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(DRAFT OF JANUARY 24, 1916)

Public Service Commission for the
First District.

to

Hudson and Manhattan Railroad
Company



CERTIFICATE

Modifying Certificate to Hudson and
Manhattan Railroad Company

DATED MAY 4, 1909

IN RE LOCATION OF TRACKS AND STATIONS
NORTH OF 33d STREET AND BROADWAY

January

1916

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Form submitted with Counsel's letter of January 31, 1916 -
Changes initialed L.R.T.H. made prior to submission



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(DRAFT OF JANUARY 24, 1916)

**Public Service Commission for the
First District.**

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Company**



CERTIFICATE

**Modifying Certificate to Hudson and
Manhattan Railroad Company**

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January

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[Draft of January 24, 1916.]

PUBLIC SERVICE COMMISSION FOR THE FIRST
DISTRICT

TO

HUDSON AND MANHATTAN RAILROAD COMPANY

CERTIFICATE

MODIFYING CERTIFICATE TO HUDSON AND MANHATTAN RAILROAD
COMPANY DATED MAY 4, 1909.

THE PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT
(which is hereinafter referred to as "THE COMMISSION") does
hereby certify as follows:

WHEREAS, the Commission did heretofore and on the 4th
day of May, 1909, by certificate bearing that date (which certi-
ficate is hereinafter referred to as "the Certificate") grant to Hud-
son and Manhattan Railroad Company (which is hereinafter re-
ferred to as "THE TUNNEL COMPANY") the right and franchise
to lay down, construct and operate a railroad on a route begin-
ning at the terminus of the railway of the Tunnel Company as
at that time authorized at the intersection of Sixth Avenue
and Thirty-third Street, in the Borough of Manhattan, City
of New York; and thence running northerly under Sixth Ave-
nue to a point at or near the corner of Sixth Avenue and For-
tieth Street; thence upon a line curving to the east, under the
corner of Bryant Park to a point in Forty-second Street; thence
under Forty-second Street passing under Fifth Avenue and
Madison Avenue to a terminal station under Forty-second Street,
between Vanderbilt Avenue and Lexington Avenue; (which rail-
road is hereinafter referred to as "THE RAILROAD"); and

WHEREAS, the Tunnel Company on May 4, 1909, duly ac-
cepted the Certificate and all the terms, conditions and require-
ments thereof by an instrument in writing; and

[Handwritten signatures and initials]

CERTIFICATE

WHEREAS, by the terms, conditions and requirements of the Certificate it was provided, among other things, that the Tunnel Company should begin the construction of the Railroad within six (6) months after it had obtained the consent of the Board of Estimate and Apportionment of The City of New York, together with the approval of the Mayor of The City of New York and the consents of the owners of one-half in value of property bounded on each portion of the streets, avenues and highways under or through which the Railroad or part of the route thereof runs to the construction and operation of the Railroad, or such part thereof, or in case the consent of such property owners could not be obtained, then the determination pursuant to law of commissioners to be appointed by the Appellate Division of the Supreme Court in the First Department that such portion of the Railroad ought to be constructed and operated, the said determination of such commissioners when confirmed by the Court to be taken in lieu of such consent of property owners; and

WHEREAS, the Tunnel Company received the said consent of the Board of Estimate and Apportionment of The City of New York on the 4th day of June, 1909, and the said approval of the Mayor of The City of New York on the 8th day of June, 1909, and filed with the Commission on the 28th day of April, 1910, what purported to be the consents of the owners of one-half in value of the property bounded on each portion of the streets, avenues or highways under or through which the Railroad or any part of the route thereof runs to the construction and operation of the Railroad or such part thereof; and

WHEREAS, the time to begin construction of the said Railroad has been extended by the Commission by written orders up to and including the first day of March, 1916, and the Tunnel Company desires a further extension of time as hereinafter provided; and

WHEREAS, subsequent to the granting of the Certificate and on March 19, 1913, The City of New York (hereinafter referred to as "THE CITY") entered into contracts with Interborough Rapid Transit Company and New York Municipal Railway Corporation, respectively, wherein the City obligated itself to construct

CERTIFICATE

certain municipal rapid transit railroads to be equipped, maintained and operated by such contractors and among such municipal railroads is one known as the Broadway Line, which extends under Broadway and under the intersection of Broadway, Thirty-third Street and Sixth Avenue, and another known as the Steinway Tunnel Line, which extends under Forty-second Street, the first of which is now in course of construction and the second of which is partially in course of construction; and

WHEREAS, the construction of such municipal railroads is affected by the future construction of the Railroad and the future construction of the Railroad is affected by the construction of such municipal railroads; and

WHEREAS, in order to accommodate both railroads and to provide for the future construction of the Railroad with the minimum of danger to the municipal railroad it has been necessary for the Commission to adopt an unusual and more expensive type of construction for the portion of the Broadway Line at and near the intersection of Broadway, Thirty-third Street and Sixth Avenue, so that the floor of such municipal railroad may serve as the roof of the Railroad, which by reason of the design will require the Tunnel Company to continue the three tracks at the northerly end of the Thirty-third Street Station further north than was originally contemplated; and

WHEREAS, in order that such Steinway Tunnel Line and the Railroad may both be constructed in Forty-second Street it is necessary for the Commission to control the precise location of the tracks and stations of the Railroad in such street; and

WHEREAS, in order to provide for such changed conditions it is necessary that the Certificate be modified as hereinafter provided and to the ends and purposes hereinbefore recited, the Commission has determined upon certain modifications of the Certificate as hereinafter set forth, and has prescribed such terms, conditions and requirements in relation thereto as to it appears just and proper, including all the terms, conditions and requirements provided for by the Rapid Transit Act and in case of such modifications; and

CERTIFICATE

WHEREAS, the Board of Estimate and Apportionment of The City of New York has approved this modifying certificate,

NOW, THEREFORE, the Commission, with the consent of the Tunnel Company, does hereby modify the Certificate as follows:

First. The following provisions of the Certificate are modified as hereinafter provided; italics indicating new matter, brackets old matter to be omitted:

1. The first three paragraphs of the granting clauses:

1—To lay down, construct and operate a railway, including [two tracks] *three tracks to a point not more than* ^{five hundred (500)} ~~feet~~ *feet north of the center line of Thirty-third Street and two tracks north of such point*, on a route beginning at the terminus of the railway of the Tunnel Company as at present authorized at the intersection of Sixth Avenue and Thirty-third Street, in the Borough of Manhattan; and thence running northerly under Sixth Avenue to a point at or near the corner of Sixth Avenue and Fortieth Street; thence upon a line curving to the east, under the corner of Bryant Park to a point in Forty-second Street; thence under Forty-second Street ~~passing under~~ *passing under* Fifth Avenue and Madison Avenue to a terminal station under Forty-second Street between *a point east of [Vanderbilt]* ~~the center line of Madison Avenue to be hereafter fixed by the Commission, and Lexington Avenue, in said borough.~~

2—To lay down, construct and operate in connection with its said terminal station in Forty-second Street, but not west of *a point east of the [westerly side] center line of [Vanderbilt] Madison Avenue to be hereafter fixed by the Commission*, such additional tracks, sidings and connections as may be found convenient for the operation of the railroad, with the right to use thereof ~~so much of the said street to the entire width thereof as may not be required for the purposes of the municipal rapid transit railroad known as the Steinway Tunnel Line.~~

3—To build, maintain and operate subway stations, and the necessary platforms and track connections therewith,

CERTIFICATE

contiguous to the Railroad, at or near the intersection of Sixth Avenue and Thirty-eighth Street and at or near the intersection of Forty-second Street and Fifth Avenue and also the said terminal station under Forty-second Street between a point east of the center line of [Vanderbilt] Madison Avenue to be hereafter fixed by the Commission, and Lexington Avenue, together with stairways, entrances and exits, leading from and to such subway stations and from and to the surface of the streets and avenues.

2. Subdivision 1 of Article IV.

1—The Tunnel Company shall pay to the City annually the sum of fifty cents per annum for each linear foot of single track of such railway track ~~of~~ of such subway station platforms which shall then be constructed or which the Tunnel Company shall be bound to have then constructed under any such streets, avenues, parks or public places within the City during the period beginning on the day when the Tunnel Company shall first commence actual operation of any part of the Railroad (but not later than the last day on which the Tunnel Company shall be bound to begin such operation) and ending on the day ten years after the day when any part of the Railroad hereby authorized is first in actual operation; and the sum of one dollar per annum for each linear foot of such tracks and of such subway station platforms during the period beginning on the last day of such period of ten years and ending on the day when the rentals payable under the above-mentioned franchise of July 10, 1902, shall next thereafter become subject to readjustment under the terms of said franchise. In case additional stations shall hereafter be constructed, additional rental for such station platforms shall be paid, to be computed at the rate ~~above~~ specified. *Provided, however, that the Tunnel Company shall not be required to pay to the City under the provisions of this paragraph any sum or sums for or on account of the third track herein provided for from the present terminus of the railroad authorized under the said certificate of February 2, 1905, and a point north of the center line of Thirty-third Street*

Three hundred and seventy (370) feet

CERTIFICATE

3. The final paragraph of Subdivision 2 of Article IV.

The Tunnel Company shall pay to the City annually as rental for any other vault space occupied by it, as the phrase "vault space" is hereinafter defined, not including station platforms, concourses or bridges over tracks or stairways or entrances or exits or station approaches connected therewith, payment for which is hereinbefore provided for, such a sum as shall be equal to four per cent. per annum upon the valuation of the horizontal area of such vault space. Such valuation shall be determined as follows: The valuation per square foot of the neighboring or adjacent land, exclusive of buildings, as fixed for purposes of taxation for the year 1909, shall first be ascertained. One-fourth of the aforesaid valuation shall be the valuation per square foot for the purposes of this certificate, of any such vault space area for the period beginning on the day when the Tunnel Company shall first commence actual operation of any part of the Railroad hereby authorized (but not later than the last day on which the Tunnel Company shall be bound to begin such operation), and ending on the day ten years after the day when any part of the Railroad hereby authorized is first in actual operation. One-half of the aforesaid valuation of neighboring or adjacent land shall be the valuation per square foot, for the purposes of this agreement, of the same vault space area for the period beginning on the last day of such period of ten years, and ending on the day when the rentals payable under the franchise to the New York and Jersey Railroad Company, dated July 10, 1902, shall next thereafter become subject to readjustment under the terms of the said last mentioned franchise. *Provided, however, that the Tunnel Company shall not be required to pay to the City under the provisions of this paragraph any sum or sums for or on account of the third track herein provided for from the present terminus of the railroad authorized under the said certificate of February 2, 1905, and a point north of the centre line of Thirty-third Street.*

4. At the end of Subdivision 3 of Article IV:

As reimbursement to the City for the increased expense to which it is or has been put in the construction of a mu-

Three hundred
and seventy (370)
feet

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CERTIFICATE

municipal rapid transit railroad under Broadway at and near the intersection of Broadway, Sixth Avenue and Thirty-third Street, in order to accommodate the future construction of the Railroad, the Tunnel Company shall pay to the Comptroller of the City on or before the day on which the Tunnel Company shall begin the construction of the Railroad the sum of _____ thousand (\$ _____) dollars, with interest at the rate of six per centum per annum from the _____ day of _____.

5. The third and fourth paragraphs of Article V:

The [tunnels] portion of the Railroad [, but not including the stations thereof, where the same shall be] in Forty-second Street, shall be located [south of the center line of said street unless] as the Commission [shall expressly authorize the location of the tunnels elsewhere in the said street] may hereafter, in its discretion, determine and so as not to interfere with the present municipal rapid transit railroad in Forty-second Street or with the projected municipal rapid transit railroad therein, known as the Steinway Tunnel Line.

The uppermost part of said tunnel or tunnels on the portion of the railroad from the present terminus of the railroad authorized under the said certificate of February 2, 1905, to a point _____ feet north of the center line of 33rd Street shall be constructed immediately beneath the municipal rapid transit railroad known as the Broadway Line at such depth as may be approved by the Commission and from such point to 41st Street, shall not approach nearer than five (5) feet to the surface of the street. [In crossing 34th Street the said tunnel or tunnels shall be further de-

Rider A on Page 7

shall be as near the surface of the street as street conditions and grades, will in the opinion of the Commission, permit but in no event [shall not approach] nearer than five (5) feet to the surface of the street.

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- Twenty-five
- Three hundred and seventy
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CERTIFICATE

municipal rapid transit railroad under Broadway at and near the intersection of Broadway, Sixth Avenue and Thirty-third Street, in order to accommodate the future construction of the Railroad, the Tunnel Company shall pay to the Comptroller of the City on or before the day on which the Tunnel Company shall begin the construction of the Railroad the sum of _____ thousand (\$ _____) dollars, with interest at the rate of six per centum per annum from the _____ day of _____.

5. The third and fourth paragraphs of Article V:

The [tunnels] portion of the Railroad [, but not including the stations thereof, where the same shall be] in Forty-second Street, shall be located [south of the center line of said street unless] as the Commission [shall expressly authorize the location of the tunnels elsewhere in the said street] may hereafter, in its discretion, determine and so as not to interfere with the present municipal rapid transit railroad in Forty-second Street or with the projected municipal rapid transit railroad therein, known as the Steinway Tunnel Line.

The uppermost part of said tunnel or tunnels on the portion of the railroad from the present terminus of the railroad authorized under the said certificate of February 2, 1905, to a point _____ feet north of the center line of 33rd Street shall be constructed immediately beneath the municipal rapid transit railroad known as the Broadway Line at such depth as may be approved by the Commission and from such point to 41st Street, shall not approach nearer than five (5) feet to the surface of the street. [In crossing 34th Street the said tunnel or tunnels shall be further depressed so that the uppermost part thereof shall not be more than thirteen (13) feet six (6) inches above mean high water for the central sixty (60) feet of the width of 34th Street. For the remaining portion of the street between the house line of 34th Street, the uppermost part shall not be more than fourteen (14) feet three (3) inches above mean high water. The uppermost part of said tunnel, where it crosses Broadway (which for the purposes hereof, shall be deemed to extend for a distance of eighty (80)

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CERTIFICATE

feet westerly from the easterly line of Broadway) shall not approach nearer to the surface of the street than twenty-two (22) feet. At other points in Sixth Avenue other than those herein provided for, the roof of the tunnel shall be as near the surface of the street as street conditions and grades will, ~~in the opinion of the Commission~~, permit. The uppermost part of said tunnel or tunnels [at a point] under 42nd Street [six hundred (600) feet westerly from the centre line of Fifth Avenue shall not be more than twenty-four (24) feet above mean high water. The uppermost part of said tunnel where it crosses Fifth Avenue shall not be more than twelve (12) feet above mean high water. The uppermost part of said tunnel where it crosses Madison Avenue shall not be more than ten (10) feet above mean high water, and at Lexington Avenue the uppermost part of the passage to the Steinway Tunnel shall not be less than ten (10) feet below mean high water, and at Vanderbilt Avenue and Park Avenue the uppermost part of said tunnel] shall be at such levels as shall not interfere with the existing or projected rapid transit railroads [owned by] of the City and shall be at such levels as the Commission may in its discretion fix and determine.

6. The eleventh paragraph of Article V:

The Tunnel Company shall make good to the City all damage which shall be done to the property of the City, including present and future rapid transit railroads, their equipment and rolling stock, by the construction or operation of the Railroad. [.] The Tunnel Company shall also make good to every present or future lessee or operator of any such rapid transit railroad all damage which shall be done to any such rapid transit railroad, its equipment or rolling stock, by the construction or operation of the Railroad. The Tunnel Company shall also make good to the City and to every such present or future lessee or operator of any such rapid transit railroad all damages resulting from injury to person or property of passengers or employees of any such rapid transit railroad or of the City or any such present or future lessee or operator (including sums payable under any present or future workmen's compensation law)

CERTIFICATE

caused by the construction or operation of the Railroad and all damages resulting from interference with train operation caused by the construction or operation of the Railroad. The liability of the Tunnel Company under this paragraph is absolute and is not dependent upon any question of negligence on its part and the Tunnel Company shall be liable for any such damages whether the same shall be caused by any act or omission of the Tunnel Company or successor thereof or of any contractor, subcontractor or other person in the course of any employment upon the construction or operation of the Railroad or any part thereof. The Tunnel Company [and] shall also make good to every owner of property abutting upon the Railroad, or which shall be injured by the work of construction or by operation thereof, all physical damage which shall be done to such abutting or injured property through any act or omission of the Tunnel Company or successor thereof, or of any contractor, subcontractor or other person in the course of any employment upon the construction or operation of the Railroad or any part thereof.

7. Article VII:

The plan and profile of the Railroad herewith attached, as the same are amended or modified by the terms of a certain modifying certificate granted by the Commission under date of, 1916, are to be deemed a part of this franchise and to be construed with the text hereof. The same shall be substantially followed, but deviations therefrom not inconsistent with the other provisions [hereof] of this certificate as amended by such modifying certificate may be permitted or required by the Commission.

Second. The time of the Tunnel Company within which to begin the construction of the Railroad is hereby extended up to and including the first day of March, 1918. The Commission shall have the power upon reasonable cause shown to further extend such time by written order. Within such period the Tunnel Company shall obtain the consents specified in Article II of the Certificate to the changes in the Railroad in this modifying certificate provided for, if, as a matter of law, any such consents therefor are necessary.

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CERTIFICATE

Third. Except as *expressly* modified herein the Certificate shall remain in full force and effect as though the provisions hereof had originally been incorporated therein.

Fourth. This certificate will be executed by the Commission in four identical originals, so proved as to be entitled to be recorded in the office of the Register of the County of New York and to be filed in the office of the Secretary of State of the State of New York, all of which will be delivered by the Commission to the president, vice-president, secretary or treasurer of the Tunnel Company. This certificate shall be void unless within thirty days after such delivery or such further period as shall be prescribed in writing by the Commission, the Tunnel Company shall have procured three of the said identical originals to be returned to the Commission, each of them having an acceptance of all the terms, conditions and requirements hereof subscribed at the foot thereof by the Tunnel Company, such acceptance being so proved as to entitle it to be recorded and filed as aforesaid. If the Certificate shall have been pledged as security for any mortgage or undertaking such acceptance by the Tunnel Company shall be consented to in proper form by the trustee of such mortgage or undertaking and such consent, so proved as to entitle it to be recorded and filed as aforesaid, annexed to such acceptance.

CERTIFICATE

IN WITNESS WHEREOF, this certificate has been prepared by the Public Service Commission for the First District, and is now attested by its seal and by the signature of its Chairman, who is its presiding officer, and by the signature of its Secretary, this

..... day of, 1916.

PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT.

By

Chairman

Attest:

Secretary

CERTIFICATE

ACCEPTANCE AND CONSENT OF HUDSON AND MANHATTAN RAIL-
ROAD COMPANY

Hudson and Manhattan Railroad Company hereby accepts
the foregoing certificate and all the terms, conditions and require-
ments thereof and expressly consents to the modification of the
contract constituted by the certificate of May 4, 1909, as above
set forth.

Dated, New York, , 1916.

HUDSON AND MANHATTAN RAILROAD COMPANY.

By

President

Attest:

Secretary

[Form of acknowledgment to be added]