

**Agreement for the Termination of Agreement for the Resurrection of Operations Upon the
Northwestern Pacific Railroad Line and Lease**

WHEREAS, on September 6, 2006, the North Coast Railroad Authority (“NCRA”) and Northwestern Pacific Railroad Company (“NWPCo”) (collectively “Parties”) entered into a contract entitled “Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease” (“Operations Agreement”); and

WHEREAS, the Operations Agreement was amended by the Parties on June 20, 2011; and

WHEREAS, pursuant to the Operations Agreement and the authority of the Surface Transportation Board (“STB”), NWPCo has acted as the freight operator of the NCRA-held right of way along all points in active use from the date of the Operations, and has held the option to act as freight operator with respect to all other points upon the NCRA-held right of way; and

WHEREAS, NWPCo has entered into a Funds Transfer Agreement with the California State Transportation Agency (“CalSTA”) under the terms of which NWPCo, in return for the receipt of funds from CalSTA, agreed to release all debts owed by NCRA to NWPCo, and to terminate all agreements with NCRA in a manner directed by NCRA, including the Operations Agreement; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Within 30 days after the execution of the Funds Transfer Agreement, NWPCo shall file a notice of exempt discontinuance with the STB with respect to all points for which NWPCo is the operator of record before the STB upon NCRA-held right of way as of the date of the filing. Effective immediately upon the issuance of authority by STB for such termination to become effective, the Operations Agreement is terminated. Upon such termination, NWPCo shall have no further right, present or future, to the use or occupation of any right of way or other interest in real property held in whole or in part by NCRA. If NWPCo does not timely file a notice of exempt discontinuance with the STB as required hereby, or does not diligently prosecute to its completion any and all necessary steps to effectuate the discontinuance of NWPCo’s status as operator before the STB, NCRA shall have the right and authority to act on behalf of NWPCo before the STB with respect to any and all actions and filings reasonably required to be undertaken in order to effectuate the discontinuance of NWPCo’s status as operator on any and all NCRA-held rights of way. If NCRA exercises its right to act on behalf of NWPCo pursuant to this section, within 60 days after the effective date of the discontinuance, NWPCo shall reimburse NCRA for all costs and fees incurred in connection with such actions, including attorney’s fees.

2. By their signatures hereto, the Parties agree and acknowledge that, subject to the terms of Section 1 hereof, all agreements currently in effect between NCRA and NWPCo are hereby deemed fully performed, and are hereby terminated. With the exception of any terms of any agreement between the Parties expressly intended to survive the termination thereof, no such agreements shall have any further force or effect.

3. Concurrent with the termination of the Operations Agreement, NWPCo hereby releases all right, title, and interest in any property, real or personal, held by NCRA, including any security interest held by NWPCo in any property owned by NCRA, including thirty three 50-foot plate F, 100 ton box cars bearing marks and numbers NCXX 1000- NCXX 1034.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective this ____ day of June, 2021.

Northwestern Pacific Railroad Company

By: _____

Douglas Bosco, its President

NORTH COAST RAILROAD AUTHORITY

By: _____

Mitch Stogner, its Executive Director

CALIFORNIA STATE TRANSPORTATION AGENCY
FUNDS TRANSFER AGREEMENT

Pursuant to Senate Bill 1029 (McGuire, 2018) codified at 2018 Cal. Legis. Serv. Ch. 934 ("SB 1029"), the California State Transportation Agency ("CalSTA") has conducted an assessment and found that discharge of certain obligations (the "Obligations") associated with the North Coast Railroad Authority ("NCRA") to be in the best interest of the people of California. CalSTA has determined the discharge of the Obligations to be an integral part of dissolving NCRA. CalSTA is therefore directing certain agencies of the State of California, including but not limited to the California State Controller's Office, to make payments and otherwise take actions necessary or appropriate to ensure the discharge of the Obligations as further detailed in CalSTA's report to the legislature, *Assessment of the North Coast Railroad Authority and Viability of a Great Redwood Trail*, released in November 2020.

This Agreement entered into on **June 7, 2021**, is between The Northwestern Pacific Railroad Company, a private enterprise, hereinafter referred to as RAILROAD, and the STATE OF CALIFORNIA, acting by and through its State Transportation Agency, hereinafter referred to as STATE, and, acting for and on behalf of NCRA. RECITALS:

1. RAILROAD is a freight carrier with operating rights on tracks owned by NCRA, including 62 miles between Lombard and Windsor in California.
2. RAILROAD entered into the Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease ("Operating Agreement") in September 2006, with NCRA. The Operating Agreement had an initial term of five years, with options to extend up to 99 years. In 2011, the parties exercised a 20-year term extension.
3. RAILROAD entered into a total of eight agreements, seven amendments, one informal financing arrangement, and one trade payable obligation with NCRA between September 2006 and December 2019.
4. Senate Bill 1029 (McGuire, 2018), the North Coast Railroad Authority Closure and Transition to Trails Act, required STATE to conduct an assessment in consultation with the Natural Resources Agency to provide the State Legislature with information necessary to determine the most appropriate way to dissolve NCRA and dispense with its assets and liabilities.
5. The STATE task force assigned to the assessment included the California Department of Finance, Office of State Audits and Evaluations, which conducted a calculation engagement, as that term is defined in the Statement on Standards for Valuation Services of the American Institute of

Certified Public Accountants. The calculation procedures were performed solely to provide STATE information in accordance with Government Code section 13978.9 and included a thorough review of all known contracts and agreements between NCRA and RAILROAD. The subsequent Calculated Value of Net Assets report detailed the specific calculation procedures used to calculate assets and liabilities of NCRA as of December 31, 2019.

6. Assembly Bill 74, (Ting, 2019), the Budget Act of 2019-2020, included an appropriation of \$10.8 million in item 0521-101-0001 for STATE for use on "expenses related to dissolving NCRA, including operations, maintenance, and the retirement of outstanding debts."
7. STATE has retained the appropriate funds from Item 0521- 101- 0001 which may be used, with this agreement, to retire NCRA's outstanding debt owed to RAILROAD and outstanding debt owed to the Federal Railroad Administration Railroad Rehabilitation and Infrastructure Financing (RRIF) loan program.
8. STATE and RAILROAD have identified all debts to be paid to, or on behalf of, RAILROAD in Schedule A.
9. STATE and RAILROAD have identified assets to be released by RAILROAD in the attached Schedule B. By operation of law, funding available to RAILROAD under this Agreement will terminate on **June 30, 2022**.
10. This agreement is intended to terminate all existing contracts and liability between RAILROAD and NCRA.

NOW THEREFORE,

1. Consistent with and subject to the terms of the Asset Transfer Agreement with an effective date of December 3, 2020 (the "SMART ATA") between Railroad and Sonoma Marin Area Rail Transit District ("SMART") and except for those portions of the Operating Agreement which contain certain rights and obligations that RAILROAD is obligated to transfer to SMART pursuant to the SMART ATA, RAILROAD agrees to terminate all agreements with NCRA, including the following:
 - A. Those portions of the Agreement for the Resurrection of Operations Upon the Northwestern Pacific Railroad Line and Lease (Operating Agreement), September 2006 and amended September 2011 that are not subject to the terms of the SMART ATA.
 - B. Memorandum of Understanding between North Coast Railroad Authority and Northwestern Pacific Railroad Company for Interim Financing and Amendment.

- C. Bridge Financing and Security Agreement and Amendment.
 - D. Marin Consent Decree Security Agreement.
 - E. Agreement to Complete Reopening Project Lombard to Windsor and Amendments.
 - F. Memorandum of Agreement – FRA.
 - G. Informal Financing Arrangement.
 - H. Agreement for Loan for NCRA Operations, Allocation and Payment of Legal Fees, Disposition of Real Estate.
 - I. All fees Related to RRIF Loan Agreement.
 - J. Ukiah Depot Remediation Agreement and Amendments.
 - K. Trade Accounts Payable Owed to NWPCo.
2. RAILROAD warrants that there are no other agreements and no other binding legal instruments between itself and NCRA. Except as otherwise stated herein or as prohibited by applicable laws, and to the extent such termination would be inconsistent with the terms of the SMART ATA and/or RAILROAD'S Petition for Discontinuance currently filed with the Surface Transportation Board, RAILROAD hereby terminates and extinguishes any and all agreements with NCRA whether written, oral or implied.
3. Except to the extent such termination would be inconsistent with the terms of the SMART ATA and/or RAILROAD'S Petition for Discontinuance currently filed with the Surface Transportation Board, RAILROAD hereby terminates or transfers any and all rights and licenses to operate with the Surface Transportation Board in favor of or to NCRA, which termination or transfer shall be effectuated in the manner directed by NCRA and consistent with all requirements of the Surface Transportation Board. Except to the extent such proceedings would be inconsistent with the SMART ATA and/or RAILROAD'S Petition for Discontinuance currently filed with the STB to effectuate such terms, RAILROAD shall cooperate with NCRA in all proceedings before the Surface Transportation Board to effectuate the intent of this Agreement and this Paragraph, including any and all filings related to the abandonment and/or railbanking of any portion of the line subject to the Operating Agreement. If RAILROAD fails to take any action before the Surface Transportation Board as directed by NCRA to effectuate the intent of this Agreement, but subject to the terms of the SMART ATA and RAILROAD'S Petition for Discontinuance currently filed with the STB in order to effectuate such terms, NCRA shall have authority to make any reasonably necessary filings before the Surface Transportation Board on behalf of RAILROAD to terminate or transfer RAILROAD's interests and rights in favor of NCRA. To the extent any termination or transfer of

rights pursuant to this section requires prior approval by the Surface Transportation Board in order to become effective, the termination shall not be effective until such time as approved by the Surface Transportation Board. To the extent any transfer or termination of rights by RAILROAD pursuant to this Paragraph is restricted or denied by the Surface Transportation Board, RAILROAD agrees to cooperate with NCRA and STATE to effectuate such termination or transfer.

4. RAILROAD shall return all equipment and property leased from NCRA to NCRA or its designee, consistent with the terms of the SMART ATA. A copy of the equipment and property is set forth in Schedule B.
5. Except to the extent such release would be inconsistent with the terms of the SMART ATA and/or RAILROAD'S Petition for Discontinuance currently filed with the STB, RAILROAD shall notify the California Public Utilities Commission, the Federal Railroad Administration, and all other regulatory bodies that RAILROAD is releasing its rights to all railroad activities and property for the entire rail corridor owned by NCRA to the NCRA.
6. Final payment by STATE to RAILROAD shall occur after RAILROAD satisfies all of its duties, responsibilities and obligations under the terms, covenants and conditions of this Agreement. Payment shall be invoiced by NWPCo to NCRA through its normal invoicing process and payment shall be issued through NCRA's account with the County of Sonoma.
7. Except to the extent to which such release would conflict with the terms of the SMART ATA, RAILROAD shall release all contracts, agreements, licenses and rights, (known and unknown), that it holds with NCRA and provide documentation of said release as soon as it is available. The failure of RAILROAD to provide documentation of release within the time established herein shall result in the return of funds to the Public Transportation Account.
8. STATE shall retire the debt owed to the Federal Railroad Administration in the amounts set forth in Schedule A upon receipt of documentation for the termination of contracts with NCRA extinguishing or transferring its operating rights and licenses in favor of NCRA and the transfer to NCRA, or its successor in interest, consistent with the terms of the SMART ATA, the custody and control of equipment owned by NCRA that is on loan or lease to RAILROAD.
9. WAIVER AND RELEASE

Upon fulfillment of the obligations called for herein and consistent with and subject to the terms of the SMART ATA, including the warranties, waivers and indemnifications contained therein, the State, NCRA and RAILROAD, as between them, do each on behalf of themselves and their successors,

assigns, employees, agents, attorneys, representatives, consultants, experts and agencies, fully and forever waive, release and discharge one another of any causes of action, damages, claims, demands, losses and liabilities of whatever kind and nature, in law, equity or otherwise, whether known or unknown, suspected or unsuspected, whether identified in this agreement or not, which relate or pertain to the contracts terminated hereby or the financial obligations contained therein.

10. WAIVER OF CIVIL CODE SECTION 1542

With respect to the claims which are the subject of the releases set forth in the preceding paragraphs, the Parties hereto acknowledge that in the event of further injury, loss or damage arising out of the relationship between the RAILROAD and NCRA is sustained which is not now known or suspected, or in the event that the loss or damage arising out of the claims now know has consequences or results not known or suspected, this Release shall nevertheless remain a full and final settlement and release of: (i) all claims by RAILROAD against NCRA and State that are released in Paragraph 9 above; and (ii) all claims by NCRA and State against RAILROAD that are released in Paragraph 10 above, and the release shall apply to and include all such unknown or unsuspected consequences or results. The Parties have read or have had read to them and have been fully advised of the contents and meaning of Section 1542 of the California Civil Code which reads as follows:

“A general release does not extend to claims that the creditor or the releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party. ”

The Parties expressly waive any and all rights and benefits under Section 1542, with the understanding that such waiver is a material term of this Agreement, without which the Parties would not have given the consideration stated herein.

The terms of this Agreement are contractual and are the result of negotiation between the Parties.

This Agreement has been carefully read by each of the Parties and the contents thereof are known and understood by each of the Parties. This Agreement is signed freely by each Party executing it.

11. BINDING ON SUCCESSORS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties and shall inure to the benefit of NCRA, which is an intended third-party beneficiary hereof.

12. SURVIVAL OF WARRANTIES

The representations and warranties contained in this Agreement are deemed to and do survive the execution hereof.

13. MODIFICATIONS

This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the Parties to be charged with such modification.

14. GOVERNING LAW

This Agreement shall be construed in accordance with and be governed by the laws of the State of California.

15. VENUE

Any suit to enforce the Parties' right under this Agreement must be brought in a state court of competent jurisdiction in California.

16. CONSTRUCTION OF RELEASE

This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with the laws of the State of California. The terms of the Agreement have been negotiated by the Parties, and the language of the Agreement shall not be construed for or against any particular Party. This Agreement was prepared by each of the Parties hereto jointly and equally and shall not be interpreted against any party on the ground that the Party drafting the Agreement caused it to be prepared. The headings used herein are for reference only and shall not affect the construction of this Agreement.

17. SOLE AGREEMENT

This Agreement represents the sole and entire agreement between the Parties with respect to the subject matter hereto and supersedes all written and oral agreement, negotiations and discussions between the Parties hereto and/or their respective counsel with respect to the subject matters covered hereby.

18. ATTORNEY'S FEES

Should any action or proceeding be brought arising out of, relating to, or seeking the enforcement of the terms of this Agreement, the prevailing

party shall recover reasonable attorney's fees and costs of suit, including the costs of any appeals and enforcement of judgment.

19. AGREEMENT MAY BE EXECUTED IN COUNTERPARTS

This Agreement may be executed and delivered in counterparts, and by each Party in a separate counterpart, each of which when so executed and delivered shall constitute an original and all which taken together shall constitute one and the same instrument.

20. SEVERABILITY

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

21. NO ADMISSION OF LIABILITY

This Agreement reflects the settlement of contract and other disputed claims and shall not be considered an admission of liability by any Party, each of which specifically denies such liability.

22. WARRANTY OF AUTHORITY

Each Party whose signature is affixed hereto in a representative capacity represents and warrants that he or she is authorized to execute this Agreement on behalf of and to bind the entity on whose behalf his or her signature is affixed.

23. AMENDMENT TO AGREEMENT

Any amendment to this Agreement must be in writing signed by duly authorized representatives of each of the Parties hereto and stating the intent of the Parties to amend this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date determined by the provisions in the section entitled "Effective Date," above.


(END)

ELECTRONIC SIGNATURES

Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures.

**NORTHWESTERN PACIFIC RAILROAD
CO. (NWP Co.)**

**STATE OF CALIFORNIA
CALIFORNIA STATE
TRANSPORTATION AGENCY**



Douglas H. Bosco (Jun 8, 2021 17:10 PDT) Jun 8, 2021
DOUG BOSCO Date
President and Legal Counsel


Elissa K. Konove (Jun 9, 2021 09:25 PDT) Jun 9, 2021
ELISSA KONOVE Date
Undersecretary

**ACKNOWLEDGED BY,
NORTH COAST RAILROAD AUTHORITY**

APROVED AS TO FORM AND PROCEDURE
CALIFORNIA STATE TRANSPORTATION
AGENCY


Mitch Stogner (Jun 8, 2021 13:04 PDT) Jun 8, 2021
MITCH STOIGNER Date
Executive Director


Scott Wyckoff (Jun 8, 2021 17:21 PDT) Jun 8, 2021
SCOTT WYCKOFF Date
Attorney







Funds Transfer Agreement between NWPCo and CalSTA


Final Audit Report

2021-06-09


Created:	2021-06-08
By:	Leishara Ward (s131691@dot.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAPs6HwDHC9IQwsYldnAZnHkzEvVAnLi3x

"Funds Transfer Agreement between NWPCo and CalSTA" History

-  Document created by Leishara Ward (s131691@dot.ca.gov)
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 Document e-signed by Elissa K. Konove (elissa.konove@calsta.ca.gov)

Signature Date: 2021-06-09 - 4:25:32 PM GMT - Time Source: server- IP address: 149.136.33.252

 Agreement completed.

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