

ESTIMATE  
MAF 22 1945  
Cal. No. 3

No. 236

**BOARD OF ESTIMATE**  
THE CITY OF NEW YORK

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REPORT BY THE  
**BUREAU OF FRANCHISES**

to the

**BOARD OF ESTIMATE**

on the Petition dated February 28, 1944 of

**BROOKLYN**  
**EASTERN DISTRICT TERMINAL**

Requesting the right and lease to maintain and use fifty-four (54)  
railroad tracks located in the Boroughs of Brooklyn and  
Queens.

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March 16, 1945

BOARD OF ESTIMATE  
THE CITY OF NEW YORK

Bureau of Franchises, March 16, 1945.

*Hon. FIORELLO H. LA GUARDIA, Mayor, Chairman of the Board of Estimate:*

Sir—The Brooklyn Eastern District Terminal presented a petition dated February 28, 1944, to the Board of Estimate, requesting the right to lease, maintain and use forty-four (44) tracks located in the public streets in the Borough of Brooklyn and ten (10) tracks in the public streets in the Borough of Queens, all of which are designated and described in detail as to location in the petition.

Of the above tracks those in the Borough of Brooklyn are owned by the City while those in the Borough of Queens are now the property of the Company, but ownership thereof will vest in the City upon the granting of the proposed franchise. The Company includes in its petition the request to lease these tracks in the Borough of Queens.

A map was prepared and submitted with the petition on which is shown in detail the tracks in the public streets at each terminal as well as the tracks on private property used in connection with the City-owned tracks.

This petition was presented to the Board at a meeting held March 9, 1944 (Cal. No. 69), at which time it was referred to the Bureau of Franchises.

*The Company and Its Operations*

This is the only company operating a freight terminal business under a franchise from the City which has been incorporated as a freight terminal corporation. This Company was organized under Article 10-A of the Transportation Corporations Law on November 4, 1915, and shortly thereafter merged into it the Brooklyn Eastern District Terminal (organized as a navigation corporation) and the East River Terminal Railroad (a railroad corporation). The latter two corporations were controlled by the same interests as that controlling the petitioning company. The Company operates two freight terminals, one at Kent Avenue Yard in the Borough of Brooklyn and the other at the Pidgeon Street (55th Avenue) Yard in the Borough of Queens. It acts as contract agent for various trunk line railroads of the United States operating into New York Harbor and transfers and distributes the incoming freight shipments obtained from such railroads at its terminal yards in the Boroughs of Brooklyn and Queens. It likewise transfers the freight collected at these terminals to the various railroads. The main freight station is known as the Kent Avenue Yard and occupies about 13 blocks in the vicinity of the East River lying between North 3d Street and North 11th Street in the Williamsburg section of the Borough of Brooklyn. It is served by three float bridges in the East River, one each at the foot of North 5th Street, North 6th Street and North 9th Street, respectively. The connecting tracks in the yard occupy the greater part of the area between North 3d Street to North 11th Street between Kent Avenue and the East River, with some tracks extending across Kent Avenue and also Wythe Avenue into the adjoining blocks. The Kent Avenue Yard is used principally as a switching or make-up yard for the cars handled between the terminals of the Company and those of the trunk line railroads. It also maintains a freight house, team tracks, various sidings to warehouses and connecting tracks to industrial buildings located in the neighborhood.

The other terminal is located in the southwesterly section of Long Island City in the Borough of Queens lying between 54th Avenue and Newtown Creek west of Vernon Avenue. This latter terminal is reached via a float bridge in the East River at the foot of 55th Avenue (formerly Pidgeon Street) and by means of tracks occupying 55th Avenue and crossing 5th Street and 2d Street, entering into the freight terminal locally known as the Pidgeon Street Terminal. The National Sugar Refining Company owns property on both sides of 55th Avenue west of 2d Street and this property and 55th Avenue are almost completely covered with railroad tracks. The Pidgeon Street Yard is occupied principally with team tracks used for the transfer of freight between the cars on such tracks to or from the trucks receiving or delivering the same.

The freight cars obtained from the various railroads at their main terminal yards are placed on car floats which then transfer them with the aid of tugboats to the float bridges at the Kent Avenue Yard. Here they are reassembled and placed on sidings or other tracks in this yard and switched onto floats for further transfer to the 55th Avenue Yard and the Navy Yard. The reverse operation is carried on in the shipment of merchandise from the local yards.

The Company by three agreements dated separately July 7, 1935, November 16, 1935, and April 18, 1936, entered into between the City and the Company was authorized for a term of ten years to construct a float bridge and tracks in the Wallabout

Market for the purpose of establishing a freight terminal on the then Wallabout Market lands. Such construction was performed and operation was conducted by the Company until it ceased during the emergency period, due to the property in the Wallabout Market being taken over by the Federal Government on April 1, 1941, in its enlargement of the facilities of the Brooklyn Navy Yard. It is understood that the Company is now furnishing services to the Brooklyn Navy Yard, but such operation does not involve the use of City streets and is not considered in this petition.

*Prior Franchises and Consents*

In a report dated May 26, 1938, this Bureau set forth a detailed recital of the corporate rights of the petitioner and at the same time brought out the franchise rights of the prior corporations previously merged into the present company. This report was prepared and presented to the Board as representing the study made at that time by this Bureau, upon a petition submitted by the Company for the lease of and right to use the tracks at the Kent Avenue terminal. The proposed form of contract attached to that report was finally authorized and became the franchise contract dated September 1, 1938. This grant was for the lease of the City-owned track in the public streets at the Kent Avenue terminal and was limited to the term ending on March 14, 1944. This grant affected 4,613 linear feet of track which had become the property of the City. The annual compensation was fixed at \$7,640, and \$15,000 in security was required to be posted thereunder.

By resolution adopted by the Board on January 8, 1942, and approved by the Mayor on January 26, 1942, the City gave its consent to the construction, maintenance and operation of two additional tracks and the relocation of three tracks at the Kent Avenue Yard, all as provided for in the 1938 contract. This consent was made coterminous with the 1938 contract and provided for the payment of an additional annual sum of \$225.

As a result of an inspection made by this office it was found that the petitioner was maintaining and operating railroad tracks along 55th Avenue across 2d Street and 5th Street into the so-called Pidgeon Street terminal yard in the Borough of Queens. An examination of the records disclosed that in 1901 the National Sugar Refining Company had obtained the consent of the City to lay tracks fronting their works and premises on Pidgeon Street. This consent did not specify the number nor location of the tracks nor did it require the payment of compensation therefor. It did state, however, that such permission would continue only during the pleasure of the City authorities. No authority appeared in the records giving the present petitioner the right to operate such tracks nor the tracks leading into the Pidgeon Street Yard. These disclosures were submitted to the Board and in a report dated March 30, 1943, this Bureau recommended that the right to use the tracks in 55th Avenue possessed by the National Sugar Refining Company be rescinded and the Brooklyn Eastern District Terminal be required to make application to the Board for permission to use the tracks. A resolution embodying these recommendations was adopted by the Board at its meeting held April 8, 1943. Thereafter the Company applied for the right to use such tracks and by resolution adopted by the Board on September 9, 1943, and approved by the Mayor on October 8, 1943, the consent of the City was given to the Company to maintain and use the ten (10) tracks in the public streets at this location. This consent was made revocable at any time at the pleasure of the Board but in no event to extend beyond October 7, 1945. It required that the Company pay annual compensation for the use of such tracks in the amount of \$3,500 and post security of \$7,000. It further provided that upon termination of the consent the ownership of the tracks would vest in the City.

*The Railroad*

The total length of track of the Company at the Brooklyn and Queens terminals as of March 15, 1944, is given by a statement of the Company to be as follows:

|                                  | Brooklyn Terminal<br>(feet) | Queens Terminal<br>(feet) |
|----------------------------------|-----------------------------|---------------------------|
| Serving piers .....              | 6,607                       | 0                         |
| Team tracks .....                | 10,503                      | 2,746                     |
| Serving warehouses .....         | 9,805                       | 521                       |
| General switching purposes ..... | 16,776                      | 1,415                     |
| In public streets .....          | 4,628                       | 3,540                     |
|                                  | 49,319                      | 8,222                     |

All the tracks listed above, other than the tracks in public streets, represent tracks of the Company located on private property. The following is a detailed list of tracks

in the public streets and constitute the leased tracks referred to and described in the attached proposed form of contract. The designation of each track is given, the street it occupies, its length and prior authority. It is to be noted that in the accompanying list each track is now in existence due to a prior authorization and the present petition does not request authority for additional tracks.

## Borough of Brooklyn

| Track Designation | Street Crossed    | Length (feet) | Prior Authority |
|-------------------|-------------------|---------------|-----------------|
| A-1               | Wythe Avenue      | 60            | A*              |
| B-1               | Kent Avenue       | 60            | A               |
| B-2               | Kent Avenue       | 11            | A               |
| B-3               | Kent Avenue       | 60            | A               |
| B-4               | Kent Avenue       | 60            | A               |
| C-1               | North 4th Street  | 81            | A               |
| D-1               | North 5th Street  | 901           | A               |
| D-2               | North 5th Street  | 52            | A               |
| D-3               | North 5th Street  | 109           | A               |
| D-4               | North 5th Street  | 351           | A               |
| E-1               | Wythe Avenue      | 65            | A               |
| E-2               | Wythe Avenue      | 60            | A               |
| E-3               | Wythe Avenue      | 61            | A               |
| F-1               | Kent Avenue       | 63            | A               |
| F-2               | Kent Avenue       | 60            | A               |
| G-1               | North 6th Street  | 85            | A               |
| G-2               | North 6th Street  | 86            | A               |
| G-3               | North 6th Street  | 41            | A               |
| G-4               | North 6th Street  | 51            | A               |
| G-5               | North 6th Street  | 36            | A               |
| G-6               | North 6th Street  | 25            | A               |
| G-7               | North 6th Street  | 24            | B               |
| G-8               | North 6th Street  | 86            | B               |
| H-1               | North 6th Street  | 483           | A               |
| I-1               | North 7th Street  | 558           | A               |
| I-2               | North 7th Street  | 67            | A               |
| I-3               | North 7th Street  | 14            | A               |
| J-1               | North 7th Street  | 70            | A               |
| J-2               | North 7th Street  | 15            | A               |
| J-3               | North 7th Street  | 63            | B               |
| J-4               | North 7th Street  | 60            | B               |
| J-5               | North 7th Street  | 60            | B               |
| J-6               | North 7th Street  | 100           | A               |
| K-1               | North 8th Street  | 29            | A               |
| K-2               | North 8th Street  | 63            | A               |
| K-3               | North 8th Street  | 63            | A               |
| K-4               | North 8th Street  | 58            | A               |
| L-1               | North 9th Street  | 112           | A               |
| L-2               | North 9th Street  | 10            | A               |
| L-3               | North 9th Street  | 46            | A               |
| L-4               | North 9th Street  | 64            | A               |
| M-1               | Kent Avenue       | 60            | A               |
| N-1               | North 10th Street | 67            | A               |
| N-2               | North 10th Street | 78            | A               |

Total—Brooklyn 4,628 feet

## Borough of Queens

|     |                                    |       |   |
|-----|------------------------------------|-------|---|
| O-1 | 55th Avenue, 2d Street, 5th Street | 1,074 | C |
| O-2 | 55th Avenue, 2d Street, 5th Street | 1,081 | C |
| O-3 | 55th Avenue, 2d Street             | 499   | C |
| O-4 | 5th Street                         | 79    | C |

| Track Designation | Street Crossed | Length (feet) | Prior Authority |
|-------------------|----------------|---------------|-----------------|
| O-5               | 55th Avenue    | 99            | C               |
| O-6               | 55th Avenue    | 97            | C               |
| O-7               | 55th Avenue    | 136           | C               |
| O-8               | 55th Avenue    | 322           | C               |
| O-9               | 55th Avenue    | 91            | C               |
| O-10              | 5th Street     | 62            | C               |
| Total—Queens      |                | 3,540 feet    |                 |

The letters under prior authority refer to

- A\* Authorized as A-3 in contract dated September 1, 1938.
- A Authorized in contract dated September 1, 1938.
- B Authorized in consent of January 8, 1942.
- C Authorized in consent of September 9, 1943.

#### *Investigation by Bureau of Franchises*

Upon receipt of the petition copies of the same and accompanying map were forwarded on March 3, 1944, to the Presidents of the Boroughs of Brooklyn and Queens and also to the Commissioner of Water Supply, Gas and Electricity with the request that such officials advise this Bureau if they had any objections to the maintenance and operation of the tracks or of any particular conditions which they deemed necessary to have incorporated in the proposed lease and form of contract authorizing the same. Replies were received from these departments dated, respectively, April 4, 1944, April 3, 1944, and March 28, 1944, and offered no objections to the continued maintenance and use of the tracks and in addition to the usual conditions imposed in the form of consents offered the following suggestions:

The President of the Borough of Brooklyn requested a provision be incorporated in the proposed contract prohibiting the barricading of the streets. (Note—See Article Three, Subdivision 22, of the proposed contract.)

The Commissioner of Water Supply, Gas and Electricity advised that (a) in the immediate future it proposes to install a water main in 55th Avenue between 2d and 5th Streets in the Borough of Queens which will cross the tracks in 5th Street and in connection with the construction of such water main it requested that provision be made for the Company to bear the cost of temporarily and permanently protecting and supporting the tracks during the installation of the water main crossing the tracks. (Note—See Article Four, Subdivision 2, of the proposed contract); (b) the records of the Department indicate that it had difficulty in maintaining existing water mains because of the railroad traffic crossing such mains in North 9th Street and in North 10th Street, in the Borough of Brooklyn, and requested that the petitioner be required to install permanent supports and protect the water mains at these locations.

A condition was drafted to meet this recommendation, but upon noticing the same the Company requested permission to further discuss it with the Department. As a result thereof, it appears that a further study of this matter was made by this Department and it was found that no repairs had been required on the main in North 10th Street since 1940, although prior thereto several repairs were required due to soil conditions at some distance from the railroad crossings. The Commissioner, in a letter dated January 3, 1945, revised his recommendations so that it require the Company to provide immediate support and protection of the main in North 9th Street and that similar work be performed for the main in North 10th Street only as and when the Department requires the same in the future. (Note—Article Four, Subdivision 4, has been drafted to include such latter recommendation.)

A communication was forwarded to the Department of Taxation and Finance of the State of New York on March 22, 1944, asking that it furnish this Bureau with data showing (a) the length of track in the street as reported to it by the Company, and (b) the special franchise assessments made upon such tracks separating such assessments into tangible, intangible and total assessments. In its reply dated March 27, 1944, it was stated that there have been no special franchise assessments made on this Company since 1937 but that certain tentative assessments have been made for the Kent Avenue and Pidgeon Street Terminals which the Company claims should be cancelled. As to the tentative assessments, the following is reflected from the information supplied:

*Tentative Special Franchise Assessments*  
Kent Avenue Terminal—Brooklyn

| Location         | Length of Track Reported       | Tangible    | Intangible  | Total       |
|------------------|--------------------------------|-------------|-------------|-------------|
| North 6th Street | 80 feet                        | \$320 00    | \$2,070 00  | \$2,400 00  |
| North 7th Street | 60 feet                        | 240 00      | 2,070 00    | 2,300 00    |
|                  | Pidgeon Street Terminal—Queens |             |             |             |
| 55th Avenue      | 3,540 feet                     | \$15,858 00 | \$48,114 00 | \$64,000 00 |

A request was also made of the Department of Taxes and Assessments of The City of New York for a statement of the assessments made by it for the past five (5) years upon the railroad structures of the Company in the public streets at both locations. Under date of April 3, 1944, the following information was furnished:

Identification No. 151—Brooklyn

| Year      | Assessed Valuation                                 |
|-----------|--|
| 1939-1940 | \$15,000—exempt to New York City                   |
| 1940-1941 | 15,000—exempt to New York City                     |
| 1941-1942 | 15,000—exempt to New York City                     |
| 1942-1943 | 15,000—exempt to New York City                     |
| 1943-1944 | 15,000—exempt to New York City                     |
| 1944-1945 | 15,000—taxed to Brooklyn Eastern District Terminal |

Identification No. 376B—Queens

| Year      | Assessed Valuation                               |
|-----------|--|
| 1939-1940 | \$5,500—taxed to The National Sugar Refining Co. |
| 1940-1941 | 5,500—taxed to The National Sugar Refining Co.   |
| 1941-1942 | 5,500—taxed to The National Sugar Refining Co.   |
| 1942-1943 | 5,500—taxed to The National Sugar Refining Co.   |
| 1943-1944 | 5,500—taxed to The National Sugar Refining Co.   |

Identification No. 151—Queens

| Year      | Assessed Valuation                                  |
|-----------|---|
| 1944-1945 | \$7,100—taxed to Brooklyn Eastern District Terminal |

The Office of City Treasurer was asked to advise this Bureau as to the assessments made and the taxes paid upon the assessments fixed by the State Tax Commission and the Department of Taxes and Assessments upon the railroad properties of the Company in the streets in the Boroughs of Brooklyn and Queens. On March 29, 1944, the Bureau of City Collections of the Department of Finance transmitted the following information:

"The Kent Avenue Terminal is assessed under Real Estate of Corporations, Brooklyn Identification No. 151. For the years 1939-1940 to 1943-1944, inclusive, the Tax Department placed a valuation of \$15,000 on the tracks for each year. However, the assessment was marked exempt for all years mentioned based on an opinion of the Corporation Counsel dated June 23, 1937, which was rendered with regard to the property of the above mentioned company in Wallabout Market and which the Tax Department considered also applied to this property. The State Tax Commission did not assess this property during the years 1939-1940 to 1943-1944.

"With regard to the 55th Avenue (Pidgeon Street) Terminal, investigation discloses that for the years 1939-1940 to 1943-1944 the tracks were assessed to the National Sugar Refining Company under Real Estate of Corporations, Queens Identification No. 376B. There was a total assessed valuation placed on parts A, B and C of 376. The following chart shows the amounts applicable to 376B, which is the tracks in Pidgeon Street and across 2d Street. The tracks across 5th Street were not assessed. There was no State Tax Commission assessed valuation placed against this property.

| Year                           | 376 Total Assessed Valuation of 376B |         | 1st Half | Date Paid     | 2d Half | Date Paid     |
|--------------------------------|--------------------------------------|---------|----------|---------------|---------|---------------|
| 1939-1940                      | \$7,000                              | \$5,500 | \$83 60  | Oct. 31, 1939 | \$83 60 | Apr. 29, 1940 |
| 1940-1941                      | 7,500                                | 5,500   | 86 63    | Oct. 30, 1940 | 86 62   | Apr. 30, 1941 |
| 1941-1942                      | 7,500                                | 5,500   | 84 98    | Oct. 30, 1941 | 84 97   | Apr. 29, 1942 |
| 1942-1943                      | 8,200                                | 5,500   | 86 35    | Oct. 30, 1942 | 86 35   | Apr. 29, 1943 |
| 1943-1944                      | 8,200                                | 5,500   | 86 08    | Oct. 29, 1943 | .....   | .....         |
| Total paid on Ident. 376B..... |                                      |         |          |               |         | \$769 18"     |

Request was made of the Comptroller to furnish this Bureau with a statement showing (a) the amount of security on the deposit and the date of deposit of same, and (b) the payments made by the company for each of the past five (5) years under the existing franchise and consents. The reply to this request was dated March 29, 1944 and furnished the following information:

"The receipt is acknowledged of your letter of March 22, 1944, wherein you request a statement of (a) the amount of security now on deposit with the Comptroller by The Brooklyn Eastern District Terminal under franchise and lease dated September 1, 1938, covering terminal operations at its Kent Avenue Terminal, Brooklyn; also its operations at its 55th Avenue (Pidgeon Street) Terminal, Queens; and (b) the payments made by the Company for each of the past five years under the franchise and consents covering the above operations.

"The following is a statement relating to the Brooklyn Eastern District Terminal; also to the 55th Avenue (Pidgeon Street) Terminal:

Brooklyn Eastern District Terminal—Kent Avenue Terminal

Contract dated September 1, 1938:

| Compensation Paid |            |               | Security Deposited |               |
|-------------------|------------|---------------|--------------------|---------------|
| Year Ended        | Amount     | Date          | Amount             | Date          |
| Sept. 30, 1939    | \$7,640 00 | Nov. 2, 1939  | \$1,000 00         | Aug. 13, 1937 |
| Sept. 30, 1940    | 7,640 00   | Oct. 31, 1940 | 4,000 00           | Oct. 4, 1938  |
| Sept. 30, 1941    | 7,640 00   | Nov. 1, 1941  | 10,000 00          | Feb. 15, 1939 |
| Sept. 30, 1942    | 7,640 00   | Oct. 17, 1942 |                    |               |
| Sept. 30, 1943    | 7,640 00   | Oct. 28, 1943 |                    |               |

Consent of January 8, 1942:

|                  |          |               |  |               |
|------------------|----------|---------------|--|---------------|
| Nov. 24, 1941 to |          |               |  |               |
| Nov. 1, 1942     | \$210 82 | May 15, 1942  |  | Same as above |
| Nov. 1, 1942 to  |          |               |  |               |
| Nov. 1, 1943     | 225 00   | Oct. 17, 1942 |  |               |
| Nov. 1, 1943 to  |          |               |  |               |
| Mar. 14, 1944    | 82 60    | Oct. 28, 1943 |  |               |

55th Avenue (Pidgeon Street) Terminal, Queens

Consent of September 9, 1943:

|                  |            |               |            |                |
|------------------|------------|---------------|------------|----------------|
| June 11, 1943 to |            |               |            |                |
| July 1, 1944     | \$3,691 78 | Nov. 26, 1943 | \$7,000 00 | Nov. 22, 1943" |

On March 22, 1944, the Company was requested to furnish this Bureau with certain statistical information relative to the operations of the Company at each of the terminals. In its reply dated May 26, 1944, the Company furnished certain data and such of it as is informative and has a bearing on the preparation of the form of contract is herewith set forth.

1. The length of track operated at each of the terminals has been previously set forth under the heading of "The Railroad".

2. The total number of cars handled annually at the terminals is given as follows:

| Year      | Brooklyn | Queens | Year      | Brooklyn | Queens |
|-----------|----------|--------|-----------|----------|--------|
| 1939..... | 36,980   | 8,219  | 1942..... | 54,379   | 7,436  |
| 1940..... | 36,880   | 8,985  | 1943..... | 50,996   | 8,283  |
| 1941..... | 50,042   | 12,105 |           |          |        |

3. The railway operating revenue.

| Year      | Brooklyn    | Queens    | Year      | Brooklyn  | Queens  |
|-----------|-------------|-----------|-----------|-----------|---------|
| 1939..... | \$1,160,802 | \$257,994 | 1942..... | 1,982,658 | 271,375 |
| 1940..... | 1,160,182   | 282,668   | 1943..... | 2,071,517 | 336,903 |
| 1941..... | 1,691,420   | 409,149   |           |           |         |

4. As to the nature of the business conducted by the Company at the terminals, the Company advises that the data furnished by the Company in 1936, which was considered in formulating the 1938 contract, in their opinion, represents a more equitable basis on which to arrive at a rental for the renewal of the present franchise rather than that of current years. The data returned for the recent periods reflect abnormal increases in business brought about by the war and which it is believed, would revert to the

normal conditions of the previous period after the war. The abnormal conditions are indicated not only in the revenue due to increase of wartime business but in the cost of all elements entering into the conduct of the business, including the increased taxes. As to the Queens Terminal, it is stated that over fifty (50) per centum of the tonnage handled at this station is in sugar and this business is of a highly competitive nature and subject to shifting of the tonnage to refineries in other cities. Should such eventuality occur it would adversely affect the operation of the miscellaneous freight terminal at this locality. It is further stated that 55th Avenue was filled in to the bulkhead line in 1901 but the street was never opened or used as a public street.

The Company furnished this office with a certificate of the final special franchise valuation as made by the Department of Taxation and Finance of the State of New York which reflects the following:

|                                | Brooklyn | Queens   |
|--------------------------------|----------|----------|
| Final full valuation.....      | \$4,700  | \$64,000 |
| Equalization rate .....        | 98       | 93       |
| Final equalized valuation..... | \$4,606  | \$59,250 |

#### *Conferences with Company Representatives*

Prior to presenting the petition in its final form representatives of the Company conferred with this office as to form and substance of the petition as well as the data to be shown upon the accompanying map. At that time it was outlined to them that the procedure that this office would recommend to the Board would be that the consent authorizing the operation of the tracks at the Queens Terminal be rescinded upon the date of the execution of the proposed contract by the Mayor at which time the tracks in the Borough of Queens would become the property of the City and that the Company in its petition would request the right to lease such tracks. The Company acceded to such procedure which was in accord with the program laid down by this Bureau at the time the 1943 consent for the Queens tracks was negotiated. At conferences held subsequent to the filing of the petition the method of arriving at the rate of compensation was discussed and the company was advised that the same mode of procedure would be adopted in this case as was employed in the recent contracts with other terminal railroad companies. Although the representatives of the Company offered no objection thereto in principle nor as it applied to the tracks at the Brooklyn Terminal, it did develop that in its application to the tracks in the Borough of Queens it did produce a rate which the Company did protest. It appears that as to the tracks at the Queens Terminal there were certain developments worthy of consideration relating to the assessments made upon such tracks. Up to the time of the discussion the Company itself had not had to pay any tax on such tracks. As noted in the reply from the Tax Commission of The City of New York the tracks at this location had been assessed to the National Sugar Refining Company up to the year 1943-1944 but for the year 1944-1945 the assessment was then made against this Company. Such assessment was fixed by that Department at \$7,100 and represented the value of the track structures in the street. As appears above, the State Tax Commission placed a full special franchise assessment against this operation at \$64,000 of which the tangible assessment of the tracks in the street was fixed at \$15,858. Although the Company did protest the assessment made by the City Tax Commission such appeal was disallowed upon its review. The representatives of the Company claimed the assessment made upon the tangible property by the State Commission was excessive, it being more than double the assessment made by the City Tax Commission, and so made upon a misinterpretation of the type of rail used at this location. It further appears that had the Company fully brought the facts as to the quality of the rail used properly to the attention of the State Tax Commission or protested to the same within the statutory time it is quite probable a more equitable assessment of such tracks would have been fixed. For the current period the assessment fixed by the State Tax Commission now stands. In arriving at the rate of compensation to be fixed in the grant, this Bureau employs as elements thereof the amount of the tax on the special franchise assessment made by the State Tax Commission and also a percentage charged on its valuation of the track structures.

The representatives of the Company stated that although the excessive valuation of tracks was known to them and at the time brought to the attention of the Local Assessment Bureau of the State Tax Commission objection thereto was not persisted in because of a mistaken notion that as ownership in such tracks was to vest in the City, the Company would be exempt from this payment of the tax upon such assessment. The Company was advised by this Bureau that such tracks remain the property of the Company until the execution of the contract by the Mayor and further that in arriving

at the compensation to be included this Bureau uses the elements involved in such assessment. The Company brought this condition to the attention of the State Tax Commission and endeavored to obtain a more equitable assessment thereon. The Company then furnished to that body certain additional detailed data as to the character of the rails forming such tracks and based upon such information the State Tax Commission revised its valuation of the tracks although for the current period the assessment as fixed remains unchanged. Under date of October 24, 1944 the Director of the Local Assessment Bureau forwarded a letter to this office reading as follows:

"The Brooklyn Eastern District Terminal Company has taken up with this department the matter of the valuation of the track in Pidgeon Street, Borough of Queens, and has recently furnished a detailed statement of the various weights of rail. Based on that information we would place a valuation on the tangible property, reproduction cost \$8,852 and present value \$6,204 instead of the present value of \$15,858 included in the special franchise valuation"

In the judgment of this Bureau this latter value of \$6,204 more nearly represents the assessed value of such tracks and is somewhat in conformity with the valuation placed upon such tracks by the City Tax Commission. Such figures have been used in the computations to determine the amount of compensation to be inserted in the franchise.

In order to give consideration to the contention of the Company as to the inflationary value of its present day business, this Bureau determined to use the franchise payments in the prior grant and consent and to apply the usual increment increase of ten per centum (10%) thereto. On such basis the rate of compensation arrived at for the Queens Terminal, as hereafter set forth in detail, amounts to \$5,741 per annum. This amount represents an increase of \$2,241 over the amount now being paid under the 1943 consent and appeared to be excessive to the representatives of the Company. It was pointed out to the Company that although the National Sugar Refining Company possessed the right to use the tracks in front of its premises up to the time such right was cancelled the Company itself never possessed such right nor the right to extend such tracks across the streets adjacent to the freight terminal. The Company had been operating such tracks for a number of years prior to the 1943 consent but no past use charge was inserted in such consent. On such basis it is not believed to be unfair to the Company to have the ownership of such tracks vest in the City only after one year's authorization and made subject to lease thereafter with the attendant increase in charge for the use of the tracks.

The Company's representatives desired to have the present security on deposit under the expired contract and the 1943 consent stand as security for the present contract and this was agreed to because the proposed contract provided that the Company pay the required annual compensation in advance.

The Company is considering the removal of tracks extending longitudinally in North 6th Street and North 7th Street, at the Brooklyn Terminal, after the war. This program is being considered due to its desire to free the roadway of tracks in order to permit the very long freight trucks now being operated to more conveniently move and turn around in the street. An estimate of \$400 was made as representing the proportion of reductions which would be made in the annual compensation should this program be carried out and the Company requested that a provision of such character be included in the contract.

#### Proposed Form of Contract

In formulating the proposed form of contract it was determined to pattern such contract upon the previous contract and lease which had recently expired affecting the operations of the Company at the Kent Avenue Yard. This contract, which was dated September 1, 1938, was drafted after considerable negotiation had between this Bureau and representatives of the Company and had been formulated so that it contained conditions applicable to a freight terminal corporation which were acceptable to the Company while also safeguarding the interests of the City in making the grant. Certain pertinent conditions have been added which have since then been included in other terminal railroad contracts, all of which are believed necessary to be precautionary measures in the City interest.

A brief recital of the more important conditions entering into this contract are herein set forth and a discussion of the same is provided.

Preamble—The preamble to the contract sets forth factual information relating to the prior contract and consents under which the Company has been conducting its operations as well as a recital of the procedural steps to be taken by the Board in the granting of the franchise and lease. Certain definitions of matter later used in the contract are collated as a preliminary to the grant and terms and conditions.

Grant—The grant in this instance is for the lease of and the franchise, right and consent to maintain and operate leased tracks for the purpose of conveying goods,

wares and merchandise upon forty-four (44) tracks in the public streets, in the Borough of Brooklyn and ten (10) tracks in the Borough of Queens, all of which are described in detail and with reference to the adjoining street corners. This grant is unique in that the tracks in the separate boroughs are not connected by any railroad operated by the Company but serve as separate terminals at each of the locations. It is true that both terminal yards are connected by means of water borne service but otherwise there is no direct connection between them. The tracks at the Kent Avenue Yard became the property of the City on March 15, 1934, at the termination of the renewal terms of the franchise granted by the City to the East River Terminal Railroad pursuant to the provisions contained in such grants. The details in connection therewith are set forth in the report dated May 26, 1938, of this Bureau to the Board (see Minutes 1938 page 4097). In addition thereto certain additional tracks subsequently relocated or constructed pursuant to the terms of the September 1, 1938 franchise also became the property of the City. The tracks at the Pidgeon Street terminal are now the property of the Company and are maintained pursuant to a consent adopted by the Board on September 9, 1943. A provision in this consent provides that upon termination thereof the tracks will become the property of the City. Although such consent is revocable at any time but does not extend beyond October 7, 1945, the Company has agreed and it is provided for in the proposed contract, that ownership of such tracks will vest in the City on the date of execution of the proposed contract by the Mayor. At such date the proposed contract provides for the leasing of both the Kent Avenue and the Pidgeon Street terminal tracks by the Company.

The tracks proposed to be leased are shown upon a map attached to and made a part of the proposed contract.

It is further provided that the Board may direct this Company to relocate its tracks or if directed by proper authorities, authorize the Company to install additional tracks so as to provide service to any party whose premises are located in the vicinity of the railroad.

**Term**—The current practice provided in leases of City owned structures, has been to restrict the term of grant to a period ending ten (10) years from the date of termination of the prior grant. In the instant case, at the request of the Company, the proposed contract will expire on June 1, 1955, approximately in ten (10) years from the anticipated date of signing of the contract by the Mayor. A provision in the Transportation Corporations Law affecting freight terminal corporations requires that all grants to such corporations shall contain the restriction that the grant shall be revocable upon one (1) year's notice with the approval of the Public Service Commission and upon its certificate that such privilege is no longer necessary for the public use or that the exercise of such grant has failed to improve the public service afforded to the public. Such a condition is included in the proposed contract. Should the railroad be not operated for three (3) consecutive months or for any six (6) month period the Board may cancel the proposed contract.

**Public Service Approval**—The Company is required to apply to the Public Service Commission for such certificates of approval as is required by law, to permit of the operation of the railroad, within thirty (30) days after the date of the contract and within six (6) months thereafter obtain such certificates applicable to the railroad otherwise the contract may be cancelled. Should the Commission issue its certificate applicable to part of the railroad the Company then has a further year's time in which to reapply and obtain approval of the uncertificated part of the grant.

**Compensation**—The amount of compensation fixed in the proposed grant follows the norm adopted in arriving at the rate of compensation used in other terminal franchises and leases recently adopted by the Board. Such rate of compensation includes (1) an initial payment of \$500; (2) an interim payment applicable to the use of the tracks from March 15, 1944 to June 30, 1945, and (3) a fixed annual amount payable in advance on the beginning of the fiscal period on July 1st in each year. The initial payment is the same amount as required in the contracts recently authorized to the Long Island Railroad (at the Degnon Terminal), the Jay Street Connecting Railroad and others.

The interim payment period is divided into two periods—the first period runs from March 15, 1944 to the date upon which the contract is signed by the Mayor. During this period the sum payable is at the rate of \$8,363 which is the annual rate applicable to the tracks at the Brooklyn Terminal because during this period these tracks are the only ones that are unauthorized and subject to lease. The second period runs from the date of the contract to June 30, 1945, and for such interval the ownership of all of the tracks will be in the City and the amount payable will be at the annual rate chargeable for such latter period—the total of both the rates applicable to the Brook-

wares and merchandise upon forty-four (44) tracks in the public streets, in the Borough of Brooklyn and ten (10) tracks in the Borough of Queens, all of which are described in detail and with reference to the adjoining street corners. This grant is unique in that the tracks in the separate boroughs are not connected by any railroad operated by the Company but serve as separate terminals at each of the locations. It is true that both terminal yards are connected by means of water borne service but otherwise there is no direct connection between them. The tracks at the Kent Avenue Yard became the property of the City on March 15, 1934, at the termination of the renewal terms of the franchise granted by the City to the East River Terminal Railroad pursuant to the provisions contained in such grants. The details in connection therewith are set forth in the report dated May 26, 1938, of this Bureau to the Board (see Minutes 1938 page 4097). In addition thereto certain additional tracks subsequently relocated or constructed pursuant to the terms of the September 1, 1938 franchise also became the property of the City. The tracks at the Pidgeon Street terminal are now the property of the Company and are maintained pursuant to a consent adopted by the Board on September 9, 1943. A provision in this consent provides that upon termination thereof the tracks will become the property of the City. Although such consent is revocable at any time but does not extend beyond October 7, 1945, the Company has agreed and it is provided for in the proposed contract, that ownership of such tracks will vest in the City on the date of execution of the proposed contract by the Mayor. At such date the proposed contract provides for the leasing of both the Kent Avenue and the Pidgeon Street terminal tracks by the Company.

The tracks proposed to be leased are shown upon a map attached to and made a part of the proposed contract.

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lyn and Queens terminals or \$14,104. The method of obtaining these amounts is hereafter given in detail.

Provision is also made that should the Company have made any payments to the City for the use and occupation of the tracks during the interim period the Company will be credited for the amount of such payments when payment is made under the new rate during such interim period.

The amount of the annual payments to be made in advance on July 1st of each year during the term of the contract is fixed at \$14,104 and has been made up of the same factors heretofore employed, viz.: (a) prior franchise payment with a fixed percentage of increase, (b) the special franchise taxes which the Company was obligated to pay when the additional tracks in the Kent Avenue Yard were owned by the Company and assessed under a Special Franchise and the computed tax upon the adjusted Special Franchise Assessment at the Pidgeon Street terminal and (c) a charge for the use of the City-owned tracks and upon an adjusted valuation applicable to the tracks in the Borough of Queens as heretofore discussed.

To arrive at the annual rate of charge the following data is set forth.

Payments now required under—

Contract of September 1, 1938 (Brooklyn)

|  |            |
|--|------------|
| Charge for franchise.....                          | \$4,080 00 |
| Rental charge—tax payments and use of tracks ..... | 3,560 00   |

|                    |            |
|--------------------|------------|
| Total charge ..... | \$7,640 00 |
|--------------------|------------|

|  |        |
|--|--------|
| Consent of January 8, 1942 (Brooklyn) compensation charge..... | 225 00 |
|--|--------|

|  |          |
|--|----------|
| Consent of September 9, 1943 (Queens) compensation charge..... | 3,500 00 |
|--|----------|

The franchise charge now in existence in Brooklyn is \$4,305, the sum of the amounts payable under the 1938 grant and the 1942 consent, while the charge for the consent in Queens as given in the 1943 consent is \$3,500. Applying an increase of 10 per cent over the prior franchise charges the charge for the franchise value is found to be

|                                      |            |
|--------------------------------------|------------|
| At Brooklyn, \$4,305 plus \$430..... | \$4,735 00 |
|--------------------------------------|------------|

|                                     |          |
|-------------------------------------|----------|
| At Queens, \$3,500 plus \$350 ..... | 3,850 00 |
|-------------------------------------|----------|

The report of the City Collector does not separate the amount of taxes which the Company paid upon the tracks authorized in the consents of 1942 and 1943 and consequently equivalent amounts were arrived at from the data at hand. The current tax rate in each borough was used and in Brooklyn applied to the equalized special franchise assessment. For the tracks in the Borough of Queens the valuation was obtained by using the State Tax Commission figures as follows:

|                              |             |
|------------------------------|-------------|
| Intangible assessment .....  | \$48,114 00 |
| Revised tangible value ..... | 6,204 00    |
|                              | \$54,318 00 |

|   |             |
|---|-------------|
| Equalization factor of 93 per cent applied..... | \$50,516 00 |
|---|-------------|

The following amounts were obtained as representing the amount of equivalent or equitable tax payments:

|  |          |
|--|----------|
| Consent of January 8, 1942, \$4,606 by \$3.05..... | \$140 00 |
|--|----------|

|   |          |
|---|----------|
| Consent of September 9, 1943, \$50,516 by \$3.13..... | 1,518 00 |
|---|----------|

Applying a charge of 5 per cent to the State Tax Commission tangible assessment on the additional leased tracks not included in the 1938 grant as a charge for the use of City-owned tracks we obtain these amounts:

|  |         |
|--|---------|
| Consent of January 8, 1942, \$560 by 5 per cent..... | \$28 00 |
|--|---------|

|  |        |
|--|--------|
| Consent of September 9, 1943, \$6,204 by 5 per cent..... | 310 00 |
|--|--------|

The total of the charges for taxes and use of City-owned tracks comprises the item of rental of leased tracks as distinguished from the franchise charge and is made up as follows:

At the Kent Avenue yard certain tracks were removed which reduced the total length of tracks previously authorized by the 1938 contract from 4,613 feet to 4,482 feet, thus reducing the proportional rental charge from \$3,560 to \$3,460.

To this latter amount is added the sums obtained above for taxes and rental of tracks. In Brooklyn such sums are \$3,460, \$140 and \$28, making a total of \$3,628. At Queens the equivalent amounts are \$1,581 and \$310, or a total of \$1,891.

Thus the amount of compensation at each of the terminals follows:

|                              | Franchise  | Rental     | Total       |
|------------------------------|------------|------------|-------------|
| At Kent Avenue yard .....    | \$4,735 00 | \$3,628 00 | \$8,363 00  |
| At Pidgeon Street yard ..... | 3,850 00   | 1,891 00   | 5,741 00    |
| Total .....                  |            |            | \$14,104 00 |

This latter amount of \$14,104 is inserted in the proposed contract as the annual rate of compensation.

A comparison of the annual amounts paid under the prior contract and consents coupled with the probable taxes with that required under the proposed contract is here given.

|  |             |
|--|-------------|
| Prior Authority—   |             |
| Contract of September 1, 1938.....                                     | \$7,640 00  |
| Consent of January 8, 1942.....  | 225 00      |
| Consent of September 9, 1943.....                                      | 3,500 00    |
| Taxes—   |             |
| Consent of January 8, 1942.....  | \$140 00    |
| Consent of September 9, 1943 (using adjusted figures)                  | 1,581 00    |
| Total .....  | \$13,086 00 |
| The increased charge is made up of—                                    |             |
| Prior franchise charge increment .....                                 | \$780 00    |
| Rental of additional City-owned tracks.....                            | 338 00      |
| Less—Reduced rental upon tracks removed from<br>Kent Avenue yard ..... | 100 00      |
| Total .....  | 1,018 00    |
| Compensation under proposed grant .....                                | \$14,104 00 |

Provision is made for a reduction of \$400 from the annual rate of compensation from and after the time during the term of the contract when the Company shall remove the tracks H-1 and I-1 in North 6th Street and North 7th Street, Brooklyn. A later provision in the contract outlines elements of procedure in relation to the removal of these tracks.

The Company is required that in the event it continues the operation of the tracks after the date of termination of the consent, to pay to the City the compensation fixed in the contract including taxes thereon during such period of extended operation. It is also required to pay to the City, at the rates fixed by the Board, for any additional tracks it may construct without the consent of the Board. The former provision is contained in all recent contracts authorized by the Board, while the latter provision was included in the recent contract entered into with the Long Island Rail Road Company affecting its operations at the Degnon Terminal.

The so-called "tax clause" is also inserted. This clause requires the Company to pay to the City the amount fixed as compensation therein in addition to any and all taxes.

Security—The Security is fixed at twenty-two thousand dollars (\$22,000) and represents the sum of the amounts now on deposit under the 1938 contract and the 1943 consent.

Assignment of Contract—It is provided that no assignment of the contract is to be made without the consent of the Board. No such assignment shall be valid unless it shall contain a provision that such successor in title shall assume and be bound by the terms and conditions required to be performed by the Company.

Supervision by Authorities—The construction, maintenance and operation of the railroad shall be performed under the supervision of the proper authorities. The Company shall obtain all necessary permits required for the performance of any work necessary in connection with the grant and comply with all conditions of such permits.

Rates to be charged—Inasmuch as the Company is engaged in both interstate and intrastate business and is subject to the Interstate Commerce Commission and the Public Service Commission with respect to the conduct of such business including the rates to be charged upon the operation thereof, it agrees in this contract that such rates as it will charge upon the transfer of freight to and from its terminals, shall not exceed the rates as fixed by such jurisdictional bodies. The Company agrees to notify and acquaint the Board of all proceedings that may be had before such Commissions to alter such rates and to permit the City to intervene in or initiate any such proceedings before the Commissions.

Reversion to City and Removal of Tracks—The Company agrees that upon termination of the grant any additional tracks constructed under the grant, shall vest in the City. At termination or cancellation of rights thereby granted, if the same be not renewed, and upon notice from the Board, the leased and additional tracks authorized therein shall be removed by the Company and the streets restored to their original condition, all at the expense of the Company.

Penalties for Default—Forfeiture—Certain definite penalties have been fixed for the default by the Company of provisions of the contract. Conditions whereupon the contract may be forfeited, have been included.

This latter amount of \$14,104 is inserted in the proposed contract as the annual rate of compensation.

A comparison of the annual amounts paid under the prior contract and consents coupled with the probable taxes with that required under the proposed contract is here given.

|  |             |
|--|-------------|
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| Total .....  | \$13,086 00 |
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| Prior franchise charge increment .....                                 | \$780 00    |
| Rental of additional City-owned tracks.....                            | 338 00      |
| Less—Reduced rental upon tracks removed from<br>Kent Avenue yard ..... | 100 00      |
| Total .....  | 1,018 00    |
| Compensation under proposed grant .....                                | \$14,104 00 |

Provision is made for a reduction of \$400 from the annual rate of compensation from and after the time during the term of the contract when the Company shall remove the tracks H-1 and I-1 in North 6th Street and North 7th Street, Brooklyn. A later provision in the contract outlines elements of procedure in relation to the removal of these tracks.

The Company is required that in the event it continues the operation of the tracks after the date of termination of the consent, to pay to the City the compensation fixed in the contract including taxes thereon during such period of extended operation. It is also required to pay to the City, at the rates fixed by the Board, for any additional tracks it may construct without the consent of the Board. The former provision is contained in all recent contracts authorized by the Board, while the latter provision was included in the recent contract entered into with the Long Island Rail Road Company affecting its operations at the Degnon Terminal.

The so-called "tax clause" is also inserted. This clause requires the Company to pay to the City the amount fixed as compensation therein in addition to any and all taxes.

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Assignment of Contract—It is provided that no assignment of the contract is to be made without the consent of the Board. No such assignment shall be valid unless it shall contain a provision that such successor in title shall assume and be bound by the terms and conditions required to be performed by the Company.

Supervision by Authorities—The construction, maintenance and operation of the railroad shall be performed under the supervision of the proper authorities. The Company shall obtain all necessary permits required for the performance of any work necessary in connection with the grant and comply with all conditions of such permits.

Rates to be charged—Inasmuch as the Company is engaged in both interstate and intrastate business and is subject to the Interstate Commerce Commission and the Public Service Commission with respect to the conduct of such business including the rates to be charged upon the operation thereof, it agrees in this contract that such rates as it will charge upon the transfer of freight to and from its terminals, shall not exceed the rates as fixed by such jurisdictional bodies. The Company agrees to notify and acquaint the Board of all proceedings that may be had before such Commissions to alter such rates and to permit the City to intervene in or initiate any such proceedings before the Commissions.

Reversion to City and Removal of Tracks—The Company agrees that upon termination of the grant any additional tracks constructed under the grant, shall vest in the City. At termination or cancellation of rights thereby granted, if the same be not renewed, and upon notice from the Board, the leased and additional tracks authorized therein shall be removed by the Company and the streets restored to their original condition, all at the expense of the Company.

Penalties for Default—Forfeiture—Certain definite penalties have been fixed for the default by the Company of provisions of the contract. Conditions whereupon the contract may be forfeited, have been included.

*Rights to Cease upon Condemnation*—An added provision inserted in this grant, is to the effect that should the streets, tracks and rights covered by this consent be condemned by any competent authority, the contract and the rights and privileges thereunder with respect to such premises, cease and determined upon the date of vesting of title thereto and the Company shall not be entitled to any award in connection therewith. Such provision has been inserted as an offset to any situation similar to that which prevailed at Wallabout Market at the time the Federal Government took over such property in the enlargement of the Navy Yard. At that time, this Company made claim for a substantial amount of the Federal award basing such claims upon its rights under the agreements made in 1935 and 1936 previously mentioned. It is believed the clause so inserted in the contract, will avoid a similar condition from arising.

*Cancellation of 1943 Consent*—The Company covenants and agrees that the consent of 1943 authorizing the tracks at the Queens terminal shall cease and terminate upon the date this contract is signed by the Mayor and thereupon such tracks and appurtenances shall revert to the City.

*Removal of Tracks*—The Company is given the right to remove tracks at certain locations fixed in the contract providing among other things, that at the expense of the Company, it shall restore the streets to their original condition to the satisfaction of the Borough authorities.

*Sundry Provisions*—Various sundry provisions relating to the liability of the Company in case of accident or damage, labor relations, the keeping of accounts and reports to the Board, provisions as to snow removal, protection of its structures and the street pavement and other pertinent provisions, usually included in the forms of contract governing such grants, have been included and are substantially in the same form as were included in the 1938 grant.

*Conclusions and Recommendations*—The instant petition is merely a request of the Company to grant to it the necessary authority to continue its terminal operations in Brooklyn and Queens. It involves no new operations and is for the purpose of permitting it to continue to render the services now provided at these localities. The industries utilizing these services have established themselves in their present locations partially due to the proximity of the railroad services made available to them by this Company and if the authority to continue was denied to the Company, not only it but all the industries depending upon it would suffer unestimable financial losses.

The form of contract has been formulated so as to protect the interests of the City in the granting of this franchise. Its terms are reasonable and are acceptable to the Company which has advised this Bureau that its officials will execute a contract in the form herewith presented, provided the Board authorizes the same.

The Corporation Counsel has given it his approval as to form.

On February 2, 1945 this Bureau presented a report to the Board recommending that a date be fixed for a hearing on the petition. At the meeting held on February 8, 1945 (Cal. No. 7) the date of March 22, 1945, was fixed for the statutory hearing on the petition dated February 28, 1944.

If the proposed form of contract meets with the approval of the Board and it is desired that the matter be progressed, it is recommended that, at the conclusion of the hearing on the petition, the form of contract herewith submitted be entered upon the minutes of this Board and a date be fixed for the statutory hearing thereon, such date to be fixed at not less than twenty-seven (27) days succeeding the date of entry of the contract upon the minutes.

Respectfully submitted,

JAMES D. MCGANN, Director of Franchises.

#### Proposed Form of Contract

Whereas, By contract dated September 1, 1938, by and between The City of New York and the Brooklyn Eastern District Terminal, said Company was granted the lease of and the franchise, right and consent to maintain and operate certain railroad tracks the property of the City, therein defined as leased tracks, for the purpose of conveying goods, wares and merchandise over and across certain streets in the vicinity of Kent Avenue and North 4th Street, Borough of Brooklyn, as more particularly described in said contract; and

Whereas, By resolution adopted by the Board of Estimate on January 8, 1942, and approved by the Mayor on January 26, 1942, the consent of the City was given to the Brooklyn Eastern District Terminal (a) to construct, maintain and operate two (2) additional tracks, one (1) in and across North 6th Street and the other in and across North 7th Street, designated in the hereinafter mentioned description of tracks as Tracks G-8 and J-5, and (b) to relocate three (3) tracks in North 6th Street and North 7th Street to the position as now described in the hereinafter mentioned description of tracks as Tracks G-7, J-3 and J-4; and

Whereas, The aforesaid consent provides that the additional tracks and relocated

tracks shall be subject to all the terms, conditions and provisions of said contract dated September 1, 1938, governing additional and relocated tracks; and

Whereas, Article Six of said contract dated September 1, 1938, provides in part—

"1. Upon the termination of this contract at the expiration thereof, or upon the termination of the rights hereby granted for any cause at any other time, or upon the dissolution of the Company before such termination, the additional tracks, if any, and appurtenant equipment thereto of the Company, constructed pursuant to this contract within the streets and avenues, shall become the property of the City without cost, and may be used or disposed of by the City for any purpose whatsoever, or may be leased to any Company or individual \* \* \*"; and

Whereas, By resolution adopted by the Board of Estimate on September 9, 1943, and approved by the Mayor on October 8, 1943, the consent of the City was given to the Brooklyn Eastern District Terminal to continue to maintain, use and operate ten (10) existing standard gauge railroad tracks across and on the surface of 55th Avenue, 2d Street and 5th Street in the Borough of Queens, said tracks being designated in said consent as Tracks O-1, to O-10 inclusive, as more particularly described in said consent; and

Whereas, The above resolution adopted by the Board on September 9, 1943, provides (1) that the consent of the City shall be revocable at any time but in no event to extend beyond October 7, 1945, and (2) that, upon revocation or termination of the consent, if the structures shall not be required to be removed, they shall become the property of the City; and

Whereas, By petition dated February 28, 1944, the Brooklyn Eastern District Terminal applied to the Board of Estimate for (1) the right and lease to maintain and use certain tracks described in said petition, located in the Boroughs of Brooklyn and Queens, and (2) the right to remove tracks described in said contract dated September 1, 1938, as Track A-1, Track A-2 and Track J-5; and

Whereas, Chapter 14 of the New York City Charter, provides for the manner and procedure of making such grants; and

Whereas, Pursuant to such Chapter, the Board adopted a resolution on \_\_\_\_\_, at which citizens were entitled to appear and be heard, and publication of said petition and of the notice of public hearing thereon was had for at least two (2) days in two (2) newspapers designated by the Mayor, and in THE CITY RECORD for ten (10) days prior to the date of hearing, and said hearing was duly held and closed on said date; and

Whereas, The Board has made inquiry as to the money value of the franchise or right applied for and proposed to be granted to the Company, including the lease of said tracks, and the adequacy of the compensation proposed to be paid therefor; and

Whereas, The Board did embody the result of such inquiry in this contract and has caused this contract to be spread upon the minutes of the Board on \_\_\_\_\_, together with the proposed resolution for the grant thereof, and did fix the \_\_\_\_\_ day of \_\_\_\_\_, 1944, for a public hearing thereon, at which citizens should be entitled to appear and be heard; and

Whereas, Prior to said hearing, notice thereof and the proposed contract and proposed resolution of consent thereto, in full, were published for at least fifteen (15) days (except Sundays and legal holidays), prior to said hearing in THE CITY RECORD, and a notice of such hearing, together with the place where copies of the proposed contract and resolution of consent thereto might be obtained by all those interested therein, was published at least twice, at the expense of the proposed grantee, in the two newspapers in which the petition and notice of hearing thereon were published, and said hearing was duly held and closed on said day.

This contract, made and executed in duplicate this \_\_\_\_\_ day of \_\_\_\_\_ by and between The City of New York, by the Mayor of said City, acting for and in the name of said City, under and in pursuance of the authority of the Board of Estimate of said City, party of the first part, and the Brooklyn Eastern District Terminal, a freight terminal corporation organized and existing under and by virtue of the laws of the State of New York, party of the second part, witnesseth:

That, for and in consideration of the mutual promises, stipulations and covenants herein set forth, the parties hereto, each for itself and its successors and assigns, do hereby covenant and agree as follows:

#### Definitions

Unless otherwise indicated by the context, the following definitions shall apply for all purposes to the corresponding terms used in this contract and in each or any part thereof:

1. The term "City" shall mean The City of New York, the term "Mayor" shall mean the Mayor of the City; the term "Board" shall mean the Board of Estimate of the City, and its successors.

2. The term "Company" shall mean the Brooklyn Eastern District Terminal, a freight terminal corporation organized and existing under and by virtue of the laws of the State of New York.

3. The term "Commission" shall mean the Public Service Commission of the State of New York, and its successors; the term "Commission approval" shall mean the certificate issued by the Commission to the Company to exercise the franchise and right herein granted as required by law.

4. The term "leased tracks" shall mean certain standard gauge railroad tracks (a) which became the property of The City of New York as outlined in said contract dated September 1, 1938, (b) the two (2) tracks constructed and the three (3) tracks relocated pursuant to resolution adopted by the Board on January 8, 1942, and approved by the Mayor on January 26, 1942, and (c) the ten (10) tracks maintained and operated by the Company in the Borough of Queens pursuant to the resolution adopted by the Board on September 9, 1943, and approved by the Mayor on October 8, 1943, all of which become the property of the City upon the date of signing of this contract by the Mayor.

5. The term "additional tracks" shall mean such further standard gauge railroad tracks, switches, crossover and turnouts, and the necessary appurtenances thereto, additional to and connecting with the leased tracks which may be authorized or directed by the Board as specified in Article One of this contract or with the railroad of the Company.

6. The term "railroad" shall mean the leased tracks and such additional tracks as may be constructed during the term of this contract.

7. The terms "notice," "direction" or "order" wherever used in this contract shall be deemed to mean a written notice, direction or order. Every such notice, direction or order to be served upon the Company shall be delivered to or sent by mail with postage prepaid, and addressed to the Company at or to its office in the City as shall have been designated by the Company, or if no such office exists at the time, shall be mailed in the City, postage prepaid, addressed to the Company at the last known office in the City. Every such notice to be served upon the City or the Board shall be delivered to or sent by mail, with postage prepaid, and addressed to the Mayor of the City or the Secretary of the Board at the City Hall. Delivery or mailing of such notice, direction or order as and when above provided shall be equivalent to direct personal notice, direction or order, and shall be deemed to have been given at the time of delivery or mailing.

8. The terms "streets" or "avenues" and "streets and avenues" wherever used in this contract shall be deemed to mean streets, avenues, highways, parkways, driveways, concourses, boulevards, bridges, viaducts, tunnels, public places, or any other property to which the City has title or over which the City has an easement encountered by the tracks hereinafter described and upon or in which authority is hereby given to the Company to operate said tracks.

#### ARTICLE ONE

##### Railroad Leased and Franchise Granted

The City hereby grants to the Company, subject to the conditions, provisions, requirements and limitations hereinafter set forth, the lease of and the franchise, right and consent to maintain and operate the following leased tracks for the purpose of conveying goods, wares and merchandise only. The centre line of the leased tracks is described as follows:

Track A-1—Beginning at a point in the westerly line of Wythe Avenue about 54 feet south from the southerly line of North 4th Street, thence crossing Wythe Avenue in a southeasterly direction to a point in the easterly line of Wythe Avenue about 53 feet south from the southerly line of North 4th Street.

Track B-1—Beginning at a point in the westerly line of Kent Avenue about 16 feet south from the southerly line of North 4th Street, thence crossing Kent Avenue in an easterly direction to a point in the easterly line of Kent Avenue about 16 feet south from the southerly line of North 4th Street.

Track B-2—Beginning at a point of switch in Track B-1 about 11 feet west from the easterly line of Kent Avenue, thence easterly to a point in the easterly line of Kent Avenue about 16 feet south from the southerly line of North 4th Street.

Track B-3—Beginning at a point in the westerly line of Kent Avenue about 85 feet south from the southerly line of North 4th Street, thence crossing Kent Avenue in an easterly direction to a point in the easterly line of Kent Avenue about 85 feet south from the southerly line of North 4th Street.

Track B-4—Beginning at a point in the westerly line of Kent Avenue about 96 feet south from the southerly line of North 4th Street, thence crossing Kent Avenue in a southeasterly direction to a point in the easterly line of Kent Avenue about 104 feet south from the southerly line of North 4th Street.

Track C-1—Beginning at a point in the southerly line of North 4th Street about 58 feet east from the easterly line of Kent Avenue, thence crossing North 4th Street in a northeasterly direction to a point in the northerly line of North 4th Street about 110 feet east from the easterly line of Kent Avenue.

Track D-1—Beginning at a point on the northerly side of North 5th Street about 444 feet west from the westerly line of Kent Avenue and about 8 feet south from the northerly line of North 5th Street, thence easterly along and parallel to the northerly side of North 5th Street to the westerly line of Kent Avenue, thence crossing Kent Avenue to the easterly side thereof and continuing along North 5th Street for a distance of about 45 feet, thence curving in a southeasterly direction across North 5th Street to a point about 201 feet west of the westerly line of Wythe Avenue and about 38 feet south from the northerly line of North 5th Street, thence continuing easterly along and parallel to the southerly side of North 5th Street to a point about 394 feet east of the easterly line of Kent Avenue.

Track D-2—Beginning at a point of switch in Track D-1, said point being about 17 feet west from the westerly line of Kent Avenue and about 8 feet south from the northerly line of North 5th Street; thence crossing North 5th Street in a northwesterly direction to a point in the northerly line of North 5th Street about 69 feet west from the westerly line of Kent Avenue.

Track D-3—Beginning at a point of switch in Track D-1 about 13 feet east from the easterly line of Kent Avenue, thence curving in a southwesterly direction across North 5th Street to a point in the southerly line of North 5th Street about 103 feet east from the easterly line of Kent Avenue.

Track D-4—Beginning at a point of switch in Track D-3, said point being about 48 feet east from the easterly line of Kent Avenue and about 14 feet south from the northerly line of North 5th Street, thence curving in a southeasterly direction across North 5th Street to a point about 216 feet west of the westerly line of Wythe Avenue and about 50 feet south of the northerly line of North 5th Street, thence continuing easterly along and parallel to the southerly side of North 5th Street to a point about 394 feet east from the easterly line of Kent Avenue.

Track E-1—Beginning at a point in the westerly line of Wythe Avenue about 28 feet north from the northerly line of North 5th Street, thence crossing Wythe Avenue in an easterly direction to a point in the easterly line thereof about 50 feet north of the northerly line of North 5th Street.

Track E-2—Beginning at a point in the westerly line of Wythe Avenue about 15 feet north from the northerly line of North 5th Street, thence crossing Wythe Avenue in an easterly direction to a point in the easterly line thereof about 19 feet north from the northerly line of North 5th Street.

Track E-3—Beginning at a point in the westerly line of Wythe Avenue about 13 feet north from the northerly line of North 5th Street; thence crossing Wythe Avenue in a southeasterly direction to a point in the easterly line thereof about 5 feet north from the northerly line of North 5th Street.

Track F-1—Beginning at a point in the westerly line of Kent Avenue about 32 feet north from the northerly line of North 5th Street, thence crossing Kent Avenue in an easterly direction to a point in the easterly line thereof about 53 feet north from the northerly line of North 5th Street.

Track F-2—Beginning at a point in the westerly line of Kent Avenue about 26 feet north from the northerly line of North 5th Street, thence crossing Kent Avenue in an easterly direction to a point in the easterly line thereof about 26 feet north from the northerly line of North 5th Street.

Track G-1—Beginning at a point in the northerly line of North 6th Street about 580 feet west from the westerly line of Kent Avenue, thence crossing North 6th Street on a curve in a southeasterly direction to a point in the southerly line thereof about 519 feet west from the westerly line of Kent Avenue.

Track G-2—Beginning at a point in the bulkhead line at the westerly end of North 6th Street, said point being about 40 feet northerly from the southerly line of North 6th Street produced and about 596 feet west from the westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in the southerly line of North 6th Street about 520 feet west from the westerly line of Kent Avenue.

Track G-3—Beginning at a point of switch in Track G-2, said point being about 21 feet north from the southerly line of North 6th Street and about 558 feet west from westerly line of Kent Avenue, thence extending in a northwesterly direction to a point in the bulkhead line at the westerly end of North 6th Street about 36 feet north from southerly line of North 6th Street produced and about 595 feet west from westerly line of Kent Avenue.

Track G-4—Beginning at a point in the bulkhead line at the westerly end of North 6th Street, said point being about 21 feet northerly from southerly line of North 6th Street produced and about 592 feet west from westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in the southerly line of North 6th Street about 544 feet west from westerly line of Kent Avenue.

Track G-5—Beginning at a point of switch in Track G-4, said point being about 5 feet north from southerly line of North 6th Street and about 556 feet west from westerly line of Kent Avenue, thence extending in a northwesterly direction to a point in the bulkhead line at the westerly end of North 6th Street about 15 feet north from southerly line of North 6th Street produced and about 590 feet west from westerly line of Kent Avenue.

Track G-6—Beginning at a point in the bulkhead line at the westerly end of North 6th Street, said point being about 4 feet northerly from southerly line of North 6th Street produced and about 588 feet west from westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in the southerly line of North 6th Street about 563 feet west from westerly line of Kent Avenue.

Track G-7—Beginning at a point of switch in Track G-8, said point being about 13 feet north from the southerly line of North 6th Street and about 509 feet west from westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in southerly line of North 6th Street about 489 feet west from westerly line of Kent Avenue.

Track G-8—Beginning at a point in northerly line of North 6th Street about 552 feet west from westerly line of Kent Avenue, thence crossing North 6th Street on a curve in a southeasterly direction to a point on the southerly line thereof about 491 feet west from westerly line of Kent Avenue.

Track H-1—Beginning at a point in the northerly side of North 6th Street, said point being about 3 feet west from westerly line of Kent Avenue and about 9 feet south from northerly line of North 6th Street, thence extending in a northwesterly direction along northerly side of North 6th Street to a point in northerly line of North 6th Street about 487 feet west from westerly line of Kent Avenue.

Track I-1—Beginning at a point in the northerly line of North 7th Street, about 543 feet west from westerly line of Kent Avenue, thence curving in a southeasterly direction across North 7th Street, to a point therein about 10 feet north of southerly line of North 7th Street, thence easterly along and parallel to the southerly line of North 7th Street to a point about 6 feet west from westerly line of Kent Avenue.

Track I-2—Beginning at a point of switch in Track I-1, said point being about 442 feet west from westerly line of Kent Avenue and about 10 feet north from southerly line of North 7th Street, thence extending in a southeasterly direction to a point in the southerly line of North 7th Street about 375 feet west from westerly line of Kent Avenue.

Track I-3—Beginning at a point of switch in Track I-2, about 391 feet west from westerly line of Kent Avenue and about 3 feet north from southerly line of North 7th Street, thence extending in a southeasterly direction to a point in the southerly line of North 7th Street about 375 feet west from westerly line of Kent Avenue.

Track J-1—Beginning at a point in the northerly line of North 7th Street about 547 feet west from westerly line of Kent Avenue, thence crossing North 7th Street in a southerly direction to a point in the southerly line thereof about 510 feet west from westerly line of Kent Avenue.

Track J-2—Beginning at a point of switch in Track J-1, said point being about 12 feet north from southerly line of North 7th Street and about 518 feet west from westerly line of Kent Avenue, thence extending in a southerly direction to a point in the southerly line of North 7th Street about 509 feet west from westerly line of Kent Avenue.

Track J-3—Beginning at a point in the northerly line of North 7th Street about 562 feet west from westerly line of Kent Avenue, thence crossing North 7th Street in a southerly direction to a point in the southerly line thereof about 547 feet west from westerly line of Kent Avenue.

Track J-4—Beginning at a point in the northerly line of North 7th Street about 584 feet west from westerly line of Kent Avenue, thence crossing North 7th Street in a southwesterly direction to a point in the southerly line thereof about 585 feet west from the westerly line of Kent Avenue.

Track J-5—Beginning at a point in the northerly line of North 7th Street about 564 feet west from westerly line of Kent Avenue, thence crossing North 7th Street

in a southwesterly direction to a point in the southerly line of North 7th Street about 565 feet west from westerly line of Kent Avenue.

Track J-6—Beginning at a point in the northerly property line of City of New York, said point being 20 feet north of northerly line of North 7th Street produced and about 640 feet west from westerly line of Kent Avenue, thence crossing such property and North 7th Street in a southerly direction for a distance of 100 feet to a point in the southerly property line of City of New York about 634 feet west from westerly line of Kent Avenue.

Track K-1—Beginning at a point of switch in Track K-2, said point being about 28 feet north from southerly line of North 8th Street about 643 feet west from westerly line of Kent Avenue, thence extending in a southerly direction to a point in the southerly line of said street about 636 feet west from westerly line of Kent Avenue.

Track K-2—Beginning at a point in the northerly line of North 8th Street about 652 feet west from westerly line of Kent Avenue, thence crossing North 8th Street in a southerly direction to a point in the southerly line of said street about 633 feet west from westerly line of Kent Avenue.

Track K-3—Beginning at a point in the northerly line of North 8th Street about 639 feet west from westerly line of Kent Avenue, thence crossing North 8th Street in a southerly direction to a point in the southerly line of said street about 620 feet west from westerly line of Kent Avenue.

Track K-4—Beginning at a point of switch in Track K-3, said point being about 50 feet north from southerly line of North 8th Street and about 635 feet west from westerly line of Kent Avenue, thence curving in a southeasterly direction across North 8th Street to a point in the southerly line thereof about 610 feet west of the westerly line of Kent Avenue.

Track L-1—Beginning at a point in the bulkhead line at the westerly end of North 9th Street, said point being about 23 feet north from southerly line of North 9th Street produced and about 725 feet west from westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in the southerly line of North 9th Street about 619 feet west from westerly line of Kent Avenue.

Track L-2—Beginning at a point of switch in Track L-1, said point being about 2 feet north from southerly line of North 9th Street and about 625 feet west from westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in the southerly line of North 9th Street about 615 feet west of westerly line of Kent Avenue.

Track L-3—Beginning at a point of switch in Track L-1, said point being about 14 feet north from southerly line of North 9th Street and about 685 feet west from the westerly line of Kent Avenue, thence extending in a southeasterly direction to a point in the southerly line of North 9th Street about 641 feet west from westerly line of Kent Avenue.

Track L-4—Beginning at a point in the northerly line of North 9th Street about 682 feet west from the westerly line of Kent Avenue, thence crossing North 9th Street in a southwesterly direction to a point in the southerly line of said street about 702 feet west from the westerly line of Kent Avenue.

Track M-1—Beginning at a point in the westerly line of Kent Avenue about 94 feet south from southerly line of North 10th Street, thence crossing Kent Avenue in an easterly direction to a point in the easterly line of said street about 94 feet south from southerly line of North 10th Street.

Track N-1—Beginning at a point in the southerly line of North 10th Street about 711 feet west from westerly line of Kent Avenue, thence crossing North 10th Street in a northeasterly direction to a point in the northerly line of said street about 688 feet west from westerly line of Kent Avenue.

Track N-2—Beginning at a point in the southerly line of North 10th Street about 585 feet west from westerly line of Kent Avenue, thence crossing North 10th Street in a northeasterly direction to a point in the northerly line of said street about 535 feet west from westerly line of Kent Avenue,

—all in the Borough of Brooklyn.

Also

Track O-1—Beginning at a point in the easterly line of 5th Street about 24 feet north from the southerly line of 55th Avenue produced, thence westerly crossing 5th Street and continuing along 55th Avenue to a point on the easterly side of 2d Street, said point being about 24 feet north from southerly line of 55th Avenue; thence continuing westerly across 2d Street to a point on west side of 2d Street, said point being about 29 feet north from southerly line of 55th Avenue; thence continuing westerly and about 29 feet north from southerly line of 55th Avenue for

a distance of about 370 feet, thence continuing southwestward a distance of about 84 feet to a point in the East River bulkhead, approximately 6 feet north of the southerly line of 55th Avenue.

Track O-2—Beginning at a point in the easterly line of 5th Street about 16 feet north from the northerly line of 55th Avenue produced, thence curving westerly and across 5th Street a distance of 66 feet to easterly side of said street, thence continuing westerly on a curve to the right a distance of about 105 feet to a point in 55th Avenue, said point being about 24 feet south from the northerly side of 55th Avenue and 104 feet west of the westerly side of 5th Street; continuing westerly and about 24 feet south from the northerly line of 55th Avenue to the easterly line of 2d Street; thence westerly crossing 2d Street to a point in the westerly line of said street about 19 feet south from the northerly side of 55th Avenue; thence continuing westerly and about 19 feet south from the northerly side of 55th Avenue to a point about 324 feet from west side of 2d Street; thence continuing southwestward about 130 feet to a point in the East River bulkhead, 40 feet south from the northerly side of 55th Avenue.

Track O-3—Beginning at a point of switch in Track O-1 about 15 feet easterly from east line of 2d Street and 24 feet north of the southerly side of 55th Avenue, running thence westerly and across 2d Street to a point on the westerly side of said street, said point being about 19 feet north from the southerly line of 55th Avenue; thence continuing westerly and about 19 feet north from the southerly line of 55th Avenue to a point of switch in Track O-1, said point being about 424 feet from westerly side of 2d Street.

Track O-4—Beginning at a point of switch in Track O-1 about 18 feet westerly from the west line of 5th Street; thence running easterly on a curve to the left a distance of about 79 feet to a point in the easterly line of 5th Street; said point being about 35 feet northerly from south line of 55th Avenue produced.

Track O-5—Beginning at a point of switch in Track O-1, said point being about 55 feet westerly from west line of 5th Street running thence northwestward a distance of about 99 feet to a point of switch in Track O-2; said point being about 153 feet westerly from west line of 5th Street.

Track O-6—Beginning at a point of switch in Track O-1, said point being about 95 feet easterly from east line of 2d Street running thence northwestward a distance of 97 feet to a point of switch in Track O-2; said point being on the easterly line of 2d Street.

Track O-7—Beginning at a point of switch in Track O-2, said point being about 4 feet westerly from west line of 2d Street; running thence northwestward a distance of about 136 feet to a point in the northerly line of 55th Avenue; said point being about 140 feet westerly from west line of 2d Street.

Track O-8—Beginning at a point of switch in Track O-7, said point being about 121 feet westerly measured from west line of 2d Street; thence running westerly and about 2 feet south of the northerly side of 55th Avenue a distance of about 322 feet to a point 443 feet westerly from the west line of 2d Street.

Track O-9—Beginning at a point of switch in Track O-2, said point being about 279 feet westerly from west side of 2d Street; running thence westerly a distance of about 91 feet to a point of switch in Track O-1; said point being 370 feet westerly measured from west line of 2d Street.

Track O-10—Beginning at a point in the easterly line of 5th Street, said point being about 9 feet northerly measured from south line of 55th Avenue produced; running thence westerly on a curve to the right a distance of about 62 feet to a point in the westerly side of 5th Street; said point being about 6 feet southerly measured from south line of 55th Avenue,

—all in the Borough of Queens.

And crossing such other streets and avenues, named and unnamed, as may be encountered in the aforesaid description of leased tracks.

The leased tracks as described herein are all shown by solid red lines upon a map entitled:

“Map showing tracks operated by Brooklyn Eastern District Terminal at Kent Avenue Yard, Borough of Brooklyn, and 55th Avenue Yard, Borough of Queens, to accompany petition dated February 28, 1944, to the Board of Estimate, City of New York”

—and signed Brooklyn Eastern District Terminal, by Henry O. Havemeyer, President, a copy of which is attached hereto, and made a part of this contract.

In case of conflict between the Map and this contract, the latter shall control.

This grant is made with the understanding that the tracks herein leased are to be

operated as a necessary part of the railroad of the Company within the terminal areas as shown by the lay-out upon the map attached hereto and is only made upon condition that all of the track shown upon said map, whether on private property or upon streets or avenues, shall be operated as part of the railroad of the Company.

The Board may, upon terms, conditions, requirements and limitations as fixed by it by resolution (a) direct the Company at its own expense, to relocate or remove existing track or tracks or (b) upon application of the Company, or if directed by the proper authorities, authorize the Company to construct, maintain and operate such additional tracks as may be necessary to permit the Company to furnish service to any individual, firm or corporation whose building or premises shall be situated on any of the streets or avenues through or along which the Company is herein authorized to maintain and operate its tracks, extensions or connections or to buildings in the vicinity of such streets and avenues, without prejudice to any right of the Company to recover reimbursement from the individual, firm or corporation whose premises may be connected. Such additional tracks when constructed, however, shall be the property of the Company during the existence of this contract, and shall be a part of the railroad. In case of the failure of the Company to construct any such additional tracks within four (4) months after being so authorized by the Board, or after being directed to do so by the proper authorities, and after such individual, firm or corporation has paid, or in writing agreed to pay the cost of construction thereof, or in case of the Company's failure to thereafter maintain and operate the said additional tracks and furnish its service as herein provided, the franchise and lease hereby granted, may be terminated by resolution of the Board.

#### ARTICLE TWO

##### Commission Approval

1. Within thirty (30) days after the date of this contract or such further time as the Board may by resolution duly adopted allow prior to the expiration of said thirty (30) days, the Company, if required to do so by law, shall apply to the Commission for Commission approval as to all of the railroad. In the event that the Company shall fail to make such application, if required to do so by law, within such time, the franchise, right and lease herein granted shall, at the option of the Board, cease and determine.

2. If, within one hundred and eighty (180) days from the date of this contract, or such further period as the Board may, by resolution duly adopted, allow prior to the expiration of said one hundred and eighty (180) days, the Commission, if required to do so by law, shall not have determined upon the application required to be made by the preceding subdivision as to all the railroad herein authorized, the Board at any time subsequent to said one hundred and eighty (180) days or such further period as above mentioned and prior to such determination, may cancel the within contract and thereupon the franchise, right and lease herein granted shall cease and determine.

3. In the event an application to the Commission is required by law and a determination is made which shall not permit operation over all of the authorized railroad, the Board shall have the option, if exercised within thirty (30) days from the date of such determination, either to consent to operation upon those portions of the railroad for which the Company has procured Commission approval or to cancel this contract, in which later event the franchise, right and lease herein granted shall cease and determine. The failure of the City to exercise the foregoing option within said thirty (30) days' period shall be deemed to constitute its consent to the operation of less than all of the railroad for which Commission approval has been procured.

4. If the City does not exercise the option reserved in the preceding section to terminate this contract, the Company shall have the right within one (1) year after the date of the order or determination of the said Commission to procure the requisite Commission approval for the remaining railroad or any portion thereof. The Company shall have no further right thereafter to proceed in any manner with respect to any portion of the railroad for which Commission approval has not been obtained which shall be regarded as not included in the railroad within the meaning of this contract.

#### ARTICLE THREE

##### Terms of Lease and Grant

The grant of this franchise and right and the lease of the said tracks is subject to the following conditions, which shall be complied with by the Company.

1. The said franchise and right to maintain and operate said railroad and the lease of said tracks shall be for a term commencing on the date of signing of this contract by the Mayor and shall continue until terminated in accordance with its provisions, but in no event shall it extend beyond June 1, 1955. Provided, however, that said franchise, right and lease shall be revocable by the City upon one (1) year's notice in writing to

the Company with the approval of the Commission and upon its certificate that such privilege is no longer needed for public use or that the exercise of such privilege has failed to enhance or improve the service afforded by such streets to the public. Upon termination, all rights of the Company by virtue of this contract shall cease and determine.

If for a period of three (3) consecutive months the railroad shall not be operated for any cause except an Act of God, act of a public enemy or strikes, or if the same be not operated for a period of six (6) months out of any consecutive twelve (12) months, the Board may, by resolution, cancel the franchise and lease hereby granted.

2. The Company agrees that during the 14th month prior to the aforesaid expiration of the term of this franchise and lease, it will notify the Board, in writing, of its intention, or lack of intention to apply for a renewal thereof. In the event the Company notifies the Board of its intention to apply for a renewal, the Company shall at the same time file a petition therefore.

3. In the manner and at the times hereinafter specified the Company shall pay to the City, as compensation for the franchise and right hereby granted and for the exercise thereof, and as rental for the property hereby leased, the following amounts of money at the times hereby specified:

(a) Within thirty (30) days after the date on which this contract is signed by the Mayor and before anything is done in the exercise thereof (1) the sum of five hundred dollars (\$500); (2) a sum of money which shall be such proportion of eight thousand three hundred and sixty-three dollars (\$8,363) as the actual number of days intervening between March 15, 1944 and the date upon which this contract is signed by the Mayor bears to the whole of one year; and (3) a sum of money which shall be such proportion of fourteen thousand, one hundred and four dollars (\$14,104) as the actual number of days intervening between the date this contract is executed by the Mayor and June 30, 1945, bears to the whole of one year. The Company shall be entitled to a credit of such sums as have heretofore been paid to the City as compensation for the use and operation of tracks (i) authorized pursuant to said contract dated September 1, 1938 and said resolution adopted by the Board on January 8, 1942, for the period from March 15, 1944 to June 30, 1945 and (ii) authorized by said resolution adopted by the Board on September 9, 1943 for the period from the date upon which this contract is signed by the Mayor to June 30, 1945.

(b) On July 1, 1945, and upon a like date in each year thereafter during the term of this contract, the annual sum of fourteen thousand, one hundred and four dollars (\$14,104), which annual sum shall represent the compensation due the City for use and occupation of the leased tracks described in Article One hereof for the annual period ending June 30 of the succeeding year.

(c) Should the Company remove the track in North 6th Street, Brooklyn, designated in Article One hereof as "Track H-1" and the track in North 7th Street, Brooklyn, designated in Article One hereof as "Track I-1" under the conditions provided in Article Three—26 hereof the Company shall be entitled to reduce the annual payment above provided for by four hundred dollars (\$400) from and after the date of removal of such structures and the restoration of the street surface to its original condition as certified to by the Borough authorities affected.

(d) On the last payment date prior to the termination of this contract, the amount due at the rate applicable to such period for less than a full fiscal year period, shall be only such portion of the annual rate fixed in (b) and (c) hereof as the actual number of days for which such payment is to be made, shall bear to the whole of one year.

In the event the Company continues operation of any part or all of the railroad set forth in Article One hereof after and in spite of the termination or expiration of the contract, the Company agrees to pay to the City the compensation as set forth herein at the rate in effect at the time of such termination or expiration and in the manner set forth herein, together with all taxes it would have been required to pay had its operation been duly authorized. If the Company shall fail to pay such compensation or taxes, the Comptroller may withdraw the amounts thereof from the security fund if such fund shall not have already become the property of the City, as hereinafter provided.

In the event the Company constructs any tracks other than those shown by solid red lines on the plan attached hereto on any of the streets or avenues through or along which the Company is herein authorized to maintain and operate tracks, extensions or connections or constructs such tracks in adjoining street or streets, the Company agrees to pay the City compensation from the date of construction at the regular rates established by the Board of Estimate and Apportionment by resolution adopted on February 11, 1921. If the Company shall fail to pay such compensation, the Comptroller may

withdraw the amounts hereof from the security fund, if such fund shall not have already become the property of the City as hereinafter provided.

4. The annual charges or payments shall continue throughout the whole term of this contract, notwithstanding any clause in any statute or in the Charter of any other railway or railroad company or freight terminal company providing for the payment for similar rights or franchises at a different rate.

5. Any and all payments to be made by the terms of this contract to the City by the Company shall not be considered in any manner in the nature of a tax, but such payments shall be made in addition to any and all taxes of whatsoever kind or description now or hereafter required to be paid by any ordinance or local law of the City or resolution of the Board or law of the State of New York.

6. The sum of fifteen thousand dollars (\$15,000) heretofore deposited with the Comptroller pursuant to the terms and conditions of said contract dated September 1, 1938 and the sum of seven thousand dollars (\$7,000) heretofore deposited with the Comptroller of the City under and pursuant to the provisions of the aforementioned resolution adopted by the Board on September 9, 1943, shall constitute a fund of twenty-two thousand dollars (\$22,000), which fund shall remain on deposit with said Comptroller as security for the faithful performance by the Company of all of the terms and conditions of this and previous contract and consents and for its compliance with all orders of the Board and of the officials of the City acting under the powers herein reserved, especially those which relate to the payment of compensation to the City as herein provided, the reimbursement to the City for any and all liability with interest for damages to persons or property by reasons of the maintenance and operation of the railroad, the rendering of efficient public service at the rate fixed, the paving and repairing of the street pavement and the maintenance of the property hereby leased and such additional tracks constructed as provided herein in good condition throughout the whole term of this contract.

7. The Company agrees that it will obtain and file with the Board, within three (3) months from the date of signing of this contract by the Mayor, such consents, if any, not heretofore obtained and filed with the Board, in writing of owners of property bounded on the streets and avenues in and upon which said railroad is or may hereafter be constructed and operated, as may be required by law.

8. The grant of this franchise, right and lease is subject to whatever right, title or interest the owners of abutting property or others may have in and to the streets and avenues in which the Company is hereby authorized to operate.

9. The Company covenants and agrees that it will not, at any time, make any claim that the said leased tracks are not, or were not, at any time of the commencement of said term, in suitable repair or condition for the uses or purposes of this contract.

10. The Company covenants and agrees that it will, at all times during said term, put, keep and maintain all of the railroad and every part thereof in good and sufficient repair and condition and that such repairs during said term shall be done at the sole cost, charge and expense of the Company.

11. Any construction, maintenance or operation provided for by this contract shall be performed subject to the supervision and control of any authorities of the City having jurisdiction in such matters, as provided by the Charter of the City. No construction of additional tracks or repair or reconstruction of said railroad shall be commenced until written permits have been obtained from the proper City officials. Any electric equipment to be installed by the Company for the operation of the railroad whether upon streets and avenues or upon private property shall be installed and maintained under the supervision and control of the Commissioner of Water Supply, Gas and Electricity. The Company shall comply with any conditions for the purpose of protecting, relocating or reconstructing any structures in the streets and avenues, or for the proper restoration of such streets and avenues, which may be imposed in connection with the issuance by any official of the City of any permit for the performance by the Company of any construction, repairs or reconstruction of the railroad. The Company shall pay the full cost of the work necessary to comply with any such conditions attaching to the issuance of any permit, but such payment shall be without prejudice to any right of the Company to seek reimbursement from property owners benefiting by the construction of any connection or extension for which such permit may be issued. Any work of construction, repair or reconstruction shall be performed in such manner as not to interfere with the use of any street or avenue as a public highway.

12. This franchise, right and lease, or any part thereof, shall not be leased, assigned or transferred, either in whole or in part; nor shall title thereto either legal or equitable or any right, interest or property therein, pass to or vest in any other person or corporation whatsoever, either by the act of the Company or by operation of law, whether under the provisions of the statutes relating to the consolidation or merger of corpora-

tions or otherwise, without the consent of the City, acting by the Board evidenced by an instrument under seal, anything herein contained to the contrary notwithstanding, and the granting, giving or waiving of any one or more of such consents shall not render unnecessary any subsequent consent or consents. No lease, assignment or transfer of this franchise, right and lease, or of any part thereof, shall be valid or effectual for any purpose unless such lease, assignment or transfer shall specifically provide and shall contain a covenant on the part of the lessee, assignee or transferee that such lease, assignment or transfer is subject to all of the conditions, provisions, requirements and limitations of this franchise, right and lease; and that any such lessee, assignee or transferee assumes and will be bound by all of the conditions, provisions, requirements and limitations of this franchise, right and lease and especially by the requirements hereof with respect to payments of compensation to the City, notwithstanding anything in any statute or in the Charter of such lessee, assignee or transferee to the contrary, any that such lessee, assignee or transferee shall specifically waive any more favorable conditions, provisions, requirements and limitations created by any such statute or Charter and shall covenant and agree that it will not claim by reason thereof or otherwise, exemption from liability to comply with all and singular of the conditions, provisions, requirements and limitations of this contract.

The exercise of the franchise, right and lease herein granted and all rights and privileges of the Company hereunder shall cease and determine one hundred and twenty (120) days after the appointment of a receiver or receivers, trustee or trustees to take over and conduct the business of the Company whether in a bankruptcy, reorganization or other action or proceeding unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred and twenty (120) days.

In case of foreclosure or other judicial sale of the plant, property and equipment of the Company, including or excluding this franchise, right and lease, the Board may serve notice of termination upon the Company and the successful bidder at such sale, in which event the consent of the City to the exercise of the franchise, right and lease herein granted and all rights and privileges of the Company hereunder shall cease and determine thirty (30) days after service of such notice, unless the Board shall have consented to the transfer of the franchise, right and lease herein contained as and in the manner in this subdivision provided, and unless such successful bidder prior to the expiration of such period of thirty (30) days shall have covenanted and agreed with the City to assume and be bound by all the conditions, provisions, requirements and limitations of this contract.

13. Nothing in this contract shall be deemed to affect in any way the right of the City to grant to any person or corporation a franchise or right to use the streets hereinbefore mentioned, or any part of them, for railroad purposes, and the Company shall not, at any time oppose, but hereby consents to the construction and operation of a railroad by any such other corporation or individual which may receive a franchise therefor from the City; provided, however, that nothing in this clause contained shall estop the Company from appearing before the Board and being heard on any application for rights in said streets.

14. The Company covenants and agrees that it will operate the railroad in the latest approved manner of street railroad operation, and it is hereby agreed that the Board may require the Company to improve or add to the railroad equipment, including rolling stock and railroad appurtenances, from time to time, as such additions and improvements are necessary, in the opinion of the Board. Upon failure on the part of the Company to comply with the direction of the Board within a reasonable time, the rights hereby granted shall cease and determine.

15. The Company covenants and agrees that it will assume, and hereby assumes, all legal liability for which the City can or may be held for injury to persons or damage to property occasioned by reason of or resulting from or growing out of the maintenance or operation of the railroad and it is a condition of this contract that the City shall not, by reason of this contract, become responsible for any such liability, either to persons or property. The Company covenants and agrees that it will save the City harmless from any such liability and further covenants and agrees that it will repay to the City any damages which the City may be compelled to pay by reason of any act or default of the Company.

16. The Company is engaged both in interstate commerce and intrastate commerce, and may now or hereafter be subject to the jurisdiction of the Interstate Commerce Commission of the United States in respect to the rates to be charged for carrying property in interstate commerce and to the jurisdiction of the Commission in respect to the rates for carrying property in intrastate business. The Company agrees that the rates to be charged by it in respect to interstate traffic upon the railroad shall not exceed the rates fixed by the Interstate Commerce Commission and that the rates charged by it

upon the railroad shall in no case exceed the rates for intrastate traffic fixed by the Commission.

The Company agrees to notify the Board immediately of any proceeding of which the Company has notice before the Interstate Commerce Commission of the United States or before the Commission to fix, alter or amend any rate for carrying property in interstate or intrastate business upon the railroad and to deliver to the Board copies of all papers in any such proceeding, and upon request of the Board to consent that the Board or the City intervene therein or that the Board or the City initiate any proceeding for the further alteration or amendment of any such rate before either of said Commissions.

17. The Company covenants and agrees that it will not institute any proceeding to acquire by condemnation, any land, property, appurtenances or rights, pursuant to any law, unless and until permitted to do so by resolution of the Board, otherwise, this grant shall cease and determine.

If the whole or any part of the street, tracks and rights covered by this contract shall be taken or condemned by any competent authority, then, and in that event, this contract and all of the rights and privileges thereunder with respect to said streets, tracks and rights or any part thereof so taken or condemned, shall cease and terminate upon the date of the vesting of title pursuant to such taking or condemnation, and the Company shall not be entitled to any award or any part of any award made by reason thereof. The Company, however, in the event of such termination, shall pay to the City any sum or sums or charges due or required to be paid under this contract up to the date of said termination.

18. The Company agrees to recognize the right of its employees to bargain collectively through representatives of their own choosing, and at all times to recognize and deal with the representatives duly designated or selected by the majority of its employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, as the sole bargaining agents of such employees, and not to dominate, interfere with or participate in the management or control of or give financial support to any union or association of its employees.

19. The Company shall, at all times keep accurate books of accounts and records pertaining to the operations of the Company at each of the terminals served by the tracks herein authorized and upon request furnish to the Board or the Comptroller such reports pertaining to the operations of the Company as may be requested by them, from time to time.

Within ten (10) days after the Company files with the Commission and with the Interstate Commerce Commission of the United States its annual reports, pursuant to the provisions of law, the Company shall file a copy of such reports with the Board, and shall likewise file within like period, a copy of any other documents filed by it with the Commission or the Interstate Commerce Commission of the United States. All reports furnished by the Company in accordance herewith shall be certified by the Comptroller or Acting Comptroller of the Company to be correct and in accordance with the Company's books of accounts and records. In addition to and not in substitution for the foregoing, upon thirty (30) days' notice and demand the Company shall file with the Board, the Comptroller and the Department of Finance such reports as said Board or said officials may require and in such form as the Board or either of said officials may prescribe.

20. Cars may be operated upon the railroad by steam locomotives, which shall be housed or boxed so as to conform with the type commonly known as the "dummy engine", or by any other motive power which may be approved by the Board and by the Commission, provided, however, that upon giving to the grantee one year's notice the Board may require the Company to operate over all or a portion of the railroad by such approved system or motive power as the Board may designate and the Company shall thereupon discontinue the use of steam locomotives accordingly and thereafter operate said railroad as directed by the Board. It is understood, however, that no overhead wires shall be permitted for the operation of said railroad by electric power.

21. Neither pedestrians nor vehicles shall be prevented from crossing the railroad, due to the occupation of such tracks by cars or trains operated thereon, for a greater period than five (5) consecutive minutes at any time, and the aggregate of such periods shall not exceed ten (10) minutes in any hour between 7 o'clock a. m. and 6 o'clock p. m.

22. So long as the Company operates the railroad at the same grade as the streets and avenues, it shall station flagmen at such points as shall be necessary to exclude pedestrians and vehicles from the railroad at all times when cars or trains shall be operated thereon. Should it seem necessary in the opinion of the Board at any time during the term of this contract that gates or traffic lights be erected, maintained and operated across, at or near any point where the railroad crosses any of the streets or

avenues for the purpose of excluding or warning pedestrians and vehicles from the railroad during the operation thereof, then the Company shall at its own expense erect, maintain and operate such gates or traffic lights at such points as may be designated, upon sixty (60) days' notice by the Board to the Company.

The Company shall not barricade the streets against the use thereof by the public except during the period necessary for the laying or repairing of tracks therein or operating cars or trains thereover, it being understood, however, that a sufficient part of the street shall at all times be available to the public use—pedestrians and vehicles—during the period of laying or repairing of tracks.

23. The Company covenants and agrees that it will comply with every pertinent provision of Article 8 of the Transportation Corporations Law, Laws of New York, 1926 Chapter 762 as amended.

The Company covenants and agrees that upon the signing of this contract by the Mayor, the consent heretofore given by the resolution adopted by the Board on September 9, 1943, and approved by the Mayor on October 8, 1943, shall cease and terminate and all right, title and interest of the Company in and to said tracks and appurtenances maintained and operated pursuant to such consent shall revert to the City free and clear of all incumbrances.

25. The Company shall have the right to remove the tracks shown on the plan in broken red lines, as crossing Wythe Avenue, south of North 4th Street, and marked "Former A-1" and "Former A-2" and in the southerly side of North 7th Street, west of Kent Avenue, and marked "Former J-5" all in the Borough of Brooklyn, provided the Company, at its own expense, restores the streets affected to their original condition to meet the requirements of the departments of the City having jurisdiction.

26. The Company shall also have the right to remove the tracks designated as "Track H-1" located in North 6th Street and "Track I-1" located in North 7th Street, provided the Company first notifies the Board, the office of the President of the Borough of Brooklyn and the Department of Water Supply, Gas and Electricity of its intention to do such work and at the same time apply for the necessary permits governing the same. The work of removing said tracks including the restoration of the street to its original condition shall be performed to the satisfaction of and to meet the requirements of the departments of the City having jurisdiction. The cost of all labor, work, material and other incidentals pertaining to such track removal and restoration of the street shall be borne by the Company. Upon the completion of the track removal and street restoration to the satisfaction of the departments, the Company shall obtain from such departments written statements certifying that such work has been satisfactorily performed and file such certificates with the Comptroller and the Board. From and after the latest date of such certificates the credit referred to in Article Three, Paragraph 3 (c) hereof shall become effective.

#### ARTICLE FOUR

##### Maintenance of Sidewalks, Curbs and Roadbed; Relocation of Railroad; Removal of Snow and Ice

1. So long as the Company operates, uses or maintains the railroad or any portion thereof in any street or avenue, the Company shall set the curbs, pave the roadways and sidewalks, and keep in permanent repair that portion of the surface of the streets and avenues in which the railroad is constructed, between its tracks thereof, the rails of said tracks, and for a distance of two (2) feet beyond the rails on either side thereof, under the supervision of the local authorities whenever required by them to do so, and in such manner as they may prescribe. In case of the failure or neglect of the Company to lay pavements or make repairs after the expiration of twenty (20) days' notice to do so from the President of either Borough, no notice of cancellation having been given to the Company, such President may lay such pavement or make such repairs at the expense of the Company. The City shall have the right to change the material or character of the pavement of any street or avenue, and in that event the Company shall be bound to replace such pavement in the manner directed by the proper City official at its own expense, and the provisions as to repairs herein contained shall apply to such renewed or altered pavement.

2. Should the grades or lines of the streets and avenues, in which the railroad or any part thereof has been or may during the term of this contract be constructed, be changed at any time, the Company shall, at its own expense, change the railroad and the appurtenances thereto to conform with such new grades and lines. During the construction of any public improvement upon or under said streets and avenues the Company shall take care of and protect the railroad and appurtenances at its own expense, all to be done subject to the direction of the City official having jurisdiction over the construction of such change.

3. It is agreed that the right hereby granted to operate the railroad and the lease of said tracks shall not be in preference or in hindrance to public works of the City or public benefit corporation, and should the said railroad in any way interfere with the construction, maintenance or repair of public works in the streets and avenues, whether the same is done by the City or such public benefit corporation directly or by a contractor for the City or the public benefit corporation, the Company shall, at its own expense, protect or move the tracks and appurtenances in the manner directed by the official having jurisdiction over such public works. The term "public works" as used herein shall include in its meaning any and all construction or alterations authorized by the appropriate public authorities.

4. Any alterations to the sewerage or drainage systems, or to any other subsurface or to any surface structures in the streets, or any repairs of such structure, required on account of the construction or operation of the railroad or any part thereof, shall be made at the sole cost of the Company and in such manner as the proper City officials may prescribe.

In addition to this general condition the Company shall be required to protect the water mains of the City from damage due to the presence in the streets of the tracks crossing such water mains and shall install permanent and adequate supports for the water mains at the foot of North Ninth Street where two tracks of the Company cross the six (6) inch water main laid by the City and also at the location on North Tenth Street, west of Kent Avenue, where the tracks of the Company cross the six (6) inch water main laid by the City. The work of supporting and protecting the water main in North Ninth Street shall be done within thirty (30) days after the date of signing of this contract by the Mayor, while that required at the North Tenth Street location shall be performed only as and when required by the Department of Water Supply, Gas and Electricity. The Company shall at its own expense perform such work and provide the materials necessary to complete the same under the supervision of and to the satisfaction of the said Department of Water Supply, Gas and Electricity.

5. It is understood that the railroad now constructed and operated is maintained upon the surface of the streets, but should the Commission determine at any time during the term of this contract, pursuant to law, that such railroad including any additional tracks which the Company may with Commission approval, construct at the grade of the street, must be operated either above or below the surface of the streets, then the Company shall, at its own cost and expense, construct the railroad as directed by the Commission, and shall complete said construction within the time specified by the Commission; otherwise this right shall cease and determine, and all sums paid, or which may be deposited with the Comptroller of the City, as herein provided, shall thereupon be forfeited to the City.

6. The Company shall, at its own expense, keep the railroad along all the streets and avenues upon which the Company is hereby authorized to operate between the tracks, the rails of the tracks, and a distance of two (2) feet beyond the rails on either side thereof, free from snow and ice, and shall do everything necessary during the presence of such snow and ice to maintain and continue the operation of the railroad, and if, in order so to operate, it shall be necessary to plow or remove any snow or ice from the roadway or any part thereof over which the Company is authorized to operate, then all such work of plowing or removing of snow or ice, shall promptly be performed by the Company under the supervision of the Department of Sanitation, and all such work shall be performed without in any wise obstructing any of the crosswalks of the streets or avenues involved.

In the event that upon one hour's notice given by the Department of Sanitation the Company shall fail or neglect to perform such work and in the event that thereupon the City shall plow or move such snow or ice along any part of the Company's railroad which under this contract the Company is required to plow or move, then whether the Company has consented or not it shall pay to the City for any and all such plowing or moving done by the City's forces, the sum of One Dollar (\$1) for each 100 lineal feet in one direction plowed or moved by the City's forces, provided that such plowing or moving by the City's forces is done after the commencement of a fall of snow and prior to the expiration of 48 hours after the snow has ceased to fall.

Nothing herein contained is intended to nor shall it obligate the City to plow or move any snow or ice along the railroad or any part thereof; nor shall anything herein contained obligate the Company to cart or haul away any snow or ice or to pay the expense of such carting and hauling.

The City or its department having jurisdiction over the removal of snow or ice along public thoroughfares shall have sole discretion to determine the necessity for plowing or moving snow or ice along the railroad within the purview of this subdivision and to determine the adequacy of the Company's performance of its obligations here-

under. The determination of the City or such department as to such necessity and as to the adequacy of any performance by the Company, shall be final and conclusive.

#### ARTICLE FIVE

##### Penalties for Default; Forfeiture

1. Should the Company fail to perform any of the terms and conditions of this contract, or neglect or refuse to comply with any notice or direction of the board or other municipal officials, given or made pursuant to the terms of this contract or under the authority of any law, local law or ordinance now or hereafter in force, the Company shall pay to the City a penalty of one hundred (\$100) dollars for each violation; provided, however, that the City may at its option, upon due notice to the Company, cause the work to be done and the materials to be furnished for the performance thereof or compliance therewith, in which event the Company shall pay to the City the actual cost of such work and materials, with legal interest thereon.

2. Should the Company fail to give efficient public service at the rates fixed by the Interstate Commerce Commission of the United States or by the Commission, as the case may be, or fail to maintain its railroad structures and equipment in the streets and avenues as herein provided in good condition throughout the whole term of this contract, and should the Company, after receipt of notice from the Board specifying any such default, fail to remedy the same within a reasonable time the Company shall pay to the City for each day thereafter during which such default continues, the sum of two hundred and fifty dollars (\$250) as fixed or liquidated damages; or should the Company fail to restore such railroad structures or equipment, as may affect the surface of the streets, to good condition within a reasonable time after notice by the Board as aforesaid, the Board may, at its option, make all needed repairs at the expense of the Company, in which case the Company shall pay to the City the actual cost of such repairs with legal interest thereon.

3. Should default occur in the payment by the Company of the compensation herein fixed, the City may, at its option, collect the same, with interest, from the security fund, constituted in accordance with paragraph 6 of Article Three hereof.

4. The procedure for the imposition and collection of the penalties in this contract shall be as follows:

Upon receipt of complaint by any City official the Board shall give notice to the Company, specifying the nature of the non-compliance by the Company with the particular condition, provision, requirement or limitation of this contract, and directing its President or other officer to appear before the Board on a certain day not less than ten (10) days after the date of such notice to show cause why the Company should not be penalized. If the Company fails to appear by such officer, or if the Company in the judgment of the Board after a hearing is in default, the Board shall forthwith impose the penalty prescribed herein for such default, or if no penalty is prescribed herein, such penalty as appears to the Board to be just. The Board may thereupon direct the Comptroller to withdraw the amount of such penalty from the security fund constituted in accordance with paragraph 6 of Article Three hereof.

5. In the event that any penalty payable under the terms of this contract, or any amount of fixed or liquidated damages, or any sum constituting the actual cost of work and materials, with legal interest thereon, including any amounts payable under the provisions of this Article Five, shall not be paid promptly by the Company to the City, the amounts of such penalties or fixed or liquidated damages or actual cost with legal interest may, at the option of the Board, be withdrawn by the Comptroller from the security fund constituted in accordance with paragraph 6 of Article Three hereof. Should any draft be made upon the said security fund pursuant to the provisions of this contract, or in the event that the said security fund is also used or made to stand as security for the performance of any other consent, franchise, right and lease, hereafter granted to the Company, and should the said security fund, or any portion thereof, be forfeited, or should deductions be made therefrom, pursuant to the provisions of such later consent or franchise, the Company shall, upon ten (10) days' notice by the Comptroller, deposit with the Comptroller a sum either in money or securities, sufficient to restore or replace the said security fund to or at its original amount of Twenty-two Thousand Dollars (\$22,000). Failure on the part of the Company to deposit such additional sum shall be considered a breach or violation of this contract for which the franchise, right and lease hereby granted may be forfeited by the City.

6. The provisions for the reimbursement of the City for work done by it or amounts expended by it on behalf of the Company or amounts paid by it to any person by reason of any act or default of the Company, or for the collection by it of the annual charges, or of liquidated damages, are and shall be in addition to the City's right, as herein reserved, to forfeit the franchise, right and lease hereby granted. No remedy

provided herein and no action or proceeding under the provisions of this contract shall affect or diminish any other legal right or remedy belonging to the City.

7. In case of any violation or breach or failure to comply with any of the provisions herein contained or with any orders of the Board or any official of the City acting under the powers herein reserved, the franchise, right and privilege hereby granted may be cancelled by a suit brought by the Corporation Counsel or terminated by resolution of the Board which said resolution may contain a provision to the effect that any additional tracks constructed during the terms of this contract and in use by virtue of this contract, shall thereupon become the property of the City, without proceedings at law or in equity. Provided, however, that prior to such action the Board shall give notice to the Company to appear before it on a certain day not less than ten (10) days after the date of such notice, to show cause why such resolution declaring this franchise, right and lease forfeited should not be adopted. In case the Company fails to appear, action may be taken by the Board forthwith.

8. Any false entry in the books of the Company or false statement in the reports to the Board, the Department of Finance, or the Comptroller, shall constitute such a violation or breach or failure to comply with the provisions herein contained as to warrant the forfeiture of the right and privilege hereby granted.

9. If the Company shall become insolvent or be adjudicated a bankrupt, or if a creditors' petition in a proceeding against the Company under Section 77-B of the Federal Bankruptcy Act or under any federal or state act shall be approved by any court and such approval shall not be withdrawn, revoked or stayed within sixty (60) days after the entry of the order or decree granting such approval, or if an order, judgment or decree shall be entered by any court of competent jurisdiction appointing a receiver or trustee in bankruptcy or custodian of the property of the Company and such receiver and trustee shall not be removed or discharged or the order appointing him stayed within sixty (60) days; or if the Company shall file a voluntary petition in bankruptcy or shall file a petition for the appointment of a trustee in reorganization or an answer admitting the material allegations of a creditors' petition, in a proceeding under Section 77-B of the Federal Bankruptcy Act or any federal or state law, or if the Company shall admit in writing its inability to pay its debts as they mature; in any one or more of such events the Board may cancel this contract for the default of the Company, and the franchise, right and lease hereby granted shall thereupon be forfeited.

10. Should the franchise, right and lease hereby granted be terminated by reason of any default of the Company in complying with any of the provisions of this contract, the security fund constituted as provided in paragraph 6 of Article Three hereof shall be forfeited to the City as liquidated damages.

#### ARTICLE SIX Termination

1. Upon the termination of this contract at the expiration thereof, or upon the termination of the rights hereby granted for any cause at any other time, or upon the dissolution of the Company before such termination, the additional tracks, if any, and appurtenant equipment thereto of the Company, constructed pursuant to this contract within the streets and avenues, shall become the property of the City without cost, and may be used or disposed of by the City for any purpose whatsoever, or may be leased to any Company or individual.

If, however, at any time within one (1) year after the termination or cancellation of this contract by limitation or otherwise, the Board shall so order by resolution, the Company shall, upon thirty (30) days' notice from the Board, remove the leased tracks and any and all additional tracks and equipment appurtenant thereto, and restore the said streets and avenues to their original condition at the sole cost and expense of the Company.

2. At the expiration of this contract or earlier termination thereof, the security fund of Twenty-two Thousand Dollars (\$22,000) deposited in accordance with paragraph 6 of Article Three hereof shall be returned to the Company, provided that the Company shall have ceased operation and have complied with all the terms of this contract at the time of such termination.

3. The Company hereby further covenants and agrees to and with the City that it shall and will peaceably and quietly leave, surrender and yield up the railroad into the possession of the City without hindrance or delay, at the end of said term, or other sooner termination thereof, and the Company hereby covenants and agrees that the railroad shall then be in good order and condition, reasonable wear and tear excepted, to the satisfaction of the City.

#### ARTICLE SEVEN Other Conditions

1. If at any time the powers of the City, the Board or any other board, body, authority, official or officer herein mentioned or intended to be mentioned, shall in whole

or in part be transferred or conferred by law to or upon any other board, body, authority, official or officer, then and in such case such other board, body, authority, official or officer shall have all the powers, rights and duties herein reserved to or prescribed for the board or other board, body, authority, official or officer herein mentioned or intended to be mentioned.

2. The Company, its Receiver or Receivers, Purchaser or Purchasers, Trustee or Trustees, shall maintain its principal office in the City of New York so long as it or they continue to use the tracks and appurtenances herein leased and authorized or any part thereof and hereby designates such office as the place where all notices, directions, orders and requests may be served or delivered under this contract.

3. The City hereby reserves to itself, and the Company hereby grants to the City, the right to intervene in any suit, action or proceeding by any person or persons, firm or corporation seeking to enjoin, restrain, or in any manner interfere with the Company in the performance or observance by it of any of the conditions, provisions, requirements or limitations of this contract, or any notice, order or direction of the Board in such connection or which involves or might involve the constitutionality, validity or enforcement of any section, subdivision, clause or sentence of this contract and the City may move for dissolution of any such injunction or restraining order or take any other appropriate step in any such suit, action or proceeding which it may deem necessary or advisable to protect its interests.

4. It is understood and agreed that all the conditions, provisions, requirements and limitations of this franchise and lease shall be binding upon the Company, its successors or assigns.

5. The rights, powers, privileges and remedies reserved to the City by this franchise and lease, are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City may have at law or in equity with respect to the subject matter of this franchise and lease, and a waiver thereof at any time or in any instance shall not affect any other time or instance.

6. This franchise and lease is also upon the further and express condition that all the provisions of State and Federal statutes applicable to the Company as a carrier by railroad and all orders of the Interstate Commerce Commission of the United States, shall be strictly complied with by the Company.

7. The Company promises, covenants and agrees on its part and behalf during the entire term of this contract, to conform to and abide by and perform all the terms, conditions and requirements in this contract fixed and contained.

In witness whereof, the City, by its Mayor, thereunto duly authorized by the Board, has caused the corporate name of the City to be hereunto signed and the corporate seal of the City to be hereunto affixed and the Company, by its officers thereunto duly authorized, has caused its corporate name to be hereunto signed and its corporate seal to be hereunto affixed as of the date and year first above written.

THE CITY OF NEW YORK, by ....., Mayor.  
(Corporate Seal.)

Attest: ....., City Clerk.

BROOKLYN EASTERN DISTRICT TERMINAL, by .....,  
President.

(Seal.)

Attest: ....., Secretary.

(Here add acknowledgments)