

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING ORDINANCE )  
NO. 93-487A REVISING THE FY 1993-94 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE FOR THE PURPOSE OF )  
FUNDING AN INTERGOVERNMENTAL )  
AGREEMENT WITH THE CITY OF )  
PORTLAND FOR A PREDICATE STUDY; )  
AND DECLARING AN EMERGENCY )

ORDINANCE NO. 94-521A  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1993-94 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and


WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. That Ordinance No. 93-487A, Exhibit B, FY 1993-94 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$50,000 from the Support Service Fund contingency to the Procurement division of the Regional Facilities Department to fund an intergovernmental agreement with the City of Portland for a predicate study.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this 13th day of January, 1994.

  
\_\_\_\_\_  
Judy Wyers, Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Clerk of the Council

**Exhibit A  
Ordinance No. 94-521A**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICE FUND:Regional Facilities Department</b>							
<b>Total Personal Services</b>		<b>10.40</b>	<b>587,328</b>	<b>0.00</b>	<b>0</b>	<b>10.40</b>	<b>587,328</b>
<b>Materials &amp; Services</b>							
521100	Office Supplies		11,369		0		11,369
521110	Computer Software		2,030		0		2,030
521260	Printing Supplies		2,900		0		2,900
521310	Subscriptions		1,049		0		1,049
521320	Dues		2,050		0		2,050
521400	Fuels & Lubricants		9,252		0		9,252
524190	Misc. Professional Services		20,100		0		20,100
525630	Maintenance & Repairs Services-Vehicles		2,773		0		2,773
525640	Maintenance & Repairs Services-Equipment		6,750		0		6,750
525732	Operating Lease Payments-Vehicles		28,800		0		28,800
526200	Ads & Legal Notices		15,850		0		15,850
526310	Printing Services		200		0		200
526410	Telephone		61,982		0		61,982
526420	Postage		2,688		0		2,688
526440	Delivery Services		500		0		500
526500	Travel		5,825		0		5,825
526700	Temporary Help Services		2,400		0		2,400
526800	Training, Tuition, Conferences		7,745		0		7,745
528100	License, Permits, Payments to Other Agencies		121,253		50,000		171,253
529500	Meetings		4,920		0		4,920
529800	Miscellaneous		2,000		0		2,000
<b>Total Materials &amp; Services</b>			<b>312,436</b>		<b>50,000</b>		<b>362,436</b>
<b>Total Capital Outlay</b>			<b>5,000</b>		<b>0</b>		<b>5,000</b>
<b>TOTAL EXPENDITURES</b>		<b>10.40</b>	<b>904,764</b>	<b>0.00</b>	<b>50,000</b>	<b>10.40</b>	<b>954,764</b>

**SUPPORT SERVICE FUND:General Expenses**

<b>Interfund Transfers</b>							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		507,283		0		507,283
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen'l		30,791		0		30,791
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		41,597		0		41,597
<b>Total Interfund Transfers</b>			<b>579,671</b>		<b>0</b>		<b>579,671</b>
<b>Contingency and Unappropriated Balance</b>							
599999	Contingency						
	* General		206,294		(50,000)		156,294
	* Builders License		23,165		0		23,165
599990	Unappropriated Fund Balance-Contractors License		151,566		0		151,566
<b>Total Contingency and Unappropriated Balance</b>			<b>381,025</b>		<b>(50,000)</b>		<b>331,025</b>
<b>TOTAL EXPENDITURES</b>		<b>85.12</b>	<b>6,802,525</b>	<b>0.00</b>	<b>0</b>	<b>85.12</b>	<b>6,802,525</b>

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ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>FOR INFORMATION ONLY</b>							
<b>Regional Facilities (Procurement)</b>							
<b>Total Personal Services</b>		<b>4.25</b>	<b>241,836</b>	<b>0.00</b>	<b>0</b>	<b>4.25</b>	<b>241,836</b>
<b>Materials &amp; Services</b>							
521100	Office Supplies		7,552		0		7,552
521110	Computer Software		1,480		0		1,480
521310	Subscriptions		624		0		624
521320	Dues		625		0		625
524190	Misc. Professional Services		10,100		0		10,100
526200	Ads & Legal Notices		14,800		0		14,800
526440	Delivery Services		500		0		500
526500	Travel		2,400		0		2,400
526700	Temporary Help Services		2,400		0		2,400
526800	Training, Tuition, Conferences		2,735		0		2,735
528100	License, Permits, Payments to Other Agencies		0		50,000		50,000
529500	Meetings		3,000		0		3,000
<b>Total Materials &amp; Services</b>			<b>46,216</b>		<b>50,000</b>		<b>96,216</b>
<b>TOTAL EXPENDITURES</b>		<b>4.25</b>	<b>288,052</b>	<b>0.00</b>	<b>50,000</b>	<b>4.25</b>	<b>338,052</b>

**Exhibit B**  
**Schedule of Appropriations**  
**Ordinance No. 94-521A**

	Current Appropriation	Revision	Proposed Appropriation
<b>SUPPORT SERVICES FUND</b>			
Finance and Management Information			
Personal Services	2,238,932	0	2,238,932
Materials & Services	794,941	0	794,941
Capital Outlay	77,891	0	77,891
<b>Subtotal</b>	<b>3,111,764</b>	<b>0</b>	<b>3,111,764</b>
Regional Facilities			
Personal Services	587,328	0	587,328
Materials & Services	312,436	50,000	362,436
Capital Outlay	5,000	0	5,000
<b>Subtotal</b>	<b>904,764</b>	<b>50,000</b>	<b>954,764</b>
Personnel			
Personal Services	534,856	0	534,856
Materials & Services	59,646	0	59,646
Capital Outlay	6,675	0	6,675
<b>Subtotal</b>	<b>601,177</b>	<b>0</b>	<b>601,177</b>
Office of General Counsel			
Personal Services	434,876	0	434,876
Materials & Services	23,715	0	23,715
Capital Outlay	1,500	0	1,500
<b>Subtotal</b>	<b>460,091</b>	<b>0</b>	<b>460,091</b>
Public Affairs			
Personal Services	669,686	0	669,686
Materials & Services	91,247	0	91,247
Capital Outlay	3,100	0	3,100
<b>Subtotal</b>	<b>764,033</b>	<b>0</b>	<b>764,033</b>
General Expenses			
Interfund Transfers	579,671	0	579,671
Contingency	229,459	(50,000)	179,459
<b>Subtotal</b>	<b>809,130</b>	<b>(50,000)</b>	<b>759,130</b>
Unappropriated Balance	151,566	0	151,566
<b>Total Fund Requirements</b>	<b>6,802,525</b>	<b>0</b>	<b>6,802,525</b>

**Note: This action assumes adoption of Ordinance No. 93-514, funding the Construction Manager position; Ordinance No. 93-518, funding personal computer replacements in the Office of General Counsel; and Ordinance No. 93-516 funding a Greenspaces RFP**

**All Other Appropriations Remain As Previously Adopted**

GOVERNMENTAL AFFAIRS AND FINANCE COMMITTEE REPORT

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ORDINANCE NO. 93-521A, REVISING THE FY 1993-94 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR A PREDICATE STUDY; AND DECLARING AN EMERGENCY.

Date: December 20, 1993

Presented by: Councilor Hansen

**COMMITTEE RECOMMENDATIONS:** The Finance Committee and Governmental Affairs Committee held a joint meeting on December 16, 1993 to consider Ordinance No. 93-521. Governmental Affairs voted 4-1 to recommend Council adoption of the ordinance. Councilors Gates, Gardner, Hansen, and Wyers voted in favor. Councilor Moore voted in opposition. The Finance Committee voted 2-1 to recommend Council adoption of the ordinance. Councilors Monroe and Devlin voted in favor, and Councilor Kvistad voted in opposition. Councilors Buchanan and Van Bergen were absent.

**COMMITTEE DISCUSSION/ISSUES:** Procurement Officer Rich Wiley presented the staff report. He noted that Governmental Affairs had considered Ordinance No. 93-521 at its November 18 meeting, and submitted two memoranda with questions for the Regional Facilities Department to address (one from Councilor Wyers and one from Council Analyst Casey Short and Council Administrator Don Carlson). Mr. Wiley reviewed the written responses to those questions. Councilor Moore asked for clarification of how Metro's participation would broaden the scope of the study. The answer was that the study would be able to include information on the construction industry throughout the Metro area.

Councilor Moore asked whether broadening the scope of work to include businesses outside the construction industry would increase the cost of the study. Mr. Wiley said he didn't expect the scope would be so broadened because the City of Portland and Multnomah County have isolated the construction industry as the target of the study, and because legal precedent requires focus on specific industries in order to qualify for implementation of "narrowly tailored" remedies.

Councilor Monroe said he was concerned that only Portland and Multnomah County had agreed to participate in the study, while other cities and counties, and other districts such as Tri-Met and the Port of Portland, have chosen not to participate. He said his concern included the perception among many jurisdictions that Metro is too closely aligned with Portland. He also was concerned about the cost of the study at a time of expected fiscal constraint.

Jack Nelson and Kim Mingo of Associated General Contractors testified in public hearing. They said the study might not produce the intended benefits. They suggested assistance in technical and bonding matters might be more beneficial, and

proposed improving apprenticeship programs. They suggested that jurisdictions set aside certain classes of work for minority and women-owned firms, and cited sidewalk repair. They also proposed Metro participate in the Port's mentor program. They said a disparity study, and results that might come out of the study, would not address the training, bonding, and financing issues that need to be addressed.

Madelyn Wessel, Deputy City Attorney at the City of Portland, testified to address questions related to the scope of the study. She said Metro's participation would allow the study to look at the construction industry throughout the region. Without Metro's participation, it would be limited to Portland and Multnomah County. Other jurisdictions could use the information gathered in the study, but would not be able to use it to design remedies for past discrimination in the industry. She said the scope of the study could include issues such as supplies and professional services within the construction industry, but it could not go beyond a specific industry due to constraints of case law. In response to a question from Councilor Moore, Ms. Wessel said the study would include review of companies performing work for public agencies, even if the company was not located within the jurisdiction's boundaries.

Councilor Monroe asked Ms. Wessel why other jurisdictions have chosen not to participate; he cited Tri-Met and the Port of Portland. Ms. Wessel said she understood that Tri-Met is already governed by federal guidelines, because of their reliance on federal funds. The issues to be examined in the study concern state and local contracts, which have separate legal issues. She said the Port has decided to invest its efforts into its mentor program. She added that the City is also investing in other programs, including mentor, training, and clearinghouse programs.

Jeff Rogers, Portland City Attorney, testified. He said the purpose of the study is not to assign guilt or look backwards, but to give governments a tool that the Supreme Court has taken away. That tool was to help achieve the goal that minorities and women participate fully in the economic life of the region. He stressed that this is one of several tools, all of which need to be pursued to achieve the goal. He said it is important for Metro to participate, not only to extend the geographical scope of the study, but also to send a message that this is a regional issue and to show that government is willing to take steps to resolve the issue. He said that the lack of participation by other governments should not be a reason for Metro not to participate, but Metro's participation would distinguish this government from the others and would send a message to those other governments about partnerships.

Councilor Moore asked if other jurisdictions, such as Washington County, could use the results of the study to institute mandatory set-aside programs. Mr. Rogers said such results would be of assistance, but would not be sufficient to allow the institution

of programs that Metro or the City could enact. Councilor Devlin asked Mr. Rogers the range of remedies that could result from the study. Mr. Rogers said remedies could include declining to award a contract to an apparent low bidder who failed to meet required set-aside percentages of minorities or women. Other more voluntary measures could also be applied, but without this tool, there is no way for governments to compel participation that reflects the percentages of women and minorities in the community. He said it was up to each jurisdiction to implement its own remedies.

Robert Phillips testified as a member of the Oregon Commission on Black Affairs. He encouraged support of the disparity study, and cited recommendations of the Commission's report, which is included in the record.

Henry Pelfrey, President of Dirt & Aggregate Interchange, testified. He participated in the committee that advised the Council on the creation of the current MBE/WBE program, and said he advised the Council then that a study would be required to implement a set-aside program. He sits on the advisory committee for the Port's mentor program, and he said it's not working. He urged the Council to support the ordinance.

Margaret Garza of Impact Business Consultants testified. She said she sits on a number of advisory committees, and said it is very important to have a mandatory program to assist the businesses the program is designed to assist. She said prime contractors will comply with a program's requirements if they have to, but won't if they don't have to. She agreed with Mr. Rogers in saying that there are other elements needed to improve minority and women firms' participation, but this study is needed to have the mandatory compliance tool.

Chip Lazenby of the Multnomah County Counsel's office spoke to technical aspect of the issue. He referred to Councilor Moore's questions about the scope of the study, saying that Metro's participation as the regional government was critical to the study's success. He cited King County's experience, in which a study done there was invalidated because it used evidence gathered in Pierce County. He said the issue was not finding a tool to solve the problem, but in using all the tools at our disposal to address the problem of under-representation by women and minorities in the construction industry. He said Multnomah County's experience was that such participation was high when the County had a set-aside program, but fell off after it was invalidated. He asked to leave the record open to allow inclusion of an anticipated letter from Commissioner Beverly Stein.

Councilor Moore said she was convinced that Metro should participate in the study, but wanted other jurisdictions to participate. She suggested delaying final consideration of the matter to allow time to invite others to participate.

Councilor Gardner said Metro's program in the past had worked. That program called for set-asides or documented aggressive good-faith efforts. After that program was determined to be invalid, he believed there was a commitment to return to a program that was similar. A program based on the disparity study would do that, and keep that commitment. He said he was troubled by other jurisdictions' not participating in the study, but that was a policy decision for each jurisdiction; he said Metro should participate because it is good public policy. Councilor Moore asked if the other jurisdictions had been asked to participate. Councilor Gardner said he understood they had been formally invited, and Ms. Wessel confirmed that.

Councilor Hansen said she did not want to wait for other jurisdictions to be invited again to participate. She said this is a policy decision for the Metro Council to make for Metro.

Councilor Wyers agreed with Councilor Hansen and Councilor Gardner. She said she had a concern initially with whether this would be of benefit to Metro and its citizens, and she is now convinced there is a direct benefit. She supported moving ahead immediately.

Councilor Devlin said he believed there was a commitment from the Council to return to a more aggressive program at the time the good faith program was adopted. While he is concerned that others who should be participating are not, and he is concerned about budgetary issues, he believes the Council made a commitment to pursue this study when it came up and he supports honoring that commitment. He suggested the ordinance be amended to provide all the funding from the Support Service Fund, rather than have a split between Support Service and the General Fund.

Councilor McLain said this is the next step in implementing the program the Council indicated it supported when its earlier program was replaced with the good faith program, and said she supports the ordinance.

Councilor Gates asked for clarification on Councilor Devlin's suggestion regarding the source of funding, and asked whether there was interest in drafting a scope of work before committing to fund the study. Councilor Gardner said the issue of funding source was principally a question for the Finance Committee. To the issue of scope of work, he said the ordinance would make the funds available and not necessarily commit to spend the money. However, we won't know how much the study will cost until the scope of work is developed.

Councilor Washington said it is important for two or three agencies to do this work, even if others choose not to.

Council Analyst Casey Short distributed a memo from him and Council Administrator Don Carlson, which recommended the study be funded solely from the Support Service Fund.



Councilor Moore said she would vote in opposition to the motion to recommend Council adoption of the ordinance, because she wanted to invite other jurisdictions in the region to take part in the study, and have time for them to respond before Council considers the ordinance.

Councilor Kvistad said he would vote no, for the reasons Councilor Moore stated.

Councilor Wyers moved to amend the ordinance to have the study funded solely from the Support Service Fund, and to stipulate that it authorize "up to" \$50,000 in each of the two fiscal years. Councilor Hansen accepted that as a friendly amendment.

Councilor Devlin said he supported the ordinance, and also supported Councilor Moore's letter to other jurisdictions. He said he would be willing to sign the letter if she wanted other Councilors' signatures, but said his support for the ordinance is not dependent on whether other jurisdictions join in the effort.

Councilor Gardner said he also supports Councilor Moore's idea of formally inviting and strongly encouraging other jurisdictions to participate, and suggested the letter be from the entire Council or from all Councilors who are interested in supporting it.

[Note: The amendments incorporated into the motion to recommend Council approval separately affect the ordinance and its companion resolution, No. 93-1860. The amendment on funding source is reflected in Ordinance 93-521A, but the ordinance does not stipulate Metro's commitment to "up to" \$50,000 per year in 1993-94 and 1994-95. That reference is included as an amendment to the Intergovernmental Agreement, contained in Resolution 93-1860A. Please see the committee report for the resolution for discussion of this change.]

BEFORE THE METRO COUNCIL

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NO. 93-487A REVISING THE FY 1993-94 )  
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SCHEDULE FOR THE PURPOSE OF )  
FUNDING AN INTERGOVERNMENTAL )  
AGREEMENT WITH THE CITY OF )  
PORTLAND FOR A PREDICATE STUDY; )  
AND DECLARING AN EMERGENCY )

ORDINANCE NO. 93-521A  
  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1993-94 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

~~[WHEREAS, Oregon Budget Law, ORS 294.450(3), allows for the transfer of appropriation from the General Fund to any other fund during the fiscal year; and]~~

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. That Ordinance No. 93-487A, Exhibit B, FY 1993-94 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring ~~[\$25,000 from the General Fund to the Support Service Fund and transferring \$25,000]~~ \$50,000 from the Support Service Fund contingency to the Procurement division of the Regional Facilities Department to fund an intergovernmental agreement with the City of Portland for a predicate study.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer

ATTEST:

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Clerk of the Council

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Ordinance No. 93-521A**

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Personal Services	587,328	0	587,328
Materials & Services	312,436	50,000	362,436
Capital Outlay	5,000	0	5,000
<b>Subtotal</b>	<b>904,764</b>	<b>50,000</b>	<b>954,764</b>
Personnel			
Personal Services	534,856	0	534,856
Materials & Services	59,646	0	59,646
Capital Outlay	6,675	0	6,675
<b>Subtotal</b>	<b>601,177</b>	<b>0</b>	<b>601,177</b>
Office of General Counsel			
Personal Services	434,876	0	434,876
Materials & Services	23,715	0	23,715
Capital Outlay	1,500	0	1,500
<b>Subtotal</b>	<b>460,091</b>	<b>0</b>	<b>460,091</b>
Public Affairs			
Personal Services	669,686	0	669,686
Materials & Services	91,247	0	91,247
Capital Outlay	3,100	0	3,100
<b>Subtotal</b>	<b>764,033</b>	<b>0</b>	<b>764,033</b>
General Expenses			
Interfund Transfers	579,671	0	579,671
Contingency	229,459	(50,000)	179,459
<b>Subtotal</b>	<b>809,130</b>	<b>(50,000)</b>	<b>759,130</b>
Unappropriated Balance	151,566	0	151,566
<b>Total Fund Requirements</b>	<b>6,802,525</b>	<b>0</b>	<b>6,802,525</b>

**Note: This action assumes adoption of Ordinance No. 93-514, funding the Construction Manager position; Ordinance No. 93-518, funding personal computer replacements in the Office of General Counsel; and Ordinance No. 93-516 funding a Greenspaces RFP**

**All Other Appropriations Remain As Previously Adopted**

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING ORDINANCE )  
NO. 93-487A REVISING THE FY 1993-94 )  
BUDGET AND APPROPRIATIONS )  
SCHEDULE FOR THE PURPOSE OF )  
FUNDING AN INTERGOVERNMENTAL )  
AGREEMENT WITH THE CITY OF )  
PORTLAND FOR A PREDICATE STUDY; )  
AND DECLARING AN EMERGENCY )

ORDINANCE NO. 93-521

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1993-94 Budget; and

WHEREAS, The need for a transfer of appropriation has been justified; and

WHEREAS, Oregon Budget Law, ORS 294.450(3), allows for the transfer of appropriation from the General Fund to any other fund during the fiscal year; and

WHEREAS, Adequate funds exist for other identified needs; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. That Ordinance No. 93-487A, Exhibit B, FY 1993-94 Budget, and Exhibit C, Schedule of Appropriations, are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$25,000 from the General Fund to the Support Service Fund and transferring \$25,000 from the Support Service Fund contingency to the Procurement division of the Regional Facilities Department to fund an intergovernmental agreement with the City of Portland for a predicate study.

2. This Ordinance being necessary for the immediate preservation of the public health, safety and welfare, in order to meet obligations and comply with Oregon Budget Law, an emergency is declared to exist, and this Ordinance takes effect upon passage.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer

ATTEST:

\_\_\_\_\_  
Clerk of the Council

**Exhibit A  
Ordinance No. 93-521**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICE FUND:Resources</b>							
<u>Resources</u>							
305000	Fund Balance		133,936		0		133,936
321100	Contractors' License Fee		200,750		0		200,750
391010	Trans. of Resources from General Fund-Excise Tax		70,000		25,000		95,000
392010	Trans. Indirect Costs from General Fund		488,647		0		488,647
392120	Trans. Indirect Costs from Zoo Oper. Fund		1,048,727		0		1,048,727
392140	Trans. Indirect Costs from Planning Fund		1,005,862		0		1,005,862
392531	Trans. Indirect Costs from S.W. Revenue Fund		2,541,165		0		2,541,165
392550	Trans. Indirect Costs from OCC Operating Fund		299,249		0		299,249
392559	Trans. Indirect Costs from Conv. Ctr. Cap. Fund		66,580		0		66,580
392553	Trans. Indirect Costs from Spec. Fac. Fund		228,414		0		228,414
392160	Trans. Indirect Costs from Reg. Parks/Expo Fund		370,554		0		370,554
393010	Trans. Direct Costs from General Fund		40,000		0		40,000
393531	Trans. Direct Costs from S.W. Revenue Fund		56,181		0		56,181
393550	Trans. Direct Costs from OCC Operating Fund		153,556		0		153,556
393553	Trans. Direct Costs from Spec. Fac. Fund		61,772		0		61,772
393559	Trans. Direct Costs from Conv. Ctr. Cap. Fund		37,132		0		37,132
<b>TOTAL RESOURCES</b>			<b>6,802,525</b>		<b>25,000</b>		<b>6,827,525</b>

**Exhibit A  
Ordinance No. 93-521**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>SUPPORT SERVICE FUND:Regional Facilities Department</b>							
<b>Total Personal Services</b>		<b>10.40</b>	<b>587,328</b>	<b>0.00</b>	<b>0</b>	<b>10.40</b>	<b>587,328</b>
<u>Materials &amp; Services</u>							
521100	Office Supplies		11,369		0		11,369
521110	Computer Software		2,030		0		2,030
521260	Printing Supplies		2,900		0		2,900
521310	Subscriptions		1,049		0		1,049
521320	Dues		2,050		0		2,050
521400	Fuels & Lubricants		9,252		0		9,252
524190	Misc. Professional Services		20,100		0		20,100
525630	Maintenance & Repairs Services-Vehicles		2,773		0		2,773
525640	Maintenance & Repairs Services-Equipment		6,750		0		6,750
525732	Operating Lease Payments-Vehicles		28,800		0		28,800
526200	Ads & Legal Notices		15,850		0		15,850
526310	Printing Services		200		0		200
526410	Telephone		61,982		0		61,982
526420	Postage		2,688		0		2,688
526440	Delivery Services		500		0		500
526500	Travel		5,825		0		5,825
526700	Temporary Help Services		2,400		0		2,400
526800	Training, Tuition, Conferences		7,745		0		7,745
528100	License, Permits, Payments to Other Agencies		121,253		50,000		171,253
529500	Meetings		4,920		0		4,920
529800	Miscellaneous		2,000		0		2,000
<b>Total Materials &amp; Services</b>			<b>312,436</b>		<b>50,000</b>		<b>362,436</b>
<b>Total Capital Outlay</b>			<b>5,000</b>		<b>0</b>		<b>5,000</b>
<b>TOTAL EXPENDITURES</b>		<b>10.40</b>	<b>904,764</b>	<b>0.00</b>	<b>50,000</b>	<b>10.40</b>	<b>954,764</b>

**SUPPORT SERVICE FUND:General Expenses**

<u>Interfund Transfers</u>							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		507,283		0		507,283
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen1		30,791		0		30,791
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		41,597		0		41,597
<b>Total Interfund Transfers</b>			<b>579,671</b>		<b>0</b>		<b>579,671</b>
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency						
	• General		206,294		(25,000)		181,294
	• Builders License		23,165		0		23,165
599990	Unappropriated Fund Balance-Contractors License		151,566		0		151,566
<b>Total Contingency and Unappropriated Balance</b>			<b>381,025</b>		<b>(25,000)</b>		<b>356,025</b>
<b>TOTAL EXPENDITURES</b>		<b>85.12</b>	<b>6,802,525</b>	<b>0.00</b>	<b>25,000</b>	<b>85.12</b>	<b>6,827,525</b>



**Exhibit A  
Ordinance No. 93-521**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>FOR INFORMATION ONLY</b>							
<b>Regional Facilities (Procurement)</b>							
<b>Total Personal Services</b>		<b>4.25</b>	<b>241,836</b>	<b>0.00</b>	<b>0</b>	<b>4.25</b>	<b>241,836</b>
<b>Materials &amp; Services</b>							
521100	Office Supplies		7,552		0		7,552
521110	Computer Software		1,480		0		1,480
521310	Subscriptions		624		0		624
521320	Dues		625		0		625
524190	Misc. Professional Services		10,100		0		10,100
526200	Ads & Legal Notices		14,800		0		14,800
526440	Delivery Services		500		0		500
526500	Travel		2,400		0		2,400
526700	Temporary Help Services		2,400		0		2,400
526800	Training, Tuition, Conferences		2,735		0		2,735
528100	License, Permits, Payments to Other Agencies		0		50,000		50,000
529500	Meetings		3,000		0		3,000
<b>Total Materials &amp; Services</b>			<b>46,216</b>		<b>50,000</b>		<b>96,216</b>
<b>TOTAL EXPENDITURES</b>		<b>4.25</b>	<b>288,052</b>	<b>0.00</b>	<b>50,000</b>	<b>4.25</b>	<b>338,052</b>

**Exhibit A  
Ordinance No. 93-521**

FISCAL YEAR 1993-94		CURRENT BUDGET		REVISION		PROPOSED BUDGET	
ACCT #	DESCRIPTION	FTE	AMOUNT	FTE	AMOUNT	FTE	AMOUNT
<b>General Fund:All Other Expenditures</b>							
<b>Total Other Expenditures</b>			<b>1,955,479</b>		<b>0</b>		<b>1,955,479</b>
<b>General Fund:General Expenses</b>							
<u>Interfund Transfers</u>							
581513	Trans. Indirect Costs to Bldg. Fund-Regional Center		163,504		0		163,504
581610	Trans. Indirect Costs to Support Svcs. Fund		488,647		0		488,647
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Gen'l		2,173		0		2,173
581615	Trans. Indirect Costs to Risk Mgmt. Fund-Workers' Comp		8,238		0		8,238
582550	Trans. Resources to Oregon Conv. Ctr. Oper. Fund		0		0		0
583610	Trans. Direct Costs to Support Svcs. Fund		40,000		0		40,000
583615	Trans. Direct Costs to Risk Management Fund		14,429		0		14,429
<u>Excise Tax Transfers</u>							
582140	Trans. Resources to Planning Fund		1,780,738		0		1,780,738
582513	Trans. Resources to Building Mgmt. Fund		58,869		0		58,869
582610	Trans. Resources to Support Svcs. Fund		70,000		25,000		95,000
582160	Trans. Resources to Reg. Parks/Expo Fund-Greenspaces		593,172		0		593,172
582160	Trans. Resources to Reg. Parks/Expo Fund-Parks		80,000		0		80,000
<b>Total Interfund Transfers</b>			<b>3,299,770</b>		<b>25,000</b>		<b>3,324,770</b>
<u>Contingency and Unappropriated Balance</u>							
599999	Contingency		392,500		(25,000)		367,500
599990	Unappropriated Fund Balance		267,665		0		267,665
<b>Total Contingency and Unapp. Balance</b>			<b>660,165</b>		<b>(25,000)</b>		<b>635,165</b>
<b>TOTAL EXPENDITURES</b>		<b>16.00</b>	<b>5,915,414</b>	<b>0.00</b>	<b>0</b>	<b>16.00</b>	<b>5,915,414</b>

**Note: This action assumes adoption of Ordinance No. 93-514, funding the Construction Manager position; Ordinance No. 93-518, funding personal computer replacements in the Office of General Counsel; and Ordinance No. 93-516 funding a Greenspaces RFP**

**Exhibit B**  
**Schedule of Appropriations**  
**Ordinance No. 93-521**

	Current Appropriation	Revision	Proposed Appropriation
<b>SUPPORT SERVICES FUND</b>			
Finance and Management Information			
Personal Services	2,238,932	0	2,238,932
Materials & Services	794,941	0	794,941
Capital Outlay	77,891	0	77,891
<b>Subtotal</b>	<b>3,111,764</b>	<b>0</b>	<b>3,111,764</b>
Regional Facilities			
Personal Services	587,328	0	587,328
Materials & Services	312,436	50,000	362,436
Capital Outlay	5,000	0	5,000
<b>Subtotal</b>	<b>904,764</b>	<b>50,000</b>	<b>954,764</b>
Personnel			
Personal Services	534,856	0	534,856
Materials & Services	59,646	0	59,646
Capital Outlay	6,675	0	6,675
<b>Subtotal</b>	<b>601,177</b>	<b>0</b>	<b>601,177</b>
Office of General Counsel			
Personal Services	434,876	0	434,876
Materials & Services	23,715	0	23,715
Capital Outlay	1,500	0	1,500
<b>Subtotal</b>	<b>460,091</b>	<b>0</b>	<b>460,091</b>
Public Affairs			
Personal Services	669,686	0	669,686
Materials & Services	91,247	0	91,247
Capital Outlay	3,100	0	3,100
<b>Subtotal</b>	<b>764,033</b>	<b>0</b>	<b>764,033</b>
General Expenses			
Interfund Transfers	579,671	0	579,671
Contingency	229,459	(25,000)	204,459
<b>Subtotal</b>	<b>809,130</b>	<b>(25,000)</b>	<b>784,130</b>
Unappropriated Balance	151,566	0	151,566
<b>Total Fund Requirements</b>	<b>6,802,525</b>	<b>25,000</b>	<b>6,827,525</b>
<b>GENERAL FUND</b>			
Council			
Personal Services	987,165	0	987,165
Materials & Services	149,546	0	149,546
Capital Outlay	4,000	0	4,000
<b>Subtotal</b>	<b>1,140,711</b>	<b>0</b>	<b>1,140,711</b>
Executive Management			
Personal Services	343,248	0	343,248
Materials & Services	79,532	0	79,532
Capital Outlay	0	0	0
<b>Subtotal</b>	<b>422,780</b>	<b>0</b>	<b>422,780</b>

**Exhibit B**  
**Schedule of Appropriations**  
**Ordinance No. 93-521**

	Current Appropriation	Revision	Proposed Appropriation
<b>GENERAL FUND (continued)</b>			
Office of Government Relations			
Personal Services	67,538	0	67,538
Materials & Services	74,450	0	74,450
Capital Outlay	0	0	0
Subtotal	141,988	0	141,988
Special Appropriations			
Materials & Services	250,000	0	250,000
Subtotal	250,000	0	250,000
General Expenses			
Interfund Transfers	3,299,770	25,000	3,324,770
Contingency	392,500	(25,000)	367,500
Subtotal	3,692,270	0	3,692,270
Unappropriated Balance	267,665	0	267,665
<b>Total Fund Requirements</b>	<b>5,915,414</b>	<b>0</b>	<b>5,915,414</b>

**Note: This action assumes adoption of Ordinance No. 93-514, funding the Construction Manager position; Ordinance No. 93-518, funding personal computer replacements in the Office of General Counsel; and Ordinance No. 93-516 funding a Greenspaces RFP**

**All Other Appropriations Remain As Previously Adopted**



METRO

*Daniel B. Cooper*  
*Tele: (503) 797-1528*  
*FAX (503) 797-1792*

December 9, 1993

The Honorable Judy Wyers  
Metro Council Presiding Officer  
600 N.E. Grand Avenue  
Portland, OR 97232-2736

Re: Disparity Study

Dear Presiding Officer:

Neil Saling has referred to me a question that has been asked regarding the potential legal liability for Metro if it participates in the disparity study that has been proposed by the City of Portland.

Metro has two possible exposures to claims based on federal and state laws prohibiting discrimination based on race, ethnic status or gender. The first exposure is for claims based on allegations that Metro is an actor or active participant in discriminatory activity. The second area of exposure is to claims that Metro has policies or programs that unlawfully create preferences based on race, ethnic status or gender.

The purpose of the disparity study is to determine if there is a factual basis for Metro to adopt narrowly tailored programs to remedy past practices of discrimination by specific industries against specific racial, ethnic or gender based groups. This requirement for a study is based on federal court decisions City of Richmond v. J.A. Croson Company, 488 U.S. 469 (1989); Coral Construction Company and Columbia Chapter of the Associated General Contractors of American v. King County, 1991 U.S. App. (9th Cir. Aug 8, 1991). This Office has previously advised the Metro Council and Executive Officer that the Metro DBE/WBE program in effect at the time the Coral decision was rendered was in violation of the legal requirements established there. In order to avoid potential legal liability, the Council and Executive Officer took action to discontinue the previous program and adopted the current program which we believe is valid.

The Honorable Judy Wyers  
December 9, 1993  
Page 2

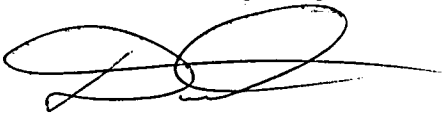
In order to find that past acts of discrimination have occurred that justify legislating further in this area Metro need not conclude or admit that it as an entity has engaged in prohibited conduct. Rather, it must establish that evidence exists that others have engaged in such conduct. However, Croson and Coral do not require that Metro determine which specific individuals have actually engaged in such practices or determine beyond a reasonable doubt that unlawful acts have occurred.

Neither Croson nor Coral require that a municipality "admit liability" before adopting a remedial program. Based on our general knowledge and experience, as well as due inquiry into Metro's affairs, this Office believes that Metro itself as an entity has not engaged in any prohibited acts of discrimination. Metro officials have certified to the federal government on an annual basis the absence of such discrimination, and we believe there is currently no basis for finding that Metro has any legal liability for past acts of discrimination.

The context in which the disparity study will be conducted is based on an assumption that Metro has no duty to remedy past discrimination. Such a finding of a duty could only arise out of a prosecution or investigation by a federal or state authority and would be in the form of a court order or other remedy. That is not the case in the disparity study. Rather, the proposed study and the court opinions in Croson and Coral reflect that such a study is a requirement if a local government decides as a policy matter to initiate a remedial program to correct the affect of discrimination on the part of others.

In this context, the study is not necessarily a sword that will result in potential liability for its sponsors. However, if the study does reveal that Metro has in fact actively engaged in prohibited activity, Metro officials may have a duty to report this matter to the appropriate authorities.

Yours very truly,



Daniel B. Cooper,  
General Counsel

gl  
1772/1.87

## STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 93-521 AMENDING ORDINANCE NO. 93-487A REVISING THE FY 1993-94 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR A PREDICATE STUDY; AND DECLARING AN EMERGENCY

---

Date: October 26, 1993

Presented by: Neil Saling

### BACKGROUND AND ANALYSIS

Resolution No. 93-1860 for the purpose of authorizing the Executive Officer to execute an intergovernmental agreement with the City of Portland for a predicate study will be presented to the Council for consideration during the month of November. In September, 1992, the Metro Council authorized a Multi-Jurisdictional Statement of Mutual Understanding supporting and permitting a feasibility study to be pursued by Multnomah County as a precursor to a major predicate study. The intergovernmental agreement with the City of Portland for the predicate study is an outgrowth of the feasibility study. Participants in the IGA include the City of Portland, Multnomah County and Metro. A copy of Resolution No. 93-1860 and the accompanying staff report explaining the predicate study are attached.

This action amends the budget to allow for the cost of the intergovernmental agreement. The predicate study will be performed over two fiscal years. The total cost of Metro's contribution to the study is \$100,000, funded equally in each of FY 1993-94 and FY 1994-95. The study is necessary to respond to a Supreme Court decision which applies to government operations in general. It addresses a broad based social benefit for the long term social good and extends far beyond the contracting issues. As such, the study is proposed to be funded equally by the General Fund and the Support Service Fund. This action transfers \$25,000 from the General Fund to the Procurement division of the Regional Facilities Department in the Support Services Fund, and transfers \$25,000 from the Support Service Fund contingency to the Procurement division of the Regional Facilities Department.

### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 93-521.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING )	RESOLUTION NO. 93-1860
THE EXECUTIVE OFFICER TO )	
EXECUTE AN INTERGOVERNMENTAL )	
AGREEMENT WITH THE CITY OF )	Introduced by Rena Cusma,
PORTLAND FOR A PREDICATE STUDY )	Executive Officer

WHEREAS, a group of procurement professionals from various governmental agencies have met since October, 1991 to discuss and share information on their past and present minority and women-owned business enterprise (MBE/WBE) programs; and

WHEREAS, the group determined that, if MBE/WBEs were to receive preferential procurement treatment to remedy the present effects of past discrimination, a predicate study documenting past discrimination would be necessary; and

WHEREAS, the Metro Council in September, 1992 authorized a Multi-Jurisdictional Statement of Mutual Understanding supporting and permitting a feasibility study to be pursued by Multnomah County as a precursor to a major predicate study; and

WHEREAS, that study by Sara Glasgow Cogan & Associates outlined the requirements for and projected costs of such a multi-jurisdictional predicate study; and

WHEREAS, the City of Portland has endorsed a regional approach to such a predicate study, authorized \$175,000 in funding and directed the Mayor to seek funding partners to complete such a regional study; now, therefore,

BE IT RESOLVED,

That the Metro Council authorizes the Executive Officer to execute an intergovernmental agreement with the City of Portland in substantial conformance with Exhibit A attached, so as to support and promote a regional predicate study.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

\_\_\_\_\_  
Judy Wyers, Presiding Officer





## METRO

DATE: November 16, 1993

TO: Governmental Affairs Committee  
Finance Committee

FROM: Casey Short, <sup>cl</sup> Council Analyst  
Donald E. Carlson, Council Administrator <sup>DL</sup>

RE: Disparity/Predicate Study

Ordinance No. 93-521 and Resolution No. 93-1560 have been referred to the Governmental Affairs and Finance Committees. These two companion pieces of legislation would authorize the Executive Officer to execute an intergovernmental agreement with the City of Portland for a predicate/disparity study to determine the extent of past discrimination in contracting practices, and would make available the funds for Metro's participation in such a study. Multnomah County will also participate, and has committed funds for the study. Relevant background information and justification is included in the materials accompanying the legislation.

In addition to the basic issue of the justification and need for Metro's participation in this study as it relates to remedying any past discrimination, there are some other issues we would like to raise for committee and Council consideration.

1. What will be the benefit to Metro of taking part in the study?

The policy decision of whether to participate in the study should be viewed in the context both of Metro within the broader local government community and of Metro as an independent jurisdiction. Participation through the proposed intergovernmental agreement would clearly establish this agency as a partner with other jurisdictions in the region in taking steps to identify, and remedy to the applicable extent, past discrimination in certain sectors of the community.

In addition, however, the specific benefit for this agency should also be identified. How will Metro's participation in the study directly benefit this agency? To what extent will Metro's participation be reflected in the structure of the study, with results that are directly tied to the interests of this agency?

2. What results can the study be expected to produce, and is the expenditure justified regardless of the outcome?

The purpose of the study is to determine whether there is evidence of past discriminatory practices in which governments actively or passively participated, through the awarding of public contracts. If such evidence is found, "narrowly tailored" remedies may be implemented to correct the effects of such past discrimination. These remedies must address the specific relevant sectors of the business community which the study finds to have practiced discrimination.

The purpose of this study - and the expenditure of hundreds of thousands of dollars of public funds - should be considered to be broader than just to document past discrimination. Croson requires such a study be performed in order to establish a basis for remedy, but the study may not produce results which justify any remedies. It may conclude that there was wholesale racial and gender discrimination in the building trades, or that there is no documentable history of any such discrimination, or that certain segments of the industry practiced some forms of racism or sexism in the past. Participating jurisdictions, including Metro, must be prepared to accept the study's results regardless of its conclusions. This implies that a result which documents no discrimination is to be deemed worthy of the expenditure. Is the expenditure of Metro funds justified on the basis of the project itself, even if the result is one that does not produce data that could justify remedies?

3. What is the basis for the total study cost, Metro's share of the cost, and how will the study be conducted?

The documents in the agenda packet do not contain a scope of work for the study. Has a scope of work been developed, or does that await determination of the amount of funds available? What will the total \$375,000 buy, and what will Metro receive for its \$100,000? How was the split of funds among the participating jurisdictions determined, and should Metro's share be 27% of the total?

4. What is the status of other jurisdictions' participation in the study?

Portland and Multnomah County are cited as pledging funds for this project. Have other jurisdictions in the region, including the Port of Portland, the State of Oregon, and Washington and Clackamas Counties, agreed or declined to participate?

5. What is the justification for splitting the cost of the study between the General and Support Service Funds?

Disparity/Predicate Study

November 16, 1993

Page 3

6. Who should be Metro's liaison to the City on this project?

It is our understanding that this project is being managed by the Portland City Attorney's office, with Multnomah County Counsel serving as the County's liaison. This implies that the project's focus will be on legal issues, to determine whether the standards set in Croson can be achieved through the study.

If so, should Metro's participation correspondingly be handled through the Office of General Counsel rather than the Procurement Office in the Regional Facilities Department, and should the legislation be amended to appropriately reflect the management responsibility?

cc: Metro Councilors  
Neil Saling  
Dan Cooper  
Dick Engstrom

**IMPACT**

2125 NE Harbor Blvd., Suite 102  
Portland, Oregon 97216  
(503) 246-3841  
(503) 245-9953

**BUSINESS CONSULTANTS**

**MEMORANDUM**

**TO:** Rena Cusma and METRO Council

**FROM:** Margaret R. Garza, *MRG*  
IMPACT Business Consultants, Inc.

**DATE:** November 18, 1993

**Subject:** DISPARITY STUDY

This memorandum is written in support of Metro's efforts to fund the disparity study of racial discrimination in public contracting.

IMPACT Business Consultants, Inc. is a privately owned management consulting firm providing technical business services to minority/women owned businesses throughout the states of Oregon, Washington, Utah, and Arizona. We are under contract with several local, state and federal agencies to provide such services to these businesses. As such, we strongly support the efforts of Metro council and Metro staff to ensure significant participation of Minority and Women businesses on locally funded projects. Again, we at IMPACT Business Consultants, Inc. applaud the commitment of Metro staff and council in this endeavor.

This disparity study is greatly needed and long overdue. This study would allow the public contracting entities such as Metro to implement contracting goals and return to a more strict contracting program. A vehicle that has worked in the past in assisting the public contracting entities to contract with its local constituents of minority and women businesses.

Thank you for your continued interest in Minority/Women business development. Should you have any inquiries in reference to this memo, please do not hesitate to call or write.

Respectfully submitted.



## METRO

DATE: November 18, 1993  
TO: Metro Councilors  
FROM: *JW* Councilor Judy Wyers  
RE: Predicate Study

I am attaching a copy of a letter from Governor Roberts to Portland Mayor Katz which raises a number of concerns regarding the predicate study the City of Portland proposes to undertake. Metro is being asked to participate in and help fund this study.

I share those concerns raised in the Governor's letter, and want to express some additional ones of my own. These include:

- How much will the study cost Metro and how will Metro be obligated if there are additional costs beyond an original amount? Can we opt to spend fewer dollars?
- Will Metro's financial participation ensure that Metro's interests in this issue will be fully reflected throughout the region, or will it serve merely to broaden the scope of the study?
- If the study is to concentrate on construction contractors (such as plumbers), what will be the benefit to Metro, given our anticipated reduction in construction activity?
- What authority will Metro have to ensure that any remedial measures can be effectively implemented, or would Metro be obligated to other jurisdictions for remedial costs?
- Will Metro be able to participate in the preparation of the study's scope of work and the selection of the contractor to perform the study?
- What legal liabilities might we assume by participating in the study if it finds that discrimination had occurred? Might a study show that public sector contracting in this community is actually high in proportion to the numbers of minority population and minority businesses in the region?
- What has been the experience of jurisdictions that have performed similar studies, in terms of cost and results?

Disparity Study  
November 18, 1993  
Page 2

- Who will participate in the study from the City of Portland?
- Might Metro offer to provide staff support to the study effort, rather than commit dollars?

These questions need to be answered, in addition to those submitted earlier by Council staff, before the Council can consider the substantive question of whether to authorize Metro's participation in this study.

cc: Executive Officer Rena Cusma  
Neil Saling  
Dan Cooper



OFFICE OF THE GOVERNOR  
STATE CAPITOL  
SALEM, OREGON 97310-0370  
TELEPHONE: (503) 378-3111  
TDD (503) 378-4859

October 21, 1993

The Honorable Vera Katz  
Mayor of Portland  
1220 S.W. Fifth Avenue  
Portland, OR 97204

Dear Mayor Katz:

I am committed to making sure disadvantaged businesses receive a fair share of government contracts. The State of Oregon shares City of Portland's concern that the Croson decision will hurt efforts to improve Disadvantaged Business Enterprises' participation in regional construction contracts. As one of the largest users of goods and services, we realize the importance of establishing a policy that includes all Oregonians in a fair and equitable way.

Because of my personal commitment, the state has begun programs to increase participation of disadvantaged businesses through mentorships and training in general business practices. We are also restructuring our policy for procurement and contracting. In addition, the Multi-Jurisdictional Feasibility Study (with the state as a participant) pointed out the need to standardize data collection. We have developed a reporting system that will provide subcontracting information that could be used in a future disparity study.

It is important to move forward in this area, and I appreciate your willingness to tackle this most difficult issue. The State is interested in working with the City on the proposed disparity study, but I have several concerns and cannot commit state funds at this stage in the process.

These are my concerns:

1. That the study will only cover construction contractors, when there are other areas where disadvantaged business are grossly impacted by the Croson decision.
2. That the disparity study may not give us the legal authority to reject bids that do not have DBE subcontractors named.

Page 2  
Mayor Katz  
October 21, 1993

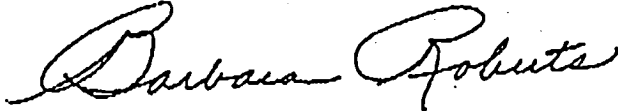
3. That the State have input into the legality of the study, the contractor that conducts the study and the study's geographic scope. As you are aware, in order for a jurisdiction to set numerical goals, the data must be collected from the same geographical area in which the goals apply. The region and types of contractors covered are important issues to the State.

4. That the State can't evaluate the estimated cost of \$700,000 until the City has defined the type of study it will conduct.

I hope we can resolve some of these concerns. Faye Burch, of my staff, and Wendy Robison, of the Justice Department, are available to work with you and your staff on these issues. Faye may be reached at (503) 378-5651, ext. 223, and Wendy Robinson at (503) 378-6986.

We share a commitment to fairness and to improving opportunities for disadvantaged businesses; I hope we can find a way to be partners in meeting that commitment.

Sincerely,



Barbara Roberts  
Governor

CC: Tom Bartlett  
Don Forbes  
Cam Birnie  
Faye Burch ✓  
Wendy Robinson





City of Portland  
Vera Katz  
Mayor

November 17, 1993

THE HONORABLE BARBARA ROBERTS  
GOVERNOR, STATE OF OREGON  
STATE CAPITOL  
SALEM OR 97310-0370

Post-It™ brand fax transmittal memo 7671		# of pages ▶
To <i>Madelyn W.</i>	From <i>Vera Katz</i>	
Co.	Co.	
Dept.	Phone #	
Fax # <i>797-1796</i>	Fax #	

Re: Regional Disparity Study

Dear Governor Roberts:

Thank you for your letter dated October 21, 1993 regarding my request that the state consider participation in a regional disparity study. As you know, many regional governments and the State of Oregon have been discussing the feasibility of such a study for some time. You have noted a number of concerns regarding the state's participation in such a study.

1) "That the study will only cover construction contractors, when there are other areas where disadvantaged business are grossly impacted by the Croson decision."

Comments: A legal opinion issued to the state's Minority, Women & Emerging Small Business Office by Assistant Attorney General Wendy Robinson a year ago confirms that any disparity study must focus specifically on individual industry sectors, such as construction. The opinion states that: "The jurisdiction must prove particular discrimination suffered by minorities in the particular industry to be benefitted by the remedial program." The Multi-Jurisdictional Disparity/Predicate Feasibility Study (hereinafter "'Predicate" study) in which some fourteen regional governments and the State of Oregon participated, also concluded that: "The jurisdiction must demonstrate a statistical disparity between the participation of minorities and/or women-owned businesses in purchasing and contracting and their availability in a given industry in that jurisdiction." (See page 19).

Over the past several years, minority community advocates as well as administrators and others involved in-house with purchasing and contracting issues, have been overwhelmingly concerned with

The Honorable Barbara Roberts  
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Page 2

the impact of the Croson decision on our public works contracting programs. The Oregon Commission on Black Affairs which held hearings concerning the impact of Croson on African American businesses and contractors in May of 1992, also concluded that discrimination against minority contractors continues to adversely affect opportunities for minority businesses and recommended that a disparity study be initiated by the State of Oregon. Because the weight of the concerns and complaints we have heard have centered on this particular industry, we have decided that the construction industry, broadly defined, ought to be the focus of the disparity study we are currently designing. To broaden the study to include other industries or sectors would undoubtedly involve an even greater investment of public funds and does not appear to be warranted based on the evidence before us at this time. If the state believes that there "are other areas where disadvantaged business[sic] are grossly impacted" by Croson as well, the state could design a supplemental study aimed at those areas in order to comply with the Croson decision. I would be happy to review such a proposal at any time and seek funding from our City Council should the facts support the need for such supplemental studies.

2) "That the disparity study may not give us the legal authority to reject bids that do not have DBE subcontractors named."

Comments: It is clear that we cannot prejudge the specific outcome of the proposed study. Since we do not and indeed, cannot know what the study will establish factually, we cannot say for sure what types of remedial measures will be viewed as legally appropriate. I believe that set-asides are one tool among many which can and will assist our government in ensuring that minority and women owned businesses have an equal opportunity to participate in the public contracting opportunities which their tax dollars help to fund. However, we plan on designing the study such that it is capable of establishing the predicate for other types of programs or methodologies, as well. Thus, other types of assistance, such as percentage advantages in bidding, rewarding mentorships of MBE's and WBE's, focussing on employment and training of minorities and women in the construction trades, are some of the other areas in which I believe the disparity study will give us invaluable information and enhanced legal tools.

3) "That the State have input into the legality of the study, the contractor that conducts the study and the study's scope."

Comments: Fourteen governments and state agencies cooperated in the earlier "Predicate" study. It goes without saying that any multi-jurisdictional effort will involve a substantial amount of

The Honorable Barbara Roberts  
November 17, 1993  
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coordination on many fronts. At this time, an Intergovernmental Agreement is being prepared for the City, Multnomah County, and Metro to coordinate disposition of some of the key issues. Deputy City Attorney Madelyn Wessel who is staffing the disparity study from the City end is happy to work with your staff and has told Faye Burch and others of her willingness to do so many times. We will, however, soon be at a planning stage where the study and bid specifications have been contoured to fit the needs of those governments which have made a commitment to participate.

4) "That the State can't evaluate the estimated cost of \$700,000 until the City has defined the type of study it will conduct."

Comments: The "Predicate" analysis prepared by Sara Glasgow Cogan & Associates last year provided a "ballpark" estimate of approximately \$700,000 for a study meeting the needs of the fourteen study participants. Her study was submitted almost a year ago after the state and others had an extensive opportunity to comment and react to earlier drafts. We do not believe that any precise figure can be guaranteed of course, as the Cogan "Predicate" study and our own in-house estimates have necessarily been based on comparative figures from other jurisdictions which can only roughly be said to resemble the Portland region, or the state as a whole.

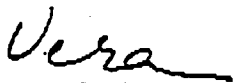
At this time we estimate our study costs to be roughly in the \$400,000 range, because we anticipate a focus on the tri-county "metropolitan" region. Should the state decide to participate, the scope of the study and its costs would undoubtedly increase. In assessing the potential cost of full or partial participation by the state, it seems obvious that you and your staff will need to determine what the state would like to address both geographically and in terms of industry "scope."

The Oregon Commission on Black Affairs made its recommendation for a disparity study in November of 1992. The intergovernmental "Predicate" study was completed in December of 1992. I wrote asking for your support for such a study in May of this year. The Portland City Council unanimously voted to support and fund a disparity study in June of this year. We continue to be interested in working with the state on a disparity study, but we are moving forward. Please let me know if any of my staff can be of assistance at any time. Deputy City Attorney Madelyn Wessel can be reached at (503) 823-4047. My Executive Assistant Sam Adams can be reached at (503) 823-4125.

The Honorable Barbara Roberts  
November 17, 1993  
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Thank you for your consideration of the proposed study.

With warm regards,



Vera Katz  
Mayor

BARBARA ROBERTS  
GOVERNOR



OFFICE OF THE GOVERNOR  
STATE CAPITOL  
SALEM, OREGON 97310-0370  
TELEPHONE: (503) 378-3111

November 22, 1993

Judy Wyers  
President  
METRO  
600 NE Grand  
Portland, Oregon 97232

Dear President Wyers:

I would like to reinforce the State of Oregon's position on the regional disparity study. We are supportive, however, in any major decision involving state agencies we need to carefully evaluate the ramifications of the study with our legal counsel. I expect the City of Portland counsel, Maddelyn Wessel and State of Oregon counsel, Wendy Robinson will be meeting about our concerns this week. I'm sure your counsel would be welcome at this meeting.

As I said during our earlier conversation, I would recommend that METRO also consider being a partner in this regional study. Partnership can be in the form of dollars, staff assistance or legal counsel. I expect our participation to include a combination of all three.

Metro has a very good program thanks to the efforts of Rich Wiley and Amha Hazen, but all of our jurisdictions can and should do more to make contracting opportunities more equitable.

Sincerely

Faye Burch  
Governor's Advocate for Minority, Women & Emerging Small Business

cc: Casey Short  
Ed Washington  
Maddelyn Wessel  
Wendy Robinson  
Rich Wiley  
Amha Hazen



## METRO

Date: November 30, 1993  
To: Judy Wyers, Metro Council Presiding Officer  
From: Neil Salinger, Director of Regional Facilities  
Re: Questions Regarding Proposed Disparity/Predicate Study

---

The following responds to questions raised by you, Don Carlson and Casey Short in separate memorandums dated November 16 and 17, 1993.

General

The majority of the background for the proposed Disparity/Predicate (D/P) Study is contained in the Staff Report which accompanies proposed Resolution No. 93-1560. As you may recall, the Council-appointed committee which drafted Metro's present MBE/WBE program recommended the D/P study be undertaken. That same group testified before the Government Affairs Committee on November 18, 1993, making a strong argument for a study which would again require Metro to effectively set aside a portion of its contracts for minority enterprises.

There appears to be an implicit assumption on the part of the more vocal proponents for the D/P study that disparity resulting from discrimination will be found. Further, it is assumed that some form of set-asides will be at least one of the remedial measures. This may not be the case. It is also possible that a narrowly tailored remedial response would provide preferential opportunities only to firms who can document economic hardship due to Metro action or inaction. An important phase of the study is the determination of appropriate remedial measures given the extent of the disparity and the nature of its causes. Thus, in many respects, a complete answer to many of the questions posed would require the study be undertaken.

The Council should also be aware that Crosen requires that remedial measures be taken in concert with a race and gender neutral program. This suggests that an Emerging Small Business (ESB) program, emphatically rejected by the Council-appointed committee, may need to be crafted and implemented at Metro.

Q1. What will be the benefit to Metro of taking part in the study?

A1. Mr. Short's response which follows succinctly states the qualitative response to this question:

"The policy decision of whether to participate in the study should be viewed in the context of Metro within the broader local government community and of Metro as an independent jurisdiction. Participation through the proposed intergovernmental agreement would clearly establish this agency as a partner with other jurisdictions in the region in taking steps to identify, and remedy to the applicable extent, past discrimination in certain sectors of the community."

Recognition by the minority community that Metro is willing to carefully examine the potential for discriminatory impacts and take appropriate corrective action is the only direct benefit to the agency. The study will cost the agency \$100,000 but, until the study is completed, any added costs for remedial programs are difficult to impossible to forecast. If set-asides and/or quotas are the extent of the remedial measures, our program costs would be only those accruing from a lack of competitive bidding. Other remedial programs, such as training or bond underwriting, could cost more.

Based on Metro's regional nature, it must be an active study participant to gain the broader study coverage. Similarly, the restriction of the study in the construction industry is not in Metro's best interest and Metro must make its desires known to preclude a narrow scope which provides only a portion of Metro's needs.

- Q2. What results can the study be expected to produce, and is the expenditure justified regardless of the outcome?
- A2. The study can be expected to produce statistical and anecdotal evidence of discrimination, probably not on the part of Metro. Here the question of discrimination against a firm or enterprise can be blurred by testimony of discrimination against an individual. The statistical analysis of minority firms may show that the use of those firms by Metro and other public agencies is proportionate to their availability. Such a result is not anticipated by the minority community, but Metro must be prepared to accept such a result. Metro would have no basis for preferential program absent the D/P study.
- Q3. What is the basis for the total study cost, Metro's share of the cost, and how will the study be conducted?
- A3. Metro's participation level of \$100,000 is patterned after Multnomah County. The overall study funds of \$375,000 are somewhat lower than those provided in other similar studies. A final scope of work has not yet been developed. (The Feasibility Study suggested a consultant be hired just to draft the Scope of Work.) The City of Portland is envisioned as the study leader.
- Q4. What is the status of other jurisdictions' participation in the study?
- A4. To date only the City of Portland and Multnomah County have expressed a strong interest in participating in the D/P study.
- Q5. What is the justification for splitting the cost of the study between the General and Support Service Funds?
- A5. The primary beneficiary of the study is the agency in general. A secondary "beneficiary" is the procurement system funded by the Support Service Fund. There is no formal paradigm for the division of the study costs.
- Q6. Who should be Metro's liaison to the City on this project?

- A6. Berit Stevenson will be the lead analyst for Metro. This reflects her familiarity with both procurement and construction practices. General Counsel will play a supporting role providing legal analysis and guidance. This mix will continue Metro's present practice of using legal staff as advisors/litigators, keeping project management in the department/administrative category.
- Q7. How much will the study cost Metro and how will Metro be obligated if there are additional costs beyond an original amount? Can we opt to spend fewer dollars?
- A7. Metro's recommended share in the D/P study cost is \$100,000 over two fiscal years. Metro Council can reserve to itself decisions on any added expenditures or choose to provide a lesser level of initial funding.
- Q8. Will Metro's financial participation ensure that Metro's interests in this issue will be fully reflected throughout the region, or will it serve merely to broaden the scope of the study?
- A8. Metro's participation in the study will require examination of the entire region. Thus, Metro's participation would broaden the scope of the study. Similarly, Metro may see a need to address industry sectors beyond those of interest to the City and the County.
- Q9. If the study is to concentrate on construction contractors (such as plumbers), what will be the benefit to Metro, given our anticipated reduction in construction activity?
- A9. A study addressing only construction firms and related specialty contractors would be of lesser utility to Metro than a study addressing multiple industry sectors.
- Q10. What authority will Metro have to ensure that any remedial measures can be effectively implemented, or would Metro be obligated to other jurisdictions for remedial costs?
- A10. Any remedial measures must be tailored to the agency. Thus, Metro would control its own remedial activities. Metro would not be obligated to another agency for remedial costs without some form of implementing agreement.
- Q11. Will Metro be able to participate in the preparation of the study's scope of work and the selection of the contractor to perform the study?
- A11. Yes. Participation in formulating the Scope of Work and in selection of the study contractor is a basis tenet of the Intergovernmental Agreement with the City.
- Q12. What legal liabilities might we assume by participating in the study if it finds that discrimination has occurred? Might a study show that public sector contracting in this community is actually high in proportion to the numbers of minority population and minority businesses in the region?



A12. The question of legal liability has been referred to the Metro General Counsel and will be addressed under separate cover. There is a distinct possibility that a careful statistical analysis might show that no disparity exists in Metro contracting with minorities when compared to the demographics of the minority population or to the available minority enterprises.

Q13. What has been the experience of jurisdictions that have performed similar studies, in terms of cost and results?

A13. Similar studies in King County and San Francisco have been more expensive, both in terms of consultant cost and staff time. The costs, as estimated in the Feasibility Study, were \$577,750 and \$1,522,000 respectively. The Feasibility Study estimate for a comparable study in the Portland area was \$700,000.

Major studies to date have found discrimination, but not in all industry sectors. The corrective action in most cases involved project goals and/or set-asides. Much of what is being done can be categorized as increased information flow, oversight and outreach. Metro now has many of these measures in place but without specific quotas or set-asides.

Q14. Who will participate in the study aside from the City of Portland?

A14. The study manager from the City is Madeline Wessel, an attorney. It is understood that she is directly responsible to Mayor Katz. No other City staff have been specifically identified.

Q15. Might Metro offer to provide staff support to the study effort, rather than commit dollars?

A15. Significant Metro staff effort is anticipated to support the study in addition to the commitment of funds. The level of staff support required of all participants may be better defined after a Scope of Work is crafted.

A summary of MBE/WBE participation in Metro contracting since the implementation of its present MBE/WBE/DBE program is attached.

Enclosure

cc: Don Carlson  
Dick Engstrom  
Dan Cooper  
Berit Stevenson  
Rich Wiley

METRO

MBE/WBE PARTICIPATION

JANUARY 1, 1993 - NOVEMBER 30, 1993

CATEGORY	TOTAL	MBE	%	WBE	%
PERSONAL SERVICES	2,762,743.00	335,279.00	12.14	154,688.00	5.60
LABOR & MATERIALS	3,874,176.00	31,582.00	0.82	122,284.00	3.16
CONSTRUCTION	9,556,603.00	483,651.00	5.06	285,290.00	2.99
PROCUREMENT	5,635,458.00	132,409.00	2.35	114,126.00	2.03
TOTAL	21,828,980.00	982,921.00		676,388.00	

**METRO**

DATE: January 20, 1994  
TO: Rena Cusma, Executive Officer  
FROM: Paulette Allen, Clerk of the Council  
RE: TRANSMITTAL OF ORDINANCE NOS. 94-521A and 94-527A

Attached for your consideration are true copies of the ordinances referenced above adopted by the Council on January 13, 1994.

If you wish to veto any of the ordinances referenced above, I must receive a signed and dated written veto message from you no later than 5:00 p.m., Thursday, January 20, 1994. The veto message, if submitted, will become part of the permanent record. If no veto message is received by the time and date stated above, these ordinances will be considered finally adopted.

---

I, Uneth Shorley, received this memo and true copies of Ordinance Nos. 94-521A and 94-527A from the Clerk of the Council on 1-20-94.