

BEFORE THE COUNCIL OF THE
METROPOLITAN SERVICE DISTRICT

FOR THE PURPOSE OF ENTERING INTO) RESOLUTION NO. 86-715
AN INTERGOVERNMENTAL AGREEMENT)
AND EXPENDING FUNDS TO PRESERVE THE) Introduced by
SOUTHERN PACIFIC RIGHT-OF-WAY) Councilor Jim Gardner
(JEFFERSON STREET BRANCH) BETWEEN)
PORTLAND AND LAKE OSWEGO)

WHEREAS, The Metropolitan Service District has been participating in the Southern Pacific Right-of-Way Policy Advisory Committee with Portland, Lake Oswego, Clackamas County, Multnomah County, Tri-Met and the Oregon Transportation Commission; and

WHEREAS, Preservation of the Southern Pacific Right-of-Way is important to the land use and transportation objectives of Portland, Lake Oswego, Clackamas and Multnomah counties; and

WHEREAS, The Southern Pacific Right-of-Way Policy Advisory Committee has negotiated an option with Southern Pacific, prepared a preservation program, gained Emergency Board approval for state participation, and recommended an intergovernmental agreement for the participating jurisdictions; and

WHEREAS, The Metropolitan Service District can accommodate the financial requirements of the intergovernmental agreement within the existing budget; now, therefore,

BE IT RESOLVED,

1. That the Council of the Metropolitan Service District authorizes the Executive Officer to enter into the attached Intergovernment Agreement.

2. That the Council approves the expenditure of \$10,000 from the contractual services line item in the Executive Management budget from the amount budgeted for "Regional Studies" to fulfill

its share of the cash requirements associated with the attached Intergovernmental Agreement.

ADOPTED by the Council of the Metropolitan Service District
this 18th day of December, 1986.


Richard Waker, Presiding Officer

SS/gl
6632C/485-2
12/09/86

CONSIDERATION OF RESOLUTION NO. 86-715 FOR THE
PURPOSE OF ENTERING INTO AN INTERGOVERNMENTAL
AGREEMENT AND EXPENDING FUNDS TO PRESERVE THE
SOUTHERN PACIFIC RAILROAD RIGHT-OF-WAY (JEFFERSON
STREET BRANCH) BETWEEN PORTLAND AND LAKE OSWEGO

Date: December 10, 1986

Presented by: Jim Gardner

FACTUAL BACKGROUND AND ANALYSIS

During October 1986, Metro was requested by the City of Portland to participate in a Southern Pacific Railroad Right-of-Way Policy Advisory Committee. Executive Officer Rick Gustafson and Councilor Jim Gardner represented Metro. Also participating was Margaret Strachan (Portland), Bill Young (Lake Oswego), Sam Naito (Oregon Transportation Commission), Pauline Anderson (Multnomah County), Dale Harlan (Clackamas County), and Jim Cowen (Tri-Met). The objective of the Advisory Committee was to determine how to preserve the Southern Pacific right-of-way (Jefferson Street Branch) between Portland and Lake Oswego for future public uses. The criticality of the issue was created by Southern Pacific's abandonment of rail service on the branch line and the imminent reversion of railroad easements to abutting property owners -- thereby dismantling the corridor.

Technical work on behalf of the Advisory Committee led to a multiple step program as follows:

1. Enter into a one-year option to buy the right-of-way. The cost of the option is \$70,000; the purchase price is \$1.2 million. The option must be signed by the end of December.
2. Commence an interim rail use of the corridor during calendar year 1987. During the same period, resolve outstanding legal issues.
3. By the end of calendar year 1987, determine if purchase is to be executed.
4. Over the long term, if corridor is purchased, develop ultimate trolley/rail project.

To implement this program, the Advisory Committee has recommended an arrangement defined by the attached Intergovernmental Agreement for the participating jurisdictions.

This agreement focuses primarily on steps 1 and 2 of the program. The resolution limits Metro's involvement to \$10,000 of a pool of common cash resources and staff time to do regional travel analyses (similar to our standard corridor analysis). This Intergovernmental Agreement is for \$6,500 of the \$10,000 authorization. The cash pool, which would total approximately \$130,000, is to be used to exercise the option, pay legal fees, conduct appraisals, etc. If the option is entered into, there will be a subsequent intergovernmental agreement proposed regarding operations arrangements. The remaining \$3,500 of the \$10,000 authorization will be obligated in the second Intergovernmental Agreement. Thus, Metro's financial responsibility will be limited to the \$10,000 approved as part of this action. Nothing in either agreement will commit Metro to any further financial liability, in particular the actual purchase of the right-of-way.

With regards to the potential purchase, the Emergency Board authorized state participation of 50 percent up to \$975,000. Funds, both hard (cash outlays) and soft (staff time) dollars, spent during steps 1 and 2 count as match at step 3. By participating in the intergovernmental agreement, Metro is guaranteed involvement in the decisions involved in steps 1-3. Metro is guaranteed involvement in step 4 as the region's Metropolitan Planning Organization.

The \$10,000 cash participation, if approved, would come from a contractual services line item in the Executive Management budget entitled "Regional Studies" (budgeted at \$50,000). Existing grant money in the IRC's "Regional LRT Study" would be used to cover staff time. Therefore, no amendments to appropriations are required.

EXECUTIVE OFFICER'S RECOMMENDATION

The Executive Officer recommends adoption of Resolution No. 86-715.

SS/gl
6632C/485-3
12/09/86

INTERGOVERNMENTAL AGREEMENT
TO OPTION AND LEASE THE JEFFERSON STREET RAIL LINE

THIS AGREEMENT is entered into by and between the CITY OF PORTLAND, OREGON (Portland), the METROPOLITAN SERVICE DISTRICT (Metro), the CITY OF LAKE OSWEGO, OREGON (Oswego), MULTNOMAH COUNTY, OREGON (Multnomah), and CLACKAMAS COUNTY, OREGON (Clackamas). The parties shall collectively be referred to as the "governmental bodies."

RECITALS:

A. Portland and Oswego are municipal corporations of the State of Oregon organized and existing under the laws of the State of Oregon. Multnomah County is a home rule political subdivision and Clackamas County is a general law county of the State of Oregon organized and existing under the laws and constitution of the State of Oregon. Metro is a municipal corporation of the State of Oregon established under Chapter 268 of Oregon Revised Statutes.

B. This Agreement is entered into pursuant to Chapter 190 of Oregon Revised Statutes. Lake Oswego enters into this Agreement pursuant to the authority granted by § 4 of its City

Charter as well as ORS Chapter 190; and Portland enters into this Agreement pursuant to the authority granted by § 2-105(a)(4) of its City Charter, as well as ORS Chapter 190.

C. The Southern Pacific Railroad (S.P.) has received permission from the Interstate Commerce Commission to discontinue freight service on the Jefferson Street Branch rail line extending from Portland to Oswego.

D. The rail line is a valuable transportation and economic development resource in the Macadam Corridor and will benefit all of the governmental bodies.

E. The Jefferson Street Branch line has been designated as a transportation corridor which should be preserved for public use in the City of Portland Arterial Streets Classification Policy and the need to preserve a corridor to the John's Landing area has been specified in the Regional Transportation Plan for the Portland Metropolitan Area. Development of a light rail transit facility in the Macadam Corridor was recommended in the Johns Landing Master Plan, the Macadam Avenue Improvement Plan, and the Macadam Corridor Plan and Design Guidelines.

F. The governmental bodies have negotiated with S.P. to acquire the Jefferson Street Branch line, including the real property, tracks, trestles, tunnels, and other improvements thereon. S.P. has offered to sell the line to the governmental bodies for \$1.2 million and has offered the governmental bodies a one-year option to purchase the line, for \$70,000, which amount may be applied to the \$1.2 million purchase price. S.P.'s offer also gives the governmental bodies the right to extend the option for an additional six-month period for an additional \$70,000, which may also be applied to the purchase price; and it gives the governmental bodies the right to lease the line for the original and extended option period for the consideration of \$1.00. The lease agreement being negotiated by the governmental bodies shall include the right to use the S.P. line from the end of the Jefferson Street line to the State Street crossing in Oswego, plus S.P. spur lines located between State Street and the Willamette River. The railroad's offer must be acted upon by December 31, 1986.

G. Total costs for acquiring the option and lease, including the option price, attorney fees, liability insurance, and title insurance are estimated to be \$130,000.

H. It is in the public interest of each of the governmental bodies to contribute to the acquisition of the option and lease of the line.

I. Portland is an appropriate governmental body to execute the option and lease agreements on behalf of itself and the other governmental bodies to this Agreement. Portland shall be the optionee and the lessee of the line in that representative capacity.

J. Portland City Charter § 10-102 and Oregon Revised Statute § 225.020 empower Portland to option and lease the rail line from S.P.

TERMS:

1. Each of the governmental bodies agrees to participate in the costs of acquiring the option and lease. The proportionate shares of the option and lease costs covering the original one-year option period to be borne by the governmental bodies are as follows:

<u>Party</u>	<u>Share</u>	<u>Not to exceed</u>
Portland	52 %	\$ 67,600.00
Metro	5 %	6,500.00
Multnomah	11 %	14,300.00
Clackamas	11 %	14,300.00
Oswego	21 %	27,300.00

Estimated option and lease costs include:

<u>Item</u>	<u>Estimated Expense</u>
Option Price	\$ 70,000.00
Lease Price	1.00
Legal Fees for Acquiring Option and Lease	30,000.00
Title Certification and Abstract Costs	25,000.00
Liability Insurance	5,000.00

The total contributions of all governmental bodies shall be called the "option fund."

2. Multnomah, Clackamas, and Oswego shall deliver to the City Treasurer of Portland checks in the amounts of their proportional shares of the option and lease costs by December 19, 1986. If mutually agreed by Portland and a governmental body, the date of payment for that governmental body may be extended to a later date which is mutually convenient.

Metro shall deliver to the City Treasurer of Portland a check in the amount of \$6,500 ten days after the execution of the option agreement and lease agreement by Portland and S.P. Metro shall not be liable for any expenses or claims to parties or

third parties arising under or in any way connected with this agreement in excess of the maximum \$6,500 it has agreed to contribute.

3. Portland shall use its best efforts to enter into an option agreement and a lease agreement with S.P. by December 31, 1986. Portland shall enter the option and lease in its capacity as a representative of the governmental bodies, and Portland's rights, obligations, and liabilities in that capacity are defined by this agreement. It is contemplated by the governmental bodies that they will enter into future agreements concerning purchase and use of the right-of-way. These future agreements may further define the role of Portland as optionee and lessee on behalf of the governmental bodies.

Portland shall pay S.P. the \$70,000 option price and the \$1.00 lease price out of the option fund. If the option and lease transaction is not completed by December 31, 1986, Portland agrees to promptly return to the other governmental bodies amounts equivalent to their proportional shares of the \$70,000 option price and \$1 lease price, plus their proportional shares of the remaining \$60,000 not expended or encumbered prior to the date the transaction failed. The governmental bodies agree that

they remain liable for and shall forfeit their proportional shares of all amounts attributable to acquisition of the option and lease expended or encumbered prior to the date the transaction failed.

4. Prior to executing the option and lease agreements, Portland shall purchase out of the option fund a general liability insurance policy, insuring the Owners', Landlords' and Tenants' (OLT) third party liability exposure with combined limits of \$300,000 plus defense costs, or \$500,000 including defense costs, and shall keep such liability insurance in full force and effect throughout the one-year option period. If the option and lease are not executed, Portland shall promptly cancel the insurance policy and shall promptly return to the other governmental bodies their proportional shares of any premium refund. It is understood by the governmental bodies that the OLT Policy will not insure the governmental bodies against liability for railroad operations, and that prior to commencing service it may be advisable to purchase a separate policy covering railroad operations.

5. Prior to executing the option and lease, Portland shall also purchase out of the option fund a certification from a title insurance company that all of the rights of S.P. over and across

the Jefferson Street Rail Line are held by virtue of recorded documents, except for those minor portions of the line for which no recorded document has been found and which are thus held by adverse possession. Portland shall also pay to the title company out of the option fund such sums as may be necessary for abstracts of title.

6. Portland shall pay attorney fees to option and lease the right-of-way out of the option fund. This agreement is not intended to create any liability on the part of Portland to bear attorney fees required for title litigation or to negotiate or prepare a purchase agreement for ultimate purchase of the right-of-way.

7. The governmental bodies agree to actively seek citizen participation in the decisions which will be made relating to the purchase and subsequent exercise of the option and to interim uses of the right-of-way. To that end the governmental bodies will hold informational meetings and take public comments before any such decisions are made.

8. The governmental bodies will form a Local and Regional Government Advisory Committee (Advisory Committee) giving each governmental body one vote on all policy recommendations

regarding the purchase and use of the right of way. The recommendations of a majority of the Advisory Committee shall be presented to the governing bodies of each signatory jurisdiction. Each jurisdiction's governing body shall make any binding decision for that jurisdiction. Participation in the Advisory Committee shall not alter the duties and liabilities of each jurisdiction as set out in this agreement.

9. The governmental bodies contemplate negotiating to enter into an operations agreement as soon as possible after acquiring the lease and option. The operations agreement will specify, among other pertinent provisions:

- a. Allocation of financial and management responsibility for track clearance and restoration and of operational responsibility for interim uses.
- b. Monetary and in-kind contributions of each party for clearance, restoration, operation and litigation.
- c. The value of, or a mechanism for determining the value of, in-kind contributions.
- d. Allocation of liability for ownership, maintenance and operation and costs of insurance.

The operations agreement may be entered into by any three of the five governmental bodies, but governmental bodies who decline to enter into the operations agreement shall have no rights or responsibilities with respect to operations under that agreement, except those guaranteed to the Advisory Committee under section 8 hereunder.

10. Until such time as the operations agreement is entered into, Portland shall have no obligation whatsoever to the other governmental bodies to clear or restore the track, or to take any action whatsoever to prepare for or commence interim usage of the right-of-way. Portland shall, however, alone or in cooperation with any and all other governmental bodies, have the right to take clearance or restoration action, prior to entering into the operations agreement, but Portland and other governmental bodies taking such actions shall do so at its or their own risk and expense. With the consent of a majority of the Advisory Committee, Portland and any other governmental bodies shall have the right to take specific actions with regard to interim usage prior to entering into the operations agreement. No governmental body shall, however, be obligated financially in any way unless and to the extent that such financial obligation has been consented to by its governing body..

11. In the event a decision is made by the governmental bodies to exercise the option to purchase the right-of-way, the governmental bodies contemplate entering into an intergovernmental purchase agreement prior to exercising the option. The purchase agreement may be entered into by any of the governmental bodies who are a party to this agreement, and the option may be exercised by any of the governmental bodies alone or in combination with one another, after having considered the recommendation of the Advisory Committee.

CITY OF PORTLAND, OREGON

APPROVED AS TO
FORM:

By _____
Commissioner of Public Utilities

By _____
City Attorney

By _____
City Auditor

CITY OF LAKE OSWEGO, OREGON

APPROVED AS TO
FORM:

By _____

By _____
City Attorney

By _____

MULTNOMAH COUNTY, OREGON
BOARD OF COUNTY COMMISSIONERS

APPROVED AS TO
FORM:

By _____
County Executive

By _____
County Counsel

CLACKAMAS COUNTY, OREGON

APPROVED AS TO
FORM:

By _____

By _____
County Counsel

METROPOLITAN SERVICE DISTRICT

APPROVED AS TO
FORM:

By _____
Chief Executive Officer

By *James S. Bayardale*
Attorney for
Metropolitan
Service District



METRO

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

Memorandum

Agenda Item No. 8.4

Date: December 18, 1986

Meeting Date Dec. 18, 1986

To: Metro Councilors

From: Marie Nelson, Clerk of the Council

Regarding: Resolution No. 86-715 (Attached)

Resolution No. 86-715 was inadvertently omitted from the agenda packet mailed to you last week. Please find a copy of the Resolution attached.

The motion carried and Resolution No. 86-714 was adopted.

8.4 Consideration of Resolution No. 86-715, for the Purpose of Entering Into an Intergovernmental Agreement and Expending Funds to Preserve the Southern Pacific Right-of-Way (Jefferson Street Branch) Between Portland and Lake Oswego

Councilor Gardner presented staff's report and reviewed the history of events leading up to the recommendation of the Resolution. He reported land owners in the Johns Landing area did not support this action because of the potential for noise.

Councilor Cooper asked if Metro's charter allowed for purchase of railroad right-of-ways. Eleanore Baxendale, General Counsel, replied such an action would be allowed.

Motion: Councilor DeJardin moved the Resolution be adopted and Councilor Hansen seconded the motion.

Councilor Gardner explained the Resolution would not obligate Metro to purchase the right-of-way but would create a situation where the property could not be sold to another party for one year. This would allow time to explore all options further, he said.

Councilor Frewing asked if adoption of the Resolution would prevent future use of the land as a bike path. Councilor Gardner replied it would not.

Councilor Ragsdale said he would support the Resolution given its interim nature. He cautioned linear land parcels traditionally had low market value and that land prices should be examined very closely before any purchase was made.

Vote: A vote on the motion resulted in all twelve Councilors voting aye.

The motion carried and Resolution No. 86-715 was adopted.

8.5 Consideration of Resolution No. 86-720, for the Purpose of Amending Resolution No. 86-696, Regarding Responses to Requests for Proposals for Compost Facility Services

Debbie Allmeyer, Solid Waste Analyst, reported Resolution No. 86-696 unintentionally omitted reference to sewage sludge compost markets and markets targeted for sewage sludges in the sixth resolve paragraph. Because both yard debris compost and sewage sludge compost were being marketed, both should be considered when evaluating marketing plans proposed by mixed waste compost proper, she explained.