

REGIONAL TRANSIT AUTHORITY

RESOLUTION NO. 63

A RESOLUTION of the Board of the Central Puget Sound Regional Transit Authority for the Pierce, King and Snohomish Counties region approving an agreement for the purposes of planning, commissioning and overseeing a study of discrimination in public and private contracting in the Seattle-King County metropolitan area and in the adjacent metropolitan areas in Pierce and Snohomish Counties.

WHEREAS, a Central Puget Sound Regional Transit Authority ("RTA") has been created for the Pierce, King and Snohomish Counties region by the legislative action of their respective county councils pursuant to RCW 81.112.030 and came into existence at its first meeting on September 17, 1993; and

WHEREAS, following a positive public vote to implement Phase I of the Regional Transit System Master Plan, the RTA will need to begin an extensive program to procure contracted services from consultants, contractors, vendors and service providers; and

WHEREAS, the RTA desires that there be significant participation by minority, women and disadvantaged businesses on its contracts to the maximum extent allowable under applicable laws and regulations; and

WHEREAS, by Resolution No. 54 adopted January 27, 1995 the RTA Board established a work program related to Minority/Women/Disadvantaged Business Enterprises (M/W/DBE); and

WHEREAS, an element of that work program includes the establishment of a local (non-federal) M/W/DBE program, which requires the RTA to conduct a disparity study to establish whether discrimination has historically occurred and has impaired minority and women owned businesses from obtaining contracts; and

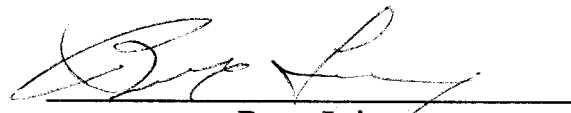
WHEREAS, the RTA has joined with a consortium of other public agencies (King County, King County Metro, City of Seattle, Port of Seattle and the Seattle School District No. 1), to jointly conduct a disparity study which will include as a minimum King County and the urbanized portions of Pierce and Snohomish Counties.

NOW THEREFORE BE IT RESOLVED by the Board of the Regional Transit Authority as follows:

Section 1. The Board of the Regional Transit hereby approves and authorizes the Executive Director to enter into the "Agreement for a Joint Study of Discrimination in Contracting" substantially as provided in the attached agreement.

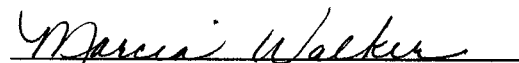
Section 2. The M/W/DBE Program Supervisor shall represent the RTA on the Steering Committee of the participating jurisdictions, and shall provide regular reports to the Executive Director and to the M/W/DBE Task Force of the RTA Board regarding progress of the Disparity Study.

ADOPTED by the Board of the Regional Transit Authority for the Pierce, King and Snohomish counties region at a regular meeting thereof held on the 12th day of MAY, 1995.



Bruce Laing
Chair of the Board

ATTEST:



Marcia Walker
Board Administrator

AGREEMENT FOR A JOINT STUDY OF DISCRIMINATION IN CONTRACTING

Effective the 1st day of May, 1995, the undersigned parties hereby enter into an agreement for the purposes of planning, commissioning and overseeing a study of discrimination in public and private contracting in the Seattle-King County metropolitan area and in the adjacent metropolitan areas in Pierce and Snohomish Counties.

A. PARTIES

The Parties to this Agreement are:

- King County, including the Department of Metropolitan Services ("Metro") ("the County")
- The City of Seattle ("the City")
- The Seattle School District ("the School District")
- The Port of Seattle ("the Port")
- The Regional Transit Authority ("the RTA")

B. PURPOSE AND PROCESS

The purpose of this Agreement is to plan for, commission and oversee a study of racial and gender discrimination in contracting in the Seattle-King County metropolitan area and in the adjacent metropolitan areas in Pierce and Snohomish Counties ("the MWBE Disparity Study" or "the Study"). The Study will determine the existence, extent and nature of such discrimination and assess the need for remedial action.

The Parties will jointly develop a Request for Proposals ("RFP") to solicit proposals to conduct the MWBE Disparity Study and provide other related services. The RFP will be advertised and processed by the County following its usual procurement processes for professional services. Each Party will inform the County of the Party's mandatory procurement and contracting requirements and the County will make every effort to comply with such requirements.

All Parties will have an opportunity to review and approve the RFP, including the proposed scope of work, to ensure it meets each Party's needs prior to initiation of the public advertisement process by the County. All Parties will have an opportunity to review and approve each consultant recommended to conduct the MWBE Disparity Study. All Parties will have an opportunity to participate in the selection of a Project Manager and the management of each consultant and to review the proposed service contract(s) with the consultant(s).

It is the intent of the Parties to work together in a cooperative, supportive and collegial atmosphere to ensure the MWBE Disparity Study is thorough and meets the needs of each Party.

C. FINANCIAL CONTRIBUTIONS

As of the effective date of this Agreement, each Party anticipates it will contribute the following amount toward funding the MWBE Disparity Study:

The County	\$ 100,000
The City	\$ 100,000
The School District	See Section E of this Agreement
The Port	\$ 80,000
The RTA	\$ 100,000
Metro	\$ 60,000

Each Party acknowledges that its continued participation in the Study is contingent on it making a contribution toward funding the Study.

The parties acknowledge that their contributions toward funding the Study will be used to pay the costs for the consultant(s) and administrative and clerical support for the Project Manager as provided in this Agreement.

D. STEERING COMMITTEE

A Steering Committee shall be established to perform the following functions and duties:

- Develop and make decisions on the contents of the RFP for a consultant to conduct the MWBE Disparity Study;
- Oversee and manage the procurement process to select a consultant to conduct the Study, including without limitation:
 - Providing direction and guidance to King County staff on the RFP procurement process;
 - Evaluating proposals; and
 - Recommending a consultant to the King County Executive for award of a contract.
- Select and release a Project Manager;

- Provide guidance to the Project Manager regarding the Study consultant's performance; and
- Monitor the progress and performance of the Study consultant.

Each Party may appoint as many representatives to the Committee as it deems appropriate. Each Party shall have one vote on the Committee regardless of the number of representatives it appoints; provided, that the County and Metro shall have one vote each. Each Party shall determine which of its representatives will cast its vote.

The Committee shall operate under the following rules of procedure:

- A simple majority of the Parties shall constitute a quorum for decision-making purposes and selection of a chairperson and vice-chairperson.
- A majority of the Parties in attendance must vote in favor for an item to be approved. In the event of a tie vote, the item will not be considered approved.
- The Committee shall select a chairperson and vice-chairperson. The vice-chairperson will act for the chairperson in the absence or unavailability of the chairperson.
- The chairperson will convene meetings of the Committee, establish the order of business of such meetings, and preside over the business of the Committee.
- The chairperson may establish subcommittees of the Committee if s/he determines subcommittees would assist the Committee in performing its functions and duties.
- The chairperson shall ensure a record of the decisions of the Committee is maintained and a copy sent to each representative promptly following each Committee meeting.

The M/WBE Program staff from each Party, the attorneys representing each Party, and the Project Manager shall serve as advisors to the Committee. The Committee may include other parties as advisors if all Parties determine such other parties would assist the Committee in performing its functions and duties.

E. PROJECT MANAGER

The Project Manager will perform the following functions and duties:

- Serve as principal liaison with the consultant conducting the M/WBE Disparity Study, and represent the Steering Committee to the consultant;

- Verify that consultant invoices are accurate, sufficiently documented and consistent with the terms of the consulting services agreement(s) and that the services being invoiced have been performed in a satisfactory manner;
- As requested by the Steering Committee or consistent with guidelines established by the Steering Committee, as applicable, serve as the principal spokesperson of the Steering Committee on questions and issues raised by community leaders and other members of the public regarding the Study; develop, obtain Steering Committee approval of, and implement communication initiatives to ensure community leaders and the public are aware of and given opportunities to participate in the development of the RFP for the Study;
- As directed or requested by a particular Party, serve as the principal spokesperson of the Steering Committee to the elected officials of the Parties; develop, obtain Steering Committee approval of, and implement communication initiatives to ensure such elected officials are kept informed of the implementation of the Study; and
- Sit as an ex officio, non-voting member of the Steering Committee.

The Parties agree to accept Dr. Olvin Moreland as the Project Manager for the Disparity Study under the terms of the letter from the Superintendent of the School District dated January 24, 1995, as such terms were confirmed in the letter from Mr. David J. Burman, legal counsel to the School District, dated February 16, 1995.

In consideration of the School District agreeing Dr. Moreland will serve as Project Manager with all costs of salary and benefits paid by the District during the time Dr. Moreland serves as Project Manager, the District will be permitted to participate in the Disparity Study without making any additional financial contribution. In the event Dr. Moreland is unable or no longer willing to continue as Project Manager for any reason whatsoever, the District, if it desires to continue to participate in the Disparity Study, agrees it will make a financial contribution toward completion of the Disparity Study and the additional costs of a subsequent project manager. The Parties agree that Dr. Moreland shall not be considered or deemed to be an employee of any of the Parties other than the School District which shall continue to have full responsibility for all aspects of the employment of Dr. Moreland.

The Project Manager will have part-time, but not less than one-half time, administrative and clerical support. The County or Metro will provide such administrative and clerical support and inform the Steering Committee of the costs of such support. Each Party, other than the School District, will pay such costs on a pro rata share based on its financial contribution compared to the total amount for the Study.

F. JOINT DEFENSE AND PRIVILEGES

The Parties anticipate that litigation may arise in connection with the Study or any action adopted by any of the Parties based on the Study. The Parties believe they have a commonality of interests in the defense of such litigation, and may wish to cooperate in the defense of such litigation. The Parties also believe it is important that legal issues and advice related to the planning, administration, analysis and use of the Study be discussed with complete openness and candor by and between the Parties and their respective legal counsel. Therefore, the Parties intend and agree that all communications relating to the Study between any Party and one or more of the Parties' legal counsel shall be privileged and confidential and shall not be disclosed voluntarily to others who are not a Party to this Agreement. Specifically, this Section F memorializes the Parties' prior oral agreement to this effect.

The Parties agree that in the event of litigation in connection with the Study or any legislation based on the Study, they will confer in a timely manner to determine whether and how to cooperate in or support the defense of such litigation.

The obligations of this Section F shall survive the termination of this Agreement and/or withdrawal of any Party from this Agreement.

G. WITHDRAWAL FROM AGREEMENT

Any Party may withdraw from this Agreement at any time with or without cause by giving the other Parties not less than 10 calendar days written notice. In the event of such a withdrawal, the withdrawing Party shall be responsible only for its share of such costs of the Study as have been accrued as of the time of withdrawal and costs that directly result from such withdrawal. A withdrawal by any Party shall not relieve the Party of its obligations under Section F above.

H. OWNERSHIP OF STUDY WORK PRODUCTS

The Parties agree that the Study and all documents, reports, analysis and other related materials prepared by the consultant(s) as part of the Study shall be the property of each of the Parties. Each Party shall be entitled to receive a complete set of all such materials. Each Party shall be entitled to make full use of the Study and such materials, to the extent consistent with Section F above.

I. LEGAL RELATIONS

Each Party shall indemnify and hold the other Parties and their agents, employees and officers harmless from, and process and defend at its own expense, any and all claims, demands, suits at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the Party arising out of or in connection with the Party's non-performance or failure to perform pursuant to this Agreement.

No liability shall attach to any Party by reason of entering into this Agreement except as expressly provided herein.

This Agreement shall be interpreted in accordance with the laws of the state of Washington in effect on the effective date of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

The Parties' rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.

The provisions of this Section I shall survive any termination of this Agreement or withdrawal by one or more Parties.

J. ADMINISTRATION OF PAYMENTS TO THE CONSULTANT(S)

The County will administer contract payments to the Study consultant(s) according to the payment provisions in the contract(s) with the consultant(s). Each other Party, except the School District, will make pro rata payments to the County based on its financial contribution compared to the total amount for the Study. The County through the Project Manager will provide an itemized billing to each such Party which shall make payment to the County within twenty days after receipt of the billing.

K. INSURANCE

Taking into account the scope of work and services to be performed by the Study consultant(s), the County will prudently determine whether, and in what amounts, each consultant shall obtain and maintain public liability, professional liability, and any other insurance coverages. The final form of the language regarding required insurance coverages shall be subject to approval by the County's Risk Manager. Such insurance shall protect the consultant(s) against loss from liability imposed by law upon, or assumed under agreement by, the consultant for damages on account of bodily injury, property damage and/or other damages in connection with the Study. All liability insurance policies shall include all Parties and their officers, officials, agents and employees as additional insureds and shall contain "severability of interest" (cross liability) wording. The consultant's insurance shall be primary to and not contributing with any insurance or self-insurance which may be carried or maintained by each of the Parties.

L. RECORDS AND AUDITS

From the effective date of this Agreement and for a period not less than three years from the date of final payment to the Study consultant, the County shall prepare and maintain records and accounts pertaining to payments to the consultant(s) for

performance of the Study in accordance with applicable accounting procedures prescribed by the Division of Municipal Corporations of the State Auditor's Office. Such records and accounts shall be available to each of the other Parties and their designated representatives for inspection and audit. Copies of such records and accounts shall be furnished to any Party upon request. If any litigation, claim or audit related to the conduct of the Study is commenced, the County shall maintain the records and account along with all supporting documentation until all litigation, claims or audits have been resolved.

M. DURATION OF AGREEMENT

This Agreement shall be effective on the date set forth on page one of this Agreement and shall expire, unless modified or terminated in accordance with the provisions of this Agreement, upon completion of the Study or June 1, 1996, whichever shall first occur.

N. NOTICES

Until such time as each Party is notified otherwise, all notices required to be given under the terms of this Agreement shall be given in writing addressed to the chief executive or administrative officer or official of each of the Parties with copies to the legal counsel for each of the Parties. All notices required under this Agreement shall be deemed received when actually received by the addressee, whether by delivery or facsimile, or within five calendar days from the date they are mailed as determined by the postmark on the envelope.

O. BINDING UPON SUCCESSORS

This Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of all Parties.

P. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same instrument.

Q. NO THIRD-PARTY BENEFICIARIES

This Agreement is entered into solely for the mutual benefit of the Parties hereto. This Agreement is not entered into with the intent that it shall benefit any other person and no other such person shall be entitled to be treated as a third-party beneficiary of this Agreement.

R. ENTIRE AGREEMENT

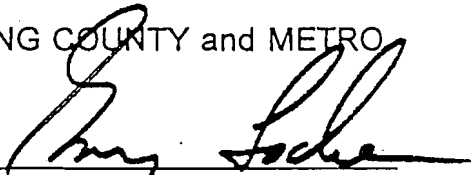
This document contains all terms, conditions, and provisions agreed upon by the Parties hereto, and shall not be modified except by written amendment approved by all Parties, except such Parties that may have withdrawn.

S. SEVERABILITY

If any provisions of this Agreement are held invalid by a court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby if such remainder would then continue to serve the purposes and objectives originally contemplated by the Parties.

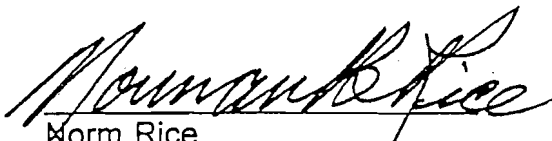
IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date first above written.

KING COUNTY and METRO




Gary Locke
County Executive

CITY OF SEATTLE




Norm Rice
Mayor

SEATTLE SCHOOL DISTRICT



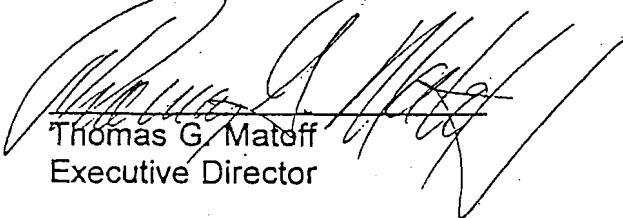
William M. Kendrick
Superintendent

PORT OF SEATTLE



Mic Dinsmore
Executive Director

REGIONAL TRANSIT AUTHORITY



Thomas G. Matoff
Executive Director