

Hiedy Torres

From: Dannelly, Mike (FECRES) <Mike.Dannelly@fecrwy.com>
Sent: Monday, April 30, 2018 10:25 AM
To: Hiedy Torres
Subject: FW: Recology
Attachments: License Agreement Recology, Inc. 122117.pdf

I would like to close on this soon.

Mike

From: Eric Potashner <EPotashner@recology.com>
Sent: Monday, April 30, 2018 11:14 AM
To: Dannelly, Mike (FECRES) <Mike.Dannelly@fecrwy.com>
Subject: Recology

Notice: This email came from outside FEC Railway

Mike:

I got comments back from our risk department. Hopefully we can work the issues below without having to go back for additional approvals from your board.

- Section 5. Indemnification -- the one thing we cannot do -- that WC insurers cannot do -- is give "additional insured" status to 3rd parties.
- NCRA's reluctance to accept our other changes or comments, all of which are reasonable, may
 - waive rights, and
 - increase Recology's exposure to losses not directly attributed to us, or
 - risk breach of contract because we are unable to comply with requirements outside of our control (e.g. H.i.)

Please let me know how you want to proceed.

Eric Potashner

Vice President & Sr. Director of Strategic Affairs

Recology™ | 50 California Street, 24th Floor | San Francisco, CA 94111-9796
T: 415.875.1102 | C: 415.624.9885 | epotashner@recology.com

License Agreement

This License Agreement (“Agreement”) by and between *North Coast Railroad Authority* (NCRA), a public authority established pursuant to the North Coast Railroad Authority Act (Gov Code §93000 et seq.) (herein referred to as “Licensor”) and Recology Humboldt County a California corporation (herein referred to as “Licensee”) together known as the “Parties”.

In consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

1. GRANT OF LICENSE; DESCRIPTION OF PROPERTY

Licensor grants to Licensee a license to utilize property of Licensor as depicted in Exhibit “A” attached hereto (“Premises”), and otherwise described as *One Non-Exclusive commercial at-grade crossing approximately 35’ x 30’ at NCRA Milepost 300.9 (APN 401-031-39)*. The Premises lies adjacent to property owned by Licensee located at 555 Vance Avenue, Samoa CA (APN 401-031-67) (“Licensee's Property”)

2. USE OF PROPERTY; TERM

The above described Property may be entered upon and maintained by Licensee solely during the period beginning September 30, 2017 (the Effective Date) and continuing for a term of twenty (20) years, unless sooner terminated as provided herein (“Initial Term”). Licensee is expressly permitted to use the Premises for access, ingress and egress to and from Licensee's Property Subject to the terms and conditions set forth herein, the License shall automatically renew for additional one (1) year terms until terminated as provided herein (“Renewal Term”). However, the term will be deemed reduced from the otherwise remaining term at the annual anniversary date of this agreement, to one additional year if the crossing is located on any portion of the right of way that as of the annual anniversary date has been approved by the Federal Railroad Administration for the resumption of freight operations. At any time during the “Initial Term,” or a “Renewal Term,” either party may give notice in the manner provide herein to the other party that the term shall not automatically renew on the next renewal date and will be reviewed for compatibility with rail operations at that time. Time is expressly declared to be of the essence of this provision.

3. CONSIDERATION

As consideration for this Agreement, Licensee agrees to pay Licensor a one-time payment of **\$25,000.00 (Twenty-five Thousand dollars)** for the initial twenty (20) year term of this Agreement, payable on the Effective Date of this Agreement. Beginning twenty (20) years following Effective Date, and continuing thereafter on each anniversary following the initial License Term, as it may be extended (“Anniversary Date”), Rent shall be adjusted

to the current market value at that time and then increased by Three Percent (3%) in each year times the prior year consideration.

4. USE AND IMPROVEMENTS

Licensee's use of the premises shall be restricted to the personal use of the Licensor, the Licensor's agents and employees and consultants and nothing in this License is to be construed as permitting the Licensee to allow the general public to use the Property for any purpose unless the Licensor consents in a separate writing

Licensee hereby agrees to install all permanent improvements and any necessary utilities to serve those improvements. Improvements, excavations, removal of any trees, weeds, brush, grass or improvements and other modifications to the Premises shall be the sole responsibility of Licensee. Licensee will make all reasonable efforts and take all reasonable precautions to maintain the Premises in such a way that is safe and free from unreasonable hazards likely to cause injury to persons who use the Premises. Licensee shall assume full responsibility for the proper use and supervision of the Premises. If Premises usage increases the annual fee will be reassessed.

Licensee hereby agrees to maintain the vegetation on the said Premises at Licensee's expense. Licensee hereby agrees to maintain the Licensee owned fence (if installed at any time) at Licensee's expense. Licensee agrees to disclose to any purchaser of the Licensee's property that the improved area belongs to the Licensor, and a new agreement will need to be entered into upon transfer of title for any owner to maintain use of Licensor's property.

Any Licensee improvements must obtain any required permits from the local jurisdiction.

Licensee improvements shall be subject to the terms and provisions of Section 7 in the event of a termination by either party.

5. INDEMNIFICATION

Licensor shall not be liable for and is free from the cost of any damages for personal injury or property damage resulting from the use made by Licensee of the Premises, and any defective condition of faulty construction of any improvements arising thereafter, and Licensee covenants and agrees to indemnify and save harmless said Licensor and its officers, agents and employees from and against any and all liability, loss, cost, or other obligation, including reasonable attorney's fees in account of or arising out of any such injuries or losses.

Licensee shall provide Licensor with a Certificate of Liability/Insurance naming North Coast Railroad Authority (NCRA) as Additionally Insured for the following categories and in the following amounts:

- | | |
|---------------------------------|-------------------------------|
| a. Commercial General Liability | \$1,000,000.00 per occurrence |
| b. Comprehensive Auto Liability | \$2,000,000.00 general ag. |
| single limit | \$1,000,000.00 combined |
| c. Worker's Compensation | \$500,000.00 each employee |
| d. Employer's Liability | \$500,000.00 each accident |
| | \$1,000,000.00 policy limit |

6. ENVIRONMENTAL PROVISIONS

A. Definitions. As used in this Section, the following terms have the following definitions:

"Agencies" means any federal, state, or local governmental authorities, agencies, or other administrative bodies with jurisdiction over Licensee or the Premises.

"Environmental Laws" means any federal, state, or local environmental, health, or safety-related laws, regulations, standards, court decisions, ordinances, rules, codes, orders, decrees, directives, guidelines, permits, or permit conditions, currently existing and as amended, enacted, issued, or adopted in the future that are or become applicable to Licensee or the Premises, including, but not necessarily limited to the Consent Decree in *Hight v. North Coast Railroad Authority*, Mendocino County Superior Court, Case No. 80240, a true and correct copy of which is posted at NCRA's website, <http://www.northcoastrailroad.org>.

"Existing Environmental Conditions" means the conditions disclosed in the report entitled *Phase II and Phase III Program Findings, Northwestern Pacific Railroad, Novato to Willits, dated March 1996*, prepared for Licensor by Geomatrix Consultants, a true copy of which is available for inspection at the NCRA office, or such other conditions as may be identified in an addendum to this agreement executed by both parties.

"Hazardous Material" means any chemical, substance, material, controlled substance, object, condition, waste, living organism, or combination that is or may be hazardous to human health or to the safety of the environment due to its radioactivity, flammability, corrosiveness, reactivity, explosiveness, toxicity, carcinogenicity, mutagenicity, phytotoxicity, infectiousness, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum and petroleum products, asbestos, radon, polychlorinated biphenyls (PCBs) and all of those chemicals, substances, materials, controlled substances, objects, conditions, wastes, living organisms, or combinations that are now or become in the future listed, defined, or regulated in any

manner by any Environmental Law based upon, directly or indirectly, their properties or effects.

"Licensee's Parties" means Licensee's employees, agents, customers, visitors, invitees, licensees, contractors, designees, or subLicensee's.

B. Use of Hazardous Materials.

Licensee will not use or allow the use of the Premises in a manner that may cause "Hazardous Materials" to be released or to become present on, under, or about the Premises or other properties in the vicinity of the Premises.

C. Environmental Compliance.

i. Licensee and Licensee's Parties will not, at any time during the Term, cause or permit any Hazardous Materials to be brought upon, stored, manufactured, generated, blended, handled, recycled, treated, disposed, or used on, under, or about the Premises for any purpose, except as specifically approved in writing by Licensor ("Permitted Hazardous Materials"), as amended from time to time. Any material change to the Permitted Hazardous Materials must be approved in advance in writing by Licensor, whose approval will not be unreasonably withheld.

ii. During the Term, Licensee will take reasonable steps to protect against intentional or negligent acts or omissions of third parties that might result directly or indirectly in the release, disposal, or other placement of Hazardous Materials on or under the Premises.

iii. No asbestos-containing materials will be manufactured or installed for any purposes on or as part of the Premises, whether as part of Licensee's or Licensee's Parties' business operations or as Licensee improvements, unless approved in advance in writing by Licensor, whose approval will not be unreasonably withheld.

iv. Licensee will keep, operate, and maintain the Premises in compliance with all, and will not cause or permit the Premises to be in violation of any, Environmental Laws.

D. Underground Storage Tanks.

i. Neither Licensee nor any of Licensee's Parties will install or use any underground storage tanks on the Premises.

E. Licensor's Right of Entry and Testing.

Licensors and Licensors' representatives have the right, but not the obligation, at any reasonable time to enter onto and to inspect the Premises and to conduct reasonable testing, monitoring, sampling, digging, drilling, and analysis to determine if Hazardous Materials are present on, under, or about the Premises and to review and copy any documents, materials, data, inventories, financial data, or notices or correspondence to or from private parties or governmental authorities (collectively, "Inspection"). If the Investigation indicates the presence of any environmental condition that occurred during the Term as a result of Licensee's or Licensee's Parties' activities, or failure to act where Licensee had a duty to act, in connection with the Premises, Licensee will reimburse Licensors for the cost of conducting the tests.

F. Environmental Assessment.

Licensors may require Licensee to retain a duly licensed environmental consultant acceptable to Licensors that will perform an environmental compliance audit of the Premises and Licensee's and Licensee's Parties' business activities and compliance with the provisions of this Agreement. Licensors may require Licensee to cause the environmental compliance audit to be conducted on an annual basis, the reasonable cost of which will be the sole responsibility of Licensee. If the results of the environmental compliance audit indicate that Licensee is or may be in violation of Section 6, Licensee will be responsible for the cost of any additional testing required by Licensors. Licensee must promptly provide a copy of the report from the consultant to Licensors upon receipt, and upon request must promptly provide to Licensors a copy of all data, documents, and other information prepared or gathered in connection with the report. Licensee acknowledges that Licensee has been provided an adequate opportunity to conduct Licensee's own environmental investigation of the Premises with independent environmental experts and consultants.

G. Notification.

- i. Licensee must give immediate written notice to Licensors of:
 - (a) any enforcement, remediation, or other regulatory action or order, taken or threatened, by any Agency regarding, or in connection with, the presence, release, or threat of releases of any Hazardous Material on, under, about, or from the Premises, or any tanks on the Premises, or otherwise resulting from Licensee's use of the Premises;
 - (b) all demands or claims made or threatened by any third party against Licensee or Licensee's Parties or the Premises relating to any liability, loss, damage, or injury resulting from the presence, release, or threat of release of any Hazardous Materials on, under, about, or from the Premises or otherwise resulting from Licensee's use of the Premises;

- (c) any significant spill, release, or discharge of a Hazardous Material on, under, about, or from the Premises, including, without limitation, any spill, release, or discharge required to be reported to any Agency under applicable Environmental Laws; and
- (d) all incidents or matters where Licensee and Licensee's Parties are required to give notice to any Agency pursuant to applicable Environmental Laws.

ii. Licensee must promptly provide to Licensor copies of all materials, reports, technical data, Agency inspection reports, notices and correspondence, and other information or documents relating to incidents or matters subject to notification under this Agreement. Also, Licensee must promptly furnish to Licensor copies of all permits, approvals, and registrations Licensee receives or submits with respect to Licensee's operations on the Premises, including, without limitation, any underground storage tank registrations, installation permits, and closure permits.

H. Remediation.

i. If any Hazardous Materials are released or found on, under, or about the Premises arising out of Licensee's or Licensee's Parties' activities, or failure to act where Licensee had a duty to act, in connection with the Premises, Licensee must promptly take all actions, at Licensee's sole expense, necessary to investigate and remediate the release or presence of Hazardous Materials on, under, or about the Premises in accordance with Environmental Laws and the requirements of all Agencies. However, unless an emergency situation exists that requires immediate action, Licensor's written approval of these actions will first be obtained, and the approval will not be unreasonably withheld. Licensor's right of prior approval of these actions includes, but is not limited to, the selection of any environmental consultant to perform work on or related to the Premises, the scope of work, and sampling activities to be performed by the consultant before the report is final. Licensee will provide Licensor with at least three (3) business days' advance notice of any sampling, and upon request of Licensor, will split samples with Licensor. Licensee will also promptly provide Licensor with the results of any test, investigation, or inquiry conducted by or on behalf of Licensee or Licensee's Parties in connection with the presence or suspected presence of Hazardous Materials on, under, about, or from the Premises. Licensee must notify Licensor in advance and give Licensor the right to participate in any oral or written communications with regulatory agencies concerning environmental conditions on or arising from the Premises. Licensor has the right, but not the obligation, to assume control of any required remediation on the Premises at Licensee's expense if Licensee fails to notify Licensor and obtain Licensor's approvals as required. Within thirty (30) days after Licensee's completion of any remediation of the Premises, Licensee must deliver to Licensor a letter from the applicable Agency stating that the remediation was undertaken in accordance with all applicable Environmental Laws and that any residual

contamination remaining after the remediation does not pose a threat to human health or the environment.

ii. If Licensee or Licensee's Parties have caused or permitted a release of Hazardous Materials that results in or threatens to result in Hazardous Materials becoming present on, under, or about the Premises, threatens public health or safety or the environment, or is in noncompliance with any applicable Environmental Laws or requirements, Licensor may demand that Licensee promptly take action. If Licensee does not respond within thirty (30) days (unless there is an emergency, in which case Licensee must respond as soon as practicable, but not less than three (3) days), Licensor has the right, but not the obligation, to enter onto the Premises and take all actions reasonably necessary to investigate and fully remediate the release of noncompliance at Licensee's sole expense, which sums will be immediately due and payable upon receipt of an invoice and will constitute additional rent under this Agreement.

7. SURRENDER OF THE PREMISES; HOLDING OVER

A. Upon termination of this License, Licensee shall leave the Premises in a neat and clean condition satisfactory to Licensor and free of all personal property of Licensee. All repairs, Alterations and/or other improvements made by Licensee shall become the property of Licensor, provided that Licensor may, by written notice given to Licensee on not less than (10) days prior to the expiration of the Agreement, require Licensee to remove any such Alterations and improvements from the Premises and to restore the Premises to their original condition (normal wear and tear excepted) prior to termination of this Agreement. If Licensee fails to do so, Licensor may perform such removal and restoration work in which case Licensee shall pay Licensor within thirty (30) days after demand therefore an amount equal to the rent (as in effect immediately before termination) for the period during which such removal is accomplished to compensate Licensor for the loss of rent to Licensor resulting from the unavailability of the Premises for licensing to another Licensee during such time and (2) the cost of removal of such improvements. Licensor shall use reasonable diligence on the removal of such improvements.

B. If Licensee, without Licensor's written consent, remains in possession of all or part of the Premises after termination or expiration of this Agreement, such occupancy shall be construed to be a tenancy from month-to-month, subject to the terms and conditions of this Agreement, except that the Base Rent shall automatically increase to 200% of the Base Rent in effect immediately prior to such termination or expiration in addition to such other damages that Licensor may sustain.

8. ASSIGNMENT

Licensee will not assign this license or any interest therein and will not let or underlet the said Premises or any part thereof without the prior written consent of the Licensor, which consent shall not be unreasonably withheld.

9. ATTORNEY'S FEES

In any legal action to enforce or interpret any provision of this Agreement, the prevailing party shall be entitled to recover from the other party its reasonable costs and attorney's fees.

10. NOTICES

Any written notice or payment required hereby shall be deemed given upon receipt or forty-eight hours after such notice is deposited in the United States mail, first class postage prepaid and addressed as follows:

Payments

To Licensor: North Coast Railroad Authority
419 Talmage Rd. Suite M
Ukiah, CA 95482
Attn: Executive Director

With a copy to: Neary and O'Brien
Attorneys at Law
110 South Main Street, Suite C
Willits Ca. 95490

To Licensee: Recology Humboldt County.
Attention: Chief Financial Officer
50 California Street, 24th Floor
San Francisco, CA 94111

With a copy to: Recology, Inc.
Attention: General Counsel
50 California Street, 24th Floor
San Francisco, CA 94111

11. TERMINATION

This License may be terminated by notice from Licensor to Licensee in the event that either the Federal Railroad Administration or the California Public Utilities Commission orders the crossing closed for any reason. In such event Licensor may appeal such order, at its own expense, and the Licensor will not challenge the standing of Licensee to do so. In the

event that Licensee is in breach of this License, the Licensor may terminate this license upon twenty (20) days' notice to Licensee and opportunity to cure any violation of this License.

12. PARAGRAPH HEADINGS

Paragraph headings are included for the convenience of the parties and are not intended to define or limit the scope of this Agreement.

13. PREVIOUS AGREEMENTS

Any and all existing statements or agreements, whether oral or written, or renewals thereof, between the parties hereto, covering the same subject matter are hereby cancelled and superseded by the terms of this Agreement, and such prior agreements, statements or understandings shall have no further force or effect.

Recology Humboldt County, a California Corporation - Licensee

Sign: _____

Print: _____

Title: _____

Date: _____

North Coast Railroad Authority – Licensor

By: _____

Print: _____

Title: _____

Date: _____

Approved as to Form

NCRA General Legal Counsel

File No. NCRA-300-1001
Recology Humboldt County
Milepost 300.9, Humboldt County



Recology Inc. Humboldt City
Milepost 300.9+/-
Purpose: At Grade Crossing

EXHIBIT A
Section 18 - Township 5 North - Range 1 West
Humboldt County, California