

DEVELOPMENT AGREEMENT

BY AND BETWEEN

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

AND

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

DATED: _____, 2024

THIS DEVELOPMENT AGREEMENT (the “Agreement”) is dated as of _____, 2024 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 ten (10) 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 (3) 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 PWRF has indicated that it intends that its museum would, ideally in close and respectful collaboration with the Snoqualmie Tribe if it is located in Snoqualmie, suitably convey the deleterious impact the extension of the transcontinental railroads had on Tribal Nations and Indigenous People across the Western United States. Toward that end it expects that museum exhibitry will include candid, informative and respectful explanations, based on information available to the museum, of that impact in order that the public may begin to comprehend this dimension of the arrival of the railroads in the Puget Sound region; and

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

WHEREAS, after exploring the possibility of locating the new museum on a site west of the Snoqualmie central business district, Hambling and City leadership have settled on a location (the “Site) in downtown Snoqualmie across the street from the Historic Snoqualmie Depot; and

WHEREAS, the Site (shown on Exhibit A) consists of four (4) contiguous parcels, two (2) of which the City recently re-acquired from a former prospective developer (the “City Parcels”) and another two (2) that Hambling intends to purchase (the “Hambling Parcels”), which, together with the unimproved street rights-of-way separating and adjacent to the properties will provide a highly desirable location for the new museum; and

WHEREAS, the City also has indicated it will vacate the City street rights-of-way separating the Hambling and City parcels as well as the right-of-way immediately east of such parcels for museum development purposes, the practical effect of which will be to enlarge both sets of adjacent parcels, each by one half of the vacated street rights-of-way; and

WHEREAS, the City and the PWRP also have negotiated this mutually acceptable Agreement under which PWRP 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, if the Project proceeds as conceived under this Agreement, 1) Hambling will purchase the Hambling Parcels; 2) the City will vacate the involved street rights-of-way; 3) Hambling will donate the Hambling Parcels, increased in size by their respective shares of the vacated street rights-of-way, to the PWRF; and 4) the City will transfer ownership of the City Parcels, also as increased in size by the vacated street rights-of-way, to the PWRF, subject to a covenant pursuant to which the PWRF agrees to operate the new public museum for a period of not less than fifty (50) years; and

WHEREAS, in its Ordinance No. _____, the City Council authorized the City Manager to execute this Agreement conditioned upon Hambling's execution of an Agreement of Purchase and Sale (the "Purchase Agreement") of the Hambling Parcels acceptable to the City substantially in the form attached as Exhibit B hereto; and

WHEREAS, Hambling agrees to purchase the Hambling Parcels pursuant to such Agreement of Purchase and Sale upon the satisfaction of certain contingencies, as further identified herein; and

WHEREAS, Peter and Lorrie Hambling agree to execute concurrently with Hambling's purchase of the Hambling Parcels, a Contingent Gift Agreement with PWRF (the "Hambling Gift Agreement") to convey the PWR model railroad and the Hambling Parcels, increased in size by

the vacated street rights-of-way, to the PWRF no later than PWRF's issuance of its Notice to Proceed to its general contractor as provided under this Agreement; and

WHEREAS, in this Agreement the City agrees to timely vacate the street rights-of-way as shown in Exhibit A such that both the Hambling and City parcels may be conveyed to PWRF increased in size by their respective shares of such street vacation.

WHEREAS, the City agrees to execute, concurrently with Hambling's purchase of the Hambling Parcels the Conveyance Agreement with PWRF (the "Conveyance Agreement") committing the City, as provided under this Agreement, to: convey the City Parcels, increased in size by the vacated street rights-of-way, to PWRF, no later than PWRF's issuance of its Notice to Proceed; and

WHEREAS, the eventual conveyance of the City Parcels will be subject to a Public Use Covenant (the "Covenant"), as provided in Exhibit E, requiring PWRF to operate and maintain the museum to be constructed pursuant to this Agreement. Under the covenant, such museum will be accessible to the general public; provide enumerated public benefits; care for and display the model railroad; and steward, maintain and otherwise care for its museum, all for a period of not less than 50 years following its opening; and

WHEREAS, in entering into this Agreement, the Conveyance Agreement and the associated Covenant, the City specifically finds that the public benefits associated with the development and operation of the PWRF museum in downtown Snoqualmie as envisioned under

this Agreement represent more than sufficient consideration for the transfer of the City Parcels to PWRF as provided herein.

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 execution of the Hambling Gift Agreement between Peter and Lorrie Hambling and PWRF and the Conveyance Agreement, including the Covenant, the Parties hereby agree as follows:

AGREEMENT

ARTICLE

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: Site
- Exhibit B: Agreement of Purchase and Sale
- Exhibit C: Contingent Gift Agreement
- Exhibit D: Conveyance Agreement
- Exhibit E: Public Use Covenant
- Exhibit F: Fundraising Plan
- Exhibit G: Preliminary Project Budget
- Exhibit H: Preliminary Project Design
- Exhibit I: Preliminary Project Schedule

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 6.1.

(d) “City Parcels” means the portion of the Site in City ownership, increased in size by the vacated street rights-of-way, as shown in Exhibit A.

(e) “Design Review Board” means the body established and governed by Chapter 17.80, Snoqualmie Municipal Code, as presently enacted or subsequently amended or recodified.

(f) “Final Project Budget” means the all-inclusive budget that the City Administrator of the City (“City Administrator”) concurs is consistent with the cost of completing construction of the Final Project Design under Section 5.4.

(g) “Final Project Design” is the design reflected in the Project’s one hundred percent (100%) construction documents approved by the City Design Review Board under Section 5.2.1.

(h) “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 5.4.

(i) “Fundraising Plan” is the PWRF’s plan for securing the resources required to construct its Museum, as provided in Section 4.2.1.

(j) “Hambling Parcels” means the portion of the Site to be acquired by Peter and Lorrie Hambling and conveyed to the PWRF, increased in size by the vacated street rights-of-way, as shown in Exhibit A.

(k) “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.

(l) “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 5.4.

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

(n) “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.

(o) “Preliminary Project Design” is defined in Section 5.2.1.

(p) “Preliminary Project Schedule” is defined in Section 2.3 and shown in Exhibit I.

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

(r) “Project Coordinator” is defined in Section 5.5(a).

(s) “Project Manager” is defined in Section 5.5(a).

(t) “Public Use Covenant” means the covenant governing PWRF’s management and operation of its museum, as provided in Exhibit E.

(u) “Purchase Agreement” means the agreement under which Hambling will acquire the Hambling Parcels, as provided in Exhibit B.

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

(w) “PWRF Indemnified Parties” is defined in Section 6.1.

(x) “Site” means the land on which the Museum will be constructed by the PWRF consisting of the Hambling Parcels, the City Parcels and the vacated City rights-of-way separating and adjacent to the properties, as shown in Exhibit A.

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 H, at a currently estimated total cost of approximately _____ to _____ (_____ - _____).

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

Section 2.3 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 I. The Project schedule remains subject to change as the Project evolves.

ARTICLE 3

Site Assembly

Section 3.1 City Parcels. No later than the issuance of its Notice to Proceed as provided in Section 5.4 and contingent upon the reasonably contemporaneous donation of the Hambling Parcels to PWRF as provided herein the City shall: (a) vacate the involved street rights-of-way and (b) transfer ownership of the City Parcels, increased in size by their respective shares of the vacated street rights-of-way, as shown on Exhibit A, to PWRF pursuant to the Conveyance Agreement and subject to the terms and conditions of the Covenant, substantially in the form of attachment Exhibit E.

Section 3.2 Hambling Parcels

3.2.1 Hambling shall acquire the Hambling Parcels pursuant to the Purchase Agreement upon satisfaction of the following preconditions:

(a) Site Suitability. Based on then available knowledge, neither environmental contamination nor the presence of archaeological remains likely will preclude development of the Site for its intended purpose under this Agreement at a cost reasonably consistent with the Preliminary Project Budget; and

(b) Satisfaction of the conditions precedent to closing as provided in the Purchase Agreement.

3.2.2 No later than the issuance of its Notice to Proceed as provided in Section 5.4 and contingent upon the reasonably contemporaneous transfer of the City Parcels to PWRF, as provided herein, Hambling shall donate the Hambling Parcels to PWRF.

3.3 Failure to assemble the complete Site, including the City Parcels and the Hambling Parcels, increased in size by their respective shares of the vacated street rights-of-way, or a determination by either Party that the Site is not or reasonably cannot be made suitable for its intended purpose shall constitute a Failure of Assumptions and result in termination of this Agreement, as provided in Section 7.16.2.

ARTICLE 4

Preliminary Project Budget and Funding

Section 4.1 Preliminary Project Budget. The current Preliminary Project Budget to complete construction of the Project is attached hereto as Exhibit G. The Preliminary Project Budget reflects the preliminarily estimated cost of construction of the Project based on the Preliminary Project Design, as discussed in Section 5.2. The all-inclusive Final Project Budget shall continue to include all direct and indirect costs as well as contingencies consistent with industry standards.

Section 4.2 PWRF Funding and City Support.

4.2.1 PWRF Funds and Fundraising.

(a) As reflected in Exhibit G, the Preliminary Project Budget currently totals between _____ to _____ (\$_____ – \$_____) 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 ExhibitF. PWRF's success in achieving its fundraising objectives shall be evaluated by the City Administrator when making their determinations under Section 5.4. Such evaluation shall include review of PWRF's private sector donor pledges, pledge payment experience and such other relevant information the City Administrator may reasonably require. PWRF's private sector donor pledges will be reviewed by the City Administrator under procedures to protect the confidentiality of donors and PWRF donor-related information to the extent possible. PWRF will submit to the City Administrator a copy of the pledges in a form acceptable to the City Administrator, with donor names verified by the City Administrator but omitted from the copy submitted. The City

Administrator 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 Administrator knows of no reason the pledge will not be honored.

(b) If requested by PWRF, 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 7.16.2.

4.2.2 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 City Parcels to PWRF for construction of its PWR Museum under this Agreement and its operation under the Covenant. The City, to the best of its knowledge based on its prior evaluation and studies of the condition of the City Parcels and its readiness for construction of improvements such as the PWR Museum, represents that it considers the Site to be in construction-ready condition (recognizing that no construction may occur until necessary land use approvals and construction permits are obtained by PWRF). In reliance on such representation, PWRF accepts the Parcels in their current condition. However, if, during the course of its preconstruction activities or during construction of the Museum, PWRF discovers or encounters conditions that would materially increase the budgeted cost of constructing the Museum on the former City Parcels, including the cost of any resulting delays in construction; materially reduce the buildable size of the Site; or require material on-going Site-related expense, the City shall be responsible for addressing such conditions, at its sole expense. For example, the City shall fully remediate any environmental or address other physical conditions 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 site as required herein is beyond its means to fund, this Agreement shall terminate as provided in Section 7.16.2. 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 7.16.2. To the extent that the Project is proceeding but has been delayed as a result the Parties' efforts to address Site-suitability issues as required under this Agreement, the Preliminary Project Schedule provided in Section 2.3 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 such as the cost of third-party reviews and inspections that 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 Snoqualmie Tribe and the greater Snoqualmie community to respectfully solicit and inform public opinion regarding the Project.

(d) The City, at no cost to PWRF, shall provide land suitable for Project construction staging as provided in Section 5.5(f) and Project construction-related and worker parking as provided in Section 5.5(g).

ARTICLE 5

Project Design and Construction

Section 5.1 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 permits (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 4.2.2(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 Design Review Board 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 5.2 Design Review and Approval; Consistent Preliminary Project Budget.

5.2.1 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 Design Review Board, which approval shall not be unreasonably denied, conditioned or delayed. The Project’s Preliminary Project Design is attached hereto as ExhibitH. Upon the City Design Review Board’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 5.4.

5.2.2 Material Change. Any material changes to the Final Project Design require the prior approval of the City Design Review Board, 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, in the reasonable determination of the City Administration, materially 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 Administrator 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 Design Review Board'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 Design Review Board, 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.

5.2.3 Signage. Initial signage for the PWR Museum shall be incorporated in the Project design and shall be subject to the review and approval of the City Design Review Board in

the context of review and approval of the design as provided in Section 5.2.1. 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 5.3 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:

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

Section 5.4 Notice to Proceed.

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

(a) concurrence by the City Administrator 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;

(b) the determination of the City Administrator, 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 Administrator 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; and

(d) conveyance of the City Parcels and the Hambling Parcels to PWRF as provided in Article 3 herein.

Section 5.5 Project Management and Coordination.

(a) Project Manager and Coordinator. At least thirty (30) days prior to issuing its Notice to Proceed, PWRF shall notify the City Administrator 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 Administrator's option, with the City Administrator'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 Site.) PWRF shall prepare for the City Administrator's reasonable review and approval a plan for construction fencing, including 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 5.5(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 Fencing. 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. 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 Administrator's approval as provided in Section 5.5(d) and shall be removed upon Project completion.

(g) Construction-related and Worker Parking. The City and PWRF shall develop 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. Ideally, such parking shall be provided on the City property provided for construction staging under Section 5.5(f).

Section 5.6 PWRF Cost Overruns Responsibility and Risk Management.

5.6.1 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 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 Administrator. 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 Administrator 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 Design Review Board approval under Section 5.2.2. 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 Administrator. 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 Administrator approves the Final Project Design (excluding permitting or other regulatory requirements).

5.6.2 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 Administrator.

5.6.3 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 5.7 Insurance Requirements

5.7.1 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:

5.7.1.1 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:

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 \$5,000,000.00 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.

5.7.1.2 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 \$2,000,000.00 combined single limit per occurrence.

5.7.1.3 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.

5.7.1.4 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 \$2,000,000.

5.7.1.5 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 have a deductible no greater than \$5,000 (except for flood and earthquake damage, which may be higher) and shall be paid by PWRF. 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.

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

5.7.2 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.

5.7.2.1 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 of \$2,000,000 per occurrence and \$2,000,000 aggregate per project/location, with at least \$2,000,000 products-completed operations aggregate limit. PWRP shall also obtain an umbrella policy with limit of at least \$5,000,000.

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 PWRP 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.

5.7.2.2 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 \$1,000,000 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.

5.7.2.3 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.

5.7.2.4 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 \$2,000,000.

5.7.2.5 Contractor's Pollution Liability. Contractor shall provide contractor's Pollution Liability coverage in the amount of \$2,000,000 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.

5.7.2.6 Contractor’s Professional Liability. In any construction contract that requires professional services as part of the work, contractor shall provide \$2,000,000 per claim/\$2,000,000 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.

5.7.3 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:

5.7.3.1 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 \$2,000,000 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.

5.7.3.2 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 \$1,000,000 combined single limit per occurrence.

5.7.3.3 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.

5.7.3.4 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 \$2,000,000.

5.7.3.5 Professional Liability Errors and Omissions. Consultant shall provide \$2,000,000 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.

5.7.4 Terms and Conditions. The policies required under this Section 5.7 shall meet all requirements below.

5.7.4.1 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.

5.7.4.2 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.

5.7.4.3 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.

5.7.4.4 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).

5.7.4.5 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.

5.7.4.6 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.

5.7.4.7 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.

5.7.4.8 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.

5.7.4.9 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.

5.7.5 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 5.7, 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.

5.7.6 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:

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

5.7.6.2 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;

5.7.6.3 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.

5.7.6.4 Pending receipt of the documentation specified in this Section 5.7, 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.

5.7.7 Assumption of Property Risk. Except to the extent of City's negligence or willful misconduct, but subject to Section 5.7.5 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.

5.7.8 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.

5.7.9 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 5.7.5 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 6

Indemnification and Dispute Resolution

Section 6.1 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 throughout the course of the Project 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, and which result 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, arising out of, or 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 land 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 6.2 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 6.2 no longer required by then applicable law.

Section 6.3 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 6.4 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 Administrator 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 7

Miscellaneous

Section 7.1 Amendments. This Agreement may not be amended, changed, modified or altered, except by an instrument in writing duly executed by the City Administrator and PWRP (or their successors in title).

(a) The City Administrator is authorized to approve “minor” amendments to this Agreement. A proposed amendment is “minor” if it does not alter the purpose and intent of this Agreement and does not increase the financial burdens or obligations of the City. Any proposed amendment that does not meet the definition of a “minor” amendment constitutes a “major” amendment. The determination of whether a proposed amendment is “major” or “minor” lies with the Mayor.

(b) Major amendments require the approval of the City Council via passage of a resolution or ordinance.

Section 7.2 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 7.3 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 7.4 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 Administrator 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 Administrator 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 7.5 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 7.6 Counterparts. This Agreement may be executed in counterparts for the convenience of the Parties, and such counterparts shall together constitute one Agreement.

Section 7.7 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 7.8 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 7.9 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 7.10 Integration. 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 7.11 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 7.12 No Partnership. Nothing in this Agreement shall create any partnership, joint venture or other relationship between PWRF and the City.

Section 7.13 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 7.14 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 PWRP:

Peter Hambling

7811 NE 10th Street

Medina, WA 98039

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@pacificalawgroup.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 7.15 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 7.16 Termination of Agreement.

7.16.1 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 Article 6; and Sections 5.3(a); 5.7.1.1; 5.7.2.1; 5.7.2.6; 5.7.3.1; 5.7.3.5; 5.7.4.6; and 7.9 survive the expiration or termination of this Agreement.

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

- (a) As provided in Section 3.3, the failure to assemble a suitable Site;
- (b) As provided in Sections 3.3 and 4.2.2(a), in either Party's sole discretion, due to unreasonably high Site preparation costs;
- (c) As provided in Section 4.2.1(c), in PWRP's sole discretion, due to unsuccessful fundraising;

(d) By mutual agreement of the Parties for any other failure of a material shared assumption underlying the Project's purpose or prospects.

7.16.3 Disputes. Any disputes with regard to this section are expressly made subject to the terms of Section 6.4 of this Agreement regarding Dispute Resolution.

Section 7.17 Time of Essence. Time and all terms and conditions shall be of the essence of this Agreement.

ARTICLE 8

City Right to Retake/Right to Purchase

Section 1. Notwithstanding anything to the contrary contained in this Agreement, in the event that PWRF does not complete construction of the Museum as provided here (such event a "Project Failure"), then the City shall have the following rights:

(a) Right to Retake City Parcels. After a Project Failure and the City Parcels have been transferred to PWRF, the City may elect to have the City Parcels, increased in size by their respective share of the vacated street rights-of-way, if applicable, transferred to the City by providing written notice to PWRF of such election within thirty (30) days of the occurrence of the Project Failure. The Parties agree to execute and deliver such reasonable documentation necessary to effectuate such transfer. In the event the City does not timely exercise its right contained in this

subsection (a), then the City will be deemed to have waived such right and PWRF shall be permitted to retain ownership in the City Parcels or sell or transfer the same to another party without any compensation to the City.

(b) Right to Purchase. After a Project Failure, if Hambling has acquired the Hambling Parcels, the City may elect to purchase ("Purchase Option") the Hambling Parcels, increased in size by their respective share of the vacated street rights-of-way, if applicable, for a purchase price equal to the greater of (i) the then fair market value of the Hambling Parcels ("FMV") or (ii) the amount Hambling paid for the acquisition of the Hambling Parcels from Seventy-Nine Forty, LLC (such amount in (ii) referred to as the "Purchase Price Floor"). In order to exercise its Purchase Right, the City must provide written notice ("Purchase Notice") to PWRF of such election within thirty (30) days of the occurrence of the Project Failure.

Within [___] days of receipt of the Purchase Notice, PWRF shall inform the City of its reasonable determination of the FMV and the purchase price. If the City objects to PWRF's determination, then the Parties shall meet and confer for up to thirty (30) days ("Negotiation Period") in order to determine a mutually agreeable purchase price. In the event the Parties are unable to agree within the Negotiation Period, then the purchase price shall be determined as follows (but in no event shall be less than the Purchase Price Floor):

(i) Within ten (10) business days of the end of the Negotiation Period, each of the Parties shall select one MAI real estate appraiser with at least ten (10) years' full-time commercial appraisal experience in the greater Snoqualmie, WA area for comparable

projects and who is neutral and has not rendered services to either PWRF or City or their respective affiliates within the preceding ten (10) year period (each, an “Appraiser”).

(ii) Within ten (10) days after each of the Appraisers have been selected, each Appraiser shall make its respective determination of the FMV, provided, however, that if either Appraiser requests additional information or documentation needed to make its determination of the FMV, such ten (10) day period shall be extended by up to an additional twenty (20) days, and each Party shall cooperate to provide any such requested information and documentation to the applicable Appraiser. The determination of each Appraiser shall be limited solely to the FMV. Neither Appraiser shall have the power to add to, modify, or change any of the provisions of this Agreement.

(iii) Upon a Party’s selected Appraiser’s determination of the purchase price, such Party shall cause its selected Appraiser to notify the Parties thereof. Upon each Appraiser having made its determination of FMV, the purchase price shall be equal the greater of (A) the mean of the two Appraisers’ respective determinations of the FMV (i.e., the average of the two Appraisers’ respective determinations of the FMV) or (B) the Purchase Price Floor. Such determination of the purchase price shall be final.

The cost of each Appraiser shall be paid by the Party that selected such Appraiser. Upon determination of the purchase price, the Parties agree to execute and deliver such reasonable documentation necessary to effectuate such transfer.

[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:

EXHIBIT A

Site

EXHIBIT B

Agreement of Purchase and Sale

EXHIBIT C

Contingent Gift Agreement

EXHIBIT D

Conveyance Agreement

Exhibit E

Public Use Covenant

Exhibit F

EXHIBIT F

Fundraising Plan

OVERVIEW OF PACIFIC WEST RAIL

Background

Pacific West Rail began in 2007 as the Northwest Trunk Lines. Originally constructed in the basement of a private residence, this 3,700 square foot model railroad showcases re-creations of numerous scenic locations around the western United States and Canada. Designed and built with portability in mind, this miniature display has reached a level of completion, authenticity, and detail such that it deserves a new location as a public exhibit.

Location

In 2020 the Pacific West Rail team began searching in earnest for a new location to construct a purpose-built structure that would house an expanded and reconfigured version of the model railroad in a museum setting. The City of Snoqualmie quickly rose to the top of potential sites with enthusiastic government support, high tourist volumes, and complementary railroad-themed attractions. A high-visibility lot within Snoqualmie

city limits was selected and a name change to Pacific West Rail occurred to help differentiate the new attraction.

Team

Several prominent advisors have been a part of the effort to transform Pacific West Rail into a unique and economically viable interpretive experience.

Howard and Peggy Lovering of Logic Inc. bring decades of experience in the museum sector with involvement in multiple large-scale projects including Seattle's Museum of Flight.

Nicole Klein with the ASUW Shell House has been a helpful guide in regard to working alongside local Indian Tribes.

Kelly Coughlin with the Snoqualmie Valley Chamber of Commerce has proven indispensable with her local connections and detailed knowledge of the Snoqualmie area.

Tom Kundig, Edward Lalonde, Alan Maskin, and Michael Paraszczak of Olson Kundig Architects bring their years of experience working on museum design. The firm's projects include The Tillamook Creamery, The Burke, Wagner Center at the Center for Wooden Boats, among many other distinguishable museums.

Gerry Johnson of Pacifica Law Group has been an invaluable resource. Gerry has an extensive history of working with nonprofits in the Seattle area. Gerry has provided counsel to some of the region's most impressive projects, including the initial development and expansion of the Seattle Art Museum, T-Mobile Park, Lumen Field and the Museum of Flight.

Matt Hayes, President and CEO at the Museum of Flight, has been instrumental in PWR understanding the operations within a museum and what it takes to run a successful museum.

John Ferguson of the Museum of Glass has been a champion of the project from the initial stages. John has been an eager participant in the project, offering his guidance through the ins and outs of the museum industry.

Jack Anderson is one of PWR's initial board members. Jack brings a keen design eye to the project. Jack founded Hornal Anderson, a top design company on the West Coast, and has been vital while working with Olson Kundig.

John Hanson is another of our initial board members. John is founder and head of KBC Advisors. A preeminent real estate advisory firm looking after most of Amazon's properties.

Andy Eccleshall is a brilliant mural artist that performed all of the mural artwork on PWR. Andy's work has been featured in a number of publications throughout the region. Andy is a valuable asset that will provide insight into the best methods of relocating the model railroad's mural.

Lou Maxon is a local Snoqualmie Valley resident. Lou's experience in branding has been showcased throughout some of the world's largest corporations. Lou has a strong passion for railroading and has offered his expertise as PWR moves forward.

Bruce McCaw has been a valuable resource, facilitating connections with many of these individuals as well as possible donors. Olson Kundig architects were hired to develop a building and site plan that would meet the unique requirements of the lot as well as cater to the wants and needs of the community.

FEASIBILITY

Economic Feasibility

The Snoqualmie Valley plays host to millions of tourists who come to be closer to nature and enjoy the charming towns tucked within. Annually, over 2 million people visit Snoqualmie Falls alone, which is located one half mile from the proposed site of the Pacific West Rail museum. Based on projected revenues and expenses prepared by our consultants Logic Inc, the museum could be profitable if even 2% of this traffic

became paying customers. Break-even is forecast to be approximately 30,000 visitors, with a very reasonable target of 70,000 once established.

Construction of the Pacific West Rail museum stands to benefit the City of Snoqualmie as well. The Northwest Railway Museum, an existing focal point of the local tourist scene, estimates annual visitors at 130,000. We believe there will be significant crossover in audience that increases traffic to both museums. Additionally, the proposed location of the Pacific West Rail museum is a strategic link that can help draw visitors from Snoqualmie Falls into the historic downtown core, providing an economic boost to other local shops and eateries.

MUSEUM & CAMPUS

The Pacific West Rail Museum

The design crafted by Olson Kundig is a two story structure elevated above flood level. A building footprint of 255' x 90' should provide approximately 35,000 square feet of interior space plus a 660 square foot covered balcony. This provides room for permanent and rotating exhibits, event and catering space, gift shop, theater, and a variety of educational and interpretive programming. Accommodations are also being made for a city-sponsored visitor center.

The 1.5 acre site is envisioned to become a community gathering place. Integrated natural features are meant to both anchor the site in the environment as well as provide function during heavy rain and flooding.

Pacific West Rail is committed to keeping development costs in the neighborhood of \$20 million and will work with Olson Kundig to achieve a final design that meets this budget. To ensure the best outcome, we will not begin construction until the full cost has been committed. In conjunction with the City of Snoqualmie, we hope to set an aggressive timeline and move as quickly as possible.

FUNDRAISING SOURCES

Individual & Charitable Gift Solicitation

The fundraising strategy is driven by the importance of moving forward expeditiously. Fundraising will focus on high net worth individuals and charitable foundations with whom we can find an emotionally connected interest, and subsequently a discovered passion for PWR.

The campaign would inherently be a private placement offering, with a directed approach to potential supporters and institutions of substantial means. Following their

network of social and business connections would ideally lead others to ride on the same train as it were. Initial fundraising efforts will be focused on friends and colleagues, followed by connections that are developed through these initial pledgers.

Efforts will be focused on those with a latent interest in railroads, Western American history, and the ancestral and cultural evolution of America, as well as an innate curiosity and fascination with imaginary models and experiences, living museum exhibits, and sub-scale realities contrasted with a scene's real life counterpart.

The model railroad has a significant impact on visitors, one that isn't fully appreciated until seen with one's own eyes. Guests of all ages and interests are stunned and temporarily blown away by what they see. These are not just individuals interested in trains, but in fact a wide spectrum of people from all walks of life, who by having been dropped into an imaginary world, momentarily get lost in it. One common theme is the emotional reconnection with feelings of childhood, fueled by endless imagination.

An invite would be extended to potential supporters and investors to immerse themselves in the model railroad, in which we believe would supercharge any curiosity and interest they may have started with. The miniature world of trains and scenery is extremely impressive and quite unforgettable, an experience that is impossible to comprehend until one sees it, and offers a shining example of what the PWR museum will become.

In these early stages, we would look for commitments to funding, and not accept financial contributions until substantially all the funds necessary to complete the design, construction, and exhibit installation of the museum have been assured. We intend to complete this effort within two years if we are going to be successful.

Government Grants

City, County and State government is not to be overlooked. PWRF will utilize connections facilitated through the Snoqualmie Valley Chamber of Commerce, as well as other regional connections to acquire grants through all levels of government.

City of Snoqualmie:

PWR will explore potential grant money that could be available to the city. This money could provide assistance with site preparation, drainage, utilities, and parking to help reduce the cost of construction and operations.

King County:

The county is a potential source of capital funding. Grants from nonprofits such as 4Culture will be accessed. The Northwest Railway Museum, also located within the City of Snoqualmie, has greatly benefited from grants provided by 4Culture. We believe pursuing a grant for \$2 to \$3 million is reasonable.

State of Washington:

The state, in two-year cycles, includes capital grants for cultural facilities. PWR will begin the solicitation process to apply for these grants. Starting with State Representatives for the area, along with the assistance of the City of Snoqualmie and local business representatives.

We believe our case for grants is strong, as the economic impact to the area is significant. Our economic impact survey estimates \$250k in local taxes will be generated annually from tourism, more than twice that to the state. The impact is estimated at an additional \$5 million in earnings, creating many jobs. For construction alone, the state taxes are \$700k, and earnings are \$21 million regionally. This provides a great case for support from City, County and State Government. We believe a target request of \$3 to \$5 million is appropriate, with the understanding that this money will take years to receive, but will look for a commitment as soon as possible.

Corporations

The corporations most likely to support Pacific West Rail are those in the rail and transportation sector. That said, the region is home to numerous fortune 500 companies that look to give back to their community.

Online Campaign

Some of today's largest contributions for non-profits can be found in the form of online fundraising. PWR could harness the power of the internet and social media to gain

attention and source donations. Online campaigns featuring updates provided in the form of photos, videos and blog articles could keep donors engaged throughout the project, showcasing how their contributions are being utilized.

Exhibit G

Preliminary Project Budget

Provided by Olson Kundig

Building Hard Costs (Materials + Construction):

\$20,810,000 - \$26,564,500

Building Soft Costs (Design Team + Consultants):

\$2,185,050 - \$4,000,000

Exhibition Hard Costs (Materials + Fabrication):

\$2,500,000 - \$3,890,000

Exhibition Soft Costs (Design Team + Consultants):

Deferred

Exhibition Soft Costs (Design Team + Consultants):

Deferred

Total:

\$22,995,050 - \$30,564,500

Exhibit H

Preliminary Project Design

Exhibit I

Preliminary Project Schedule