

BNSF Railway - )  
Abandonment Exemption - ) AB 6 sub no. 490X  
In King County, WA )

ENTERED  
Office of Proceedings  
September 8, 2015  
Part of  
Public Record

The City of Seattle's  
Motion to Reopen  
and Motion for an Environmental Stay

The City of Seattle ("City" or "Seattle") hereby moves to reopen the above-captioned proceeding and for an environmental stay on the effectiveness of any abandonment authorization for the reasons stated below.

Background

This proceeding, pursuant to 49 C.F.R. 1152.50 (two year out of service exemption abandonments) involves, according to BNSF Railway, approximately 1100 feet of track. This Board published a notice of exemption per its regulation on August 19, 2015. The notice of exemption provides that September 8 is the due date for motions to reopen. Similarly, the draft environmental assessment served August 24 makes September 8 the due date for environmental comments, which City regards as rendering requests for environmental stays timely if by that date.

As indicated in City's comments filed August 4 and August 20 in this proceeding, the trackage at issue is covered by the so-called "Burke Gilman Agreements," comprised of three documents that settled a controversy over an unlawful de facto abandonment of a line of railroad by BNSF's predecessor some decades ago. The Agreements commit BNSF, if it seeks an abandonment authorization, to agree to convey to City property sufficient for railbanking (in particular, a corridor of 30 feet width unless the railroad owns less) upon request of the City, for completion of elements of the City's trail system, compatible with future rail reactivation per 16 U.S.C. 1247(d) and this Board's regulations.<sup>1</sup>

The location of MP 4.53 (beginning point of abandonment) in this proceeding is not clear on the basis of maps filed by the railroad. Representatives of BNSF have orally informed the City that MP 4.53 is located on the west edge of 13<sup>th</sup> Avenue. Assuming that MP 4.53 is the west edge of 13<sup>th</sup> Avenue, at that point, there are two sets of track that cross 13<sup>th</sup> Avenue. One set of tracks terminates almost immediately on the east side of 13<sup>th</sup> Avenue. The other set of tracks extends several hundred additional feet east of 13<sup>th</sup> Avenue. City was initially orally informed that all tracks east of 13<sup>th</sup> Avenue were being

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<sup>1</sup> Copies of the three agreements are supplied herewith as Exhibit A.

abandoned. However, on September 4, 2015, City received an email (attached as Exhibit B) from a real estate representative of BNSF (Mr. Tim Sharman) stating that although BNSF owned all trackage at issue, that BNSF was not abandoning the "sidetrack" and in addition the track was subject to an industry track agreement with a customer. On September 8, Mr. Sharman confirmed by telephone that his email related to trackage east of 13<sup>th</sup>.

#### Motion to Reopen

If the railroad is not abandoning the track east of 13<sup>th</sup> Avenue, and if that track is subject to a track agreement with a customer, then it would appear that the track remains in rail use. If that is the case, 49 C.F.R. 1152.50 may not be used for this abandonment proceeding, because a portion of the line proposed for abandonment remains in use for a customer per a track agreement. Any notice of exemption encompassing the line with 13<sup>th</sup> Avenue as a point of commencement is thus void ab initio. BNSF should revise the beginning point of the abandonment to pertain only to its line east of the line subject to the track agreement. City of Seattle accordingly moves to reopen this proceeding and for a declaration that any abandonment authorization granted herein is void ab initio.

If the railroad clarifies that the endpoint of the abandonment is east of the trackage covered by the track

agreement, and that the railroad in fact intends to abandon (or railbank) what it seeks authorization to abandon, then City will voluntarily withdraw this motion.

Environmental comments and Motion for an Environmental Stay

Under the Burke Gilman agreements, BNSF is obligated to convey at least a 30 foot wide corridor to the City unless, due to prior conveyances or original limits, the corridor is less than 30 feet. In all events, City has the option of acquiring all additional BNSF property encompassed by the abandonment beyond 30 feet.

BNSF per Mr. Sharman's email states that the railroad is not abandoning the property for which it is seeking authorization for abandonment and indeed wishes to retain the property to some unspecified "clear distance." This raises two substantial concerns. According to City's surveyors, there may be insufficient property in width for purposes of restoration of rail service if BNSF retains what Mr. Sharman refers to as "sidetrack."<sup>2</sup> Certainly there would be less than 30 feet in width available to the City, in breach of the Burke Gilman

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<sup>2</sup> To date, City's surveyors indicate that a 30 foot corridor would require acquisition at least to the centerline of the so-called sidetrack. Any clear distance retained by BNSF would not only shrink the corridor conveyed to the City below the minimum specified by the Burke Gilman Agreements but also potentially below the width needed for rail reactivation.

agreements, absent voluntary waiver of right by the City.<sup>3</sup> In particular, if the City due to BNSF's machinations cannot acquire from BNSF sufficient property to restore rail service, then the property would appear ineligible for railbanking. This not only is inconsistent with, and a breach of, the Burke Gilman Agreements (requiring BNSF to transfer a width no less than 30 feet if owned by BNSF) but also would jeopardize the continued existence of railbanked trails along the south side of the Ship Canal all the way east to the southern tip of Lake Union under the so-called severance doctrine.<sup>4</sup> While City could sue BNSF for damages in the event BNSF severs the railbanked corridor at MP 4.53, the loss would remain irreparable due to the difficulties in reassembling a corridor for trail and rail reactivation purposes.

In short, loss of the City's railbanked trail system south of the Ship Canal is an irreparable environmental injury which must be carefully analyzed by the agency (and BNSF) before this

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<sup>3</sup> City does not waive any rights in the circumstances here due to the threat of severance. BNSF needs to ensure that there is sufficient corridor not simply for trail use but also for rail reactivation. The railroad has not done so to date.

<sup>4</sup> See, e.g., BN R. Co. - Ab. Ex. - between Klickitat and Goldendale, WA, AB 6-335X, slip at 3, citing RLTD Railway v. STB, 166 F.3d 808 (6<sup>th</sup> Cir. 199) (holding agency loses jurisdiction if rail line is severed from interstate rail system).

abandonment is allowed to become effective. This environmental loss was not disclosed by BNSF in its environmental filings, nor discussed by the agency at all in its draft environmental assessment. City accordingly seeks an environmental stay on the effectiveness of the notice of exempt abandonment issued in this proceeding until this issue is thoroughly analyzed. In particular, City calls on BNSF to clarify that it will convey to the City sufficient width of property to permit rail reactivation along the entire length of the rail line at issue in this proceeding if it continues to pursue an abandonment with a western beginning point at 13<sup>th</sup> Avenue.

#### Conclusion

For the reasons stated, pending adequate clarifications from BNSF, this proceeding should be reopened and the notice of exemption be declared void ab initio, and in any event, an environmental stay must be issued pending clarification that the railroad can and will convey sufficient width of right of way to the City so that the line remains within the agency's jurisdiction for railbanking purposes under 16 U.S.C. 1247(d). City also requests such other relief as this Board deems just and appropriate.

Certificate of service. By my signature below, I certify service by USPS First Class, and courtesy email, upon Karl Morell, Esq., 655-15<sup>th</sup> St., N.W., WDC 20005 on September 8, 2015.

Respectfully submitted,



Charles H. Montange

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Seattle, WA 98177

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Exhibit A  
Burke Gilman Agreements

**JOINT STATEMENT OF PRINCIPLES BY THE CITY OF SEATTLE,  
BURLINGTON NORTHERN RAILROAD COMPANY,  
AND THE GLACIER PARK COMPANY**

It is the long-term objective of the City of Seattle, the Burlington Northern Railroad Company, and the Glacier Park Company to maintain a continuous and permanent linear corridor along selected railroad rights-of-way to complete the Burke-Gilman Trail and other urban trails. It should be noted, however, that in its effort to complete the corridor the City continues to support rail-served businesses along these rights-of-way and does not encourage the discontinuation of rail service to these businesses.

This statement of principles will guide the development of a formal implementation agreement between the City of Seattle (City), Burlington Northern Railroad Company (BNRR), and Glacier Park Company to meet this objective.

1. This statement of principles deals with railroad rights-of-way to which the City, BNRR, and Glacier Park mutually agree. Initially agreed to are the following rights-of-way as generally described and delineated in Attachment 1.
  - o North Ship Canal: Section from Third Avenue N.W. to where the rail line connects with the north/south rail line at N.W. 68th Street.
  - o South Ship Canal: Section from 15th Avenue West (Ballard Bridge) to the Fremont Bridge.
  - o West Lake Union: Section from the Fremont Bridge to the corner of Valley Street and Fairview Avenue North.

Any of the three parties to this statement of principles may request that other rights-of-way be added to this list. A decision to add or not add a requested section of right-of-way will be made within 90 days of the written request.

2. The City desires to secure these rights-of-way to create a continuous linear parkway for purposes of active and passive public use and transportation (e.g., urban trail, linear greenbelt, etc.) as soon as possible after they become available for public use, as described in Section 3 of this statement of principles.
3. The City, BNRR, and Glacier Park each desire and need timely responses from the other on these matters. Burlington Northern Railroad Company and Glacier Park Company will notify the City whenever a final decision has been made that any of the agreed upon rights-of-way, or any portion thereof, will be available for public use and/or are no longer needed for active rail purposes. Specifically, Burlington Northern Railroad and Glacier Park will notify the City before any portion of the trackage identified in Section 1 is removed, any portion of said right-of-way is sold, or negotiations for other uses (other than incidental routine uses and property management functions that would not hinder the long-term integrity of the corridor) are begun on said rights-of-way.
4. The City, Glacier Park, and BNRR will enter into an agreement for the acquisition by the City of the property rights it deems necessary to develop a continuous linear corridor for public use.
  - a. Throughout the corridors specified in Section 1, the City and Burlington Northern agree to cooperatively use their best efforts to extend trails using all available mechanisms including rail-banking.
  - b. In those areas within the corridor that Burlington Northern owns outright, the City will acquire Burlington Northern's property rights in consideration for certain mutual and offsetting benefits to be specified in the implementation agreement. Generally, these benefits shall take the form of allowing BNRR to abandon in place trackage within the corridor in lieu of making restorations that would otherwise be required under the terms of the franchise agreements. The specific package of mutual and offsetting benefits

shall be developed to reflect equity between the value of the rights obtained and the restoration costs to be waived, as determined by three party appraisal. In the event the value of the right-of-way sought by the City exceeds the value of allowing track to be left in place within the corridor the City may consider additional trackage to be abandoned in place outside the corridor, or other forms of consideration mutually agreed to by the parties.

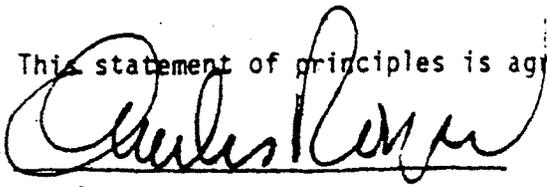
Consideration for additional rights-of-way which may be identified under the terms of Section 1 of this statement of principles shall be negotiated separately.

5. This statement of principles will be submitted to the Seattle City Council. Upon approval by the City Council, negotiations between the City of Seattle and Burlington Northern companies will proceed regarding the mechanisms to be used to implement the above principles. Elements of negotiation to be addressed will include, but not be limited to:

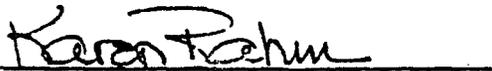
- o Rights-of-way to be included in the agreement
- o Amendment procedures
- o Notification procedures
- o Procedures and timing for the acquisition of and compensation for rights-or-way involved
- o Railbanking procedures

The product of these negotiations will be a formal implementation agreement executed by Seattle Mayor ~~Charles Royer~~ pursuant to an adopted City ordinance, and by ~~William Francis~~ of Burlington Northern Railroad Company and ~~Karen Rahm~~ of Glacier Park Company, on behalf of their respective companies, successors, and assigns.

This statement of principles is agreed to by the undersigned:



Charles Royer  
Mayor, City of Seattle



Karen Rahm  
Vice President, Glacier Park Company



William Francis  
Vice President, Burlington Northern Railroad Company

GK/nea

6/15/88

BURKE-GILMAN TRAIL AGREEMENT

THIS BURKE-GILMAN TRAIL AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 24th day of January, 1989, by and between BURLINGTON NORTHERN RAILROAD COMPANY ("BNRR") and the City of Seattle, a municipal corporation of the State of Washington ("City") (collectively referred to as the "parties").

RECITALS

WHEREAS, BNRR and the City wish to provide for the establishment of a permanent and contiguous system of public trails utilizing certain BNRR railroad rights-of-way located within the City when rail service is discontinued on such rights-of-way; and

WHEREAS, the parties realize that rail service has been discontinued on certain rights-of-way and it is possible in the future that as businesses currently utilizing rail service will either relocate or make other arrangements to satisfy their transportation needs that other rail service discontinuances could occur; and

WHEREAS, the parties wish to provide for the orderly transition of such rights-of-way within the City from railroad use to public trail use without prematurely affecting rail service to businesses served thereon; and

WHEREAS, the parties wish to avoid any confusion or controversy in the disposition of such rights-of-way following discontinuance of such service; and

WHEREAS, Federal law provides a procedure for effecting such transition upon discontinuance of rail service; and

EXHIBIT "A"

WHEREAS, the parties wish to ensure the application of such procedure to certain rights-of-way;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Agreements Settling Disputes Concerning February 2, 1988 Conveyance to Dennis R. Washington, Trustee for the Roy Dennis Washington Revocable Living Trust ("Washington"). The City shall use its best efforts to obtain and agrees to enter into appropriate agreements with Fremont Dock Company ("Fremont"); Washington; Quadrant Development Company ("Quadrant") and any and all other necessary persons or parties to fully and finally resolve and settle any and all disputes concerning or challenges to the February 2, 1988 conveyance of railroad rights-of-way to Washington. Such agreements also shall provide for the establishment of public trails within such rights-of-way configured acceptably to the City.

2. Dismissal Without Adjudication of Interstate Commerce Commission ("ICC") Proceeding Known as "Rails to Trails Conservancy, et al. Petition for Declaratory Order." BNRR and the City shall jointly move to dismiss with prejudice and without adjudication on the merits the proceeding known as "Rails to Trails et al. Petition for Declaratory Order" (ICC Finance Docket No. 31292) and shall each use their best efforts to obtain the

joinder of Fremont Dock, Washington Companies and Rails to Trails in such petition.

3. Reclassification of Certain BNRR Rights-of-Way. BNRR shall promptly classify or reclassify as necessary the following rights-of-way (the "stated rights-of-way") as "railroad lines" subject to ICC abandonment or discontinuance jurisdiction under 49 U.S.C. 10903, et seq. and 49 CFR, Part 1152:

a. North Ship Canal: Section from Third Avenue N.W. to the intersection of such line with the major north/south line at N.W. 68th Street;

b. South Ship Canal: Section from the west side of 15th Avenue West (Ballard Bridge) to the Fremont Bridge; and

c. West Lake Union: Section from the Fremont Bridge to the intersection of Valley Street and Fairview Avenue North.

4. Abandonment or Discontinuance Proceedings Affecting the Stated Rights-of-Way. As soon as BNRR determines that the stated rights-of-way are no longer required for rail service, BNRR shall initiate abandonment or discontinuance proceedings therefor. The parties concur that: (i) such stated rights-of-way are "suitable for use for public purposes" within the meaning of 49 U.S.C. 10906; (ii) public trail use would constitute such a public purpose; and (iii) such stated rights-of-way are suitable for public trail use within the meaning of 16 U.S.C. 1247(d). BNRR shall notify the City prior to filing abandonment or discontinuance proceedings affecting any such railroad lines in order to enable the parties to provide for use of the rights-of-way for public trail purposes as follows:

a. "Railbanking" of Stated Rights-of-Way. If "railbanking" as contemplated herein is legally available and the parties determine it would be an appropriate mechanism for converting the stated rights-of-way to public trail use, BNRR agrees to enter into an interim trail use agreement with the City under the National Trails System Act of 1968 (16 U.S.C. 1241, et seq.) covering each segment of the stated rights-of-way for which abandonment or discontinuance proceedings are initiated. As required under such Act, the City agrees to assume full responsibility for management of all such segments of the stated rights-of-way and for any legal liability arising out of such transfer or use (16 U.S.C. 1247(d)). BNRR agrees to cooperate with the City in the City's defense of any challenges to "railbanking."

b. Conveyance to City. If "railbanking" as contemplated herein is legally unavailable or the parties determine it would be an inappropriate mechanism for converting the stated rights-of-way to public trail use, BNRR agrees to convey to the City by quit claim deed lineal, contiguous portions of such rights-of-way for public trail purposes.

c. Trail Width. Any public trail corridor established pursuant to subsections 4(a) or 4(b) of this Agreement shall be at least 30-feet wide (the "30-foot corridor"). BNRR shall not be required to provide more right-of-way than it owns or controls or is unencumbered by leases to third parties as of the date of execution of this Agreement in order to satisfy this requirement except as specifically provided herein.

d. Right-of-Way Subject to Leases to Third Parties.

Portions of the stated rights-of-way leased to third parties as of the date of execution of this Agreement are exempt from any "railbanking" or conveyance under subsections 4(a) and 4(b) of this Agreement. However, the parties may provide for "railbanking" of properties for which the City has exercised its option or right of first refusal to acquire. Within 60 days of the date of execution of this Agreement, BNRR shall provide to the City a list of all property within the stated rights-of-way leased to third parties as of such date, specifically identifying any portions of the stated rights-of-way where a 30-foot corridor could not be established for public trail purposes as a result of existing leases to third parties. Subject to any existing rights, BNRR hereby grants the City an option to acquire at fair market value any properties leased to third parties as of the date of this Agreement. Such option shall be exercisable prior to the establishment of a public trail as provided pursuant to subsection 7(a). Subject to any existing rights, BNRR hereby grants the City a right of first refusal to acquire at fair market value any properties leased to third parties as of the date of this Agreement.

e. Management Prior to Establishment of Public Trail.

Until a public trail is established as provided herein, BNRR shall continue to manage property within the stated rights-of-way for its own purposes and in its sole discretion except as specifically provided in this subsection. Any leases of property within the stated rights-of-way executed after the date of execution of this

Agreement shall be specifically terminable upon the establishment of a public trail as provided herein. BNRR shall terminate any such leases of property within the stated rights-of-way which is to be "railbanked" pursuant to subsection 4(a); conveyed pursuant to subsection 4(b); or acquired pursuant to subsections 4(d) or 4(e) prior to such "railbanking," conveyance or acquisition. BNRR hereby grants the City a right of first refusal to acquire, prior to the establishment of a public trail as provided herein, at fair market value any property within the stated rights-of-way not leased to third parties as of the date of exercise of this Agreement.

f. Consideration for Rights-of-Way. Consideration to be paid for "railbanking" of right-of-way under subsection 4(a); conveyance of right-of-way under subsection 4(b); or property acquisition under subsections 4(d) and(e) shall be determined at the time of any such "railbanking," conveyance or acquisition. Consideration agreed upon by the parties may, in accord with subsection 4(b) of the June 15, 1988 Joint Statement of Principles, include, inter alia, avoiding restoration costs for the stated rights-of-way and elsewhere in the City where BNRR is otherwise obligated to the City to undertake restoration upon abandonment or discontinuance. BNRR may salvage any track materials (excluding roadbed support and structures) it cares to remove prior to "railbanking," conveyance or acquisition pursuant to Section 4 of this Agreement. The City agrees to assume full responsibility for management of public trails established hereunder and to hold BNRR

harmless for any legal liability arising out of "railbanking," conveyance or acquisition.

5. Effective Date. This Agreement takes effect upon execution, except for Sections 3 and 4 which take effect only upon the entry of a final order by the ICC or court of competent jurisdiction of dismissal with prejudice of the proceeding in ICC Finance Docket No. 31292 without an adjudication on the merits thereof. In the event such an order is not made final, this Agreement shall be null and void.

6. Trail Maintenance. The City shall maintain without cost to BNRR any public trails established within the rights-of-way identified in Section 3 of this Agreement to the same standards generally applied to the Burke-Gilman Trail.

7. Option and Right of First Refusal. The City shall exercise its option to acquire properties pursuant to subsection 4(d) and its right of first refusal to acquire properties pursuant to subsections 4(d) and 4(e) as follows:

a. Option. When the parties agree to establish a public trail pursuant to subsections 4(a) and 4(b), the City shall have 90 days to exercise its option to acquire properties pursuant to subsection 4(d) prior to the establishment of such trail. If the City is unable to exercise such option within the 90-day period, it shall notify BNRR that it requests an additional 30 days to exercise such option. Such a request shall not be unreasonably denied by BNRR. If the City fails to exercise its option within such 90 days or any additional period agreed to by BNRR, the City

shall not oppose any other BNRR disposition of any such right-of-way.

b. Right of First Refusal. With respect to properties subject to the City's right of first refusal pursuant to subsections 4(d) and 4(e), BNRR shall notify the City of the receipt and terms of any offer by any third party BNRR regards as bona fide to acquire any such properties. Such notice shall be provided to:

Director of Engineering  
City of Seattle  
Municipal Building  
Seattle, Washington 98104

The City shall have 90 days following receipt of such notice to exercise its right of first refusal. If the City is unable to exercise such right of first refusal within the 90-day period, it shall notify BNRR that it requests an additional 30 days to exercise such right. Such a request shall not be unreasonably denied by BNRR. If the City fails to exercise its right of first refusal within such 90 days or any additional period agreed to by BNRR, the City shall not oppose any other BNRR disposition of any such right-of-way.

8. Permits. Nothing in this Agreement shall revoke, impair or otherwise affect any permits granted by BNRR within the stated rights-of-way. Until a public trail is established as provided herein, BNRR may grant or extend permits, provided, however, BNRR may not utilize permits to circumvent other provisions of the Agreement. Upon the establishment of such a public trail pursuant to this Agreement, such permits within right-of-way "railbanked,"

conveyed or acquired pursuant to this Agreement shall be assigned to the City. The City hereby agrees to accept assignment thereof.

9. Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

10. Integration. This Agreement constitutes the entire agreement between the parties with respect to the transactions contemplated hereby and supersedes any and all prior and contemporaneous agreements and understandings between the parties hereto relating to the subject matter hereof; provided, however, nothing herein is intended to affect the June 15, 1988 Joint Statement of Principles.

11. Attorneys' Fees. In any suit arising out of this Agreement, the prevailing party, or the party which substantially prevails, as determined by the court, shall be awarded a reasonable amount for its attorneys' fees and expenses of suit.

12. Time. Time is of the essence in this Agreement.

13. Additional Acts. Except as otherwise provided herein, in addition to the acts recited herein and contemplated to be performed, BNRR and the City hereby agree to perform or cause to be performed any and all such further acts as the City or BNRR, as the case may be, may reasonably require to consummate the transactions contemplated hereunder.

14. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision

hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

15. Counterparts. This Agreement shall be executed in two counterparts, and each such counterpart shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

16. Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

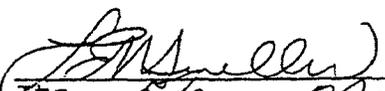
17. Remedies Cumulative. Except as otherwise expressly provided herein, the rights and remedies given herein to BNRR and the City shall be deemed cumulative, and the exercise of one or more of such remedies shall not operate to bar the exercise of any other rights reserved to BNRR or the City under the provisions of this Agreement or given to BNRR or the City by law.

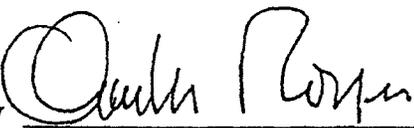
18. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Washington.

DATED this 24th day of January, 1989.

BURLINGTON NORTHERN RAILROAD  
COMPANY

THE CITY OF SEATTLE

BY   
its Gen. Mgr.

BY   
Charles Royer, Mayor  
(Subject to Approval of  
Seattle City Council)

## TRAIL IMPLEMENTATION AGREEMENT

THIS TRAIL IMPLEMENTATION AGREEMENT (hereinafter referred to as the "Agreement") is made and entered into this 23 day of September, 1991, by and between BURLINGTON NORTHERN RAILROAD COMPANY ("BNRR") and the City of Seattle, a municipal corporation of the State of Washington ("City") (collectively referred to as the "parties").

## RECITALS

WHEREAS, BNRR and the City signed a "Joint Statement of Principles" on June 15, 1988, that stated that "It is the long-term objective of the City of Seattle, the Burlington Northern Railroad Company, and the Glacier Park Company to maintain a continuous and permanent linear corridor along selected railroad rights-of-way to complete the Burke-Gilman Trail and other urban trails"; and

WHEREAS, the Statement of Principles was intended "to guide the development of a formal implementation agreement between the City of Seattle, (and) Burlington Northern Railroad Company"; and

WHEREAS, the "Joint Statement of Principles" specified the inclusion of the following rights-of-way:

- o North Ship Canal: Section from Third Avenue Northwest to where the rail line connects with the north/south rail line at Northwest 68th Street.
- o South Ship Canal: Section from 15th Avenue West (Ballard Bridge) to the Fremont Bridge.
- o West Lake Union: Section from the Fremont Bridge to the corner of Valley Street and Fremont Avenue North; and

WHEREAS, the "Statement of Principles" specified that, "In those areas within the corridor (as specified) that Burlington Northern owns outright, the City will acquire Burlington Northern's property rights in consideration for certain mutual and offsetting benefits to be specified in the implementation agreement.

Generally, these benefits shall take the form of allowing BNRR to abandon in place trackage within the corridor in lieu of making restorations that would otherwise be required under the terms of the franchise agreements. The specific package of mutual and offsetting benefits shall be developed to reflect equity between the value of the rights obtained and the restoration costs to be waived, as determined by three-party appraisal. In the event the value of the right-of-way sought by the City exceeds the value of allowing track to be left in place within the corridor, the City may consider additional trackage to be abandoned in place, outside the corridor, or other forms of consideration mutually agreed to by the "parties."

WHEREAS, BNRR and the City signed a second agreement, entitled "Burke-Gilman Trail Agreement," on January 24, 1989 that, among other things, established a 30-foot trail corridor width for the implementation agreement (assuming BN controlled the property), and gave the City the right-of-first-refusal for anything beyond the 30-foot corridor.

NOW, THEREFORE, in consideration of the June 15, 1988, "Joint Statement of Principles," the January 24, 1989 "Burke-Gilman Trail Agreement," and the agreements hereinafter set forth, and good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and BNRR hereby agree as follows:

#### AGREEMENT

1. Establishment of fair market value for a 30-foot Corridor. The City and BNRR agree that the fair market value for a 30-foot corridor on the North Ship Canal, South Ship Canal and West Lake Union, as previously described, has a current fair market value of \$2,309,723.00
2. Establishment of current unit cost for track removal and street rights-of-way restoration. The City and BNRR agree that track removal and street restoration, required under terms of franchise agreements, have the following current unit costs (assumes 15' width/track).



3. Establishment of current cost for track removal and street rights-of-way restoration on identified streets. Based on the aforementioned unit costs, the City and BNRR agree that the costs for track removal and street restoration, required under franchise agreement, are as follows:

A. North Side of Ship Canal from Ballard to Fremont:

9th Avenue NW to NW Bowdoin Place			
Paved Street Area	- 625/LF @ \$134.00/LF	=	\$ 83,750.00
Paved Parking Area	- 225/LF @ \$ 93.50/LF	=	\$ 21,038.00
Section in Street Right-of-Way - 24th Avenue NW to 9th Avenue NW			
Paved Street Area	- 2,000/LF @ \$134.00/LF	=	\$268,000.00
Paved Parking Area	- 4,000/LF @ \$ 93.50/LF	=	\$374,000.00
NW 70th Street to 24th Avenue NW			
Paved Street Area	- 500/LF @ \$134.00/LF	=	\$ 67,000.00
Paved Parking Area	- 120/LF @ \$ 93.50/LF	=	\$ 11,220.00
1991 Total Item A Contract Fee Cost		=	\$825,008.00

B. South side Ship Canal from Interbay to Lake Union, along west shore of Lake Union to Fairview Avenue North and on Terry Avenue North from Valley Street to Denny Way:

Section in Street Right-of-Way - Fremont Bridge to Fairview Avenue North			
Paved Street Area	- 970/LF @ \$134.00/LF	=	\$129,680.00
Paved Parking Area	- 4,830/LF @ \$ 93.50/LF	=	\$451,605.00
Terry Avenue North from Denny Way to Valley Street			
Paved Street Area	- 4,020/LF @ \$134.00/LF	=	\$538,680.00
Paved Parking Area	- 1,420/LF @ \$ 93.50/LF	=	\$132,770.00
1991 Total Item B Contract Fee Cost		=	\$1,253,035.00

C. Occidental Avenue South from King Street to Hanford Avenue South:

Occidental Avenue South at Royal Brougham Way Only			
Paved Street Area	- 300/LF @ \$134.00/LF	=	\$ 40,200.00
Occidental South - King Street to Royal Brougham (excluding area at Royal Brougham Way)			
Paved Street Area	- 480/LF @ \$134.00/LF	=	\$ 64,320.00
Paved Parking Area	- 1,360/LF @ \$ 93.50/LF	=	\$127,160.00
1991 Total Item C Contract Fee Cost		=	\$231,680.00

TOTAL CONTRACT COST FEE (A, B, & C) \$2,309,723.00

4. Procedure for abandonment and transfer of property.

- A. **Abandonment:** If and when BNRR determines that a particular section of railroad right-of-way (as previously described) is to be abandoned, BNRR will convey by quit claim or other similar document containing no warranties, to the City, all ownership rights BNRR owns or controls and subject to existing leases as described in section 4(d) of Burke-Gilman Trail Agreement for a 30-foot wide right-of-way, using the rail banking and other procedures as outlined in the June 15, 1988 and January 24, 1989 agreements. In return, the City will allow BNRR to leave, in the street right-of-way, the tracks described in section 3 of this agreement.
- B. **Compensation:** The total value of the aforementioned tracks (section 4) BNRR leaves in the street right-of-way shall constitute full and complete compensation for the 30-foot right-of-way to be conveyed to the City.
- C. **Third Avenue Northwest to 8th Avenue Northwest:** As agreed, the first section to be conveyed to the City will be a 30-foot strip from 3rd Avenue Northwest to 8th Avenue Northwest. The City, in turn, will grant BNRR a franchise for the section of track still in use. The franchise will be in perpetuity until such time as the tracks are no longer needed for rail purposes.
- D. **Closure of the Agreement:** When the City has acquired all the property identified in this Trail Implementation Agreement that it needs for trail purposes, this agreement will terminate.

This Trail Implementation Agreement is agreed to by the undersigned.

Dated this 23 th day of September, 1991.

BURLINGTON NORTHERN

THE CITY OF SEATTLE

By:

  
Title Division General Manager

  
GARY ZARKER, DIRECTOR  
SEATTLE ENGINEERING DEPARTMENT

trlagree.pal  
8/6/91

Exhibit B

Email from BNSF Real Estate Rep

**Subject:** Re: Update, City of Sea acquisition along South Ship Canal  
**From:** Sharman, Tim (Tim.Sharman@am.jll.com)  
**To:** Stuart.Goldsmith@seattle.gov; John.Sims@bnsf.com; c.montange@frontier.com;  
**Cc:** Julio.Carranza@seattle.gov; karlm@karlmorell.com; LLacrosse@mellinalarson.com;  
**Date:** Friday, September 4, 2015 1:16 PM

BNSF owns the sidetrack and currently there is an industry track agreement with that customer. Any future trail or bike path would need to make sure there is adequate clearance to serve this track which was not part of the abandonment.

When you can, please forward the legal descriptions that match the survey illustrations for Parcel L and K so I can have BNSF review and approve of the accuracy.

Thank you.

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Tim Sharman  
Vice President  
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Seattle, WA 98104  
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Mobile + 1 206 999 8368  
tim.sharman@am.jll.com  
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