

## NCRA COMMERCIAL LICENSE

THIS COMMERCIAL LICENSE (“License”) is entered into as of the 15 day of July, 2018 by and between the NORTH COAST RAILROAD AUTHORITY, a legislatively created state agency (“Licensor”), and, HUMBOLDT BAY MUNICIPAL WATER DISTRICT, a California Municipal Corporation (“Licensee”).

### Premises

Subject to the terms and conditions set forth herein Licensor hereby Licenses to Licensee, and Licensee Licenses from Licensor, the real property and any improvements thereon located near the Cities of; Arcata, County of Humboldt, State of California (“Premises”) consisting of a 57’ x 25’ area of land located at APN 504-201-004, together with a non-exclusive access area approximately 550’ x 20’ located along the Kobel/Annie Mary Branch Lead, on or near 7270 West End Road, consisting of land for the purpose of installing and maintaining an electrical switchgear facility with surrounding housing and fencing, and access, as depicted on Exhibit A, attached to this License and incorporated into it by this reference.

### Effective Date

This License shall take effect on July 15, 2018 (“Effective Date”), and supersedes any prior License existing between the parties or their predecessors.

### Term

This License shall be for a of term fifty (50) years (“License Term”) from the Effective Date, and shall automatically renew for successive five (5) year terms thereafter, as provided in Section 11 hereof, unless sooner terminated as provided herein.

### Termination for Rail Transit Activities

Either party may terminate this License by giving a sixty (60) calendar months written notice. Licensor may require Licensee to remove any or all of Licensee’s Alterations upon termination, pursuant to the Section 24 below. LICENSEE HEREBY EXPRESSLY WAIVES ANY RIGHT IT MAY HAVE TO RECEIVE BENEFITS UNDER FEDERAL AND STATE UNIFORM RELOCATION ACTS (UNITED STATES CODE, SECTION 7260, ET SEQ.) AS A RESULT OF LICENSOR’S USE OR POSSESSION OF ANY PORTION OF THE PREMISES.

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Licensee

### 1. Use

The Premises shall be used by Licensee solely and exclusively for installing and maintaining an electrical switchgear facility with surrounding housing and fencing, and access, *as specified on Exhibit “A”* (“permitted Use”). Licensee shall not use the Premises for any other use other than the Permitted Use without Licensor’s prior written consent, which consent may be withheld by Licensor in its sole discretion.

### Restriction on Use

Licensee shall not permit any damage, nuisance or waste on the premises; nor permit to be placed upon the Premises any gasoline, diesel fuel, oil, other petroleum products, or any hazardous or explosive material, waste or substance.

### Regulatory Approvals

Licensee, at Licensee's expense, shall arrange for the filing of any map required under any subdivision map act and of any environmental impact report required, or other requirements imposed by any governmental body having jurisdiction in the matter. If any governmental body seeks to impose any condition on approval of Licensee's use of the Premises, Licensor may terminate this License forthwith if any such condition shall effect any other property of Licensor or shall affect the Premises after this License is no longer in effect.

### Compliance with Laws

Licensee at Licensee's expense, shall at all times during the Term comply with all applicable laws, regulations, rules and orders with respect to Licensee's use and/or improvement of the Premises, regardless of when they become or became effective, including, without limitation, those relating to construction, grading, signage, health, disability accommodation (including the Americans with Disabilities Act), safety, noise, environmental protection, waste disposal, and water and air quality. Licensee shall furnish satisfactory evidence of such compliance upon request of Licensor.

### Prior Rights

This License is made subject to all licenses, easements, restrictions, conditions, covenants, encumbrances, liens, and claims of title that may affect the Premises in effect as of the Effective Date of the License. The word "License" shall not be construed as a covenant against the existence of any of these.

### 2. Condition of Premises

"AS IS" Rental. Licensor Licenses the Premises to Licensee on an "AS IS" basis, and Licensee acknowledges that Licensor has made no representations of any kind in connection with soils, improvements, or physical conditions on the Premises, or bearing on the use of the Premises, whether express or implied.

### 3. Inspections

Licensee shall be solely responsible for conducting any inspections it may deem necessary or appropriate in determining whether to enter this License. Prior to the Effective Date, Licensee may examine and inspect all matters with respect to taxes, operating expenses, insurance costs, bonds, permissible uses, historical uses, zoning, covenants, conditions and restrictions and all other matters which in Licensee's judgment might bear upon the value and suitability of the Premises for Licensee's purposes or Licensee's willingness to enter into this License. Licensee acknowledges that Licensor has made no representations and warranties regarding these matters, whether express or implied, and the Licensee has relied on its own inspections and examinations contemplated in this Section 3 and Licensee be deemed to have accepted the Premises "AS IS" with all faults.

### 4. Rent

Commencing as of the Effective Date, Licensee shall pay to Licensor as for the Premises the sum of One Thousand Two Hundred dollars (\$1,200.00) per year ("Rent"), subject to adjustment as provided in Section 5 below. Rent shall be payable annually, in advance, to Licensor on or before each anniversary of the Effective Date during the License Term, as it may be extended, in lawful money of the United States, at the address set forth in Section 9 below, without deduction, setoff, prior notice or demand of any kind.

5. Rental Adjustments

Beginning one year following Effective Date, and continuing thereafter on each anniversary of the Effective Date during the License Term, as it may be extended (“Anniversary Date”), Rent shall be increased by the increase in the Consumer Price Index or three percent (3%), whichever is greater, provided that in no event shall the rent be decreased. The increase in the Consumer Price Index means the percentage increase from the last preceding Anniversary Date to the current Anniversary Date of the Consumer Price Index – US all urban consumers, as published by the United States Department of Labor, Bureau of Labor Statistics.

6. Security Deposit

Licensee shall not be required to provide a Security Deposit to Licensor.

7. Late Charges; Interest

A. Late Charges

If any installment of rent or other sum due from Licensee is not received by Licensor within ten (10) days of the date it is due, then Licensee shall pay to Licensor a late charge equal to ten percent (10%) of such overdue amount. The parties hereby agree that such a late charge represents a fair and reasonable estimate of the costs Licensor will incur by reason of late payment by Licensee which are impracticable to estimate. Acceptance by Licensor shall in no event constitute a waiver of Licensee’s default or breach with respect to such overdue amount or prevent Licensor from exercising any other rights and remedies granted herein.

B. Interest

Any monetary obligation due Licensor hereunder, other than late charges, not received by Licensor within ten (10) days of the date it is due, shall bear interest from the date due at the current Prime rate plus four percent or the then prevailing maximum rate permitted by applicable law, whichever is less (“Interest Rate”).

8. Taxes

Licensee shall pay, before they become delinquent, all taxes, charges, and assessments, which are levied upon, or assessed against any improvement or personal property, placed upon the Premises by Licensee. Licensee shall pay, before they become delinquent, any and all property taxes and/or possessory interest taxes, assessments and/or supplemental taxes which are levied or assessed by any local public entity or government on the Premises or Licensee’s possession and/or use thereof. In addition to the taxes and assessments specified above, Licensee shall pay to Licensor any privilege, sales, gross income or other tax (not including federal or state income tax), if any, imposed upon the Rent received by Licensor by an agency having the authority to do so.

9. Notices

All notices, payments, or other communications by either party to the other under this License shall be in writing and shall be deemed to have been given or made on the date of service if served personally or on the second business day after mailing if mailed to the party whom notice is given by first class mail, registered or certified, postage prepaid and properly addressed as follows:

Payments

To Licensor: North Coast Railroad Authority  
419 Talmage Rd. Ste. M  
Ukiah, CA 95482  
Attn: Hiedy Torres

Notices:

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

With a copy to: Christopher J. Neary  
Attorney at Law  
110 S. Main St. Ste. C  
Willits, CA 95490

And a copy to: FEC ROW LLC  
7411 Fullerton Street, Suite 301  
Jacksonville, FL 32256

To Licensee: Humboldt Bay Municipal Water District  
828 7<sup>th</sup> Street  
Eureka, CA 95501  
Attn: Becky Moyle, Accounting/HR Specialist

Either party may change its address by providing written notice to the other as provided herein.

10. Alterations

Licensee may at its sole cost and expense complete the Alterations generally described in Exhibit A to this License. Other than these improvements, Licensee shall not make or suffer to be made any alterations, additions or improvements (collectively "Alterations") in on or to the Premises without the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed. Any Alterations Licensee is permitted to make shall be made at Licensee's sole cost and expense except as the parties may otherwise expressly agree in writing. Prior to commencement of construction of the Alterations, Licensee shall deliver to Licensor, and obtain Licensor's approval of, a detailed construction plan for the Alterations at least thirty (30) days prior to the intended date of commencement of construction, which approval shall not be unreasonably withheld or delayed. Prior to commencement of construction, Licensee shall also obtain and deliver to Licensor copies of all city, county, and/or other regulatory permits required for construction of the Alterations. Licensee shall keep the Premises free and clear of all liens of any kind. Licensee shall give the Licensor at least ten (10) days' prior written notice of commencement of any kind of work on Alterations, so that Licensor may post appropriate notices of non-responsibility, and Licensee hereby grants permission to Licensor to enter onto Premises for that purpose. Licensee at its cost shall provide to Licensor a performance bond equal to 125% of the total estimated cost of any proposed Alterations prior to commencement of work thereon. All work on Alterations shall be performed in a workman like manner and shall comply with all applicable governmental permits, laws, ordinances and regulations, including, but not limited to, any procedures promulgated by Licensor. All work on Alterations shall be completed by contractors licensed in the State of California which shall have in place prior to commencement of work the policies of insurance required of Licensee by Section 18 below, as evidenced by a certificate of insurance delivered to and approved by Licensor. Licensor shall have the right to enter onto the Premises and to inspect construction of the Alterations during construction. All Alterations and fixtures, whether temporary or permanent in character, made in or upon or added to the Premises by Licensee shall be Licensor's property at the end of the License Term without compensation to Licensee, subject to the provisions of Section 25 below.

## 11. Option to Renew

Subject to the terms and conditions set forth in this Section, and provided that Licensee has complied with all terms and conditions of the License prior to the date of exercise; and, Licensee is not at the time of exercise in default under the License, the License shall automatically renew for additional five (5) year terms (“Renewal Term”) subject to Section 5 Rental Adjustments and continue until such time the License is terminated pursuant to Section 13.

## 12. Utilities

Licensee shall arrange and pay for all utilities, if any, including without limitation, water, electric, gas, garbage, communications and sewer services, to be used in connection with this License. If Licensor is required to contract with a utility to provide access for the service to Licensee at the Premises for Licensee’s sole use, Licensee shall pay to Licensor the sum of \$200.00 upon receipt of a bill therefore to partially defray administrative costs.

## 13. Termination

This Agreement may not be terminated, except as provided in the section titled “Termination for Transit Activities” of this License, or except by written agreement signed by all parties, their successors or assigns hereto. At the request of either party hereto, the parties shall reasonably cooperate in the preparation of such agreement, which shall be executed and delivered by each party to the other.

## 14. Maintenance and Repair

Licensee shall keep the Premises, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the License Term at Licensee’s sole cost and expense. Licensee shall, at Licensee’s sole expense repair any area damaged by Licensee, Licensee’s agents, employees and visitors. Licensee acknowledges that Licensor is under no duty to repair or make improvements to the Premises. If Licensee fails to perform Licensee’s obligations under this Section, Licensor may enter upon the Premises after ten (10) days prior written notice to Licensee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Licensee’s behalf and expense as provided in Section 22(a) of this License. At the end of the License Term, Licensee shall surrender the Premises to Licensor in the same condition as when received, ordinary wear and tear accepted.

## 15. Liens

Licensee shall not permit any mechanics’ or material men’s liens, stop orders or other liens (collectively, “Liens”) to be filed against the Premises nor against the Licensee’s License hold interest therein by reason of such labor or materials furnished to the Premises at Licensee’s instance or request. If any such liens are filed against the Premises, Licensee shall cause the same to be discharged of record either by payment of the claim or by posting and recording the bond contemplated by California Civil Code Section 3143, within twenty (20) days after demand by Licensor. Licensee shall indemnify, hold harmless, and defend Licensor from and against any such liens.

## 16. Indemnification

Licensee shall indemnify, defend and hold harmless Licensor, the North Coast Railroad Authority, the successors and assigns of any of them, any railroad company operating on the premises, and their respective directors, officers, employees, agents, contractors (including but not limited to , any person that may be operating Licensor’s railroad tracks and services) and any other person acting on Licensor’s behalf and all liabilities, penalties, losses, damages, costs, loss of rent, expenses, demands, causes of action, claims, penalties, losses, judgments (collectively,

“Liabilities”) arising out of or in connection with (a) the use, maintenance, occupation, alteration, or improvement of the Premises by Licensee, (b) any act, omission, or neglect of Licensee, Licensee’s officers, employees, agents, servants, sub Licensees, concessionaires, contractors or visitors, and/or (c) any breach or default by Licensee of any of the terms, covenants or conditions of this License; provided, however that with respect to any Liability under sub-sections (a) and/or (b) above, Licensee shall not be obligated to indemnify any Indemnities for any Liability caused by the gross negligence or willful misconduct of that Indemnities. The duty to defend established herein shall include payment of all legal costs and charged, including reasonable or willful misconduct by Licensee against any Indemnities. Licensee waives any and all rights to any type of express or implied indemnity against Licensor, its directors, officers or employees. The provisions of this Section shall survive the expiration or termination of this License.

### ***17. 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 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>. and is incorporated herein by this reference.

“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’s office.

“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, corrosivity, reactivity, explosivity, 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 (PCB’s 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 sub Licensee’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 omission 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 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 unless specifically approved in advance in writing by Licensor, which approval may be withheld in Licensor's sole discretion. If Licensor approves Licensee's installation or use of underground storage tanks, Licensee will be responsible for compliance with all applicable requirements and environmental Laws, including, but not limited to, financial assurance requirements, and must furnish evidence satisfactory to Licensor of that compliance. Licensee will also test soil for settling and conduct appropriate tests of the tank and associated piping and equipment at the time of installation to assure that the tank has been properly installed.

(ii). At Licensor's option, upon the termination of this Lease at any time and for any reason, Licensee will, within forty-five (45) days from the date of the termination, remove all Hazardous Materials in, on, under, and about the Premises, in accordance with the requirements of all Environmental Laws and to the satisfaction of the Agencies (defined in Section 16(A)) and Licensor, and deliver to Licensor a copy of a certificate of closure issued for the tanks by the Agencies.

(e). Licensor's Right of Entry and testing. Licensor and Licensor's representatives have the right, but not the obligation, at any reasonable time to enter onto and 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 or Licensee's Parties activities, or failure to act where Licensee had a duty to act, in

connection with the Premises, Licensee will reimburse Licensor for the cost of conducting the tests.

(f) Environmental Assessment. Licensor may require Licensee to retain a duly licensed environmental consultant acceptable to Licensor 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 Lease. Licensor may require Licensee to cause the environmental compliance audit to be conducted on an annual basis, the 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 16, Licensee will be responsible for the cost of any additional testing required by Licensor. Licensee must promptly provide a copy of the report from the consultant to Licensor upon receipt, and upon request must promptly provide to Licensor a copy of all data, documents, and other information gathered in connection with the report. Licensee acknowledges that Licensee has been provided and 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 Licensor 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 release 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 documentation relating to incidents or matters subject to notification under this Lease. 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 action, 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 in 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 under Section 16(h). 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 in, under, or about the Premises, threatens public health or safety or the environment, or is in noncompliance with any applicable Environmental Laws or requirements of Section 16, Licensor may demand that Licensee promptly take action in accordance with Section 16 (h)(i). 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 or 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 Lease.

(i) Annual Certification

On the date that is one year from the commencement of the Term and annually after that, Licensee must provide Licensor with a letter certifying that Licensee has complied with all applicable Environmental Laws and the requirements of all applicable Agencies and that no soil or groundwater contamination has occurred in or originated from the Premises.

(j). Expiration and Termination Procedures.

Upon expiration or termination of this Lease and upon the request of Licensor, Licensee will perform all of the following activities at Licensee's sole expense:

(i). an environmental assessment of the Premises to evaluate the environmental condition of the Premises and potential environmental liabilities and in accordance with Section 16(e);

(ii). all remedial or other work identified in the environmental assessment in accordance with Section 16(h) and all applicable Environmental governmental agency; and

(iii). all corrective, remedial, repair or other work necessary to correct any alleged violations, deficiencies, or hazards noted by any environmental, governmental agency; and

(iv). all steps necessary to terminate, close, or transfer all environmental permits, licenses, and other approvals or authorizations for the Premises or for activities, equipment, or conditions on the Premises, in accordance with all environmental Laws. Licensee will also obtain and provide to Licensor the written approval or verification of the satisfactory completion of the termination, closure, or transfer from each Agency with jurisdiction over the Environmental permit, license, or other approval.

(k). Indemnification.

(i) Licensee will indemnify, protect, defend, and hold harmless Licensor and Licensor's directors, officers and employees, agents, and each of their respective successors and assigns (individually and collectively "Licensor Indemnities") from all claims, judgments, caused of action, damages, penalties, fines, taxes, costs, liabilities, losses, and expenditures (the "Environmental Response Costs") arising (directly or indirectly) as a result of or in connection with Licensee's or Licensee's Parties breach of any prohibition or provision of this Lease, or the presence of any Hazardous Materials on or under the Premises during the Term or any Hazardous Materials that migrate from the Premises to other properties, as a result (directly or indirectly) of Licensee's or Licensee's Parties' activities, or failure to act where Licensee had a duty to act, on or in connection with the Premises.

(ii) This obligation by Licensee to indemnify, protect, defend and hold harmless Licensor Indemnities includes, without limitation, costs and expenses incurred for or in connection with any investigation, cleanup, remediation, monitoring, removal, restoration, or closure work required by the Agencies because of any Hazardous Materials present on, under, or about the Premises; the costs and expenses of restoring, replacing, or acquiring the equivalent of damages; all reasonable attorney fees; litigation, arbitration, and administrative proceeding costs; and reasonable expert consultant and laboratory fees.

(iii) Neither the written consent of Licensor to the presence of Hazardous Materials on or under the Premises, nor the strict compliance by Licensee with all Environmental Laws, will excuse Licensee from the indemnification obligation. This indemnity will survive the expiration or termination of this Lease. Further, if Licensor detects a deficiency in Licensee's performance under this indemnity and Licensee fails to correct the deficiency within ten (10) days after receipt of written notice from Licensor, Licensor has the right to join and participate in any legal proceedings or actions affecting the Premises that are initiated in connection with any Environmental Laws. However, if the correction of the deficiency takes longer than ten (10) days, Licensor may join and

participate if Licensee fails to commence corrective action within the ten (10) day period and after that diligently proceeds to correct the deficiency.

(iv) In that the NCRA has been a passive owner if the Premises and the Licensee has greater knowledge concerning the past and present uses of the Premises the parties specifically intend that NCRA's risk for environmental issues be limited to the maximum permitted by law, except as expressly limited in this Section. Accordingly, the foregoing indemnity shall apply to the above Environmental Response Costs arising out of or in connection with (1) Licensee's violation of this Section 16; (2) Licensee's willful misconduct, or negligence (notwithstanding any active or passive negligence of NCRA); or (3) any other cause, other than the willful misconduct or sole negligence of NCRA, irrespective of whether occurring prior, or after the commencement of the Term hereof.

(A). Licensee's Release of Licensor. Licensee on behalf of Licensee and Licensee's successors, assigns, and successors-in-interest waives, releases, remises, acquits, and discharges Licensor Indemnities from all claims, actions, causes of actions, demands, rights, damages, costs, expenses, or compensation, direct or indirect, known or unknown, foreseen or unforeseen, that Licensee now has or that may arise in the future on account of the physical condition of the real property; the Environmental Laws, including, but not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C.A. §§9601 et seq., or their application to the Premises; or the existence or condition of any fill, excavation, or filled ground on the real property that may affect the use, maintenance, monitoring, or otherwise of any underground storage tanks or related equipment installed by Licensee or Licensee's Parties. Also, Licensee waives the benefit of Civil Code § 1542, which reads as follows:

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 BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

## 18. Insurance

Policies of Insurance. Licensee shall maintain in full force and effect during the term of this Lease and any extension hereof, the following insurance:

Workers Compensation. As required by Section 1860 of the California Labor Code (Chapter 1000, Statutes of 1965), or any subsequent amendments or successor acts thereto governing the liability of employers to their employees, the Licensee shall secure Workers' Compensation coverage with an Employer's Liability limit of \$2,000,000. Licensee shall insure the procurement and maintenance of such insurance by all contractors or subcontractors engaged on the Premises.

Commercial General Liability. Licensee shall, at its own cost and expense, procure and maintain Commercial General Liability insurance. The policy shall include as additional insured the Licensor, the North Coast Railroad Authority, the successors and assigns of any of them, any railroad company operating on the Premises, and their respective directors, officers, employees, brokers and agents (collectively, "Insured"). The policy shall be primary and contain cross liability and severability of interest clauses.

The policy shall have a combined single limit of One Million Dollars (\$1,000,000.00) for bodily injury and property damage per occurrence. This insurance shall include but not be limited to

premises and operations; contractual liability covering the indemnity provisions contained in this Agreement; personal injury; explosion, collapse and underground coverage; products and completed operations and broad form property damage. The insurance shall include Automobile Bodily Injury and Property Damages Coverage including owned, hired and non-owned vehicles, on or off the Premises of Licensor.

If food or alcoholic beverages are to be served on the Premises, the policy shall include coverage of any claims founded upon the use of food or food products and liquor law liability with limits of not less than Two Million Dollars (\$2,000,000.00)

Personal Property Insurance Licensee shall obtain and maintain insurance coverage on all of Licensees personal property, trade fixtures and Licensee owned alterations and utility installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$2,500 per occurrence. The proceeds from any such insurance shall be used by Licensee for the replacement of personal property, trade fixtures and Licensee owned alterations and utility installations.

Railroad Protective Liability Insurance Upon request from Licensor, Licensee shall obtain and maintain, with respect to the operations it or any subcontractors perform above the railroad tracks or within fifty (50) feet horizontally of the railroad tracks, Railroad Protective Liability Insurance with the Insurance Services Office (ISO)/Railroad Insurance Management Association (RIMA) form with pollution coverage for job site fuels and lubricants. The Insured shall be named as additional insured on said policy. The policy shall have limits of liability of not less than Two Million dollars (\$2,000,000) per occurrence, combined single limit, for losses arising out of injury to or death of all persons and for physical loss of or damage to or destruction of property, including the loss of use thereof, and a Five Million Dollars (\$5,000,000) annual aggregate shall apply.

Regulatory Compliance In addition to the requirements described above, Licensee shall maintain any other insurance that may be required by law, statute or governmental regulations.

Evidence of Insurance Prior to entering onto the Premises, Licensee shall file a Certificate(s) of Insurance with the Licensor evidencing the required coverage and endorsement(s) and upon request, a certified duplicate original of any of those policies. Said Certificate(s) shall stipulate:

The insurance company(ies) issuing such policy(ies) shall give written notice to the Licensor of any material alteration, cancellation, non-renewal, or reduction in aggregate limits, if such limits apply, and provide at least thirty (30) days notice of cancellation, Licensee shall, at least thirty (30) days prior to the expiration of such policies furnish Licensor evidence of renewal or insurance binders evidencing renewal thereof.

That the policy(ies) is Primary Insurance with respect to any policy of insurance maintained by any Insured, and the insurance company(ies) providing such policy(ies) shall be liable there under for the full amount of any loss or claim up to and including the total limit of liability, without right of contribution from any other insurance effected or which may be effected by the Insured.

The policy(ies) shall also stipulate: Inclusion of the Insured as additional insured shall not in any way affect rights of Insured either as respects any claim, demand, suit, or judgment made, brought or recovered against the Licensee. Said policy shall protect Licensee and the Insured in the same manner as though a separate policy had been issued to each, but nothing in said policy

shall operate to increase the insurance companies' liability as set forth in its policy beyond the amount or amounts shown or to which the insurance company would have been named as an insured.

The insurance policy(ies) shall be written by an insurance company or companies acceptable to the Licensor. Such insurance company shall be authorized to transact business in the State of California.

#### 19. Noise Levels Near Railroad Tracks

Licensee hereby recognizes and acknowledges that railroad tracks are located on or adjacent to the Premises, and that the operation of trains over the tracks does and shall produce noise levels, which may be considered objectionable by Licensee or employees, agents, sub Licensees, or invites of Licensee. Therefore, Licensee agrees that no legal action or complaint of any kind whatsoever shall be instituted against Licensor on Licensee's behalf as a result of such noise levels including any claims of nuisance or trespass. Licensee shall indemnify and save harmless Licensor against any loss, damage, liability or expense either might incur as a result of such action being taken by Licensee's employees, agents, sub Licensees or invitees.

#### 20. Reservations

Licensor hereby excepts and reserves the right, to be exercised by Licensor or by any other person who has obtained or may obtain permission or authority from Licensor, to (a) operate, maintain, review and relocate any and all existing pipe, track (if any), power, signal and/or communication (including without limitation fiber optic) lines and appurtenances and other facilities of like character upon, over or under the surface of the Premises, and (b) construct, operate, maintain, review and relocate such additional facilities of the same character on a manner that does not reasonably interfere with Licensee's use of the Premises.

#### 21. Mineral Rights

Licensor also reserves for itself and those whom it grants such right the title and exclusive right to all of the minerals and mineral ores of every kind and character now known to exist or hereafter discovered upon, within or underlying the Premises, or that may be produced there from, including, without limiting the generality of the foregoing, all petroleum, oil, natural gas, and other hydrocarbon substances and products derived there from, together with the exclusive and perpetual right thereto, without, however, the right to use or penetrate the surface of, or to enter upon the Premises within five hundred feet (500') of the surface thereof to extricate or remove the same.

#### 22. Default

- a. Defaults. The occurrence of any of the following shall constitute a material breach and default ("Default") of this Lease by Licensee:
  - (1) Any failure by Licensee to pay when due any of the Rent or other charges payable by Licensee;
  - (2) A failure by Licensee to observe or perform any other provision of this Lease to be observed or performed by Licensee when such failure is not corrected within ten (10) days after written notice thereof from Licensor; or if such failure cannot be cured within this ten (10) day period, as determined by Licensor in its reasonable discretion, if such cure is not commenced within thirty (30) days of Licensor's written notice and thereafter diligently pursued to completion;

- (3) The abandonment or the vacation of the Premises by Licensee for a period of more than fifteen (15) consecutive days;
- (4) The happening of any of the following events;
  - a. The filing or institution by Licensee of any proceeding under the Bankruptcy Act and any amendment thereto, or any other federal or state act now or hereafter relating to the subject of bankruptcy, insolvency, arrangement, reorganization, or other form of debtor relief,
  - b. the institution or filing of any involuntary proceeding against Licensee under any of the aforementioned laws unless such proceeding is dismissed within thirty (30) days thereafter,
  - c. an adjudication of bankruptcy or a finding or judgment of insolvency of Licensee,
  - d. an assignment for the benefit of creditors by Licensee,
  - e. the levy of a writ of execution of the business of Licensee or the assets of Licensee located on the Premises which is not discharged within ten (10) days after the date of said levy,
  - f. or the appointment of a receiver to take possession of any property of Lease.

### 23. Remedies

In the event of a default by Licensee, Licensors may, at any time thereafter:

- (a) Cure said Default by Licensee at Licensee's expense. Licensee shall upon demand, immediately reimburse Licensors for the cost of such cure together with interest at the Interest Rate from the date of the expenditure therefore by Licensors until such reimbursement is received by Licensors.
- (b) Maintain Licensee's right to Possession in which case this Lease shall continue in effect whether or not the Licensee shall have vacated or abandoned the Premises, in which event Licensors shall be entitled to enforce all of Licensors's rights and remedies under this Lease, including the right to recover the rent as it becomes due hereunder as provided in California Civil Code Section 1951.4. Acts of maintenance or preservation, efforts to re-let the Premises, or the appointment of a receiver upon the termination of Licensee's right to possession. No act by Licensors other than giving written notice to Licensee will terminate this Lease.
- (c) Terminate Licensee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Licensee shall immediately surrender possession of the Premises to Licensors. In such event Licensors shall be entitled to recover from Licensee the sum of all amounts set forth in California Civil Code Section 1951.2 (a), including without limitation, the worth at the time of award of the amount by which all unpaid rent for the balance of the term of this Lease after the time of award excludes the amount of such rental loss that Licensee proves could be reasonably avoided, and all other damages incurred by Licensors by reason of Licensee's default including, without

limitation, the cost of recovering possession of the Premises, and expenses of re-letting such as renovation of the Premises, and real estate commissions and finder's fees actually paid for such re-letting. The "worth at the time of award" shall be computed in the manner provided in California Civil Code Section 1951.2(b) or its successor statute. For the purpose of determining unpaid rent under this paragraph, the rent reserved in this Lease shall be deemed to be the sum of all then unpaid monetary obligations owed under this Lease.

- (d) Pursue any other remedy now or hereafter available to Licensor under the laws of California.

Termination of this Lease under this section or for any reason whatsoever shall not release either party from any liability or obligation hereunder resulting from an event which may have occurred before termination (including, but not limited to payment of all rent due but unpaid as of the date of termination), or thereafter in case by the terms of this Lease it is provided that certain things shall or may have to be done after termination hereof.

#### 24. Surrender of the Premises; Holding Over

- (a) Upon termination of this Lease, 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 Lease, 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 Lease. 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 leasing 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 Lease, such occupancy shall be construed to be a tenancy from month-to-month, subject to the terms and conditions of this Lease, except that the Base Rent shall automatically increase to 200% of the Base Rent in effect immediately prior to such termination or expiration.

#### 25. Condemnation

If all or part of the Premises is acquired by eminent domain or by purchase in lieu thereof, Licensee shall have no claim to any compensation awarded for the taking of the Premises or any portion thereof, including Licensee's leasehold interest therein or any bonus value of this Lease, or to any compensation paid as severance damages, or for loss of or damaged to Licensee's Alterations or improvements, except as may be expressly provided in this Lease.

#### 26. Assignment and Subletting

Licensee shall not assign or encumber or otherwise Transfer, as defined below, its interest in this Lease without the prior written consent of Licensor. Licensor shall not unreasonably withhold consent to any Transfer in the event the proposed sub Licensee or assignee meets Licensor's

credit, business/qualification and reputation requirements and the proposed occupancy is consistent with the general character of the use permitted by this Lease. With respect to any such approved transfer, Licensor shall be entitled as additional rent for the duration of the Transferee's occupancy to an amount equal to fifty percent (50%) of the difference between the rent charged by Licensee to the proposed Transferee the then current Base Rent hereunder. For purposes of this Lease, the term "Transfer" means any assignment, encumbrance, transfer or subletting, change in more than 50% ownership interest or control of Licensee, or a reorganization or merger of Licensee by operation of law. As a condition to Licensor's consideration of any Transfer, Licensee will pay to Licensor, whether or not consent is ultimately given, Licensor's reasonable attorney's fees incurred in connection with each request for such consent. No Transfer, even with Licensor's written consent thereto, shall release Licensee from its obligations hereunder. Licensor's consent to one transfer shall not constitute its consent to any other Transfer, or a waiver of Licensor's rights hereunder. Licensee's Transferee shall agree in writing to be bound by all of the terms and conditions of this Lease that are to be performed by Licensee. Any purported Transfer in violation of this Section shall be void and constitute a default hereunder, and at the option of Licensor, terminate this Lease.

### 27. Damage

Scope of Damage Licensee shall notify Licensor in writing immediately upon the occurrence of any damage to the Premises, which makes the Premises untenable (a "Casualty"). Such damage shall be deemed partial if it can be repaired and the Premises made tenantable within 180 days and does not occur during the last year of the Term ("Partial Damage"). All damage other than Partial Damage shall be deemed to be total destruction ("Total Destruction").

Total Destruction In the event of Total Destruction, the Lease shall terminate as of the date of the Casualty ("Casualty Date").

Partial Damage In the event of Partial Damage, Licensor shall elect in a written notice to Licensee within sixty (60), days of the Casualty Date whether to restore the Premises, at Licensor's expense, to their condition prior to the Casualty Date. If Licensor elects to restore the Premises, Licensor shall diligently pursue such restoration to completion at Licensor's sole cost and expense, provided that Licensee shall be responsible for the restoration, at Licensee's expense of Licensee's fixtures, equipment and other improvements installed by Licensee. Upon such an election, this Lease will remain in effect. If Licensor elects not to restore the Premises, Licensee shall elect within thirty (30) days of receipt of Licensor's election whether to restore the Premises at Licensee's sole cost and expense. If Licensee elects to restore the Premises, Licensee shall diligently pursue such restoration to completion in compliance with the provisions of Section 10 above. Upon such election, this Lease will remain in effect. If Licensee elects not to restore the Premises, this Lease shall terminate as of the date of Licensee's election.

Licensee's Costs If Licensor restores the Premises, Licensee shall reimburse Licensor for the deductible or self insured retention under any of Licensor's Insurance and, if the Casualty was caused or contributed to by the Licensee or Licensee's Invitees, the excess of the costs to restore the Premises over the amount of the insurance proceeds from the Licensor's Insurance. Licensee shall have no right to any insurance proceeds other than proceeds that Licensee obtained with respect to Licensee's personal property and fixtures. If this Lease is not terminated, the Base Rent shall abate in proportion to the Premises damage until the Premises are restored.

### 28. Barricades



Licensee agrees to install and maintain around the Premises the barricades, fences, and fence gates of a size and form satisfactory to Licensor at Licensor's request such locations as may be designated by Licensor at any time while this Lease is effect, all at Licensees expense and to Licensor's satisfaction.

### 29. Costs

Licensee shall pay the costs for review of the lease application, design and construction plans, preparation of the agreement, and any inspection of construction, including, but not limited to, expenses incurred by Licensor, which costs Licensee agrees to pay upon demand.

### 30. Attorney Fees

If either party brings any action against the other to enforce any provisions of this Lease or collect any sum due hereunder or if Licensor brings an action for unlawful detainer of the Premises, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other remedies to which it may be entitled.

### 31. Miscellaneous Provisions

- a. Non Waiver. Licensor's failure to enforce or exercise its rights with respect to any provision hereof shall not be construed as a waiver of such rights or of such provisions. Acceptance of rent or any other sum shall not be a waiver of any preceding breach by Licensee of any provision hereof, regardless of Licensor's knowledge of such preceding breach at the time of acceptance of such rent; nor shall such acceptance be a waiver in any way of Licensor's right to terminate this Lease for any reason.
- b. Time of Essence. Time is of the essence of each provision of this Lease. Any reference to "days" shall mean calendar days except as otherwise expressly provided in this Lease.
- c. Entire Agreement and Amendment. This Lease sets forth the entire agreement between the Parties with respect to the leasing of the Premises and supersedes all prior and/or contemporaneous agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. This Lease shall not be modified except by written agreement of the parties.
- d. Successors and Assigns. Subject to the provisions of this Lease relating to assignment, mortgage and subletting, this Lease shall bind the heirs, executors, administrators, successors and assigns of any and all of the parties hereto.
- e. Authority. Each individual executing this Lease on behalf of Licensee represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of Licensee, and that this Lease is binding upon Licensee in accordance with its terms. Licensor, as a condition precedent to this Lease, may require corporate or partnership resolutions as are reasonably necessary to establish the authority of Licensee to execute this Lease.
- f. Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of California as applied to contracts that are made and performed entirely in California.
- g. Captions. All captions and headings in this Lease are for the purposes of reference and convenience and shall not limit or expand the provisions of this Lease.

- h. Third Party Beneficiaries. The Indemnities specified in Section 9 who are not expressly parties to this Lease shall be deemed third party beneficiaries under this Lease for purposes of enforcing any rights to indemnification and insurance granted in Sections 14, 15, 16, and 17 of this Lease, and shall be entitled to seek attorney's fees and costs as provided in Section 29 above and dispute arising from the enforcement of said rights.
- i. Brokers. Licensor and Licensee are separately responsible for payment of any broker's commission or finder's fee incurred by that party's engagement or acceptance of the services of a broker or agents by said party. Licensor and Licensee agree to indemnify, defend and hold the other party harmless from and against any claims and suits made by any broker, agent or other person claiming a commission or other form of compensation against the other party by virtue of having dealt with Licensor or Licensee, as the case may be, with regard to this Lease.
- j. Counterparts. This Lease may be entered into in counterparts, each of which shall be deemed an original but both of which together shall be deemed a single agreement.

IN WITNESS WHEREOF, the parties hereto have executed, or have caused to be executed, this Lease on the day and year first above written.

Licensor:

Licensee:

North Coast Railroad Authority

Humboldt Bay Municipal Water District  
828 7<sup>th</sup> Street  
Eureka, CA 95501

By: \_\_\_\_\_  
Mitch Stogner Executive Director NCRA

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

\*By: \_\_\_\_\_

Print Name: \_\_\_\_\_

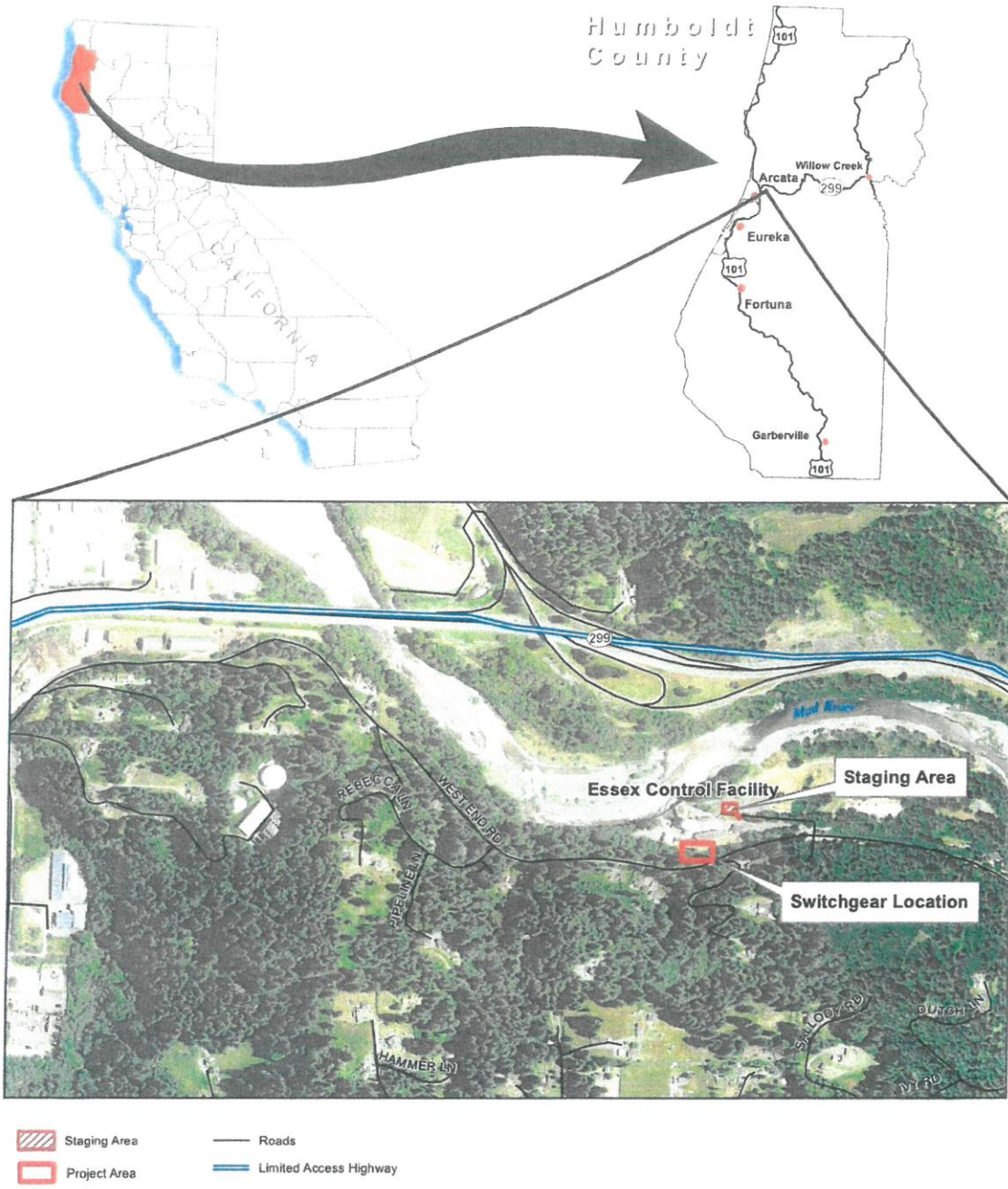
Title: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_  
APPROVED AS TO FORM:  
Christopher Neary  
Attorney for Authority:

*\*If Licensee is a corporation, two corporate officers must sign on behalf of the corporation as follows: (1) the chairman of the board, president or vice-president; and (2) the secretary, assistant secretary, chief financial officer, or assistant treasurer.*

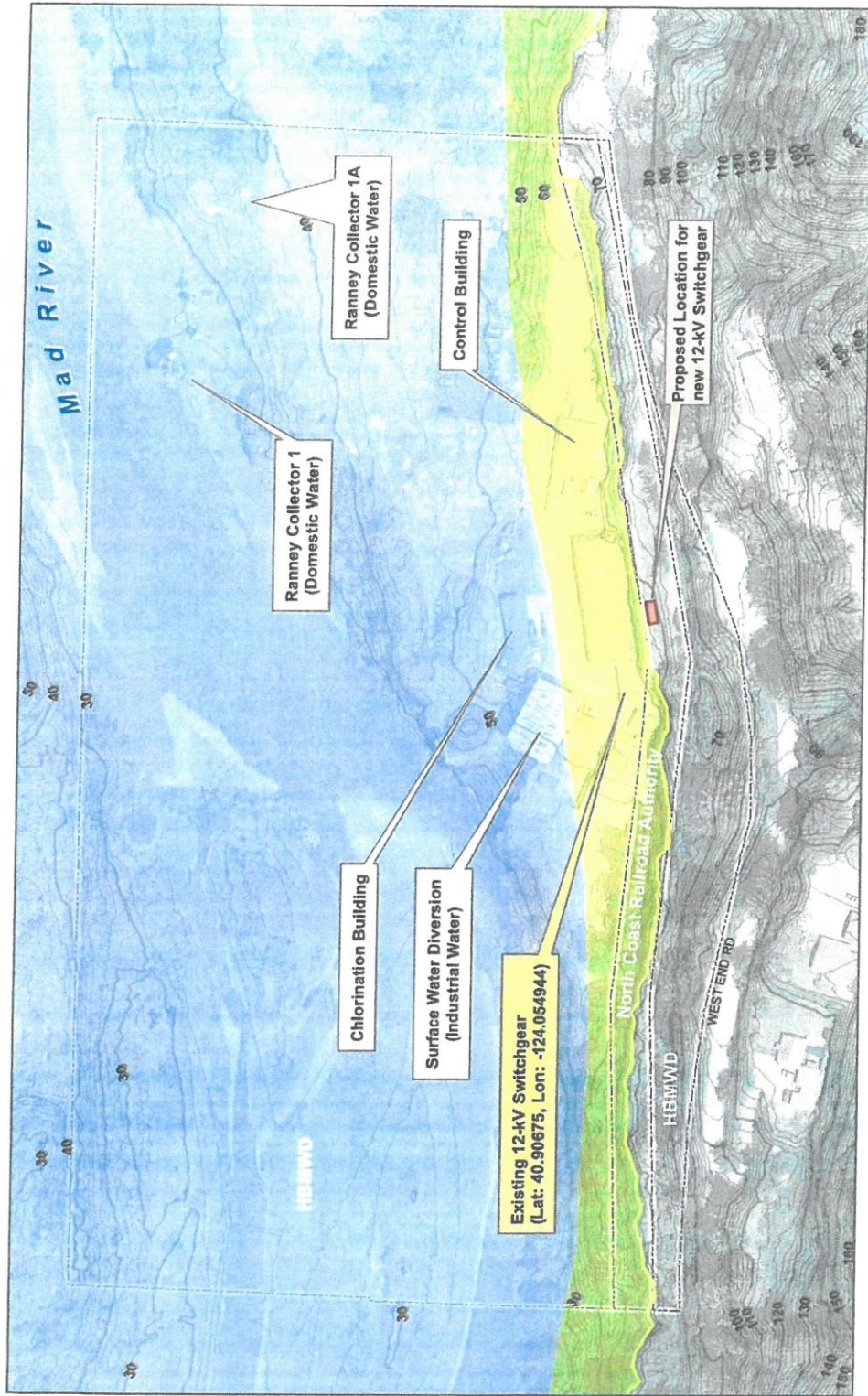




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| <p>Paper Size ANSIA</p> <p>0 300 600 900 1,200 1,500</p> <p>Feet</p> <p>Map Projection: Mercator/Auxiliary Sphere<br/>Horizontal Datum: WGS 1984<br/>Grid: WGS 1984 Web Mercator Auxiliary Sphere</p> |  |  | <p>HBMWD 12-kV Switchgear Relocation<br/>NCRA Easement</p> | <p>Job Number   11121523<br/>Revision   1<br/>Date   20 May 2016</p> |
|---|--|--|--|--|

12-kV Switchgear Vicinity Map **Figure 1**

lightning@hbmwd.com \Projects\11111121523 HBMWD-12kV SG 2016 PDM Grant\08-GIS\Map\Figures\Hazard Mitigation Grant\F12-M12\hbmwd\Arcata, CA 95501 T 707 443 8326 F 707 444 8330 E eureka@hbmwd.com W www.hbmwd.com  
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Data source: ESRI Street Map USA, USDA, NAIP orthoimagery - 2014, HBMWD GIS, property boundaries. Created by J.Clerk2



Paper Size 8.5" x 11" (ANSI A)  
 Scale: 0 40 80 120 160 200 Feet  
 Map Projection: Lambert Conformal Conic  
 Horizontal Datum: North American 1983  
 Grid: NAD 1983 StatePlane California 1 FIPS 5001 Feet  
 Job Number: 11121523  
 Revision: A  
 Date: 06 Oct 2016  
 HBMWD 12-kV Switchgear Relocation  
 NCRA Eastmont  
 12-kV Switchgear Site Map  
 Figure 2  
 716 Third Street Eureka CA 95501 USA, T 707 443 0320 F 707 444 0320 E eureka@hbmwd.com W www.hbmwd.com  
 2016. While every care has been taken to prepare this map, GH0 and HBMWD make no representations or warranties about its accuracy, reliability, completeness or suitability for any particular purpose and accept liability and responsibility of any kind (express or implied) for any expenses, losses, damages and/or costs (including indirect or consequential damages) which are or may be incurred by any party as a result of the map being inaccurate, incomplete or unusable in any way and for any reason.  
 Data source: HBMWD; Property boundaries and water systems: Google Earth imagery; Elev. Street Map USA; NOAA; elevation - 2013. Created by: plink2