

AUD 50-25-640  
12-68 3M

# ACCEPTANCE

RECEIVED Portland, Oregon, November 28, 1969

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RAY SMITH  
Auditor of the City of Portland,  
Room 202, City Hall  
Portland, Oregon 97204

RAY SMITH, AUDITOR  
CITY OF PORTLAND, ORE.

BY *[Signature]*

Dear Sir:

This is to advise the City of Portland, Oregon, that I hereby accept the terms and provisions of Ordinance No. **130131** authorizing transfer of possession of the plant and property used by Rose City Transit Co. in mass transit service in the City and adjacent area when delivered to the City by Rose City Transit Co. and its affiliates to the Mass Transit District of Washington, Clackamas and Multnomah Counties, under certain terms and conditions, and declaring an emergency and in consideration of the benefits to be received thereunder by me I hereby agree to abide by and perform each and all of the terms and provisions thereof applicable to me.

Very truly yours,

*[Signature]*

\* Meland H. Johnson

[CORPORATE SEAL]

Morgan Park Bldg, Rm 230  
Address  
729 SW Alder St.  
Portland, Oregon 97205

Approved as to form:

*[Signature]*  
City Attorney

\*When an acceptance is required from a firm or corporation the Acceptance must be signed by an officer of the firm or corporation stating his or her official title, and corporations must affix the corporate seal.

MEMORANDUM OF UNDERSTANDINGRECITALS:

1. ROSE CITY TRANSIT CO. (RCT) and LANDPORT CO., INC. (Landport) and the CITY OF PORTLAND (City) have not been able to arrive at a mutually agreeable price for the RCT bus system operated by RCT.

2. RCT and Local 757 Amalgamated Transit Union have not been able to agree upon a wage and labor agreement to replace the agreement which expired November 1, 1969 and the Transit Union has announced that it will strike on December 1, 1969.

3. The City notified RCT that its franchise was terminated as of August 13, 1969, and denied RCT's request that the basic fare be increased from 35¢ to 40¢. In connection with the termination of the franchise the City tendered to RCT revenue certificates and demanded that RCT transfer title to the bus system to the City.

4. RCT and Landport, in a declaratory judgment suit, contend that the City's attempted termination of the franchise was not valid and that the City was required to approve RCT's request for a fare increase. The City, in this suit, has denied the claims of RCT and Landport, and has requested the Court to fix the fair value of the bus system, in accordance with the franchise; and compel RCT to transfer the bus system to the City and accept revenue certificates in payment.

5. The City, in a declaratory judgment suit, contends that RCT is liable for and obligated to fund the retirement and disability benefits of retired and disabled RCT employees in the approximate amount of \$1,400,000.00, and that RCT is also liable for and obligated to fund the accrued retirement and disability rights, if any, of RCT employees who have not retired in the approximate amount of \$1,600,000. RCT contends that it has no obligation or liability in connection with either the retired, disabled, or unretired employees' benefits, except on a month-to-month basis.

6. The different and unresolved positions of the City, RCT, and Landport on legal questions that affect value and method of payment and the difference in the amount of the RCT and City valuations of the bus system have thus far made it impossible for them to arrive at a mutually agreeable price for the bus system.

7. To avoid a bus stoppage and to provide a method to arrive at the value of the bus system, the City, RCT, and Landport have approved the following:

A G R E E M E N T

A. RCT and Landport will transfer possession of the RCT bus system to the City as of 12:01 a.m., December 1, 1969, and the City will thereafter operate the bus system. Bus system as used herein means all of the assets (except cash, cash items and accounts receivable) including real and personal property, rights and interest of RCT and Landport comprising or pertaining to the RCT bus system. Appended hereto, marked Exhibit No. 1, is a list of the tangible property to be transferred by RCT and Landport to the City. It is contemplated that an inventory will be taken as of 12:01 a.m., December 1, 1969, and the closing will be made under terms and conditions to be agreed upon between the parties. See Exhibit No. 2 attached.

B. The parties will proceed with dispatch to obtain a final judicial determination (which may include appeal) of the pending declaratory judgment suits involving the franchise and the retirement and disability rights, if any, of present and former RCT employees.

C. If the Court finally determines in the franchise suit that the City's purported termination of the franchise was not valid, and the Court does not finally determine therein that the City is entitled to acquire the bus system under the claim alleged in the

second further separate answer and counterclaim contained in the City's initial answer, then the City shall, within thirty (30) days after the entry of final judgment or decree, file a condemnation or other appropriate action in the Multnomah County Circuit Court in which valuation of the bus system, as of November 30, 1969 shall be determined and awarded according to and in the manner of the procedural and substantive law of the state of Oregon relating to the condemnation of property. Upon final judgment in the condemnation action, the City shall promptly pay the condemnation award.

D. If the Court finally determines in the franchise suit that the City's purported termination of the franchise was valid, or that the City is entitled to acquire the bus system under the claim alleged in the second further separate answer and counterclaim contained in the City's initial answer, and that the City has the right to acquire the bus system by the method and measure of valuation provided in the franchise and to pay for such acquisition with revenue certificates, then RCT and the City shall proceed in that suit with the valuation of the bus system and payment therefor as directed by the Court, consistent with the franchise. Values shall be determined as of November 30, 1969.

E If the Court, in the declaratory judgment suit pertaining to retirement and disability benefits (retirement suit) finally determines that RCT is liable on account of retirement or disability benefits, then RCT shall make provisions for the payment of this liability in the manner directed by the Court.

F. Pending a final judgment in the retirement suit the City shall make the monthly retirement and disability payments to retired and disabled individuals and monthly retirement payments to those individuals who retire after December 1, 1969. RCT shall reimburse

the City for retirement and disability payments made under this paragraph if and to the extent that the Court finally determines that RCT was legally obligated to make such payments, not, however, exceeding as to any individual the benefit payments in effect November 30, 1969.

G. RCT and Landport shall transfer possession of the bus system to the City free and clear of all encumbrances; and assume all liabilities in connection with the operation of the bus system incurred prior to December 1, 1969, including but not limited to sick pay, vacation pay, wages and claims. The closing, the valuation of supplies and the prorate of receivables and liabilities shall be in accordance with Exhibit No. 2.

Landport may elect to have the City make the payments in connection with its contract of purchase of the 70 new buses and the City will accept such buses subject to this encumbrance. Such payments shall be credited to City on any condemnation award, or if revenue certificates are to be issued then such payments shall be reimbursed by RCT to City. All such credits or reimbursed payments shall bear interest at legal rate.

The City will not sell, transfer or dispose of any property acquired from RCT and Landport under this agreement except as herein provided without the prior written approval of RCT, and in connection with such approval RCT may require the City to substitute as security available for a mortgage to secure revenue certificates property of comparable kind and value.

The City assumes liability for payment of all expenses of operation after December 1, 1969, including the payment of all taxes against the property, license fees, insurance, and the like, and to properly maintain the property.

H. The City is authorized to transfer to the Tri-County Metropolitan Transportation District of Oregon (TRI-MET) all and only all of the bus system, provided TRI-MET first enters into

a valid and binding agreement with the City, RCT and Landport whereby TRI-MET, its successors and assigns, assumes and agrees to perform all of the City's agreements and obligations in and under this agreement, and agrees to be joined as a party defendant in the pending franchise suit. The transfer of property by City to TRI-MET does not relieve City of its obligations hereunder.

I. The City (or TRI-MET if TRI-MET acquires the bus system) may make such changes in the operations of the system as it may desire, and may purchase new or additional facilities and equipment and alter, sell or otherwise dispose of any of the bus system property and equipment acquired from RCT or Landport (subject to the terms of paragraph G, above) provided that neither the City nor TRI-MET, its successors or assigns, shall take any action which will impair the security to which RCT may be entitled under the franchise.

J. This agreement shall not constitute a waiver of, and shall be without prejudice to, any claims by RCT or Landport against the City arising from the failure of the City to grant RCT a fare increase; or any claim by the City with respect to retirement and disability benefits of present or former RCT employees.

K. City agrees to observe the provisions of Article XI, Section 13, of the Constitution of Oregon if and to the extent applicable to it but without prejudice to the assertions made by it in the retirement suit.

APPROVED: November 26, 1969

ROSE CITY TRANSIT CO.

By Charles Brown, President

LANDPORT CO., INC.

By W. J. Kerwin, Exec VP

MASS TRANSIT ADVISORY COMMISSION

By Kelvin S. Johnson

CITY OF PORTLAND

By Jerry A. Schenk  
Francis J. Francis

## ORDINANCE NO. 130131

An Ordinance authorizing transfer of possession of the plant and property used by Rose City Transit Co. in mass Transit Service in the City and adjacent area when delivered to the City by Rose City Transit Co. and its affiliates to the Mass Transit District of Washington, Clackamas and Multnomah Counties, under certain terms and conditions, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds that the City has authorized execution of a "Memorandum of Understanding" between Rose City Transit Co., Landport Co., Inc. and the City of Portland, which provides for the transfer to the City of all the plant and property both real and personal, except cash, cash items and accounts receivable by said companies on December 1, 1969; that the Mass Transit District for Washington, Clackamas and Multnomah Counties has been duly formed and exists under the laws of the State of Oregon; that said District has statutory authority to provide mass transit service within the City of Portland and within the area of the three counties named in its title; that said District does not presently have equipment for such operation and it is therefore appropriate for the City to transfer to said District the possession of the plant and property used by Rose City Transit Co. in mass transit service in and adjacent to the City of Portland as soon as possession is obtained by the City; now, therefore, upon delivery to the City of possession of the plant and property used in mass transit service aforesaid, said possession shall immediately be transferred to the said District for its operation.

Section 2. The Council further finds that under said "Memorandum of Understanding" and particularly in Paragraph "G", Landport Co., Inc. may elect to have the City make remaining payments on its contract for purchase of buses. In the event of such election, said District shall transfer to the City funds to continue and complete such payments.

Section 3. By the transfer of the possession of the system assets delivered to it by Rose City Transit Co. and Landport Co., Inc., the said District will assume and save harmless the City of Portland from all liability for payment of expenses of operation after December 1, 1969, including the payment of all taxes against the property, license fees, insurance and the like, pension and disability payments and the expense of maintenance of said property.

Section 4. The Council further finds that under said Section C of the "Memorandum of Understanding" between Rose City Transit Co., Landport Co., Inc. and the City, City has agreed to file a condemnation or other appropriate action in the Circuit Court of Multnomah County to procure ownership of said system in the event of final judgment in favor of Rose City Transit Co. and Landport Co., Inc.

## ORDINANCE No.

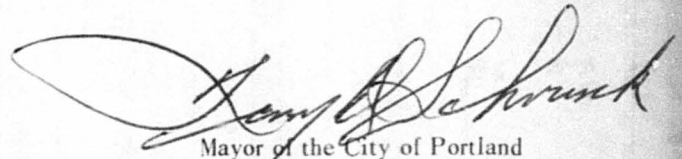
in the case brought by said companies against the City concerning the validity of the termination of the City's franchise and payment for the assets by revenue certificates, tendered and rejected, and the validity of the City's refusal of a fare increase. In the event of such condemnation proceeding the said District will satisfy any such condemnation award and judgment and will indemnify and save harmless the City from any liability therefor upon transfer to it of the title so obtained by City, or will in the alternative bring its own condemnation proceedings to acquire title to such assets upon agreement by Rose City Transit Co. and Landport Co., Inc. that such District condemnation may be substituted for City condemnation.

Section 5. The Mass Transportation District of Washington, Clackamas, Multnomah Counties, by acceptance of possession transferred to it from City of the Mass Transportation System assets as aforesaid, assumes and agrees to perform all of the City's agreements and obligations in the "Memorandum of Understanding" between the City and said companies.

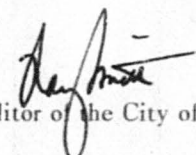
Section 6. This ordinance shall not be effective until the acceptance approved as to form by the City Attorney is filed on behalf of said District, of the terms and provisions of this ordinance.

Section 7. Inasmuch as this ordinance is necessary for the immediate preservation of the public health, peace and safety of the City of Portland in this: In order that orderly transfer of plant and property to be received from Rose City Transit Co. and Landport Co. Inc. may be made and a stoppage of mass transit service within the City be averted, therefore, an emergency hereby is declared to exist and this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, NOV 28 1969

  
Mayor of the City of Portland

Attest:

  
Auditor of the City of Portland

Com'r. Ivancie  
11/28/69 MCR:rf



Calendar No. 4864-2

ORDINANCE No. 130131

Title

An Ordinance authorizing transfer of possession of the plant and property used by Rose City Transit Co. in mass Transit Service in the City and adjacent area when delivered to the City by Rose City Transit Co. and its affiliates to the Mass Transit District of Washington, Clackamas and Multnomah Counties, under certain terms and conditions, and declaring an emergency.

INTRODUCED BY  
Commissioner Ivancie

DRAWN BY  
MCR:rf  
Date November 28, 1969

NOTED BY THE COMMISSIONER  
Affairs  
Finance and Administration  
Safety  
Utilities  
Works

City Attorney MCR

NOTED BY THE CITY AUDITOR  
Gy

APPROVED  
Date  
By City Engineer  
Date  
By

THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
<del>Anderson</del> Bowes	1	
Earl	1	
Grayson	1	
Ivancie	1	
Schrunk	1	

5

FOUR-FIFTHS CALENDAR	
<del>Bowes</del>	
Earl	
Grayson	
Ivancie	
Schrunk	

Filed NOV 28 1969

RAY SMITH  
Auditor of the CITY OF PORTLAND  
By George Yerkovich Deputy