



Kirkpatrick & Lockhart
Nicholson Graham LLP



October 25, 2006

Hand Delivered

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

ENTERED
Office of Proceedings

OCT 26 2006

Part of
Public Record

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Re: **Finance Docket No. 34810**
WASHINGTON COUNTY, OREGON-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF THE UNION PACIFIC RAILROAD COMPANY

217956

Finance Docket No. 34791
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF
OREGON -- ACQUISITION EXEMPTION -- CERTAIN ASSETS OF
WASHINGTON COUNTY, OREGON

21757

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceedings are an original and ten copies of the **Verified Notice of Exemption of Washington County, Oregon, Verified Notice of Exemption of Tri-County Metropolitan Transportation District of Oregon**, and a **Motion to Dismiss the Verified Notices of Exemption**, dated October 25, 2006. Two checks in the amount of \$1,500.00 each, representing the appropriate fees for the filings, are also enclosed.

Washington County, Oregon ("County") and Tri-County Metropolitan Transportation District of Oregon ("TriMet") respectfully request waiver under 49 C.F.R. §1002.2(e) of the \$1,500 filing fees. County is a political subdivision of the State of Oregon. TriMet is a municipal corporation providing public transportation for the Portland, Oregon metropolitan area. Under 49 C.F.R. §1002.2(e)(1), "filing fees are waived for an application or other proceeding which is filed by a federal governmental agency, or a state or local government entity." County and TriMet respectfully submit that they are each entitled to the fee waiver under 49 C.F.R. §1002.2(e)(1). Neither County nor TriMet is a quasi-government corporation or government-subsidized transportation company. As part of its public mandate, County is seeking Board

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authority to acquire right-of-way and appurtenances from Union Pacific Railroad Company ("UP") in order to transfer same to TriMet so that TriMet may conduct passenger rail operations thereon in the future. County and TriMet filed notices of exemption at issue in furtherance of this public purpose, and have filed a motion to dismiss the notices in order to obtain a jurisdictional determination that they are not subject to Board jurisdiction. The benefits from participation in this proceeding will flow to the general public in the State of Oregon. For the above reasons, County and TriMet submit that they are entitled to a waiver and refund of the filing fee. In addition, please note that we are requesting expedited consideration for the Motion for the reasons set forth therein.

Please acknowledge receipt of this filing by countersigning the attached copy of this letter.

Should any questions arise regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,



Janie Sheng
**ATTORNEY FOR WASHINGTON COUNTY,
OREGON and TRI-COUNTY
METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON**

Enclosures

BEFORE THE
SURFACE TRANSPORTATION BOARD



FINANCE DOCKET NO. 34810

217956

WASHINGTON COUNTY, OREGON
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF THE UNION PACIFIC RAILROAD COMPANY

AND

FINANCE DOCKET NO. 34791

217957

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF THE UNION PACIFIC RAILROAD COMPANY

**WASHINGTON COUNTY, OREGON AND
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
JOINT MOTION TO DISMISS NOTICES OF EXEMPTION**

EXPEDITED CONSIDERATION REQUESTED

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**ATTORNEYS FOR WASHINGTON COUNTY,
OREGON AND TRI-COUNTY
METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON**

Dated: October 25, 2006

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34810

WASHINGTON COUNTY, OREGON
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF THE UNION PACIFIC RAILROAD COMPANY

AND

FINANCE DOCKET NO. 34791

TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
-- ACQUISITION EXEMPTION --
CERTAIN ASSETS OF THE UNION PACIFIC RAILROAD COMPANY

**WASHINGTON COUNTY, OREGON AND
TRI-COUNTY METROPOLITAN TRANSPORTATION DISTRICT OF OREGON
JOINT MOTION TO DISMISS NOTICES OF EXEMPTION**

I. INTRODUCTION

Upon completion of three transactions described below, Tri-County Metropolitan Transportation District of Oregon ("TriMet") will acquire ownership of a rail line and right-of-way and use it for passenger rail service. Portland & Western Railroad, Inc. ("P&W") will acquire a freight railroad operating easement and continue its present freight common carrier operations. TriMet and Washington County, Oregon ("County"), whose interest is described below, seek to dismiss their Notices of Exemption to acquire the underlying physical assets to acquire the Subject Line (as defined below).

First, County will acquire from Union Pacific Railroad Company ("UP") its right, title and interest in the right-of-way, trackage and other physical assets of approximately

EXPEDITED CONSIDERATION REQUESTED

5 route miles of railroad line from approximately milepost 749.95 to approximately milepost 755.43, and related trackage located in Washington County within the State of Oregon (the "Subject Line") pursuant to a Purchase and Sale Agreement.¹ Second, UP will retain a permanent and exclusive freight rail operating easement and any attendant freight rail common carrier obligations on the Subject Line (the "Freight Easement"),² and then transfer the Freight Easement to P&W. Third, County will transfer by quitclaim deed its right, title and interest in the Subject Line to TriMet.³ (The first and third transactions described above shall be referred to herein collectively as the "Transactions"). P&W currently provides freight rail service on the Subject Line pursuant to a lease with UP. Freight operations on the Subject Line will continue to be conducted by P&W pursuant to the Freight Easement and a Shared Use Agreement ("SUA") between TriMet and P&W.⁴ Neither County nor TriMet will acquire the right or obligation to conduct any freight rail operations of any kind on the Subject Line.

County has filed a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.31, et. seq. in STB Finance Docket No. 34810 to acquire the underlying physical assets that constitute the Subject Line from UP, and TriMet has filed Notice to acquire the same

¹ A copy of the form Quitclaim Deed to be delivered at closing pursuant to the terms of the Purchase and Sale Agreement entered into by UP and County, is attached hereto as Exhibit A.

² The Freight Easement is reserved in the Quitclaim Deed.

³ TriMet will not acquire the Subject Line directly from UP because County previously has negotiated and agreed upon the terms and conditions of the sale, and County will transfer the Subject Line to TriMet once the sale is consummated.

⁴ A shared use agreement between County and P&W currently is in place, effective as of November 21, 2005, and will terminate with the execution of the Shared Use Agreement between TriMet and P&W.

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from County in STB Finance Docket No. 34791 (collectively the “Notices”).⁵ County and TriMet (collectively the “Buyers”) hereby move the Board to dismiss the Notices. The Buyers submit that because of the nature and terms of the proposed Transactions as described in the Notices and this Joint Motion to Dismiss, the Transactions are not subject to Board jurisdiction and consummation of them will not make either County or TriMet a rail carrier as a result of their ownership of the underlying physical assets that constitute the Subject Line.⁶ The Transactions will not have any effect on current or future freight rail operations on the Subject Line.

II. STATEMENT OF FACTS

County is a political subdivision of the State of Oregon, and is currently a non-carrier. TriMet is a municipal corporation providing public transportation for much of the three counties in the Portland, Oregon metropolitan area, and is currently a non-carrier. UP is a corporation organized under the laws of Delaware. The Buyers do not conduct and have no plans to conduct freight rail operations. The purpose of the Transactions is to convey ownership of the underlying physical assets that constitute the Subject Line ultimately to TriMet subject to P&W's retention of an exclusive and perpetual freight rail operating easement that will enable P&W to continue providing common carrier freight rail service on the Subject Line.

⁵ P&W has filed or soon will file a Verified Notice of Exemption pursuant to 49 C.F.R. § 1150.41, and upon its effectiveness, will acquire the Freight Easement from UP. See Finance Docket No. 34792.

⁶ Neither County nor TriMet is a carrier subject to Board jurisdiction as a result of their rail passenger operations because both are local governmental authorities that have the authority to provide mass transportation. See 49 U.S.C. §10501(c).

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Under the Purchase and Sale Agreement entered into by and between County and UP, County will acquire UP's right, title and interest in the right-of-way, trackage and other physical assets associated with the line of railroad extending between approximately milepost 749.95 and approximately milepost 755.43, in Washington County, Oregon. UP will retain an exclusive and perpetual freight easement, and then transfer that easement to P&W. See Exhibit A, Quitclaim Deed. County will quitclaim its right, title and interest to the Subject Line to TriMet.

As noted above, TriMet and P&W will enter into a Shared Use Agreement, which governs their respective operations on (among other rail lines) the Subject Line. See Exhibit B. The terms of the SUA ensure that TriMet will not materially interfere with freight rail operations on the Subject Line. The parties do not anticipate that the Transactions will have any effect on those freight railroad operations, which will continue to be conducted by P&W pursuant to a grant of Freight Easement from UP to P&W. The SUA stipulates that TriMet will have no right or obligation to conduct freight rail service of any kind on the Subject Line. See SUA, Section 2.1(b). TriMet will have the right to use the Subject Line for passenger rail purposes only. See SUA, Section 2.2(a).

P&W will have the exclusive right and obligation to provide local and overhead freight rail service to current and future freight rail shippers, receivers, consignees, and other entities located on the Subject Line or those seeking freight rail service over or on the Subject Line. See SUA, Section 2.1(a). P&W will have the exclusive right to use the Subject Line to provide such freight rail services. See id.

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P&W will have the right to design and construct capital improvements on the Subject Line, so long as they do not materially interfere with TriMet's passenger service. See SUA, Section 2.4(a).

P&W (or an affiliate) will control all dispatching of any and all trains and equipment on the Subject Line. See SUA, Section 3.1(a). P&W will have all maintenance responsibilities (including repair and renewal) of the joint trackage between Wilsonville and Beaverton, until such time P&W wishes to transfer maintenance responsibility to TriMet. In the event of transfer, TriMet will be responsible for maintenance of the Subject Line to a standard not less than the existing standard recorded in a joint inspection conducted before transfer of maintenance responsibilities. See SUA, Section 4.1.

Overall, the Purchase and Sale Agreement, Quitclaim Deed, Freight Easement and SUA will give the Buyers the property and contract rights they require to operate passenger rail service on the Subject Line. However, UP will retain and then transfer to P&W the property and contract rights necessary to conduct common carrier freight rail operations on the Subject Line. As a result, P&W will have the exclusive right and obligation to provide local and overhead freight rail service on the Subject Line. The SUA gives P&W the right to make capital improvements, dispatch trains and maintain the Subject Line (or ensure that TriMet maintains the Subject Line) to a prescribed standard. The Buyers will be expressly prohibited from conducting or authorizing any third party to conduct rail freight operations on the Subject Line, and neither will hold itself out as willing or able to do so.

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III. ARGUMENT

Under 49 U.S.C. Section 10901, the Board has exclusive jurisdiction over the acquisition of a railroad line by a non-carrier (including public entities such as County and TriMet), where common carrier rights and obligations also are being transferred. Common Carrier Status of States, State Agencies, 363 I.C.C. 132, 133 (1980), aff'd sub nom. Simmons v. ICC, 697 F.2d 326 (D.C. Cir. 1982). Whether a particular transaction is an acquisition of a railroad line subject to Board jurisdiction depends on whether the acquiring entity is holding itself out to provide common carrier rail service and has the ability to provide common carrier rail service. Status of Bush Universal, Inc., 342 I.C.C. 550, 564 (1973). This is an objective test; the Board (like the former Interstate Commerce Commission ("ICC")) looks at what the acquiring entity will do as opposed to how it labels itself. Los Angeles County Transportation Commission -- Petition for Exemption -- Acquisition from Union Pacific Railroad Company, Finance Docket No. 32374 (STB served July 23, 1996); see United States v. California, 297 U.S. 175, 181 (1936).

Subtitle IV of Title 49 defines "railroad" to include "the road used by a rail carrier and owned by it or operated under an agreement" 49 U.S.C. § 10102(6)(B). It defines "rail carrier" as a "person providing common carrier railroad transportation for compensation" 49 U.S.C. § 10102(5). A typical §10901 acquisition line includes the conveyance of a property interest sufficient to permit the buyer to provide (or at least control) railroad transportation for compensation, and that interest forms the basis of the Board's jurisdiction over the transaction and the buyer. However, the Board (like the former ICC) has consistently recognized that under certain circumstances the

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acquisition of the physical assets of a rail line is not subject to its jurisdiction and does not make the buyer a rail carrier. Such precedent is applicable to and should govern this transaction.

In State of Maine, Department of Transportation -- Acquisition and Operation Exemption -- Maine Central Railroad Company, 8 I.C.C.2d 835 (1991) ("State of Maine"), the State of Maine, acting by and through its Department of Transportation ("MDOT"), sought an exemption to acquire certain railroad right-of-way and trackage from Maine Central Railroad Company ("MEC"), subject to MEC's retained easement for common carrier railroad operations. MDOT acquired the line for possible establishment of a public transit system using the acquired assets. MEC's retained easement included access rights for maintenance and renewal of the line and was permanent. As a result, MDOT's acquisition of the line's underlying physical assets did not impair freight railroad operations. The ICC found that no common carrier rights or obligations were transferred to MDOT, because nothing in the transaction disabled MEC's affiliate and lessee, Springfield Terminal Railroad ("STR"), from meeting its common carrier obligations, and STR could not cease to offer service on the line without ICC approval. For these reasons, the ICC saw "no reason to impose upon the purchaser of the underlying rail assets an additional common carrier obligation." State of Maine, 8 I.C.C.2d at 837.

In State of Georgia, Department of Transportation -- Acquisition Exemption -- Georgia Southwestern Railroad, Inc., Finance Docket No. 33876 (STB served July 7, 2000), the State of Georgia, acting by and through its Department of Transportation ("GDOT"), filed a motion to dismiss its notice of exemption for the acquisition of certain

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railroad assets, including rail line owned by Georgia Southwestern Railroad, Inc. ("GSRW"). Pursuant to an agreement with GSRW, GDOT acquired the rail line, but not the right or obligation to conduct common carrier freight operations on the line. Instead, pursuant to a separate easement agreement, Heart of Georgia Railroad, Inc. ("HOG") acquired an exclusive rail freight service easement over the line from GSRW.

The Board specifically noted that "under the easement agreement, HOG has the ability to provide unrestricted freight service as a railroad common carrier over the line." The Board also noted that "HOG's easement agreement enables it to carry out its common carrier obligation and gives it more than sufficient power over the operation and maintenance of the line to avoid any undue interference by GDOT." The Board acknowledged that based upon the representations made by the parties, GDOT would not conduct any freight rail operations over the line or hold itself out to do so. Accordingly, the Board held that the proposed transaction did not require Board approval and granted GDOT's motion to dismiss the notice of exemption.⁷

In State of Wisconsin Department of Transportation – Petition for Declaratory Order, Finance Docket No. 34181 (STB served August 1, 2002), the State of Wisconsin Department of Transportation ("WisDOT") requested a declaratory order to determine whether the Board had jurisdiction over its acquisition of certain specified railroad right-of-way and improvements from the Wisconsin and Southern Railroad Company ("WSOR"). Pursuant to the acquisition transaction, WisDOT would exercise an option to acquire the real estate and improvements on a line of railroad operated by WSOR, but

⁷ See also State of Georgia, Department of Transportation – Acquisition Exemption – South Carolina Central Railroad, Inc., Finance Docket No. 34057 (STB served April 30, 2002).

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would not assume the common carrier obligation to operate the rail line. Instead, WSOR would retain a perpetual easement to operate freight rail service on the rail line.⁸

The STB noted that pursuant to the acquisition transaction, no common carrier obligations were being transferred and that WisDOT would not hold itself out as a common carrier performing rail freight service. The STB acknowledged that WSOR would retain all common carrier rights and obligations by virtue of its perpetual easement for freight rail operations. Therefore, the STB concluded that as a result of the acquisition transaction, there would be no alteration of any common carriers rights or obligations, and therefore STB approval was not required.

Taken together, State of Maine and subsequent cases establish that an entity may acquire the physical assets of a rail line without becoming a carrier, provided that another entity retains sufficient interest to operate as a rail carrier on the line and has autonomy to conduct common carrier freight rail operations. Stated somewhat differently, if an acquisition of a rail line is subject to the existing operating interests of a common carrier and the acquiring entity does not have the ability to materially interfere with the carrier's operations, the acquiring company is not a common carrier subject to Board jurisdiction.

The Transactions described herein are similar in all material respects to the transactions in the State of Maine case and the other cases discussed above. The Buyers will acquire certain real property and related improvements, but will not acquire the property and contractual rights necessary to conduct or control common carrier

⁸ The option was included in an operating agreement between WSOR and Wisconsin River Rail Transit Commission ("WRRTC") that gave WRRTC the right to contract for commuter rail service on the line.

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freight rail operations on the Subject Line. The Buyers will be permitted to operate rail passenger service over the Subject Line, but will not be allowed to provide rail freight service of any kind. P&W will have the exclusive and perpetual right to provide or permit rail freight service on the Subject Line.

P&W will have the right to make capital improvements on the Subject Line, will have exclusive dispatching control and either will maintain the Subject Line or will have rights under the SUA to ensure that TriMet properly maintains the Subject Line.

In summary, the Buyers' acquisition of the underlying physical assets of the Subject Line will not constitute an acquisition of lines of railroad subject to the Board's jurisdiction. The Buyers' ownership interests in those assets will not make either of the Buyers a common carrier subject to STB jurisdiction. The Buyers will not conduct freight rail operations on the Subject Line and neither will hold itself out as willing or able to do so.

IV. EXPEDITED CONSIDERATION REQUESTED

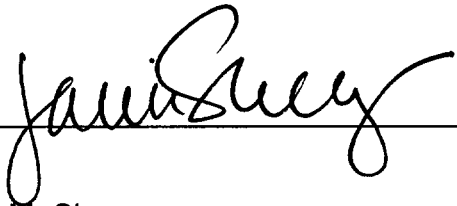
County and TriMet seek expedited consideration of this motion by the Board. The parties intend to consummate the transaction that is the subject of this proceeding on November 27, 2006. Negotiations pertaining to the transaction were prolonged and the parties did not want to make the required Board submissions until they were confident that the transaction could close. In order to fully understand the consequences of this transaction, County and TriMet respectfully request that the Board issue and serve a decision that is effective on or before November 24, 2006 so that the parties may have the Board's jurisdictional determination in advance of closing, but in any event the parties will not close before a determination is made.

EXPEDITED CONSIDERATION REQUESTED

V. CONCLUSION

For the reasons set forth above, County and TriMet respectfully request that the Board dismiss their Verified Notices of Exemption for lack of jurisdiction.

Respectfully submitted,

By: 

Kevin M. Sheys
Janie Sheng
Kirkpatrick & Lockhart Nicholson Graham LLP
1601 K Street, NW
Washington, D.C. 20006
(202) 778-9000

**ATTORNEYS FOR WASHINGTON COUNTY,
OREGON AND TRI-COUNTY
METROPOLITAN TRANSPORTATION
DISTRICT OF OREGON**

Dated: October 25, 2006

EXPEDITED CONSIDERATION REQUESTED

LIST OF EXHIBITS

Exhibit A

Quitclaim Deed

Exhibit B

DRAFT Shared Use Agreement

EXHIBIT A

Quitclaim Deed

**EXHIBIT B TO PURCHASE AND SALE AGREEMENT
(WASHINGTON COUNTY, OREGON)**

QUITCLAIM DEED

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Washington County, Oregon

Attention: _____

(Space above line for Recorder's use only)

QUITCLAIM DEED

UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Grantor") releases and quitclaims to WASHINGTON COUNTY, OREGON, a political subdivision of the State of Oregon ("Grantee"), all right, title, and interest in and to that certain real property (the "Property") situated in Washington County, State of Oregon, described on Exhibit A attached hereto and incorporated herein by reference.

The true consideration for this quitclaim is Eighteen Million Five Hundred Thousand Dollars and No Cents (\$18,500,000.00).

EXCEPTING from the Property hereby quitclaimed and RESERVING unto Grantor, its successors and assigns, forever, all minerals and all mineral rights of every kind and character now known to exist or hereafter discovered 500 feet or more below the surface, including, without limiting the generality of the foregoing, oil and gas and rights thereto, together with the sole, exclusive and perpetual right to explore for, remove and dispose of said minerals by any means or methods suitable to Grantor, its successors, and assigns, but without entering upon or using the surface of the Property, and in such manner as not to damage the surface of said lands or to interfere with the use thereof by Grantee, its successors or assigns.

ALSO EXCEPTING from the Property hereby quitclaimed and RESERVING unto Grantor, its successors and assigns (including, without limitation, lessees and licensees of Grantor), forever, a perpetual, non-exclusive easement located on the portion of the Property

described on Exhibit B attached hereto and incorporated by reference (the "Communications Easement Property"), together with reasonably necessary rights of access for the communications easement purposes authorized hereunder in, on, over and across the Property. Grantor and its lessees, sublessees, licensees, successors and assigns shall have the right in, on, under, over, through and across the Communication Easement Property as reasonably necessary to own, construct, reconstruct, maintain, repair, operate, use, relocate and/or remove fiber optic communication systems, lines and facilities and all rights related thereto (collectively, the "Communications Improvements"). Grantee covenants that it shall not construct any structures or improvements under, over, in, on, through or across the Communication Easement Property except for Grantor's railroad tracks and related facilities, without Grantor's prior written consent which shall not be unreasonably withheld. Any modification to the Communications Improvements and the construction and modification of any new Communications Improvements shall be constructed and maintained in good and workmanlike manner in accordance with all requirements of any governmental agency having jurisdiction thereover and at no cost or expense to Grantee. All necessary permits for such construction or modification shall be obtained at no cost or expense to Grantee.

Notwithstanding any other provision of this Quitclaim Deed, Grantor's quitclaim hereunder is subject to, and the easement reserved herein shall allow Grantor to honor its grant and fulfill its other obligations and exercise its rights under, all existing agreements for Communication Improvements, and this Quitclaim Deed shall not impair, restrict or limit the rights of any communications company under any existing agreements. All Communication Improvements presently existing on or hereafter constructed on the Communication Easement Property shall remain the personal property of the Grantor or the communications company to which they belong. Grantor shall be entitled to all revenues and consideration derived from all current and future agreements to which Grantor is a party affecting the Communication Easement Property.

ALSO EXCEPTING from the Property hereby quitclaimed, all water and water rights appurtenant to, or located on or under, the Property.

ALSO EXCEPTING from the Property hereby quitclaimed and RESERVING unto Grantor, its successors and assigns, a permanent, exclusive easement upon, over, under and across the Property, for purposes of conducting freight rail operations and otherwise to fulfill Grantor's and/or Portland & Western Railroad, Inc.'s obligations as a common carrier freight railroad under applicable laws and regulations, including the right to use the Property to operate, use, construct, reconstruct, maintain, repair, relocate and/or remove existing and/or future railroad, rail and railroad-related equipment, facilities and transportation systems necessary for and related to freight rail operations.

ALSO EXCEPTING one (1) signboard and appurtenances thereto, including, without limitation, wirelines for electrical service to such signboard, now located upon, along, under and across the Property near Scholls Ferry Road, and a perpetual easement for the construction, maintenance, operation, repair, replacement, renewal and reconstruction of the signboard and appurtenances thereto (whether now or hereafter constructed) upon, along, under and across the portion of the Property which is the current location of the signboard and within a radius five feet

purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing overhead electrical power lines and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the right of reasonable ingress and egress to and from the Power Line Easement Areas, subject to applicable railroad safety laws and, to the extent not inconsistent with the current terms of the agreements governing the aforementioned electrical power lines, reasonable requirements for railroad operations, and (b) the right to grant, at Grantor's sole discretion, sub-easements, licenses and any other interests in the Power Line Easement Areas with respect to the easement rights herein reserved, and to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easements, Grantee, for itself, its successors and assigns, subject to applicable railroad safety laws and, to the extent not inconsistent with the current terms of the License Agreements listed herein below, reasonable requirements for railroad operations, hereby covenants and agrees that Grantee shall not interfere in any manner with the rights of Grantor's Licensee under those certain License Agreements between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Portland General Electric Company (i) dated November 15, 1971, identified in the records of Grantor as Audit Number S168314, and (ii) dated April 30, 1991, identified in the records of Grantor as Audit Number S212041, and granting certain rights to said Licensee to use the Property for overhead electrical power line purposes.

ALSO EXCEPTING all existing catch basins and drain pipes and appurtenant facilities, whether owned by Grantor or any third party, and RESERVING unto Grantor, its successors and assigns, a perpetual easement upon, over, along, under and across the portion of the Property that lies five feet (5') on each side of the centerline of such existing catch basins and drain pipes and appurtenant facilities (the "Drainage Easement Area"), for the purposes of constructing, maintaining, repairing, operating, renewing, replacing, using and/or removing catch basins and drain pipes and appurtenant facilities (whether now or hereafter installed, and including facilities which are the technological successor to any existing or hereafter installed facilities); together with (a) the reasonable right of ingress and egress to and from the Drainage Easement Area, subject to applicable railroad safety laws and, to the extent not inconsistent with the current terms of the agreements governing the aforementioned catch basins, reasonable requirements for railroad operations, and (b) the right to grant, at Grantor's sole discretion, sub-easements, licenses and any other interests in the Drainage Easement Area with respect to the easement rights herein reserved, and to collect the rents, issues and profits therefrom, and from any existing contracts. In addition to and not in limitation of Grantor's rights under the foregoing reservation of easement, Grantee, for itself, its successors and assigns, subject to applicable railroad safety laws and, to the extent not inconsistent with the current terms of the License Agreement listed herein below, reasonable requirements for railroad operations, hereby covenants and agrees that Grantee shall not interfere in any manner with the rights of Grantor's Licensee under that certain License Agreement between Southern Pacific Transportation Company (predecessor in interest to Grantor) and Cascade Square Associates/Short Cressman Burgess dated May 1, 1983, identified in the records of Grantor as Audit Number S200733, and granting certain rights to said Licensee to use the Property for catch basin and drain pipe purposes.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)). THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER CHAPTER 1, OREGON LAWS 2005 (BALLOT MEASURE 37 (2004)).

IN WITNESS WHEREOF, the undersigned has executed this Quitclaim Deed as of _____, 2006.

UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation

By: _____

Title: _____

Attest:

Assistant Secretary

STATE OF)
) ss.
COUNTY OF)

On _____, 2006, before me, _____, a Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

Notary Public

(Seal)

My commission expires: _____

EXHIBIT B

DRAFT Shared Use Agreement

SHARED USE AGREEMENT

THIS SHARED USE AGREEMENT ("Agreement") is made on this ____ day of _____, 2006 (the "Execution Date"), by and between Portland & Western Railroad, Inc. ("P&W"), a New York corporation, and Tri-County Metropolitan Transportation District of Oregon ("TriMet"), a municipal corporation.

RECITALS

WHEREAS, P&W is a railroad that provides freight rail service on certain railroad lines located in Oregon, including the railroad line between Wilsonville (former Oregon Electric Railway, Oregon Electric Subdivision milepost 42.8) and Beaverton (former Oregon Electric Railway, Tillamook Branch Subdivision milepost 755.50), a distance of approximately 15.3 route miles (the "Subject Line");

WHEREAS, P&W and Washington County, Oregon ("County") had a shared use agreement in place effective as of November 21, 2005, and terminated as of the Execution Date, and in light of the termination of the aforementioned shared use agreement, P&W and TriMet want their own Shared Use Agreement to govern use of the Subject Line;

WHEREAS, the State of Oregon/Oregon Department of Transportation ("ODOT") acquired the right of way underlying the portion of the Subject Line between Wilsonville (milepost 42.8) and Tigard (former Oregon Electric Railway, Oregon Electric Subdivision milepost 750.00) from The Burlington Northern Santa Fe Railway Company ("BNSF") pursuant to a Rail Corridor Real Estate Donation Contract dated April 24, 1998;

WHEREAS, ODOT's ownership of the right of way underlying the portion of the Subject Line between Wilsonville and Tigard is subject to an exclusive rail service easement held by P&W. The easement includes the following provision:

Grantee shall have the right to attempt to prevent any access to the rail corridors that does not exist on the date of Closing, where such access would more than insignificantly increase Grantee's liability risks or interfere with Grantee's rail operation, construction or maintenance activities, and, accordingly, under these circumstances, Grantor, or its successor(s), shall obtain Grantee's prior written consent before entering into any agreement providing such access to another party;

WHEREAS, on the portion of the Subject Line between Wilsonville and Tigard, P&W is the owner of all track, ties, signaling and road crossing protection equipment, ballast, buildings, and other improvements needed for rail service;

WHEREAS, County intends to acquire the remaining portion of the Subject Line (including the right of way and improvements located thereon) between Tigard (milepost 750.00) and Beaverton (milepost 755.50) (the "Northern Segment") from Union Pacific Railroad Company ("UP") pursuant to a Purchase and Sale Agreement and assign such Purchase and Sale Agreement to TriMet;

WHEREAS after any such assignment of the Northern Segment to TriMet, P&W shall continue to operate as the sole provider of freight rail service pursuant to an easement that will be granted by UP, pursuant to the terms of such easement;

WHEREAS, TriMet intends to provide passenger rail service on the Subject Line, subject to P&W's exclusive rights to provide freight rail service thereon;

WHEREAS, the parties recognize that TriMet's operation of passenger rail service on the Subject Line will more than insignificantly increase P&W's liability risk and interfere with P&W's freight rail operation and its ongoing construction and maintenance activities; and

WHEREAS, in this Agreement, P&W has agreed not to attempt to prevent, and to allow, TriMet's passenger rail service on the Subject Line and accept the burdens

associated with such service, subject to the limitations and conditions specified herein;
and

WHEREAS, P&W has agreed to provide specified dispatching, maintenance, administrative, and other services to TriMet; and

WHEREAS, P&W has agreed to provide nearly all of the services required by TriMet on an at cost basis; and

WHEREAS, TriMet shall bear all the costs and business risks associated with its passenger operations and shall not impose on P&W any costs or business risks attributable to TriMet's passenger operations, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. DEFINITIONS

"Agreement" shall mean this Shared Use Agreement by and between P&W and TriMet.

"Changes and/or Additions" shall mean any material improvements to the Subject Line constructed after the Effective Date, including but not limited to material additions, betterments, and any construction, reconstruction, alteration and modification thereto, and any retirements from the Subject Line, but excluding maintenance, repair and renewal of the Subject Line and excluding the Initial Capital Improvements.

"Conductor Operator" shall mean the person providing the service of a train conductor with respect to the passenger rail operations.

"Construction Commencement Date" shall have the meaning set forth in Section 5.3.

"Coordination Committee" shall have the meaning set forth in Section 2.8.

"County" shall mean Washington County, Oregon.

"Effective Date" shall mean the date on which County consummates its acquisition of the portion of the Subject Line between Tigard and Beaverton from UP and assigns the same to TriMet.

"Environmental Law" means any applicable federal, state, or local statute, law, rule, regulation, ordinance, code, order or policy having the force of law (A) relating to protection of the environment, natural resources, or public or employee health and safety, (B) regulating or prohibiting air, soil, ground, water, noise or Hazardous Materials pollution, or (C) relating to the production, generation, use, storage, treatment, processing, transportation or disposal of Hazardous Materials.

"Equipment" shall mean trains, locomotives, freight cars, intermodal units, passenger cars, cabooses, vehicles and other machinery in the possession, account, custody or control of a party to this Agreement and capable of being operated on railroad tracks or capable of being operated on right of way for purposes of maintenance, repair or renewal of such railroad tracks.

"Evening Passenger Period" shall have the meaning set forth in Section 2.2.

"Execution Date" shall mean the date of execution of this Agreement, as set forth on the first page hereof.

"Final Plans" shall have the meaning set forth in Section 2.3(c).

"Freight Only Changes and/or Additions" shall mean such Changes and/or Additions designed and constructed by P&W, at its sole cost and expense (except as expressly provided herein), that are designed solely for use in P&W's freight rail

operations on the Subject Line and are not required for TriMet's passenger rail operations on the Subject Line.

"FTA" shall mean the Federal Transit Administration of the United States Department of Transportation or any successor agency.

"Governmental Approval" means any permit, license, authorization, consent, approval, waiver, exception, variance, order, or exemption issued by any federal, state or local Governmental Body pursuant to an Environmental Law.

"Governmental Body" means any agency of the United States Government, any state, county, municipality or other political subdivision of any of them, and any entity exercising executive, legislative, judicial, regulatory or administrative functions legally assigned and delegated by a government with jurisdiction over the matter in question.

"Hazardous Materials" shall mean any material or substance that is defined or classified as:

(A) a "hazardous substance" pursuant to (1) Section 101 of CERCLA (42 U.S.C. §9601(14)) or (2) Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1321) or (3) state statutes or regulations similar to either of them;

(B) a "hazardous waste" pursuant to (1) Section 1004 or Section 3001 of the Resource Conservation and Recovery Act (42 U.S.C. §§6903, 6921) or (2) similar state statutes or regulations;

(C) a "toxic pollutant" under (1) Section 307(a)(1) of the Federal Water Pollution Control Act (33 U.S.C. §1317(a)(1)), or (2) similar state statutes or regulations;

(D) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990 (49 U.S.C. App. §1802(4));

(E) a “chemical substance” under Section 3 of the Toxic Substances Control Act (15 U.S.C. §2602);

(F) (1) asbestos and asbestos containing materials, (2) polychlorinated biphenyls, (3) flammable materials, (4) radioactive materials, (5) explosives, (6) wastes, (7) petroleum or petroleum-based materials, (8) waste oil, (9) solvents and (10) other substances to the extent that such substances are defined or regulated under applicable Environmental Laws.

“Initial Capital Improvements” shall mean the improvements to be constructed by TriMet on the Subject Line prior to the Passenger Service Commencement Date in accordance with Section 2.3, as more particularly described on **Schedule 2.3** attached hereto.

“Joint Trackage” shall mean the railroad trackage between Wilsonville and Beaverton, as depicted in the maps and/or drawings attached hereto as Exhibit A, that will be used by P&W and TriMet for shared track passenger and freight operations, including all improvements, fixtures and structures located thereon or appurtenant thereto as of the Effective Date, all Changes and/or Additions thereto and the Initial Capital Improvements, but excluding (i) Freight Only Changes and/or Additions and Passenger Only Changes and/or Additions, (ii) retirements from the Joint Trackage; and (iii) in-street trackage in Beaverton along Lombard Street.

“Locomotive Operator” shall mean the person providing the services of a locomotive engineer with respect to TriMet’s passenger rail operations on the Subject Line.

“Loss” or “Losses” shall mean all losses, damages, claims, demands, costs, liabilities, judgments, fines and civil penalties, fees and expenses of any nature arising from or in connection with the death of or injury to persons, including, without limitation, employees of the parties, or damage to or destruction of property (including repair and replacement expenses) and/or natural resources, including, without limitation, property owned by either of the parties hereto. “Loss” or “Losses” also shall include (i) investigation costs, cleanup costs, and remediation costs attributable to spills, emissions, discharges, or other releases of Hazardous Materials; (ii) reduced revenues of P&W, reduced fare box revenues of TriMet, and other economic losses of the parties to this agreement to the extent the party claiming same can demonstrate that either damage to or destruction of property, or disruption of freight or passenger rail service, was the proximate cause of such losses; (iii) costs and expenses incurred in connection with the investigation, adjustment and defense of any claim, suit, appeal or arbitration pertaining to a Loss, including reasonable attorney and expert witness fees, and (iv) salaries or wages and associated benefits of, and out-of-pocket expenses incurred by or with respect to, employees of either party (or their successors and assigns) engaged directly in such investigation, adjustment and defense and a reasonable amount of allocated salaries and wages of employees providing support services to such employees so engaged directly in such work.

“Maintenance Changeover Date” means the date, if any, as of which TriMet (or its PRS Contractor(s), other than P&W or a P&W affiliate or P&W contractor or subcontractor) assumes responsibility for the maintenance of the Joint Trackage, or any segment thereof, in accordance with Section 4.1.

“Material Modifications” shall have the meaning set forth in Section 2.3.

“Midday Passenger Period” shall have the meaning set forth in Section 2.2.

“Morning Passenger Period” shall have the meaning set forth in Section 2.2.

“NFA” means the issuance by the Oregon Department of Environmental Quality (“ODEQ”) of a determination that the selected Response Action for a Hazardous Material Release has been fully implemented to ODEQ’s satisfaction or issuance of a determination by ODEQ that no further action of any nature is required with respect to a Hazardous Material Release.

“Non-Material Modifications” shall have the meaning set forth in Section 2.3.

“PRS Contractor” or “PRS Contractors” shall mean any TriMet contractor providing services related to TriMet’s passenger rail operations on the Subject Line, including the services provided by P&W or a P&W affiliate or P&W contractor or subcontractor as the Locomotive Operator and the Conductor Operator and any train dispatcher or otherwise.

“P&W” shall mean Portland & Western Railroad, Inc.

“Passenger” shall mean and include any and all persons, ticketed or unticketed, on the Subject Line for the purpose of using the passenger rail service (a) while on board trains, locomotives, rail cars or rail equipment employed in the passenger rail service and/or entraining and detraining therefrom, (b) while on the Subject Line and commuter stations for any purpose related to the passenger rail service, including parking, inquiring about passenger rail service or purchasing tickets therefor and coming to, waiting for, leaving from and/or observing passenger rail service or passenger rail trains or rail equipment employed in the passenger rail service (including

passenger locomotives and passenger rail cars), and (c) all persons meeting, assisting or in the company of any person described herein.

“Passenger Only Changes and/or Additions” shall mean such Changes and/or Additions designed and constructed by TriMet, at the sole cost and expense of parties other than P&W, that are designed solely for use in TriMet’s passenger rail operations on the Subject Line, and are not required for P&W’s freight rail operations on the Subject Line.

“Passenger Service Commencement Date” shall mean the date on which TriMet (through its PRS Contractor(s)) commences regularly scheduled, revenue passenger rail service on the Subject Line.

“Passenger Period” shall refer collectively to the Morning Passenger Period, Midday Passenger Period and Evening Passenger Period.

“Northern Segment” shall have the meaning set forth in the Recitals.

“Release” means the spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leaching, dumping or disposal of any Hazardous Material into surface water, groundwater, soil, the land surface or subsurface, or ambient air.

“Reportable Release” means the Release of a Hazardous Material in an amount greater than a reportable quantity as defined under applicable Environmental Laws, or which otherwise requires notification to a Governmental Body, or which is likely to result in the imposition of liability for remediation, personal injury, property damage, or natural resource damage. Reportable Release does not include a Release which is authorized under applicable Governmental Approvals. The parties acknowledge that Response

Actions may be Required by Law with respect to Releases of less than reportable amounts.

“Response Action” means any and all actions required to (i) clean up, remove, treat, contain or in any other way address to take remedial action or response action of or with respect to any Hazardous Materials in the Environment, (ii) prevent the Release or threat of Release or minimize the further Release of Hazardous Materials so they do not migrate or endanger public health or welfare or the indoor or outdoor environment or (iii) perform pre-remedial studies and investigations and post-remedial monitoring and care. The term “Response Action” includes any action which constitutes a “removal”, “remedial action” or “response” as defined by Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. §9601(23), (24), and (25).

“STB” means the Surface Transportation Board of the United States Department of Transportation or any successor agency.

“Subject Line” shall mean the railroad line and right of way between Wilsonville and Beaverton, as more particularly described on the first page hereof, including the Joint Trackage, any Changes and/or Additions thereto, the Initial Capital Improvements and any other improvements, fixtures and structures located within or appurtenant to such railroad line and right of way but excluding in-street trackage in Beaverton along Lombard Street.

“Trains” shall consist of one or more locomotive units with or without freight or passenger cars attached thereto in the possession, account, custody or control of a

party hereto, or one or more self-propelled passenger cars in the possession, account, custody or control of TriMet.

"TriMet" shall mean Tri-County Metropolitan Transportation District of Oregon.

"UP" shall mean the Union Pacific Railroad Company.

SECTION 2. FREIGHT AND PASSENGER RIGHTS GENERALLY

2.1 Freight Operating Rights.

(a) P&W currently provides and shall have the exclusive right and obligation to continue to provide local and overhead freight rail service to current and future freight rail shippers, receivers, consignees, and other entities that are located on the Subject Line or are seeking freight rail service over or on the Subject Line. P&W shall have the exclusive right to provide freight rail service on the Subject Line for other freight railroads. P&W shall have the exclusive right to use the Subject Line (including all of the Joint Trackage) to provide such freight rail services; provided, however, that P&W shall not have the right to use Passenger Only Changes and/or Additions for any purpose without the prior written consent of TriMet. P&W shall provide TriMet with advance written notice, as soon as is reasonably practicable, if P&W intends to provide freight rail service to any shipper, receiver, consignee or other entity located on or seeking local freight rail service on the Subject Line that is not being served by P&W from the Subject Line as of the Effective Date or that has not been served by P&W from the Subject Line within the three-year period prior to the Effective Date. Notwithstanding the foregoing, P&W shall have no obligation to give such notice prior to serving the customers listed in **Schedule 2.1** or their successors and assigns (unless such customers, or their

successors or assigns, relocate their rail loading or unloading facilities to other locations on the Subject Line).

(b) P&W expressly retains and TriMet expressly declines to assume the obligation to provide freight rail service to shippers, receivers, consignees or other entities located on the Subject Line (or using the Subject Line for overhead service) as of or after the Effective Date or any common carrier obligation or any other obligation with respect thereto. Neither TriMet nor any person or entity other than P&W (or its successors or assigns) shall be permitted to provide local, overhead or any other type of freight rail service on the Subject Line.

(c) P&W expressly retains any contractual rights it may have to provide or authorize qualified third parties to provide passenger rail service on the Subject Line. Notwithstanding the extent of any such rights, unless TriMet grants its advance consent in writing, P&W shall not provide or authorize qualified third parties to provide any passenger rail service on any portion of the Subject Line to passengers traveling by railroad over distances less than sixty (60) miles. TriMet's passenger rail service shall have dispatching priority over any passenger rail service conducted pursuant to any such rights.

(d) P&W shall have the right to use the Subject Line (including all of the Joint Trackage, but excluding Passenger Only Changes and/or Additions) for excursion passenger trains, where the purpose of such trains is entertainment or recreation and not transportation ("Excursion Trains"). Excursion Trains shall not be operated by P&W during the specific times allocated (i) for construction of Initial Capital Improvements by TriMet or (ii) for construction of Changes and/or Additions

by TriMet. Excursion Trains shall not be operated by P&W during the Passenger Periods without the prior written consent of TriMet, which consent shall not be unreasonably withheld, conditioned or delayed. P&W shall operate and dispatch any such Excursion Trains in a manner that does not impair TriMet's ability to provide on-time passenger rail service.

(e) P&W expressly retains the right to sell or transfer its assets, to merge with another entity, or to be acquired by another entity; provided that this Agreement shall be binding on any successor(s) or assignee(s) of P&W. P&W expressly retains the right to impose embargoes suspending freight rail service on the Subject Line; provided, that P&W's right to impose such embargoes shall not diminish any of its obligations under this Agreement, except as provided in Section 14.4 and Section 14.13 hereof. Neither TriMet nor any PRS Contractor shall oppose any application or exemption petition relating to such actions that P&W files with the STB or any other agency. Neither TriMet nor any PRS Contractor shall bring or support any court action opposing merger, acquisition, divestiture, or embargo involving P&W or the Subject Line.

(f) Except as set forth in Section 2.1(g), P&W expressly retains the right to seek authorization for an abandonment or discontinuance of freight rail service. Except as set forth in Section 2.1(g), neither TriMet nor any PRS Contractor shall oppose any application or exemption petition relating to such action that P&W files with the STB or any other agency. Except as set forth in Section 2.1(g), neither TriMet nor any PRS Contractor shall bring or support any court action opposing an

abandonment or discontinuance of freight rail service involving P&W or the Subject Line.

(g) In the event that P&W seeks authorization for an abandonment or discontinuance of freight rail service on all or any portion of the Subject Line from the STB or any successor agency, TriMet retains the right to submit an offer of financial assistance to P&W and to the STB. If TriMet's offer of financial assistance is of equal or higher value than any bona fide offer of financial assistance made by another entity, P&W shall either accept TriMet's offer or withdraw the application or exemption seeking authorization for the abandonment or discontinuance. To the extent that P&W obtains ownership of Initial Capital Improvements or Changes and/or Additions paid for by TriMet, the value of any offer of financial assistance made by TriMet shall be calculated by adding to TriMet's cash offer an amount equal to the depreciated value of any such Initial Capital Improvements or Changes and/or Additions paid for by TriMet, but owned by P&W. Notwithstanding the provisions of Section 2.1(f), TriMet shall have the right to oppose any offer of financial assistance filed by another entity, and P&W expressly waives the right to support any offer made by such entity that is equal in value or lower in value than TriMet's offer. In the event that TriMet does not submit an offer of financial assistance and P&W does not receive a bona fide offer of financial assistance from a third party within the applicable time period, P&W shall be obligated: (1) to notify TriMet within ten (10) days of any third party offer to purchase the track material on the applicable portion of the Subject Line; (2) to notify TriMet at least thirty (30) days prior to any planned removal of track material by P&W on the applicable portion of the Subject Line; (3) to

provide TriMet with a right of first refusal on the purchase of such track material prior to its removal and salvage from the Subject Line, which TriMet must exercise within thirty (30) days after P&W provides notice to TriMet of any such third party offer or any such planned removal by P&W; and (4) to accept any Statement of Willingness to Assume Financial Responsibility that TriMet files with the STB within the applicable time period by filing with the STB (i) an expression of willingness to enter into a rail banking/trail use agreement; (ii) a statement that P&W and TriMet have entered into such an agreement; and (iii) a request that the STB issue a Notice of Interim Trail Use or Certificate of Interim Trail Use (as appropriate). To the extent that P&W obtains ownership of the Initial Capital Improvements or Changes and/or Additions paid for by TriMet, in exercising its right of first refusal, TriMet's offer shall be calculated by adding TriMet's cash offer to an amount equal to the depreciated value of any such Initial Capital Improvements or Changes and/or Additions paid for by TriMet, but owned by P&W.

2.2 Passenger Operating Rights.

(a) TriMet shall have the right to use the Subject Line (including all of the Joint Trackage) only for the purposes of design, construction, operation and maintenance of passenger rail service; provided, however, that TriMet shall not have the right to use Freight Only Changes and/or Additions for any purpose without the prior express written consent of P&W. TriMet shall not transport for hire packages, mail, diesel fuel, or freight of any kind on the Subject Line; provided, however, that nothing herein shall prohibit the transport by TriMet in passenger rail cars of those things ordinarily or reasonably carried by passengers or the transport of goods and

supplies used in and for the construction, operation and maintenance of passenger rail service provided by TriMet.

(b) Except as expressly set forth in Section 2.1(c) and Section 2.1(d), neither P&W nor any person or entity other than TriMet or its PRS Contractor(s), or their successors or assigns, shall be permitted to provide passenger rail service for hire on the Subject Line. While either P&W or a P&W affiliate shall be eligible to be selected as one or more of the PRS Contractors for all or a portion of the Subject Line, P&W expressly declines to assume any obligation to provide passenger rail service for hire on the Subject Line other than any obligation imposed in a contract governing P&W's or its affiliate's service as a PRS Contractor.

(c) P&W or an affiliate shall provide Locomotive Operator and Conductor Operator services on an "at cost" basis in accordance with **Schedule 2.2(c)** hereto. Upon ten (10) days' written notice from P&W, TriMet shall have the right (but not the obligation) to interview P&W candidates for the position of Conductor Operator. P&W shall not hire any such candidates, unless TriMet waives its right to interview such candidates in writing within five (5) days after receipt of the aforementioned notice, without the written approval of TriMet. If any Conductor Operator shall neglect, refuse or fail to perform his or her duties in the reasonable judgment of TriMet, TriMet shall give notice in writing to P&W, and P&W shall have ten (10) days to discharge or transfer such employee; TriMet shall assume, bear and pay any and all Losses of P&W, including attorneys fees and expenses, arising from any wrongful discharge or transfer of any such employee. If either party shall deem it necessary to hold a formal investigation to establish such neglect, refusal or failure

on the part of the Conductor Operator, then upon notice, TriMet and P&W shall promptly hold a joint investigation, each bearing the expense for their respective officers, counsel, witnesses and employees. If after such investigation, in the reasonable judgment of TriMet, the result of such investigation warrants, TriMet shall give notice in writing to P&W, and P&W shall have ten (10) days to withdraw such employee from service as a Conductor Operator and TriMet shall release, defend and indemnify P&W from and against any and all Losses, including attorneys fees and expenses, arising from any wrongful withdrawal, transfer, or termination.

(d) P&W shall have the right to approve or disapprove any PRS Contractor that will be providing services on or related to the Joint Trackage, including but not limited to track or signal maintenance services and on-train services, by providing written notice thereof to TriMet. P&W's approval of such PRS Contractors selected by TriMet shall not be unreasonably withheld, conditioned or delayed.

(e) Any contract between TriMet and a PRS Contractor other than P&W or a P&W affiliate or P&W contractor or subcontractor providing services on or related to the Joint Trackage shall authorize prompt termination by TriMet if such PRS Contractor fails to operate safely, fails to coordinate effectively with P&W, or otherwise materially breaches the contract in a manner that could have an adverse effect on P&W. If P&W reasonably believes that any such PRS Contractor is operating unsafely, is failing to coordinate effectively with P&W, or has materially breached the contract in a manner that could have an adverse effect on P&W, and P&W provides TriMet with a letter or memorandum providing specific facts giving

rise to P&W's belief, TriMet shall within ten (10) days of receipt of such written report take affirmative steps to (i) commence termination of the applicable contract with such PRS Contractor or (ii) initiate an arbitration with P&W with regard to whether such PRS Contractor has operated unsafely, failed to coordinate effectively with P&W or materially breached the contract in a manner that could have an adverse effect on P&W. If TriMet elects to take affirmative steps to commence termination of the applicable contract, TriMet shall have one hundred eighty (180) days to replace such PRS Contractor, and P&W shall assume, bear and pay any and all Losses of TriMet arising from any wrongful termination of such contract. In the event TriMet elects to initiate arbitration, such PRS Contractor shall continue to provide service during the pendency of the arbitration. In the event the arbitrator determines that such PRS Contractor has operated unsafely, failed to coordinate effectively with P&W or materially breached the contract in a manner that could have an adverse effect on P&W, TriMet shall have one hundred eighty (180) days from the effective date of such determination to replace such PRS Contractor, and TriMet shall pay the entire cost of the arbitration, notwithstanding Section 7 hereof; TriMet shall also assume, bear, and pay P&W for any Losses suffered by P&W as a result of such PRS Contractor's unsafe operation, failure to coordinate effectively with P&W or such PRS Contractor's breach of the contract. In the event the arbitrator determines that such PRS Contractor has not operated unsafely, not failed to coordinate effectively with P&W and not materially breached the contract in a manner that could have an adverse effect on P&W, P&W shall pay the entire cost of the arbitration, notwithstanding Section 7 hereof. Notwithstanding the foregoing, P&W

acknowledges that P&W and its affiliates shall not have any right to approve, reject, negotiate or modify the specific contractual language pertaining to default and termination in any contract between TriMet and any PRS Contractor (other than P&W or its affiliates or a P&W contractor or subcontractor), shall not have any direct right to terminate any such contract, and shall not have any rights as a third-party beneficiary of any such contract.

(f) Any contract between TriMet and a PRS Contractor (other than P&W or its affiliates or a P&W contractor or subcontractor) providing maintenance services shall specify that all maintenance activities must be scheduled with P&W's consent, which consent shall not be unreasonably withheld, conditioned or delayed. TriMet acknowledges that P&W may reasonably withhold, condition or delay its consent so as to limit unreasonable interference with ongoing freight operations.

(g) TriMet's Trains shall be scheduled to operate on the Subject Line Monday through Friday in the morning between approximately 5:30 a.m. and 9:30 a.m. ("Morning Passenger Period"), at midday between approximately 11:30 a.m. and 1:00 p.m. ("Midday Passenger Period") and in the evening between approximately 3:30 p.m. and 7:30 p.m. ("Evening Passenger Period"). Except as otherwise provided in subparagraphs (i) and (j), TriMet shall have the right to operate a maximum of thirty-four (34) Trains in revenue service on the Subject Line per day Monday through Friday. In addition, TriMet shall have the right to increase the number of revenue service Trains per day, up to a maximum of fifty (50) such Trains per day, without any additional capital improvements, if TriMet (i) notifies P&W of any such increase at least one (1) month in advance and (ii) provides a

schedule along with a detailed string line documenting the feasibility of the increase and establishing that the increase will not result in recurrent delays to scheduled arrival and departure times. Notwithstanding the foregoing, TriMet shall use its best efforts to notify P&W of any increase in the number of Trains as far in advance as is practicable and as soon as the aforementioned string line documentation is available. Any expansion of the Passenger Periods or any increase in the maximum daily number of revenue service Trains that may be operated on the Subject Line by TriMet above fifty (50) such Trains per day is subject to the express written consent of P&W; TriMet acknowledges and agrees that P&W's consent may be denied or may be granted subject to and conditioned upon TriMet making additional capital improvements to the Subject Line or other conditions.

(h) If TriMet increases the number of Trains in revenue service over thirty-four (34) Trains per day Monday through Friday, any decline in on-time performance shall be disregarded for purposes of determining the monthly dispatching fee paid to P&W under **Schedule 2.2(c)**; provided that P&W shall have the burden to reasonably demonstrate that the decline in on-time performance resulted from the increase in Trains.

(i) TriMet may seek approval from P&W to operate additional Trains in non-revenue service, including but not limited to, Trains in deadhead service on the Subject Line. Notwithstanding any other provision in this Agreement, any TriMet Trains in non-revenue service shall not be given any dispatching priority.

(j) TriMet shall have the right, from time to time, to seek P&W's prior written consent to operate a special event train on the Subject Line (excluding

Freight Only Changes and/or Additions) outside of the Passenger Periods. P&W agrees to negotiate in good faith with TriMet regarding the terms and conditions that will govern the operation of such a special event train on the Subject Line; provided that P&W's consent shall not be unreasonably withheld, conditioned or delayed; provided, further, that such a special event train shall receive dispatching priority as if it was being operated during the Passenger Periods in accordance with Section 3.1.

2.3 Initial Capital Improvements.

(a) TriMet shall be responsible, at its sole cost and expense, for designing and constructing the Initial Capital Improvements described on **Schedule 2.3** attached hereto. All Initial Capital Improvements shall be designed and constructed in accordance with railroad industry standards, and all Initial Capital Improvements, including the Centralized Traffic Control ("CTC") system, shall be designed and constructed to ensure interoperability with the systems operated by other U.S. freight railroads. In consideration for P&W's loss of unrestricted use of approximately 11,731 feet of track generally located between Milepost 28.00 and Milepost 33.00, TriMet shall pay P&W (i) Eight Hundred Thirty Nine Thousand (\$839,000) Dollars to offset P&W's estimated costs to relay replacement track on property owned by P&W or elsewhere on the Subject Line (in which case, the location and alignment will be subject to the review and approval of TriMet, which shall not be unreasonably withheld, conditioned or delayed) and (ii) One Hundred Twenty Thousand (\$120,000) Dollars to offset P&W's estimated costs of moving four (4) switches. The aforementioned payments shall be made at least thirty (30) days

prior to the loss of capacity. As additional consideration, P&W shall be entitled to (i) four (4) salvaged turnouts and (ii) salvage materials from the aforementioned sidings in accordance with Section 2.3(b). Provided that TriMet fulfills all of its obligations under this paragraph, P&W acknowledges and agrees that it will be fully compensated for the loss of the aforementioned sidings and that it is not entitled to any further compensation or assistance under the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. § 4601, et seq.), or any other federal, state (including but not limited to Oregon Revised Statute §§ 281.045 and 281.060) or local law, ordinance or regulation requiring the provision of relocation assistance to persons displaced by action of public agencies, by reason of the transactions contemplated by this Agreement.

(b) In connection with the Initial Capital Improvements constructed by TriMet, TriMet shall have the right to use on other portions of the Joint Trackage any track material that is removed from the Subject Line (including rail, ties and turnouts). TriMet shall have no right to sell, convey, or transfer such track material to any third party, and TriMet's right to use removed track material shall be limited to no more than Thirty-Nine Thousand (39,000) linear feet of rail and associated ties, turnouts and other track material. For track material being reused by TriMet, TriMet shall arrange for removal of such material within a reasonable time and within any time required by law. TriMet may use motor carriers to transport such track material or request that P&W supply gondolas for the transportation of such track material; upon reasonable request, P&W shall supply such gondolas subject to its standard charges. For track material being returned to P&W, TriMet shall give P&W one

week's prior notice of removal and thereafter load such material into any gondolas supplied by P&W at P&W's cost and expense. If, after having given P&W one week's prior notice of removal, P&W does not supply gondolas for loading of such material, TriMet shall have the right to stockpile such material and P&W shall have an obligation to arrange for removal of such materials within two (2) weeks of the aforesaid notice or within any shorter time required by law at the sole cost and expense of P&W. In connection with Changes and/or Additions, the party paying for construction of such Changes and/or Additions shall have the right to sell, salvage or reuse any track material removed from the Subject Line and shall, in any case, remove salvaged materials within one week of removal or within any shorter time required by law; provided that if TriMet is paying for construction and elects not to reuse any track material removed from the Subject Line, such un-reused material shall be made available free of charge to P&W, at P&W's election, provided that P&W must remove such un-reused material within a reasonable time of TriMet's notice that such material are available and within any time required by law, at the sole cost and expense of P&W.

(c) TriMet has delivered to P&W a set of design plans (including available schematic drawings and specifications) for Initial Capital Improvements at the thirty percent (30%) completion stage, and the thirty percent plans are acceptable to P&W. TriMet shall deliver to P&W a set of the design plans (including available schematic drawings and specifications) for the Initial Capital Improvements at the sixty percent (60%) completion stage, ninety percent (90%) completion stage and one hundred percent (100%) completion stage (the latter referred to herein as

the "Final Plans"). P&W shall have thirty (30) days from receipt to review and comment on the 60% plans, thirty (30) days from receipt to review and comment on the 90% plans, and fifteen (15) days from receipt to review and approve the Final Plans. The parties shall use their best efforts to identify and resolve issues of concern through a collaborative design review process, meeting not less than monthly during the design review period. If P&W reasonably determines that the proposed design or location of the Initial Capital Improvements, as reflected in any such set of plans, will materially interfere with P&W's use of the Subject Line for freight rail service, will materially limit expansion of freight rail service, or will materially increase P&W's potential liabilities, it shall provide written comments to TriMet explaining its concerns in this regard within the applicable review period. The parties shall then use their best efforts to agree on modifications to any such set of plans in order to ensure that the proposed design or location of the Initial Capital Improvements will not materially interfere with P&W's use of the Subject Line for freight rail service, materially limit expansion of freight rail service, or materially increase P&W's potential liabilities. If the parties are unable to agree on appropriate modifications to any such set of plans within thirty (30) days of TriMet's receipt of P&W's written comments, the matter shall be submitted to the dispute resolution process set forth in Section 7 herein. If P&W fails to provide written comments to TriMet on any set of plans within the applicable review period, P&W shall be deemed to have approved such set of plans. P&W plans to reduce its switching operations conducted in the vicinity of Beburg so that they are limited to switching necessary to serve shippers located in the vicinity of Beburg. TriMet has prepared its design

plans to be consistent with P&W's plans to reduce switching operations at Beburg. Accordingly, subject to Section 14.13 hereof, P&W agrees to adhere to its plans to reduce switching operations in the vicinity of Beburg so that they are limited to switching necessary to serve shippers located in the vicinity of Beburg.

(d) TriMet shall construct such Initial Capital Improvements that have been approved by P&W under subparagraph (c) at such times and in such a manner as to not unreasonably interfere with, delay or endanger P&W's freight rail operations on the Subject Line, P&W's Trains or Equipment, or the Subject Line. TriMet shall deliver to P&W, and shall update on a monthly basis, a detailed schedule for the construction of the Initial Capital Improvements and any Changes and/or Additions constructed by TriMet, showing both the sequence and location of such construction work. P&W shall have ten (10) days from receipt to approve such schedules, which approval shall not be unreasonably withheld, conditioned or delayed. The parties shall then consult with each other in order to coordinate the scheduling of such construction work. P&W acknowledges and agrees that, during construction of the Initial Capital Improvements and any Changes and/or Additions constructed by TriMet, TriMet (and its contractors) shall have exclusive access to the Subject Line on each day where P&W is not scheduled to operate freight rail service on the Subject Line and for a consecutive period of at least six (6) hours between 7:00 a.m. and 7:00 p.m. on each day where P&W is scheduled to operate freight rail service on the Subject Line; provided that P&W shall cooperate with TriMet to permit TriMet to have exclusive access for more than six (6) hours per day on days where P&W is scheduled to operate such freight rail service or non-exclusive access

(outside of the six (6) hour exclusive access period) with flagging on such days; provided further, that TriMet shall cooperate with P&W in the event P&W desires a change in the days or hours of operation of its scheduled freight train operations. Construction of the Initial Capital Improvements by TriMet shall be conducted in accordance with all applicable laws, rules and regulations and shall follow sound engineering and architectural practices. During construction of the Initial Capital Improvements, TriMet shall provide, at its sole cost and expense, appropriate protection to P&W's employees, contractors, agents, shippers, customers, lading in P&W's possession, Trains and Equipment.

(e) TriMet shall construct the Initial Capital Improvements in accordance with the Final Plans approved by P&W and subject to any modifications issued by TriMet that are authorized by this subparagraph. TriMet shall notify and obtain P&W's advance written consent to any change order issued by TriMet to the approved Final Plans that, in TriMet's reasonable judgment, is material to the overall design and construction of the Initial Capital Improvements ("Material Modifications"). P&W shall use its best efforts to complete its review of such Material Modifications as soon as possible but in any event within three (3) business days of receipt of such Material Modifications from TriMet. P&W's approval shall not be unreasonably withheld, conditioned or delayed unless any such Material Modifications would materially interfere with P&W's use of the Subject Line for freight rail service, materially increase P&W's potential liabilities, or materially limit expansion of freight rail service. TriMet shall provide P&W with a copy of any modification issued by TriMet to the approved Final Plans that, in TriMet's

reasonable judgment, is not material to the overall design and construction of the Initial Capital Improvements ("Non-Material Modifications"). TriMet shall provide P&W with a copy of such Non-Material Modifications within ten (10) days after issuance thereof.

(f) TriMet shall complete the construction of such Initial Capital Improvements prior to the Passenger Service Commencement Date. In the event that TriMet substantially completes the construction of such Initial Capital Improvements and reasonably believes that TriMet's passenger rail service on the Subject Line can be operated in a safe and efficient manner prior to the completion of any remaining punch-list or other items that are part of the Initial Capital Improvements, TriMet may seek P&W's prior written consent to commence regularly scheduled, revenue passenger rail service on the Subject Line prior to the completion of such items. P&W's consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the parties acknowledge that TriMet shall have the right to run periodic test Trains and Equipment on the Subject Line (excluding Freight Only Changes and/or Additions) and conduct other pre-revenue service activities on the Subject Line (excluding Freight Only Changes and/or Additions) upon completion or substantial completion of the Initial Capital Improvements and prior to the Passenger Service Commencement Date. The operation of such test Trains and Equipment and such other pre-revenue service activities shall be coordinated with P&W's operations and activities on the Subject Line.

(g) P&W acknowledges that TriMet may use third party contractors to design and construct the Initial Capital Improvements and any Changes and/or Additions. TriMet must select experienced contractors that have bonding and insurance coverage consistent with reasonable and customary standards within the railroad industry. For construction projects involving track, CTC facilities, bridges, and culverts, and areas within or directly adjacent to the right of way of the Subject Line, TriMet shall select contractors with railroad construction experience.

(h) P&W or a P&W affiliate shall be eligible to compete on work solicited by TriMet as a construction contractor for all track and track-related improvements on the Subject Line.

(i) TriMet shall be responsible, at its sole cost and expense, for any increased maintenance costs attributable to the Initial Capital Improvements that are constructed by TriMet pursuant to this Section 2.3. Such increased costs, if any, will be determined in accordance with Section 4. TriMet's obligation to pay such costs shall remain effective regardless of whether TriMet is providing passenger rail service (except as otherwise expressly provided in Section 4), and TriMet's obligation shall survive termination of this Agreement unless and to the extent that P&W obtains ownership of such Initial Capital Improvements or unless otherwise agreed by the parties hereto.

2.4 P&W's Right to Make Freight Only Changes and/or Additions.

(a) P&W shall have the right to design and construct Freight Only Changes and/or Additions to the Subject Line and may construct and/or relocate sidetracks or industrial spur tracks as required in the ordinary course of business;

provided, however, that such Freight Only Changes and/or Additions shall not materially interfere with TriMet's use or intended use of the Subject Line. TriMet shall have the right to review and approve such Freight Only Changes and/or Additions in accordance with subparagraph (b) below.

(b) P&W shall deliver to TriMet copies of the design plans (including available schematic drawings and specifications) for such Freight Only Changes and/or Additions that it proposes to design and construct pursuant to subparagraph (a) at least sixty (60) days prior to commencing construction of such Freight Only Changes and/or Additions. TriMet shall have thirty (30) days to review and approve such plans. If TriMet reasonably determines that the proposed design or location of the Freight Only Changes and/or Additions, as reflected in such plans, will materially interfere with TriMet's use or intended use of the Subject Line, it shall provide written comments to P&W explaining its concerns in this regard within the initial thirty (30) day period. The parties shall then use their best efforts to agree on modifications to such plans in order to ensure that the proposed design or location of the Freight Only Changes and/or Additions will not materially interfere with TriMet's use or intended use of the Subject Line. If the parties are unable to agree on appropriate modifications to such plans within thirty (30) days of P&W's receipt of TriMet's written comments, the matter shall be submitted to the dispute resolution process set forth in Section 7 herein. If TriMet fails to provide written comments on the plans to P&W within the initial thirty (30) day period, TriMet shall be deemed to have approved the plans.

(c) P&W shall construct such Freight Only Changes and/or Additions that have been approved by TriMet in accordance with subparagraph (b) at such times and in such a manner as to not unreasonably interfere with, delay or endanger passenger rail operations on the Subject Line, TriMet's Trains or Equipment, or the Subject Line. P&W shall construct such Freight Only Changes and/or Additions in accordance with the plans approved by TriMet and any change orders authorized under the process set forth in Section 2.2(e). Such construction shall be conducted in accordance with all applicable laws, rules and regulations and shall follow sound engineering and architectural practices. P&W shall provide, at its sole cost and expense, appropriate protection to TriMet's employees, contractors, agents, passengers, Trains and Equipment during such construction. TriMet acknowledges and agrees that, during construction of any Changes and/or Additions constructed by P&W, P&W shall have exclusive access to the Subject Line (excluding Passenger Only Changes and/or Additions) except during the Passenger Periods. P&W shall deliver to TriMet, and shall update on a monthly basis, a detailed schedule for the construction of any Changes and/or Additions constructed by P&W.

(d) Except as provided in subparagraph (e) below, P&W shall be responsible, at its sole cost and, for any increased maintenance costs attributable to such Freight Only Changes and/or Additions that are constructed by P&W pursuant to this Section 2.4. Any disputes about such increased maintenance costs shall be resolved in accordance with Section 7.

(e) P&W shall be responsible for that portion of the cost and expense of designing, constructing and maintaining Freight Only Changes and/or Additions

that would have been incurred by P&W as if TriMet were not using or intending to use the Subject Line (including the costs and expenses of grading, track work and switches required to provide P&W with access to future freight rail customers located on the Subject Line). TriMet shall be responsible for all other costs and expenses of designing, constructing and maintaining Freight Only Changes and/or Additions (including the costs and expenses of installing power switches, signals and related cabling required to provide P&W with access to future freight rail customers located on the Subject Line and the costs and expenses of installing higher quality track if required for TriMet's passenger rail operations). TriMet shall be responsible for all additional design, construction, and maintenance costs attributable to the presence of the CTC system that will be constructed by TriMet. Without limiting the generality of the foregoing, TriMet shall be responsible for (i) the difference in P&W's reasonable cost between new switches and used switches when new switches are required by TriMet to be installed as part of Freight Only Changes and/or Additions, and (ii) the costs to equip all P&W locomotives with any equipment required by law or by regulation due to the installation of the CTC system, the installation of automatic train stopping devices, or the installation of new cab signaling systems. For all Freight Only Changes and/or Additions, the parties shall negotiate in good faith in an effort to agree on the appropriate allocation of such costs and expenses during the applicable plan review period for such Changes and/or Additions. The increased maintenance costs attributable to such Changes and/or Additions, if any, will be determined in accordance with Section 4.

2.5 TriMet's Right to Make Passenger Only Changes and/or Additions.

(a) TriMet shall have the right, at its sole cost and expense, to design and construct Passenger Only Changes and/or Additions; provided, however, that such Passenger Only Changes and/or Additions shall not materially interfere with P&W's use of the Subject Line for freight rail purposes, materially limit freight rail expansion or materially increase P&W's potential liabilities. P&W shall have the right to review and approve such Passenger Only Changes and/or Additions in accordance with subparagraph (b) below.

(b) TriMet shall deliver to P&W copies of the design plans (including available schematic drawings and specifications) for such Passenger Only Changes and/or Additions that it proposes to design and construct pursuant to subparagraph (a) at least sixty (60) days prior to commencing construction of such Passenger Only Changes and/or Additions. P&W shall have thirty (30) days to review and approve such plans. If P&W reasonably determines that the proposed design or location of the Passenger Only Changes and/or Additions, as reflected in such plans, will materially interfere with P&W's use of the Subject Line for freight rail service, will materially limit freight rail expansion or will materially increase P&W's potential liabilities, it shall provide written comments to TriMet explaining its concerns in this regard within the initial thirty (30) day period. The parties shall then use their best efforts to agree on modifications to such plans in order to ensure that the proposed design or location of the Passenger Only Changes and/or Additions will not materially interfere with P&W's use of the Subject Line for freight rail service, materially limit freight rail expansion, or materially increase P&W's potential liabilities. If the parties are unable to agree on appropriate modifications to such

plans within thirty (30) days of TriMet's receipt of P&W's written comments, the matter shall be submitted to the dispute resolution process set forth in Section 7 herein. If P&W fails to provide written comments on the plans to TriMet within the initial thirty (30) day period, P&W shall be deemed to have approved the plans.

(c) TriMet shall construct such Passenger Only Changes and/or Additions that have been approved by P&W in accordance with subparagraph (b) at such times and in such a manner as to not unreasonably interfere with, delay or endanger P&W's freight rail operations on the Subject Line, P&W's Trains or Equipment, or the Subject Line. TriMet shall construct such Passenger Only Changes and/or Additions in accordance with the plans approved by P&W and any change orders authorized under the process set forth in Section 2.2(e). Such construction shall be conducted in accordance with all applicable laws, rules and regulations and shall follow sound engineering and architectural practices. TriMet shall provide, at its sole cost and expense, appropriate protection to P&W's employees, contractors, agents, shippers, customers, loading in P&W's possession, Trains and Equipment during such construction.

(d) TriMet shall be responsible, at its sole cost and expense, for any increased maintenance costs attributable to such Passenger Only Changes and/or Additions that are constructed by TriMet pursuant to this Section 2.5.

2.6 Other Changes and/or Additions.

(a) Each party shall be responsible for designing and constructing, at its sole cost and expense (except as expressly provided in subparagraph (e) below) and in accordance with the design review requirements set forth in Section 2.4(b)

and Section 2.5(b) above (as appropriate) and the construction requirements set forth in Section 2.4(c) and Section 2.5(c) above (as appropriate), any Changes and/or Additions to the Subject Line that are required by any governmental agency or authority solely as a result of that party's operations on the Subject Line. The parties acknowledge that such Changes and/or Additions may constitute Freight Only Changes and/or Additions or Passenger Only Changes and/or Additions, depending on the nature of the improvements.

(b) In the event that any Changes and/or Additions are required as a result of the operations of both parties on the Subject Line, the parties shall use their best efforts to determine which party shall be responsible for designing and constructing such Changes and/or Additions and to allocate the costs and expenses of designing, constructing and maintaining such Changes and/or Additions based on the principle set forth in subparagraph (e) below. Such Changes and/or Additions shall be designed and constructed in accordance with the design review requirements set forth in Section 2.4(b) and Section 2.5(b) above (as appropriate) and the construction requirements set forth in Section 2.4(c) and Section 2.5(c) above (as appropriate).

(c) Either party shall have the right, at its sole cost and expense (including any increased maintenance costs attributable thereto, except to the extent otherwise provided in this Agreement) or as otherwise agreed by the parties, to construct such other Changes and/or Additions as are reasonably deemed necessary or desirable by the constructing party. Such Changes and/or Additions shall be designed and constructed in accordance with the design review

requirements set forth in Section 2.4(b) and Section 2.5(b) above (as appropriate) and the construction requirements set forth in Section 2.4(c) and Section 2.5(c) above (as appropriate). TriMet shall be responsible for the cost and expense of any such Changes and/or Additions (and any increased maintenance costs attributable thereto) reasonably deemed necessary or desirable by TriMet. TriMet also shall be responsible for the cost and expense of any such Changes and/or Additions constructed by P&W required to maintain the higher operating speeds required for TriMet's passenger rail operations to the extent such costs and expenses would not have been incurred by P&W but for the presence of TriMet's passenger service, including the use of new switches in circumstances where P&W would otherwise use used switches, and any increased maintenance costs attributable thereto.

(d) Unless otherwise agreed by the parties, the party designing and constructing any Changes and/or Additions under this Section 2.6 shall be responsible, at its sole cost and expense (except as expressly provided in subparagraph (e) below), for any increased costs attributable to such Changes and/or Additions. Such increased costs, if any, will be determined in accordance with Section 4.1(f).

(e) P&W shall be responsible for that portion of the cost and expense of designing, constructing and maintaining Changes and/or Additions required under subparagraph (a) above and Changes and/or Additions that it elects to construct under subparagraph (c) above that would have been incurred by P&W even if TriMet were not using or intending to use the Subject Line. TriMet shall be responsible for all other costs and expenses of designing, constructing and maintaining such

Changes and/or Additions. The parties shall negotiate in good faith in an effort to agree on the appropriate allocation of such costs and expenses during the applicable plan review period for such Changes and/or Additions. The increased maintenance costs attributable to such Changes and/or Additions, if any, will be determined in accordance with Section 4.1(f).

(f) Notwithstanding any other provisions of this Agreement, if any federal, State or local government agency requires grade separations between the Subject Line and intersecting or crossing streets, roads, or highways, TriMet and P&W shall share equally the railroad share of the capital and maintenance costs for any resulting Changes and/or Additions; provided, however, that if either party demonstrates that equal capital and maintenance cost-sharing would result in gross inequity in a particular situation, then the parties shall negotiate in good faith to arrive at an equitable allocation. If the parties fail to reach agreement, the allocation may in cases of gross inequity be determined through arbitration. In attempting to establish gross inequity and in seeking an alternative cost allocation, the parties may rely on any relevant information, including the number of Trains operated by each party on the Subject Line, the correlation of the timing of highway crossing-train conflicts with the volume of highway traffic at those times, the presence or absence of a grade separation during the period prior to the Passenger Service Commencement Date, and the train-miles and ton-miles attributable to each party on the Subject Line.

(g) Notwithstanding any other provisions of this Agreement, if any federal, State or local government agency requires increased protection at

crossings, where the Subject Line crosses or intersects streets, roads, or highways, TriMet and P&W shall share equally the railroad share of the capital and maintenance costs for any resulting Changes and/or Additions; provided, however, that if either party demonstrates that this equal capital and maintenance cost-sharing would result in gross inequity in a particular situation, then the parties shall negotiate in good faith to arrive at an equitable allocation. If the parties fail to reach agreement, the allocation may in cases of gross inequity be determined through arbitration. In attempting to establish gross inequity and in seeking an alternative cost allocation, the parties may rely on any relevant information, including the number of Trains operated by each party on the Subject Line, the correlation of the timing of highway crossing-train conflicts with the volume of highway traffic at those times, the presence or absence of a grade separation during the period prior to the Passenger Service Commencement Date, and the train-miles and ton-miles attributable to each party on the Subject Line.

(h) Notwithstanding any other provision of this Agreement, if it becomes infeasible for either party to operate over any portion of the Subject Line due to a catastrophic event, including, but not limited to, a hurricane, tornado, fire, flood, landslide, collapse or failure of a critical facility, such as a bridge or tunnel, neither party shall have an obligation under this Agreement either to restore service or to invest additional capital in the Subject Line; provided, however, that should TriMet agree to pay all the costs and expenses necessary to restore service over the affected portion of the Subject Line, TriMet may construct the required Changes and/or Additions. Such Changes and/or Additions shall be designed and

constructed in accordance with the design review requirements set forth in Section 2.5(b) and the construction requirements set forth in Section 2.5(c) herein.

2.7 Ownership of Changes and/or Additions.

(a) TriMet shall own (i) all Passenger Only Changes and/or Additions on the Subject Line, (ii) any Initial Capital Improvements and any Changes and/or Additions required to be constructed by TriMet on the portion of the Subject Line between Tigard and Beaverton, and (iii) any Changes and/or Additions required to be constructed by P&W on the portion of the Subject Line between Tigard and Beaverton. To the extent that P&W retains any obligation to return the portion of the Subject Line between Tigard and Beaverton to UP at the end of P&W's existing lease or any subsequent lease, TriMet shall indemnify P&W for any costs attributable to the presence of the Initial Capital Improvements and any Changes and/or Additions constructed by TriMet on that portion of the Subject Line.

(b) P&W shall own (i) all Freight Only Changes and/or Additions on the Subject Line, and (ii) any Changes and/or Additions required to be constructed by P&W on the portion of the Subject Line between Wilsonville and Tigard. On the portion of the Subject Line between Wilsonville and Tigard, TriMet shall own all Initial Capital Improvements and all Changes and/or Additions required to be constructed by TriMet except for such Initial Capital Improvements and such Changes and/or Additions with respect to trackage existing as of the Effective Date on that portion of the Subject Line, which improvements shall be owned by P&W.

(c) Subject to the provisions of Section 2.1(f) and Section 2.1(g), and except as provided in Section 2.7(d), within one hundred eighty (180) days of the

abandonment or discontinuance of P&W's common carrier freight rail operations on all or a portion of the Subject Line, or within one hundred eighty (180) days of the issuance of a Notice of Interim Trail Use or Certificate of Interim Trail Use with respect to all or a portion of the Subject Line, P&W shall have the right (but not the obligation) to remove all track, ties, equipment or property owned by P&W on the applicable portion of the Subject Line. If TriMet is providing passenger rail service on the applicable portion of the Subject Line, P&W shall remove such track, ties, equipment, and other property in a manner that minimizes any impact to TriMet's passenger rail operations. Any such track, ties, equipment, or property not removed by P&W within the one hundred eighty (180) day period shall become the property of TriMet, and P&W shall have no further rights in such items.

(d) Within one hundred eighty (180) days of the abandonment or discontinuance of P&W's common carrier freight rail operations on all or a portion of the Subject Line, or within one hundred eighty (180) days of the issuance of a Notice of Interim Trail Use or Certificate of Interim Trail Use with respect to all or a portion of the Subject Line, P&W shall have the right (but not the obligation) to remove any Freight Only Changes and/or Additions from the applicable portion of the Subject Line and to restore such portion of the Subject Line to its original condition as part of such removal. If P&W does not remove any such Changes and/or Additions and adequately restore the Subject Line within the one hundred eighty (180) day period, TriMet shall have the right to remove such Changes and/or Additions and adequately restore the Subject Line at P&W's sole cost and expense. Any such Changes and/or Additions not removed by P&W or TriMet on the portion of the

Subject Line between Tigard and Beaverton in accordance with the foregoing shall become the property of TriMet, and P&W shall have no further rights or interests in such Changes and/or Additions. If P&W removes such Changes and/or Additions but fails to adequately restore the Subject Line to its original condition, TriMet shall have the right to obtain reimbursement from P&W for the cost and expense of performing such restoration.

(e) Within one hundred eighty (180) days after the discontinuance of TriMet's passenger rail operations on the Subject Line, TriMet shall have the right (but not to obligation) to remove any Passenger Only Changes and/or Additions from the Subject Line and to restore the relevant portion of the Subject Line to its original condition as part of such removal. Before removing any Passenger Only Changes and/or Additions, TriMet shall give sixty (60) days written notice to P&W and shall obtain any necessary regulatory approvals. If TriMet does not remove any such Changes and/or Additions and adequately restore the Subject Line within the one hundred eighty (180) day period, P&W shall have the right to remove such Changes and/or Additions and adequately restore the Subject Line at TriMet's sole cost and expense. Any such Changes and/or Additions not removed by TriMet or P&W on the portion of the Subject Line from Wilsonville to Tigard in accordance with the foregoing shall become the property of P&W, and TriMet shall have no further rights or interests in such Changes and/or Additions. If TriMet removes such Changes and/or Additions but fails to adequately restore the Subject Line to its original condition, P&W shall have the right to obtain reimbursement from TriMet for the cost and expense of performing such restoration.

(f) Within one hundred eighty (180) days after the discontinuance of TriMet's passenger rail operations on the Subject Line, TriMet shall have the right (but not to obligation) to remove any Initial Capital Improvements owned by TriMet from the Subject Line and to restore the relevant portion of the Subject Line to its original condition. Before removing any Initial Capital Improvements, TriMet shall give sixty (60) days written notice to P&W and shall obtain all necessary regulatory approvals. If TriMet does not remove any such Initial Capital Improvements and adequately restore the Subject Line within the one hundred eighty (180) day period, P&W shall have the right to remove such Initial Capital Improvements and adequately restore the Subject Line at TriMet's sole cost and expense. Any such Initial Capital Improvements not removed by TriMet or P&W in accordance with the foregoing shall become the property of P&W, and TriMet shall have no further rights or interests in such Initial Capital Improvements. If TriMet removes such Initial Capital Improvements but fails to adequately restore the Subject Line to its original condition, P&W shall have the right to obtain reimbursement from TriMet for the cost and expense of performing such restoration. Notwithstanding the foregoing, TriMet shall not remove any rail or railroad ties utilized by P&W unless the replacement rail and railroad ties are in a condition reasonably satisfactory to P&W and at least of equivalent quality to the rail and railroad ties in place before TriMet installed the rail and railroad ties identified for removal.

2.8 Coordination Committee. TriMet and P&W shall establish a Coordination Committee consisting of at least two (2) representatives of each party. The Coordination Committee shall be a forum for the parties to share information, discuss

matters submitted by one party to the other party for review and/or approval, including safety and operating issues, and progress resolution of any issues between the parties with respect to this Agreement except those covered by Section 2.3(c). The Coordination Committee shall meet (in person or telephonically) regularly but not more than once per month and also as necessary to address issues between the parties that require prompt resolution.

SECTION 3. OPERATIONS

3.1 Dispatching and Control.

(a) The dispatching of any and all Trains and Equipment of either party over and along the Subject Line shall be subject to the direction and control of P&W's or a P&W affiliate's train dispatchers and other authorized agents. In performing its dispatching responsibilities, P&W or its affiliate shall schedule and dispatch Trains and Equipment over and along the Subject Line in a safe, reliable and on-time manner and in a manner that complies with all applicable laws, regulations or rules; provided that all dispatching decisions by P&W or its affiliate affecting the movement of Trains and Equipment on the Subject Line shall give priority to TriMet's Trains moving in revenue service during the Morning and Evening Passenger Periods.

(b) TriMet shall pay P&W or its affiliate a fixed amount per month for providing such dispatching services and a monthly bonus amount (if earned) based on on-time performance (the "Dispatching Fee"). The fixed portion of the monthly Dispatching Fee shall cover all of P&W's costs in providing dispatching services, including base salaries, fringe benefits, vacation and sick time costs, and contribution to overhead, as provided in **Schedule 2.2(c)**. This fixed portion of the

monthly Dispatching Fee shall be adjusted at the end of each calendar year to reflect any increases in P&W's costs for base salaries, fringe benefits, vacation and sick time costs, and contribution to overhead. If at any time the number or mix of employees assigned to the dispatching function is changed by mutual agreement, the fixed portion of the monthly Dispatching Fee shall be adjusted immediately, effective at the time of any change in the number of employees. This Dispatching Fee shall be assessed by P&W or its affiliate within thirty (30) days of the end of each month after the Passenger Service Commencement Date in which dispatching services (including services related to equipment testing) are rendered by P&W or its affiliate on the Subject Line, and the monthly bonus amount shall be applicable as of the Passenger Service Commencement Date. The Dispatching Fee shall be determined as more particularly provided for on **Schedule 2.2(c)**.

(c) At least forty-five (45) days prior to the Passenger Service Commencement Date, TriMet shall provide P&W with a proposed schedule for its revenue Trains and a schedule for its pre-revenue service activities (including test Train and Equipment activities) on the Subject Line. At least fourteen (14) days prior to the Passenger Service Commencement Date, TriMet shall provide P&W with a final schedule for its revenue Trains. Prior to the Passenger Service Commencement Date, P&W shall reschedule its Trains to the extent necessary to comply with the priority given to TriMet's Trains during the Passenger Periods. Each party shall have a continuing obligation to notify the other of any changes to such Train schedules, and P&W shall have a continuing obligation to schedule its Trains so as to maintain the priority given to TriMet's Trains.

(d) Neither P&W nor TriMet shall adopt, except by agreement with the other party (which shall not be unreasonably withheld, conditioned or delayed), a new communications system or signal system for use on the Subject Line which would adversely affect the other party's provision of its rail service, unless required by any statute, law, ordinance or governmental regulation. Each party shall give the other party at least thirty (30) days advance written notice of any material change in its existing communications system or signal system.

(e) The parties hereby acknowledge that operating and management issues may arise from time to time with respect to the Subject Line and agree to meet and confer in good faith to discuss and resolve such issues in the Coordination Committee as set forth in Section 2.8.

3.2 Train Operations.

(a) Except as otherwise expressly provided herein, TriMet and P&W shall each be responsible for providing and operating their own Trains and Equipment on the Subject Line and each shall operate such Trains and Equipment in a safe and efficient manner. Each party shall be responsible for furnishing, at its sole cost and expense, all labor, fuel and other supplies necessary for the operations of its own Trains and Equipment over the Subject Line.

(b) TriMet and P&W shall each comply with all applicable laws, regulations or rules, state or federal, governing operations on, and the inspection, testing or safety of, the Subject Line, the Trains and Equipment thereon, and any personnel employed in the operation and maintenance thereof (including any laws relating to the transportation of Hazardous Materials). If any failure on the part of a

party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against the other 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 (including reasonable attorneys' fees) incurred in connection therewith, and shall upon the request of the other party defend such action free of cost, charge or expense to the other party. For purposes of Section 3.2(b), TriMet shall be responsible for compliance by any PRS Contractor (other than P&W or its affiliates or a P&W contractor or subcontractor); provided that this Section is subject to the requirements of Section 6 and in the event of any conflict, Section 6 shall control over this Section.

(c) Neither TriMet nor P&W shall have any responsibility for inspecting, maintaining, servicing or repairing any Trains or Equipment used by the other party on the Subject Line. If, for any reason, TriMet's or P&W's Trains or Equipment become stalled or disabled on the Joint Trackage and are unable to proceed, then the party whose Trains or Equipment are involved in the incident (the "Responsible Party") shall within a reasonable time furnish such assistance as may be necessary to haul, help, push or move such Trains or Equipment and clear the Joint Trackage. If the Responsible Party does not clear its Trains or Equipment from the Joint Trackage within a reasonable time, the other party may clear such Trains or Equipment from the Joint Trackage and obtain from the Responsible Party reimbursement of all reasonable costs and expenses incurred in so doing.

(d) As of the Passenger Service Commencement Date, if either party shall reasonably need to enter upon any portion of the Subject Line (excluding

Freight Only Changes and/or Additions or Passenger Only Changes and/or Additions, as applicable) outside the normal course of its operations (such operations including in order to transport officers, directors, employees, consultants, contractors, customer representatives, representatives of potential buyers or any other persons), then such party shall give reasonable notice to the other party of such entry, which notice shall be provided not less than twenty-four (24) hours in advance, except in the case of emergencies. The parties shall use their best efforts to avoid interfering with the operations of the other party during such entries.

(e) If P&W is required by law to conduct any testing (including any drug or alcohol testing) on any TriMet or PRS Contractor employees, TriMet shall reimburse P&W for any reasonably documented testing costs incurred by P&W.

Without limiting the generality of the foregoing, such testing costs may include costs incurred for medical services, hospital services, laboratory services, as well as P&W employee costs for time spent in arranging and supervising such testing. P&W shall provide reasonable documentation for such costs, provided that with respect to costs incurred by parties other than P&W (or its affiliates or a P&W contractor or subcontractor), P&W shall be required to provide documentation only to the extent that such documentation is available or can be obtained through commercially reasonable efforts of P&W.

SECTION 4. MAINTENANCE

4.1 Maintenance Obligations.

(a) Prior to any Maintenance Changeover Date, P&W shall maintain, repair and renew the Joint Trackage on a consistent basis at no less than the existing standard as of the Execution Date, which standard shall be determined by

the parties on the basis of a joint inspection conducted no more than thirty (30) days after the Execution Date; provided that if the standard established by any Initial Capital Improvements or any Changes and/or Additions is higher than the existing standard as of the Execution Date, P&W shall maintain, repair and renew the Joint Trackage on a consistent basis at no less than the standard established by such improvements. Such maintenance shall include the repair of trackage, structures and signals, installation of ties and ballast, surfacing work and replacement in-kind of existing facilities such as trackage, structures and signals. In conducting such maintenance obligations, P&W shall use reasonable and customary care, skill and diligence and shall comply with all applicable laws, regulations or rules.

(b) As of the earlier of the date when the Initial Capital Improvements are substantially completed or the date when P&W is required to establish a level of maintenance that is higher than necessary for freight operations, TriMet shall pay P&W for such maintenance services on a monthly basis. The monthly fee and the scope of maintenance services are set forth in **Schedule 4.1** hereof. In the event of discontinuance of TriMet's passenger rail service on the Subject Line prior to expiration of this Agreement, the parties shall negotiate in good faith to reduce TriMet's obligation to pay P&W for maintenance services to an amount that fully compensates P&W for any maintenance obligations in excess of those required for P&W's freight rail service, including, but not limited to, signal maintenance, and **Schedule 4.1** shall be amended accordingly. Thereafter, P&W and TriMet each shall have the right to request annual renegotiation of the maintenance fee based upon the same standard, and in the case of changes, **Schedule 4.1** shall be

amended accordingly. Notwithstanding the foregoing, if TriMet discontinues its passenger service but leaves in place the CTC system installed pursuant to this Agreement, TriMet shall at a minimum pay all the maintenance costs for that system, including wages and replacement parts, for a period of fifteen (15) years after TriMet's discontinuation of passenger service.

(c) P&W shall have the right, upon one hundred eighty (180) days advance written notice to TriMet, to discontinue maintenance of the Joint Trackage. In the event of any such discontinuance, P&W shall pay TriMet a monthly fee for maintenance services, as specified in Section 4.1(e) of this Agreement. Any such discontinuance shall not alter TriMet's obligation to pay for maintenance services provided by P&W.

(d) As of the Maintenance Changeover Date, TriMet shall assume sole and exclusive responsibility for maintaining, repairing and renewing the Joint Trackage on a consistent basis at no less than the existing standard as of the Joint Inspection Date; provided that if the standard established by any Initial Capital Improvements or any Changes and/or Additions to the Joint Trackage constructed after the Joint Inspection Date is higher than the standard determined as of the Joint Inspection Date, TriMet shall maintain, repair and renew the Joint Trackage on a consistent basis to the standard established by such improvements. Such maintenance shall include the repair of trackage and structures, installation of ties and ballast, surfacing work and replacement in-kind of existing facilities such as trackage and structures. In conducting such maintenance, TriMet shall use

reasonable and customary care, skill and diligence and shall comply with all applicable laws, regulations or rules.

(e) As of the Maintenance Changeover Date, P&W will pay TriMet a monthly fee of Nine Thousand Seven Hundred Four Dollars (\$9,704) for maintenance services provided by TriMet, which fee is based on P&W's current estimated share of the cost and expense of maintaining the Joint Trackage attributable to its freight rail operations on the Subject Line. The monthly fee shall be adjusted from the current estimated amount stated in the previous sentence to an adjusted amount as of the Maintenance Changeover Date by the same percentage as the percentage increase, if any, in the STB's rail cost adjustment factor, unadjusted for productivity, between the Execution Date and the Maintenance Changeover Date and thereafter, shall be adjusted annually as of the end of each calendar year by the same percentage as the percentage annual increase, if any, in the STB's rail cost adjustment factor, unadjusted for productivity. If the rail cost adjustment factor ceases to exist, the parties shall use the Consumer Price Index for all Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics or a substantially similar index. In addition, TriMet and P&W shall adjust the monthly fee every five (5) years from the Effective Date to reflect any changes in the volume of P&W traffic on the Subject Line.

(f) The monthly maintenance fees specified in subparagraph (e) above shall be adjusted retroactively, as necessary, to ensure that P&W's maintenance costs on the Joint Trackage shall not exceed its average system-wide maintenance cost per track-mile. For purposes of this provision, costs shall be calculated using a

three (3) year rolling average. By March 1 of each calendar year, P&W shall make the required calculations and provide all such calculations to TriMet. TriMet shall have the right to audit the applicable records of P&W relating to such calculations. TriMet shall promptly refund to P&W any such maintenance costs incurred by P&W above this cap.

(g) Notwithstanding any other provision of Section 4.1, P&W shall be responsible for maintenance of Freight Only Changes and/or Additions.

4.2 Failure to Maintain.

(a) In the event that either TriMet or P&W (as appropriate, the "Maintaining Party") fails to fulfill any maintenance obligations under this Agreement, the other party (the "Non-Maintaining Party") shall give written notice of such failure to the Maintaining Party. If the Maintaining Party does not cure such failure within thirty (30) days after receipt of such notice, the Non-Maintaining Party may perform such maintenance obligations and shall be entitled to full reimbursement for the costs and expenses thereof from the Maintaining Party. The performance of any such maintenance obligations by the Non-Maintaining Party shall not be deemed or construed as an assumption by such party of any other or ongoing maintenance obligations of the Maintaining Party. The Maintaining Party shall be responsible for any fines and/or penalties assessed against either party by the Federal Railroad Administration ("FRA") or any successor agency, and shall be responsible for defending (at its sole cost and expense) both parties in any enforcement action, arising from the Maintaining Party's failure to comply with applicable FRA requirements.

(b) In the event that the Maintaining Party repeatedly fails to fulfill its maintenance obligations under this Agreement, despite having received adequate written notice of such repeated failure from the Non-Maintaining Party, the Non-Maintaining Party shall have the right, upon sixty (60) days advance written notice to the Maintaining Party, to assume the maintenance responsibilities of the Maintaining Party. The parties shall negotiate in good faith to establish the amount of compensation that the Maintaining Party shall pay the Non-Maintaining Party for assuming and performing such maintenance obligations.

(c) P&W shall provide a copy of all reports of track inspections on the Northern Segment by the FRA or ODOT inspectors to TriMet promptly upon receipt of said reports. The term "reports" includes any notices or citations alleging deficiencies from FRA track standards.

(d) During the term hereof, P&W shall pay prior to delinquency all bills for any utilities necessary for its operations, including such bills for water, weed abatement, sewer, gas and electric service to the Northern Segment. To the extent such utility costs stem solely from P&W's freight operations, P&W shall bear such costs. To the extent such utility costs stem solely from TriMet's passenger operations, TriMet shall bear such costs and shall reimburse P&W for payments made by P&W. To the extent such utility costs stem both from P&W's freight operations and from TriMet's passenger operations, the costs shall be allocated based upon the number of trains operated respectively by P&W and by TriMet during the three most recent calendar months or during a representative time period agreed upon by P&W and TriMet. Utility costs to be borne by TriMet shall be

invoiced by P&W pursuant to Section 10 of this Agreement. Nothing herein shall require P&W to pay utility bills relating to TriMet's passenger stations, TriMet's parking facilities, or TriMet's passenger maintenance facilities; TriMet shall arrange to be billed directly and shall pay directly for any utility costs relating to such stations or facilities.

SECTION 5. INSURANCE

5.1 Liability Insurance.

(a) TriMet shall obtain railroad liability insurance, effective as of the Passenger Service Commencement Date, for the liability of P&W, Willamette & Pacific Railroad, Inc. ("W&P") and Genesee & Wyoming Inc. ("GWI") as the named insureds on the policy, and for the officers, directors and employees of any of them, for injury to persons, including death, and for damage to property, including damage to the environment, that would not have occurred but for TriMet's operation of the Subject Line for passenger rail transportation. Such insurance shall provide liability limits of not less than \$200,000,000 per occurrence and \$200,000,000 in the annual aggregate, excess to a self-insured retention of liability. Such insurance shall include blanket contractual liability coverage, and shall not exclude coverage for punitive damages, coverage for claims made under the Federal Employers Liability Act, coverage for the release of pollutants arising from and taking place at the site of a railroad accident, or coverage for negligence claims arising out of the intentional acts of any employee or agent. The initial self-insured retention shall be no greater than \$5,000,000, provided that the self-insured retention may be raised to an amount no greater than \$10,000,000 if TriMet can reasonably demonstrate to P&W that there has been a material change in market conditions as reflected in premium

levels and P&W concurs, which concurrence shall not be unreasonable withheld, conditioned or delayed. Subject to the limit imposed by the then-current maximum on the self-insured retention, TriMet shall have sole discretion to determine the amount of the self-insured retention. TriMet shall pay claims otherwise covered by the liability insurance described in this paragraph, but that are within the self-insured retention.

(b) In the event that TriMet purchases railroad liability insurance on a claims made basis, TriMet hereby agrees to procure insurance with an extended reporting period of five (5) years beyond expiration, cancellation or termination of the policy.

(c) TriMet shall obtain insurance, effective as of the Passenger Service Commencement Date, for the liability of P&W, W&P and GWI as the named insureds on the policy, and for the officers, directors and employees of any of them, for Loss arising out of environmental damage or the release of the Hazardous Materials on the Subject Line, with limits of not less than \$10,000,000 annually. TriMet shall have sole discretion to determine the amount of the self-insured retention, but the self-insured retention shall not exceed \$1,000,000. TriMet will pay claims otherwise covered by the insurance described in this paragraph, but that are within the self-insured retention.

(d) P&W has and shall at all times maintain railroad liability insurance for its freight operations, and any other P&W railroad operations (excluding PRS Contractor services), for its own liability and that of its officers, directors and employees, for injury to persons, including death, and for damage to property,

including damage to the environment that would have occurred regardless of TriMet's operation of the Subject Line for passenger rail service. Such insurance shall provide liability limits as P&W deems sufficient to respond to claims arising out of its own operations, and with such retentions or deductibles as it deems appropriate. P&W shall pay any claims that are within the deductible or retention of insurance obtained by P&W in satisfaction of this paragraph.

(e) TriMet and P&W shall each provide evidence of the insurance required by Sections 5.1(a), (c) and (d) to the other party at the time such insurance is obtained or renewed, but no later than the date of renewal. Certificates must be from a company authorized to do business in Oregon. TriMet and P&W have the right to review and approve insurance policies obtained by the other party for compliance with the obligations set forth in this Section 5.1; provided that such approval shall not constitute a waiver of any non-compliance with this Section 5.1.

(f) Within thirty (30) days after any amendment, expiration or repeal, or judicial invalidation of the statutory cap on liability set forth at 49 U.S.C. § 28103, and no more than once on each three year anniversary of the Passenger Service Commencement Date, TriMet and P&W shall consider the Losses paid under the insurance and self-insured retentions described in this Section 5.1, along with any other relevant information, and shall determine whether there are reasonable grounds to adjust the limits of insurance required by this Section 5.1 or the amount of or maximum for the self-insured retentions. Any disputes with respect to whether there are grounds for such adjustments shall be subject to arbitration in accordance with Section 7.

5.2 Property Insurance.

(a) TriMet has and shall maintain at all times insurance providing coverage for loss or destruction of property, including but not limited to Equipment owned by TriMet or in which TriMet has an insurable interest, or P&W property which is in the care, custody or control of TriMet, in amounts determined by TriMet to adequately insure physical damage, business interruption, extra expense, and such other loss as is reasonably foreseeable and desired by TriMet. The insurance obtained by TriMet in satisfaction of this Section shall include a waiver of subrogation in favor of P&W and if necessary, name P&W as a Loss Payee.

(b) P&W has and shall maintain at all times insurance providing coverage for loss or destruction of property used for its freight operations, and any other P&W railroad operations (excluding PRS Contractor services),, including but not limited to Equipment owned by P&W or in which P&W has an insurable interest, in amounts determined by P&W to adequately insure physical damage, business interruption, extra expense, and such other loss as is reasonably foreseeable and desired by P&W. The insurance obtained by P&W in satisfaction of this Section shall include a waiver of subrogation in favor of TriMet.

5.3 Course of Construction Insurance. TriMet shall obtain and maintain an Owner Controlled Insurance Program ("OCIP"), in accordance with Oregon law, effective on the date that TriMet commences construction of the Initial Capital Improvements ("Construction Commencement Date"). The OCIP shall include the following: (1) Railroad Protective Liability Insurance designating P&W as a named insured, and providing coverage with liability limits of \$2,000,000 per occurrence and

\$6,000,000 aggregate; (2) Builders Risk Insurance, excluding coverage for rail vehicles, with a Direct Damage Limit of \$100,000,000, and Earthquake and Flood limits of \$50,000,000 each; (3) general liability insurance with limits of \$2,000,000 per occurrence, and \$4,000,000 aggregate; (5) excess liability insurance with limits of \$75,000,000 in excess of the underlying limits general liability limits; and (6) workers compensation insurance as required by Oregon law. P&W shall be a named insured on all of the aforementioned policies, except the workers compensation insurance. To the extent that the OCIP or any other insurance available to TriMet does not insure liability for environmental damage, TriMet nevertheless shall assume responsibility for such liability or loss in accordance with Section 6.

5.4 Workers Compensation/Employers Liability Insurance. TriMet will insure or self-insure its liability to TriMet employees, as required by Oregon law.

5.5 Letter of Credit In Amount of Retention. Tri-Met shall secure and maintain unconditional and irrevocable standby Letters of Credit addressed to P&W in an amount equal to the then-current self-insured retention levels for the insurance required under Sections 5.1(a) and 5.1(c) and conterminous with the longest remaining term among the policies then in place to meet the requirements of Sections 5.1(a) and 5.1(c). The issuer of the Letter of Credit shall be a bank with a long term senior debt credit rating of not less than "A(2)" by Moody's Investors Service or "A" by Standard & Poor's. In the event Tri-Met fails to meet its obligation with respect to claims within the self-insured retention under any insurance policy provided for in this Section 5 in accordance with Section 6.4, P&W shall have the right, upon ten (10) days written notice to Tri-Met, to

draw upon the Letter of Credit to satisfy such claims and to seek interest from TriMet under Section 10.5, retroactive to the date of any payment by P&W.

5.6 Notice of Change.

(a) The policy or policies obtained by TriMet in satisfaction of the obligations set forth in Sections 5.1(a) and 5.1(c) may not be non-renewed, cancelled or materially changed without providing P&W written notice thirty (30) days prior or soon as reasonably practicable after TriMet receives a notice of cancellation or change from any insurer issuing such policy or policies.

(b) The policy or policies obtained by P&W in satisfaction of the obligations set forth in Section 5.1(b) may not be non-renewed, cancelled or materially changed without providing TriMet written notice thirty (30) days prior or soon as reasonably practicable after P&W receives a notice of cancellation or change from any insurer issuing such policy or policies.

5.7 Primary Nature of Insurance. Insurance obtained pursuant tot his contract shall be primary and non-contributing as respects any level of self-insurance or coverage maintained by P&W. Certificates must reflect the above wording such wording shall be included on the policies obtained pursuant to Section 5.1(a) and 5.1(c). Any coverage maintained by P&W for its liability shall be excess over any other valid and collectible insurance.

5.8 Separation of Insureds. All policies required herein shall include a severability of interest provision or endorsement, or separation of insureds language within the policy.

5.9 Insurers. Each insurance policy required by this Section shall be issued by a financially sound insurer has a Best's Rating of A-VII or better.

SECTION 6. LIABILITY AND INDEMNIFICATION

6.1 Indemnification.

(a) TriMet agrees to defend and indemnify P&W, its parent and affiliated companies, and the officers, directors and employees of any of them, against all claims, suits and demands for Losses arising out of injury or death sustained by any person, and out of damage to property, when such Loss would not have occurred but for TriMet's operation of passenger rail service on the Subject Line.

(b) P&W agrees to defend and indemnify TriMet and its related entities, and the officers, directors and employees of any of them, against all claims, suits and demands for Losses arising out of injury or death sustained by any person, and out of damage to property, when such Loss did not arise out of and would have occurred regardless of TriMet's operation of passenger rail service on the Subject Line.

6.2 Allocation of Responsibilities.

(a) Without limiting the generality of Section 6.1, any and all Losses arising out of (i) personal injury (including bodily injury and death) to, or property damage suffered by, Passengers or TriMet's non-Passenger invitees, employees, agents, officers, directors, commissioners, trustees or any person operating TriMet's Trains or TriMet's Equipment on the Subject Line; (ii) personal injury (including bodily injury and death) to, or property damage suffered by, P&W's invitees, employees, agents, officers, directors, trustees or any person operating P&W's

Trains or P&W's Equipment on the Subject Line; (iii) property damage suffered by TriMet; (iv) property damage suffered by P&W; (v) personal injury or property damage suffered by any other persons (including trespassers whether or not subject to the cap on liability established in 49 U.S.C. § 28103); or (vi) the direct or indirect release, discharge, or spillage of Hazardous Materials; shall be the responsibility of and borne by TriMet, if such Losses would not have arisen but for the provision of TriMet's passenger rail service on the Subject Line (including any service performed by P&W for TriMet) or to the presence of Passengers, cars, equipment, personnel, contractors or agents of TriMet on or about the Subject Line.

(b) Without limiting the generality of Section 6.1, any and all Losses not covered by Section 6.2(a) arising out of (i) personal injury (including bodily injury and death) to, or property damage suffered by, P&W, P&W's invitees, employees, agents, officers, directors, trustees or any person operating P&W's Trains or P&W's Equipment on the Subject Line; (ii) personal injury or property damage suffered by any other persons (including trespassers); or (iii) the direct or indirect release, discharge, or spillage of Hazardous Materials; shall be the responsibility of and borne by P&W.

(c) In any case where a party is required under the provisions of this Section 6 to bear the responsibility for a Loss, it shall have the responsibility for cleanup, including all associated costs, of the incident or accident which resulted in such Loss. In the event the party responsible for the cleanup fails to clean up the incident or accident within a reasonable time, the other party may clean up the incident or accident and obtain from the responsible party reimbursement of all costs

and expenses arising from the cleanup, including interest imposed beginning on the day funds are first advanced for such cleanup, in accordance with Section 10.5.

(d) Should P&W be forced to suspend freight rail service due to construction or maintenance by TriMet of the Initial Capital Improvements or Passenger Only Changes and/or Additions, TriMet shall be responsible for P&W's lost revenue and increased expenses of any kind or character (both direct and third party expenses) to the extent such lost revenue and increased expenses would be covered by a Builders Risk Insurance policy like that described in Section 5.3. For the avoidance of doubt, P&W had operating revenue in excess of \$38 million in the Oregon Region in a recent annual period. TriMet shall not be responsible for any such Losses that occur as a result of P&W's inability to provide freight rail service either during construction by TriMet that occurs within the specific hours allocated for such projects under Section 2.3(d) or during maintenance by TriMet that occurs within a schedule established in advance by TriMet and P&W. Except as otherwise expressly provided in this Section 6, P&W shall be responsible for and shall bear any Losses sustained by TriMet (including lost profits) as a result of P&W activities on the Subject Line that occur during any specific hours allocated for TriMet construction projects.

(e) Should P&W be required to provide passenger rail service on the Subject Line, by court order, agency order, or by operation of law, due to a cessation or suspension of passenger rail service by TriMet, TriMet shall indemnify P&W for all resulting Losses, including reasonable attorneys' fees and expenses incurred in opposing regulatory or legal action requiring P&W to provide such service.

(f) Notwithstanding any other provision of this Section 6, Losses arising out of an accident or incident involving both TriMet's Trains or Equipment and P&W's Excursion Trains shall be the responsibility of and borne by the parties in proportion to their respective degrees of fault.

(g) Neither party shall (i) seek to nullify, void or set aside the allocation of Losses set forth in this Section 6 by alleging that the other party has engaged in misconduct, or willful and wanton misconduct, or negligence or gross negligence; (ii) bring a claim alleging that the other party has engaged in misconduct, or willful and wanton misconduct, or negligence or gross negligence; or (iii) seek to nullify, void or set aside the allocation of Losses set forth in this Section 6 by invoking the doctrine of sovereign immunity or by alleging that execution of this Agreement by a party was not within the scope of that party's authority; or (iv) seek to nullify, void or set aside the allocation of Losses set forth in this Section 6 by alleging that any provisions of this Agreement is inconsistent with the provisions of the Oregon constitution or any other provision of Oregon law; or (v) challenge the enforceability of the Loss allocation provisions set forth in this Section 6.

6.3 Scope of Indemnification.

In any case where a party is required under the provisions of this Section 6 to bear the responsibility for a Loss, it shall pay, satisfy and discharge such Loss and all judgments that may be rendered by reason thereof and all costs, charges and expenses incident thereto (including all incidental expenses incurred by the indemnified party), and such party shall forever indemnify, defend and hold harmless the other party and its commissioners, directors, officers, agents, employees,

shareholders, parent corporation and affiliated companies or governmental entities from, against and with respect to any and all Losses which arise out of or result from the incident giving rise thereto.

6.4 Procedure.

(a) If any claim demand shall be asserted by any person against an indemnified party under this Section 6, the indemnified party shall, within thirty (30) days after notice of such claim or demand, cause written notice thereof to be given to the indemnifying party, provided that failure to notify the indemnifying party shall not relieve the indemnifying party from any liability which it may have to the indemnified party under this Section 6, except to the extent that the rights of the indemnifying party are in fact prejudiced by such failure. If any such claim or demand shall be brought against the indemnified party and it shall have given notice thereof to the indemnifying party, the indemnifying party shall have the right, at its own expense, to control (including the selection of counsel reasonably satisfactory to the indemnified party) or to participate in the defense of, negotiate or settle, any such claim or demand, and the parties hereto agree to cooperate fully with each other in connection with any such defense, negotiation or settlement. In any event, the indemnified party shall not make any settlement of any claims which might give rise to liability on the part of the indemnifying party under this Section 6 without the prior written consent of the indemnifying party, which consent shall not be unreasonably withheld, conditioned or delayed. If any claim or demand relates to a matter for which the parties, under the terms of Section 6.2, are to share liability equally or in proportion to their relative degrees of fault, each party shall be entitled to select its

own counsel and defend itself against the claim at its own expense, and neither party shall make any settlement of any such claims without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed.

(b) Subject to the provisions of Section 6.4(a) on each occasion that the indemnified party shall be entitled to indemnification or reimbursement under this Section 6, the indemnifying party shall, at each such time, promptly pay the amount of such indemnification or reimbursement. If the indemnified party shall be entitled to indemnification under this Section 6 and the indemnifying party shall not elect to control any legal proceeding in connection therewith, the indemnifying party shall pay to the indemnified party an amount equal to the indemnified party's reasonable legal fees and other costs and expenses arising as a result of such proceeding.

(c) Any dispute between the parties as to the right to indemnification or the amount to which it is entitled pursuant to such right with respect to any matter shall be submitted to arbitration pursuant to Section 7; provided, however, that if either party or both parties are named as defendants, third party defendants, cross-claim defendants or are otherwise named as parties to a lawsuit or other legal proceeding initiated by a third party, and such proceeding involves or relates to such indemnification rights, then either party shall have the right to pursue the resolution of such indemnification issues in that proceeding instead of through the arbitration procedures set forth in Section 7.

6.5 Not For Benefit Of Third Parties. The provisions of this Section 6 are not intended to confer any right, benefit, or cause of action upon any third party and are

intended solely to deal with the allocation of liability, if any, as between the parties to this Agreement.

SECTION 7. DISPUTE RESOLUTION AND BINDING ARBITRATION

7.1 Submission. Both of the parties hereto shall make every reasonable effort to settle any disputes arising out of their respective rights and obligations under this Agreement through prompt and diligent negotiations. If at any time a question or controversy shall arise between the parties hereto in connection with the Agreement that the parties cannot resolve within thirty (30) days, such question or controversy shall be submitted to and settled by binding arbitration unless and to the extent that (i) P&W seeks to suspend or terminate its performance obligations to TriMet under Section 3 and/or Section 4 of this Agreement and/or require TriMet to suspend or terminate its passenger rail service rights under Sections 2.2 and/or 2.5 of this Agreement or (ii) such question or controversy is otherwise expressly excluded from arbitration by the terms of this Agreement. The parties shall retain any and all rights to seek judicial relief with respect to questions or controversies that are expressly excluded from arbitration by the terms hereof. For such purposes, both parties consent to venue in the U.S. District Court for the District of Oregon, provided such Court has jurisdiction. Arbitration shall occur in Portland, Oregon or in another location mutually agreed to by the parties. Unless otherwise agreed by the parties, arbitration between the parties pursuant to this Section 7 shall be governed by the rules and procedures set forth in this Section 7.

7.2 Selection of Arbitrator. If the parties to the dispute are able to agree upon a single competent and disinterested arbitrator within fifteen (15) 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 nomination of one competent and disinterested arbitrator. Within fifteen (15) days after receipt of said notice, the noticed party shall appoint a competent and disinterested arbitrator and notify the notifying party in writing of such appointment. Should the noticed party fail within fifteen (15) days after receipt of such notice to name its arbitrator, said arbitrator may be appointed by the Chief Judge (or acting Chief Judge) of the United States District Court for the District of Oregon upon application by either party after ten (10) days’ written notice to the other party. The two arbitrators so chosen shall select one additional competent and disinterested arbitrator to complete the board within fifteen (15) days. If the arbitrators so chosen fail to agree upon an additional arbitrator, the additional arbitrator shall, upon application of either party, be appointed by said judge in the manner heretofore stated, provided that in such case the appointed arbitrator shall have experience in passenger and freight railroad shared track operations.

7.3 Hearing. Upon selection of the arbitrator(s), said arbitrator(s) shall, with reasonable diligence and subject to the rights of the parties under Section 7.6, determine the questions as disclosed in said notice of arbitration, give both parties reasonable notice of the time and place (of which the arbitrator(s) shall be the judge) of hearing evidence and argument, 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 judge shall appoint another to act in the arbitrator’s place.

7.4 Decision. After considering all evidence, testimony and arguments, said single arbitrator or the majority of said board of arbitrators shall promptly (and in no event more than thirty (30) days after the arbitration hearing) 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) shall be binding on the parties and 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.

7.5 Costs. 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.

7.6 Discovery. The parties may obtain discovery and offer evidence as directed by the arbitrators but 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.

SECTION 8. TERM AND TERMINATION

8.1 Initial Term. The initial term of this Agreement shall commence on the Effective Date and shall expire fifty (50) years thereafter (the "Initial Term"), unless earlier terminated in accordance with this Section.

8.2 Breach By TriMet.

(a) Subject to Section 8.5, in the event of a material breach by TriMet of this Agreement, if TriMet fails to cure within thirty (30) days of receipt of written notice from P&W, P&W shall be entitled to any and all legal and equitable remedies, except that if P&W elects to suspend its performance obligations to TriMet under Section 3 and/or Section 4 of this Agreement and/or require TriMet to suspend its passenger rail service rights under Sections 2.2 and/or 2.5 of this Agreement, the cure period shall be five (5) years and TriMet shall have the right to the reinstatement of P&W performance and/or the reinstatement of passenger rail service thirty (30) days after TriMet has cured such breach. Should a dispute arise regarding whether TriMet has cured such breach, there shall be no reinstatement of passenger rail service until the dispute is resolved. For purposes of this provision, a material breach shall include, but shall not be limited to: (i) any failure by TriMet to meet its indemnification obligations; or (ii) any failure by TriMet to meet its payment obligations to P&W, where the amount owed by TriMet equals or exceeds fifty thousand (\$50,000) dollars.

(b) If TriMet's breach of its obligations in Section 6.2(d) causes a cessation of P&W's freight rail operations on the Subject Line for more than thirty (30) days or TriMet fails to pay within thirty (30) days P&W's lost revenue and increased expenses arising from a breach of its obligations in Section 6.2(d), then in

addition to the remedies set forth elsewhere in this Section 8, P&W shall have the right to (x) suspend passenger rail service until P&W's freight rail operations on the Subject Line are fully restored and TriMet has paid such lost revenue and increased operating expenses arising from any such cessation and (y) collect interest from TriMet under Section 10.5, retroactive to the date of any such lost revenue or increased operating expenses.

(c) TriMet shall not invoke or rely upon sovereign immunity as a basis to avoid or nullify any provision of this Agreement.

8.3 Breach by P&W. Subject to Section 8.5, in the event of a material breach of this Agreement by P&W, if P&W fails to cure such breach within thirty (30) days of receipt of written notice from TriMet, TriMet shall be entitled to any and all legal and equitable remedies. For purposes of this provision, a material breach shall include, but shall not be limited to: (i) any failure by P&W to meet its indemnification obligations; or (ii) any failure by P&W to pay TriMet for maintenance where the amount owed by P&W equals or exceeds fifty thousand (\$50,000) dollars.

8.4 Materiality Thresholds. The fifty thousand (\$50,000) dollar materiality thresholds contained in this Section 8 shall be adjusted, as of the end of each calendar year, by the same percentage annual increase in the Consumer Price Index for All Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics or a substantially similar index agreed to by the parties if the CPI-U is discontinued.

8.5 Termination.

(a) Except as provided in this Section 8.5, neither party shall have the right to terminate this Agreement. This Agreement shall terminate upon the

abandonment or discontinuance of P&W common carrier freight rail service on the Subject Line pursuant to authorization or exemption by the Surface Transportation Board or a successor agency, subject to the rights and obligations of either party that survive termination, including Section 2.1(g). A temporary suspension of freight rail service pursuant to an embargo shall not result in termination; nothing in this Section 8.5 shall limit P&W's rights under Sections 14.1 and 14.3 of this Agreement. This Agreement shall terminate upon the discontinuance of TriMet's passenger rail service on the Subject Line, subject to the rights and obligations of either party that survive termination, including Section 4.1(b). Termination shall not relieve either of the parties hereto from any obligations or liabilities accrued under this Agreement as of the time such termination becomes effective. Without limiting the generality of the foregoing, it is specifically recognized that P&W's removal and restoration obligations under Section 2.7, TriMet's removal and restoration obligations under Section 2.7, and any obligation on the part of either party to assume financial responsibility, to indemnify and defend or to make a payment of money shall survive termination of this Agreement.

(b) Either party shall have the right to terminate this Agreement if there is any change in Oregon law that renders the insurance or loss-allocation provisions of the Agreement unenforceable as applied to the other party. P&W shall have the right to terminate this Agreement if ORS 30.320 is amended or repealed and if no comparable provision is enacted ensuring that a suit or action for breach of contract may be maintained against TriMet and, in the event of any assignment, against the assignee.

(c) Termination shall not relieve either of the parties hereto from any obligations or liabilities accrued under this Agreement as of the time such termination becomes effective. Without limiting the generality of the foregoing, it is specifically recognized that P&W's removal and restoration obligations under Section 2.7, TriMet's removal and restoration obligations under Section 2.7, and any obligation on the part of either party to assume financial responsibility, to indemnify and defend or to make a payment of money shall survive termination of this Agreement.

SECTION 9. TAXES

To the extent any taxes are payable with respect to any portion of the Subject Line by reason of P&W's use thereof in accordance with this Agreement, P&W will pay, to the extent required to do so, such taxes prior to delinquency and shall protect, defend, indemnify and hold TriMet harmless from and against any and all liability, loss, cost, damage or expense (including reasonable attorneys' fees) TriMet may sustain or incur on account of any such taxes. Notwithstanding the foregoing, any increase in taxes imposed on P&W due to TriMet's passenger operations, the Initial Capital Improvements, the Passenger Only Changes and/or Additions or other Changes and/or Additions constructed by TriMet shall be the responsibility of TriMet.

SECTION 10. COMPENSATION AND BILLING

10.1 Invoices. Invoices submitted to the parties under this Agreement ("Invoices") must specify the amount due under this Agreement. Any Invoice covering work or services billed on a time and materials basis must be itemized with a detailed description of the work performed, the date of such work, the person performing such work, the time expended and the associated hourly billing rate or charge for such work,

the associated fringe benefit costs or fringe benefit ratio, and any reimbursable expenses (including the cost of materials used and reasonable overhead) incurred in the performance of the work. The party requesting reimbursement shall certify that it has actually incurred the expenses set out in its Invoice. Except as specifically provided in the Schedules accompanying this Agreement, invoices for reimbursable expenses may not exceed the out-of-pocket expense and assigned overhead costs for such items. Invoices shall be paid within thirty (30) days after receipt thereof by the payor. If a party disputes any items on an Invoice, that party may, at its election, deduct the disputed item from the payment, but shall not delay payment for the undisputed portions. The amounts and reasons for such deductions, if any, shall be documented to the other party within thirty (30) days after receipt of the Invoice. Once documentation is given for the disputed amounts, and accepted by the paying party, the disputed amounts shall be paid by the paying party within fifteen (15) days after receipt of the documentation; in connection with any payments delayed under this provision, an interest charge shall be applied pursuant to Section 10.4, and interest shall accrue from the original due date for payment forward, except that no interest shall accrue if the payment was delayed due to a material failure to provide required documentation. No Invoice shall be submitted later than one hundred twenty (120) days after the last day of the calendar month in which the reimbursable expense or cost covered thereby is incurred.

10.2 Audit. So much of the books, accounts, and records (except for privileged or confidential 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. All accounting records and other

supporting papers shall be maintained for a minimum of three (3) years from the date thereof. If work relating to this Agreement is funded in whole or in part by a federal grant, the Comptroller General of the United States and authorized representatives of the federal agency furnishing the grant shall have the right to examine and audit such books, accounts, and records in accordance with applicable federal laws and regulations.

10.3 Supporting Documentation. Upon request, a party disputing the accuracy of any Invoice shall be entitled to receive from the invoicing party copies of such supporting documentation and/or records as are kept in the ordinary course of the invoicing party's business and which are reasonably necessary to verify the accuracy of the Invoice as rendered.

10.4 Interest on Past Due Invoices. If a party fails to pay an Invoice or a portion of an Invoice within the thirty (30) day period, the party requesting reimbursement may impose an interest charge from the thirtieth (30th) day forward on the unpaid amount. Such interest charge may be included on a subsequent Invoice or an amended Invoice. The interest rate shall be three percent (3%) above the prime rate published in the Wall Street Journal, if available (and, if not available, then a substantially similar prime rate). Notwithstanding the foregoing, an interest charge may not be imposed on any Invoice or any portion of an Invoice that is determined through arbitration or through mutual agreement to be in excess of the amount that is properly due and owing under this Agreement, or for so long as the payment was delayed due to a material failure to provide required documentation.

10.5 Interest on Payments. If a party fails to make a payment under any provision of this Agreement (other than payment obligations arising out of Losses) within thirty (30) days of when such payment is due, interest shall be imposed from the thirtieth (30th) day forward on the unpaid amount, except that in the case of cleanup cost reimbursements described in Section 6.2(c), interest shall be imposed beginning on the day funds are first advanced for such cleanup. The interest shall be three percent (3%) above the prime rate published in the Wall Street Journal, if available (and, if not available, then a substantially similar prime rate).

SECTION 11. ASSIGNMENT

This Agreement shall be binding on the successors and assigns of the respective parties. Except as otherwise provided herein, neither party may assign this Agreement to any other person or entity without the express written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. With respect to any permitted assignment (in whole or in part) of the rights and obligations of one party, it is the intent of the parties that the assigning party shall have no further rights or obligations under this Agreement to the extent of such assignment. TriMet acknowledges that if P&W or all of its assets are acquired, or if a controlling interest in P&W is acquired, or if P&W merges into another entity, P&W shall have the right to assign this Agreement without TriMet's consent to the entity that has acquired P&W or all of its assets or a controlling interest in P&W or has merged into P&W.

SECTION 12. NON-DISCRIMINATION

No person shall be denied or subjected to discrimination in receipt of the benefits of any services or activities made possible by or resulting from this contract on the

grounds of race, color, religion, gender, sexual orientation, national origin, disability, age, or marital status.

SECTION 13. HAZARDOUS MATERIALS AND ENVIRONMENTAL COMPLIANCE ON THE NORTHERN SEGMENT

13.1 Removal of Certain Materials Upon Termination. Upon expiration or earlier termination of the term of this Agreement, and subject to Section 6.2 of this Agreement, P&W shall (i) remove any drums, totes, or other portable vessels on the Northern Segment used to store Hazardous Materials used or generated by P&W, and remove the contents of, and clean out, any tanks, sumps or other vessels located on the Northern Segment that were used to store Hazardous Materials used or generated by P&W, and properly transport such items and Hazardous Substances to appropriately permitted off-site facilities for reuse, storage, processing, treatment, recycling or disposal in compliance with all applicable Environmental Laws.

13.2 Notice of Releases of Hazardous Materials. P&W shall promptly furnish TriMet written notice of any and all:

(a) Reportable Releases of a Hazardous Material at, to or affecting the Northern Segment or any adjacent property of which it becomes aware which occur during the term of this Agreement; and

(b) Alleged violations of Governmental Approvals. Such written notice shall identify the substance released, the amount released and the measures undertaken to clean up and remove the released material and any contaminated soil or water, the nature and extent of the alleged violation of the measures taken to eliminate the violations, and shall certify that P&W has complied with all applicable regulations, orders, judgments or decrees in connection therewith, or the date by

which such compliance is anticipated to be effected. P&W shall also provide TriMet with copies of any and all reports made to any governmental agency which relate to such releases or such alleged violations during the term of this Agreement.

13.3 Response to Releases of Hazardous Materials. Subject to Section 6.2:

(a) With respect to any Release of Hazardous Materials to the Northern Segment arising from P&W's facilities, equipment, operations, or activities, or for which P&W is otherwise responsible as provided in Section 6.2 (including any such Releases arising from P&W's facilities, equipment, operations or activities prior to the Effective Date), P&W shall promptly undertake and diligently implement such Response Actions as reasonably required in order to comply with applicable Environmental Laws and to obtain an NFA, in accordance with the procedures and provisions of **Schedule 13.3**.

(b) In the event that any Release of Hazardous Materials for which P&W is responsible as provided in Section 13.3 is combined with any Release of Hazardous Materials for which TriMet is responsible, the Parties shall confer and coordinate the planning and implementation of Response Actions in accordance with the procedures and provisions of **Schedule 13.3**.

13.4 Compliance with Laws; Wastes and Pollution. During the term of this Agreement, P&W shall comply with all federal, state and local laws, rules, regulations, and ordinances applicable to the Northern Segment, including but not limited to all applicable Environmental Laws. Without limiting the generality of the foregoing, at each location that P&W parks its locomotives, P&W shall install drip pans and a recovery system for fuel drippings that meet or exceed the requirements of applicable

Environmental Laws within six (6) months after the Effective Date or such earlier time as required under applicable Environmental Laws.

13.5 Release of Hazardous Materials. P&W shall not Release any Hazardous Materials in, from, upon, under or above the Northern Segment except in compliance with all applicable Environmental Laws and applicable Governmental Approvals.

13.6 Storage and Disposal of Waste. P&W shall not store any waste of any type in, upon, under or above the Northern Segment except for the temporary accumulation and storage of waste in the ordinary course of business, pending removal of such waste for recycling, treatment or disposal at a permitted facility. Such waste shall not be accumulated for longer than the time allowed under applicable Environmental Laws. Waste shall be stored in appropriate containers and in compliance with all applicable Environmental Laws. P&W shall not dispose of any waste of any kind (whether hazardous or not) on or upon the Northern Segment.

13.7 Storage of Other Hazardous Materials. P&W shall not store any Hazardous Materials in, upon, under or above the Northern Segment except for (A) the temporary storage of waste as provided in Section 13.6 and (B) the storage of fuel, commercial products or other materials necessary to operate and maintain P&W's locomotives and equipment. Fuel oil and lubricants shall be stored only in vessels, containers, totes or tanks, which comply with all applicable Environmental Laws. To the extent that such materials are stored on or at the Northern Segment, all other materials shall be stored only in properly labeled and appropriate containers, in facilities or buildings where such materials are stored as of the Effective Date or at such other

locations on or at the Northern Segment that TriMet may approve, which approval shall not be unreasonably withheld.

13.8 Responsibility For Past Releases By UP Or Other Freight Railroads.

Notwithstanding any other provision in this Agreement, P&W shall bear no responsibility to TriMet for releases of Hazardous Materials by UP, UP affiliates, or other freight railroads that have operated on the Subject Line before the Execution Date. Nothing in this Agreement shall require P&W to pay for Response Actions or to undertake Response Actions necessitated by the presence of Hazardous Materials released by UP, UP affiliates, other freight railroads, or other third parties before the Execution Date.

SECTION 14. MISCELLANEOUS PROVISIONS

14.1 P&W's Right To Impose Embargoes. Except as provided in Section 2.1(e), nothing in this Agreement shall impair or restrict P&W's rights to impose embargoes suspending freight rail service on the Subject Line. P&W shall promptly notify TriMet if any embargo is imposed by P&W.

14.2 Regulatory Approvals and Conditions. Each party shall file for and obtain any regulatory approval that it deems necessary (in its sole discretion) to enter into the transaction contemplated by this Agreement. TriMet shall pay any reasonable expenses, including legal fees, incurred by P&W in obtaining the required approvals listed in **Schedule 14.2**. The parties acknowledge that this Agreement, including Section 2.3(a) hereof, will be subject to FTA approval. The parties further acknowledge that the STB does not have jurisdiction over the transaction contemplated by this Agreement; if County does not acquire the Northern Segment and transfer same to TriMet by March 31, 2007, TriMet shall notify the STB of that fact and inform the STB that it does not intend to act in reliance on the effect of any STB exemptions or

jurisdictional determinations. If any regulatory authority imposes material conditions on the transaction or operations authorized by this Agreement, and if such conditions are unacceptable to either party hereto, P&W or TriMet may at any time prior to the initiation of construction of the Initial Capital Improvements terminate the Agreement on thirty (30) days written notice.

14.3 P&W's Existing Agreements. TriMet acknowledges and agrees that, except as specifically provided herein, the agreements listed in **Schedule 14.2** remain in full force and effect, as amended from time to time.

14.4 Reconstruction or Replacement of Damaged Facilities. P&W shall bear no responsibility for disruptions of passenger rail service due to flooding, bridge damage, fires, hurricanes, tornadoes, storms or landslides. Nothing in this Agreement shall impose any obligation on P&W to reconstruct or replace bridges or other major structures now used on the Subject Line.

14.5 Representation as to Enforceability of Agreement. Each party represents and warrants that it has all necessary authority to execute this Agreement and to meet its respective obligations under this Agreement. P&W represents and warrants that this Agreement is and shall be enforceable against P&W. TriMet represents and warrants that this Agreement is and shall be enforceable against TriMet. TriMet further represents and warrants that (a) its execution of this Agreement and its performance under this Agreement are within the scope of its authority; and (b) its performance under this Agreement is not in any way prohibited by the Oregon Constitution or by any provision of Oregon law. These representations and warranties shall survive termination of the Agreement.

14.6 Successors and Assigns. This Agreement and each and every provision hereof is for the benefit of the parties hereto and their successors and assigns only, and shall not be deemed to inure to the benefit of any third parties. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

14.7 Notices. Except as otherwise expressly provided in this Agreement, all notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (a) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy directed to the applicable telecopy number listed below and the transmission is confirmed by mail as provided under (b) below which is deposited on the first business day after the transmission, or (b) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications shall be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

If to TriMet: Tri-County Metropolitan Transportation District of Oregon
710 Holladay Street
Portland, OR 97232-2168
Attn: Neil S. McFarlane

If to P&W: Portland & Western Railroad, Inc.
650 Hawthorne Avenue, S.E.
Salem, OR 97301
Telephone: 541-924-6560
Facsimile: 541-924-6580
Attn: President and General Manager

With a copy to: Genesee & Wyoming, Inc.
66 Field Point Road
2d Floor
Greenwich, CT 06830
Attn: Legal Department

14.8 Interpretation. The section and subsection headings in this Agreement are for convenience only and shall not be used in its interpretation or considered part of this Agreement. Words used herein, regardless of the number and gender used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires and, as used herein, unless the context requires otherwise, the words "hereof," "herein," and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The terms "include" and "including" and any derivation thereof shall be deemed to encompass the phrase "without limitation." This Agreement is entered into by the Parties in reliance upon the economic and legal bargains contained herein and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the party who prepared, or caused the preparation of, this Agreement or the relative bargaining power of the Parties.

14.9 Integration, Amendment, and Waiver. This Agreement is the entire agreement, and supersedes all prior and contemporaneous agreements, representations, and understandings, of the parties concerning the subject matter hereof. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by both of the parties. Union Pacific Railroad Company ("UPRR") shall have the right to review and approve any amendment to this Agreement if such amendment could reasonably be construed to adversely affect UPRR's commercial position with respect to freight handled over the Northern Segment,

provided any such review and approval shall not be unreasonably withheld, conditioned or delayed. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provisions, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

14.10 Counterparts. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A facsimile signature by any party on a counterpart of this Agreement shall be binding and effective for all purposes. Such party shall, however, subsequently deliver to the other party the original, executed counterpart of this Agreement.

14.11 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Oregon without regard to any conflict of law principles that, if applied, might permit or require the application of the law of another jurisdiction.

14.12 Attorneys Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it or they may be entitled.

14.13 Force Majeure.

(a) Except as otherwise provided in Section 14.13(b), each party will be excused from the performance of any of its obligations hereunder to the other party where such nonperformance is occasioned by any event beyond its control, which shall include any order, rule or regulation of any federal, state, or local governmental body, agency or instrumentality, natural disaster, work stoppage, or civil disorder, provided that, except as otherwise provided in Section 13.4, the party so excused hereunder shall use all reasonable efforts to minimize its nonperformance and to overcome, remedy, cure, or remove such event and resume the performance of its obligations as soon as reasonably practicable. Notwithstanding the foregoing, orders, rules, or regulations issued by TriMet shall not excuse any failure of performance by TriMet.

(b) With respect to either party's indemnification, insurance, and payment obligations, any failure of performance attributable to a Force Majeure event shall suspend such party's obligations for a maximum of thirty (30) days. At the end of the thirty (30) day period, such party shall be required to meet all such obligations, including any obligations suspended during the Force Majeure event.

14.14 Severability. Except for the provisions of Section 5, which govern insurance coverage obligations, if any covenant or provision of this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision of this Agreement that is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision.

14.15 Effective Date. The parties acknowledge and agree that this Agreement shall become effective as of the Effective Date; provided, however, that if County fails to consummate its acquisition of the Northern Segment and transfer same to TriMet by March 31, 2007, this Agreement shall be terminated, and except for rights and obligations already incurred, the parties' shall have no further rights and obligations hereunder.

IN WITNESS WHEREOF, each party has caused this Agreement to be signed by one of its duly authorized officers as of the date and year set forth on the following page.

[This space intentionally left blank.]

Date: _____

By: _____
Bruce Carswell, President and General
Manager
Portland & Western Railroad, Inc.

Date: _____

By: _____
Neil S. McFarlane
Executive Director, Capital Projects &
Facilities Division
Tri-County Metropolitan Transportation
District of Oregon

Exhibit A

Maps/Drawings of Joint Trackage

List of Schedules

Schedule 2.1 – Customers Not Served by P&W Within the Last Three Years But Likely to Receive Service in the Future

Schedule 2.2(c) – Services & Compensation - Operations

Schedule 2.3 – List of Initial Capital Improvements

Schedule 4.1 – Services & Compensation – Maintenance

Schedule 13.3 – Procedures Governing Environmental Response Actions

Schedule 14.2 – List of Required Approvals

Schedule 14.3 – P&W Agreements

Schedule 2.1

**Customers Not Served By P&W Within The Last Three Years
But Likely To Receive Service In The Future**

Utility Vault

GI Joes

RiteAid

WestCo.

McCall Oil

Schedule 2.2(c)

**Compensation For Locomotive Operator And Conductor Operator Services,
Including Dispatching, Management, and Administrative Services**

1. Overall Approach.

(a) Every five (5) years, TriMet and P&W shall negotiate in good faith to determine the number and types of P&W employees required to provide Locomotive Operator and Conductor Operator Services. Locomotive Operator and Conductor Operator Services shall include not only Train services, but also dispatching services, general manager services, and contractor administration services. The parties will develop written job descriptions for all Locomotive Operator and Conductor Operator Services. Using the agreed-upon list of positions, P&W shall determine for the five (5) year period, the total projected annual labor cost for such services, taking into account base salaries, fringe benefits, vacation and sick time, and overhead; in the manner set forth in the table attached below. P&W shall upon reasonable request provide to TriMet documentation for these projected labor costs. Based upon the projected labor costs, the parties shall then negotiate in good faith to determine TriMet's monthly payment for Locomotive Operator and Conductor Operator Services.

(b) Within a reasonable time after the end of each calendar year, P&W shall determine the actual labor costs incurred in providing Locomotive Operator and Conductor Services to TriMet, taking into account base salaries, fringe benefits, vacation and sick days, and overhead. If TriMet is found to have made any excess payments (i.e., payments exceeding P&W's actual labor costs as described in the previous sentence), P&W shall promptly refund to TriMet the excess amount. If TriMet is found to have paid less than P&W's actual labor costs for such Locomotive Operator

and Conductor Services, P&W shall bill TriMet for the shortfall, and TriMet shall reimburse P&W for the shortfall. P&W shall upon reasonable request provide to TriMet documentation relating to this annual reconciliation. Rather than making such end of year reconciliation payments in cash, the parties may by mutual agreement authorize an equivalent adjustment (either an increase or decrease) to future invoices for Locomotive Operator and Conductor Services.

2. Cost of Living Adjustments For Employees Providing Locomotive Operator and Conductor Services. During any calendar year, if P&W's labor costs increase due to general raises for the P&W (system-wide) work force or cost of living adjustments, P&W shall recompute the costs to provide Locomotive Operator and Conductor Services and shall provide cost documentation to TriMet. The parties shall then negotiate in good faith to establish an adjusted payment rate covering the new P&W salaries and any corresponding adjustments to fringe benefits, overhead, and vacation days or sick days.

3. Changes In The Required Employee Complement During The Year. The parties understand and agree that it may be necessary to change the numbers or types of employees during a particular calendar year if there are changes in Train schedules or increases or decreases in the number of passenger Trains operated by TriMet. In such cases, TriMet and P&W shall negotiate in good faith to modify the list of positions, as needed, and to make corresponding adjustments in the monthly payment rate.

4. P&W's Right To Discontinue Locomotive Operator And Conductor Services. In the event that regulatory, corporate, or other business-related factors require P&W to discontinue either or both of the Locomotive Operator and Conductor

Services, P&W shall have the right, upon one hundred eighty (180) days advance written notice to TriMet, to discontinue such services. Any discontinuance of Locomotive Operator or Conductor Services shall not alter TriMet's obligation to pay for services actually provided by P&W prior to the discontinuance.

Dispatching Bonus

<u>Monthly On-Time Performance/Dispatching Bonus</u>	<u>Bonus Amount</u>
100%	\$20,000
99%	\$18,000
98%	\$16,000
97%	\$14,000
96%	\$12,000
95%	\$2,000
Below 95%	\$0

The on-time performance during a calendar month shall be calculated by dividing the number of TriMet passenger trains that arrived on-time (as defined below) by the total number of TriMet passenger trains that operated on the Joint Trackage. For purposes of this calculation, the following terms and conditions will apply:

A train will be considered "on-time" if it arrives at its endpoint destination station prior to or within four (4) minutes of its scheduled arrival time as set forth in the published schedule applicable to such train.

A train shall not be counted as operated over the Joint Trackage if the train is unable to complete its scheduled transportation of passengers over the Joint Trackage as a result of any event, occurrence or condition that is not attributable to the actions or omissions of P&W, including but not limited to: force majeure events, passenger equipment mechanical failure, declines in on-time performance within the scope of Section 2.2(h), cancellation of service by TriMet or involvement of that train in an accident or derailment on the Joint Trackage (other than accidents involving freight trains or derailments attributable to track defects prior to the

Maintenance Changeover Date); or actions or omissions of any PRS Contractor other than P&W or a P&W affiliate or a P&W contractor or subcontractor .

The following shall not be counted in the calculation of the arrival time of a particular train: (i) the actual number of minutes a northbound train is late leaving Wilsonville (if such delay is not attributable to the actions of P&W); (ii) the actual number of minutes a southbound train is late leaving Beaverton (if such delay is not attributable to the actions of P&W); and (iii) the actual number of minutes a train is delayed due to mechanical failure or other equipment deficiencies or any delay due to signal malfunctions or slow orders imposed by PRS Contractors other than P&W or a P&W affiliate or a P&W contractor or subcontractor, or to any failure to make minimum running time on the part of the PRS Contractor other than P&W or an a P&W affiliate or a P&W contractor or subcontractor.

Disputes over the calculation of on-time performance or payments regarding on-time performance shall be resolved in accordance with the dispute resolution procedures set forth in Section 7 of the Shared Use Agreement.

At the end of each calendar year, the monthly on-time performance bonus shall be adjusted using the Consumer Price Index for all Urban Consumers (CPI-U) issued by the Bureau of Labor Statistics or a substantially similar index.

Schedule 2.3

List of Initial Capital Improvements

**Insert Copy of TriMet Commuter Rail Plan Set,
Revised February 2002 and related correspondence**

In substitution for this page

**October 7, 2005
Attachment A
Scope Changes Agreement**

Project Revisions post 75% Design – Railroad-Related Items

- A. End-to-End Rebuild: Project will replace rails, ballast and ties via use of the P811 tracklaying machine. Project will furnish ballast, continuously welded rail and concrete ties for the length on the mainline track. Rail sources will include new IQ grade rail and relay rail from the existing line. Railroad will use its best efforts to provide one 30 day shutdown of the line and additional shorter shutdowns to provide to accommodate the tracklaying effort and any other time-sensitive work, including but not limited to in-water work windows and signal installation efforts.
- B. Reduce Design Speeds: Maximum design speed will be set at 60 mph for commuter trains and 40 mph for freight trains. This change will eliminate some track superelevation. At Durham Road and Bonita Road design speeds will be reduced to 40 mph in order to reduce costs associated with walls, road reconstruction and utility relocation. At Tualatin Road, the vertical curve will be flattened per AREMA standards. The resulting design speeds in this curve will be 60 mph for commuter and 27 mph for freight.
- C. Reduce Bridge Costs: The bridges that will be rehabilitated will not include underlayment, new and rehabilitated bridges will include walkways on one side only, the Grahams Ferry bridge will be kept as open track.
- D. Tonquin Siding Revisions: Eliminate the power switch at the north crossover of the Tonquin siding. The turnout will be operated by a hand throw switch with electric lock protection. The power turnout at the south end will remain. The mainline turnouts at the North and South will be new No 11 to match the 136# mainline rail. Relocate one of the existing mainline turnouts to the siding end of the North crossover.
- E. Avery Siding Revisions: Eliminate the power-operated switches at the Avery siding. Length of the Avery siding will be reduced by approximately 1,200 to 1,500 feet at the north end to avoid extending into SW Teton Ave. The spiral at the north end will be revised to accommodate a new No. 10 turnout to match the 136# mainline rail.
- F. Beburg Siding Revisions: Eliminate the crossover at CP Beburg and the power-operated turnout to the Beburg siding, a total of 3 power-operated turnouts. Move the 3 turnouts westward to create a new crossover under the Denny Rd. overpass. Turnouts will be hand operated with electric lock and signal protection. Close the Far West Fiber siding and retire the existing turnout.,.
- G. Wilsonville Siding: Extend the siding track approximately 3100 feet north, add a crossing at Boeckman Road, and add one switch north of Boeckman.
- H. Revise excusable delays: TriMet and P&W agree to clarify delay provisions:

- a. Parties to agree upon a baseline timetable as follows: TriMet will model the Commuter timetable with 16 daily trips at 30 minute headways, on the post-75% design, using the Colorado Railcar DMU in a two-car consist.
- b. If the modeling shows constraints based on the post-75% configuration, TriMet shall have the opportunity to revise the configuration to remedy the constraints.
- c. If the Commuter service can be reliably provided in this configuration, excusable delays shall be limited to circumstances beyond P&W's control.
- d. No less than 90 days before the commencement of revenue service, the parties shall prepare a detailed addendum to the Shared Use Agreement including the timetable, excusable delays, and other supporting information.

Except as otherwise provided herein, the project revisions agreed to on or about January 12, 2005 at the Post 70% design stage shall remain in effect.

12 January 2005

Attachment-B

“Scope Changes and Mutual Agreement”

Project Revisions Post 60% Design – Railroad Related Items

(Items as agreed between P&W and TriMet on 12 January 2005)

ITEM:

TRACK ITEMS

- J. Delete the Yard Track Wye at the Maintenance Facility: In development of the 60% plans, TriMet observed the need to be able to reverse direction of the spare power unit at the maintenance yard. Reversing could be accomplished at the 5th Avenue wye in Beaverton or at the OE/Tillamook junction in Tigard, but these were considered too far away from the yard to turn a single-ended spare power unit. Therefore, TriMet's 60% design and estimate included a wye at the yard. The revised vehicle plan, using a Budd car as the spare, eliminates the need for the yard wye. Additionally, a revision to the yard track to add a tail track to the north of the maintenance facility in the railroad r-o-w will simplify and improve train movements. Overall, the combination of changes in yard track reduces track requirements, eliminates a diamond crossing, and eliminates three turnouts and switch stands. It will also slightly reduce wetland impacts. Estimated cost savings have been quantified by the track designer.

Portland & Western RR has no issue with this change. We need to determine how much right of way (ROW) is required. Railroad would convey property through an easement.

Tri-Met to delete wye and maintenance yard at Wilsonville and extend yard track to the north onto railroads right-of-way. Agreed 1/12/05

- K. Use Re-Lay/IQ Rail: This is a VE concept to use #1 re-lay material and/or Industrial Quality (IQ) rail in lieu of new rail material for the mainline track. This concept is acceptable to the railroad. The railroad would prefer IQ rail to #1 re-lay, but either is possible. TriMet believes that IQ material will be easier to find than #1 re-lay. The 60% estimate was based on new track material. Cost savings are based on current quotes from a representative supplier.

Portland & Western RR concurs. However, rail must meet AREMA standards for Class IV track. (weld out rail defects, weld out joints, grind railhead, add anchors)

As noted in P&W comments above. Agreed 1/12/05

- L. Use Fir/IG Hardwood Ties: The 60% plans & estimate included use of all hardwood ties. VE concept to use Industrial Grade (IG) hardwood ties in lieu of mixed hardwood has been accepted by the railroad. The use of Douglas Fir ties is also acceptable but IG wood is preferred. Cost savings are based on current quotes from a representative supplier.

As stated in our comments on the 60% design phase IG hardwood cross ties are acceptable. Douglas Fir is not.

Use Industrial grade hardwood ties. Agreed 1/12/05

- M. Tie Replacement: The 60% plans & estimate assumed that 50% of the alignment's ties would require replacement. TriMet and the railroad recently conducted a detailed inspection of the alignment, and the 50% replacement figure was verified to be accurate. Ties to be replaced under the project have been marked. No change to the 60% estimate is warranted at this time.

Note: (As of November 2004) Between Wilsonville Mp 42 and Mp33 a total of 16,075 cross ties were marked as defective. On the Tillamook line between Mp 755 and Mp 751 a total of 6,641 cross ties were marked as defective. As time moves on there may be more defective cross ties to replace.

As noted in above comments. Agreed 1/12/05

- N. Move Washington Square Station: By moving Washington square Station to just south of Hall Blvd the proposed new second mainline track would be eliminated between station 115+00 and 165+00. The No. 20 turnout at station 165+00 would move to approximate station 115+00 where the second mainline track would connect back into the existing mainline track. This eliminates approximately 5,000 ft of new mainline track and associated earthwork. The cost estimate is from the track designer.

Portland & Western Railroad's concern with the elimination of 5000ft of double track is one of diminishing freight mobility to protect higher levels of business, seasonal surges or recover from service failures. We must maintain an infrastructure balance that can accommodate both freight and commuter operations. Absent an alternative P&W would not be agreeable to the loss of 5000ft of double track.

Move Washington Square Station to just south of Hall Street Station platform to be located east side of the main line. Industry siding to Suburban Propane will be preserved. Item includes reduction of double track to just north of Hall Street.

Agreed 1/12/05

- O. Add Beburg and Tonquin sidings, yard as Commuter Rail Project elements: These sections of track infrastructure were previously anticipated to be freight only elements and thus were planned to be built as local betterments. With the reduction

in doubletrack being proposed as part of the track alignment changes, the Beburg and Tonquin sidings may be required to stage Commuter Rail trains in instances of emergency or delay mitigation. The costs for these segments are based on a TriMet estimate, prepared for the local partners at the time of the 60% estimate calculation.

Tonquin siding and Beburg are used daily to set out, pick up, store and switch freight cars. Commingling freight and commuter activities on same track will restrict Portland & Western Railroad ability to service its freight customers and make railroad connections in a timely manner. This practice would also increase the liability of Portland & Western Railroad dramatically.

What is exactly meant by adding "Beburg and Tonquin to the CR project elements"?

Add Beburg and Tonquin siding-this merely shifts these sidings into the Federal project to balance books on the local side given the local purchase of UP.

Note comments above. Agreed 1/12/05

- P. Delete Beburg Yard Track: Eliminate the proposed Beburg yard track. This change eliminates approx. 2,700 ft. of track, (2) No. 9 TO's and associated earthwork. Cost savings have been estimated by the track designer.

Beburg yard is essential to the service levels that we provide our freight customers. Track capacity of 6,128 ft for the siding and 1,150 ft for yard-1 was recognized very early in the process as being material to its freight operations. We are not agreeable to any change from the original PE of 2/2002.

Delete Beburg yard track- Railroad requires this yard. Railroad to advise TriMet asap whether they prefer the yard to be at the north or south end of the Beburg siding and;

Permitting, locate the yard track in the middle of Beburg siding to maximum head room on either end of track. This is required for switching cuts of freight cars in order to reduce or eliminate movements over street crossings on either the north or south end of the track.

If the existing Farwest Fiber turnout and lead may be removed and used in the yard.

P&W's preference is to leave the turnout and track as is. Not Agreed 1/12/05

- Q. Reduce Double Track Near Beburg: The proposed new second mainline can be furthered shortened to the south end of the proposed Beburg Siding to station 100+50 without impact to Commuter Rail operations. This eliminates an additional 1450 ft. of new mainline track. Implementing these changes should not adversely affect existing freight railroad operations. Cost savings have been estimated by the track designer.

January /2004 Portland & Western Railroad agreed to eliminate double track from Scholls Ferry Rd to Tiedeman station 160+00 to 198+13. With the proposed shift of Washington Square north (creating single platform station) and the further elimination of 1450ft of main track to station 100+50 has created a corridor imbalance between Commuter and Freight activities. Our position on this is as stated in item E.

Further reduces the double track from North of Hall Street to 100+50. This is not acceptable to P&W. Agreed 1/12/05

The double track will be terminated just north of Hall Street listed under Item E. Agreed 1/12/05

- R. Reduce Tigard Double Track: Runtime modeling shows that the commuter rail trains will meet at Tigard Station. Thus, the design provides for a No. 15 crossover just north of Hall Blvd to connect the Tillamook Branch to the new OE Main. This eliminates a segment of double tracking thereby eliminating the need to rehab the Tillamook Branch between station 248+00 to 295+00 +/- . A portion of new track, as well as No. 20 turnouts between station 283+00 to 308+00 would also be eliminated. Cost savings for this change have been estimated by the track designer.

Increase of freight traffic in the Tigard area has grown and is expected to continue, coupled with the commuter rail traffic this location has the potential of becoming a choke point. The rehabilitation of the infrastructure between station 248+00 to 295+00 +/- , and other locations as well, was contemplated by the framers of the agreement as material and a balanced approach for freight and commuter rail to co-exist in the same corridor.

The elimination of 136# CWR relay between station 283+00 and 308+00 (OE Main Line) would not be in the interest of safety or AREMA track standards for Class IV track.

Our position is as stated in item E.

Provide a commuter rail crossover north of Hall Blvd and add a freight only crossover north of Bonita Drive, as close to Bonita as practicable. The existing turnouts & crossover at MP 750 will be removed and used in the freight crossover if their condition permits. UP Tillamook Branch south of Hall Blvd commuter rail crossover will be freight only, remain dark and not rehabilitated.

Commuter Rail design team to determine feasibility of building additional tracks on the west side of Tillamook Branch line between Hall and the Bonita crossover and between Tillamook line and the new Commuter Rail line (OE). If feasible the project construction team will prepare the area for later track construction by P&W. Agreed 1/12/05

- S. Delete Engler Siding: The 60% plans included a passing siding just south of industrial way. Updated runtime modeling show that this siding is not needed. The change deletes 2,700 ft of siding track and (2) No. 14 TO's. Cost savings have been estimated by the track designer.

Engler Siding was not planned for in the original PE. It was a later design that was less expensive than the original PE.

Delete Engler Siding. Agreed 1/12/05

- T. Reverse Avery Siding: This change reverses the direction of the industrial turnout at Avery Siding to serve it from the north instead of the south. The change eliminates double tracking across Avery Street and the need to shift the mainline as shown in the 60% plans. A No.11 turnout would be placed 10 feet south of Teton Avenue, and the new siding would roughly parallel the mainline, stopping 50' from the Avery Street crossing. The existing mainline curve will remain a 2-degree curve. The current superelevation through Avery is 1-5/8 inches, and the required superelevation for 65 mph is 3 inches; however, if CR speed is reduced to 60 mph, the required super drops to 2-1/8 inches, significantly reducing the roadway impacts at Avery St. Cost savings have been estimated by the track designer.

This proposal impacts on the ability to service customers in a timely manner as well as adding additional operating costs to the business. Portland & Western Railroad would require access from the north and south ends of the Avery siding.

Avery siding will be made double-ended. Siding would be low speed, not regularly used by commuters (no planned meet) North end will be located at Teton, south of the road if possible. South end of the siding will be located at the existing Oregon Culvert turnout pending development of a suitable design, but in any case north of Industrial Way

P&W agrees in principle. However objects, for safety reasons, to main track turnouts being located in curves. Pending suitable design. Agreed 1/12/05

- U. Refurbish No. 16 TO's: This change is a VE concept to refurbish existing No. 16 turn-outs (TO's) instead of providing new equipment. The concept has been agreed by the railroad. Cost savings have been estimated by the track designer.

Refurbish/Rehabilitation of a turnout is defined as class one quality of all components of the turnout, such as; frogs, guard rails, frog plates, switch points, stock rail, switch stand and connectors in addition to ensuring good drainage of the ballast section of the turnout.

Definition of refurbish / rehabilitation of a turnout as stated above. Agreed 1/12/05

- V. **Add Siding at Wilsonville:** Run time modeling shows the need for a commuter rail meet at Wilsonville requiring a passing siding just north of the station. As part of this change, the 60% plan siding at the platform would be eliminated and the platform would be moved adjacent to the mainline track. A No. 15 turnout would be placed just north of the platform and a siding track extended north, across Boeckman Road and tied back into the mainline at station 707+36 using a No. 15 turnout. This allows a northbound commuter to depart the station along the siding, and pass the southbound commuter, and then enter the mainline north of Boeckman Road. Cost savings have been estimated by the track designer.

The proposed Wilsonville Siding would eliminate access to a freight customer at

Mp 41.37 station 722+00. Siding would have no practical use for balancing freight and commuter operations. In our view the siding is not required.

Revised proposal would put station between main line and a station tail track. No passing siding would be added. Commuter rail to add this back with contingency funds if available. Agreed 1/12/05

Track Revisions-Related Items:

Grade crossing savings: Scope of work to remain as previously discussed. Agreed 1/12/05

Signal savings-includes mechanical locks at 5 locations not power operated. Agreed 1/12/05

Assumptions Sidings are 115# rail.

Rail must meet AREMA standards for Class IV track, weld out rail defects, weld out joints, grind rail head, add anchors. Agreed 1/12/05

Reuse concrete crossing panels. Agreed 1/12/05

Reuse good quality gate mechanism and equipment. Agreed 1/12/05

Other Railroad Items:

Work window efficiencies- Revised proposal assumes 4-10s, 3-8s and 16 full weekend shutdowns (5 P.M. Friday to 8 AM Monday).

P&W agreed to further define "work windows: The 4-10 hour windows will be included in the 16 full shutdown weekends. Work windows and times are to be coordinated with P&W Operations Department. Work windows are only applicable to agreed portions or

segments of the subject track. Contractor and Railroad to be flexible in the application of these work windows. Agreed 1/12/05

Flagger rate- in est. at 5220 hours @ \$75. P&W will discount flagger rate to \$35/hour for the period. All parties will seek to minimize the use of flaggers by use of derails, signs, etc at the limits of the work zone, subject to FRA requirements.

P&W will discount its flagger rate for the normal work period. The rate will be \$45/hour plus mileage, should the flagger require the use of their own vehicle. Agreed 1/12/05

Work Train Rate-in est. at 208 days @ \$2150. P&W will discount its daily rate by 25% to \$1612.50 per day.

P&W will discount the work train rate. The rate will be \$1612.50 per day subject to the full RCAFU increase.

(Rail Cost Adjusted Factor Unadjusted)(Railroad cost of living adjustment). Agreed 1/12/05

Schedule 4.1

Method for Determining Maintenance Fees Paid By TriMet To P&W

6. Overall Approach.

(a) Every five (5) years, TriMet and P&W shall negotiate in good faith to identify routine maintenance tasks, standards, and procedures as well as anticipated materials requirements. Simultaneously, TriMet and P&W shall negotiate in good faith to determine the numbers and types of employees required to perform routine maintenance activities. Using this agreed upon list of positions, P&W shall determine, for the five (5) year period, the total annual labor cost for routine maintenance services, taking into account employee base salaries, fringe benefits, vacation and sick time, and reasonable contribution to overhead, in the manner set forth in Schedule 4.1(a) below. P&W shall upon reasonable request provide to TriMet documentation relating to this calculation of labor costs. These parties shall then negotiate in good faith to determine TriMet's monthly payments for labor costs.

(b) Within a reasonable time after the end of a calendar year, P&W shall determine the actual labor costs incurred in providing maintenance services to TriMet, taking into account base salaries, fringe benefits, vacation and sick days, and overhead. If TriMet is found to have made any excess payment (i.e., payments exceeding P&W's actual labor costs as described in the previous sentence), P&W shall promptly refund to TriMet the excess amount. If TriMet is found to have paid less than P&W's actual labor costs for such maintenance services, P&W shall bill TriMet for the amount due, and TriMet shall pay P&W that amount. P&W shall upon reasonable request provide to TriMet documentation relating to this annual reconciliation.

7. Cost Of Living Adjustments For Employees Providing Maintenance

Services. During any calendar year, if P&W's labor costs increase due to general raises or cost of living adjustments for the P&W work force, P&W shall recompute the labor cost component of the maintenance fees imposed under this Agreement and shall provide cost documentation to TriMet. The parties shall then negotiate in good faith to establish an adjusted payment rate covering the new P&W salaries and any corresponding adjustments to fringe benefits, overhead, and vacation days or sick days.

8. Costs For Materials Required For Maintenance. The parties agree and understand that in maintaining the Joint Trackage, it will be necessary for P&W to purchase and use materials, including, but not limited to, ties, ballast, signal materials, bridge materials, fuel for Trucks, and other items specified in Schedule 4.1(a). P&W shall procure or arrange for procurement of these materials, and TriMet shall pay the full cost of the required materials. P&W may, at its election, forward to TriMet invoices from vendors or suppliers covering materials having a cost in excess of \$5,000; TriMet shall pay such invoices within thirty (30) days of receipt. For materials purchased by P&W, P&W shall bill TriMet on a monthly basis; and TriMet shall then reimburse P&W. Upon reasonable request, P&W shall provide documentation relating to such costs.

9. Special Or Non-Recurring Maintenance Projects.

(a) The parties agree and understand that from time to time, TriMet may determine that special or non-recurring maintenance projects should be undertaken. TriMet shall submit to P&W a work order describing any such project, and identifying any suggested timetable for the work, and the work order shall state whether TriMet is seeking a cost estimate from P&W prior to P&W's implementation of the

project. If TriMet does not request a cost estimate from P&W, and if the project identified by TriMet is feasible, P&W shall initiate the required work as soon as practicable. If TriMet requests an advance cost estimate, P&W shall use best efforts to supply such an estimate within twenty (20) days; if TriMet then approves the cost estimate and if the project is feasible, P&W shall initiate the required work as soon as practicable.

(b) For special or non-recurring maintenance projects expected to have a cost in excess of ten thousand dollars (\$10,000), P&W may, at its election, request a deposit or advance payment from TriMet covering seventy-five percent (75%) of the project's expected costs. P&W may, at its election, defer the initiation of any such project until after P&W has received the deposit or advance payment from TriMet. Upon completion of the project, P&W shall then bill TriMet for the actual labor costs and materials costs incurred by P&W; P&W shall deduct from this invoice the amount of any deposit or advance payment by TriMet. TriMet shall pay any remaining amount due. P&W shall upon reasonable request provide to TriMet documentation for project costs.

(c) For special or non-recurring maintenance projects expected to cost less than ten thousand dollars (\$10,000), P&W may elect either to bill TriMet for labor costs and materials on a monthly basis or to bill TriMet upon completion of the project. In either case, TriMet shall pay the amount due. P&W shall upon reasonable request provide documentation for its costs.

10. P&W's Right to Discontinue Maintenance Services. P&W shall have the right, upon one hundred eighty (180) days advance written notice to TriMet, to discontinue maintenance of the Joint Trackage. In the event of any such

discontinuance, P&W shall pay TriMet a monthly fee for maintenance services, as specified in Section 4.1(e) of this Agreement. Any such discontinuance shall not alter TriMet's obligation to pay for maintenance services provided by P&W.

Schedule 13.3

Procedures Governing Environmental Response Actions On the Northern Segment

SECTION 1. Definitions.

1.1 *All capitalized terms not specifically defined in this Schedule shall have the meaning set forth in the Shared Use Agreement.*

1.2 *The following terms shall have the meanings set forth below:*

(a) "Lead Party" means TriMet or P&W, as the case may be, who has the lead with respect to implementation of any Response Action as provided in Paragraph 0.

(b) "Non-Lead Party" means TriMet or P&W, as the case may be, who does not have the lead with respect to implementation of any Response Action as provided in Paragraph 0.

SECTION 2. Understandings and Procedures Regarding Response Actions.

The following understandings and procedures shall apply to the planning and implementation of Response Actions to address Hazardous Substance Releases affecting the Northern Segment.

2.1 ***Response Action Approach.*** With respect to any Response Actions with respect to any Hazardous Material Release, TriMet and P&W agree, to the extent allowed under applicable Environmental Law and permitted by applicable Governmental Bodies:

(a) to seek, accept and support the use of either remediation standards published by applicable Governmental Bodies based upon current and future non-residential use of the Northern Segment or site-specific remediation standards based upon the assessment of risks to human health and the environment, considering (a) the current and future use of the Northern Segment for passenger and freight rail service, commercial and industrial purposes, and other non-residential purposes, and (b) the use of institutional and engineering controls to eliminate or minimize exposure pathways to the extent allowed under clause (iii);

(b) to support the selection of a remedial method capable of meeting the applicable remediation standards (including any site-specific risk-based standards) that is most cost-effective (considering both initial capital costs, the present discounted value of anticipated future monitoring, operation and maintenance costs and any costs incurred with respect to disruption of operations at the Northern Segment;

(c) that institutional or engineering controls may be utilized to eliminate or minimize exposure pathways where the use of such controls does not significantly interfere with the current and future uses and operations at the Northern Segment, provided that TriMet shall not be required to agree to any covenants or other limitations restricting future use and development of the Northern Segment for passenger and freight rail service, commercial and industrial purposes, and other non-residential purposes.

2.2 Lead Party. The following provisions shall govern the respective roles of P&W and TriMet with respect to the implementation of a Response Action to address any Hazardous Material Release on or affecting the Northern Segment:

(a) With respect to any area affected by a Hazardous Material Release for which P&W is solely responsible, P&W shall be the Lead Party.

(b) With respect to any area affected by a Hazardous Material Release for which TriMet is solely responsible, TriMet shall be the Lead Party.

(c) With respect to any area affected by a Hazardous Material Release for which P&W is responsible in combination with a Hazardous Material Release for which TriMet is responsible, TriMet may, at TriMet's option, either (i) assume the role of Lead Party with respect to performance of such Response Action, or (ii) provide written notice to P&W tendering to P&W the role of Lead Party with respect to performance of such Response Action. P&W may, at its option, either accept or reject such a tender.

(d) If TriMet provides a notice to P&W tendering to P&W the role of Lead Party, and P&W agrees within ten (10) days of such notice to assume the role of Lead Party, P&W shall thereafter promptly and diligently undertake and implement the Response Action consistent with the procedures set forth in Paragraph 00.

(e) If P&W does not agree to assume the role of Lead Party, or if P&W fails to promptly and diligently undertake and implement the Response Action, TriMet may, upon written notice to P&W, assume the role of Lead Party.

(f) If TriMet exercises the initial option to perform the role of Lead Party or if TriMet assumes the role of Lead Party pursuant to Paragraph 000, P&W shall promptly reimburse and pay TriMet for all P&W's share of all costs of Response Actions incurred by TriMet.

(g) If P&W assumes the role of Lead Party, TriMet shall promptly reimburse and pay P&W for TriMet's share of all costs of Response Actions incurred by P&W.

2.3 Communications, Notice, Coordination and Avoidance of Interference. The following provisions shall govern the conduct by the Lead Party of any Response Actions to address any Hazardous Material Release.

(a) The Lead Party shall promptly provide to the Non-Lead Party notice and copies of any correspondence to or from any Governmental Body or third party concerning any Hazardous Material Release or any Response Action affecting the Northern Segment. The Lead Party shall provide to the Non-Lead Party for review and comments drafts of any proposed plans, reports or other submissions for any Response Action. The Non-Lead Party shall have at least fifteen (15) days to provide comments to the Lead Party regarding any such draft plans, reports or submissions. The Lead Party shall give good faith consideration to Non-Lead Party's comments regarding such draft plans.

(b) The Lead Party shall promptly provide the Non-Lead Party with notice of, and the Non-Lead Party shall have the opportunity to attend and participate in any meetings or other communications with any involved Governmental Body concerning any Hazardous Material Release or any Response Action affecting the Northern Segment.

(c) If P&W is the Lead Party, P&W shall provide TriMet with written notice at least three (3) days prior to any required entry onto the Northern Segment to conduct any Response Actions. P&W shall consult and coordinate with TriMet the planning for, timing, and method of conducting any such Response Actions so as to avoid or minimize any interference with the then existing facilities, uses and operations at the affected portion of the Northern Segment.

(d) If P&W is the Lead Party, P&W shall conduct all Response Actions in a manner that avoids any significant interference with the then existing facilities, uses and operations at the affected portion of the Northern Segment.

(e) Notwithstanding any other provision in this Schedule, if there is a need for expeditious action concerning any Hazardous Materials Release, and if it is not feasible to provide the advance notice specified elsewhere in this Schedule, the Lead Party may take the action required and may give only such notice that is practicable.

SECTION 3. Allocation of Responsibility.

Where it is determined that contamination in are area is the result of a Hazardous Material Release for which P&W is responsible in combination with a Hazardous Material Release for which TriMet is responsible, liability for any claims or costs associated with Response Actions associated with or arising from such conditions shall be allocated equitably between TriMet and P&W based upon consideration of the following factors:

Whether, but for the Release for which one of the Parties is responsible, an obligation to undertake Response Actions would have arisen for the other Party;

The degree to which the Hazardous Material for which as Party is responsible affects the selection of the remedy, the cost of the remedy, and the period of time over which the Response Action must be implemented;

The relative quantity, toxicity, and area affected by the Hazardous Materials for which the respective Parties are responsible; and

Other relevant considerations.

Schedule 14.2

List of Required Approvals

None.

Schedule 14.3

P&W Agreements

1. Agreement For Sale of Certain Assets, Rights and Obligation "OF" BNSF "TO"
Portland & Western Railroad
Dated: 19-November 1997.
2. Rail Services Easement: between BNSF and Portland & Western Railroad.
Dated: 25-November 1997
3. Oregon Trackage Rights Agreement:
Dated: 26-May-1994
4. Trackage Rights Agreement:
Dated: 1-Oct-1941

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