

**INTERLOCAL AGREEMENT
CITY OF NORTH BEND AND
SI VIEW METROPOLITAN PARK DISTRICT**

This Agreement is entered into by and between the Si View Metropolitan Park District, a municipal corporation, hereinafter referred to as the “District,” and the City of North Bend, a Washington municipal corporation, hereinafter referred to as the “City.”

WHEREAS, the City is a municipal corporation of the State of Washington, organized and operating under the Optional Municipal Code, Title 35A RCW; and

WHEREAS, the District is a municipal corporation of the State of Washington, organized and operating under Chapter 35.61 RCW; and

WHEREAS, this Agreement is made under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW; and

WHEREAS, the City is the owner of the North Bend Train Station building located at 2005 McClellan Street, North Bend, Washington (the “Train Station”); and

WHEREAS, the City has an agreement for use of the Train Station and the associated railway tracks with the Puget Sound Railway Historical Association, a Washington nonprofit corporation (the “Railway Association”) for use of the Train Station and association tracks; and

WHEREAS, the City and District desire to enter into an interlocal agreement specifying the terms and conditions under which the District will schedule and staff rental of the Train Station for times that do not interfere with use by the Railway Association.

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the parties hereto agree as follows:

1. Duration of Agreement. This Agreement shall be in full force and effect for a period running from the later of the date of execution by the respective parties through December 31, 2015 (Term) and automatically renew for additional term(s) of five (5) years (Additional Term), unless sooner terminated under Section 21 of this Agreement.
2. Services to be Provided by the District. The District shall:
 - A. Schedule and book reservations for users of the Train Station according to the policies approved by the City, attached hereto as **Exhibit A**.
 - B. Ensure that scheduling, booking, and all other District activities at the Train Station do not interfere with the Agreement Regarding Use Of City Property For Operation Of A Not For Profit Railroad entered into on June 23, 1988, and with King County recording number 8808220870 between

the City and the Railway Association, attached hereto as **Exhibit B** and incorporated herein by this reference.

- C. Be available to the public, either in person or by telephone, e-mail or fax, to take reservations for and to schedule and give tours of the Train Station directly related to rental activity.
- D. When working with the public, act as a spokesperson for City and in support of its policies and procedures regarding the Train Station.
- E. Answer and respond to visitor comments and complaints.
- F. Provide a person to open the Train Station 15-minutes prior the start of an event scheduled during regular business hours (Monday thru Friday, 8:00 am - 5:00 pm) and to close and secure the Train Station at the conclusion of the event.
- G. Ensure that all doors, windows, security system, giving access to the Train Station are secured after hours and that all lights, except night lights, are turned off before leaving the Train Station.
- H. Ensure that keys issued to access the Train Station are not duplicated or marked in a manner identifying them as keys to the Train Station, and report immediately to the City the loss of any keys.
- I. Maintain a 24-month rolling schedule for the Train Station.
- J. Ensure that the building interior, entryways, patios, restrooms, furniture, fixtures, and other building amenities are kept in a clean and safe condition. Report immediately to the City any damage to or potential safety hazards at the Train Station. Remedy or secure immediately any hazardous conditions that occur to prevent further damage and/or protect visitors of the Train Station.
- K. Prohibit smoking in any portion of the Train Station.
- L. Provide all janitorial services including supplies (toilet paper, paper towels, etc.), as needed to ensure that the Train Station is in a clean and safe condition prior to each scheduled rental use.
- M. Remove all garbage and refuse at the conclusion of an event to a designated collection point provided by City.

3. City Responsibilities.
 - A. The City shall perform routine maintenance and repairs for the Train Station and grounds. Such routine activities will include a regular schedule for such items as window washing, and other common periodic items.
 - B. The City shall perform landscaping maintenance services for the grounds of the Train Station.
4. Fiscal Agent. The District shall serve as the fiscal agent for this Agreement, collecting and distributing monies and records in a prompt manner.
5. Compensation and Method of Payment.
 - A. The District shall collect rental fees in accordance with the fee schedule adopted by the District. The District shall retain one hundred percent (100%) of said fees collected as compensation for services provided to City.
 - B. A rental report detailing the fees collected, the number of rental events and the estimated attendance at each rental event shall be provided to the City on an annual basis.
6. Revenue Collection.
 - A. All Train Station rentals, whether paid or unpaid require a signed District rental contract. District rental contracts must be pre-numbered.
 - B. The District shall maintain a separate account in their financial records for expenditures and revenues related to the execution of this Agreement.
7. Special Use of the Train Station.

City shall have priority on Train Station use and may reserve the Train Station for City programs and meetings as needed and at no cost to the City. All Train Station reservations for the City shall be booked at least two weeks in advance through the District. City usage shall be managed and supervised by City personnel.
8. Damage Deposits. The District shall manage the collection, retention and return of damage deposit fees.
9. Record Keeping and Reporting.
 - A. The District shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all

direct and indirect costs expended and services performed pursuant to this Agreement.

- B. The foregoing records shall be maintained according to the records retention scheduled established by the Washington State Office of the Archivist in accordance with Chapter 40.14. RCW.
- 10. Personnel. The District and its personnel shall operate in a business-like and courteous manner, and strive to provide high quality and personable services to the public.
- 11. Advertising. All temporary and permanent signage to be displayed on the premises shall require prior written approval by the City. The District shall include the City logo on all promotional materials relating to the Train Station.
- 12. Public Suggestions and Complaints. The District shall solicit feedback concerning the premises and the overall operation of the Train Station. Copies of the comments shall be provided to the City on the first of each month for the previous month.
- 13. Evaluation of Services. The District shall collect data, including use and attendance statistics, relating to the rental use of the Train Station. The District shall present an evaluation of this data to the City on an annual basis beginning twelve months from the execution of this agreement. The District's data shall be used by the parties to jointly determine the need for modification to this Agreement.
- 14. Incident and Accident Reports.
 - A. The District shall complete an Incident and/or an Accident Report to document participant or visitor accidents and any incidents that may occur at the Train Station and to record the steps taken by District staff to address the incident or accident.
 - B. The District shall provide a copy of each Incident/Accident Report to the City within five business days of an occurrence.
- 15. Utilities. City will make available and pay for all utility services including electricity, gas, water, sewer, garbage, and phone.
- 16. Train Station Improvements. City may at any time, at its sole discretion and expense, make any and all improvements to, or repairs, maintenance, or modifications of the Train Station, which it deems necessary or desirable to protect or serve Train Station visitors, or which enhance the overall Train Station. City shall notify the District of maintenance-related Train Station closures at least two weeks in advance of the closure. Maintenance closures shall not interfere with previously scheduled programs and rentals when possible.

17. City Access. The City shall at all times during the term of the Agreement have the right to enter the Train Station for the purpose of monitoring compliance with the provisions of the Agreement, or for any other purpose related to operation of the Train Station.
18. Assignment and Subcontract. The District shall not subcontract or assign any portion of the services covered by this Agreement without the prior written consent of City.
19. Independent Contractor. City and the District agree that the District is an independent contractor with respect to the services provided pursuant to this Agreement. The District will be solely responsible for its acts and for the acts of its agents, employees, subcontractors, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.
20. Ownership and Use of Documents. The detail of the operations, as noted in papers, documents, reports, files, films, work product, and other records and all copies thereof that are developed by the District specifically as part of this contract shall be the property of the City. Accordingly, such materials shall not be disseminated without discussion and written permission of the City. Said permission shall not be unreasonably withheld.
21. Termination. This agreement may be terminated by either party, at any time, with or without cause, upon written notification of not less than ninety (90) days to the other party or, if by mutual consent, earlier. The notice shall specify the date of termination, and shall be conclusively deemed to have been delivered to and received by the District or City as of midnight the second day following the date of the posting in the United States mail, addressed as noted herein, or to other such addresses as is advised in writing. In the event this Agreement is terminated or suspended, the City shall be entitled to receive all reports specified herein and the return of all keys and other City property given to the District for operation of the Train Station.
22. Indemnification. Each party to this Agreement shall defend, indemnify, and hold the other party, its officers, elected officials, employees, and volunteers harmless from any claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the party, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the party.
23. Insurance. Each party shall maintain commercial general liability insurance or other similar liability coverage acceptable to the other party covering injuries to persons and damage to property, with the other party added as named additional insureds covering all of the activities pertaining to this Agreement. By requiring such insurance coverage, neither party shall be deemed to, or construed to, have assessed the risks that may be applicable to the other party under this Agreement. Proof of insurance shall be provided by and to each party, including renewals. Such coverage

shall include the provision for notification of the additional insured party for expiration or cancellation notification.

24. Discrimination Prohibited. The District shall not discriminate against any employee, applicant for employment, or any person seeking the services of the District under this Agreement, on the basis of race, color, religion, creed, sex, age, national origin, marital status, or presence of any sensory, mental or physical handicap.
25. Entire Agreement. This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes that are mutually agreed upon shall be incorporated by written amendments to this Agreement.
26. Notices. Notices to the District shall be sent to the following address:

Director
Si View Metropolitan Park District
P.O. Box 346
North Bend, WA 98045

Notices and reports to the City shall be sent to the following address:

City Administrator
211 Main Ave. N.
P.O. Box 896
North Bend, WA 98045

Either party may change the address or addressee for Notice by providing the amended information to the other party in writing.

27. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the parties specifically understand and agree that venue shall be exclusively in King County, Washington. The prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.
28. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the District and City.
29. Filing with Auditor and Interlocal Cooperation Act Compliance. This Agreement shall be filed with the King County Auditor or listed by subject on the City's website or other electronically retrievable public source, pursuant to RCW 39.34.040. No

separate legal entity has been created pursuant to this Agreement, and the City and District do not intend to acquire, hold, or dispose of real or personal property for the purposes of this Agreement.

SI VIEW METROPOLITAN PARK DISTRICT:

CITY OF NORTH BEND:

By: _____
President of the Board of Commissioners

By: _____
Mayor Kenneth G. Hearing

Date: _____

Date: _____

ATTEST/AUTHENTICATED:

ATTEST:

Commission Clerk

City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

Exhibit A

NORTH BEND TRAIN STATION RENTAL POLICIES

1. RIGHT OF REFUSAL

District may limit or deny rental of the Train Station due to staff availability, incompatibility of the rental request with the facilities, incompatibility of the rental request for other similar reasons.

2. TRAIN STATION USAGE PRIORITY

- A. Railway Association usage, per Exhibit B to this Interlocal Agreement between the City of North Bend and the Si View Metropolitan Park District, shall take precedence over all other Train Station usage requests.
- B. City programs and activities take precedence after the Railway Association over other Train Station usage requests.

3. TRAIN STATION RESERVATIONS

- A. Rentals at the Train Station are subject to availability and may be reserved during the following times:

Monday – Thursday	7:00 am – 10:00 pm
Friday	7:00 am – midnight
Saturday	8:00 am – midnight
Sunday	8:00 am – 10:00 pm

- B. Reservations may be made up to twelve (12) months in advance. Non-profit groups that qualify for non-profit rental fees may reserve space up to three (3) months in advance, unless otherwise approved by the District.
- C. Rental requests must be made at least seven (7) days in advance for rentals scheduled during regular business hours. Reservations must be made at least thirty (30) days in advance for rentals scheduled during non-business hours. Reservation requests received with less notice than previously specified may not be accommodated unless otherwise approved by the District.
- D. Rental applications are accepted Monday through Friday, from 9:00 am to 5:00 pm at the location specified by the designated agent. Rental reservations are accepted on a first come, first served basis, subject to the restrictions outlined herein. Reservations are confirmed and the rental date and time secured, once the rental fees have been paid in full.

- E. Rooms are reserved by the whole hour only. Weekday rentals require a three-hour minimum. Weekend rentals require a ten-hour minimum rental.
- F. Long-term and ongoing rentals require written approval by the City. In most cases requests for an ongoing rental will be approved for no more than six (6) months at a time.

4. TRAIN STATION RENTAL FEES

Train Station rental fees are established by the District. Train Station rental fees are generally reviewed on an annual basis and adjusted using a comparative rental fee study. Train Station rental fees are subject to change without notice.

5. DAMAGE DEPOSITS

- A. Train Station rental damage deposits are established by the District. Train Station rental damage deposit fees are generally reviewed on an annual basis and adjusted using a comparative fee study. Damage Deposit fees are subject to change without notice.
- B. All private rental groups using the Train Station will be charged a damage deposit, except as otherwise approved in writing by the District and City.
- C. The damage deposit is due in full two (2) weeks prior to the scheduled event.
- D. Damage deposits are fully refundable provided the following conditions are met:
 - 1. The rented Train Station is left in a clean and orderly manner.
 - 2. The Train Station was not damaged as a result of the rental.
 - 3. Use of the Train Station did not exceed the scheduled reservation time.
 - 4. All Train Station equipment is accounted for and not damaged or broken.
 - 5. Additional staff time was not required as part of the rental.
 - 6. All rules/guidelines governing rental use of the Train Station were met.
- E. If all conditions are met to the satisfaction of the District, a refund will be processed within four (4) weeks of the event date. If the conditions are not met to the satisfaction of the District, an appropriate fee will be deducted from the damage deposit. If necessary, rental groups will be charged to cover any additional costs incurred as a result of their usage of the Train Station.

6. RENTAL CANCELLATIONS

- A. Notice of rental cancellations given more than (2) months from the rental date will result in a non-refundable cancellation fee of twenty-five dollars (\$25) per reservation or fifty percent (50%) of the rental fee, whichever is less. Groups that have reserved facilities on multiple dates may be charged a cancellation fee of up to twenty-five dollars (\$25) for each date reserved.

- B. Notice of rental cancellations given between two (2) weeks’ and two (2) months’ prior to the rental date notice will result in a non-refundable cancellation fee of fifty percent (50%) of the rental fees or twenty-five dollars (\$25), whichever is greater.
- C. Notice of a rental cancellation given less than two (2) weeks’ prior to the rental date will result in forfeiture of all of the damage deposit.

7. RENTAL DATE AND TIME CHANGES

All Train Station rental date and time change requests are subject to staff and room availability. Additional rental time must be paid for at the time the request is made. Refunds will not be issued for a reduction in rental hours if the request is received with less than two (2) months’ notice.

8. ALCOHOL SERVICE AND CONSUMPTION

- A. If private rental groups would like to distribute, serve, or consume alcohol during their rental event, they must complete an Alcohol Service Request Form (ASRF). Completing an ASRF does not guarantee that a rental group will be allowed to serve alcohol during their event. The ASRF is reviewed by the District or its designated agent and a decision rendered within two (2) weeks of receiving the ASRF.

- B. If alcohol service is approved, it may only be served during the following times:

Monday – Friday	To Be Determined by District
Saturday	1:00 pm - Midnight
Sunday	1:00 pm – 10:00 pm

- C. Extra charges will apply if the rental administrator determines additional staff are needed during the event based on the presence of alcohol, estimated attendance, time of the reservation or any other factors affecting the safe use of the Train Station. The renter is responsible for all additional staffing costs.

- D. If alcohol service is approved, the following rules and regulations shall apply:

1. Rental groups must obtain a Washington State Banquet Permit. A copy of the permit shall be submitted to the District a minimum of five (5) business days prior to the event. The original permit must be displayed in the room during the rental event.
2. Alcohol is permitted in the Train Station building only. Alcohol is prohibited in all other areas of the Train Station including the grounds and the parking lot.
3. Rental groups are responsible for the conduct and behavior of their participants and any problems related to the presence of alcohol.
4. Alcohol service may include beer, wine, and champagne only. Liquor and other alcoholic beverages are not permitted.
5. Kegs are prohibited.

6. Alcohol may only be served during the times approved on the ASRF.
- E. Rental groups serving alcohol during their event without approval from the District or its designated agent may forfeit their entire damage deposit and face additional charges.

9. RENTAL USAGE GUIDELINES

- A. Maximum room capacities are designated by the City in cooperation with Eastside Fire and Rescue and must be adhered to. Rentals that exceed approved capacities may be cancelled immediately and the entire damage deposit withheld.
- B. The Train Station will be unlocked at the time the rental is scheduled to start by a District staff member.
- C. Room set-up is the responsibility of the renter. Set-up time must be included in the rental reservation. Rental groups will not be allowed early access to the Train Station.
- D. Rental groups should consult with District staff prior to booking their event for a list of available rental equipment. Rental groups may elect to bring in additional equipment for the event. Rental equipment is subject to approval by the District.
- E. Delivery of items for a rental event must occur during the scheduled rental time. District staff will not sign for delivery items and early deliveries will not be accepted.
- F. Only freestanding decorations are permitted. Items may not be affixed to the ceiling, doors, columns, walls, light fixtures, or windows. Damage resulting from the use of tape or other adhesives will result in the loss of all or a portion of the damage deposit.
- G. The use of flammable materials is regulated by Eastside Fire and Rescue.
- H. Rice, birdseed, confetti, glitter, and dance wax are prohibited.
- I. Fog and smoke machines are prohibited. Use of these machines may activate the fire alarm resulting in immediate evacuation and possible cancellation of the rental event.
- J. The use of barbecues is prohibited.
- K. Fireworks are prohibited.
- L. At the conclusion of the rental, all personal items must be removed from the Train Station. Rental groups are not allowed to store any items at the Train Station.
- M. The rental group is responsible for cleaning the Train Station. The following items must be addressed to avoid additional charges:

1. All Train Station equipment shall be cleaned and returned to the proper storage location.
 2. All decorations and personal items shall be removed from the Train Station.
 3. All garbage cans shall be emptied and re-lined. Garbage shall be deposited in the outdoor garbage receptacle.
 4. All floors shall be swept and mopped if necessary.
- N. District staff will provide cleaning equipment and supplies. The staff person will conduct a post-event inspection at the conclusion of the event.
- O. Any cleaning and/or repairs that require staff time and materials will be deducted from the damage deposit and/or charged to the rental group. If a rental group exceeds the time reserved, they will be charged additional time and/or it may be deducted from the damage deposit.
- P. Failure to follow the rental guidelines may result in forfeiture of the damage deposit, additional charges, and/or denial of future rental usage.

10. INSURANCE FOR PRIVATE RENTAL EVENTS

- A. The following events and/or groups may be required to carry insurance naming the City as an additional insured(s):
1. Corporate hosted functions of any size.
 2. Rental events in excess of 200 participants.
 3. Any rental event where alcohol is to be sold.
 4. Other conditions that may increase liability risk for the District or City.
- B. The District will evaluate all Train Station rental requests and determine whether or not additional liability insurance is required.
- C. If liability insurance is required, the rental group shall provide a certificate of insurance naming the City as an additional insured. The certificate must state that the policy may not be cancelled without thirty (30) days written notice provided to the City. The insurance certificate must be on file fourteen (14) days prior to the rental event. The certificate should provide combined single limit coverage of at least \$1,000,000.00 for each occurrence with a 10-day cancellation clause.

11. NON-PROFIT RENTAL USAGE OF THE TRAIN STATION

- A. Non-profit rental fees are established by the District and approved by the City. Non-profit rental fees are generally reviewed on an annual basis and adjusted using a comparative rental fee study. Non-profit rental fees are subject to change without notice.

- B. The Train Station is available for discounted use by non-profit organizations located within the boundaries of the City of North Bend. The Train Station is available for discounted use by non-profit organizations for events that directly pertain to the business of the organization. Personal and social occasions will not be recognized as a non-profit event. Examples of personal and social occasions such as birthday celebrations, holiday parties, anniversary parties, and retirement events.
- C. To qualify for the non-profit rate, the organization must submit an application for Reduction of Rental Fees to the District. The Application for Reduction of Rental Fees is valid for the calendar year only and must be renewed on an annual basis. The requesting organization must provide proof of non-profit status as defined by the Internal Revenue Service 501(c)3 guidelines at the time of application. If approved by the District, the requesting organization will be eligible for non-profit rental rates at the Train Station for the calendar year.
- D. Non-profit Train Station rentals may be scheduled up to three (3) months in advance, unless otherwise approved by the District.
- E. The non-profit group is responsible for room set-up, breakdown, and clean-up in its entirety. The person that reserved the Train Station must be on-site during the entire reservation including set-up and clean-up time.
- F. Non-profit organizations agree to abide by all other rental policies and procedures.

12. RENTAL USAGE OF THE TRAIN STATION AT NO CHARGE

- A. The Train Station is available for use at no charge by non-profit organizations located within the boundaries of the City of North Bend that have historically used the Train Station for free given the organization's ties to the community, low budget, and infrequent use of the Train Station. These organizations have included in the past youth sports organizations, Girl Scouts, Boy Scouts, and Homeowner's Associations. The Train Station is available for use by such by the organizations for events that directly pertain to the business of the organization. Personal and social occasions are not included. The Train Station is also available for use at no charge by governmental agencies who provide reciprocal use for the City.
- B. To qualify for this rate, the organization must submit an application for Reduction of Rental Fees to the District. The Application for Reduction of Rental Fees is valid for the calendar year only and must be renewed on an annual basis. If approved by the City, the requesting organization will be eligible for this rental rate at the Train Station for the calendar year.
- C. Train Station rentals may be scheduled up to three (3) months in advance, unless otherwise approved by the District.

D. The group is responsible for room set-up, breakdown, and clean-up in its entirety. The person that reserved the Train Station must be on-site during the entire reservation including set-up and clean-up time.

E. These organizations agree to abide by all other rental policies and procedures.

copy of document in
P.O. Box 896
North Bend, Wa. 98045

EXHIBIT B

SEP 27 1988

88/08/22

#0870 D

AGREEMENT REGARDING USE OF CITY PROPERTY FOR OPERATION OF A NOT FOR PROFIT RAILROAD

21.00

PROFIT

***21.00

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1. Date and Parties. This Agreement, for reference purposes only, is dated the 23rd day of June, 1988 and is entered into by and between the CITY OF NORTH BEND, a Washington municipal corporation, herein referred to as the "City", and the PUGET SOUND RAILWAY HISTORICAL ASSOCIATION, a Washington not-for-profit corporation herein referred to as the "Railway Association".

2. General Purpose. The Railway Association currently operates an historical railway between the City of Snoqualmie and the City of North Bend. The City has recently constructed a railroad depot building within a City park. The purpose of this Agreement is to provide for the extension of the Railway Association's existing tracks to the depot building and then to define the parties' respective rights and obligations with regards to the operation of said railway within the City and the use of the City's depot building. The parties hereto thus agree to be bound by the terms and conditions set forth herein.

3. Use of Railroad Depot. The Railway Association shall be authorized to operate its trains up to the North Bend Depot and to utilize the platforms thereof for loading and unloading passengers. The Railway Association shall have the exclusive use of the ticket office which is shaded in yellow on the floor plan attached hereto as Exhibit A and by reference incorporated herein. In addition, the Railway Association shall have the

EXHIBIT B

use of the bathroom facilities, and other public facilities within the Depot at such times as the Railway Association loads and unloads passengers.

4. Use of City Right-of-Way. The railroad shall have the right to construct, repair and maintain railroad tracks, and operate its trains thereon over the real property formerly a part of the Burlington Northern, Inc. Snoqualmie Branch Railroad right-of-way within the City, a portion of said right-of-way being owned by the City and a portion being owned by the Railway Association. The use of the City-owned portion of said railroad right-of-way shall be from the westerly edge of said portion of the right-of-way owned by the City to the easterly edge of the William H. Taylor Park. The precise placement of the railroad track shall be determined in the field at the time of placement in order to line the track to be constructed with the existing track. The legal description of the right-of-way to be used by the Railway Association is attached hereto as Exhibit B and by reference incorporated herein. The City shall also grant additional right-of-way to the extent necessary for the placement of traffic control devices required by the Washington State Department of Transportation for the crossing at North Bend Boulevard. Nothing contained herein shall be construed as an admission of ownership by the City or non-ownership by the Railway Association of any real property in which the Railway Association has a current ownership interest.

5. City's Use of City Owned Right-of-Way. The City

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reserves the right to use the City owned right-of-way for any purpose not inconsistent with the rights herein granted, including, without limitation, the right to cross the railroad tracks situated on the said property and to grant to third parties the right to cross said railroad tracks. Provided, however, the Railway Association shall be given thirty (30) days prior notice of any authorization to cross the railroad tracks in order to review the proposal for safety concerns. Provided further, it is agreed that the City or its assignees shall not make any improvements on the railroad right-of-way that may adversely affect the stability or safety of any embankments, fill, ditch, bridge or other railway structure or adversely affect the visibility of or from the train operation. In the event that the City or its assignees adversely affect the stability or safety of said embankments, fill, ditch, bridge, or other railway structure, or adversely affect the visibility of or from the railway association's trains, then, and in that event, the City shall undertake to abate or repair such adverse conditions at its own expense, and shall hold the railway association harmless from any claims or claim of damages arising therefrom.

6. Maintenance. The Railway Association shall maintain the track, rolling stock, and other facilities and equipment situated or used upon the City owned right-of-way in a safe condition, according to applicable standards of the State of Washington Utilities and Transportation Commission, and any

EXHIBIT B

other applicable government agency. The Railway Association does hereby consent to the City contacting said agencies for the purpose of confirming compliance with their regulations.

7. Insurance. The Railway Association agrees that it will maintain minimum insurance coverage as follows:

a. \$1,000,000 combined bodily injury and property damage (applicable to any combination of person or property damaged in a single occurrence);

b. The City shall be named as an additional insured, provided,

(1) The City shall have no obligation for the payment of premiums;

(2) Any additional insurance carried by the City shall be secondary to the primary liability of the Railway Association and insurance coverage obtained by the Railway Association;

(3) Any claim by the City against the Railway Association for bodily injury or property damage shall be treated as if the City were not named as an individual insured in said policy and any said claim shall be free from any defense that the City is not entitled to recover because of its status as an additional insured;

(4) The City shall be entitled to not less than thirty (30) days notice of cancellation of any required insurance policy; and

(5) The Railway Association will furnish the City either with certification from an insurance company or companies that required coverage is in effect, or will furnish the City with a copy of the insurance policy or policies.

8. Hold Harmless.

(A) The Railway Association further agrees to protect and save the City, its elected and appointed officials and employees while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes

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of action of any kind or character, including the cost of defense thereof (including but not limited to court costs, deposition fees, attorney's fees, etc.) arising in favor of the Railway Association's employees or third parties on account of personal injuries, death or damage to persons or property arising out of the use of the premises for the purposes contained herein or in any way resulting from the acts or omissions of the Railway Association and/or its agents, employees or representatives.

(B) The City further agrees to protect and save the Railway Association, its elected and appointed officials and employees and/or members while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof (including but not limited to court costs, deposition fees, attorney's fees, etc.) arising in favor of the City employees or third parties on account of personal injuries, death or damage to persons or property arising out of the use of the premises for the purposes contained herein or in any way resulting from the acts or omissions of the City and/or its agents, employees or representatives.

9. Assessments. Railway Association shall be required to pay any general or special assessments incurred by the City which are directly attributable to or arising from any actions, occupancy and usage authorized herein.

10. Restoration. After installation, operation,

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maintenance or removal of any facility upon City owned right-of-way, the Railway Association shall restore the City owned property to a condition which is equivalent in all respects to the condition of the property prior to starting work, save and except for the improvements which have been made thereon by the railroad association, or to a lesser condition satisfactory to the City as per the standards in the APWA 1981 edition and the City design and construction standards in effect at the time of restoration. If the Railway Association delays the restoration for 180 days, the City may, but is not required to, accomplish all necessary work and charge all of the reasonable costs therefore to the Railway Association. The City shall give the Railway Association 30 days notice before affecting any such repairs.

11. Repairing Damage by Railway Association. In the event that damage to the City owned right-away, or to the property adjacent to the right-of-way, of any kind is caused by the Railway Association in the course of performing work authorized by this Agreement, the Railway Association will repair any damage at its sole cost and expense. Repair work shall begin without unreasonable delay and continue without interruption until completed. If damage is extensive the time allowed for repair will be prescribed by the City Council. If the City determines it is necessary, the City may accomplish the work and charge all the costs to the Railway Association after giving notice of such intent within a reasonable amount

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of time, calculated to allow the Railway Association to effectuate such repairs.

12. Abatement of Unsafe Conditions. The responsible City representative may at any time after a reasonable attempt to contact the Railway Association, do, order, or have done any and all work considered necessary to restore to a safe condition any area left by the Railway Association in a condition dangerous to life or property and upon demand the Railway Association shall pay to the City all reasonable costs of such work, materials, etc. Nothing in this section shall relieve the Railway Association of its duties and obligations under Paragraph No. 7. "Insurance".

13. Lowering of Grade on Main Street. It is anticipated that the grade at the Main Street crossing will need to be lowered and the city utilities relocated at the time that the railroad track is laid to the depot. The City will be responsible for lowering the grade and relocating the City utilities at their own expense. The Railway Association and the City will coordinate their efforts so that the grade may be lowered and the tracks laid immediately thereafter. If the Railway Association is not able to so coordinate the laying of the tracks then they shall be responsible for repaving the street at the crossing and reconstructing any curb, gutters and sidewalks damaged in laying the track. If the City should break a utility line during its grade lowering and utility relocation, then it shall be responsible for repairing the same

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at its own expense. If the Railway Association damages any utility lines during their laying of track at any location they shall repair the same at their own expense.

14. Storage of Equipment. The Railway Association shall provide such furnishings in its ticket booth as shall be consistent with a historical railway ticket booth. They shall also be allowed to have displays and other memorabilia in the public sections of the railway depot in the sole discretion of the City. Other than the furnishings, fixtures and equipment to be placed in the ticket booth, this Agreement does not authorize the storage of Railway Association equipment on City property. However, the City Council may, in its sole discretion, grant written permission for the storage of railroad equipment upon City property after request to do so is received from the Railway Association.

15. Term.

A. Railroad Depot. With regards to the use of the Railroad Depot and William H. Taylor Park this Agreement shall commence on June 15, 1988 and shall continue for a period of thirty (30) years thereafter. It may be renewed for an additional term of thirty (30) years if this agreement has not been earlier terminated by the provisions contained herein and if notice of intent to request the additional 30-year term is provided to the City in writing within the first three months of the 29th year of this Agreement.

B. Railroad right-of-way. As to the Railroad right-

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of-way for track purposes the use shall be perpetual, subject to the conditions subsequent of early termination set forth in Paragraph 16. The perpetual easement is further conditioned upon the Railway Association, at least one year before the termination of the lease on the Railroad depot, giving written notice to the City that it intends to continue the operation of the Railroad along the Railroad right-of-way even after the termination of the agreement on the Railroad depot.

16. Early Termination. This Agreement as it pertains to the Railway Association's use of the depot may be terminated upon the occurrence of any of the following events however, notwithstanding any other provision contained herein, the Railway Association's use of the City owned right-of-way may be terminated only upon the occurrence of the condition precedent set forth in paragraph 16C hereof:

A. The Railway Association fails to provide at least ten (10) train trips to the Depot for tourists in any given year, except for exigent circumstances such as bridge outage;

B. The Railway Association fails to pay the amounts required to be paid hereunder pursuant to paragraph 18;

C. The Railway Association fails to comply with any other terms and conditions of the Agreement after being given thirty (30) days notice of their noncompliance. If the City expends monies in effectuating repairs then a reasonable time for any required repayment shall be defined as 30 days for an

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amount under \$1,000.00 and up to one year for amounts greater than \$1,000.00. Failure by the Railway Association to perform repairs required in Paragraphs 10, 11 and 12 shall be deemed a noncompliance even if the City effectuates the repairs; and

D. The City fails to comply with any of the terms and conditions of this Agreement after being given thirty (30) days notice of its noncompliance.

18. Defraying City Operating Costs. The Railway Association agrees to help defray the City's operating costs associated with the depot and the William Henry Taylor Park. The Railway Association shall pay the City \$1,000 on or before June 15, 1988 as and for the use of the depot as described herein for the 1988 calendar year. For the 1989 calendar year and each year thereafter the Railway Association shall pay to the City on January 1 of each year the sum of \$3,000.00. If the number of days of operation exceeds 60 days in any given year the parties shall renegotiate upwards the fee due under this paragraph. If the number of days of operation in any given year decreases below 28 days then the parties shall renegotiate downwards the fee due under this paragraph.

19. Ownership of Track. The rails, ballast, ties, jewelry and crossing signals shall remain the personal property of the Railway Association, and they shall remove the same within one hundred eighty (180) days of the termination of this Agreement. The roadcrossings shall be resurfaced in accordance with the then applicable City design and construction

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standards. If not so removed, then they shall automatically become the City's property. Provided the Railway Association shall remain obligated to resurface the roadcrossing.

20. Recording with the Department of Records. This Agreement shall be executed in duplicate and the Railway Association shall cause its original to be recorded with the King County Department of Records. Upon recording the same, the Railway Association shall advise the City of the date of recording and the recording number.

21. Mediation/Arbitration. If the parties are unable to reach agreement on any terms of this Agreement that require further negotiation, then they agree to mediate their dispute. If the parties cannot agree to a mediator, then the parties shall select a mediator of their choice and the mediator to be used shall be chosen by lot. If the parties are unable to resolve their differences after mediation, then an arbitrator shall be selected to arbitrate the dispute, and his or her decision shall be binding upon the parties. If the parties are unable to agree to an arbitrator, then the parties shall each choose the arbitrator they wish and then which of those two arbitrators will be used shall be determined by lot.

Lot selection of the mediator or arbitrator shall be made by each party placing the name of their chosen arbitrator on a slip of paper and sealing the same in a plain white envelope so both envelopes shall be identical. Two representatives of the City shall each hold one of the envelopes behind their back.

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The representative of the Railway shall then request one of the two persons to reveal their envelope. The name of the mediator/arbitrator in the envelope so produced shall be the mediator/arbitrator.

22. Compensation for use of City right-of-way. Since there is no expense to the City involved in the operation of the Railroad itself, and given the fact that there is a benefit of increased tourism to the City as a result of the Railroad being allowed to operate within the City, the City is not requiring any compensation to be paid to the City as a result of the use of the City right-of-way for Railroad track purposes during the period of time that this agreement is in effect as to the use of the Railroad depot. If the term of the Agreement as to the use of the Railroad depot should expire, then this Agreement shall remain in full force and effect except as to the use of the Railroad depot and William H. Taylor Park. The Railway Association shall then pay to the City a fair and reasonable sum for the use of the City right-of-way. The parties shall commence negotiations of said fair and reasonable sum at least one year before the termination date for the use of the Railroad depot. If agreement is not reached as to said sum at least six months before the termination of the agreement as to the use of the Railroad depot, then the parties agree to submit the matter to binding arbitration. The arbitration shall be conducted by a panel of three persons. The Railway Association shall choose one of the arbitrators, the City shall

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choose another of the arbitrators, and the third arbitrator shall be chosen by the two arbitrators selected by the City and Railway Association. If the two arbitrators cannot agree upon a third arbitrator, then the third arbitrator shall be chosen by lot from a list of four names, each of the two arbitrators supplying two names to the list. The decision of the arbitrator panel shall be binding upon the City and Railway Association as to the right-of-way lease amount.

23. Termination of Previous Franchise Agreement. Upon the execution of this Agreement by all parties all previous agreements between the parties, including any preexisting franchises shall become null and void.

24. Imposition of Special Use Tax. The City agrees that there is adequate compensation being paid pursuant to the terms of this Agreement and thus no Special Use Tax will be imposed

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against the Railroad unless said tax is imposed universally
against all businesses operating within the City.

PUGET SOUND RAILWAY
HISTORICAL ASSOCIATION
a Washington Non-Profit
Corporation:

CITY OF NORTH BEND,
a Washington Municipal
corporation:

By: *Douglas Weeks*
Douglas Weeks
Its President

Fritz Ribary
Fritz Ribary
Mayor

ATTEST:

By: *Rose Wildes*
Rose Wildes
Its Secretary

James F. Neher
James F. Neher, CMC
City Administrator

APPROVED AS TO FORM:

LOREN D. COMBS, INC., P.S.

By: *Susan Rae Sampson for*
Loren D. Combs
City Attorney

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RECEIVED THIS DAY

CITY OF NORTH BEND

AUG 22 11 47 AM '00

LEGAL DESCRIPTION FOR EASEMENT TO
PUGET SOUND RAILWAY HISTORICAL ASSOCIATION

BY THE DIVISION OF
RECORDS & ELECTIONS
KING COUNTY

Those portions of Sections 4, 5 and 9, Township 23 North, Range 8 East, W.M., King County, Washington, described as follows:

A 27.00-foot wide easement lying 12.50 feet Northeasterly and 14.50 feet Southwesterly of the following described line and Southerly of the East-West centerline of the Southeast quarter of said Section 5:

Beginning at the intersection of the centerline of the abandoned Burlington Northern Railroad right-of-way, said centerline being the construction centerline of the old railroad tracks, with the East-West centerline of the Southeast quarter of said Section 5, said East-West centerline also being on the boundary of the Corporate Limits of North Bend as defined by City of North Bend Ordinance No. 469;

Thence Southeasterly along said centerline of right-of-way to a point 325.00 feet, as measured along said centerline, Northwesterly of the intersection of said centerline with the centerline of North Bend Boulevard and Point "A" and a terminus of this strip easement description.

AND ALSO a 31.00-foot wide easement lying 8.50 feet Northeasterly and 22.50 feet Southwesterly of the following described line beginning at Point "A":

Thence Southeasterly along the centerline of the abandoned Burlington Northern Railroad right-of-way, said centerline also being the centerline of construction centerline for new tracks, a distance of 1,565.00 feet to Point "B" and a terminus of this strip easement description.

AND ALSO a 17.00-foot wide easement lying 8.50 feet on each side of the following described centerline beginning at Point "B":

Thence Southeasterly along said centerline to a point from which the intersection of the Southwesterly margin of said abandoned Burlington Northern Railroad right-of-way and the North margin of Park Avenue is at right angles to the said centerline;

Thence continuing Southeasterly along the said centerline a distance of 40.00 feet to a terminus of this strip easement description.

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AND ALSO a 50.00-foot wide easement lying 25.00 feet on each side of the following described centerline:

Commencing at the center of the existing Bridge No. 35 across the South Fork of the Snoqualmie River;

Thence Northwesterly along the centerline of the abandoned Burlington Northern Railroad right-of-way a distance of 500.00 feet to the Point of Beginning;

Thence Southeasterly along the said centerline a distance of 830.00 feet to a terminus of this strip easement description.

AND ALSO the Southwesterly 20.00 feet of the Southeasterly 20.00 feet of that land lying Northwesterly of a line parallel with and 44.00 feet, as measured at right angles, Southeasterly of the centerline of North Bend Boulevard and Northeasterly of a line drawn parallel with and 37.00 feet, as measured at right angles, Southwesterly of the centerline of the abandoned Burlington Northern Railroad right-of-way.

AND ALSO the Northeasterly 20.00 feet of the Northwesterly 20.00 feet of that land lying Southeasterly of a line parallel with and 44.00 feet, as measured at right angles, Northwesterly of the centerline of North Bend Boulevard and Southwesterly of a line parallel with and 23.00 feet, as measured at right angles, Northeasterly of the centerline of the abandoned Burlington Northern right-of-way.

AND ALSO the Southwesterly 20.00 feet of the Southeasterly 20.00 feet of that land lying Northwesterly of a line parallel with and 44.00 feet, as measured at right angles, Southeasterly of the centerline of Main Street and Northeasterly of a line drawn parallel with and 37.00 feet, as measured at right angles, Southwesterly of the centerline of the abandoned Burlington Northern Railroad right-of-way.

AND ALSO the Northeasterly 20.00 feet of the Northwesterly 20.00 feet of that land lying Southeasterly of a line parallel with and 44.00 feet, as measured at right angles, Northwesterly of the centerline of Main Street and Southwesterly of a line parallel with and 23.00 feet, as measured at right angles, Northeasterly of the centerline of the abandoned Burlington Northern right-of-way.