



**METRO**

DATE: August 25, 1994  
MEETING: Metro Council  
DAY: Thursday  
TIME: 4:00 p.m.  
PLACE: Metro Council Chamber

Approx.  
Time\*

Presented  
By

4:00 **CALL TO ORDER/ROLL CALL**

**1. INTRODUCTIONS**

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

**3. EXECUTIVE OFFICER COMMUNICATIONS**

4:05  
(5 min.) **4. CONSENT AGENDA** (Action Requested: Motion to Adopt the Consent Agenda)

**4.1 Minutes of July 14 and 28, 1994**

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

**4.2 Resolution No. 94-2020**, For the Purpose of Exempting Curriculum Development, Teacher Training, and Program Evaluation for the Zoomobile Science Enhancement Project for the Washington Park Zoo from Competitive Bid, and Authorizing a Sole Source Contract with Janet Jewett

REFERRED FROM THE SOLID WASTE COMMITTEE

**4.3 Resolution No. 94-1971**, For the Purpose of Re-Appointing Jim Cozzetto, Jr. and Andrew Thaler to Serve on the Solid Waste Rate Review Committee

**5. ORDINANCES, SECOND READINGS**

REFERRED FROM THE FINANCE COMMITTEE

4:10  
(20 min.) **5.1 Ordinance No. 94-554A**, Relating to Contract Procedures Amending Metro Code Chapter 2.04 to Increase to \$25,000 the Maximum Amount of Contracts That May Be Let Without Using a Formal Bid or Request for Proposals Process (Action Requested: Motion to Adopt the Ordinance)

Hansen

4:30  
(10 min.) **5.2 Ordinance No. 94-560**, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule For the Purpose of Funding a Contract to Recommend Further Improvements in Competitive Bidding, Procurement and Contracting Services (Action Requested: Motion to Adopt the Ordinance)

Hansen

For assistance/services per the Americans with Disabilities Act (ADA), dial TDD 797-1804 or 797-1534 (Clerk).

\* Times are approximate; items may not be considered in the exact order listed.

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**5. ORDINANCES, SECOND READINGS (Continued)**

REFERRED FROM THE FINANCE COMMITTEE

4:40  
(20 min.)

- 5.3 Ordinance No. 94-566**, For the Purpose of Amending the Metro Code and Relating to the Annual Budget (Action Requested: Motion to Adopt the Ordinance)

5:00  
(10 min.)

- 5.4 Ordinance No. 94-561**, An Ordinance Amending the FY 1994-95 Budget and Appropriations Schedule of the Rehabilitation and Enhancement Fund For the Purpose of Funding a Recoverable Grant to the Portland Housing Center's Down Payment Assistance Fund and Declaring an Emergency (Action Requested: Motion to Adopt the Ordinance)

Hansen

5:10

**RECESS** (20 minutes)

PLACED ON COUNCIL AGENDA AT THE DIRECTION OF THE COUNCIL  
(REMOVED FROM FINANCE COMMITTEE)

**5:30  
TIME  
CERTAIN  
(3 HRS.)**

- 5.5 Ordinance No. 94-556B**, An Ordinance Relating to Taxation, Establishing a Construction Excise Tax, Reducing the Metro Excise Tax, Reducing Solid Waste Rates, and Refunding Payments to Local Governments PUBLIC HEARING; Testimony is limited to 3 minutes per person/entity (Action Requested: Motion to Adopt the Ordinance)

Monroe

**6. RESOLUTIONS**

REFERRED FROM THE PLANNING COMMITTEE

8:30  
(20 min.)

- 6.1 Resolution No. 94-2024B**, Publishing a Schedule of Public Hearings and Metro Council Decisions to Select the Region 2040 Preferred Alternative (Action Requested: Motion to Adopt the Resolution)

Gardner

8:50  
(10 min.)

- 6.2 Resolution No. 94-2015**, Amending the FY 1995 Metro TIP to Allocate Funds to Two Road Widening Projects and Acknowledging Miscellaneous Administrative Amendments (Action Requested: Motion to Adopt the Resolution)

Monroe

REFERRED FROM THE REGIONAL FACILITIES COMMITTEE

9:00  
(10 min.)

- 6.3 Resolution No. 94-2025**, Entering Into a Grant Agreement with the Metropolitan Arts Council (Action Requested: Motion to Adopt the Resolution)

Moore

REFERRED FROM THE FINANCE COMMITTEE

9:10  
(10 min.)

- 6.4 Resolution No. 94-2018A**, For the Purpose of Authorizing a Lease with the American Advertising Museum for Space in the Metro Regional Center (Action Requested: Motion to Adopt the Resolution)

Kvistad

METRO COUNCIL AGENDA

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**6.** **RESOLUTIONS** (Continued)

REFERRED FROM THE FINANCE COMMITTEE

- |                   |   |         |
|-------------------|---|---------|
| 9:20<br>(10 min.) | <b>6.5</b> <b>Resolution No. 94-2021</b> , For the Purpose of Amending a Contract with Talbot, Korvala and Warwick for FY 94-95 Performance Audit Services<br>(Action Requested: Motion to Adopt the Resolution)                        | Gardner |
| 9:30<br>(10 min.) | <b>6.6</b> <b>Resolution No. 94-2005</b> , For the Purpose of Adopting an Interim Contract Services Division Report on MBE/WBE/DBE Utilization and Authorizing the Executive Officer (Action Requested: Motion to Adopt the Resolution) | Hansen  |
| 9:40<br>(10 min.) | <b><u>7.</u></b> <b><u>COUNCILOR COMMUNICATIONS AND COMMITTEE REPORTS</u></b>   |         |

Meeting Date: August 25, 1994  
Agenda Item No. 4.1

MINUTES



**METRO**

**DATE:** August 19, 1994

**TO:** Metro Council  
Executive Officer  
Agenda Recipients

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

**RE:** AGENDA ITEM NO. 4.1; MINUTES OF JULY 14 AND 28, 1994

The minutes will be provided to Councilors on or before Wednesday, August 24, and will be available at the Council meeting August 25, 1994.

Meeting Date: August 25, 1994  
Agenda Item No. 4.2

RESOLUTION NO. 94-2020

REGIONAL FACILITIES COMMITTEE REPORT

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RESOLUTION NO. 94-2020, EXEMPTING CURRICULUM DEVELOPMENT, TEACHER TRAINING, AND PROGRAM EVALUATION FOR THE ZOOMOBILE SCIENCE ENHANCEMENT PROJECT FOR THE WASHINGTON PARK ZOO FROM COMPETITIVE BID, AND AUTHORIZING A SOLE SOURCE CONTRACT WITH JANET JEWETT

Date: August 18, 1994

Presented by: Councilor McFarland

**COMMITTEE RECOMMENDATION:** At its August 17, 1994 meeting the Regional Facilities Committee voted 3-0 to recommend Contract Review Board approval of Resolution No. 94-2020. Voting in favor were Councilors Hansen, McFarland, and Washington. Councilors Gates and Moore were absent.

**COMMITTEE DISCUSSION/ISSUES:** Zoo Education Specialist Roger Yerke presented the staff report. He said that a grant had been received to enhance the curriculum and provide teacher training in connection with the Zoomobile. An RFP was issued in June 1994, but there were no responses. Janet Jewett later inquired about the contract, and she was interviewed and found to have the qualifications the Zoo needs.

There was no substantive committee discussion.

BEFORE THE METRO CONTRACT REVIEW BOARD

|   |   |                          |
|---|---|--------------------------|
| FOR THE PURPOSE OF EXEMPTING            | ) | RESOLUTION NO. 94-2020   |
| CURRICULUM DEVELOPMENT, TEACHER         | ) |                          |
| TRAINING, AND PROGRAM EVALUATION FOR    | ) | Introduced by Rena Cusma |
| THE ZOOMOBILE SCIENCE ENHANCEMENT       | ) | the Executive Officer    |
| PROJECT FOR THE WASHINGTON PARK ZOO     | ) |                          |
| FROM COMPETITIVE BID, AND AUTHORIZING A | ) |                          |
| SOLE SOURCE CONTRACT WITH JANET JEWETT  | ) |                          |

WHEREAS, the Metro Washington Park Zoo is committed to proceeding with a grant funded curriculum enhancement and teacher science training program with the zoo's Zoomobile, and;

WHEREAS, the zoo requires expert assistance in curriculum assessment development, design and implementation of teacher training workshops, and evaluation of program results for the Zoomobile, and;

WHEREAS, publication of a Request for Proposals for this project resulted in the receipt of no proposals by the July 1, 1994, deadline for submission of proposals, and;

WHEREAS, after the initial RFP deadline, Dr. Janet Jewett has contacted, been interviewed by Education division staff, and presented relevant credentials, and proposed to do the project, and;

WHEREAS, Dr. Jewett has the requisite qualifications in curriculum writing, teacher, training, and program evaluation, now therefore,

BE IT RESOLVED,

That the Metro Contract Review Board of Metro declares the use of Dr. Janet Jewett under the terms stated above to be a sole source procurement exempt from competitive bidding, and authorizes the Executive Officer to execute a contract in a form substantially similar to the attached Exhibit "A" for Zoomobile Science Enhancement Project.

ADOPTED by the Contract Review Board of Metro this 25th day of August, 1994.

Ed Washington, Deputy Presiding Officer



PERSONAL SERVICES AGREEMENT

THIS AGREEMENT is between Metro, a metropolitan service district, organized under the laws of the state of Oregon and the 1992 Metro Charter, located at 600 N.E. Grand Avenue, Portland, Oregon 97232-2736, and DR. JANET JEWETT, hereinafter known as "Contractor," located at 4260 S.W. 48th Place, Portland, Oregon 97221.

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 June 30, 1995, 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 amount(s), manner and at the time(s) specified in the Scope of Work for a maximum sum not to exceed TWELVE THOUSAND DOLLARS AND NO/100THS (\$12,000.00).

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 bodily 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. 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.

Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law 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. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

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, or with any patent infringement or copyright claims 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 and reasonable 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. Situs. The situs of this Agreement is Portland, Oregon. Any litigation over this agreement shall be governed by the laws of the state of Oregon and shall be conducted in the circuit court of the state of Oregon, for Multnomah County, or, if jurisdiction is proper, in the U.S. District Court for the District of Oregon.

13. 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.

14. Termination. This Agreement may be terminated by mutual consent of the parties. In addition, Metro may terminate this Agreement by giving Contractor 30 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.

15. 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.

16. Modification. Notwithstanding and succeeding any and all prior agreement(s) or practice(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s), signed by both parties.

DR. JANET JEWETT

METRO

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

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

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

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

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

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

**Exhibit A**  
**Scope Of Work/Terms of Payment**

Contractor will be responsible for curriculum refinement and development, volunteer training, teacher training, and evaluation activities in a project for improved science education and teacher training for the zoo's Zoomobile outreach program. Specific responsibilities, as listed in the project timeline, include:

1. Review of existing Zoomobile Curriculum (month one)
2. Meetings with school and zoo education staff to develop coordinated program content and process. (month one)
3. Writing and revision of curriculum materials with pre and post visit activities for use in classrooms. (month two)
4. Development of classroom presentation scripts and support materials. (month two)
5. Conduct training sessions for zoo education volunteers. (month three)
6. Writing teacher in-service materials. (month two)
7. Conduct teacher in-service sessions in each cooperating school district; a minimum of 20 sessions. (months three thru seven)
8. Draft evaluation instruments and procedures for measuring program impacts on student science understanding and teacher science teaching practices. (month three)
9. Administer evaluation and analyze results. (months four thru nine)
10. Prepare final report and revisions of curriculum based upon evaluation results. (month 10)

The scope of the work in this project is roughly equivalent to a one third time position..

Contract amount is \$12,000 to be paid in ten equal monthly installments over the course of the project.

Contractor shall provide the

**Accounts Payable Division of Metro,**

**600 NE Grand Avenue**

**Portland, Oregon 97232-2736**

with an original, fully itemized monthly invoice detailing all goods and services provided and received.

To expedite processing, an additional copy clearly marked "Duplicate" should be mailed to

**Education Division**

**Metro Washington Park Zoo**

**4001 SW Canyon Road**

**Portland, OR 97221-2799.**

Each invoice shall be paid within the terms specified or Net 30 Days but only upon receipt by Accounts Payable, specific written approval by the Education Division Manager and inclusion in the weekly check run.

## STAFF REPORT

FOR THE PURPOSE OF AUTHORIZING AN EXEMPTION TO METRO CODE CHAPTER 2.04.041 (C) TO ENTER INTO A SOLE SOURCE CONTRACT WITH DR. JANET JEWETT FOR CURRICULUM DEVELOPMENT, TEACHER TRAINING, AND PROGRAM EVALUATION FOR THE ZOOMOBILE SCIENCE ENHANCEMENT PROJECT.

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DATE : JULY 29, 1994

Presented by: Roger Yerke

### FACTUAL BACKGROUND AND ANALYSIS

On May 28, 1994 the Metro Washington Park Zoo received a grant from the Toyota USA Foundation to develop a curriculum enhancement and teacher science training program as a part of the Zoomobile outreach program. The grant provides funding to contract with a specialist in early childhood education as the project science coordinator to edit and refine the existing Zoomobile curriculum, plan and conduct teacher training workshops for the new curriculum, and to design and conduct an evaluation of the project.

On June 13, 1994 a Request For Proposals for the contract position was published in The Daily Journal of Commerce and The Skanner, and distributed in the education community. No proposals were received as of the July 1, 1994 deadline for the submission of proposals.

On July 8, 1994 Dr. Janet Jewett contacted the Education Division about the project and the RFP. She was interviewed by David Mask, Education Manager, and Roger Yerke, Education Specialist on July 15, 1994 and discussed the project.

Based upon her qualifications and availability she is very well qualified to do the work required. Dr. Jewett has her Ph.D. in early childhood education. She has spent three years doing evaluations of early childhood education programs for Northwest Regional Educational Laboratory. During five years at the Erikson Institute she designed, and evaluated a math and science program for Head Start students. This project included teacher training and supervision.

In consideration of the fact that no responses to the original RFP were received, the project timeline requires work be initiated at the earliest possible date, and Dr. Jewett's excellent credentials and availability, she is being recommended as a sole source for this contract.

Meeting Date: August 25, 1994  
Agenda Item No. 4.3

RESOLUTION NO. 94-1971

**SOLID WASTE COMMITTEE REPORT**

CONSIDERATION OF RESOLUTION NO. 94-1971, FOR THE PURPOSE OF RE-APPOINTING JIM COZZETTO, JR AND ANDREW THALER TO SERVE ON THE SOLID WASTE RATE REVIEW COMMITTEE

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Date: August 18, 1994

Presented by: Councilor McLain

**Committee Recommendation:** At the August 16 meeting, the Committee voted 4-0 to recommend Council adoption of Resolution No. 94-1971. Voting in favor: Councilors Hansen, McFarland, McLain, and Monroe. Councilors Buchanan and Wyers were absent.

**Committee Issues/Discussion:** Chair McFarland, who also chairs the Rate Review Committee, noted that Mr. Cozzetto and Mr. Thaler have served on the committee for several years and that their reappointment would bring continuity and experience to the committee. She noted that this is particularly important because others may be leaving the committee in the near future.

Roosevelt Carter, Solid Waste Budget and Finance Manager, concurred that Mr. Cozzetto and Mr. Thaler are valuable members of the committee and urged their reappointment.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF RE-APPOINTING ) RESOLUTION NO. 94-1971  
JIM COZZETTO, JR. AND ANDREW )  
THALER TO SERVE ON THE SOLID ) Introduced by Rena Cusma,  
WASTE RATE REVIEW COMMITTEE ) Executive Officer

WHEREAS, Chapter 5.08 of the Metro Code provides for the establishment of a Rate Review Committee composed of seven members, including one Metro Councilor, who serves as Committee Chair and who is appointed by the Council Presiding Officer and all other members appointed by the Executive Officer, subject to confirmation by the Council; and

WHEREAS, The Executive Officer's appointments include two persons engaged in the business of hauling solid waste; one person with business-related financial experience; one person with experience in establishing rates; one person involved with a local recycling or waste reduction program and one citizen rate payer; and

WHEREAS, the initial terms of two non-Council members, Jim Cozzetto, Jr. representing the solid waste hauling industry and Andrew Thaler, a member with experience in establishing rates, expire September 1, 1994, and members may be re-appointed for a consecutive term; and

WHEREAS, Jim Cozzetto, Jr. and Andrew Thaler, having served on the Rate Review Committee previously and being well suited to carry out the duties of the member representing the solid waste hauling industry and rate establishing experience respectively, and would provide important continuity to the committee; and

WHEREAS, the resolution was submitted to the Executive Officer and was forwarded to the Council for approval; now therefore,



BE IT RESOLVED,

THAT Jim Cozzetto, Jr., a member representing those engaged in the business of hauling solid waste, and Andrew Thaler, a member representing experience in establishing rates are hereby confirmed for reappointment to the Rate Review Committee for four-year terms respectively.

ADOPTED by the Metro Council this \_\_\_\_ day of August, 1994.

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Judy Wyers, Presiding Officer

JM:gbc  
mandvrapptmt.doc

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 94-1971 FOR THE PURPOSE OF CONFIRMING THE RE-APPOINTMENT OF JIM COZZETTO, JR. AND ANDREW THALER TO THE SOLID WASTE RATE REVIEW COMMITTEE.

Date: August 1, 1994

Presented by: Roosevelt Carter

#### FACTUAL BACKGROUND AND ANALYSIS

Ordinance No. 91-436A, Metro Code Chapter 5.08 establishes a seven-member solid waste rate review committee, six members to be appointed by the Executive Officer, subject to confirmation by the Council. The members appointed by the Executive Officer shall include: two persons engaged in the business of hauling solid waste; one person with business-related financial experience; one person with experience in establishing rates; one person involved with a local recycling or waste reduction program; and one citizen rate payer. The seventh committee member will be a Metro Councilor, who shall be appointed by the Council Presiding Officer.

The present committee is comprised of two members each filling terms in two, three, and four-year increments in order to establish staggering so that no more than two members are replaced each year. The two-year terms of two members expire September 1, 1994; Jim Cozzetto, Jr., representing the hauling industry, and Andrew Thaler, a member with experience in establishing rates. The ordinance provides that members may be re-appointed for a consecutive term. Reappointment of Mr. Cozzetto and Mr. Thaler would provide important continuity to the Rate Review Committee.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends that Resolution No. 94-1971 be adopted, confirming reappointment of Jim Cozzetto, Jr. and Andrew Thaler to the Solid Waste Rate Review Committee.

JM:gbc

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Meeting Date: August 25, 1994  
Agenda Item No. 5.1

ORDINANCE NO. 94-554A

## FINANCE COMMITTEE REPORT

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ORDINANCE NO. 94-554A, RELATING TO CONTRACT PROCEDURES AMENDING METRO CODE CHAPTER 2.04 TO INCREASE TO \$25,000 THE MAXIMUM AMOUNT OF CONTRACTS THAT MAY BE LET WITHOUT USING A FORMAL BID OR REQUEST FOR PROPOSALS PROCESS

Date: July 19, 1994

Presented by: Councilor Hansen

**COMMITTEE RECOMMENDATION:** At its July 12, 1994 meeting the Finance Committee voted 7-0, with one abstention, to recommend Council adoption of Ordinance No. 94-554A. Voting in favor were Councilors Monroe, Buchanan, Devlin, Kvistad, McLain, Van Bergen, and Washington. Councilor Gardner abstained.

**COMMITTEE DISCUSSION/ISSUES:** Council Analyst Casey Short presented the staff report. He said this ordinance was initiated by Councilor Hansen in response to concerns from minority contractors who said the low dollar levels for formal Requests for Proposals was an obstacle for small and minority businesses in receiving Metro contracts. The ordinance would raise the limit of contracts that could be let without a formal RFP or RFB process from \$10,000 for Personal Services contracts and \$15,000 for other Public contracts to \$25,000 for all contracts. Mr. Short said the ordinance also made technical corrections to the Code to reflect Metro's current organization, replacing existing references to the Finance and Administration Department with the General Services Department as the department that processes contracts.

Councilor McLain expressed a concern that raising the limit for formal bid procedures could lead departments to rely more on short lists of contractors with whom they were familiar rather than expanding the list of potential vendors. Procurement Officer Rich Wiley said the principal difference in the two processes in terms of notification is publication of the RFP or RFB notice, and said that efforts were generally made to notify a broad range of potential vendors. He also said the business logic for procurements is to provide the best deal for Metro, which argues for a maximum number of bidders. Councilor McLain asked for assurances that normal practice was to invite the greatest number of bids. Mr. Wiley and General Counsel Dan Cooper said they could not provide those assurances on a case by case basis. Councilor McLain said she would support changes in the Code to strengthen requirements that the maximum number of potential contractors are notified.

Councilor Hansen said this ordinance was part of a two part proposal she is working on to strengthen Metro's MBE and WBE contracting. The other part is a revision to the "A" and "B" contract designation criteria to require advance documentation from departments that they have identified potential women- and minority-owned businesses for solicitation of bids. She said

staff is working to prepare these changes, and would address Councilor McLain's concerns when implemented.

Councilor Van Bergen asked why the difference between Personal Services and other Public contracts exists in the current Code but not in the proposed ordinance. Mr. Cooper said state law distinguishes between the two types of contracts, giving more latitude to local governments in awarding personal service contracts. He said the changes proposed in the ordinance would merely raise the threshold amounts but not blur the distinctions between the two types of contracts.

Councilor Van Bergen asked whether adoption of this ordinance would affect the pending litigation to determine authority to approve contracts and contract amendments. Mr. Short said he did not think this Code change affected that issue because it deals with the front end of the process only, not the awarding of the contracts themselves.

Councilor Kvistad said he has concerns about Metro's contracting practices, specifically with oversight of contracts after they're awarded. Councilor Kvistad said he generally supports the goals of the ordinance, but would prefer that the problems with the contracting code be fixed before the limit is raised.

Councilor Devlin asked how this change in procedures would benefit small businesses. Councilor Hansen said the additional cost of preparing formal bids and proposals was too high for many small businesses to permit them to make a reasonable profit while still submitting a competitive bid on small contracts. Councilor Devlin said he shares concerns voiced by Councilors McLain and Kvistad that this proposed change could produce the opposite effect of that desired, namely to reduce the number of bidders.

Councilor McLain encouraged the Committee and staff to begin working on revising the Code to improve criteria for the awarding of contracts.

In response to Councilor Washington, Mr. Wiley said this change would allow staff to provide more assistance to small contractors in preparing their bids. He added that getting more firms in the bidding process should improve results for Metro, by broadening the pool of bidders and increasing competition.

Councilor Gardner said he is concerned that the process continue to be a competitive one. He said a problem that has been voiced about Metro's process is that only a few firms compete for Metro contracts, and he was not convinced that raising the limit for formal bids would improve competition.

Councilor Van Bergen requested that administrative direction be given to the Contracts Office to limit amounts to \$25,000 and not allow additional amounts to be added by amendment without proper approval.

BEFORE THE METRO COUNCIL

RELATING TO CONTRACT PROCEDURES )      ORDINANCE NO. 94-554A  
AMENDING METRO CODE CHAPTER 2.04 )  
TO INCREASE TO \$25,000 THE MAXIMUM )  
AMOUNT OF CONTRACTS THAT MAY BE )      Introduced by  
LET WITHOUT USING A FORMAL BID OR )      Councilor Sandi Hansen  
REQUEST FOR PROPOSALS PROCESS )

WHEREAS, The Metro Code requires formal bid procedures for Personal Services Contracts over \$10,000 and Public Contracts over \$15,000; and

WHEREAS, Contracts of less than the threshold amounts of \$10,000 and \$15,000 may be let by securing quotes from qualified bidders; and

WHEREAS, Representatives of the minority contracting community have indicated that raising the limit for letting contracts without formal bid procedures will improve the ability of minority- and women-owned businesses to compete for Metro contracts; and

WHEREAS, The State of Oregon has a \$25,000 threshold for contracts to be let without formal bids, and Multnomah County is planning to adopt the State's guidelines; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS:

1. The following Sections of the Metro Code are amended to read as follows:

CHAPTER 2.04

METRO CONTRACT PROCEDURES

SECTIONS:

2.04.030 Rules and Procedures Governing All Personal Services and Public Contracts:

(a) Applicability: All Personal Services Contracts and Public Contracts are subject to the applicable selection, review and approval procedures of this Chapter.

(b) Initiating a Contract: When a department initiates a contract not in the form of a Purchase Order, it must first notify the ~~Department of Finance & Administration~~ Contracts Division of the Department of General Services of its intention and request the issuance of a contract number which shall appear on all copies of the contract. The department must complete a Contract Summary form indicating the specifics of the contract. This form must be forwarded to the ~~Department of Finance & Administration~~ Contracts Division of the Department of General Services either with a fully executed contract (one copy) if the amount is estimated to be \$2,500 or under, or with an unexecuted contract (three copies) for review, approval and signature if the amount is over \$2,500.

(c) Documentation Required for Contract Files: The ~~Department of Finance & Administration~~ Contracts Division of the Department of General Services will maintain central files for all contracts. An original copy should be given to each contractor. All correspondence relating to a contract which alters conditions or amounts must be included in the central files as should all papers which document the process of obtaining competitive bids, quotes, or proposals. In any case where a low bid, quote, or proposal is not accepted, a detailed justification must be included with the contract file. Other documentation, if applicable, that should be included in the file includes:

- Mailing Lists
- Affidavits of Publication
- Insurance Endorsements and Certificates
- Amendments
- Extensions
- Related Correspondence
- Quotes, Proposals, and Bids
- Bonds
- DBE/WBE Information
- Contract Closure Form
- Personal Services Evaluation Form

(d) Contract Review: Prior to approval by the appropriate person or body, contracts shall be reviewed as follows:

- (1) Any contract which deviates from a standard contract form, exceeds ~~\$10,000~~ \$25,000 for a Personal Services Contract or ~~\$15,000~~ for a Public Contract, or is with another public agency must be reviewed by the General Counsel.

- (2) Contracts involving federal or state grant funds must be reviewed by the Deputy Executive Officer.

(e) Disadvantaged Business Program: All contracting and purchasing is subject to the Metro Disadvantaged Business Enterprise Program. Metro will take affirmative action to do business with Disadvantaged Business Enterprises. ~~The Director of Finance and Administration~~ Contracts Division of the Department of General Services will maintain a directory of disadvantaged businesses which shall be consulted and used in all contracting and purchasing of goods and services. If a disadvantaged business is included in the directory that appears capable of providing needed goods or services, that business should be contacted and given an opportunity to compete for Metro business. Contracts awarded subject to the program may be exempted from the competitive bidding process by resolution of the Contracting Review Board.

(f) Monthly Contract Report: The Executive Officer will provide a monthly report to the Council, pursuant to Section 2.04.032, of all contracts, including extensions and amendments, which have been executed during the preceding month; provided, however, that such monthly report need not include purchase orders under \$500.

(g) Federal/State Agency Approval: When required by federal or state law or regulations, review and approval of Metro contracts shall include prior concurrence or approval by appropriate federal or state agencies.

(h) No contract or contract amendment may be approved or executed for any amount in excess of the amount authorized in the budget.

2.04.031 Notice of Award and Appeals:

(a) At least five (5) days prior to the execution of any Public Contract ~~over \$15,000~~ or a Personal Services Contract over ~~\$10,000~~ ~~the District~~ \$25,000, Metro shall provide a Notice of Award to the contractor selected and to all contractors who submitted unsuccessful bids or proposals. This requirement may be waived by the Executive Officer for any emergency contract entered into pursuant to this Code.

(b) Bid/Request for Proposals Appeal Procedures: The following procedure applies to aggrieved bidders and proposers who wish to appeal an award of a Public Contract ~~above \$15,000~~ ~~and/or~~ a Personal Services Contract above ~~\$10,000~~ \$25,000. The appeal process for bids is the same as for Requests for Proposals. In the case of Requests for Proposals, disagreement with the judgment exercised in scoring by evaluators is not a basis for appeal.

- (1) All appeals shall be made in writing and shall be delivered to the ~~Contracts Administrator~~ Procurement Officer at Metro's main office within five (5) working days of the postmarked date on the Notice of



Award. The written appeal must describe the specific citation of law, rule, regulation, or procedure upon which the appeal is based.

- (2) The ~~Contracts Administrator~~ **Procurement Officer** shall forthwith notify the appropriate department head and the Executive Officer of the appeal. Within ten (10) working days of the receipt of notice of appeal, the Executive Officer shall send a notice of rejection of the appeal or a notice of acceptance of the appeal as applicable to the appellant. The appellant may appeal the Executive Officer's decision to reject the appeal in writing to the Contract Review Board within five (5) working days from the postmarked date on the Notice of Rejection.
- (3) The Contract Review Board will review the grounds for appeal, all pertinent information, and the Executive Officer's recommendation, and make a decision. The decision of the Contract Review Board is final.
- (4) No contract which is the subject of a pending appeal may be executed unless the Contract Review Board shall have given its approval at the request of the Executive Officer. The Executive Officer may request the Contract Review Board to determine a matter without waiting for the expiration of the time periods provided for herein.

#### 2.04.032 Contract Information Reports:

(a) The Executive Officer shall provide a monthly report to the Council showing the status of all contracts in effect at Metro as of the date of the report. The report shall be divided into four sections: (a) Contracts Awarded; (b) Contracts Amended; (c) Open Contracts; and (d) Contracts Closed.

- (1) Contracts Awarded: This section shall report all new contracts awarded since the date of the previous report to the Council of all new contracts. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, vendor name, and a brief description of the purpose of the contract.
- (2) Contracts Amended: This section shall report all contracts amended by Change Order since the date of the previous report to the Council of contract amendments. Information contained in this report will be the contract number, vendor name, amendment number, type of amendment, the original amount of the contract, the amount of the contract amendment, the new total contract amount, the percent of the

amount of increase in excess of the original amount of the contract, and a brief description of the purpose of the contract.

(3) Contracts Open: This section shall report all contracts in effect on the last day of the month for which the report is prepared. Information contained in this report will be the cost center of the department responsible for the contract, contract number, starting and ending dates of the contract, type of contract, amount of the contract, the amount expended to date, vendor name, and a brief description of the purpose of the contract.

(4) Contracts Closed: This section shall report all contracts closed by the last day of the month for which the report is prepared. Information contained in this report will be contract number, vendor name, type of contract, date contract closed, amount of the contract, final amount expended, and a brief description of the purpose of the contract.

(b) Contract Type: Each contract will be identified by a type code to describe the class of contract entered into by Metro. There shall be six types of contracts at Metro:

- (1) Personal Services;
- (2) Pass-Through Agreements;
- (3) Labor and Materials;
- (4) Intergovernmental Agreements;
- (5) Procurement; and
- (6) Construction.

(c) Prior to entering into (1) any public contract or personal services agreement pursuant to the authority granted in Section 2.04.060 authorizing Sole Source Contract, or (2) any Public Contract or Personal Services Agreement in an amount exceeding ~~\$15,000~~\$25,000 for which only one bid or response to a Request for Proposals has been received, the Executive Officer shall file a written report with the Council detailing the reasons why a Sole Source Contract was entered into or giving an explanation of why only one bid or response was received.

(d) The Executive Officer shall provide to the Council during the annual budget process a list of proposed contracts and Intergovernmental Agreements to be entered into during the ensuing fiscal year. The Council shall designate all listed contracts and Intergovernmental Agreements as either "A" or "B". For contracts designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, which may be the annual budget ordinance, copies of bid or proposal documents shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents must be filed with the Clerk of the Council at least thirty-five (35) days prior to the date of release for response by potential bidders. If the Council or

a committee has not within fourteen (14) days of the date of filing scheduled the matter for a hearing the documents may be released to prospective bidders at any time after the fourteenth (14th) day. In any event, bid documents may be released to prospective bidders on the thirty-fifth (35th) day after filing with the Council. For Intergovernmental Agreements designated by the Council as "A" contracts and being subject to this requirement by duly adopted ordinance, copies of the proposed agreement and scope of work or similar project description shall be filed with the Clerk of the Council and referred to the appropriate Council committee for review and comment. Documents shall be filed with the Clerk of the Council at least fourteen (14) days prior to execution of the agreement.

(e) Between the time of release of competitive bid or Request for Proposal documents for "A" contracts, as defined in subsection (d), and the designated due date for responses, all technical addenda which do not materially alter the bid document, the basis of award for the bid or proposal, or the proposed services or product to be contracted, shall be filed with the Metro General Counsel and the Clerk of the Council at the time of their release. All non-technical addenda to the bid documents shall be filed, with a staff report explaining the purpose and nature of the addendum, with the Metro General Counsel and the Clerk of the Council at least seven (7) days prior to their release. The Metro General Counsel shall determine if the addendum materially adds to or deletes from the original scope of work included in the bid documents or the basis of award for the bid or proposal. If the General Counsel finds that an addendum materially alters a bid document as described herein, for a contract subject to Council approval under Section 2.04.033, the General Counsel shall prepare an appropriate resolution for Council approval of the addendum. Council may act to approve an addendum per the Council's authority to approve the competitive bid or Request for Proposal document under subsection 2.04.033(a)(1). Such resolution shall be filed with the Clerk of the Council and placed on the agenda for the next scheduled Metro Council meeting. Any addendum filed by General Counsel for Council approval shall not be issued by the Metro Executive Officer or designated department until the Council acts on the resolution. Any addendum approved by the Council must be issued by the Metro Executive Officer or designated department not less than fourteen (14) days prior to the bid or proposal opening date unless the original opening date is extended at least fourteen (14) days. In any event, Council approval of the contract will act to cure any claim that any addendum to the contract bid or proposal document was material as described herein and was not approved by Council.

(f) Except as provided in subsection (f), all other contracts designated by the Council as "B" contracts shall be subject to the requirement that copies of bid documents shall be filed with the Clerk of the Council at the time they are released for response by potential bidders. For Intergovernmental Agreements designated as "B" contracts, copies of the contract and scope of work or similar project description shall be filed with the Clerk of the Council at the time they are to be executed. At the time any of the above documents are filed, the Executive Officer shall furnish the Council with information stating the purpose and nature of the proposed contract, the appropriation to be charged with the contract, and a statement of the contract's impact on the District in future fiscal years.

(g) Any Public Contract ~~\$15,000 or more~~ or Personal Services Contract ~~\$10,000 exceeding \$25,000 or more~~ or any Intergovernmental Agreement not on the list of proposed contracts submitted by the Executive Officer as required by subsection (d) shall be subject to the filing and Council or committee review requirements in subsection (d) or if appropriate, the provisions of Section 2.04.033.

2.04.040 Public Contracts, General Provisions:

(a) Competitive Bidding: Metro may enter into an intergovernmental agreement with the State of Oregon to make purchases from State Price Agreement established by the State of Oregon by competitive bids. Metro may purchase directly from these price agreements that are based on the State's competitive bids. Unless exempt from public bidding, all other public contracts shall be awarded to the lowest, responsive, responsible bidder responding to competitive bids by Metro.

(b) Oregon Preference: In all public contracts, the District shall prefer goods or services that have been manufactured or produced in Oregon if price, fitness, availability and quality are otherwise equal. Where a contract in excess of \$10,000 is awarded to a contractor not domiciled or registered to do business in Oregon, the initiating Department shall assure compliance with the provisions of ORS 279.021.

(c) Rejection of Bids: The Executive Officer or the Deputy Executive Officer may reject any bid not in compliance with all prescribed public bidding procedures and requirements and may, for good cause, reject any or all bids upon a finding that it is in the public interest to do so, for example, when all bids exceed the budget or estimate for that project.

(d) Bonds: Unless the Board shall otherwise provide, bonds and bid security requirements are as follows:

- (1) Bid security not exceeding 10 percent of the amount bid for the contract is required unless the contract is for ~~\$15,000~~ \$25,000 or less.
- (2) For public improvements, a Labor and Materials bond in an amount equal to 100 percent of the contract price is required for contracts over \$15,000.
- (3) For public improvements, a Performance bond in an amount equal to 100 percent of the contract price is required for contracts over \$10,000. If the contract is under \$50,000, the performance bond and labor and material bond may be one bond; if the contract is \$50,000 or more, there shall be two bonds.

- (4) Bid security, labor and material bond and performance bond may be required even though the contract is of a class not identified above, if the Executive Officer determines it is in the public interest.
- (5) Bid security and labor and performance bonds will not be required for food products procured pursuant to Chapter 2.04.090.
- (6) Bid security and bonds may be provided in the form of a surety bond, cash, cashier's check or certified check.

**2.04.041 Requirement of Competitive Bidding, Exemptions:**

(a) **State Law:** The following contracts are exempt from the competitive bidding selection process pursuant to State Statute:

- (1) Contracts with other public agencies or the federal government.
- (2) Contracts made with qualified nonprofit agencies providing employment opportunities for the handicapped.
- (3) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145.
- (4) Contracts for supplies estimated to be less than \$500.

(b) **Board Rule:** The following classes of public contracts are exempt from the competitive bidding process based on the findings by the Contract Review Board that the exemption will not encourage favoritism or substantially diminish competition for public contracts and that such exemptions will result in substantial cost savings:

- (1) Purchase and sale of Zoo animals.
- (2) Purchase and sale of Zoo gift shop retail inventory and resale items.
- (3) All contracts estimated to be less ~~not more~~ than ~~\$15,000~~ \$25,000, provided that the selection process described in the appropriate Code sections is followed.
- (4) Contracts estimated not to exceed \$25,000 for road, highway or parking lot maintenance provided that at least three (3) competitive quotes are obtained, if available, and a record of said quotes and efforts to obtain them are maintained.

- (5) Emergency contracts when the Executive Officer makes written findings that an emergency exists and that the emergency consists of circumstances that could not have been reasonably foreseen and requires prompt execution of a contract to remedy that condition. An emergency contract must be awarded within sixty (60) days of the declaration of the emergency unless the Board grants an extension.
- (6) Purchase of food items pursuant to Section 2.04.090.
- (7) Contracts for warranties in which the supplier of the goods or services covered by the warranty has designated a sole provider for the warranty service.
- (8) Contracts for computer hardware and software. Selection procedures for these contracts, however, must follow the RFP process outlined in Section 2.04.050, "Personal Services Contracts."
- (9) Contracts under which Metro is to provide a service only and incurs no financial obligation to another party.
- (10) Contracts for the lease or use of the Oregon Convention Center or other facilities operated by the Metropolitan Exposition-Recreation Commission.
- (11) For the purchases by the Metropolitan Exposition-Recreation Commission, all contracts estimated to be less than \$31,000 provided that any rules adopted by the Commission which provide for substitute selection procedures are followed.
- (12) For purchases by the Metropolitan Exposition-Recreation Commission, emergency contracts when the General Manager makes written findings that: 1) immediate procurement is essential to prevent a delay in work or extra expense to the Commission in circumstances which could not have been foreseen and avoided; 2) there is a threat of immediate damage to Commission property; or 3) there is an immediate danger to citizens or employees. The General Manager shall report to the Commission at its next regularly scheduled meeting of any contracts entered into pursuant to this section.
- (13) For purchases by the Metropolitan Exposition-Recreation Commission, contracts for equipment repair or overhaul, but only when the service and/or parts required are unknown before the work begins and the cost cannot be determined without extensive preliminary dismantling or testing.

(c) Board Resolution: Specific contracts, not within the classes exempted in subsection (b) above, may be exempted by the Board by resolution subject to the requirements of ORS 279.015(2) and ORS 279.015(5). The Board shall, where appropriate, direct the use of alternate contracting and purchasing practices that take account of market realities and modern innovative contracting and purchasing methods, which are consistent with the public policy of encouraging competition.

(d) Limitation: The exemptions in subsections (a)-(c), above, are exemptions to the competitive bid process only; all other procedures, including review and approval, apply to these contracts.

2.04.043 Public Contracts Between ~~\$2,501~~\$2,500 and ~~\$15,000~~\$25,000:

(a) Selection Process: Unless completely exempt from competitive bidding under Section 2.04.041, when the amount of the contract is \$2,500 or more, but ~~less~~not more than ~~\$15,000~~\$25,000, the District must obtain a minimum of three (3) competitive quotes. The District shall keep a written record of the source and amount of the quotes received. If three (3) quotes are not available, a lesser number will suffice provided that a written record is made of the effort to obtain the quotes.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~Contracts Division of the ~~Department of General Services~~.

(c) Approval Process: (1) For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign; however, the Director or Assistant Director of the Zoo may sign purchase orders of \$10,000 or less. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~General Services may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.044 Public Contracts ~~of over~~ ~~\$15,000~~\$25,000 or More:

(a) Selection Process: Unless exempt from competitive bidding by Code section 2.04.041, the following competitive bidding procedures shall apply to all contracts:

- (1) The initiating department staff will prepare bid specifications and compile a list of potential bidders.
- (2) The bid document will be reviewed by the ~~Department of Finance and Administration~~Contracts Division of the ~~Department of General~~

~~Services~~ and by the General Counsel before bids are solicited or advertised, and shall include the contract form to be used.

- (3) A request for bids will be advertised in the manner required by law and in a local minority newspaper, and in any appropriate trade magazine. Additional advertisement may be appropriate depending upon the nature of the contract.
- (4) The initiating department will receive and open sealed bids at the time and place designated in the request for bids.
- (5) The opened bids will be reviewed by the requesting department and a recommendation and contract will be submitted to the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.
- (6) After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.
- (7) The initiating department will notify all bidders in writing of the contract award and obtain any necessary bonds and insurance certificates.
- (8) The District shall reserve the right to reject any or all quotes or bids received.

(b) Approval Process: All initial contracts with a contract price of ~~more than \$15,000~~ \$25,000 or more shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the ~~Director Regional of Facilities of General Services~~ may approve and execute contracts of ~~\$15,000~~ \$25,000 or more. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) Within thirty (30) days of award of a construction contract, the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services shall provide the notice required by ORS 279.363.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

(e) Prior to the award of a contract to any bidder other than the apparent low bidder the Executive Officer shall obtain the prior approval of the Contract Review Board.



2.04.052 Personal Services Contracts Between \$2,500 and \$10,000

(a) Selection Process: For Personal Services contracts \$2,500 or more but less than \$10,000, the Department Director shall use the following process:

- (1) Proposals shall be solicited from at least three (3) potential contractors who, in the judgment of the Department Director, are capable and qualified to perform the requested work.
- (2) The initiating Department shall document the fact that at least three (3) proposals have been solicited. Preferably, the proposals should be written, but this is not required. The District reserves the right to reject any or all proposals for any reason.
- (3) Evaluation, as determined by the Department Director, may require oral presentations and shall include use of a contractor evaluation form. The objective is the highest quality of work for the most reasonable price. The quality of the proposal may be more important than cost.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) Notification of selection or rejection shall be made in writing after final review by the initiating department.

(b) Review Process: After selection and prior to approval, the contract must be reviewed by the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.

(c) Approval Process: For contracts of \$2,500 or more, either the Executive Officer or Deputy Executive Officer must sign. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~ General Services may sign contracts. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(d) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

2.04.053 Personal Services Contracts of more than \$10,000\$25,000 or More:

(a) Selection Process: For Personal Services contracts of more than \$10,000\$25,000 or more-an evaluation of proposals from potential contractors shall be performed as follows:

- (1) A request for proposals shall be prepared by the initiating department and shall be reviewed by the General Counsel and the ~~Department of Finance and Administration~~ Procurement Officer. Where appropriate, notice of the request shall be published in a newspaper of general circulation or in trade magazines. In addition, Metro shall notify in writing at least three (3) potential contractors, who, in the judgment of the Department Director, are capable and qualified to perform the requested work. The initiating department will be responsible for maintaining the file and making the appropriate notification.
- (2) All requests for proposals shall at a minimum contain a description of the project and a brief summary of the project history, contain a detailed proposed scope of work or other specifications setting forth expected performance by the contractor, include a description of the criteria that will be utilized to evaluate proposals and the estimated budget for the project.
- (3) Evaluations of proposals shall include use of a contract evaluation form. The use of an oral interview or an evaluation team is recommended.
- (4) Personal Services Evaluation Form: The Personal Services evaluation form shall document the reasons for the selection. Proposals shall be evaluated according to predetermined criteria. The evaluation process may include the evaluators assigning a quantifiable score on how each aspect of a proposal meets the predetermined criteria. The contract may be awarded to the firm receiving the highest average score.
- (5) After evaluation is complete, the Department Director will recommend final selection through the ~~Department of Finance and Administration~~ Contracts Division of the Department of General Services.
- (6) Notifications of selection and rejection shall be made in writing by the initiating department.
- (7) Personal Services contracts with the Scope of Work must be approved by the department head and then forwarded to the ~~Department of Finance and Administration~~ Contracts Division of the Department of

**General Services** for internal review and execution. General Counsel review is required.

(b) **Approval Process:** All initial contracts with a contract price of greater than ~~\$10,000~~**\$25,000** shall be approved and executed by the Executive Officer or Deputy Executive Officer. When designated in writing to serve in the absence of the Executive Officer or Deputy Executive Officer, the Director of ~~Regional Facilities~~**General Services** may approve and execute contracts of ~~more than \$15,000~~**\$25,000 or more**. No contract may be approved or executed for any amount in excess of the amount authorized in the budget.

(c) All contracts are subject to the rules and procedures of Code Section 2.04.030, "Rules and Procedures Governing Personal Services and Public Contracts."

**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 ~~\$15,000~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,000~~\$25,000 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. For contracts over the dollar amounts indicated in this section, all known MBEs 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.

(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.

2.04.235 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~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,001~~\$25,000 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. For contracts over the dollar amounts indicated in this section, all known WBEs 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.

(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.

**2.04.335 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~~\$25,000 in the case of non-personal services contracts; and 2) for more than \$2,500 but not more than ~~\$10,001~~\$25,000 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.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_ 199\_\_.

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

ATTEST:

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

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Meeting Date: August 25, 1994  
Agenda Item No. 5.2

ORDINANCE NO. 94-560



FINANCE COMMITTEE REPORT

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ORDINANCE NO. 94-560, AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE FOR THE PURPOSE OF FUNDING A CONTRACT TO RECOMMEND FURTHER IMPROVEMENTS IN COMPETITIVE BIDDING, PROCUREMENT AND CONTRACTING SERVICES

Date: August 15, 1994

Presented by: Councilor Hansen

**COMMITTEE RECOMMENDATION:** At its August 10, 1994 meeting the Finance Committee voted 4-1 to recommend Council adoption of Ordinance No. 94-560. Voting in favor were Councilors Monroe, Gardner, McLain, and Washington. Councilor Kvistad voted in opposition. Councilors Buchanan, Devlin, and Van Bergen were absent.

**COMMITTEE DISCUSSION/ISSUES:** General Services Director Doug Butler said this ordinance provides the funding to implement the proposals in Resolution No. 94-2005. (See the Finance Committee's report on that resolution for the discussion.)

Chair Monroe called a public hearing and no one testified. There was no further committee discussion.

BEFORE THE METRO COUNCIL

AN ORDINANCE AMENDING THE FY )  
1994-95 BUDGET AND )  
APPROPRIATIONS SCHEDULE FOR )  
THE PURPOSE OF FUNDING A )  
CONTRACT TO RECOMMEND )  
FURTHER IMPROVEMENTS IN )  
COMPETITIVE BIDDING, )  
PROCUREMENT AND CONTRACTING )  
SERVICES )

ORDINANCE NO. 94-560  
Introduced by Rena Cusma,  
Executive Officer

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

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

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

THE METRO COUNCIL HEREBY ORDAINS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$30,000 from the Support Service Fund Contingency to Materials and Services in the General Service Department to fund a personal services contract to recommend further improvements in competitive bidding, procurement and contracting services.

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

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

ATTEST:

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

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

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**Exhibit A  
Ordinance No. 94-560**

# Support Services Fund

| FISCAL YEAR 1994-95                |   | CURRENT BUDGET |                  | REVISION |               | ORD. NO.94-560 |                  |
|------------------------------------|---|----------------|------------------|----------|---------------|----------------|------------------|
| ACCT #                             | DESCRIPTION                                     | FTE            | AMOUNT           | FTE      | AMOUNT        | FTE            | AMOUNT           |
| <b>General Services Department</b> |   |                |                  |          |               |                |                  |
|                                    | Total Personal Services                         | 16.45          | 947,694          |          |               | 16.45          | 947,694          |
|                                    | <u>Materials &amp; Services</u>                 |                |                  |          |               |                |                  |
| 521100                             | Office Supplies                                 |                | 17,550           |          |               |                | 17,550           |
| 521110                             | Computer Software                               |                | 4,095            |          |               |                | 4,095            |
| 521111                             | Computer Supplies                               |                | 1,846            |          |               |                | 1,846            |
| 521240                             | Graphics/Reprographic Supplies                  |                | 800              |          |               |                | 800              |
| 521260                             | Printing Supplies                               |                | 75,755           |          |               |                | 75,755           |
| 521290                             | Other Supplies                                  |                | 400              |          |               |                | 400              |
| 521310                             | Subscriptions                                   |                | 1,510            |          |               |                | 1,510            |
| 521320                             | Dues  |                | 2,790            |          |               |                | 2,790            |
| 521400                             | Fuels & Lubricants                              |                | 7,252            |          |               |                | 7,252            |
| 524190                             | Misc. Professional Services                     |                | 62,800           |          | 30,000        |                | 92,800           |
| 525630                             | Maintenance & Repairs Services-Vehicles         |                | 2,773            |          |               |                | 2,773            |
| 525640                             | Maintenance & Repairs Services-Equipment        |                | 81,238           |          |               |                | 81,238           |
| 525710                             | Equipment Rental                                |                | 18,710           |          |               |                | 18,710           |
| 525732                             | Operating Lease Payments-Vehicles               |                | 33,150           |          |               |                | 33,150           |
| 526200                             | Ads & Legal Notices                             |                | 12,950           |          |               |                | 12,950           |
| 526310                             | Printing Services                               |                | 8,100            |          |               |                | 8,100            |
| 526320                             | Typesetting & Reprographics Services            |                | 1,500            |          |               |                | 1,500            |
| 526410                             | Telephone                                       |                | 61,992           |          |               |                | 61,992           |
| 526420                             | Postage   |                | 109,990          |          |               |                | 109,990          |
| 526440                             | Delivery Services                               |                | 850              |          |               |                | 850              |
| 526500                             | Travel  |                | 6,463            |          |               |                | 6,463            |
| 526700                             | Temporary Help Services                         |                | 4,760            |          |               |                | 4,760            |
| 526800                             | Training, Tuition, Conferences                  |                | 12,595           |          |               |                | 12,595           |
| 528100                             | License, Permits, Payments to Other Agencies    |                | 147,018          |          |               |                | 147,018          |
| 529500                             | Meetings  |                | 3,520            |          |               |                | 3,520            |
| 525740                             | Capital Lease Payments-Furniture & Equipment    |                | 20,005           |          |               |                | 20,005           |
|                                    | Total Materials & Services                      |                | 700,412          |          | 30,000        |                | 730,412          |
|                                    | Total Capital Outlay                            |                | 10,960           |          |               |                | 10,960           |
|                                    | <b>TOTAL EXPENDITURES</b>                       | <b>16.45</b>   | <b>1,659,066</b> |          | <b>30,000</b> | <b>16.45</b>   | <b>1,689,066</b> |
| <b>General Expenses</b>            |   |                |                  |          |               |                |                  |
|                                    | Total Interfund Transfers                       |                | 806,169          |          |               |                | 806,169          |
|                                    | <u>Contingency and Unappropriated Balance</u>   |                |                  |          |               |                |                  |
| 599999                             | Contingency                                     |                |                  |          |               |                |                  |
|                                    | * General                                       |                | 200,000          |          | (30,000)      |                | 170,000          |
|                                    | * Builders License                              |                | 62,987           |          |               |                | 62,987           |
|                                    | * Construction Services (Tri-Met Contract)      |                | 2,539            |          |               |                | 2,539            |
| 599990                             | Unappropriated Fund Balance-Contractors License |                |                  |          |               |                |                  |
|                                    | *Builders License                               |                | 207,625          |          |               |                | 207,625          |
|                                    | *Capital Replacement Reserve                    |                | 200,000          |          |               |                | 200,000          |
|                                    | Total Contingency and Unappropriated Balance    |                | 673,151          |          | (30,000)      |                | 643,151          |
|                                    | <b>TOTAL EXPENDITURES</b>                       | <b>81.25</b>   | <b>7,668,704</b> |          |               | <b>81.25</b>   | <b>7,668,704</b> |

**Exhibit A  
Ordinance No. 94-560**

# Support Services Fund

|   |  | CURRENT BUDGET |                | REVISION |               | ORD. NO.94-560 |                |
|---|--|----------------|----------------|----------|---------------|----------------|----------------|
| FISCAL YEAR 1994-95                         |  | FTE            | AMOUNT         | FTE      | AMOUNT        | FTE            | AMOUNT         |
| <b>General Services (Contract Services)</b> |  |                |                |          |               |                |                |
| Total Personal Services                     |  | 3.65           | 239,697        |          |               | 3.65           | 239,697        |
| <u>Materials &amp; Services</u>             |  |                |                |          |               |                |                |
| 521100                                      | Office Supplies                              |                | 2,075          |          |               |                | 2,075          |
| 521111                                      | Computer Supplies                            |                | 1,846          |          |               |                | 1,846          |
| 521310                                      | Subscriptions                                |                | 655            |          |               |                | 655            |
| 521320                                      | Dues   |                | 505            |          |               |                | 505            |
| 524190                                      | Misc. Professional Services                  |                | 50,100         |          | 30,000        |                | 80,100         |
| 526200                                      | Ads & Legal Notices                          |                | 10,400         |          |               |                | 10,400         |
| 526440                                      | Delivery Services                            |                | 500            |          |               |                | 500            |
| 526500                                      | Travel                                       |                | 3,450          |          |               |                | 3,450          |
| 526700                                      | Temporary Help Services                      |                | 680            |          |               |                | 680            |
| 526800                                      | Training, Tuition, Conferences               |                | 1,625          |          |               |                | 1,625          |
| 528100                                      | License, Permits, Payments to Other Agencies |                | 150            |          |               |                | 150            |
| 529500                                      | Meetings                                     |                | 3,000          |          |               |                | 3,000          |
| Total Materials & Services                  |  |                | 74,986         |          | 30,000        |                | 104,986        |
| <b>TOTAL EXPENDITURES</b>                   |  | <b>3.65</b>    | <b>314,683</b> |          | <b>30,000</b> | <b>3.65</b>    | <b>344,683</b> |

**Exhibit B**  
**Ordinance No. 94-560**

**FY 1994-95 SCHEDULE OF APPROPRIATIONS**

|                                | Adopted<br>Appropriations<br><u>Jun 30, 1994</u> | <u>Revision</u> | ORD. No. 94-560<br>Proposed<br><u>Appropriation</u> |
|--------------------------------|--|-----------------|---|
| <b>SUPPORT SERVICES FUND</b>   |  |                 |   |
| General Services               |  |                 |   |
| Personal Services              | 947,694  |                 | 947,694   |
| Materials & Services           | 700,412  | 30,000          | 730,412   |
| Capital Outlay                 | 10,960   |                 | 10,960  |
| Subtotal                       | <u>1,659,066</u>                                 | <u>30,000</u>   | <u>1,689,066</u>                                    |
| General Expenses               |  |                 |   |
| Interfund Transfers            | 806,169  |                 | 806,169   |
| Contingency                    | 265,526  | (30,000)        | 235,526   |
| Subtotal                       | <u>1,071,695</u>                                 | <u>(30,000)</u> | <u>1,041,695</u>                                    |
| Unappropriated Balance         | 407,625  |                 | 407,625   |
| <b>Total Fund Requirements</b> | <u><b>7,668,704</b></u>                          | <u><b>0</b></u> | <u><b>7,668,704</b></u>                             |

## STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-2005 ADOPTING AN INTERIM REPORT ON MBE/WBE/DBE UTILIZATION, AND AUTHORIZING THE EXECUTIVE TO RELEASE A REQUEST FOR PROPOSALS AND EXECUTE A PERSONAL SERVICES CONTRACT TO RECOMMEND FURTHER IMPROVEMENTS IN COMPETITIVE BIDDING, PROCUREMENT AND CONTRACTING SERVICES; AND

ORDINANCE NO. 94-560 FOR THE PURPOSE OF AMENDING THE FY 1994-95 BUDGET BY TRANSFERRING \$30,000 FROM THE SUPPORT SERVICES FUND CONTINGENCY TO PROFESSIONAL SERVICES WITHIN THE GENERAL SERVICES DEPARTMENT TO FUND RESOLUTION NO. 94-2005

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Date: June 30, 1994

Presented by: Douglas E. Butler

### Background

The Contract Services Division of the General Services Department is responsible for providing competitive bidding, procurement and contracting assistance, document review and Metro-wide contract coordination. In addition, the Metro Council has, by Code, made that Division responsible for the promotion, implementation, and administration of Metro's special programs for MBE, WBE, DBE and QRF outreach and utilization. Also, as part of this year's budget reductions, the Division inherited labor compliance monitoring and the licensing of contractors.

In March, 1993, Talbot, Korvola and Warwick completed the last performance audit of the Division which identified a number of issues, questions and concerns. That was not the first such study of this Division but what is significant is that it avoided broad policy issues such as centralization or decentralization of the process, and focused instead upon a specific action plan to be formulated and implemented.

Since that time, the Division has implemented a number of those recommendations and improved overall operating efficiencies. Much work remains to be done, however. With the press of day-to-day activities and the on-going need for contracting services, the prospects for completing other improvements will take substantially longer than originally expected or desirable.

Along with that progressive challenge for the Division's improvement, the Metro Council, in January, 1993, instituted a new program to specifically encourage MBE, WBE, DBE, and QRF involvement and utilization. The program was designed to comply with current court decisions and was therefore "process" and "good faith" oriented but it clearly expected definitive action and positive, measurable results.

The actual results, our rate of progress, and the prospects for the future are too slow and too limited. Although, in general, we comply with the current letter of the law and with grant

requirements, there are some specific instances (e.g., required advertising and goals adoption) where we have not. This is simply not good enough. These programs need more attention than they've received to date given the normal workload. They need more emphasis and resources. We have recognized the need for improvements in effectiveness and efficiency as the work load rises, but we need to actively prepare for the future as Metro's business relationships grow in number, size and complexity.

### Proposal

We propose that the Council consider changes to the Metro Code and corresponding organizational and procedural adjustments to Metro's overall competitive bidding, procurement and contracting system in order minimize costs and maximize results. We need to make some changes that will not let "business as usual" pre-empt improvement efforts and that will stimulate a positive momentum. We might need to follow the old "80/20" rule and focus upon a limited list (the 20%) of immediate steps which could have a broad (the 80%) impact to "jump-start" the program. Specifically, we propose to:

1. File the annual report attached as Exhibit A and establish the proposed program goals included therein. The attached annual report was prepared in response to the requirements of Section 2.04 of the Metro Code. The report has a number of shortcomings as currently drafted. Specifically, there is:
  - No substantiation for the proposed goals which documents compliance with the methodology required by Metro Code sections 2.04.145, 245, and 345 (b)(1-4).
  - No comparison by which to judge the efficacy of Metro's "good faith" approach since it does not contrast current results with previous years when a goal based program mandated utilization or with the current programs of other governments.
  - No in depth discussion of the relevance and effectiveness of the action steps taken in implementation of the Metro program.

The staff person responsible for this program is currently on extended, indefinite medical leave and therefore not available to do further work on this report. Other Division staff could be diverted from their normal duties to expend further time making a variety of corrections, revisions, and modifications to make the report conform to specific Metro Code requirements, expose the logic of the calculation process and provide a meaningful context for interpretation of the program data. We do not believe, however, that this would be a wise use of limited staff resources.

We are not convinced that our current program is having optimal impact and producing the results that it could or should deliver. But, instead of looking back and speculating on what might have been, we would prefer, with the assistance of a consultant, to formulate a new plan with specific action steps designed for more meaningful results. We therefore, propose that the Metro Council accept the attached report and adopt the program goals included therein as an interim measure of proforma compliance.

2. **Hire a consultant to develop a Metro-wide action plan to pragmatically contain operating costs but optimize our competitive bidding, procurement and contracting delivery system and pursue truly effective MBE/WBE/DBE and QRF utilization measures. The adopted Budget for the General Services Department does not provide funds for this purpose and a transfer from the Support Services Fund Contingency is requested to fund this effort. With your approval, we will proceed immediately with a competitive, RFP consultant selection process. A proposed mailing list marked Exhibit B and a preliminary draft of that RFP format including a detailed scope of work marked Exhibit C are attached for your review. The Division seeks Council approval to proceed with this project in substantial compliance with those draft documents.**
  
3. **Present a report to the Executive Officer and Council in December of this year which clearly reflects the appropriate analysis, logical recommendations and definite action plan(s) for improvement. If approved, this plan would be incorporated into the Department's proposed budget for Fiscal Year 1995-96 and appropriate legislation could be introduced for immediate implementation in January or February.**

**Recommendation**

The Executive Officer recommends approval of Ordinance No. 94-560 and Resolution No. 94-2005.



Meeting Date: August 25, 1994  
Agenda Item No. 5.3

ORDINANCE NO. 94-566



**METRO**

DATE: August 19, 1994

TO: Metro Council  
Executive Officer  
Agenda Recipients

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

RE: AGENDA ITEM NO. 5.3; ORDINANCE NO. 94-566

The Finance Committee will consider Ordinance No. 94-566 on August 24. Committee reports will be distributed in advance to Councilors and available at the Council meeting on August 24, 1994.



## METRO

Date: August 8, 1994  
To: Metro Council  
From: Rod Monroe, Finance Committee Chair <sup>RMM/JSR</sup>  
Re: Ordinance No. 94-566 Relating to the Annual Budget

This is to inform you that I have introduced Ordinance No. 94-566 for Council consideration. This ordinance, if adopted, requires the Executive Officer to submit the Proposed Budget Document and Budget Message for the following fiscal year to the Council on the first Tuesday after the first Monday of each new year. The submission would be at a special meeting of the Council.

The purpose for this ordinance is to give the Council the flexibility to adopt the agency's Annual Budget by March 30 of each year thus avoiding the need for an emergency clause and an extraordinary majority of Councilors. **This ordinance does not propose a specific schedule.** This will make it possible for each Council at the beginning of the new year to decide the specific schedule for consideration and adoption of the Annual Budget. For explanatory purposes only, I have attached a draft of a possible schedule to be followed which would enable the adoption of the Annual Budget without the use of an emergency clause.

If you have any questions about this ordinance, please let me know.

cc: Rena Cusma  
Jennifer Sims



**DRAFT**

**EXHIBIT A**

**POSSIBLE GENERAL SCHEDULE FOR COUNCIL CONSIDERATION  
OF FY 1995-96 PROPOSED BUDGET**

| <u>DATE</u>                                | <u>EVENT</u>   |
|--|--|
| January 3, 1995 (Tuesday)                  | Executive Officer presents FY 1995-96 Proposed Budget and Budget Message to Council  |
| January 7, 1995 (Saturday)                 | Council meets for Budget Workshop  |
| January 9 - February 24, 1995<br>(7 weeks) | Council meets as Budget Committee to deliberate on FY 1995-96 Proposed Budget. Budget Committee recommendations finalized by February 24, 1995       |
| March 2, 1995 (Thursday)                   | Council hold Public Hearing and approves budget resolution transmitting FY 1995-96 Approved Budget to Tax Supervising Conservation Commission (TSCC) |
| March 8, 1995 (Wednesday)                  | FY 1995-96 Approved Budget filed with TSCC. (TSCC holds hearing on Proposed Budget on Wednesday, March 29, 1995                                      |
| March 30, 1995 (Thursday)                  | Council holds Public Hearing and Adopts FY 1995-96 Budget (Budget Ordinance takes effect on July 1, 1995 -- 93 days from adoption                    |

Meeting Date: August 25, 1994  
Agenda Item No. 5.4

ORDINANCE NO. 94-561



**METRO**

**DATE:** August 19, 1994

**TO:** Metro Council  
Executive Officer  
Agenda Recipients

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

**RE:** AGENDA ITEM NO. 5.4; ORDINANCE NO. 94-561

The Finance Committee will consider Ordinance No. 94-561 on August 24. Committee reports will be distributed in advance to Councilors and available at the Council meeting on August 24, 1994.

## SOLID WASTE COMMITTEE REPORT

CONSIDERATION OF ORDINANCE NO. 94-561, AN ORDINANCE AMENDING THE FY 1994-95 BUDGET AND APPROPRIATIONS SCHEDULE OF THE REHABILITATION AND ENHANCEMENT FUND FOR THE PURPOSE OF FUNDING A RECOVERABLE GRANT TO THE PORTLAND HOUSING CENTER'S DOWN PAYMENT ASSISTANCE FUND AND DECLARING AN EMERGENCY

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Date: August 18, 1994

Presented by: Councilor Hansen

**Committee Recommendation:** At the August 16 meeting, the Committee voted 4-0 to recommend Council adoption of Ordinance No. 94-561. Voting in favor: Councilors Hansen, McFarland, McLain and Monroe. Councilors Buchanan and Wyers were absent.

**Committee Issues/Discussion:** Since the closure of the St. Johns Landfill, the Metro North Portland Enhancement Committee has generally used only the interest from its fund balance (about \$1.8 million) to fund enhancement projects. Occasionally, projects have been presented that the committee felt warranted the expenditure of a portion of the fund's principal.

During its current project funding cycle, the committee allocated \$100,000 to help fund a new community housing down payment assistance program. The intent of the program is to assist low income individuals who have the resources to make a house payment, but who have been unable to save enough to make a down payment. The program would provide such individuals with up to \$4,000 in down payment assistance.

Following the allocation of the initial funding, the other partners in the program asked if the committee would consider an additional \$100,000 contribution to allow the program to reach its goal of a \$1.2 million self-perpetuating fund (\$600,000 from participating banks, \$200,000 from the city of Portland, \$200,000 from the real estate industry, and \$200,000 from the enhancement committee). The committee agreed, with the additional funding to come from the enhancement fund's unappropriated balance. The committee's agreement to help fund the program provides that the enhancement fund's contribution will be reimbursed to the fund by the year 2000 (\$40,000/year beginning in 1996). In addition, enhancement funds will only be used to finance applicants within the enhancement area. It is estimated that 157 potential homeowners will be assisted in North Portland.

The Portland Housing Center will administer the program, providing application processing, counseling and other technical assistance to those participating in the program. The ordinance includes an emergency clause because the assistance program began on August 15 and the enhancement fund contribution is needed to fully fund the program.



BEFORE THE METRO COUNCIL

|                                |   |                           |
|--------------------------------|---|---------------------------|
| AN ORDINANCE AMENDING THE FY   | ) | ORDINANCE NO. 94-561      |
| 1994-95 BUDGET AND             | ) |                           |
| APPROPRIATIONS SCHEDULE OF THE | ) | Introduced by Rena Cusma, |
| REHABILITATION AND ENHANCEMENT | ) | Executive Officer         |
| FUND FOR THE PURPOSE OF        | ) |                           |
| FUNDING A RECOVERABLE GRANT TO | ) |                           |
| THE PORTLAND HOUSING CENTER'S  | ) |                           |
| DOWN PAYMENT ASSISTANCE FUND   | ) |                           |
| AND DECLARING AN EMERGENCY     | ) |                           |

WHEREAS, The Metro Council has reviewed and considered the need to transfer appropriations within the FY 1994-95 Budget; and

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

WHEREAS, Adequate funds exist for other identified needs;

WHEREAS, The ordinance was submitted to the Executive Officer for consideration and was forwarded to the Council for approval; now, therefore,

THE METRO COUNCIL HEREBY ORDAINS;

1. That the FY 1994-95 Budget and Schedule of Appropriations are hereby amended as shown in the column titled "Revision" of Exhibits A and B to this Ordinance for the purpose of transferring \$100,000 from the Rehabilitation & Enhancement Fund Contingency to Materials and Services to fund the second of two \$100,000 installments of Metro Contract No. 903822 with the Portland Housing Center for the Down Payment Assistance Fund.

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

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

ATTEST:

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

\_\_\_\_\_  
Clerk of Council  
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Exhibit A  
Ordinance No. 94-561

# Rehabilitation & Enhancement Fund

| FISCAL YEAR 1994-95                           |  | ADOPTED |           | REVISION |           | ORD. NO. 94-561 |           |
|---|--|---------|-----------|----------|-----------|-----------------|-----------|
| ACCT #  | DESCRIPTION                                  | FTE     | AMOUNT    | FTE      | AMOUNT    | FTE             | AMOUNT    |
| <u>Materials &amp; Services</u>               |  |         |           |          |           |                 |           |
| <b>NORTH PORTLAND ENHANCEMENT ACCOUNT</b>     |  |         |           |          |           |                 |           |
| 524190  | Misc. Professional Services                  |         | 345,000   |          | 100,000   |                 | 445,000   |
| 526200  | Ads & Legal Notices                          |         | 500       |          |           |                 | 500       |
| 526310  | Printing Services                            |         | 700       |          |           |                 | 700       |
| 526420  | Postage                                      |         | 400       |          |           |                 | 400       |
| 526800  | Training, Tuition, and Conferences           |         | 500       |          |           |                 | 500       |
| 529500  | Meetings                                     |         | 360       |          |           |                 | 360       |
| <b>COMPOSTER ENHANCEMENT ACCOUNT</b>          |  |         |           |          |           |                 |           |
| 524190  | Misc. Professional Services                  |         | 2,335     |          |           |                 | 2,335     |
| <b>METRO CENTRAL ENHANCEMENT ACCOUNT</b>      |  |         |           |          |           |                 |           |
| 524190  | Misc. Professional Services                  |         | 387,750   |          |           |                 | 387,750   |
| 526200  | Ads & Legal Notices                          |         | 500       |          |           |                 | 500       |
| 526310  | Printing Services                            |         | 552       |          |           |                 | 552       |
| 526420  | Postage                                      |         | 500       |          |           |                 | 500       |
| 529500  | Meetings                                     |         | 500       |          |           |                 | 500       |
| <b>FOREST GROVE ACCOUNT</b>                   |  |         |           |          |           |                 |           |
| 528100  | License, Permits, Payments to Other Agencies |         | 34,118    |          |           |                 | 34,118    |
| <b>OREGON CITY ACCOUNT</b>                    |  |         |           |          |           |                 |           |
| 528100  | License, Permits, Payments to Other Agencies |         | 192,690   |          |           |                 | 192,690   |
| Total Materials & Services                    |  |         | 966,405   |          | 100,000   |                 | 1,066,405 |
| Total Interfund Transfers                     |  |         | 42,254    |          | 0         |                 | 42,254    |
| <u>Contingency and Unappropriated Balance</u> |  |         |           |          |           |                 |           |
| 599999  | Contingency                                  |         | 350,000   |          | (100,000) |                 | 250,000   |
| 599990  | Unappropriated Balance                       |         | 1,384,716 |          |           |                 | 1,384,716 |
| Total Contingency and Unappropriated Balance  |  |         | 1,734,716 |          | (100,000) |                 | 1,634,716 |
| <b>TOTAL EXPENDITURES</b>                     |  | 0.00    | 2,743,375 |          | 0         |                 | 2,743,375 |

**Exhibit B  
Ordinance No. 94-561**

**FY 1994-95 SCHEDULE OF APPROPRIATIONS**

|  | <b>Adopted<br/>Appropriations<br/>Jun 30, 1994</b> | <b>Revision</b>  | <b>ORD. No. 94-560<br/>Proposed<br/>Appropriation</b> |
|--|--|------------------|---|
| <b>REHABILITATION &amp; ENHANCEMENT FUND</b> |  |                  |   |
| North Portland Enhancement Account           |  |                  |   |
| Materials & Services                         | 347,460  | 100,000          | 447,460   |
| <b>Subtotal</b>                              | <b>347,460</b>                                     | <b>100,000</b>   | <b>447,460</b>  |
| Composter Enhancement Account                |  |                  |   |
| Materials & Services                         | 2,335  |                  | 2,335   |
| <b>Subtotal</b>                              | <b>2,335</b>                                       |                  | <b>2,335</b>  |
| Metro Central Enhancement Account            |  |                  |   |
| Materials & Services                         | 389,802  |                  | 389,802   |
| <b>Subtotal</b>                              | <b>389,802</b>                                     |                  | <b>389,802</b>  |
| Forest Grove Account                         |  |                  |   |
| Materials & Services                         | 34,118   |                  | 34,118  |
| <b>Subtotal</b>                              | <b>34,118</b>                                      |                  | <b>34,118</b>   |
| Oregon City Account                          |  |                  |   |
| Materials & Services                         | 192,690  |                  | 192,690   |
| <b>Subtotal</b>                              | <b>192,690</b>                                     |                  | <b>192,690</b>  |
| General Expenses                             |  |                  |   |
| Interfund Transfers                          | 42,254   |                  | 42,254  |
| Contingency                                  | 350,000  | (100,000)        | 250,000   |
| <b>Subtotal</b>                              | <b>392,254</b>                                     | <b>(100,000)</b> | <b>292,254</b>  |
| Unappropriated Balance                       | 1,384,716  |                  | 1,384,716   |
| <b>Total Fund Requirements</b>               | <b>2,743,375</b>                                   | <b>0</b>         | <b>2,743,375</b>                                      |

STAFF REPORT

IN CONSIDERATION OF ORDINANCE NO. 94-561 AMENDING THE FY 94-95 BUDGET AND APPROPRIATIONS SCHEDULE OF THE REHABILITATION AND ENHANCEMENT FUND FOR THE PURPOSE OF FUNDING A RECOVERABLE GRANT TO THE PORTLAND HOUSING CENTER'S DOWN PAYMENT ASSISTANCE FUND AND DECLARING AN EMERGENCY.

Date: August 11, 1994

Presented by: Roosevelt Carter  
Katie Dowdall

FACTUAL BACKGROUND AND ANALYSIS

This action requests adjustments to the Rehabilitation and Enhancement fund, North Portland Enhancement Account, for the following purpose:

1. Transfer of \$100,000 within the contingency category of the North Portland Enhancement Account to the materials and services category of the North Portland Enhancement Account to provide a recoverable grant to the Portland Housing Center's Down Payment Assistance Fund.

RECOVERABLE GRANT TO THE PORTLAND HOUSING CENTER'S DOWN PAYMENT ASSISTANCE FUND

Metro North Portland Enhancement Committee has made a strong commitment to helping low-income families purchase homes within the North Portland enhancement area. In North Portland owner occupied home ownership declined from 71% in 1960 to 52% in 1990. This decline correlates with increased crime, blight, and housing deterioration, as well as increased transience in the schools. In addition, home ownership is the best way for modest-income working families to accumulate equity that could be used for education, health care and retirement. Rehabilitation and Enhancement Funds were established by Metro for the purpose of funding projects that will improve and enhance the designate enhancement area. This project has been determined to meet:

Criteria No. 2 Rehabilitate and upgrade residential housing.

Criteria No. 4 Improve public safety.

Criteria No. 5 Enhance neighborhood appearance and cleanliness.

Criteria No. 6 Improve viability of commercial area and enhance the small business environment.

By joining First Interstate Bank of Oregon, Bank of America, Oregon, Key Bank of Oregon, US Bank, and Norwest Mortgage Company; The City of Portland, Realtors; and other granting sources an even larger pool of down payment assistance will be available for low-income families to purchase homes in North Portland as well as Northeast and Southeast, Portland. The goal of this coalition is to create a minimum one million dollar permanent revolving down payment assistance fund.

Metro North Portland Enhancement Committee (NPEC) agreed to enter into a \$200,000 recoverable grant with the Portland Housing Center, an established non-profit agency. This \$200,000 recoverable grant would complete the needed monies to establish a one million dollar permanent revolving down payment assistance fund. The down payment assistance fund will be managed by Portland Housing Center and Oregon Title, which will offer professional down payment loan collection services at a donated cost. An Advisory Council will be established and a member from the North Portland Enhancement Committee will serve as a permanent seat of the council. The down payment assistance fund will provide loans up to \$4,000 per buyer with a five-year payback loan schedule. All borrowers would participate in the Home Buyer education program that would include counseling, education, a preapproval and would be run by the Portland Housing Center. The borrower would continue to work with the Portland Housing Center throughout the term of the down payment assistance loan (5 years).

Originally Metro North Portland Enhancement Committee had budgeted a \$100,000 grant for FY 94-95 in the account category of materials and services. The banks required a minimum of \$200,000 community match by July 1, 1994, before they would commit their \$600,000 to the down payment assistance fund. Project Down Payment requested a \$200,000 recoverable grant from North Portland Enhancement Committee to meet this required match from community base support. The enhancement committee felt that it would not be fiducial to remove \$200,000 from the principal with no way to recover it. The committee negotiated a schedule to recover the \$200,000 by July 1, 2000. The repayment schedule would be five repayments of \$40,000 each starting July 1, 1996, with final payment on July 1, 2000.

This is a win-win situation for all parties. Currently, it would take approximately \$500,000 of NPEC capital to generate \$15,000 in interest for down payment grants and continue the program which NPEC has funded for the last two years. Instead, by directly investing \$200,000 in capital in the down payment assistance loans, interest on the remaining \$300,000 in capital can be used for other worth while community projects. The effective cost of investing \$200,000 in capital until the year 2000 is approximately \$34,000 in lost interest. This is almost the same amount budgeted for the past two years for down payment assistance that helped 61 home buyers. Based on draft program guidelines, the use of \$200,000 for the down payment assistance revolving fund would assist 67 home buyers in 1994 and about 20 home buyers in each subsequent year as the funds recycle. NPEC funds will solely be utilized in the targeted North Portland enhancement area. Additionally, to ensure North Portland enhancement area shares in the larger pool of revolving down payment assistance loans, a goal of an additional \$200,000 from the larger pool shall be targeted to the North Portland enhancement area within the first five years. The second win-win is that the \$200,000 recoverable grant will leverage the \$800,000 in match contribution thus producing deeper assistance for more home buyers. The third win-win for NPEC is that investing \$200,000 in the Portland Housing Center's down payment assistance fund will relieve NPEC of the responsibility of managing a down payment assistance program.

Metro has entered into a contract with Portland Housing Center, Contact # 903822 (attached) with the second \$100,000 installment to be awarded to Portland Housing Center upon Metro Council approval of this Ordinance No. 94-561. The North Portland Enhancement Committee recommends approval of a budget amendment to transfer \$100,000 from contingency to materials and services in the FY 1994-95 North Portland Enhancement Account of the Rehabilitation and Enhancement Fund, thereby reducing the contingency category to \$250,000 and increasing materials and services to \$445,000.

#### EXECUTIVE OFFICER RECOMMENDATION

The Executive Officer recommends approval of Ordinance No. 94-561 and declaring an emergency.

CONTRACT NO. 903822

ENHANCEMENT FUND GRANT CONTRACT  
NORTH PORTLAND ENHANCEMENT FUND

THIS Contract is entered into between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, located at 600 Northeast Grand Avenue, Portland, Oregon 97232-2736, and PORTLAND HOUSING CENTER, whose address is 1605 N.E. 45th Avenue, Portland, Oregon 97213, hereinafter referred to as the "Contractor."

Metro has established this enhancement grant with the sole purpose of funding the proposed community project(s) or activity(ies). Therefore, notwithstanding any potential statements or inferences to the contrary, Metro neither intends nor accepts any direct involvement in these projects; any sponsorship benefits or supervisory responsibility(ies) with respect to the event(s) or service(s) funded; or any ownership or attendant responsibilities for care and custody of the tangible products which result.

THE PARTIES AGREE AS FOLLOWS:

ARTICLE I  
SCOPE OF WORK

Contractor shall undertake the program and perform all activities described in the Scope of Work attached hereto as Attachment "A."

ARTICLE II  
TERM OF CONTRACT

The term of this Contract shall be for a period commencing July 1, 1994 through and including July, 2000.

### ARTICLE III

#### CONTRACT SUM AND TERMS OF PAYMENT

Metro shall compensate the Contractor for performance as described in Attachment "A." Metro shall not be responsible for payment of any materials, expenses or costs other than those which are specifically included in Attachment "A."

### ARTICLE IV

#### LIABILITY AND INDEMNITY

Contractor is an independent contractor and assumes full responsibility for the performance of the program and the content of its work and performance of Contractor's labor, and assumes full responsibility for all liability for bodily injury or physical damage to person or property arising out of or related to this Contract, and shall indemnify and hold harmless Metro, its agents and employees, 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 Contract. Contractor is solely responsible for paying Contractor's subcontractors. Nothing in this Contract shall create any contractual relationship between any subcontractor and Metro.

### ARTICLE V

#### TERMINATION

Metro may terminate this Contract upon giving Contractor seven (7) days written notice. In the event of termination, Contractor shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against the Contractor.

ARTICLE VI  
INSURANCE

If Contractor is a unit of federal, state or local government, or if such a government unit will be providing insurance coverage to Contractor, then Contractor shall comply with the provisions of section VI.A. In all other cases Contractor shall comply with the provisions of section VI.B.

A. Contractor shall maintain such insurance as will protect Contractor from claims under Workers' Compensation Acts and other employee benefits acts covering all of Contractor's employees engaged in performing the work under this Contract; and from claims for damages because of bodily injury, including death and damages to property, all with coverage limits satisfactory to Metro. Liability insurance shall have minimum coverage limits of at least the dollar amounts listed in ORS 30.270. Additional coverage may be required in the Scope of Work attached hereto. This insurance must cover Contractor's operations under this Contract, whether such operations be by Contractor or by any subcontractor or anyone directly or indirectly employed by either of them. Contractor shall immediately increase the amounts of liability insurance required to reflect any changes in Oregon Law so that the insurance provided shall cover, at a minimum, the maximum liability limits under the Oregon Tort Claims Act.

If required in the Scope of Work Attached hereto, Contractor shall provide Metro with a certificate of insurance complying with this section and naming Metro as an insured within fifteen (15) days of execution of this Contract or twenty-four (24) hours before services under this Contract commence, whichever date is earlier.

Contractor shall not be required to provide the liability insurance described in this section if an express exclusion relieving Contractor of this requirement is contained in the Scope of Work.

B. 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 bodily 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.

Insurance coverage shall be a minimum of \$500,000 per occurrence. If coverage is written with an annual aggregate limit, the aggregate limit shall not be less than \$1,000,000. Metro, its elected officials, departments, employees, and agents shall be named as ADDITIONAL INSURED. Notice of any material change or policy cancellation shall be provided to Metro 30 days prior to the change or cancellation. Contractor, its subcontractors, if any, and all employers working under this Agreement that are subject employers under the Oregon Workers' Compensation Law 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. If Contractor has no employees and will perform the work without the assistance of others, a certificate to that effect may be attached, as Exhibit B, in lieu of the certificate showing current Workers' Compensation.

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.

ARTICLE VII  
PUBLIC CONTRACTS

Contractor shall comply with all applicable provisions of ORS Chapters 187 and 279 and all other conditions and terms necessary to be inserted into public contracts in the state of Oregon, as if such provisions were a part of ORS 187.010-.020 and 279.31-.430.

ARTICLE VIII  
ATTORNEY'S FEES

In the event of any litigation concerning this Contract, the prevailing party shall be entitled to reasonable attorney's fees and court costs, including fees and costs on appeal to any appellate courts.

ARTICLE IX  
SUBCONTRACTORS

Contractor shall contact Metro prior to negotiating any subcontracts and Contractor shall obtain approval from Metro before entering into any subcontracts for the performance of any of the services and/or supply of any of the goods covered by this Contract. Metro reserves the right to reasonably reject any subcontractor or supplier and to no increase in the Contractor's compensation shall result thereby. All subcontracts related to this Contract shall include the terms and conditions of this agreement. Contractor shall be fully responsible for all of its subcontractors as provided in Article IV.

ARTICLE X  
RIGHT TO WITHHOLD PAYMENTS

Metro shall have the right to withhold from payments due 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. If a liquidated damages provision is contained in the Scope of Work and if Contractor has, in Metro's opinion, violated that provision, Metro shall have the right to withhold from payments due Contractor such sums as shall satisfy that provision. All sums withheld by Metro under this Article shall become the property of Metro and Contractor shall have no right to such sums to the extent that Contractor has breached this Contract.

#### ARTICLE XI SAFETY

If services of any nature are to be performed pursuant to this agreement, Contractor shall take all necessary precautions for the safety of employees and others in the vicinity of the services being performed and shall comply with all applicable provision of federal, state and local safety laws and building codes, including the acquisition of any required permits.

#### ARTICLE XII INTEGRATION OF CONTRACT DOCUMENTS

All of the provisions of any proposal documents including, but not limited to, Requests for Proposals, Proposals and Scopes of Work that were utilized in conjunction with the award of this Contract are hereby expressly incorporated by reference. Otherwise, this Contract represents the entire and integrated agreement between Metro and Contractor and superseded all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both Metro and Contractor. The law of the state of Oregon shall govern the construction and interpretation of this Contract.

ARTICLE XIII  
ASSIGNMENT

Contractor shall not assign any rights or obligations under or arising from  
this Contract without prior written consent from Metro.

PORTLAND HOUSING CENTER

METRO

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Metro Contract No 903822

ATTACHMENT A  
NORTH PORTLAND ENHANCEMENT COMMITTEE GRANT

PROJECT TITLE: DOWN PAYMENT ASSISTANCE FUND  
CONTRACTOR PORTLAND HOUSING CENTER  
1605 NE 45th AVENUE  
PORTLAND, OR 97213  
PROJECT COORDINATOR: PEG MALLOY, EXECUTIVE DIRECTOR  
CONTRACT TERM: JULY 1, 1994 THROUGH JULY 31, 2000  
AMOUNT: \$200,000

SCOPE OF WORK

This contract is between Portland Housing Center, Contractor, and Metro for a \$200,000 recoverable grant from the Metro North Portland Enhancement Committee. Metro North Portland Enhancement Committee has made a strong commitment to helping low-income families purchase homes in the North Portland enhancement boundary by joining with the banks, Realtors, the City of Portland, and other granting sources to provide even deeper assistance with a one million dollar revolving down payment assistance fund.

Metro is prepared to award monies to the Portland Housing Center's down payment assistance fund upon entering into this contract. The down payment assistance fund will be managed by Portland Housing Center, an established non-profit agency, and Oregon Title, which will offer professional down payment loan collection services at a donated cost. The down payment assistance fund will provide loans up to \$4000 per buyer with a five year payback loan schedule. All borrowers would participate in the Home Buyer education program that would include counseling, education, loan preapproval and would be run by the Portland Housing center. The borrower would continue to work with the Portland Housing Center throughout the term of the down payment assistance loan (5 years).

**Payment:**

Metro North Portland Enhancement Committee shall award grant monies to Contractor in two installments. The first installment of \$100,000 will be awarded as soon as this contract has been signed by both Metro and the Portland Housing Center and upon proper documentation that the monies will be deposited in the down payment assistance fund account. The second installment of \$100,000 will be awarded upon Metro Council approval of Ordinance No. 94-561 for revising the FY 1994-95 budget for the purpose of funding a request from the North Portland Enhancement Committee to provide grants from the Rehabilitation and Enhancement contingency fund for the down payment assistance fund.

The conditions for funding are as follows:

1. **Portland Housing Center:** The project will be administered by Portland Housing Center, an existing non-profit organization. The Portland Housing Center will submit semi-annual reports to Metro North Portland Enhancement Committee on the status of their \$200,000 grant and an semi-annual report on the status of the larger assistance fund pool. All copies of audits and or other annual financial reports must also be submitted to Metro North Portland Enhancement Committee.
2. **Advisory Council:** A representative from Metro North Portland Enhancement Committee will have a seat on the Advisory Council. It is the understanding that any programmatic changes that are made, must be made with the approval of the Advisory Council and all major contributors. *i.e.*, Metro North Portland Enhancement Committee.
3. **Disbursement of the Pool Funds:** All \$200,000 granted by Metro North Portland Enhancement Committee is allocated for loans to fund down payments and closing costs within the North Portland Enhancement Committee boundary. The boundary of the North Portland enhancement area is the area between the Willamette River and the Columbia Channel and west of I-5 to the Fremont Bridge. The neighborhoods included in this area are Arbor Lodge, Cathedral Park, Kenton, Overlook, Portsmouth, St. Johns and University Park.

To ensure North Portland enhancement area shares in the larger pool of revolving down payment assistance loans, a goal of \$200,000 from the larger pool shall be targeted to the North Portland enhancement area within the first five years.

4. **Recoverable grant pay back schedule:** As this is a recoverable grant, grant dollars will be repaid to Metro in five installments with the first installment due July, 1996. The repayment schedule is as follows:

- \$40,000 repayment due July, 1996
- \$40,000 repayment due July, 1997
- \$40,000 repayment due July, 1998
- \$40,000 repayment due July, 1999
- \$40,000 repayment due July, 2000

5. **Loan Loss:** Any loan loss occurring with the North Portland Enhancement Committee's \$200,000 designated fund will be charged off to that grant and not refunded in the repayment to Metro in the year in which it occurred. However, Portland Housing Center must notify Metro's Community Enhancement Coordinator prior to foreclosure. Any loan loss which may occur using the general pool's money will be charged off to the general pool.

#### **PROGRAM EVALUATION:**

1. The Portland Housing Center shall submit semi-annual reports to the Metro North Portland Enhancement Committee listing dollar amounts and addresses of down payment assistance loans awarded within the North Portland enhancement boundary.
2. The Portland Housing Center shall submit semi-annual reports to the Metro North Portland Enhancement Committee on the status of the entire down payment assistance fund.
3. At year three, 1997, Portland Housing Center shall schedule a meeting with the Metro North Portland Enhancement Committee to evaluate the status of their \$200,000 recoverable grant.
4. At year 2000, Portland Housing Center shall submit to Metro North Portland Enhancement Committee a final report on the completion of this grant.

Meeting Date: August 25, 1994  
Agenda Item No. 5.5

ORDINANCE NO. 94-556B





**METRO**

**DATE:** August 19, 1994

**TO:** Metro Council  
Executive Officer  
Agenda Recipients

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

**RE:** AGENDA ITEM NO. 5.5; ORDINANCE NO. 94-556B

Ordinance No. 94-556B only has been printed in this agenda packet with a summary sheet provided by Lisa Creel, Senior Public Affairs Specialist. All other related materials, including a summary of all testimony given to the Finance Committee from June 22 to August 1, 1994, has been printed in a supplemental information packet. To obtain a copy before August 24, contact the Clerk at 797-1534. Copies will be available at the Council meeting.



METRO

**SUMMARY SHEET**  
**Proposed Construction Excise Tax**  
**(Ordinance No. 94-556B)**

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**Purpose:**

Establishes a funding source for Metro's charter-mandated growth management functions. Metro's voter-approved 1992 charter requires that Metro focus its primary mission on regional planning functions and growth management. The proposed ordinance levies a tax on new residential and commercial/industrial construction and some types of commercial/industrial renovation.

**Rate:**

Tax rate on *new* residential and commercial/industrial construction is 12 cents per square foot. (e.g., owners of a new 2,000-square-foot house would pay a one-time tax of \$240). This also includes adding square footage to existing buildings.

Tax rate on a major renovation of an *existing* structure is 6 cents per square foot. A "major renovation" is defined as a renovation that changes the use of a structure (e.g., converting a home into a business). The construction excise tax would not apply to a remodeling project that does not change the use of the building.

**Exemptions:**

Exempted from the tax are governments and tax-exempt organizations that provide housing and other social services to low-income families. In addition, single-family houses that sell for less than \$100,000 are eligible for a rebate of up to \$125.

**Other provisions:**

The construction excise tax ordinance also:

- Reduces current Metro excise tax levied on users of all district services from the current 7.5 percent to 6 percent.
- Reduces the solid waste tip fees charged at Metro solid waste facilities from \$75 per ton to \$73 per ton.
- Rebates on a pro-rated basis this year's voluntary dues paid by local governments to Metro for planning services and discontinues future dues.
- Requires Metro to place part of the funds in a stabilization account due to the cyclical nature of the construction industry.
- Requires Metro to review the tax by July 1, 1998, once Metro's Regional Framework Plan is completed, to determine whether the tax is still needed.

**Collection:**

Local governments will be asked to collect construction excise tax fees for Metro as part of their local building permit system. Metro will pay those local governments up to 5 percent of the collected tax to cover their administrative costs. Metro will collect the tax when local governments do not.

**Projected revenues:**

The net revenues for this tax will be dedicated to Metro's planning functions. First-year projections are that the tax will raise about \$2.4 million for these planning functions.

**Effective date:**

The construction excise tax takes effect 90 days after adoption by the Metro Council.

BEFORE THE METRO COUNCIL

AN ORDINANCE RELATING TO TAXATION, )  
ESTABLISHING A CONSTRUCTION EXCISE )  
TAX REDUCING THE METRO EXCISE TAX, )  
REDUCING SOLID WASTE RATES AND )  
REFUNDING PLANNING SERVICE FEES )  
TO LOCAL GOVERNMENTS )

ORDINANCE NO. 94-556B  
Introduced by  
Councilor Rod Monroe

THE METRO COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. Effective November 1, 1994 or the effective date of this Ordinance, whichever is the latest, the following Chapter 7.02 Construction Excise Tax is added to the Metro Code.

CHAPTER 7.02

CONSTRUCTION EXCISE TAX

SECTIONS:

7.02.010 Short title.  
7.02.020 Construction.  
7.02.030 Definitions.  
7.02.040 Exemptions.  
7.02.050 Rules and regulations promulgation.  
7.02.060 Administration and enforcement authority.  
7.02.070 Imposition of tax.  
7.02.080 Rate of tax.  
7.02.090 Failure to pay.  
7.02.100 Statement of entire floor area required.  
7.02.110 Intergovernmental agreements.  
7.02.120 Rebates.  
7.02.130 Hearings Officer.  
7.02.140 Appeals.  
7.02.150 Refunds.  
7.02.160 Occupation of improvement without payment unlawful.  
7.02.170 Enforcement by civil action.  
7.02.180 Review.  
7.02.190 Failure to pay -- Penalty.  
7.02.200 Violation -- Penalty.  
7.02.210 Rate stabilization.  
7.02.220 Needs assessment.  
7.02.230 Dedication of revenues.

**7.02.010 Short title:** This chapter shall be known as the "Construction Excise Tax Ordinance" and may be so pleaded.

**7.02.020 Construction:** The construction excise tax ordinance and all amendments hereinafter made thereto shall be referred to herein as "this chapter." This chapter and any terms not defined herein or elsewhere in this Code shall be construed to be consistent with definitions and terminology used in the Oregon State Building Code, 1993 Edition (the Uniform Building Code).

**7.02.030 Definitions:** As used in this chapter unless the context requires otherwise:

- (a) "Building Official" means any person charged by a municipality with responsibility for the administration and enforcement of a building code.
- (b) "Commercial Construction" means the construction of any building or structure, or portion thereof, that is classified as any occupancy other than a residential occupancy.
- (c) "Construction" means erecting, constructing, enlarging, altering, repairing, moving, improving, removing, converting, or demolishing any building or structure for which the issuance of a building permit is required pursuant to the provisions of Oregon law. Construction also includes the installation of a manufactured dwelling.
- (d) "Contractor" means any person who performs Construction for compensation.
- (e) "Executive Officer" means the Metro Executive Officer.
- (f) "Improvement" means any newly constructed structure or a modification of any existing structure.
- (g) "Major Renovation" means any renovation, alteration or remodeling of an existing building or structure, or portion thereof, that will result in a change in occupancy classification of the building or structure, or portion thereof, from a residential occupancy classification to a non-residential occupancy classification, or from one non-residential occupancy classification to another.
- (h) "Manufactured Dwelling" means any building or structure designed to be used as a residence that is subject to regulation pursuant to ORS ch 446, as further defined in ORS 446.003(26).
- (i) "Occupancy Classification" means any occupancy group or division of any occupancy group as defined by the Oregon State Building Code.

(j) "Person" means and includes individuals, domestic and foreign corporations, societies, joint ventures, associations, firms, partnerships, joint stock companies, clubs or any legal entity whatsoever.

(k) "Residential Construction" means the Construction or installation of any building or structure, or portion thereof, that is classified as a residential occupancy and includes all accessory buildings and structures. The installation of a Manufactured Dwelling is included within the meaning of the term Residential Construction.

(l) "Total Combined Floor Area" means the sum of the floor areas of each floor created by the Construction. Total Combined Floor Area shall be also construed to mean the newly created floor area added to an existing building or structure by any renovation, alternation or remodeling.

(m) "Total Renovated Floor Area" means the Total Combined Floor Area of an existing building or structure, or portion thereof, that is the subject of a Major Renovation.

7.02.040 Exemptions:

(a) No obligation to pay the tax imposed by Section 7.02.070 shall arise from the Construction of any Improvement that is owned by any government entity whether federal, state or local.

(b) The Executive Officer may pursuant to Sections 7.02.050, 7.02.060 and 7.02.110 exempt from the duty to pay the tax imposed by Section 7.02.070 any Person who would be entitled to a rebate pursuant to Section 7.02.120(a)(2) or Section 7.02.120(a)(3).

7.02.050 Rules and regulations promulgation: The Executive Officer may promulgate rules and regulations necessary for the administration and enforcement of this chapter.

7.02.060 Administration and enforcement authority:

(a) The Executive Officer shall be responsible for the administration and enforcement of this chapter. In exercising the responsibilities of this section of the Executive Officer may act through a designated representative.

(b) In order to carry out the duties imposed by this chapter, the Executive Officer shall have the authority to do the following acts, which enumeration shall not be deemed to be exhaustive, namely: administer oaths; certify to all official acts; to subpoena and require attendance of witnesses at hearings to determine compliance with this chapter, rules and regulations; to require production of relevant documents at public hearings; to swear witnesses; and take testimony of any Person by deposition.

**7.02.070 Imposition of tax:** An excise tax is imposed on every Person who engages in the act of engaging in Construction within the District. The tax shall be measured by the Total Combined Floor Area constructed or the Total Renovated Floor Area constructed as set forth in Section 7.02.080. If no additional floor area is created or added by the Construction and if the Construction does not constitute a Major Renovation then there shall be no tax due. The tax shall be due and payable at the time of the issuance of any building permit, or installation permit in the case of a manufactured dwelling, by any building authority. Liability for this tax shall attach upon every owner or occupant of property on which the is located and every Contractor who engages in Construction; provided, however, that only one tax must be paid.

**7.02.080: Rate of tax:** The rate of tax to be paid is set forth in this section for each specific category of Construction:

(a) The rate of tax to be paid for Residential Construction or Commercial Construction shall be 12 cents for each square foot of Total Combined Floor Area constructed.

(b) The rate of tax to be paid for any Major Renovation shall be one-half the rate for Commercial Construction per square foot of Total Renovated Floor Area.

(c) If any Major Renovation results in the addition of additional floor area to an existing building or structure, then the tax to be paid shall be the total tax due pursuant to subsections (a) and (b).

**7.02.090 Failure to pay:** It shall be unlawful for any Person to fail to pay all or any portion of the tax imposed by this chapter.

**7.02.100 Statement of entire floor area required:** It shall be unlawful for any Person to fail to state or to misstate the full floor area of any Improvement or Manufactured Dwelling. When any Person pays the tax, within the time provided for payment of the tax, there shall be a conclusive presumption, for purposes of computation of the tax, that the floor area of the Improvement or Manufactured Dwelling is the floor area as determined by the Building Official at the time of issuance of the building permit or installation permit. When any Person fails to pay the tax within the time provided for payment of the tax, the floor area constructed shall be as established by the Executive Officer who may consider the floor area established by the Building Official but may consider other evidence of actual floor area as well.

**7.02.110 Intergovernmental agreements:** The Executive Officer may enter into intergovernmental agreements with other governments to provide for the enforcement of this chapter and the collection of the Construction Excise Tax. The agreements may provide for the governments to retain no more than 5 percent of the taxes actually collected as reimbursement of administrative expense.

**7.02.120 Rebates:**

(a) The Executive Officer shall rebate to any Person who has paid a tax the amount of tax actually paid, upon the Person establishing that:

- (1) The tax was paid for the Construction of a single family residence that was sold to its original occupant for a price less than \$100,000; provided that the maximum amount that may be refunded for any one residence is \$125; or
- (2) The Person who paid the tax is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), or a limited partnership the sole general partner of which is a corporation exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3), the Construction is used for residential purposes and the property is restricted to being occupied by Persons with incomes less than 50 percent of the median income for a period of 30 years or longer; or
- (3) The Person who paid the tax is exempt from federal income taxation pursuant to 42 U.S.C. 501(c)(3) and the Construction is dedicated for use for the purpose of providing charitable services to Persons with incomes less than 50 percent of the median income.

(b) In the event the tax was paid for Construction that is eligible for a rebate for only a portion of the Construction, the Executive Officer shall rebate only the tax paid for the eligible portion.

(c) The Executive Officer may require any Person seeking a refund to demonstrate that the Person is eligible for a refund and that all necessary facts to support the refund are established.

(d) The Executive Officer shall either rebate all amounts due under this section within 30 days of receipt of a complete application for the rebate or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.02.140.

**7.02.130 Hearings Officer:** The Executive Officer shall appoint a hearings officer to conduct hearings related to enforcement or appeals of this Chapter. All hearings shall be conducted in accordance with rules and regulations adopted by the Executive Officer.

**7.02.140 Appeals:** Any Person who is aggrieved by any determination of the Executive Officer regarding liability for payment of the tax, the amount of tax owed, or the amount of tax that is subject to refund or rebate may appeal the determination in accordance with Section 7.02.140. All appeals must be in writing and must be filed within 10 days of the



determination by the Executive Officer. No appeal may be made unless the Person has first paid the tax due as determined by the Executive Officer.

**7.02.150 Refunds:**

(a) Upon written request, the Executive Officer shall refund any tax paid upon the Person who paid the tax establishing that Construction was not commenced and that any building permit issued has been cancelled as provided by law.

(b) The Executive Officer shall either refund all amounts due under this section within 30 days of a complete application for the refund or give written notice of the reasons why the application has been denied. Any denial of any application may be appealed as provided for in Section 7.02.140.

**7.02.160 Occupation of improvement without payment unlawful:** It shall be unlawful for any Person to occupy any Improvement unless the tax imposed by this chapter has been paid.

**7.02.170 Enforcement by civil action:** The tax and any penalty imposed by this chapter constitutes a debt of the Person liable for the tax as set forth in Section 7.02.070 of this chapter and may be collected by the Executive Officer in an action at law. If litigation is necessary to collect the tax and any penalty, the prevailing party shall be entitled to reasonable attorney fees at trial or on appeal. The Office of General Counsel is authorized to prosecute any action needed to enforce this chapter as requested by the Executive Officer.

**7.02.180 Review:** Review of any action of the Executive Officer taken pursuant to this chapter, or the rules and regulations adopted pursuant thereto, shall be taken solely and exclusively by writ of review in the manner set forth in ORS 34.010 through 34.100, provided, however, that any aggrieved Person may demand such relief by writ of review.

**7.02.190 Failure to pay -- Penalty:** In addition to any other fine or penalty provided by this chapter, failure to pay the tax within fifteen days of the date of issuance of any building permit for any Improvement or installation permit for any Manufactured Dwelling shall result in a penalty equal to the amount of tax owed or \$50.00, whichever is greater.

**7.02.200 Violation -- Penalty:**

(a) In addition to any other civil enforcement provided herein, violation of this chapter shall be a misdemeanor and shall be punishable, upon conviction, by a fine of not more than five hundred dollars.

(b) Violation of this chapter by any officer, director, partner or other Person having direction or control over any Person violating this chapter shall subject each such Person to such fine.

**7.02.210 Rate stabilization:** In order to protect against the cyclical nature of the construction industry and development patterns, the Council shall annually as part of the budget process create reserves from the revenues generated by the construction excise tax that are designed to protect against future fluctuations so as to promote stability in the rate of tax needed to support required programs.

**7.02.220 Needs assessment:** Prior to July 1, 1998, the Council shall conduct a needs assessment review of the Construction Excise Tax to determine whether it is necessary to continue the tax beyond the period of adoption and implementation of the Regional Framework Plan. In conducting the assessment, the Council shall hold at least two public hearings.

**7.02.230 Dedication of revenues:** Revenue derived from the imposition of this tax after deduction of necessary costs of collection shall be dedicated solely to carrying out the Regional Planning Functions of Metro mandated by Section 5 of the 1992 Metro Charter.

**Section 2.** Section 7.01.020 of the Metro Code is amended to read as follows:

**7.01.020 Tax Imposed:**

(a) For the privilege of use of the facilities, equipment, systems, functions, services, or Improvements owned, operated, franchised, or provided by the District, each user shall pay a tax in the amount established in subsection 7.01.020(b) but not to exceed ~~seven and one-half (7.5)~~ **six (6)** percent of the payment charged by the operator or the District for such use. The tax constitutes a debt owed by the user to the District which is extinguished only by payment of the tax directly to the District or by the operator to the District. The user shall pay the tax to the District or to an operator at the time payment for the use is made. The operator shall enter the tax on his/her records when payment is collected if the operator keeps his/her records on the cash basis of accounting and when earned if the operator keeps his/her records on the accrual basis of accounting. If installment payments are paid to an operator, a proportionate share of the tax shall be paid by the user to the operator with each installment.

(b) The Council may for any annual period commencing July 1 of any year and ending on June 30 of the following year establish a tax rate lower than the rate of tax provided for in subsection 7.01.020(a) by so providing in the annual budget ordinance adopted by the District. If the Council so establishes a lower rate of tax, the Executive Officer shall immediately notify all operators of the new tax rate. Upon the end of the fiscal year the rate of tax shall revert to the maximum rate established in subsection 7.01.020(a) unchanged for the next year unless further action to establish a lower rate is adopted by the Council as provided for herein.

Section 3. Metro Code Section 5.02.025 and 5.02.045 is amended to read as follows:

5.02.025 Disposal Charges at Metro South Station, Metro Central Station and the Metro Household Hazardous Waste Facilities:

(a) Total fees for disposal by credit account customers shall be ~~\$75.00~~**\$73.00** per ton of solid waste delivered for disposal at Metro South Station or Metro Central Station.

(b) Total fees for disposal by cash account customers shall be \$100.00 per ton of solid waste delivered for disposal at Metro South Station or Metro Central Station. A cash account customer delivering a load of waste such that no portion of the waste is visible to Metro scalehouse personnel (unless the waste is only visible through a secure covering), shall receive a 25 percent rebate.

(c) The total disposal fees specified in subsection (a) and (b) of this section include:

- (1) A disposal fee of ~~\$39.25~~**\$37.70** per ton;
- (2) A regional transfer charge of ~~\$7.20~~**\$7.10** per ton;
- (3) The user fees specified in Section 5.02.045;
- (4) An enhancement fee of \$.50 per ton; and
- (5) DEQ fees totaling \$1.05 per ton.

(d) Notwithstanding subsection (b) of this section, cash account customers using Metro South Station or Metro Central Station, who have separated and included in their loads at least one half cubic yard of recyclable material (as defined in ORS 459.005) shall receive a \$3.00 credit toward their disposal charge if their load is transported inside a passenger car or in a pickup truck not greater than a 3/4 ton capacity.

(e) The minimum charge shall be \$19.00 for all credit account vehicles and shall be \$25.00 for all cash account vehicles. The minimum charge shall be adjusted by the covered load rebate as specified in subsection (b) of this section, and may also be reduced by application of the recycling credit provided in subsection (d) of this section. If both the rebate and the recycling credit are applicable, the rebate shall be calculated first.

(f) Total fees assessed at Metro facilities shall be rounded to the nearest whole dollar amount (a \$.50 charge shall be rounded up) for all cash account customers.

(g) A fee of \$5.00 is established to be charged at the Metro Household Hazardous Waste facilities for each load of Household Hazardous Waste.

(h) A fee of \$10.00 is established at the Metro Household Hazardous Waste facilities for special loads.

(i) The following table summarizes the disposal charges to be collected by Metro from all persons disposing of solid waste at Metro South Station and Metro Central Station:

**METRO SOUTH STATION  
METRO CENTRAL STATION**

| Fee Component   | \$/Ton | Tonnage<br>Rate     |
|---|--------|---------------------|
| Disposal Fee  |        | \$39.2537.70        |
| Regional User Fee   |        | 17.5017.25          |
| Metro User Fee  |        | 9.50 9.40           |
| Regional Transfer Charge  |        | 7.207.10            |
| <b>Total Rate</b>   |        | <b>\$73.4571.45</b> |
| <b>Additional Fees</b>  |        |                     |
| Enhancement Fee   |        | \$ .50              |
| DEQ Fees  |        | 1.05                |
| <b>Total Disposal Fee</b>   |        | <b>\$75.0073.00</b> |
| <b>Minimum Charge</b>   |        |                     |
| Per Charge Account Vehicle  |        | \$19.00             |
| Per Cash Account Vehicle (subject to possible covered load rebate and recycling credit) |        | 25.00               |

| Tires | Type of Tire  | Per Unit |
|-------|---|----------|
|       | Car tires off rim                                   | \$ 1.00  |
|       | Car tires on rim                                    | 3.00     |
|       | Truck tires off rim                                 | 5.00     |
|       | Truck tires on rim                                  | 8.00     |
|       | Any tire 21 inches or larger diameter off or on rim | \$12.00  |

**5.02.045 User Fees:**

The following user fees shall be collected and paid to Metro by the operators of solid waste disposal facilities, whether within or outside of the boundaries of Metro, for the disposal of solid waste generated, originating, collected or disposed of within Metro boundaries, in accordance with Metro Code Section 5.01.150:

(a) Regional User Fee:

For compacted or noncompact solid waste, ~~\$17.50~~ 17.25 per ton delivered.

(b) Metro User Fee:

~~\$9.50~~ 40 per ton for all solid waste delivered to Metro-owned or operated facilities.

(c) Inert material, including but not limited to earth, sand, stone, crushed stone, crushed concrete, broken asphaltic concrete and wood chips used at the St. Johns Landfill for cover, diking, road base or other internal use shall be exempt from the above user fees.

(d) User fees shall not apply to wastes received at franchised processing centers that accomplish materials recovery and recycling as a primary operation.

(e) Notwithstanding the provisions of (a) and (b) above, Metro User Fees may be assessed as may be appropriate for solid waste which is the subject of a Non-System License under Chapter 5.05 of the Metro Code.

Section 4. The Executive Officer shall rebate to each local government that has made a voluntary payment to Metro in lieu of the per capita payments required by the provisions of former ORS 268.513 for fiscal year 1994-95 an amount equal to amount of the payment made to Metro multiplied by a fraction equal to the number of days remaining in fiscal year 1994-95 on the effective date of this Ordinance divided by 365. Prior to making any rebate, however, the Executive Officer shall deduct from the amount to be paid to any local government the amount of start-up costs that Metro has agreed to pay pursuant to any intergovernmental agreement authorized by Metro Code Section 7.02.110.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1994.

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

ATTEST:

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

gl1166a

Meeting Date: August 25, 1994  
Agenda Item No. 6.1

**RESOLUTION NO. 94-2024B**

## PLANNING COMMITTEE REPORT

### **CONSIDERATION OF RESOLUTION NO. 94-2024B FOR THE PURPOSE OF PUBLISHING A SCHEDULE OF PUBLIC HEARINGS AND METRO COUNCIL DECISIONS TO SELECT THE REGION 2040 PREFERRED ALTERNATIVE**

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Date: August 19, 1994

Presented By: Councilor Gardner

**Committee Recommendation:** At the August 18, 1994 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 94-2024B. Voting in favor: Councilors Kvistad, Gardner, Devlin, McLain, Monroe, Moore, and Washington. Absent: Councilor Gates.

**Committee Issues/Discussion:** Gail Ryder, Senior Council Analyst, presented the staff report. She explained that the purpose of the resolution was to allow for publication of a schedule of events leading to a final decision by the Metro Council in 1994 on the Region 2040 Preferred Alternative. The schedule establishes several deadlines:

- |                    |   |
|--------------------|---|
| September 22, 1994 | Deadline for Presentation of Recommendation to Metro Council by Executive Officer |
| November 10, 1994  | Deadline for formation of advice from Metro advisory committees                   |
| November 21, 1994  | Deadline for Planning Committee recommendation                                    |
| November 28, 1994  | Deadline for submission of written testimony to Council                           |
| December 8, 1994   | Deadline for Metro Council formal adoption  |

The schedule also provides for two in depth briefings of the Planning Committee on various components of the recommendation before beginning to hear from the public. In mid October five "listening post" meetings are planned in Hillsboro, Gresham, Tigard, Portland and Central Clackamas County. These meetings are called "listening posts" rather than public hearings to identify that the primary function of the meeting is to listen to the public. Councilors will be allowed to question witnesses but will be asked to restrain their own comments to a special time later in the meeting following all public testimony. Between September 26 and October 14 there will also be a series of local government briefings. Between October 31 and November 10 advisory committees will complete their formation of advice to the Metro Council.

On November 10, at the regularly scheduled Metro Council meeting, a status report will be given by the Chair and Vice-Chair of the Planning Committee that reviews the public comment meeting results and the local government briefings. Advisory Committees will be allowed to present their formal advice at that time. There are then two work sessions for the Planning Committee, with a final recommendation completed by November 21.

The Metro Council will hold a special meeting on November 28 to conduct a final public hearing. There are then three possible work session dates, concluding with formal adoption on December 8.

The committee clarified several conceptual amendments as follows:

1. In the final "Whereas" it should be identified that the need for the schedule is for "the Executive Officer's recommended Preferred Alternative".
2. November 10 was clarified as the opportunity for advisory committees to formally present their advice to the Metro Council.
3. November 28 was set as the deadline for submission of written testimony.

In addition, there were several additional points of importance:

1. The full Council will be invited and encouraged to attend any or all Planning Committee meetings devoted to the Region 2040 Preferred Alternative.
2. Metro Councilors are to be included in all briefings of local governments.
3. It is expected that a process or format for submission of proposed changes to the recommended Preferred Alternative will be developed by staff and presented to the Planning Committee at the earliest opportunity, hopefully September 15.
4. The Metro Committee on Citizen Involvement should be immediately informed about this schedule.

Additional committee discussion centered on concern by some Councilors that the process may take longer than envisioned, leaving little time during the final phase of decision making in late November and early December. Chair Kvistad explained that if something unforeseen occurs, Saturday meetings may be added

The remainder of discussion regarded the need for the full Council to commit to the "listening" rules imposed at the "listening post" meetings.



BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PUBLISHING A )  
SCHEDULE OF PUBLIC HEARINGS )  
AND METRO COUNCIL DECISIONS )  
TO SELECT THE REGION 2040 )  
PREFERRED ALTERNATIVE )

RESOLUTION NO. 94-2024[A]B

Introduced by  
Councilors Jon Kvistad  
and Jim Gardner

WHEREAS, On April 28, 1994, the Metro Council approved Resolution 94-1930B, describing intended Metro action on final Region 2040 reports and comments; this resolution stated the Council's intention to "identify the region's long-term planning direction in 1994"; and

WHEREAS, In June, 1994, the Executive Officer presented a "Concepts for Growth" staff report to the Metro Council; in the opening remarks of the report, Ms. Cusma urged the Metro Council to "act to bring this phase of long range regional planning to closure" and ready efforts in 1995 to "adopt a Regional Transportation Plan and identify urban reserves as the first elements of the newly required Regional Framework Plan." She went on to state, "failure to act by this council (emphasis added) would likely result in substantial delays that put the region at risk of having lost the window of opportunity to get ahead of the curve on population growth"; and

WHEREAS, During every phase of the Region 2040 project, Metro has actively sought to inform and seek comment from Metro advisory committees and the region's local governments, citizens and interest groups; and

WHEREAS, In order to provide ample opportunity to inform the public and seek their advice and comment, to allow Metro advisory committees adequate deliberative opportunity, and to provide sufficient time for Metro Planning Committee and Metro Council deliberation and decision-making on the Executive Officer's recommended Preferred Alternative, a schedule of activities for public hearings and decision-making should be immediately published and distributed; now, therefore

BE IT RESOLVED,

1. That the Metro Council encourages the Metro Executive Officer to take whatever steps necessary, including the authorization of staff overtime, to assure that an Executive Officer recommendation for the Region 2040 Preferred Alternative be presented to the Metro Council no later than September 22, 1994.
2. That the Metro Council seeks advice, comment and recommendation regarding the Region 2040 Preferred Alternative, by November 10, 1994, from the following Metro Advisory Committees:
  - a. the Joint Policy Advisory Committee on Transportation (JPACT), with the assistance of the Transportation Policy Alternatives Committee (TPAC);
  - b. the Metro Policy Advisory Committee (MPAC), with the assistance

of the Metro Technical Advisory Committee (MTAC); and

c. the Future Vision Commission (FVC).

3. That the Metro Council approves the schedule in Exhibit A for the final adoption process to be used in selecting the Region 2040 Preferred Alternative. This schedule provides for a December 8, 1994 final adoption date by the Metro Council.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

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Ed Washington, Deputy Presiding Officer

**EXHIBIT A**  
**REGION 2040 PREFERRED ALTERNATIVE SCHEDULE**

|                            |  |
|----------------------------|--|
| September 15 (Thursday)    | Staff presents "Draft" Preferred Alternative Recommendation to Planning Committee  |
| September 22 (Thursday)    | Executive Officer presents Preferred Alternative Recommendation to Metro Council   |
| September 26 - October 14  | Local Government Briefings   |
| September 28 (Wednesday)   | Newsletter to Region 2040 Mailing List   |
| September 29 (Thursday)    | Special Planning Committee Work Session (in depth discussion of transportation and land use components of recommendation)  |
| October 6 (Thursday)       | Regular Planning Committee Work Session (in depth discussion of open space and density components of recommendation)   |
| October 18, 19, 20, 25, 26 | Special Planning Committee "Listening Post" Meetings (to receive public comment in Hillsboro, Gresham, Tigard, Portland and Central Clackamas County), 6:30 - 9 PM |
| October 20 (Thursday)      | Regular Planning Committee Meeting, 4 - 6 PM   |
| October 31 (Monday)        | Future Vision Commission Meeting, 4 PM Metro (formation of advice to Metro Council)  |
| November 9 (Wednesday)     | Metro Policy Advisory Committee Meeting, 5 PM Metro (formation of advice to Metro Council)   |
| November 10 (Thursday)     | Joint Policy Advisory Committee on Transportation Meeting, 7:15 AM Metro (formation of advice to Metro Council)  |
|                            | Regular Metro Council Meeting - Status Report (public comment meetings results recommendations and local   |

government briefings), presented by Planning Committee Chair and Vice-Chair; Presentation of Advice from Advisory Committees (FVC; MPAC; JPACT)

November 17 (Thursday)

Regular Planning Committee Work Session/Mark Up (no public testimony taken)

November 21 (Monday)

Special Planning Committee Work Session - Final Recommendation to Metro Council

November 28 (Monday)

Special Metro Council Public Hearing on Planning Committee Preferred Alternative Recommendation

Deadline for Submission of Written Testimony

December 1 (Thursday)

Special Metro Council Work Session on Preferred Alternative (4 PM, Planning Committee will be rescheduled)

Regular Metro Council (time certain to be announced, takes place of Nov. 24 Thanksgiving holiday)

December 5 (Monday)

Optional Special Metro Council Meeting (if needed to complete Dec. 1 Preferred Alternative agenda)

December 8 (Thursday)

Regular Metro Council Meeting - Formal Adoption of Preferred Alternative for Implementation into Regional Framework Plan

## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 94-2024 FOR THE PURPOSE OF PUBLISHING A SCHEDULE OF PUBLIC HEARINGS AND METRO COUNCIL DECISIONS TO SELECT THE REGION 2040 PREFERRED ALTERNATIVE

Date: August 10, 1994

Presented by: Gail Ryder

## PROPOSED ACTION

This resolution sets forth a schedule of meetings for the final approval of the Region 2040 Preferred Alternative, specifically clarifying that the final decision will be made by the presently seated Metro Council by December 8, 1994. This schedule directs the Metro Executive Officer to have her final recommendation delivered to the Council by a date certain and also directs the completion date for recommendations to the Planning Committee from Metro advisory committees. At present all dates have been left blank and will be developed by the Planning Committee at their August 18 meeting.

## FACTUAL BACKGROUND AND ANALYSIS

There have been several occasions on which the Council has clarified its intention to complete this portion of the Region 2040 decision-making during 1994. This desire is echoed by the Metro Executive Officer in her transmittal remarks in the "Concepts for Growth" staff report to the Metro Council.

The resolution, once completed, will allow publication of an adequate number of timely public opportunities for the general public, interest groups, and Metro advisory committees to voice their opinions regarding the Region 2040 Preferred Alternative before final adoption in early December.

GR - C:\wpwin60\wpdocs\ord-res\94-2024.rs3

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF PUBLISHING A )  
SCHEDULE OF PUBLIC HEARINGS )  
AND METRO COUNCIL DECISIONS )  
TO SELECT THE REGION 2040 )  
PREFERRED ALTERNATIVE )

RESOLUTION NO. 94-2024

Introduced by  
Councilors Jon Kvistad  
and Jim Gardner

WHEREAS, On April 28, 1994, the Metro Council approved Resolution 94-1930B, describing intended Metro action on final Region 2040 reports and comments; this resolution stated the Council's intention to "identify the region's long-term planning direction in 1994"; and

WHEREAS, In June, 1994, the Executive Officer presented a "Concepts for Growth" staff report to the Metro Council; in the opening remarks of the report, Ms. Cusma urged the Metro Council to "act to bring this phase of long range regional planning to closure" and ready efforts in 1995 to "adopt a Regional Transportation Plan and identify urban reserves as the first elements of the newly required Regional Framework Plan." She went on to state, "failure to act by this council (emphasis added) would likely result in substantial delays that put the region at risk of having lost the window of opportunity to get ahead of the curve on population growth"; and

WHEREAS, During every phase of the Region 2040 project, Metro has actively sought to inform and seek comment from Metro advisory committees and the region's local governments, citizens and interest groups; and

WHEREAS, In order to provide ample opportunity to inform the public and seek their advice and comment, to allow Metro advisory committees adequate deliberative opportunity, and to provide sufficient time for Metro Planning Committee and Metro Council deliberation and decision-making, a schedule of activities for public hearings and decision-making should be immediately published and distributed; now, therefore

BE IT RESOLVED,

1. That the Metro Council encourages the Metro Executive Officer to take whatever steps necessary, including the authorization of staff overtime, to assure that an Executive Officer recommendation for the Region 2040 Preferred Alternative be presented to the Metro Council no later than \_\_\_\_\_, 1994.
2. That the Metro Council seeks advice, comment and recommendation regarding the Region 2040 Preferred Alternative, by \_\_\_\_\_, 1994, from the following Metro Advisory Committees:
  - a. the Joint Policy Advisory Committee on Transportation (JPACT), with the assistance of the Transportation Policy Alternatives Committee (TPAC);
  - b. the Metro Policy Advisory Committee (MPAC), with the assistance of the Metro Technical Advisory Committee (MTAC); and



- c. the Future Vision Commission (FVC).
3. That the Metro Council approves the schedule in Exhibit A for the final adoption process to be used in selecting the Region 2040 Preferred Alternative. This schedule provides for a December 8, 1994 final adoption date by the Metro Council.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1994.

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

Meeting Date: August 25, 1994  
Agenda Item No. 6.2

RESOLUTION NO. 94-2015

## PLANNING COMMITTEE REPORT

### **CONSIDERATION OF RESOLUTION NO. 94-2015 FOR THE PURPOSE OF AMENDING THE FY 1995 METRO TRANSPORTATION IMPROVEMENT PROGRAM TO ALLOCATE FUNDS TO TWO ROAD WIDENING PROJECTS AND ACKNOWLEDGING MISCELLANEOUS ADMINISTRATIVE AMENDMENTS**

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Date: August 19, 1994

Presented By: Councilor Monroe

**Committee Recommendation:** At the August 18 meeting, the Planning Committee voted unanimously to recommend Council adoption of Resolution No. 94-2015. Voting in favor: Councilors Kvistad, Gardner, Devlin, McLain, Monroe, Moore, and Washington. Absent: Councilor Gates.

**Committee Issues/Discussion:** Andy Cotugno, Planning Director, presented the staff report. He explained that adoption of this resolution is the final step in the adoption of the Transportation Improvement Program (TIP). This resolution clarifies several discrepancies between the Metro TIP and the State TIP. Federal planning regulations have made it required that the two documents conform to each other.

He then briefly reviewed the two road widening projects that were added; the Wilsonville Road project and the Durham Road project. ODOT has approved the two projects contingent on Metro's inclusion of the project in the FY 1995 TIP. He then briefly reviewed the many administrative amendments included in the resolution. The guidelines for administrative amendment of the TIP included in Metro Resolution 85-592 do not require resolution action to include these amendments. But since the list was so long, the department decided to include them at this time.

Councilor Moore asked for an update on the truck climbing lane situation recently reported in the Oregonian. She asked what happens to the money for the project if it is stalled indefinitely. Mr. Cotugno explained that once federal funds are "obligated" they cannot be rescinded for other projects. The money will remain obligated for the climbing lane project. The monies are not in jeopardy of being lost, but neither are they available for some other purpose.

There was no additional discussion.

BEFORE THE METRO COUNCIL

|                                 |   |                        |
|---------------------------------|---|------------------------|
| FOR THE PURPOSE OF AMENDING THE | ) | Resolution No. 94-2015 |
| FY 1995 METRO TRANSPORTATION    | ) |                        |
| IMPROVEMENT PROGRAM TO ALLOCATE | ) | Introduced by the      |
| FUNDS TO TWO ROAD WIDENING      | ) | Planning Committee     |
| PROJECTS AND ACKNOWLEDGING      | ) |                        |
| MISCELLANEOUS ADMINISTRATIVE    | ) |                        |
| AMENDMENTS                      | ) |                        |

WHEREAS, Metro adopted Resolution No. 94-1964 on June 23, 1994, approving the FY 1995 Transportation Improvement Program (MTIP); and

WHEREAS, New federal planning regulations require that the MTIP be adopted without change in the State Transportation Improvement Program (STIP); and

WHEREAS, ODOT identified two projects (see Exhibit A) which it wishes to include in the FY 1995 STIP which will be adopted by the Oregon Transportation Commission on July, 20, 1994; and

WHEREAS, ODOT has identified funding under its control for the two projects which would not otherwise be allocated to the region; and

WHEREAS, The two projects are included in the 1992 Regional Transportation Plan; and

WHEREAS, The two projects will be included in the FY 1995 (Air Quality) Conformity Analysis; and

WHEREAS, The two projects will obligate federal funds and/or will lead to an increase of vehicle capacity on the affected roadways; and

WHEREAS, Metro Resolution No. 85-592 requires that projects having these characteristics must be amended into the TIP by resolution action; and

WHEREAS, ODOT has identified other Hazard Elimination System, Highway Bridge Replacement and State Preservation/Overlay program

projects (see Exhibit B) that are contained in the FY 1995 STIP that were not included in the FY 1995 MTIP; and

WHEREAS, These projects will not increase vehicle capacity on existing roads, are categorically exempt from federal environmental review and otherwise conform with guidelines of Metro Resolution No. 85-592 for administrative amendment of the MTIP; now therefore

BE IT RESOLVED:

1. That the FY 1995 Metro TIP be amended to approve obligation authority for the two projects identified in Exhibit A up to the amounts identified in Exhibit A.

2. That the miscellaneous administrative amendments identified in Exhibit B are acknowledged as programmed.

3. That, as amended by this action, the Metro FY 1995 TIP has been wholly incorporated within ODOT's FY 1995 STIP without change.

4. That Metro staff is directed to request amendment of the state TIP to reflect these actions and/or to take such action as needed, within the guidelines established by Metro Resolution No. 85-592, to assure that the STIP and MTIP remain consistent with one another throughout the federal approval process.

ADOPTED by the Metro Council this \_\_\_\_ day of \_\_\_\_\_, 1994.

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

## EXHIBIT A

### TWO SIGNIFICANT ROADWAY PROJECTS REQUESTED BY ODOT FOR INCLUSION IN THE METRO FY 1995 TIP

#### 1. I-5: Wilsonville Road Widening and Bridge Reconstruction:

Widen Wilsonville Road beneath I-5 and between the north and southbound ramps from three lanes to six lanes; reconstruction of I-5 overcrossing bridges to accommodate road widening. The project was approved by the Oregon Transportation Commission as an Immediate Opportunity Fund project.

PE: \$1.04 million in FY 95  
ROW: 2.01 million in FY 95  
Con: 5.35 million in FY 96

Funding: state gas tax for preliminary engineering and right-of-way; and local, developer fee and Immediate Opportunity Funds for construction.

#### 2. Durham Road Bridge Widening:

Reconstruct and widen bridge from two lanes to three lanes with bicycle and pedestrian facilities as part of a locally funded project to widen Durham Road between Hall Boulevard and Upper Boones Ferry Road. The bridge widening will be federally funded and is needed to match the profile of the locally funded roadway improvements.

PE: \$0.40 million in FY 1994  
ROW: 0.25 million in FY 1995  
Con: 0.60 million in FY 1995

Funding: Federal Highway Bridge Replacement program for the bridge widening; local funding for associated road widening.

| ODOT PCS #       | PROJECT TITLE                                      | DESCRIPTION  | FY 95 | FY 96 | FY 97 | POST FY 97 |
|------------------|--|--|-------|-------|-------|------------|
| STATE OPERATIONS |  |  |       |       |       |            |
| 07289            | 1-205: SE 82ND TO OR 212                           | SOUND WALL (PE, CON)   | 0.410 |       |       |            |
| 07578            | EAST PORTLAND FRWY (1-205) @ SUNNYSIDE ROAD        | SCREENING (PE, CON)  | 0.730 |       |       |            |
| 07577            | VISTA RIDGE & JEFFERSON ST TUNNELS                 | LIGHTING UPGRADES (CON)  | 1.700 |       |       |            |
| 05294            | U.S. 30 SAUVIE ISLAND BRIDGE                       | BRIDGE APPROACH REALIGN (CON)  | 0.220 |       |       |            |
| 08231            | 1-5/1205 JOINT REPAIR                              | MP 283.21 FOR 22.53 MILES (PE, CON)  | 1.260 |       |       |            |
| 03696            | 1-5: INTERSTATE BRDG - COLUMBIA                    | GRIND & REPAVE (PE)  | 0.271 |       |       | 2.940*     |
| 07972            | 1-405: COLUMBIA TO STADIUM                         | GRIND & REPAVE (PE)  | 0.412 |       |       | 20.900*    |
| 07973            | 1-405: STADIUM TO MARQUAM BRDG                     | GRIND & REPAVE (PE)  | 0.646 |       |       | 33.400*    |
| 08050            | 1-205 @ SUNSET AVENUE                              | SCREENING (PE, CON)  |       | 0.033 |       |            |
| 06970            | JOHNSON CREEK @ 1-205                              | STRIPE AN EB TURN LANE (PE, CON)   |       | 0.105 |       |            |
| 08051            | 1-205 @ HOLTGATE                                   | PROTECTIVE SCREENING (PE, CON)   |       | 0.033 |       |            |
| 04366            | LINNTON / SAUVIE ISLAND BRIDGE                     | ROCK FALL PROTECTION (PE, CON)   |       | 0.360 |       |            |
| 07167            | US 30 B (SANDY BLVD): MLK JR TO 60TH               | OVERLAY (PE, CON)  |       | 0.555 |       |            |
| 06969            | TSM-INITIATIVE                                     | VARIOUS FREEWAY, ARTERIAL, AND TRANSIT FLOW IMPROVEMENT PROJECTS TOTALING \$1.04 MILLION (PE, CON) |       | 1.040 |       |            |
| 07579            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07961            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07962            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07963            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07964            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07965            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07966            | TSM-INITIATIVE                                     |  |       |       |       |            |
| 07967            | TSM-INITIATIVE (FY 98 Construction)                |  |       |       |       |            |
| 07156            | 99 W: TUALATIN RIVER BRIDGE TO KRUEGER ROAD        | OVERLAY (PE, CON)  |       | 1.092 |       |            |
| 07155            | BARBUR: PEDESTRIAN OXING TO SW 60TH                | CONSTRUCT PED OXING (PE, CON)  |       | 1.134 |       |            |
| 05862            | TRAFFIC LOOP REPAIRS UNIT 6                        | TRAFFIC LOOP REPAIRS (PE, CON)   |       | 0.585 |       |            |
| 05866            | TRAFFIC LOOP REPAIRS UNIT 7                        | TRAFFIC LOOP REPAIRS (PE, CON)   |       | 0.604 |       |            |
| 06019            | TRAFFIC LOOP REPAIRS UNIT 8                        | TRAFFIC LOOP REPAIRS (PE, CON)   |       | 1.580 |       |            |
| 08239            | US 26: 185TH SOUNDWALL                             | SOUNDWALL (PE, CON)  |       | 1.570 |       |            |
| 07168            | US 30: ST. JOHNS-CORNELIUS PASS ROAD               | OVERLAY (CON)  |       |       |       |            |
| 07162            | OR 43: HUGHES AVENUE TO OREGON CITY BRIDGE         | OVERLAY (PE, CON)  |       |       |       | 0.753      |
| 07163            | OR 47: MP 90.4 TO 91.5                             | OVERLAY (PE, CON)  |       |       |       | 0.167      |
| 07169            | 99E: MILWAUKIE CITY LIMITS- CLACKAMAS RIVER BRIDGE | OVERLAY (PE, CON)  |       |       |       | 1.510      |
| 07186            | OR 224: ROCK CREEK TO SE 197TH                     | OVERLAY (PE, CON)  |       |       |       | 0.291      |
| 07164            | OR 8 (TV HWY): OR 47 TO QUINCE                     | OVERLAY (PE, CON)  |       |       |       | 0.565      |

EXHIBIT B: METRO FY 1995 TIP ADMINISTRATIVE AMENDMENTS

| ODOT PCS NO.                           | PROJECT TITLE  | DESCRIPTION   | FY 95 | FY 96 | FY 97  | POST FY 97 |
|--|--|---|-------|-------|--------|------------|
| <b>HAZARD ELIMINATION SYSTEM (HES)</b> |  |   |       |       |        |            |
| 08075                                  | BNRR X'ING: LWR ROCKY BUTTE RD @ HOLBROOK                  | RAIL ROAD CROSSING (PE)   | 0.120 |       |        |            |
| 07057                                  | HALSEY @ 47TH  | SIGNAL, LOOPS / SIGNAGE (PE)  | 0.020 |       |        |            |
| 06711                                  | SW ALLEN BLVD @ SW WESTERN AVENUE                          | INTERSECTION IMPROVEMENT  | 0.372 |       |        |            |
| 07134                                  | NORTH PORTLAND ROAD @ BNRR CROSSING                        | RAIL ROAD CROSSING (PE, CON)  |       | 0.105 |        |            |
| 07045                                  | ALLEN: 141ST TO SW MERLO                                   | WIDEN TO 66' ADD LFT TURN POCKET (PE, ROW & CON)  |       | 0.705 |        |            |
| 06971                                  | N. FESSENDEN/BNRR X'ING                                    | RAIL CROSSING (PE, CON)   |       | 0.065 |        |            |
| 07136                                  | OREGON CITY SIGNAL UPGRADE (OPTICOM)                       | SIGNAL UPGRADES (PE, CON)   |       |       | 0.235  |            |
| <b>BRIDGE PROJECTS</b>                 |  |   |       |       |        |            |
| 07263                                  | FANNO CREEK BRIDGE / GRANT STREET                          | REPLACE BRIDGE (PE, CON)  | 1.360 |       |        |            |
| 07253                                  | OSWEGO CANAL/CHILDS ROAD BRIDGE REPLACEMENT                | REPLACE BRIDGE W/ 48' DECK (PE, ROW & CON)  |       | 0.315 |        |            |
| 07264                                  | FANNO CREEK BRIDGE/TIEDEMAN AVENUE                         | REPLACE BRIDGE (PE, CON)  |       | 0.752 |        |            |
| 08052                                  | HAWTHORNE BRIDGE PAINTING                                  | PAINT BRIDGE (PE, CON)  |       |       | 16.600 |            |
| 08500                                  | NE 138TH/COLUMBIA SLOUGH BRDG                              | REPLACE BRIDGE #25T15 (PE, CON)   |       |       | 0.891  |            |
| <b>ODOT RECONNAISSANCE PROGRAM</b>     |  |   |       |       |        |            |
| 05330                                  | I-205: GLADSTONE INTERCHANGE TO WEST LINN INTERCHANGE      | NEEDS ASSESSMENT (PE)   | 0.045 |       |        |            |
| 05279                                  | I-405/1-5/US 26 CORRIDOR ASSESSMENT                        | NEEDS ASSESSMENT (PE)   | 0.071 |       |        |            |
| 04820                                  | OR 99W: PFAFFLE RD TO COMMERCIAL                           | CORRIDOR FEIS (PE)  | 0.517 |       |        |            |
| 06578                                  | REGION 1 CORRIDOR PLANNING                                 | PLANNING BUCKET (PE)  | 3.450 |       |        |            |
| <b>MISCELLANEOUS</b>                   |  |   |       |       |        |            |
| 08105                                  | GOLF CREEK SECTION PH. 2, 3, & 4                           | LANDSCAPING (CON)   | 0.150 |       |        |            |
| 06028                                  | HALL BLVD. BV/TUALATIN HWY: SPRR CROSSING-GREENBURG ROAD   | BIKE LANE (PE, ROW & CON)   | 0.310 |       |        |            |
| 00835                                  | US 30B: NE COLUMBIA BLVD TO NE LOMBARD (NE BOTH CONNECTOR) | CITY OF PORTLAND FUNDS TO COMPLETE FEIS. NO ROW OR CONSTRUCTION FUNDS APPROVED BY ODOT. | 0.573 |       |        |            |

Funds shown are PE, ROW and Construction cost (as appropriate) shown in estimated year of expenditure for most advanced work phase (e.g., for project with PE, ROW and Construction funding, year shown is expected year of construction activity).

\* Sums listed in FY 95 are programmed PE dollars. Italicized Post-FY 97 dollars are anticipated construction cost. The construction costs are provided for information purposes only and are not approved by this action.

To the extent possible, all projects will provide appropriate pedestrian, bicycle and transit facilities.



## STAFF REPORT

### CONSIDERATION OF RESOLUTION NO. 94-2015 FOR THE PURPOSE OF AMENDING THE FY 1995 METRO TRANSPORTATION IMPROVEMENT PROGRAM TO ALLOCATE FUNDS TO TWO ROAD WIDENING PROJECTS AND ACKNOWLEDGING MISCELLANEOUS ADMINISTRATIVE AMENDMENTS

Date: July 21, 1994

Presented by: Andrew Cotugno

#### PROPOSED ACTION

Adoption of this resolution would amend the Metro FY 1994 TIP to approve allocation of local funds, state gas tax and federal bridge improvement funds to two road widening projects. It would also acknowledge notification to TPAC and JPACT of numerous administrative amendments of the FY 95 TIP per guidelines established in Metro Resolution No. 85-592. Finally, this resolution would declare to federal review authorities that the Metro FY 1995 TIP, as amended by this action, has been wholly incorporated in ODOT's FY 1995 STIP, without change, as required by recent federal planning regulations.

TPAC has reviewed this TIP amendment and recommends approval of Resolution No. 94-2015.

#### FACTUAL BACKGROUND AND ANALYSIS

Basis for the Amendment. Metro Resolution No. 94-1964 approved the Metro FY 1995 TIP. JPACT adopted the resolution at its regular meeting on June 9, 1994. Thereafter, ODOT identified two road widening projects included in its draft FY 1995 STIP which were not included in the draft Metro FY 1995 TIP. These were widening of Wilsonville Road at its undercrossing of I-5 and a bridge replacement project approved as the state's contribution to a locally funded widening of the Beaverton/Tualatin Highway (Durham Road between Hall Boulevard and Upper Boones Ferry Road). Under the region's Project Selection Procedures included in the Introduction of the FY 1995 TIP, these projects fall within Metro's authority to program in consultation with ODOT. ODOT has therefore approved the two projects contingent on Metro's inclusion of the projects in its FY 1995 TIP.

Project Descriptions. The Wilsonville project was approved in the spring of 1994 as an Immediate Opportunity Fund project. The project will widen Wilsonville Road from three lanes to six and will include bicycle and pedestrian facilities. To accommodate the wider road section, the I-5 bridge crossing will also require widening. Wilsonville Road will remain at three lanes east and west of the I-5 ramps. Improvement of the interchange, including the widening, is approved in the 1992 Regional Transportation Plan. Funding for this project will come from state gas tax revenues and local contributions. PE and ROW funds were previously allocated to the full interchange improvement project. Savings from some FY 1994 overlay projects and the IOF funds provide the bulk of the remaining revenue. No funding was

diverted from the FY 1995-1998 construction program. Because the project will affect a federal interstate facility, it must be included in the TIP.

The Durham Road bridge project is a small piece of a larger locally funded widening that had been identified in the TIP as a regionally significant, locally funded project. The project is also included in the RTP. Only after JPACT adoption of the draft Metro FY 1995 TIP was it discovered that ODOT had committed federal bridge improvement funds to assist the project. Moreover, because the bridge will be widened to three travel lanes, it requires amendment into the TIP by resolution.

Both projects are included in the network of projects assumed in the Air Quality Conformity network currently being developed by Metro for the FY 1995 TIP and RTP Conformity Determination. No funds are being diverted from other regionally approved projects to accommodate these projects.

Administrative Amendments. It was also discovered that numerous federal Hazard Elimination System (HES), Highway Bridge Replacement (HBR) and state overlay and preservation projects were included in the draft FY 1995 STIP that were not included in the Metro TIP approved by JPACT. However, none of these projects add capacity and all but one are under \$2 million. The exception is painting of the Hawthorne Bridge (\$16 million). Per the guidelines for administrative amendment of the TIP included in Metro Resolution No. 85-592, these projects do not require resolution action. However, they do require notification to TPAC, JPACT and Metro Council. Given the large number of projects, it was felt by staff to be appropriate to append this notification to the subject resolution. The overall intent of both actions is to assure consistency of the Metro TIP with the state TIP that will both be forwarded for federal review. New federal planning guidelines require that the Metro TIP be included without change in the state TIP. Adoption of this resolution would achieve this objective.

#### EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 94-2015.

Meeting Date: August 25, 1994  
Agenda Item No. 6.3

RESOLUTION NO. 94-2025

## REGIONAL FACILITIES COMMITTEE REPORT

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### RESOLUTION NO. 94-2025, ENTERING INTO A GRANT AGREEMENT WITH THE METROPOLITAN REGIONAL ARTS COUNCIL

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Date: August 18, 1994

Presented by: Councilor Moore

**COMMITTEE RECOMMENDATION:** At its August 17, 1994 meeting the Regional Facilities Committee voted 5-0 to recommend Council approval of Resolution No. 94-2025. All committee members were present and voted aye.

**COMMITTEE DISCUSSION/ISSUES:** Executive Assistant Don Rocks discussed the background of this resolution, pointing out that it provides for an agreement between Metro and the Metropolitan Regional Arts Council to do work on arts and cultural outreach, education, and programs. The \$125,000 for this work is included in the 1994-95 budget. The agreement authorized in the resolution provides for accountability on how those funds are to be spent, and provides for periodic reporting on the program's progress. Mr. Rocks introduced Bill Bulick and Donna Milrany, the Executive Director and Associate Director of the Metropolitan Arts Commission.

Mr. Bulick discussed the transition from the Metropolitan Arts Commission to the new Metropolitan Regional Arts Council (MRAC). The MRAC is a non-profit organization that is scheduled to take over the duties and functions of the Arts Commission in January 1995. Mr. Bulick said he would like as much time as possible in the future for reporting to the Regional Facilities Committee and Metro Council on the activities called for in the agreement, and asked for assistance in appointing a liaison Councilor to MRAC.

Councilor Washington asked for clarification on items #3 and 4 in Mr. Bulick's August 8, 1994 memo. He wanted to know who will be conducting the town meetings and what the meetings will be for. Mr. Bulick said the purpose of the meetings is to create "linkages" between emerging arts leaders and other community leaders, including elected officials, to promote and foster a strong arts community throughout the region. Ms. Milrany said the Arts Commission has retained Sharon Morgan, Executive Director of the Oregon Coast Council for the Arts, to conduct these meetings. Ms. Milrany discussed the results of town meetings that have already been held in Hillsboro and Lake Oswego. The town meetings are both to coordinate between arts councils and community leaders, and involve the general public in developing arts and cultural policies.

Ms. Milrany spoke to item #4 (provide coordination and training to regional arts industry), saying that the aim is to advise local arts councils how to broaden their outreach and contact with community leaders. She cited Beaverton, Tigard and the cities of East Multnomah County as areas where this work is

progressing. Mr. Bulick said neighborhood arts programs and cultural strategies are also being developed and promoted, citing work now being done in Portland's Old Town which coordinates community policing efforts with cultural programs.

In response to a question from Councilor Moore, Mr. Bulick said the counties are providing financial support to the Arts Commission as follows: Washington, \$25,000; Clackamas, \$32,000; and Multnomah, \$275,000 plus \$100,000 from hotel/motel tax revenues.

Mr. Bulick asked for assistance from the committee to incorporate arts policies into Metro's regional planning efforts such as 2040 and Future Vision. He also asked for guidance in determining Metro's role in appointing members of the MRAC. Councilor Washington asked Mr. Bulick to address a letter to him as Deputy Presiding Officer requesting such assistance and an appointment of a liaison Councilor. Chair Hansen directed committee staff to report back to the committee on alternatives for the appointments process.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING ) RESOLUTION NO.94-2025  
INTO A GRANT AGREEMENT WITH )  
THE METROPOLITAN REGIONAL ARTS ) Introduced by Rena Cusma  
COUNCIL ) Executive Officer

WHEREAS, Metro has historically worked through the Metropolitan Arts Commission (MAC) and with various arts organizations that utilize facilities operated by the Metropolitan Exposition-Recreation Commission (MERC) and that serve and enrich the Metro region through a variety of arts and cultural activities; and

WHEREAS, various citizen advisory bodies convened by local government have analyzed the fiscal needs of the arts and arts organizations and of the convention, trade and spectator facilities operated by Metro through the Metropolitan Exposition-Recreation Commission; and

WHEREAS the Metro Regional Arts Funding Task Force chaired by David Knowles has made various short and long term recommendations regarding arts and cultural activities; and

WHEREAS, the Metro Council in response to those studies and task force recommendations has adopted a budget appropriation of \$115,000 for the 1994-95 Fiscal Year to be coupled with \$10,000 appropriated by MERC; and

WHEREAS, the Metropolitan Regional Arts Council (MRAC) is the successor of the Metropolitan Arts Commission which was established by intergovernmental agreement between the City of Portland and Multnomah County; now, therefore,

BE IT RESOLVED:

That in recognition of the mutual interest of the parties the agreement attached hereto as Contract No.903909 is adopted and that grant funds shall be conveyed to the Metropolitan Regional Arts Council according to the terms of the agreement.

ADOPTED by the Metro Council this \_\_\_\_\_ day of August, 1994.

\_\_\_\_\_  
Ed Washington, Deputy Presiding Officer

METRO CONTRACT NO.903909

AGREEMENT

This Agreement, dated as of August 17, 1994, is by and between Metro, a metropolitan service district organized under the laws of the State of Oregon and the 1992 Metro Charter, whose address is 600 N.E. Grand Avenue, Portland, Oregon 97232-2736 and the Metropolitan Regional Arts Council, a nonprofit entity legally chartered under applicable Federal law and State statute whose address is The Portland Building, 1120 S.W. Fifth Avenue, Portland, Oregon, 97204, hereinafter referred to as "MRAC."

Witnesseth:

Whereas, Metro has historically supported the work of the Metropolitan Arts Commission (MAC) and other arts organizations cultural activities that serve and enrich the Metro region and that utilize facilities operated by the Metropolitan Exposition-Recreation Commission (MERC); and

Whereas, various citizen advisory bodies convened by Metro and local government have analyzed the fiscal needs of the arts and arts organizations and of the convention, trade and spectator facilities operated by Metro through the Metropolitan Exposition-Recreation Commission; and

Whereas, the Metro Regional Arts Funding Task Force chaired by David Knowles has made various short and long term recommendations regarding arts and cultural activities; and

Whereas, the Metro Council in response to those studies and task force recommendations has adopted a budget appropriation of \$115,000 for the 1994-95 Fiscal Year to be coupled with \$10,000 appropriated by MERC; and

Whereas, the Metropolitan Regional Arts Council (MRAC) is the successor of the Metropolitan Arts Commission which was established by intergovernmental agreement between the City of Portland and Multnomah County;

Now, Therefore, in recognition of the mutual interests of the parties and based upon the terms and conditions contained herein it is hereby mutually agreed that Metro shall provide grant funding to be utilized by MRAC effective July 1, 1994 through and including July 30, 1995 to pursue, execute and accomplish the projects and specific tasks described herein.

1. SCOPE OF WORK:

This Agreement is exclusively for the personal services of MRAC to be utilized for the administration of the following:

PROJECTS/ACTIVITIES

COST<sup>1</sup>

**PLANNING & COORDINATION**

**A) Leadership Development:** Consultation with elected officials, managers, Metro, county and municipal planners to identify community priorities and needs. Incorporate arts and cultural issues into such planning efforts as Future Vision, 2040 and related growth management planning.

100 hours at \$30/hr

\$3,000

**B) Inventory Resources:** Complete a comprehensive inventory of arts and cultural resources, community organizations and facilities in the region in collaboration with the growing network of local arts councils, and arts producers

Project manager, surveys and compilation  
Design and layout for guide

\$3,750

\$4,000

**C) Town Meetings on the Arts:** Facilitate community dialogues to integrate arts into economic development, education, growth management and quality of life strategies.

9 facilitated town meetings and consulting  
20 speakers presentations

\$4,500

\$1,000

**D) Provide Coordination and Training to Regional Arts Industry:** Organize monthly meetings of arts groups outside Portland and encourage partnerships with Portland based groups by linking the Regional Art Network and the Arts Alliance; provide management and other professional practices training such as fundraising, production, marketing and board development.

50 hours meeting organizations at \$30/hr  
Trainer honoraria; net costs of workshops

\$1,500

\$5,000

**E) Planning and Coordination for MRAC Re-grant Program:** New funding throughout the region to support arts activities and education projects; manage the process, conduct outreach and technical assistance to applicants, recruit/train knowledgeable, geographically representative arts panelists; facilitate public grant making meetings.

150 hours planning @ \$25/hr

\$3,750

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<sup>1</sup> NOTE: Amounts shown for projects and activities do not represent their whole cost in every instance, matching funds (other governments and the National Endowment for the Arts) will be coupled with Metro grant monies.



F) **Printing and Distribution of Technical Information:** Development of the regional arts infrastructure and reports for public meetings, etc.

- \* develop and disseminate a quarterly progress report on regional arts plan implementation
- \* organize joint board and staff meetings at least annually
- \* publish issue monographs; survey results
- \* Expand distribution of monthly technical assistance newsletter (competitions, grant and training opportunities)

Staffing, postage, printing and materials \$2,500

G) **Arts Education Planning and Coordination:** Cooperation with regional arts and education leaders so that all communities are linked to the best critical and strategic thinking on this important topic.

Administration/hosting meetings \$1,000

#### RESEARCH

H) **Polling:** (Public needs, interests, attitudes) \$15,000

#### PUBLIC EDUCATION AND ACCESS

(Building public awareness of resources and accessibility)

A) **Umbrella Media/Print Advertising Campaign:** To promote general public awareness of wide ranging regional arts and cultural activities and the effect on our quality of life. Scheduled on TV, The Oregonian, regional media.

\$10,000

B) **Neighborhood and Regional Event Cultural Tour Bus:** A painted cultural bus will be launched by Tri-Met in partnership with Northwest Business Committee for the Arts (NWBCA), Metropolitan Regional Arts Council (MRAC), Association for Portland Progress (APP), Portland/Oregon Visitors Association (POVA) and the Arts & Cultural Alliance. The painted bus will tour to outdoor regional events in late summer and fall to promote regional access. Funding will bring high caliber professional performance groups to scheduled family festivals and events throughout the region. The primary goal is to initiate business and arts partnerships to build a stronger regional base of support for the arts. This promotion will encourage use of the new bus services by families throughout the region.

\$45,000

C) **Cultural Tourism and Audience Development:** Promoting use of arts and cultural facilities and activities throughout the region to our growing visitor industry in collaboration with MAC, NWBCA, POVA, the Regional Art Network and Washington, Clackamas and Clark County tourism councils.

\$5,000

D) Regional Events and Access Campaign: A key tool will be production marketing and distribution of an events calendar, possibly in collaboration with The Oregonian. Emphasis will be on family activities. PCPA events and activities will be prominently featured in all aspects of the regional public information campaign. Up to \$10,000 (the MERC appropriation) has been designated for PCPA's use in a partnership with businesses for bi-monthly calendars of upcoming events. marketing purposes

|                    |           |
|--------------------|-----------|
| MERC FUNDING       | \$10,000  |
| METRO GENERAL FUND | \$115,000 |
| TOTAL              | \$125,000 |

## 2. MRAC/BCA FIDUCIARY RELATIONSHIP:

Metro understands and agrees that MRAC and the Northwest Business Committee for the Arts (NWBCA) will partner in completing the grant workplan and that MRAC will delegate certain tasks and projects to the NWBCA together with Metro grant funds necessary for their completion.

## 3. RELEASE OF METRO FUNDS:

In recognition that demands upon grant funding will not be evenly distributed across the grant period, Metro agrees to release one-half of the grant funds (\$62,500) to MRAC upon completion and signing of the necessary documents. The second one-half of the grant funds (\$62,500) shall be released approximately one-half of the way through the grant period, on or about January 1995.

## 4. REPORTING REQUIREMENTS:

MRAC shall be responsible for providing written program progress and financial reports to Metro and MERC on a regular basis across the grant period. At a minimum, MRAC shall report quarterly to the Metro Council Regional Facilities Committee (or other appropriate body as may be determined by the Metro Council's Presiding Officer) and the MERC Commission and shall provide such other verbal and written reports as may be requested by Metro and MERC.

Those reports shall be presented verbally by representatives of MRAC/NWBCA so as to allow queries, if any, and shall, whenever possible, be accompanied by examples of products produced. Financial reports shall include revenue expenditure information in detail for the work elements shown above.

## 5. INDEMNIFICATION:

The parties hereby agree that MRAC is an independent organization, and that the activities of MRAC, their officers, agents, and employees, shall not constitute actions of Metro for any purpose. Therefore, MRAC hereby agrees to indemnify, hold harmless, and defend Metro, MERC, Multnomah County and the City of Portland, and

their respective members, officers, directors, agents, and employees from and against any and all liabilities, damages, actions, costs, losses, claims and expenses (including attorney's fees) arising out of the activities of MRAC, its officers, agents, employees, contractors, and invitees.

#### **6. TERMINATION**

Metro may terminate this Contract upon giving MRAC seven (7) days written notice. In the event of termination, MRAC shall be entitled to payment for work performed to the date of termination. Metro shall not be liable for indirect or consequential damages. Termination by Metro will not waive any claim or remedies it may have against MRAC.

#### **7. SITUS:**

The situs of this Agreement is Portland, Oregon, and any litigation related hereto shall be governed by the laws of the state of Oregon and conducted in the State circuit court for Multnomah County.

#### **8. NONTRANSFERABILITY:**

This Agreement is binding on each party, its successors, assigns, and legal representatives and may not, under any circumstances, be assigned or transferred by either party.

#### **9. CONTACTS:**

The manager of this grant for Metro and MERC shall be (until such time as the Executive Officer may name a replacement)::

Donald E. Rocks, Executive Assistant  
Executive Management Dept, 600 N.E. Grand Avenue, Portland, Oregon 97232  
Telephone 797-1504

And all correspondence and reports shall be addressed to him.

The manager of this grant for MRAC shall be:

Bill Bulick  
Portland Building, Room 1023  
Telephone 823-5111

And all correspondence and payments shall be addressed to him.

#### **10. ENTIRE AGREEMENT:**

Notwithstanding and succeeding any and all prior agreement(s) or practices(s), this Agreement constitutes the entire Agreement between the parties, and may only be expressly modified in writing(s) signed by both parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates hereinafter indicated and as follows:

**METRO**

**METROPOLITAN REGIONAL ARTS  
COUNCIL (MRAC)**

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

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

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

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

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

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

METROPOLITAN ARTS COMMISSION

August 8, 1994

**TO:** Rena Cusma, Metro Executive  
Judy Wyers, Metro Council Chair  
Sandi Hansen, Regional Facilities Committee Chair

**FROM:** Bill Bulick, Executive Director

**RE:** MAC/BCA Revised Budget for  
regional planning/public information coordination  
MAC status as fiscal agent and update on MAC/RAC Transition

The purpose of this memo is to provide details about the expenditures, matching funds and proposed programs supported by an FY 94/95 \$125,000 METRO appropriation and to update Metro on MAC's desire to utilize its non-profit structure for program oversight.

It was proposed that the Metropolitan Arts Commission act as fiscal agent for this project, in light of our long standing relationship with Metro as administrator of public art projects and through partnerships on Arts Plan 2000+ and the Metro Regional Arts Funding Task Force. Arts Plan 2000+ recommended that the Metropolitan Arts Commission transition from a City of Portland bureau to a non-profit organization in order to more efficiently address new regional responsibilities and opportunities. In response, MAC convened a Transition Task Force comprised of regional government and arts stakeholders, including Metro, to study structural options. The Arts Plan recommendation was reaffirmed by this group and by the Metro Regional Arts Funding Task Force. MAC is now in the process of implementing that recommendation.

MAC formed a non-profit corporation, the Metropolitan Regional Arts Council (MRAC), three years ago to manage a regional Arts in Education Program. It had been envisioned that MAC would utilize this structure for

operations as a regional agency if the non-profit option was favored. The articles of incorporation, by laws, federal 501 c (3) status and fiscal accounting systems are already in place. During MAC's transition, which began on July 1 and will culminate on January 15, 1995 with MAC ceasing to exist, we have begun to shift programs and resources into the non-profit MRAC.

One of the prime benefits of this non-profit structure is to accomplish program oversight with a high degree of accountability, but less paperwork and bureaucracy. MAC wishes to model this new operating style by utilizing MRAC for the Metro projects.

As would be the case for an intergovernmental contract, we request that the appropriation be conveyed in one payment as soon as contracts can be signed. We are also anxious to lay out a regular reporting schedule for the Committee and Council and would like to follow up with the Regional Task Force recommendation of assigning an official Metro Council liaison to MAC and its successor. Also of interest to us is Metro's involvement in appointments to the Commission. We are prepared to discuss the ramifications of these recommendations with you in detail at the Metro Regional Facilities Committee meeting next week.

The narrative that follows reiterates the case statement for regional cultural development and planning originally made to the Regional Facilities Committee and the Metro Council. The revised figures are a refinement in light of the actual appropriation. We believe these programs and funding are critical to continuing the momentum towards implementation of short and long term recommendations of the Metro Regional Arts Funding Task Force.

The Metropolitan Arts Commission (MAC), the Northwest Business Committee for the Arts (BCA) and other organizations such as the Regional Art Network, local arts councils, the Arts & Cultural Alliance and our many community based partners are continuing to implement multiple recommendations of Arts Plan and lay the groundwork for the regional stewardship of our cultural resources envisioned by the Metro Regional Arts Funding Task Force.

The circle of leadership, participation and awareness has already widened considerably, but there is much more to do. Metro's continued involvement and leadership are needed in order to implement the Task Force's short and long term recommendations.

MAC, in its developing regional role, seeks to encourage community arts and cultural assessments, inventory resources, convene town meetings and to

unite existing arts organizations toward common goals. This planning emphasizes communication, coordination and leadership and is essential to the goals of collaboration, resource sharing, partnering and strategic development of the regional arts industry. The work is also essential to developing broad based, grass roots support for a regional funding solution.

The Northwest Business Committee for the Arts is committed to developing a public information campaign that will increase public awareness of the multiple benefits of the arts and their impact on the quality of our region. This work is a critical precursor to a regional ballot measure campaign.

| <u>Request Summary:</u>       | <u>METRO</u>     | <u>Match</u>     |
|-------------------------------|------------------|------------------|
| Planning & Coordination       | \$30,000         | \$141,500        |
| Research                      | 15,000           | 15,000           |
| Public Information & Outreach | 80,000           | 610,000          |
| <b>Totals</b>                 | <b>\$125,000</b> | <b>\$766,500</b> |

Match:

\$125,000 is an appropriate level of funding from Metro and helps to insure matching of a three-year Challenge grant from the National Endowment for the Arts. Further, it brings Metro's leverage into the new coalition of governments (City of Portland, Clackamas, Multnomah and Washington Counties) who are providing funding for MAC to plan for and address the needs of the regional arts & cultural industry. The Northwest Business Committee for the Arts and the wider business community are additional funding partners.

Matching Funds:

|   |                  |
|---|------------------|
| New Funding From Counties<br>(per year, and increasing)                               | \$43,500         |
| NEA Challenge grant<br>(per year, for three years)                                    | 63,000           |
| Portland Mayor's Challenge<br>(Arts Plan response)                                    | 250,000          |
| Business Committee for the Arts<br>(minimally)  | 250,000          |
| Local community match<br>(local governments, business<br>and community organizations) | 160,000          |
| <b>Minimum total being matched</b>  | <b>\$766,500</b> |

## Budget Detail

|         |                |
|---------|----------------|
| Service | Metro Matching |
|---------|----------------|

### PLANNING AND COORDINATION

1) Leadership Development:

*Consultation with elected officials, managers and planners at Metro and in municipalities outside Portland to identify community priorities and needs. Incorporate arts & cultural issues into such planning efforts as Future Vision, 2040, and related growth management planning*

|                      |        |         |
|----------------------|--------|---------|
| 100 hours at \$30/hr | \$3000 | \$3,000 |
|----------------------|--------|---------|

2) Inventory Resources

*Complete a comprehensive inventory of arts and cultural resources, community organizations and facilities in the region in collaboration with the growing network of local arts councils. and arts producers*

|  |         |          |
|--|---------|----------|
| Project manager, surveys and compilation | \$3,750 | \$10,000 |
| Design & layout for guide                | \$4,000 | \$4,000  |

3) Town Meetings on the Arts:

*Facilitate community dialogues to integrate arts into economic development, education, growth management and quality of life strategies; include feedback on Metro Funding Task Force Final Report & Recommendations*

|  |         |         |
|--|---------|---------|
| 9 facilitated town meetings & consulting | \$4,500 | \$8,500 |
| 20 speakers presentations @ 50           | \$1,000 | \$3,000 |



4. Provide coordination and training to regional arts industry:

*Organize monthly meetings of arts groups outside Portland and encourage partnerships with Portland based groups by linking the Regional Art Network and the Arts Alliance; provide management and other professional practices training such as fundraising, production, marketing and board development.*

|   |         |         |
|---|---------|---------|
| 50 hours meeting organization at \$30/hr  | \$1,500 | \$3,000 |
| Trainer honoraria; net costs of workshops | \$5,000 | \$5,000 |

5) Planning and coordination for regrant program:

*New funding throughout the region to support arts activities and education projects; manage the process, conduct outreach and technical assistance to applicants, recruit/train knowledgeable, geographically representative arts panelists; facilitate public grant making meetings.*

|                              |         |          |
|------------------------------|---------|----------|
| 150 hours planning @ \$25/hr | \$3,750 | \$50,000 |
|------------------------------|---------|----------|

6. Printing and Distribution of Technical Information

*for development of the regional arts infrastructure and reports for public meetings, etc.*

- *develop and disseminate a quarterly progress report on regional arts plan implementation*
- *organize joint board and staff meetings at least annually*
- *publish issue monographs; survey results*
- *expand distribution of monthly technical assistance newsletter (competitions, grant & training opportunities)*

|   |         |         |
|---|---------|---------|
| Staffing, postage, printing and materials | \$2,500 | \$5,000 |
|---|---------|---------|

Service

Metro Matching

7. Arts Education Planning and Coordination:

*in cooperation with regional arts and education leaders so that all communities are linked to the best critical and strategic thinking on this most important topic.*

|                                    |                 |                  |
|------------------------------------|-----------------|------------------|
| Administration/hosting meetings    | \$1,000         | \$50,000         |
| <b>Total Planning Expenditures</b> | <b>\$30,000</b> | <b>\$141,500</b> |

**RESEARCH**

|   |          |          |
|---|----------|----------|
| 1) Polling re: public needs and interests | \$15,000 | \$15,000 |
|---|----------|----------|

**PUBLIC EDUCATION AND ACCESS**

Builds public awareness of resources and accessibility.

1) Umbrella media/print advertising campaign

*To promote general public awareness of wide ranging regional arts and cultural activities and the effect on our quality of life. Scheduled on TV., the Oregonian and regional newspapers*

|          |           |
|----------|-----------|
| \$10,000 | \$200,000 |
|----------|-----------|

2) Neighborhood and Regional Event Cultural Bus Tour

*A painted cultural bus will be launched by Tri-Met in partnership with BCA, MAC, APP, POVA and the Arts & Cultural Alliance. The painted bus will tour to outdoor regional events in late summer and fall to promote regional access. Funding will bring high caliber, professional performance groups to scheduled family festivals and events throughout the region. The primary goal is to initiate business and arts partnerships to build a stronger regional base of support for the arts. This promotion will encourage use of the new bus services by families throughout the region.*

|          |           |
|----------|-----------|
| \$45,000 | \$340,000 |
|----------|-----------|

3) Cultural Tourism and Audience Development

*Promoting use of arts and cultural facilities and activities throughout the region to our growing visitor industry in collaboration with MAC, BCA, POVA, the Regional Art Network and Washington, Clackamas and Clark County tourism councils.*

\$5,000      \$20,000

4) Regional Events and Access Campaign

Key tool will be production, marketing and distribution of an events and activities calendar, possibility in collaboration with the Oregonian. Emphasis on family activities. PCPA events and activities will be prominently featured in all aspects of the regional public information campaign. Up to \$10,000 has been designated for PCPA's use in a partnership with businesses for bi-monthly calendars of upcoming events.

\$20,000      \$50,000

**Total Public Information/Outreach Expenditures    \$80,000    \$610,000**

[Additional PR and marketing projects planned by Northwest Business Committee for the Arts and the Metropolitan Arts Commission include launching and promoting the Regional Visual Chronicles, arts and cultural participation in the annual Our Children's Store, Tri-Met Field Trips/Arts Card promotion, Arts Plan 2000 Schools, Artquake and PDX TIX, Day of show half price ticket booth at POVA's Visitor Information Center]

**TOTAL METRO REQUEST AND MATCHING    \$125,000    \$766,500**

## STAFF REPORT

### IN CONSIDERATION OF RESOLUTION NO 94-2025 FOR THE PURPOSE OF ENTERING INTO A GRANT AGREEMENT WITH THE METROPOLITAN REGIONAL ARTS COUNCIL

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Date: August 11, 1994

Presented By: Don Rocks

#### BACKGROUND

During the FY 1994-95 budget process the Metropolitan Arts Commission (MAC), Northwest Business Committee for the Arts (NW BCA) and Metro Funding Task Force ("Knowles Committee") requested a \$145,000 appropriation from Metro to implement Task Force recommendations and strategies.

The council approved a sum of \$115,000 which is reflected in the adopted budget as a General Fund Special Appropriation. The MERC budgeted an additional \$10,000, which sum will be used to enhance the PCPA marketing program, bringing the total grant amount to \$125,000.

The MAC was to serve as the fiscal agent for the Metro grant and pass-through to the NWBCA monies earmarked for projects and activities to be performed by BCA. Concurrently, and extending over the approximately last 18 months, the MAC formed Transition Committee, chaired by Joyce Ashmanskas, Washington County, consulted broadly with representatives of arts organizations and governments regarding the most appropriate and efficient organizational vehicle for a regional arts commission.

The conclusion and recommendation to the main body was that a non profit entity should be formed. The new entity would essentially replace the MAC which was created by intergovernmental agreement between the City of Portland and Multnomah County. MAC subsequently made presentations to local governments throughout the region including Metro.

The Metropolitan Regional Arts Council is now in place as a 501 c (3) entity with articles of incorporation, by laws and fiscal accounting systems in place. The full transition is expected to be complete by mid January, 1995.

Meeting Date: August 25, 1994  
Agenda Item No. 6.4

RESOLUTION NO. 94-2018A

## FINANCE COMMITTEE REPORT

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### RESOLUTION NO. 94-2018A, AUTHORIZING A LEASE WITH THE AMERICAN ADVERTISING MUSEUM FOR SPACE IN THE METRO REGIONAL CENTER

Date: August 15, 1994

Presented by: Councilor Kvistad

**COMMITTEE RECOMMENDATION:** At its August 10 meeting the Finance Committee voted 5-0 to recommend Council adoption of Resolution No. 94-2018A. Voting in favor were Councilors Monroe, Gardner, Kvistad, McLain, and Washington. Councilors Buchanan, Devlin, and Van Bergen were absent.

**COMMITTEE DISCUSSION/ISSUES:** Principal Analyst Berit Stevenson presented the staff report. She said this lease was the result of months of negotiations with the American Advertising Museum to fill the gallery space along Grand Avenue in Metro Regional Center. That space was required by the City of Portland to be built for a retail tenant. Council Analyst Casey Short said the changes in the "A" version before the committee were housekeeping only.

In response to a question from Councilor McLain, Ms. Stevenson said the lease payments included Metro payment of utilities and regular janitorial services. Councilor McLain asked about security for the space and access to the parking garage. Ms. Stevenson said there is a back door which opens to the garage, which must remain unlocked during business hours under fire safety codes. She assured Councilor McLain that Metro's security office was next to that door, and that it is monitored by Metro's security cameras; she added that the door in question would be available only for Museum staff and not the general public.

Councilor Kvistad asked if the rent per square foot was competitive with the market. Ms. Stevenson said it is, although the space is not ideal for retail space because Grand Avenue is not an active pedestrian area. Councilor Kvistad asked what a comparable rate would be in the area, and Ms. Stevenson said Metro is discussing lease terms for the Plaza space at \$12/square foot. (The rate in the lease for the Advertising Museum is \$7.08/square foot.)

In response to a question from Councilor Washington, Ms. Stevenson said the goal for leasing this space was to cover our costs and make a little more, and this lease does that. She said she thought this was a good deal for Metro because it met those goals. Councilor Monroe added that it would provide an additional place for convention attendees to go in the neighborhood.

Councilor Gardner asked if this met the City's requirement that the space be a retail space. Ms. Stevenson said the requirement was to build the space for retail, and that requirement was met by building it out. She added that the Advertising Museum does have a gift shop, so there should be no question the requirement is met.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AUTHORIZING )  
A LEASE WITH THE AMERICAN )  
ADVERTISING MUSEUM FOR )  
SPACE IN THE METRO )  
REGIONAL CENTER )

RESOLUTION NO. 94 - 2018<sup>A</sup>

Introduced by  
Rena Cusma  
Executive Officer

WHEREAS, A requirement of the City of Portland Zoning Code was the inclusion of retail space along Grand Avenue at Metro Regional Center; and

WHEREAS, a 2,652 square foot gallery space was designed and constructed and is located at the south end of the Metro Regional Center on the first floor, thereby complying with the City of Portland zoning requirement; and

WHEREAS, A Lease, a copy of which is attached as Exhibit A, has been prepared which provides for the tenancy of the American Advertising Museum in the gallery space;

WHEREAS, Prior approval of leases of real property owned by the District is required by Metro Code 2.04.033 (a) (3) now, therefore;

BE IT RESOLVED, that the Metro Council authorizes the Executive Officer to execute the attached Lease attached as Exhibit A with the American Advertising Museum.

ADOPTED by the Metro Council this \_\_\_\_\_ day of August, 1994.

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

## LEASE

THIS LEASE made as of this \_\_\_\_\_ day of \_\_\_\_\_ 1994, between METRO, hereinafter referred to as "Landlord," whose address is 600 N.E. Grand Avenue, Portland, OR 97232-2736, and the AMERICAN ADVERTISING MUSEUM, whose address is Nine N.W. Second Avenue, Portland, OR 97209, hereinafter referred to as "Tenant."

### RECITALS

1. Landlord owns and occupies the ~~Premises Building~~ located at 600 NE Grand Avenue, Portland, Oregon 97232-2736, ~~and described herein on Exhibit "A." and known as the Metro Regional Center.~~
2. Tenant desires to lease a portion of ~~these Premises~~ the Building from Landlord.
3. The parties desire to have a Lease agreement defining the terms of the Lease.

In consideration of the mutual covenants contained herein, the parties agree as follows:

**SECTION 1. PREMISES.** Tenant leases from Landlord ~~a portion of the Premises as described in Exhibit Attachment "A."~~

### **SECTION 2. TERM; POSSESSION.**

2.1 Term. The Lease Term shall commence January 1, 1995 (the "Commencement Date") and continue through December 31, 1997 unless sooner terminated pursuant to the terms hereof. A "Lease Year," as such term is used herein, shall run from the Commencement Date or its anniversary ("Anniversary") until the day immediately preceding the next Anniversary.

2.2 Renewal Option. In the event the Lease is not in default at the time the option is exercised and at the time the renewal term is to commence, then Tenant shall have the option to renew this Lease for one (1) term of two (2) years, as follows:

a) Commencement. The renewal term shall commence on the day following expiration of the original term.

b) Exercise. The option may be exercised by written notice to Landlord given not less than one hundred and twenty (120) days prior to the last day of the expiring term. The giving of such notice shall be sufficient to make the Lease binding for



the renewal term without further act of the parties. Landlord and Tenant shall then be bound to take the steps required in connection with the determination of rent as specified below.

c) **Terms and Conditions.** The terms and conditions of the Lease for each renewal term shall be identical with the original term, except for the applicable rent and except that Tenant will no longer have any option to renew this Lease. No additional security deposit, other than the original \$1,500 security deposit, shall be required during the renewal term. Rent for the option period shall be determined by the following method:

1) compute the percent increase, if any, of the Consumer Price Index published by the United States Department of Labor for the Portland, Oregon, metropolitan area for all urban consumers or the nearest comparable data on changes in the cost of living for the Portland metropolitan area as selected by Landlord if such index is no longer published ("CPI") between that most recently published as of the current Anniversary and that published as of the immediately preceding Anniversary;

2) multiply the Rent for the immediately preceding Lease Year by said percent; provided, however, that, at the minimum, the Rent shall be increased by 4 percent of the immediately preceding Lease Year's Rent and that, at the maximum, by 6 percent of the preceding Lease Year's Rent; and

3) add the product so obtained to the Rent for the immediately preceding year, with the sum to be the Rent for the option period.

2.3 **Tenant's Work.** Landlord will notify Tenant when the Building and Premises are ready for the commencement of Tenant's work and installation of Tenant's improvements, personal property and performance of other work. Tenant, on request, will apprise Landlord of the date when the Premises are then expected to be ready for occupancy. Tenant will promptly perform the work, if any, required to ready the Premises for Tenant's possession and use, in accordance with the ~~terms drawing~~ attached as ~~Exhibit Attachment~~ "B." If Landlord requires, Tenant shall, at Tenant's expense, return the premises to their original condition upon the termination of this Lease. Landlord shall not be required to perform any work to ready the Premises for Tenant's occupancy.

2.4 **Delivery of Possession.** Delivery of possession of the Premises (the "Possession Date") will occur when Tenant actually occupies or takes possession of the Premises by, among other things, moving equipment, fixtures, materials, or other personal property onto the Premises, or by commencement of Tenant's improvements to the Premises. Tenant shall not so occupy or take possession of the Premises without first giving Landlord written notice thereof. Landlord shall have no liability for delays in delivery of possession caused by labor disputes, shortages of materials, acts of God, holdover by prior tenants, or other causes. All obligations of Tenant under this Lease, with the exception of payment of Rent, shall commence as of the Possession Date. Payment of Rent shall commence as of the Commencement Date. Tenant shall not have the right to terminate this Lease because of

delay in the delivery of possession for any reason, unless possession is delayed beyond October 1, 1994; provided that Tenant shall have no right to terminate if said delay is caused by the direct action or inaction of Tenant. In order to exercise the limited right to terminate provided for by the previous sentence, Tenant shall, at its option, give written notice to Landlord of the termination prior to the tender of possession to Tenant, thereby terminating its future obligations under this Lease; provided, however, that Landlord shall not be liable to Tenant for any damages, but shall be required to return Tenant's security deposit and pre-paid rent. Notwithstanding the above, if possession is not delivered to Tenant on or before the Commencement Date, Tenant's obligation to pay Rent will be delayed until possession is delivered, that is Tenant shall be entitled to one additional days free rent for each additional day which possession is delayed.

**SECTION 3. RENT.** Tenant shall pay to Landlord the Rent monthly for the Premises and any additional rent provided herein without deduction or offset. Rent for any partial month during the term shall be prorated to reflect the number of days during the month the Tenant occupies the Premises. Additional rent means amounts determined under Paragraph 4 of this Lease.

Rent for the first three (3) months of the Lease Term shall be zero. Rent for the remaining thirty-three (33) months of the Lease Term shall be \$1,564.68 per month, which is based on a yearly rate of \$7.08 per sq. ft. Tenant acknowledges that the First Year Rent, as well as rent for all subsequent years of the Lease, is computed based on 2,652 sq. ft., the square footage of the Premises.

3.1 Time and Place of Payment. Rent will be paid in advance on the first day of each month at the address for Landlord set forth in this Lease. Rent is uniformly apportionable day to day.

3.2 Security Deposit. Upon execution of this Lease, Tenant shall pay a security deposit to Landlord in the amount of \$1,500. The deposit shall be held by Landlord to secure all payments and performance due from Tenant under this Lease. Landlord may commingle the deposit with its funds and will owe no interest on the deposit. Landlord may apply the deposit to the cost of performing any obligation which Tenant fails to perform within the time require by this Lease, but such application by Landlord shall not be the exclusive remedy for Tenant's default. If the deposit is applied by Landlord, Tenant shall pay the sum necessary to replenish the deposit to its original amount upon Landlord's demand. To the extent not applied by Landlord, the deposit shall be refunded to Tenant within ten (10) days after expiration of the Lease Term.

**SECTION 4. UTILITIES; CUSTODIAL; OTHER CHARGES.** This is a "full service" Lease. Landlord is responsible for providing the following:

Assessments; Capital Improvement Assessments. All assessments (excluding real property taxes), and public charges on the Building and underlying real property.

**Utilities.** All utilities and services on the Building including electricity, gas, sewer and water, property insurance, garbage and recycling haul services.

**Common Area Maintenance.** The maintenance and operation of the Common Areas. "Common Areas" as used herein shall be defined as: all areas of the Building and the underlying real property not otherwise leased to a tenant, including, but not limited to, the breezeway and Lobby areas (including areas covered by awnings), the garbage and recycling area, all landscaped areas including those along the public streets (but excluding the parking area) and all Building mechanical elements.

**4.1 Extraordinary Operating Costs.** The parties recognize that by virtue of extraordinary use of the Premises by Tenant, extraordinary operating costs may result. Therefore, the parties agree that the Rent is based only upon use of the Premises during ordinary business hours of the Tenant and employing ordinary office equipment. Tenant agrees to pay as additional rent any such extraordinary operating expenses within forty-five (45) days of demand by Landlord.

**4.2 Real Property Taxes.** Tenant represents that Tenant is a tax-exempt entity and has no responsibility for payment of property taxes. If Tenant's representation is inaccurate or, if, for any reason whatsoever, Tenant's tax-exempt status is revoked, all real property taxes which are assessed as a result of Tenant's occupancy of the Premises will become due by Tenant as Rent. Tenant shall make such payments by November 1 in the year in which they are assessed.

**SECTION 5. PARKING.** Tenant shall have the option of purchasing from Landlord the use of up to five (5) monthly parking spaces in the adjacent Metro Grand and Irving Parking Garage at the then current monthly rate. Use is limited to normal business hours during weekdays, except during recognized public holidays. Tenant will be separately billed monthly for the use of the parking spaces. This option for parking spaces is subject to the usual terms and conditions of the standard parking space rental agreement. No visitors' parking is provided under this Lease.

**SECTION 6. USE.** Tenant shall use the Premises for the display space associated with the American Advertising Museum and for no other purposes without Landlord's written consent. A more detailed description of the American Advertising Museum's operation is attached as ~~Exhibit~~ Attachment "C." Tenant shall at its expenses promptly comply with all applicable laws, ordinances, rules and regulations of any public authority and shall not annoy, obstruct, or interfere with the rights of other Building occupants.

**SECTION 7. MAINTENANCE AND ALTERATIONS.**

**7.1 Tenant's Obligations.** Landlord shall not be required to make any repairs, alterations, additions or improvements to or upon the Premises or Building during the term of this Lease, except only those specifically hereinafter provided for in Section 8.2

below. Tenant hereby agrees to maintain and keep the Premises, including all interior doors and relites in as good repair, operating condition, working order, and appearance, and as clean and safe during the entire term of this Lease as they were as of the Possession Date, at Tenant's own cost and expense. In this regard, Tenant shall, as necessary: a) replace equipment and fixtures, b) replace broken or damaged interior and exterior glass in the windows and doors of the Premises with glass of as good or better quality as that now in use, and c) paint the interior of the Premises. Finally, Tenant hereby agrees to be responsible and pay for the repair or replacement of any part of the Building damaged as a result of the action or inaction of Tenant or its agents, independent contractors, employees, suppliers or invitees; provided that Tenant's obligation to pay for the damage caused by its invitees and suppliers shall be limited to damages to the (Tenant's interior) Premises, its windows or doors only.

7.2 Landlord's Obligations: Representations. Landlord agrees to maintain in good order and repair during the term of this Lease the exterior walls, roof, gutters, downspouts, structural systems and foundation, heating, ventilating and cooling systems, interior wiring, plumbing and rain pipes of the Building. It is understood and agreed that Landlord reserves and at any and all times shall have the right to repair or improve the Building or to add thereto, and, for that purpose, at any time may erect scaffolding and other necessary structures about and upon the Building and Premises. In such event, Landlord and Landlord's representatives, contractors and workmen may enter in or about the Building and Premises with such materials as Landlord may deem necessary therefor. Tenant waives any claim against Landlord for damages, including disruption of business resulting therefrom, caused by third parties not in Landlord's control. To the best of Landlord's knowledge, the Premises as turned over to Tenant will be in compliance with the structured requirements of the Americans with Disabilities Act ("ADA"). To the extent the Premises are not, Landlord will be responsible for compliance. (This shall not reduce Tenant's obligation itself to comply with the requirements of the ADA with respect to its own leasehold improvements).

7.3 Alterations; Signs. Tenant shall not alter, add to or improve the Premises, Building or install additional electrical equipment, machinery or any signs without Landlord's prior written consent. All alterations shall be made in a good and workmanlike manner, and any alterations and fixtures, including partitions, plumbing, electrical wiring and other additions and improvements, installed by Tenant (other than trade fixtures and equipment) shall become part of the Building and belong to Landlord. The parties specifically agree as follows:

Signs. Landlord will consider, in its sole discretion, allowing Tenant to place signage identifying Tenant on the Building facade. Landlord's prior approval of the proposed placement and design of signage by Tenant is required prior to installation of Tenant signage. All Tenant signage shall be in conformance with the sign code, shall not damage the Building's exterior, and in Landlord's reasonable opinion shall be tasteful. In any event, the signage and its installation shall be at the sole cost and expense of Tenant.

**SECTION 8. LIENS.** Tenant shall pay as due all claims for work done on or for services rendered or material furnished to the Premises or, on its behalf, to the Building, and shall keep the Premises and the Building free from any liens other than liens created by Landlord or other tenants; provided, however, that, so long as Tenant escrows cash with Landlord or provides a surety bond sufficient to pay the claim or lien, Tenant shall not be required to pay a claim or lien which it is validly contesting and the non-payment of which does not constitute a default by Landlord under any financing against the Building. If Tenant fails to pay such claim or to discharge any lien created or suffered by Tenant, Landlord may do so and collect such amount as additional rent. Amounts paid by Landlord shall bear interest and be repaid by Tenant as provided in paragraph 11.3 below. Such payment by Landlord shall not constitute a waiver of any right or remedy Landlord may have because of Tenant's default.

**SECTION 9. DEFAULT BY TENANT.** The following shall be events of default by Tenant:

9.1 Payment Default. Failure of Tenant to make any rent or other payment under this Lease within ten (10) days after it is due; provided, however, that Landlord shall give Tenant notice and five (5) business days following such notice to cure such default. However, Landlord shall have no obligation to give notice if Landlord has previously given Tenant notice of a failure to make the same type of payment twice in the last twelve (12) months.

9.2 Unauthorized Transfer. Tenant makes any transfer without Landlord's prior written consent as required under paragraph 9.1.

9.3 Abandonment of Buildings. Tenant abandons the Building, for which purpose "abandons" means a failure by Tenant to occupy and use the Building for the purposes permitted under this Lease for a total of seven (7) business days or more during the Lease Term, unless such failure is excused under other provisions of this Lease.

9.4 Default in Other Covenants. Failure of Tenant to comply with any other term or condition or fulfill any other obligation of this Lease within thirty (30) days after notice by Landlord specifying the nature of the default with reasonable particularity.

**SECTION 10. DEFAULT BY LANDLORD.** Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time. However, Landlord shall perform its obligations within thirty (30) days after receiving written notice from Tenant specifying where and how Landlord has failed to perform its obligations. However, if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

**SECTION 11. REMEDIES ON DEFAULT.** Upon default, Landlord may exercise any one or more of the following remedies, as well as any other remedy available under applicable law:

11.1 Retake Possession. Landlord may reenter and retake possession of the Premises either by summary proceedings, force, any other applicable action or proceeding, or otherwise, all without notice to Tenant except as may be required by law. Landlord may use the Premises for Landlord's own purposes or relet it upon any reasonable terms without prejudice to any other remedies that Landlord may have by reason of Tenant's default. None of these actions will be deemed an acceptance of surrender by Tenant.

11.2 Damages for Default. Whether or not Landlord retakes possession or relets the Premises, Landlord may recover all damages caused by the default (including but not limited to unpaid rent, reasonable attorneys' fees relating to the default, and reasonable costs of reletting). Landlord may sue periodically to recover damages as they accrue during the remainder of the Lease Term without barring a later action for further damages. Landlord may at any time bring an action for accrued damages plus damages for the remaining Lease Term.

11.3 Cure of Tenant's Default. Without prejudice to any other remedy for default, Landlord may perform any obligation or make any payment required to cure a default by Tenant. The cost of performance, including reasonable attorneys' fees and all disbursements, shall immediately be repaid by Tenant upon demand, together with interest from the date of expenditure until fully paid at the rate of 15 percent per annum, but not in any event at a rate greater than the maximum rate of interest permitted by law.

**SECTION 12. SURRENDER AND EXPIRATION.**

12.1 Condition of Building. Upon expiration of the Lease Term or earlier termination on account of default, Tenant shall deliver all keys to Landlord and surrender the Premises in first-class condition. Depreciation and wear from ordinary use for the purpose for which the Building was let need not be restored, but all repairs for which Tenant is responsible' shall be completed to the latest practical date prior to such surrender.

12.2 Fixtures. Tenant shall promptly remove all of its furnishings, furniture, and trade fixtures that remain the property of Tenant and reasonably restore all damage caused by such removal. If Tenant fails to effect such a removal within twenty (20) days after Landlord's notice in writing and request for removal, this failure shall constitute an abandonment of the property and Landlord may retain the property and all rights of Tenant with respect to it shall cease. In the alternative, by notice in writing given to Tenant within twenty (20) days after removal was required, Landlord may elect to hold Tenant to its obligation of removal. If Landlord elects to require Tenant to remove, Landlord may effect a removal and place the property in public storage for Tenant's account. Tenant shall be

liable to Landlord for the cost of removal, restoration, transportation to storage, and storage, with interest on all such expenses as provided in paragraph 12.3 below.

12.3 Holdover. If Tenant does not vacate the Premises at the time required, Landlord shall have the option to treat Tenant as a tenant from month to month, subject to all of the provisions of this Lease (except that the term will be month to month and the initial Base Rent will be 115 percent of the amount of Base Rent being paid by Tenant at the expiration of the Lease Term), or to eject Tenant from the Premises and recover damages caused by wrongful holdover.

12.4 For Sale and For Rent Signs. During the period of one hundred (100) days prior to the date above provided for the termination of this Lease, Landlord may post on the Building thereof signs notifying the public that the Premises are "for sale" or "for lease;" provided, however, that any signs outside the Premises shall be above the level of the Premise's windows.

**SECTION 13. INSURANCE**. The Tenant shall hold and save harmless Metro, and indemnify, and defend its elected officials, employees, and agents from damages arising out of acts of Tenant, Tenant employees, agents, and visitors. Tenant shall continuously maintain at its expense comprehensive general liability insurance on its business in the Premises with a combined single limit of One Million Dollars (\$1,000,000), or such higher limits as Landlord may reasonably require from time to time. Tenant shall also maintain such other insurance on Tenant's operation as Landlord may reasonably require during the Lease Term. All such insurance shall name Landlord, its elected officials, departments, agents and employees, as an additional insured and shall contain a contractual liability endorsement referring to this Lease. The policies shall be in a form, amounts and with companies reasonably acceptable to Landlord. Certificates evidencing such insurance and bearing endorsements requiring thirty (30) days' written notice to Landlord prior to any change or cancellation shall be furnished to Landlord prior to Tenant's occupancy of the Building. Tenant shall also notify Landlord prior to any change or cancellation of such insurance.

**SECTION 14. WAIVER OF RIGHTS**. Each party hereby releases the other from any and all liability or responsibility to the other (or anyone claiming through or under them by way of subrogation or otherwise) for any loss or damage to the Premises, the Building, or property thereon caused by peril which would be covered by a standard "all risks" property insurance policy and water damage, whether or not such insurance is in force or is collectible, even if such loss or damage shall have been caused by the fault or negligence of the party, or anyone for whom such party may be responsible.

**SECTION 15. ASSIGNMENT AND SUBLETTING**. Tenant shall not assign this Lease or further sublet all or part of the Premises without the prior written consent of Landlord. Landlord shall not unreasonably withhold consent to any assignment or subletting provided the proposed tenant is compatible with Landlord's standards for the Building and is

financially sound. The giving of such consent in one instance shall not preclude the need for Tenant to obtain Landlord's consent to further transfers.

**SECTION 16. ATTORNEYS' FEES.** In the event of any suit or action by either party to enforce any provision of this Lease, or in any other suit or action arising out of or in connection with this Lease, the prevailing party shall be entitled to recover its costs of suit or action and reasonable attorneys' fees whether at trial or appeal.

**SECTION 17. CUMULATIVE RIGHTS AND REMEDIES.** No right or remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other rights and remedies at law or in equity.

**SECTION 18. TIME OF THE ESSENCE.** Time is of the essence of the performance of each of Tenant's obligations in this Lease.

**SECTION 19. AMENDMENTS.** This Lease shall not be amended or modified except by agreement in writing signed by both parties.

**SECTION 20. EXHIBITS/ATTACHMENTS.** ExhibitAttachment "A," ExhibitAttachment "B" and ExhibitAttachment "C" which are referred to in this Lease are attached hereto and by this reference incorporated herein.

**SECTION 21. CONSENT OF LANDLORD.** Whenever consent, approval or direction by Landlord is required under the terms contained herein, all such consent, approval or direction must be in writing.

**SECTION 22. QUIET POSSESSION.** Upon Tenant paying the rent reserved hereunder and observing and performing all of the covenants, conditions and provisions on Tenant's part to be observed and performed hereunder, Tenant shall have quiet possession of the Premises for the entire term hereof, subject to all provisions of this Lease.

**SECTION 23. SECTION HEADINGS.** The section headings to the sections of this Lease are not part of the Lease and shall have no effect upon the construction or interpretation of any part of it.

**SECTION 24. COMPLETE AGREEMENT.** There are no oral agreements between Landlord and Tenant affecting this Lease, and this Lease supersedes and cancels any and all previous negotiations, arrangements, brochures, advertising, agreements and understandings, oral or written, if any, between Landlord and Tenant or displayed by Landlord or its agents to Tenant with respect to the subject matter of this Lease, the Premises or the Building. There are no representations between Landlord and Tenant other than those contained in this Lease and all reliance with respect to any representations is solely upon representations contained in this Lease.



**SECTION 25. THIRD PARTIES.** Landlord and Tenant are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, or indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its term.

**SECTION 26. ESTOPPEL CERTIFICATES.** Within seven (7) days after Landlord's written request, Tenant shall deliver a written statement stating the date to which the rent and other charges have been paid, whether the Lease is unmodified and in full force and effect, and any other matters that may reasonably be requested by Landlord.

**SECTION 27. INSPECTION.** Landlord or its authorized representatives may enter at any time to determine Tenant's compliance with this Lease, to make necessary repairs, or to show the Premises and Building to any prospective tenants or purchasers; provided, however, that, except in the case of emergency repairs, such entry will be: a) made only on at least 24 hours prior oral or written notice, b) during normal business hours, and c) with an employee or Tenant to accompany Landlord or its representatives.

**SECTION 28. REPRESENTATIONS.** Tenant certifies that no representations as to the condition or repair of the Premises have been made by Landlord or its agents, and that no agreement to alter, repair, or improve said Premises has been made by Landlord, except as expressly set forth herein.

**SECTION 29. NOTICES.** Notices under this Lease shall be in writing, effective when delivered, or if mailed, effective on the second day after mailed postage prepaid to the address for the party set forth on page 1 of this Lease, or to such other address as either party may specify by notice to the other. Rent shall be payable to Landlord at the same address and in the same manner.

**SECTION 30. PARTIAL INVALIDITY.** Any provision of this Lease which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and other provisions shall remain in full force and effect.

**SECTION 31. OBSERVANCE OF LAW.** Tenant, at Tenant's expense, shall comply with all laws, rules, orders, ordinances, directions, regulations, and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force during the term of this Lease, which shall impose any duty upon Landlord or Tenant with respect to the use, occupation or alteration of the Premises.

////

**SECTION 32. CHOICE OF LAW.** This Lease shall be governed by the laws of the State of Oregon.

**AMERICAN ADVERTISING MUSEUM**

**METRO**

\_\_\_\_\_

\_\_\_\_\_

**Rena Cusma, Executive Officer**

Date \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

\_\_\_\_\_

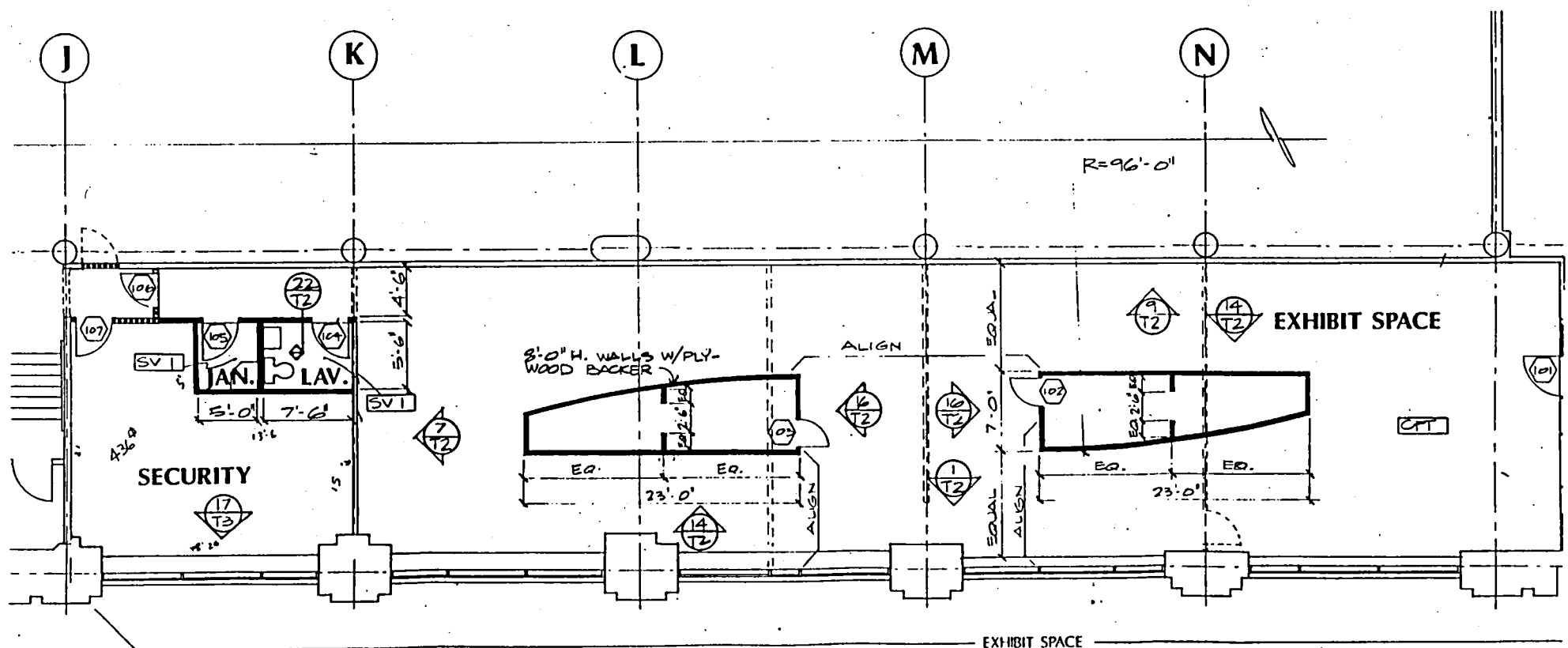
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**Daniel B. Cooper, General Counsel**

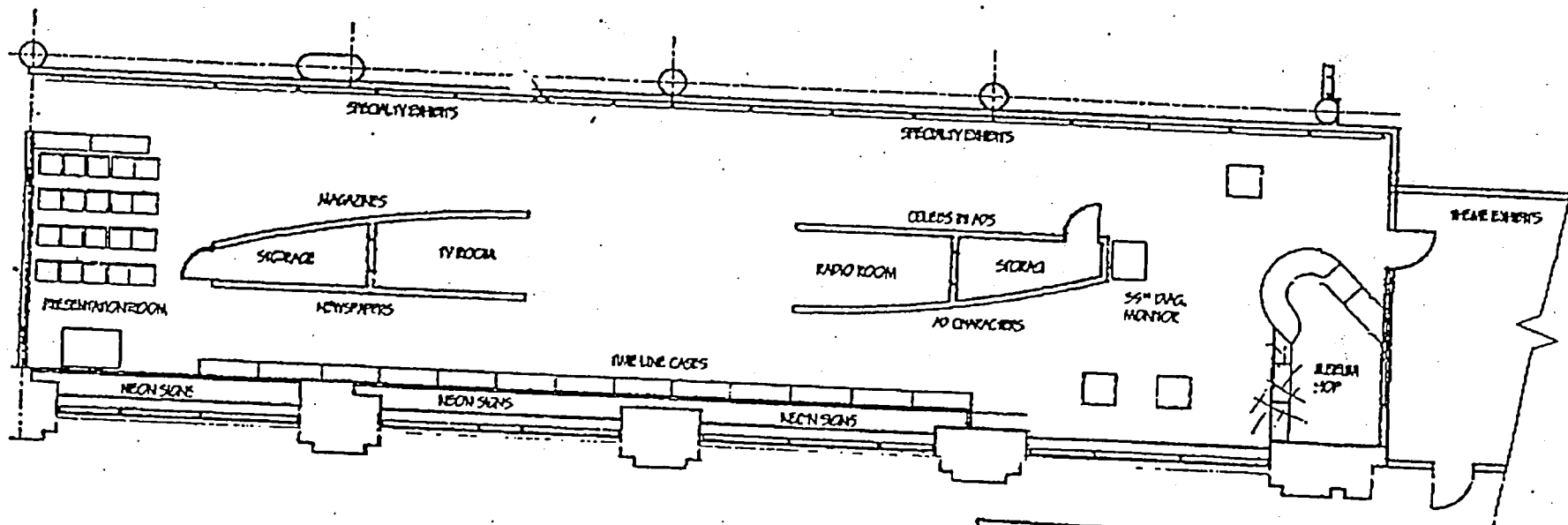
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1209



Grand Avenue



AD MUSEUM FLOOR PLAN 1/8" = 1'

PRELIMINARY DRAWING


**COLOR & DESIGN EXHIBITS INC**  
 PORTLAND • SEATTLE • SAN JOSE  
 (503) 243-8400 (206) 622-7764 (408) 432-2228

8.1.94

~~(EXHIBIT)~~ Attachment C  
Lease Agreement  
American Advertising Museum/Metro

1. The American Advertising Museum will have full discretion in establishing its hours of operation which will include weekday as well as Saturday and Sunday public visiting hours, evening public visiting hours, and evening private party hours.
2. The American Advertising Museum will have full discretion in establishing its admission fees including fees to public visitors, fees for private and public events, and fees for tours.
3. The American Advertising Museum will have full use of the Premises for Museum sponsored events which may include admission fees and/or group rental fees.
4. The American Advertising Museum is permitted to serve and/or sell food and beverages including alcoholic beverages in conjunction with its private and/or public special events. The American Advertising Museum will be responsible for securing any required permits or licenses.
5. Musical entertainment will be permitted in conjunction with Museum special events provided there is no disruption of other Metro building occupants and such entertainment is in accordance with city ordinances.
6. Subject to availability and prior arrangement with the landlord, The American Advertising Museum will have use of the North Plaza for special private and/or public events. It is understood that there will be no additional rental charge, but it is agreed that the Museum will pay extra-ordinary costs should they occur.
7. Subject to availability and prior arrangement with the landlord, The American Advertising Museum will have use of Metro conference room space during Metro's regularly scheduled hours. It is understood that there will be no additional rental charge, but it is agreed that the Museum will pay extra-ordinary costs should they occur.
8. The American Advertising Museum accommodates tour groups periodically during regular public visiting hours. In the event additional rest room capacity is needed to serve these tour groups, the American Advertising Museum will have access to rest rooms off the main lobby area and off the South lobby area through the garage. At the discretion of Metro, additional security maybe required for this access. In the event additional security is required, the Museum will be responsible for such additional security as an extraordinary cost.
9. For after hours events the Museum can arrange for security to be on duty to provide guests with access to the rest room areas referenced in point #8. The charge for security will be an extraordinary operating cost. The Museum needs to arrange for security through Metro Security manager at least one week in advance of event.
10. "Extraordinary Operating Costs" as referenced under Section 4.1 are those not included or covered by rent and the normal services provided under this lease. These costs may be applicable during the Museum's hours of operation which do not coincide with Metro's regular hours as specified in point #10. These costs will be assessed on an hourly basis as follows:

Security: \$14.00 per hour per person  
Cleaning: \$16.00 per hour per person  
HVAC: \$5.00 per hour

If these actual costs to Metro increase, the increase will be passed on to The American Advertising Museum.

The Museum will not be required to hire additional security or cleaning service on Sundays for regular visiting hours. Should the Museum need cleaning services beyond the hours defined in point #11 below, it will be assessed on an hourly basis.

11. Metro's normal business hours are Monday through Friday from 7:00 a.m. to 6:00 p.m. and Saturday from 8:00 a.m. to 5:00 p.m. except for holidays (see attached). These are the normal hours of HVAC service included in the Museum's rent. It is understood that the Museum will be open on Sundays from 12 noon to 5:00 p.m., and will be charged extra for HVAC at a rate of \$5.00 per hour for each Sunday the Museum operates. HVAC can also be arranged for after hours evens and Metro holidays at a rate of \$5.00 per hour.
12. By special notice, the Museum may request their normal cleaning service be completed after evening events provided the cleaning crew has access to the Museum space by 10:00 p.m., and that service can be completed by 12 midnight. Service required after 12 midnight will be at time and a half. See point #9.
13. Should the Museum need additional cleaning services, it may scheduled these with Metro. The charge for these services will be an "Extraordinary Operating Cost." Arrangements for additional cleaning services need to be made at least one week in advance.
14. The American Advertising Museum will be able to use its window space for appropriate Museum signage including neon, directionals, and event promotions pending prior approval of the landlord. It is understood that the Museum has sole discretion as to the hours its neon signs may remain illuminated as long as these hours are in compliance with any city sign/code requirements.
15. Suppliers to the American Advertising Museum, i.e. caterers and movers, will have access to the garage and its entrance to the Museum space for the purposes of loading and unloading. Arrangements need to be made at least one week in advance. Additional security maybe required and would be considered an extraordinary operating cost.
16. Subject to prior approval by Metro, the Museum may install a security system exclusive to its space. It is understood that the Museum's garage entrance is monitored by Metro security.
17. It is understood that (routing) routine maintenance will be handled by Metro.

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NUMBER 94-2018 WHICH AUTHORIZES A LEASE WITH THE AMERICAN ADVERTISING MUSEUM FOR SPACE IN THE METRO REGIONAL CENTER

Date: July 25, 1994

Presented by: Berit Stevenson

FACTUAL BACKGROUND AND ANALYSIS

As a part of the design and construction of the improvements at the Metro Regional Center, a Gallery space was included and is located on the first floor along Grand Avenue. The 2,652 square foot space responds to a requirement of the City of Portland Central City Plan to provide for retail space along at least 50 % of the Grand Avenue building frontage.

General Services staff have been negotiating a tenancy with staff of the American Advertising Museum and have prepared the attached Lease. The lease provides for a three year term with an additional two year option. Monthly base rent for the space will be \$1,564.68. This figure includes the amortization of the first three months of rent which will be deferred and amortized over the term of the lease to assist the Advertising Museum during their move. The direct operating expenses of the space have been estimated to be \$4.38 per square foot. The lease rate equates to \$6.50 per square foot.

In addition to base rent, the Advertising Museum will pay extra-ordinary expenses which result from their operations. An example of these would be the cost of additional security which would be necessary during evening gallery events. All other operating expenses such as utilities are included in the base rent.

The lease includes an attachment entitled Summary - Points of Agreement which describes the operations of the Advertising Museum in more detail. Specifically, the Museum is open to the general public, charges an admission fee and hosts gallery opening events which occur after hours and include a typical gallery reception with an attendance of 100 to 200 persons. The Museum is currently open for business Tuesday through Sunday and expects to maintain similar hours of operation.

BUDGET IMPACT

Revenues which would accrue from this lease have not been reflected in the FY 94-95 budget. Therefore, enterprise revenues will be higher than expected. This will result in a decrease in the amount of interfund transfer to the Bulding Management Fund necessary for Regional Center debt service.

RECOMMENDATION

The Executive Officer recommends approval of Resolution No. 94-2018.

Meeting Date: August 25, 1994  
Agenda Item No. 6.5

RESOLUTION NO. 94-2021



FINANCE COMMITTEE REPORT

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RESOLUTION NO. 94-2021, AMENDING A CONTRACT WITH TALBOT, KORVOLA & WARWICK FOR FY 94-95 PERFORMANCE AUDIT SERVICES

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Date: August 15, 1994

Presented by: Councilor Gardner

**COMMITTEE RECOMMENDATION:** At its August 10, 1994 meeting the Finance Committee voted 5-0 to recommend Council adoption of Resolution No. 94-2021. Voting in favor were Councilors Monroe, Gardner, Kvistad, McLain, and Washington. Councilors Buchanan, Devlin, and Van Bergen were absent.

**COMMITTEE DISCUSSION/ISSUES:** Council Analyst Casey Short presented the staff report. He summarized that the proposal is to have the Council's contracted performance auditors review Metro's cost allocation plan, with three purposes as noted in the written staff report: comply with the Council's commitment to review the cost allocation plan this fiscal year, as resolved in Resolution No. 94-1955; comply with federal government guidelines for grant recipients; and comply with bond requirements to have a qualified independent consultant review the cost allocation plan prior to January 1, 1995.

There was no substantive committee discussion.

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF AMENDING A ) Resolution No. 94-2021  
CONTRACT WITH TALBOT, KORVOLA & )  
WARWICK FOR FY 94-95 PERFORMANCE ) Introduced by the  
AUDIT SERVICES ) Finance Committee

WHEREAS, The Metro Council has entered into a Personal Services Contract with Talbot, Korvola & Warwick for Performance Audit Services (Metro Contract No. 902742); and

WHEREAS, The term of the Contract is from September 25, 1992 through June 30, 1995 with periodic amendments being required to determine a new Scope of Work and additional contract costs; and

WHEREAS, Resolution No. 94-1955, adopted by the Council on May 12, 1994, states that "the Council will review the Cost Allocation Plan with FY 94-95 Performance Audit funds to provide departments the most cost effective and appropriate method for allocating costs"; and

WHEREAS, The Finance Committee recommends that the Council's Performance Audit for FY 1994-95 focus on the Cost Allocation Plan; now, therefore,

BE IT RESOLVED,

1. That the Metro Council acting as the Contract Review Board exempts Contract Amendment No. 3 from the competitive procurement procedures of Section 2.04.053.

2. That the Metro Council approves Amendment No. 3 attached hereto to the contract with Talbot, Korvola & Warwick for performance audit services.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_,  
1994.

Judy Wyers, Presiding Officer

AMENDMENT NO. 3

ADDITIONAL SCOPE OF WORK AND CONTRACT AMOUNT

That Contract between Metropolitan Service District, hereinafter referred to as "Metro," and Talbot, Korvola & Warwick hereinafter referred to as "CONTRACTOR," dated November 13, 1992, for Performance Audit Services, Contract No. 902742 is hereby amended to 1) add the Scope of Work for FY 94-95 as described in Exhibit A attached hereto; and 2) increase the maximum amount that Metro shall pay to the CONTRACTOR for services provided to ONE HUNDRED THIRTY THOUSAND AND NO/100TH (\$130,000) dollars.

All other terms of the Contract remain in full force and effect.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

CONTRACTOR

METRO

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

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

## **METRO COST ALLOCATION PLAN SCOPE OF WORK**

Metro Resolution No. 94-1955 has established the use of FY1994-95 performance audit funds to review the Cost Allocation Plan to provide departments with the most cost effective and appropriate method for allocating costs. This exhibit describes the contractor's work plan, deliverables and budget for conducting a review of Metro's Provisional Indirect Cost Rate Proposal - the Cost Allocation Plan. The plan is prepared in accordance with Office of Management and Budget's Circular A-87.

The Cost Allocation Plan was designed to allocate indirect costs of Metro's support services functions - General Counsel, Public and Government Relations, Personnel, and the Departments of Finance and Management Information and General Services. Indirect costs that are allocated through the Plan have a "benefit or use" relationship to the respective funded departments. Two specific plans have been established - one to meet federal requirements and one for internal use. Both plans contain similar cost data with one major exception - the internal plan includes certain costs disallowed by the federal government. Our analysis will consist of a review of each plan.

The review will be conducted in two separate phases: a preliminary information gathering phase (Phase I) and in-depth review phase (Phase II). Phase I will identify requirements of the current Cost Allocation Plan and establish a basis for evaluation. Under Phase II, the contractor will conduct an in-depth review of the components of the Plan. Specifically the review will:

1. Assess Metro's allocation basis and application of costs within each operating department.
2. Determine the accuracy of the current Plan's methodology.
3. Determine what, if any, modifications to the current plan should be made to allocate costs in a simpler, more efficient manner.
4. Explore the feasibility and identify the effects of a direct cost plan.
5. Provide third party assurance to Metro Council and management that the current Cost Allocation Plan works as designed.
6. Identify where formalized policies need to be established.

### **WORK PLAN**

The work plan for the completion of the review of Metro's Cost Allocation Plan is set forth below. It is based on the assumption that the Council's Finance Committee will perform oversight of this review. If a different oversight arrangement is adopted by the Council, the contractor will modify the work program accordingly.

The level of effort, distributed by professional staff level, for the tasks set forth in the contractor's work plan are shown in the budget section of this scope of work. The contractor agrees to complete the work within 90 days of the execution of this contract.

We anticipate working extensively with applicable financial planning personnel and Council staff to assure project objectives are met.

## **PHASE I - Preliminary Information**

### **Task 1 - Conduct Start-up Activities**

This task will include:

- a). Conducting entrance conferences with key elected officials and management staff to introduce review team, refine scope and study objective and discuss project coordination.
- b). Collecting and reviewing key documents regarding the Cost Allocation Plan.

### **Task 2 - Establish a Basis for Evaluation**

This task includes conducting interviews with applicable Financial Planning personnel to gather additional information and to establish a basis for plan evaluation.

## **PHASE II - Detailed Review**

### **Task 3 - Perform an In-Depth Study**

This task includes a thorough evaluation of each component of the Plan and an assessment of the basis and distribution of indirect costs for each operating department. The degree to which the plan is meeting its stated purpose will result in an overall assessment for Metro.

### **Task 4 - Preparation of Results**

This task will include:

- a). Preparation of the draft report which summarizes the following:
  - scope of work performed
  - methodology for conducting the study
  - major findings in each area reviewed
  - conclusions of the study
  - recommendations
- b). reviewing the draft report with Council and financial planning personnel to:
  - provide an opportunity for additional explanation or clarification regarding the results of the study

- c). reviewing the draft report with Council Finance Committee to:
  - presents the results of the study
  - clarify any questions raised by the Committee
- d). finalizing the report:
  - make any necessary changes in the draft report based upon the review and comments
  - present the final written report to the Metro Council

## **DELIVERABLES**

Based on the Scope of Work, contractor will provide the following deliverables:

- a). Task 4 - Draft Report of findings, conclusions and recommendations developed in Phase II - Detailed Review
- b). Task 4 - At least 30 copies of the Final Report

## **METRO BOND REQUIREMENTS**

Specific Bond requirements exist concerning the Cost Allocation Plan. Metro Ordinance No. 91-439, Section 501(c) requires "On or before January 1 of every third year, commencing with the first January 1 which is not less than 30 months following the date upon which the first Series of Bonds is issued hereunder, the Issuer shall retain a Qualified Consultant to review its method of determining the Department Assessments and provide the Issuer, not later than March 1 of such year, a written report with respect thereto. In determining the Department Assessments, the Issuer shall give due consideration to any recommendations made by the Qualified Consultant and shall implement such recommendations unless the governing body of the Issuer, by resolution duly adopted, finds and determines that such recommendations are unreasonable, impractical or contrary to the requirements of law or established governmental policies of the Issuer."

As a supplement to the above scope of work, the contractor will expand the analysis to meet all specified requirements and provide a written report.

## **METRO CONTRACT MANAGER**

The Council Administrator shall serve as contract manager for this contract. The contractor agrees to provide periodic status reports to the contract manager and the Finance Committee as mutually agreed to by the contractor and contract manager.

## BUDGET

The proposed costs to accomplish this scope of work (\*) are as follows:

| Professional                     | Hours      | Rate  | Total           |
|----------------------------------|------------|-------|-----------------|
| Principal/Partner<br>Jack Talbot | 75         | \$100 | \$7,500         |
| Manager<br>Brad Rafish           | 195        | \$ 70 | 13,650          |
| Consultant<br>Wendy Levy         | 292        | \$ 45 | 13,140          |
| <b>TOTAL</b>                     | <b>562</b> |       | <b>\$34,290</b> |

### EXPENSES

|                   |     |
|-------------------|-----|
| Report production | 205 |
|                   | 505 |

|                            |                 |
|----------------------------|-----------------|
| <b>Total Project Costs</b> | <b>\$35,000</b> |
|----------------------------|-----------------|

\*Includes bond requirement supplemental

The rates shown are for FY1994-95 work. Contractor agrees that Mr. Jack Talbot and Mr. Brad Rafish will serve as the principal and manager respectively for the term of this contract unless Metro agrees to change the person(s) so designated.

## STAFF REPORT

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### DRAFT RESOLUTION NO. 94-2021, AMENDING A CONTRACT WITH TALBOT, KORVOLA & WARWICK FOR FY 94-95 PERFORMANCE AUDIT SERVICES

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Date: August 3, 1994

Presented by: Don Carlson

#### BACKGROUND

The Council entered into a three-year contract in 1992 with Talbot, Korvola & Warwick for performance audit services. Fiscal year 1994-95 is the third and final year of the contract, and the elected auditor assumes the responsibility for the performance audit program in January 1995. Prior performance audits performed under the current contract have addressed Metro's contracting process, the waste reduction program, and the public affairs function, at a total cost of \$95,000.

The Council adopted Resolution No. 94-1955 on May 12, 1994, "for the purpose of reiterating Council policy regarding support services cost allocation." This resolution was initiated, in part, in response to actions of the MERC Commission in adopting MERC Resolutions No. 94-15 and 94-20, which were intended to establish guidelines for MERC's acceptance of support costs. Both resolutions were returned to MERC in accordance with Metro Code provisions and did not become effective, but Councilors assured MERC representatives that a review of the Cost Allocation Plan would be done in FY 1994-95.

#### PROPOSED ACTION

Among the matters "resolved" in Resolution 94-1955 was the Council's pledge to review the Cost Allocation Plan in FY 1994-95 using the funds budgeted for the performance audit program. As stated in the scope of work for this audit, the review of the Cost Allocation Plan has three components:

- Metro's internal uses. This component includes examination of the methodology currently used to establish the Cost Allocation Plan, discussion of alternatives to the current system, recommendations for improvement to the current system, and an assessment of its equity .
- Compliance with federal government guidelines. The Planning Department receives significant funding assistance from the federal government for certain of its programs. In order to qualify for this assistance, Metro must conform with the federal government's rules regarding the allocation of support costs. The performance audit will assess Metro's compliance with these rules and recommend changes if needed.



- Compliance with bond requirements. As noted in the Scope of Work, Ordinance No. 91-439 requires Metro to retain a qualified consultant to review the Cost Allocation Plan by January 1, 1995. This audit will meet that requirement.

#### SUMMARY

The Council has directed that a performance audit of the Cost Allocation Plan be done this fiscal year, and the \$35,000 cost of the audit is available in the Adopted Budget (\$30,000 in the Council Department budget and \$5,000 in the Finance & Management Information Department budget). This audit will be the last done by Talbot, Korvola & Warwick under its contract with the Council, as the elected Auditor assumes responsibility for the performance audit function in January and there are only funds to pay for a single audit of the scope proposed. It is appropriate to begin this audit as soon as possible, in order to have it completed in time to incorporate any recommended changes to the Cost Allocation Plan for use in the 1995-96 budget process, and to conform with outside requirements.

Meeting Date: August 25, 1994  
Agenda Item No. 6.6


RESOLUTION NO. 94-2005



**METRO**

DATE: August 19, 1994

TO: Metro Council  
Executive Officer  
Agenda Recipients

FROM: Paulette Allen, Clerk of the Council 

RE: AGENDA ITEM NO. 6.6; RESOLUTION NO. 94-2005

Exhibit 1, "Minority, Women and Disadvantaged Business Goals," has been printed previously in the Finance Committee agenda packet. Due to the volume of that document, it has been separately from this agenda and will be provided at the Council meeting August 25, 1994.

## FINANCE COMMITTEE REPORT

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RESOLUTION NO. 94-2005, ADOPTING AN INTERIM CONTRACT SERVICES DIVISION REPORT ON MBE/WBE/DBE UTILIZATION, AND AUTHORIZING THE EXECUTIVE OFFICER TO EXECUTE A CONSULTANT SERVICES CONTRACT FOR METRO-WIDE SERVICE IMPROVEMENTS

Date: August 15, 1994

Presented by: Councilor Hansen

**COMMITTEE RECOMMENDATION:** At its August 10, 1994 meeting the Finance Committee voted 4-0 to recommend Council adoption of Resolution No. 94-2005. Voting in favor were Councilors Monroe, Gardner, McLain, and Washington. Councilors Buchanan, Devlin, Kvistad, and Van Bergen were absent.

**COMMITTEE DISCUSSION/ISSUES:** Procurement Officer Rich Wiley presented the staff report. He said there are two purposes of the resolution. The first is to continue with the process of implementing the recommendations of the 1992 performance audit of Metro's contracting process. The second is to improve Metro's Minority- and Women-owned business (MBE/WBE) contracting performance. He summarized the responsibilities of the Contract Services Division, noting that there are only two people active in the Division; the third staff member, who is assigned the MBE/WBE program, is out on medical leave for an indefinite period. The result is that help is needed to develop an improved MBE/WBE program.

Councilor Kvistad questioned the need for an outside consultant at a cost of \$30,000 to do the work. Mr. Wiley said much of the actual work could be done in-house, but a consultant is being requested to provide additional expertise and to help produce a workable program through discussions with both the MBE/WBE community and the broader business community. Councilor Kvistad suggested scaling down the proposal to provide for facilitation services only, but not spend the amount of money being requested. General Services Director Doug Butler responded by saying that Metro can improve the MBE/WBE program, but it is a complicated program with changing legal constraints that needs more attention than can be paid to it now with an understaffed division; the only practicable alternative now to hiring a consultant would be to defer work on the program. He added that the issue is not just doing more business with minority- and women-owned businesses, but that it involves considerable foresight in anticipating contracts that MBE's and WBE's could bid on and providing greater opportunity for those firms to compete. Councilor Kvistad said part of the problem is that the agency is expanding its use of outside contractors, which both increases the Contract Services Division's work load and creates an atmosphere that relies more heavily on consultants agency-wide.

Councilor Hansen said consultants are retained for their experience and expertise that is not available on staff. She

said the purpose of addressing the MBE/WBE issue is to do business in a new way, in consultation with citizens' groups, which is hard to do with staff who are used to doing business in a certain way. She also noted that staff is responding to requests from members of the Council to address the problem of MBE and WBE contracting at Metro, and if they are going to get that work done with reduced staff resources they need outside help.

Councilor Washington spoke in support of the resolution, saying Metro does not have a very good record in contracting with MBE and WBE firms. He said the issue had been faced in the past, but with limited success, and he wants to see better results.

**BEFORE THE METRO COUNCIL**

FOR THE PURPOSE OF ADOPTING AN )  
INTERIM CONTRACT SERVICES )  
DIVISION REPORT ON MBE/WBE/DBE )  
UTILIZATION AND AUTHORIZING THE )  
EXECUTIVE OFFICER TO EXECUTE A )  
CONSULTANT SERVICES CONTRACT )  
FOR METRO-WIDE SERVICE )  
IMPROVEMENTS )

RESOLUTION NO. 94-2005

Introduced by Rena Cusma,  
Executive Officer

WHEREAS, the Contract Services Division of General Services provides critical competitive bidding, procurement, and contract assistance including Metro-wide administration and coordination of the Minority, Women-Owned and Disadvantaged Business Enterprise programs; and

WHEREAS, the Contract Services Division has to-date implemented numerous procedural changes to streamline and expedite the procurement and contracting process, but a number of issues, questions and concerns documented in the Metro Council's 1993 performance audit by the consulting firm of Talbot, Korvola and Warwick remain unresolved; and

WHEREAS, Section 2.04.105, 205, & 305 (d) of the Metro Code commits all Metro departments, contractors and employees to increase, to the greatest extent permitted by law, participation by MBEs, WBEs and DBEs in all purchases of goods and services; and

WHEREAS, the Contract Services Division as part of its annual report to the Metro Council is anxious to pursue further effectiveness and efficiency measures to improve the procurement and contracting process and dissatisfied with the first year results of the established MBE/WBE/DBE programs; and

WHEREAS, the Contract Services Division solicits resolution of the broader procurement and contracting issues and a planned, proactive, and results-oriented program for

MBE/WBE/DBE utilization; now, therefore,

**BE IT RESOLVED,**

That the Metro Council hereby supports the Contract Services Division's request to further proceed with the formulation of specific recommendations for improvement of the procurement/ contracting process and a proactive MBE/WBE/DBE program; adopts the Division report and proposed interim program goals; authorizes the Executive Officer to execute a personal services contract for a consultant to assist in the development of a pragmatic Metro-wide action plan to contain operational costs, optimize Division services, and ensure MBE/WBE/DBE involvement and utilization.

ADOPTED by the Metro Council this \_\_\_\_\_ day of \_\_\_\_\_, 1994

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

## STAFF REPORT

CONSIDERATION OF RESOLUTION NO. 94-2005 ADOPTING AN INTERIM REPORT ON MBE/WBE/DBE UTILIZATION, AND AUTHORIZING THE EXECUTIVE TO RELEASE A REQUEST FOR PROPOSALS AND EXECUTE A PERSONAL SERVICES CONTRACT TO RECOMMEND FURTHER IMPROVEMENTS IN COMPETITIVE BIDDING, PROCUREMENT AND CONTRACTING SERVICES; AND

ORDINANCE NO. 94-560 FOR THE PURPOSE OF AMENDING THE FY 1994-95 BUDGET BY TRANSFERRING \$30,000 FROM THE SUPPORT SERVICES FUND CONTINGENCY TO PROFESSIONAL SERVICES WITHIN THE GENERAL SERVICES DEPARTMENT TO FUND RESOLUTION NO. 94-2005

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Date: June 30, 1994

Presented by: Douglas E. Butler

### Background

The Contract Services Division of the General Services Department is responsible for providing competitive bidding, procurement and contracting assistance, document review and Metro-wide contract coordination. In addition, the Metro Council has, by Code, made that Division responsible for the promotion, implementation, and administration of Metro's special programs for MBE, WBE, DBE and QRF outreach and utilization. Also, as part of this year's budget reductions, the Division inherited labor compliance monitoring and the licensing of contractors.

In March, 1993, Talbot, Korvola and Warwick completed the last performance audit of the Division which identified a number of issues, questions and concerns. That was not the first such study of this Division but what is significant is that it avoided broad policy issues such as centralization or decentralization of the process, and focused instead upon a specific action plan to be formulated and implemented.

Since that time, the Division has implemented a number of those recommendations and improved overall operating efficiencies. Much work remains to be done, however. With the press of day-to-day activities and the on-going need for contracting services, the prospects for completing other improvements will take substantially longer than originally expected or desirable.

Along with that progressive challenge for the Division's improvement, the Metro Council, in January, 1993, instituted a new program to specifically encourage MBE, WBE, DBE, and QRF involvement and utilization. The program was designed to comply with current court decisions and was therefore "process" and "good faith" oriented but it clearly expected definitive action and positive, measurable results.

The actual results, our rate of progress, and the prospects for the future are too slow and too limited. Although, in general, we comply with the current letter of the law and with grant



requirements, there are some specific instances (e.g., required advertising and goals adoption) where we have not. This is simply not good enough. These programs need more attention than they've received to date given the normal workload. They need more emphasis and resources. We have recognized the need for improvements in effectiveness and efficiency as the work load rises, but we need to actively prepare for the future as Metro's business relationships grow in number, size and complexity.

### Proposal

We propose that the Council consider changes to the Metro Code and corresponding organizational and procedural adjustments to Metro's overall competitive bidding, procurement and contracting system in order minimize costs and maximize results. We need to make some changes that will not let "business as usual" pre-empt improvement efforts and that will stimulate a positive momentum. We might need to follow the old "80/20" rule and focus upon a limited list (the 20%) of immediate steps which could have a broad (the 80%) impact to "jump-start" the program. Specifically, we propose to:

1. **File the annual report attached as Exhibit A and establish the proposed program goals included therein.** The attached annual report was prepared in response to the requirements of Section 2.04 of the Metro Code. The report has a number of shortcomings as currently drafted. Specifically, there is:
  - No substantiation for the proposed goals which documents compliance with the methodology required by Metro Code sections 2.04.145, 245, and 345 (b)(1-4).
  - No comparison by which to judge the efficacy of Metro's "good faith" approach since it does not contrast current results with previous years when a goal based program mandated utilization or with the current programs of other governments.
  - No in depth discussion of the relevance and effectiveness of the action steps taken in implementation of the Metro program.

The staff person responsible for this program is currently on extended, indefinite medical leave and therefore not available to do further work on this report. Other Division staff could be diverted from their normal duties to expend further time making a variety of corrections, revisions, and modifications to make the report conform to specific Metro Code requirements, expose the logic of the calculation process and provide a meaningful context for interpretation of the program data. We do not believe, however, that this would be a wise use of limited staff resources.

We are not convinced that our current program is having optimal impact and producing the results that it could or should deliver. But, instead of looking back and speculating on what might have been, we would prefer, with the assistance of a consultant, to formulate a new plan with specific action steps designed for more meaningful results. We therefore, propose that the Metro Council accept the attached report and adopt the program goals included therein as an interim measure of proforma compliance.

2. **Hire a consultant to develop a Metro-wide action plan to pragmatically contain operating costs but optimize our competitive bidding, procurement and contracting delivery system and pursue truly effective MBE/WBE/DBE and QRF utilization measures.** The adopted Budget for the General Services Department does not provide funds for this purpose and a transfer from the Support Services Fund Contingency is requested to fund this effort. With your approval, we will proceed immediately with a competitive, RFP consultant selection process. A proposed mailing list marked Exhibit B and a preliminary draft of that RFP format including a detailed scope of work marked Exhibit C are attached for your review. The Division seeks Council approval to proceed with this project in substantial compliance with those draft documents.
  
3. **Present a report to the Executive Officer and Council in December of this year which clearly reflects the appropriate analysis, logical recommendations and definite action plan(s) for improvement.** If approved, this plan would be incorporated into the Department's proposed budget for Fiscal Year 1995-96 and appropriate legislation could be introduced for immediate implementation in January or February.

#### Recommendation

The Executive Officer recommends approval of Ordinance No. 94-560 and Resolution No. 94-2005.