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Franchise to S. P. & S. Ry. Co.

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ORDINANCE NO. 26513
An Ordinance granting to Spokane, Portland and Seattle Railway Company, a corporation, its successors and assigns the right and privilege of laying down, constructing and maintaining standard gauge railway tracks for a commercial railroad, and to operate locomotives and cars, and to transport passengers, mail, baggage, express and freight, on certain streets.

The City of Portland Does Ordain as Follows:

Granting Clause, Streets Named.

Section 1. That there be and is hereby granted, subject to the terms, restrictions and provisions in this Ordinance contained, to Spokane, Portland and Seattle Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Washington, its successors and assigns, the right and privilege to lay down, relay, construct, reconstruct, repair, maintain, equip, operate, have, hold, use and enjoy lines of railway of standard gauge, either single track or double track, with convenient switches, turnouts, crossovers, curves, connections, spur tracks and side tracks, for commercial railroad purposes, including the transportation of freight, and to operate cars and locomotives, with steam or other motive power, in, over, along and upon the following streets in the City of Portland:

On East Water street, from the north line of Hawthorne avenue to the north line of East Ash street;

On East Third street, from the north line of Hawthorne avenue to the north line of East Ash street;

On East Oak street, from the west line of Union avenue to the western end of said East Oak street;

Also upon Blocks 10, 13, 50, 53, 89, 88, 87, 86 and 85, East Portland, now part of the City of Portland, or such parts of said blocks as are owned by said grantee and used as a right of way and for railroad terminal purposes, from the Harbor Line on the Willamette River in front of said block ten (10) (as the harbor line is now or may hereafter be established), crossing all intervening streets lying between said blocks.

Also from block 50 to a connection with the tracks now in or hereafter to be laid in East Second street near East Main street; also, from block 13 to connections with the track now in or hereafter to be laid in East Water street near East Main street and near East Madison street; also, from a connection with the track to be laid in East Oak street between East Second and East Third streets to a connection with the track or tracks now in or hereafter to be laid in East Third street, between East Oak and East Stark streets; also from a connection with the track or tracks to be laid in East Oak street, between East First street and East Water street to a connection with the track or tracks now in or hereafter to be laid in East Water street, between East Oak and East Stark streets. Also on East Third street from a connection with the East Third street common user track at East

Pine street to a point between East Ash and East Ankeny streets; on block 66, or by other practical route, to East Second street; from East Second street across block sixty-six (66) and across intervening blocks and streets to and along the southerly side of Sullivan's Gulch to East Eighteenth street; on East Second street from East Ash street to a point between East Flinders street and East Glisan street, and to a connection with the approach to the Oregon-Washington Railroad and Navigation Company's bridge on the east side of the Willamette River on the Oregon-Washington Railroad and Navigation Company's main line tracks; thence upon the said bridge approach and the Oregon-Washington Railroad and Navigation Company's bridge across the Willamette River, and upon the approach to said bridge on the west side of the Willamette River on the Oregon-Washington Railroad and Navigation Company's main line tracks to North Front street; thence by a single track on North Front street from the westerly approach of the said bridge to block 243, Couch's Addition to the City of Portland. Provided, however, that no freight shall be moved over the said track on North Front street excepting at night between the hours of 6 o'clock p. m. and 6 o'clock a. m.

The grantee shall have the right to change from a single track to a double track, but not from a double to a single track without the consent of the Council as expressed by ordinance, and no change shall be made during the pendency of a street improvement proceeding on a street or portion of a street where such change is to be made without the consent of the Council first expressed by ordinance, nor unless the said grantee shall first pay its full portion of the assessment for such improvement as apportioned to it by the Council, or as hereinafter provided in Section 4. Provided, however, that so much of said track or tracks as are authorized to be laid in East Oak street west of the west line of East Water street shall, whenever required by the Commission of Public Docks, or other lawfully constituted authority of the City of Portland having charge of the Public Docks, be relocated and rebuilt by the grantee at its expense to connect with the track or tracks on the Public Docks west of East Water street.

Location of Tracks in Streets.

Section 2. Where a single track is constructed under this ordinance by the grantee, there then being no other track at that place in the street where the same is laid, the same shall be constructed, maintained and operated in the center line of said street as nearly as practicable; and where double tracks are constructed under this Ordinance by the grantee, there then being no other track or tracks at that place, the same shall be constructed, maintained and operated so that the inside rail of said double track shall be equally distant from the center line of the said street as nearly as practicable, but this provision does not apply where curves are made; and where tracks owned or controlled by any other person or corporation already occupy part of the street at any place, so that it

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is not practicable to comply with the terms of this section, the requirement hereof may be dispensed with.

Manner of Laying Tracks.

Section 3. All tracks constructed in the streets under this Ordinance shall conform as nearly as practicable to the established grade of the streets upon which they are constructed, so as to interfere as little as possible with the public use of the said streets. The rails laid in or across paved streets shall not be less than six inches in depth and shall weight not less than seventy pounds to the yard. The rails in other than paved streets shall be not less than four and one-quarter inches in depth and shall weigh not less than sixty pounds to the yard. In laying down, repairing or reconstructing the said tracks the grantee shall not obstruct any street for a greater continuous distance nor for a longer time, than is reasonably necessary and subject to the control of the Executive Board or other lawfully constituted authority of the City of Portland.

Street Improvements.

Section 4. Nothing in this Ordinance, nor any right or privilege granted by this Ordinance, shall be construed to prevent the municipal authorities of the City of Portland from sewerage, grading, paving, planking, macadamizing, improving, altering or repairing any of the streets over which the tracks authorized by this Ordinance are constructed or operated, but all such work shall be done so as to cause as little obstruction or hindrance as possible to the cars and the operation of the said railway, and the grantee shall have the privilege of raising and shifting the tracks so as to avoid as much as possible obstruction to the operation of cars during the progress of street improvements, sewerage, grading, planking, macadamizing, improving, altering or repairing. The grantee shall fill in and grade to the established grade and plank, pave, repave, reconstruct, or otherwise improve or repair and keep in good condition from time to time, whenever directed by the Council or Executive Board, and in such manner as the municipal authorities may direct, those portions of the street or streets or other public places along and over which the said tracks are or shall hereafter be constructed, the whole width of said tracks between the rails, and also between the tracks, and for the width of one foot on the outside of the outermost rails; all such work required of the grantee shall be done and completed within the time fixed by the Executive Board. And whenever it becomes necessary for the city to construct and maintain sewers or water mains under the tracks of said grantee, authorized to be constructed hereunder, the right so to do is hereby granted by said grantee, its successors or assigns, without compensation, or the further execution of a formal conveyance; provided the city shall at all times protect the said tracks from damage, and said work shall be done so as not to delay the operation of trains over said tracks.

Obstruction of Tracks Unlawful—Penalty.

Section 5. It shall be unlawful for any person or persons to obstruct the laying down, construction, maintenance or operation of the tracks or the lines of railway provided for in this Ordinance, and any person or persons who shall violate the provisions of this section shall, upon the conviction thereof, before the Municipal Court of the City of Portland, be punished by a fine of not less than five dollars or more than twenty-five dollars for each and every offense.

Time of Construction.

Section 6. The grantee shall begin construction of the tracks herein mentioned

within ninety (90) days from and after the final approval of this Ordinance, and shall complete the construction of the tracks along Second and Third streets and begin the operation of cars thereon on or before one year from the date of the final approval of this Ordinance, except that the grantee shall be permitted to locate and construct spurs and sidetracks to accommodate abutting property along the said railway lines from time to time, when the same are needed, and also from time to time when same are needed for commercial railroad purposes to locate and construct additional spurs and sidings on property owned by said grantee and crossing intervening streets. In case of delays occasioned by strike, accident, litigation or other sufficient cause, the time herein mentioned shall be extended by the amount of such delays; and where tracks owned and controlled by any other person or corporation occupy any of said streets, so that the grantee is delayed in the completion of its said railway lines by reason thereof, the time for completion shall be extended as to the portion of the grantees tracks not completed on account of such obstruction.

Duration of Franchise.

Section 7. The rights, franchises and privileges granted to or conferred upon the grantee by this Ordinance shall continue and remain in force until the expiration of twenty-five (25) years from and after the date when this Ordinance shall become effective.

Acceptance—Grantee to File.

Section 8. Said grantee shall, within thirty (30) days after the final approval of this Ordinance, file in the office of the Auditor of the City of Portland a written acceptance of this Ordinance and of the privileges therein granted; the failure on the part of the grantee to file such written acceptance within the time specified shall be deemed an abandonment and rejection of the privileges herein conferred and this Ordinance shall thereafter be null and void. The acceptance provided for by this section shall be unqualified and shall be an acceptance of all of the terms, conditions and restrictions contained in this Ordinance.

Compensation.

Section 9. The amount and manner of compensation to be paid by the grantee for the granting of this franchise and for the rights hereby granted is hereby fixed as follows:

The said grantee shall pay to the Treasurer of the City of Portland on or before the 15th day of January, 1914, and annually thereafter during the life of this franchise, the sum of Five Hundred (\$500.00) Dollars.

Executive Board—Authority Over Tracks.

Section 10. The Executive Board of the City of Portland or other legally constituted authority thereof shall have the power and authority to regulate the manner of constructing and maintaining the tracks provided for by this Ordinance and the carrying out of the provisions of this Ordinance in relation thereto.

Map of Definite Location—Grantee to File.

Section 11. Before commencing the construction of the railways provided for in this Ordinance, the grantee shall and is hereby required to file in the office of the Auditor of the City of Portland a map and plat showing the definite location of the tracks, and after the definite location thereof it shall be unlawful for it to change the route thus established without the permission of the Executive Board of the said city upon plans being first filed showing

such changes: Provided that work of immediate necessity may be done without filing such plans. No work shall be commenced until such plans are approved by the Executive Board.

Common User.

Section 12. The franchise hereby granted is upon the condition that the grantee, its successors or assigns, shall allow any other commercial railroad company, including commercial railroad companies operating by electricity and having a franchise to occupy the same streets, or parts thereof, covered by this franchise, to use in common with the grantee, its successors or assigns, any tracks (main or side), or any part thereof, that may hereafter be constructed under authority of this franchise by the grantee, its successors or assigns, on any of the public streets, each railroad company paying an equitable and proper portion of the cost for the construction and repair of the tracks and appurtenances used by such railroad companies jointly, and railroad companies operating by electricity shall erect and maintain poles and wires and bond the rails for operating by electricity without cost or expense to the grantee, its successors and assigns, unless the grantee joins in the use thereof, then each railroad company using electricity shall pay a proper and equitable proportion of the cost for the erection and maintenance of such poles and wires, bonding of rails and electric current consumed. Any railroad company now having a franchise on any of the streets covered by this franchise shall not be restrained from crossing the track or tracks of the grantee herein wherever necessary, and may construct such main or side tracks in said street as it may be authorized so to do by its franchise, across the track or tracks of the grantee herein. The rules and regulations for the common use of the grantee's tracks shall be prepared by the grantee herein, and in case dispute arises as to the same, the matter in controversy shall be determined by the Council by Ordinance.

Cost of Construction and Maintenance.

Section 13. The estimated total cost of constructing the tracks authorized to be constructed by this Ordinance is the sum of Forty Thousand (\$40,000.00) Dollars, and the yearly sum to be expended thereon is the sum of Five Hundred (\$500.00) Dollars.

Abandonment of Street—Council Must Consent.

Section 14. In the event that any street or portion of a street or other public place used by the grantee shall during the life of the franchise hereby granted be abandoned by the grantee, said grantee shall forthwith remove its tracks and other property therefrom, and on such removal restore, repair or reconstruct that portion of the street which, under this franchise, is to be kept in repair by said grantee, so that it will be placed in such condition as may be required by the Council, and this franchise as to such street or portion of street or other public place so abandoned shall thereafter be null and void and shall be forfeited without any further action on the part of the city: Provided, that no tracks or portion thereof laid under the authority of this ordinance shall be abandoned without first obtaining the consent of the Council of the City of Portland first expressed by ordinance.

Forfeiture.

Section 15. The failure to comply within a reasonable time with any of the provisions or conditions contained in this franchise shall authorize the City of Portland to declare an immediate forfeiture of the franchise hereby granted and the roadbed or tracks constructed thereunder on any street shall likewise be forfeited, and in

case of the failure or neglect or refusal of the said grantee after thirty (30) days' notice given by the Council to repair, improve or maintain as herein set out, the portion of the streets as herein required, the City of Portland may at its option do such work, and the cost of the same as ascertained and declared by the Council shall be entered in the docket of city liens and be enforced in like manner and with like effect as a general tax upon the real and personal property of the grantee.

Trains to Stop at East Morrison Street.

Section 16. The grantee shall cause each and every of its trains, engines and cars to come to a full stop on approaching East Morrison street, and send out a flagman, and none of its trains, engines or cars shall proceed over or across said East Morrison street until after receiving a proper signal from the flagman that the way is clear.

The Council reserves the right to hereafter by general ordinance, require gates or interlocking signal or switching systems installed at street intersections and further reserves the right to require, by general ordinance, the raising or lowering of all tracks.

Streets Now Occupied—Right of Grantee to Use.

Section 17. Where any other railroad track is already laid in any of said streets in, over, along and upon which the right and privilege to construct its railway line is granted to said grantee, by this Ordinance, the track or tracks of the grantee shall, wherever practicable, be laid so as not to unnecessarily interfere with the same. The track belonging to Oregon-Washington Railroad and Navigation Company now occupying the center of East Second street may be moved to the westward in said street between East Ankeny and East Flanders streets, to enable the tracks of the grantee under this Ordinance to be placed near the center of the street at that place, and the track so moved shall continue to be the property of the Oregon-Washington Railroad and Navigation Company to be owned and operated by it. As to any and all tracks now or hereafter laid upon any street or part of street covered by this Ordinance, upon which said tracks the City of Portland has the power to give and grant the right and privilege of using the same in common with any other corporation the consent of the City of Portland is hereby given to the grantee to use the same in common with such other corporation, each of them paying a proper and equitable portion for the construction, maintenance and repair of the tracks and appurtenances used by said companies jointly. In case they cannot agree, the matter shall be determined by the Council by ordinance, and the Council reserves the power to determine the amount and proportion of such payments, and to make all needful rules and regulations in case of the failure of the parties to agree.

Grantee May Contract With Present owners For Common User.

Section 18. Whenever by the terms of this Ordinance the grantee is authorized and permitted to construct, lay down, maintain and operate a track or tracks in, over, along and upon any street or portion of street whereon any other corporation now has a railway track or tracks, the grantee and such other corporation may agree to use in common the same track or tracks and the appurtenances thereof, upon such terms and conditions as to sharing the expense of the construction, maintenance and repair thereof, and the expense of operation thereof as may be agreed upon between them, and the grantee is authorized and permitted whenever it can do so by agreement, to use such other railroad track or

tracks and the appurtenances thereof, in common with the owner or lessee thereof, and to enter into contract with such owner or lessee for the joint or common use thereof. But the failure of such parties to agree shall not deprive the grantee of any right or privilege hereby granted.

Rights In Common With Municipal Belt Line Railroad.

Section 19. This Ordinance and the franchise hereby granted is upon the condition that said grantee shall allow the City of Portland, or the proper department of said City of Portland, to use in common with it, the same track, or tracks in this section mentioned, as well as the track or tracks upon its private right or rights of way, described as follows, to-wit: On North Front street and upon the bridge of the Oregon-Washington Railroad and Navigation Company and the approaches thereto on each side of the Willamette River; on East Second street between said bridge and East Ankeny street; on block 65; on East Third street between said block and East Stark street; on block 62, and on East Oak street between East Third street and the western end of the said street; also on block 6, Frush's Square and on block 32, East Portland, so as to make a continuous feasible route over the said tracks in East Portland to reach the Public Docks at the foot of East Oak street from the said railway bridge, for the purpose of a municipal, commercial railroad belt line, if said city should ever be

empowered to construct, maintain or operate such municipal commercial railroad belt line, in which said event the said City of Portland, or the proper department of said city, shall pay to the grantee herein, or to its successors or assigns, an equitable and proper proportion for the construction and repair of the tracks and appurtenances thereof used jointly by said grantee herein and the said City of Portland, or the proper department of said city.

Franchise Subject to Charter.

Section 20. This Ordinance and the franchise hereby granted is subject to all of the terms, provisions and conditions of the Charter of the City of Portland applicable thereto as though each and every of the said terms, provisions and conditions were expressly set out and embodied herein. And at all times the power and right reasonably to regulate in the public interest the exercise of the franchise or rights so granted shall remain and be vested in the Council. The provisions of Section 99 of the Charter of the City of Portland are binding upon the grantee and shall be complied with.

"Grantee" Defined.

Section 21. Wherever the expression "grantee" is used in this Ordinance the same shall be construed to include the said Spokane, Portland and Seattle Railway Company, its successors and assigns, and on sale, transfer, mortgage or lease of the said franchise, or of any of the rights and privileges hereby granted, the requirements of Section 110 of the Charter of the City of Portland shall be complied with.

Passed the Council, January 8, 1913.

A. L. BARBUR,
Auditor of the City of Portland.

Submitted to the Mayor, January 9, 1913.

Approved, January 16, 1913.

A. G. RUSHLIGHT,
Mayor.