

ORDINANCE NO. 17330

AN ORDINANCE of the City of Seattle granting to the Chicago, Milwaukee & St. Paul Railway Company of Washington, its successors and assigns, and to the joint owners hereafter acquiring an interest in this franchise, in accordance with the provisions thereof, the right, privilege and authority to locate, lay down, construct, maintain and operate railway tracks in, along and across sundry streets, within the limits of said city, and granting to said company, its successors and assigns, rights-of-way for such tracks in, along and across such streets in said city.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

SECTION 1. The City of Seattle does hereby grant to the Chicago, Milwaukee & St. Paul Railway Company, of Washington, its successors and assigns, and to the joint owners hereafter acquiring an interest in this franchise, in accordance with the provisions thereof, for the term beginning with the taking effect of this ordinance and ending December 31st, A. D. 1926, the right, privilege and authority to lay down, construct, maintain and operate tracks of standard gauge railway, as hereinbelow designated and specified, over and across certain streets within the limits of said City, and also rights-of-way for said tracks over and across said streets; all of which rights, privileges and authorities are hereby granted, subject to all the conditions, restrictions, specifications and requirements in this ordinance expressed.

SEC. 2. The tracks of standard gauge railway, the laying down, construction, maintenance and operation whereof are author-

ized by this ordinance, and the rights-of-way granted for the same are described as follows, said tracks being hereinafter designated as Track "A" and Track "B":

TRACK "A". One track of standard gauge railway, the center line whereof shall be, as nearly as may be, coincident with the center line of a right-of-way fifteen (15) feet in width for such track, the center line of which right-of-way shall begin at a point of intersection, in Whatcom Avenue, with the center line of the track described in the first paragraph of Section 2 of Ordinance No. 13633, of the City of Seattle, entitled "An Ordinance of the City of Seattle granting to the Chicago, Milwaukee & St. Paul Railway Company of Washington, its successors and assigns, and to the joint owners hereafter acquiring an interest in this franchise, in accordance with the provisions thereof, the right, privilege and authority to locate, lay down, construct, maintain and operate sundry railway tracks in, along and across sundry streets, avenues, alleys and other public places within the limits of said city, and granting to said company, its successors and assigns, rights-of-way for such tracks in, along and across all such streets, avenues, alleys and other public places in said City", approved May 2d, 1906, which point of beginning is one hundred and sixty-five and twenty-three hundredths (165.23) feet south of the intersection of the center line of the track described in said ordinance, with the center line of Lander Street, produced southeasterly, and one hundred and eighty-six and five-tenths (186.5) feet west of the east line of Whatcom Avenue, said point of beginning being the point of a ^{CURVE} corner to the left having a radius of two hundred and eighty-seven and nine hundred and thirty-nine thousandths (287.939) feet; thence north-westerly along said curve, consuming an angle of forty-five (45)

degrees to a point of tangency, a distance of two hundred and twenty-six and fourteen hundredths (226.14) feet; said point of tangency being on a line parallel to the south margin of Lander Street and distant seventeen and one-half (17-1/2) feet northeasterly therefrom, thence northwesterly along the said last described line, a distance of seven hundred and seventy-six and sixty-two hundredths (776.62) feet to the East Waterway.

TRACK "B". One track of standard gauge railway, the center line whereof shall be as nearly as may be, coincident with the center line of a right-of-way fifteen (15) feet in width for such track, the center line of which right-of-way shall begin at a point of intersection in Whatcom Avenue, with the center line of the track described in the first paragraph of Section 2, of Ordinance No. 13633, of the City of Seattle, entitled "An Ordinance of the City of Seattle granting to the Chicago, Milwaukee & St. Paul Railway Company of Washington, its successors and assigns, and to the joint owners hereafter acquiring an interest in this franchise, in accordance with the provisions thereof, the right, privilege and authority to locate, lay down, construct, maintain and operate sundry railway tracks in, along and across sundry streets, avenues, alleys and other public places within the limits of said City, and granting to said company, its successors and assigns, rights-of-way for such tracks in, along and across, all such streets, avenues, alleys and other public places in said City", approved May 2d, 1906, which point of beginning is seventy-three and three hundred and six thousands (73.306) feet south of the intersection of the center line of the track described in said ordinance, with the center line of Lander Street produced southeasterly and one hundred and eighty-six and five tenths (186.5) feet west of the

east line of Whatcom Avenue, said point of beginning being the point of a curve to the left having a radius of two hundred and eighty-seven and nine hundred and thirty-nine thousandths (287.939) feet; thence northwesterly along said curve, consuming an angle of forty-five (45) degrees to a point of tangency; said point of tangency being on a line parallel to the north margin of Lander Street and distant seventeen and one-half (17-1/2) feet southwesterly therefrom; thence northwesterly along the said last described line a distance of seven hundred and seventy-six and sixty-two hundredths (776.62) feet to the East Waterway.

SEC. 3. The City of Seattle shall retain the same control of the streets in and across which said railway tracks shall be laid down as over other streets in said City, and shall have the right at all times by general ordinance to regulate the speed of locomotives and trains within the limits of the right-of-way herein granted, and the maximum period of time for which locomotives, cars or trains shall be allowed to blockade travel along or across the streets embraced in this grant, 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, or wires above, the tracksherein granted, and the right of access to any spaces occupied by such tracks within limits of any such street, 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 right 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 right.

SEC. 4. The grantee herein, its successors or assigns, shall cause that portion of the streets lying within its right-of-way to be graded, planked, paved or otherwise improved whenever the adjoining parts of such streets shall be so graded, planked, paved or otherwise improved by the City. Whenever such streets, after having been so graded or improved by the City, shall be re-graded, re-planked, re-paved, or otherwise re-improved, said grantee, its successors or assigns, shall cause the parts thereof lying within such right-of-way to be correspondingly regraded, re-planked, re-paved or otherwise re-improved; all such original or subsequent grading or improvements to be done wholly at the cost of said grantee, its successors or assigns, and under the supervision and control and subject to the acceptance of the Board of Public Works of said city.

SEC. 5. Said grantee, its successors and assigns, shall allow each owner or occupant of a wharf, warehouse or industry, contiguous to the railway tracks constructed under this franchise, and who shall have first procured from the Board of Public Works of said City a permit therefor, a spur track connecting such railway track with such wharf, warehouse, or industry; provided, however, that such grantee, its successors and assigns, may at its or their option require that such spur track shall be constructed and maintained at the expense of such owner or occupant of such wharf, warehouse or industry, including the reasonable value of any right-of-way, not within a street, requisite therefor; and provided further, that any such spur track serving a wharf, warehouse or industry located on the southwesterly side of Lander Street shall start from Track "A" and that any such spur track serving a wharf, warehouse or industry located on the northeasterly side of Lander Street shall start

from Track "B". The use of such spur tracks shall be subject to such reasonable rules and regulations as to the opening and closing of the switch controlling access thereto, as said grantee, its successors and assigns, may from time to time establish. And said grantee, its successors and assigns, shall have the right to lay down, construct, maintain and operate any such spur track for the use of the owner or occupant of any such wharf, warehouse or industry crossing in its course the track or tracks of any other railway company; provided, however, that in no case shall said grantee, its successors or assigns, occupy any more of the right-of-way of any such other railway company for the purposes of such crossing than shall be reasonably necessary therefor, nor shall such space be occupied otherwise than in the course of the transit of locomotives and cars across the same in the use of such spur tracks, nor for that purpose any oftener or longer than shall be reasonably necessary.

SEC. 6. Any other railway company heretofore having constructed or hereafter constructing a standard gauge railway to the City of Seattle, upon obtaining a franchise from the said City, giving access to any point therein from which it can reach with its engines and cars any point on the tracksherein specified, and also a franchise permitting it or them to use and run its engines and cars upon the same, shall have the right to the common use thereof with the grantee herein, its successors or assigns, and the companies hereafter acquiring a joint interest in this franchise and the tracksherein mentioned for the running thereon of the engines and cars of such other railway company, on all or any part of the tracks specified in this ordinance, upon payment to the grantee herein, its successors or assigns, of such monthly or annual rental or other compensation as may be just and equitable, and subject to such reasonable rules and regula-

tions as may be consistent with the prior rights of the grantee herein, its successors and assigns, and as shall not unnecessarily interfere with or impede the transaction and dispatch of the business of the grantee herein, its successors or assigns. And in case such railway company can not agree with the grantee herein, its successors or assigns, upon the rental or compensation to be paid for such use of said tracks as aforesaid, any controversy or difference between them respecting the proper amount of such rental or other compensation, or respecting the conditions, terms, rules and regulations of such use, shall be submitted to arbitration as provided in Section seven (7) hereof.

SEC. 7. The said grantee, for itself, its successors and assigns, in and by its acceptance of the benefit of this ordinance agrees that the tracks mentioned and described herein, shall be subject to the following provisions, to-wit: That any railway company or companies now owning or operating a standard gauge railway or railways in the City of Seattle, under franchise from said City, upon and over Whatcom Avenue in said city, or any railway company or companies, or terminal railway company or companies, hereafter receiving a franchise from said City of Seattle and constructing and operating, or operating, thereunder a standard gauge railway or railways, upon and over said avenue, shall have the right to acquire by purchase upon the basis of cost of construction, as hereinafter fixed, and interest thereon from the date of completion thereof, at the rate of four per cent. (4%) per annum (except as hereinafter provided), an absolutely equal joint interest with the grantee herein, or with any of the successors or assigns of the grantee, to any interest thereof, or the then joint owners thereof, in and to the tracks constructed and operated under this franchise, and in and to the

rights and privileges conferred by this franchise, subject to all the provisions of this ordinance, and said grantee, its successors and assigns, or the then joint owners of said tracks and franchise, upon receiving a tender of its or their pro rata proportion of such purchase price, as aforesaid, shall convey to such company or companies such pro rata proportion of its or their interest in said tracks and this franchise as to enable such company or companies to become an absolute equal owner with the other then owners of said tracks and this franchise. Thereafter such joint owners shall own and operate said railway tracks constructed under the terms of this franchise, so far as concerns the cost of maintenance and operation thereof, upon a wheelage basis, or upon such other basis as may be agreed upon by them.

In computing the purchase price for such equal interest in said track ^{and} franchise, no interest shall be paid upon the cost of construction by any railway company or companies now owning or operating a standard gauge railway in the City of Seattle, under a franchise from the said City, provided such railway company or companies shall pay and acquire such interest within six months after the completion thereof, as herein provided, nor shall any such interest upon the cost of construction be paid by any new railway company or companies not now owning or operating under, but hereafter receiving a franchise from the City of Seattle, and constructing and operating thereunder a standard gauge railway upon or over said Avenue, provided such railway company or companies acquire and pay for such interest in said tracks and this franchise, within one year from the date of the acceptance by it or them of said franchise from said City; but as to any such railway company or companies last above described so failing to purchase and pay for such interest within said period of one (1) year, but thereafter electing to purchase such

interest, interest at the rate of four per cent. (4%) per annum upon the cost of construction thereof, as aforesaid, shall be computed and paid by it or them from the date of the acceptance by it or them of its or their franchise or franchises to the date of such purchase.

In case any of the said railway companies or terminal company or companies cannot agree with the said grantee, its successors or assigns, or with any of the then joint owners of the railway tracksto be constructed under the terms of this franchise as to the terms and compensation to be paid for the acquisition of their equal joint interest in such trackSand franchise, or in case of a controversy as to any question arising under the terms of this franchise, or the construction, maintenance and operation of said tracksto be constructed hereunder, respecting the amount to be paid to the said grantee, its successors and assigns, or such joint owners, for the purchase and acquisition of an equal joint interest in such tracksand franchise, and the conditions, terms and regulations of such use, such controversy shall be submitted for arbitration to a board of disinterested arbitrators, one to be appointed by each of the said railway companies so interested in, or desiring to become interested in such tracksand franchise, and in case such board of arbitrators shall consist of an even number, and they cannot agree upon a basis of arbitration or upon another arbitrator, then the Board of Public Works of the City of Seattle, or such board or body as may be its successor, shall have the right to appoint such additional arbitrator. And in case any such company or companies fail, after receiving fifteen (15) days' notice in writing requesting the appointment thereof, to appoint such an arbitrator, for the purpose of determining any such dispute or

controversy, then the Board of Public Works of the City of Seattle, or such body as may be its successors, shall have the right to appoint any such arbitrator for such company or companies so failing to appoint, and such controversy shall be without delay submitted to such board of arbitrators, appointed as aforesaid, according to the laws in force in the State of Washington, relating to arbitration, and such submission and the decision of such arbitrators thereon shall have the same force and binding effect upon the parties thereto as shall be provided by such laws in other cases of arbitration.

In determining the compensation to be paid for the purchase of any interest therein, as hereinbefore provided, no value shall be assigned to the franchise hereby granted.

Within ninety (90) days from and after the time of the completion of the tracks referred to in this section, the said grantee shall, for the purpose of preserving evidence of the cost thereof, file with the City Clerk of the said City of Seattle a sworn statement of the cost of such construction, and upon being required so to do by either the City Council or the Board of Public Works, shall submit the items of such cost of construction, together with the vouchers therefor.

SEC. 8. Said grantee, by acceptance of this grant, does agree and covenant, for itself, its successors and assigns, to and with the City of Seattle, to protect and save harmless said City, from all claims, actions or damages of every kind and description, which may accrue to, or be suffered by, any person or persons by reason of any defective construction or maintenance or improper occupation of said right-of-way, or by reason of the negligent operation by said grantee, its successors or assigns, of its or their railway trains over the right-of-way hereinbefore described. And in case any action or suit shall be begun

against said City for damages arising out of, or by reason of, such defective construction or maintenance or improper occupation or negligent operation, said grantee, its successors or assigns, may, and shall, upon notice to it or them of the commencement of such action or suit, defend the same at its or their cost and expense, and, in case judgment shall be rendered against said City in such action or suit, shall fully satisfy such judgment within ninety (90) days after such action or suit shall have been finally determined, if determined adversely to said City.

SEC. 9. In the operation of the tracks authorized by this Ordinance, said grantee, its successors and assigns, shall have the right to use steam power, or any other motive power that it or they may deem suitable, subject to the reasonable control and regulation of the City of Seattle.

SEC. 10. The City of Seattle shall have the right at any time by ordinance to prohibit any use of the track or right-of-way hereby granted except between the hours of eleven o'clock p.m. and 5 o'clock a.m.

SEC. 11. The right-of-way and all the rights, privileges and authorities granted by this ordinance, and all benefits hereof, shall be assignable by said grantee, its successors or assigns, as it or they may at any time see fit, either as an entirety or as respects any part of its or their tracks embraced within the scope of such grant; provided, however, that no such assignment, either total or partial, shall be of any force or effect until a copy thereof, certified as such by the secretary of the assignee, or other officer or person having the proper custody of such assignment in its behalf, shall have been filed in the office of the City Comptroller.

SEC. 12. Nothing in this ordinance contained shall be construed as granting an exclusive franchise or privilege for the

use of any street or part thereof; and the grant herein contained shall be subject to the right of the City Council at any time hereafter to repeal, change or modify said grant, if the franchise granted thereby is not operated in accordance with the provisions of such grant or at all, and the City of Seattle reserves the right at any time hereafter so to repeal, amend or modify said grant.

SEC. 13. In order to claim the benefits of this Ordinance, and to acquire the rights, privileges and authorities hereby granted, said grantee, its successors or assigns, must, within ninety (90) days after the taking effect of this Ordinance, file in the office of the City Comptroller a copy, duly certified and attested by its Secretary under its corporate seal, of a resolution duly adopted by its board of trustees, accepting the benefits of this Ordinance, and the rights, privileges and authorities hereby granted, subject to all the conditions, restrictions, specifications and requirements herein expressed, and if such certified copy of such a resolution of acceptance shall not be filed before the expiration of said time, this Ordinance shall thereupon become void and of no effect.

SECTION 14. This Ordinance shall take effect and be in force from and after its passage and approval, if approved by the Mayor, otherwise it shall take effect at the time it shall become a law under the provisions of the City Charter.

Passed the City Council the 28th day of OCTOBER 1907,
and signed by me in open session in authentication of its passage
this 28th day of OCTOBER 1907.

Ellis Morrison
President PRO-TEM of the City Council.

Approved by me this 8th day of NOVEMBER 1907.

William Moore
Mayor.

Filed by me this 8th day of NOVEMBER 1907.

Attest:

A. W. Carroll
Comptroller and ex-officio City Clerk

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