

BNSF

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206515

VIA UPS OVERNIGHT MAIL

October 29, 2002

Mr. Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings

OCT 30 2002

Part of
Public Record



Re: Surface Transportation Board Finance Docket No. 34275; The Burlington Northern and Santa Fe Railway Company -- Trackage Rights Exemption -- Union Pacific Railroad Company -- Argo, WA to Black River, WA

Dear Secretary Williams:

Enclosed for filing in the referenced docket, jointly on behalf of The Burlington Northern and Santa Fe Railway Company ("BNSF") and the Union Pacific Railroad Company ("UP"), are the original and ten copies of BNSF and UP's Notice of Exemption, and a check for \$1,800.00, covering the filing fee.

Please acknowledge receipt of this material by date stamping the enclosed copy of this letter and returning it to me in the enclosed self-addressed stamped envelope.

Sincerely,

Sarah Whitley Bailiff

SWB/js

cc: Robert T. Opal (UPRR)

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**SURFACE
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206515
BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 34275

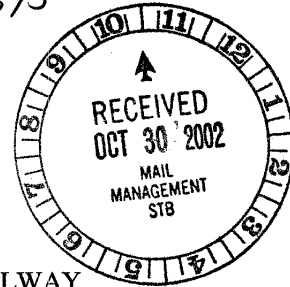
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY--
ARGO, WA TO BLACK RIVER, WA

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VERIFIED NOTICE OF EXEMPTION



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Dated: October 30, 2002

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**SURFACE
TRANSPORTATION BOARD**

BEFORE THE

SURFACE TRANSPORTATION BOARD



STB Finance Docket No. 34275

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY—TRACKAGE RIGHTS EXEMPTION --
UNION PACIFIC RAILROAD COMPANY --
ARGO, WA TO BLACK RIVER, WA

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VERIFIED NOTICE OF EXEMPTION

1. The Burlington Northern and Santa Fe Railway Company ("BNSF") and Union Pacific Railroad Company ("UP") file this verified notice of exemption pursuant to 49 C.F.R. §1180.2.

2. BNSF owns certain lines of railroad between Argo, Washington in the vicinity of BNSF Milepost 3.3x and Black River, Washington in the vicinity of BNSF Milepost 9.5x, a distance of 6.2 miles ("BNSF Trackage").

3. UP owns certain lines of railroad between Rhodes, WA in the vicinity of UP Milepost 176.4 and Black River, Washington in the vicinity of UP Milepost 173.1, a distance of 3.3 miles ("UP Trackage").

4. Under this notice BNSF and UP have agreed to exchange temporary overhead trackage rights over the BNSF Trackage and the UP Trackage between Argo, WA and Black

River, WA as a precursor to and in order to facilitate a planned Central Puget Sound Regional Transit Authority ("Sound Transit") commuter operation between Seattle and Tacoma, Washington.¹

5. The BNSF and UP joint effort to accommodate Sound Transit and support the general commuting public project will require commuter rail enhancements to the rail corridor between Argo and Black River. Accordingly, pursuant to the planned phase in of commuter rail enhancements, implementation of track reconfigurations require temporary overhead routing of BNSF trains over UP Trackage, and likewise, temporary overhead routing of UP trains over BNSF Trackage during this phase. Accordingly, BNSF and UP jointly seek regulatory approval of the temporary exchange of overhead trackage rights, which is the subject of this Notice of Exemption.

6. In addition to the foregoing information, the following information is provided as required by 49 C.F.R. §1180.4(g)(1)(i):

Section 1180.6(a)(1)(i-iii).

BNSF has granted UP overhead trackage rights, and UP has granted BNSF overhead trackage rights as set forth above. UP will operate its own trains with its own crews over the BNSF Trackage under the trackage rights. BNSF will operate its own trains with its own crews over the UP Trackage under the trackage rights. Consolidated dispatching for the corridor is planned to be implemented under BNSF direction in order to increase coordination and improve joint operations over the trackage rights lines.

The carriers involved in this transaction and their business addresses are as follows:

The Burlington Northern and Santa Fe Railway Company and Union Pacific Railroad

¹ Contingent upon completion of a phased in program for capacity and planning for the Sound Transit project, BNSF and UP contemplate exchanging 50 percent ownership interests in each of their respective interests in the trackage rights lines pursuant to a Property Exchange Agreement to be executed at some time in the future. Since arrangements for such Joint Ownership are subject to contingencies, including finalizing the contemplated Property Exchange Agreement, regulatory authority for that potential outcome is not requested at this time. In the event the parties execute a Property Exchange Agreement, BNSF and UP contemplate filing a subsequent petition for exemption pursuant to 49 U.S.C. Section 10502, that the Board exempt from 49 U.S.C. Sections 11323, the proposed exchange of joint ownership interests.

SURFACE TRANSPORTATION BOARD

Notice of Exemption

STB Finance Docket No. 34275

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY
COMPANY--TRACKAGE RIGHTS EXEMPTION--
UNION PACIFIC RAILROAD COMPANY --
ARGO, WA TO BLACK RIVER, WA

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant limited overhead trackage rights to Union Pacific Railroad Company (UP) between BNSF milepost 3.3x near Argo, Washington and BNSF MP 9.5x near Black River WA, and UP has agreed to grant limited overhead trackage rights to BNSF between UP milepost 176.4 near Rhodes, WA and UP milepost 173.1 near Black River, WA as part of a joint track relocation project to facilitate commuter rail enhancements for the Central Puget Sound Regional Transit Authority planned operations between Argo, WA and Black River, WA.

The trackage rights will be effective on November 7, 2000, and operations under this exemption will begin as soon as practicable.

This notice is filed under §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

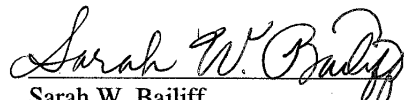
Dated:

By the Board,
Vernon A. Williams,
Secretary.

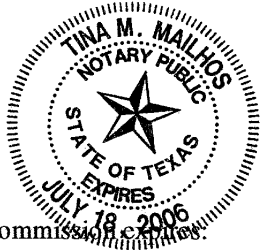
VERIFICATION

THE STATE OF TEXAS §
 §
COUNTY OF TARRANT §

Sarah W. Bailiff being duly sworn, deposes and says that she has read the foregoing notice of exemption and that the contents thereof are true and correct to the best of her knowledge and belief.


Sarah W. Bailiff

Subscribed and sworn to before me this 24 day of October, 2002.



My Commission Expires:

7-18-06

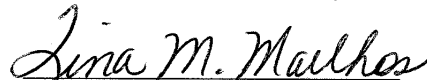

Notary Public

EXHIBIT NO. 1

Map

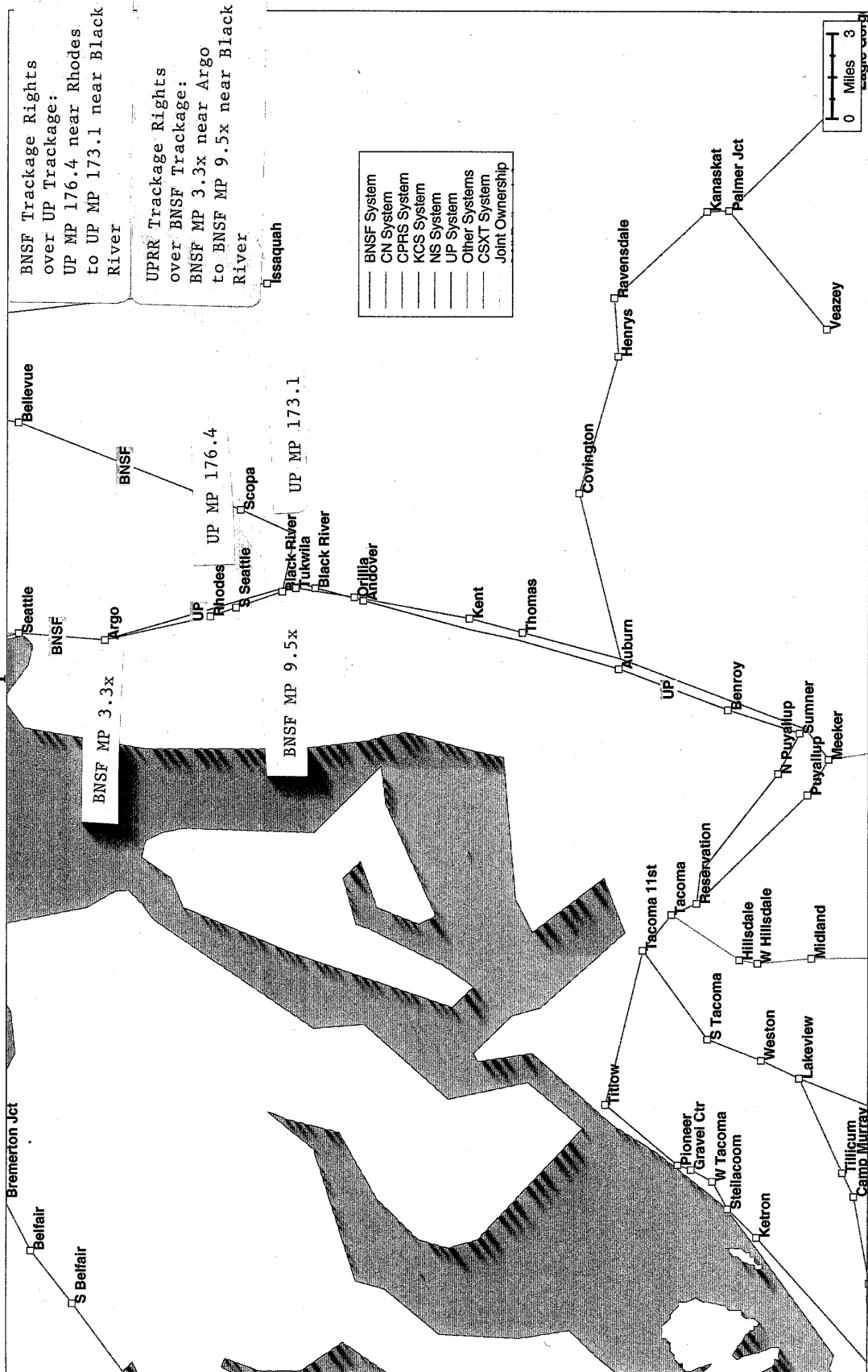


EXHIBIT NO. 2

**ARGO, WASHINGTON TO BLACK RIVER, WASHINGTON
TRACKAGE RIGHTS AND JOINT OWNERSHIP AGREEMENT**

AGREEMENT made this 5th day of April, 2002, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, hereinafter called "BNSF," and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation, hereinafter called "UP."

WITNESSETH:

WHEREAS, BNSF owns certain lines of railroad between Argo, Washington in the vicinity of BNSF Milepost 3.3x and Black River, Washington in the vicinity of BNSF Milepost 9.5x ("BNSF Trackage") as set forth in the "Present" portion on Exhibit "A-1" dated August 17, 2000, attached hereto and made a part hereof; and

WHEREAS UP owns certain lines of railroad between Argo, Washington in the vicinity of UP Milepost 179.7 and Black River, Washington in the vicinity of UP Milepost 173.1 ("UP Trackage") as also set forth in the "Present" portion on Exhibit "A-1" dated August 17, 2000, attached hereto and made a part hereof, and

WHEREAS, the parties entered into a Memorandum of Understanding ("MOU") dated March 16, 1998, as amended and restated on September 15, 2000 ("Amended and Restated MOU"), which sets out the agreement between the parties hereto with respect to capacity, ownership and operational changes necessary between Argo and Black River to accommodate Central Puget Sound Regional Transit Authority ("Sound Transit") commuter operation between Seattle and Tacoma, Washington, to be progressed in three (3) phases, and which shall be more fully developed in this Agreement ("Sound Transit Project"); and

WHEREAS, Exhibit A-1 depicts the three (3) trackage arrangements between Argo and Black River: 1) the Present, 2) Modified Phase II ("Phase II") and 3) Phase III (Modified 'MOU') ("Phase III"). The trackage shown as green on Exhibit A-1 for Phase II and Phase III, respectively, and as further described in Section 3 A below and in Section 1.8 of Exhibit "B", along with all related structures, signal and communications systems, appurtenances and right of way, ("Joint Segment") shall be jointly operated by BNSF and UP during Phase II and jointly owned and operated during Phase III of the Sound Transit Project; and

WHEREAS, the parties desire to set forth in this Agreement the manner in which the BNSF Trackage, Joint Segment, Shared Trackage, and UP Trackage (all as defined in this Agreement) shall be managed, maintained and operated to

accommodate the addition of Sound Transit to the Joint Segment to the extent required by the Amended and Restated MOU.

NOW, THEREFORE, it is mutually agreed by and between the parties:

Section 1. General Conditions:

The General Conditions set forth in Exhibit "B" attached hereto are hereby made a part of this Agreement. All capitalized terms used and not otherwise defined in this Agreement shall have the meaning ascribed to them in the General Conditions. If any conflict between the General Conditions and this Agreement shall arise, the provisions of this Agreement shall prevail.

Section 2. Designation of User and Owner

For the purposes of this Agreement covering Phase II operations, UP shall be the "User" and BNSF shall be the "Owner" as regards UP's use of BNSF Trackage, and BNSF shall be the "User" and UP shall be the "Owner" as regards BNSF's use of UP Trackage.

Section 3. Rights of User and Owner

A. Subject to the terms and conditions contained herein, BNSF grants to UP the nonexclusive right to use that portion of the Joint Segment owned by BNSF (BNSF's Main 1 and Main 2 as shown in green on Exhibit A-1 for Modified Phase II, owned by BNSF between Argo, Washington, BNSF MP 3.3x, and Black River, Washington, BNSF MP 9.5x), and UP grants to BNSF the nonexclusive right to use that portion of the Joint Segment owned by UP (UP Main as shown in green on Exhibit A-1 for Modified Phase II, owned by UP between Rhodes, Washington, near UP MP 176.4, and Black River, Washington, UP MP173.1), as shown on Exhibit A-1 for Modified Phase II, for the limited operation of Equipment in User's account over said Joint Segment in common with Owner and such other railroad company or companies as Owner has heretofore admitted or may hereafter at any time in the future admit to the joint use of all or part of the Joint Segment, provided that such future admittance shall not materially hinder or obstruct the fair and reasonable exercise of the rights granted by Owner to User in this Agreement, such other railroad company or companies to hereinafter be considered Owner for the purposes of this Agreement, it being understood and agreed that User shall not have the right to:

- (i) Switch industries upon the Joint Segment, except as hereinafter provided;
- (ii) Set out, pick up or store Equipment upon the Joint Segment, or any part thereof, except as otherwise provided in this Section 3 and in Sections 2.12, 2.13 and 2.14 of Exhibit B;

- (iii) Serve any industry, team or house track, intermodal or auto facility now existing or hereafter located along the Joint Segment, except as otherwise provided in this Section 3;
- (iv) Except for rights in existence on the Effective Date of this Agreement, permit or admit any third party to the use of all or any portion of the Joint Segment, nor, under the guise of doing its own business, contract or make any agreement to handle as its own Equipment over or upon the Joint Segment, or any portion thereof, the Equipment of any such third party which in the normal course of business would not be considered the Equipment of User, without the written consent, which shall not be unreasonably withheld, of Owner; provided, however, that the foregoing shall not prevent User, pursuant to a run-through agreement with any railroad, from using the locomotives and cabooses of another railroad as its own under this Agreement, except as hereinafter provided; or
- (v) Connect with or interchange with any other railroad except as may hereinafter be provided.

B. The rights granted in Section 3 (a) shall be for rail traffic of all kinds and commodities, both carload and intermodal.

C. BNSF shall have the right to serve each and all of its respective present and future customers originating or terminating traffic on the BNSF Trackage, but only to the extent it can be done in a manner that shall not materially hinder or obstruct operations of either party to this Agreement on the Joint Segment pursuant to this Agreement.

D. UP shall have the right to serve each and all of its respective present and future customers originating or terminating traffic on the UP Trackage, but only to the extent it can be done in a manner that shall not materially hinder or obstruct operations of either party to this Agreement on the Joint Segment pursuant to this Agreement.

E. Each party agrees that when entering, exiting, setting out or picking up from its respective existing lines of railroad or trackage rights lines, it shall do so without causing unreasonable interference or impairment of the Joint Segment.

Section 4. Joint Ownership

- A. BNSF and UP shall each, pursuant to the Amended and Restated MOU, grant, convey and/or transfer one half of its respective interest in the entire Joint Segment to the other ("Property Exchange Agreement") once Phase III capacity has been constructed. As new Phase III capacity is completed and placed in service, it shall be jointly owned.
- B. Except for rights in existence on the Effective Date of the Property Exchange Agreement, neither party shall admit a third party to the use of the Joint Segment

or initiate haulage services thereover for a third party without the prior written consent, which shall not be unreasonably withheld, of the other party.

- C. BNSF and UP agree that when the Property Exchange Agreement is executed, the Joint Segment shall continue to be governed under the terms and conditions of this Agreement.
- D. Execution of the Property Exchange Agreement will not change commercial access to existing or new industries.

Section 5. Dispatching

BNSF and UP shall cooperate to make the conversion to BNSF dispatching between Argo, Washington and Black River, Washington. This conversion shall take place at least 90 days prior to commencing Phase II construction on the Joint Segment and shall be at no cost, including the cost of training, to UP. BNSF and UP will work together to have all work related to the dispatch conversion done at Sound Transit expense.

Phase II

1. BNSF shall dispatch the Joint Segment for all users in accordance with the dispatching Protocol as defined by the agreement between UP/SP and BNSF dated September 25, 1995 ("Settlement Agreement").

2. Upon commencement of dispatching by BNSF, BNSF dispatchers shall route BNSF and UP trains over any of the three (3) existing mainlines, as same may be available from time to time, on the Joint Segment.

3. All costs associated with (i) signal and communications engineering; (ii) signal construction and improvements; and (iii) conversion to BNSF dispatching, that are required to implement the Amended and Restated MOU shall be paid by parties other than UP. BNSF and UP will work together to have all work related to the dispatch conversion done at Sound Transit expense.

4. UP and BNSF agree that during construction, in addition to Dispatching Protocol, the Joint Segment shall be governed by the following dispatching rules:

- (i) BNSF shall not dispatch BNSF trains or commuter trains over UP's mainline between Argo and Rhodes, except as may be permitted from time to time by UP: (1) to facilitate train operations during construction of Phase II capacity and (2) thereafter as may be required to perform maintenance on the Joint Segment.
- (ii) Until Phase II is completed, BNSF agrees to route UP trains over BNSF's running track between Argo and Rhodes, when it becomes available, from

time to time as necessary to maintain freight capacity between Argo and Black River.

- (iii) Once Phase II commuter operation has started, Phase II improvements have been completed, and Sound Transit is proceeding with Phase III capacity construction, BNSF shall not dispatch BNSF trains or commuter trains over UP's Phase II main between Argo and Rhodes, except as may be permitted from time to time by UP to facilitate train operations during construction of Phase III capacity.
- (iv) If Sound Transit does not complete Phase III as specified in the BNSF/Sound Transit Construction Agreement, UP's main between Argo and Rhodes shall not be dispatched by BNSF nor shall it become part of the Joint Segment.

5. After completion of Phase II construction and during Phase II operations (the Modified Phase II portion of Exhibit A-1 shall apply to all references to Exhibit A-1 unless otherwise specified), BNSF dispatchers shall dispatch trains as follows:

- (i) BNSF and UP shall have complete and equal access to all three (3) mains or portions thereof, marked in green on Exhibit A-1,

- (ii) The BNSF running track marked in blue on Exhibit A-1 is intended to be for BNSF's exclusive use; however, BNSF shall allow dispatchers to route UP trains over the running track (or segments of it) if it is available, especially if a UP train is being held off the 3 mains account commuter operation. UP recognizes that BNSF may occasionally stage trains on this track as part of BNSF's normal activity,

- (iii) Once there is a power switch in place on the south end of the Duwamish Interchange, BNSF shall allow its dispatchers the flexibility to dispatch UP trains over this route, when necessary due to Sound Transit commuter operations.

- (iv) BNSF shall also have the right to use the power switch, the runaround track through the Duwamish Interchange and the UP portion of the route to the Harbor Island lead (under similar circumstances to UP's use of this route). This route shall not be part of the Joint Segment but shall be covered by this special provision of the Agreement as follows: (i) the operation of either party on the trackage outside the Joint Segment as described in this Section 5 shall be governed by the same liability provisions as if operating on the Joint Segment, (ii) the operation of either party on the trackage outside the Joint Segment as described in this Section 5 shall be governed by the same compensation provisions as if operating on the Joint Segment.

- (v) In addition to the rights described in this Section 5, the BNSF dispatchers shall double out UP trains from Argo Yard onto the BNSF running track between Argo and Rhodes, as it is available, and allow said UP trains to make the final air test before departure from the BNSF running track onto the Joint Segment. UP recognizes that

BNSF may occasionally stage trains on this running track as part of BNSF's normal activity. UP's use of BNSF's running track to double out trains is important to UP's operations and BNSF shall cooperate with UP in order to facilitate availability of the running track for UP double out moves. UP double out moves must be coordinated with the BNSF dispatcher so that said dispatcher can anticipate UP double out requirements sufficiently in advance to plan BNSF activity on the running track and so that UP trains can be scheduled to promptly clear the BNSF running track and the Joint Segment.

Phase III

A. During Phase III of the Sound Transit Project (including 90 days prior to start of Phase III construction), BNSF shall also dispatch UP's main line between Argo, UP MP 179.7 and Rhodes, near UP MP 176.4, under the terms of this Agreement.

B. When construction of Phase III of the Sound Transit Project is complete, and progressively during construction with respect to operations during construction:

- (i) BNSF and UP trains shall have complete and equal access to the Joint Segment, or portions thereof, between Argo and Black River.
- (ii) The yard tracks in the Van Asselt area marked in magenta on Exhibit A-1 shall be exclusive UP Trackage.
- (iii) The UP Running Track, running south from the Argo area to its connection with Main 1 north of Rhodes marked in blue on Exhibit A-1, shall be a Shared Track under UP control, except that UP will allow BNSF dispatchers to route BNSF trains over said track (or segments of it) if it is available. BNSF recognizes that UP may stage trains on said track as part of its normal activity.
- (iv) The yard and industry tracks marked in black on Exhibit A-1 shall be exclusive BNSF Trackage.
- (v) The BNSF running track between Argo and Black River, marked in blue on Exhibit A-1, shall be a Shared Track under BNSF control, except BNSF shall allow its dispatchers to route UP trains over said track (or segments of it) if it is available, especially if a UP trains being held off the three (3) mains account commuter operation. UP recognizes that BNSF may stage trains on said track as part of its normal activity.
- (vi) BNSF activity over the Argo connecting track in the future is intended to be through train movements. BNSF shall make every effort to avoid blocking UP's Argo connection. The new capacity plan has a series of crossovers to the north of the Argo connection which should permit BNSF activity between one of the 3 mains and the Colorado Main and the PC

tracks without blocking UP access between Argo yard and the proposed UP running track to the south.

- (vii) BNSF has included a power switch on the south end of the Duwamish Interchange in the Sound Transit Project because there may be occasions when a UP train cannot get into or out of Argo through the normal route and this would provide an escape route (through the crossovers mentioned in 5 B (vi) above, marked in blue on Exhibit A-1, and thence via the run-around track through the Duwamish Interchange and the UP portion of the route to the BNSF Harbor Island lead). If this power switch remains in the Sound Transit Project, BNSF shall allow its dispatchers the flexibility to route UP trains that way, when necessary due to Sound Transit commuter operations. If the power switch is not included in the Sound Transit Project as described above, then UP shall have the right, at its sole election and cost, to have BNSF install such power switch for the above stated purpose. If subsequent to such installation, BNSF chooses to use the switch, then BNSF shall pay to UP 50% of the installation cost, plus interest as computed in the Settlement Agreement. Upon payment of said cost, or if this power switch is included in the Sound Transit Project, BNSF shall also have the right to use the power switch, the run-around track through the Duwamish Interchange and the UP portion of the route to the Harbor Island lead (under similar circumstances to UP use of this route). This route shall not be part of the Joint Segment; however, its use shall be covered by this special provision of the Agreement as follows: (i) the operation of either party on the trackage outside the Joint Segment as described in this Section 5 shall be governed by the same liability provisions as if operating on the Joint Segment. (ii) the operation of either party on the trackage outside the Joint Segment as described in this Section 5 shall be governed by the same compensation provisions as if operating on the Joint Segment.
- (vii) All trains shall be required to keep moving on the 3 mains within the Joint Segment.
- (viii) Other BNSF Trackage between Argo and Black River is shown marked in black on Exhibit A-1.
- (ix) Other UP Trackage between Argo and Black River is shown marked in magenta on Exhibit A-1.

Section 6. Labor Protection

BNSF and UP each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either BNSF or UP may be required to

pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 7. Work to be Performed by Sound Transit

A. The portion of BNSF's overall Seattle -Tacoma Sound Transit commuter plan which covers the Argo - Black River Joint Segment, depicted as Phase II and Phase III on Exhibit A-1, reflects the agreement of the parties.

B. Work Initiation Documents ("WID'S") must be provided to BNSF by Sound Transit for Phase II by November 2, 2001. In the event that Sound Transit does not comply with the WID timetable for Phase II, ~~the Agreement may be terminated at the request of either BNSF or UP thereby re-instating the pre-Agreement property and operating status of the parties, including BNSF dispatching of Argo interlocker and UP dispatching of the Black River interlocker.~~

C. WID's for Phase III must be provided to BNSF by Sound Transit by September 2, 2004. In the event that Sound Transit does not comply with the WID timetable for Phase III, the terms of the Agreement pertaining to Phase III shall be terminated and any further consideration for establishing commuter service beyond Phase II levels would require a new agreement between UP, BNSF and Sound Transit.

D. BNSF and UP agree that the purpose of each Phase is to maintain the capacity of the current route as determined by transit time, after the addition of the commuter rail operation.

E. The number of scheduled commuter trains to be allowed over the Joint Segment after construction of Phase II shall be limited to nine (9) round trips per day.

F. The number of scheduled commuter trains to be allowed over the Joint Segment after construction of Phase III shall be limited to fifteen (15) round trips per day.

G. BNSF and UP further agree that at such time as any additional scheduled commuter operations are requested by Sound Transit over the Joint Segment, above the level agreed to by UP and BNSF in Phase II and Phase III, then UP, BNSF, and Sound Transit shall work together using simulation tools and appropriate operating scenarios agreed to by all parties, to determine what additional capacity requirements, if any, will be added to maintain then current freight schedules, including anticipated freight growth, prior to commencement of any additional scheduled commuter traffic. Capacity improvements required by additional commuter operation will be at Sound Transit expense.

H. BNSF and UP agree that commuter operation mitigation outside of the Joint Segment will be handled separately.

Section 8. Capacity Construction:

A. Phase II

- (i) Construction of Phase II improvements on UP property within the Joint Segment, and certain improvements (see Section 8 A (ii) below) on UP property outside the Joint Segment between Argo and Rhodes, will be handled by BNSF. Maintenance of UP trackage, structures and related facilities including signal and communication facilities on the Joint Segment shall be handled by BNSF. UP shall provide any unique UP track or signal materials to BNSF as required for said maintenance. The cost of any such track or signal material so provided by UP will be prorated between UP and BNSF in the same manner as other maintenance charges on the Joint Segment. UP and the BNSF will work together to petition the FRA with a request to downgrade the UP's CTC signal system between Argo and Rhodes. The new portions of the BNSF signal system between Black River and Rhodes and at Argo will be engineered to tie in to the present UP CTC signal system, or to a downgraded signal system, if approved by the FRA, between Argo and Rhodes on the UP mainline, which ever is appropriate. The cost to tie in the UP signal system shall be included in the Sound Transit Project.
- (ii) BNSF shall, with its own forces or contractors, construct the new Phase II and Phase III capacity improvements for the Joint Segment as shown on Exhibit A-1 (use final "as constructed" plan(s) in lieu of Exhibit A-1 for the Agreement when same are available), including those on UP property, and thereafter maintain said improvements and any existing facilities as well as construct and maintain any future capacity within the Joint Segment. In addition, BNSF shall, with its own forces or contractors, relocate (shift to the east) UP's main line between Argo and Military Road including the construction and installation of new turnouts for the yard lead at the north end of Van Asselt Yard and from the Georgetown siding to the south end of Van Asselt Yard. UP shall subsequently maintain said main line and turnouts and all other UP controlled trackage between Argo and Black River.
- (iii) UP and BNSF agree that any maintenance costs incurred on the Joint Segment shall be reduced by any amount paid by Sound Transit and/or Amtrak for maintenance of the Joint Segment, prior to apportionment of maintenance costs between UP and BNSF. BNSF further agrees that it will not reduce or diminish the rates to be paid by Amtrak and/or Sound Transit for maintenance of the Joint Segment without the prior written consent of UP. The respective GTM's of Sound Transit and Amtrak will not be attributed to BNSF or UP for the apportionment of maintenance expenses. BNSF and UP also agree, for purposes of maintenance and liability allocation, that any use of non-Joint Segment trackage in lieu of Joint Segment trackage shall be treated as if the Joint Segment had been utilized.

B. Phase III

- (i) The parties have agreed, in the Amended and Restated MOU and in contemporaneous discussions with other parties including Sound Transit, upon the Sound Transit Project (Exhibit A-1). It is the intent of the parties to preserve freight mobility and allow for anticipated freight growth while meeting the demands of commuter passengers for safe, fast, efficient and on-time performance. The purpose of this plan is to maintain the capacity of the current route, as determined by transit time, after the addition of the commuter rail operation.
- (ii) The parties and Sound Transit have agreed on how the cost of Phase III of the Sound Transit Project will be shared:
 - (a) BNSF's contribution to the Sound Transit Project takes the form of cost reduction.
 - (b) UP will contribute \$7 million made up of \$3 million in cash and \$4 million in absorbed track construction expense in Fife Yard (for UP use in lieu of trackage given up in Seattle for the Sound Transit Project). In order to simplify accounting and administrative matters Sound Transit has requested and UP has agreed to pay the \$3 million to BNSF, progressively over the time required to construct Phase III of the Sound Transit Project.
 - (c) Sound Transit (with WSDOT, Amtrak and/or others) will be responsible for the balance of the Sound Transit Project expense.
- (iii) During construction of Phase III of the Sound Transit Project, BNSF dispatchers shall route BNSF and UP Equipment over any of the three existing mains (including UP's main between Argo and Rhodes), or portions thereof, between Argo and Black River, as same may be available from time to time during construction. The terms of this Agreement shall also govern during this interim period.
- (iv) BNSF shall perform this dispatching in accordance with the Dispatching Protocol as defined by the BNSF-UP/SP Settlement Agreement dated September 25, 1995.
- (v) In order to facilitate construction of the Sound Transit Project, UP agrees to permit BNSF, with its own forces and/or contractors, to construct the Sound Transit Project, including portions on UP Trackage or Shared Trackage under UP control, and thereafter maintain said construction within the Joint Segment and any other existing railroad facilities or

appurtenances within the limits of the Joint Segment as well as construct and maintain future capacity in the Joint Segment; provided however, that after completion of the Sound Transit Project construction, UP, at its sole cost and expense, shall maintain the UP Trackage and the Shared Trackage under UP control between Argo and Black River.

- (vi) BNSF, at its sole cost and expense, shall maintain the BNSF Trackage and the Shared Trackage under BNSF control between Argo and Black River.

C. Changes and/or Additions

BNSF shall construct such Changes and/or Additions to the Joint Segment with an estimated cost of One Hundred Thousand Dollars (\$100,000) or less per project as BNSF or UP shall deem desirable for the safe, efficient and economical use of the Joint Segment by both parties. Before commencing construction of Changes and/or Additions with an estimated cost greater than One Hundred Thousand Dollars (\$100,000) per project for use by both parties, BNSF shall secure the written approval of UP. Neither party shall unreasonably withhold its written approval of any project proposed by the other party for the safe, efficient and economical use of the Joint Segment by both parties. All Changes and/or Additions to the Joint Segment shall progressively during construction become part of the Joint Segment. Ownership of the Changes and/or Additions under Phase II shall be based on ownership of the property upon which said Changes and/or Additions are constructed or placed. If the ownership of the property is not joint at the time of the Changes and/or Additions, the subject Changes and/or Additions will become subject to the Property Exchange Agreement at the time it is executed. BNSF shall have the right to include as a part of the cost of Changes and/or Additions any engineering costs related to Changes and/or Additions to the Joint Segment. Subject to Section 3 (and Section 8 A (i) and Section 8 B (v) during construction of the Sound Transit Project), either party shall have the right to construct, or have constructed for it, industrial trackage or other trackage and facilities connecting to the Joint Segment, provided that such construction can be constructed and is constructed in such a manner as not to impair the other party's use of the Joint Segment.

Section 9. Phase II and III Timeline Requirements:

If Sound Transit fails to start Phase II within the time frame allowed under the BNSF/Sound Transit Construction Agreement, or if Sound Transit starts but fails to complete Phase II capacity construction, BNSF and UP will revert to their original separate operations between Argo and Black River. If Sound Transit starts but fails to complete Phase III capacity construction, BNSF and UP will revert to Phase II operations between Argo and Black River or an alternative mutually agreed upon operation. In the event there are any incomplete Phase III capacity improvements, neither party shall utilize said capacity improvements without the agreement of the other party.

Section 10. Amended and Restated MOU:

The provisions, rights and obligations set forth in the Amended and Restated MOU shall survive, and nothing herein shall be deemed to repeal or supersede the Amended and Restated MOU. If any conflict between the Amended and Restated MOU and this Agreement shall arise, the provisions of the Amended and Restated MOU shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

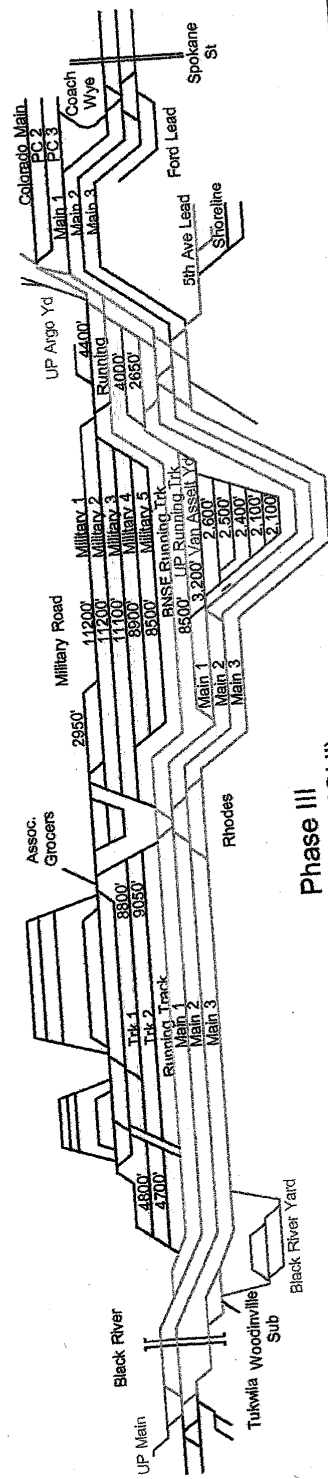
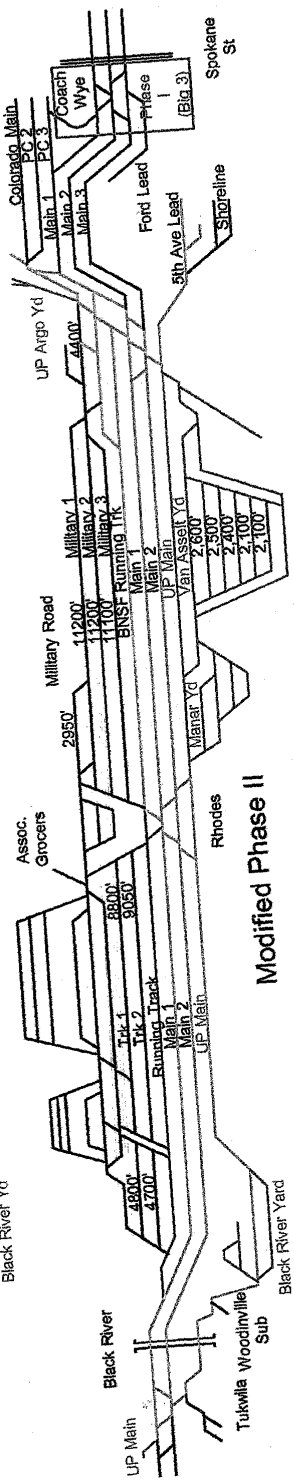
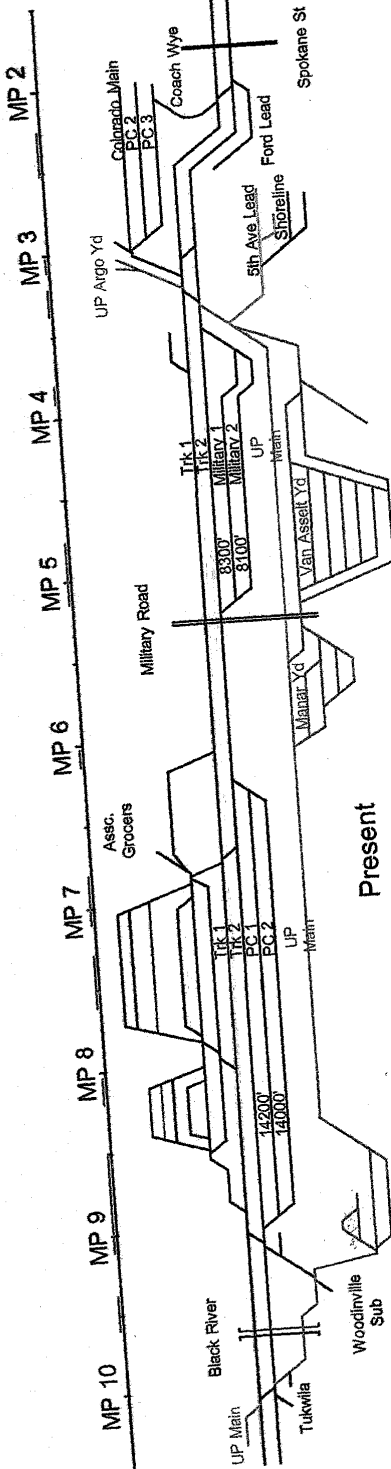
UNION PACIFIC RAILROAD
COMPANY

By: J. B. Williams

By: [Signature]

Its: AVP CONTRACT & JOINT FACILITIES

Its: [Signature]



UP	Joint
BNSF	Dispatcher
	Discretion

Exhibit A-1

8/17/00

EXHIBIT "B"

GENERAL CONDITIONS

Section 1. DEFINITIONS

1.1 "Agreement" shall mean that certain agreement dated April ^{5th}, 2002 to which this Exhibit "B" is appended.

1.2 "Annual" shall mean a calendar year.

1.3 "Car" shall mean one (1) rail car; provided, however, that each platform in an articulated rail car of two (2) or more platforms shall be counted as one (1) rail car per each platform such that an articulated car with two platforms would be counted as two (2) cars and so on.

1.4 "Changes in and/or Additions to" shall mean work projects and retirements, the cost of which is chargeable in whole or in part to Property Accounts during the term of this Agreement.

1.5 "Equipment" shall mean trains, locomotives, rail cars (loaded or empty), intermodal units (loaded or empty), cabooses, vehicles, and machinery which are capable of being operated on railroad tracks or on right-of-way for purpose of the maintenance or repair of such railroad tracks.

1.6 "GTM" shall mean gross ton mile which is the weight in tons for Equipment and lading transported over one (1) mile of track included in the Joint Segment.

1.7 "GTM Handled Proportion" shall mean the GTMs handled over the Joint Segment by or for a party divided by the total number of GTMs handled by or for all parties using the Joint Segment, during the same period. For the purpose of computing such GTM's Handled Proportion, Equipment engaged in work service pertaining to construction, maintenance or operation of the Joint Segment or Changes in and/or Additions to the Joint Segment shall not be counted and GTMs of third parties shall be attributed to the Grantor, as such is defined in Section 3.1 of these General Conditions, and all GTMs of said third party shall be considered as being the GTM's of the Grantor in computing the respective GTMs of the parties to the Agreement.

1.8 "Joint Segment" shall mean the track structure of the parties as described in the Agreement including necessary right-of-way and all appurtenances, signals, communications, and facilities of the parties and all Changes in and/or Additions to said track structure now or in the future located as are required or desirable for the operation of the Equipment of the parties hereto.

1.9 "Owner" shall have the meaning given to it in the Agreement.

1.10 "Property Accounts" shall mean accounts so designated under the Uniform System of Accounts for Railroad Companies prescribed by the STB, or any replacement of such system prescribed by the applicable federal regulatory agency, if any, and used by the parties hereto.

1.11 "STB" shall mean the Surface Transportation Board of the United States Department of Transportation or any successor agency.

1.12 "User" shall have the meaning given to it in the Agreement.

Section 2. MAINTENANCE, ADDITIONS, OPERATION, AND CONTROL

The provisions of this Section 2 are written to govern the parties following completion of the Sound Transit Project; however, these provisions are also intended to apply during construction of the Sound Transit Project. If application of specific portions seem ambiguous or unclear during construction of the Sound Transit Project, the parties shall do their best to construe the application in terms of how same would have applied following construction of the Sound Transit Project.

2.1(a) UP shall manage the UP Trackage and that portion of the Shared Trackage under UP control as identified on Exhibit A-1. BNSF shall manage the BNSF Trackage, that portion of the Shared Trackage under BNSF control as identified on Exhibit A-1. Each party shall have sole charge of the maintenance and repair of their respective portions of the trackage it manages, including, without limitation, ordinary and routine replacement of ties, rails and other track and signal equipment, with its own supervisors, labor, materials and Equipment. Any work projects performed pursuant to this Section 2.1(a) shall become a part of the appropriate Trackage or, in the case of retirements, shall be excluded from the appropriate Trackage. By September 1 of each year during the term of this Agreement (1) UP will advise BNSF of its anticipated programmed maintenance on Shared Trackage for the succeeding calendar year, and (2) BNSF will advise UP of its anticipated programmed maintenance on the Shared Trackage and Joint Segment for the succeeding calendar year.

2.1(b) BNSF shall have sole charge of the maintenance and repair of the Joint Segment with its own supervisors, labor, materials and equipment. BNSF, from time to time, may make such Changes in and/or Additions to the Joint Segment as shall be required by any law, rule, regulation or ordinance promulgated by any government body having jurisdiction, or as BNSF shall deem necessary, subject to Section 8, C of the Agreement. Such Changes in and/or Additions to the Joint Segment shall become a part of the Joint Segment or in the case of retirements shall be excluded from the Joint Segment.

2.2 Unless otherwise mutually agreed to by the parties in writing, BNSF shall, (i) keep and maintain each party's respective ownership portion of the Joint Segment on a consistent basis at no less than the track standard designated in the respective

timetables in effect on the date of the Agreement, taking into consideration the Changes and/or Additions provided for herein, including special instructions for the Joint Segment as of the date of the Agreement, (ii) maintain at least the physical capacity of the Joint Segment, including the Changes and/or Additions provided for herein once they are constructed, (i.e., number of main tracks, support tracks, signal systems, rail weight, line clearances, etc.), and (iii) be responsible for any Changes in and/or Additions to the Joint Segment as shall be necessary to accommodate the traffic of BNSF and UP while maintaining existing service standards (including transit times) in effect on the date of the Agreement. Prior to BNSF assuming maintenance responsibility for the Joint Segment, BNSF and UP will jointly inspect the Joint Segment and determine if any portion of the Joint Segment does not meet the track standard designated in the respective timetables in effect on the date of the Agreement. Any deficiencies shall be corrected immediately by Owner or Owner may elect to have BNSF correct such deficiencies and bill Owner. In the event that either party desires that the portion of the Joint Segment owned by the other party be improved to a condition in excess of the standard set forth in this Section 2.2, or either party desires that other Changes in and/or Additions to be made to the portion of the Joint Segment owned by the other party, BNSF agrees to make such improvements and /or Changes in and/or Additions to the Joint Segment if funded in advance by the requesting party. Thereafter, such Changes in and/or Additions to the Joint Segment shall become part of the Joint Segment and shall be maintained by BNSF in such improved condition. Other than when UP, or BNSF if BNSF is directed to use a UP improvement solely due to a service interruption, is expressly directed to use such improvements by BNSF's dispatcher, if the other party thereafter makes any use of such improvements paid for by one party, such other party shall reimburse the originally paying party for one half of the costs of such improvements plus per annum interest equal to the rate paid on 30-year Treasury Notes of the United States government as of the date of completion. On the date of use by such other Party, such improvements shall become part of the Joint Trackage as described in this Section 2.2. Per annum interest shall be adjusted annually on the first day of the twelfth (12th) month following the date of completion and every year thereafter on such date, based on the increase or decrease, in the average yield of 30-year U.S. Treasury Notes for the prior year compared to their average yield in first year of completion of the Changes and/or Additions. Each annual adjustment shall be subject, however, to a "cap" (up or down) of two percentage points of the prior year's interest (i.e., adjustment may not exceed an amount equal to two percentage points of the immediately preceding year's interest rate). Should the United States government discontinue the issuance of 30-year Treasury Notes, the parties agree that the longest maturity U.S. Treasury Note issued, not to exceed 30 years, will be substituted for the 30-year Treasury Note in the above calculation.

2.3 BNSF shall employ, directly and/or through contractors, all persons necessary to construct, operate, maintain, repair and renew the Joint Segment. BNSF shall be bound to use reasonable and customary care, skill and diligence in the construction, operation, maintenance, repair and renewal of the Joint Segment and in managing of the same. BNSF shall make its best effort to ensure that UP is given the

same advance notice of maintenance plans and schedules as is provided to BNSF's personnel.

2.4 The trackage rights granted hereunder for Phase II operations shall give User access to and joint use of the Joint Segment on the same basis as that of Owner. Likewise, following the Property Exchange Agreement and completion of Phase III, the parties shall continue to have equal access to the Joint Segment. The management, operation (including dispatching) and maintenance of the Joint Segment shall, at all times, be under the exclusive direction and control of BNSF. The movement of Equipment over and along the Joint Segment shall at all times be subject to the exclusive direction and control of BNSF's authorized representatives and in accordance with such reasonable operating rules as BNSF shall from time to time institute, but in the management, operation (including dispatching) and maintenance of the Joint Segment, BNSF and UP shall be treated equally. UP shall, at UP's sole cost and expense, obtain, install and maintain necessary communication equipment to allow UP's Equipment to communicate with BNSF's dispatching and signaling facilities the same as BNSF's trains so utilize. BNSF shall consult with UP prior to the adoption of new communication or signaling systems to be employed on the Joint Segment, which have not theretofore been generally adopted in the railroad industry.

2.5 A Joint Service Committee ("Committee"), comprised of the chief transportation officers of BNSF and UP (or their designees) shall be established, and shall be responsible for establishing rules or standards as appropriate to ensure equitable and non-discriminatory treatment, appropriate maintenance and efficient joint use of the Joint Segment. The Committee shall meet on a regular basis when any party serves upon the other party thirty (30) days' written notice of its desire to meet to review the overall performance of Equipment on the Joint Segment, conflicts, if any, experienced between Equipment of BNSF (including Equipment of Sound Transit and Amtrak) and Equipment of UP, grievances over the handling of particular Equipment or operational events, maintenance of the Joint Segment, ways in which future conflicts may be minimized, ways of improving operations and maintenance of the Joint Segment and such other relevant matters as the Committee may decide to consider. The Committee may issue standards or rules to prevent unnecessary interference or impairment of use of the Joint Segment by either party or otherwise ensure fair and equal treatment as between BNSF and UP. Either party may request a special meeting of the Committee on reasonable notice to the other. Informal telephonic conferences shall be held by the Committee where appropriate to address immediate concerns of either party. It is expected that the work on the Committee shall be undertaken in a spirit of mutual cooperation consistent with the principles expressed in the Agreement.

2.6 If the use of the Joint Segment shall at any time be interrupted or traffic thereon or thereover be delayed for any cause, neither party shall have or make any claim against the other for loss, damage or expense caused by or resulting solely from such interruption or delay.

2.7 The parties may from time to time provide any track or tracks along the Joint Segment other than those delineated in Exhibit A-1 to the Agreement for use by User provided there shall at all times be afforded User a continuous route of equal utility for the operations of its Equipment between the termini of the Joint Segment. When such tracks which are not part of the Joint Segment are used as provided herein, the Agreement shall govern for purposes of direction and control, billing and liability as if all movement had been made over the Joint Segment.

2.8 Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and train and other supplies necessary for the operation of its own Equipment over the Joint Segment. In the event a party does furnish such labor, fuel or train and other supplies to another party, the party receiving the same shall promptly, upon receipt of billing therefor, reimburse the party furnishing the same for its reasonable costs thereof, including customary additives.

2.9 Each party shall be responsible for the reporting and payment of any mileage, per diem, use or rental charges accruing on Equipment in its account on the Joint Segment. Except as may be specifically provided for in this Agreement, nothing herein contained is intended to change practices with respect to interchange of traffic between the parties or with other carriers on or along the Joint Segment.

2.10 Except as otherwise may be provided in the Agreement, each party shall operate its Equipment over the Joint Segment with its own employees but before said employees are assigned or permitted to operate Equipment over the Joint Segment as herein provided, and from time to time thereafter as reasonably requested by BNSF, they shall be required to pass the applicable rules examinations required by BNSF of its own employees. BNSF shall delegate to specified UP officers the conduct of such examinations in the event UP chooses to conduct such examinations. If a BNSF officer conducts such examinations of employees of UP, UP shall pay BNSF a reasonable fee for each employee so examined, such fee to be mutually agreed upon by the parties from time to time in a separate agreement. Notwithstanding any such examination, UP shall be responsible for ensuring that its employees are qualified and have taken all such rules examinations. Upon request of UP, BNSF shall qualify one or more of UP's supervisory officers as pilots and such supervisory officer or officers so qualified shall qualify employees of UP engaged in or connected with UP's operations on or along the Joint Segment. At UP's request, BNSF shall furnish a pilot or pilots, at the expense of UP, to assist in operating trains of UP over the Joint Segment.

2.11 If any employee of UP shall neglect, refuse or fail to abide by BNSF's rules, instructions and restrictions governing the operation on or along the Joint Segment, such employee shall, upon written request of BNSF, be prohibited by UP from working on the Joint Segment. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure on the part of any employee of UP, then upon such notice presented in writing, BNSF and UP shall promptly hold a joint investigation in which the parties concerned shall participate and bear the expense for their respective officers, counsel, witnesses and employees. Notice of such

investigations to UP's employees shall be given by UP's officers, and such investigation shall be conducted in accordance with the terms and conditions of schedule agreements between UP and its employees. If, in the judgment of BNSF, the result of such investigation warrants, such employee shall, upon written request by BNSF, be withdrawn by UP from service on the Joint Segment, and UP shall release and indemnify BNSF from and against any and all claims and expenses arising from such withdrawal. If the disciplinary action is appealed by an employee of UP to the National Railroad Adjustment Board or other tribunal lawfully created to adjudicate such cases, and if the decision of such board or tribunal sustains the employee's position, such employee shall not thereafter be barred from service on the Joint Segment by reason of such disciplinary action.

2.12 If any Equipment of either party is bad ordered enroute on the Joint Segment and it is necessary that it be set out, it shall be promptly removed from the Joint Segment by said party. BNSF may, upon request of UP and at UP's sole cost and expense, furnish the required labor and material and perform light repairs to make such bad ordered Equipment safe for movement. The employees and Equipment of BNSF while in any manner so engaged or while enroute to or returning to BNSF's terminal from such an assignment shall be considered Sole Employees (as hereinafter defined) of UP and Sole Property (as hereinafter defined) of UP. However, should BNSF's employees after repairing such bad ordered Equipment for UP move directly to perform service for BNSF's benefit rather than return to BNSF's terminal, then UP's exclusive time and liability will end when BNSF's employees depart for work to be performed for BNSF's benefit. In the case of such repairs by BNSF to freight cars in UP's account, billing therefor shall be in accordance with the Field and Office Manuals of the Interchange Rules, adopted by the Association of American Railroads ("AAR"), hereinafter called "Interchange Rules", in effect on the date of performance of the repairs. BNSF shall then prepare and submit billing directly to and collect from the car owner for car owner responsibility items as determined under said Interchange Rules, and BNSF shall prepare and submit billing directly to and collect from UP for handling line responsibility items as determined under said Interchange Rules. BNSF also shall submit billing to and collect from UP any charges for repair to freight cars that are UP's car owner responsibility items as determined under said Interchange Rules, should said car owner refuse or otherwise fail to make payment therefor. Repairs to locomotives shall be billed as provided for in Section 3 of these General Conditions.

2.13 If Equipment of either party shall become derailed, wrecked, or otherwise disabled while upon the Joint Segment, it shall be rerail or cleared by BNSF, except that employees of UP may rerail UP's derailed Equipment on the Joint Segment whenever use of motorized on or off track equipment is not required; however, in any such case, employees of UP shall consult with and be governed by the directions of BNSF. BNSF reserves the right to rerail Equipment of UP when, in the judgment of BNSF, BNSF deems it advisable to do so to minimize delays and interruptions to train movement.

2.14 In the event Equipment of UP shall be forced to stop on the Joint Segment, and such stoppage is due to insufficient hours of service remaining among UP's employees, or due to mechanical failure of UP's Equipment (other than bad ordered Equipment subject to light repairs pursuant to Section 2.12), or to any other cause not resulting from an accident or derailment (including the failure of UP to promptly repair and clear bad ordered Equipment pursuant to Section 2.12), and such Equipment is unable to proceed, or if a train of UP fails to maintain the speed required by BNSF on the Joint Segment, or if, in emergencies, disabled Equipment is set out of UP's trains on the Joint Segment, BNSF shall have the option to furnish motive power or such other assistance (including but not limited to the right to recrew UP's train) as may be necessary to haul, help or push such Equipment, or to properly move the disabled Equipment off the Joint Segment. The reasonable costs and expenses of rendering such assistance shall be borne by UP. Services provided under this section shall be billed in accordance with Section 3 of these General Conditions.

2.15 UP shall pay to BNSF reasonable expenses incurred by BNSF in the issuance of timetables made necessary solely by changes in the running time of the trains of UP over the Joint Segment. If changes in running time of trains of BNSF, as well as those of UP, require the issuance of timetables, then UP shall pay to BNSF that proportion of the expenses incurred that one bears to the total number of parties changing the running time of their trains. If changes in running time of trains of BNSF, but not those of UP, require the issuance of timetables, then UP shall not be required to pay a proportion of the expenses incurred in connection therewith.

2.16 User, at Owner's request, shall be responsible for reporting to Owner the statistical data called for in the Agreement, which may include, but is not limited to, the number and type of Equipment and GTMs operated on the Joint Segment.

2.17 The terms and conditions applicable to the management of the real property underlying the Joint Segment which is subject to the Property Exchange Agreement shall be contained in a separate agreement to be entered into between the parties.

2.18 This Agreement, including the Property Exchange Agreement, shall not change commercial access to various existing or new industries on the Joint Segment.

Section 3. BILLING AND COMPENSATION

3.1 The following are items that are billable under this Agreement:

(a) Accounting as prescribed by the STB from time to time will be followed for purposes of this Agreement, except as provided in Section 3.1(e) below and Section 1.10 of these General Conditions.

(b) Expenditures for any future Changes in and/or Additions to the Joint Segment made during Phase II operations (to the extent not reimbursed or paid for by a

third party or parties), except as provided in Section 3.1(e) below, such as, but not limited to, sidings (other than Improvements), Centralized Traffic Control, grade separations, and future connections, shall be shared by BNSF and UP on the basis of the parties' respective GTM Handled Proportion for the calendar year period immediately prior to the year work on the project is commenced. During Phase III operations and Joint Ownership, Changes in and/or Additions to the Joint Segment will be shared equally by the parties. Changes in and/or Additions to the Joint Segment (to the extent not reimbursed or paid for by a third party or parties), the cost of which are in excess of \$100,000, must be approved in writing by both parties to this Agreement. The use of Joint Segment by any third party shall be attributed to the party responsible for allowing said third party use of the Joint Segment (Grantor) and all GTMs of said third party shall be considered as being the GTM's of the Grantor in computing respective GTMs for purposes of this Section 3, except as noted below where the GTM's of specific third parties shall not be attributed to either party. During Phase II operations, each of the parties shall bear a GTM Handled Proportion of said costs properly chargeable to capital account, except as provided in Section 3.1(e) below, and its cost (or other accounting treatment) for retirement of its GTM Handled Proportion of any depreciable property in connection with the Joint Segment. For the purposes of the preceding sentence, and the sentence following this one, the cost (or other accounting treatment) for retirement of Depreciable Property in place on the Joint Segment prior to the Effective Date of this Agreement will be apportioned for coverage under this Agreement based on the ratio of the number of full months between the Effective Date of this Agreement and the retirement date bears to the total number of months said Depreciable Property was in service. During Phase III operations, for assets placed into use after the Effective Date of this Agreement, and for Depreciable Property in place on the Effective Date, the value of which is apportioned as described in the previous sentence, each of the parties shall bear one-half of the costs properly chargeable to capital accounts and its cost (or other accounting treatment) for retirement of its one-half of any depreciable property in connection with the Joint Segment. Either party incurring costs properly chargeable to capital account in constructing Changes in and/or Additions to the Joint Segment shall progressively bill the other party hereto, as provided in Section 3 of this Exhibit "B", its appropriate proportion, depending on the phase of operation, of the cost incurred subject to adjustment when the Roadway Completion Report is received. The progressive billing shall be made not more frequently than monthly within thirty (30) days of the close of the month in which the billing party charges its GTM Handled Proportion of the cost to its appropriate capital account and the amount of such progressive billing shall not exceed the GTM Handled Proportion so charged by the billing party.

(c) Except as otherwise provided in Section 3.1(e) below, BNSF shall, pursuant to Section 3 of this Exhibit "B", render monthly to UP a bill for UP's GTM Handled Proportion, of the cost incurred by BNSF, reduced by any amount received from Sound Transit and Amtrak for maintenance of the Joint Segment - per Section 3.8 of these General Conditions, during the month for which billing is being rendered, in controlling operations over, maintaining, repairing and renewing the Joint Segment during said month. UP shall pay that bill within thirty (30) days. The respective GTM's

of Sound Transit and Amtrak will not be attributable to BNSF or UP for the billing under this Section 3.1 (c).

(d) Until such time as UP and BNSF enter into the Property Exchange Agreement, each of the parties hereto shall pay its respective GTM Handled Proportion of any taxes or assessments levied by any governmental body, municipal or otherwise, on the Joint Segment, for the calendar year period immediately prior to the year in which said taxes or assessments are levied. Following the Property Exchange Agreement, each of the parties hereto shall pay one-half of any taxes or assessments levied by any governmental body, municipal or otherwise, on the Joint Segment.

(e) The parties hereto agree that the current cost of replacement in kind of track materials replaced under AFE or similar programmed work authority will be shared between them on an annual GTM Handled Proportion for the calendar year immediately prior to the year in which the expense is incurred for the replacement in kind. The respective GTM's of Sound Transit and Amtrak will not be attributable to BNSF or UP for the billing covered in this Section 3.1 (e).

(f) All invoices are due within thirty (30) days after the date of the invoice. In the event that either party hereto shall fail to pay any monies due to the other party hereto within thirty (30) days after the invoice date, then such first party shall pay interest on such unpaid sum from thirty (30) days after its invoice date to the date of payment by such first party at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

(g) Notwithstanding the delinquent payment additive provisions hereinbefore provided, in the event either of the parties shall fail to make one or more payments within six (6) months of the date the same became due and payable and the matter is not the subject of arbitration, such failure or nonpayment shall constitute a default and thereafter the party hereto not in default shall have the right to exercise any and all of the actions, remedies or privileges hereinafter provided for defaults.

(h) In the event that either party hereto shall incorrectly bill the other party, then such billing party shall pay interest on such incorrect billings from the date said billings are first settled between the parties until repaid, at an annual rate equal to (i) the greater of (a) for the period January 1 through June 30, the prime rate last published in The Wall Street Journal in the preceding December plus two and one-half percent (2 1/2%), and for the period July 1 through December 31, the prime rate last published in The Wall Street Journal in the preceding June plus two and one-half percent (2 1/2%), or (b) twelve percent (12%), or (ii) the maximum rate permitted by law, whichever is less.

3.2 Billing shall be accomplished on the basis of data contained in a billing form mutually agreed to between the parties. Such billing forms shall contain sufficient detail to permit computation of payments to be made hereunder. Billing shall be prepared according to the rules, additives, and equipment rental rates as published by BNSF. UP shall pay to BNSF at the Office of the Treasurer of BNSF, or at such other location as BNSF may from time to time designate in writing, all the compensation and charges of every name and nature which in and by the Agreement UP is required to pay in lawful money of the United States within thirty (30) days after the rendition of bills therefor. Bills shall contain a statement of the amount due on account of the expenses incurred, properties and facilities provided and services rendered during the billing period.

3.3 Errors or disputed items in any bill shall not be deemed a valid excuse for delaying payment, but shall be paid subject to subsequent adjustment; provided, no exception to any bill shall be honored, recognized or considered if filed after the expiration of three (3) years from the last day of the calendar month during which the bill is rendered and no bill shall be rendered later than three (3) years (i) after the last day of the calendar month in which the expense covered thereby is incurred, or (ii) in the case of claims disputed as to amount or liability, after the amount is settled and/or the liability is established. This provision shall not limit the retroactive adjustment of billing made pursuant to exception taken to original accounting by or under authority of the STB or retroactive adjustment of wage rates and settlement of wage claims.

3.4 So much of the books, accounts and records of each party hereto as are related to the subject matter of this Agreement shall at all reasonable times be open to inspection by the authorized representatives and agents of the parties hereto. All books, accounts, and records shall be maintained to furnish readily full information for each item in accordance with any applicable laws or regulations.

3.5 For all costs and expenses that become payable by BNSF to UP under the Agreement, the provisions of this Sections 3 of these General Conditions shall apply with UP as the billing party and BNSF as the paying party.

3.6 Either party hereto may assign any receivables due it under this Agreement; provided, however, that such assignments shall not relieve the assignor of any rights or obligations under the Agreement.

3.7 Except as otherwise specifically provided for in this Agreement, bills rendered pursuant hereto shall be prepared in conformance with the standard practices of the party rendering the bill. Such billings, including surcharges, Equipment rental and other rates, will be based on cost, and such surcharges, Equipment rental and other rates will be subject to revision from time to time to reflect changes in costs. A one percent (1%) surcharge will be applied in lieu of the material surcharge in the billing party's standard billing practice to material placed under AFE or similar programmed work authority when the material is delivered to the job site from suppliers or processors such as rail welders or tie treaters and not from existing stock. Secondhand material prices, including, without limitation, rail, shall be equal to fifty percent (50%) of the cost

of new materials at the time the materials are applied to or released from the Joint Segment. Scrap materials shall be priced at the current market scrap prices received by BNSF at the time of removal from the Joint Segment. Determination of scrap versus secondhand material shall be consistent with the current accounting practices. For the purposes of this Section 3.7, salvage from track materials replaced in kind or the value thereof, less any amounts due Amtrak or Sound Transit, shall be apportioned on an annual GTM Handled Proportion basis for the calendar year immediately prior to the year in which salvage occurred.

3.8 UP and BNSF agree that any maintenance costs incurred on the Joint Segment shall be reduced by any amount paid by Sound Transit and Amtrak for maintenance of the Joint Segment, prior to apportionment of maintenance costs between UP, BNSF and any other user (other than Sound Transit and Amtrak) of the Joint Segment. BNSF and UP also agree, for purposes of maintenance and liability allocation, that any use of non-Joint Segment trackage in lieu of Joint Segment trackage shall be treated as if the Joint Segment had been utilized.

Section 4. COMPLIANCE WITH LAWS

4.1 With respect to operation of Equipment on the Joint Segment, each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances ("Standards"), and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly reimburse and indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall upon request of the other party defend such action free of cost, charge and expense to the other party.

4.2 Each party agrees to comply fully with all applicable Standards concerning "hazardous waste" and "hazardous substances" ("Hazardous Materials") and covenants that it shall not treat or dispose of Hazardous Materials on the Joint Segment. During Phase II, User further agrees to furnish Owner (if requested) with proof, satisfactory to Owner, that User is in such compliance.

In the event any accident, bad ordered Equipment, derailment, vandalism or wreck (for purposes of this Section 4.2 and 4.3 hereinafter called collectively "Derailment") involving Equipment of or a train operated by a party to this Agreement (the "Derailing Party" carrying Hazardous Materials shall occur on any segment of the Joint Segment, any report required by federal, state or local authorities shall be the responsibility of the Derailing Party. The Derailing Party shall also immediately advise the owner/shipper, and the other party to this Agreement, of the Hazardous Materials involved in the Derailment.

In the event of a Derailment on the Joint Segment, BNSF shall assume responsibility for the immediate emergency response to any release of Hazardous

Materials from Equipment on the Joint Segment in accordance with all federal, state, or local regulatory requirements. Each party may have representatives at the scene of the Derailment to observe and provide information and recommendations concerning the characteristics of Hazardous Materials release and the cleanup effort. Such costs shall be borne in accordance with Section 5 of these General Conditions.

If a Hazardous Materials release caused by a derailment involving Equipment of User, or on a train operated by User, results in contamination of real property or water on the Joint Segment or on real property or water adjacent to the Joint Segment (whether such real property or water is owned by Owner or a third party), BNSF shall assume responsibility for emergency cleanup conducted to prevent further damage. The Derailing Party shall be responsible for performing cleanup efforts thereafter. Any costs associated with cleaning up real property or water on or adjacent to the Joint Segment contaminated by Hazardous Materials shall be borne in accordance with Section 5 of these General Conditions.

If Hazardous Materials must be transferred to undamaged Equipment or trucks as a result of a release caused by a Derailment, the Derailing Party shall perform the transfer; PROVIDED, HOWEVER, that if the Hazardous Materials are in damaged Equipment that is blocking the Joint Segment, BNSF, at its option, may transfer the Hazardous Materials with any costs associated with such transfer borne in accordance with Section 5 of these General Conditions. Transfers of Hazardous Materials by the Derailing Party shall only be conducted after being authorized by BNSF.

4.3 The total cost of clearing a Derailment, cleaning up any Hazardous Materials released during such Derailment, and/or repairing the Joint Segment or any other property damaged thereby shall be borne by the party or parties liable therefor in accordance with Section 5 of these General Conditions.

4.4 In the event of release of Hazardous Materials caused by faulty Equipment or third parties, cleanup will be conducted as stated in Sections 4.2 and 4.3 of these General Conditions.

Section 5. LIABILITY

5.1 General. The provisions of this Section 5 shall apply only as between the parties hereto and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than the parties hereto. It is the explicit intention of the parties hereto that no person or entity other than the parties hereto is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, the parties hereto. Notwithstanding anything contained in this Section 5, no provisions hereof shall be deemed to deprive either party of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this Agreement as a result of the other party's failure to perform or observe any other

occurring on the Joint Segment and shall include liability for any and all claims, suits, demands, judgments and damages resulting from or arising out of such injury, death, loss or damage, except (other than as provided in Section 5.5(c)) liability for punitive and exemplary damages. Loss and/or Damage shall include all costs and expenses incidental to any claims, suits, demands and judgments, including attorneys' fees, court costs and other costs of investigation and litigation. Loss and/or Damage shall further include the expense of clearing wrecked or derailed Equipment and the costs of environmental protection, mitigation or clean up necessitated by such wreck or derailment and shall include any liabilities for any Third-Party claims for personal injury or death, property damage, natural resource damage, or any penalties, judgments or fines associated with a release of any contaminants resulting from such wreck or derailment;

- (f) Operating Employees of a party whose service may be jointly used by the parties hereto for the movement of trains over the Joint Segment, including, but not limited to, train dispatchers, train order operators, operator clerks and watchmen shall at the time of performing their services be deemed to be Sole Employees of the party hereto for whose benefit said services may be separately rendered (during the time they are so separately rendered) and be deemed to be Joint Employees of the parties hereto at such time as their services may be rendered for the parties' joint benefit;
- (g) All Employees, Equipment, tools and other equipment and machinery other than as described in (b), (c), (d) or (f) above or in Section 5.4 shall be deemed the Sole Employees of the employing party and the Sole Property of the using party;
- (h) "Joint Service Property" means the UP line between Argo, Washington in the vicinity of UP Milepost 179.7 and Black River, Washington in the vicinity of UP Milepost 173.1 and the BNSF line between Argo, Washington in the vicinity of BNSF Milepost 3.3x and Black River, Washington in the vicinity of BNSF Milepost 9.5x, including all rail facilities now or in the future located between the above-referenced mileposts, which include, without limitation, signals and signal systems, interlocking devices and plants, communication facilities, the Centralized Traffic Control system and other controls, main line and passing tracks, rights-of-way, terminal facilities, yards, buildings, improvements, and other rail facilities necessary and useful for Commuter Rail Service. A description of the "Joint Services Property" and accompanying map are attached hereto as Exhibit A-1. The term "Joint Service Property" shall not include spur tracks, lead tracks, industry tracks, or yard tracks or

any rail facilities located with rail yards that would not be directly used in operating Commuter Rail Service, unless said tracks are used in lieu of the Joint Service Property because of a service disruption or required maintenance of the Joint Service Property;

- (i) "BNSF Party" means one or more of (i) BNSF's officers, directors, employees, agents, or contractors while using or on the Joint Service Property, in connection with performing duties of any kind for BNSF, including, among others, performing duties related to the Joint Service Property, and excluding any such person who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, or (ii) persons (other than a Sound Transit Party or UP Party) receiving services of BNSF involving use of the Joint Service Property or on or using the Joint Service Property themselves under authority of or by agreement with BNSF;
- (j) "UP Party" means one or more of (i) UP's officers, directors, employees, agents, or contractors while using or on the Joint Service Property, in connection with performing duties of any kind for UP, including, among others, performing duties related to the Joint Service Property, and excluding any such person who is a fare paying passenger on board a passenger train operating in Commuter Rail Service, or (ii) persons (other than a Sound Transit Party or BNSF Party) receiving services of UP involving use of the Joint Service Property or on or using the Joint Service Property themselves under authority of or by agreement with UP;
- (k) "Sound Transit Party" means one or more of (i) Sound Transit's officers, directors, employees, agents or contractors while on or using the Joint Service Property or performing duties related to the Joint Service Property, or performing duties related to the provision of Commuter Rail Service, (ii) any passenger of a Sound Transit train (other than a BNSF Party or UP Party) while such passenger is on the Joint Service Property, or (iii) any other person (other than a BNSF Party or UP Party) at or proximate to a commuter rail station used by Sound Transit who is there for the purpose of (A) boarding or detraining from a Sound Transit train, meeting or accompanying a ticketed passenger or a person intending to become a ticketed passenger on a Sound Transit train, purchasing a Sound Transit commuter rail ticket, making a reservation for a Sound Transit train, attending a special event sponsored by or held on behalf of Sound Transit, or obtaining information about Sound Transit Commuter Rail Service or conducting business with Sound Transit, or (B) for the purpose of providing local transportation to or accompanying a person described in Subsection 4.1(d)(iii)(A), above. A BNSF Party shall not be considered a Sound Transit

Party for purposes of this Agreement, except and only to the extent that BNSF is performing duties and acting in its capacity as the Commuter Rail Service Provider. However, BNSF's and Sound Transit's rights, responsibilities and liabilities when BNSF is the Commuter Rail Service Provider shall continue to be governed by the Commuter Rail Service Agreement;

- (l) "Third Party" shall mean any person or entity other than (i) a party hereto, (ii) a Sole Employee of either party, (iii) a Joint Employee, (iv) an invitee of either party or (v) a Sound Transit Party;
- (m) Any railroad not a party to this Agreement heretofore or hereafter admitted to the use of any portion of the Joint Segment, shall, as between the parties hereto, be regarded in the same light as a Third Party. Without limiting the generality of the foregoing, neither of the parties hereto assumes any responsibility to the other under the provisions of this Agreement for any Loss and/or Damage occasioned by the acts or omissions of any employees of any such other railroad, or for any Loss and/or Damage which such other railroad shall be obligated to assume in whole or in part pursuant to law or any agreement relating to such other railroad's use of any portion of the Joint Segment;
- (n) For the purpose of this Section 5, Equipment of foreign lines being detoured over the Joint Segment, and all persons other than Joint Employees engaged in moving such Equipment, shall be considered the Equipment and Employees of the party hereto under whose detour agreement or other auspices such movement is being made.

5.3 The parties agree that:

- (a) Each party hereto shall pay promptly Loss and/or Damage for which such party shall be liable under the provisions of this Section 5, and shall indemnify the other party against such Loss and/or Damage, including reasonable attorneys' fees and costs. If any suit or suits shall be brought against either of the parties hereto and any judgment or judgments shall be recovered which said party is compelled to pay, and the other party shall under the provisions of the Agreement be solely liable therefor, then the party which is so liable shall promptly repay on demand to the other party paying the same any monies which it may have been required to pay, whether in the way of Loss and/or Damage, costs, fees or other expenses; and if the Loss and/or Damage in such case or cases is joint or allocated between the parties to the Agreement, the party defendant paying the same or any costs, fees or other expenses

shall be reimbursed by the other party as allocated pursuant to this Agreement;

- (b) Each party covenants and agrees with the other party that it will pay for all Loss and/or Damage, both as to persons and property, and related costs which it has herein assumed, or agreed to pay, the judgment of any court in a suit by Third Party or Parties to the contrary notwithstanding, and will forever indemnify and save harmless the other party, its successors and assigns, from and against all liability and claims therefor, or by reason thereof, and will pay, satisfy and discharge all judgments that may be rendered by reason thereof, and all costs, charges and expenses incident thereto;
- (c) Each party hereto shall have the sole right to settle, or cause to be settled for it, all claims for Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5, and the sole right to defend or cause to be defended all suits for the recovery of any such Loss and/or Damage for which such party shall be solely liable under the provisions of this Section 5;
- (d) User shall provide written notice to the other party of any accidents or events resulting in Loss and/or Damage within seven (7) days of its discovery or receipt of notification of such occurrence;
- (e) In the event both parties hereto may be liable for any Loss and/or Damage under the provisions of this Section 5 ("Co-Liable"), and the same shall be settled by a voluntary payment of money or other valuable consideration by one of the parties Co-Liable therefor, release from liability shall be taken to and in the name of all the parties so liable; however, no such settlement in excess of the sum of One Hundred Thousand Dollars (\$100,000) shall be made by or for any party Co-Liable therefor without the written consent of the other party so liable, but any settlement made by any party in consideration of One Hundred Thousand Dollars (\$100,000) or a lesser sum shall be binding upon the other party and allocated in accordance with Section 5.5; and no party shall unreasonably withhold its consent to a settlement proposed by the other party; provided, however, that failure by a party to secure consent from the other shall not release such other party to the extent the party who failed to obtain such consent demonstrates that the other party was not prejudiced by such failure.
- (f) In case a claim or suit shall be commenced against either party hereto for or on account of Loss and/or Damage for which the other party hereto is or may be solely liable or Co-Liable under the

provisions of this Section 5, the party against whom such claim or suit is commenced shall give to such other party prompt notice in writing of the pendency of such claim or suit, and thereupon such other party shall assume or join in the defense of such claim or suit as follows: If the claim or suit involves Loss and/or Damage to the Sole Employees or Sole Property of a party or its invitee or property in its care, custody or control, that party shall assume and control the investigation and defense of such claim or suit; if the claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Segment, the party whose Sole Employees or Equipment were involved in the incident shall investigate and defend such claim or suit; and if such claim or suit involves Loss and/or Damage to Third Parties, Joint Employees or the Joint Segment and neither or both party's Equipment and Sole Employees were involved in the incident, BNSF shall investigate and defend such claim or suit unless resulting from an incident covered under Section 5.5(c) in which case said Section shall govern; provided that the other party also may participate in the defense of any of the foregoing if it may have liability as a result of such incident;

- (g) No party hereto shall be conclusively bound by any judgments against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

5.4 The cost and expense of repairing bad ordered Equipment, clearing wrecks or otherwise disabled Equipment or rerailing Equipment (and the costs of repair or renewal of damaged Joint Segment or adjacent properties) shall be borne by the party whose Equipment was wrecked, disabled, or derailed. All Employees or Equipment, while engaged in, en route to or from, or otherwise incident to operating wrecker or work trains clearing wrecks, disabled Equipment or derailments or engaged in repair or renewal of the Joint Segment subsequent to any such wreck, disability or derailment, shall be deemed to be Sole Employees and/or Sole Property of the party whose Equipment was wrecked, disabled or derailed. However, such Employees or Equipment, while en route from performing such clearing of wrecks, disabled Equipment or derailments or repairing or renewing the Joint Segment to perform another type of service, shall not be deemed to be performing service incident to the instant wreck, disability or derailment.

5.5 Allocation.

- (a) Each party shall bear all costs of Loss and/or Damage to its Sole Employees or its Sole Property, or property in its care, custody or control or its invitees without regard to which party was at fault (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property).
- (b) ~~Loss and/or Damage to Third Parties or their property (other than Third Parties involved in any crossing accident on the Joint Segment), to Joint Employees or their property or to Joint Property shall be borne by the parties hereto as follows:~~
 - (i) If the Loss and/or Damage is attributable to the acts or omissions of only one party hereto, or only one party is involved (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property), that party shall bear and pay all of such Loss and/or Damage.
 - (ii) If such Loss and/or Damage is attributable to the acts or omissions of more than one party hereto, or occurs in such a way that it cannot be determined how such Loss and/or Damage came about, except as provided for in Section 5.5, paragraph (c), such Loss and/or Damage (whether or not contributed to by acts or omissions of Joint Employees or defect in Joint Property) shall be apportioned between the two (2) parties to this Agreement on a usage basis considering each party's gross ton miles over the Joint Segment for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of this Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of this Agreement. During Phase II operations, User shall not bear or incur any liability for claims, suits, demands, judgements, losses or damages resulting from environmental contamination of or hazardous material on or released from the Joint Trackage, except contamination or a release of hazardous materials from User's own Equipment or caused by or arising from the actions or omissions of User or User's Employees, and then only in accordance with the other provisions hereof.

- (iii) If such loss and/or damage occurs to Joint Employees or their property or to Joint Property in the normal course of business, such as, but not limited to, routine maintenance activities, track program activities and similar day to day activities, including travel to and from work areas, such Loss and/or Damage shall be borne and paid on a usage basis considering each party's gross ton miles over the Joint Segment for the preceding twelve (12) months or, if such Loss and/or Damage occurs during the first twelve (12) months following the effective date of this Agreement, the usage of each party between the occurrence of such Loss and/or Damage and the effective date of this Agreement.
- (c) Loss and/or Damage involving i) a Sound Transit Party or ii) occurs in a way that that it cannot be determined how such loss and damage came about but could have involved a Sound Transit Party, shall be determined in accordance with the Joint Facility Use Agreement Between Sound Transit, BNSF and UP dated March 29, 2002.
- (d) As to claims by Third Parties against either party hereto for grade crossing accidents, it is understood and agreed that a number of vehicular crossings of the Joint Segment presently exist, or may be constructed. Each party agrees to accept all crossings in whatever condition they may be during the term of this Agreement, and that neither party will assert any claim, demand or cause of action against the other party hereto that a crossing is inadequate, defective, or extra hazardous. In any crossing accident on the Joint Segment in which only one party's Sole Property is involved, that party will investigate, defend, indemnify, and hold harmless the other from and against any claim, demand or cause of action by any Third Party for actual damages arising out of the crossing accident on the Joint Segment.

5.6 THE PARTIES EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS AGREEMENT, SUCH INDEMNITY SHALL INCLUDE (1) INDEMNITY FOR THE NEGLIGENCE OR ALLEGED NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE LOSS OR DAMAGE; AND (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY, INCLUDING BUT NOT LIMITED TO THE FEDERAL EMPLOYERS LIABILITY ACT ("FELA"), THE SAFETY

APPLIANCE ACT, THE BOILER INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT ("OSHA"), THE RESOURCE CONSERVATION AND RECOVERY ACT ("RCRA"), THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT ("CERCLA"), THE CLEAN WATER ACT ("CWA"), THE OIL POLLUTION ACT ("OPA"), AND ANY SIMILAR STATE STATUTE IMPOSING OR IMPLEMENTING SIMILAR STANDARDS.

Section 6. ARBITRATION

6.1 If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement upon which the parties cannot agree, such question or controversy shall be submitted to and settled by arbitration. Unless other procedures are agreed to by the parties, arbitration between the parties pursuant to this Section 6 shall be governed by the rules and procedures set forth in this Section 6.

6.2 If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within twenty (20) days after written notice by one party of its desire for arbitration to the other party, then the question or controversy shall be submitted to and settled by that single arbitrator. Otherwise, any party (the notifying party) may notify the other party (the noticed party) in writing of its request for arbitration and nominating one arbitrator. Within twenty (20) days after receipt of said notice, the noticed party shall appoint an arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within twenty (20) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the American Arbitration Association ("AAA"), using a selection process that considers candidates with experience with respect to the issue to be arbitrated. The two arbitrators so chosen shall select one additional arbitrator to complete the board. If the arbitrators so chosen fail to agree upon an additional arbitrator, the same shall, upon application of a party, be appointed by said AAA in the manner heretofore stated.

6.3 Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence, determine the questions as disclosed in said notice of arbitration, shall give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, may take such evidence as the arbitrator(s) shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If an arbitrator declines or fails to act, the party (or parties in the case of a single arbitrator) by whom the arbitrator was chosen or said AAA selection process shall appoint another to act in the arbitrator's place.

6.4 After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly state such decision or award and the reasoning for such decision or award in writing which shall be final, binding, and conclusive on all parties to the arbitration when delivered to them. The award rendered by the arbitrator(s) may be entered as a judgment in any court having

jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, the same as entered by the court at the conclusion of a judicial proceeding in which no appeal was taken. Until the arbitrator(s) shall issue the first decision or award upon any question submitted for arbitration, performance under the Agreement shall continue in the manner and form existing prior to the rise of such question. After delivery of said first decision or award, each party shall forthwith comply with said first decision or award immediately after receiving it.

6.5 Each party to the arbitration shall pay all compensation; costs, and expenses of the arbitrator appointed in its behalf and all fees and expenses of its own witnesses, exhibits, and counsel. The compensation, cost, and expenses of the single arbitrator or the additional arbitrator in the board of arbitrators shall be paid in equal shares by all parties to the arbitration.

6.6 The parties may obtain discovery and offer evidence in accordance with the Federal Rules of Civil Procedure Rules 26 - 37, and Federal Rules of Evidence, as each may be amended from time to time.

6.7 Interest computed annually, at a rate equal to the Prime Rate plus two (2) percentage points, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision. The term "Prime Rate" shall mean the minimum commercial lending rate charged by banks to their most credit-worthy customers for short-term loans, as published daily in the Wall Street Journal.

Section 7. GOVERNMENTAL APPROVAL AND ABANDONMENT

7.1 BNSF and UP shall, at their respective cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by User thereunder. BNSF and UP agree to cooperate fully to procure all such necessary consent, approval or authority.

7.2 In the event Owner shall be involuntarily dispossessed, including by threat of condemnation by competent public authority, of the right to operate upon and maintain any portion of its Joint Segment and Owner fails or declines to replace said Joint Segment, Owner shall have no obligation hereunder to provide tracks in replacement of such Joint Segment for User's use, and User shall have and shall make no claim of any kind, legal or otherwise, against Owner for failure to provide such Joint Segment for User's use.

7.3 To the extent that Owner may lawfully do so, Owner reserves to itself the exclusive right, exercisable at any time during the life of the Agreement without concurrence of User, to elect to abandon all or any part of the Joint Segment by giving six (6) months' prior written notice to User of its intention so to do ("Notice of

Abandonment"). Owner shall, concurrent with its Notice of Abandonment, if legally able to do so, give to User the option to purchase the part or parts of the Joint Segment thereof to be abandoned at the Net Liquidation Value thereof, on the date of said notice. "Net Liquidation Value" shall mean fair market value of land and salvage value of track components and other facilities less estimated cost of removal. User shall have three (3) months from the date of receipt of Owner's notice to exercise its option and shall evidence the exercise of its option by giving Owner written notice thereof. Thereafter User shall immediately make appropriate application to secure all necessary governmental authority for such transaction. Within thirty (30) days following the effective date of all requisite governmental approval of the transaction, User shall pay to Owner the amount of money required to purchase said Joint Segment to be abandoned at the aforesaid Net Liquidation Value. Upon the receipt of payment of such sum, the Agreement shall terminate as to the part of the Joint Segment so purchased by User. Contemporaneously with such payment, by instrument or instruments, Owner shall convey and assign by good and sufficient quit claim deed or deeds, bills of sale or other instruments, all of Owner's right, title, interest and equity, in and to the Joint Segment so purchased. Owner agrees that it shall promptly take all necessary action to obtain from the trustees of its mortgages all releases or satisfactions covering the same and shall deliver to User such instruments.

If User fails to exercise the option herein granted within the time and in the manner above specified, Owner may forthwith proceed free of all obligation to User to abandon the portion of Joint Segment or make appropriate application, if necessary, to secure all necessary governmental authority for such abandonment. User agrees that at such time it shall concurrently make application for all necessary governmental authority for abandonment of its right to operate over such Joint Segment. The Agreement shall terminate as to the section of Joint Segment so abandoned upon the effective date of such approval by governmental authority.

7.4 Owner and User each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated companies) including any amounts that either Owner or User may be required to pay to its own respective employees pursuant to labor protective conditions imposed by the STB.

Section 8. SECTION HEADINGS

All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Section 9. TERM

9.1 The Agreement shall be effective upon the date of execution ("Effective Date") and shall be co-terminus with the Commuter Rail Service Agreement Between Central Puget Sound Regional Transit Authority and The Burlington Northern and Santa Fe Railway Company, dated May 2, 2000 which has a term of 40 years from its effective

date, which is however, subject to prior termination if certain conditions are not met as outlined in Section 7 C of the Agreement. If Phase III construction is completed and the parties execute a Property Exchange Agreement, the term of the Agreement shall be extended for a term of ninety-nine (99) years from the date of execution of the Property Exchange Agreement. Liabilities created under this Agreement, if it becomes effective and is later terminated, shall survive such termination.

9.2 Upon termination of the Agreement, or any partial termination, as the applicable case may be, however the same may occur, User shall be released from any and all manner of obligations and shall be deemed to have forever relinquished, abandoned, surrendered and renounced any and all right possessed by User to operate over that part of the Joint Segment to which such termination applied, and as to such part, User shall forever release and discharge Owner of and from any and all manner of obligations, claims, demands, causes of action, or suits which User might have, or which might subsequently accrue to User growing out of or in any manner connected with, directly or indirectly, the contractual obligations of Owner under the Agreement, in all events provided, however, the aforesaid relinquishment, abandonment, surrender, renunciation, release and discharge by User shall not in any case affect any of the rights and obligations of either Owner or User which may have accrued, or liabilities accrued or otherwise, which may have arisen prior to such termination or partial termination. Upon any termination, Owner shall remove from Owner's right of way any connecting track, and any exclusive facility of User, at User's expense with salvage to be delivered to and retained by User. Upon any partial termination of the Agreement, however the same may occur, the terms and conditions hereof shall continue and remain in full force and effect for the balance of the Joint Segment.

(9.3) On the date that BNSF commences dispatching the Joint Segment as outlined in Section 5, the parties shall toll the following agreements:

- (a) Argo Interlocking
- (b) Black River Interlocking (south)

Section 10. ASSIGNMENT

Except as provided in Section 3.5 and in the sentence immediately following, the Agreement and any rights granted hereunder may not be assigned in whole or in part by Owner or User without the prior written consent of the other. The Agreement may be assigned by Owner or User without the prior written consent of the other only (i) as a result of a merger, corporate reorganization, consolidation, change of control or sale of substantially all of its assets, or (ii) to an affiliate of the assigning party where the term "affiliate" means a corporation, partnership or other entity controlled, controlling or under common control with the assigning party. In the event of an authorized assignment, the Agreement and the operating rights hereunder shall be binding upon the successors and assigns of the parties.

This Agreement and each and every provision hereof is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against either of the parties hereto.

Section 11. DEFAULT

11.1 Notwithstanding the provisions of Section 3 of these General Conditions, either party hereto claiming default of any of the provisions of the Agreement (including these General Conditions) shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of the Agreement claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular Section or Sections of the Agreement under which such claim of default is made.

11.2 If the default shall continue for an additional period of thirty (30) days after receipt of such written notice and demand, and such default has not been remedied within said thirty (30) day period, or reasonable steps have not been nor continue to be taken to remedy a failure or default which cannot reasonably be remedied within said thirty (30) day period, and such default relates to the provisions and terms of the Agreement, either party shall resort to binding arbitration provided that the arbitrator shall not have the authority to amend, modify or terminate the Agreement.

11.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to effect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

Section 12. NOTICES

All notices, demands, requests, submissions and other communications which are required or permitted to be given pursuant to this Agreement shall be given by either party to the other in writing and shall be deemed properly served if delivered by hand, or mailed by overnight courier or by registered or certified mail, return receipt requested, with postage prepaid, to such other party at the address listed below:

If intended for UP:

Executive Vice President-Operation
Room 1206
1416 Dodge Street
Omaha, Nebraska 68179

With a copy to:

Director Joint Facilities
Room 1200
1416 Dodge Street
Omaha, Nebraska 68179

If intended for BNSF:

Executive Vice-President & COO
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

With a copy to:

AVP Joint Facilities
2600 Lou Menk Drive
P.O. Box 961034
Fort Worth, Texas 76161-0034

Notice of address change may be given any time pursuant to the provisions of this Section 12.

Section 13. OTHER CONSIDERATIONS

13.1 The Agreement, and each and every provision hereof, is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

13.2 If any covenant or provision of the Agreement not material to the right of User to use the Joint Segment shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of the Agreement be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of the Agreement.

13.3 In the event there shall be any conflict between the provisions of these General Conditions and the Agreement, the provisions of the Agreement shall prevail, except that the definition of Joint Segment set forth in Section 1.8 of these General Conditions shall prevail.

13.4 All section headings are inserted for convenience only and shall not affect any construction or interpretation of the Agreement.

13.5 Reference to any agency or other organization shall include any successor agency or organization, and reference to any index or methodology (e.g., RCAF-U, URCS, etc.), if such index or methodology ceases to exist or is no longer available, shall include any substantially similar index or methodology selected by the parties or, if the parties fail to agree on such, one determined by binding arbitration under Section 6 of these General Conditions.

Section 15. LAWS GOVERNING

This Agreement shall be interpreted in accordance with the laws of the State of Washington.

Section 16. ENTIRETY, AMENDMENTS, AND WAIVERS

~~16.1 This Agreement is entered into to implement the provisions of the Amended and Restated MOU. The provisions of the Amended and Restated MOU shall govern in the event of any conflict with the provisions of this Agreement. All amendments, supplements, modifications to and waivers of the terms of this Agreement shall be in writing and signed by the parties hereto.~~

16.2 The failure of either party hereto to insist in any one or more instances upon strict performance of any of the obligations of the other pursuant to this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of the performance of any such obligations or the relinquishment of any such rights for the future, but the same shall continue and remain in full force and effect.

16.3 Once construction of Phase III of the Sound Transit Project is complete, the parties shall toll the following agreements until this agreement terminates or is cancelled:

- (c) Argo Interlocking
- (d) Black River Interlocking (south)

Section 17. GOVERNMENTAL APPROVAL

BNSF and UP shall, at their joint cost and expense, initiate by appropriate application or petition and thereafter diligently prosecute proceedings for the procurement of all necessary consent, approval or authority from any governmental agency for the sanction of the Agreement and the operations to be carried on or conducted by the parties thereunder. BNSF and UP agree to cooperate fully to procure all such necessary consent, approval or authority.

END OF EXHIBIT "B"