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Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423

Re: BNSF Railway Company—Abandonment Exemption - in  
King County, WA, AB 6-490X

- (1) Statement of Willingness (49 C.F.R. 1152.29)
- (2) Request for Fee Waiver (Fee Exemption applies)
- (3) Request for Issuance of a NITU
- (4) Environmental Comment
- (5) Request for Issuance of a Public Use Condition  
(49 C.F.R. 1152.28)

Dear Ms. Brown:

Statement of willingness. Enclosed for filing in the above docket please find the original and ten of a statement of willingness per 49 C.F.R. 1152.29 on behalf of The City of Seattle (Washington). The statement is attached as Appendix I.

Filing fee exemption. The City of Seattle (hereinafter "City" or "Seattle") hereby requests waiver of the fee for filing of the statement of willingness. This Board's regulations provide that a state or local governmental entity is exempt from filing fees. 49 C.F.R. 1002.2(e)(1). The City of Seattle is a local governmental entity, and not operating as a quasi-governmental corporation or government subsidized transportation company.

Request for issuance of a Notice of Interim Trail Use (NITU). City hereby requests that this Board timely (prior to the effective date of the abandonment exemption in this proceeding) issue a NITU for the railroad corridor at issue in

this proceeding. The Burke Gilman Agreements (infra) specifically provide for BNSF consent to railbanking the rail corridor at issue in this proceeding at the request of the City.

Environmental comment. The corridor at issue in this proceeding is suitable for trail use and preservation for other public purposes pursuant to 16 U.S.C. 1247(d) (interim trail use or railbanking). In fact, other portions of this corridor east of this segment have been railbanked and developed as an interim trail (South Ship Canal Trail, which in turn links to the Cheshiahud Lake Union Loop Trail) by the City.

In order to allow trail users to access the Fisherman's Terminal area west of the Ballard Bridge, the City has already installed a trail on a right of way immediately south of the BNSF railroad corridor at issue in this proceeding. However, the City wishes to acquire the BNSF property at issue in this proceeding not only because it is contractually entitled to secure the property for public use up to a width of at least 30 feet (if the corridor is that wide) pursuant to the so-called "Burke Gilman Agreements") but also in order to prevent a claim that the South Ship Canal and Cheshiahud Lake Union Loop Trails are somehow severed from the interstate rail network such that they may no longer be eligible for railbanking.

The Burke Gilman Agreements (dated 6/15/88, 1/24/89, and 9/23/91) resolved a dispute over the sale of a section of what is now Seattle's Burke Gilman Trail by a predecessor of BNSF to a developer without an abandonment authorization (see ICC F.D. 31292), and also provided a (so far) successful mechanism for implementing the public interest in preserving otherwise-to-be abandoned BNSF lines in Seattle for alternative public uses, including railbanking. The Burke Gilman Agreements specifically identified the rail corridor of which this segment is a part as appropriate for Seattle's "permanent and contiguous system of public trails" (e.g., Burke Gilman Trail Agreement dated 1/24/89 at pp. 1 & 3). That document further provides that "[t]he parties concur that ... [the South Ship Canal right of way from the west side of 15<sup>th</sup> Avenue West (Ballard Bridge) to the Fremont Bridge is] 'suitable for use for public purposes within the meaning of 49 U.S.C. 10906 [now 10905].'" 1/24/89 agreement at p. 3. Pp. 1-3 of the 1/24/89 Burke Gilman Trail Agreement are attached as Appendix II. Given the long agreement by the parties that the property at issue here is suitable for public purposes, STB should and must find accordingly for purposes of

49 U.S.C. 10905 and all related relief sought by City in this proceeding.

Request for public use condition. Pursuant to 49 C.F.R. 1152.28, City requests this agency to issue a public use condition as provided below:

- (i) Condition sought: a condition barring BNSF from alienating the property at issue in this proceeding for a period of 180 days from the effective date of any applicable abandonment or railbanking authorization, other than to the City of Seattle (i.e., a condition consistent with the Burke Gilman Agreements).
- (ii) Public importance of the condition: as indicated in the environmental comments above, City and BNSF have long agreed that the property in question is suitable for public use upon cessation of rail use as part of the City's trail system. In addition, City seeks the right of way at issue in this proceeding to secure adequate right of way width to prevent claims of severance from the interstate rail network, which might otherwise jeopardize the railbanked status of the South Ship Canal and Lake Union Loop Trails. Establishment and preservation of an integrated contiguous trail system is a long held goal of the City which should not be put at risk at this late date.
- (iii) Period of time: 180 days.
- (iv) Justification for time period: The parties have not yet agreed upon the surveyed property description for purposes of transferring the property. Indeed, to date the City has been unable to confirm the location of MP 4.53 and has requested assistance from BNSF in identifying that end point. In order to allow time for this and related matters to be worked out, a 180 day period for the public use condition is appropriate. Seattle does not waive any contractual claims barring, or arising from, inconsistent disposition in respect to the property at issue herein.

Reservation to make further comments and motions. City reserves the right to file additional pleadings relating to this docket.

Certificate of service. By my signature below, I certify service of the foregoing (including appendices) upon Karl Morell, Esq. (counsel for BNSF), 655-15<sup>th</sup> St., N.W., Suite 225, Washington, D.C. 20005 by USPS, postage pre-paid, on the date above, and by email addressed to [karlm@karlmorell.com](mailto:karlm@karlmorell.com) on the same date.

Thank you for your assistance in this matter.

Respectfully,



Charles H. Montange  
for The City of Seattle

Of counsel: Julio V.A. Carranza, Esq.  
Assistant City Attorney  
Seattle City Attorney's Office  
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[julio.carranza@seattle.gov](mailto:julio.carranza@seattle.gov)

Att. Appendix I (statement of willingness)  
Appendix II (excerpts from BG Trail Agreement)

cc. Stuart Goldsmith (City of Seattle Dept. of Transportation)  
(with appendices)

Appendix I  
"Statement of Willingness"

Before the Surface Transportation Board

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

STATEMENT OF WILLINGNESS TO ASSUME  
FINANCIAL RESPONSIBILITY

In order to establish interim trail use and railbanking under 16 U.S.C. 1247(d) and 49 C.F.R. 1152.29, The City of Seattle ("City" or "Interim Trail User") is willing to assume full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against the right-of-way owned by BNSF Railway Company and operated by same. The property, known as the South Ship Canal branch, extends from beginning of abandonment at railroad milepost 4.53, near 13<sup>th</sup> Ave. W., to end of line at engineering station 258+07, south and east of W. Ewing Place, a distance of approximately 1100 linear feet, in City of Seattle, King County, WA. The right of way is part of a line of railroad proposed for abandonment in STB docket AB 6-490X.

A map of the property depicting the right of way is attached.<sup>1</sup>

City acknowledges that use of the right of way is subject to the user's continuing to meet its responsibilities described above and subject to possible future reconstruction and

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<sup>1</sup> The map is the same used by BNSF in connection with its notice of exemption in AB 6-490X.

reactivation of the right of way for rail service. A copy of this statement is being served on the railroad on the same date it is being served on the Board.



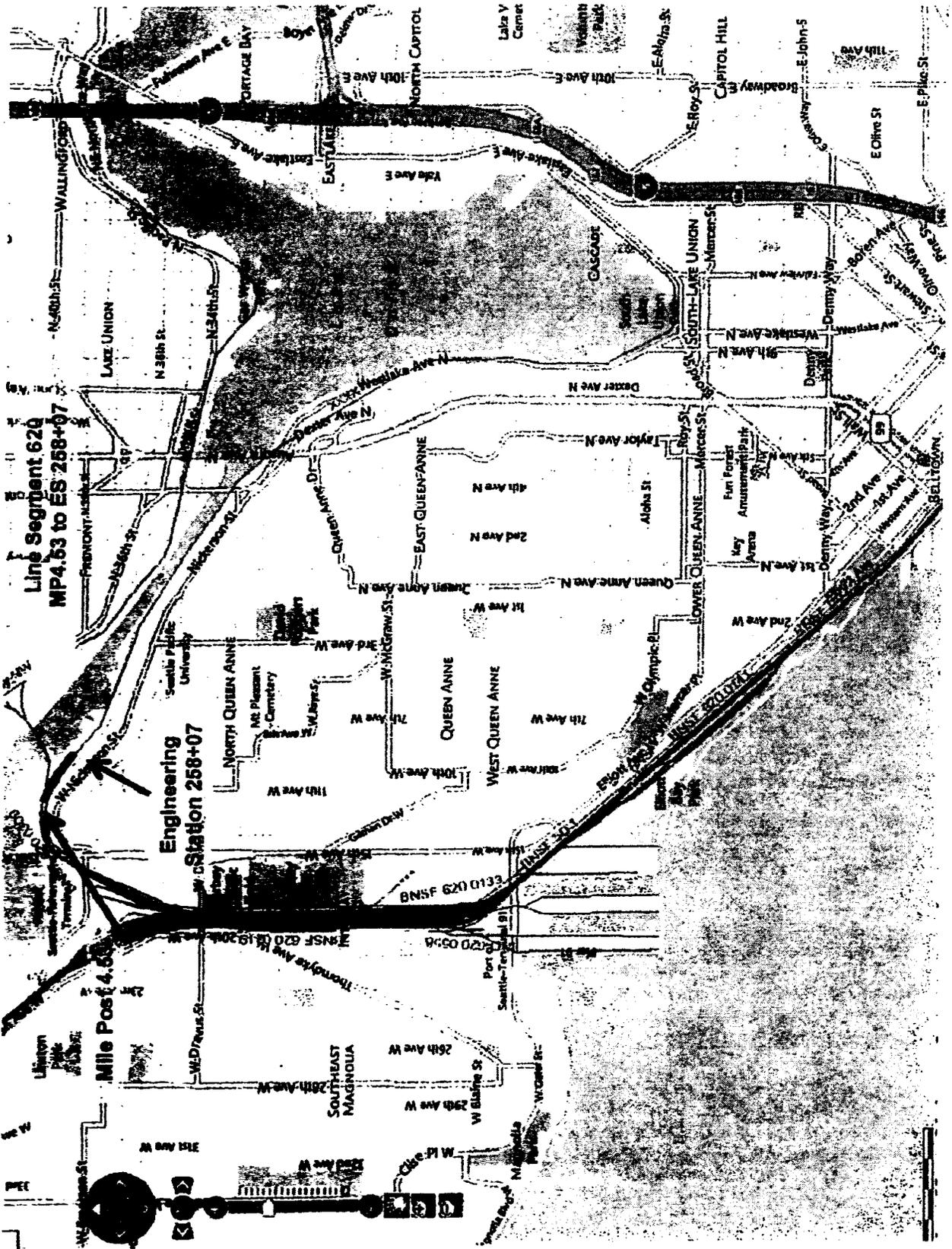
Name: Charles H. Montange  
Title: Attorney for The City of Seattle  
Address: Law Offices of Charles H. Montange,  
426 NW 162d St., Seattle, WA 98177  
Email: [c.montange@frontier.com](mailto:c.montange@frontier.com)

Of counsel: Julio V.A. Carranza, Esq.  
Assistant City Attorney  
Seattle City Attorney's Office  
Civil Division - Contracts & Utilities Section  
701 Fifth Avenue, Suite 2050  
Seattle, WA 98104-7097  
Phone: 206-727-3979  
FAX: 206-684-8284  
[julio.carranza@seattle.gov](mailto:julio.carranza@seattle.gov)

Attachments: Map (as supplied by BNSF)

cc. Karl Morell  
Karl Morell & Associates  
655-15<sup>th</sup> St., NW, Suite 225  
Washington, D.C. 20005  
(by USPS, first class, and  
Email to [karlm@karlmorell.com](mailto:karlm@karlmorell.com))

EXHIBIT B



Appendix II

Excerpts from "Burke Gilman Trail Agreement"

1/24/89

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.

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.

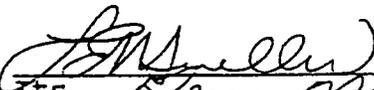
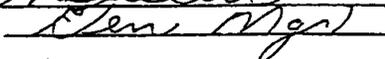
17. Remedies Cumulative. Except as otherwise expressly provided herein, the rights and remedies given herein to BNRR and the City shall be deemed cumulative, and the exercise of one or more of such remedies shall not operate to bar the exercise of any other rights reserved to BNRR or the City under the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

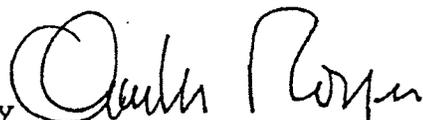
18. Applicable Law. This Agreement shall be construed in accordance with the laws of the State of Washington.

DATED this 24th day of January, 1989.

BURLINGTON NORTHERN RAILROAD  
COMPANY

THE CITY OF SEATTLE

By   
its 

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