

PACIFICA LAW GROUP DRAFT of July 6, 2023 FOR
DISCUSSION PURPOSES ONLY. SUBJECT TO CONTINUING CLIENT REVIEW
AND, EVENTUALLY, PWRF BOARD APPROVAL.

DEVELOPMENT AGREEMENT

BY AND BETWEEN

**CITY OF SNOQUALMIE,
A WASHINGTON MUNICIPAL CORPORATION**

AND

**PACIFIC WEST RAIL FOUNDATION,
A WASHINGTON NONPROFIT CORPORATION**

DATED: _____, 2023

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of _____, 2023 and is by and between the CITY OF SNOQUALMIE (the “City”), a municipal corporation organized under the laws of the State of Washington, and the PACIFIC WEST RAIL FOUNDATION, a Washington nonprofit corporation (“PWRF”), collectively, the “Parties”.

RECITALS

The following facts and circumstances form the background of this Agreement:

WHEREAS, the Pacific West Rail (“PWR”) is a model railroad layout that depicts fourteen different locations across the western United States within the timeframe of the early 1900’s to the late 1960s. It was created by the country’s preeminent model rail designer and reflects actual locations, accurately modeled with the highest degree of realism, with sound and lighting for different times of day and night and topography finished with materials from each of the locations. The collection includes 100 engines, 125 passenger cars and 550 freight cars running on one half-mile of tracks though miniature dioramas set in these recognizable landmark locations throughout the West. Some _____ major railroad lines are represented within the areas that they serve or served. The system is controlled by a command center using highly sophisticated software that runs the trains autonomously for hours with programming. Three full-time staff are employed to maintain and operate the model; and

WHEREAS, it is one of the largest model railroads and one of, if not the finest in the United States in its faithful creation of real world railroads in their respective locations. Its multimillion dollar value has been determined by a highly-regarded, experienced professional and is indisputably a one-of-a-kind fully operational collection; and

WHEREAS, its founder and owner, local resident and entrepreneur Peter Hambling (“Hambling”), always has intended to share the PWR with the public in a suitable venue in an appropriate location; and

WHEREAS, Hambling has formed the nonprofit PWRF to which he intends to donate the model railroad in its entirety if and when a publicly accessible museum can be established to house it; and

WHEREAS, the City enjoys a rich railroad history and also is the home to the legacy Snoqualmie Valley Railroad (“SVR”); and

WHEREAS, the City has expressed a keen interest in providing land for the construction of PWRF’s museum adjacent to tracks of the SVR, enabling real-time comparison between the actual and the model; and

WHEREAS, the City also is located on the ancestral lands of the Snoqualmie Tribal People; and

WHEREAS, the westward transcontinental expansion of railroads, including those terminating in the Puget Sound region, materially facilitated and therefor substantially contributed to the degradation of the cultures of the indigenous peoples of the American West, specifically including those of the Pacific Northwest region; and

WHEREAS, with respect and humility, the PWRF intends that a museum located in Snoqualmie would, ideally in close consultation with the Snoqualmie Tribe, suitably convey for its visiting public the deleterious impact railroads had on the indigenous peoples of the American West, and pledges that its exhibitry will include candid, informative and respectful explanations of that impact such that public may begin to comprehend this dimension of the arrival of the transcontinental railroads in the Puget Sound region; and

WHEREAS, the City and PWRF have negotiated a mutually acceptable Ground Lease of certain City property for the proposed site of the museum and providing for its operation by PWRF once constructed; and

WHEREAS, Hambling has engaged the well-known Olson Kundig architectural firm to design the publicly accessible museum to be located on the proposed site; and

WHEREAS, the City and the PWRF also have negotiated this mutually acceptable Development Agreement under which PWRF will be responsible for raising the funding needed to construct the museum designed by the Olson Kundig firm. When funding has been secured, PWRF will build the museum as designed and approved by the City; and

WHEREAS, Hambling and his spouse have executed a Contingent Gift Agreement under which they will give the PWR model railroad to the PWRF upon completion of the Olson Kundig designed museum on the site proposed to be leased to the Foundation by the City,

NOW THEREFORE, in consideration of the foregoing, of the mutual promises of the Parties hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, and contingent upon concurrent execution of the Ground Lease between the Parties and the Contingent Gift Agreement between Peter and Lori Hambling and PWRF by all relevant Parties, the Parties hereby agree as follows:

AGREEMENT

ARTICLE 1

Effective Date; Incorporation of Documents and Materials; Definitions

Section 1.1 Effective Date. This Agreement will be effective upon the date when both of the following conditions are satisfied: (a) the City Council of the City ("City Council") has authorized this Agreement; and (b) this Agreement is executed by authorized representatives of the City and PWRF.

Section 1.2 Incorporation of Documents and Materials. The following documents and materials are attached as exhibits to this Agreement and by this reference are incorporated into this Agreement:

- Exhibit A: Preliminary Project Schedule
- Exhibit B: Site Plan
- Exhibit C: Preliminary Project Design
- Exhibit D: Preliminary Project Budget
- Exhibit E: Fundraising Plan

Section 1.3 Definitions. The following terms shall have the respective meanings set forth below for this Agreement.

(a) “Agreement” means this Development Agreement between the City of Snoqualmie and the Pacific West Rail Foundation.

(b) “City” means the City of Snoqualmie, a Washington municipal corporation.

(c) “City Indemnified Parties” is defined in Section 5.1.

(d) “Final Project Budget” means the all-inclusive budget that the City Manager of the City (“City Manager”) concurs is consistent with the cost of completing construction of the Final Project Design under Section 4.4.

(e) “Final Project Design” is the design reflected in the Project’s one hundred percent (100%) construction documents approved by the City Manager under Section 4.2.1.

(f) “Final Project Schedule” incorporates all pre-construction activities required under this Agreement and reflects the projected schedule for completion of construction of the Project following the issuance of PWRF’s Notice to Proceed, when authorized under Section 4.4.

(g) “Fundraising Plan” is the PWRF’s plan for securing the resources required to construct its Museum, as provided in Section 3.2.1.

(h) “Lease” means the Ground Lease for the Pacific West Rail Museum site by and between the City, as landlord and PWRF, as tenant, dated of even date herewith.

(i) “Museum” or “PWR Museum” means the Pacific West Rail Museum to be operated by PWRF or any subsequent museum or other operator of the PWR Museum.

(j) “Notice to Proceed” means the notice provided by PWRF to the Project general contractor to commence construction of the PWR Museum upon satisfaction of the requirements of Section 4.4.

(k) “Parties” means the City of Snoqualmie and the Pacific West Rail Foundation.

(l) “Preliminary Project Budget” means an all-inclusive budget reflecting the estimated cost of construction of the Project based on the Preliminary Project Design, including contingencies consistent with industry standards and soft costs such as professional services and applicable taxes.

(m) “Preliminary Project Design” is defined in Section 4.2.1.

(n) “Preliminary Project Schedule” is defined in Section 2.4 and shown in Exhibit A.

(o) “Project” means the development and construction of the Pacific West Rail Museum for public museum purposes.

(p) “Project Coordinator” is defined in Section 4.5(a).

(q) “Project Manager” is defined in Section 4.5(a).

(r) “PWRF” means the Pacific West Rail Foundation.

(s) “PWRF Indemnified Parties” is defined in Section 5.1(b).

(t) “Site” means the City land on which the Museum will be constructed by the PWRF, as shown in Exhibit B and as more specifically identified in the Lease.

ARTICLE 2

General Provisions

Section 2.1 Scope. PWRF will construct the PWR Museum on the Site substantially consistent with the Final Project Design as evolved from the Preliminary Project Design provided in Exhibit C, at a currently estimated total cost of approximately _____ Million Dollars (\$____,000,000).

Section 2.2 Development Agreement. The Parties’ rights, responsibilities and obligations during design, development and construction of the Project are delineated in this Agreement.

Section 2.3 Lease. The Parties’ long-term rights, responsibilities and obligations concerning operation of the PWR Museum are reflected in the Lease. Under the Lease, PWRF is obligated to provide enumerated Public Benefits (as required under the Lease) during its operation of the Museum.

Section 2.4 Schedule. PWRF shall use its best efforts to start construction of the Project within three (3) years from the effective date of this Agreement. The Parties, by mutual agreement, may extend the construction start date by a maximum of two (2) additional years, in up to two (2) one (1)-year increments. The current Preliminary Project Schedule for securing Project funding and the concurrent evolution of the Project's design and budget is attached hereto as Exhibit A. The Project schedule remains subject to change as the Project evolves.

ARTICLE 3

Preliminary Project Budget and Funding

Section 3.1 Preliminary Project Budget. The current Preliminary Project Budget to complete construction of the Project is attached hereto as Exhibit D. The Preliminary Project Budget reflects the preliminarily estimated cost of construction of the Project based on the Preliminary Project Design, as discussed in Section 4.2. The all-inclusive Final Project Budget shall continue to include all direct and indirect costs as well as contingencies consistent with industry standards.

Section 3.2 PWRF Funding and City Support.

3.2.1 PWRF Funds and Fundraising.

(a) As reflected in Exhibit D, the Preliminary Project Budget currently totals _____ Million Dollars (\$____,000,000) to complete the development and construction of the Project, to be provided from all available sources. PWRF will be responsible for securing the funding needed to fully fund the eventual Final Project Budget, increased or decreased as appropriate resulting from scope, design and schedule changes and any cost overruns, all as provided herein. PWRF's fundraising commitment shall be increased to reflect the additional cost of any financing necessary to ensure the availability of funding as needed during construction of the Project (above the projected cost of any such financing reflected in the Final Project Budget). PWRF agrees to use its best efforts to secure commitments from private individuals, corporations and foundations, and governmental sources (other than the City) for such funds on a schedule consistent with its Fundraising Plan, attached hereto as Exhibit E. PWRF's success in achieving its fundraising objectives shall be evaluated by the City Manager when making their determinations under Section 4.4. Such evaluation shall include review of PWRF's private sector donor pledges, pledge payment experience and such other relevant information the City Manager may reasonably require. PWRF's private sector donor pledges will be reviewed by the City Manager under procedures to protect the confidentiality of donors and PWRF donor-related information to the extent possible. PWRF will submit to the City Manager a copy of the pledges in a form acceptable to the City Manager, with donor names verified by the City Manager but omitted from the copy submitted. The City Manager will approve a pledge if it is from a person or entity of substantial net worth in relation to the amount pledged and the City Manager knows of no reason the pledge will not be honored.

(b) The City will consider providing financing or credit enhancement for PWRF financing that may be needed to bring City-approved pledges forward to facilitate commencement of construction.

(c) If PWRF determines that, its best efforts notwithstanding, it is unlikely to be able to secure sufficient funding to complete the Project as presently conceived and as represented in the Preliminary Project Design, it shall so advise the City. The Parties shall confer and determine whether a mutually agreeable alternative project may be constructed and operated within projected reasonably available resources. In the event the Parties concur that such an alternative project would be mutually acceptable, the requirements of this Agreement may be modified to reflect such a modified project, including revising the Project design, budget and schedule for completing it, as appropriate. If the Parties cannot achieve concurrence on such an alternative project, particularly if the PWRF concludes, in its sole discretion, that its fundraising efforts are unlikely to yield sufficient resources to construct any project that would fulfill its vision and aspirations, this Agreement shall be terminated, as provided in Section 6.16.2.

3.2.2 City Support. The City shall provide the following in support of the development and construction of the PWR Museum:

(a) Site. The City shall provide the Site to PWRF for construction of its PWR Museum under this Agreement and its operation under the Lease. When provided to PWRF, the Site shall be in a construction ready condition. As such, the Site shall require no additional non-construction related site preparation at the cost of PWRF nor shall the property have been materially reduced in buildable size or require material ongoing site-related expense for PWRF under the Lease. Upon execution of this Agreement, the City shall undertake, at its sole expense and in close consultation with PWRF, a mutually agreeable, comprehensive evaluation of the Site to confirm its suitability for construction of the Museum consistent with the Preliminary Project Schedule contemplated in this Agreement. At its sole expense, the City shall fully remediate any environmental or address other physical conditions identified during the course of such evaluation that require such remediation or other measures before construction may proceed. The City also will respectfully address, at its sole expense, any archaeological, cultural or other physical impediments that may affect Project construction. If the City determines, in its sole discretion, that the cost of delivering a suitable construction ready site as required herein is beyond its means to fund, this Agreement shall terminate as provided in Section 6.16.2(b). If the PWRF, in its sole discretion, determines that the Site is no longer viable for the Project, this Agreement shall terminate as provided in Section 6.16.2(c).

To the extent that the Project is proceeding but has been delayed as a result of the City's efforts to provide a construction-ready site as required under this Agreement, consistent with the Preliminary Project Schedule provided in Section 2.4 for the start of construction shall be extended accordingly.

(b) Permitting and Other City Fees and Costs. The City shall waive or, as needed, bear, at its sole expense, any permitting fees or other project-related City costs, including without limitation, any internal or external project management or oversight expenses

the City may incur from the date of execution of this Agreement until completion of Project construction.

(c) Public Participation and Community Engagement. The City, at its expense and in close coordination with PWRF, shall engage the greater Snoqualmie community, specifically including, without limitation, the Snoqualmie Tribe, to solicit and respectfully inform public opinion regarding the Project. If either Party reasonably determines that prevailing community sentiment is such that the Project has become too controversial to warrant further City or PWRF support, the Parties shall confer and may concur that the Project should terminate as provided in Section 6.16.2(d).

ARTICLE 4

Project Design and Construction

Section 4.1 Project Management. Subject to the requirements of this Agreement, PWRF shall at its expense undertake and be responsible for the management of all aspects of the design and construction of the Project. PWRF shall engage and manage, without limitation, project managers, architects and other design professionals and a general contractor with the expertise and experience necessary to successfully complete the project. In conducting any construction work on the premises, PWRF shall cause all work to be done in a good and workmanlike manner and shall comply with or cause compliance with all laws. PWRF shall obtain or cause to be obtained and maintain in effect, as necessary, *all master use permits¹ (including State Environmental Policy Act (“SEPA” approvals), certificates of approvals, building permits, licenses and other governmental approvals that may be required in connection with such work,* subject to the City’s commitment provided in Section 3.2.2(b). PWRF shall complete construction of the Project substantially consistent with the Final Project Design, except as specifically provided herein. PWRF shall use its good faith best efforts to resolve issues that may arise during construction to avoid material or other changes to the Final Project Design that would require the approval of the City Manager by, among other measures, applying contingency funding available within the Preliminary Project Budget; adjusting the Project schedule; reducing costs through permissible changes to the Final Project Design and other means; and, as needed, committing additional funds to supplement the Preliminary Project Budget.

Section 4.2 Design Review and Approval; Consistent Preliminary Project Budget.

4.2.1 City Design Review and Approval. Sequential, major phase design documents (including schematic design, design development and permit documents) shall be reviewed and approved by the City Manager, which approval shall not be unreasonably denied, conditioned or delayed. The Project’s Preliminary Project Design is attached hereto as Exhibit C. Upon the City Manager’s approval of the Project’s one hundred percent (100%) construction documents, such documents shall constitute the Final Project Design for purposes of this Agreement. The Final Project Budget for construction of the PWR Museum consistent with the Final Project Design shall be determined by PWRF and is subject to the approval of the City as provided in Section 4.4.

¹ Placeholder for appropriate description of permits required by the City.

4.2.2 Material Change. Any material changes to the Final Project Design require the prior approval of the City Manager, which approval shall not be unreasonably withheld or delayed. A material change is any change estimated to cost Two Hundred Thousand Dollars (\$200,000) or more to complete and that affects the design, function or utility of the Project, including but not limited to elimination or addition of a significant element or feature; discernible or functional alteration in the quality or projected performance of any significant feature or system; or any significant change in the use or appearance of any major space or component. PWRF shall notify the City Manager of any proposed material changes. Any dispute between the Parties as to whether a proposed change is material shall be resolved in favor of requiring the City Manager's approval. Before PWRF gives its construction contractor its Notice to Proceed with construction, the Parties shall develop a process under which any proposed material changes shall be reviewed by the City Manager, including a timeline for such review designed to minimize potential delays in completing the Project consistent with the Final Project Schedule. Nothing in this paragraph shall be construed as limiting the authority of the City to approve or disapprove proposed changes to the Project when acting in its regulatory capacity.

4.2.3 Signage. The PWR Museum may be identified by signage affixed on the building and located elsewhere on its leased premises. Initial signage for the PWR Museum and leased premises shall be incorporated in the Project design and shall be subject to the review and approval of the City Manager in the context of review and approval of the design as provided in Section 4.2.1. The Project design may also include features or fixtures necessary for the display and support of temporary promotional or informational signage such as banners and flags.

Section 4.3 Requirements for Construction. In managing the Project, PWRF shall ensure that the Project and its general contractor and others as appropriate apply good faith best efforts to comply with the contracting requirements provided herein. PWRF shall comply with the following additional requirements:²

(a) *Upon completion of construction of the Project, PWRF shall apply for Leadership in Energy and Environmental Design (LEED) certification at the _____ level or higher, under the U.S. Green Building Council's Rating System.*

(b) *Staging? Will staging be entirely on site?*

Section 4.4 Notice to Proceed.

PWRF may issue its Notice to Proceed to its general contractor upon receipt of the following:

(a) concurrence by the City Manager that the Final Project Budget is consistent with the cost of completing construction of the Final Project Design, based on their review of the most recent construction cost estimates provided by PWRF;

² Placeholders for City requirements; also subject to client and client design team review.

(b) the determination of the City Manager, based on their review of the status of PWRF's fundraising efforts against its Fundraising Plan, that PWRF has timely access to sufficient funds from all available sources, including private individuals, corporations and foundations and public sources other than the City, to fully fund the cost of completing construction of the Project, as reflected in the Final Project Budget; and

(c) concurrence by the City Manager that (i) PWRF's general contractor has agreed to a guaranteed maximum price to construct the Project as represented in the Final Project Design and consistent with the Final Project Budget; and (ii) PWRF's contract with its general contractor provides for the requirements for construction under this Agreement.

*Section 4.5 Project Management and Coordination.*³

(a) *Project Manager and Coordinator. At least thirty (30) days prior to issuing its Notice to Proceed, PWRF shall notify the City Manager of the identity of the PWRF construction contractor's project manager ("Project Manager") by name and such person's business and home telephone numbers, and the City shall provide to PWRF comparable contact information for the City project coordinator ("Project Coordinator"). In the event either such person is replaced, the party changing personnel shall provide notice to the other no later than the effective date of such replacement, including such replacement's name and business and home telephone numbers.*

(b) *Project Construction Meetings. The Project Manager shall keep the Project Coordinator informed of the time and place of each regular and special project construction meeting to enable the Project Coordinator to attend, become informed about the status of the Project, participate in discussions and present the City's position regarding matters being discussed. The Project Manager shall also participate in such separate meetings with the Project Coordinator and, at the City Manager's option, with the City Manager's designee, as may be scheduled by the Project Coordinator with at least three (3) days' prior notice.*

(c) *Status Reports. Within seven (7) days after the receipt by PWRF of any project construction meeting minutes, PWRF shall deliver a copy of each of the same to the Project Coordinator.*

(d) *Minimization of Adverse Impacts. PWRF shall protect from damage or destruction all private and public property near the construction premises not scheduled for repair, replacement or removal. All Project-related demolition, construction, alteration, addition, improvement and other activity or work performed by or for PWRF on the construction premises shall be carried out in a manner that minimizes any adverse impact on nearby City property and the use thereof by the City or third parties, and on any private property near the Project. (For purposes of this requirement, the term "property" includes land, trees, shrubbery and landscaping, irrigation facilities, drainage, survey markers and monuments, buildings and structures, conduits and pipes, meters, fences, pavements, curbs, driveways, sidewalks, and other property of any description, excluding the premises subject to the Lease.) PWRF shall prepare for the City Manager's reasonable review and approval a plan for construction fencing, including*

³ Specifically reserved for Client and City discussion.

routes for temporary pedestrian access around the construction site, before mobilization work begins. PWRF shall work with the Project Coordinator to schedule construction activity to minimize construction impacts such as noise, dust and fumes. Nothing in this Section 4.5(d) limits the City's authority to impose SEPA mitigation measures on the Project when acting in its regulatory capacity.

(e) Waste Disposal. PWRF shall secure and provide within the construction premises, appropriately sized containers for the collection of all waste materials, debris and rubbish associated with the Project. PWRF shall keep the Site and all adjacent property free from the accumulation of waste materials, rubbish and windblown debris associated with the Project and, daily, shall dispose of all flammable, hazardous and toxic materials generated by or otherwise associated with, but not needed for construction of, the Project. Storage and disposal must be in accordance with applicable Federal, State and local laws, fire codes and regulations. All waste materials, debris and rubbish generated by or otherwise associated with the Project shall be disposed of legally at disposal areas away from the Site. Upon completing the Project, PWRF shall ensure that the Site and the roadways and walkways immediately surrounding the Site are cleaned to the reasonable satisfaction of the Project Coordinator, and that all tools, equipment and surplus materials, and waste materials, debris and rubbish associated with the Project have been removed from the Site.

(f) Staging and Fencing⁴. The Parties shall cooperate in the identification of sufficient space reasonably proximate to the Site for the exclusive use of PWRF's contractor and its subcontractors and their employees, agents or contractors for construction staging activities. Such activities include, without limitation, parking of construction, contractor and construction worker vehicles, temporary structures and storage of construction materials to be used in the Project. The space shall become available for staging when PWRF authorizes its contractor to proceed with construction of the Project and terminate upon Project completion. PWRF shall fully restore the staging space, as provided in Section 4.2. During Project construction, PWRF may install a temporary perimeter fence enclosing its staging area and the Site to secure both the Site and the staging area. Such fencing is subject to the City Manager's approval as provided in Section _____ and shall be removed upon Project completion.

(g) Construction Worker Parking. The City and PWRF have developed a plan for identifying locations for parking for Project contractors, suppliers and construction workers to minimize the impact of worker parking on the Site and the surrounding neighborhood.

Section 4.6 PWRF Cost Overruns Responsibility and Risk Management.

4.6.1 Cost Overruns.

(a) The Parties agree to apply good faith best efforts to complete the Project consistent with the Final Project Design. Funds required for any increases in the Preliminary Project Budget necessary to complete the Project substantially consistent with the Final Project Design (as potentially modified under this Agreement) shall be provided by PWRF from sources other than the City, except as specifically provided herein. PWRF's responsibility

⁴ Are we staging on-site or do we need staging elsewhere? Is there other City property nearby for staging?

for cost overruns includes responsibility for those due to unforeseen conditions that must be addressed for the Project to proceed, but only to the extent such conditions can be remedied with resources available within the Preliminary Project Budget. Upon discovery of an unforeseen condition that must be addressed for the Project to proceed, PWRF will notify the City Manager. PWRF will evaluate ways to resolve any such conditions for the Project to proceed and determine the cost of doing so. In addressing such additional cost, PWRF may, among other measures, apply contingency funds within the Preliminary Project Budget, make modifications to the Final Project Design, and apply such additional funds that PWRF, in its sole discretion, determines to provide to increase the Preliminary Project Budget. PWRF will keep the City Manager apprised of its work and advise them of its plans for addressing such conditions, specifically including any proposed changes in the Final Project Design requiring their approval under Section 4.2.2. If PWRF concludes that it lacks the resources to address any such unforeseen conditions and that it cannot complete the Project, it will so notify the City Manager. The Parties will cooperate in developing and implementing a plan to suspend or terminate the Project.

(b) PWRF's responsibility for cost overruns notwithstanding, the City shall bear financial responsibility for any direct or indirect cost increases associated with changes to the Project that the City requests after the City approves the Final Project Design (excluding permitting or other regulatory requirements).

4.6.2 Retainage and Bonding. PWRF shall establish retainage for purposes equivalent to those stated in Ch. 60.28 RCW at not less than five percent (5%) of its contractor's guaranteed maximum price and shall require bonding by its contractor to the extent warranted, in its judgment and discretion after consultation with the City Manager.

4.6.3 Liens. PWRF shall pay or cause to be paid all sums payable by it for any labor performed or materials furnished in connection with any work performed on the Project. PWRF will discharge, by bond or otherwise, any mechanic's or materialman's lien filed against the premises for work claimed to have been done for, or materials claimed to have been furnished to PWRF, within thirty (30) days after filing.

*Section 4.7 Insurance Requirements*⁵

4.7.1 *PWRF's Insurance Requirements. From and during the effective date of this Agreement, PWRF shall, at its sole cost and expense and as part of project costs, procure and maintain with insurers acceptable to the City, at a minimum, the following insurance against claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by PWRF, its agents, representatives, employees, consultants, subconsultants, contractors and/or subcontractors. Coverage shall be at least as broad as:*

4.7.1.1 Commercial General Liability. Insurance Services Office form number (CG 00 01) or equivalent covering Commercial General Liability Policy shall be written on form CG 00 01 07 98 or its equivalent and shall not include any exclusions or limitations other than those incorporated in the standard form and shall include coverage for:

⁵ Specifically reserved for Client and City review and discussion.

1. Premises/Operations;
2. Products/Completed Operations;
3. Advertising Injury;
4. Contractual Liability;
5. Independent Contractors;
6. "Additional Insured" status provided to relevant project entities;
7. Unintentional failure to disclose provision;
8. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or equivalent; and
9. A broadened knowledge of occurrence provision.

Such insurance must provide a minimum limit of not less than \$_____ general aggregate per location aggregate. Such insurance shall not contain exclusions related to explosion, collapse, underground, and blasting. PWRF shall maintain coverage for completed operations/product liability claims as part of such Commercial General Liability policy or provide evidence of completed operations/product liability for at least six (6) years after substantial completion of the Project. The policy will not exclude coverage losses resulting from perils and acts of terrorism so long as terrorism coverage is commercially available. If any such insurance policy excludes coverage for perils and acts of terrorism, PWRF will obtain a separate terrorism insurance policy in the coverage amount required by this paragraph in form and substance reasonably satisfactory to the City.

4.7.1.2 Automobile Liability. Insurance Services Office form number (CA 00 01) or equivalent covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than \$_____ combined single limit per occurrence.

4.7.1.3 Workers' Compensation. Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits, and any other applicable State Workers' Compensation Law.

4.7.1.4 Employer's Liability or "Stop Gap". The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability or Worker's Compensation Policy in the amount of at least \$_____.

4.7.1.5 Builder's Risk Insurance. During the period of construction, PWRF shall also procure and maintain Builder's Risk Insurance, which shall be written on an "all-risk" completed value policy form in the amount of the initial Contract Sum, plus value of subsequent contract modifications and cost of materials supplied or installed by PWRF, the City, or others, comprising total value for the entire Project at the site on a replacement cost basis, including cost to cover professional fees. Coverage shall be provided for (i) the perils of earth movement including earthquake and flood (an earthquake and flood sublimit may be allowed, as mutually agreed to by PWRF and the City and may be subject to probable maximum loss study); (ii) resultant damage from errors in design, plans, specifications, faulty workmanship, materials and construction; (iii) "extra expense"; (iv) temporary buildings, debris removal and all materials to be stored offsite and while in transit to the jobsite; (v) "cold testing" of all building

systems; (vi) PWRF's loss of use of the Project due to delays in Project completion caused by covered peril losses to the Project, including loss of income and rents and soft costs such as interest on any construction loan, real estate taxes and insurance premiums; (vii) the increased cost of construction, debris removal and demolition due to the operation of building laws and code upgrades; and (viii) direct physical damage to the Project and loss of use caused by an off premises services interruption. PWRF shall have the required Builder's Risk Policy in place no later than commencement of construction. The Builder's Risk Policy shall include PWRF, the general contractor and their respective subcontractors and other contractors as insureds in an amount equal to their interest with a loss payable clause in favor of any construction lender, as their interests may appear. PWRF shall keep the Builder's Risk Policy in place from commencement of construction until substantial completion. Upon substantial completion, the completed project broad-form all risk property insurance coverage will take effect immediately. The policy will not exclude coverage losses resulting from perils and acts of terrorism so long as terrorism coverage is commercially available. If any such insurance policy excludes coverage for perils and acts of terrorism, PWRF will obtain a separate terrorism insurance policy in the coverage amount required by this paragraph in form and substance reasonably satisfactory to the City.

4.7.1.6 Umbrella/Excess Liability. Coverage shall follow form of the General Liability, Employer's Liability, and Automobile Liability.

4.7.2 Contractors' Insurance Requirements. From and after the Effective Date of this Agreement, the contractor shall, at its sole cost and expense, procure and maintain or cause to be procured and maintained with insurers acceptable to the City, at a minimum, the following insurance against claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by contractor, its agents, representatives, employees, consultants, contractors and/or subcontractors. Coverage shall be at least as broad as follows. PWRF shall include a provision in each construction contract requiring each contractor to maintain the following minimum scope and limits of insurance.

4.7.2.1 Commercial General Liability. Insurance Services Office form number (CG00 01) or equivalent covering Commercial General Liability including coverage for:

1. Premises/Operations;
2. Products/Completed Operations;
3. Advertising Injury;
4. Contractual Liability;
5. Independent Contractors;
6. Explosion collapse underground hazards;
7. Personal injury with employment and contractual exclusions deleted;
8. Unintentional failure to disclose provision;
9. Per project aggregate per ISO CG 25 03 (Aggregate Limits of Insurance per Project) or Equivalent;
10. Blasting (if explosives are used in the performance of the Work); and
11. A broadened knowledge of occurrence provision.

Such insurance must provide a minimum limit of liability general aggregate per project/location of \$_____ plus CGL umbrella policy with limit of \$_____.

The contractor's CGL insurance shall not exclude perils generally known as XCU (Explosion, Collapse and Underground Property Damage), Subsidence, Absolute Earth Movement (except as respects earthquake peril only) or any equivalent peril.

The contractor's CGL insurance shall include each of City and PWRF as an additional insured for Products and Completed Operations by providing additional insured status on the ISO CG 20 10 11 85 or CG 20 37 endorsement, or by an equivalent policy or endorsement provision. The Products and Completed Operations additional insured status for City shall remain in effect for not less than six (6) years following substantial completion.

4.8.2.2 Automobile Liability. Automobile Liability Insurance Services Office form number (CA 00 01) or equivalent for owned, non-owned, hired, and leased vehicles, as applicable, with a minimum limit of liability of \$_____. Combined Single Limit (CSL). If pollutants are to be transported, CA 99 48 endorsement is required on the Automobile Liability insurance policy unless in-transit pollution risk is covered under a Pollution Liability insurance policy.

4.7.2.3 Workers' Compensation. The contractor shall comply with Workers' Compensation coverage as required by Title 51 RCW (Industrial Insurance) and any other applicable State Workers' Compensation laws.

4.7.2.4 Employer's Liability or "Stop Gap". The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability or Workers' Compensation Policy in the amount of at least \$_____.

4.7.2.5 Contractor's Pollution Liability. Contractor shall provide contractor's Pollution Liability coverage in the amount of \$_____ per occurrence or claim and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage to include the destruction of tangible property, loss of use, clean-up costs and the loss of use of tangible property that has not been physically injured or destroyed. Insurance shall not exclude pollution arising out of asbestos, lead, mold and/or PCB operations. Evidence of insurance must specifically state that such coverage is included. Contractor shall be responsible for obtaining and maintaining evidence of Transportation coverage (including MCS-90 and CA 9948 Endorsements for Automobile Liability) and Disposal Site Operators Insurance from all subcontractors and site operators. If coverage is placed on a "Claims-Made" basis, then the Retrospective Date of the policy must match or precede the date these contracts are executed. Evidence of continuous coverage or an extended reporting period endorsement shall be required for a period of six (6) years after substantial completion.

4.7.2.6 Contractor's Professional Liability. In any construction contract that requires professional services as part of the work, contractor shall provide \$_____ per

claim/aggregate professional liability errors and omissions coverage. If coverage is placed on a "Claims-Made" basis, then the Retrospective Date of the policy must match or precede the date the first professional services are provided. Evidence of continuous coverage or an extended reporting period endorsement shall be required for a period of six (6) years after substantial completion.

4.7.3 Design and Engineering Consultants' Insurance Requirements. From and after the effective date of this Agreement, the professional consultant shall, at its sole cost and expense and as part of project costs, procure and maintain or cause to be procured and maintained with insurers acceptable to the City, at a minimum, the following insurance against claims for injuries to persons or damages to property that may arise from, or in connection with the performance of work hereunder by professional consultant, its agents, representatives, employees, consultants, contractors and/or subcontractors. PWRF shall require in each professional consultant contract that the consultant provide the following minimum scope and limits of insurance:

4.7.3.1 General Liability. Insurance Services Office form number (CG00 01) or equivalent covering Commercial General Liability, including coverage for completed operations/product liability, independent contractors, contractual liability, explosion collapse underground hazards, personal injury with employment and contractual exclusions deleted, unintentional failure to disclose provision, and a broadened knowledge of occurrence provision with a limit of not less than \$_____ combined single limit per occurrence, \$2,000,000 general aggregate per project/location. Professional consultant shall maintain coverage for completed operations/product liability claims as part of such Commercial General Liability policy or provide evidence of completed operations/product liability for at least six (6) years after substantial completion of the Project.

4.7.3.2 Automobile Liability. Insurance Services Office form number (CA 00 01) or equivalent covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, and 9, with a limit of not less than \$_____ combined single limit per occurrence.

4.7.3.3 Workers' Compensation. Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington or any other applicable State Workers' Compensation Law, at statutory limits.

4.7.3.4 Employer's Liability or "Stop Gap". The protection provided by the Workers' Compensation Policy, Part 2 (Employer's Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the General Liability or Worker's Compensation Policy in the amount of at least \$_____.

4.7.3.5 Professional Liability Errors and Omissions. Consultant shall provide \$_____ per claim/aggregate professional liability errors and omissions coverage. Such coverage shall continue in force or be extended by professional "Tail" coverage for a period no less than six (6) years from Project completion.

4.7.4 Terms and Conditions. The policies required under this Section _____ shall meet all requirements below.

4.7.4.1 The City of Snoqualmie as Additional Insured. The CGL insurance and, in addition, Excess and/or Umbrella liability insurance, if any, shall include the “City of Snoqualmie, its officers, officials, employees, agents and volunteers” as additional insureds. All insurance shall be primary and non-contributory to any insurance maintained by or available to the City. The term “insurance” in this paragraph shall include insurance, self-insurance (whether funded or unfunded), alternative risk transfer techniques, capital market solutions or any other form of risk financing.

4.7.4.2 Required Separation of Insured Provision; Cross-Liability Exclusion and other Endorsements Prohibited. PWRF’s insurance policy shall include a “separation of insureds” or “severability” clause that applies coverage separately to each insured and additional insured, except with respect to the limits of the insurer’s liability. PWRF’s insurance policy shall not contain any provision, exclusion or endorsement that limits, bars, or effectively precludes the City from coverage or asserting a claim under PWRF’s insurance policy on the basis that the coverage or claim is brought by an insured or additional insured against an insured or additional insured under the policy. PWRF’s failure to comply with any of the requisite insurance provisions shall, at the discretion of the City, serve as grounds for the City to procure or renew insurance coverage with any related costs of premiums to be repaid by PWRF or reduced and/or offset against the Agreement.

4.7.4.3 Cancellation Notice. Such policies shall not be renewed, canceled, or materially modified without thirty (30) days’ prior written notice to the City or ten (10) days for non-payment of premiums. PWRF shall provide City with notification in the event of any reduction or restriction of insurance limits or coverage of any respective policies.

4.7.4.4 Minimum Security Requirements: Each insurance policy required hereunder shall be (1) subject to reasonable approval by City that it conforms with the requirements of this Section, and (2) be issued by an insurer rated A–:VII or higher in the then-current A. M. Best’s Key Rating Guide and licensed to do business in the State of Washington unless procured under the provisions of chapter 48.15 RCW (Unauthorized insurers).

4.7.4.5 Each insurance policy shall be written on an “occurrence” form, excepting that insurance for professional liability, errors and omissions, and Contractors Pollution Liability when required, may be acceptable on a “claims made” form.

4.7.4.6 If coverage is approved (if approval is required above) and purchased on a “claims made” basis, PWRF warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than six (6) years from the date of completion of the work that is subject to said insurance.

4.7.4.7 Any deductible must be disclosed to, and shall be subject to reasonable approval by, the City. The cost of any claim falling within a deductible shall be the responsibility of PWRF.

4.7.4.8 By requiring such minimum insurance as specified herein, neither party shall be deemed to, or construed to, have assessed the risks that may be applicable to the other party to this Agreement or any contractor. Each party and each contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage.

4.7.4.9 PWRF shall release the City from any and all claims or causes of action whatsoever in or from or in any way connected with any loss covered or which should have been covered by insurance required to be maintained by PWRF pursuant to this Agreement.

4.7.5 Waiver of Subrogation. City and PWRF release and relieve the other from any liability they might otherwise have and waive their entire right of recovery for loss or damage to property located within or constituting a part or all of the Premises or the PWR Museum to the extent that the loss or damage either (a) is actually covered by the injured party's property insurance, or (b) if the injured party failed to maintain insurance as required under this Agreement, would have been covered under the terms and conditions of the property insurance the injured party is required to carry under Section _____, whichever is greater. This waiver applies regardless of the cause or origin of the claim including without limitation loss due to the negligent acts or omissions of City or PWRF, or their respective officers, directors, council members, employees, agents, contractors, invitees, PWRF's assignees or subtenants. The parties shall have their property insurers endorse the applicable insurance policies to reflect the foregoing waiver of claims, provided however, that the endorsement shall not be required if the applicable policy of insurance permits the named insured to waive rights of subrogation on a blanket basis, in which case the blanket waiver shall be acceptable; and provided further, that the failure to obtain such endorsement, when required, shall not impair the effectiveness of this waiver and/or release between City and PWRF.

4.7.6 Evidence of Insurance. On or before the effective date, and thereafter not later than the last business day prior to the expiration date of each such policy, the following documents must be delivered to City at its notice address as evidence of the insurance coverage required to be maintained by PWRF:

4.7.6.1 Certification of insurance documenting compliance with the coverage, minimum limits and general requirements specified herein.

4.7.6.2 A copy of the policy's declarations pages, showing the insuring company, policy effective dates, limits of liability and the Schedule of Forms and Endorsements specifying all endorsements listed on the policy including any company-specific or manuscript endorsements;

4.7.6.3 A copy of the CGL insurance policy provision(s) and endorsements expressly including the City and its officers, elected officials, employees, agents and volunteers as additional insureds (whether on ISO Form CG 20 26 or an equivalent additional insured or blanket additional insured policy wording), showing the policy number, and the original signature and printed name of the representative of the insurance company authorized to sign such endorsement; a full and complete copy of insurance policies must be provided to the City upon request.

4.7.6.4 Pending receipt of the documentation specified in this Section _____, PWRF may provide a copy of a current complete binder. An ACORD certificate of insurance will not be accepted in lieu thereof.

Evidence of Insurance as set forth above, shall be issued to:

City of Snoqualmie

4.7.7 Assumption of Property Risk. Except to the extent of City's negligence or willful misconduct, but subject to Section _____ above, the placement and storage of PWRF's personal property in or about the Premises shall be the responsibility, and at the sole risk, of PWRF.

4.7.8 Adjustments of Claims. PWRF shall provide for the prompt and efficient handling of all claims for bodily injury, property damage or theft arising out of the activities of PWRF under this Agreement.

4.7.9 PWRF's Responsibility. The procuring of the policies of insurance required by this Agreement shall not be construed to limit PWRF's liability hereunder. Notwithstanding said insurance, but subject to Section _____ above, PWRF shall be obligated for the full and total amount of any damage, injury or loss caused by negligence of PWRF, or any of its agents, officers and employees or through use or occupancy of the Premises.

ARTICLE 5

Indemnification and Dispute Resolution

Section 5.1 Indemnification.

(a) PWRF Indemnification. To the fullest extent permitted by law, PWRF shall indemnify, defend (using counsel acceptable to the City) and hold the City, its officers, agents, employees and elected officials (collectively, the "City Indemnified Parties") harmless, and shall require its construction contractor to similarly indemnify, defend and hold the City Indemnified Parties harmless from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including City's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever arising out of the Project, including, but not limited to, claims resulting from, arising out of, or connected with the following: (i) the acts or omissions of PWRF, its employees, agents, officers, affiliates, contractors, guests or invitees throughout the course of the Project; (ii) PWRF's breach of this Agreement; or (iii) construction of the Project. PWRF's defense and indemnity obligations and those of its contractor shall extend to claims brought by their own employees and the foregoing obligations are specifically and expressly intended to act as a waiver of PWRF's and PWRF's contractor's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to the City Indemnified Parties and to the extent necessary to provide the City Indemnified Parties with a full and complete defense and indemnity.

(b) City Indemnification. To the fullest extent permitted by law, the City shall indemnify, defend (using counsel acceptable to PWRF) and hold PWRF, its board members, employees, agents, officers, contractors, guests or invitees (collectively, "PWRF Indemnified Parties") harmless throughout the course of the Project from and against all claims, suits, losses, damages, fines, penalties, liabilities and expenses (including PWRF's actual and reasonable personnel and overhead costs and attorneys' fees and other costs incurred in connection with claims, regardless of whether such claims involve litigation) of any kind whatsoever resulting from, arising out of the Project, and which result from, arise out of, or are connected with the following: (i) the acts or omissions of the City, its employees, agents, officers, elected officials, affiliates, contractors, guests or invitees throughout the course of the Project; or (ii) the City's breach of this Agreement, specifically including, without limitation, any such claims related to the condition of the Site as delivered to PWRF for which the City bears sole responsibility to provide a construction-ready site. The City's defense and indemnity obligations extend to claims brought by its own employees and the City's foregoing obligations are specifically and expressly intended to act as a waiver of the City's immunity under Washington's Industrial Insurance Act, RCW Title 51, but only as to PWRF Indemnified Parties and to the extent necessary to provide PWRF Indemnified Parties with a full and complete defense and indemnity.

Section 5.2 Limitation of PWRF's Obligation. To the extent necessary to comply with RCW 4.24.115 as in effect on the effective date of this Agreement, PWRF's and PWRF's contractor's obligation to indemnify the City for damages arising out of bodily injury to persons or damage to property relative to the construction, alteration, repair, addition to, subtraction from, improvement to, or maintenance of, any building, road, or other structure, project, development, or improvement attached to real estate, including the Project (i) shall not apply to damages caused by or resulting from the sole negligence of the City Indemnified Parties; and (ii) to the extent caused by or resulting from the concurrent negligence of (A) the City Indemnified Parties and (B) PWRF, its board members, agents, contractors, officers, affiliates, employees, guests or invitees shall apply only to the extent of the negligence of PWRF, its board members, agents, contractors, officers, employees, guests or invitees; PROVIDED, HOWEVER, the limitations on indemnity set forth in this Section shall automatically and without further act by either the City or PWRF be deemed amended so as to remove any of the restrictions contained in this Section _____ no longer required by then applicable law.

Section 5.3 Waiver of Indemnity; Indemnities Negotiated. PWRF and the City agree that the foregoing indemnity specifically includes, without limitation, claims brought by either party's employees against the other party. THE FOREGOING INDEMNITIES ARE EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF EACH PARTY'S IMMUNITY UNDER WASHINGTON'S INDUSTRIAL INSURANCE ACT, RCW TITLE 51, TO THE EXTENT NECESSARY TO PROVIDE THE OTHER PARTY OR PARTIES WITH A FULL AND COMPLETE INDEMNITY FROM CLAIMS MADE BY EACH PARTY AND ITS EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE. THE CITY AND PWRF ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS ARTICLE WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM.

Section 5.4 Dispute Resolution. In the event of a dispute regarding this Agreement, the Parties agree to follow the procedures in this Section prior to filing or initiating a lawsuit. The

Parties shall make their best efforts to resolve disputes as expeditiously as possible through negotiations at the lowest possible decision-making level, and in the event such negotiations are unsuccessful, the matter shall be referred to the City Manager and the Executive Director or Board Chair of PWRF. If those officials are unable to resolve the dispute within a period of fifteen (15) days after the matter has been formally referred to them for resolution, they shall meet during the immediately succeeding seven (7) days to select a mediator to assist in the resolution of such dispute. PWRF and the City agree to participate in mediation with the agreed upon mediator for a reasonable amount of time and in good faith. The cost of the mediation shall be shared equally between the City (one-half) and PWRF (one-half).

ARTICLE 6

Miscellaneous

Section 6.1 Amendments. This Agreement may not be amended, changed, modified or altered, except by an instrument in writing duly executed by the City and PWRF (or their successors in title) upon passage of an ordinance by the City Council.

Section 6.2 Authority. Each Party hereto warrants that it has the authority to enter into this Agreement and to perform its obligations hereunder and that all necessary approvals, acts or resolutions to authorize this transaction have been taken, and the signatories, by executing this Agreement, warrant that they have the authority to bind the respective parties.

Section 6.3 Binding Effect; No Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their successors. This Agreement may not be assigned without the written consent of the Parties.

Section 6.4 Consents and Approvals. In any instance when any Party's consent or approval is required under this Agreement, such consent or approval shall not be unreasonably withheld, conditioned or delayed. Whenever the consent of City or the City Manager to any act to be performed under this Agreement is required, PWRF must obtain the consent or approval expressly for purposes of this Agreement, regardless of whether a consent or approval shall have been granted by the City in its regulatory, public utility, or other capacity. No permission, consent, or approval of the City or the City Manager contained herein or given pursuant to this Agreement is, or shall be construed as, a representation or assurance that the matter consented to or approved complies with applicable laws, regulations, ordinances or codes, nor shall any such consent or approval be construed to authorize any failure to comply with any of the foregoing.

Section 6.5 Construction. The following rules shall apply to the construction of this Agreement unless the context otherwise requires:

(a) Words describing the singular number shall include the plural number and vice versa, except where otherwise indicated.

(b) All references herein to articles, sections or exhibits are references to articles, sections or exhibits of this Agreement, unless otherwise stated.

(c) The headings and table of contents herein are solely for convenience of reference and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.

(d) This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if all Parties had prepared it.

Section 6.6 Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

Section 6.7 Cumulative Remedies. The rights and remedies that any Party may have under this Agreement or at law or in equity, upon any breach, are distinct, separate and cumulative and shall not be deemed inconsistent with each other, and no one of them shall be deemed to be exclusive of any other.

Section 6.8 Force Majeure. Except as otherwise provided in this Agreement, time periods for any Party's performance under any provision of this Agreement shall be extended for periods of time during which such performance is prevented due to circumstances beyond such party's reasonable control, including without limitation, strikes, embargoes, shortages of labor or materials, governmental regulations, acts of God, unforeseen site conditions, casualty, war or other strife.

Section 6.9 Governing Law; Jurisdiction and Venue. This Agreement is governed by and shall be construed in accordance with the laws of the State of Washington and shall be liberally construed so as to carry out the purposes hereof. City and PWRF each hereby consent to personal jurisdiction in the state and federal courts located in the State of Washington. Except as otherwise required by applicable law, any action arising under this Agreement shall be brought and maintained in the Superior Court of the State of Washington in and for King County, City and PWRF each consent and agree that venue is proper in such court, and City and PWRF each waive any defense or right to seek dismissal or transfer on grounds of improper or inconvenient venue.

Section 6.10 Integration. Together with the Lease, this Agreement contains the entire integrated agreement between the parties as to the matters covered herein and supersedes any oral statements or representations or prior written matter not contained in this instrument as to the matters set forth herein.

Section 6.11 Limitation on Third Party Rights. Nothing in this Agreement expressed or implied is intended or shall be construed to give to any person other than the Parties any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or provision herein contained; and all such covenants, conditions and provisions are and shall be held to be for the sole and exclusive benefit of the Parties.

Section 6.12 No Partnership. Nothing in this Agreement shall create any partnership, joint venture or other relationship between PWRF and the City.

Section 6.13 No Waiver. Failure of any Party to complain of any act or omission by the other, no matter how long the failure may continue, shall not constitute a waiver of any rights under this Agreement. No waiver by any Party of any breach of any provisions of this Agreement shall be deemed a waiver of a breach of any other provision or consent to any subsequent breach of any other provision. If any action of any Party requires the consent or approval of another, consent or approval given on one occasion shall not be deemed a consent to or approval of that action on any other occasion. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

Section 6.14 Notices. All notices, demands or requests that may or must be given by any Party to another under this Agreement shall be given in writing and delivered personally, or sent by U.S. certified mail, postage prepaid, return receipt requested, or nationally recognized overnight air carrier, and addressed to City's address or PWRF's address, as follows:

If to the City:
City of Snoqualmie
Attn: City Administrator
38624 SE River Street
P.O. Box 987
Snoqualmie, WA 98065
Email: mchambless@snoqualmiewa.gov

And:

Copy to: **City Attorney**

If to PWRF:

Copy to: B. Gerald Johnson
Pacifica Law Group LLP
1191 2nd Avenue, Suite 2000
Seattle, WA 98101-3404
Phone: 206.245.1700
Email: gerry.johnson@pacificallawgroup.com

Notices shall be deemed to have been given upon receipt or attempted delivery where delivery is not accepted. Any Party may change its address and/or those receiving copies of notices upon written notice given to the other.

Section 6.15 Severability. If any provision of this Agreement is determined to be invalid or unenforceable, then that provision and the remainder of this Agreement shall continue in effect and be enforceable to the fullest extent permitted by law. It is the intention of the Parties that if any provision of this Agreement is capable of two constructions, one of which would render the provision void, and the other of which would render the provision valid, then the provision shall have the meaning that renders it valid.

Section 6.16 Termination of Agreement.

6.16.1 Upon Project Completion. Unless otherwise stated herein, this Agreement and all obligations hereunder shall terminate when the Project receives its final certificate of occupancy, except that the provisions of Sections _____, _____, _____ and _____ survive the expiration or termination of this Agreement.

6.16.2 Failure of Assumptions. This Agreement may be terminated under the following circumstances:

- (a) As provided in Section 3.2.1(b), in PWRP's discretion, due to unsuccessful fundraising;
- (b) As provided in Section 3.2.2(a), in the City's discretion, due to unreasonably high Site preparation costs;
- (c) As provided in Section, 3.2.2(a), in PWRP's sole discretion, due to the viability of the Site;
- (d) As provided in Section 3.2.2(c), by mutual agreement between the Parties that the Project lacks adequate community support; or
- (e) By mutual agreement of the Parties for any other failure of a material shared assumption underlying the Project's purpose or prospects.

6.16.3 Disputes. Any disputes with regard to this section are expressly made subject to the terms of Section 5.4 of this Agreement regarding Dispute Resolution.

Section 6.17 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

[signatures on next page]

City:

CITY OF SNOQUALMIE, a Washington municipal
corporation

By: _____

Name: Katherine Ross

Title: Mayor

PWRF:

PACIFIC WEST RAIL FOUNDATION, a
Washington nonprofit corporation

By: _____

Name: Peter Hambling

Title: