

AMENDED LICENSE AGREEMENT

THIS AMENDED LICENSE AGREEMENT (“Agreement”), made as of June 18, 2014, is amended as of is made as of this [redacted] day of [redacted], 2014~~2014~~2020, by and between the North Coast Railroad Authority, a public agency formed pursuant to Government Code Section 93000 et seq. (“NCRA”) and the City of Ukiah, a municipal public entity (“City”).

RECITALS

- A. NCRA is the property owner or easement holder of the railway right-of-way corridor (“Rail Corridor”) located in Mendocino County and under contract for operation with the Northwestern Pacific Railroad Company (“NWP”).
- B. In conjunction with NWP, NCRA adopted a Policy and Procedures Manual for the design, construction, safety, operations, and maintenance of shared use public trails located within the Rail Corridor (“Rails-with-Trails”).
- C. The City seeks to develop a Rails-with-Trails path within the Rail Corridor located in the City of Ukiah jurisdictional area consistent with said Rails-with-Trails Policy and Procedures Manual.
- D. NCRA desires to issue a license to the City to use the Rail Corridor for the Ukiah NWP Rail Trail Project, and the City desires to accept such license, on the terms and conditions set forth in this License Agreement. ***NOW THEREFORE***, in consideration of the mutual covenants, conditions and agreements recited herein and made a material part hereof, the NCRA and City agree as follows:

- 1. Definitions.
- 2. Description of License Property. The property subject to this Agreement (the “License Property”) is defined as that specific section of the Rail Corridor within the Ukiah City Limits beginning in the south at Norgard Lane, at or near Station 5814+50 and terminating in the north at Brush Street, at or near Station 5968+50.
- 3. Use. NCRA hereby grants to the City a non-exclusive license to access and use the License Property to construct, install, maintain, reconstruct, remove, repair and manage a multi-modal public path, for shared use by, including but not limited to, bicyclists, pedestrians, wheelchairs, joggers, and other non-motorized uses. Motorized vehicles shall be permitted access and use as needed by the City, its agents and contractors, for construction and maintenance purposes, and by emergency response personnel. All use shall be consistent with the NCRA Rails-with-Trails Policy and Procedure Manual, adopted May 13, 2009, amended August 12, 2009, and all future amendments thereto.

4. Term. The term of this Agreement shall be twenty five (25) years (the “Term”) commencing on August 1, 2014 (the “Commencement Date”), and, unless sooner terminated or extended as herein provided, shall terminate on August 1, 2039.
5. Conditions Precedent. This Agreement shall be null and void in the event the City fails to obtain funding and all regulatory permits required for trail construction.
6. License Fee. City shall maintain the trail which will provide maintenance to the NCRA right-of-way in lieu of a one-time license payment. The City shall track the annual maintenance of the trail / right-of-way. In lieu of either a one-time or annual license fee payment, the City shall provide maintenance to completed trail segments as follows: a.) maintain drainage structures between the center line of the railroad main line and the western edge of the main line right-of-way; b.) provide all vegetation management, including tree trimming and removal, between the center line of the railroad main line and the western edge of the main line right-of-way; c.) additionally, north of Perkins Street and south of Clara Avenue, provide vegetation management between the western edge of the main line right-of-way and the easterly line of Mason Street; d.) although not required, the City, at its sole discretion and expense, may perform such additional vegetation management as it deems appropriate within the License Property.
7. Trail Construction.
 - (a) Trail Construction, Timing. The City may construct trail improvements in the License Property in segments as funding allows. Individual trail segments shall not be open for public use until completion of the trail improvement in said segment. Where required by permitting or other regulatory authorities, NCRA reasonably agrees to execute and deliver applications for permits, licenses or other authorizations relating to the Rail Corridor. Trail segments shall be constructed in accordance with approved Construction Plans, and all applicable laws, rules, regulations and permits. The City shall provide fourteen (14) days advance written notice to NCRA prior to beginning construction on any trail segment. The City shall provide fourteen (14) days advance written notice to the NCRA prior to opening any trail segment for public use.
 - (b) Construction Plan Approval. The City shall submit detailed construction ready plans and specifications (“Construction Plans”) to the NCRA for review and approval prior to constructing any trail segment. Within one hundred twenty (120) days of receipt, the NCRA shall provide comments and input on the Construction Plans to the City. Failure to provide comments to the City within this time period shall be deemed approval by the NCRA of the Construction Plans.
 - (c) Construction Plan Contents. Construction Plans shall include, but not be limited to, specifications for temporary construction fencing, permanent landscaping, fencing or other trail demarcation and setbacks, and signage. Construction Plans shall comply with

all standards and conditions set forth in the Rails-with-Trails Policy and Procedures Manual.

(d) *Removal of Sidings.* City shall co-ordinate with NWP Co. the removal of the freight sidings located north of Perkins Street and west of the main line with NWP Co to bear the cost of removal, retain salvageable materials for future railroad use, and dispose of unusable material.

8. Ongoing Maintenance.

(a) The City shall, during the Term, at its own cost and expense and without any cost or expense to NCRA:

(i) Keep and maintain all trail improvements (subject to City's right to remove) in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. NCRA shall not be obligated to make any trail repairs of any kind; and

(ii) Comply with and abide by all applicable federal, state, and local laws and regulations affecting the License Property.

9. Consent to Establish City Park.

(a) NCRA authorizes the City to establish as a City Park under Ukiah City Code ("UCC") Section 1965 upon the License Property as defined herein.

(b) NCRA authorizes the City to allow for specified uses of park facilities within the License Property that are consistent with the "Rails-with-Trails Policy and Procedures Manual" as defined in the License Agreement and are enhancements to uses authorized in the License Agreement, such as, but not limited to, adjacent landscaping and community gardens ("Enhancements").

(c) The park designation in UCC §1965 may include a provision specifying that portions of the License Property not used for a multi-modal public path or Enhancements are closed to public use and shall not be subject to Ukiah City Code Sections 1966. NCRA authorizes the City to apply rules and regulations other than those prescribed in UCC Division 1, Chapter 12, if such rules are adopted by resolution of the Ukiah City Council and are otherwise permitted by the terms of this Agreement.

(d) Nothing in this Section 9 authorizes the City to dedicate the Licensed Property as park land, nor shall this Section 9 be construed as such a dedication. No designation of a City Park pursuant to the authority of this Section 9 shall survive the termination of this Agreement.

(e) NCRA may at any time, upon thirty (30) days' written notice to the City, revoke its consent to the use of the License Property as a City Park. Upon such notice of

Formatted: Indent: Left: 0"

revocation of consent, all other terms of this Agreement shall remain in full force and effect.

~~109.~~ Trail Removal, Modification. The City shall reasonably remove, relocate or modify any trail improvement or portion thereof, at its own expense, in order to accommodate additional track or tracks or other railroad related facilities in the Rail Corridor.

~~110.~~ Insurance. The City shall maintain general liability coverage in the amount of no less than \$5,000,000 per occurrence and aggregate. Insurance shall be placed with a carrier having a current A.M. Best rating of at least A:VII or with the Redwood Empire Municipal Insurance Fund (“REMIF”). Evidence of coverage shall be provided to NCRA on request.

~~124.~~ Indemnification. To the maximum extent allowed by law, the City agrees to indemnify, defend and hold harmless NCRA, including its officers, employees, operators, agents, contractors, successors and assigns, from and against all loss, liability (including liability with respect to death, injury and personal and property damage), claims, demands, suits, liens, claims of lien, damages, costs and expenses;

(a) arising out of the use or misuse of the License Property by members of the public, including claims which arise from utilization of the NCRA right-of-way adjacent to the License Property by users of the License Property;

(b) arising from the construction of improvements within or the maintenance of those improvements by the City or its contractors; or

(3) any negligent or wrongful act or omission by the City in constructing or maintaining improvements within the Licensed Premises.

Such indemnity shall apply notwithstanding NCRA’s active or passive negligence, and shall be deemed to apply to any and all losses resulting from the City’s negligent or wrongful acts or omissions. The City is not required to indemnify NCRA for claims or damages caused by the willful misconduct or the sole negligence of NCRA or its officers, contractors or employees. This provision shall survive any termination of the License for actions or inactions that may arise during the time this License is in effect.

~~132.~~ Assumption of Risk and Waiver. To the maximum extent allowed by law, the City assumes any and all risk of loss, damage or injury. The City’s assumption of risk shall include loss or damage to the City, its officers, employees, agents, contractors, assigns and successors. The City hereby waives all claims and demands against NCRA for such loss, damage or injury, and waives the benefit of California Civil Code Section 1542, which provides as follows:

Formatted: Indent: First line: 0", Space After: 0 pt, Line spacing: single

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor.

- 143. Abandonment. In the event of action by the City Council for the City of Ukiah to abandon the use of the License Property, or any part thereof, this Agreement shall terminate to the extent of the portion so abandoned or discontinued.
- 154. Surrender. Upon termination of this Agreement, including but not limited to a termination resulting from expiration of the license term, breach, or abandonment of all or a portion of the trail improvements, the City may remove, at its own cost and expense, any and all trail improvements. Upon removal of any trail improvements, the City may, with the concurrence of NCRA, (i) reasonably restore the affected portion of the License Property to a state or condition as it existed prior to the construction of trail improvements, (ii) leave all or a portion of the trail improvements in place, or (iii) replace the trail improvements with comparable improvements approved by NCRA.
- 165. Breach. In the event the City breaches, or fails to keep, observe or perform any covenant, term or condition of this Agreement, in addition to all other rights and remedies of NCRA provided hereunder or by law, after written notice or demand, and the City's failure to cure the breach within thirty (30) days of notice, or fewer days in the event the breach impacts public health, welfare or safety, unless the breach cannot be cured within that time in the exercise of reasonable diligence, in that event the City must commence to cure the breach within 30 days and complete the cure as soon as reasonably practical, NCRA may terminate this Agreement and thereafter recover possession of the License Property by lawful means.
- 176. Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Agreement shall constitute a waiver, abandonment or relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder.
- 187. Notices. Except as otherwise provided hereunder; any notice or communication to NCRA, or the City shall be in writing and be mailed by postage prepaid. Notices or communications shall be addressed to the parties at the following addresses, which may be changed at any time by notice to the other party:

To NCRA:
Executive Director
North Coast Railroad Authority

To City:
Director of Public Works
City of Ukiah

419 Talmage Road, Ste M
Ukiah, CA 95482

300 Seminary Avenue
Ukiah, CA 95482

Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office. Notice may be sent by email when simultaneously provided using one of the methods set forth above.

18. Severability. In case any one or more of the provisions contained in this Lease 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 provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.
19. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.
20. Consents. Whenever in this Lease the consent or approval of either NCRA or City is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.
21. Attorneys' Fees. In the event of any action or proceeding at law or in equity between NCRA and City to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, each party shall pay its own costs and expenses, including attorney's fees.
22. Integration. This instrument constitutes the entire agreement between NCRA and City with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by NCRA and City.
23. Amendments. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.
24. Assignment and Subletting. City may assign this Agreement, or any interest herein, at any time provided that, (i) NCRA has consented to the assignment, (ii) the assignment shall be in writing, duly executed and acknowledged by City and the assignee, in form satisfactory to NCRA, providing that the assignee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Lease on the part of City to be performed and observed, and (iii) an executed original of such assignment shall be delivered to NCRA.

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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

NORTH COAST RAILROAD

CITY OF UKIAH:

AUTHORITY:

By: _____

By: _____

Name: _____

Name: _____

It's: _____

It's: _____

Date: _____

Date: _____