

CITY ATTORNEY

OAKLAND CITY COUNCIL

RESOLUTION NO. ~~78453~~ C.M.S.

INTRODUCED BY COUNCILMEMBER _____

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER AGREEMENT WITH SUN MICROSYSTEMS INC. ("SUN") AND SUN MICROSYSTEMS FINANCE INC. ("SUN FINANCE") IN ORDER TO ACQUIRE EQUIPMENT AND NECESSARY SERVICES CONTRACTS TO REFRESH THE CITY'S SUN SERVER PLATFORM IN AN AMOUNT NOT TO EXCEED THREE MILLION SIX HUNDRED TWENTY-SIX THOUSAND FIVE HUNDRED SIXTY DOLLARS (\$3,626,560); AND AUTHORIZING THE CITY MANAGER TO EXECUTE CONTRACTS WITH THIRD PARTY VENDORS FOR EQUIPMENT AND SERVICES REQUIRED TO SUPPORT THE REFRESH OF THE SUN SERVER PLATFORM IN AN AMOUNT NOT TO EXCEED FOUR HUNDRED THIRTEEN THOUSAND DOLLARS (\$413,000); AND AUTHORIZING THE CITY MANAGER TO EXECUTE A MASTER LEASE-PURCHASE AGREEMENT AND RELATED DOCUMENTS WITH SUN FINANCE FOR FINANCING IN AN AMOUNT NOT TO EXCEED FOUR MILLION THIRTY-NINE THOUSAND FIVE HUNDRED AND SIXTY DOLLARS (\$4,039,560), PLUS THE COST OF FINANCING

WHEREAS, the City of Oakland (City) desires to execute the Technology Refresh Clause of the contract and lease agreement that was executed between the City, GE Capital Public Finance Inc., and Sun Microsystems Inc. on July 27, 2001 and approved by the City Council on July 24, 2001; and,

WHEREAS, the technology refresh clause provides the City with the option to upgrade, replace, or add equipment after the mid-term of the lease with discounts and on the same terms as similarly situated customers; and

WHEREAS, the City must execute the technology refresh to avoid equipment obsolesces and lack of processing capacity that could negatively impact the performance and growth of the City's Oracle applications and other emerging applications designed to provide services to all city agencies and departments; and

WHEREAS, Sun has demonstrated that it can provide the necessary equipment and services and has the qualifications and technical experience to perform the technology refresh; and,

WHEREAS, in accordance with Charter section 902(e), the City Council finds that because of the financial savings the City will realize from Sun, it is in the public interest to purchase the equipment and services necessary to perform the technology refresh directly from Sun;

WHEREAS, the City must purchase third party equipment and services to support SUN's performance of the technology refresh to ensure a turnkey installation; and,

WHEREAS, the City of Oakland will request informal competitive bid quotations from third party vendors to purchase the third party equipment and services to support SUN's performance of the technology refresh; and,

WHEREAS, the City will provide local vendors maximum opportunity to bid on the third party equipment and services; and,

WHEREAS, City Council desires to finance the equipment and services to be provided by Sun through a lease from Sun Microsystems Finance, Inc. ("Sun Finance"); and

WHEREAS, City Council finds that the services provided pursuant to the agreement authorized hereunder are of a professional and specialized nature;

NOW THEREFORE, the City Council of the City of Oakland hereby finds, determines, declares and resolves as follows:

Section 1. The proposed form of Master Agreement by and among the City, Sun and Sun Finance, on file with the City Clerk, is hereby approved. The City Manager, the Director of the Finance and Management Agency or the Treasury Manager, or a designee of any such official, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver, Master Agreement, substantially in such form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution thereof; provided, however, that term of the Master Agreement shall not exceed five (5) years; and the aggregate principal amount of the Master Agreement shall not exceed \$4,039,560.

Section 2. The proposed form of Master Lease-Purchase Agreement by and between the City and Sun Finance, on file with the City Clerk, is hereby approved. The City Manager, the Director of the Finance and Management Agency or the Treasury Manager, or a designee of any such official, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver, Master Lease-Purchase Agreement, substantially in such form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution thereof; provided, however, that interest rate on the Master Lease-Purchase Agreement shall not exceed 4%, the term of the Master Lease-Purchase Agreement shall not exceed five (5) years; and the aggregate amount to be paid pursuant to the terms of the

Master Lease-Purchase Agreement shall not exceed \$4,039,560, plus the cost of financing.

Section 3. The proposed form of Escrow Agreement, by and between the City, and an escrow agent to be selected by the City Manager, the Director of the Finance and Management Agency or Treasury Manager, or a designee of any such official, on file with the City Clerk, is hereby approved. The City Manager, Director of the Finance and Management Agency or Treasury Manager, or a designee of any such official, is hereby authorized and directed, for and in the name and on behalf of the City, to execute and deliver, in connection with each Lease, an escrow agreement in substantially said form, with such changes therein as such officer may require or approve, such approval to be conclusively evidenced by the execution and delivery thereof.

Section 4. The City Manager, Director of the Finance and Management Agency, Treasury Manager and other appropriate officers of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents and certificates which they deem necessary or advisable in order to consummate the execution and delivery of the documents mentioned herein and otherwise to effectuate the purposes of this Resolution and the transactions contemplated hereby, including, but not limited to, entering into agreements and allocating funds to third party vendors for the services, software, and tools required to implement the acquisition of the Sun equipment and services; and executing related Sun documents for the implementation of its services including, but not be limited to, a Products and Services Agreement, a Maintenance Agreement and Statement of Work.

Section 5. The City Council hereby authorizes the City Manager or her designee to approve any subsequent amendments to or extensions of said Agreements with the exception of those related to an increase in the contract price or the allocation of additional funds provided that such amendments or extensions shall be filed with the City Clerk's office.

Section 6. Proceeds of the sale of the Leases may be invested in any Permitted Investment set forth in the Escrow Agreement, including but not limited to the State of California Local Agency Investment Fund or any other investment in accordance with the City's then-current Investment Policy.

Section 7. Pursuant to Oakland Municipal Code Section 2.04.050I subsections 1, 2 and 5, the City Council finds and determines that (a) the services are professional and specialized, (b) calling for formal bids is impractical, and (c) it is in the best interests of the City to waive the formal bid requirements for the purchase of vehicles the services, software, hardware and equipment as described in this resolution.

Section 8. The City Manager is authorized to informally bid and award contracts for the purchase of equipment which cannot be obtained through cooperative contracts in place with other governmental agencies.

Section 9. All actions heretofore taken by the officers and agents of the City Council with respect to the transactions contemplated hereby are hereby ratified, confirmed and approved.

Section 10. This Resolution shall take effect immediately upon its passage.

IN COUNCIL, OAKLAND, CALIFORNIA, APR 6 2004, 2004

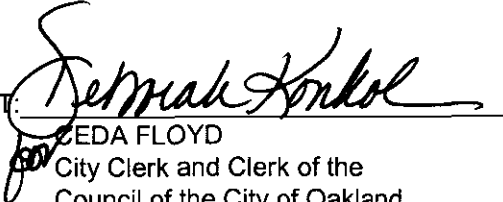
PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN AND
PRESIDENT DE LA FUENTE **-8**

NOES- **0**

ABSENT- **0**

ABSTENTION- **0**

ATTEST: 
ZEDA FLOYD
City Clerk and Clerk of the
Council of the City of Oakland,
California