governmental charges lawfully assessed or levied against or with respect to the Equipment. Lessee shall pay all gas, water, steam, electricity, heat, power, telephone, utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Equipment. Lessee shall pay such taxes or charges as the same may become due; provided that, with respect to any such taxes or charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments as accrue during the then current fiscal year of the Lease Term.

Section 8.03. Insurance. At its own expense, Lessee shall maintain (i) casualty insurance insuring the Equipment against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in Lessee's state and any other risks reasonably required by Lessor in an amount equal to at least the then outstanding principal component of Rental Payments and, (ii) liability insurance that protects Lessor from liability in all events in an amount satisfactory to Lessor, and (iii) worker's compensation insurance covering all employees working on, in, near or about the Equipment; provided that, with Lessor's prior written consent, Lessee may self-insure against such risks. All insurance proceeds from casualty losses shall be payable as hereinafter provided in this Agreement. Lessee shall, at Lessor's request, furnish to Lessor certificates evidencing such coverage. (See District's Certificate attached hereto as Exhibit 4).



All such insurance shall be with insurers that are authorized to issue such insurance in the State of Oregon, shall name Standby Trustee and Lessor as additional insureds and shall contain a provision to the effect that such insurance shall not be canceled or modified materially and adversely to the interest of Lessor or Standby Trustee without first giving written notice thereof to Lessor and Standby Trustee at least ten (10) days in advance of such cancellation. Such changes shall not become effective without Lessor's and Standby Trustee's prior written consent, which consent shall not be unreasonably withheld. All such casualty insurance shall contain a provision making any losses payable to Lessee, Lessor and Standby Trustee as their respective interests may appear.

Section 8.04. Advances. In the event Lessee shall fail to either maintain the insurance required by this Agreement or keep the Equipment in good repair and working order, Lessor may, but shall be under no obligation to, purchase the required insurance and pay the cost of the premiums thereof and maintain and repair the Equipment and pay the cost thereof. All amounts so advanced by Lessor shall constitute additional rent for the Lease Term and shall be due and payable on the next rental payment date and Lessee covenants and agrees to pay such amounts so advanced by Lessor with interest thereon from the date such amounts are advanced until paid at the rate of 12% per annum or the maximum amount permitted by law, whichever is less.

#### ARTICLE IX

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 shall be taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt replacement, repair, restoration, modification or improvement of the Equipment, unless Lessee shall have exercised its right to defease the Agreement as provided herein. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

For purposes of Section 8.03 and this Article, the term "Net Proceeds" shall mean the amount remaining from the gross proceeds of any insurance claim, condemnation award or sale under threat of condemnation after deducting all expenses, including attorneys' fees, incurred in the collection thereof.

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 improvement referred to in Section 9.01, Lessee shall either (a) complete such replacement, repair, restoration, modification or improvement and pay any costs thereof in excess of the amount of the Net Proceeds and, if Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article VI, or (b) defease Lessor's interest in the Equipment pursuant to Section 6.04. The amount of the Net Proceeds, if any, remaining after completing such repair, restoration, modification or improvement or after such defeasance may be retained by Lessee.

#### ARTICLE X

Section 10.01. 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 WARRANTY WITH RESPECT THERETO. In no event shall Lessor be liable for any incidental, indirect, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or Lessee's use of any item, product or service provided for in this Agreement.

Section 10.02. Vendor's Warranties. Lessor hereby irrevocably appoints Lessee its agent and attorney-in-fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Equipment that Lessor may have against the Vendor. Lessee's sole remedy for the breach of such warranty, indemnification or representation shall be against the Vendor of the Equipment, and not against Lessor, nor shall such matter have any effect whatsoever on the rights and obligations of Lessor with respect to this Lease, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no representations or warranties whatsoever as to the existence or the availability of such warranties of the Vendor of the Equipment.

Section 10.03. Use of the Equipment. 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. Lessee shall provide all permits and licenses, if any, necessary for the installation and operation of the Equipment. In addition, Lessee agrees to comply in all respects with all laws of the jurisdiction in which its operations involving any item of Equipment may extend and any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the items of the Equipment; provided that Lessee may contest in good faith the validity or application of any such law or rule in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest of Lessor in and to the Equipment or its interest or rights under this Agreement.

## ARTICLE XI

Section 11.01. Purchase Option. Lessee shall have the option to purchase Lessor's interest in the Equipment on the last day of the Lease Term, without prior notice to Lessor, if the Agreement is still in effect on such day, upon payment in full of the Rental Payments due hereunder plus payment of One (1) Dollar to Lessor.

## ARTICLE XII

Section 12.01. Assignment by Lessor. As part of the Program, Lessor's right, title and interest in, to and under this Agreement and the Equipment will be assigned to on the Commencement Date to Seattle-First National Bank, as paying agent, registrar and standby trustee (the "Standby Trustee"), under that certain Master Trust Agreement, dated March 1, 1992, between the Standby Trustee and the Lessor. Pursuant to the Master Trust Agreement, lease/purchase agreements of other Participating Districts with the same Commencement Date as this Agreement shall be pooled and jointly marketed pursuant to the Association's Program, and the Standby Trustee shall at the Lessor's direction execute and deliver certificates of participation in the pooled lease/purchase agreements. The Standby Trustee shall maintain a register of the owners of all certificates of participation in the pooled lease/purchase agreements.



Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements that may be reasonably requested by Lessor or the Standby Trustee to protect its interests in the Equipment and in this Agreement.

In the event that the aggregate principal amount of certificates of participation of which this Agreement is a part exceeds \$1,000,000, then Lessee agrees to review the disclosure information on the Lessee in disclosure documents prepared by Lessor and upon conformance with any changes requested by Lessee deem it a final disclosure document (the near final official statement) under Securities and Exchange Commission Rule 15c2-12.

Section 12.02. Assignment and Subleasing by Lessee. Except as provided in Section 1.01(b), none of Lessee's right, title and interest in, to and under this Agreement and in the Equipment may be assigned or encumbered by Lessee for any reason; except that Lessee may sublease all or part of the Equipment if Lessee obtains the prior written consent of Lessor and an opinion of counsel satisfactory to Lessor that such subleasing will not adversely affect the exemption of the interest components of the Rental Payments from federal income taxation. Any such sublease of all or part of the Equipment shall be subject to this Agreement and the rights of the Lessor in, to and under this Agreement and the Equipment and Lessee shall remain liable under this Agreement.

Section 12.03. Release and Indemnification Covenants. To the extent permitted by the law, Lessee shall indemnify, protect, hold harmless, save and keep harmless Lessor and Standby Trustee from and against any and all liability, obligation, loss, claim and damage whatsoever, regardless of cause thereof, and all 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; provided that Lessee shall not be deemed to be indemnifying Lessor or Standby Trustee for its own willful or negligent conduct. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

### ARTICLE XIII

Section 13.01. Events of Default Defined. Any of the following shall constitute an "Event of Default" under this Agreement:

- (a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;
- (b) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in subparagraph (a) above, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided that, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

- (c) Any statement, representation or warranty made by Lessee in or pursuant to this Lease or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;
- (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 60 consecutive days.

Section 13.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take 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) a sum sufficient to exercise Lessee's option to defease this Agreement under Section 6.04 as well as any other sums due hereunder, and (ii) the net 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, reconditioning, selling, leasing, or subleasing the Equipment and all brokerage, auctioneer's or attorney's fees);
- (c) Terminating this Agreement, by written notice to Lessee, accelerate all outstanding Rental Payments, in which case Lessee agrees to pay to Lessor a sum sufficient to defease this Agreement under Section 6.04 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;



- (d) By written notice to the escrow agent, instruct the escrow agent to release to Lessor all sums held by the escrow agent in any accounts under the Escrow Agreement, such sums to be credited to Lessee's obligations under this Article XIII; and
- (e) Lessor may take whatever action at law or in equity necessary or desirable to enforce its rights in the Equipment and under this Agreement.

Section 13.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to 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 Lease now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

#### ARTICLE XIV

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 hereto at the addresses immediately after the signatures to this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee (other than a Registered Owner) at its address as it appears on the registration books maintained by Lessee and to any Registered Owner at its address as it appears on the registration books maintained by the Standby Trustee.

Section 14.02. Certification as to Arbitrage. Lessee hereby represents as follows:

- (a) The estimated total costs of the Equipment will not be less than the total principal amount of the Rental Payments.
- (b) The Equipment has been ordered or is expected to be ordered within six months and the Equipment is expected to be delivered and installed, and the Vendor fully paid, within one year from the Commencement Date. Lessee shall diligently proceed with such acquisition.
- (c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.
- (d) The Equipment has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.
- (e) To the best of Lessee's knowledge, information and belief, the above expectations are reasonable.

Section 14.03. 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 14.04. 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 14.05. Amendments, Changes and Modifications. This Agreement may be amended by Lessor and Lessee; provided that no amendment that affects the rights of the Registered Owners shall be effective unless it shall have been consented to by the Registered Owners of a majority, in principal amount, of the Lease Participation Certificates, if any, then outstanding.

Section 14.06. Execution in Counterparts. This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 14.07. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

Section 14.08. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease/Purchase Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

LESSOR:

United States National Bank of Oregon

\_\_\_\_\_  
Debra Brusie, Municipal Finance Officer

Address: Public Finance Department T-10  
P.O. Box 4412  
Portland, Oregon 97208  
Attn: SDAO Program

LESSEE:

Metropolitan Service District

By: \_\_\_\_\_  
Jennifer Sims, Director of Finance and  
Management Information

ATTEST:

\_\_\_\_\_  
Craig Prosser, Financial Planning Manager

Address: 600 NE Grand Avenue  
Portland, Oregon 97232

COUNTERPART # \_\_\_\_\_ OF 3 COUNTERPARTS. ONLY  
COUNTERPART #1 SHALL BE DEEMED TO BE THE ORIGINAL.  
NO SECURITY INTEREST MAY BE CREATED IN THIS  
AGREEMENT EXCEPT BY THE TRANSFER AND POSSESSION OF  
THE ORIGINAL.

EXHIBIT 1

ACCEPTANCE CERTIFICATE

United States National Bank of Oregon  
Public Finance Department T-10  
Attn: SDAO Program  
P.O. Box 4412  
Portland, Oregon 97208

Seattle-First National Bank  
1100 Second Avenue, 5th Floor  
Seattle, Washington 98101-0720  
Attn: Bond Trustee Services

Re: Lease/Purchase Agreement dated as of November 1, 1993, Series 1993J, between United States National Bank of Oregon, as Lessor, and Metropolitan Service District, as Lessee.

Ladies and Gentlemen:

In accordance with the above-referenced Lease/Purchase Agreement (the "Agreement"), the undersigned ("Lessee") hereby certifies and represents to, and agrees with, United States National Bank of Oregon ("Lessor") as follows:

- (1) The Equipment has been acquired, made, delivered, installed and accepted on the date indicated below.
- (2) Lessee has conducted such inspection and/or testing of the Equipment as it deems necessary and appropriate and hereby acknowledges that it accepts the Equipment for all purposes.
- (3) Lessee is currently maintaining the insurance coverage required by Section 8.03 of the Agreement.
- (4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.
- (5) Attached is a completed Exhibit 2 of the Agreement containing all serial numbers or other applicable information.



- (6) All items listed in Exhibit 2 are free and clear of all liens in connection with prior financing as required by Section 7.04 of the Agreement.

Date: \_\_\_\_\_

Metropolitan Service District  
as Lessee

By: \_\_\_\_\_  
Title: \_\_\_\_\_

EXHIBIT 2

EQUIPMENT DESCRIPTION

Re: Lease/Purchase Agreement, dated as of November 1, 1993, between United States National Bank of Oregon, as Lessor and Metropolitan Service District, as Lessee.

The Equipment is as follows:

<u>QUANTITY</u>	<u>DESCRIPTION/SERIAL NUMBERS</u>	<u>LOCATION</u>
1	Kodak 2085AF Duplicator	600 NE Grand Avenue Portland, Oregon
	Sun Computer Hardware and Software	

EXHIBIT 3

PAYMENT SCHEDULE

Re: Lease/Purchase Agreement, dated as of November 1, 1993, between United States National Bank of Oregon, as Lessor and Metropolitan Service District, as Lessee.

All terms used herein have the meanings ascribed to them in the above-referenced Agreement.

- A. Rental Payments. The Rental Payments shall be in the amounts set forth in the "Period Total" column of the Payment Schedule contained in this Exhibit 3. These Rental Payments are calculated on the basis of 30-day months and a 360-day year.
- B. Payment Schedule. The Payment Schedule is as set forth below.

SEE ATTACHED SCHEDULE

EXHIBIT 4

DISTRICT'S CERTIFICATE

Re: Lease/Purchase Agreement, dated as of November 1, 1993, between United States National Bank of Oregon, as Lessor and the Metropolitan Service District, as Lessee.

I, the undersigned, the duly appointed, qualified and acting Financial Planning Manager of the above-captioned Lessee do hereby certify this November 8, 1993, as follows:

1. Lessee did, at a regular meeting of the governing body of the Lessee held October 28, 1993, by motion duly made, seconded and carried, in accordance with all requirements of law, approve and authorize the execution and delivery of the above-referenced Lease/Purchase Agreement (the "Agreement") on its behalf by the following named representative of the Lessee, to wit:

<u>Jennifer Sims</u>	<u>Director of Finance and Management Information</u>	
Name	Title	Signature

2. The above-named representative of the Lessee held at the time of such authorization and holds at the present time the office set forth above.

3. The meeting of the governing body of the Lessee at which the Agreement was approved and authorized to be executed was duly called, regularly convened and attended throughout by the requisite majority of the members thereof and that the action approving the Agreement and authorizing the execution thereof has not been altered or rescinded. All meetings of the Council of Lessee (the "Council") relating to the authorization and delivery of the Agreement have been:

- (a) held within the geographic boundaries of the governing body;
- (b) open to the public, allowing all people to attend;
- (c) held at places that do not practice discrimination on the basis of race, creed, color, sex, age, national origin or disability;
- (d) announced by public notice reasonably calculated to give actual notice to interested persons, including the news media which have requested notice, such notice has included the time and place of the meeting and the principal subjects anticipated to be considered at such meeting;
- (e) in the case of special meetings, announced with at least 24 hours notice to members of the governing body, the news media which have requested notice and to the general public;
- (f) conducted in accordance with internal procedures of the governing body with a quorum of the governing body in attendance;
- (g) conducted in a place accessible to the disabled; and



(h) held with a good faith effort made to have an interpreter for hearing impaired persons, to the extent requested by such a person, at its regularly scheduled meetings and held with a reasonable effort made to have an interpreter for hearing impaired persons, to the extent requested by such a person, at its special meetings (as required and defined in ORS 192.630 (5), as amended).

4. Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current budget year to make the Rental Payments scheduled to come due during the current budget year and to meet its other obligations for the current budget year and such funds have not been expended for other purposes.

5. No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default (as such term is defined in the Agreement) exists at the date hereof.

6. All insurance required in accordance with the Agreement is currently maintained by the Lessee.

7. To the best of my knowledge after reasonable inquiry, there is no action, suit, proceeding, inquiry or investigation at law or in equity before or by any judicial or administrative court or agency, public board or body, pending or threatened against or which affects Lessee wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Agreement, the security interest granted in the Property or the enforceability thereof.

8. The budget year of Lessee is from July 1 to June 30.

IN WITNESS WHEREOF, I hereunto set my hand the day and year first above written.

Metropolitan Service District

\_\_\_\_\_  
Craig Prosser, Financial Planning Manager

Subscribed to and sworn before me this \_\_\_\_ day of October, 1993.

\_\_\_\_\_  
Notary Public - State of Oregon  
My Commission Expires: \_\_\_\_\_

## STAFF REPORT

### CONSIDERATION OF RESOLUTION 93-1854 AUTHORIZING A MASTER LEASE FINANCING AGREEMENT WITH U.S. NATIONAL BANK FOR THE FINANCING OF COMPUTER EQUIPMENT FOR THE PLANNING DEPARTMENT AND A KODAK COPIER NEEDED BY THE DEPARTMENT OF FINANCE AND MANAGEMENT INFORMATION.

October 5, 1993

Presented by: Craig Prosser

#### Factual Background and Analysis

Resolution 93-1854 authorizes a lease financing agreement with U.S. National Bank for the financing of computer equipment needed by the Planning Department (purchase price \$206,142) and a Kodak copier needed by the Department of Finance and Management Information (purchase price \$40,855). This equipment acquisition was authorized in the FY 1993-94 budget to be obtained under a lease-purchase arrangement.

This lease financing agreement is initiated under an existing master lease agreement between the Special Districts Association of Oregon and US National Bank. This master lease gives special districts (including Metro) access to low interest lease financing through the bank.

Under this master lease arrangement, interest rates for purchases during a 30-day period are set on the 7th of each month. Once set, that interest rate remains fixed for the life of the financing (in this case, three years). The interest rate for these purchases is 4.05%. This rate is lower than other lease rates available at this time.

This lease financing agreement covers only the specified equipment. If Metro chooses to use this financing vehicle for future purchases, a new agreement will be required. Council approval will be required for any new agreements.

#### Executive Officer's Recommendation

The Executive Officer recommends approval of Resolution No. 93-1854.

**METROPOLITAN SERVICE DISTRICT**  
**SDAO FLEXLEASE PROGRAM**  
**COMPUTER EQUIPMENT**  
 -----  
**DEBT SERVICE SCHEDULE**  
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DATE	PRINCIPAL	COUPON	INTEREST	PERIOD TOTAL	FISCAL TOTAL
8/ 1/94			5,907.42	5,907.42	5,907.42
12/ 1/94	82,000.00	4.100000	5,083.50	87,083.50	
6/ 1/95			3,382.50	3,382.50	90,446.00
12/ 1/95	80,000.00	4.100000	3,382.50	83,382.50	
6/ 1/96			1,742.50	1,742.50	85,125.00
12/ 1/96	85,000.00	4.100000	1,742.50	86,742.50	
6/ 1/97					88,742.50
	247,000.00		21,220.92	268,220.92	
ACCRUED			196.91	196.91	
	247,000.00		21,024.01	268,024.01	

Dated 11/ 1/93 with Delivery of 11/ 8/93  
 Bond Years 517.583  
 Average Coupon 4.100000  
 Average Life 2.095479  
 N I C % 4.100000 % Using 100.0000000  
  
 Weighted Bond Years 512.781  
 Weighted Average Life 2.076035  
 Weighted N I C % 4.100001 % Using 100.0000000  
 T I C % 4.097579 % From Delivery Date

Prepared by: U.S. Bank of Oregon, Public Finance Department

RUNDATE: 10-05-1993 @ 10:12:33      FILENAME: METRO      KEY: SERV

*Preliminary schedule; rates are for informational purposes only.*

FINANCE COMMITTEE REPORT

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RESOLUTION NO. 93-1854 AUTHORIZING A MASTER LEASE FINANCING AGREEMENT WITH U.S. NATIONAL BANK FOR THE FINANCING OF COMPUTER AND DUPLICATING EQUIPMENT

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Date: October 18, 1993

Presented By: Councilor Van Bergen

**COMMITTEE RECOMMENDATION:** At its October 13, 1993 meeting the Committee voted unanimously to recommend Council adoption of Resolution No. 93-1854. All Committee members were present and voting.

**COMMITTEE DISCUSSION/ISSUES:** Craig Prosser, Financial Planning Manager, presented the Staff Report. He stated the purpose of the resolution is to authorize a lease financing agreement with the U.S. National Bank for office equipment. The Planning Department acquired \$206,142 of computer equipment and the Finance and Management Information Department acquired a Kodak duplicator for \$40,855. He pointed out that this lease agreement provides for an interest rate of 4.05% which is lower than other lease rates available at this time.

In response to questions from Committee members and Council Staff Mr. Prosser stated that the lease agreement is available to Metro because of the District's membership in the Special Districts Association (SDAO). The lease, however, is between Metro and the Bank and the SDAO is not a party to it. He pointed out that the terms of financing set the principal of the lease at a not to exceed amount of \$247,000; the interest rate is not to exceed 4.85% (the actual rate is 4.05%); and the length of the agreement is not to exceed 3.5 years.