Office of the State Treasurer

Lease/Purchase Program Guide

Michael J. Murphy
State Treasurer

This page provides labels for notebook spines. Document follows on next page….

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Revised 01/19/2005

Introduction

The purpose of the State Treasurer's Lease/Purchase Program is to provide convenient, cost-effective financing for state agencies, colleges and universities. This guide has been written to provide an overview of the program as well as some background information on municipal finance. It is our hope that the overview will enhance your understanding of the administrative policies established by the State Treasurer.

The Program Guide, which is divided into four sections, details the Lease/Purchase program's background and explains the procedures to follow for financing:

Overview

Financing Equipment

Financing Real Estate Projects

Repayment and Prepayment of Lease Transactions

If you have a question that is not addressed in this Program Guide, the Treasurer's staff is available to answer questions or to meet with you at any point in the process. Please feel free to contact the following individuals:

Susan C. Melvin
Lease/Purchase Specialist
Equipment
(360) 902-9022
melvins@tre.wa.gov
FAX (360) 902-9045

Noah Crocker
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(360) 902-9020
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Nancy Notter
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Authorization

It's not just a good idea, it's the

State agencies are not required to finance their acquisitions, but if they choose to do so, *financing must be obtained through the State Treasurer's Lease/Purchase Program.*

Lease/Purchase transactions are financed with certificates of participation (COPs).

COP payments are subject to appropriation by the Legislature.

RCW 39.94 was passed by the Legislature in 1989. It provides for financing of both real and personal property (real estate and equipment) by state agencies through the use of financing contracts. Financing contracts include lease/purchase agreements or any other interest bearing contract used to finance property. Real estate projects must be specifically approved by the Legislature. These projects are listed in the "Miscellaneous" section of the Capital Budget. For a few agencies, the project authorizations are included in the Transportation Budget.

The most important stipulation of RCW 39.94 is that **ALL FINANCING CONTRACTS MUST BE APPROVED BY THE STATE FINANCE COMMITTEE**. The State Finance Committee is comprised of three elected officials:

State Treasurer, Chair
Governor
Lieutenant Governor.

The Committee approves all securities issued on behalf of the state of Washington. These securities include general obligation bonds and certificates of participation (COPs).

COPs are the securities issued to finance equipment and real estate through the Treasurer's Lease/Purchase Program. COPs are issued pursuant to a lease of financed assets that provides collateral to the lender. These securities represent ownership interests, or participations, in the future stream of lease payments.

COPs have certain features that distinguish them from state general obligation bonds. General obligation bonds are backed by the full faith and credit of the state of Washington. The contractual obligation of the state to pay principal and interest is unconditional. Lease payments, on the other hand, are subject to continual appropriation by the Legislature. Although the possibility of non-appropriation is extremely remote, the State Treasurer has established policies and procedures for the administration of the Lease/Purchase Program to ensure that this risk will be perceived as minimal by investors. By minimizing this risk, the Treasurer is able to obtain the lowest possible interest rates for the state's COPs, resulting in lower lease payments for state agencies.

Program Benefits

The primary purpose of the Lease/Purchase Program is to provide convenient, low-cost financing for state agencies.

The State Finance Committee has delegated administrative responsibility for the Lease/Purchase Program to the Debt Management Team in the Office of the State Treasurer. By pooling financing requests in the name of the state of Washington, the State Treasurer provides individual state agencies access to the municipal securities markets and lower, tax-exempt interest rates.

Prior to the inception of RCW 39.94, state agencies negotiated vendor leases to finance equipment acquisitions. These vendor leases often carried above market interest rates and many did not reflect the agencies' eligibility for tax exempt borrowing or the high credit quality of the state.

Administration by the State Treasurer protects the state's credit rating.

The State Treasurer obtains a credit rating from at least one of the major New York rating agencies for most lease/purchase transactions. Administrative controls imposed by the State Treasurer are cited by these firms as a major factor in their assignment of an investment grade rating. The Lease/Purchase Program allows state agencies to benefit from the state's high credit quality and assures access to the lowest possible interest rates.

Legal documents are standardized.

Sample documents are pro-vided in Appendix A.

Forms are available on disk or by e-mail upon request.

The Attorney General appoints attorneys with expertise in municipal finance to serve as certificate counsel for lease/purchase transactions. Certificate counsel drafts the master financing agreements (contracts between the State Treasurer and the lenders) and sublease agreements (contracts between state agencies and the State Treasurer). Standardized documents assure agency managers of compliance with state law as well as securities and tax laws and regulations.

The legal documents have been refined over time to minimize "paper work" for state agencies. Although the master agreements are comprehensive, the equipment sublease agreements have been reduced to three documents and a total of five pages. Legal documents for real estate transactions are unique for each project and are prepared for signature by all parties.

The payment process is stream-lined.

Lease payments are made semi-annually to the State Treasurer on June 1 and December 1. Two weeks prior to these payment dates, the State Treasurer forwards a notice to all agencies summarizing payments due on outstanding leases.

A centralized lease/purchase program enhances statewide accountability.

In addition to low cost and convenience, a secondary benefit of the lease/purchase program is enhanced accountability. The State Treasurer reports annually to the House Capital Committee on the status of outstanding debt for the state of Washington. Included in this report is a discussion of financing obtained through the Lease/Purchase Program.

The database maintained by the debt management division is capable of generating a wide variety of reports in response to inquiries by legislative staff and the Office of Financial Management (OFM).

At the close of each fiscal year, the State Treasurer provides OFM's Accounting Division with a summary report detailing outstanding lease/purchase balances for all state agencies. OFM is able to reconcile balances reported by agencies to correct errors prior to audit. The reconciliation also provides verification of the accuracy of the Treasurer's lease/purchase database.

Program Parameters

The lease/purchase program is mandatory.

RCW 39.94 prohibits state agencies from negotiating financing leases directly with vendors or other lenders.

Finance terms must be greater than one year and may not exceed the useful life of the property.

Finance terms cannot exceed the useful life of the asset. In lease/purchase transactions, the property serves as collateral. Consequently, there can be no outstanding principal balance when the asset has no remaining value. Useful life for specific assets should be determined by referring to the OFM State Financial and Administrative Policies Manual (SAAM), Chapter 30.50, Capital Asset Commodity Class and Location Code List and Useful Life Schedules. The SAAM manual is online at www.ofm.wa.gov/policy/30.50.htm For unique or used equipment, the Treasurer's staff will provide assistance.

It is always possible to finance for a term that is *shorter* than the useful life.

Finance terms must be ***greater than one year***. RCW 39.94 was enacted to finance assets on a long-term basis; it does not provide for short-term borrowing.

Assets must serve an *essential* public purpose.

Financed assets must serve an ***essential public purpose***. Restricting financing to essential property serves to mitigate the risk of non-appropriation by the Legislature. Essential does ***not*** mean generic utility. It means that the specific equipment or project must be necessary for the agency to fulfill its obligation to the public. For example, boats and motors are appropriate, essential equipment for the Department of Fish and Wildlife even though they would not serve a public purpose for the Office of Financial Management.

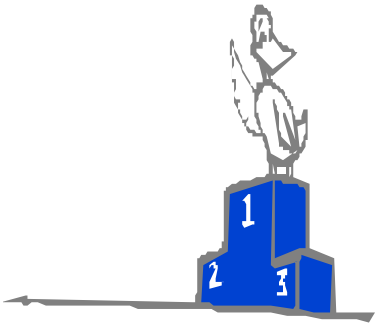
RCW 39.94 does ***NOT*** apply to rental agreements (operating leases).

Operating Lease or Financing Lease?

Agencies may negotiate operating leases but *NOT FINANCING LEASES*.

FASB #13:

the lease *"duck test"*



State agencies may enter into operating leases or rental agreements at their discretion. However, managers must be certain that the lease is, in fact, an operating lease. Management intent is ***NOT*** a determining factor.

Operating leases are distinguished from financing leases according to accounting criteria. Accounting standards for governmental entities are established by the Governmental Accounting Standards Board (GASB) in conjunction with the Financial Accounting Standards Board (FASB) which promulgates accounting standards for corporate entities. FASB Statement No. 13 specifies four criteria to identify a financing lease:

- Present value of lease payments ≥ 90% of fair market value
- Lease term ≥ 75% of useful life
- Lease includes a bargain purchase option
- Lease provides for transfer of ownership

If a lease satisfies any ***ONE*** of the above criteria, it ***IS*** a financing lease subject to RCW 39.94.

The last three criteria are fairly straight-forward. The first item requires analysis based on the time value of money. Lease payments to be paid in the future are discounted at the lessee's "effective borrowing rate" to determine their value at the inception of the lease. For state agencies, the "effective borrowing rate" is the rate that would be paid by financing through the State Treasurer's Lease/Purchase Program. The Treasurer's lease/purchase staff will provide the current interest rate for the finance term under consideration.

Deciding to Finance

Some associated costs may be financed and others *may not* for the following

Reasons

Questions often arise relative to the allowable cost of capital assets. The following table summarizes eligible and ineligible costs:

Eligible Costs	Ineligible Costs
Design	Maintenance
Delivery & Setup	Insurance
Training	Transactions under $10,000
Sales & Use Tax	

Collateral requirements ➨

Design costs may not be financed ***before*** equipment is acquired or construction begins because design, by itself, does not represent collateral to the lender. These costs may be reimbursed when COPs are sold.

Collateral requirements ➨

Maintenance and insurance are operating expenses and may not be financed. Although the state does not perfect a security interest in financed equipment, in order to minimize risk to investors, agencies must pledge to maintain and insure the financed property. Insurance is discussed in the ***Financing Equipment*** section of the Program Guide.

Financial policy ➨

TIP: **Bundle items under $10,000 into one sublease.**

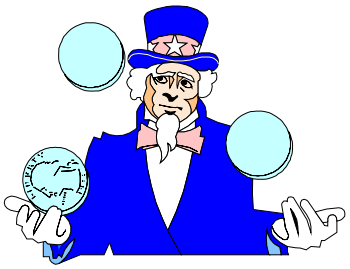
Transactions for less than $10,000 should be purchased with available funds. The Treasurer has established the minimum threshold at a very low level in order to accommodate the financing requirements of even the smallest state agencies.

Follow *all* normal procurement procedures.

State agencies should acquire equipment in accordance with state law and internal agency procurement policies. Construction projects are subject to public works requirements.

The Internal Revenue Code exempts the interest paid on municipal securities from the investors' federal income tax. As a result, municipal issuers, like the state of Washington, pay a lower rate of interest than corporations. Congress intended this benefit for the construction and acquisition of local infrastructure.

Decide *BEFORE* you buy!



It was ***NOT*** intended as a means of earning *arbitrage*– investing proceeds from municipal securities at a higher rate than the interest rate paid for debt service.

To discourage arbitrage abuse by municipalities, the Internal Revenue Service (IRS) has issued "reimbursement" regulations that must be followed in order to maintain the tax exempt status of the COPs to investors. These regulations stipulate that the municipal issuer must file a written statement of its intent to be reimbursed for project (or equipment) costs within 60 days of payment to a contractor or vendor. The Notice of Intent to Lease Purchase (discussed in the ***Financing Equipment*** section) satisfies these IRS regulations.

The State Treasurer is subject to audit by the IRS for compliance with the Internal Revenue Code arbitrage rules. Failure to comply with these regulations will subject an entire pooled transaction to loss of its tax exempt status and have serious credit implications for the state. In order to safeguard lease/purchase securities, sublease documents will be reviewed to ensure that the date of the Notice of Intent ***precedes*** the date of remittance to vendors when reimbursement is requested.

The Treasurer's staff is available to assist with the decision process. Please feel free to call us to determine the current interest rates, payment options or for any other lease/purchase questions. Please direct your equipment financing questions to **Sue Melvin** at (360) 902-9022 and real estate questions to **Noah Crocker** at (360) 902-9020.

Submitting a Notice of Intent to Lease/Purchase

Keep the Treasurer's staff informed of the identity of agency contacts.

Estimate on the HIGH side.

Refer to the OFM Manual to determine useful life.

As soon as the decision to finance through lease/purchase has been made, agencies should submit a ***Notice of Intent to Lease/Purchase***. An example of this form is provided in Appendix A. The information provided on the form assists the State Treasurer in planning for future state-wide financing requirements and to demonstrate compliance with Internal Revenue Service regulations as discussed in the ***Overview*** section.

The Notice of Intent asks for the names and phone numbers of agency ***purchasing and accounting contacts***. The Treasurer's staff communicates with purchasing contacts for pending transactions and with accounting contacts for lease payments. Some agencies have chosen to delegate responsibility for lease/purchase transactions to one individual. ***A single designated contact has proven very beneficial and the Treasurer strongly recommends this practice***.

Provide a ***brief*** description of the equipment to be financed. Please be specific; for example, *telephone system* or *vehicles* and indicate in the second column the quantity, if applicable.

In the third column, provide your ***best estimate*** of the amount to be financed. IRS regulations prohibit reimbursement of amounts that exceed this estimate. It will be necessary to amend your Notice of Intent, even for modest variations, when the actual amount ***exceeds*** the initial estimate when reimbursement is requested.

The ***total*** amount should exceed $10,000. For equipment that falls below this threshold, consider combining requests with the same finance term.

In the fourth column, request a repayment term in ***years***. Remember that the finance term may not exceed the useful life of the equipment as discussed in the ***Overview*** section.

Submitting a Notice of Intent to Lease/Purchase

Agencies may request a ***shorter*** finance term. If you would like assistance with this decision, the Treasurer's staff will provide you with alternative payment scenarios.

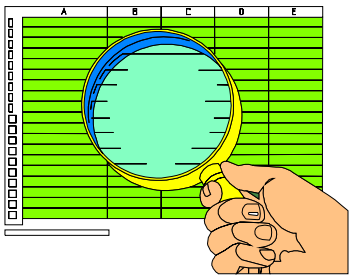
In the fifth column provide your ***best estimate*** of your expected ***acceptance date***. This is the date when the equipment will be delivered and installed. Ideally, the Notice of Intent should be submitted ***prior*** to acceptance. In order to comply with federal tax regulations discussed on pages 1-7 and 2-1, ***in no circumstances*** will a Notice of Intent be accepted 60 days after payment has been made to the vendor or contractor.

Finally, indicate which fund, or funds, your agency will charge when lease payments are made.

Where do I send the Notice?

The Notice should be signed by the agency director or by an individual authorized by the director. Forward the signed Notice of intent to:

Office of the State Treasurer
Debt Management Division
PO Box 40200
Olympia, WA 98504-0200



The Treasurer's staff will review the Notice for:

- Completeness
- Essentiality of equipment
- Length of finance term
- Acceptance date compliance with tax laws
- Signature

How will I know if my financing has been approved?

A transaction identification number will be assigned and a letter acknowledging acceptance of the financing application will be mailed to the individual identified as the ***purchasing contact*** on the Notice of Intent. The Treasurer's staff can provide verbal approval by telephone for agencies that require an immediate response.

What if I change my mind?

If you subsequently decide ***NOT*** to finance your equipment, please forward written notification to the State Treasurer.

Purchasing the Equipment

The State Treasurer does not interfere with the agency in the selection of equipment. However, agencies should follow all state procurement regulations when acquiring equipment through the Lease/Purchase Program. For example, when agencies request financing for computers or telecommunications equipment, Department of Information Systems (DIS) approval is required for acquisition amounts which exceed the agency's delegated authority. Community colleges must comply with standards established by the Communications Technology Center. Energy conservation projects must be approved by the Energy Conservation Program in the Department of General Administration's Engineering and Architectural Services Division.

Pay the vendor and request reimbursement if possible.

The State Treasurer pledges, but does not perfect, a security interest in all financed equipment. Agencies should list themselves as both legal and registered owners on titled assets.

Agencies pledge to maintain equipment in lease documents submitted to the State Treasurer.

Inspect your equipment and ***accept*** it before submitting final financing documents. The equipment will serve as collateral for financing and should be in good working order. Subsequent warranty issues must be resolved between your agency and the vendor.

Agencies may *not* withhold lease payments if equipment malfunctions or if it is damaged or destroyed.

Because the equipment provides collateral security for the lender/investors, both liability and property damage insurance must be obtained through the Office of Financial Management's Office of Risk Management. The Office of Risk Management has a self-insurance pool for liability. However, the liability pool does not cover aircraft and certain vessels. A commercial policy must be purchased for these assets. The Office of Risk Management does not offer a self-insurance pool for property damage. Agencies may purchase a commercial policy or they must agree to accept financial responsibility in the event of damage or destruction of the equipment. In such event, the agency must either prepay the lease or replace the equipment with similar assets.

The Office of Risk Management will prepare a written declaration of your agency's selection of insurance for the state's fiscal agent. Copies are sent to the agency and the State Treasurer. ***The State Treasurer must receive this declaration in order to complete the financing process.***

Submitting Financing Documents

Timing is everything.

The State Treasurer pools agency requests for equipment financing on a quarterly basis. The Lease/Purchase Program has established ***"cut-off" dates*** for acceptance within a pooled transaction. The sale of COPs in the municipal bond market imposes certain timing constraints. In order to successfully market COPs, the Treasurer cannot accommodate agency financing requests submitted subsequent to these ***"cut-off" dates:***

Cut Off Date	Financing Date	First Payment Due
February 1	**March 10-15**	**June 1**
May 1	**June 5-10**	**December 1**
August 1	**September 5-10**	**December 1**
November 1	**December 10-15**	**June 1**

When the first of the month falls on a weekend or a holiday, the "cut-off" date will be the next business day.

Pooled equipment COPs are sold by competitive bid during the first week of the month following the ***"cut-off" date***. Closing and disbursement of proceeds will generally occur by the middle of the same month. Sale and closing dates may vary due to market conditions. If you would like to know the exact date for disbursement of proceeds, please feel free to call **Sue Melvin** or **Nancy Notter.**

If possible, pay the vendor and request reimbursement.

Lease documents should be submitted after the equipment has been accepted. If at all possible, pay the vendor or contractor and request reimbursement through the lease/purchase program. This avoids delays inherent in the quarterly financing process.

The State Finance Committee has approved a Master Financing Contract that authorizes the sale of COPs to finance equipment acquired by state agencies. The Master Contract includes standardized lease documents to be used for equipment acquisition.

Forms will be provided by e-mail or on disk upon request.

In order to finance equipment, state agencies enter into a Financing Addendum with the State Treasurer. The Agency Financing Addendum, including Exhibits and supporting documents, are discussed in the following pages. Sample forms are provided in Appendix A.

Agency Financing Addendum

***SIGN* the Sublease!**

The ***Agency Financing Addendum*** is a one page document that establishes the contractual obligations of the state agency in the transaction. It further confirms the intent of the agency to sublease equipment and remit lease payments to the State Treasurer. The Agency Financing Addendum is signed by the agency director or a designated representative. It is countersigned by the Designated State Treasurer Representative, usually the Deputy State Treasurer for Debt Management.

The Agency Financing Addendum is submitted with several exhibits:

Exhibit A Notice of Intent

A copy of the Notice of Intent is the first exhibit to the Sublease.

Exhibit B Personal Property Certificate

Enter the assigned transaction number in the upper right corner.

The ***Personal Property Certificate*** is a one page document that identifies the state agency and the designated signer. It also describes the equipment, the vendor(s), the amount to be financed and directions for disbursement.

Generic forms have inherent limitations. When the space provided is insufficient, you may refer to an attached list. If you have acquired forms by e-mail or computer disk, the templates will allow you to enter additional lines of data.

Request reimbursement by completing the line Disburse to "Agency"

An important function of the Personal Property Certificate is to provide direction to the State Treasurer for the disbursement of proceeds. The State Treasurer will reimburse agencies by completing an A-8 form crediting the fund(s) designated in the Notice of Intent. Unless directed otherwise, the A-8 will be forwarded to the ***Accounting Contact*** designee on or before the disbursement date with an explanatory cover memo describing the transaction.

It is more efficient to wire funds than to mail warrants.

Colleges, universities and state agencies using separate bank accounts will receive reimbursements by electronic transfer or state warrant. The State Treasurer prefers to reimburse electronically. Agencies should include wire instructions on the line that sets forth the **Method of Payment**. This line should also be used to request warrant or A-8 distribution.

The State Treasurer will also remit payment directly to vendors and contractors for those agencies not seeking reimbursement. The Treasurer will disburse to vendors by warrant unless directed to pay electronically. For electronic disbursements, the Treasurer will confirm bank coding directly with the vendor. Directions for vendor payments should be indicated on the **Method of Payment** lines.

It is critical that the correct amount is stipulated on the **Disbursement Amount** line. This should be the ***exact amount*** to be financed and repaid. The Treasurer's staff will review attached invoice(s) (discussed below) to determine that the amount ***does not exceed*** the invoice total. When partial financing is desired, be sure to stipulate the lesser, targeted amount to be financed. Once the COPs are sold, it is not possible to revise a payment schedule.

The Personal Property Certificate requires ***four attachments:***

1. ***Invoices*** for all equipment to be financed, including evidence of payment for reimbursement requests

2. ***Payment Schedule (Exhibit E)*** This is prepared by the State Treasurer ***following the sale of COPs***.

3. ***Certificate Designating Authorized Agency Representatives (Exhibit C)*** This document is to be prepared on agency letterhead. An original Certificate may be filed with the State Treasurer so that photocopies may be submitted with future subleases. The format is provided in Appendix A.

4. ***Certificate of Insurance*** This document is prepared by the Office of Risk Management and sent directly to the State Treasurer.

TIP:
It may be difficult to have your agency director sign lease documents when the *"cut-off" date* approaches, so plan to submit documents as soon as possible.

Three sets of lease documents (original and two copies) should be forwarded:

Office of the State Treasurer
Debt Management Division
PO Box 40200
Olympia, WA 98504-0200

Documents must be received by the ***"cut-off" date!***

Subleases ***must be complete*** in order to qualify for financing.

Why THREE copies?

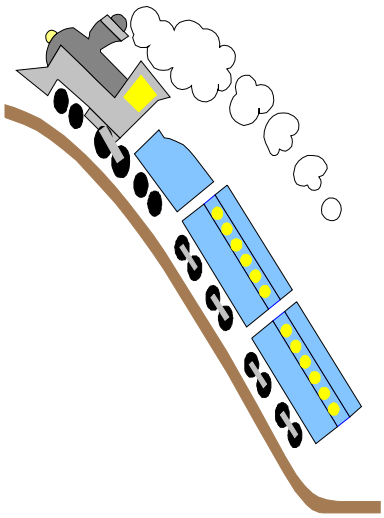
The Treasurer's administrative and accounting staff will review the sublease packages to determine that they are complete, signed and accurate. The invoices will be audited to ensure that they support the amount requested to be financed.

Following the sale of COPs, the State Treasurer's finance staff will prepare payment schedules and countersign the subleases. A copy of fully signed documents, with a cover letter informing agencies of the completed transaction, will be returned to the ***Purchasing Contact*** specified on the Notice of Intent unless your agency has designated another individual as the lease/purchase contact. The Treasurer retains the remaining copy and places the original together with the transcript for the certificate of participation issue.

On the transaction closing date, the lender/underwriter who submitted the least cost bid for the COPs wires payment to the State Treasurer. The Treasurer's accounting staff distributes the proceeds to vendors and agencies as directed on the Sublease Personal Property Certificates. This completes the financing process for equipment lease/purchase transactions.

Summary of the Equipment Financing Process

Follow these steps for a successful lease/purchase.



Attention to detail ***is*** important to the successful financing of lease/purchase transactions. The following summary of steps is provided for those already familiar with the process and for those who might benefit from a quick review.

- ✔ Submit a Notice of Intent to Lease/Purchase
- ✔ Purchase and ***accept*** the equipment
- ✔ Request a Certificate of Insurance
- ✔ Assemble ***THREE*** ***complete*** sets
  - ➢ Financing Addendum
  - ➢ Copy of Notice of Intent
  - ➢ Personal Property Certificate
    - Supporting Invoices
    - Evidence of Payment (Reimbursements)
- ✔ Certificate Designating Agency Representatives
- ✔ ***SIGN*** the documents
- ✔ Deliver to the State Treasurer before the ***"cut-off" date***

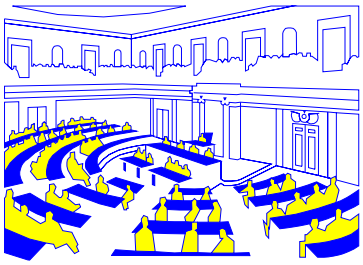
The State Treasurer will pool all transactions received by the ***"cut-off" date*** and sell COPs by competitive bid. The purchaser of the COPs provides the financing for the equipment purchases. The Treasurer's staff will prepare payment schedules following the sale of COPs, countersign the sublease agreements and return copies to financing agencies.

Every effort has been made to provide answers to frequently asked questions and to provide clear directions to prevent errors and their frustrating aftermath. However, we ***KNOW*** we haven't thought of everything! Please feel free to call us with your questions.

Still have questions?

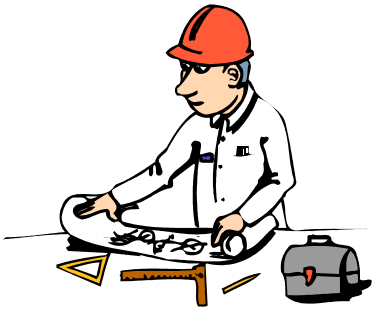
Help is just a phone call away!

Overview of Real Estate Financing



A line item amount should be specified for the cost of each authorized project. An example is provided in Appendix C.

ALL **other required approvals must be obtained *before* a project is financed**.



All real estate projects must be specifically approved by the Legislature. The Legislature authorizes projects in the capital budget or, for certain agencies, in the transportation budget.

The State Treasurer requires that all authorizations be ***current*** in order to be eligible for financing. Authorizations lapse at the end of the biennium. If a financing contract has not been completed by the last day of a biennium, a project must be re-authorized in the ensuing biennium capital budget in order to be financed.

The authorizing language should specify a ***net*** amount for the cost of the project to be financed: the maximum allowed for the actual cost of acquisition and/or construction to be financed through a financing contract, net of financing expenses or reserves. ***Agencies should provide for lease payments in their operating budgets***.

Some agencies, such as colleges and universities, are required to obtain approval from their governing boards. A copy of this approval must be provided to certificate counsel, a law firm appointed by the Attorney General.

Occasionally, the Legislature will require approval of a project plan by the Office of Financial Management (OFM). The Treasurer's staff will provide assistance to agencies and OFM in the form of optional financing structures and repayment scenarios.

Selection of contractors, construction plans and purchase negotiations are the responsibility of the agency and the Department of General Administration (GA). Construction projects financed through the Lease/Purchase Program must be built as public works projects.

Real estate financing contracts consist of two lease agreements and a trust agreement. These agreements are drafted by the certificate counsel.

State agencies agree to make lease payments in exchange for property.

Financing Lease

The financing lease is an agreement between the state agency and the lessor that provides for the use of the land and facility in exchange for lease payments to be made by the agency. The State Treasurer appoints a lessor, currently the Washington Finance Officers Association (WFOA). The role of WFOA is nominal. WFOA assigns its rights under the lease to a trustee bank or to the state fiscal agent, currently The Bank of New York. The trustee or fiscal agent serves the investors who purchase COPs.

Ground Lease

In the state of Washington, a ground lease provides collateral security for investors.

The ground lease is an agreement between the state agency and WFOA that provides for the lease of the land for a period that extends 5 years beyond the term of the financing lease. Again, WFOA will assign its rights to the trustee or fiscal agent.

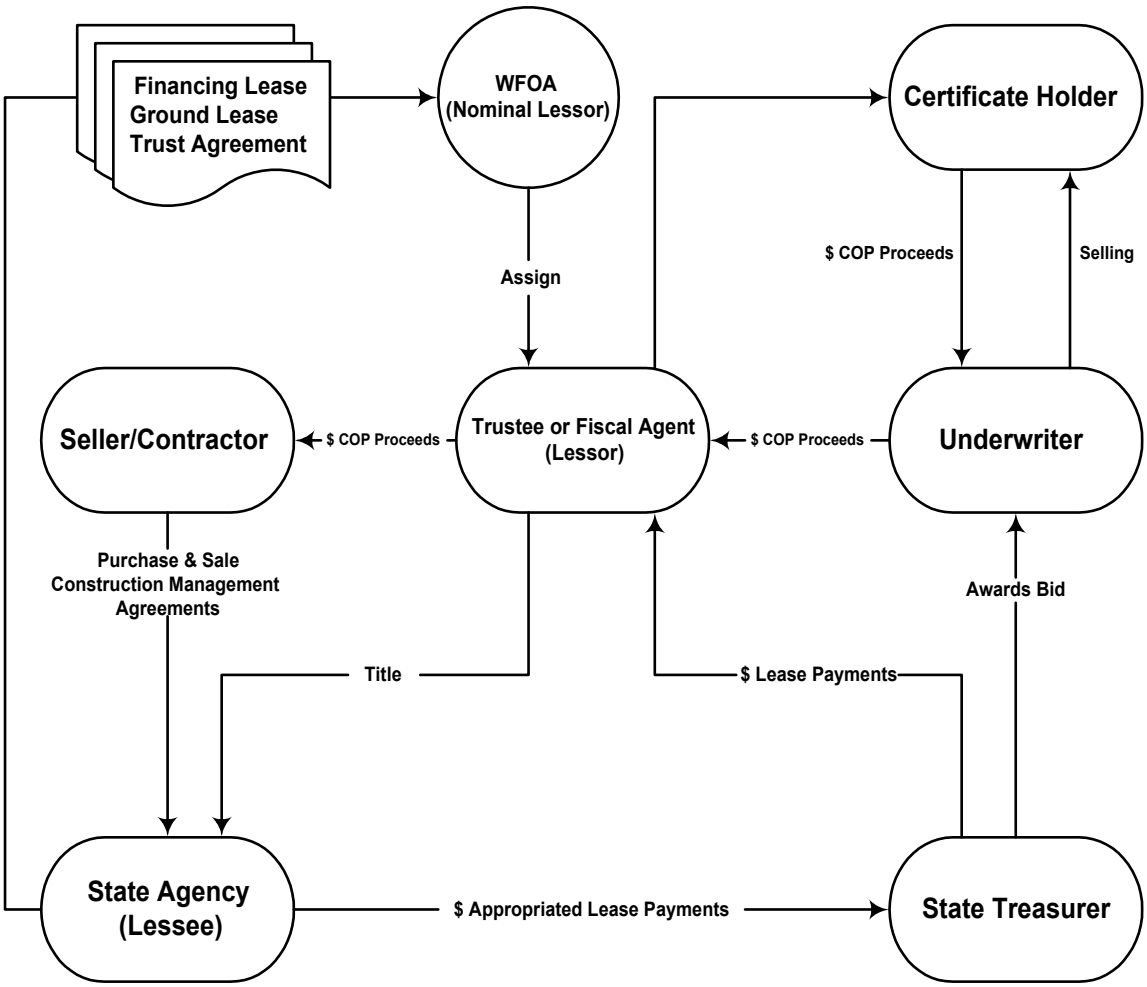
The ground lease provides collateral for the financing lease. Should the agency fail to keep its commitment under the financing lease to make lease payments, the ground lease allows the trustee or fiscal agent to assume control of the property for the extended term of the ground lease. During this period, the trustee may re-lease the facility in order to make the investors whole. At the end of the term of the ground lease, the property will revert to the state agency. However, if the agency makes all of the payments required under the financing lease, the ground lease will terminate at the end of the financing term.

Trust Agreement

A trust agreement between the state, WFOA and the fiscal agent is required for all projects. The Trust Agreement requires the fiscal agent to hold the collateral for the benefit of investors and to be available to represent investors in any event of default.

Pursuant to the Trust Agreement, COP proceeds are held by the State Treasurer or the fiscal agent, and disbursed for approved construction expenses. Details about disbursement procedures will be reviewed with the agency at the time of financing.

Diagram of Real Estate Transaction



Getting Started

COPs are issued in strict compliance with municipal securities laws.

Real estate projects are financed on an individual basis so that the COP may be structured to meet the specific financing requirements of each project. The legal agreements described earlier are unique for each transaction. In addition to the legal agreements, a disclosure document called an official statement must be prepared in accordance with federal and state securities laws. Information which must be provided in the official statement includes:

- Terms and conditions of the financing
- A description of the agency and its purpose
- A description of the project and its relevance
- Appropriation history over the past five biennia
- Population served over the past five years
- Agency or program employment history.

PLANNING AHEAD

is the key to a successful financing experience

Preparation of these documents requires substantial lead time. Agencies should allow a minimum of 60 days for straight-forward acquisition or refinancing transactions. Construction projects and more complex acquisition projects generally require a minimum of 90 days lead time.

At the beginning of each biennium, the State Treasurer will communicate with each agency with authorized projects to determine expected timing of transactions. ***For acquisition projects, the Office of the State Treasurer requests the agency complete the purchase of the real estate prior to the COP being issued***. The proceeds from the COP will be used to reimburse the agency for the approved amount.

ALL ancillary legal agreements must be reviewed by COP counsel ***even if they were drafted by the agency's AG.***

It is also critical that any agreements with outside parties be reviewed by the Treasurer's certificate counsel ***prior to execution*** to ensure their compatibility with the issuance of COPs. These include purchase and sale agreements, construction management agreements and any lease agreements between the agency and current or prospective tenants. ***ALL*** ancillary legal agreements must be reviewed by the certificate counsel ***even if they were drafted by the agency's assistant attorney general***.

Agreements for projects on land that will not be owned by the state must be approved by the Treasurer's certificate counsel.

A preliminary meeting with the financing team will be scheduled with agency project managers.

Agency representatives should be prepared to discuss their project's timing and budget.

Lease agreements with current or prospective tenants may have a significant effect on COP transactions. When these tenants are private businesses or an agency of the federal government, interest paid to investors on the COPs may be subject to federal income tax. Agencies should discuss their intentions prior to the offering of COPs to avoid unintended restrictions on the type of tenants allowed.

Occasionally, projects have been authorized on land that will not be owned by the state of Washington or a state agency. ***In this situation, it is imperative that a legal review of the land lease occurs prior to the agency finalizing the agreement.*** Lease/purchase financing with COPs will not be possible unless specific structural and legal criteria are met.

When a project has been authorized and acquisition and/or construction is expected to occur within three to four months, the agency should submit the Notice of Intent and Project Overview forms. ***It is important that the Notice of Intent be submitted to the Office of the State Treasurer prior to the agency spending any funds expected to be reimbursed by the COP proceeds***. After the receipt of the Notice of Intent and Project Overview forms the Treasurer's staff will arrange a meeting to introduce agency project leaders to the financing team and to discuss the project and its financing structure. For agencies that have prior experience with real estate financing through the Lease/Purchase Program, this preliminary discussion may occur through a conference call.

The financing team includes the Treasurer's staff, certificate counsel and the Treasurer's financial advisor. In addition to the agency project leaders, representatives from GA's Property Development and Architecture and Engineering Divisions will also be included whenever GA will be negotiating the purchase and sale agreement and/or administering the project construction or renovation.

Be sure to inform the financing team of any material project timing modifications.

The financing team will explain the COP financing process and will discuss the specific requirements for the project. Agency project leaders should be prepared to provide an overview of the project, including the estimated cost of acquisition and/or construction and timing. Any special budget and financial issues will also be discussed so that the Treasurer's staff and the financial advisor will be able to provide viable scenarios for the structure of the COPs.

Following the meeting, the Treasurer's staff will provide a summary of the discussion including a list of contacts and telephone numbers. A checklist citing the information and documents required from responsible parties will also be provided. A summary checklist of typical documents required for real estate projects is illustrated on page 3-8.

The financing team will develop a time line schedule for the transaction working toward a sale and closing date for the COPs. If the project time line changes, it is imperative to inform the Treasurer's Office promptly. This is critical for all real estate projects since COPs will not be offered for sale until the construction contract is awarded or acquisition completed, except in very rare instances.

Real Estate Transaction Checklist

Required Documents	Acquisition	Renovation	Construction
Purchase and sale agreement	✔		
Name and address of seller	✔		
Affidavit regarding nationality of seller (FIRTPA)	✔		
Copies of any building warranties or guarantees	✔		
Construction time schedule		✔	✔
Bid documents		✔	✔
Payment and performance bonds		✔	✔
Ground lease if land is leased from third party		✔	✔
Legal description of land	✔	✔	✔
Title report and title insurance	✔	✔	✔
Phase 1 environmental report	✔	✔	✔
Service contracts or management agreements	✔	✔	✔
If personal property is included in the project:			
Schedule of personal property	✔	✔	✔
UCC search	✔	✔	✔
Equipment leases, if applicable	✔	✔	✔
Use tax affidavit, if applicable	✔	✔	✔
For facilities to be occupied by non-state agencies:			
Percentage of space to be occupied by tenants	✔	✔	✔
Copy of proposed lease	✔	✔	✔
For facilities with continuing tenants:			
Copies of leases	✔	✔	
Assignment of leases to state agency	✔	✔	
Estoppels from tenants	✔	✔	
Security deposits and prepaid rents	✔	✔	

Completing the Real Estate Financing Transaction

The State Treasurer's financing team will assume the responsibility for completing the financing transaction and the issuance and sale of the COPs. The sale of COPs will be coordinated with the acquisition and construction schedule provided by the agency. The state agency's responsibility is limited to providing the items specified in the checklist and informing the Treasurer's staff of any changes in the expected timing of their acquisition and/or construction.

For acquisition projects, the real estate transaction should be closed prior to the closing of the COP. In rare cases, if it is not possible to close the real estate first, the COP closing must occur simultaneously with the real estate closing.

Accounting staff need to be informed of transactions prior to closing.

Prior to closing, a conference call will be scheduled. Representatives of the, agency, Treasurer's accounting staff, agency project leaders and financing team members will discuss the closing process, subsequent disbursement for construction projects and the lease payment process.

Because each real estate project is unique, timely communication between client agencies and the Treasurer's staff is conducive to a smooth, trouble-free financing experience. If you have questions, please feel free to call or e-mail:

Noah Crocker
(360) 902-9020
FAX 902-9045
Noah@tre.wa.gov

Making Scheduled Lease Payments

Agency purchasing contacts or project managers should inform their accounting staff of lease/purchase contract payment schedules.

NEW POLICY:

For all state agencies operating out of the state treasury, the State Treasurer will transfer lease payments on the payment due dates.

Agencies unable to remit payment electronically should call ***Nancy Notter*** for directions.

OFM ACCOUNTING

For **Lease/purchase accounting requirements** refer to the Office of Financial Management State Administrative & Accounting Manual (SAAM), sections:

Chapter 85.72.40-general
Chapter 85.85.45-Equip.
Chapter 85.85.50-RE

www.ofm.wa.gov/policy/saamintro.htm

ALL lease payments are due to the State Treasurer on June 1 and December 1 according to payment schedules provided at the closing of each transaction. For equipment transactions, the schedules are prepared by the Treasurer's staff immediately following the sale of COPs. The schedules are returned to state agencies with their copies of the countersigned sublease agreements. Unless other arrangements have been requested, the sublease agreements will be returned to the purchasing contact named on the Notice of Intent to Lease/Purchase. Real estate project payment schedules will be provided to agency project managers as part of the closing process for each transaction.

The State Treasurer will forward a payment notice to each agency accounting contact on May 15 and November 15. The notice will provide an itemized list of payments due for all outstanding lease/purchase transactions and a summary total due. For those agencies operating out of the state treasury, the Treasurer will prepare a journal voucher (JV) for the amount due. The amount will be charged to the general fund. Agencies will prepare their own JVs to reverse the Treasurer's accounting entry and record their payments in compliance with OFM budget and accounting guidelines.

Community colleges, universities and agencies operating from local funds, should remit payments electronically to the State Treasurer as follows:

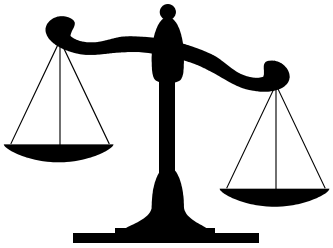
Bank of America, Olympia Branch
ABA: #125000024 – for ACH; #026009593 – for wires
Account #62049010
Credit WA State Treasurer Concentration Account

Questions related to scheduled lease payments should be directed to:

Nancy Notter
(360) 902-9026
FAX 902-9045
NancyN@tre.wa.gov

Prepaying Lease/Purchase Transactions

Convenience



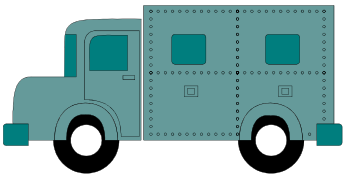
Lower Interest

With the exception of certain real estate transactions which are structured to suit specific agency requirements, ***the State Treasurer issues all COPs on a non-callable basis***. When an investor purchases a non-callable security, he/she will be certain of receiving all principal and interest payments. When an issuer sells securities that may be "called" (prepaid) before they are due, investors will demand a higher rate of return. This may be provided by a call premium (usually expressed as a percent of the prepaid principal balance), a higher interest rate or a combination of these features.

The State Treasurer receives relatively few requests to prepay lease/purchase transactions. In order to provide financing at the lowest possible cost for the majority of state agencies, the Treasurer has opted to forgo the convenience of callable COPs for the minority.

The Treasurer will establish escrow accounts to accommodate agency prepayment requests.

Non-callable COPs may still be prepaid. The State Treasurer will purchase U.S. Treasury fixed income securities and establish an escrow account on behalf of agencies requesting prepayment. The escrow account will be structured so that the income stream from these securities will provide the payments due to the COP holders. The amount required to prepay a transaction will be the actual cost of the securities plus escrow fees charged by the trustee or fiscal agent.



The State Treasurer will provide an initial estimate of escrow costs for agencies inquiring about prepayment of lease/purchase contracts. ***Once the decision to prepay has been made, it is irrevocable.*** The State Treasurer will commit to the purchase of the escrow securities and advise the agency of the amount due. Funds must be remitted immediately either by journal voucher, electronic transfer or check.

An important function of the Office of the State Treasurer is to promote good financial management for state government. The State Treasurer does ***not*** encourage the prepayment of

The State Treasurer does not encourage use of pre-payments as a budget adjustment tool.

NEW POLICY:

Effective July, 1997 ***30 days notice is required***

lease/purchase contracts because the interest rate paid by state agencies is less than the rate of return earned on the state's operating cash balance. We request State Agencies do not attempt to prepay before they have made 3 payments. Prepayment requests prior to this time will only be arranged for exceptional circumstances.

Agencies frequently attempt to use lease contract prepayment as a budget adjustment tool at the end of the fiscal reporting period. Because prepayment is not a primary service of the lease/purchase program, ***the State Treasurer requires a minimum of 30 days notice to complete a prepayment request.*** **THIS POLICY WILL BE STRICTLY ENFORCED.**

Prepayment inquiries should be directed to:

Sue Melvin
(360) 902-9022
FAX 902-9045
melvins@tre.wa.gov

Noah Crocker
(360) 902-9020
FAX (360) 902-9045
Noah@tre.wa.gov

Pam Johnson
(360) 902-9021
FAX 902-9045
Pam@tre.wa.gov

Appendix A

Sample Lease Forms

The following forms are standardized for financing equipment through the Treasurer's Lease/Purchase Program:

State Agency Financing Addendum
Personal Property Certificate
Certificate Designating Authorized Agency Representatives
Notice of Intent to Lease/Purchase

The Notice of Intent to Lease/Purchase should also be used to apply for financing real estate. Please make copies from the samples provided in this manual.

If you prefer to complete your forms electronically, templates created in Microsoft Word, Version 6, are available on our web site: http://www.tre.wa.gov/BondDebt/bnd_state-lp.htm. Or you may request these templates by phone or email by contacting Sue Melvin at (360) 902-9022, melvins@tre.wa.gov; Noah Crocker at (360) 902-9020, Noah@tre.wa.gov; or Pam Johnson at (360) 902-9021, pam@tre.wa.gov.

The forms are legal components of the Master Installment Agreement approved by the State Finance Committee. ***DO NOT MODIFY THE LANGUAGE ON THESE FORMS.***

Transaction No. _____

STATE AGENCY FINANCING ADDENDUM, SERIES 200__
(Equipment)

This State Agency Financing Addendum, Series 200__ (the "Agency Financing Contract") is entered into by and among the Washington Finance Officers Association, a nonprofit corporation organized and existing under and by virtue of the laws of the state of Washington (the "Corporation"), and the state of Washington ("State"), acting by and through the State Treasurer ("State Treasurer") and the ("State Agency").

RECITALS

WHEREAS, certain State agencies (as defined in Appendix I hereto, "State Agencies"), including the State Agency, are authorized to acquire real and personal property used or needed by such State Agencies through financing contracts entered into pursuant to Chapter 356, Laws of Washington, 1989, codified as Chapter 39.94 of the Revised Code of Washington (the "RCW"), as supplemented and amended (the "Act"); and

WHEREAS, Chapter 291, Laws of Washington, 1998 supplemented and amended the Act to authorize the State to enter into financing contracts on behalf of certain local agencies (as described therein, "Local Agencies"), to finance the acquisition of real and personal property by Local Agencies; and

WHEREAS, the State Treasurer has established a consolidated program providing for the execution and delivery of certificates of participation in such financing contracts, or in master financing contracts with respect thereto, in series from time to time in order to provide financing or refinancing for the costs of acquisition of such real and personal property by State Agencies and Local Agencies; and

WHEREAS, simultaneously with the execution and delivery hereof, the State is entering into a Master Financing Contract, Series 200__, dated as of the Dated Date (the "Master Financing Contract") with the Corporation to provide financing for the costs of acquisition of certain items of personal property by certain State Agencies and Local Agencies, including the State Agency, under the terms set forth therein; and

WHEREAS, the State Treasurer and the State Agency have determined that it is necessary and desirable to enter into this Agency Financing Contract, as a part of the Master Financing Contract, to provide financing or refinancing for the costs of acquisition of certain items of personal property, described in Exhibit B hereto (the "Property"), by the State Agency; and

WHEREAS, the State Finance Committee has authorized the execution and delivery of this Agency Financing Contract pursuant to Resolution No. 987 adopted on October 7, 2003; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and delivery of this Financing Contract do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the Parties hereto are now duly authorized to execute, deliver and perform their respective obligations under this Agency Financing Contract;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other valuable consideration, the Parties hereto mutually agree as follows:

Section 1.1 Defined Terms. Capitalized terms used but not otherwise defined in this Agency Financing Contract shall have the respective meanings given such terms in Appendix I hereto.

Section 1.2 Notice of Intent; Personal Property Certificate; Certificate Designating Authorized State Agency Representative. The State Agency has delivered a Notice of Intent to the State Treasurer in the form of Exhibit A attached hereto and incorporated herein by this reference. In order to evidence its acceptance of the Property financed and acquired pursuant hereto, the State Agency has executed and delivered herewith, or will execute and deliver within 60 days from the Dated Date to the State Treasurer, a Personal Property Certificate in the form of Exhibit B, attached hereto and incorporated herein by this reference. The State Agency has delivered a Certificate Designating Authorized Agency Representatives to the State Treasurer in the form of Exhibit C attached hereto and incorporated herein by this reference. Said Certificate is currently in force and has not been amended, withdrawn or superseded, and the signatures shown thereon are true and correct originals of the signatures of the persons who hold the titles shown opposite their names. The signature of any one of the individuals shown on said Certificate is sufficient to bind the State Agency under this Agency Financing Contract with respect to any of the undertakings contemplated herein. The terms and provisions set forth in Appendix II hereto are incorporated herein and made a part hereof by this reference.

Section 1.3 Installment Sale and Purchase of Property. The Corporation hereby agrees to sell, assign and convey, and does hereby sell, assign and convey to the State Agency, and the State Agency hereby agrees to purchase, acquire and assume, and does hereby purchase, acquire and assume, from the Corporation, all of the Corporation's right, title and interest in and to the Property and all proceeds and profits thereof and therefrom, subject to the security interest created pursuant to Section 2.5 of Appendix II hereof, and the State Agency agrees to pay in consideration thereof the Purchase Price therefor and interest thereon and the Additional Costs in accordance with Section 1.4 hereof, and all other amounts required to be paid by the State Agency hereunder, all in accordance with the provisions of this Agency Financing Contract.

Section 1.4 Agency Installment Payments. In consideration of the sale of the Property and the covenants and agreements of the Corporation in this Agency Financing Contract, the State Agency hereby promises to pay to the State the following amounts at the following times: (a) On each Agency Installment Payment Date, the Agency Installment Payment set forth in Exhibit D hereto, consisting of a Agency Principal Component and/or an Agency Interest Component as set forth in such Exhibit; and (b) All Additional Costs incurred by the State in connection with the sale of the Property to the State Agency, the execution and delivery of the Certificates, and the observance and performance of the Series 200__ Agreements, within thirty (30) days following receipt of an invoice from the State with respect thereto which includes (i) a brief description of each such Additional Cost, (ii) the party to whom payment is due, (iii) the amount thereof, and (iv) such additional information as the State Agency may reasonably request.

Section 1.5 Term. This Agency Financing Contract shall terminate on the date on which all amounts due hereunder shall have been paid or the payment thereof duly provided for pursuant to Section 4.3 of Appendix II hereof.

STATE OF WASHINGTON OFFICE OF THE STATE TREASURER	_____ as State Agency
By _____ Designated State Treasurer Representative	By _____ Title _____
Date:	

EXHIBIT A

NOTICE OF INTENT

Date:
Agency Name: **Agency No.:**
Name of Division:
Address: **City:** **Zip:**

Purchasing Contact Person: **Phone Number:** **Fax Number:**
Title: **E-mail:** **Mail Stop:**

Accounting Contact Person: **Phone Number** **Fax Number:**
Title: **E-Mail:** **Mail Stop:**

Property Description	Quantity	Amount Expected to be Financed	Proposed Finance Term (Years)	Acceptance Date	Fund (AFRS No.)

By executing this Notice of Intent, the State Agency acknowledges, agrees to and accepts its designation and appointment as agent of the WFOA in connection with the acquisition of the Property. The State Agency reasonably expects to be reimbursed for original expenditures made to acquire the personal/real property identified above after (and/or not more than 60 days before) the date of the Notice of Intent to Lease/Purchase, from sale proceeds of certificates of participation in a Personal/Real Property Financing Lease with the State Treasurer in the maximum amount expected to be financed as identified above.

Return to: Debt Management Division, MS 40200
Office of the State Treasurer

Signature of Authorized Agency Representative

Revised 2-1-2005

EXHIBIT B
PERSONAL PROPERTY CERTIFICATE

Name of State Agency:
Address:

All capitalized terms not defined herein shall have the meanings assigned to such terms in the Financing Contract that this Exhibit B is attached to. The undersigned, [Name/Title] _____ does hereby certify, that [he/she] is an Authorized Agency Representative of _____ (the "State Agency") pursuant to the terms of the Financing Contract.

The undersigned, confirms that the Property described below will be placed in use at the location listed below. The undersigned confirms that the Property described below has been delivered to and received by the State Agency. All installation or other work necessary prior to the use thereof has been completed. The Property has been examined and/or tested and is in good operating order and condition and is in all respects satisfactory to the State Agency and complies with all terms of the Master Financing Contract and the Financing Contract.

Notwithstanding the foregoing, the undersigned does not waive or limit, by execution of this certificate, any claim against the vendor or any other seller, installer, contractor other provider of property or services related to the purchase, shipment, delivery, installation or maintenance of the Property.

The State Agency further confirms that the Property will be used to fulfill an essential governmental function which the State Agency has the authority to provide in the State.

****

PROPERTY INFORMATION

Description:	_____	Name of Vendor :	_____
	_____	Address	_____
	_____		_____
	_____		_____
Serial No.:	_____		_____
State Tag No.:	_____	Payment Amount:	_____
	_____	Disburse to:	_____
Location of Property	_____		_____
Acquisition:	_____	Method of Payment:	_____
	_____		_____

Attached hereto are:

1. A vendor's invoice for the Property acquired or to be acquired by the State Agency.
2. A Certificate of Insurance from Office of Risk Management, Department of General Administration, demonstrating liability insurance coverage and stating that insurance will be renewed annually automatically, unless said office notifies the State Treasurer of any discontinuation of coverage.

In connection with the State Agency's acquisition of the Property as agent of the Washington State Finance Officers Association, you are hereby requested to make a disbursement as indicated above.

_____
Authorized Agency Representative
Date: _____

Countersigned and
Approved for Payment: _____
Designated State Treasurer Representative
Date: _____

EXHIBIT C

CERTIFICATE DESIGNATING AUTHORIZED AGENCY REPRESENTATIVES

I, _____, _____of _____ (the "State Agency"), hereby certify that, as of the date hereof the following individuals are each an "Authorized Agency Representative," as indicated by the title appended to each signature, that the following individuals are duly authorized to execute and deliver the Financing Contract to which this Certificate is attached as Exhibit C, and all documentation in connection therewith, including but not limited to the Personal Property Certificate(s) attached thereto as Exhibit B, that the signatures set forth below are the true and genuine signatures of said Authorized Agency Representatives and that _____ of the _____ following signature(s) [is/are] required on each of the aforementioned documents in order to consider such documents executed on behalf of the State Agency:

_____	_____	_____
(signature)	(name)	(title)
_____	_____	_____
(signature)	(name)	(title)
_____	_____	_____
(signature)	(name)	(title)

Dated this _____ day of _____, 20_____.

_____ [SIGNATURE]

[TITLE]

[NAME OF STATE AGENCY]

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20_____.

By: _____
NOTARY PUBLIC in and for the State of Washington, residing at:

_____
Printed Name: _____
My Commission Expires: _____

Appendix B

State Agency Financing Addendum, Series 200_
Equipment
(Appendix II)

This addendum is provided for your reference only. Included in your financing documents there is a one page summary form that you will need to sign and return with your financing package.

The following documents are on file with the Office of State Treasurer and are available for your review.

Mater Financing Contract, Series 200_
Trust Agreement, Series 200_
Master Assignment, Series 200_
Appendix I to the Trust Agreement, Master Financing Contract, Financing Contracts and Master Assignment

APPENDIX II

STATE AGENCY FINANCING ADDENDUM, SERIES 200__
(Equipment)

(Appropriated Funds)

ARTICLE I
DEFINITIONS; CONSTRUCTION; MISCELLANEOUS PROVISIONS; SUPPLEMENTS

Section 1.1 Definitions, Construction, Miscellaneous Provisions, Supplements;. Capitalized terms used but not otherwise defined in this Agency Financing Contract shall have the respective meanings given such terms in Part 1 of Appendix I of this Agency Financing Contract, which is incorporated herein and made a part hereof by this reference. This Agency Financing Contract shall be construed in accordance with the Rules of Construction set forth in Part 2 of Appendix I of this Agency Financing Contract, which is incorporated herein and made a part hereof by this reference. The miscellaneous provisions set forth in Part 3 of Appendix I are incorporated herein and made a part hereof by this reference. This Agency Financing Contract may be supplemented and amended from time to time in accordance with Part 4 of Appendix I of this Agency Financing Contract, which is incorporated herein and made a part hereof by this reference.

Section 1.2. Performance by Representatives. Any authority granted or duty imposed upon the State Treasurer or the State hereunder may be undertaken and performed by the Treasurer Representative. Any authority or duty imposed upon the State Agency hereunder may be undertaken and performed by the Authorized Agency Representative.

ARTICLE II
SALE AND PURCHASE OF PROPERTY

Section 2.1 Conditional Sales Contract; Master Financing Contract.

(a) *Conditional Sales Contract.* This Master Financing Contract shall constitute a "conditional sales contract," a "financing contract" and a "master financing contract" within the meaning of the Act.

(b) *Master Financing Contract.* The State Agency acknowledges and agrees that this Agency Financing Contract is subject in all respects to the other terms and provisions of the Master Financing Contract, of which this Agency Financing Contract is a part.

Section 2.2 Appointment of Agents; Acquisition of Property.

(a) *Appointment of Agents*. The State Agency hereby ratifies, approves, confirms, accepts and agrees to its designation and appointment as agent of the Corporation in connection with the acquisition of the Property.

(b) *Acquisition of Property*. The State Agency hereby agrees that (i) it has caused or will cause the Property to be acquired, as agent for the Corporation, with all reasonable dispatch; (ii) it will make, execute, acknowledge and deliver any contracts, agreements, orders, receipts, documents, writings or instructions with or to any Person and do all other things that may be necessary or

desirable to acquire the Property; and (iii) it will pay or cause to be paid the Costs of Acquisition of the Property from funds available to it pursuant to the Master Financing Contract and this Agency Financing Contract. The appointment of the State Agency to act as agent of the Corporation in connection with the acquisition of the Property is made and conferred irrevocably by the Corporation, and shall not be terminated by any act of the State Agency, the State Treasurer, the Corporation or otherwise.

The State Agency shall negotiate or call for bids for the purchase of the Property in accordance with the requirements and limitations, if any, imposed by State law with respect to the purchase of such Property by such State Agency. It is intended by the Parties hereto that the Corporation shall have no responsibility, liability or obligation with respect to the selection or procurement of any of the Property.

(c) *Revision and Substitution of Property*. The State Agency, with the prior written consent of the State Treasurer, may revise any item of Property to be financed or refinanced and acquired pursuant hereto, or the description thereof; *provided*, that (i) such item of Property as so revised shall satisfy the requirements under this Agency Financing Contract and the Master Financing Contract with respect to the substitution of Property previously acquired; (ii) the Costs of Acquisition of such item of Property shall not be materially reduced thereby; and (iii) any such revision shall not relieve the State Agency of its obligation to acquire the Property in accordance herewith and with the Master Financing Contract.

After acquisition of an item of Property, the State Agency, with the prior written consent of the State Treasurer, may substitute for an item of Property acquired pursuant to this Financing Contract other personal property by filing with the State Treasurer (i) a certificate of the State Agency stating that such substitute Property (A) has a remaining useful life equal to or greater than the Property for which it is being substituted; (B) has a fair market value equal to or greater than the fair market value of the item of Property for which it is being substituted; (C) is free and clear of all liens and encumbrances except a first priority security interest in favor of the Fiscal Agent, as assignee of the Corporation, under the Master Financing Contract; (D) is of equal usefulness and value as the Property for which it is being substituted; and (E) is essential to the State Agency's ability to carry out its governmental functions and responsibilities; and (F) is expected to be used by such State Agency immediately and for the term of this Agency Financing Contract; and (ii) an Opinion of Counsel to the effect that such substitution will not cause interest evidenced and represented by the Certificates to be includable in gross income for federal income tax purposes under the Code.

Section 2.3 Acquisition Fund. Pursuant to the Trust Agreement, the State Treasurer shall establish the Acquisition Fund and make disbursements therefrom in accordance with the provisions thereof and of the Master Financing Contract to pay the Acquisition Costs of the Property on behalf of the Corporation. Proceeds of the sale of the Certificates shall be deposited in the Acquisition Fund. Moneys on deposit in the Acquisition Fund shall be invested by the State Treasurer as provided in the Trust Agreement. Disbursements from the Acquisition Fund shall be made as provided in the Trust Agreement. The amount allocable to each State Agency shall be established by the State Treasurer and shall be an amount not to exceed the Acquisition Costs of its respective Property. The State Agency shall file requisitions with the State Treasurer for the Acquisition Costs of the Property or reimbursement therefor in such form as the State Treasurer shall reasonably require.

If moneys in the Acquisition Fund allocable to the State Agency shall not be sufficient to pay the Acquisition Costs of the Property in full, the State Agency shall cause the Acquisition Costs of such Property in excess of the allocable amount in the Acquisition Fund to be paid from other moneys of such State Agency. Neither the State Treasurer nor the Corporation makes any representation or warranty, either express or implied, that the moneys which will be deposited into the Acquisition Fund allocable to the State Agency will be sufficient to pay the Acquisition Costs of the Property. The State Treasurer and the Corporation shall have no obligation or liability for the payment of the Acquisition Costs of the Property other than from the proceeds of the Certificates and any other amounts that may be provided by the State Agency. If the State Agency shall pay or cause the payment of any Acquisition Costs in excess of the allocable amounts in the Acquisition Fund available for such purpose from other funds, the State Agency shall not be entitled to any reimbursement from the State Treasurer or the Corporation for such payments, nor shall the State Agency be entitled to any diminution, reduction, abatement, postponement, counterclaim, defense or set-off of the Agency Installment Payments, Additional Costs or other amounts otherwise required to be paid hereunder.

The Fiscal Agent, as assignee of the Corporation, shall have no responsibility, liability or obligation under the Master Financing Contract or otherwise with respect to the acquisition of the Property or payment of the Acquisition Costs thereof.

Section 2.4 Title to the Property. All right, title and interest in and to the Property shall transfer to and vest in the State Agency from the Corporation without any further action by the State Agency, the State or the Corporation immediately upon the acquisition thereof or reimbursement to the State Agency for the Acquisition Costs thereof; *provided*, that the State Treasurer and the State Agency shall take such action and execute such documents (including without limitation bills of sale and other title documents) as may be deemed necessary or desirable by the State Treasurer, the State Agency or the Corporation to evidence and confirm such transfer of title pursuant to this Agency Financing Contract and the Master Financing Contract.

Title to any and all additions, modifications, improvements, repairs or replacements to the Property shall vest in the State Agency, subject to the security interest of the Corporation until payment of all amounts due and owing with respect to such Property under this Agency Financing Contract.

Any Property constituting a motor vehicle subject to registration with the State Department of Licensing shall be registered with the State Agency as the registered and legal owner thereof.

Section 2.5 Security Interest.

(a) *State Security Interest.* In order to secure the payment and performance by the State of its obligations under the Master Financing Contract, the State has pledged, granted, assigned and conveyed to the Corporation a lien on and security interest in all right, title and interest of the State, whether now owned or hereafter acquired, in and to the Property and this Agency Financing Contract, including without limitation the Agency Installment Payments and all proceeds thereof. The State Agency acknowledges and agrees to such pledge, grant, assignment and conveyance, and hereby acknowledges that its right, title and interest in and to the Property is subject to such first priority lien and security interest.

(b) *State Agency Security Interest.* In order to secure the payment and performance by the State Agency of its obligations under this Agency Financing Contract, the State Agency hereby pledges, grants, assigns and conveys to the Corporation a lien on and security interest in all right, title and interest of the State Agency, whether now owned or hereafter acquired, in and to the Property. Accordingly, this Agency Financing Contract constitutes a security agreement. The State Agency acknowledges and agrees that each provision of this Agency Financing Contract is also a provision of the security agreement.

The State Agency further agrees that the Corporation may: (i) commingle Property which comes into its possession; (ii) re-pledge such Property upon terms which impair the State Agency's right to redeem such Property; and (iii) require the State Agency to assemble the Property and make it available to the Corporation in a manner which is reasonably convenient to both Parties. To the extent the Corporation is required for any reason to provide commercially reasonable notice to the State Agency, the State agrees that notice mailed by first class mail five days before the event of which notice is given is commercially reasonable notice. The standard by which the Corporation's rights and duties with respect to this security agreement shall be measured is gross negligence or willful misconduct.

If required by the Corporation or the Fiscal Agent, as assignee of the Corporation, at any time during the term of this Agency Financing Contract, the State Agency will execute and deliver to the Corporation or the Fiscal Agent, as the case may be, in form satisfactory to the Corporation or the Fiscal Agent, such security agreements, financing statements and/or other instruments covering the Property and all accessions thereto.

Section 2.6 Disclaimer of Warranties. The State Agency acknowledges and agrees that the Property is of a nature, size, design and capacity selected by the State Agency pursuant to its own specifications, and not by the State Treasurer or the Corporation, and that neither the State Treasurer nor the Corporation is a manufacturer, supplier or a vendor of such Property. THE STATE TREASURER AND THE CORPORATION MAKE NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AND ASSUME NO RESPONSIBILITY, LIABILITY OR OBLIGATION, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR USE OF THE PROPERTY, OR AS TO THE TITLE THERETO, OR FOR THE ENFORCEMENT OF THE MANUFACTURERS', SUPPLIERS' OR VENDORS' REPRESENTATIONS, WARRANTIES OR GUARANTIES, OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY. IN NO EVENT SHALL THE STATE TREASURER OR the Corporation BE LIABLE OR RESPONSIBLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGENCY FINANCING CONTRACT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR USE BY THE STATE AGENCY OF THE PROPERTY.

the Corporation hereby grants, assigns and conveys to the State Agency during the term hereof, for so long as no Agency Event of Default, Event of Default or other event permitting termination of this Agency Financing Contract has occurred and is continuing hereunder, all representations, warranties and guaranties, if any, express or implied, with respect to the Property from the manufacturers, suppliers and vendors thereof, subject, however, to a reservation by the State Treasurer and the Corporation of a right to independently enforce such warranties and guaranties.

No officer, employee or agent of any manufacturer, supplier or vendor is authorized to waive or alter any term or condition of this Agency Financing Contract, and no manufacturer, supplier or vendor shall in any way affect the State Agency's duty to pay and perform its obligations as set forth in this Agency Financing Contract.

ARTICLE III
AGENCY INSTALLMENT PAYMENTS; LIMITED OBLIGATION

Section 3.1 Agency Installment Payments. Each Agency Installment Payment shall consist of an Agency Principal Component and/or an Agency Interest Component as set forth in Exhibit D to this Agency Financing Contract. Interest shall accrue and be calculated as determined by the State Treasurer, which determination shall be binding and conclusive against the State Agency absent manifest error. Each Agency Installment Payment payable hereunder shall be paid to or upon the order of the State Treasurer at such place as the State Treasurer shall direct in writing not less than ten (10) Business Days prior to the Agency Installment Payment Date by electronic funds transfer in lawful money of the United States of America. Payments of Additional Costs shall be made to or upon the order of the State Treasurer. Each Agency Installment Payment shall be applied first to the Agency Interest Component due hereunder, and then to the Agency Principal Component due hereunder.

Section 3.2 Sources of Payment of Agency Installment Payments.

(a) *State Agency Financing Contract*. The State Agency hereby acknowledges and agrees that the State is acquiring the Property from the Corporation for and on behalf of the State Agency. Concurrently with the execution hereof, the State shall execute and deliver the Master Financing Contract pursuant to which the State shall agree to make Installment Payments for the acquisition of the Property for and on behalf of the respective Agencies, at such times and in such amounts as provided therein, which will be sufficient in the aggregate to pay the Purchase Price of the Property to be acquired by the State for and on behalf of the State Agency together with all other personal property to be acquired for and on behalf of the other State Agencies, and interest thereon.

(b) *Obligation of State Agency Subject to Appropriation*. That portion of the Installment Payments that is allocable to the Purchase Price of the State Agency Property shall be payable by the State solely from Agency Installment Payments to be made by the respective State Agencies, including the State Agency. The obligation of the State Agency to make its Agency Installment Payments shall be subject to appropriation by the State Legislature and to Executive Order reduction. The State shall not be obligated to pay that portion of the Installment Payments that is allocable to the Purchase Price of the State Agency Property and interest thereon other than from appropriated funds of the respective State Agencies.

Section 3.3 Deposit and Investment of Agency Installment Payments. The State Agency hereby acknowledges and agrees that the Agency Installment Payments shall be deposited in a special fund or funds maintained by the State Treasurer (the "Agency Installment Payment Fund"). Payments of Agency Installment Payments from State Agencies shall be separately accounted for from payments from the Local Agencies. The Agency Installment Payments due on each Agency Installment Payment Date shall be at least sufficient, in the aggregate, to make the Installment Payment next coming due under the Master Financing Contract. Amounts in the Agency Installment Payment Fund, including investment earnings thereon, shall be used and applied, *first*, to make the Installment Payment next coming due, *and thereafter*, but prior to the next Agency Installment

Payment Date, to the extent that amounts remain in such Fund after such Installment Payment is made, to pay Additional Costs or for any other lawful purpose of the State Treasurer. Amounts in the Agency Installment Payment Fund shall be invested in Qualified Investments, and shall be separately accounted for, but may be commingled with other moneys on deposit with the State Treasurer solely for investment purposes. The State Agency shall have no right, title or interest in or to the amounts on deposit from time to time in the Agency Installment Payment Fund.

Section 3.4 No Set-Off. The obligation of the State Agency to make Agency Installment Payments from the sources set forth herein and to perform its other obligations hereunder shall be absolute and unconditional. The State Agency shall make Agency Installment Payments as and when the same shall become due without diminution, reduction, postponement, abatement, counterclaim, defense or set-off as a result of any dispute, claim or right of action by, against or among the State, the Corporation, the Fiscal Agent, any Agency, and/or any other Person, or for any other reason; *provided*, that nothing in this Section 3.4 shall be construed to release or excuse the State Treasurer or the Corporation from the observance or performance of its obligations hereunder or under the Master Financing Contract. If the State Treasurer or the Corporation shall fail to observe or perform any such obligation, the State Agency may institute such legal action and pursue such other remedies against the State Treasurer or the Corporation as the State Agency deems necessary or desirable, including, but not limited to, actions for specific performance, injunction and/or the recovery of damages.

Section 3.5 Limited Obligation. THIS AGENCY FINANCING CONTRACT SHALL CONSTITUTE A SPECIAL, LIMITED OBLIGATION OF THE STATE AGENCY PAYABLE SOLELY FROM THE SOURCES AND SUBJECT TO THE LIMITATIONS SET FORTH HEREIN. THIS AGENCY FINANCING CONTRACT SHALL NOT CONSTITUTE A DEBT OR A GENERAL OBLIGATION OF THE STATE OR OF THE STATE AGENCY, THE CONTRACTING OF AN INDEBTEDNESS BY THE STATE OR THE STATE AGENCY, OR A PLEDGE OF THE FAITH AND CREDIT OR TAXING POWER OF THE STATE OR OF THE STATE AGENCY, FOR PURPOSES OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION UPON DEBT OR THE CONTRACTING OF INDEBTEDNESS. THE OBLIGATION OF THE STATE AGENCY TO MAKE AGENCY INSTALLMENT PAYMENTS IS SUBJECT TO APPROPRIATION AND TO EMERGENCY REDUCTION IN FUNDING UNDER CERTAIN CIRCUMSTANCES, ALL AS SET FORTH IN THIS AGENCY FINANCING CONTRACT. NOTHING IN THIS AGENCY FINANCING CONTRACT SHOULD BE CONSIDERED AS OR CONSTRUED TO IMPLY A MORAL OBLIGATION ON THE PART OF THE STATE OR THE STATE AGENCY TO MAKE THE AGENCY INSTALLMENT PAYMENTS DUE HEREUNDER.

Section 3.6 Assignments by the Corporation. The State Agency acknowledges and agrees that, concurrently with the execution and delivery hereof, the Corporation will unconditionally grant, sell, assign, transfer and convey to the Fiscal Agent without recourse (i) all of its rights to receive the Installment Payments under and pursuant to the Master Financing Contract, (ii) all of its remaining right, title and interest in, to and under the Master Financing Contract and this Agency Financing Contract, and in and to the Property (including any security interest therein), including but not limited to its right to take all actions and exercise all remedies under and pursuant to the Master Financing Contract, pursuant to the Master Assignment in consideration for the payment by the Fiscal Agent to the State Treasurer, as agent of the Corporation, of the proceeds of the sale of the Certificates. The State and the Corporation have acknowledged and agreed that such grant, sale,

assignment, transfer and conveyance by the Corporation is intended to be a true sale of the Corporation's right, title and interest, and that upon such grant, sale, assignment, transfer and conveyance, the Corporation shall cease to have any rights, duties or obligations under the Master Financing Contract or this Agency Financing Contract or with respect to the Property, and the Fiscal Agent shall thereafter have all the rights, duties and obligations of the Corporation thereunder and hereunder as if the Fiscal Agent had been the original party thereto and hereto, and every reference therein and herein to the Corporation shall be deemed and construed to refer to the Fiscal Agent, except where the context otherwise requires. Anything herein or therein to the contrary notwithstanding, such grant, sale, assignment, transfer and conveyance shall not confer any rights or impose any duties or obligations on the Fiscal Agent other than as expressly set forth in the Trust Agreement and the Master Assignment.

ARTICLE IV
OPTIONAL AND MANDATORY PREPAYMENT OF AGENCY INSTALLMENT PAYMENTS

Section 4.1 Optional Prepayment.

(a) The State Agency may, at its option, prepay all or any portion of its Agency Installment Payments then unpaid, in whole or in part on any date, by causing to be deposited with the State Treasurer money and/or Government Obligations in an amount sufficient for the State Treasurer to prepay or defease the portion of its Installment Payments corresponding thereto in accordance with Subsection 4.1(a) or 4.1(b) of the Master Financing Contract, and to pay any Additional Costs in connection therewith.

(b) The State Agency shall provide the State Treasurer with not less than 60 days' prior written notice of its intention to prepay any of its Agency Installment Payments, which notice shall specify the date of such prepayment, and the amount and the Agency Installment Payment Dates of the Agency Installment Payments to be prepaid. The State Treasurer shall notify the State Agency within fifteen (15) Business Days after receipt of such notice from the State Agency as to the amount required to be paid in connection with such prepayment or defeasance of the corresponding Installment Payments, including any Additional Costs in connection therewith. The determination by the State Treasurer of the amount to be paid by the State Agency shall be binding and conclusive against such State Agency, absent manifest error.

Section 4.2 Revision of Agency Installment Payments upon Prepayment. The Agency Principal Components and Agency Interest Components of the Agency Installment Payments due on each Agency Installment Payment Date on and after the date of any prepayment pursuant to Section 4.1 hereof, as set forth in Exhibit D hereto, shall be reduced by the State Treasurer to reflect such prepayment, in such amounts and on such Agency Installment Payment Dates as the State Agency shall elect in its written notice to the State Treasurer pursuant to Section 4.1(b) hereof.

Section 4.3 Discharge of Agency Financing Contract. All right, title and interest of the State herein and all obligations of the State Agency hereunder shall cease, terminate, become void and be completely discharged and satisfied (except for the right of the State Treasurer and the Fiscal Agent, as assignee of the Corporation, and the obligation of the State Agency to have the moneys and Government Obligations so set aside applied to make the remaining Agency Installment Payments) when either:

(a) all Agency Installment Payments and all Additional Costs and other amounts due hereunder have been paid in accordance herewith; or

(b) (i) the State Agency shall have delivered a written notice to the State Treasurer of its intention to prepay all of the Agency Installment Payments remaining unpaid; (ii) the State Agency shall have caused to be deposited with the State Treasurer (A) moneys and/or Government Obligations in accordance with Section 4.1 hereof; and (B) an Opinion of Counsel to the effect that such actions are permitted hereunder, under the Master Financing Contract and under the Trust Agreement and will not cause interest evidenced and represented by the Certificates to be includable in gross income for federal income tax purposes under the Code; and (iii) for so long as any Agency Installment Payments remain unpaid, provision shall have been made satisfactory to the Corporation and the Fiscal Agent for payment of all Additional Costs.

ARTICLE V
PERMITTED TERMINATION EVENT; REMEDIES

Section 5.1 Permitted Termination Event. The following shall constitute a "Permitted Termination Event" hereunder:

(a) The State Legislature elects not to appropriate sufficient funds within any biennial budget for the purpose of paying the Agency Installment Payments due hereunder during the next occurring Biennium; or

(b) The Governor of the State issues an Executive Order mandating an emergency reduction in State funding;

provided, that the State Agency delivers written notice thereof to the State Treasurer as provided by Section 5.2 hereof.

Section 5.2 Written Notice describing Permitted Termination Event. If, as of five (5) Business Days following (a) the enactment of each biennial budget by the State Legislature, or (b) an Executive Order reduction in funding, the State Agency determines as a result of such legislation or Executive Order that sufficient funds will not be available to make its scheduled Agency Installment Payments for the Property in the next occurring Biennium or upon a reduction in funding in the manner as set forth above, the State Agency shall deliver not less than 45 days' prior written notice to the State Treasurer, which notice shall describe the Permitted Termination Event, and state that the State Agency has determined (as provided herein) that such Permitted Termination Event will result in the cancellation of this Agency Financing Contract and the related obligation of the State Treasurer under the Master Financing Contract.

Section 5.3 Remedies of the Corporation Upon a Permitted Termination Event. Upon the occurrence of a Permitted Termination Event and upon the Written Request of the State Treasurer, the director or other chief administrator of the State Agency shall, at the beginning of the period for which funds have not been appropriated or for which funding has been reduced, return the Property to the Corporation and thereupon be released of its obligations to make all further Agency Installment Payments hereunder and under the Master Financing Contract with respect to the Property; *provided*, that the State Agency delivers the Property in good repair, working order and condition, ordinary wear and tear excepted, and its unencumbered title to the Corporation at a location in the United States designated by the Corporation as of the end of the last month for which

funding has been provided, or the end of the last month for which funding is available in the event of an Executive Order reduction in funding, and written notice is provided by the State Agency directly to the State Treasurer as set forth in Section 5.1 of this Agency Financing Contract. If the State Agency returns the Property pursuant to the terms of this Section, the State Treasurer and the Corporation shall be entitled to retain all sums theretofore transmitted to the State Treasurer or the Corporation by or on behalf of the State Agency for the benefit of the Owners of the Certificates.

The occurrence of a Permitted Termination Event shall not constitute an Agency Event of Default, a Master Contract Event of Default or an Event of Default, and the remedies set forth in this Section relating to the return of the Property are the sole remedies available to the State Treasurer and the Corporation upon such occurrence. If the State Legislature provides a supplemental appropriation or the Executive Order is withdrawn prior to the expiration of the notice period specified above and the State Treasurer or the Corporation has not yet sold, relet or otherwise disposed of the Property, the State Agency may, by written notice to the State Treasurer and the Corporation, revoke its notice of termination and continue its obligations hereunder.

ARTICLE VI
REPRESENTATIONS, WARRANTIES, COVENANTS AND AGREEMENTS

Section 6.1 Representations and Warranties of the State Agency. The State Agency represents and warrants as follows:

(a) The State Agency is a "State Agency" within the meaning of the Act, duly organized and validly existing under the Constitution and laws of the state of Washington.

(b) The State Agency is authorized under the laws of the state of Washington and its Charter or other constituent document, if any, to enter into and perform its obligations under this Agency Financing Contract.

(c) Neither the execution and delivery by the State Agency of this Agency Financing Contract, nor the observance and performance of the terms and conditions hereof, nor the consummation of the transactions contemplated hereby, conflicts with or constitutes a breach of or default under any agreement or instrument to which the State Agency is a party or by which the State Agency or its property is bound, or results in the creation or imposition of any lien, charge or encumbrance whatsoever upon the Property, except as expressly provided in this Agency Financing Contract and the Master Financing Contract.

(d) The State Agency has been duly authorized to enter into this Agency Financing Contract pursuant to Resolution No. 987 of the State Finance Committee, adopted on October 7, 2003; and this Agency Financing Contract has been duly executed and delivered by the State Agency.

(e) This Agency Financing Contract is a valid and binding obligation of the State Agency, enforceable against it in accordance with its terms, except as such enforceability may be affected by bankruptcy, insolvency, reorganization, moratorium and other laws relating to or affecting creditors rights generally, to the application of equitable principles, and to the exercise of judicial discretion in appropriate cases.

(f) The Property to be financed and acquired pursuant to this Agency Financing Contract is essential to the State Agency's ability to carry out its governmental functions and responsibilities, and the State Agency expects to make immediate and continuing use of such Property during the term of this Agency Financing Contract.

(g) The useful life of the Property is equal to or exceeds the term hereof.

(h) The State Agency makes no representation or warranty regarding the perfection of any security interest in the Property, the Master Financing Contract or this Agency Financing Contract for the benefit of the Corporation or the Fiscal Agent, as assignee of the Corporation.

(i) There are no circumstances, including any existing Executive Order of the Governor of the State or directive from OFM, presently affecting the State Agency that could reasonably be expected during the term of this Agency Financing Contract to alter its need for the items of Personal Property or adversely affect its ability or willingness during the term of this Agency Financing Contract to budget funds for the Agency Installment Payments or Additional Costs to become due hereunder.

(j) The State Agency has reviewed its projected revenues and expenditures and reasonably expects that it shall have on hand and legally available appropriated funds sufficient to make all payments when due from it under this Agency Financing Contract

(k) For the current Biennium, the State Agency has received appropriations from the State Legislature sufficient to make all payments scheduled to become due from such State Agency under this Agency Financing Contract during the current Biennium.

Section 6.2 Covenants and Agreements of the State Agency. The State Agency covenants and agrees as follows:

(a) *Budget.* The State Agency shall (i) include in its biennial budget all payments required to be made by the State Agency under Section 1.3 hereof; (ii) submit such budget to OFM at such times and in such manner as required by law; (iii) use its best efforts to obtain appropriations by the State Legislature in amounts sufficient to make any such payments; (iv) include all such payments in its statements of proposed expenditures for each fiscal period required by law to be submitted to OFM; and (v) use its best efforts to obtain allotments by OFM of appropriated funds sufficient to make all such payments.

(b) *Application of Appropriations.* To the extent permitted by law, the State Agency agrees that, to the extent that any amounts are included in its budget for purposes or facilities served, or functions or operations supported or provided, by the Property, the State Agency will allocate a sufficient portion of such amounts to the payment of the Agency Installment Payments and Additional Costs due hereunder.

(c) *Tax-Exemption.* The State Agency shall not make any use of the proceeds of this Agency Financing Contract or the Certificates or of any other amounts, regardless of the source, or of any property, and shall not take or refrain from taking any action, that would cause the Master Financing Contract or the Certificates to be "arbitrage bonds" within the meaning of Section 148 of the Code. The State Agency shall not use or permit the use of the Property or any part thereof by any Person other than a "governmental unit" as that term is defined in Section 141 of the Code, in such

manner or to such extent as would result in the loss of the exclusion from gross income for federal income tax purposes of the Interest Component of the Installment Payments under Section 103 of the Code. The State Agency shall not make any use of the proceeds of this Agency Financing Contract or the Certificates or of any other amounts, and shall not take or refrain from taking any action, that would cause the Master Financing Contract or the Certificates to be "federally guaranteed" within the meaning of Section 149(b) of the Code, or "private activity bonds" within the meaning of Section 141 of the Code, or "hedge bonds" within the meaning of Section 149 of the Code. To that end, for so long as any Agency Installment Payments remain unpaid, the State Agency, with respect to such proceeds and other amounts, will comply with all requirements under such Sections and all applicable regulations of the United States Department of the Treasury promulgated thereunder. The State Agency will at all times do and perform all acts and things permitted by law which are necessary or desirable in order to assure that the Interest Components of the Installment Payments will not be included in gross income of the Owners of the Certificates for federal income tax purposes under the Code, and will take no action that would result in such interest being so included. The State Agency shall comply with the applicable provisions of the Tax Certificate and Agreement.

(d) *Duties Imposed by Law.* To the extent permitted by law, the covenants, agreements and other obligations on the part of the State Agency contained herein shall be deemed and construed to be ministerial and non-discretionary duties imposed by law, and it shall be the duty of the State Agency and each and every public official of the State Agency to take such actions and to do such things as are required by law in the performance of the official duties of such officials to enable the State Agency to observe and perform the covenants, agreements, terms, conditions and other obligations contained herein to be observed and performed by the State Agency.

(e) *Liens; Sale or Disposal.* The State Agency shall not create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property, except the rights of the Corporation as provided herein and in the Master Financing Contract. The State Agency shall promptly, at its own expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance or claim if the same shall arise at any time. The State Agency shall not grant, sell, transfer, assign, pledge, convey or otherwise dispose of any of the Property or any interest therein during the term of this Agency Financing Contract, and any such attempted grant, sale, transfer, assignment, pledge, conveyance or disposal shall be void.

(f) *Performance.* Unless a Permitted Termination Event has occurred, the State Agency shall punctually pay the Agency Installment Payments and any Additional Costs out of funds appropriated by the State Legislature in strict conformity with the terms and provisions hereof, and will faithfully observe and perform all the covenants, agreements, terms, conditions and other obligations contained herein required to be observed and performed by the State Agency. Except for Permitted Termination Events, the State Agency will not suffer or permit any default to occur hereunder, or do or permit anything to be done, or omit or refrain from doing anything, in any case where any such act done or permitted, or any such omission or refraining from doing anything, would or might be grounds for acceleration or termination of this Agency Financing Contract. Except for Permitted Termination Events, the State Agency will not terminate this Agency Financing Contract for any cause, including but not limited to any acts or circumstances that may constitute failure of consideration, destruction of or damage to the Property, commercial frustration of purpose, any change in the tax or other laws of the United States of America or of the State or any political subdivision of the State, or any failure by the State Treasurer or the Corporation to observe or

perform any covenant, agreement, term, condition or other obligation contained herein or in the Master Financing Contract required to be observed and performed by it, whether express or implied, or the bankruptcy, insolvency, liquidation or reorganization of the Corporation. The State Agency assumes the entire risk of loss, from any and every cause whatsoever, to the Property.

(g) *Further Assurances.* The State Agency will preserve and protect the rights of the State Treasurer and the Corporation hereunder, and will warrant and defend such rights against all claims and demands of all Persons. The State Agency will promptly execute, make and deliver any and all further assurances, instruments and agreements, and do or cause to be done such other and further things, as may be necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming to the State Treasurer and the Corporation the rights and benefits provided to it hereunder.

(h) *Use of Property*. During the term of this Agency Financing Contract, the State Agency will use the Property for the purposes of performing one or more of its essential governmental functions or responsibilities. The State Agency will not permit the Property to be used or operated other than by authorized employees, agents and contractors of the State Agency.

(i) *Notice of Nonpayment.* The State Agency shall give written notice to the State Treasurer, the Corporation and the Fiscal Agent, as assignee of the Corporation, prior to any Agency Installment Payment Date if the State Agency knows prior to such date that it will be unable to make the Agency Installment Payment due on such date, or any portion thereof.

(j) *Use; Repairs*. For so long as the State Agency is in possession of the Property, the State Agency shall be solely responsible for the maintenance and repair, both ordinary and extraordinary, thereof. The State Agency will (i) keep and maintain the Property in good repair, working order and condition, and protect the same from deterioration other than normal wear and tear; (ii) cause the Property to be used within its normal capacity, in the manner contemplated by the manufacturer's specification, and in compliance with the requirements of applicable laws, ordinances and regulations, the requirements of any warranties applicable thereto, and the requirements of any insurance or self-insurance program required under Subsection 5.2(o) hereof; (iii) cause the Property to be used and operated by or under the direction of competent persons only, and obtain all registrations, permits and licenses, if any, required by law for the operation of the Property; and (iv) will pay all costs, claims, damages, fees and charges arising out of its possession, use or maintenance of the Property. The State Agency, at its expense, will furnish all parts, mechanisms and devices required to operate and maintain the Property.

(k) *Alterations*. The State Agency will not make any alterations, additions or improvements to the Property without the prior written consent of the State Treasurer unless such alterations, additions or improvements (i) maintain or increase the value of the Property; or (ii) may be readily removed without damage to the Property. All such alterations, additions or improvements shall be deemed to be a part of the Property and shall be subject to the terms and provisions of this Agency Financing Contract.

(l) *Location; Inspection*. The Property will be located within the State. The State Treasurer, the Corporation and the Fiscal Agent, as assignee of the Corporation, will be entitled to inspect the Property during regular business hours upon at least one (1) Business Day's prior notice. The State Agency hereby acknowledges, and consents and agrees to the right of the State Treasurer, the Corporation and the Fiscal Agent to so inspect the Property.

(m) *Impositions and Charges*. If during the term of this Agency Financing Contract, any Imposition is imposed or incurred in connection with the sale and purchase of the Property by the Corporation to the State, or by the State to the State Agency, or the ownership, operation, possession or use of the Property by the Corporation, the State or the State Agency, or the payment of the Agency Installment Payments by the State Agency, or the payment of the Installment Payments payable therefrom by the State, or any fines, penalties or interest imposed on or with respect to any of the foregoing, the State Agency shall pay all such Impositions and charges when due. The State Agency at its own expense may contest any such Impositions and charges until it obtains a final administrative or judicial determination with respect thereto, unless the Property is encumbered by any levy, lien or any other type of encumbrance because of the State Agency's failure to pay such Impositions or charges. If the State Treasurer or the Corporation pays any such Impositions or charges for which the State Agency is responsible or liable hereunder, the State Agency shall reimburse the State Treasurer or the Corporation therefor as Additional Costs hereunder.

(n) *Risk of Loss; Damage; Destruction; Condemnation*. The State Agency assumes all risk of loss of or damage to the Property from any cause whatsoever, and the obligation of the State Agency to pay the Agency Installment Payments or to perform any other obligation under this Agency Financing Contract shall in no way be released, discharged or otherwise affected for any reason, including without limitation (i) any defect in the condition, quality or fitness for use of, or title to, any portion of the Property, or (ii) any damage to, or abandonment, destruction, requisition, condemnation or taking of any portion of the Property. In the event of damage to any item of the Property, the State Agency will immediately place the same in good repair, working order and condition as required by Subsection 6.2(j) hereof. If the State Agency determines that any item of Property is lost, stolen, destroyed or damaged beyond repair, the State Agency will either (x) replace the same with equipment of equivalent value and usefulness in good repair in accordance with Subsection 2.1(c) hereof, or (y) prepay all of its obligations for Agency Installment Payments and terminate its obligations hereunder in accordance with Subsection 4.3(b) hereof.

(o) *Insurance*.

(i) The State Agency shall maintain, or cause to be maintained, in full force and effect, comprehensive general liability insurance with respect to the Property in such amounts as may be reasonably determined by the State Agency from time to time but in any event not less than $1,000,000 per occurrence or such greater amount as the State Treasurer may reasonably require from time to time. Such insurance may be carried under a blanket policy with umbrella coverage. Such insurance shall cover any and all liability of the State Agency and its officials, officers, employees and volunteers. Such insurance shall include (A) coverage for any accident resulting in personal injury to or death of any person and consequential damages arising therefrom; and (B) comprehensive property damage insurance.

(ii) The State Agency shall maintain or cause to be maintained in full force and effect fire and extended coverage insurance covering the Property in such amounts and covering such risks as the State Agency may reasonably determine from time to time but in any event not less than the aggregate amount of Agency Installment Payments due hereunder which remain unpaid. Such insurance may be carried under a policy or policies covering other property of the State Agency. In the alternative, the State Agency may assume financial responsibility for any physical damage to and/or loss of the Property; *provided,*

however, that if the State Agency elects this option, the State Agency hereby covenants and agrees that it will promptly repair or replace the Property promptly upon any loss or damage thereto.

(iii) The insurance required under paragraphs (i) and (ii) above: (A) shall be provided by a financially responsible insurance company authorized to do business in the State; (B) shall name the State Treasurer, the Corporation and the Fiscal Agent, as assignee of the Corporation, as additional insureds thereunder; (C) shall provide that the same may not be canceled or given notice of non-renewal, nor shall the terms of conditions thereof be altered, amended or modified, without at least 45 days' prior written notice being given by the insurer to the State Treasurer, the Corporation and the Fiscal Agent as assignee of the Corporation; and (D) may be provided in whole or in part through a funded program of self-insurance reviewed at least annually by an insurance actuary.

(iv) A certificate of insurance with respect to the required coverages shall be provided by the State Agency to the State Treasurer on or prior to the date of delivery of the Personal Property Certificate to the State Treasurer.

(v) The State Agency will pay or cause to be paid when due the premiums for all insurance policies required by this Section 6.2(o).

ARTICLE VII
EVENTS OF DEFAULT; REMEDIES

Section 7.1 Agency Event of Default. Each of the following shall constitute an "Agency Event of Default" hereunder:

(a) Failure by the State Agency to pay or cause to be paid any Agency Installment Payment required to be paid hereunder within ten (10) Business Days of the respective Agency Installment Payment Date, other than as a result of a Permitted Termination Event;

(b) Failure by the State Agency to observe or perform any covenant, agreement, term or condition on its part to be observed or performed hereunder, other than as set forth in paragraph (a) above, for a period of thirty (30) days after written notice from the State Treasurer or the Fiscal Agent to the State Agency specifying such failure and requesting that it be remedied, other than as a result of a Permitted Termination Event; *provided, however*, that such period shall be extended for not more than sixty (60) days if such failure cannot be corrected within such period, and the corrective action is commenced by the State Agency within such period and diligently pursued until the failure is corrected;

(c) If any statement, representation, or warranty made by the State Agency in this Agency Financing Contract or in any writing delivered by the State Agency pursuant hereto or in connection herewith is false, misleading, or erroneous in any material respect; and

(d) Inability of the State Agency to generally pay its debts as such debts become due, or admission by the State Agency, in writing, of its inability to pay its debts generally, or the making by the State Agency of a general assignment for the benefit of creditors, or the institution of any proceeding by or against the State Agency seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding-up, reorganization, reimbursement, adjustment, protection, relief or

composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or for appointment of a receiver, trustee, or other similar officer of it or any substantial part of its property, or the taking of any action by the State Agency to authorize any of the actions set forth above in this Section 7.1(d).

Notwithstanding the foregoing provisions of this Section 7.1, if by reason of *force majeure* the State Agency is unable in whole or in part to carry out the covenants, agreements, terms and conditions on its part contained in this Agency Financing Contract, the State Agency shall not be deemed in default during the continuance of such inability. The term "*force majeure*" means the following: acts of God; strikes; lockouts or other industrial disturbances or disputes; acts of public enemies; orders or restraints of any kind of the government of the United States of America or any of its departments, agencies or officials, or of its civil or military authorities; orders or restraints of the State or of any of its departments, agencies or officials or civil or military authorities of the State; wars, rebellions, insurrections; riots; civil disorders; blockade or embargo; landslides; earthquakes; fires; storms; droughts; floods; explosions; or any other cause or event not within the control of the State Agency.

The State Treasurer, with the prior written consent of the Fiscal Agent, may, at its election, waive any default or Agency Event of Default and its consequences hereunder and annul any notice thereof by written notice to the State Agency to such effect, and thereupon the respective rights of the Parties hereunder shall be as they would have been if such default or Agency Event of Default had not occurred.

ANYTHING HEREIN TO THE CONTRARY NOTWITHSTANDING A PERMITTED TERMINATION EVENT, SHALL NOT CONSTITUTE AN AGENCY EVENT OF DEFAULT HEREUNDER.

Section 7.2 Rights of State Treasurer Following Agency Event of Default. Upon the occurrence and continuance of an Agency Event of Default, the State Treasurer, at its option, may exercise any one or more of the following remedies:

(a) By written notice to the State Agency, require that the State Agency promptly return possession and use of the Property to the State Treasurer at any location specified in the United States (at the cost and expense of the State Agency) in good repair, working order and condition, ordinary wear and tear excepted;

(b) By written notice to the State Agency and the Fiscal Agent, declare an amount equal to all Agency Installment Payments to become due and payable hereunder, including but not limited to the Agency Interest Components thereof accrued and unpaid, to be immediately due and payable, without further demand;

(c) Take whatever action at law or in equity may appear necessary or desirable to collect the Agency Installment Payments then due and thereafter becoming due, or to enforce the observance or performance of any covenant, agreement or obligation of the State Agency under this Agency Financing Contract; and

(d) exercise any other rights or remedies it may have hereunder or under applicable law.

Section 7.3 No Remedy Exclusive; Non-Waiver. No remedy conferred upon or reserved to the State Treasurer hereunder or under applicable law is intended to or shall be exclusive, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agency Financing Contract or now or hereafter existing at law or in equity. No delay or omission to exercise any right or remedy accruing upon a default or an Agency Event of Default hereunder shall impair any such right or remedy or shall be construed to be a waiver of such default or Agency Event of Default, but any such right or remedy may be exercised from time to time and as often as may be deemed necessary or expedient. In order to exercise any remedy reserved to the State Treasurer hereunder, it shall not be necessary to give any notice, other than such notice as may be required hereunder. A waiver by the State Treasurer of any default or Agency Event of Default hereunder shall not constitute a waiver of any subsequent default or Agency Event of Default hereunder, and shall not affect or impair the rights or remedies of the State Treasurer in connection with any such subsequent default or Agency Event of Default.

ARTICLE VIII
MISCELLANEOUS PROVISIONS

Section 8.1 No State Agency Assignment. The State Agency may not grant, sell, assign, transfer, convey, pledge, hypothecate or grant any security interest in any of its right, title or interest in, to or under this Agency Financing Contract. Any attempted grant, sale, assignment, conveyance, pledge, hypothecation or security interest shall be void.

Section 8.2 Notices to Agency. The notice address for the State Agency shall be as set forth in the Notice of Intent.

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Appendix C

Example of Real Estate Authorization

Real estate projects must be specifically authorized by the Legislature. The authorization will be included in the *Miscellaneous Section* of the Capital Budget. For certain agencies, such as the Department of Transportation or the Department of Licensing, the authorization will be included in the Transportation Budget. The amount authorized should be the amount required to acquire and/or construct the property/project. The authorizing language will allow the Treasurer to issue sufficient securities to cover costs of issuance.

The authorizing language will ***NOT*** include amounts required for lease payments. Lease payment should be budgeted in the Operating Budget.

The following is an example of an appropriately worded authorization for the lease/purchase of a real estate project:

(Department of [—]
Enter into a financing contract in the amount of $XXX plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to purchase (and/or construct) [describe land and project].

For additional examples and to review the introductory language for the Miscellaneous Section for lease/purchase projects, please refer to the current Capital Project. Remember that authorizations will be treated as expired at the end of the biennium. Agencies wishing to complete a project that is not financed by the end of the fiscal period will need to have their project reauthorized in the ensuing biennium Capital Budget. ***It is important that the authorization should not restrict the state agency from using appropriated funds to make lease payments on the COPs. Currently the State Treasurer's Office will require the agency to make a pledge of appropriated funds to secure the COPs.***