Ordinance No. \23091

Council Bill No. \\ \6619

AN ORDINANCE authorizing execution of an amendment to BNSF Railway Company (BNSF) Franchise Ordinance 9117 (as previously amended by Ordinances 12191, 92565 and 117477) in order to provide for the relocation of the existing tail track to a new location, and ratifying and confirming prior acts.

#### Related Legislation File:

Date Introduced and Referred:	To: (committee):
8.17.09	Transportation
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action:	Date Presented to Mayor:
9-21-09	9-22-09
Date Signed by Mayor:	Date Returned to City Clerk:
9.24.09	9.24.09
Published by Title Only	Date Vetoed by Mayor:
Published in Full Text	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

# The City of Seattle - Legislative Department Council Bill/Ordinance sponsored by: Lan Dio

Full Council Action:	Date	Committee Action: Recommendation	Vote
	Pass	3-0 Drago, Claur,	Melves
Full Council Action:			
	This file is comple	ete and ready for presentation to Full Council.	
		Full Council Action:	
Date Decision Vote	Date	Decision	Vote
9-21-09 Passed 90	8-21-09	7 Passed 90	

Joyce C. Kling /jck Tail Track Franchise Ordinance July 2009 Version 4a

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## ORDINANCE 123091

AN ORDINANCE authorizing execution of an amendment to BNSF Railway Company (BNSF) Franchise Ordinance 9117 (as previously amended by Ordinances 12191, 92565 and 117477) in order to provide for the relocation of the existing tail track to a new location, and ratifying and confirming prior acts.

WHEREAS, the Washington State Department of Transportation ("WSDOT"), in consultation with the City of Seattle ("City"), is planning for the replacement of the Alaskan Way Viaduct ("AWV") on State Route 99, a non-limited access highway located partially in the City of Seattle; and

WHEREAS, WSDOT and the City, in conjunction with the Federal Highway Administration and King County, are working to define a reconfigured and improved State Route 99; and

WHEREAS, the City, WSDOT, and BNSF Railway Company ("BNSF") have agreed that in order to facilitate the SR 99 S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 2, it is necessary that the existing tail track connected to BNSF's Seattle International Gateway Yard, more particularly described in City Ordinance Number 9117 as amended, be relocated from its current location; and

WHEREAS, relocation of the tail track is proposed to take place in two stages, first to a temporary location, then to a permanent location; and

WHEREAS, the existing BNSF tail track currently is located within City right-of-way pursuant to a franchise authorized by Ordinance 9117, and subsequently amended by Ordinances 12191, 92565 and 117477; and

WHEREAS, the proposed temporary and permanent locations for the relocated BNSF tail track also are within City right-of-way; and

WHEREAS, the City and BNSF agree that it is in their mutual interests to work together cooperatively and in good faith to review the various franchise agreements between them, including the franchise agreement amended herein and other franchise agreements across the City, and to amend or replace those various franchise agreements as the City and BNSF may agree, each in its sole discretion, upon completion of that review; NOW, THEREFORE,

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BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Con Contraction of the Contracti

Joyce C. Kling /jck Tail Track Franchise Ordinance July 2009 Version 4a

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Section 1. Section 2 of Ordinance 9117, as amended by Ordinances 12191, 92565 and 117477, is further amended by adding the following language as a new paragraph at the end of section 2:

BNSF Railway Company, as successor to Northern Pacific Railway Company, may, subject to the conditions set forth in Ordinance 9117, as amended, construct, lay down, maintain and operate its tail track in the temporary and permanent locations described in Exhibits A1, A2 and A3 attached hereto.

Section 2. The paragraph designated "First" of Section 3 of Ordinance 9117, as amended, is further amended as follows:

Section 3. The grant in this ordinance contained is made expressly subject to the following conditions and requirements, to wit:

First: The City of Seattle shall retain the same control of the streets, avenues and alleys in and across which said railway tracks shall be laid down, as over other streets, avenues and alleys, ((and shall have the right at all times, by general ordinance, to regulate the speed of locomotives and trains within the limits of the rights of way herein granted, and the maximum period of time for which locomotives, ears or trains shall be allowed to blockade travel along or across the streets embraced in this grant, or intersecting streets,)) and shall have such further control and police powers over such right of way as the City Charter and State laws permit. And said city reserves to itself and its grantees the right to carry all water mains, sewer mains, gas pipes, conduits and other public utilities underneath any and all of the tracks herein authorized, below any and all bridges herein provided for and underneath any street, avenue or other public place which may be vacated concurrently with or after the enactment of this ordinance, and the right of access to any spaces occupied by such tracks within the limits of any such street, avenue or other



2.8

Joyce C. Kling /jck Tail Track Franchise Ordinance July 2009 Version 4a

public place, and the right to open the ground beneath said tracks, for all purposes of construction, maintenance, repair, alteration and inspection of any such public utilities; which rights shall be exercised, however, so as to interfere as little as practicable with the use of said tracks and so as to leave the right of way occupied thereby restored to as good a condition as prior to any exercise of such rights.

Section 3. Section 4 of Ordinance 9117, as amended by Ordinances 12191, 92565 and 117477, is hereby repealed in its entirety.

Section 4. BNSF may continue to operate the existing tail track in its current location until such time as BNSF accepts and approves the relocated tail track and discontinues its operations on the existing tail track, all in accordance with the terms and conditions of the agreement reached between the Washington State Department of Transportation and BNSF for construction of the relocated tail track, at which time BNSF's right to use that portion of the City's right-of-way underlying the existing tail track for the existing tail track and all other purposes as may be granted pursuant to City Ordinance Number 9117, as amended, shall cease.

Section 5. The Director of Transportation is authorized to accept the franchise amendment from BNSF substantially in the form attached hereto as Exhibit B.

Section 6. BNSF's acceptance of this ordinance shall not be deemed a waiver of the preemptive effect of any state or federal law.

Section 7. Any act consistent with the authority of this ordinance taken after the passage of this ordinance and prior to its effective date is hereby ratified and confirmed.



Joyce C. Kling /jck Tail Track Franchise Ordinance July 2009 Version 4a

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Section 8. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the <u>ap</u> day of <u>Septemben</u>, 2009, and signed by me in open session in authentication of its passage this <u>as</u> day of <u>September</u>, 2009.

of the City Council Approved by me this 31 day of 5. 12009. Gregory J. Nickels, Mayor Filed by me this 21 day of Septel 2009.

(Seal)

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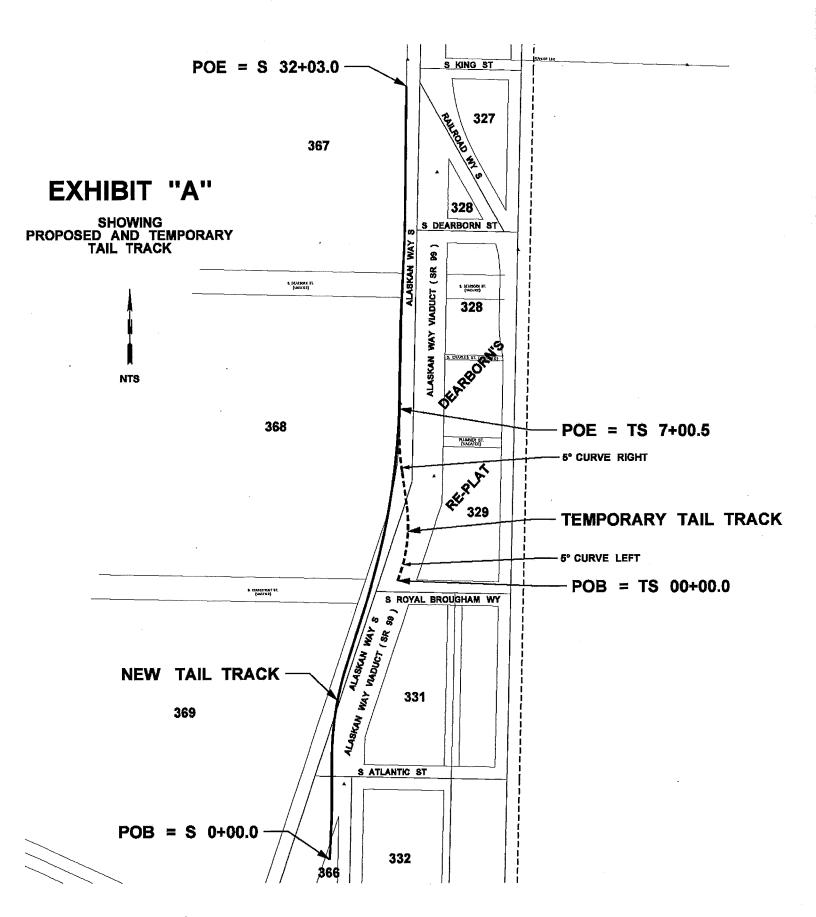
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Plan showing proposed and temporary tail track Exhibit A1 Tail Track Location—Permanent Exhibit A2 Exhibit A3 Tail Track Location—Temporary Acceptance Document Exhibit B





#### **EXHIBIT A1**



# Exhibit A2 Tail Track Location—Permanent

Adding a temporary track to the existing track, relating to the railroad franchise granted to the Burlington Northern Railroad Company, described in Ordinance 117477, a single track of standard gauge railway, the centerline whereof shall be as nearly as may be coincident with the centerline of the right-of-way therefore next herein below specified, and a right-of-way 15 feet in width for such track, the centerline of which shall begin near the northerly line of South Royal Brougham Way a distance of 22.5 feet more or less to a 5 degree reverse curve to the left a distance of 608 feet more or less, thence 70 feet more or less northerly to a point whereof shall be as nearly as may be coincident with the centerline of the proposed additional track as shown on attached Exhibit "A1".

# Exhibit A3 Tail Track Location—Temporary

Adding an additional track to the existing track, relating to the railroad franchise granted to the Burlington Northern Railroad Company, described in Ordinance 117477, a single track of standard gauge railway, the centerline whereof shall be as nearly as may be coincident with the centerline of the right-of-way therefore next herein below specified, and a right-of-way 15 feet in width for such track, the centerline of which shall begin near the south line of lot 2 of Block 366, as laid out on the map of Seattle Tidelands filed March 15, 1895, in the office of the Board of State Land Commissioners of the State of Washington, a distance of 3203.0 feet northerly toward the south line of King Street as shown on the attached Exhibit "A1".



#### EXHIBIT "B"

(Acceptance of Franchise Amendments)

Franchise Amendments issued purs	uant to Ordinance No
I, the authorized representative to acco	, am the, and am ept the above-referenced Franchise Amendments on behalf o
BNSF Railway Company. I certify preempted by any state or federal la	that the Franchise Amendments and, except to the extent w, all terms and conditions thereof are accepted by BNSF ation or reservation, and that BNSF Railway Company will
DATED this day of _	, 2009.
	By Its
	Its
Tax Payer ID#	
STATE OF	
STATE OF s	S.
I certify that I know or have	satisfactory evidence that is
the person who appeared before me instrument, on oath stated that said acknowledged it (as the	, and said person acknowledged that said person signed this person was authorized to execute the instrument and of BNSF Railway Company, a
corporation,) to be the uses and purposes mentioned in	the free and voluntary act of such corporation/individual for the instrument.
	, 2009.
Dated thisday or	
	(Signature of Notary)
	Print Name
	Notary public in and for the state of, residing at
	My appointment expires

#### FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	DOF Analyst/Phone:	
Seattle Department of	Bob Chandler 684-7595	Stephen Barham 733-9084	
Transportation			

**Legislation Title:** AN ORDINANCE authorizing execution of an amendment to BNSF Railway Company (BNSF) Franchise Ordinance 9117 (as previously amended by Ordinances 12191, 92565 and 117477) in order to provide for the relocation of the existing tail track to a new location, and ratifying and confirming prior acts.

#### Summary and background of the Legislation:

The proposed Council Bill amends an ordinance granting railroad franchise rights held by the BNSF Railway Company (BNSF). The amendment would enable relocation of BNSF's tail track, a single track used to assemble railroad cars into trains, to City right-of-way to the west of the new SR 99 roadway and make way for roadway development in its current location. The track will be relocated in two stages to accommodate construction phasing, so the ordinance provides for both a permanent and temporary track location. Attachments A and B show the current location and the proposed permanent relocation. The temporary relocation would connect the existing track at about Royal Brougham Way South with the new permanent track running to about South King Street.

The ordinance also amends the franchise ordinance to eliminate provisions originally included in 1903 that have since been held unenforceable by the courts.

In addition, the ordinance notes in the recitals that the City and BNSF agree that it is in their mutual interests to work together to review the various franchise agreements between them.

The work required to relocate the tail track will be performed primarily by the Washington State Department of Transportation and in part by BNSF pursuant to agreement between those two parties. The City will have no financial responsibility for the work.

Please check any of the following that apply:

x This legislation does not have any financial implications.





Office of the Mayor

August 11, 2009

Honorable Richard Conlin President Seattle City Council City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

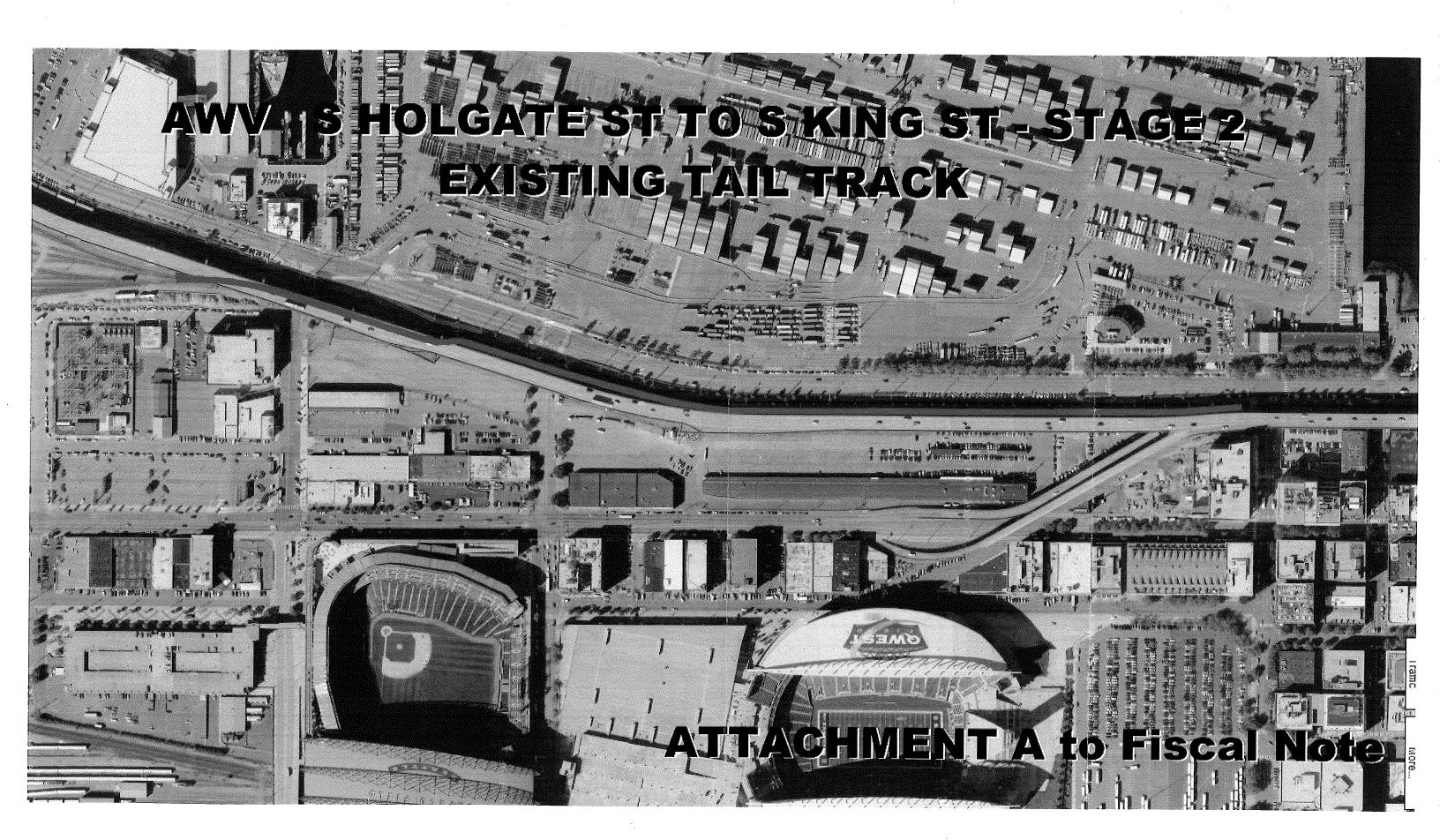
I am pleased to transmit the attached proposed Council Bill to amend an ordinance granting railroad franchise rights held by the Burlington Northern and Santa Fe Railway (BNSF). The amendment enables relocation of BNSF's tail track (a single track used to assemble railroad cars into trains) to a City right-of-way west of the new SR 99 roadway. The ordinance also eliminates provisions in the franchise ordinance that have been found to be unenforceable by the courts.

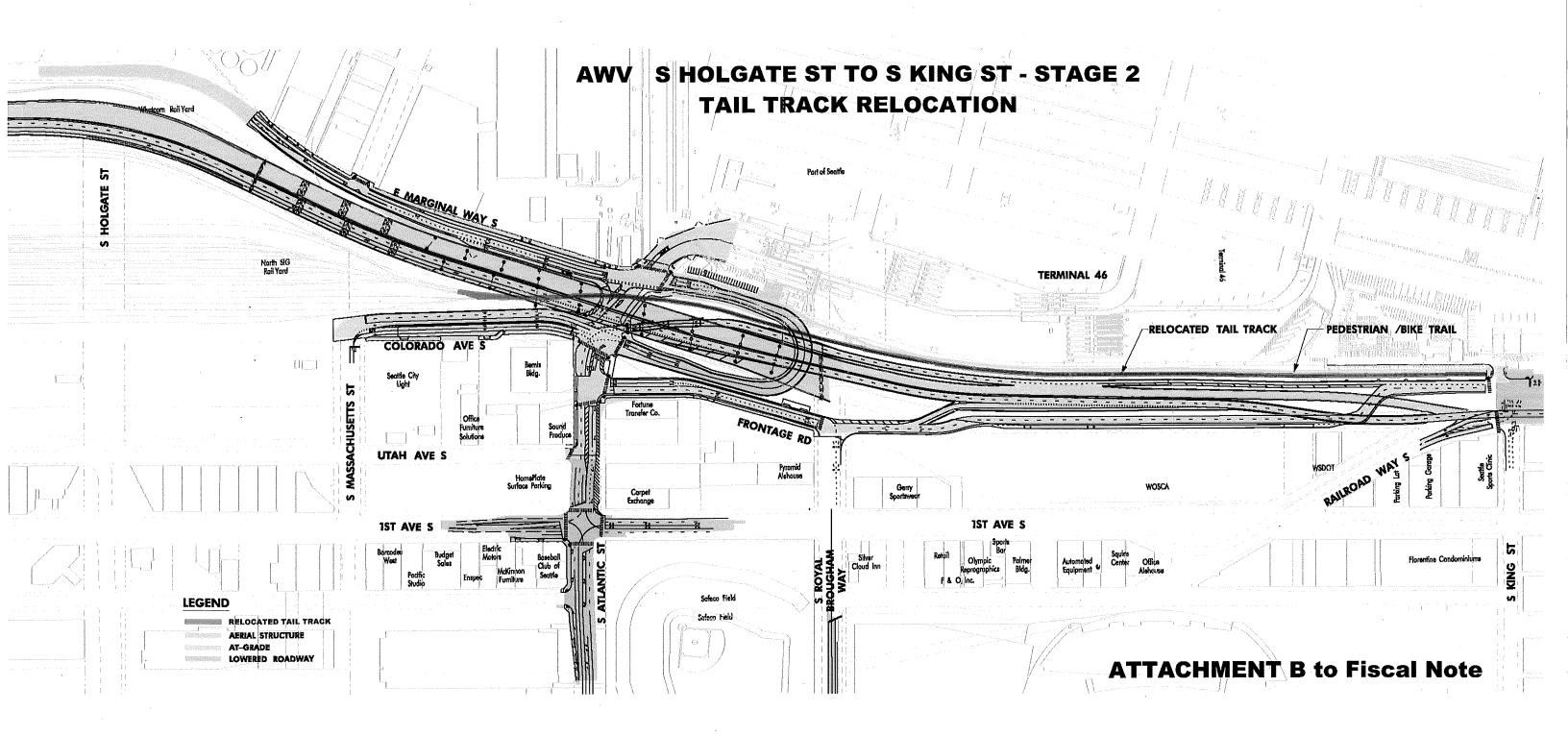
The tail track relocation is an important component of the transportation system planned for the South Holgate to South King Street Stage 2 Viaduct Replacement Project, which is expected to begin in 2010. Thank you for your consideration of this legislation. Should you have questions, please contact Bob Chandler at 684-7595.

Sincerely

GREG NICKELS Mayor of Seattle

cc: Honorable Members of the Seattle City Council





## STATE OF WASHINGTON – KING COUNTY

--ss.

245613 CITY OF SEATTLE, CLERKS OFFICE No.

#### **Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:ORD 123091

was published on

10/06/09

The amount of the fee charged for the foregoing publication is the sum of \$ 240.55, which amount has been paid in full.

Subscribed and sworn to before me on

Notary public for the State of Washington,

residing in Seattle

Affidavit of Publication

### State of Washington, King County

## City of Seattle

#### ORDINANCE 125091

AN ORDINANCE authorizing execution of an amendment to BNSF Railway Company (BNSF) Franchise Ordinance 9117 (as previously amended by Ordinances 12191, 92565 and 117477) in order to provide for the relocation of the existing tail track to a new location, and ratifying and confirming prior acts.

WHEREAS, the Washington State Department of Transportation ("WSDOT"), in consultation with the City of Seattle ("City"), is planning for the replacement of the Alaskan Way Viaduct ("AWV") on State Route 99, a non-limited access highway located partially in the City of Seattle; and

WHEREAS, WSDOT and the City, in conjunction with the Federal Highway Administration and King County, are working to define a reconfigured and improved State Route 99; and

WHEREAS, the City, WSDOT, and BNSF Railway Company ("BNSF") have agreed that in order to facilitate the SR 99 S. Holgate Street to S. King Street Viaduct Replacement Project, Stage 2, it is necessary that the existing tail track connected to BNSF's Seattle International Gateway Yard, more particularly described in City Ordinance Number 9117 as amended, be relocated from its current location; and

WHEREAS, relocation of the tail track is proposed to take place in two stages, first to a temporary location, then to a permanent location; and

WHEREAS, the existing BNSF tail track currently is located within City right-of-way pursuant to a franchise authorized by Ordinance 9117, and subsequently amended by Ordinances 12191, 92565 and 117477; and

WHEREAS, the proposed temporary and permanent locations for the relocated BNSF tail track also are within City right-of-way;

whereas, the City and BNSF agree that it is in their mutual interests to work together cooperatively and in good faith to review the various franchise agreements between them, including the franchise agreement amended herein and other franchise agreements across the City, and to amend or replace those various franchise agreements as the City and BNSF may agree, each in its sole discretion, upon completion of that review; NOW, THEREFORE.

# BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 2 of Ordinance 9117, as amended by Ordinances 12191, 92565 and 117477, is further amended by adding the following language as a new paragraph at the end of section 2:

BNSF Railway Company, as successor to Northern Pacific Railway Company, may, subject to the conditions set forth in Ordinance 9117, as amended, construct, lay down, maintain and operate its tail track in the temporary and permanent locations described in Exhibits Al, A2 and A3 attached hereto.

Section 2. The paragraph designated "First" of Section 3 of Ordinance 9117, as amended, is further amended as follows:

Section 3. The grant in this ordinance contained is made expressly subject to the fol-lowing conditions and requirements, to wit:

First: The City of Seattle shall retain the same control of the streets, avenues and alleys in and across which said railway tracks shall be laid down, as over other streets, avenues and alleys, ((and shall have the right at all times, by general ordinance, to regulate the speed of locomotives and trains within the limits of the rights of way herein for which locomotives, cars or trains shall be allowed to blockade travel along or across the streets embraced in this grant, or intersecting streets,) and shall have such further control and police powers over such right of way as the City Charter and State laws permit. And said city reserves to itself and its grantees the right to carry all water mains, sewer mains, gas pipes, conduits and other public utilities underneath any and all of the tracks herein authorized, below any and all bridges herein provided for and underneath any street, avenue or other public place which may be vacated concurrently with or after the enactment of this ordinance, and the right of access to any spaces occupied by such tracks within the limits of any such street, avenue or other public place, and the right to open the ground beneath said tracks, for all purposes of construction, maintenance, repair, alteration and inspection of any such public utilities; which rights shall be exercised, however, so as to interfer as little as practicable with the use of said tracks and so as to leave the right of way occupied thereby restored to as good a condition as prior to any exercise of such rights.

Section 3. Section 4 of Ordinance 9117, as amended by Ordinances 12191, 92665 and

Section 3. Section 4 of Ordinance 9117, as amended by Ordinances 12191, 92565 and 117477, is hereby repealed in its entirety.

117477, is hereby repealed in its entirety.

Section 4. BNSF may continue to operate the existing tail track in its current location until such time as BNSF accepts and approves the relocated tail track and discontinues its operations on the existing tail track, all in accordance with the terms and conditions of the agreement reached between the Washington State Department of Transportation and BNSF for construction of the relocated tail track, at which time BNSF's right to use that portion of the City's right-of-way underlying the existing tail track for the existing tail track and all other purposes as may be granted pursuant to City Ordinance Number 9117, as amended, shall cease.

Section 5. The Director of Transportation

Section 5. The Director of Transportation is authorized to accept the franchise amendment from BNSF substantially in the form attached hereto as Exhibit B.

Section 6. BNSF's acceptance of this ordi-nance shall not be deemed a waiver of the preemptive effect of any state or federal law.

Section 7. Any act consistent with the authority of this ordinance taken after the passage of this ordinance and prior to its effective date is hereby ratified and con-

Section 8. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 21st day of September, 2009, and signed by me in open session in authentication of its passage this 21st day of September, 2009.

RICHARD CONLIN,

President of the City Council.

Approved by me this 24th day of September, 2009.

GREGORY J. NICKELS,

Mayor.

Filed by me this 24th day of September, 2009

(Seal) JUDITH E. PIPPIN,

City Clerk.

Exhibit A1 Plan showing proposed and temporary tail track.

Exhibit A2 Location—Permanent. Tail Track

Exhibit A3 Location—Temporary.

Track

Exhibit B

Acceptance

Tail

Date of publication in the Seattle Daily Journal of Commerce, October 6, 2009. 10/6(245613)