



METRO

Agenda

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

REVISED AGENDA: Agenda Item No. 9 has been added;
Agenda Item No. 9 has been renumbered as Agenda Item No. 10

DATE: September 24, 1992
MEETING: METRO COUNCIL
DAY: Thursday
TIME: 5:30 p.m.
PLACE: Metro Council Chamber

Approx.
Time*

Presented
By

5:30
(1 hr.)

ROLL CALL/CALL TO ORDER

1. CONSIDERATION OF A CANDIDATE FOR VACANT DISTRICT 2 COUNCIL POSITION

- A. Interview of Candidates by Council
- B. Selection of Candidate for the District 2 Position
- C. Resolution No. 92-1684, For the Purpose of Appointing a Candidate to Fill the Vacant District 2 Position

6:30
(5 min.)

2. INTRODUCTIONS

3. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

4. EXECUTIVE OFFICER COMMUNICATIONS

5. CONSENT AGENDA (Action Requested: Motion to Adopt the Consent Agenda)

5.1 Minutes of July 23, August 13 and 27, 1992

6. ORDINANCES, SECOND READINGS

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

6:35
(10 min.)

- 6.1 Ordinance No. 92-467A, For the Purpose of Approving the Revision of Metro Code Section 2.02.275, Zoo Visitor Services Employees PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)

Gronke

6:45
(20 min.)

- 6.2 Ordinance No. 92-466A, For the Purpose of Repealing Metro Code Sections 2.04.100-180, and For the Purpose of Enacting New Provisions Establishing and Governing Metro's Contracting Procedures for Minority, Women and Disadvantaged Business Enterprises PUBLIC HEARING (Action Requested: Motion to Adopt the Ordinance)

Collier

7. RESOLUTIONS

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

7:05
(10 min.)

- 7.1 Resolution No. 92-1661, For the Purpose of Authorizing the Executive Officer to Execute a Statement in Support of Determining the Feasibility of a Predicate/Disparity Study (Action Requested: Motion to Adopt the Resolution)

Collier

* All times listed on this agenda are approximate; items may not be considered in the exact order listed.

7. RESOLUTIONS (Continued)

REFERRED FROM THE TRANSPORTATION & PLANNING COMMITTEE

- 7:15 7.2 Resolution No. 92-1680, For the Purpose of Endorsing Tri-
(20 min.) Met's Financing Plan for the Westside Light Rail Projects
Which Includes Advancing the Region's Hillsboro Extension
Allocated Funds to the 185th Project (Action Requested:
Motion to Adopt the Resolution)
- 7:35 7.3 Resolution No. 92-1667, For the Purpose of Adopting the FY
(10 min.) 1993 to Post 1996 Transportation Improvement Program and
the FY 1993 Annual Element (Action Requested: Motion to
Adopt the Resolution)
- 7:45 7.4 Resolution No. 92-1670, For the Purpose of Approving an
(10 min.) Amendment to the 1993 Unified Work Program to Provide for
Transportation and Land Use Modeling Improvements (Action
Requested: Motion to Adopt the Resolution)

REFERRED FROM THE SOLID WASTE COMMITTEE
BEFORE THE CONTRACT REVIEW BOARD

- 7:55 7.5 Resolution No. 92-1671, For the Purpose of Authorizing an McFarland
(10 min.) Exemption to the Competitive Procurement Procedures of
Metro Code Chapter 2.04.053 and Authorizing a Personal
Services Agreement with the Oregon Graduate Institute of
Science and Technology (Action Requested: Motion to
Adopt the Resolution)

REFERRED FROM THE FINANCE COMMITTEE

- 8:05 7.6 Resolution No. 92-1672, For the Purpose of Establishing Wyers
(10 min.) the District's Intent to Include a Citizen's Bond Sale as
Part of Its General Obligation Bond Issuance of \$200
Million for the Regional Greenspaces System (Action
Requested: Motion to Adopt the Resolution)
- 8:15 7.7 Resolution No. 92-1676, For the Purpose of Approving Van Bergen
(10 min.) Contract for Performance Audit Services (Action
Requested: Motion to Adopt the Resolution)

8. NON-REFERRED RESOLUTIONS

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

- 8:25 8.1 Resolution No. 92-1681, For the Purpose of Directing the
(10 min.) Preparation of Neutral Factual Information Regarding the
Proposed Metro Charter (Ballot Measure 26-3) (Action
Requested: Motion to Adopt the Resolution)
- 8:35 9. EXECUTIVE SESSION Held Under the Authority of ORS
(10 min.) 192.660(1)(h) to Consult with Counsel with Regard to
Litigation
- 8:45 10. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS
(10 min.)
- 8:55 ADJOURN



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BEFORE THE CONTRACT REVIEW BOARD

- 7:55 (10 min.) 7.5 Resolution No. 92-1671, For the Purpose of Authorizing an Exemption to the Competitive Procurement Procedures of Metro Code Chapter 2.04.053 and Authorizing a Personal Services Agreement with the Oregon Graduate Institute of Science and Technology (Action Requested: Motion to Adopt the Resolution) McFarland

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- 8:15 (10 min.) 7.7 Resolution No. 92-1676, For the Purpose of Approving Contract for Performance Audit Services (Action Requested: Motion to Adopt the Resolution) Van Bergen

8. NON-REFERRED RESOLUTIONS

REFERRED FROM THE GOVERNMENTAL AFFAIRS COMMITTEE

- 8:25 (10 min.) 8.1 Resolution No. 92-1681, For the Purpose of Directing the Preparation of Neutral Factual Information Regarding the Proposed Metro Charter (Ballot Measure 26-3) (Action Requested: Motion to Adopt the Resolution)

8:35 (10 min.) **9. COUNCILOR COMMUNICATIONS & COMMITTEE REPORTS**

8:45 ADJOURN

Meeting Date: September 24, 1992
Agenda Item No. 1

DISTRICT 2 VACANCY HEARING



METRO

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

Memorandum

DATE: September 21, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NO. 1; DISTRICT 2 VACANCY HEARING

Please note the deadline to submit applications for the vacant District 2 position is 5:00 p.m., Monday, September 21 and the public hearing within the community will be held September 21. Attached are materials for the public hearing, the application packet and Resolution No. 92-1684.



METRO

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

Memorandum

DATE: September 15, 1992

TO: Applicants for Council District 2 Vacancy

FROM: Donald E. Carlson, Council Administrator

RE: Procedures for the Conduct of September 21 Hearing

A subcommittee of the Metro Council will conduct a hearing on Monday, September 21, beginning at 7:00 p.m. in Room 3 of the Cedar Hills Recreation Center building, 11640 SW Parkway, to hear testimony regarding Council District 2 from applicants for the District 2 vacancy and others with an interest in the district. The subcommittee will report its findings to the full Metro Council prior to its September 24 meeting, when the Council will interview those who have submitted applications for the appointment by the deadline of 5:00 p.m. on September 21.

In order to hear from all interested parties, each applicant will be allowed no more than 15 minutes to speak on why he or she is applying for the appointment and is best suited to represent the community, and to present supporters to speak on his/her behalf. The time allotted each applicant will be in a single 15-minute block.

All speakers will be limited to 3 minutes except the applicants themselves, who may use as much of their 15 minutes as they see fit. Testimony is to be limited to residents, property owners, or operators of a business within District 2. The hearing will begin with testimony from anyone who is not speaking on behalf of an applicant, followed by applicants' presentations in alphabetical order, and conclude with any general public testimony not given at the beginning.

Thank you for your interest in the Metro Council and in District 2. I look forward to receiving your application and meeting you at the hearing.



METRO

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

Memorandum

DATE: September 2, 1992

TO: Potential Metro Council District 2 Applicants

FROM: Donald E. Carlson, *DE* Council Administrator

RE: INFORMATION AND APPLICATION FORM

Thank you for your interest in applying for the vacant Council District 2 position. Enclosed you will find an application form and information about the position and the Metro Council. This appointment will be an interim appointment, for the period through January 3, 1993. The District 2 position will be filled for a full four-year term at the November 3, 1992 general election. Only one candidate will appear on the general election ballot, but that candidate may not be appointed to fill this vacancy because he lives outside the boundaries of the existing district from which this appointment will be made. As of January 1993, District 2 will have a new boundary as a result of reapportionment.

The application form needs to be completed and returned to me at the Metro Council office by no later than 5:00 P.M. Monday, September 21, 1992. (Postmarks are not acceptable.) A subcommittee of the Council will conduct a public hearing on Monday, September 21, 1992, beginning at 7:00 p.m. in Room 3 of the Cedar Hills Recreation Center building, 11640 SW Parkway to hear testimony from and about applicants for the position and about the characteristics that district residents would like to see in the appointee. If you have any questions or need additional information, please do not hesitate to contact me at 221-1646.

Enclosure

CS1vac2app.men

METROPOLITAN SERVICE DISTRICT
2000 S.W. FIRST AVENUE
PORTLAND, OREGON 97201
(503) 221-1646

APPLICATION FOR APPOINTMENT
TO VACANT METRO ELECTIVE OFFICE
DISTRICT 2

.. This application must be completed in full and returned to Don Carlson,
Council Administrator at the above address not later than 5:00 P.M. on
Monday, September 21, 1992.

NAME: _____ DATE: _____

ADDRESS: _____

LIST EXPERIENCE, SKILLS OR QUALIFICATIONS WHICH YOU FEEL WOULD QUALIFY YOU
FOR THE POSITION: _____

IN THE SPACE PROVIDED STATE YOUR REASONS AND PURPOSES FOR APPLYING FOR THE
POSITION: _____

HIGH SCHOOL ATTENDED: _____

COLLEGE: Name _____ Major _____

Name _____ Major _____

VOCATIONAL TRAINING: Name _____ Course _____

Name _____ Course _____

OTHER FORMAL EDUCATION: _____

EMPLOYMENT HISTORY:

Present or Last Employer _____

Address _____

Position or Title _____

Duties _____

Dates of Employment _____

CERTIFICATE

I hereby certify that I am an elector and resident of Council District No. 2 of the Metropolitan Service District, as reapportioned in 1981; that I will have been a resident of subdistrict No. 2 for a continuous period of at least one year as of September 24, 1992; and that I am not an elected official of any other public body or, if an elected official, I will resign such office prior to appointment.

DATED _____

Signature _____

INFORMATION REGARDING DISTRICT 2 COUNCIL POSITION

- A vacancy exists in the District 2 Council position effective September 21, 1992.
- The Metropolitan Service District Council will appoint a Councilor to fill the vacancy in District 2 according to provisions in Chapter 268 of the Oregon Revised Statutes and Section 2.01.180 of the Metro Code.
- The individual appointed would serve on the Metro Council from September 24, 1992 through January 3, 1993.
- To qualify for the position an applicant must have been a resident of District 2 for a continuous period of at least one year as of September 24, 1992, must be an elector of District 2 and cannot be an elected official of any other public body or, if an elected official, must resign such office prior to appointment. Attached is a map showing the boundary of Council District 2.
- Deadline for submitting an application for the District 2 position is 5:00 p.m., on Monday, September 21, 1992.
- A subcommittee of the Metro Council will hold a public hearing on Monday, September 21, 1992 beginning at 7:00 p.m. in Room 3 of the Cedar Hills Recreation Center building, 11640 SW Parkway, for the purpose of receiving testimony from district residents and those with an interest in District 2 regarding applicants for the position and suggestions about the characteristics they would like the appointee to have.
- All applicants for the District 2 position will be interviewed by the Metro Council on September 24, 1992. Interviews will be approximately 15 minutes for each nominee. Attached are some of the questions the Council will ask during the interviews.
- All interviews will be held on Thursday, September 24, in the Council Chamber at the Metro Center, 2000 SW First Avenue, Portland, Oregon. Applicants for the position will be notified in advance of their scheduled interview time.
- There will be an election for the District 2 position at the November 1992 general election. The 1992 election will be to fill the position for the regular four-year term, from January 1993 to January 1997. Only one name will be on the general election ballot, due to the withdrawal of the second candidate. The person whose name will appear on the ballot is not eligible for appointment to fill the existing vacancy because he lives outside the current District 2 boundaries; he does live in the new re-apportioned district which goes into effect with this election.

COUNCIL DISTRICT 2 INTERVIEW QUESTIONS

1. Metro currently provides regional services in the areas of solid waste disposal, transportation planning, urban growth management, and regional facilities management. Should Metro provide other services or programs? If so, what services or programs? If not, why not?
2. What should Metro's relationship be with other governments in the region?
3. Metro Councilors are responsible for setting regional policy and for program and fiscal oversight of the Metropolitan Service District. Explain how your background would enhance the Council's ability to perform these tasks.
4. By assuming this position, you would be appointed to represent a district of approximately 100,000 people. Please share with us your knowledge of the needs and concerns of your district. What experience do you have in working with community organizations, as well as individuals in your district? How would you balance the needs of District 2 with the needs of the region?
5. What do you believe ought to be changed about Metro, if anything?

NOTICE OF METRO COUNCIL VACANCY

Notice is hereby given of a vacancy for the District 2 position on the Metropolitan Service District Council effective September 1, 1992. The position will be filled by appointment by the Metro Council pursuant to Chapter 268 of the Oregon Revised Statutes and Section 2.01.180 of the Metro Code. The appointment process includes: (1) General notification of the appointment process through the print media; (2) Specific notification of the appointment process to recognized groups with territory within the vacant Council sub-district; (3) Distribution of a Council appointment application to interested citizens; (4) Conduct of a public hearing in the vacant district before a subcommittee of the Council appointed by the Presiding Officer, which subcommittee shall report all testimony received to the full Council; (5) Conduct of interviews with applicants for the vacant position before the Council. The Council will in a public meeting appoint the person to fill the vacancy from a list of applicants who have been nominated and seconded by Councilors. The appointed term will begin upon Metro Council action and the taking of an oath of office, and will expire on January 3, 1993. To qualify for appointment to this non-partisan office, an applicant must be a registered voter and a resident of Metro District 2 and must have resided within District 2 for a continuous period of at least one year prior to the appointment. District 2 includes most of the City of Beaverton and all or part of the Washington County communities of Aloha, Bonny Slope, Cedar Hills, Cedar Mill, Garden Home, Raleigh Hills, and West Slope.

For further information or to obtain an application, contact Don Carlson, Council Administrator, 221-1646. Deadline for submitting applications is 5 p.m. Monday, September 21, 1992, at Metro Center, 2000 SW First Ave., Portland, 97201.

2.01.180 Procedures for Appointing a Person to Fill a Vacancy on the Metro Council:

(a) Whenever a vacancy occurs on the Council more than twenty (20) days prior to the next general election day, the Council shall commence a process to fill the vacancy by appointment by a majority vote of the remaining members of the Metro Council.

(b) The appointment process shall include the following:

- 1) Notification of the appointment process in a newspaper of general circulation in the District, in local newspapers which serve the Council subdistrict, and other journals, publications and circulars deemed appropriate at least three weeks prior to the appointment.
- 2) Notification of the appointment process to official neighborhood organizations, cities, civic groups, and other recognized groups with territory within the vacant Council sub-district at least three weeks prior to the appointment.
- 3) Distribution of a Council appointment application to interested citizens at least two weeks prior to the appointment.
- 4) Conduct of a public hearing in the vacant district before a subcommittee of the Council appointed by the Presiding Officer. The subcommittee shall report all testimony received to the full Council.
- 5) Conduct of interviews with applicants for the vacant position before the Council.

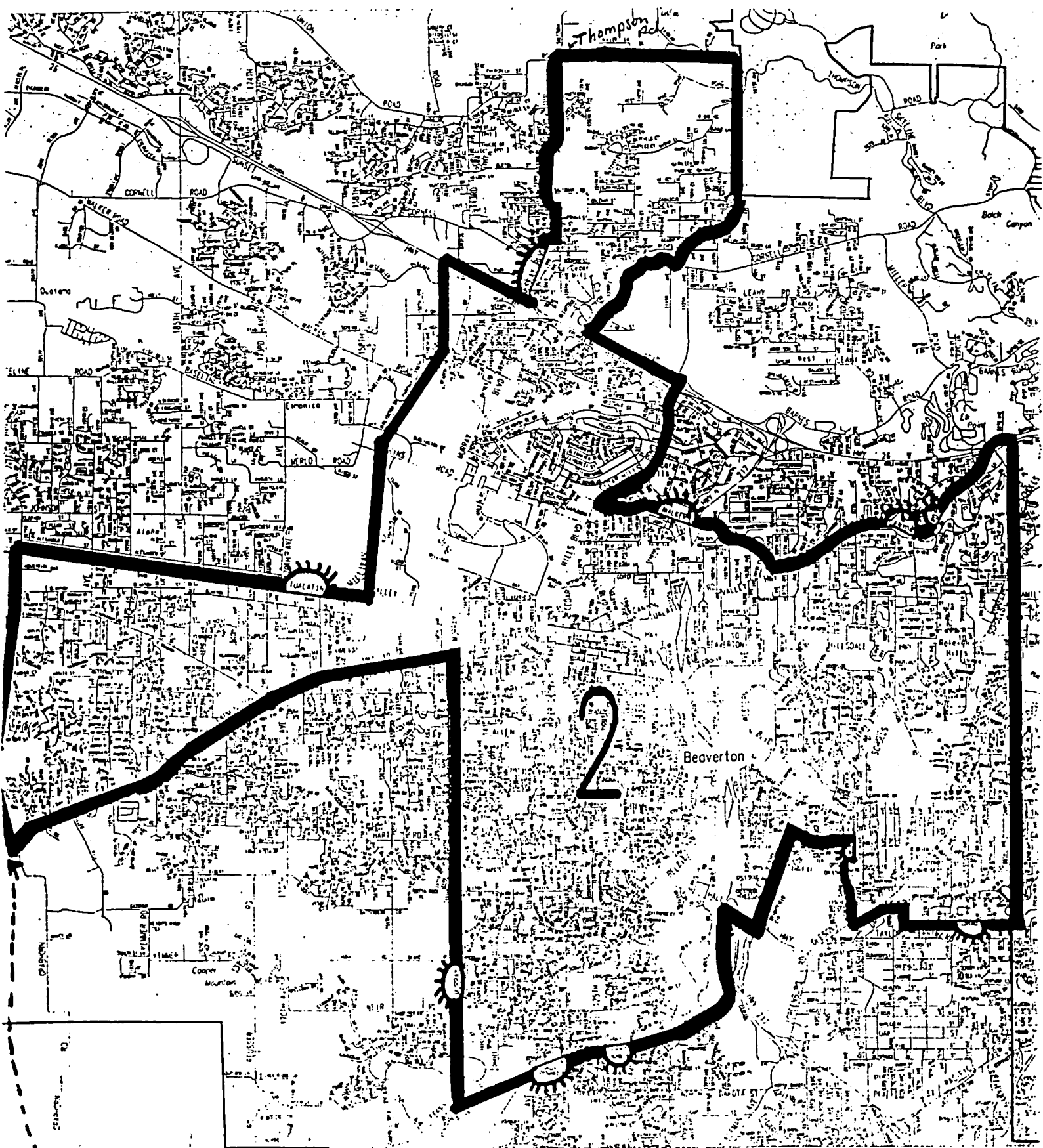
(c) The Council shall in a public meeting appoint the person to fill the vacancy from a list of applicants who have been nominated and seconded by Councilors. Voting for the person shall be by a written signed ballot. The Clerk of the Council shall announce the results of each ballot following the vote and shall record the result of each Councilor's ballot. Any applicant who receives a majority of the votes by the remaining members of the Council shall be elected to the vacant position. If no applicant receives a majority vote of the Council on the first ballot, the Council shall continue to vote on the two applicants who receive the most votes until an applicant receives a majority vote of the Council.

(Ordinance No. 90-322A, Sec. 2)

2.01.190 Appointment Process, Qualifications and Terms of Office for Boundary Commission Members:

(1) As provided by Oregon Law;

(a) The Portland Metropolitan Area Local Government



209th Ave.

Metro Council
District 2

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPOINTING	)	RESOLUTION NO. 92-1684
A CANDIDATE TO FILL THE VACANT)	
DISTRICT 2 POSITION	)	Introduced by Presiding
	)	Officer Jim Gardner

WHEREAS, A vacancy exists in the District 2 position on the Council of the Metropolitan Service District; and

WHEREAS, Chapter 268 of the Oregon Revised Statutes requires that a vacancy in office shall be filled by a majority of the remaining members of the Council; and

WHEREAS, Section 2.01.180 of the Metro Code establishes the procedures for filling Council vacancies, all of which have been followed; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District hereby appoints _____ to fill the vacant District 2 position on the Council of the Metropolitan Service District for the period of September 24 through January 2, 1993.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

Meeting Date: September 24, 1992
Agenda Item No. 5.1

MINUTES

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

July 23, 1992

Council Chamber

Councilors Present: Presiding Officer Jim Gardner, Deputy
Presiding Officer Judy Wyers, Roger
Buchanan, Tanya Collier, Richard Devlin,
Ed Washington, Sandi Hansen, Ruth
McFarland, Susan McLain, George Van
Bergen and Ed Washington

Councilors Absent: Larry Bauer

Also Present: Executive Officer Rena Cusma

Presiding Officer Gardner called the regular meeting to order at
5:35 p.m.

Presiding Officer Gardner announced Agenda Item Nos. 6.8 and 7.1
had been added to the agenda and that "Councilor Communications
and Committee Reports" had been renumbered as Agenda No. 8.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

4.1 Resolution No. 92-1649, For the Purpose of Adding Members to
the Funding Task Force for Regional Facilities and Programs

REFERRED FROM THE TRANSPORTATION & PLANNING COMMITTEE

4.2 Resolution No. 92-1627, For the Purpose of Establishing the
Region's Priority Congestion Mitigation/Air Quality Program
Projects for Inclusion in ODOT's Six-Year Program

4.3 Resolution No. 92-1644, For the Purpose of Establishing
Administrative Procedures Between Metro and ODOT for Use and
Exchange of FAU, STP and State Funding

4.4 Resolution No. 92-1645, For the Purpose of Revising the Portland Metropolitan Area's Urbanized Transportation Boundary to Establish the Area Eligible for Metro STP Funds

4.5 Resolution No. 92-1646, For the Purpose of Endorsing Commitment of Tri-Met General Obligation Bonds to East Portland/Clackamas County LRT Development and Westside Credit Enhancement

REFERRED FROM THE SOLID WASTE COMMITTEE

4.6 Resolution No. 92-1651, For the Purpose of Confirming the Appointment of Del Seitzinger, Stefanie Graff and Arnold Polk to Fill Vacancies on the 1st for Recycling Advisory Committee

REFERRED FROM THE FINANCE COMMITTEE

4.7 Resolution No. 92-1653, For the Purpose of Approving a Request for Proposal Document for Performance Audit Services

Motion: Councilor McLain moved, seconded by Councilor Devlin, for adoption of the Consent Agenda.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington and Gardner voted aye. Councilors Bauer and Wyers were absent. The vote was unanimous and the Consent Agenda was adopted.

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 92-467, For the Purpose of Approving the Revision of Metro Code Section 2.02.275, Zoo Visitor Services Employees

The Clerk read the ordinance for a first time by title only.

Presiding Officer Gardner announced Ordinance No. 92-467 had been referred to the Governmental Affairs Committee for consideration.

5.2 Ordinance No. 92-468, For the Purpose of Approving an Increase in the Transfer Rate for the Forest Grove Transfer Station

The Clerk read the ordinance for a first time by title only.

Presiding Officer Gardner announced Ordinance No. 92-468 had been referred to the Solid Waste Committee for consideration.

6. RESOLUTIONS

6.1 Resolution No. 92-1637, For the Purpose of Considering Adoption of the Metropolitan Greenspaces Master Plan (Public Hearing)

Motion: Councilor Devlin moved, seconded by Councilor McFarland, for adoption of Resolution No. 92-1637.

Councilor Devlin gave the Transportation & Planning Committee's report and recommendations. He said the Committee met July 14 and recommended the resolution to the full Council for adoption. He noted changes made to the draft Master Plan since its release to the public were notated in the Committee Report. He said Metro, when drafting the Master Plan, had provided numerous opportunities for public comment and review. He said Legal Counsel provided amendments for purposes of clarification which were also contained in the Committee Report. He said 24 citizens testified at the public hearing. He said Peterkort property representatives testified in opposition to the Master Plan. He said issues discussed related to "Roles and Responsibilities" language, how many times "right of refusal" could be exercised by local governments, and stated for the record it was clarified at Committee that right of refusal could only be used one time. Councilor Devlin discussed local government responsibility with regard to Greenspaces. He said also discussed was whether costs would be tied to specific sites or be based on the system as a whole and that the Committee had determined either ideology could be used.

Presiding Officer Gardner opened the public hearing. He said testimony on Agenda Item Nos. 6.1, 6.2 and 6.3 would be taken collectively rather than opening three separate public hearings.

Councilor Barbara R. Wiggin, Gresham City Council, supported Greenspaces and the bond issue referral. She said action had to be taken now to preserve natural areas in light of anticipated development and urged the Council to adopt the Master Plan.

Brian Scott, Oregon Downtown Development Association, distributed a brochure, "Liveable City Centers" and said the Greenspaces Program would help create liveable city centers.

Diana Bradshaw, 10997 SE Sunnyside, said Sunnyside was rural 15 years ago. She said wildlife was almost gone and traffic had increased. She participated on a neighborhood task force to establish a park and recreational district which Clackamas County now had, but said Greenspaces would further protect natural areas

in her neighborhood and the region. She said North Clackamas was deficient in natural areas.

Sue Lamb, Greenspaces Policy Advisory Committee member, thanked Metro staff for their work on the Greenspaces Master Plan and praised the public involvement process used. She said existing natural areas must be protected and supported the bond measure to fund Greenspaces.

Doug Cottam, Oregon Department of Fish & Wildlife, strongly supported the Greenspaces Program and briefly discussed land use issues. He said the Department of Fish & Wildlife exercised land use supervision and issued permits. He said land use actions occurred in cities and counties and that each jurisdiction had its own codes. He said the Greenspaces Master Plan would assist the Fish & Wildlife with its land use responsibilities. He said the bond measure to acquire natural areas was the best management tool to achieve goals.

Leslie Blaize, Friends of Forest Park, said natural areas were infringed upon now and said like water resources, natural areas would not be missed until gone. He urged adoption of the Greenspaces Master Plan.

Eric Engstrom, 1747 SE 47th, Portland, endorsed the Greenspaces Master Plan and the bond issue. He said as a member of the Audubon Society, he was concerned about threats to natural areas and wildlife. He said Metro was the appropriate agency to coordinate the Greenspaces Program.

Marquerite Nabeta, Oregon State Parks and Recreation Department Outdoor Recreation planner, said she was impressed with the process Metro used to develop the Master Plan because of the extensive planning and citizen involvement utilized.

Dick Shook, Friends of Mt. Scott/Kellogg Creek, discussed watershed protection issues and said the both the Master Plan and bond issue were necessary to protect stream corridors and natural areas.

Russ Peterson, U.S. Fish & Wildlife Service field supervisor, said Metro staff had done an excellent job on the Master Plan and said the Department believed Greenspaces was critical to the metropolitan area's quality of life.

Linda Dobson, assistant to City of Portland Commissioner Mike Lindberg, distributed a letter dated July 23 from Commissioner Lindberg and a memo dated July 23 from Charles Jordan, Director, City of Portland Bureau of Parks and Recreation, both of which

urged the Council to adopt the Greenspaces Master Plan and bond measure.

Commissioner Sharron Kelley, Multnomah County Board of Commissioners, introduced Charles Ciecko, Director, Parks Services Division, and distributed her letter dated July 23. She urged the Council to adopt the Master Plan and bond measure because of anticipated population growth, said Metro was the appropriate agency to manage Greenspaces, and pledged Multnomah County's full cooperation in implementing the Greenspaces Master Plan.

Dan Zinzer, Clackamas County Parks Director, said he had received numerous letters in the mail in support of the Greenspaces Program. He said working with the Metro Council and staff on the process had been an enjoyable process and urged adoption of the Master Plan.

Richard Seidman, Friends of Trees Executive Officer, said that organization was non-profit and worked for neighborhood improvement and environmental restoration. He said the destruction of trees led to grief, sadness and anger and said Greenspaces would give citizens the chance to respond proactively to environmental encroachment.

Jerri Bohard, Clark County Parks, Greenspaces Technical Advisory Committee member, said Clark County was supportive of Greenspaces especially as it related to bi-state efforts. She said Clark County would perform complementary work and had just completed a prioritization of open lands in Clark County including a survey of bike trails.

Ron Klein, Portland General Electric (PGE), Environmental Affairs Coordinator, said PGE encouraged approval and implementation of the Master Plan. He said urban natural areas played an important part in defining the region's quality of life which in turn contributed to a healthy economy and urged adoption of the Master Plan.

Cathy Claire, Tualatin River Keepers, noted the Metro Council had actively supported Tualatin River Discovery Day, an environment-related event, for the past three years and said acquisition and protection of natural spaces must begin now because it would be too expensive to do so later.

Mike Houck, Audubon Society (Loaned Executive to Metro), said the Master Plan went far beyond the acquisition of natural areas alone and would assist in other planning areas such as transportation, environmental land use, Urban Growth Boundary

(UGB) planning and maintenance, and infill. He said work on those issues could not be done without protecting natural areas and said such protection was an integral part of urban growth management. Mr. Houck displayed a draft poster to advertise the ballot measure campaign and urged adoption of the Master Plan.

Jim Coleman, attorney, O'Donnell Ramis, said he represented the Peterkort property owners. He said the Master Plan did an excellent job in promoting regional open spaces goals. He expressed concern that it did not take into account the other functions of land use planning that must occur in the State of Oregon by law. He said the Master Plan as implemented would have significant impact on land use plans for various properties in the metropolitan region. He suggested amendment language which he said would make the Plan more defensible during the acquisition process by providing coordinating language for any public agencies with transportation plans or land use plans that must be taken into account during the acquisition process. He said the Peterkort family was concerned about the proposed Sunset light rail station planned for their property and densities planned to support that site and transit center. He said the Westside lightrail citizen advisory committee had already expressed their concern to Metro on the need for coordination between the acquisition program and the lightrail project itself. He distributed proposed language (additional language underlined) to amend page 72, Policy No. 2.25 to read: "Make funding decisions consistent with the priorities of the Greenspaces Master Plan, acquisition, and capital improvement plans. Funds for acquisition under this masterplan may be used (1) to acquire land set aside to satisfy Goal 5 in local comprehensive plans and (2) to purchase identified land from willing sellers. Funds shall not be used to purchase land from unwilling sellers unless the local comprehensive plan already calls for the preservation of land in order to satisfy Goal 5." That language was attached to a letter from Jack Broome, The Wetlands Conservancy, dated July 17, 1992.

Mr. Coleman said Mr. Broome had expressed concerns about language in the Master Plan about the use of the "eminent domain" power to purchase property from unwilling sellers. He said he did not represent Mr. Broome, but said Mr. Broome's concerns were similar to the Peterkorts in that instance. He said amendment language would address concerns about the use of eminent domain in purchasing property.

Councilor Van Bergen asked Mr. Coleman how the Peterkorts could receive a hearing since a court process or normal planning process would not be utilized.

Mr. Coleman said the effect of site-specific designations for public uses definitely impacted the ability to use and market property. He said unless Metro provided a forum, the only alternative was for property owners to apply to the Land Use Court of Appeals (LUBA).

Councilor Devlin said when Metro carried out the inventory process of the program, land was inventoried for specific characteristics and not designated for preservation. He said the Master Plan identified triangles, or areas of opportunity, and was not site-specific. He said in the case of the Peterkort property, the inventory identified it in that large portions of that property should be preserved. He said Metro had made every effort not to perform "inverse condemnation."

Mr. Coleman said he had no difficulties with the process taken to date, but asked that when Metro took the next steps to acquire, that the Master Plan contain policy that required coordination between the agencies whose public facility plans and transportation plans were affected by those acquisitions. He said that was what the proposed language would do and provided a necessary step.

Michael Carlson, Audubon Society conservationist, distributed written testimony and congratulated Metro on its leadership in development of the Master Plan. He said 90 percent of the region's natural areas were in private ownership and that with anticipated population growth, only 10 percent of the region's natural areas were safe from development. He urged adoption of the Master Plan and bond measure. He said although the Plan would ensure protection of some natural areas, it was essential not to become complacent and assume they were permanently protected. He said Metro should not have to do all the work and that citizens should also assume responsibility for better understanding and protection of natural areas.

Elaine Ryback, Friends of Cedar Springs, said Friends wholeheartedly supported the Master Plan and pledged to actively work on adoption of the ballot measure.

Valerie Jimenez, student, Madison High School, said the Madison Students for Social and Environmental Citizenship (MSSEC) supported the Master Plan. She said she attended a resources camp located at Klamath Falls and said it was surrounded by undeveloped natural areas. She said adoption of the Master Plan would protect the remaining undeveloped natural areas surrounding Portland. She said not all students had the opportunity to attend camps and that urban natural areas might be the only natural areas they had the opportunity to observe. She noted

Madison High School had just begun an environmental studies program.

Councilor Wyers encouraged Ms. Jimenez and her fellow students to help with passage of the ballot measure.

Councilor Buchanan asked Ms. Jimenez to contact Metro when she and other students observed natural areas in her area worthy of preservation.

Stephanie Stevenson, student, Madison High School, and member of MSSEC, said natural areas were extremely important to the urban environment and to future generations and urged adoption of the Master Plan.

Alice Blatt, 15231 NE Holladay, Portland, spoke as a citizen but noted she belonged to East Portland District Coalition, ECCO and Friends of Wildlife (FOWL). She expressed strong support for the Master Plan and the ballot measure. She said the state economy depended a great deal on the region's known quality of life.

Kelly Puntenev, Assistant to the Manager of the City of Vancouver, stated Vancouver's support for Greenspaces. He said interstate efforts would assist in the Program's success.

Hal Bergsma, senior planner, Washington County, said he represented Washington County on the Greenspaces Technical Advisory Committee. He said the Greenspaces planning process had been an interesting and enjoyable experience. He said Washington County urged the Council to adopt the Master Plan after having given due consideration to Peterkort property concerns and condemnation concerns as expressed by Mr. Coleman in his testimony at this meeting.

Presiding Officer Gardner asked if any other citizens wished to testify. No other citizens appeared to testify and the public hearing was closed.

Councilor McLain said the testimony received at this meeting had been uplifting. She stated for the record that the Greenspaces Master Plan was an important and progressive program.

Councilor Devlin discussed issues related to the Peterkort property and eminent domain. He stated for the record that the issue of eminent domain and its use was discussed in detail by the Greenspaces Technical and Policy Advisory Committees and the Council Transportation & Planning Committee. He said the issues raised by Mr. Coleman were complex. He said the Master Plan was not a static or a functional plan and was subject to change in

the future as issues arose. He said eminent domain issues could not be dealt with at this meeting. He asked for the Office of General Counsel's opinion because such issues would have to be addressed in the future.

Councilor Devlin recognized and thanked those present for their work during the planning process, including Councilors Hansen and McFarland for their service on committees, Planning Department staff including Andy Cotugno, Richard Carson, Mel Huie, Pat Lee, David Auscherman, Ellen Lanier-Phelps, and Eric Sample. He thanked Marilyn Matteson of the Public Affairs Department; David Yamashita while on loan from the City of Portland; Linda Robinson, a temporary employee in the Planning Department; Chris Scherer from the Department of Finance & Administration; Legal Counsel Dan Cooper and Larry Shaw; Commissioner Sharron Kelley, former Metro Councilor; and Mike Houck from the Audubon Society. He recognized members present from the Technical and Policy Advisory Committees and Greenspaces ballot measure volunteers. Councilor Devlin noted Esther Lev of Portland State University and her participation and said many others had participated and helped and were too numerous to thank.

Councilor Van Bergen asked those present for their continued work and participation on the ballot measure campaign.

Presiding Officer Gardner said the only way to preserve natural areas within and without the District was to adopt the Greenspaces Master Plan.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Bauer was absent. The vote was unanimous and Resolution No. 92-1637 was adopted.

2. Resolution No. 92-1639A, For the Purpose of Submitting to Voters Questions of Contracting a General Obligation Bond Indebtedness in the Amount of \$200 Million and Authorization to Proceed with the Financing, Acquisition, Development, Operations and Maintenance of a Regional System of Greenspaces

Main Motion: Councilor Devlin moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1639A.

Councilor Devlin gave the Finance Committee's report and recommendations. He explained the resolution would submit a \$200 million general obligation bond to the voters for the purpose of

acquiring natural areas for the Greenspaces Program. He said the Committee reviewed the financial plan and noted to achieve everything the Plan required would cost \$555 million. He said that amount could be achieved with a bond measure amount of \$475 million. He said the both the Technical and Policy Advisory Committees determined a measure should be put on the ballot with a reasonably good chance of passage that would get the Master Plan underway and had determined to do so, a \$200 million bond measure was required at this time. He said Greenspaces bond proceeds would be split; 75 percent allocated to the regional system and 25 percent allocated to local park providers for any park and recreation capital expenditures. He said operation and maintenance cost estimates were provided for "basic maintenance" and "land banking" levels. He said the Plan provided that the land banking level of maintenance be provided with existing District resources and that basic maintenance be provided following the acquisition of additional operating funds. He said 11 persons testified in favor at Committee and there was no testimony in opposition.

Councilor Devlin said the Committee reviewed the caption for the ballot and accepted proposed amendments by staff with the understanding that General Counsel would review the proposed ballot title to assure the District was able to assume regional park functions as stated in the Oregon Revised Statutes.

Motion to Amend: Councilor Devlin moved, seconded by Councilor McFarland, to substitute General Counsel's Exhibit A, ballot title language, printed in General Counsel's July 22 memorandum, for Exhibit A language printed in the Council agenda.

Presiding Officer Gardner asked for a collective vote on the main motion and the motion to amend.

Vote on Both Motions: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Bauer was absent. The vote was unanimous and Resolution No. 92-1639A was adopted as amended.

6.3 Resolution No. 92-1638A, For the Purpose of Considering District Policy to Allocate Excise Taxes Toward Operation and Maintenance of Metro-Managed Greenspaces Until Other Funds Are Available

Motion: Councilor Hansen moved, seconded by Councilor Devlin, for adoption of Resolution No. 92-1638A.

Councilor Hansen gave the Finance Committee's report and recommendations. She explained the proposed excise tax commitment was based on the land banking level of maintenance as described in the Financial Study. She said estimated costs were \$4,000 in FY 1993-94, \$29,000 in FY 1994-95 and \$99,000 in FY 1995-96, if the \$200 million ballot measure passed. She explained "land banking level" meant the lowest level of maintenance in that the areas would be kept clean and supervised.

Councilor Devlin said Metro currently devoted approximately \$250,000 in excise taxes. He said if the bond measure passed, staff work would be eligible for reimbursement by bond funds and current excise tax expenditures would be freed.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Bauer was absent. The vote was unanimous and Resolution No. 92-1638A was adopted.

Presiding Officer Gardner thanked all those present for their support of the Greenspaces Program.

Presiding Officer Gardner recessed the Council at 7:20 p.m. The Council reconvened at 7:34 p.m.

6.4 Resolution No. 92-1650A, For the Purpose of Submitting to the Voters the Question of Whether Legislation Should be Adopted to Authorize the Voters to Abolish Multnomah, Washington and Clackamas Counties, the Metropolitan Service District, and Tri-Met, and Create a Single Consolidated Government (Public Hearing)

Main Motion: Councilor Collier moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1650A.

Councilor Collier gave the Governmental Affairs Committee's report and recommendations. She explained the resolution was introduced by herself and Executive Officer Cusma. She said the Committee considered the resolution on three separate occasions and passed it out of Committee with no recommendation with a 3/0 vote. She said while in Committee, approximately 30 persons testified on the resolution. She said the resolution would put an advisory ballot measure on the November 3 ballot asking citizens if the Multnomah, Washington and Clackamas County governments, the Metropolitan Service District and Tri-Met should be abolished and create a county with 10 percent less expenditures. She said if the ballot measure passed, it would be referred to the State Legislature to restructure a combined

government. She said with regard to structure, the resolution asked that full-time persons be elected from districts and an executive officer be elected at large to replace 33 elected officials from the three counties, Metro and Tri-Met. She said the resolution did not cover taxes or whether taxes would be raised in one county and lowered in another, was not meant to increase Metro's power, and was not refined enough to have a financial analysis because it only asked for an advisory vote. She said the resolution was written in response to the effects of Ballot Measure No. 5 and the discontent citizens had expressed with the cost and duplication of government. She said this concept had been discussed for years by elected officials, civic leaders, civic groups, academics and the media throughout the region had commented on it.

Presiding Officer Gardner opened the public hearing.

Judge Stephen Herrell, Multnomah County Circuit Court, spoke as a member of the Portland City Club and distributed written testimony. He discussed a previous City Club study written which had recommended consolidation of existing governments to be called "Willamette County." He said the City Club's report was still timely today. He said the study received a great deal of support. He said the committee agreed on a two-tiered model of government with a regional entity to deal with regional issues and cities to deal with service issues. He said currently there were three levels of government and two dealt with regional issues. He said county governments acted as regional government also. He said the time when the three counties were considered separate communities were gone. He said the urban population had homogenized together to create one community. He said old county boundaries were redundant and it was not sensible to keep them anymore. He said citizens did not identify with Metro but did identify with county government, and so the City Club committee believed all county government should be merged and that municipal services should be performed by cities or corporations. He said Metro competed with cities and counties for funding.

Judge Herrell said before the question was put to the voters, detailed financial analysis should be performed and that information should be fully communicated to the public.

Councilor Buchanan and Judge Herrell discussed cost savings. Judge Herrell said the City Club was not able to invest in a detailed financial study. Councilor Buchanan said he did not believe restructuring of governments would save money because of costs related to synchronizing existing infrastructures such as computer systems and police equipment.

Councilor Devlin asked if the City Club studied the different service levels offered by different counties. Councilor McLain discussed school district issues. She asked if the City Club attempted to determine if citizens were in favor of consolidation or reviewed the issues on a cost-savings basis only. He said the City Club attempted to determine what the most logical governmental structure would be. He said the City Club did not have the resources to review different governmental budgets extensively.

Councilor Gronke asked if there was sufficient time between this date and November 3 to answer the questions Judge Herrell raised. Judge Herrell said he did not think there was sufficient time, but said it was an advisory vote and if presented properly, would be appealing to citizens.

Councilor Van Bergen expressed concern about the judicial system and venues and asked how filing considerations in jurisdictions would be consolidated or if they would be at all. He said each jurisdiction had different, sometimes confusing, filing requirements. Judge Herrell said the resolution stated the court systems would be kept separate from other consolidation issues. Judge Herrell hoped juvenile services/courts would eventually be merged. He said it would be sensible to merge the court system, but said there could be different geographic courts as there were now.

Commissioner Sharron Kelley, Multnomah County Board of Commissioners, said Multnomah County adopted a resolution in support of Metro's consolidation proposal. She said it created healthy debate and made sense. She distributed data based on the 1990 census covering the three counties which detailed the percentage of county households with incomes below the poverty line; the percentage of county households with incomes less than \$10,000; the percentage of county households with less than \$15,000; and other statistics. She noted 77 percent of the region's population worked in Multnomah County. She compared property tax bases per county per capita and said without considering other revenue sources, statistics suggested that Multnomah County property tax rates had to be 19 percent higher than Washington County and 11 percent higher than Clackamas County, if the need for services was equal among the three counties.

Councilor Hansen said she knew citizens moved to Multnomah County for the social services offered there. Commissioner Kelley said that was true to some extent. Councilor Van Bergen asked why taxes in other counties should increase to subsidize social services in Multnomah County. Councilor Kelley cited gang

problems and said Multnomah County did not have the resources to develop programs to deal with gang problems. She said there were approximately 1,000 gang members in Gresham. She said urban problems were spreading to Clackamas and Washington Counties and were not Multnomah County's problem only. She discussed cuts made by Multnomah County in the number of jail beds, library services and other services/resources. Councilor Van Bergen said some of the problems Commissioner Kelley cited could be the state's responsibility. Commissioner Kelley agreed, but said the issues should be reviewed.

Councilor Devlin asked, if the 10 percent cut took place because of consolidation, whether Multnomah County would be willing to accept the cut. Commissioner Kelley said Multnomah County would be willing and said it had already made \$7 million in efficiency cuts alone.

Councilor Buchanan said he would propose an amendment that the ballot measure go on the spring ballot rather than the November 3 ballot.

Councilor Hansen asked if Multnomah County Commissioners would be supportive of a statewide ballot rather than a metropolitan area ballot only. Commissioner Kelley said it would make sense because governments would determine feeling in both urban and rural areas in the state.

Michael Gorsuch, 13377 SE Johnson Rd, Clackamas, said he represented Clackamas County citizens, and said the bigger government became, the less citizens were represented. He said Clackamas County had previously been ignored, but was now being acknowledged, to get its tax dollars. He said local governments paid attention to individual voters.

Councilor Collier asked Mr. Gorsuch if an advisory vote asking citizens to express their opinion was acceptable. He said if the ballot measure was passed, the counties should be allowed to decide how consolidation would be performed. Councilor Buchanan asked if it would be advisable to delay the ballot measure. Mr. Gorsuch said it should be delayed to allow more time to inform citizens. The Council and Mr. Gorsuch briefly discussed the issues further.

Don Clark, former chair, Multnomah County Board of Commissioners, reviewed the history of local government and said current government structure was based on England's shire/county structure. He reviewed Oregon's county system(s) back to 1843. He discussed the effects of Ballot Measure No. 5 and said there was a redundancy of expenditure. He said school and highway

funds could be combined and a "Metropolitan Health Authority" could be formed. He said the current political climate meant it was an ideal time to change the current governmental structure and said citizens demanded leadership. He said business could not be done as had been done in the past. He said the past included legislators and elected officials such as himself. He asked Metro to be bold and said Resolution No. 92-1650A was not bold enough. He said all current local government should be abolished to create one, cohesive government.

Councilor Devlin asked if rural residents would be best served by an urban county or brought into some sort of combined county structure. Mr. Clark said rural residents should be brought into a combined structure because it would not be fair to cut them off because they were not part of the urban tax base.

The Council and Mr. Clark discussed the issues further. Councilor Wyers asked what would happen if the public voted negatively in large numbers. Mr. Clark said the task force he served on had various options for legislative review. He said if the public voted no, the public should be asked again. He said the best thing to do was to put the options to the public and get their opinion. To Councilor Gronke's question, Mr. Clark said he would not accept a negative vote as approval of the status quo. He said there was confusion about what different governments did, that the public should be informed and be given options. He said a nay vote meant the public had not been offered the right option and expected leadership.

John Brophy, C.R. Brophy Machine Works, 13377 SE Johnson Road, Clackamas, said he resided in Multnomah County. He noted more members of the public were present for the Council's consideration of Greenspaces than there were for Resolution No. 92-1650A. He said there was not enough public awareness of the issues and asked who would benefit from consolidation. He said Metro was a tool for the elite. He said the east side of Portland had been neglected for years. He asked why Clackamas County would not be getting light rail and said the consolidation as proposed by Metro meant Clackamas County would continue to lose. He said a super county would not be accountable to citizens, and that it was unfair to tax and not represent.

Nohad Toulan, Dean, School of Urban and Public Affairs, Portland State University (PSU) said he was not speaking on behalf of PSU and said most of the testimony suggested consolidation would solve current problems, but asked if consolidation would create good government for the future. He said most current government structures were created in the 19th century to meet agricultural needs. He said the citizens who created government then did not

think the structures created would be permanent. He said with the advent of the Industrial Revolution, government began to be less responsive to citizens' needs. He urged the Council to adopt the resolution and allow citizens to vote on consolidation issues. He said noted Commissioner Kelley's testimony and said 20 or 30 years from now, Clackamas County rather than Multnomah County could be the entity with difficulty providing resources for the poor and homeless.

Councilor Van Bergen asked Dr. Toulan when dialogue on the issues should take place. Dr. Toulan agreed there was not very much time between this meeting date and November 3, but said discussion of these and similar concepts had taken place over the last 20 years.

Councilor Gronke asked Dr. Toulan his opinion of the ballot measure title and the timing of the measure. Dr. Toulan said the timing was overdue. He said there had been discussion on changing regional government's form for a long time. He said after the issues were voted upon, serious discussion would begin to take place. He did not know whether 10 percent of the tax base revenues could be saved or not. He said the issue was how governments were going to save years from now when current problems had multiplied. He said one single government was a likely option. He disagreed with Mr. Clark's testimony on abolishing local government and did not think that was necessary. He said the strength of the consolidation proposal was that it would probably strengthen local government rather than weaken it. He said difficulties encountered would be with unincorporated areas. He said any final proposal had to deal with unincorporated areas, or the same situation would occur as had with the 1974 City-County consolidation. Dr. Toulan said the ballot measure language was acceptable, and probably should not be any more specific.

Councilor Buchanan reiterated the November 3 election was too soon to vote on consolidation issues. Dr. Toulan said his only concern about putting the measure on the March ballot was that would be too late for the Legislature to work on a consolidated structure. Councilor Buchanan said the Legislature would have four to five months after March to work on the ballot measure.

Senator Ron Cease, Charter Committee member, discussed consolidation issues. He said he had observed Metro deal with issues related to merging with Tri-Met for 13 years. He urged the Council to adopt the consolidation ballot measure now and not delay the process any further.

The Council and Senator Cease discussed the issues further. Councilor Devlin noted the ballot measure could go to an interim committee between two legislative sessions. Councilor Devlin asked if the ballot title should detail in advance a proposed governmental structure. Senator Cease said the language should not be specific because the vote asked for was advisory in nature only. He said Metro should make clear it was asking for advice from the voters. He said it was not possible to anticipate answers to specific questions in advance.

Councilor McLain reassured Senator Cease that the Council knew Metro was not the only entity involved in the issues and discussed services for school districts. She said what the Council wanted was more information from the voters. She said the voter was not always included in debate on governmental structure. Senator Cease said county governments were upset by the consolidation proposal. He said it was immaterial which government proposed consolidation, but said all parties should be involved in discussion on the ideas. He said there was merit in having smaller school districts.

Commissioner Ed Lindquist, Clackamas County Board of Commissioners, distributed and read from written testimony. He introduced Ray Erland, Clackamas County assessor, who distributed his July 23 memorandum "Analysis of Impact - Proposed Tri-County Consolidation."

Commissioner Lindquist said Resolution No. 92-1650A could be considered an attempt to subvert the efforts of the Charter Committee. He said Metro had shown no basis for the claim that consolidation would save taxpayers 10 percent. He noted many county sources of funding such as the gas tax, were dedicated to specific purposes. He said failure to use those funds did not benefit the citizens because they did not come from property taxes. He said honesty with the voters required that governments state any reduction in operating costs would not necessarily lead to lowered property taxes. He said the impact would be greatest on citizens who would not be included in the November vote because they lived outside District boundaries and/or in timber-dependent communities. He said a tax shift resulting from consolidation would adversely affect cities in Clackamas County which already faced declining revenues and services. He said the timing of Metro's proposal could not have been worse and said the voters must be allowed to review and approve the efforts of the Charter Committee before voting on consolidation. He said that the addition of the consolidation measure to the November ballot would jeopardize both the Charter and Greenspaces ballot measures, both of which Clackamas County supported. He said the Clackamas County Board of Commissioners would like to participate

in a regional effort that truly represented the desires of the voters in the tri-county area. He stressed that Clackamas County did not object to having the consolidation measure put to the voters for consideration. He said Clackamas County's objections were to the closed and exclusionary process by which the consolidation proposal was developed, poor timing, a misleading ballot title, and lack of honesty and clarity in the explanatory statement.

Presiding Officer Gardner noted Clackamas County submitted a White Paper during Governmental Affairs Committee consideration of the resolution. He said there was an assumption that with consolidation there would be a uniform tax rate for the three counties.

Mr. Erland said that assumption was because Metro had provided no detailed information. He said if Metro had done so, the three county assessors could have provided detailed data on tax impacts in response. He said he combined the three county tax rolls for FY 1991-92 and computed them based on current law.

Councilor Collier said many assumptions had been made. She asked if Clackamas County would be willing to put the measure on their ballot county-wide rather than just the part of the county that encompassed the Metropolitan Service District.

Commissioner Lindquist said the Commission felt it should. He said there would be a problem if the ballot explanation said there would be an automatic 10 percent reduction in taxation. He did not believe governments could make that promise to voters.

Councilor Buchanan asked if the March 1993 election would solve timing problems. Commissioner Lindquist said it would if an extensive public information outreach could be achieved. He stated he was not opposed to regional government and that he served on the original committee that created Metro. He said the public should be educated on the issues. He asked what the public's perception would be of a ballot that contained both the Metro Charter and the consolidation measure.

Executive Officer Cusma noted Legal Counsel had been consulted and that differential taxation in the District was a possibility.

Mr. Erland said taxes were an issue to citizens. He said any time governments with different tax bases were combined, taxes were increased unless differential taxation was utilized. He said if differential taxation was not used, the City of Portland would get \$11 million annually. He said Metro should describe

what process would be used when asking the citizens for an advisory vote.

Ed Einowski, attorney, Stoel Rives Boley Gray, noted Mr. Clark's previous testimony on Oregon county history. He said counties were originally formed to build roads so farmers could get to market. He said circumstances had changed in the last 80 years. He said political boundaries represented real boundaries. He said problems arose when those boundaries did not apply to current circumstances. He said citizens lived under antiquated divisions that had real impacts on how people lived. He said there was concern about the ballot title's language expressed at this meeting, but said everyone who read it would understand what it meant. He believed the \$10 million reduction language should be kept in because it was achievable.

The Council and Mr. Einowski briefly discussed the issues.

Commissioner Bonnie Hays, Chair, Washington County Board of Commissioners, said the consolidation proposal would not fix current political and fiscal problems. She said a quick fix without analysis and empirical data was not responsible. She noted efforts such as transportation planning and Greenspaces which relied on cooperation between governments. She said consolidation issues could be discussed between the involved governments. She said if Metro believed voters should have an opportunity to give input on governmental structure, it should be done on a state-wide basis. She said if "Willamette County" was created, the other 33 counties would be apprehensive. She said the advisory vote could raise voters' expectations that a magical solution was in the offing. She said the voters could become disenchanted even further. She said advisory votes were very faulty and expensive public surveys.

The Council and Commissioner Hays briefly discussed the issues further.

Arnie Polk, Washington County resident, said he previously resided in Chicago and that Chicago residents did not have the opportunity to vote on such ballot measures. He said an advisory vote should be offered to citizens.

Marilyn Wall, North Clackamas County Chamber of Commerce, vice president of Governmental Affairs, said the Chamber favored an advisory vote. She said bigger government was not necessarily better or more efficient. She did not think ballot measure language was clear and said it would not be clear what the voters did want if the measure passed. She said current law provided

that voters could change county boundaries. She said Metro should provide a structure to vote upon.

Corky Kirkpatrick, 230 Forest Cove Road, West Linn, former Metro Councilor, said she served on the Tri-County Local Government Commission, was a Lake Oswego City Councilor for 4 years, and a Metro Councilor for 10 years. She said she and her family relocated to Oregon from Florida because of urban problems there. She said Oregon was beginning to have some of the problems Florida had. She applauded Metro's vision and said citizens were ready for real change.

Diane Quick, 10100 SE Walnut Drive, Happy Valley, said she lived in Clackamas County for 25 years, had a business in Multnomah County for eight and one half years and lived in Washington County. She said it was predominantly clear that there was a lack of knowledge. She said some counties had already made consolidation efforts. She said Multnomah County's problems as detailed by Commissioner Kelley were not new. She said the Multnomah County Board should ask voters if they wanted change and asked why other counties should assume Multnomah County's problems. She said Washington County had its own share of the poor and homeless.

Sam Tamura, City Club Government and Taxation Committee member, asked if Councilor Buchanan's proposals made at the Governmental Affairs Committee would be considered at this meeting.

Councilor Buchanan said he planned to propose amendments.

Ms. Tamura asked what 10 percent reduction in expenditures meant. Councilor Collier explained \$65 million was 10 percent of total operating expenditures for the five entities in question. She explained at this time, staff did not have specifics on how to achieve that reduction and said the Legislature would work on fiscal issues if the ballot measure passed.

Betsy Brumm, 3115 NE Alameda Terrace, said she was part of the process 20 years ago to abolish the Columbia Regional Association of Governments (CRAG) to achieve regional government and urged the Council to adopt the resolution.

Easton Cross, 222 NW Davis, #317, Portland, discussed the consolidation measure. He said the Legislature was the only entity with the time and resources to address the issues. He said a previous attempt to perform city/county consolidation failed because of how to reconcile police/fire pension funds. He said since the vote would be advisory, the Legislature would work on the proposal anyway.

Alice Blatt, previous testifier at this meeting, said efficiency and economy in government had been discussed for years and supported Resolution No. 92-1650A. She expressed concern about negative impact on the Greenspaces ballot measure.

Presiding Officer Gardner asked if any other citizens present wished to testify. No other citizens appeared to testify and the public hearing was closed.

First Motion to Amend: Councilor Buchanan moved, seconded by Councilor Devlin, to amend Resolution No. 92-1650A, Whereas clause No. 7 (additions underlined and deletions bracketed) : "Whereas, Abolishing Metro, Tri-Met, Multnomah, Washington and Clackamas counties and their replacement by a single government entity [~~will~~] may provide for [~~at least a 10 percent~~] reduction in total expenditures; and..."

Councilor Devlin clarified any amendments made to the resolution would also amend Exhibit A which contained the ballot title and explanation.

Councilor Buchanan said he had observed consolidation efforts before and said they led to no reduction in expenditure or savings. He said the advisory vote should not mislead voters. He said reduction in governmental expenditures would be due to the effects of Ballot Measure No. 5.

Councilor Collier said an across-the-board 10 percent cut had to be offered. She said cuts could not be carried out jurisdiction by jurisdiction or savings goals would not be realized. The Council discussed the motion to amend.

Vote on First Motion to Amend: Councilors Buchanan, Devlin and Gronke voted aye. Councilors Collier, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted nay. Councilor Bauer was absent. The vote was 8 to 3 against and the motion failed.

Second Motion to Amend: Councilor Buchanan moved, seconded by Councilor Devlin, to amend Resolution No. 92-1650A Whereas clause No. 8: "Whereas, Abolishing Metro, Tri-Met, Multnomah, Washington and Clackamas counties and their replacement by a single government entity [~~would provide one elected government comprised of no more than nine full-time elected councilors and a separately-elected full-time executive~~] to replace the existing four elected bodies and one appointed governing body consisting of 29 elected and 7 appointed

officials and, thus, make the new government both more accessible and more accountable to the persons it serves; and..."

Councilor Buchanan noted previous testimony that the vote asked for was advisory in nature only and did not have to be specific. Councilor Collier said she would vote nay on the amendment because sending it to the Legislature with no form or direction at all was not sensible.

Executive Officer Cusma concurred with Councilor Collier. She noted a question citizens frequently asked was how many elected officials there would be and what the new governmental structure would be like.

Vote on Second Motion to Amend: Councilors Buchanan and Washington voted aye. Councilors Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Wyers and Gardner voted nay. Councilor Bauer was absent. The vote was 9 to 2 against and the motion to amend failed.

Third Motion to Amend: Councilor Buchanan moved, seconded by Councilor Devlin, to amend Resolution No. 92-1650A, Be It Resolved Section No. 2: "That the measure shall be placed on the ballot for [the General] a special election [on the 3rd day of November, 1992] to be held on the fourth Tuesday of March, 1993."

The Council discussed the motion. Councilor Gronke said the amendment would solve timing issues and give Metro the opportunity to educate the public. He said it would also tell other governmental entities and the public that Metro was not attempting to circumvent the Metro Charter. He expressed concern the measure would adversely affect the Greenspaces ballot measure. Councilor McLain supported the motion also. She said timing issues contained political ramifications that could not be ignored.

Councilor Collier understood arguments for a March election. She said it was easier to defer difficult issues. She said it was important to put the measure on the November ballot. She said more voters voted in November than spring elections. She said the November election date provided many opportunities for public dialogue. She said a March election date was too late because the Legislative session would begin January 1993. She asked the Council to vote nay on the motion. Councilor Hansen concurred with Councilor Collier.

Councilor Devlin said a November election did not give voters enough time to review the issues and said the Greenspaces ballot measure had received three years of preparation and work.

Councilor Wyers said she would vote nay on the motion. She said voters would be able to tell the difference between the Charter, consolidation and Greenspaces.

Executive Officer Cusma concurred with Councilor Wyers' assessment of voters' perceptions. She noted since Metro had two other items on the November ballot, the consolidation ballot measure would only cost Metro \$5,000. She said a special election in March would cost Metro \$80,000.

Vote on Third Motion to Amend: Councilors Buchanan, Devlin, Gronke, McLain and Van Bergen voted aye. Councilors Collier, Hansen, McFarland, Washington, Wyers and Gardner voted nay. Councilor Bauer was absent. The vote was 6 to 5 against and the motion to amend failed.

Councilor Van Bergen said the consolidation proposal was a debacle. He said the public perceived the proponents of the measure as being heavy-handed. He said Clackamas and Washington County residents were concerned about increased taxes and also whether the consolidation measure was an attempt to subvert the consolidation ballot measure. He said regardless of what people thought of the proposed Metro Charter, it was done. He said Metro originally requested its own charter from the Legislature, the Legislature authorized it, and Metro had to abide by the process. He said public perception was also that with a bigger, consolidated government, there would be less access to elected officials. He said the City Club study as previously discussed by Judge Herrell was faulty because it was not completely thought through. He said that study never defined what was going to happen. He asked how jurisdiction venue issues would be solved. He asked where he could file title to his house located in Clackamas County. Councilor Van Bergen said he would vote no on the resolution.

Councilor McFarland said voters were discerning and fully capable of making decisions on the issues. She said consolidation issues were not the same as Charter issues.

Councilor Washington agreed with Councilor McFarland. He said voters would not confuse Greenspaces with other issues. He said it was insulting to the voters to think otherwise. He said the advisory vote was only one step and did not alter anything. He wanted the voters in his District to have the opportunity to vote on the issues.

Vote on Main Motion: Councilors Collier, Hansen, McFarland, McLain, Washington, Wyers and Gardner voted aye. Councilors Buchanan, Devlin, Gronke and Van Bergen voted nay. Councilor Bauer was absent. The vote was 7 to 4 in favor and Resolution No. 92-1650A was adopted.

Motion: Councilor Collier moved, seconded by Councilor Wyers, to recommend Clackamas, Multnomah and Washington Counties put the consolidation measure on their November ballots county-wide rather than just the Metropolitan Service District portion of those counties.

Councilor Van Bergen asked for Legal Counsel's opinion of the motion. General Counsel Dan Cooper said if the counties chose to do so, they could put the measure on county-wide. He said Metro had no legal power to direct them to do so outside of Metropolitan Service District boundaries. Councilor Wyers asked if it was permissible for Metro to make that request. Mr. Cooper said it was legal for Metro to make the request.

Councilor Buchanan stated he would actively campaign for the consolidation measure's passage in November.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Bauer was absent. The vote was unanimous and the motion passed.

Presiding Officer Gardner recessed the Council at 11:20 p.m. The Council reconvened at 11:26 p.m.

6.5 Resolution No. 92-1647A, For the Purpose of Accepting ODOT's Recommended Six-Year Program Reductions

Motion: Councilor Van Bergen moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1647A.

Councilor Van Bergen gave the Transportation & Planning Committee's report and recommendations. Councilor Devlin noted the Oregon Department of Transportation (ODOT) over-planned when it issued the first version of the six-year plan and that Metro requested \$22 million be applied to Westside lightrail which affected other projects. He said that some projects had been moved back and others had been eliminated.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and McLain were absent. The vote was unanimous and Resolution No. 92-1647A was adopted.

6.6 Resolution No. 92-1654, For the Purpose of Making Areas Outside the Metro Boundary Eligible to Receive "Metro Challenge" Grants

Motion: Councilor Hansen moved, seconded by Councilor Washington, for adoption of Resolution No. 92-1654.

Councilor Hansen gave the Solid Waste Committee's report and recommendations. She explained part of the \$500,000 for Metro Challenge Grants budgeted would assist smaller communities outside of District boundaries who used and paid fees at Metro facilities. She said the resolution would make those communities eligible for grants to use those funds.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and McLain were absent. The vote was unanimous and Resolution No. 92-1654 was adopted.

6.7 Resolution No. 92-1648A, For the Purpose of Directing the Metropolitan Exposition-Recreation Commission to Prepare a Plan for the Financial Management of the Finance Committee Spectator Facilities Fund

Motion: Councilor Wyers moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1648A.

Councilor Wyers gave the Finance Committee's report and recommendations. She explained during Budget Committee deliberation, that Committee offered a rent relief package of approximately \$200,000 for tenants of the Portland Center for the Performing Arts (PCPA). She said MERC adopted a different resolution which rebated \$1 million over the next two years. She said that change affected not only MERC's ability to fund the PCPA, but other MERC facilities as well. She said the Finance Committee determined to ask MERC to prepare a 10-year financial plan for the spectator facilities which included capital expenditures, and to do so in consultation with the City of Portland. She noted a memorandum received from City of Portland Commissioner Mike Lindbergh stating amendments to the consolidation agreement might be needed. She said City concerns

did not directly relate to the issues at hand, but said the Council would likely hear more about those issues later.

Councilor Collier noted KPMG Peat Marwick recommended a 10-year financial plan be prepared during its audit of MERC operations. She asked if the resolution meant the audit would be done twice. Councilor Wyers said the resolution asked for a financial plan specifically on the Spectator Facilities Fund. Councilor Wyers thanked Casey Short, Council Analyst for his input and work on the resolution.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Bauer was absent. The vote was unanimous and Resolution No. 92-1648A was adopted.

6.8 Resolution No. 92-1660, For the Purpose of Determining that the Charter Proposed by the Metro Charter Committee be Included in the State Voters' Pamphlet

Motion: Councilor Devlin moved, seconded by Councilor Buchanan, for adoption of Resolution No. 92-1660.

Councilor Devlin gave the Governmental Affairs Committee's report and recommendations. Councilor Devlin explained the resolution would include the Metro Charter as written by the Metro Charter Committee in the Voters' Pamphlet. He said Metro had to do so to allow arguments for and against to be printed in the Pamphlet and noted the enabling legislation for the Metro Charter Committee did not give that committee authority to print it in the Pamphlet.

Presiding Officer Gardner noted the Charter Committee had until August 6 to finish the charter document.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. The vote was unanimous and Resolution No. 92-1660 was adopted.

7. NON-REFERRED RESOLUTIONS

7.1 Resolution No. 92-1658, For the Purpose of Accepting May 19, 1992 Primary Election Abstract of Votes for Metropolitan Service District Council District 4

Motion to Suspend the Rules: Councilor Buchanan moved, seconded by Councilor Hansen, to suspend the Council's rules requiring resolutions be referred by Committee so that the Council as a whole could consider Resolution No. 92-1658.

Vote on Motion to Suspend the Rules: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. The vote was unanimous and the motion passed.

Main Motion: Councilor Collier moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1658.

Presiding Officer Gardner said Resolution No. 92-1658 would accept corrected May 19, 1992 Primary Election abstracts correctly showing Councilor Devlin had won his District's election.

8. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

8.1 Status Report on Council Retreat

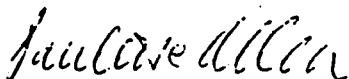
Presiding Officer Gardner briefed the Council on the status of the Council retreat. He said it would be held on September 25-26 or 26-27, at the Flying M Ranch. He said Councilors would be notified of final dates soon.

8.2 Status Report on 1 $\frac{1}{2}$ for Art for Metro Headquarters Building

Deferred to August 13, 1992, Council meeting.

All business having been attended to, Presiding Officer Gardner adjourned the meeting at 11:40 p.m.

Respectfully submitted,



Paulette Allen
Clerk of the Council

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

August 13, 1992

Council Chamber

Councilors Present: Presiding Officer Jim Gardner, Deputy Presiding Officer Judy Wyers, Roger Buchanan, Richard Devlin, Ed Gronke, Sandi Hansen, Ruth McFarland, Susan McLain, George Van Bergen and Ed Washington

Councilors Excused: Tanya Collier

Councilors Absent: Larry Bauer

Presiding Officer Gardner called the regular meeting to order at 5:34 p.m.

Presiding Officer Gardner announced that Agenda Item No. 9 had been added to the agenda.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

3.1 Briefing on Metro Charter Proposal

Ken Gervais, Senior Management Analyst, briefed the Council on the Metro Charter proposal. The Council and Mr. Gervais discussed Metro Charter issues.

Motion: Councilor Devlin moved, seconded by Councilor Gronke, that further consideration of the proposed Metro Charter be referred to the September 3, 1992 Governmental Affairs Committee meeting, and that prior to that meeting, staff prepare an analysis of the Charter including, but not limited to, its fiscal impact on Metro and a comparison of its provisions to the charter principles adopted by the Council as set forth in Resolution No. 92-1543A, and that the Governmental Affairs Committee should recommend a course of action for the Council at the earliest possible time.

The Council discussed the motion.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McLain, Washington and Gardner voted aye. Councilors McFarland, Van Bergen and Wyers voted nay. Councilors Bauer and Collier were absent. The vote was 7 to 3 in favor and the motion passed.

4. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

4.1 Status on 1 $\frac{1}{2}$ for Art for Metro Headquarters Building

Kristin Calhoun, Metropolitan Arts Commission, gave a status report on art projects for the Metro Headquarters Building.

5. CONSENT AGENDA

REFERRED FROM THE FINANCE COMMITTEE

5.1 Resolution No. 92-1664, For the Purpose of Authorizing a Contract with Stoel Rives Boley Jones and Gray for Bond Counsel Services

REFERRED FROM THE SOLID WASTE COMMITTEE

5.2 Resolution No. 92-1657, For the Purpose of Authorizing Issuance of a Request for Bids for Hauling and Processing Yard Debris from the Metro South Station

Motion: Councilor Devlin moved, seconded by Councilor Buchanan, to adopt the Consent Agenda.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Collier were absent. The vote was unanimous and the Consent Agenda was adopted.

6. ORDINANCES, FIRST READINGS

6.1 Ordinance No. 92-469, Amending Ordinance No. 92-449B Revising the FY 1992-93 Budget and Appropriations Schedule for the Purpose of Reflecting the Reorganization of Division Functions Within the Solid Waste Revenue Fund, Establishing the Planning and Technical Services Division and Funding the Carryover for Phase II of the Storm Water Processing and Retention Project at Metro South Household Hazardous Waste Facility

The Clerk read the ordinance for a first time by title only.

Presiding Officer Gardner announced Ordinance No. 92-469 had been referred to the Finance Committee for consideration.

7. ORDINANCES, SECOND READINGS

7.1 Ordinance No. 92-468, For the Purpose of Approving an Increase in the Transfer Rate for the Forest Grove Transfer Station (Public Hearing)

The Clerk read the ordinance for a second time by title only.

Presiding Officer Gardner announced that Ordinance No. 92-468 was first read on July 23, 1992, and referred to the Solid Waste Committee for consideration. The Solid Waste Committee considered the ordinance on August 4 and recommended it to the full Council for adoption.

Motion: Councilor McFarland moved, seconded by Councilor Wyers, for adoption of Ordinance No. 92-468.

Councilor McFarland gave the Solid Waste Committee's report and recommendations. She explained the ordinance would grant a \$2.75 per ton increase in the transfer rate charged at the Forest Grove Transfer Station (FGTS) and that the station's operator, A.C. Trucking, had requested the rate increase due to: 1) Increased administrative costs; 2) A Public Utilities Commission (PUC) ruling that reduced the size of truck payloads transferring material from the station to the Riverbend Landfill; and 3) Reduced operating hours at the Riverbend Landfill.

Presiding Officer Gardner opened the public hearing. No citizens appeared to testify on the ordinance and the public hearing was closed.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Collier were absent. The vote was unanimous and Ordinance No. 92-468 was adopted.

8. RESOLUTIONS

8.1 Resolution No. 92-1663, For the Purpose of Authorizing Execution of the Contracts for the Art Projects Selected Under the Auspices of Metro's Headquarters Building One Percent for Art Program

Motion: Councilor Washington moved, seconded by Councilor Devlin, for adoption of Resolution No. 92-1663.

Councilor Washington gave the Regional Facilities Committee's report and recommendations.

Berit Stevenson, Headquarters Project Manager, displayed and described the art works selected for the Metro Headquarters Building.

Councilor Van Bergen asked if Metro would own the art works. Ms. Stevenson said Metro would own the art and the artists would retain the copyrights. She said Metro would retain grants from the artists for promotional and/or educational purposes. She said because the artists wanted to maintain the integrity of pieces as designed, that if Metro wanted to move them, the artists had to be consulted on proposed alterations. She said if Metro and the artist could not agree, the contract allowed Metro to destroy the art work. She said Metro also retained the right to display or not to display the work.

Councilor Washington listed the cost of the art work and honorariums given to the top six finalists including the two artists whose works were selected.

Presiding Officer Gardner said the 1% for Art for the Metro Headquarters Building Committee members felt Metro had obtained art works of considerable value at a reasonable cost.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Collier were absent. The vote was unanimous and Resolution No. 92-1663 was adopted.

8.2 Resolution No. 92-1655, For the Purpose of Authorizing the Execution of a Sale Agreement with Intel Corporation for Acquisition of Property at Southwest 209th and Tualatin Valley Highway

Motion: Councilor Hansen moved, seconded by Councilor Devlin, for adoption of Resolution No. 92-1663.

Councilor Hansen gave the Finance Committee's report and recommendations. She said both the Solid Waste and the Finance Committees reviewed the resolution. She said Metro purchased the property in 1986 from Intel for the purpose of siting Metro West Station on that property. She said Metro West would not be built on that property and that the Regional Facilities Department had asked to sell it as surplus property. She said the Solid Waste Committee agreed it was surplus property, but asked if it would be viable for inclusion in the Greenspaces Program and

recommended it to the Finance Committee for further consideration. She said because of the facilities surrounding the site, the property was not suitable for inclusion in Greenspaces. She said Councilors asked if the property should be sold at public bid. She said Metro bought the property in 1986 for \$900,000 and would sell it back to Intel for \$1 million.

The Council briefly discussed fair market value, the unsuitability of the property for Greenspaces, and the unsuitability of the property for a transfer station.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Collier were absent. The vote was unanimous and Resolution No. 92-1665 was adopted.

8.3 Resolution No. 92-1659, For the Purpose of Approving an Intergovernmental Agreement with the City of Oregon City Providing Reimbursement to the City for Household Hazardous Materials Problems

Motion: Councilor Hansen moved, seconded by Councilor Wyers, moved for adoption of Resolution No. 92-1659.

Councilor Hansen gave the Solid Waste Committee's report and recommendations. She said the resolution would reimburse the City of Oregon City for training their fire department personnel on how to handle household hazardous waste at Metro South Station (MSS). She said Oregon City would be reimbursed for \$17,000 for training and \$5,000 for equipment. She said future costs would be less because personnel had been trained and equipment had now been acquired.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Collier were absent. The vote was unanimous and Resolution No. 92-1659 was adopted.

Presiding Officer Gardner recessed the Council of the Metropolitan Service District and convened the Contract Review Board of the Metropolitan Service District to consider Agenda Item No. 8.4

8.4 Resolution No. 92-1656, For the Purpose of Authorizing an Exemption to the Competitive Procurement Procedures of Metro Code 2.04.053 and Authorizing a Change Order to the Design Services Agreement with Parametrix, Inc.

Motion: Councilor McFarland moved, seconded by Councilor Wyers, for adoption of Resolution No. 92-1656.

Councilor McFarland gave the Solid Waste Committee's report and recommendations. She said Solid Waste Department staff explained there was a need for several levels of assistance from Parametrix concerning scheduled work for the closure of Subareas 2 and 3 at St. Johns Landfill (SJL) and the development of a related motor blower flaring facility. She said the change order contract cost was for \$213,795. She noted staff stated also it was necessary to add \$50,000 to the regulatory contingency fund to fund unanticipated services related to addressing any potential issues raised by state and federal regulatory agencies.

Vote: Councilors Buchanan, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Collier were absent. The vote was unanimous and Resolution No. 92-1656 was adopted.

Presiding Officer Gardner adjourned the Contract Review Board and reconvened the Council of the Metropolitan Service District.

9. OTHER BUSINESS

The Council discussed possible retreat dates and locations and agreed to have a retreat August 29 at the Oregon Convention Center.

All business having been attended to, Presiding Officer Gardner adjourned the meeting at 7:40 p.m.

Respectfully submitted,



Paulette Allen
Clerk of the Council

MINUTES OF THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

August 27, 1992

Council Chamber

Councilors Present: Presiding Officer Jim Gardner, Deputy Presiding Officer Judy Wyers, Roger Buchanan, Tanya Collier, Richard Devlin, Ed Gronke, Sandi Hansen, Ruth McFarland, Susan McLain, George Van Bergen and Ed Washington.

Councilors Absent: Larry Bauer

Presiding Officer Gardner called the regular meeting to order at 5:34 p.m.

1. INTRODUCTIONS

None.

2. CITIZEN COMMUNICATIONS TO THE COUNCIL ON NON-AGENDA ITEMS

None.

3. EXECUTIVE OFFICER COMMUNICATIONS

None.

4. CONSENT AGENDA

4.1 Minutes of May 28 and June 11, 1992

Motion: Councilor Buchanan moved, seconded by Councilor McFarland, for adoption of the Consent Agenda.

Vote: Councilors Buchanan, Collier, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Devlin were absent. The vote was unanimous and the Consent Agenda was adopted.

5. ORDINANCES, FIRST READINGS

5.1 Ordinance No. 92-471, For the Purpose of Amending the Metro Code to Modify the Designated Facility Status of Columbia Ridge Landfill for Purposes of Flow Control, to Add Roosevelt Regional Landfill to the List of Designated Facilities, to Establish Criteria to Consider in Designating Disposal Facilities, and Declaring an Emergency

The Clerk read the ordinance for a first time by title only.

Presiding Officer Gardner announced Ordinance No. 92-471 had been referred to the Solid Waste Committee for consideration.

5.2 Ordinance No. 92-450, An Ordinance Adopting a Final Order for Periodic Review of the Metro Urban Growth Boundary

The Clerk read the ordinance for a first time by title only.

Presiding Officer Gardner announced Ordinance No. 92-450 had been referred to the Transportation & Planning Committee for consideration.

6. RESOLUTIONS

Presiding Officer Gardner recessed the Council of the Metropolitan Service District and convened the Contract Review Board of the Metropolitan Service District to consider Agenda Item No. 6.1.

6.1 Resolution No. 92-1662, For the Purpose of Authorizing an Exemption to the Requirement for Competitive Bidding in Metro Code Chapter 2.04.040, and Authorizing a Sole Source Contract with Philip Environmental Services, Inc. for Recycling of Oil-Based Paint Wastes Collected at Metro's Household Hazardous Waste Facilities

Motion: Councilor Wyers moved, seconded by Councilor Hansen, for adoption of Resolution No. 92-1662.

Councilor Wyers gave the Solid Waste Committee's report and recommendations. She explained the resolution would authorize a sole-source contract with Philip Environmental Services, Inc. for the recycling of oil-based paints. She said Philip Environmental Services, Inc. was the only available company to perform that type of recycling for a contract cost for \$200,000 for the rest of FY 1992-93.

Vote: Councilors Buchanan, Collier, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilors Bauer and Devlin were absent. The vote was unanimous and Resolution No. 92-1662 was adopted.

Presiding Officer Gardner adjourned the Contract Review Board and reconvened the Council of the Metropolitan Service District.

6.2 Resolution No. 92-1666, For the Purpose of Accepting Nominees to the Metro Committee for Citizen Involvement (Metro CCI)

Motion: Councilor Buchanan moved, seconded by Councilor Collier, for adoption of Resolution No. 92-1666.

Councilor Buchanan gave the Transportation & Planning Committee's report and recommendations. He explained there was a total of 38 positions to be filled on the Metro CCI, or 19 members and 19 alternates. He said there were not enough applicants to fill all of the positions and it was necessary to conduct a second round of applications. He said an additional complication was that Multnomah County omitted the process identified in the committee bylaws that involved Metro Councilors in the selection process. He said the Transportation & Planning Committee determined that the nominations submitted by Multnomah County representing Districts 3, 7, 8, 10, and 12 be returned so that they could be reconsidered during Round 2 for a complete process that included input from Metro Councilors. Councilor Washington removed District 11 from the list of returned nominees because he felt that the nominee(s) were not responsible for Multnomah County's procedural error. Councilor Buchanan said the Transportation & Planning Committee approved his amendment to return the nominees for the second round and directed a letter be sent from Chair Devlin that the nominees' names were returned due to the procedural breach only and that there should be no reflection on the qualifications of any of the applicants. The letter also urged Multnomah County to involve Metro Councilors in Round 2 and suggested the County consider interviewing each applicant before making final decisions.

Councilor Wyers asked how citizens in Council Districts in Multnomah County could submit applications. Presiding Officer Gardner said resolution materials explained how to apply for CCI positions.

Councilor McLain stated for the record the procedural error was unfortunate, but that such errors did occur and could be solved, as was being done via Resolution No. 92-1666. She wanted to make sure that District 1 vacancies were filled in Round 2. Councilor Buchanan said Round 2 was correcting the process to fill vacancies in districts in Multnomah County.

Councilor Devlin said because of Round 2, the process would be completed in November. He would have preferred that the Metro CCI be operational by July, 1992.

To Presiding Officer Gardner's question, Judy Shioishi, Council Analyst, explained Exhibit A had been amended to reflect changes discussed at this meeting at the Committee level.

Vote: Councilors Buchanan, Collier, Devlin, Gronke, Hansen, McFarland, McLain, Van Bergen, Washington, Wyers and Gardner voted aye. Councilor Bauer was absent. The vote was unanimous and Resolution No. 92-1666 was adopted.

7. COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS

Councilor McLain noted she had attended a conference September 24-25 on conflict resolution techniques which she said could be useful for the Council when dealing with local entities and citizens and for Council interpersonal relations.

Councilor Hansen noted Metro's Student Congress would be held at the Oregon Convention Center on Saturday, October 17, and said all Councilors would be invited to attend a round table luncheon to enable students to participate in a question and answer session on regional issues.

Councilor McLain noted a commercial to advertise that event would be filmed Friday, August 28.

Councilor McLain reviewed recent Regional Facilities Committee activity including its consideration of Resolution No. 92-1652, Authorizing a Development Effort and Stating Metro's Intent to Provide Financing Via General Obligation Bonds for the End of the Oregon Trail Project. She said the resolution had some problems and was tentatively scheduled for another hearing by the Committee on Tuesday, September 8.

Councilor McLain discussed Committee discussion on the Task Force for Funding Regional Facilities. She said one item discussed was creating a wider base for facilities and activities proposed.

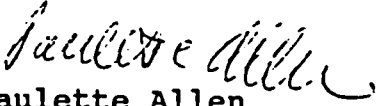
Councilor Washington noted he attended the Task Force for Funding Regional Facilities meeting this date and informed them about the Council's concerns on fiscal concerns related to current and proposed regional facilities.

Presiding Officer Gardner reminded those present of the Council retreat to be held August 29 at the Oregon Convention Center and noted Andy Cotugno, Director of Planning, would facilitate retreat discussion.

METRO COUNCIL
August 27, 1992
Page 5

All business having been attended to, Presiding Officer Gardner adjourned the meeting at 5:55 p.m.

Respectfully submitted,


Paulette Allen
Clerk of the Council

Meeting Date: September 24, 1992
Agenda Item No. 6.1

ORDINANCE NO. 92-467A



METRO

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

Memorandum

DATE: September 21, 1992

TO: Metro Council
Executive Officer
Interested Persons

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 6.1; ORDINANCE NO. 92-467A

The Governmental Affairs Committee report on Ordinance No. 92-467A will be distributed in advance to Councilors and available at the Council meeting September 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING THE	)	ORDINANCE NO. 92-467A
REVISION OF METRO CODE SECTION)	
2.02.275, ZOO VISITOR SERVICES	)	Introduced by Rena Cusma,
EMPLOYEES	)	Executive Officer

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 2.02.275 - Zoo Visitor Services Employees, is amended to read as follows:

2.02.275 Zoo Visitor Services Employees:

(a) Purpose: The purpose of this section is to establish personnel ~~rules~~ policies pertaining to the conditions of employment of Zoo Visitor Services Worker employees; to promote efficiency, economy, and public responsiveness in the operation of the Zoo Visitor Services Division; and to provide that the employees covered by this section shall be subject to proper conduct, the satisfactory performance of work, and the availability of funds.

(b) These policies do not constitute a contract of employment. In order to meet future challenges and to continue to improve the working environment for all Zoo Visitor Service Employees, the Council retains the flexibility to change, substitute, interpret and discontinue the policies and benefits described herein, at any time, with or without notice to employees. No contract of employment can be created, nor can an employee's status be modified, by any oral or written agreement, or course of conduct, except by a written agreement signed by the Division Manager, Zoo Director or his/her designee, the Personnel Manager, and the Executive Officer. Whenever a question arises as to the meaning or interpretation of any policy or practices of the Zoo Visitor Services Division, the interpretation given by the Executive Officer and/or his/her designee(s) shall be final and binding.

~~[(b)]~~ (c) Definitions:

(1) The Visitor Services Worker classification is divided into two definitions, and nothing contained in this section shall be construed as any guarantee of hours worked per day or per week:

(A) Seasonal Visitor Services Worker Employee: Employees who are employed on a ~~[year-round]~~ seasonal basis. They will be scheduled regularly during the peak seasons and scheduled as

needed and as available during the remainder of the year. ~~[The period of employment is indefinite unless the employee is terminated according to section (i) of this section or the employee resigns. Section 2.02.045 Probationary Period of the Metro Code does not apply.]~~

The probationary period for seasonal visitor services employees is the initial thirty (30) work days of employment, and an additional probationary period shall not be required at a subsequent reinstatement, if the reinstatement is within one year of termination in good standing. Visitor service employees serving their initial probationary period may be disciplined or terminated without cause, with or without prior notice. However, nothing in this paragraph shall be construed as implying or requiring that cause must exist for the discipline or termination of a seasonal status employee who has completed the initial probationary period.

- (B) Regular Visitor Services Worker Employee: Employees who are employed on a year-round basis in the Visitor Services Division of the Metro Washington Park Zoo and regularly scheduled to work ~~[80]~~ 20 or more hours each ~~[month]~~ week, as provided by the current adopted budget.

(2) Director means Director of the Metro Washington Park Zoo.

(3) Seasons are defined as April through the first week in September (Labor Day), and the second week in September through March.

~~[(e)]~~ (d) Application of Personnel ~~[Rules]~~ Policies: All Visitor Services Worker Employees shall be subject to this section and to all other Zoo personnel policies and regulations not inconsistent with this section.

~~[(d)]~~ (e) Recruitment and Appointment for Seasonal Visitor Services Worker Employees:

- (1) In-house recruitment to fill Seasonal Visitor Services vacancies is not required ~~and is at the discretion of the Visitor Services Manager.~~
- (2) Recruitment to fill vacancies shall include appropriate forms of announcements to attract qualified applicants and to comply with Affirmative Action goals.
- (3) At the beginning of each ~~[year]~~ season ~~[there will be]~~ a general

recruitment will be initiated. The recruitment will remain open until the beginning of the following season. A list of qualified applicants will be developed, by the Visitor Services Manager pursuant to these Visitor Services Worker rules, from which Visitor Services Workers will be appointed. ~~[The Executive Officer will pre-authorize this qualified list on an annual basis pursuant to these Visitor Services Worker Rules.]~~ Applicants will be appointed from this list on an as-needed basis only. ~~[The duration of this list will be one year, unless it is exhausted before that time, in which case other recruitments will be held.]~~ If the seasonal list is not exhausted, those not hired but remaining on the list must go through the next [year's] season's selection process to be considered for hiring. ~~[When an emergency exists and no one on the pre-authorized, qualified list is available to work that period, the Zoo may recommend an appointment from another source. Appointments made in an emergency situation will be treated the same as other appointments. These Visitor Services Worker Rules will apply to employees appointed during an emergency situation. Emergencies will be determined and documented by the Visitor Services Manager or his/her designee.]~~ The Visitor Services Manager will maintain the list and will determine who will be appointed.

- (4) Employees who leave in good standing may, within one year of termination, be reinstated without going through a recruitment process.

[(e)] (f)
Employees:

Recruitment and Appointment for Regular Visitor Services Worker

- (1) In-house recruitments to fill Regular Visitor Services Worker vacancies are open only to current seasonal visitor services worker employees which will be the first means used. ~~[unless.]~~ If no one applies, then the position may be filled [by] with a current seasonal employee who shall be appointed by the Visitor Services Manager.
- (2) In-house recruitments to fill vacancies as described in #1 above, shall include posting of such vacancies for at least five (5) calendar days within [in] the Visitor Services Division [agency].
- ~~[(3)]~~ ~~Recommendations from the list of employees who applied to be appointed to vacant positions will be made by the Director of the Zoo or his/her designee. The Executive Officer is the appointing authority for all positions.]~~

- [(4)] (3) Regular Visitor Services Worker employees will be eligible to apply in-house for all vacant Regular (non-Visitor Services Worker) positions within

[the agency-] Metro.

~~[(f)]~~ (g) Status of Seasonal Visitor Services Worker Employee: Seasonal Visitor Services Worker employees will be eligible to compete: ~~[a) for in-house recruitments of Regular Visitor Services Worker positions if they were hired under the competitive process for the position they currently hold or had been reinstated to that position; and b)]~~ for in-house recruitments of a Regular, non-Visitor Services Worker position, if they have worked 40 hours per week for three consecutive months and were hired through a competitive process for or had been reinstated to the position they currently hold. ~~[If hired into a Regular position, time employed in a previous full-time Seasonal Visitor Services Worker position will be counted toward the accumulation of Vacation time if there has been no break in service.]~~

~~[(g)]~~ (h) Benefits:

- (1) Benefits required by law such as Workers' Compensation and Social Security will be paid for all Visitor Services employees. Seasonal Visitor Services Worker employees ~~[and Regular Visitor Services Worker employees who do not work at least 80 hours per month]~~ will not receive any other benefits.
- (2) Seasonal Visitor Services Worker employees will not be paid for holidays not worked. Designated holidays shall be considered as normal workdays.
- (3) Regular Visitor Services Worker employees appointed to one of the regular Visitor Services Worker positions will receive a full benefit package when working a minimum of ~~[80]~~ 20 hours per ~~[month]~~ week.

~~[(h)]~~ (i) Performance Evaluation: Performance evaluations will be performed at least once during the initial thirty (30) work day probationary period. ~~[on the schedule specified in Table S of the Pay Plan. Employees are eligible for advancement to the next step upon completion of 12 months and 480 hours.]~~

~~[(i)]~~ (j) Disciplinary Action:

~~[(1) Disciplinary actions or measures shall include only the following: oral or written reprimand, suspension, demotion and dismissal from employment. Disciplinary action shall be for just cause. Oral reprimands will not be used as the basis for subsequent disciplinary action unless the employee is so notified at the time of reprimand. If Metro has reason to reprimand an employee, it shall be done in a manner that is least likely to embarrass the employee before other employees or the public.]~~

~~(2) It shall be the duty of all employees to comply with and to assist in carrying~~

~~into effect the provisions of this chapter. No employee shall be disciplined except for violation of established rules and regulations, and such discipline shall be in accordance with procedures established by this chapter.]~~

(1) Nothing contained in this Section precludes the Visitor Services Manager or Zoo Director from establishing work rules not inconsistent with this Section for efficient operations and administration of the job site, or precludes the Manager from having private discussions with employees. These discussions may be in the form of assignment, instruction, or any other job-related communication.

(2) It is appropriate, though not always necessary in every circumstance, that disciplinary actions be taken progressively. Disciplinary actions will take into consideration the degree, severity, and frequency of the offense and/or circumstances surrounding the incident. Any disciplinary action shall be done in a manner that is least likely to embarrass the employee before other employees or the public. Copies of disciplinary actions shall be placed in the employee's personnel file. Any disciplinary action may be grieved under the grievance procedure established in chapter 2.02 of the Code.

(3) ~~[Any of the following may constitute grounds for disciplinary actions:]~~ The following are some examples (but not all) of the types of conduct which will result in disciplinary action. The listing of these examples is for illustrative purposes:

- (A) Abandonment of position;
- (B) Absence from duty without leave;
- (C) Abuse of leave privileges;
- (D) Below standard work performance;
- (E) Discourteous treatment of the public or other employees;
- (F) Intoxication during working hours;
- (G) Fraud in securing appointment or promotion;
- (H) Insubordination;
- (I) Misuse of Metro property, funds or records;
- (J) Neglect of duty;
- (K) Willful deceit;
- (L) Any conviction by a court of law which ~~[would be incompatible with the work performed for Metro by the affected employee]~~ demonstrates an impaired ability to properly perform work for the Division;
- (M) Violation of Metro Code, ordinances, [and] regulations, established work rules and directives [in particular,] including those directives defined in the Visitor Services Worker Handbook.

~~[(4) Any of the following types of disciplinary action may be utilized. It is appropriate, though not necessary in every circumstance, that the following steps be taken progressively. Reasons for each disciplinary action should be documented before action is taken unless extenuating circumstances exist.]~~

~~(A) (Oral Reprimand: Oral Reprimand is notice by a supervisor to an employee that his/her behavior or performance must be improved. It defines areas where improvement is needed, sets goals, and informs the employee that failure to improve may result in more serious action.)~~

~~The supervisor shall record the date and content of the oral reprimand, and such record shall be placed in the employee's personnel file. This record shall be removed when successful corrective action is completed.~~

~~(B) Written Reprimand: Written Reprimand is formal notice by a supervisor to an employee that his/her performance or behavior must be improved. A written reprimand must be approved by the Director or his/her designee. It contains the same elements as the oral reprimand. When appropriate, it should be used in conjunction with a plan for individual improvement. A copy of the written reprimand and plan for individual improvement is placed in the employee's personnel record. This copy shall be removed when successful corrective action is completed.~~

~~(C) Suspension: Suspension without pay should be used when other disciplinary measures have failed or when it is necessary that the employee not remain on duty. Suspensions shall not require advance notice and may be effected immediately. Approval of the Director or his/her designee is required. Within two (2) working days a notice shall be sent to the suspended employee at his or her last known address or personally delivered to that employee describing the circumstances of the suspension, the reason for the suspension, the length of the suspension, the date or the circumstances under which the employee may return to work. A duplicate copy of the written notice shall be placed in the employee's personnel file by the Personnel Officer. Dismissal may be the next step of disciplinary action.]~~

~~[(5)] (4) Dismissal. Should the actions of an employee [require] indicate [a supervisor to discharge] the dismissal of the employee may be necessary, [the~~

~~supervisor shall suspend the employee without pay for five days. This must be authorized by the Director or his/her designee. The notice shall be in writing and shall include the reasons the termination is being recommended, the effective date, and notice that the employee may respond in writing within two days to the Visitor Services Manager.]~~ the Visitor Services Manager will review the proposed termination with the Personnel[Officer] Manager, including a review of any [written] response or explanation by the employee. If [the Visitor Services Manager still believes] the [disciplinary] dismissal action is appropriate the Visitors Services Manager will seek authorization from the Zoo Director to proceed with the dismissal. [he/she shall prepare a written notice of termination to be reviewed by the Director or his/her designee and the Personnel Officer. The Executive Officer must approve the termination except in an emergency. The written notice shall be sent to the employee by certified mail by the fifth day from the date the suspension notice was mailed or the employee was personally served with the suspension.] The employee shall be notified in writing of the dismissal action. The notice will become a permanent part of the employee's personnel file. Payroll shall be notified to prepare the final check.

[~~(j)~~] (k) Promotion: Eligibility for assignment to Visitor Services Worker 2 and 3 classifications shall be established by the [supervisor] Visitor Services Manager and shall be subject to in-house recruitment established in (f) (1-3) above upon determination that an employee has acquired or possesses the knowledge, skill and ability required for the position.

[~~(k)~~] (l) Wage Rates:

- (1) Visitor Services Worker employees will be paid at a rate in the Pay Plan recommended by the Visitor Services Manager and the Personnel Manager and approved by the Executive Officer and the Council.
- (2) The step range for each employee shall be established on the basis of individual qualifications and work assignment. It will be the general practice to appoint new Visitor Services Worker employees at the beginning step of the Visitor Services Worker 1 salary range. Exceptions approved by the Executive Officer may be made to allow hiring above the beginning step. Total hours of previous work experience with the Zoo and the quality of that work will be considered in determining the step for previous employees reemployed at the Zoo in subsequent seasons.
- (3) Eligibility for a wage increase shall be [based on completion of 480 hours of satisfactory service after a 12-month period and upon recommendation of the Director or his/her designee, with a performance evaluation submitted to the Personnel Division] at the discretion of the Visitor Services Manager and after successful completion of the initial

probationary period

- (4) Section 2.02.160 of the Metro Code (Salary Administration Guidelines) shall not apply to any Visitor Services Worker employees.

[(+)] (m) Reporting and Hours of Work:

- (1) Because the number of Seasonal Visitor Services Worker employees needed at a given time depends upon weather conditions, such employees may be relieved from duty prior to the end of a scheduled workday or may be directed to not report for duty on a scheduled workday. The Director or his/her designee shall establish appropriate procedures for regulating reporting during inclement weather.
- (2) Work schedules will be posted, and will be subject to subsection (1) above. No employee will be called to work for less than three (3) hours in one day.

[(m)] (n) Rest and Meal Period:

- (1) A rest period of 10 minutes with pay will be provided during each work period of four hours.
- (2) A non-paid lunch period of one-half hour (30 minutes) shall be provided. Whenever possible, such meal period shall be scheduled in the middle of the shift.

(Ordinance No. 81-123, Sec. 1 and 2; amended by Ordinance No. 87-221, Sec. 1 and 2; and Ordinance No. 89-269, Sec. 1; amended by Ordinance No. 89-269)

Jim Gardner, Presiding Officer

Attest: Clerk of the Council

STAFF REPORT

CONSIDERATION OF ORDINANCE NO. 92-467A, FOR THE PURPOSE OF APPROVING THE REVISION OF METRO CODE SECTION 2.02.275 - ZOO VISITOR SERVICES EMPLOYEES.

Date: August 19, 1992

Presented by: Paula Paris
Teresa Metke

Background: As a result of discussions with Teresa Metke, Zoo Visitor Services Manager, it became apparent that the current Section 2.02.275 of the Code does not adequately or accurately reflect the needs or methods of operation of the division.

Highlights of Revisions:

1) The current purpose of this section is to establish personnel rules for the Visitor Services Worker employees. The revisions establish a broader definition of purpose which gives greater flexibility to the Council, Executive Officer, Zoo Director, and Visitor Services Manager to meet the operational needs of the division particularly in the area of seasonal employment conditions that may vary greatly depending on the seasons and public responsiveness.

2) Visitor Services employees are non-represented employees who, under current Code language, have a higher standard of just cause than do our existing union-represented employees. The revisions establish a progressive discipline process currently known to employees and in use through division work rules.

3) There is no probationary period for Visitor Services employees. The revisions establish a 30 work-day probationary period.

4) The Visitor Services Manager currently has to re-open recruitments numerous times during the year for these seasonal positions when an applicant pool is depleted. The revisions establish an on-going open recruitment for two seasons per year which will enable prompter filling of positions and faster response time to Visitor Services operational needs.

Fiscal Impact: None

We believe these revisions to the Code are necessary for the consistent and balanced operation of the Zoo Visitor Services Division. It is, therefore, recommended by the Executive Officer that Ordinance No. 92-467A be adopted.

Meeting Date: September 24, 1992
Agenda Item No. 6.2

ORDINANCE NO. 92-466A



METRO

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

Memorandum

DATE: September 21, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 6.2; ORDINANCE NO. 92-466A

The Governmental Affairs Committee report on Ordinance No. 92-466A will be distributed to Councilors in advance and available at the Council meeting September 24.



METRO

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

Memorandum

DATE: September 10, 1992
TO: Governmental Affairs Committee
FROM: Casey Short, Council Analyst
RE: Ordinance No. 92-466A

The Governmental Affairs Committee has on its September 17 agenda consideration of Ordinance No. 92-466A, establishing a program for Minority, Women, and Disadvantaged Business Enterprises (M/W/DBE). Included in your packet are earlier reports discussing the development of this ordinance, which were included in previous agenda packets concerning this item.

The Committee last considered Ordinance No. 92-466 on July 2, 1992. Testimony was presented at that meeting which raised concerns about parts of the proposed M/W/DBE program. As a result of the testimony, Chair Collier directed staff to meet with the Task Force which had developed the ordinance in an effort to resolve the concerns. I also met with Regional Facilities Director Neil Saling to address the concerns he raised at the July 2 meeting, and talked with Kathleen Thomas of Thomas/Wright, Inc., about her issue.

At the July 2 meeting, Ms. Thomas raised a concern that the ordinance might discourage minority- and women-owned firms from bidding on Metro contracts because it would be difficult for small M/WBE firms to comply with the good faith requirements on subcontracting. She later sent me a suggested amendment (attached) which would have waived the good faith efforts for M/WBE's if such a firm were the prime bidder and responsible for at least 25% of the work. Metro's legal counsel advised me that such language would constitute a preference and would therefore not be legal according to court rulings. In addition, the good faith requirements only apply to construction contracts over \$50,000 (unless the liaison officer should require them in a specific instance); in other cases, the ordinance calls for Metro to solicit bids from M/WBE's for contracted services. Because of this focus in the ordinance, only larger construction contractors will generally be subject to the good faith subcontracting provisions.

Changes that are proposed from the earlier version of the ordinance are summarized below. Please note that all changes are in both the MBE and WBE sections of the ordinance, though I cite

below only the MBE section. All "Section" notations below are preceded in the ordinance by the overall Code chapter number (2.04); the WBE sections are the same as the MBE sections, except they begin 2.04.2xx instead of 2.04.1xx.

<u>Page</u>	<u>Section</u>	<u>Summary of change</u>
2	.100(c)	Clarifies that the MBE and WBE sections are both to be implemented, and that one does not supersede the other.
3	.110(b)	Requires a bidder to make available either the budgeted amount or the estimated sub-bid, but deletes the requirement to make available the low bid received. This is in an effort to keep M/WBE's in the process, while not promoting bid shopping.
4	.110(i)	Provides that an MBE may advise Metro of interest in a project, in addition to advising the prime bidder, in an effort to broaden the potential MBE pool.
5	.120(a)	Makes the Metro Executive Officer responsible for administering the program, rather than a staff person. The staff person designated as Liaison Officer will still be the day-to-day administrator, but the elected Executive is clearly to be ultimately responsible.
6	.120(c)	Changes the date for establishing an outreach and assistance program from September 1, 1992 to January 1, 1993, to reflect that the ordinance doesn't go into effect until 90 days after adoption.
6	.120(c)(5)	Adds the requirement that the plan is to include a method for coordination among Metro departments. This is to provide leverage to ensure compliance by the departments.
8	.135(m)	There are two changes here. The first provides that any waivers of the procedures in this section be in writing, as suggested by Clifford Freeman. The second change is to

clarify the meaning of "all known
MBE's."

- | | | |
|----|------------|--|
| 9 | .135(n) | Lowens from \$100,000 to \$50,000 the amount of a construction contract which requires all prospective bidders to attend a prebid conference. This is to conform with Section 2.04.150(a) which requires good faith efforts for construction contracts over \$50,000. |
| 10 | .155(d) | Requires bidders to submit MBE utilization information to Metro at the time of bid opening, rather than within 24 hours of bid opening. The language is also changed to require this of all bidders, not just the apparent low bidder. |
| 11 | .155(g) | Again, provides that waivers of procedure be documented in writing. |
| 11 | .160(a)(1) | Calls for Metro, as part of our good faith efforts, to identify elements of a project that can be done by a minority- or woman-owned firm or firms. Also calls for Metro to direct that the prime contractor include Metro's identified elements as part of the prime's subcontracting plan, in an effort to increase M/WBE participation. |
| 12 | .160(b)(1) | This item is tied to the above item. It requires a bidder to develop its subcontracting plan in conformance with Metro's direction, as stated above. |



METRO

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

Memorandum

DATE: June 25, 1992

TO: Governmental Affairs Committee

FROM: Casey Short, ^{es} Council Analyst

RE: Ordinance No. 92-466

The Governmental Affairs Committee has on its July 2 agenda consideration of Ordinance No. 92-466, establishing a program for Minority, Women, and Disadvantaged Business Enterprises (M/W/DBE). Included in your packet are two earlier reports, one discussing the development of the ordinance and its provisions in draft form, and the other summarizing a meeting held with representatives of Metro's original task force convened to consider the M/W/DBE program.

The ordinance before you now contains two significant changes from the draft ordinance. The first is that there is no program for Emerging Small Businesses (ESB). There was little support among either the original task force members or the group formed to develop the ordinance for an ESB program, and the Governmental Affairs Committee decided not to include such a program in the ordinance.

The other change from the draft concerns the "good faith efforts" sections of the MBE and WBE programs (sections 2.04.160 and 2.04.260). Pursuant to suggestions from task force representatives at the May 19 meeting, the Governmental Affairs Committee agreed to have Metro take on some of the responsibility for outreach to minority and women-owned businesses. Those efforts on Metro's part include "identifying and selecting specific economically feasible units" to clarify areas eligible for sub-bids. Placing this responsibility on Metro will make the determination uniform for all bidders as to what portions of contracts are to be sub-bid, and decrease the potential for challenges to contractors' compliance with the good faith efforts provisions. The other major change to this section calls for Metro, not the prime contractor, to contact potential minority and women-owned firms to inform them of upcoming contracts. This relieves the contractors from having to perform, and document, extensive outreach efforts. This will place extra responsibility on Metro and will cause extra up-front costs to Metro, but those costs should be recovered in the form of fewer conflicts over outreach and lower bids from contractors because their costs will be lowered.

STAFF REPORT

DRAFT ORDINANCE ESTABLISHING A MINORITY/WOMEN/DISADVANTAGED BUSINESS ENTERPRISE AND EMERGING SMALL BUSINESS PROGRAM

Date: April 10, 1992

Presented by: Casey Short

BACKGROUND: Ordinance No. 91-391 proposed to amend the Metro Code, modifying the provisions related to procurements involving minorities, women and emerging small businesses. That ordinance was first read on May 23, 1991 and was considered several times by the Governmental Affairs Committee without action being taken to forward it to the Council. On October 10, 1991, an emergency ordinance (No. 91-430) was brought before the Council at the request of the Regional Facilities Committee. That ordinance proposed to amend Section 2.04 of the Metro Code to delete provisions giving any preference based on race or gender in Metro contract awards. The reason for the introduction of Ordinance 91-430 was in response to the Ninth Circuit Court's decision in Coral Construction Company v. King County, which Metro General Counsel believed rendered unconstitutional preference provisions of the existing Metro Code. That ordinance failed on an 11-0 vote.

Regional Facilities Department staff has been working with interested members of the community for more than a year to develop a satisfactory contracting/procurement program for minority- and women-owned businesses. Department Director Neil Saling presented a progress report on these efforts to the Governmental Affairs Committee on March 5, 1992. Following that presentation, Committee Chair Tanya Collier directed Council staff to work with a members of the community who were at that meeting to develop a draft ordinance establishing a Metro program for contracting with minority- and women-owned businesses, and to present a report to the Committee at its April 16 meeting. Members of this task force are Casey Short (Metro Council staff), Bruce Broussard (American Contractor), Clifford Freeman (Governor's Advocate, Office of Minority/Women/Emerging Small Business), Shirley Minor (Minor Steele & Associates), and Henry Pelfrey (Dirt & Aggregate Interchange, Inc.).

TASK FORCE ACTIVITY

The task force met three times, on March 13 and 20, and April 3. Dan Cooper, Metro General Counsel, attended all three meetings, and Rich Wiley, Metro Procurement Officer, attended the first two. Mr. Pelfrey, with assistance from Impact Business Consultants, provided a draft ordinance based on King County's M/WBE program. Discussion at the first two meetings focused on the constraints imposed by federal court decisions on local

governments' ability to establish goals or preference for minority or women contracting without a history of past discrimination having been established. Other issues discussed included the community representatives' desire to establish separate MBE and WBE programs; the nature of outreach efforts that Metro might implement; and the merits of an Emerging Small Business program. There was little interest in establishing such a program. Ms. Minor and Mr. Pelfrey also asked to be provided with statistics showing the participation of minority- and women-owned businesses in Metro contracts in the last few years. (Those statistics were provided from the Regional Facilities Department on April 9, and are included in the agenda packet.)

Between the second and third meetings, Mr. Cooper and Mark Williams of his staff drafted a series of proposed Metro Code sections, which would establish a Minority Business Enterprise (MBE) program, a Women Business Enterprise (WBE) program, a Disadvantaged Business Enterprise (DBE) program, and an Emerging Small Business (ESB) program. Their instructions were to draft the most liberal programs they could which were within the limits of the law as interpreted by the United States Supreme Court (in Croson v. City of Richmond) and the Ninth Circuit Court (in Coral).

At the third meeting, the task force reviewed the drafts and offered some suggestions for revision. Those revisions have been incorporated in the drafts included in this agenda packet.

NATURE OF PROPOSED PROGRAMS

The draft programs have four separate components, as discussed above. The MBE, WBE, and ESB programs apply to locally-funded contracts, while the DBE program is for federally-funded contracts.

1 & 2 - MBE and WBE Programs

The content of the MBE and WBE programs is virtually the same, with the obvious difference that one proposes a program for Minority Business Enterprises and the other proposes a Women Business Enterprises program. The only appreciable differences are in the applicable definitions, for "minority" and "women." There are separate programs, rather than a composite DBE program which would include both groups, at the recommendation of the task force. The task force preferred establishing separate programs in order that the separate categories of minorities and women be considered individually, to avoid having a consolidated set of goals or outreach activities apply to both groups. This would help ensure that neither group suffered as the result of the other's success (i.e., a large number of women-owned businesses might receive Metro contracts, which might increase total DBE participation without increased minority participation).

The draft program consists of the most liberal parts of several programs submitted for our consideration that could be implemented without documentation of past discrimination. Those programs include Metro's current program and those for King County (Washington), the State of Oregon General Services Administration, Oregon State System of Higher Education, and the City and County of San Francisco. It calls for strong good faith efforts on the part of contractors to show they have actively sought minority and women participation in subcontracting, including a mandatory list of activities; establishes annual goals for internal Metro use in tracking the effectiveness of the program; provides for a Liaison Officer to be responsible for managing and enforcing the program, and to establish a technical assistance and outreach program that meets certain criteria spelled out in the document; calls for development of a directory of capable MBE and WBE firms, to be used in soliciting those firms' participation in Metro contracts; requires at least one MBE and one WBE firm to be contacted for consideration in awarding smaller contracts that do not otherwise require formal bids; and directs the Liaison Officer to prepare semi-annual reports detailing performance of both programs, which shall be forwarded to the Council for review.

The proposed program does not include mandatory goals for participation, nor establish any preference for MBE or WBE firms in the award of Metro contracts, because legal counsel believes such actions violate provisions of the U.S. Constitution as interpreted by the federal courts.

Adoption of the MBE and WBE programs as outlined in the drafts would require additional funds for enforcement, monitoring, and implementation. The Regional Facilities Department has not formally reviewed the proposal to determine estimated requirements for increased staffing, however, the Regional Facilities Director, in a brief, informal discussion estimated an additional 1.0 to 1.5 FTE would be needed.

3. DBE Program

The Disadvantaged Business Enterprise program applies to federally funded contracts only. The courts have ruled that the Congress may establish goals and preferences for contracts funded with federal dollars, while state and local governments cannot. The DBE program is essentially a continuation of the current Metro DBE program, separated to apply only to federally funded contracts.

4. ESB Program

Counsel drafted an Emerging Small Business program, but the task force did not review it nor discuss it in any detail. Community members of the task force were generally not in favor of

establishing an ESB program. Such a program can mandate goals and preferences, but must be based on the size of a business and be "race and gender neutral." An ESB program could be applied to any part of the Metro area the Council designated, such as an Enterprise Zone or Urban Renewal District established by another agency, a First Source Hiring Area such as that used by MERC, or an economically disadvantaged area as designated by the Council.

This program is included for Committee review only because it is an available option for improving participation in Metro contracts by small businesses, many of which are owned by minorities or women. The task force did not endorse it.

TASK FORCE RECOMMENDATIONS

The task force agrees that the proposed program is probably as good a program as can be devised without a study of past discriminatory practices, and which conforms with Metro Counsel's interpretation of federal court decisions. The task force strongly encourages the Metro Council to commission such a study, or to participate in a broader study with other local governments in the region. As Mr. Pelfrey put it, this program "has no teeth." It relies on good faith efforts and implementation of an outreach program, but has very little enforcement power or mandatory participation by minority- and women-owned businesses.

The task force further agrees that Metro should clearly establish a DBE program for federally-funded contracts as an independent section of the Code, regardless of the disposition of the proposals for programs for locally-funded contracts.

All members of the task force have been invited to the April 16 committee meeting, and advised they would have the opportunity to speak to the issues.

COMMITTEE OPTIONS

Council staff has made little effort to involve other members of the minority contracting community nor representatives of prime contractors in the development of this draft program. If the Governmental Affairs Committee chooses to introduce this draft to Council in ordinance form, hearings and meetings involving interested and affected parties will be held.

If the Committee chooses to pursue a study of past discrimination, staff will investigate efforts underway elsewhere, and will determine how much money would be required to participate in a joint study or commission an independent study.

If the Committee chooses to go no further with this draft, Metro will continue to have a DBE program that legal counsel believes is unconstitutional and which is not being enforced.



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503.221-1646

Memorandum

DATE: May 21, 1992
TO: Governmental Affairs Committee
FROM: Casey Short, Council Analyst
RE: Meeting with DBE Task Force

I called a meeting for Tuesday, May 19 for the purpose of obtaining opinions from the original Disadvantaged Business Enterprise Task Force on Metro's draft program for Minority, Women, and Disadvantaged Business Enterprises and Emerging Small Businesses. The turnout was disappointing with only four people attending out of 21 who were invited. Those attending were Scott Benge (Benge Construction), Kevin Spellman (Emerick Construction), Ron Anderson (Associated General Contractors), and Jesus Borboa (Office of the Governor's Advocate for Minority, Women, and Emerging Small Business). I have contacted about half of the remaining invitees to find out why they didn't attend, and all said they had other commitments or were ill; none said they didn't attend because of lack of interest.

The comments received at the May 19 meeting were generally favorable. Mr. Anderson said the draft program falls within AGC's approved guidelines for such programs, although the AGC committee for DBE/ESB programs has not formally reviewed it. He suggested some changes in the "good faith effort" section of the draft program, such as requiring advertising in trade publications rather than The Oregonian or minority-oriented publications. He said active contractors of any race or gender would be more likely to read trade publications, such as the Daily Journal of Commerce, than a general circulation daily, and added that several minority-oriented publications are not published daily, which could cause problems with timely notification and response. Mr. Anderson also suggested that Metro be responsible for notifying potential minority- or women-owned businesses of upcoming projects, rather than require the prime bidders to do so. This suggestion would relieve the prime contractors from extensive, and costly, record-keeping and solicitation, and would reduce Metro's monitoring and enforcement effort. While there would be some additional up-front cost to Metro, the end result could be lower project bids and net savings.

Other suggestions included clarifying issues surrounding the terms "negotiate," "qualified," and "bid shopping." There was some discussion of having Metro designate "economically feasible units" in applicable RFP's, to clarify how sub-bids are to be awarded. Mr. Bengé suggested raising the dollar amounts for contracts which require higher levels of compliance, arguing that \$50,000 is quite low and many smaller contractors can't afford to do the required paperwork.

Finally, there was some discussion of establishing an ESB program. Mr. Spellman said he would prefer an ESB program which has goals to the MBE/WBE program which requires documentation of good faith efforts. Such a program is easier for the contractors to comply with. He added that he would object to having an ESB program in addition to an MBE and WBE program because he didn't want to have to deal with three separate programs. He concluded by saying it's most important to concentrate on training and outreach.

Thomas/Wright, Inc.

Civil Engineers • Surveyors

1340 S.W. Bertha Blvd.
Portland, Oregon 97219

FAX (503) 246-3352
(503) 246-4293

FACSIMILE COVER LETTER

Please deliver the following to:

Name: CASEY Short
Company: metro
FAX No.: 273-5589
Date: 7-30-92
Subject: metro M/WBE Programs
Proj. No.: 9500.01
From: Kathy Thomas

Total Number of Pages (including cover page): 2

If you do not receive all pages, please contact us at (503) 246-4293.

*Suggested language for the WBE/MBE/DBE
Programs.*

WBE Program

Replace 2.04.250(c) with the following:

Where good faith efforts are required, the Liaison Officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor make good faith efforts at maximizing WBE opportunities, as that term is defined in Section 2.04.160. If a contract is awarded to a Minority or Woman-owned Business, these good faith efforts shall not apply, provided the Minority or Woman-owned Business prime proposer accomplishes at least 25% of the value of the contract.

MBE Program

Replace 2.04.250(c) with the following:

Where good faith efforts are required, the Liaison Officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor make good faith efforts at maximizing MBE opportunities, as that term is defined in Section 2.04.160. If a contract is awarded to a Minority or Woman-owned Business, these good faith efforts shall not apply, provided the Minority or Woman-owned Business prime proposer accomplishes at least 25% of the value of the contract.

DBE Program

Replace 2.04.350(c) with the following:

Even though no DBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE participation in the same goal amount as the current annual goal for that contract type. If a contract is awarded to a DBE, these goals shall not apply, provided the DBE prime proposer accomplishes at least 25% of the value of the contract.



PREVIOUSLY
FAXED
13/12/12 12:10pm

August 3, 1992

Mr. Casey Short
Metropolitan Service District
2000 SW First Avenue
Portland, Oregon 97201-5398

Reference: M/W/DBE Ordinance

Dear Casey,

This letter will address the issue that I raised with you last week on the proposed ordinance. I have a previous commitment that will prevent me from attending either the Governmental Affairs Committee meeting this week or the subsequent Council session.

The latest draft has altered the language in Section 2.04.155(d) to provide for the submission of "detailed MBE Utilization Forms" at the time of bid opening, as opposed to the close of the next working day. As I tried to explain to you during our telephone conversation, the paragraph no longer makes sense since, prior to the time of bid opening when these forms would obviously have to be prepared, there is no "apparent low bidder"! If you were to change the language to require all bidders to complete the forms, the subsequent language in the same paragraph must be altered to clearly require only the *low* bidder to furnish the Letters of Agreement.

Notwithstanding these problems which can be easily solved, my real concern is more general. I understand that this suggestion came from Bea Brooks of ODOT. I believe that most of Metro's work relates to building construction whereas ODOT's is obviously heavy highway work. The difference between the industries is substantial. Building contractors receive subcontractor bids up to the very moment of bid opening; this requirement places an additional burden on the primes that can only increase the chance of error. The prior language was more than reasonable.

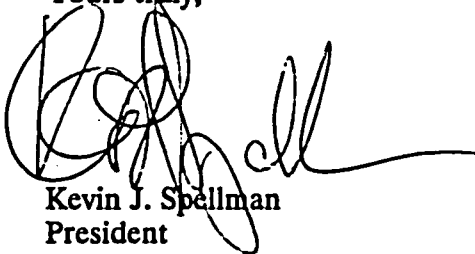
If this concern is not persuasive, I believe that Metro should consider the likely result of this onerous requirement. I suspect that, under these circumstances, most prime contractors would not show any names at bid time and rely upon the showing of good faith, which is a requirement anyway. If the prime was able to contract with M/WBE's, it would simply demonstrate that to Metro after bid. Is Metro likely to reject a bidder that has satisfied the good faith efforts and contracted with a reasonable number of M/WBE's simply because some non-mandatory forms were not provided? I think not.

Mr. Casey Short
Metropolitan Service District
August 3, 1992
Page 2

In summary, I believe that this requirement is onerous to prime bidders and, worse, it achieves nothing and may actually be counter-productive. I urge you and the Governmental Affairs Committee to change the language back to the way it was.

If you have any questions or concerns about this suggestion, I will be happy to discuss them.

Yours truly,

A handwritten signature in black ink, appearing to read 'K. Spellman', with a long horizontal flourish extending to the right.

Kevin J. Spellman
President

mmw

cc: Neil Saling



BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF REPEALING)
METRO CODE SECTIONS 2.04.100-)
.180, AND FOR THE PURPOSE OF)
ENACTING NEW PROVISIONS ESTAB-)
LISHING AND GOVERNING METRO'S)
CONTRACTING PROCEDURES FOR)
MINORITY, WOMEN, AND DISAD-)
VANTAGED BUSINESS ENTERPRISES)

ORDINANCE NO. 92-466A

Introduced by
Councilor Tanya Collier

WHEREAS, Metro Code 2.04.100-.180 previously governed the Metropolitan Service District's contracting program for disadvantaged businesses; and

WHEREAS, the Metro Council finds that a revision of the Metropolitan Service District's contracting program is desirable; now, therefore,

THE COUNCIL OF THE METROPOLITAN SERVICE DISTRICT HEREBY ORDAINS:

Section 1. The current Metro Code Sections 2.04.100-.180 are repealed.

Section 2. New Metro Code Sections 2.04.100, 2.04.200, and 2.04.300 are adopted, as follows:

"2.04.100 Minority Business Enterprise Program (MBE Program) For Locally-Funded Contracts. Findings, Purpose and Authority:

(a) The Metro Council supports the aspirations of minorities to enter the mainstream of social, political and economic life.

(b) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by minorities is essential;
- (2) Greater economic opportunity for minorities is essential;
- (3) Review of Metro programs to remedy historical patterns of exclusion of and discrimination against racial or ethnic groups is needed;

- (4) Public policies and programs to eliminate the effects of long-term, open and pervasive exclusion of and discrimination against minorities from the business sector, including increased opportunities to integrate minorities into the full economic life of the community should be reviewed; and
- (5) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program of review should be established to recommend remedies for the unfortunate effects of social, political and economic inequity that still exist.

(c) It is the purpose of the MBE Program to establish and implement a program to encourage the utilization by Metro of minority-owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. The MBE Program does not apply to federally funded contracts, which are governed by Metro Code 2.04.300 et seq. The MBE Program shall be administered simultaneously and in addition to the provisions of Metro Code Sections 2.04.200-290.

(d) Metro Code Sections 2.04.100 to 2.04.190 shall be known and may be cited as the "Metro Minority Business Enterprise Program," hereinafter referred to as the "MBE Program."

2.04.105 Policy Statement:

(a) Through this MBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to MBEs in contracting; and
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the locally-funded projects, programs and services of Metro. Metro and Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by the MBE Program shall apply to all Metro departments, commissions and project areas except as expressly provided herein.

- (d) The objectives of the MBE Program shall be:
- (1) To assure that provisions of the MBE Program are adhered to by all Metro departments, contractors, and employees; and
 - (2) To initiate and maintain efforts to increase, to the greatest extent permitted by law, program participation by minority businesses.

2.04.110 Definitions: For purposes of Metro Code Sections 2.04.100 to 2.04.190, the following definitions shall apply:

(a) "Capable" means a Minority Business Enterprise registered with the Executive Department who upon request from the bidder can supply two favorable references of prior work of the type being subcontracted for.

(b) "Competitive" means the subcontract bid submitted by the Minority Business Enterprise was within 10 percent of either the budgeted amount, subbid estimate, or the lowest bid received by the bidder. ~~The bidder shall make one of these figures available upon request. The bidder shall make either the budgeted amount or the subbid estimate available upon request.~~ This term relates to price only and must not be interpreted to mean that a bid deemed competitive is therefore entitled to the subcontract award.

(c) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(d) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the MBE Program a lease or a purchase order of \$500.00 or more is a contract.

(e) "Contractor" means the one who participates, through a contract or subcontract, in the MBE Program and includes lessees.

(f) "Documentation" means written materials purporting to establish the satisfaction of a good faith effort requirement that are capable of verification. These may include, but are not limited to, copies of business logs, correspondence or newspaper ads.

(g) "Economically Feasible Unit" means a unit of work identified in a project suitable for subcontracting in the normal course of business. These would be units that a contractor would ordinarily identify as suitable for performance by a subcontractor. The intent here is to have identified units that would be attractive to a serious and qualified

subcontractor and not be shunned by that subcontractor because the unit of work is too small to be profitable.

(h) "Executive Department" means the State of Oregon's Executive Department.

(i) "Interested" means a Minority Business Enterprise that has expressed to Metro and/or the bidder an interest in learning more about the project identified in the initial solicitation by the bidder.

(j) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a MBE and non-MBE, the MBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a MBE and a non-MBE must receive Metro approval prior to contract award.

(k) "Justification" means a maintaining or showing of a sufficient reason why an action was taken and that the action was not taken for an impermissible reason. Permissible reasons include, but are not limited to, not meeting bid invitation specifications or not being the low bid. An impermissible reason would be one that is arbitrary or capricious or based on race, sex, national origin, marital status or religion.

(l) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(m) "Lessee" means a business or person that leases, or is negotiating to lease, property from Metro or an actual or potential Metro contractor on Metro's or the contractor's facility for the purpose of operating a transportation-related activity, or for the provision of goods or services to the facility or to the public at the facility.

(n) "Minority Business Enterprise or MBE" means a small business concern which is certified as such by the Executive Department and:

- (1) Which is at least 51 percent owned by one or more minority individuals, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more minority individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the minority individuals who own it.

(o) "Minority Individual" has the meaning established by ORS 200.005(7).

(p) "Negotiate" means to engage in good faith discussions with the potential subcontractors about their proposals/bids, and the work for which a bid is sought, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available.

(q) "Personal Services Contract" means a contract for services of a personal or professional nature.

(r) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(s) "Reasonable Number" means at least three (3) firms of those MBEs certified as such by the Executive Department, or a greater number of such firms, if so specified in any particular contract by the Liaison Officer. Consideration should be given to the specialty of subcontracting or materials supply desired as well as the location of the project and whether or not the subcontractor is willing to perform work out of their geographic area.

(t) "Rebuttable Presumption" means a presumption which may be rebutted, or disproved, by evidence.

(u) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

2.04.115 Notice to Contractors and Subcontractors: Contractors of Metro accepting locally-funded contracts under the MBE Program shall be advised that failure to carry out the applicable provisions of the MBE Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

2.04.120 Liaison Officer:

(a) ~~The Executive Officer shall, by executive order, designate a MBE Liaison Officer and, if necessary, other staff adequate to administer the MBE Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the MBE Program. The Executive Officer shall be responsible for administering the MBE Program. The Executive Officer may, by Executive Order, designate a Liaison Officer and, if necessary, other staff adequate to administer the MBE Program on the Executive's behalf. For purposes of Metro Code Sections 2.04.100-.190, all references to the "Liaison Officer" shall mean the Executive Officer, unless the Executive Officer has designated another~~

individual as the "Liaison Officer," in which case the individual so designated shall perform the functions required by the MBE Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the MBE Program, and for disseminating information on available business opportunities so that MBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the MBE Program.

(c) The Liaison Officer shall begin immediately to design a technical assistance and outreach program which shall be established by ~~September 1, 1992~~ January 1, 1993. This program shall include at least the following elements:

- (1) A regularly-scheduled contractor orientation program to promote compliance with and understanding of the provisions of the MBE Program and Metro.
- (2) Feasible options for bonding, insurance, and banking assistance for MBEs.
- (3) A program designed to assist Metro departments in enhancing opportunities for MBEs.
- (4) A fully-developed and maintained resource list to include all available resources for MBEs.
- (5) A system for agency-wide reporting of MBE outreach efforts and accomplishments.

(d) The Liaison Officer shall have the responsibility for monitoring implementation of the requirements of the MBE Program and shall have the power to request from Metro departments, bidders/proposers, and/or contractors any relevant records, information and documents.

(e) The Liaison Officer shall be responsible for gathering all information concerning compliance with this chapter and shall have access to all pertinent Metro records.

2.04.125 Directory: A directory of MBEs certified by the Executive Department shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet the MBE Program requirements.

2.04.130 Minority-Owned Banks: Metro will seek to identify minority-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

2.04.135 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate MBE participation in contracting activities. These techniques include:

- (a) Making affirmative efforts to solicit proposals from MBEs.
- (b) Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by MBEs.
- (c) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of MBEs.
- (d) Referring MBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (e) Carrying out specific information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual, and in conformance with any requirements of the Americans with Disabilities Act, where appropriate.
- (f) Distribution of copies of the MBE Program to organizations and individuals concerned with MBE programs.
- (g) Periodic reviews with department heads to ensure that they are aware of the MBE Program goals and desired activities on their parts to facilitate the purposes of the MBE Program. Additionally, departmental efforts toward and success in meeting the purposes of the MBE Program shall be factors considered during annual performance evaluations of the department heads.
- (h) Monitoring and ensuring that MBE planning centers and likely MBE contractors are receiving requests for bids, proposals and quotes.
- (i) Distribution of lists to potential MBE contractors of the types of goods and services which Metro regularly purchases.
- (j) Advising potential MBE vendors that Metro does not certify MBE's, and directing them to the Executive Department.

(k) Specifying purchases by generic title rather than specific brand name whenever feasible.

(l) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential MBE participation in contracts. In an effort to become more knowledgeable regarding MBE resources, the committee shall also invite potential MBE contractors to attend selected meetings.

(m) Requiring that at least one MBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no MBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept in the appropriate files. For contracts over the dollar amounts indicated in this section, all ~~known~~ MBEs known to Metro in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(n) Requiring that all prospective bidders attend scheduled prebid conferences on all construction contracts with an estimated value of over ~~\$100,000~~ \$50,000.

(o) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are consistent with the MBE Program and designed to facilitate participation of MBEs in Metro contracting activities.

2.04.140 Certification of Minority Business Eligibility:

(a) To participate in the MBE Program, contractors, subcontractors and joint ventures must have been certified by the Executive Department as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a MBE. A prospective contractor or subcontractor must be certified as a MBE by the Executive Department or appear on its certification list prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible MBE. Metro will adhere to any applicable Recertification Rulings.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro.

2.04.145 Annual Minority Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual MBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, and procurement contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of MBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the MBE Program; and
- (4) Existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Metro will publish notice regarding proposed contract goals not later than ten (10) days prior to adoption of the goals.

2.04.150 Good Faith Efforts at Maximizing MBE Opportunities:

(a) Good faith efforts at maximizing MBE opportunities shall be required for construction contracts over \$50,000.

(b) At the discretion of the Liaison Officer, good faith efforts at maximizing MBE opportunities may be required for any other contract. This requirement shall be made in writing prior to the solicitation of bids for such contract.

(c) Where good faith efforts are required, the Liaison Officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts at maximizing MBE opportunities, as that term is defined in Section 2.04.160.

2.04.155 Contract Award Criteria:

(a) To be eligible for award of contracts subject to good faith efforts requirements, prime contractors must prove that they have made good faith efforts at maximizing MBE opportunities prior to the time bids are opened or proposal are due. Bidders/Proposers

are required to utilize the most current list of MBEs certified by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which good faith efforts requirements have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they have made good faith efforts as defined in Section 2.04.160. To document good faith efforts, all bidders and proposers shall complete and endorse a Minority Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a MBE in which the MBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) ~~Apparent low Bidders/proposers shall, by the close of the next working day following bid opening at the time of bid opening,~~ (or proposal submission date when no public opening is had), submit to Metro detailed MBE Utilization Forms listing names of MBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and MBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The MBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that good faith efforts at maximizing MBE opportunities were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will show good faith efforts at maximizing MBE opportunities, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of good faith efforts as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law. Any such waivers shall be in writing, and shall be kept in the appropriate files.

2.04.160 Definition and Determination of Good Faith Efforts:

(a) Good Faith Efforts by Metro: Metro, through its Liaison Officer, shall make good faith efforts to maximize MBE opportunities on locally-funded contracts to which good faith efforts requirements apply, including the following:

- (1) ~~Identifying and selecting specific economically feasible units of the project to be performed by MBEs to increase the likelihood of participation by such enterprises;~~ Identifying project elements for which a significant minority capability exists for execution and/or a significant interest by minority firms has been expressed and directing that contractors define economically feasible units as a part of their subcontracting plan which address these identified or targeted project elements;
- (2) Advertising in, at a minimum, one newspaper of general circulation, one minority-oriented publication, and one trade-oriented publication. The advertisement must announce subcontracting or material supply opportunities on the project at least ten (10) days before bids or proposals are due;
- (3) Providing written notice soliciting subbids/proposals to not less than a reasonable number of MBEs for each subcontracting or material supply work item selected pursuant to (1) above not less than ten (10) days before bids/proposals are due.

If there are less than three certified MBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of MBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

- (4) Using the services of minority community organizations, including at least two minority contractor groups, local, state and federal minority business assistance offices or other organizations identified by the Executive Department that provide assistance in the recruitment and

placement of MBEs; where applicable, advising and assisting MBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by MBEs.

The Liaison Officer shall maintain adequate documentation of all of Metro's good faith efforts.

(b) Good Faith Efforts by Bidders/Proposers: Bidders or proposers on locally-funded contracts to which good faith efforts requirements apply shall demonstrate that they have made good faith efforts at maximizing MBE opportunities. Performing and documenting all of the following actions constitutes a rebuttable presumption that the bidder has made good faith efforts as required by Metro's MBE Program:

- (1) Identifying and incorporating in the subcontracting plan specific economically feasible units which may be performed by MBEs to increase the likelihood of participation of such enterprises;

Documentation Required: Identification of selected economically feasible units in subcontracting plan; inclusion of Metro targeted units mandatory.

- (2) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform MBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (3) Making, not later than five days before bids/proposals are due, follow-up phone calls to all MBEs who attended any pre-solicitation or prebid meetings that were scheduled by Metro, to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each MBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where MBE bids were rejected, the dollar amount of the bid rejected from the MBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (4) Providing those MBEs expressing an interest with information about the plans, specifications and the requirements for the identified subcontracting or material supply work. This may be satisfied by a referral to a plan center.
- (5) Negotiating with interested, capable and competitive MBEs submitting bids and not rejecting any bids without justification. Bid shopping is prohibited.
- (6) If Metro or the bidder/proposer requires bonding, lines of credit or insurance, notifying the MBE of this requirement and referring them to a potential source where this requirement may be met.

(c) The good faith efforts documented by the bidder/proposer must be certified to be reasonably expected to produce participation in this project by capable and competitive MBEs.

(d) Bid invitations will contain a MBE Program compliance form for recording and documenting the completion of the above-listed actions. Completion of the form and documentation of the above-listed actions, 1 through 56, is mandatory. Failure to complete and submit the form and/or any required documentation will result in the bid being rejected as nonresponsive. The Liaison Officer shall determine, if necessary, whether good faith efforts have been met pursuant to the criteria of the MBE Program by verifying the documentation of the lowest responsible bidder.

(e) A bidder/proposer who contracts with Metro shall not discriminate against MBEs in the awarding of subcontracts. A contractor's good faith efforts at maximizing MBE opportunities must be reasonably expected by the contractor to produce participation by MBEs. Contractor shall certify as part of the bid 31-documents accompanying the bid on a public contract that the contractor has not discriminated against MBEs in obtaining any required subcontracts and that the contractor reasonably expected the above-documented good faith efforts to result in participation by MBEs. Example of certifying statement: By signing this document bidder hereby certifies that bidder has not discriminated against MBEs in obtaining any subcontracts for this project, and that the documented good faith efforts of bidder/proposer at maximizing MBE opportunities were reasonably expected to result in participation of MBEs in this project in compliance with Metro's MBE Program.

(f) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which good faith efforts apply need not accept the bid of a MBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the MBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

(g) Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made good faith efforts if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

2.04.165 Replacement of MBE Subcontractors: Prime contractors shall not replace a MBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior notice to Metro. Prime contractors who replace a MBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

2.04.170 Monitoring, Records and Reports:

(a) Metro, through the Liaison Officer, shall develop and maintain a recordkeeping system to identify and assess MBE contract awards, and prime contractors' progress in demonstrating good faith efforts. Specifically, the following records will be maintained:

- (1) The name of the contractor.
- (2) Awards to MBEs by number, percentage and dollar amount.
- (3) A description of the types of contracts awarded to MBEs.
- (4) The extent to which good faith efforts were demonstrated and reasons therefor.
- (5) The extent to which annual contract goals were met or not and the reasons therefor.
- (6) Any other information the Liaison Officer deems necessary.

(b) All MBE records will be separately maintained.

(c) The Liaison Officer shall prepare reports, at least semiannually, detailing performance of the MBE Program. The reports shall be forwarded to the Metro Council no later than January 1 and June 30 of each year, and shall include at least the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;

- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to MBE firms in the reporting period;
- (5) Statistics, and narrative where appropriate, demonstrating the utilization of MBEs by department and contract category;
- (6) Statistics, and narrative, where appropriate, demonstrating the extent to which annual contract goals have been met or not met;
- (7) Statistics, and narrative where appropriate, demonstrating the number and type of waivers granted;
- (8) Explanations of any investigative actions taken by any administrative agency touching on the implementation, monitoring and enforcement of the MBE Program.
- (9) Descriptions of any problems in the implementation reported by the department, including proposed solutions; and
- (10) Recommendations, as appropriate, regarding amendments to this MBE Program, including recommendations on changes needed to meet annual contract goals, if those goals have not been met.

2.04.180 Compliance:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to good faith efforts on MBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, additional documented proof from the contractor of good faith efforts.

2.04.190 Severability and Intent:

(a) The provisions of the MBE Program shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of the MBE Program are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of the MBE Program or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of the MBE Program, or the validity of its application to other persons or circumstances.

(b) The MBE Program is intended, and should be construed, as establishing and requiring the maximum efforts at assuring MBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law."

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"2.04.200 Women Business Enterprise Program (WBE Program) For Locally-Funded Contracts, Findings, Purpose and Authority:

(a) The Metro Council supports the aspirations of women to enter the mainstream of social, political and economic life.

(b) The Metro Council finds:

- (1) The opportunity for full participation in our free enterprise system by women is essential;
- (2) Greater economic opportunity for women is essential;
- (3) Review of Metro programs to remedy historical patterns of exclusion of and discrimination against women is needed;
- (4) Public policies and programs to eliminate the effects of long-term, open and pervasive exclusion of and discrimination against women from the business sector, including increased opportunities to integrate women into the full economic life of the community should be reviewed; and
- (5) In cooperation with the private sector, the affected populations, interest-ed groups and appropriate governmental entities, a program of review should be established to recommend remedies for the unfortunate effects of social, political and economic inequity that still exist.

(c) It is the purpose of the WBE Program to establish and implement a program to encourage the utilization by Metro of women-owned businesses, to the greatest extent permitted by law, by creating for such businesses the maximum possible opportunity to compete for and participate in locally-funded Metro contracting activities. The WBE Program does not apply to federally funded contracts, which are governed by Metro Code 2.04.300 et seq. The WBE Program shall be administered simultaneously and in addition to the provisions of Metro Code Sections 2.04.100-.190.

(d) Metro Code Sections 2.04.200 to 2.04.290 shall be known and may be cited as the "Metro Women Business Enterprise Program," hereinafter referred to as the "WBE Program."

2.04.205 Policy Statement:

(a) Through this WBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to WBEs in contracting; and
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the locally-funded projects, programs and services of Metro. Metro and Metro contractors shall not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by the WBE Program shall apply to all Metro departments, commissions and project areas except as expressly provided herein.

(d) The objectives of the WBE Program shall be:

- (1) To assure that provisions of the WBE Program are adhered to by all Metro departments, contractors, and employees; and
- (2) To initiate and maintain efforts to increase, to the greatest extent permitted by law, program participation by women businesses.

2.04.210 Definitions: For purposes of Metro Code Sections 2.04.200 to 2.04.290, the following definitions shall apply:

(a) "Capable" means a Women Business Enterprise registered with the Executive Department who upon request from the bidder can supply two favorable references of prior work of the type being subcontracted for.

(b) "Competitive" means the subcontract bid submitted by the Women Business Enterprise was within 10 percent of either the budgeted amount, subbid estimate, or the lowest bid received by the bidder. ~~The bidder shall make one of these figures available upon request. The bidder shall make either the budgeted amount or the subbid estimate available upon request.~~ This term relates to price only and must not be interpreted to mean that a bid deemed competitive is therefore entitled to the subcontract award.

(c) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(d) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the WBE Program a lease or a purchase order of \$500.00 or more is a contract.

(e) "Contractor" means the one who participates, through a contract or subcontract, in the WBE Program and includes lessees.

(f) "Documentation" means written materials purporting to establish the satisfaction of a good faith effort requirement that are capable of verification. These may include, but are not limited to, copies of business logs, correspondence or newspaper ads.

(g) "Economically Feasible Unit" means a unit of work identified in a project suitable for subcontracting in the normal course of business. These would be units that a contractor would ordinarily identify as suitable for performance by a subcontractor. The intent here is to have identified units that would be attractive to a serious and qualified subcontractor and not be shunned by that subcontractor because the unit of work is too small to be profitable.

(h) "Executive Department" means the State of Oregon's Executive Department.

(i) "Interested" means a Women Business Enterprise that has expressed to Metro and/or the bidder an interest in learning more about the project identified in the initial solicitation by the bidder.

(j) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a WBE and non-WBE, the WBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a WBE and a non-WBE must receive Metro approval prior to contract award.

(k) "Justification" means a maintaining or showing of a sufficient reason why an action was taken and that the action was not taken for an impermissible reason. Permissible reasons include, but are not limited to, not meeting bid invitation specifications or not being the low bid. An impermissible reason would be one that is arbitrary or capricious or based on race, sex, national origin, marital status or religion.

(l) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(m) "Lessee" means a business or person that leases, or is negotiating to lease, property from Metro or an actual or potential Metro contractor on Metro's or the contractor's facility for the purpose of operating a transportation-related activity, or for the provision of goods or services to the facility or to the public at the facility.

(n) "Women Business Enterprise or WBE" means a small business concern which is certified as such by the Executive Department and:

- (1) Which is at least 51 percent owned by one or more women, or, in the case of any publicly-owned business, at least 51 percent of the stock of which is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more of the women who own it.

(o) "Woman" or "Women" has the meaning established by ORS 200.005(7).

(p) "Negotiate" means to engage in good faith discussions with the potential subcontractors about their proposals/bids, and the work for which a bid is sought, including sharing with them any cost estimates from the request for proposal or invitation to bid documents, if available.

(q) "Personal Services Contract" means a contract for services of a personal or professional nature.

(r) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(s) "Reasonable Number" means at least three (3) firms of those WBEs certified as such by the Executive Department, or a greater number of such firms, if so specified in any particular contract by the Liaison Officer. Consideration should be given to the specialty of subcontracting or materials supply desired as well as the location of the project and whether or not the subcontractor is willing to perform work out of their geographic area.

(t) "Rebuttable Presumption" means a presumption which may be rebutted, or disproved, by evidence.

(u) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

2.04.215 Notice to Contractors and Subcontractors: Contractors of Metro accepting locally-funded contracts under the WBE Program shall be advised that failure to carry out the

applicable provisions of the WBE Program shall constitute a breach of contract and, after notification by Metro, may result in termination or such other remedy as Metro deems appropriate.

2.04.220 Liaison Officer:

(a) ~~The Executive Officer shall, by executive order, designate a WBE Liaison Officer and, if necessary, other staff adequate to administer the WBE Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the WBE Program. The Executive Officer shall be responsible for administering the WBE Program. The Executive Officer may, by Executive Order, designate a Liaison Officer and, if necessary, other staff adequate to administer the WBE Program on the Executive's behalf. For purposes of Metro Code Sections 2.04.200-.290, all references to the "Liaison Officer" shall mean the Executive Officer, unless the Executive Officer has designated another individual as the "Liaison Officer," in which case the individual so designated shall perform the functions required by the WBE Program.~~

(b) The Liaison Officer shall be responsible for developing, managing and implementing the WBE Program, and for disseminating information on available business opportunities so that WBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the WBE Program.

(c) The Liaison Officer shall begin immediately to design a technical assistance and outreach program which shall be established by ~~September 1, 1992~~ January 1, 1993. This program shall include at least the following elements:

- (1) A regularly-scheduled contractor orientation program to promote compliance with and understanding of the provisions of the WBE Program and Metro.
- (2) Feasible options for bonding, insurance, and banking assistance for WBEs;
- (3) A program designed to assist Metro departments in enhancing opportunities for WBEs;
- (4) A fully-developed and maintained resource list to include all available resources for WBEs.
- (5) A system for agency-wide reporting of WBE outreach efforts and accomplishments.

(d) The Liaison Officer shall have the responsibility for monitoring implementation of the requirements of the WBE Program and shall have the power to request from Metro departments, bidders/proposers, and/or contractors any relevant records, information and documents.

(e) The Liaison Officer shall be responsible for gathering all information concerning compliance with this chapter and shall have access to all pertinent Metro records.

2.04.225 Directory: A directory of WBEs certified by the Executive Department shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet the WBE Program requirements.

2.04.230 Women-Owned Banks: Metro will seek to identify women-owned banks and banks utilizing equal opportunity banking practices, including community reinvestment, and, to the greatest extent permitted by law, use their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on such banks.

2.04.235 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate WBE participation in contracting activities. These techniques include:

- (a) Making affirmative efforts to solicit proposals from WBEs.
- (b) Examining alternatives for arranging contracts by size and type of work so as to enhance the possibility of participation by WBEs.
- (c) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of WBEs.
- (d) Referring WBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (e) Carrying out specific information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual, and in conformance with any requirements of the Americans with Disabilities Act, where appropriate.
- (f) Distribution of copies of the WBE Program to organizations and individuals concerned with WBE programs.

(g) Periodic reviews with department heads to ensure that they are aware of the WBE Program goals and desired activities on their parts to facilitate the purposes of the WBE Program. Additionally, departmental efforts toward and success in meeting the purposes of the WBE Program shall be factors considered during annual performance evaluations of the department heads.

(h) Monitoring and ensuring that WBE planning centers and likely WBE contractors are receiving requests for bids, proposals and quotes.

(i) Distribution of lists to potential WBE contractors of the types of goods and services which Metro regularly purchases.

(j) Advising potential WBE vendors that Metro does not certify WBE's, and directing them to the Executive Department.

(k) Specifying purchases by generic title rather than specific brand name whenever feasible.

(l) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential WBE participation in contracts. In an effort to become more knowledgeable regarding WBE resources, the committee shall also invite potential WBE contractors to attend selected meetings.

(m) Requiring that at least one WBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no WBEs on the certification list capable of providing the service or item. Any such waivers shall be in writing, and shall be kept in the appropriate files. For contracts over the dollar amounts indicated in this section, all known WBEs known to Metro in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(n) Requiring that all prospective bidders attend scheduled prebid conferences on all construction contracts with an estimated value of over ~~\$100,000~~ \$50,000.

(o) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are consistent with the WBE Program and designed to facilitate participation of WBEs in Metro contracting activities.

2.04.240 Certification of Women Business Eligibility:

(a) To participate in the WBE Program, contractors, subcontractors and joint ventures must have been certified by the Executive Department as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a WBE. A prospective contractor or subcontractor must be certified as a WBE by the Executive Department or appear on its certification list prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible WBE. Metro will adhere to any applicable Recertification Rulings.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro.

2.04.245 Annual Women Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual WBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, and procurement contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of WBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the WBE Program; and
- (4) Existing goals of other Portland metropolitan area contracting agencies, and their experience in meeting these goals.

(c) Metro will publish notice regarding proposed contract goals not later than ten (10) days prior to adoption of the goals.

2.04.250 Good Faith Efforts at Maximizing WBE Opportunities

(a) Good faith efforts at maximizing WBE opportunities shall be required for construction contracts over \$50,000.

(b) At the discretion of the Liaison Officer, good faith efforts at maximizing WBE opportunities may be required for any other contract. This requirement shall be made in writing prior to the solicitation of bids for such contract.

(c) Where good faith efforts are required, the Liaison Officer shall direct the inclusion of a clause in any RFP or bid documents which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts at maximizing WBE opportunities, as that term is defined in Section 2.04.160.

2.04.255 Contract Award Criteria:

(a) To be eligible for award of contracts subject to good faith efforts requirements, prime contractors must prove that they have made good faith efforts at maximizing WBE opportunities prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of WBEs certified by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which good faith efforts requirements have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they have made good faith efforts as defined in Section 2.04.160. To document good faith efforts, all bidders and proposers shall complete and endorse a Women Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a WBE in which the WBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) ~~Apparent low Bidders/proposers shall, by the close of the next working day following bid opening at the time of bid opening,~~ (or proposal submission date when no public opening is had), submit to Metro detailed WBE Utilization Forms listing names of WBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and WBE subcontractors and suppliers to be utilized

in performance of the contract. A sample Letter of Agreement will be provided by Metro. The WBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that good faith efforts at maximizing WBE opportunities were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will show good faith efforts at maximizing WBE opportunities, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of good faith efforts as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law. Any such waivers shall be in writing, and shall be kept in the appropriate files.

2.04.260 Definition and Determination of Good Faith Efforts:

(a) Good Faith Efforts by Metro: Metro, through its Liaison Officer, shall make good faith efforts to maximize WBE opportunities on locally-funded contracts to which good faith efforts requirements apply, including the following:

- (1) Identifying and selecting specific economically feasible units of the project to be performed by WBEs to increase the likelihood of participation by such enterprises; Identifying project elements for which a significant minority capability exists for execution and/or a significant interest by minority firms has been expressed and directing that contractors define economically feasible units as a part of their subcontracting plan which address these identified or targeted project elements;
- (2) Advertising in, at a minimum, one newspaper of general circulation, one minority-oriented publication, and one trade-oriented publication. The advertisement must announce subcontracting or material supply

opportunities on the project at least ten (10) days before bids or proposals are due;

- (3) Providing written notice soliciting subbids/proposals to not less than a reasonable number of WBEs for each subcontracting or material supply work item selected pursuant to (1) above not less than ten (10) days before bids/proposals are due.

If there are less than three certified WBEs listed for that work or supply specialty then the solicitation must be mailed to at least the number of WBEs listed for that specialty. The solicitation shall include a description of the work for which subcontract bids/proposals are requested and complete information on bid/proposal deadlines along with details regarding where project specifications may be reviewed.

- (4) Using the services of women community organizations, including women contractor groups, local, state and federal business assistance offices or other organizations identified by the Executive Department that provide assistance in the recruitment and placement of WBEs; where applicable, advising and assisting WBEs in obtaining lines of credit or insurance required by Metro or the bidder/proposer; and, otherwise, making efforts to encourage participation by WBEs.

The Liaison Officer shall maintain adequate documentation of all of Metro's good faith efforts.

(b) Good Faith Efforts by Bidders/Proposers: Bidders or proposers on locally-funded contracts to which good faith efforts requirements apply shall demonstrate that they have made good faith efforts at maximizing WBE opportunities. Performing and documenting all of the following actions constitutes a rebuttable presumption that the bidder has made good faith efforts as required by Metro's WBE Program:

- (1) Identifying and incorporating in the subcontracting plan specific economically feasible units which may be performed by WBEs to increase the likelihood of participation of such enterprises;

Documentation Required: Identification of selected economically feasible units in subcontracting plan; inclusion of Metro targeted units mandatory.

- (2) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform WBEs of contracting and subcontracting or material supply opportunities available on the project;

Documentation required: Signature of representative of bidder or proposer on prebid meeting attendance sheet.

- (3) Making, not later than five days before bids/proposals are due, follow-up phone calls to all WBEs who attended any pre-solicitation or prebid meetings that were scheduled by Metro, to determine if they would be submitting bids and/or to encourage them to do so.

Minimum documentation required: Log showing a) dates and times of follow-up calls along with names of individuals contacted and individuals placing the calls; and b) results attained from each WBE to whom a solicitation letter was sent (e.g., bid submitted, declined, no response). In instances where WBE bids were rejected, the dollar amount of the bid rejected from the WBE must be indicated along with the reason for rejection and the dollar amount of the bid which was accepted for that subcontract or material supply item.

- (4) Providing those WBEs expressing an interest with information about the plans, specifications and the requirements for the identified subcontracting or material supply work. This may be satisfied by a referral to a plan center.
- (5) Negotiating with interested, capable and competitive WBEs submitting bids and not rejecting any bids without justification. Bid shopping is prohibited.
- (6) If Metro or the bidder/proposer requires bonding, lines of credit or insurance, notifying the WBE of this requirement and referring them to a potential source where this requirement may be met.

(c) The good faith efforts documented by the bidder/proposer must be certified to be reasonably expected to produce participation in this project by capable and competitive WBEs.

(d) Bid invitations will contain a WBE Program compliance form for recording and documenting the completion of the above-listed actions. Completion of the form and documentation of the above-listed actions, 1 through 56, is mandatory. Failure to complete and submit the form and/or any required documentation will result in the bid being rejected as nonresponsive. The Liaison Officer shall determine, if necessary, whether good faith efforts have been met pursuant to the criteria of the WBE Program by verifying the documentation of the lowest responsible bidder.

(e) A bidder/proposer who contracts with Metro shall not discriminate against WBEs in the awarding of subcontracts. A contractor's good faith efforts at maximizing WBE opportunities must be reasonably expected by the contractor to produce participation by WBEs. Contractor shall certify as part of the bid documents accompanying the bid on a public contract that the contractor has not discriminated against WBEs in obtaining any required subcontracts and that the contractor reasonably expected the above-documented good faith efforts to result in participation by WBEs. Example of certifying statement: By signing this document bidder hereby certifies that bidder has not discriminated against WBEs in obtaining any subcontracts for this project, and that the documented good faith efforts of bidder/proposer at maximizing WBE opportunities were reasonably expected to result in participation of WBEs in this project in compliance with Metro's WBE Program.

(f) Notwithstanding any other provision of this section, bidders and proposers on locally-funded contracts to which good faith efforts apply need not accept the bid of a WBE on any particular subcontract or material supply item if the bidder/proposer demonstrates that none of the WBEs submitting bids were the lowest responsible, responsive and qualified bidders/proposers on that particular subcontract item and that the subcontract item was awarded to the lowest responsible, responsive bidder/proposer.

(g) Metro reserves the right to require additional written documentation of good faith efforts and bidders and proposers shall comply with all such requirements by Metro. It shall be a rebuttable presumption that a bidder or proposer has made good faith efforts if the bidder has performed and submits written documentation of all of the above actions. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not performed or has not submitted documentation of all of the above actions.

2.04.265 Replacement of WBE Subcontractors: Prime contractors shall not replace a WBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior notice to Metro. Prime contractors who replace a WBE subcontractor shall make good faith efforts as described in the preceding section in selecting a replacement.

2.04.270 Monitoring, Records and Reports:

(a) Metro, through the Liaison Officer, shall develop and maintain a recordkeeping system to identify and assess WBE contract awards, and prime contractors' progress in demonstrating good faith efforts. Specifically, the following records will be maintained:

- (1) The name of the contractor.
- (2) Awards to WBEs by number, percentage and dollar amount.

- (3) A description of the types of contracts awarded to WBEs.
 - (4) The extent to which good faith efforts were demonstrated and reasons therefor.
 - (5) The extent to which annual contract goals were met or not and the reasons therefor.
 - (6) Any other information the Liaison Officer deems necessary.
- (b) All WBE records will be separately maintained.
- (c) The Liaison Officer shall prepare reports, at least semiannually, detailing performance of the WBE Program. The reports shall be forwarded to the Metro Council no later than January 31 and June 30 of each year, and shall include at least the following:
- (1) The number of contracts awarded;
 - (2) Categories of contracts awarded;
 - (3) Dollar value of contracts awarded;
 - (4) Percentage of the dollar value of all contracts awarded to WBE firms in the reporting period;
 - (5) Statistics, and narrative where appropriate, demonstrating the utilization of WBEs by department and contract category;
 - (6) Statistics, and narrative, where appropriate, demonstrating the extent to which annual contract goals have been met or not met;
 - (7) Statistics, and narrative where appropriate, demonstrating the number and type of waivers granted;
 - (8) Explanations of any investigative actions taken by any administrative agency touching on the implementation, monitoring and enforcement of the WBE Program.
 - (9) Descriptions of any problems in the implementation reported by the department, including proposed solutions; and

- (10) Recommendations, as appropriate, regarding amendments to this WBE Program, including recommendations on changes needed to meet annual contract goals, if those goals have not been met.

2.04.280 Compliance:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to good faith efforts on WBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, additional documented proof from the contractor of good faith efforts.

2.04.290 Severability and Intent:

(a) The provisions of the WBE Program shall be effective in all cases unless otherwise provided for by state or federal law. The provisions of the WBE Program are separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of the WBE Program or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of the WBE Program, or the validity of its application to other persons or circumstances.

(b) The WBE Program is intended, and should be construed, as establishing and requiring the maximum efforts at assuring WBE participation in Metro contracting activities that is consistent with the United States and Oregon Constitutions and applicable federal and state law."

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"2.04.300 Disadvantaged Business Enterprise Program (DBE Program) For Federally-Funded Contracts, Findings, Purpose and Authority:

(a) It is the purpose of Metro Code Sections 2.04.300 to 2.04.390 to establish and implement a program to encourage the utilization by Metro of disadvantaged businesses by creating for such businesses the maximum possible opportunity to compete for and participate in federally-funded Metro contracting activities. The DBE Program does not apply to locally funded contracts, which are governed by 2.04.100, .200, and .400 et seq.

(b) Metro Code Sections 2.04.300 to 2.04.390 are adopted pursuant to 49 CFR 23 and are intended to comply with all relevant federal regulations. Federal regulation 49 CFR 23 and its amendments implement section (105)(f) of the Surface Transportation Assistance Act of 1982 relating to the participation by Minority Business Enterprises in Department of Transportation programs.

(c) Metro Code Sections 2.04.300 to 2.04.390 shall be known and may be cited as the "Metro Disadvantaged Business Enterprise Program for Federally-Funded Contracts," hereinafter referred to as the "DBE Program."

2.04.305 Policy Statement:

(a) Through the DBE Program, Metro:

- (1) Expresses its strong commitment to provide maximum opportunity to disadvantaged businesses in contracting;
- (2) Informs all employees, governmental agencies and the general public of its intent to implement this policy statement; and
- (3) Assures conformity with applicable federal regulations as they exist or may be amended.

(b) It is the policy of Metro to provide equal opportunity to all persons to access and participate in the projects, programs and services of Metro. Metro and Metro contractors will not discriminate against any person or firm on the basis of race, color, national origin, sex, sexual orientation, age, religion, physical handicap, political affiliation or marital status.

(c) The policies, practices and procedures established by the DBE Program shall apply to all Metro departments and project areas except as expressly provided in the DBE Program.

(d) The objectives of the DBE Program shall be:

- (1) To assure that provisions of the DBE Program are adhered to by all Metro departments, contractors, employees and USDOT subrecipients and contractors.
- (2) To initiate and maintain efforts to increase DBE Program participation by disadvantaged businesses.

(e) Metro accepts and agrees to the statements of 49 CFR §23.43 (a)(1) and (2), and said statements shall be included in all USDOT agreements with USDOT subrecipients and in all USDOT-assisted contracts between Metro or USDOT subrecipients and any contractor.

2.04.310 Definitions: For purposes of the DEB Program, the following definitions shall apply:

(a) "Applicant" means one who submits an application, request or plan to be approved by a USDOT official or by Metro as a condition to eligibility for Department of Transportation (USDOT) financial assistance; and "application" means such an application, request or plan.

(b) "Construction Contract" means a contract for construction of buildings or other facilities, and includes reconstruction, remodeling and all activities which are appropriately associated with a construction project.

(c) "Contract" means a mutually binding legal relationship or any modification thereof obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them. For purposes of the DBE Program a lease or a purchase order of \$500.00 or more is a contract.

(d) "Contractor" means the one who participates, through a contract or subcontract, in the DBE Program and includes lessees.

(e) "Department or USDOT" means the United States Department of Transportation, including its operating elements.

(f) "Disadvantaged Business Enterprise or DBE" means a small business concern which is so certified by an authorized agency and:

- (1) Which is at least 51 percent owned by one or more socially or economically disadvantaged individuals, or, in the case of any publicly-owned

business, at least 51 percent of the stock of which is owned by one or more socially or economically disadvantaged individuals; and

- (2) Whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it.

(g) "Executive Department" means the State of Oregon's Executive Department.

(h) "Joint Venture" is defined as an association of two or more businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and knowledge. In a joint venture between a DBE and non-DBE, the DBE must be responsible for a clearly defined portion of the work to be performed and must share in the ownership, control, management responsibilities, risks and profits of the joint venture. A joint venture of a DBE and a non-DBE must receive Metro approval prior to contract award to be counted toward any DBE contract goals.

(i) "Labor and Materials Contract" is a contract including a combination of service and provision of materials other than construction contracts. Examples may include plumbing repair, computer maintenance or electrical repair, etc.

(j) "Lessee" means a business or person that leases, or is negotiating to lease, property from a recipient or the Department on the recipient's or Department's facility for the purpose of operating a transportation-related activity or for the provision of goods or services to the facility or to the public on the facility.

(k) "Oregon Department of Transportation or ODOT" means the State of Oregon's Department of Transportation.

(l) "Personal Services Contract" means a contract for services of a personal or professional nature.

(m) "Procurement Contract" means a contract for the purchase or sale of supplies, materials, equipment, furnishings or other goods not associated with a construction or other contract.

(n) "Recipient" means any entity, public or private, to whom USDOT financial assistance is extended, directly or through another recipient for any program.

(o) "Small Business Concern" means a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

(p) "Socially or Economically Disadvantaged Individuals or Disadvantaged Individuals" has the meaning established by ORS 200.005(2), (9), including the rebuttable presumption established by ORS 200.015(3), and the definitions supplied by ORS 200.005(7), (10).

(q) "USDOT-Assisted Contract" means any contract or modification of a contract between Metro and a contractor which is paid for in whole or in part with USDOT financial assistance.

(r) "USDOT Financial Assistance" means financial aid provided by USDOT or the United States Railroad Association to a recipient, but does not include a direct contract. The financial aid may be provided directly in the form of actual money, or indirectly in the form of guarantees authorized by statute as financial assistance services of Federal personnel, title or other interest in real or personal property transferred for less than fair market value, or any other arrangement through which the recipient benefits financially, including licenses for the construction or operation of a Deep Water Port.

2.04.315 Notice to Contractors, Subcontractors and Subrecipients: Contractors, subcontractors and subrecipients of Metro accepting contracts or grants under the DBE Program which are USDOT-assisted shall be advised that failure to carry out the requirements set forth in 49 CFR 23.43(a) shall constitute a breach of contract and, after notification by Metro, may result in termination of the agreement or contract by Metro or such remedy as Metro deems appropriate.

2.04.320 Liaison Officer:

(a) The Executive Officer shall by executive order, designate a Disadvantaged Business Liaison Officer and, if necessary, other staff adequate to administer the DBE Program. The Liaison Officer shall report directly to the Executive Officer on matters pertaining to the DBE Program.

(b) The Liaison Officer shall be responsible for developing, managing and implementing the DBE Program, and for disseminating information on available business opportunities so that DBEs are provided an equitable opportunity to bid on Metro contracts. In addition to the responsibilities of the Liaison Officer, all department heads and program managers shall have responsibility to assure implementation of the DBE Program.

2.04.325 Directory: A directory of DBEs and certified by ODOT or the Executive Department, as applicable shall be maintained by the Liaison Officer to facilitate identifying such businesses with capabilities relevant to general contracting requirements and particular solicitations. The directory shall be available to contract bidders and proposers in their efforts to meet DBE Program requirements.

2.04.330 DBE-Owned Banks: Metro will seek to identify DBE-owned banks within the policies adopted by the Metro Council and make the greatest feasible use of their services. In addition, Metro will encourage prime contractors, subcontractors and consultants to utilize such services by sending them brochures and service information on certified DBE banks.

2.04.335 Affirmative Action and Equal Opportunity Procedures: Metro shall use affirmative action techniques to facilitate DBE and participation in contracting activities. These techniques include:

- (a) Arranging solicitations, time for the presentation of bids, quantities specifications, and delivery schedules so as to facilitate the participation of DBEs.
- (b) Referring DBEs in need of management assistance to established agencies that provide direct management assistance to such businesses.
- (c) Carrying out information and communications programs on contracting procedures and specific contracting opportunities in a timely manner, with such programs being bilingual where appropriate.
- (d) Distribution of copies of the DBE Program to organizations and individuals concerned with DBE Programs.
- (e) Periodic reviews with department heads to insure that they are aware of the DBE Program goals and desired activities on their parts to facilitate reaching the goals. Additionally, departmental efforts toward and success in meeting DBE goals for department contracts shall be factors considered during annual performance evaluations of the department heads.
- (f) Monitor and insure that Disadvantaged planning centers and likely DBE contractors are receiving requests for bids, proposals and quotes.
- (g) Study the feasibility of certain USDOT-assisted contracts and procurements being set aside for DBE participation.
- (h) Distribution of lists to potential DBE contractors of the types of goods and services which Metro regularly purchases.
- (i) Advising potential DBE vendors that Metro does not certify DBEs, and directing them to ODOT until December 31, 1987, and, thereafter, to the Executive Department.
- (j) Specifying purchases by generic title rather than specific brand name whenever feasible.

(k) Establishing an interdepartmental contract management committee which will meet regularly to monitor and discuss, among other issues, potential DBE participation in contracts. In an effort to become more knowledgeable regarding DBE resources, the committee shall also invite potential DBE contractors to attend selected meetings.

(l) Requiring that at least one DBE vendor or contractor be contacted for all contract awards which are not exempt from Metro's contract selection procedures and which are 1) for more than \$500 but not more than \$15,001 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than \$10,001 for personal services contracts. The Liaison Officer may waive this requirement if he/she determines that there are no DBEs on the certification list capable of providing the service or item. For contracts over the dollar amounts indicated in this section, all known DBEs in the business of providing the service or item(s) required shall be mailed bid or proposal information.

(m) The Executive Officer or his/her designee, may establish and implement additional affirmative action techniques which are designed to facilitate participation of DBEs in Metro contracting activities.

2.04.340 Certification of Disadvantaged Business Eligibility:

(a) To participate in the DBE Program as a DBE, contractors, subcontractors and joint ventures must have been certified by an authorized certifying agency as described in subsection (b) of this section.

(b) Metro will not perform certification or recertification of businesses or consider challenges to socially and economically disadvantaged status. Rather Metro will rely upon the certification and recertification processes of ODOT and will utilize ODOT's certification list until December 31, 1987, and, thereafter, the Executive Department's list in determining whether a prospective contractor or subcontractor is certified as a DBE. A prospective contractor or subcontractor must be certified as a DBE by one of the above agencies, as applicable, and appear on the respective certification list of said agency, prior to the pertinent bid opening or proposal submission date to be considered by Metro to be an eligible DBE and be counted toward meeting goals. Metro will adhere to the Recertification Rulings resulting from 105(f) or state law, as applicable.

(c) Prospective contractors or subcontractors which have been denied certification by one of the above agencies may appeal such denial to the certifying agency pursuant to applicable law. However, such appeal shall not cause a delay in any contract award by Metro. Decertification procedures for USDOT-assisted contractor or potential contractors will comply with the requirements of Appendix A "Section by Section Analysis" of the July 21, 1983, Federal Register, Vol. 45, No. 130, p. 45287, and will be administered by the agency which granted certification.

(d) Challenges to certification or to any presumption of social or economic disadvantage with regard to the USDOT-assisted portion of the DBE Program, as provided for in 49 CFR 23.69, shall conform to and be processed under the procedures prescribed by each agency indicated in paragraph (b) of this section. That challenge procedure provides that:

- (1) Any third party may challenge the socially and economically disadvantaged status of any individual (except an individual who has a current 8(a) certification from the Small Business Administration) presumed to be socially and economically disadvantaged if that individual is an owner of a firm certified by or seeking certification from the certifying agency as a disadvantaged business. The challenge shall be made in writing to the recipient.
- (2) With its letter, the challenging party shall include all information available to it relevant to a determination of whether the challenged party is in fact socially and economically disadvantaged.
- (3) The recipient shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is in fact not socially and economically disadvantaged.
 - (i) if the recipient determines that there is not reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall so inform the challenging party in writing. This terminates the proceeding.
 - (ii) if the recipient determines that there is reason to believe that the challenged party is not socially and economically disadvantaged, the recipient shall begin a proceeding as provided in paragraphs (b), (4), (5) and (6) of this paragraph.
- (4) The recipient shall notify the challenged party in writing that his or her status as a socially and economically disadvantaged individual has been challenged. The notice shall identify the challenging party and summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the recipient, within a reasonable time, information sufficient to permit the recipient to evaluate his or her status as a socially and economically disadvantaged individual.
- (5) The recipient shall evaluate the information available to it and make a proposed determination of the social and economic disadvantage of the

challenged party. The recipient shall notify both parties of this proposed determination in writing, setting forth the reasons for its proposal. The recipient shall provide an opportunity to the parties for an informal hearing, at which they can respond to this proposed determination in writing and in person.

- (6) Following the informal hearing, the recipient shall make a final determination. The recipient shall inform the parties in writing of the final determination, setting forth the reasons for its decision.
- (7) In making the determinations called for in paragraphs (b)(3)(5) and (6) of this paragraph, the recipient shall use the standards set forth in Appendix C of this subpart.
- (8) During the pendency of a challenge under this section, the presumption that the challenged party is a socially and economically disadvantaged individual shall remain in effect." 49 CFR 23.69.

2.04.345 Annual Disadvantaged Business Goals:

(a) The Metro Council shall, by resolution each June, establish annual DBE goals for the ensuing fiscal year. Such annual goals shall be established separately for construction contracts, labor and materials contracts, personal services contracts, procurement contracts, and USDOT-assisted contracts regardless of type.

(b) Annual goals will be established taking into consideration the following factors:

- (1) Projection of the number and types of contracts to be awarded by Metro;
- (2) Projection of the number, expertise and types of DBEs likely to be available to compete for the contracts;
- (3) Past results of Metro's efforts under the DBE Program; and
- (4) Existing goals of other local USDOT recipients and their experience in meeting these goals.

(c) Annual goals for USDOT-assisted contracts must be approved by the United States Department of Transportation. 49 CFR §23.45(g)(3).

(d) Metro will publish notice that the USDOT-assisted contract goals are available for inspection when they are submitted to USDOT or other federal agencies. They will be made available for 30 days following publication of notice. Public comment will be accepted for 45 days following publication of the notice.

2.04.350 Contract Goals:

(a) The annual goals established for construction contracts shall apply as individual contract goals for construction contracts over \$50,000.

(b) The Liaison Officer may set a contract goal for any contract other than construction contracts over \$25,000. The setting of such contract goal shall be made in writing prior to the solicitation of bids for such contract. Contract goals for contracts other than construction contracts over \$50,000 shall be set at the discretion of the Liaison Officer and shall not be tied, necessarily, to the annual goal for such contract type.

(c) Even though no DBE goals are established at the time that bid/proposal documents are drafted, the Liaison Officer may direct the inclusion of a clause in any RFP or bid documents for any contract described in this section which requires that the prime contractor, prior to entering into any subcontracts, make good faith efforts, as that term is defined in Section 2.04.160, to achieve DBE participation in the same goal amount as the current annual goal for that contract type.

(d) Contract goals may be complied with pursuant to Section 2.04.360 or 2.04.375. The extent to which DBE participation will be counted toward contract goals is governed by the latter section.

2.04.355 Contract Award Criteria:

(a) To be eligible for award of contracts containing a DBE goal, prime contractors must either meet or exceed the specific goal for DBE participation, or prove that they have made good faith efforts to meet the goal prior to the time bids are opened or proposal are due. Bidders/Proposers are required to utilize the most current list of DBEs certified by the Executive Department, in all of the bidders'/proposers' good faith efforts solicitations. The address where certified lists may be obtained shall be included in all applicable bid/proposal documents.

(b) All invitations to bid or request for proposals on contracts for which goals have been established shall require all bidders/proposers to submit with their bids and proposals a statement indicating that they will comply with the contract goal or that they have made good faith efforts as defined in Section 2.04.360 to do so. To document the intent to meet the goals, all bidders and proposers shall complete and endorse a Disadvantaged

Business Program Compliance form and include said form with bid or proposal documents. The form shall be provided by Metro with bid/proposal solicitations.

(c) Agreements between a bidder/proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders/proposers are prohibited.

(d) Apparent low bidders/proposers shall, by the close of the next working day following bid opening (or proposal submission date when no public opening is had), submit to Metro detailed DBE Utilization Forms listing names of DBEs who will be utilized and the nature and dollar amount of their participation. This form will be binding upon the bidder/proposer. Within five working days of bid opening or proposal submission date, such bidders/proposers shall submit to Metro signed Letters of Agreement between the bidder/proposer and DBE subcontractors and suppliers to be utilized in performance of the contract. A sample Letter of Agreement will be provided by Metro. The DBE Utilization Forms shall be provided by Metro with bid/proposal documents.

(e) An apparent low bidder/proposer who states in its bid/proposal that the DBE goals were not met but that good faith efforts were performed shall submit written evidence of such good faith efforts within two working days of bid opening or proposal submission in accordance with Section 2.04.160. Metro reserves the right to determine the sufficiency of such efforts.

(f) Except as provided in paragraph (g) of this section, apparent low bidders or apparent successful proposers who state in their bids/proposals that they will meet the goals or will show good faith efforts to meet the goals, but who fail to comply with paragraph (d) or (e) of this section, shall have their bids or proposals rejected and shall forfeit any required bid security or bid bond. In that event the next lowest bidder or, for personal services contracts, the firm which scores second highest shall, within two days of notice of such ineligibility of the low bidder, submit evidence of goal compliance or good faith effort as provided above. This process shall be repeated until a bidder or proposer is determined to meet the provisions of this section or until Metro determines that the remaining bids are not acceptable because of amount of bid or otherwise.

(g) The Liaison Officer, at his or her discretion, may waive minor irregularities in a bidder's or proposer's compliance with the requirements of this section provided, however, that the bid or proposal substantially complies with public bidding requirements as required by applicable law.

2.04.360 Determination of Good Faith Efforts:

(a) Bidders or Proposers on USDOT-assisted contracts to which DBE goals apply must, to be eligible for contract award, comply with the applicable contract goal or show that good faith efforts have been made to comply with the goal. Good faith efforts should include

at least the following standards established in the amendment to 49 CFR §23.45(h), Appendix A, dated Monday, April 27, 1981. A showing of good faith efforts must include written evidence of at least the following:

- (1) Attendance at any pre-solicitation or prebid meetings that were scheduled by Metro to inform disadvantaged business enterprises of contracting and subcontracting or material supply opportunities available on the project;
- (2) Advertisement in trade association, general circulation, disadvantaged and trade-oriented, if any and through a disadvantaged-owned newspaper or disadvantaged-owned trade publication concerning the sub-contracting or material supply opportunities at least 10 days before bids or proposals are due.
- (3) Written notification to a reasonable number but no less than five (5) DBE firms that their interest in the contract is solicited. Such efforts should include the segmenting of work to be subcontracted to the extent consistent with the size and capability of DBE firms in order to provide reasonable subcontracting opportunities. Each bidder should send solicitation letters inviting quotes or proposals from DBE firms, segmenting portions of the work and specifically describing, as accurately as possible, the portions of the work for which quotes or proposals are solicited from DBE firms and encouraging inquiries for further details. Letters that are general and do not describe specifically the portions of work for which quotes or proposals are desired are discouraged, as such letters generally do not bring responses. It is expected that such letters will be sent in a timely manner so as to allow DBE sufficient opportunity to develop quotes or proposals for the work described.
- (4) Evidence of follow-up to initial solicitations of interest, including the following:
 - (A) The names, addresses, telephone numbers of all DBE contacted;
 - (B) A description of the information provided to DBE firms regarding the plans and specifications for portions of the work to be performed; and
 - (C) A statement of the reasons for non-utilization of DBE firms, if needed to meet the goal.

- (5) Negotiation in good faith with DBE firms. The bidder shall not, without justifiable reason, reject as unsatisfactory bids prepared by any DBE firms;
- (6) Where applicable, the bidder must provide advice and assistance to interested DBE firms in obtaining bonding, lines of credit or insurance required by Metro or the bidder;
- (7) Overall, the bidder's efforts to obtain DBE participation must be reasonably expected to produce a level of participation sufficient to meet Metro's goals; and
- (8) The bidder must use the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Executive Department's Advocate for Minority and Women and Emerging Small Business that provide assistance in the recruitment and placement of DBEs.

2.04.365 Replacement of DBE Subcontractors: Prime contractors shall not replace a DBE subcontractor with another subcontractor, either before contract award or during contract performance, without prior Metro approval. Prime contractors who replace a DBE subcontractor shall replace such DBE subcontractor with another certified DBE subcontractor or make good faith efforts as described in the preceding section to do so.

2.04.370 Records and Reports:

(a) Metro shall develop and maintain a recordkeeping system to identify and assess DBE contract awards, prime contractors' progress in achieving goals and affirmative action efforts. Specifically, the following records will be maintained:

- (1) Awards to DBEs by number, percentage and dollar amount.
- (2) A description of the types of contracts awarded.
- (3) The extent to which goals were exceeded or not met and reasons therefor.

(b) All DBE records will be separately maintained. Required DBE information will be provided to federal agencies and administrators on request.

(c) The Liaison Officer shall prepare reports, at least semiannually, on DBE participation to include the following:

- (1) The number of contracts awarded;
- (2) Categories of contracts awarded;
- (3) Dollar value of contracts awarded;
- (4) Percentage of the dollar value of all contracts awarded to DBE firms in the reporting period; and
- (5) The extent to which goals have been met or exceeded.

2.04.375 Counting Disadvantaged Business Participation Toward Meeting Goals:

(a) DBE participation shall be counted toward meeting the goals on each contract as follows:

- (1) Subject to the limitations indicated in paragraphs (2) through (8) below, the total dollar value of a prime contract or subcontract to be performed by DBEs is counted toward the applicable goal for contract award purposes as well as annual goal compliance purposes.
- (2) The total dollar value of a contract to a disadvantaged business owned and controlled by both disadvantaged males and non-disadvantaged females is counted toward the goals for disadvantaged businesses and women, respectively, in proportion to the percentage of ownership and control of each group in the business.

The total dollar value of a contract with a disadvantaged business owned and controlled by disadvantaged women is counted toward either the disadvantaged business goal or the goal for women, but not to both. Metro shall choose the goal to which the contract value is applied.

- (3) Metro shall count toward its goals a portion of the total dollar value of a contract with an eligible joint venture equal to the percentage of the ownership and control of the disadvantaged business partner in the joint venture.
- (4) Metro shall count toward its goals only expenditures to DBEs that perform a commercially useful function in the work of a contract. A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing and supervising the work involved. To determine whether a DBE is

performing a commercially useful function, Metro shall evaluate the amount of work subcontracted, industry practices and other relevant factors.

- (5) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE contractor subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function. The DBE may present evidence to Metro to rebut this presumption. Metro's decision on the rebuttal of this presumption is subject to review by USDOT for USDOT-assisted contracts.
- (6) A DBE which provides both labor and materials may count toward its disadvantaged business goals expenditures for materials and supplies obtained from other than DBE suppliers and manufacturers, provided that the DBE contractor assumes the actual and contractual responsibility for the provision of the materials and supplies.
- (7) Metro shall count its entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
- (8) Metro shall count toward the goals 60 percent of its expenditures to DBE suppliers that are not manufacturers, provided that the DBE supplier performs a commercially useful function in the supply process.
- (9) When USDOT funds are passed-through by Metro to other agencies, any contracts made with those funds and any DBE participation in those contracts shall only be counted toward Metro's goals. Likewise, any USDOT funds passed-through to Metro from other agencies and then used for contracting shall count only toward that agency's goals. Project managers responsible for administration of pass-through agreements shall include the following language in those agreements:
 - (a) Policy. It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 23 apply to this agreement.

- (b) DBE Obligation. The recipient or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin or sex in the award and performance of USDOT-assisted contracts."

(b) DBE participation shall be counted toward meeting annual goals as follows:

- (1) Except as otherwise provided below, the total dollar value of any contract which is to be performed by a DBE is counted toward meeting annual goals.
- (2) The provisions of paragraphs (a)(2) through (a)(8) of this section, pertaining to contract goals, shall apply equally to annual goals.

2.04.380 Compliance and Enforcement:

(a) Metro shall reserve the right, at all times during the period of any contract, to monitor compliance with the terms of this chapter and the contract and with any representation made by a contractor prior to contract award pertaining to DBE participation in the contract.

(b) The Liaison Officer may require, at any stage of contract completion, documented proof from the contractor of actual DBE participation."

ADOPTED by the Council of the Metropolitan Service District this _____
day of _____, 1992.

Jim Gardner, Presiding Officer

ATTEST:

Clerk of the Council

gl 1100

Meeting Date: September 24, 1992
Agenda Item No. 7.1

RESOLUTION NO. 92-1661



METRO

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

Memorandum

DATE: September 21, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NO. 7.1; RESOLUTION NO. 92-1661

The Governmental Affairs Committee report on Resolution No. 92-1661 will be distributed in advance to Councilors and available at the Council meeting September 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF AUTHORIZING)
THE EXECUTIVE OFFICER TO EXECUTE)
A STATEMENT IN SUPPORT OF)
DETERMINING THE FEASIBILITY OF)
A PREDICATE/DISPARITY STUDY)

RESOLUTION NO. 92-1661

Introduced by Rena Cusma,
Executive Officer

WHEREAS, a group of procurement professionals from the region began meeting in October 1991 to discuss and share information regarding individual agencies' MBE/WBE statistics, activities, problems and successes; and

WHEREAS, the group determined that, if MBE/WBE firms were to be accorded preferential procurement treatment designed to remedy the present effects of past discrimination, a predicate study documenting and demonstrating past discrimination would be required; and

WHEREAS, a feasibility study of patterns of disparity in MBE/WBE participation in agency procurements was recommended as a basis for agency decisions on participation in a major predicate study; and

WHEREAS, Multnomah County and Tri-Met representatives agreed to fund and administer such a feasibility study; and

WHEREAS, the group proposes to formalize the effort through execution of a Multi-Jurisdictional Statement of Mutual Understanding; and

WHEREAS, execution of the Statement of Mutual Understanding does not bind Metro to participate in any major predicate study which could be suggested by the feasibility study; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District authorizes the Executive Officer to execute the Multi-Jurisdictional Statement of Mutual Understanding attached as Exhibit A.

ADOPTED by the Council of the Metropolitan Service District this _____ day
of _____, 1992.

Jim Gardner, Presiding Officer

Exhibit A

MULTI-JURISDICTIONAL STATEMENT OF MUTUAL UNDERSTANDING

The signatories hereto wish to memorialize their mutual understandings with regard to a multi-jurisdictional effort regarding MBE/FBE/DBE program development and a disparity feasibility study. Authorization for this undertaking is found in ORS 191.010, ORS 191.080, and ORS 191.110.

R E C I T A L S

- A. The signatories hereto have come together to respond to the decision of the United States Supreme Court in Richmond v. J.A. Croson Co., 488 U.S. 469 (1989).
- B. The Croson decision established new standards by which the constitutionality of set-aside programs would be judged. Under Croson, state and local set-aside programs are subject to strict judicial scrutiny and must be narrowly tailored to rectify the clearly identified present effects of discrimination.
- C. Jurisdictions which have undertaken disparity studies sufficient to justify continuing MBE/FBE programs have found such studies to be extremely expensive undertakings, and have found themselves nonetheless faced with continuing litigation.
- D. It is prudent to obtain preliminary information regarding the feasibility, cost and scope of such a disparity study so that informed decisions can be made in regard to initiating and funding such a costly and complicated undertaking.

- E. Continuation of the existing working group with representatives from the signatories hereto is necessary, as well as cooperation from purchasing managers, legal counsel, and others associated with the governments in question.

TERMS OF UNDERSTANDING

- 1) Multnomah County and Tri-Met shall sponsor a feasibility study like or substantially similar to the Request For Proposal attached hereto as Exhibit A. All contracting functions in relation to this study shall be undertaken by Multnomah County and Tri-Met, as they mutually agree.
- 2) The signatories shall continue to ensure representation on a working group for planning and studying disparity study issues.
- 3) The signatories shall make purchasing staff, legal counsel, and others available, where appropriate, to study the results of the feasibility study and collect other data and information necessary to developing broad regional perspectives on the issues raised by the Croson decision.
- 4) Any government desiring to discontinue participation in this multi-jurisdictional effort shall give written notice to that effect to all the signatories hereto.

SIGNED: .

Dept of General Services
Purchasing Division, State of Oregon

Date

07:07:82 11:19 0503 373 7041
07. 01. 82 02:37 PM

OMWESB
CITY ATTORNEY

PO4 0015

Multnomah County

Date

Clackamas County

Date

Washington County

Date

City of Portland

Date

METRO

Date

Tri-Met

Date

Port of Portland

Date

School District #1, Portland

Date

Housing Authority of Portland

Date

Portland Community College

Date

Metropolitan Exposition Recreation
Center

Date

Oregon State System of Higher Education

Date

Office of Minority, Women Emerging Small
Business

Date

STATEMENT OF MUTUAL UNDERSTANDING

PLEASE NOTE: The following is the proposed FINAL document. This was developed over the course of several meetings. This includes fine tuning that answers many concerns raised about more clearly defining the scope. The new material is underlined. Please review it carefully. CLP 7/2/92

F I N A L D R A F T

MULTI-JURISDICTIONAL/DISPARITY FEASIBILITY STUDY
REQUEST FOR PROPOSAL

Contractor to prepare information to be used to determine the feasibility of conducting a predicate and disparity study¹.

BACKGROUND:

The use of set-aside programs and numerical goals for MBE and WBE participation by political subdivisions and the State of Oregon has all but disappeared unless required by federal law. This is a result of the January 23, 1989, U.S. Supreme Court ruling. Richmond v. J. A. Croson Co., 488 U.S. 469, 102 L. Ed. 2d 854 109 S. Ct. 706 (1989) has thrown the constitutional basis for such programs into doubt.

The Court's decision established new standards by which the constitutionality of set-aside programs would be measured. The main feature of these standards is found in a "strict scrutiny"

¹"A predicate study" is one that would document discrimination to serve as a predicate for finding a "compelling state interest". This finding would arguably justify race and/or gender based preference programs. Generally, a "disparity study" would investigate an apparent disparity between the number of minority (or women) firms who are ready, willing and able to perform work and the number of these above firms that win public contract awards. A "utilization index" is developed to show under (or over) utilization of these firms. Both anecdotal and statistical evidence are gathered as part of the process.

clause which will require municipalities and state and local governments, when using racial or gender classifications, to show "compelling interest" or a specific historical basis for the need for M/WBE programs. Under its "strict scrutiny" test, the court also requires that such programs be "narrowly tailored" to address specific areas of discrimination to ensure that a chosen program is designed to remedy the present effects of past discrimination.

Therefore, governments must go to greater lengths to provide historical evidence of a trend of discrimination against a specific group of minorities or women before establishing a purchasing set-aside program. This includes documenting the existence of gender or racial discrimination² (or continuing effects thereof) in industries where the public agency contracts for business. The agency involvement need only be passive. There need not be a "smoking gun" or actual discrimination proved against the agency.

PROJECT DESCRIPTION:

A feasibility study is planned by a group of public purchasing professionals and government representatives. This group represents local political and subdivisions and state government. The purpose of the study is to provide information that will guide the governments involved in deciding whether a comprehensive disparity/predicate study should be conducted, what its scope

²The U.S. Court of Appeals, 9th Circuit, has held that gender-based preference programs need only pass intermediate scrutiny. It would be prudent to include WBE firms in a study.

should be. The feasibility study must provide information relating to the following major areas:

1) REQUIRED COMPONENTS OF A POST-CROSON DISPARITY/PREDICATE STUDY:

Taking into account not only the evolving case law but also comparable studies which have been undertaken in other jurisdictions, assess what the necessary components would be for the study. (Particular attention is to be directed to the Seattle area and San Francisco programs.) Discuss whether these components are the same for the different types of governmental entities involved: state, municipal, county, regional and "other". Develop information regarding the most productive and effective scope for a predicate/disparity study.

2) GEOGRAPHICAL AREA:

What is the geographical area to be studied? Which components or sections of a broad disparity study identified above can be examined through a state-wide or regional analysis? Must some components required post-Croson be compiled and analyzed in relation to small or different governmental units (e.g., individual counties, cities, or other governmental entity)?

3) INDUSTRY/COMMODITY/SERVICE AREAS:

Provide information about the systemic usefulness of studying

disparity issues in the context of factors which transcend jurisdictional boundaries. Consider the utility of studying disparity issues in the context of non-governmentally defined areas including, but not limited to, the Northwest regional "construction" industry, commodity or service sectors and the like.

4) COST ESTIMATES:

Prepare cost estimates for conducting the disparity/predicate study including all necessary activities such as interviews, hearings, project design, report preparation, legal analysis, statistical analysis, etc. The cost estimate analysis must convey specific information relating to the component parts of the study. If some components would be useful to all the governments involved, but some governments would need other additional components, provide details. Provide a cost estimate for all of the signatories to the "Multi-Jurisdictional Statement of Mutual Understanding" attached hereto as Exhibit A.

~~A feasibility study is planned by a group of public purchasing professionals and government representatives. This group represents local political subdivisions and state government. An Interagency Consortium (Consortium) has been formed by this group to contract for this study. This study will provide information to be used to determine whether or not a study to document past and/or present race or gender discrimination should be conducted.~~

The purpose of the study is to develop information that will guide the Consortium in deciding whether a disparity/predicate study should be conducted and if so what should be the geographical or jurisdictional boundaries of such a study.

1) GEOGRAPHICAL AREA/SCOPE OF STUDY OPTIONS:

What is the geographical area to be studied? Prepare recommendations as to the geographical area that would be feasible, should such a study be conducted. Identify elements of a cost estimate for a statewide study. Identify elements of a cost estimate for a study including: Multnomah, Clackamas and Washington Counties. Discuss rationale for both options identified above.

Discuss surveying construction industry/commodity/service areas as opposed to geographical areas. Make a recommendation and explain rationale.

2) COST ESTIMATES:

Prepare cost estimates for conducting a disparity/predicate study. Cost estimates must include detail by activity such as interviews, hearings, project design, report preparation, statistical analysis, etc.

3)] 5) POST CROSON PROGRAMS:

Review purchasing efforts, including race and gender neutral programs, involving public contracts of Consortium members to contract with MBE and WBE firms since the Croson decision in January, 1989. Report any

changes in policy, practice, rules or results. Compare the participation rates of MBE and WBE firms when agencies used numerical goals and or set asides for participation with participation rates of MBE and WBE firms when the public agencies were prohibited from using numerical goals and had to rely on good faith efforts. Also, describe any Emerging Small Business (ESB) programs implemented by Consortium members. Include number of participants (bidders), ethnicity and gender of contract awardees, length of time program has been in place and dollar value of contract awards.

[4)] 6) REPORT:

Prepare a comprehensive report addressing all of the above points. Include a recommendation to undertake or forego a study and document the basis for the recommendation. Discuss reasons both for and against conducting a study. Prepare a brief outline of how a study should be conducted assuming that is the conclusion.

The contractor will report directly to the designee of the Consortium who will consult with Consortium members and others as appropriate on management of the project. The project is expected to be completed within forty-five (45) days of the signing of the contract.

The contract will not exceed \$20,000. This amount will be the guaranteed maximum price (GMP). This amount will include: consultant salary, travel and all related costs. Payment will be made upon completion to the satisfaction of the designee.

SELECTION PROCESS AND PROPOSED FORMAT:

The Consortium assures that all proposals will be considered without discrimination on the basis of race, age, sex, color, religion, national origin, mental or physical handicap, or marital status. The contractor will be selected based on the following criteria. Each proposal should be presented in a format that directly addresses each criteria:

1. Qualifications and background for conducting a project. Broad experience in government research involving program evaluation, public contracting and complex data analysis [and law] of the scale of this project is required. Research personnel for this project must be identified in the proposal and background information included. Provide at least three references of government research to substantiate expertise and experience necessary to carry out this project successfully and grant permission for the Consortium to contact the references. (Up to 40 points.)
2. Methods and approach for the project, including design of any survey instruments. Describe what analytical tools and methods will be used to meet the scope of work objectives.

Include quantitative measures of surveys to be conducted, if any. (Up to 20 points.)

3. A work plan for conducting and completing this project including milestones and time schedules. Describe how you would propose to accomplish the task. Identify the milestone and time of schedules. (Up to 25 points.)

4. A budget including all expenses, estimated number of hours per person required, and travel expenses associated with the project. (Up to 15 points.)

Proposals will be reviewed by a panel from the Consortium. Up to four proposals may be selected for a final one hour oral presentation.

Preproposal Conference

There will be a mandatory preproposal conference.

Reservation of Rights

This request for proposal does not commit the Consortium to award a contract. The Consortium reserves the right to accept or reject any or all proposals and to waive formalities and minor irregularities in offers received. Responses to all criteria will determine the selection of the contractor. Cost will not be the sole criterion.

Proposal Submission

Proposals must be submitted by 5 p.m., _____, May
____, 1992 to: XXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

One proposal copy may be faxed to (503) _____ by the
deadline, and the remainder mailed or shipped and/or postmarked the
same day. A total of eight (8) copies must be received. The

Consortium makes no guarantees as to the availability of the fax
transmission option and all risks of this method of response are
5? / born^d by the proposer.

Questions regarding this RFP may be directed to _____,
(503) _____.

Additional Information:

Consortium members will provide the following information to the
designee contract administrator within 30 days of the RFP award:

Consortium members will rely on their respective legal staffs to
prepare the information identified in A below. It is suggested
that the attorneys prepare information, confer and agree upon the
necessary legal requirements.

consortium members will provide information documenting the process by which programs providing preferences for MBE and WBE firms were instituted. See B below for details.

A) LEGAL REQUIREMENTS AND POST CROSON DEVELOPMENTS:

Explain the requirements articulated in the J.A. Croson v. Richmond case; review and summarize the Court of Appeals, 9th Circuit decisions and other court decisions speaking to the type of data and sufficiency of data required to report numerical minority Business Enterprise (MBE) and Women Business Enterprise (WBE) goals.

B) METHODS USED TO ESTABLISH PREFERENCE PROGRAMS:

Describe the method by which programs providing preferences for MBE and WBE firms were instituted prior to the January, 1989 Croson decision. I.e., how did the major cities, counties and the state develop rules, ordinances, resolutions and statutes that implemented MBE and WBE preference programs.

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1661, FOR THE PURPOSE OF AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A STATEMENT IN SUPPORT OF DETERMINING THE FEASIBILITY OF A PREDICATE/DISPARITY STUDY

Date: July 23, 1992

Presented by: Neil Saling

BACKGROUND

The ruling of the U.S. Supreme Court on January 23, 1989, in the case of Richmond v. J.A. Croson Co. has negated the use of set-aside programs and numerical goals for participation by minority and woman-owned enterprises (MBE/WBE) in procurement actions by regional political subdivisions. The standards by which the future use of such preferential programs will be judged is a "strict scrutiny" requirement whereby municipalities and state and local governments, when using racial or gender classifications, are required to show "compelling interest" which is a specific historic basis for the need for such programs. Under the "strict scrutiny" test, the court also requires that such programs be "narrowly tailored" to address specific areas of discrimination to ensure that a chosen program is designed to remedy the present effects of past discrimination.

Preferential programs for MBE/WBE must be based upon historical evidence of a trend of discrimination against a specific group of minorities or women before establishing a purchasing set-aside program or utilizing numerical goals. Studies which are conducted to document trends of past discrimination are called disparity or predicate studies. ("Predicate study" is used herein as descriptive of the establishment of a basis for such narrowly tailored programs.)

In October 1991, a group of procurement professionals from within the region began meeting to discuss and share information regarding individual agencies' MBE/WBE programs, activities, statistics and problems. The chairman of the group is Clifford Freeman, the Governor's Advocate for MBE/WBE and Emerging Small Businesses. Metro's representative is Mr. Richard Wiley.

The group determined that it was appropriate to address the issue of past discrimination as a means of shaping future MBE/WBE programs. Under the "strict scrutiny" required by the Croson decision, a study of past discrimination would be necessary in order to determine if programs to remedy the present effects of past discrimination are appropriate. Prudently, the group proposed a preliminary study to address the feasibility of conducting the comprehensive and expensive predicate study. To formalize agency support for the feasibility study, a Multi-Jurisdictional Statement of Mutual Understanding is proposed. Execution of the Statement has been determined to fall within the requirements of Metro Code Section 2.04.033(a)(2) requiring Council approval of intergovernmental agreements.

ANALYSIS

The group of procurement professionals has been divided over the issue of whether agency programs should emphasize equal opportunity and outreach or should return to the format of pre-Croson programs which incorporated set-asides and numerical goals to ensure involvement of minority and woman-owned enterprises in agency procurements. Return to the latter format would require a predicate study to determine whether sufficient historical evidence of discrimination exists to support such set-asides and goals as remedial measures. At this point in time there is no evidence upon which to prejudge the impact of a predicate study on the format and direction of Metro's MBE/WBE programs. Neither is there evidence to show that set-asides and numerical goals will ultimately produce a cadre of minority and woman-owned firms which would successfully compete in the open market.

The proposed feasibility study would define the scope of a predicate study. That scope would include definition of the essential components or elements of proof necessary to support the remedial programs; the geographical area to be studied; the industry/commodity/service areas to be studied; a review of post-Croson programs and results; and an estimate of predicate study cost. The cost of the feasibility study is not to exceed \$20,000, a cost to be borne jointly by Multnomah County and Tri-Met. Additionally, agency legal staffs are asked for input on Croson-derived legal requirements and a review of pre-Croson agency programs.

The Multi-Jurisdictional Statement of Mutual Understanding is a formal statement of agency support for the feasibility study. To some extent, it is an outgrowth of an earlier proposal to divide the cost of the feasibility study among the group members. Although it does not bind any agency to participation in the anticipated predicate study, there are members of the group who view execution of the statement as a commitment to participate in the predicate study. Metro Legal Counsel has reviewed the statement and finds no language which would support the latter interpretation.

POLICY IMPACT

1. Council action is required by Metro Code Section 2.04.033(a)(2).
2. Metro execution of the Multi-Jurisdictional Statement of Mutual Understanding could be interpreted by some members of the community as support for pre-Croson procurement policies which include the use of numerical goals and set-asides for MBE/WBE participation. Alternatively, the execution of the statement can be viewed as support for a prudent exploratory study to determine the possible impacts on Metro of a study of past discrimination.

FINANCIAL IMPACT

None. The feasibility study would be financed from resources available to Tri-Met and Multnomah County. The Resolution specifically reserves Metro's rights to make a future decision on commitment of resources to a predicate study.

RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1661.

Meeting Date: September 24, 1992
Agenda Item No. 7.2

RESOLUTION NO. 92-1680



METRO

2000 S.W. First Avenue
Portland, OR 97201-5398
503.221-1646

Memorandum

DATE: September 24, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NOS. 7.2, 7.3, AND 7.4

The Transportation & Planning Committee will meet on September 22 to consider Resolution Nos. 92-1680, 92-1667 and 92-1670. Committee reports will be distributed in advance to Councilors and available at the Council meeting September 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ENDORSING	)	RESOLUTION NO. 92-1680
TRI-MET'S FINANCING PLAN FOR THE)	
WESTSIDE LIGHT RAIL PROJECT	)	Introduced by
WHICH INCLUDES ADVANCING THE	)	Councilor Richard Devlin
REGION'S HILLSBORO EXTENSION)	
ALLOCATED FUNDS TO THE 185TH)	
PROJECT)	

WHEREAS, By Resolution No. 89-1035, an overall funding approach for the Westside Corridor Light Rail project (Project) was established based upon 75 percent federal share and one-half the local match from the region and one-half from the state; and

WHEREAS, By Resolution No. 90-1300, the region's share of local match was identified through Tri-Met General Obligation bonds and Regional Compact funds; and

WHEREAS, By Resolution No. 92-1646, the region committed \$15 million of Tri-Met's General Obligation bond proceeds allocated for the Portland/Clackamas extension for use as CAPRA for the Project; and

WHEREAS, The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 provided a \$515 million commitment toward a Full-Funding Grant Agreement (FFGA) during the next six-year period; and

WHEREAS, By Resolution No. 92-1598, an overall funding approach for the Hillsboro Extension was established based upon one-third federal Section 3 share, one-third state/regional share, and one-third federal Surface Transportation funds ("flexible funds") and Section 9 funds share; and

WHEREAS, Federal appropriations may not be available to meet the construction schedule of the Project; and

WHEREAS, The Federal Transit Administration (FTA) requires Tri-Met to demonstrate its ability to build the Project in the event federal appropriations are forthcoming at a rate slower than needed to meet the Project construction schedule; and

WHEREAS, Tri-Met developed a financing plan to meet FTA requirements which requires all local and state funds currently allocated for the Hillsboro and Portland/Clackamas extensions including flexible funds to be advanced to the Project, used as CAPRA or used for interim borrowing support for the Project; and

WHEREAS, FTA will sign an FFGA pledging \$516 million (a 75 percent share) for the Westside project to 185th Avenue, said FFGA including a provision to amend its terms to include the extension of the Project to downtown Hillsboro; and

WHEREAS, The FFGA recognizes that, to the extent that flexible funds are committed to the Project due to slower federal funds appropriation than set forth in the FFGA, the Section 3 federal assistance contemplated in the FFGA may be used for any federally eligible transit project in the then adopted Transportation Improvement Program (TIP), including the Hillsboro Extension; and

WHEREAS, It is necessary to finalize the Westside Light Rail financing plan in order to receive federal funds under the FFGA between Tri-Met and FTA; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District:

1. Endorses the financing plan submitted by Tri-Met that provides that flexible funds allocated for the Hillsboro Extension by Resolution No. 92-1598 will be advanced to the Westside project in the event that reduced annual federal

appropriations of Section 3 funds warrant their use. The specific funds committed will be as follows:

- . \$22 million from Regional flexible funds;
- . \$22 million from ODOT flexible funds; and
- . \$22 million from Tri-Met Section 9 funds.

2. That, in the event Tri-Met is required to use flexible funds and Section 9 funds because the appropriation of federal Section 3 funds falls short of those contemplated in the FFGA, when said Section 3 funds are made available, they shall be used for any federally eligible transit project in the then adopted TIP and they shall be reserved for the Hillsboro Extension subject to completion of EIS requirements.

3. That the advance of flexible funds and Section 9 funds from the Hillsboro Extension to the Westside Project is subject to assurances from the Federal Transit Administration that the Hillsboro Extension remains eligible for the benefits provided by ISTEA subject to completion of EIS requirements.

4. Any advance of local and state non-federal funds for cash flow purposes, including the \$30 million from Tri-Met General Obligation bond proceeds currently allocated to the Hillsboro Extension, is subject to repayment with interest through future federal appropriations for the Project.

ADOPTED by the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

AC:lmk
92-1680.RES
9-17-92

Meeting Date: September 24, 1992
Agenda Item No. 7.3

RESOLUTION NO. 92-1667



METRO

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

Memorandum

DATE: September 24, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council

RE: AGENDA ITEM NOS. 7.2, 7.3, AND 7.4

The Transportation & Planning Committee will meet on September 22 to consider Resolution Nos. 92-1680, 92-1667 and 92-1670. Committee reports will be distributed in advance to Councilors and available at the Council meeting September 24.



METRO

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

Memorandum

Date: September 17, 1992

To: Transportation and Planning Committee

From: *AC* Andrew C. Cotugno, Planning Director

Re: Resolution No. 92-1667 - Adopting the FY 1993 to post 1996
Transportation Improvement Program and the FY 1993 Annual
Element

At its September 17, 1992 meeting, JPACT recommended approval of Resolution No. 92-1667 for adoption of the FY 93 to post 96 TIP and FY 93 Annual Element with the attached errata sheet. Please include this item with consideration of the above resolution.

ACC:lmk

Attachment

Metropolitan Service District
 Transportation Improvement Program
 Obligations Through 09/30/92

rptid.r
 09/16/92
 Page 1

	Obligated	1993	1994	1995	1996	1997	Post 1997	Authorized

1 DBE TRAINING PROGRAM**					784	00-000	00000	TRA26-2001*****
			Federal Transit Administration - Sec. 20					
Other	0	75,000	0	0	0	0	75,000	150,000
Total	0	75,000	0	0	0	0	75,000	150,000
Report Total	0	75,000	0	0	0	0	75,000	150,000

xref: Step 1 funding authorized at \$75,000; Step 2 funding requires additional authorization from FTA.

PREVIOUSLY APPROVED BY RESOLUTION NO. 92-1559

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ADOPTING THE	)	RESOLUTION NO. 92-1667
FY 1993 TO POST 1996 TRANSPORTATION)	
IMPROVEMENT PROGRAM AND THE FY 1993	)	Introduced by Rena Cusma
ANNUAL ELEMENT	)	Executive Officer

WHEREAS, Projects using federal funds must be specified in the Transportation Improvement Program by the fiscal year in which obligation of those funds is to take place; and

WHEREAS, In accordance with the Metropolitan Service District-Southwest Washington Regional Transportation Council (formerly Intergovernmental Resource Center of Clark County) Memorandum of Agreement, the Transportation Improvement Program has been submitted to the Southwest Washington Regional Transportation Council for review and comment; and

WHEREAS, The Metropolitan Service District must certify compliance with the proposed policy on private enterprise participation in the Federal Transit Administration Program; and

WHEREAS, The Metropolitan Service District must evaluate the program of transit projects included in the Transportation Improvement Program to ensure financial capacity to fund the capital improvements; and

WHEREAS, Some 1992 Annual Element projects may not be obligated by the end of FY 1992 and the exact time for their obligation is indeterminate; now, therefore,

BE IT RESOLVED:

1. That the Council of the Metropolitan Service District adopts the FY 1993 Transportation Improvement Program for the urban area as contained in the attachment to this Resolution

marked Exhibit A.

2. That projects that are not obligated by September 30, 1992 be automatically reprogrammed for FY 1993 for all funding sources.

3. That the Council of the Metropolitan Service District allows funds to be transferred among projects consistent with the Transportation Improvement Program Project Management Guidelines adopted by Resolution No. 85-592.

4. That the Transportation Improvement Program is in conformance with the Regional Transportation Plan, Clean Air Act Amendments of 1990 and the Interim Conformity Guidelines and the 1982 Air Quality State Implementation Plan (Ozone and Carbon Monoxide) and that the planning process meets all requirements of Title 23 -- Highways and Title 49 -- Transportation of the Code of Federal Regulations.

5. That the Council of the Metropolitan Service District finds that Tri-Met has complied with the requirements of the region's Private Enterprise Participation Policy, adopted in August 1987. Documentation is shown in the Attachment to the Staff Report.

6. That the Council of the Metropolitan Service District finds sufficient financial capacity, as certified by Tri-Met and as demonstrated in the adopted Transit Development Plan, to complete the projects programmed for FY 1993 and incorporated in the Transportation Improvement Program.

7. That the Council of the Metropolitan Service District hereby finds the projects in accordance with the Regional

Transportation Plan and, hereby, gives affirmative Intergovernmental Project Review approval.

ADOPTED by the Council of the Metropolitan Service District
this ____ day of _____, 1992.

Jim Gardner, Presiding Officer

BP:lmk
92-1667.RES
9-8-92

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1667 FOR THE PURPOSE OF ADOPTING THE FY 1993 TO POST 1996 TRANSPORTATION IMPROVEMENT PROGRAM AND THE FY 1993 ANNUAL ELEMENT

Date: August 20, 1992

Presented by: Andrew Cotugno

FACTUAL BACKGROUND AND ANALYSIS

Proposed Action

The Transportation Improvement Program (TIP) and FY 1993 Annual Element serve as the basis for receipt of federal transportation funds by local jurisdictions, the Oregon Department of Transportation (ODOT) and Tri-Met.

This publication of the TIP reflects a number of changes from that of last year, particularly due to the new Intermodal Surface Transportation Efficiency Act (ISTEA), Metro Council approved resolutions, and administrative adjustments approved during the past year and to be approved by this resolution. The primary importance of the annual TIP update is to consolidate all past actions into a current document and set forth the anticipated programs for FY 1993. The FY 1993 program reflected herein is a first step in establishing actual priorities for FY 1993. A number of future actions will result in refinements to the material presented.

Adoption of the TIP endorses the following major actions:

- . Past policy endorsement of projects is identified in the TIP (including projects to be funded with Interstate, Interstate Transfer, Federal-Aid Urban and Federal Transit Administration (FTA) funds, as well as new highway funds available from ISTEA in the form of the Surface Transportation Program, the National Highway System Program, and the Congestion Mitigation/Air Quality Program.

New Projects:

I-5 - Seismic Retrofit Five Bridges Phase 1 - seismic retrofit bridges: 8782, 8583, 8573, 8574, and 8575.

I-5 - Boones Ferry Road to Commerce Circle (Wilsonville) - construct connection in conjunction w/Stafford Interchange, install signal.

I-84 - Halsey Street Undercrossing Bridge #13516 - repair/replacement of worn deck expansion joints and bearings.

I-84 - I-84 at 82nd Avenue Park-and-Ride Lot - construct a park-and-ride facility.

I-84 - Argay Downs Soundwall (Portland) - construct soundwall.

OR-99W - SW Hamilton to Beaverton/Hillsdale Highway Junction Guardrail - install guardrail.

I-84 - Gateway Park and Ride Lot - construct a park-and-ride facility.

OR-43 - Taylors Ferry Road to I-205 Metropolitan Area Corridor Study (MACS) - Transportation System Management.

OR-210 Scholls Highway northbound at Highway 217 Left Lane - widen for left-turn lane.

I-205 - I-205 at Glisan Northbound; at NE Glisan southbound - widen to 4 lanes each. SB: left-turn lane, 2 through lanes, right-turn lane; NB: left-turn lane, left-turn through lane, through lane, right-turn lane.

US-30B - St. Johns Bridge Joint Repair - replace sidewalk and repair joints.

US-30B - Sandy Boulevard MACS - develop Transportation System Management project.

OR-43 Oswego Highway Retaining Wall/Bikeway-McVey to Burnham - construct a retaining wall and a bikeway.

OR-210 - Scholls at Beef Bend Road - left-turn refuge - construct a left-turn refuge.

I-205 - Columbia Blvd Southbound On-ramp - widen and restripe ramps for turn lanes.

OR-8 - Tualatin Valley Overlay - 110th to 160th - replace curbs/sidewalks, construct handicap ramps, overlay roadway.

OR-8 Tualatin Valley Highway -Beaverton/Tigard Highway to 117th - remove signal, raise median and widen roadway.

I-405 East Fremont Bridge Approach - reconstruct joints and restore decks on bridge.

Sunnybrook Split Diamond PE - construct overcrossing of I-205 at Sunnybrook Street with miscellaneous ramps and auxiliary lanes.

Regional Surface Transportation Program Reserve - reserve for FY 1992 of \$8,596,711 allocated by FHWA projected to \$60.9 million over the six-year life of the Act.

Allocation of \$22 million of Regional STP funds, \$22 million of ODOT STP funds and \$22 million of Tri-Met Section 9 funds to provide a one-third matching share for the extension of the Westside project to Hillsboro.

Inclusion of the full-funding contract for Section 3 funds for the Westside Corridor project.

- High-Capacity Transit (HCT) Studies (Resolution No. 91-1456) - Because of the large amount of HCT planning underway or proposed, it is important to organize activities to allow for the most efficient conduct of the work, to ensure participation by the jurisdictions affected by the decisions that must be made and to ensure proper consideration of functional and financial trade-offs between corridors. In particular, functional trade-offs and coordination is required to take into account the effect of one project on other parts of the HCT system and financial limitations dictate that careful consideration be given to defining regional priorities before committing to construction.

In the fall of 1987, JPACT evaluated the work which had been completed to that time and determined that the Westside, Milwaukie, and I-205 corridors have the highest priority and should be advanced within a 10-year timeframe. The Barbur and I-5 corridors were determined to be a lesser priority and recommended to be constructed in a 20-year timeframe. The Macadam Corridor need was determined to be beyond the 20-year timeframe.

In 1990, JPACT endorsed a resolution to advance the Hillsboro Corridor, an extension of the Westside Corridor from 185th and Baseline Road to downtown Hillsboro into Alternatives Analysis. In 1991, JPACT further refined the region's HCT planning priorities by endorsing a resolution that advances the I-205 and Milwaukie corridors and the I-5 North and I-205 North corridors into concurrent and coordinated Preliminary Alternatives Analyses.

JPACT has endorsed a Regional HCT Study that will examine long-term systemwide issues, concentrating on CBD alignments, operations and maintenance requirements, updating forecasts on future rail corridors and extensions, and establishing regional criteria and priorities for further HCT development.

Objectives of these studies will be to:

1. Continue planning and design on the region's No. 1 priority, the Westside and Hillsboro Corridor projects.
 2. Determine the region's next HCT transit corridor(s) to advance into Alternatives Analysis. The results of the study will be a statement of the transportation problems within the priority corridor, a description of a handful of most promising alternatives that respond to those problems, preliminary cost-effectiveness analysis of those alternatives, a corridor financial strategy, and a scope and budget for Alternatives Analysis. The study will also result in an action plan for the mid and long-term development of transit in the remaining corridors.
 3. Reassess the remaining high-capacity transit corridors identified in the RTP. This assessment will develop an HCT system plan and staging strategy, determine systemwide infrastructure and operational needs, and help determine long-term needs and staging strategy in the Portland CBD. All forecasts will be performed with a common model and horizon year, using the 1988 travel-forecasting model and new 2010 land use data.
 4. Develop system financing strategies and corridor financing plans that are consistent with the conclusions of the Regional HCT Study and the Preliminary AA Studies.
- . Approximately \$5.7 million of Interstate Transfer highway and transit funding is programmed for FY 1993. The TIP includes a fixed program amount for the Metro region of \$517,750,487 (federal) based upon the original amount for the withdrawn freeways (Mt Hood and I-505), \$731,000 of additional transit withdrawal value in April 1987 added by Section 103(c) of Pub.L. 100-17, and \$16,366,283 made available by the recent I-205 Buslane withdrawal. Currently, the additional withdrawal values can only be applied to transit projects. At the end of the federal fiscal year, all unbuilt projects and their unused funds for FY 1992 will automatically shift to FY 1993.

The final transit/highway appropriation needed to complete the Interstate Transfer Program has been estimated at \$15,165,874. This amount, when combined with remaining unspent appropriations, provides some \$34.4 million available to complete the Interstate Transfer Program which was begun in 1977. The \$34.4 million is allocated to highway projects of \$14.4 million and transit projects of \$19.9 million.

- . Some \$7.4 million of FTA Section 3 "Trade" funds are programmed in FY 1992 marking the completion of the "Trade" program upon approval of outstanding grant applications. Some \$0.6 million has been earmarked for shelters, \$5.0 million for the Transit Mall Extension North, \$1.6 million for replacement buses, and

\$0.2 million for contingencies.

- . The maximum allowable use of FTA Section 9 funds for FY 1993 operating assistance is included (estimated to be \$4.6 million) which is less than that for FY 92. The Section 9 Program is projected in the TIP on a continuing basis through post 1996 based upon the Transit Development Plan and its revisions adopted by Tri-Met.
- . Private enterprise participation for FTA Section 3 and Section 9 programs is in accordance with Circular 7005.1. This requires that a local process be developed to encourage private providers to perform mass transportation and related services to the maximum extent feasible. See Attachment.
- . An amendment is included for the Westside LRT project in the TIP to make it consistent with Tri-Met's grant application. Tri-Met and FTA are in the final stages of negotiating the FFA, with original cost estimates and construction plans undergoing revision. The SDEIS estimate (federal) of \$489.5 million (1990 dollars) was refined to \$522.4 million (1990 dollars), and has further been revised to \$505.6 million. This current amount has been escalated to year of construction dollars amounting to \$692.3 million (federal).
- . On May 11, 1989, the Metro Council adopted Resolution No. 89-1094 calling for withdrawal of the I-205 buslanes and allowing for substitution of light rail as an eligible project.

The amount of federal funds finally authorized by the withdrawal for a transit project in the I-205 corridor was \$16,366,283. This amount will be included in subsequent substitution cost estimates used to apportion funds appropriated from the general revenue funds for the Interstate substitution transit projects authorized under Section 103(e)(4) of Title 23 United States Code.

- . An evaluation of transit financial capacity demonstrates that there are sufficient resources to meet future operating deficits and capital costs.
- . The former STA expired on September 30, 1991 and a new one was adopted by the U.S. Congress and signed into law December, 1992. A new Act is considered every 4-6 years. The new Act promises significant changes from the past program and will have a profound impact on the 1993-1998 and future Six-Year Programs. This TIP therefore continues to carry the former funding categories as well as new funding sources.

TPAC has reviewed the FY 93 to post 1996 Transportation Improvement Program and the FY 93 Annual Element and recommends approval of Resolution No. 92-1667.

Background

The Metro TIP describes how federal transportation funds for highway and transit projects in the Metro region are to be obligated during the period October 1, 1992 through September 30, 1993. Additionally, to maintain continuity from one year to the next, funds are estimated for years before and after the Annual Element year and include carryover (unspent) funds. Final vouchered projects (those which have undergone final audit) are aggregated to one line item as are completed projects. Completed projects are defined as those which are or will shortly be entering the final audit stage.

This FY 1993 TIP is a refinement of the currently adopted TIP and is structured by the following major headings:

Interstate Transfer Program
Federal Transit Administration Programs
Federal-Aid Urban System Program and the Regional Surface Transportation Program
Other Programs - Interstate, Primary, Bridge, Safety, State Modernization, State Surface Transportation, National Highway System, Bike, etc.

New funding programs added in the year:

Regional Surface Transportation Program
State Surface Transportation Program (Includes Transportation Enhancement Program)
State Surface Transportation Program (Safety)
National Highway System Program
State Congestion Mitigation/Air Quality Program
Regional Congestion Mitigation/Air Quality Program

INTERSTATE TRANSFER PROGRAM

The FY 1993 Interstate Transfer Program of approximately \$5.7 million represents the full funding need and this, together with the projects that slip from FY 1992, is well within the level of funding the region currently has available. The noted amount is earmarked for FHWA highway projects. Priorities will be established from among the full FY 1992 and FY 1993 programs later in the year based upon a closer estimate of project needs. Projects not funded in FY 1993, should there be insufficient funds, will be delayed; however, they will be considered for implementation and funding in FY 1994.

A number of revisions to last year's Annual Report and to the overall project allocations are incorporated including a variety of minor transfers due to cost overruns and underruns. Schedule changes to the Interstate Transfer Program consist of:

<u>Project</u>	<u>From</u>	<u>To</u>
City of Portland		
N.W. 23rd Avenue/Burnside -- R/W and Construction	1992	1993
Multnomah County		
I-84 - 223rd Avenue (Fairview) -- 207th Avenue connector	1992	1993
Clackamas County		
Beavercreek Rd. Extension	1992	1993
McLoughlin Corridor Reserve		

The McLoughlin Reserve was established in March 1986 through Resolution No. 86-632. Resolution No. 89-1135 allocated the final \$3,002,610 McLoughlin Interstate Transfer Reserve to seven projects. The projects and funding status as of June 30, 1992 are:

<u>Project</u>	<u>Cost</u>	<u>Schedule</u>
Johnson Creek Boulevard (32nd Avenue to 45th Avenue)	\$1,000,000	Post 1996
Harrison Street (Highway 224 - 32nd Avenue), P.E. Only	\$ 50,000	Post 1996
Johnson Creek Boulevard (Linwood Avenue to 82nd Avenue), P.E. Only; augmented with Sunnyside Road funds	\$ 50,000	1992
45th Avenue (Harney to Glenwood), P.E. Only	\$ 50,000	Obligated
LRT Studies in Milwaukie Corridor	\$ 560,000	Obligated
Hawthorne Bridge LRT study	\$ 5,000	Obligated
McLoughlin Corridor Highway	<u>\$1,287,610</u>	Obligated
	\$3,002,610	

Overall Program Status

Projects using remaining highway funds are:

McLoughlin PE	\$ 920,721
Transit Mall Extension.	2,917,200
Marine Drive.	2,370,698
Airport Way, Unit 4	722,000
Hawthorne Bridge.	725,922
223rd Connector (207th)	2,637,581
Johnson Creek Boulevard	897,150
Miscellaneous/Reserves Under \$500,000	<u>3,255,702</u>
	\$14,446,974

And those using remaining funds on the transit side are:

McLoughlin Blvd. Alternatives Analysis .	\$ 987,950
I-205 Buslane Withdrawal	15,941,283
Tri-Met Transit Reserve.	<u>3,000,000</u>
	\$19,929,233

During the past year, the transit/highway portions (authority) of the Interstate Transfer Program has been adjusted through the following actions:

Transit to Highway Transfers

Metro Planning (Transit).....	-\$43,305
Metro Planning (Highway).....	\$43,305

Highway to Transit Transfers

Convention Center Area Program.....	-\$2,000,000
Marine Drive Project.....	-\$1,000,000
Tri-Met Transit Account.....	\$3,000,000

The City of Portland will complete the Convention Center Area Program using Tri-Met local capital funds in compensation for the above highway to transit transfers. The reduction of Marine Drive funds is offset by an equal increase to the project under the Federal-Aid Urban Program.

A revised Interstate Substitute Cost Estimate of net funds needed to complete the program has been prepared for 1992. This revised estimate will be used in apportioning FY 1993 (or later year) funds for substitute highway and transit projects. Metro has submitted the following estimate to USDOT:

	<u>Final Amount of Funds Required</u>
Highway	\$ 4,316,789
Transit	10,849,095

FEDERAL TRANSIT ADMINISTRATION PROGRAMS

The Federal Transit Administration (FTA) carries out the federal mandate to improve urban mass transportation. It is the principal source of federal financial assistance to help urban areas

(and, to some extent, non-urban areas) plan, develop and improve comprehensive mass transportation systems. The FTA's programs of financial aid include, but are not limited to, the following:

Section 3 discretionary and formula capital grant program at 80 percent federal, 20 percent local funding.

Section 3 "trade" Letter of Intent at 80 percent federal, 20 percent local funding.

Section 9 formula grant program covering capital and operating expenses at 80 percent federal, 20 percent local for capital funding, and 50 percent federal for operating expenses. For FY 1993, only \$5.5 million is programmed in order to set aside funds for use on the Westside LRT Project in FY 1994 and FY 1995.

Section 3 Discretionary

There still remains available funds under the former discretionary program which the TIP has been carrying for specified projects:

Bus Purchases	\$ 2,500,000
Banfield Retrofit Program	
Operations Control	5,700,000
Double Tracking	9,100,000
Ruby Junction Expansion	4,100,000

Under terms of the Full-Funding Agreement, a \$5.8 million balance is still available and has been programmed for FY 1993. Tri-Met plans to request these funds to partially apply to the Banfield Retrofit projects. Also included in the Section 3 Discretionary program for FY 1993 is \$1.0 million for the Hillsboro Corridor to conduct preliminary engineering and development of civil and systems engineering to the 30% level.

Section 3 "Trade" Funding

These are funds committed through a \$76.8 million Section 3 "Letter of Intent" issued May 14, 1982. The funds are restricted to bus capital purposes under the terms for which they were awarded to the region but are flexible as to the particular bus capital purpose.

The \$76.8 million program in the TIP is predicated on a Letter of Intent extension to 1992 and is currently allocated as itemized in Exhibit A and summarized below:

Firm projects with approved grants \$69,391,120

Project applications in 1992

Bus Purchases	1,597,144
Passenger Shelters	612,951
Mall Extension	4,992,410
Contingencies	206,375

Total.....\$76,800,000

Bus Purchase - the \$1.6 million will allow procurement of approximately eight liquified natural gas (LNG) replacement buses.

Passenger Shelters - the \$0.61 million will procure approximately 250 replacement shelters.

Transit Mall Extension North - this project uses a combination of "trade" and Interstate Transfer funds; it calls for reconstructing 16 blocks on NW 5th and 6th Avenues between and including West Burnside and NW Irving Streets.

Program Status

The 'trade' program will be completed in FY 1992 upon approval of the above grant applications, and will be carried in the TIP until such time as final audit has been performed. Twenty-three projects have been implemented using the \$76.8 million with more than half of the trade program represented by the \$20 million applied to the Banfield program and some \$26 million to bus purchases.

Section 9

These funds are committed to the region through a formula allocation. There is considerable flexibility on the use of the funds, although there is a maximum allowable level that can be used for operating assistance (\$4.4 million for the Portland/Vancouver region for FY 1992), and the remainder is generally intended for "routine" capital purposes such as bus replacement and support equipment. Actual funding levels over the years are subject to amounts provided in the ISTEA, any carryovers, annual appropriations, and fluctuations in the formula distribution. Funds, except for operating expenses and projects of imperative nature, plus carryovers will be set aside for the next several years in order to accumulate some \$22 million for application to the Hillsboro Extension of the Westside Light Rail.

Section 9 Projects of Interest

Bus Dispatch System

This project will provide a new computer-aided dispatch system for fixed route buses. The project replaces many elements of the

radio dispatch system currently in use in the bus dispatch center, at radio base stations and on-board buses while retaining components that are still functional and have not completed their useful life. The existing system is becoming difficult to maintain, has limited functionality and cannot be expanded or changed to meet Tri-Met's current and future needs.

Tri-Met is currently developing procurement specifications of the project and plans to select a vendor by April 1993. Project completion date is expected to be August 1994.

Hillsboro Corridor Preliminary Engineering/Final Environmental Impact Statement

Section 9 and Section 3 funds are identified for expenditure on PE/FEIS for the Hillsboro Corridor Locally Preferred Alternative, to be selected in April 1993.

Preliminary Engineering includes development of civil and systems engineering to the 30 percent level. Engineering work will also include design of mitigation measures identified in the DEIS for the Locally Preferred Alternative.

The FEIS includes responding to comments received on the DEIS, defining plans to mitigate the adverse impacts associated with the Locally Preferred Alternative and evaluation of the results of the mitigation plans identified in the DEIS. The FEIS completed federal environmental review requirements in anticipation of application for a federal grant to implement the Locally Preferred Alternative.

* * * * *

Westside Corridor LRT

In April, Resolution No. 92-1598 amended the TIP and endorsed an overall Westside Light Rail Transit funding package which recognized the commitment of \$44 million in Surface Transportation Program funds and \$22 million of Section 9 funds for the Hillsboro extension.

In July, Tri-Met submitted a revised grant application to the Federal Transit Administration (FTA) for constructing the Westside Light Rail.

MILESTONES

Major milestones which directly supported the grant application and negotiations with FTA for the terms of a Full-Funding Agreement (FFA) have been accomplished:

In summer 1991, local jurisdictions formally committed funds under the terms of the regional compact. Total amount of the compact funds is \$21 million.

In July 1991, Tri-Met and the Oregon Department of Transportation completed an intergovernmental agreement for the state's portion of the local match.

In August 1991, the Final Environmental Impact Statement (FEIS) was published.

In November 1991, the Record of Decision (ROD) was issued by UMTA for the Westside Project, reflecting the completion and satisfaction of National Environmental Protection Act (NEPA) requirements.

In November 1991, FTA approved Tri-Met's request for a Letter of No Prejudice for final engineering and design and right-of-way acquisition.

As Tri-Met and FTA are in the final stages of negotiating the FFA, the original cost estimates and construction plan are under revision.

The SDEIS estimate of \$489.5 million in \$1990 was revised to \$522.4 million in the FEIS and has been further refined to \$505.6 million. The latest reduction reflects a combination of deletions and deferrals of project elements. The grant application reflects year-of-expenditure dollars in the attached table.

The program in the TIP reflects the noted changes and is phased by year:

1992	\$ 14.4 million	
1993	\$ 85.0 million	(Annual Element year)
1994	\$104.0 million	
1995	\$104.0 million	
1996	\$104.0 million	
post 96	<u>\$103.6 million</u>	
Total Section 3	\$515.0 million	

Funding Plan

The grant application requests a total of \$515 million in Section 3 funding as reflected above. Matching funds and local funds advanced to maintain the construction schedule will come from the following regional resources:

State Funds	\$114 million
Tri-Met General Obligation Bonds	\$ 79 million
Regional Compact Funds	\$ 12 million
Surface Transportation Funds (region)	\$ 22 million
Surface Transportation Funds (state)	\$ 22 million
Section 9 Capital Grants	\$ 22 million
Interest	<u>\$ 6 million</u>
Total Non-Section 3	\$277 million

Local funds beyond the project match requirements could be advanced to allow the project to be completed according to the construction sequencing plan. These funds would be reimbursed by subsequent appropriations of Section 3 funds. The actual amounts advanced and reimbursed will depend on annual federal appropriations.

Low-Floor Vehicles

In April 1991, public testimony at hearings on the Westside Project cited requirements of the 1990 Americans with Disabilities Act (ADA) in seeking an alternative to Banfield-style mechanical lifts.

In April 1992, the Tri-Met Board of Directors authorized the inclusion of low-floor level boarding light rail vehicles in the Westside Project and the grant application. Tri-Met is seeking separate funding for the extra costs associated with low floor vehicles. In the absence of additional funds, Tri-Met will purchase fewer (29) vehicles and use available funds to pay the low-floor "premium." If no successful bidder emerges from the procurement process, Tri-Met will purchase standard high-floor vehicles and install mini-high platforms to comply with ADA requirements.

Activities in 1993

Major activities scheduled for 1993 include:

- . bid, award and begin work on tunnel construction contract
- . bid, award and begin work on LS 6 construction contract
- . conclude procurement process for light rail vehicles
- . bid and award contract for provision of track materials
- acquire majority of right-of-way

REQUIREMENTS SUMMARY

	1990\$	Exp Yr \$
Cost Elements		
Right-of-Way*	42.4	48.2
Alignment Preparation	88.0	125.3
Tunnel	78.0	112.8
Track Materials	10.1	11.6
Electrifications, Signals, Communications	32.1	49.3
Stations and Park and Ride Lots	30.1	33.2
Operations Facility and Equipment	12.3	17.0
Light rail vehicles	56.6	79.7
Engineering and Construction Management	92.2	122.4
Design and Construction Contingency	.63.8	91.6
Interim Financing Costs		<u>1.2</u>
TOTAL PROJECT REQUIREMENTS	505.6	692.3

RESOURCES SUMMARY

Partnership Funding	Amount
Section 3 New Start**	515.0
State Funds	86.0
Tri-Met G.O. Bonds	79.3
Regional Compact Funds	<u>12.0</u>
TOTAL PROJECT RESOURCES	692.3

*Right-of-way estimate in 1992\$

**Under the terms of the 1991 Intermodal Surface Transportation Act (ISTEA), the project will receive \$515 million in Section 3 funds. The timing of these funds is uncertain; the region will advance local funds to accommodate the construction schedule and be reimbursed from future Section 3 appropriations, if necessary.

FEDERAL-AID URBAN SYSTEM AND REGIONAL SURFACE TRANSPORTATION PROGRAMS

The FAU program has been eliminated under the ISTEA and replaced by the STP program through which the Metro region receives annual allocations. There still remains FAU balances amounting to some \$4.8 million for the City of Portland, and \$3.3 million for the region. The largest shareholder for the region is Clackamas County with \$1.6 million retained for the Lower Boones Ferry Road -- Madrona to SW Jean project -- and \$933,000 for the McLoughlin Boulevard-Harrison Street through Milwaukie CBD project which is largely undefined at this time.

Resolution No. 92-1644 has established administrative options and procedures between Metro and ODOT for use and exchange of the remaining FAU funds for an equal amount of STP funds. This would have the effect of releasing the FAU funds for their use in other areas of the state and avoiding potential lapse. In exchange, the state would provide the region with new STP funds having an availability of four years.

Highlights of the resolution provide for the following:

Metro may request of ODOT that FAU fund balances be exchanged for STP funds and that any remaining amounts currently programmed for FAU projects in the TIP be allocated to corresponding projects under the STP Program.

Metro and ODOT's Salem Program Section will mutually establish the Metro areas's annual authority and six-year obligation authority in order to assure compatibility between Metro and statewide program ceiling limitations.

Annual programmed amounts may vary from annual allocations by mutual agreement of ODOT and Metro subject to ODOT's ability to accommodate shifts relative to the statewide

program and subject to the region's assurance that future authority will be available on a one-for-one basis.

The remaining FAU funds which may be exchanged for STP funds consist of those allocated to projects and to reserve accounts. Under the ISTEA, suballocation of STP funds is not allowed; therefore, in the exchange process, specific projects must be identified and reserve funds allocated to specific projects. Balances remaining for individual jurisdictions as of June, 1992 are as follows:

City of Portland.....	\$4,785,146
Multnomah County.....	11,587
Clackamas County.....	2,921,801
Washington County.....	74,523
Tri-Met.....	53,178
ODOT.....	63,477
Regional Reserve.....	178,685

Total.....\$8,088,397

Under agreement with Tri-Met, the City of Portland has deleted the Transit Mall Rehabilitation project and transferred the balance of \$800,000 in authority to the Marine Drive project along with \$200,000 of authority from its FAU reserve account. The combined amounts offset a similar transfer under the Interstate Transfer Program of \$1,000,000 from highway to transit, thus making the Marine Drive project allocations unchanged. The Transit Mall Rehabilitation Project was not eligible for use of FHWA funds and the City will now use the exchanged Tri-Met local capital funds for its rehabilitation.

OTHER PROGRAMS

The Six-Year Transportation Improvement Program

The Highway Division in the past has biennially published a Six-Year Highway Improvement program which has essentially targeted highway improvements. That publication has now been replaced in keeping with the broad interest of ODOT and the direction being set at the national level. The current publication, the 1993-1998 Six-Year Transportation Improvement Program, lists major activities expected to be under way over the next six years by the Aeronautics, Highway, Public Transit, and Rail programs. The state highway projects listed in Metro's TIP were extracted from ODOT's proposed TIP (May 1992) and comprise the 'other programs' section.

Metro has initiated a continuing process to establish priorities for the development of a unified recommendation for projects of regional scope to the Oregon Transportation Commission for inclusion in ODOT's 1993-1998 Six-Year Program. This process

incorporates the previous prioritization efforts conducted for the 1991-1996 Six-Year Program as well as an evaluation of the new project proposals relative to the ranking criteria adopted by JPACT.

The prioritization process concerns itself with three basic categories of project proposals:

Category 1 -- previously prioritized projects already included in the current (1993-1998) Six-Year Program;

Category 2 -- previously prioritized projects not contained in the current Six-Year Program; and

Category 3 -- new project proposals to be folded into the overall prioritization.

Regional Priorities and the Six-Year Transportation Improvement Program

As noted above, the process to date has been based on the previous Surface Transportation Act. The new Act provides much greater flexibility by allowing funds to be applied to a variety of alternative transportation improvements. These alternative improvements, taking advantage of new funding flexibility, have not been fully explored or evaluated. Although projects recommended for funding in the Portland region are high priority, they have not been assessed in light of these new possibilities.

Resolution No. 92-1578 endorsed comments and recommendations regarding the Oregon Department of Transportation's (ODOT) 1993-1998 Six-Year Transportation Improvement Program which is to be adopted by the Oregon Transportation Commission (OTC) in July, 1992. In the JPACT comments, it was requested of ODOT to flag specific new projects in the adopted Six-Year Program in order to allow the region to work further with ODOT to consider alternative projects by October, 1992. This would allow money to be temporarily committed to a project, with a final review step before it becomes a final commitment, and with Resolution No. 92-1578 acting as an amendment to the Six-Year Program at that time.

In general, projects identified in the Regional Transportation Plan (RTP) represent the region's highway project needs over the next decade. As a result, an essential need is seen for these projects to be included in the program elements of the new Six-Year Program, whether construction, project development, or reconnaissance. Projects listed for construction in the existing (1991-1996) Six-Year Program are recommended to retain their present status and schedule.

* * * * *

The 1993-1998 Six-Year Transportation Improvement Program must demonstrate a balance of projects and resources. The proposed program was in excess of the funds the state would receive over the six years and required reductions to achieve a balance. To this end, and to identify state STP funds in the amount of \$22 million for the Westside Light Rail Transit Project, ODOT reviewed comments and recommendations made on the proposed program of May, 1992. Resolution No. 92-1647 accepted the ODOT changes to the May program necessary to achieve the reduction and highlighted the following projects:

<u>Year</u>	<u>Highway</u>	<u>Project</u>	<u>New Status</u>
93	I-5	Tualatin Park-and-Ride	Tri-Met
93	US-26	SW Center - SW 76th LRT	Increased scope
93	I-5	W Marquam Intch-Marquam Br	Added to Program
93	I-5	Seismic Retrofit	Added to Program
94	I-5	Boones Fy-Commerce Circle	Added to Program
94	I-84	223rd to Troutdale	Reduced Scope
96	99E	MLK/Grand - SE Harold	Deferred to Dev
96	OR-208	209th to Murray	Deferred to Dev
96	99E	Milwaukie Park-and-Ride	Tri-Met
96	US-26	Westside LRT	Added to Program
96	OR-43	West Linn Park-and-Ride	Tri-Met
96	99E	Harold - Tacoma	Deferred to Dev
97	US-30B	N Columbia-Lombard/60th	Deferred to Req
98	I-5	Hood - Terwilliger	Deferred to Req
98	US-26	185th - Cedar Hills	Reduced Scope
98	I-205	Sunnybrook Interchange	Added to Program

The Other Programs section of this TIP has retained last year's funding structure as well as adding the new funding sources arising from the ISTEA. Thus, some projects appearing in this section may not fully be categorized to the proper funding source because of carryover funds to FY 1992 and assignment of new funding. This section of the TIP is organized by the following funding sources:

- Federal-Aid Interstate
- Federal-Aid Interstate 4R
- Federal-Aid Primary
- Highway Bridge Replacement
- Hazard Elimination System
- State Modernization
- State Operations
- Bikeways
- Access Oregon Highways
- State Surface Transportation Program
- State Surface Transportation Program (Safety)
- National Highway System Program
- State Congestion Mitigation/Air Quality Program
- Other Funding Programs

ACTIVITIES OF REGIONAL INTEREST

Regional Transportation Plan

The revised RTP, adopted in January 1992, is the "umbrella document" which integrates the various aspects of regional transportation planning into a consistent and coordinated process. The RTP which was revised in FY 1992 identifies the long-range (20-year) regional transportation improvement strategy and 10-year priorities established by JPACT and defines regional policies, goals, objectives and system plan elements.

The TIP relates to the RTP as an implementing document, identifying improvement projects consistent with the RTP that are authorized for funding within a five-year timeframe. Projects are identified for funding in the TIP at the request of local jurisdictions, Tri-Met and ODOT. These capital improvements must be consistent with the RTP policies, system element plans and identified criteria in order to be eligible for inclusion into the TIP for funding. All projects are retained in the RTP until implemented or a no-build decision is reached, thereby providing a permanent record of proposed improvements. Projects that are dropped from the TIP due to insufficient funds are maintained in the RTP for funding consideration at a later date. It is from priorities and proposed improvements found to be consistent with the RTP that projects appearing in the TIP and its Annual Element are drawn.

Regional Priority-Setting Process

A process to address regional transportation priorities and funding issues related to them has been implemented by JPACT in the form of Resolution No. 89-1035. The resolution represents a major milestone in reaching a consensus among jurisdictions in the Portland region on how to fund key transportation priorities. It represents an important starting point for seeking implementation of the proposals by the Legislature, affected boards and commissions and ultimately by the voter.

To implement the program, priorities must be established to guide specific funding decisions now and in the future. Criteria for setting these priorities will be as follows:

Improvements that correct severe existing traffic problems will have top priority.

Improvements that correct traffic problems anticipated in the next decade and improvements that correct access capacity deficiencies that constrain development areas during the next decade will have next priority.

Regional corridor improvement will give priority to options which reduce costs by increasing people-moving capacity.

Those options include ramp metering, signal improvements, access control and high occupancy vehicle lanes.

Large projects will be broken into manageable parts so that the most critical part is given priority for construction.

Consideration should be given to the region "reserving" a portion of available funds in order to be able to provide needed transportation improvements which quickly respond to economic development opportunities.

Criteria

Criteria adopted by JPACT in 1989, were used for prioritization of highway and transit projects proposed for inclusion in the 1991-1996 and 1993-1998 ODOT Six-Year Transportation Improvement Program. Metro has initiated a continuing process to establish priorities for the development of a unified recommendation for projects of regional scope to the Oregon Transportation Commission for inclusion in ODOT's Six-Year Programming effort.

With the adoption of the Intermodal Surface Transportation Efficiency Act (ISTEA), the federal project funding categories have been restructured to provide for increased local flexibility in funding decisions. This flexibility allows for local areas to determine whether federal funds will be directed toward highway or transit projects. In addition, two new categories, Transportation Enhancement and Congestion Mitigation/Air Quality, were developed which can provide funding for alternative transportation projects. Two separate ranking processes, each with unique criteria, have been developed for these two categories.

Regional Priorities and the Six-Year Highway Improvement Program

In June 1991, Metro submitted to ODOT results of a technical ranking process for establishing the Portland metropolitan area's priority highway projects for inclusion in ODOT's 1993-1998 Six Year Transportation Improvement Program. Priority state highway projects were ranked in three categories: Interstate, Access Oregon Highways (AOH), and Other Highway Projects.

In general, the projects represented the region's highway project needs over the next decade as identified in the Regional Transportation Plan (RTP). As a result, an essential need is seen for these projects to be included in the program elements of the new Six-Year Program, whether construction, project development, or reconnaissance.

Specifically recommended was for ODOT to identify the region's highway project priorities in the 1993-1998 Six-Year Program as follows:

Construction

All projects identified as a "high" priority (greater than 18 points) are recommended for construction. Of these, particular attention should be given to the following projects:

- . I-5: Greeley to N. Banfield (Phases 3 and 4). At a minimum, it is absolutely essential that elements related to the construction (phasing, right-of-way acquisition, local access, etc.) of a new Blazer arena be integrated into the program.
- . Highway 99W: Pfaffle to Commercial (Phase 1) and I-5 to Pfaffle (Phase 2). While Phase 2 ranked higher, Phase 1 is the preferred initial project.

In addition, the following projects which did not score higher than 18 points should be programmed for construction or require special consideration:

- . I-205: Highway 24 Interchange. This project provides necessary staging for and is complementary to Phase 1 of the Sunrise Corridor.
- . Highway 43: At Terwilliger Extension. If appropriate, this project should be constructed in conjunction with the Lake Oswego Trolley project. At the very least, an overall solution for the area should be defined through the Six-Year Program's Project Development Section and integrate both with the trolley and with ODOT's Highway 43 Metropolitan Area Corridor Study (MACS). The study should also define specific local access and circulation issues related to the trolley.

Project Development

Projects scoring between 14 and 17 (medium) points in the ranking and those scoring 18 or greater and not programmed for construction should be programmed for project development and/or right-of-way.

Transportation Enhancement

Transportation Enhancement funds are available for a broad range of transportation-related uses including bicycle or pedestrian facilities, scenic developments, highway beautification, historic enhancement or mitigation of water pollution due to highway runoff. Potential enhancement projects were solicited from jurisdictions throughout the region and were ranked during special TPAC meetings held in May of 1992. Six projects were recommended for inclusion in the 1993-1998 Six Year Program including:

- . Springwater Corridor. This project includes bike/pedestrian trail enhancements, trailhead development and safety improvements.
- . Columbia River Scenic Highway Interpretive Panels. This project covers the design, illustration, fabrication and installation of panels interpreting the cultural, historic and natural resources along the highway.
- . Fanno Creek Bike Path. Extension of an existing off-street bicycle pathway adjacent to Fanno Creek between Highway 217 and Scholls Ferry Road.
- . Clackamas/Willamette River Bike Path. This will develop a bike path along the Clackamas and Willamette Rivers in the northern portion of Oregon City.
- . Oregon Electric Right-of-Way. Acquisition and development of a bicycle/pedestrian pathway between S.W. 92nd and Oleson Road.
- . Willamette Shore Trolley Extension. Extend trolley to downtown Lake Oswego.

A specific Transportation Enhancement Program will be developed for inclusion in both the Regional Transportation Plan and future Transportation Improvement Programs.

Congestion Mitigation/Air Quality

Congestion Mitigation/Air Quality (CMAQ) funds are available for use in urban areas which are determined to be in non-attainment for Carbon Monoxide (co) or Ozone. As a non-attainment area, the Portland region is eligible for these funds, which must be used for transportation projects which contribute to the attainment of federal air quality standards.

The TPAC Transportation Demand Management (TDM) Subcommittee recommended to the state that the OTC fund a maximum of two years of the CMAQ to allow time for the region to complete work on the Governor's Task Force on Automobile Emissions and Metro's TDM study. These two studies will develop projects which directly relate to the CMAQ Program objectives. With this recommendation in mind, the TDM Subcommittee developed the following project priorities for inclusion in the 1993-1998 Six-Year Plan:

- . Tigard Park-and-Ride.
- . Willamette River Bridge Access Study
- . Courtney Avenue Bike/Pedestrian Link
- . Pedestrian to Transit Study

- . Neighborhood Rideshare Co-op
- . Bikes on Transit

A specific Congestion Mitigation/Air Quality Program will be developed for inclusion in both the Regional Transportation Plan and future Transportation Improvement Programs.

Park-and-Ride Facilities

Tri-Met has prioritized and submitted park-and-ride lots associated with state highways. Given the complex nature of acquiring park-and-ride sites, certain actions on the sites should be taken as follows:

- . MAX Expansion - 82nd Avenue park-and-ride FY 1994.
- . MAX Expansion (Gateway) - FY 1995.
- . Lake Oswego Site - attempt to resolve site issues.

Western Bypass Study

The Western Bypass Study area extends from the Sunset Highway (U.S.26) south to the I-5/I-205 interchange between Tualatin and Wilsonville, from Highway 217 west to the Chehalem Hills.

The study is addressing the development and evaluation of alternatives to serve circumferential travel in the sub-region. These are to include bypass, arterial improvement, transit and demand management as possible options.

In FY 1991, the public involvement process was initiated and the Statement of Purpose and Need was adopted.

In FY 1992, six strategies were developed and evaluated for traffic effects. Two strategies were proposed for deletion (Outer Bypass (Highway 219 alignment)) and a transit-only (light rail) alternative. Four alternatives were developed by mixing strategy elements, and the traffic impacts were evaluated along with the effects of Travel Demand Management actions.

During the year, in a separate process, 1000 Friends of Oregon developed an alternative land use scenario in conjunction with a transit-only scenario.

In FY 1993, a decision on the alternatives to carry through the EIS process will be made, including the possibility of including the 1000 Friends of Oregon alternative following evaluation of its traffic impacts. The DEIS will be completed and, hopefully, a Locally Preferred Alternative will emerge.

High-Capacity Transit Studies (Resolution No. 91-1456)

Because of the large amount of HCT planning underway or proposed, it is important to organize activities to allow for the most efficient conduct of the work, to ensure participation by the jurisdictions affected by the decisions that must be made and to ensure proper consideration of functional and financial trade-offs between corridors. In particular, functional trade-offs and coordination is required to take into account the effect of one project on other parts of the HCT system and financial limitations dictate that careful consideration be given to defining regional priorities before committing to construction.

In the fall of 1987, JPACT evaluated the work which had been completed to that time and determined that the Westside, Milwaukie, and I-205 corridors have the highest priority and should be advanced within a 10-year timeframe. The Barbur and I-5 corridors were determined to be a lesser priority and recommended to be constructed in a 20-year timeframe. The Macadam Corridor need was determined to be beyond the 20-year timeframe.

In 1990, JPACT endorsed a resolution to advance the Hillsboro Corridor, an extension of the Westside Corridor from 185th and Baseline Road to downtown Hillsboro into Alternatives Analysis. In 1991, JPACT further refined the region's HCT planning priorities by endorsing a resolution that advances the I-205 and Milwaukie corridors and the I-5 North and I-205 North corridors into concurrent and coordinated Preliminary Alternatives Analyses.

JPACT has endorsed a Regional HCT Study that will examine long-term systemwide issues, concentrating on CBD alignments, operations and maintenance requirements, updating forecasts on future rail corridors and extensions, and establishing regional criteria and priorities for further HCT development.

Objectives of these studies will be to:

1. Continue planning and design on the region's No. 1 priority, the Westside and Hillsboro Corridor projects.
2. Determine the region's next HCT transit corridor(s) to advance into Alternatives Analysis. The results of the study will be a statement of the transportation problems within the priority corridor, a description of a handful of most promising alternatives that respond to those problems, preliminary cost-effectiveness analysis of those alternatives, a corridor financial strategy, and a scope and budget for Alternatives Analysis. The study will also result in an action plan for the mid and long-term development of transit in the remaining corridors.

3. Reassess the remaining high-capacity transit corridors identified in the RTP. This assessment will develop an HCT system plan and staging strategy, determine systemwide infrastructure and operational needs, and help determine long-term needs and staging strategy in the Portland CBD. All forecasts will be performed with a common model and horizon year, using the 1988 travel-forecasting model and new 2010 land use data.
4. Develop system financing strategies and corridor financing plans that are consistent with the conclusions of the Regional HCT Study and the Preliminary AA Studies.

Regional HCT Priorities

Regional consensus has been developed around a comprehensive transit and highway program requiring a broad set of local, regional, state and federal actions to implement. Regionwide support for MAX expansion has been demonstrated with interest in advancing HCT planning in a number of corridors. Technical studies have shown that expansion is or will be viable in the Sunset, Milwaukie, I-205, I-5 North and Barbur corridors. As such, development of a regional HCT system is the long-range vision described in the Regional Transportation Plan.

. Westside and Hillsboro Corridors

The Westside Corridor is clearly the state's and region's number one priority. This has been the case since 1979 when it was established as the next priority after the Banfield LRT and has been reconfirmed on numerous occasions, most recently at the January 18, 1990 meeting of JPACT.

In 1979, when the Westside Alternatives Analysis was initiated, it was concluded that the segment from 185th Avenue to Hillsboro should also be advanced into the Alternatives Analysis when the land use plans and population and employment densities increased to the point where light rail extension would be viable within a 15-year timeframe. JPACT has concurred that the Westside Corridor to Hillsboro is the region's number one priority; first on May 11, 1989 when they agreed to pursue the Hillsboro segment; again in October 1989 when they approved the Unified Work Program and grant application for the Hillsboro Corridor Alternatives Analysis; and, finally, on January 18, 1990 when they reconfigured the region's LRT priorities.

The Westside Corridor to Hillsboro is viewed as one corridor with a question remaining on where the western terminus will be located. The first segment from downtown Portland to 185th Avenue is in final design. The second segment from 185th Avenue to Hillsboro is in Alternatives Analysis comparing the merits and environmental consequences of a No-Build, TSM, LRT Hillsboro CBD and LRT Fairplex alternatives.

A Draft Environmental Impact Statement will be completed in FY 1993 and the region will adopt a Locally Preferred Alternative (LPA). If LRT is selected as the LPA, it will be advanced into Preliminary Engineering and a Final Environmental Impact Statement will be completed.

- **I-205/Milwaukie** -- The region has determined that the next HCT transit corridor to advance into Alternatives Analysis will have a terminus in Clackamas County, either in the I-205 or Milwaukie Corridor. The region has agreed further that the process for determining which of the two corridors will advance as the region's priority corridor will be determined by conducting a Preliminary Alternatives Analysis, a transitional systems level study. During FY 1992, the region agreed upon the organizational and legal structure by which to conduct and manage the study and also agreed upon a detailed Work Plan. Most of the study elements will be completed during FY 1993, including the identification and description of transportation problems within the corridors; development of a series of methodologies describing how the key study decisions will be made; definition of a wide range of alternatives followed by a narrowing to and description of a small set of most promising alternatives (including No-Build, TSM and various LRT and other HCT options); selection of a priority corridor; preliminary assessment of the potential cost-effectiveness of those alternatives; and a systemwide financial plan. The region will develop a scope and budget for the Alternatives Analysis in FY 1994.
- **I-5/I-205 Portland/Vancouver** -- The region has agreed with Clark County, Washington to conduct an Alternatives Analysis for the I-5 North and I-205 North corridors from Portland into Clark County. The I-5/I-205 Portland/Vancouver Preliminary AA is being coordinated and will proceed on a schedule concurrent with the I-205/Milwaukie Preliminary AA. While the objectives of the studies are similar, the I-5/I-205 study will determine whether a North Corridor should advance into AA concurrent with or following a Southeast Corridor AA. A key objective of this study is the development of a corridor financial strategy consistent with the Regional Systemwide Financial Plan.

Regional HCT System - The Regional Transportation Plan defines a long-range vision for an HCT system in the Portland region. The objectives of the Regional HCT Study include the following:

- Finalize Regional HCT System Plan and staging strategy based upon adopted RTP.
- Determine sketch-level systemwide infrastructure and operational needs.
- Determine Portland CBD requirements and staging strategy.

A separate Regional HCT Financing Plan will develop financing options for constructing the HCT corridors, either as a regional system or individual corridors until the system is completed.

Major work activities and accomplished timelines in the past fiscal year include interim LRT Plan development; and advancing the Portland CBD element of the Regional HCT Study as a Pre-Alternatives Analysis Study, with the same timeframe as the I-205/Milwaukie Pre-Alternatives Analysis and the I-5/I-205 Portland/Vancouver Pre-Alternatives Analysis.

Expected work activities for the Regional HCT Study in FY 1993 include the following:

- . Define a regional LRT system that could be presented to the community, and give the community something to compare it to:
 - Determine the cost of a regional LRT system
 - Determine options for how the region would finance the system
 - Determine how implementation of the system would be staged
 - Compare the costs and benefits of implementing the system to an alternative
- . Refine alternatives to be considered in the Portland CBD:
 - Determine what new connections will be made in the CBD
 - Determine how a downtown HCT system would support the various regional system alternatives
 - Compare alternative modes (bus & rail) in the Portland CBD
 - Carry promising CBD alternatives forward to AA/DEIS

In summary, the region's HCT priorities are clear -- the Westside Corridor to Hillsboro is the number one priority. Next, we wish to initiate Alternatives Analysis in either the I-205 or Milwaukie Corridors and to determine whether the I-5 North or I-205 North corridors should advance into AA concurrently with or following the I-205 or Milwaukie Corridor AA. These priorities are being followed for purposes of seeking federal funds, state matching funds and identification of local or regional revenue sources.

Other Studies

Projects of Interstate Significance

A Bi-State Policy Advisory Committee has been established between Oregon and Washington jurisdictions for the purpose of resolving problems of mutual concern. The committee provides a forum for policymakers from the two states to express views and discuss metropolitan problems of interstate significance. Metro is currently involved in several projects which support these functions including a high-capacity transit study and I-5 and I-205

corridor improvements. The Interstate and Glenn Jackson (I-205) bridges provide the links across the Columbia River in the metropolitan area. The need for additional river crossing capacity across the Columbia River is an active issue and is continually being monitored by the responsible planning agencies on both sides of the river.

Air quality is also of interest to both sides of the river as the Portland-Vancouver airshed is classified as non-attainment for both ozone and carbon monoxide. A Bi-State Subcommittee meets on an ongoing basis to share information and to coordinate air quality planning activities.

- **Bi-State Study** - The current emphasis on bi-state transportation needs are focusing on high-capacity transit (see Regional HCT Priorities). However, the Bi-State Transportation Study focuses on short and long-term transportation system management and other relatively inexpensive methods to improve the operational efficiency of the I-5 and I-205 corridors (freeways, arterials, and transit) from I-84 north into Washington. The study is also evaluating the ability of the 2010 "recommended" RTP system to meet future year travel demands; and is assessing the impacts of bi-state accessibility on regional economic development patterns and reviewing economic factors influencing bi-state travel patterns. Study recommendations will be completed early FY 93.

Air Quality/Demand Management Planning

The Portland-Vancouver area is classified as non-attainment for carbon monoxide and ozone. As such, the area is subject to 1990 Clean Air Act Amendments (CAAA) emission reduction targets, to attainment deadlines for the two pollutants, and for the submittal of an updated SIP and air quality maintenance plan. Two inter-related studies are or will examine measures to meet CAAA requirements. Both studies recognize the interrelationships between improving air quality by reducing reliance on the single occupant automobile.

- **Governor's Task Force on Automobile Emissions in the Portland Area** - In response to a directive from the 1991 Oregon Legislature the Task Force is studying alternatives for reducing motor vehicle emissions in the region through market (pricing) and regulatory approaches. The task force will report to 1993 legislative interim committees in order that recommendations can be reviewed for appropriate or necessary legislative action. Identified strategies will be forwarded for regional review for inclusion in the RTP, SIP, and maintenance plans.
- **Transportation Demand Management (TDM) Study** - The Regional Transportation Plan recommends a balanced system of highways/arterials, transit, and TDM strategies to meet transportation needs over the next 20 years. Following, and incorporating

the work of the Governor's Task Force, a full set of TDM policy, program, and strategy recommendations will be developed for inclusion in the RTP. The TDM study will expand on the analysis of the Governor's Task Force, as necessary, and will provide the mechanism for regional and local review and implementation.

Area and Corridor Studies

Metro is the responsible agency for conducting comprehensive transportation studies which have regional or multi-jurisdictional issues or implications. The Northwest Subarea Transportation Study is the only current such study underway. The purpose of the study is to analyze existing (1990) and forecast (2010) travel demand in an area north of the Sunset Highway from approximately NW 109th in Washington County to NW Westover in the City of Portland. The study is focusing on methods to better facilitate access and circulation within the study area and to address regional traffic using study area arterials and collectors. Alternatives analysis are emphasizing non-single occupant vehicle solutions including transit, TDM, and TSM measures, as top priorities. Study recommendations will be completed in FY 93 for RTP and TIP consideration.

The Willamette River Bridge Crossing Study (Southeast Corridor Phase 2) will begin in FY 93. The study will evaluate travel demand across the river south of the Marquam Bridge. Information and alternatives will coordinate with the I-205/Milwaukie Pre-AA study and ODOT's I-405 Reconnaissance Study.

Oregon Transportation Planning Process

The ongoing Oregon Transportation Plan (OTP) Process is intended to result in the development of a transportation policy and a comprehensive, long-range plan for a multimodal transportation system for the state which encompasses economic efficiency, orderly economic development, safety and environmental quality. The OTP will guide all future state transportation planning, programming, and financing decisions. The OTP also fulfills the state's requirement to provide a Transportation System Plan (TSP) as part of the State Transportation Planning Rule 12. The rule requires that metropolitan areas and local governments develop TSPs consistent with the State TSP. Consequently, the OTP will in part guide the development of the regional TSP (or RTP).

Sunset Highway Improvements

In addition to the Westside LRT, over \$100 million in highway/transit-related construction improvements are planned in the Sunset Highway Corridor between the Zoo and Highway 217. These changes will be managed by ODOT. Construction of highway improvements will be coordinated with construction of the light rail program. The highway improvements using state funds have

been approved by the Oregon Transportation Commission, and the TIP has been revised to reflect the following project orientation:

US-26 - CEDAR HILLS BLVD INTERCHANGE TO SW 76TH AVENUE....'93
 US-26 - SW 82ND PLACE (GOLF CREEK ACCESS ROAD).....'93
 US-26 - HIGHLANDS (ZOO) INTERCHANGE.....'93
 US-26 - SYLVAN INTERCHANGE TO HIGHLANDS INTERCHANGE.....'94
 US-26 - CAMELOT INTERCHANGE TO SYLVAN INTERCHANGE.....'95
 US-26 - BEAVERTON/TIGARD HIGHWAY TO CAMELOT INTERCHANGE... '96

GENERAL

- Past policy endorsement of projects is identified in the TIP (including projects to be funded with Interstate, Interstate Transfer, Federal-Aid Urban and FTA funds), thereby providing continuing eligibility for federal funding.
- The current status through June 30, 1992 of Interstate Transfer and Federal-Aid Urban projects is accounted for, including past obligations and the anticipated FY 1993 funding level.
- On May 11, 1989, the Metro Council adopted Resolution No. 89-1094 calling for withdrawal of the I-205 bus lanes and allowing for substitution of light rail as an eligible project. The amount of federal funds finally authorized by the withdrawal for a transit project in the I-205 corridor was \$16,366,283. This amount was based on the federal pro-rata share of the costs included in the 1987 Interstate Cost Estimate for the added lanes on I-205 between Foster Road (milepost 17.79) and Marine Drive (milepost 24.88). The amount made available by this action will be included in subsequent substitution cost estimates used to apportion funds appropriated from the general revenue funds for the Interstate substitution transit projects authorized under Section 103(e)(4) of Title 23 United States Code.
- Private Enterprise Participation -- In accordance with UMTA Circular 7005.1, recipients of FTA funding are required to develop a process for considering the capability of private providers to perform mass transportation and related support services. They are also required to provide periodic documentation on the results of implementation of the policy. This requirement falls both on Metro as the Metropolitan Planning Organization (MPO) and Tri-Met as the principal provider of transit services and FTA grant recipient. Specifically, Metro is required to adopt a policy which provides for consideration of private enterprises in local transit service planning, ensure a fair resolution of disputes and certify at the time of submission of the annual Transportation Improvement Program that the local process is being followed. The policy is intended to respond to the above requirements while recognizing that the principal responsibility for involving the private sector should rest with

Tri-Met since it is the only operator in the Portland region.

In accordance with these requirements, Tri-Met's compliance with the policy to ensure private sector participation is demonstrated and endorsed by Resolution No. 92-1667.

- Financial Capacity -- On March 30, 1987, UMTA issued Circular 7008.1 which requires transit agencies and MPOs to evaluate the financial ability of transit agencies to construct and operate projects proposed in the TIP. Tri-Met's Finance Administration has conducted an analysis of the District's ability to fund the capital improvements appearing in the TIP. The results show that Tri-Met has the financial capacity to fund the capital projects as programmed.
- Air Quality -- Clean Air Act of 1990 - Interim Conformity. The TIP has been found to comply with the Clean Air Act Amendments of 1990 and the Phase I Interim Conformity Guidelines. The TIP has been found to be consistent with the most recent estimates of mobile source emissions; provides for the expeditious implementation of transportation control measures; and contributes to annual emission reductions consistent with Section 182(b)(1) and 187(a)(7) of the Act.

The TIP is in conformity with the Oregon State Implementation Plan (SIP) for Air Quality adopted in 1982. An update to the ozone plan in 1985 demonstrates attainment of the standard by the end of 1987. All projects specified in the SIP as necessary for attainment of these standards are included in the TIP. In addition, the TIP has been reviewed to ensure that it does not include actions which would reduce the effectiveness of planned transportation control measures.

- Certification of the Urban Transportation Planning Process -- ODOT and Metro have certified that the planning process carried out by Metro is in conformance with requirements established as a prerequisite for receipt of federal highway and transit funding. This certification is documented in Resolution No. 92-1582 and its attachments.

State Clearinghouse Review

The FY 1993 TIP has been submitted to the Oregon State Clearinghouse for review.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1667.

ATTACHMENT A

POLICY ON PRIVATE ENTERPRISE PARTICIPATION IN THE URBAN MASS TRANSPORTATION PROGRAM

TRI-MET DOCUMENTATION OF COMPLIANCE FOR FY 93

INVOLVEMENT OF THE PRIVATE SECTOR

Projects included in the FY 93 annual element of the Transportation Improvement Program (TIP) have been identified through the annual Tri-Met budget process. The Tri-Met budget undergoes extensive review by a seven member Citizens Advisory Committee and a public hearing on the proposed budget is convened by the Tri-Met Board of Directors.

The grant application process for all capital projects includes direct mailing to private transportation providers of notices of opportunity for public hearing on the proposed projects. Further opportunity for comment on the projects by private sector representatives is afforded when the Transportation Policy Alternatives Committee and the Joint Policy Advisory Committee on Transportation review the projects prior to approval of the TIP.

Finally, the competitive procurement process for purchase of equipment or vehicles, and provision of services or materials for the TIP annual element projects includes distribution of notices of bid advertisements or requests for proposals to prospective private sector bidders/proposers.

All major capital projects are examined prior to formulation of site plans to be certain that joint development possibilities are maximized from the inception of the project. This analysis focuses on possibilities in the area of obtaining contributions from property owners and developers, and in being certain that air rights may be utilized without undue economic penalty to the private development.

In order to increase coordination and information sharing with the private sector, the Oregon Transit Association is continuing to expand membership of private transportation providers.

PROPOSALS FROM THE PRIVATE SECTOR

Tri-Met has received no unsolicited proposals from the private sector during the last year. Tri-Met spent \$3,797,470 on contracted transportation services in FY 91-92.

DESCRIPTION OF IMPEDIMENTS TO HOLDING SERVICE OUT FOR COMPETITION

The major impediment to contracted transportation is the labor contract which requires all vehicles on lines of the District to be run by Tri-Met operators.

A copy of fully allocated Tri-Met costs by route is attached (Attachment A). Tri-Met has actively sought to contract out additional bus service at each of the last four labor negotiations. Tri-Met estimates the District would save between 18% and 25% of fully allocated costs per vehicle hour by contracting with the private sector (Attachment B).

DESCRIPTION AND STATUS OF PRIVATE SECTOR COMPLAINTS

Tri-Met has received no private sector complaints regarding privatization in the past year.

PRIVATE ENTERPRISE PARTICIPATION POLICY

Dispute Resolution Process: A protest based upon Tri-Met's Private Enterprise Participation Policy must be received in writing by the Executive Director of Operations or his designee no later than 10 working days following any decision or recommendation. The decision of the Executive Director of Operations can be appealed by written communication to the General Manager or his designee within 10 working days of receiving notice of the Executive Director's decision. Tri-Met must in each case render a decision within 10 working days of receipt of the protest or appeal.

The protest or appeal must be in writing, include a detailed explanation of the basis of the protest or appeal, and state the course of action that the protesting party thinks Tri-Met should take. Any interpretation of FTA regulations can be appealed to FTA following the Tri-Met steps.

This dispute resolution process is not applicable to RFQ/RFP or bid protests which have their own procedures.

FULLY ALLOCATED BUS COSTS

Attachment A

#	Route Name	Pay Time Minutes	Vehicle Miles	Bus Day Equiv.	Weekday Pl. Veh	Subtotal	Overhead Ratio	Fully Allocated Quarterly Costs	Fully Allocated ANNUAL COSTS	Full Cost/ Veh Hr	Estimated Private Sector Costs
1	Greeley/Vermont	\$152,014.6	\$89,435.6	\$24,080.4	\$22,021.4	\$287,551.8	\$71,240.7	\$358,792.6	\$1,435,170	\$61.48	\$1,076,378 - \$1,176,839
4	Fessenden/Division	\$472,204.7	\$290,740.0	\$74,727.7	\$63,311.6	\$870,963.9	\$216,785.4	\$1,087,749.3	\$4,347,077	\$60.48	\$3,200,308 - \$3,564,803
5	Interstate/Hawthorne	\$426,836.1	\$230,243.0	\$59,808.3	\$48,796.5	\$783,683.0	\$189,201.7	\$972,884.7	\$3,811,539	\$48.01	\$2,658,654 - \$3,125,462
6	Union Avenue	\$126,981.0	\$56,948.4	\$17,493.2	\$13,763.4	\$215,186.0	\$53,312.1	\$268,498.1	\$1,073,992	\$45.22	\$806,494 - \$880,874
8	15th/Jackson Park	\$295,867.2	\$137,436.1	\$39,915.8	\$33,032.1	\$506,250.3	\$126,423.0	\$631,673.3	\$2,526,693	\$45.99	\$1,895,020 - \$2,071,888
9	Broadway/Powell	\$327,940.1	\$170,517.3	\$48,248.0	\$41,290.2	\$587,966.5	\$145,678.3	\$733,670.8	\$2,934,683	\$48.74	\$2,201,012 - \$2,406,440
10	33rd/Harold	\$172,037.6	\$98,288.4	\$32,412.6	\$30,279.4	\$331,015.9	\$82,008.8	\$413,024.7	\$1,652,099	\$51.91	\$1,239,074 - \$1,364,721
12	Barbur/Sandy	\$461,306.4	\$261,358.7	\$62,905.6	\$55,053.6	\$830,624.2	\$205,788.3	\$1,036,410.5	\$4,146,642	\$53.88	\$3,109,232 - \$3,399,426
15	MLTabor/23rd Avenue	\$345,413.6	\$153,222.1	\$50,690.9	\$41,290.2	\$590,616.7	\$146,324.7	\$736,941.3	\$2,947,765	\$45.92	\$2,210,824 - \$2,417,168
17	21st/Holgate	\$309,022.3	\$179,419.9	\$49,905.7	\$44,042.8	\$582,390.8	\$144,288.7	\$726,677.5	\$2,906,710	\$50.44	\$2,180,032 - \$2,383,502
19	Gilean/Woodstock	\$301,765.9	\$164,751.6	\$44,321.8	\$38,637.5	\$549,376.8	\$136,107.6	\$685,484.4	\$2,741,938	\$49.40	\$2,056,453 - \$2,248,389
20	East & West Burnside	\$284,830.4	\$153,869.8	\$39,915.8	\$33,032.1	\$511,648.1	\$126,780.3	\$638,428.4	\$2,553,634	\$48.74	\$1,915,226 - \$2,093,980
22	Parkrose	\$56,890.7	\$31,431.8	\$9,553.6	\$8,268.0	\$107,934.2	\$26,740.6	\$134,674.7	\$538,699	\$49.81	\$404,024 - \$441,733
23	San Rafael	\$32,026.7	\$20,414.0	\$6,151.0	\$5,505.4	\$64,097.1	\$16,880.0	\$79,977.1	\$318,908	\$54.45	\$239,931 - \$262,325
24	Halsey	\$89,140.2	\$50,390.2	\$14,626.7	\$13,763.4	\$147,790.6	\$36,815.0	\$184,605.6	\$737,622	\$58.96	\$553,217 - \$604,850
26	Gresham-Gilean	\$44,165.8	\$30,228.8	\$8,942.9	\$8,258.0	\$91,585.5	\$22,690.2	\$114,275.7	\$467,103	\$58.72	\$342,827 - \$374,824
28	Stark	\$133,286.9	\$82,733.2	\$20,677.7	\$19,268.7	\$255,966.8	\$63,415.5	\$319,382.0	\$1,277,528	\$51.87	\$958,148 - \$1,047,573
27	Market-Main	\$74,203.3	\$48,671.7	\$17,318.7	\$16,518.1	\$166,709.7	\$38,824.7	\$205,534.4	\$782,138	\$59.48	\$586,603 - \$641,353
28	Lake/Webster	\$78,859.7	\$42,743.9	\$16,761.6	\$16,518.1	\$164,871.2	\$38,369.2	\$203,240.4	\$772,962	\$55.35	\$579,721 - \$633,829
31	Estacada	\$116,600.6	\$110,160.3	\$24,080.4	\$22,021.4	\$272,812.6	\$67,589.1	\$340,401.7	\$1,361,607	\$62.58	\$1,021,205 - \$1,116,517
32	Outfield	\$100,328.0	\$64,258.6	\$19,543.5	\$19,268.7	\$203,398.8	\$50,391.8	\$253,790.6	\$1,015,183	\$55.98	\$761,372 - \$832,433
33	McLoughlin	\$137,293.2	\$104,548.7	\$28,006.5	\$24,774.1	\$294,620.5	\$72,991.9	\$367,612.5	\$1,470,450	\$57.57	\$1,102,837 - \$1,205,769
34	River Road	\$30,876.7	\$22,396.1	\$5,505.4	\$5,505.4	\$64,361.1	\$16,945.4	\$80,306.4	\$321,226	\$55.00	\$240,919 - \$263,405
36	Oregon City	\$106,084.0	\$80,510.2	\$20,677.7	\$19,268.7	\$226,540.7	\$56,125.2	\$282,665.9	\$1,130,664	\$58.37	\$847,998 - \$927,144
36	South Shore	\$40,862.5	\$30,448.0	\$11,187.7	\$11,010.7	\$93,488.9	\$23,181.8	\$116,650.7	\$468,603	\$63.43	\$349,952 - \$382,614
37	Tualatin	\$25,000.8	\$27,595.5	\$8,375.8	\$8,258.0	\$69,290.0	\$17,166.5	\$86,456.5	\$345,826	\$76.88	\$259,369 - \$283,577
38	Boonville Ferry Road	\$32,929.5	\$30,204.4	\$8,375.8	\$8,258.0	\$79,767.7	\$19,782.4	\$99,550.0	\$398,120	\$68.89	\$298,590 - \$326,458
39	Lewis & Clark	\$27,841.4	\$18,251.7	\$6,151.0	\$5,505.4	\$55,749.4	\$13,811.9	\$69,561.3	\$278,246	\$53.37	\$208,684 - \$228,161
40	Johns Landing	\$174,573.1	\$97,543.7	\$29,184.4	\$24,774.1	\$326,075.2	\$80,784.8	\$406,860.0	\$1,627,440	\$50.81	\$1,220,580 - \$1,334,501
41	PCC/Fremont	\$267,562.4	\$144,025.1	\$36,949.4	\$33,032.1	\$481,569.1	\$119,308.3	\$600,877.3	\$2,403,509	\$47.88	\$1,802,632 - \$1,970,878
43	Taylor's Ferry	\$65,883.4	\$40,259.2	\$13,523.4	\$11,010.7	\$130,876.7	\$32,378.0	\$163,254.7	\$652,207	\$62.93	\$489,165 - \$534,809
45	Garden Home	\$83,358.4	\$52,254.3	\$16,315.3	\$13,763.4	\$165,091.5	\$41,049.9	\$206,141.4	\$826,966	\$53.93	\$620,224 - \$678,112
51	Council Crest	\$45,896.0	\$19,779.9	\$8,942.9	\$8,258.0	\$82,676.9	\$20,483.1	\$103,160.0	\$412,640	\$50.16	\$309,480 - \$338,365
52	Farmington/185th	\$77,985.7	\$51,092.1	\$12,345.5	\$11,010.7	\$152,434.1	\$37,765.4	\$190,199.5	\$760,798	\$62.99	\$570,598 - \$623,854
54	BH Highway	\$98,101.9	\$53,749.9	\$19,107.2	\$16,518.1	\$185,475.1	\$45,951.3	\$231,426.4	\$925,708	\$51.71	\$694,279 - \$759,079
55	Raleigh Hills	\$36,372.1	\$22,244.7	\$11,187.7	\$11,010.7	\$80,795.3	\$20,016.9	\$100,812.2	\$403,249	\$82.47	\$302,437 - \$330,664
58	Scholls Ferry	\$87,768.3	\$59,593.5	\$17,929.4	\$16,518.1	\$181,807.2	\$45,042.8	\$226,849.8	\$907,399	\$55.19	\$680,549 - \$744,067
57	Forest Grove	\$324,714.3	\$238,036.0	\$58,979.4	\$49,548.2	\$671,277.9	\$166,308.4	\$837,586.3	\$3,350,345	\$55.73	\$2,512,759 - \$2,747,283
59	Cedar Hills	\$107,658.3	\$67,594.8	\$20,677.7	\$19,268.7	\$215,199.5	\$53,315.5	\$268,515.0	\$1,074,060	\$53.79	\$805,545 - \$880,729
60	Leahy Road	\$18,010.7	\$10,324.8	\$8,375.8	\$8,258.0	\$41,969.3	\$10,397.9	\$52,367.2	\$209,469	\$88.62	\$157,101 - \$171,764
63	Washington Park	\$22,075.7	\$9,311.1	\$3,969.8	\$2,752.7	\$38,109.3	\$9,441.5	\$47,550.8	\$199,203	\$44.34	\$142,653 - \$155,967
67	Beaverton-Cedar Hills	\$89,040.3	\$48,023.2	\$16,882.4	\$13,763.4	\$166,709.2	\$41,302.0	\$208,011.3	\$832,045	\$50.93	\$624,034 - \$682,277
70	12th Avenue	\$159,545.3	\$73,398.5	\$24,211.2	\$19,268.7	\$276,423.8	\$68,483.7	\$344,907.6	\$1,379,630	\$45.52	\$1,034,722 - \$1,131,297
71	60th-122nd Avenue	\$306,528.2	\$202,783.4	\$45,543.3	\$35,784.8	\$590,639.7	\$146,330.4	\$736,970.1	\$2,947,880	\$51.77	\$2,210,910 - \$2,417,262
72	82nd-Killingsworth	\$339,681.2	\$198,498.8	\$42,227.9	\$33,032.1	\$613,440.0	\$151,879.1	\$765,319.1	\$3,061,677	\$48.64	\$2,296,257 - \$2,510,575
75	39th-Lombard	\$409,308.2	\$247,489.3	\$63,003.0	\$41,290.2	\$751,088.7	\$188,081.5	\$937,170.2	\$3,748,681	\$49.51	\$2,811,511 - \$3,073,918
77	Broadway-Lovejoy	\$202,997.8	\$88,076.7	\$26,825.3	\$22,021.4	\$338,921.3	\$83,987.4	\$422,908.7	\$1,691,555	\$44.49	\$1,298,606 - \$1,387,075
78	Beaverton-Lake Oswego	\$116,712.6	\$75,082.4	\$19,498.5	\$16,518.1	\$226,807.6	\$56,191.4	\$282,999.0	\$1,131,996	\$52.45	\$848,997 - \$928,237
79	Canby	\$43,930.6	\$33,558.7	\$8,781.7	\$5,505.4	\$89,756.3	\$22,237.0	\$111,993.4	\$447,974	\$55.55	\$335,980 - \$367,338
81	Rockwood-Gresham	\$27,241.7	\$18,841.4	\$5,543.9	\$5,505.4	\$55,172.3	\$13,668.9	\$68,841.1	\$275,365	\$58.37	\$208,523 - \$225,799
83	Hollywood	\$16,721.3	\$5,253.8	\$2,791.9	\$2,752.7	\$27,529.8	\$6,820.5	\$34,350.3	\$137,401	\$43.93	\$103,051 - \$112,669
84	Sandy-Boring	\$11,228.0	\$15,409.3	\$2,791.9	\$2,752.7	\$32,179.8	\$7,972.5	\$40,152.3	\$160,809	\$77.14	\$120,457 - \$131,700
88	SW 198th Avenue	\$35,837.5	\$31,137.4	\$11,187.7	\$11,010.7	\$89,153.3	\$22,087.7	\$111,241.0	\$444,964	\$69.99	\$333,723 - \$364,870
89	Rock Creek	\$40,841.1	\$31,590.3	\$13,968.6	\$13,763.4	\$100,164.4	\$24,813.2	\$124,977.6	\$499,870	\$68.59	\$374,903 - \$409,894
96	Wilsonville-Tualatin	\$41,397.1	\$45,138.1	\$11,187.7	\$11,010.7	\$108,713.5	\$26,833.7	\$135,547.2	\$542,589	\$72.83	\$406,942 - \$444,823
		\$8,019,187	\$4,725,272	\$1,308,192	\$1,134,103	\$15,186,754	\$3,782,803	\$18,969,557	\$75,797,030	\$51.38	\$58,847,772 - \$62,153,684

A. Range of Savings from Contracted Services

		Minus Administrative Costs
<u>Maximum:</u>		
Tri-Met Cost Savings with Full Maintenance Savings	\$32.26	
Private Sector Costs* (Range)	<u>\$17.45 - 20.32</u> \$12.00 - 15.00	\$9.30 - 12.30
<u>Minimum:</u>		
Tri-Met Cost Savings w/o Full Maintenance Savings	\$29.72	
Private Sector Costs* (Range)	<u>\$17.45 - 20.32</u> \$ 9.42 - 12.40	\$8.50 - 12.12
<u>Likely:</u>		
Tri-Met	\$30.00	
Private Sector	<u>20.00</u>	
	\$10.00	\$7.30

B. Tri-Met Administration Costs per Platform Hour (First Year Costs)

Manager: \$37,000 * 1.4 = \$51,940
Analyst: \$30,000 * 1.4 = 42,000
\$93,946 ÷ 34,684 annual platform hours
\$2.70/platform hour

C. FY88 Tri-Met System Operating Costs Per Hour = \$48.46

*Based on current contracts with private providers.

Meeting Date: September 24, 1992
Agenda Item No. 7.4

RESOLUTION NO. 92-1670



METRO

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

Memorandum

DATE: September 24, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NOS. 7.2, 7.3, AND 7.4

The Transportation & Planning Committee will meet on September 22 to consider Resolution Nos. 92-1680, 92-1667 and 92-1670. Committee reports will be distributed in advance to Councilors and available at the Council meeting September 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING AN	)	RESOLUTION NO. 92-1670
AMENDMENT TO THE 1993 UNIFIED WORK)	
PROGRAM TO PROVIDE FOR TRANSPORTATION)		Introduced by
AND LAND USE MODELING IMPROVEMENTS	)	Councilor Richard Devlin

WHEREAS, The Metropolitan Service District approved
Resolution No. 92-1575, which approved the Fiscal Year 1993
Unified Work Program; and

WHEREAS, The Metropolitan Service District approved the FY
1991-1992 Budget which provided for Region 2040, Phase I and also
approved Resolution No. 91-1530, which provided for a work pro-
gram for Region 2040, Phase I; and

WHEREAS, The Region 2040 work plan anticipated modeling only
one Region 2040 concept; and

WHEREAS, It is the conclusion of TPAC and JPACT that model-
ing three Region 2040 concepts, instead of the original work task
to model only a "Reference Case," would substantially and mater-
ially improve the understanding of regional growth alternatives
and the differences between them; and

WHEREAS, The amendment of the Unified Work Program and the
completion of the proposed scope of work would allow for improved
modeling capability; now, therefore

BE IT RESOLVED,

That the FY 1993 Unified Work Plan is amended as indicated
on Attachment "A."

ADOPTED by the Council of the Metropolitan Service District
this ____ day of _____, 1992.

Jim Gardner, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92-1670 FOR THE PURPOSE OF APPROVING AN AMENDMENT TO THE 1993 UNIFIED WORK PROGRAM TO PROVIDE FOR TRANSPORTATION AND LAND USE MODELING IMPROVEMENTS

September 3, 1992

By: Andrew Cotugno
Keith Lawton

BACKGROUND

The Region 2040 project has developed three regional growth concepts. Concept "A" accommodates expected regional growth by assuming that existing policies will remain largely unchanged. It assumes that growth will occur within the constraints of existing comprehensive plans and that growth that cannot be provided for within the current Urban Growth Boundary will occur outside the UGB in patterns similar to current development patterns. It is a "base case" or "reference alternative" which provides a point of departure for other growth concepts.

Metro Technical Services staff have been preparing to computer model this concept and have developed and refined many aspects of both the transportation model and the spatial interaction model through LUTRAQ project assistance.

However, given the effort, time and cost required for this modeling effort, it was concluded in the initial Region 2040 Phase I scope of work that only this one concept would be modeled.

It is clear that if specific model problems can be resolved, there are several advantages to modeling the three concepts. First, by modeling three concepts, the concepts could be more rigorously shaped to better ensure that if a concept were ultimately adopted as Metro's preferred concept, it would have been tested for its ability to function. In addition, modeling would help ensure that consistency among concepts was probable.

One of the major obstacles to modeling more than one concept is the amount of time required for computer runs. With the improvements that would be developed in this project, run times would be greatly reduced and the sensitivity of existing models would be much better understood. From this, Metro will learn the threshold of sensitivity of the models, therefore, when they are appropriate to run. In addition, speed increases will allow many more technical reviews and answers to "what if" queries that will become major questions raised by the Region 2040 effort.

The Federal Highway Administration has indicated interest in funding this modeling effort as a means to test hypotheses they have about the level of modeling needed nationally to comply with land use aspects of the 1991 Intermodal Surface Transportation

Efficiency Act (ISTEA). Sufficient funding of modeling is likely to be available from this source. Only very recently did Metro staff learn that the funding source for this prospective grant is available. However, it is available only until the end of the federal fiscal year, September 30. Accordingly, favorable action on this amendment is necessary if funding is to be secured.

TPAC has reviewed this UWP amendment and recommends approval of Resolution No. 92-1670.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends approval of Resolution 92-1670, approving an amendment to the FY 1993 Unified Work Program, as indicated on Attachment "A."

Attachment "A"

Transportation and Land Use Modeling for Three Region 2040 Concepts

Scope of Work

Introduction

The following description outlines the scope of work for a research project on equilibrium properties in the travel projection process. The research will be conducted by the Metropolitan Service District, Portland, Oregon (Metro), with the cooperation of the Oregon Department of Transportation and the Federal Highway Administration.

The purpose of this grant is to: 1) develop and make operational the set of integrated transportation and land use projection models at Metro and, 2) test the sensitivity of the combined process to various levels of feedback and degrees of equilibrium. The information and reports generated are for national distribution and need to consider issues generic to most transportation models as well as local concerns.

The major local application at this time will be to improve Region 2040 growth concepts by increasing the number of computer generated scenarios, providing answers to more of the expected "what if" questions than would otherwise be possible. This analysis is needed prior to the commencement of Phase II of the Region 2040 project.

Task 1 described below will be completed by Metro, ODOT and FHWA staff. Task 2 will be completed by contractors, in conjunction with Metro staff. Tasks 3 and 4 will be completed by contractors exclusively.

Tasks

Task 1 Scoping - This task will provide a detailed scope of work for carrying out this project, including a schedule for completion of all tasks and subtasks. The issues to be addressed will be identified in detail and will include, but not be limited to: 1) feedback between assignment and mode choice; 2) assignment and distribution; and 3) assignment and land use. Types of testing to be done will be identified such as highly constrained and unconstrained networks. The scope of work will also include cost estimates and the level of effort needed for each task. Approximately \$15,000 has been allocated for this task.

Task 2 Existing Model Improvements - This task will include the development of a tightly integrated procedure which links Metro's transportation network model (EMME/2) with its spatial interaction model (DRAM/EMPAL). The objective will be to reconcile different zone/scale requirements of each process and to create enough speed for practical sensitivity analysis.

Task 3 New Procedure Development/Computer Runs - Task 3 will develop test objectives, procedures, and evaluation measures for model tests identified in task 1. Measures will include changes in at least the following: VMT, VHT, PMT and PHT. Model test runs will also be completed within this task.

Task 4 Draft Report - A draft report will be included within this task. Copies of the draft report will be provided to FHWA, ODOT and Metro. This task schedule will include adequate time for responses to the draft.

Task 5 Final Report - This task will include responding to comments about the draft report and completing and delivering the final report.

Proposed UWP Amendment

TRANSPORTATION AND LAND USE MODELING IMPROVEMENTS FOR REGION 2040 CONCEPTS

PROGRAM DESCRIPTION

This project will provide speed improvements to the transportation model (EMME/2) and its links to the spatial interaction model (DRAM-EMPAL), as well as providing insight to the sensitivity of the combined models. The major local application at this time will be to improve Region 2040 growth concepts by increasing the number of computer-generated scenarios and providing answers to more of the expected "what if" questions than would otherwise be possible. This analysis is needed prior to the commencement of Phase II of the Region 2040 project.

RELATION TO PREVIOUS WORK

Work Program Prior to FY 92-93. Improvements to the transportation model have been made almost continuously for many years. This year's UWP includes travel model refinement -- but not to the extent of this project.

OBJECTIVES

Work Program for FY 92-93. The purpose of this project is to: 1) develop and make operational the set of integrated transportation and land use projection models at Metro; and 2) test the sensitivity of the combined process to various levels of feedback and degrees of equilibrium. The information and reports generated are for national distribution and need to consider generic issues as well as local concerns.

Anticipated Work Program after FY 92-93. None at this time, although system improvements will continue to be used.

PRODUCTS AND TARGETS

- Task 1 Scoping - October 1992
- Task 2 Existing Model Improvements - November 1992
- Task 3 New Procedure Development/Computer Runs - November 1992
- Task 4 Draft Report - December 1992
- Task 5 Final Report - January 1992

EXPENDITURE ALLOCATION

Personal Services:	\$ 45,000
(FTE 1.0)	
Materials & Services:	\$175,000
Computer (M&S):	\$ 2,750
Capital Outlay	\$ 2,250
Transfers	\$ 0
Contingency	\$ 0
TOTAL	\$225,000

REVENUES

FHWA:	<u>\$225,000</u>
TOTAL:	\$225,000

Meeting Date: September 24, 1992
Agenda Item No. 7.5

RESOLUTION NO. 92-1671

SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF RESOLUTION NO. 92-1671, FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO THE COMPETITIVE PROCUREMENT PROCEDURES OF METRO CODE CHAPTER 2.04.053 AND AUTHORIZING A PERSONAL SERVICES AGREEMENT WITH THE OREGON GRADUATE INSTITUTE OF SCIENCE AND TECHNOLOGY

Date: September 17, 1992

Presented by: Councilor McFarland

Committee Recommendation: At the September 15 meeting, the Committee voted 3-0 to recommend Council adoption of Resolution No. 92-1671. Voting in favor: Councilors Hansen, McFarland and Wyers. Councilors Buchanan and Van Bergen were excused.

Committee Issues/Discussion: Jim Watkins, Solid Waste Engineering and Analysis Manager, explained that the original closure plan for the St. Johns Landfill recognized that there would be opportunities for research at the site during the closure process. It was envisioned that such research would be privately funded unless it assisted Metro in managing the closure process.

Watkins urged that the proposal submitted by Oregon Graduate Institute (OGI) would provide many benefits to Metro and therefore providing Metro funds for this research was appropriate. He noted that the research will focus on three areas: 1) chemical reactions and migration of soil contaminants, 2) development of computer models related the surface water and contaminant movement in the Smith and Bybee Lake area and 3) soil and vegetation interaction in the landfill cap.

Watkins emphasized that the proposed Metro funding (\$99,999 total, \$75,000 during FY 92-93) is seed money and that OGI will be seeking supplemental funding from other sources such as the National Science Foundation. Watkins noted that a sole source contract is being sought for several reasons including: 1) it is OGI's proposal, 2) OGI's expertise and proximity to the landfill and 3) cost-effectiveness. He noted that the overhead for the project (61%) is much lower than the amount charged by private engineering consulting firms. Funding will come from a \$100,000 research line item in the Closure Fund account.

OGI representatives (Drs. Fish, Baptista, and Jarrell) briefly explained the technical elements of the proposed research, including a video outlining the types of computer modeling that will be completed. They emphasized that Metro will receive many benefits from the research. These include: 1) a data base and computer modeling technology that will assist in cost-effective environmental management of the site, 2) assistance in developing a proper cap for the landfill and 3) development of the site as a "field laboratory" for a variety of educational and environmental uses.

Councilor McFarland asked about the nature of the on-site facilities that would be needed to conduct the research, noting the the Smith and Bybee Lake management committee would be concerned about the location of structures in the wetland area. Dr. Fish explained that the only facilities needed would be a small shed for equipment storage that would not be located in any wetland area.

Councilor Hansen asked if this type of research would be something that we would normally procure. Watkins responded that, while we would not have independently pursued this type of research, the potential benefits are significant. He indicated that the environmental data gathered will allow Metro to address environmental concerns in advance rather than playing catch up to comply with governmental compliance requests. The computer models will be integrated with existing Metro data bases to improve our ability to address leachate-related issues at the landfill. Bob Martin also noted that the research will provide additional supportive data to strengthen Metro's negotiating position with various regulatory agencies.

Councilor Hansen asked if the computer models and data can be produced in such a form that councilors could share it with their constituents. Dr. Baptista agreed that this would be an important potential use of the data and that presentations could be developed for this purpose.

Councilor Hansen asked what other potential sources of additional funding would be available for the project. Drs. Baptista and Fish responded that they will be seeking additional funding from the National Science Foundation and possibly the Defense Department. Councilor Hansen asked how long the research could take and Dr. Fish answered -- 10 years or more.

**BEFORE THE CONTRACT REVIEW BOARD OF THE
METROPOLITAN SERVICE DISTRICT**

FOR THE PURPOSE OF AUTHORIZING)	
AN EXEMPTION TO THE COMPETITIVE)	
PROCUREMENT PROCEDURES OF	)	RESOLUTION NO. 92-1671
METRO CODE CHAPTER 2.04.053 AND)	
AUTHORIZING A PERSONAL SERVICES	)	Introduced by Rena Cusma,
AGREEMENT WITH THE OREGON	)	Executive Officer
GRADUATE INSTITUTE OF SCIENCE)	
AND TECHNOLOGY)	

WHEREAS, The Closure and Financial Assurance Plan, St. Johns Landfill, 1989 promotes the use of St. Johns Landfill as a site for research; and

WHEREAS, The Scope of Work of the Personal Services Agreement 902-635 (attached hereto and labeled Exhibit A) between Oregon Graduate Institute of Science and Technology (OGI) and the Metropolitan Service District clearly advances Metro's solid waste management objectives by providing information about the environmental impact of St. Johns Landfill; and

WHEREAS, Personal Services Agreement 902635 with OGI cannot be approved unless an exemption to the competitive procurement process of to Metro Code 2.04.053 is granted by the Metro Contract Review Board; and

WHEREAS, This resolution was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now therefore,

BE IT RESOLVED,

1. That based on the information provided in the staff report to Resolution No. 92-1671, and the information presented to the Council Solid Waste Committee, the Council of the Metropolitan Service District finds that:

- A. OGI provides a package of locally based specific research expertise, computer-based tools, technical assistance and educational opportunity that cannot, as a total package, be provided by any other private or public institution in the United States; and
- B. Due to its close proximity to the St. Johns Landfill, OGI will provide a cost-effective research program to the Metropolitan Service District.

2. That based on these findings, the Council of the Metropolitan Service District Contract Review Board exempts Personal Services Agreement 902-635 (attached hereto and labeled Exhibit A) with the Oregon Graduate Institute of Science and Technology from the competitive bid process of Metro Code Section 2.04.053 and the Executive Officer is authorized to execute this Personal Services Agreement.

ADOPTED by the Contracts Review Board of the Council of the Metropolitan Service District this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

EXHIBIT A

Project: St. Johns Landfill Closure
Contract No. 902635

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation organized under ORS Chapter 268, referred to herein as "Metro," located at 2000 SW. First Avenue, Portland, OR 97201-5398, and OREGON GRADUATE INSTITUTE OF SCIENCE AND TECHNOLOGY a non-profit educational institution, located at 19600 N.W. Von Neuman Drive, Beaverton, OR 97006.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. **Duration.** This personal services agreement shall be effective October 1, 1992, and shall remain in effect until and including September 30, 1993, unless terminated or extended as provided in this Agreement.
2. **Scope of Work.** Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. **Payment.** Metro shall pay Contractor for services performed and materials delivered in the maximum sum of NINETY NINE THOUSAND NINE HUNDRED NINETY NINE and NO/100THS DOLLARS (\$99,999.00), in the manner and at the time specified in the Scope of Work.
4. **Insurance.**
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering personal injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence, \$250,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

14. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

15. Modification. This Agreement is the entire agreement between the parties, and may only be modified in writing, signed by both parties.

16. Attorney's Fees. In the event of any litigation concerning this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal.

OREGON GRADUATE INSTITUTE OF
SCIENCE AND TECHNOLOGY

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

DO:gbc
ONE902635.con
September 2, 1992

**Exhibit A
SCOPE OF WORK**

I. INVESTIGATION OF THE TRANSPORT OF CONTAMINANTS IN SOIL SURROUNDING ST. JOHNS LANDFILL.

Contractor shall design and develop sampling and analysis procedures that best characterize the processes in soils and sediments surrounding the landfill that determine the fate and transport of contaminants commonly found in the landfill. Initial efforts will focus on understanding those fundamental mechanisms that drive computerized contaminant transport models applicable to the St. Johns Landfill.

Contractor shall investigate the transport of selected chemicals through the soils in the natural or engineered dike surrounding the solid waste in St. John's Landfill. Contractor shall study at least three soil cores which were collected by other contractors during August, 1992. Contractor shall determine the distribution of selected chemical components in the solid and liquid phases. Contractor shall study the exact forms which the chemical components assume in association with the solid and liquid phases and their interactions with the soil which influence mobility.

Nutrients and contaminants chosen for study will be those most likely to adversely affect waters surrounding the landfill. Parameters may be chosen that are surrogates or indicators of contaminants. Selection of parameters will be made after consultation with Metro Solid Waste staff.

Contractor shall submit a report presenting materials, methods, results, and conclusions to the Metro Solid Waste Department by August 31, 1993. After giving Metro staff 14 days to review and comment, Contractor shall submit a final report to Metro by September 30, 1993.

Contractor shall submit to Metro two copies of all technical papers resulting from this study prior to their written publication or oral presentation.

II. DEVELOPMENT OF AN INTEGRATED SYSTEM FOR MODELING AND GRAPHICAL VISUALIZATION OF FLOW AND TRANSPORT

Contractor shall develop and transfer to Metro an integrated system for the modeling and graphical visualization of flow and transport in and around the St. Johns landfill, including the Columbia Slough, Smith and Bybee Lakes, and relevant parts of the Willamette and Columbia Rivers.

The desired integrated system shall consist of:

1. Existing or enhanced software for computer visualization of field data and of results from numerical models of flow and transport.

The visualization software shall be able to assist the management of the St. Johns Landfill system, and shall be generic enough to support a variety of numerical models and media. In particular, regional simulations of groundwater flow and transport developed by Metro with model MODFLOW should be supported; if necessary, the input/output structure of MODFLOW will be modified by Metro to adjust to the input/output standards of the visualization tools.

2. Existing or improved numerical hydrodynamic model(s) for surface water flow and transport in the entire region of study.

As a demonstration, the model(s) shall be applied in a way that consolidates and enhances the current understanding of the dynamics of surface flow in the region. Existing field data and model results (from relevant surface water and groundwater simulations) should be used to support the application.

3. Existing or improved numerical transport model(s) for surface water transport in the entire region of study.

As a demonstration, the model(s) shall be applied in a way that enhances the current understanding of the hydraulic residence times in the region of study.

The software transfer shall lead to the availability at Metro, in a form usable in UNIX workstations, of binaries of all relevant models and graphics tools. The transfer shall include the training of Metro personnel on the use of all software, through a two-day short course.

Contractor shall submit to Metro two copies of all technical papers which result from this study prior to their written publication or oral presentation.

III. STUDIES OF SOIL/VEGETATION INTERACTIONS ON THE ST. JOHN'S LANDFILL CAP

Contractor will develop empirical methods to evaluate the rate of compaction, soil loss, and the cycling and fate of nutrients in the soil profiles proposed for the St. Johns Landfill, including the experimental plots designed for Sub-Area 1. All relevant soil fertility and physical properties that determine the success of the proposed vegetation for the landfill cover will be included.

Contractor shall conduct greenhouse experiments to study the release of nutrients and selected chemicals from vegetated and unvegetated, constructed top soils made from yard debris compost and soil and also sewage sludge compost and soil which are irrigated with simulated rainfall and with St. Johns Landfill leachate..

Contractor shall test the relevant properties of these constructed topsoils to yield estimates of short and long term soil fertility and physical properties such as erosivity.

Utilizing the Minirhizotron Camera, Contractor shall study root growth patterns of selected plants or plant communities in the cover soils of St. Johns Landfill.

Contractor shall bury the camera wells using hand tools and shall exercise caution not to damage the drainage net or geomembrane. Contractor shall notify Dennis O'Neil of Metro at least 24-hours before burying any experimental equipment.

Contractor shall submit a draft report stating materials, methods, results and conclusions to Metro Solid Waste staff by August 31, 1993. Following an opportunity for staff review and comment, Contractor shall submit a final report to Metro by September 30, 1993.

Contractor shall submit to Metro, two copies of all technical papers resulting from this study prior to their written publication or oral presentation.

IV. EQUIPMENT

Metro shall hold title to all equipment purchased with funds provided under this Agreement. Equipment shall be stored at a location agreeable to both parties and shall be turned over to Metro at the end of this Agreement.

V. PROFESSIONAL LIABILITY INSURANCE

The professional liability insurance referred to in 4(b) of this Agreement shall not be required in this Scope of Work.

VI. PAYMENT

Payment to the Contractor shall not exceed the total amount of the budget shown below.

Item	Cost
1. Salaries, Wages and Benefits	48,209.00
2. Materials and Supplies	6,700.00
3. Equipment	11,321.00
4. Overhead (61.5% of 1,2)	33,769.00
TOTAL	\$99,999.00

Metro shall pay Contractor within thirty (30) days following receipt of an approved invoice from Contractor.

DMO:gbc
oaei902635.sow
September, 1992

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 92-1671 FOR THE PURPOSE
OF AUTHORIZING AN EXEMPTION TO THE COMPETITIVE
PROCUREMENT PROCEDURES OF METRO CODE CHAPTER 2.04.053
AND AUTHORIZING A PERSONAL SERVICES AGREEMENT WITH THE
OREGON GRADUATE INSTITUTE OF SCIENCE AND TECHNOLOGY.

Date: September 3, 1992

Presented by: Jim Watkins
Jim Morgan

PROPOSED ACTION

Adopt Resolution No. 92-1671, which grants exemption from the competitive procurement process and authorizes the execution of a Personal Services Agreement with the Oregon Graduate Institute of Science and Technology for research services in connection with assessing the impact of St. Johns Landfill on the environment.

FACTUAL BACKGROUND AND ANALYSIS

According to the Revised Closure and Financial Assurance Plan, St. Johns Landfill, September 1985, "Metro's objective is to close the St. Johns Landfill using cost-effective methods to responsibly manage short and long-term negative impacts on health, safety, and the environment." The Plan states that Metro desires to "provide opportunity for research about closure methods and results." In Appendix B, Closure as a Research and Recycling Opportunity, one objective is to "use the St. Johns Landfill as a site for research, which would benefit future landfill siting, design, operation, closure, end use, and regulation development." Metro would review research proposals on a case-by-case basis. "Financial support for research projects will be the responsibility of the proposer unless the project clearly advances Metro's solid waste management objectives." The 1989 Closure Plan did not allocate any funds for research.

To date, only one academic institution has performed investigations at St. Johns Landfill. In 1990, the Metro Council approved an Intergovernmental Agreement with Portland State University. Under this Agreement, an Engineering Professor and his students have collected ground and surface water data, have assembled historical data in a computer-usable format and are incorporating this data into a surface water movement model. Metro took advantage of the fact that this group was already developing a model of surface water movement in Columbia Slough for the City of Portland. Metro asked this group to collect additional information and make calculations that would be useful for estimating the future environmental impact of the landfill. To date, about \$45,000 has been spent under this contract.

The Oregon Graduate Institute of Science and Technology (OGI) has shown an interest in conducting research about the condition of the environment in the Smith & Bybee Lakes management area, and about the environmental impact of St. Johns Landfill. OGI submitted proposals in October 1991 and February 1992 titled Environmental Integrity at the St. Johns Landfill Site. Metro staff developed a scope of work that is in line with these proposals, yet

provides information believed to have near term usefulness to the closure project. Under this scope of work, OGI would perform three types of investigations: First, Dr. William Fish would investigate how chemical interactions between certain contaminants and the soil surrounding the landfill influence the migration of these contaminants through the soil. Second, Dr. Antonio Baptista would use numerical ground and surface water models developed by Metro and Portland State University to develop an integrated, graphical, computer generated display of surface water flow and contaminant transport of at least the entire Smith & Bybee Lakes area, which would help analysts see relationships better than by only looking at columns of numbers. Third, Dr. Wesley Jarrell would investigate the interactions between the soils and vegetation over the closure cap. He would study the short and long-term soil fertility, nutrient loss, and root growth, using both greenhouse tests and field tests at St. Johns Landfill. OGI proposes a total cost of \$99,999 for these tasks. According to its representatives, OGI sees this as a one-time request for seed money to start the project. Later requests would go to other research funding agencies.

Since this would be a sole-source contract (Code Section 2.04.060), the Metro Council would have to exempt it from the competitive procurement process. An exemption can be justified for the following reasons: According to OGI, the skills of the project team are unique in Oregon. Each team member is a nationally recognized leader and expert in the particular type of investigation he will conduct. Also, the close proximity of OGI to St. Johns Landfill and Metro personnel is critical to the success of a cost-effective program. According to OGI, "The total package provided by OGI -- scientific knowledge, computer-based tools, technical assistance, and educational opportunity -- cannot be provided by any other private or public institution in the United States."

BUDGET IMPACT

The most relevant source of funds for this project would be the St. Johns Landfill Closure Account. In the FY 92-93 budget, \$100,000 is in the St. Johns Landfill Closure Account for research on landfill closure methods and landfill impacts.

EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 92-1671.



METRO

2000 SW First Ave.
Portland, OR 97201-5398
(503) 221-1646

Procurement Review Summary

To: Procurement and Contracts Division

Vendor

From

Date 9-3-92

Oregon Graduate Institute

Department Solid Waste

of Science and Technology

Division Engineering

Subject

Name Dennis O'Neil

☐ Bid

☒ Contract

Vendor no.

Title Senior SW Planner

☐ RFP

☐ Other

Contract no. 902635

Extension 229

Purpose Research on SJLF Closure Methods and Impacts

Expense

☐ Procurement ☒ Personal/professional services ☐ Services (LM) ☐ Construction ☐ IGA

Revenue

Budget code(s)

Price basis

Term

☐ Contract

☐ Grant

☐ Other

531-319000-524190-75960

☒ Unit

☐ Total

☐ Other

☐ Completion

☐ Annual

☒ Multi-year**

This project is listed in the
199 2 -199 3 budget.

☒ Yes

☒ Type A

☐ No

☐ Type B

Payment required

☐ Lump sum

☐ Progress payments

10-1-92

Beginning date

9-30-93

Ending date

Total commitment	Original amount	\$ 99,999.00
	Previous amendments	\$
	This transaction	\$
	Total	\$ 99,999.00
	A. Amount of contract to be spent fiscal year <u>92</u> - <u>93</u>	\$ 75,000.00
	B. Amount budgeted for contract <u>Misc. Prof. Services</u>	\$ 100,000.00
	C. Uncommitted/discretionary funds remaining as of <u>8-28-92</u>	\$ 100,000.00

Approvals

Division manager

Department director

Labor

Fiscal

Budget

Risk

Legal

Competitive quotes, bids or proposals:

Submitted by	\$Amount	M/W/DBE	Foreign or Oregon Contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon Contractor
Submitted by	\$Amount	M/W/DBE	Foreign or Oregon Contractor

Comments:

Attachments:

- ☐ Ad for bid
☐ Plans and specifications
☐ Bidders list (M/W/DBEs included)

Instructions:

- Obtain contract number from procurement division.
Contract number should appear on the summary form and all copies of the contract.
- Complete summary form.
- If contract is:
 - Sole source, attach memo detailing justification.
 - Less than \$2,500, attach memo detailing need for contract and contractor's capabilities, bids, etc.
 - More than \$2,500, attach quotes, evaluation form, notification of rejection, etc.
 - More than \$10,000 or \$15,000 attach RFP or RFB respectively.
 - More than \$50,000, attach agenda management summary from council packet, bids, RFP, etc.
- Provide packet to procurement for processing.

Special program requirements:

General liability: _____ / _____ / _____

Liquidated damages \$ _____ day

- ☐ Workers comp
☐ Auto
☐ Professional liability

- ☐ Prevailing wages
☐ Non-standard contract
☐ Davis/Bacon

Dates:

Ads _____ (Publication) _____

Pre-bid meeting _____ Bid opening** _____

Filed with council _____ For action _____

Filed with council committee _____ For hearing _____

Project estimate: _____

Funding:

- ☐ Local/state
☐ Federal
☐ Other

Bond requirements:

_____ % Bid \$ _____

_____ % Performance \$ _____

_____ % Performance/payment* \$ _____

_____ % L/M \$ _____

* Separate bonds required if more than \$50,000.

** Minimum period: two weeks from last day advertised.

Meeting Date: September 24, 1992
Agenda Item No. 7.6

RESOLUTION NO. 92-1672



METRO

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

Memorandum

DATE: September 24, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NOS. 7.6 AND 7.7

The Finance Committee reports for Resolution Nos. 92-1672 and 92-1676 will be distributed in advance to Councilors and available at the Council meeting September 24.

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF	)	RESOLUTION NO. 92-1672
ESTABLISHING THE DISTRICT'S)	
INTENT TO INCLUDE A CITIZENS'	)	Introduced by Rena Cusma
BOND SALE AS PART OF IT'S)	
GENERAL OBLIGATION BOND)	
ISSUANCE OF \$200 MILLION FOR)	
THE REGIONAL GREENSPACES)	
SYSTEM)	

WHEREAS, The Metropolitan Service District (Metro) has adopted Resolution No. 92-1639A that submits to the voters questions of contracting a general bond obligation of \$200 million for the regional greenspaces system (the Greenspaces Bonds); and

WHEREAS, Development of the Metropolitan Greenspaces Program has been a "grass-roots" effort supported by numerous community groups and independent citizens; and

WHEREAS, The Metro Executive Officer and Council desire to continue the involvement of community groups and citizens in the development of the Greenspaces Program; and

WHEREAS, It may be desirable to offer individuals the opportunity to invest in the Greenspaces Program by purchasing Greenspaces Bonds in \$1,000 denominations or less ("mini-bonds"); now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District directs the Finance and Management Information Department to:

1. Research the financial feasibility of developing a "mini-bond" program that would make small denomination Greenspaces Bonds available to individuals in or close to the District; and
2. If the voters approve issuance of the Greenspaces Bonds and, if the mini-bond project is deemed financial feasible, reserve \$3 up to million of the Greenspaces Bonds for this purpose.

ADOPTED by the Council of the Metropolitan Service District this ____ day of _____, 1992.

Jim Gardner, Presiding Officer

STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 92 -1672 FOR THE PURPOSE OF ESTABLISHING THE DISTRICT'S INTENT TO INCLUDE A CITIZENS' BOND SALE AS PART OF IT'S GENERAL OBLIGATION BOND ISSUANCE OF \$200 MILLION FOR THE REGIONAL GREENSPACES SYSTEM

Date: September 10, 1992

Presented by: Jennifer Slms
Christopher Scherer

The Metro Council has adopted Resolution 92-1639A which submits to the voters the question of contracting general obligation bond indebtedness in the amount of \$200 million (the Greenspaces Bonds) to proceed with the development of the Greenspaces Program. The Finance and Management Information Department has been working with the Planning Department in preparing for issuance of the Greenspaces Bonds if the ballot measure is successful.

Municipal bonds are typically offered in \$5,000 denominations. Bonds are purchased by institutions (insurance companies and bond mutual funds) interested in this type of investment and individuals whose financial circumstances warrant investment in tax-exempt bonds. Often individuals who would desire to invest in tax-exempt bonds are precluded from the opportunity of direct investment because of the minimum denomination size.

Metro may, at its option, allocate a small amount of the issue (\$1,000,000 to \$3,000,000) to be sold as "mini-bonds" in smaller than usual denominations (\$500 to \$1,000). The least complicated approach to a mini-bond issuance is to offer capital appreciation or "zero coupon" bonds purchased at the present value amount of a guaranteed future principal payment much like U.S. EE savings bonds. The mini-bond program would be administered by a local bank.

Mini-bond programs not only offer the opportunity to purchase tax-exempt bonds to a broader range of people than a standard bond issuance program, but provide the community with a vehicle to directly invest in the project being funded with bonds. We believe the Greenspaces program contains elements that would fit very well with the mini-bond concept.

Budget Impact

Most of the costs of a mini-bond program are duplicative of costs incurred under a standard program. The costs for paying agent, bond registration, and other administrative efforts would be the same under either program. Certain costs such as underwriters discount would be avoided under the mini-bond program.

However, to ensure a successful sale, it will be necessary to incur marketing costs for advertising, printing and mailing. The mini-bond program will also involve more effort on the part of the Finance and Management Information Department than a standard bond issuance. In any case, issuance costs for the mini-bonds would be limited by law to 2% of the total issuance amount or \$60,000 for a \$3 million issuance. This compares to an estimated 1.25% or \$37,500 for a standard issuance of \$3,000,000. It is assumed that issuance costs for the mini-bonds would not be close to the limit by law.

If the Resolution is adopted, the Financial Planning staff will conduct a financial feasibility study of the mini-bond program for the Executive Officer's and Council's scrutiny prior to program implementation. The study would include an assessment of the market for such a program in the Metro region and a minimum budget that would ensure a successful mini-bond issuance.

Executive Officer's Recommendation

The Executive Officer recommends that the Council adopt Resolution No. 92-1672.

Meeting Date: September 24, 1992
Agenda Item No. 7.7

RESOLUTION NO. 92-1676



METRO

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

Memorandum

DATE: September 24, 1992

TO: Metro Council
Executive Officer
Interested Parties

FROM: Paulette Allen, Clerk of the Council *PA*

RE: AGENDA ITEM NOS. 7.6 AND 7.7

The Finance Committee reports for Resolution Nos. 92-1672 and 92-1676 will be distributed in advance to Councilors and available at the Council meeting September 24.



METRO

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

Memorandum

DATE: September 10, 1992

TO: Finance Committee
Interested Parties

FROM: Donald E. Carlson, Council Administrator

RE: Resolution No. 92-1676, For the Purpose of Approving a Contract for Performance Audit Services

Enclosed is Resolution No. 92-1676, For the Purpose of Approving a Contract for Performance Audit Services with a successful proposer and to be considered for recommendation to the full Council. Attached to the resolution as Exhibit A is the Personal Services Agreement with the Scope of Work document as Exhibit A to contract.

The Staff Report and supporting documents will be made available to the Finance Committee prior to the September 17, 1992 Finance Committee meeting.

mgs\FIN\DECPFAUD.MMO

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF APPROVING	)	RESOLUTION NO. 92-1676
CONTRACT FOR PERFORMANCE AUDIT)	
SERVICES	)	Introduced by Jim Gardner,
	)	Presiding Officer

WHEREAS, The contract for Performance Audit Services has been designated as an "A" type and is for a multi-year period thus requiring Council approval;

WHEREAS, The Council adopted Resolution No. 92-1653 on July 23, 1992 approving and authorizing the release of a Request for Proposals for Performance Audit Services;

WHEREAS, Seven responses to the RFP were received and a selection committee was established to review the written proposals and interview selected proposers; and

WHEREAS, The selection committee recommends that Talbot, Korvola and Warwick be retained to be the District's performance auditors for FY 1992-93 through FY 1994-95; now, therefore,

BE IT RESOLVED,

That the Council of the Metropolitan Service District approves the contract with Talbot, Korvola and Warwick to provide performance services attached as Exhibit A to this Resolution.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1992.

Jim Gardner, Presiding Officer

mgs\FIN\R92-1676.LEG

Project _____
Contract No. _____

PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between the METROPOLITAN SERVICE DISTRICT, a municipal corporation organized under ORS Chapter 268, referred to herein as "Metro," located at 2000 S.W. First Avenue, Portland, OR 97201-5398, and _____, referred to herein as "Contractor," located at _____.

In exchange for the promises and other consideration set forth below, the parties agree as follows:

1. Duration. This personal services agreement shall be effective _____ and shall remain in effect until and including _____, unless terminated or extended as provided in this Agreement.
2. Scope of Work. Contractor shall provide all services and materials specified in the attached "Exhibit A -- Scope of Work," which is incorporated into this Agreement by reference. All services and materials shall be provided by Contractor in accordance with the Scope of Work, in a competent and professional manner. To the extent that the Scope of Work contains additional contract provisions or waives any provision in the body of this Agreement, the Scope of Work shall control.
3. Payment. Metro shall pay Contractor for services performed and materials delivered in the maximum sum of _____ AND _____/100THS DOLLARS (\$_____), in the manner and at the time specified in the Scope of Work.
4. Insurance.
 - a. Contractor shall purchase and maintain at the Contractor's expense, the following types of insurance, covering the Contractor, its employees, and agents:
 - (1) Broad form comprehensive general liability insurance covering personal injury and property damage, with automatic coverage for premises, operations, and product liability. The policy must be endorsed with contractual liability coverage; and
 - (2) Automobile bodily injury and property damage liability insurance.
 - b. Insurance coverage shall be a minimum of \$500,000 per occurrence, \$250,000 per person, and \$50,000 property damage. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000.

c. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSUREDS. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation.

d. Contractor, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide Workers' Compensation coverage for all their subject workers. Contractor shall provide Metro with certification of Workers' Compensation insurance including employer's liability.

e. If required by the Scope of Work, Contractor shall maintain for the duration of this Agreement professional liability insurance covering personal injury and property damage arising from errors, omissions, or malpractice. Coverage shall be in the minimum amount of \$500,000. Contractor shall provide to Metro a certificate of this insurance, and 30 days' advance notice of material change or cancellation.

5. Indemnification. Contractor shall indemnify and hold Metro, its agents, employees and elected officials harmless from any and all claims, demands, damages, actions, losses and expenses, including attorney's fees, arising out of or in any way connected with its performance of this Agreement, with any patent infringement arising out of the use of Contractor's designs or other materials by Metro and for any claims or disputes involving subcontractors.

6. Maintenance of Records. Contractor shall maintain all of its records relating to the Scope of Work on a generally recognized accounting basis and allow Metro the opportunity to inspect and/or copy such records at a convenient place during normal business hours. All required records shall be maintained by Contractor for three years after Metro makes final payment and all other pending matters are closed.

7. Ownership of Documents. All documents of any nature including, but not limited to, reports, drawings, works of art and photographs, produced by Contractor pursuant to this Agreement are the property of Metro, and it is agreed by the parties that such documents are works made for hire. Contractor hereby conveys, transfers, and grants to Metro all rights of reproduction and the copyright to all such documents.

8. Project Information. Contractor shall share all project information and fully cooperate with Metro, informing Metro of all aspects of the project including actual or potential problems or defects. Contractor shall abstain from releasing any information or project news without the prior and specific written approval of Metro.

9. Independent Contractor Status. Contractor shall be an independent contractor for all purposes and shall be entitled only to the compensation provided for in this Agreement. Under no circumstances shall Contractor be considered an employee of Metro. Contractor shall provide all tools or equipment necessary to carry out this Agreement, and shall exercise complete control in achieving the results specified in the Scope of Work. Contractor is solely responsible for its performance under this Agreement and the quality of its work; for obtaining and maintaining all licenses and certifications necessary to carry out this Agreement; for

payment of any fees, taxes, royalties, or other expenses necessary to complete the work except as otherwise specified in the Scope of Work; and for meeting all other requirements of law in carrying out this Agreement. Contractor shall identify and certify tax status and identification number through execution of IRS form W-9 prior to submitting any request for payment to Metro.

10. Right to Withhold Payments. Metro shall have the right to withhold from payments due to Contractor such sums as necessary, in Metro's sole opinion, to protect Metro against any loss, damage, or claim which may result from Contractor's performance or failure to perform under this Agreement or the failure of Contractor to make proper payment to any suppliers or subcontractors.

11. State and Federal Law Constraints. Both parties shall comply with the public contracting provisions of ORS chapter 279, and the recycling provisions of ORS 279.545 - 279.650, to the extent those provisions apply to this Agreement. All such provisions required to be included in this Agreement are incorporated herein by reference. Contractor shall comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations including those of the Americans with Disabilities Act.

12. Assignment. This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstance, be assigned or transferred by either party.

13. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor five days prior written notice of intent to terminate, without waiving any claims or remedies it may have against Contractor. Termination shall not excuse payment for expenses properly incurred prior to notice of termination, but neither party shall be liable for indirect or consequential damages arising from termination under this section.

14. No Waiver of Claims. The failure to enforce any provision of this Agreement shall not constitute a waiver by Metro of that or any other provision.

15. Modification. This Agreement is the entire agreement between the parties, and may only be modified in writing, signed by both parties.

CONTRACTOR

METROPOLITAN SERVICE DISTRICT

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SCOPE OF WORK

Complete one performance audit in each of the three fiscal years of the contract, FY 1992-93 through 1994-95. The subject of each year's audit will be determined early in the fiscal year, following consultation among Councilors, Council Department staff, and the performance auditor. Each performance audit will be divided into three phases, as follows:

Phase One

Conduct a survey of functions relevant to the subject of the audit, to identify issues for in-depth analysis in Phase Two, make recommendations for immediate improvements that may have been identified in the survey phase, and develop a work plan to audit in greater depth all or any combination of the functions surveyed in Phase One.

Phase Two

1. Conduct the performance audit(s) on the functions recommended in Phase One, making sure to:
 - a. Ascertain the policy basis for providing these functions
 - b. Ascertain how effectively these functions are being provided.
 - c. Ascertain how efficiently these functions are being provided.
2. Make recommendations for improving the delivery of the functions studied. Those recommendations should include, as applicable:
 - a. Changes to existing policies and procedures or introduction of new policies and procedures to improve the efficiency and effectiveness of such functions;
 - b. Development of standard performance measures or indicators to assist in future evaluation of performance;
 - c. Any organizational changes to improve the efficiency and effectiveness of such functions;
 - d. Funding levels for providing these functions in an efficient and cost effective manner; and

- e. Any other factors which should be taken into consideration.

Phase Three

Six months following presentation of the completed audit to the Council or appropriate standing committee of the Council, perform a review to determine how the recommendations are being implemented.

Meeting Date: September 24, 1992
Agenda Item No. 8.1

RESOLUTION NO. 92-1681

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF DIRECTING THE	)	RESOLUTION NO. 92-1681
PREPARATION OF NEUTRAL FACTUAL)	
INFORMATION REGARDING THE	)	INTRODUCED BY THE
PROPOSED METRO CHARTER (BALLOT	)	GOVERNMENTAL AFFAIRS
MEASURE 26-3)	)	COMMITTEE

WHEREAS, the voters of Oregon approved Ballot Measure #1 on November 6, 1990, amending the State Constitution to allow voters in a Metropolitan Service District to adopt a home rule charter; and

WHEREAS, the 1991 Oregon Legislature adopted SB 298, prescribing the method for establishing a Metro Charter Committee, which had authority to place a Metro Charter before the voters at the 1992 primary or general election; and

WHEREAS, the Metro Charter Committee has submitted to the Multnomah County Elections Officer a measure asking the voters of the Metropolitan Service District to vote on a proposed Metro Home Rule Charter at the November 3, 1992 general election, which will appear on the ballot as Measure No. 26-3; and

WHEREAS, the voters' decision on the proposed Metro Charter will have significant effect on the structure and operations of the Metropolitan Service District, and it is in the best interests of residents of the metropolitan area that impartial, objective information on the proposed Charter be made available; now, therefore,

BE IT RESOLVED, that the Council of the Metropolitan Service District finds that it is in the regional interest to initiate a

public awareness effort to promptly inform residents of the region of the Metro Charter and Ballot Measure No. 26-3; and

That the Council of the Metropolitan Service District authorizes and directs that the Office of Public Affairs' and the Office of Government Relations (subject to review and approval of the Office of General Counsel) prepare an objective and neutral fact sheet regarding the provisions of the proposed Metro Charter, for distribution to persons seeking information about the Charter. Any expenditures for copies and distribution of materials shall be consistent with existing budgeted appropriations.

ADOPTED by the Council of the Metropolitan Service District
this _____ day of _____, 1992.

Jim Gardner, Presiding Officer