

RESOLUTION
Of the
BOARD OF DIRECTORS
Of
NORTH COAST RAILROAD AUTHORITY

IN THE MATTER OF:

Recognizing the Arcata and Mad River
Railroad as Being Appropriate for
Multi-Modal Transportation Use.

Resolution No. 2008 - 11

WHEREAS; The Arcata and Mad River Railroad's predecessor, the Union Wharf and Plankwalk Company, was incorporated on December 15, 1854, and operated a horse-drawn railroad, generally considered to be the first railroad in California; and

WHEREAS; the next operator, the Arcata Transportation Company, was incorporated on June 14, 1875, and converted the railroad to steam; and

WHEREAS; on July 29, 1881, the Arcata and Mad River Railroad (A&M) was incorporated; and

WHEREAS; in 1914, with the coming of the Northwestern Pacific Railroad (NWP) and the connection to the rest of the nation, the Arcata and Mad River Railroad agreed to the junction at Korblex, NWP post mile 295.57 (the north side of West End Road), as the division between the A&M and NWP; and

WHEREAS; the Eureka Southern Railroad had purchased the NWP and in September 1988 also purchased the A&M; and

WHEREAS; the Eureka Southern Railroad continued to operate trains on both systems but was forced into bankruptcy due to numerous factors; and

WHEREAS; the North Coast Railroad Authority (NCRA) was formed by the State of California; and

WHEREAS; after NCRA acquired the A&M Line it continued to run trains thereon until the A&M Line shut down due to safety concerns; and

WHEREAS; the NCRA acquired the A&M Line as an operating Rail Road and continued to operate the A&M Line and never took formal action to abandon the A&M Line even during the period of non-use, nor does the NCRA consider the A&M Line abandoned; and

WHEREAS; the A&M roadbed is outside of the prospective contract limits of the NCRA agreement with the Northwestern Pacific Company; and

WHEREAS; it is unlikely and infeasible that the NCRA will operate trains on the A&M roadbed in the near future; and

WHEREAS; it is appropriate that NCRA retain the right to resume rail freight service on the A&M route, if possible, should the need for such service arise; and

WHEREAS; the cities of Arcata and Blue Lake and the County of Humboldt have expressed an interest in utilizing the A&M roadbed for a multi-modal transportation use.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE NORTH COAST RAILROAD AUTHORITY as follows:

1. NCRA expresses its willingness to cooperate with the City of Blue Lake and others in railbanking, and/or other appropriate means of effectuating multi-modal transportation use of the A&M Line in its entirety from NWP mile post 295.57 (the north side of West End Road) to just east of Blue Lake and will cooperate with such process, including filing an appropriate application with the Surface Transportation Board, at such time as a local entity enters into an agreement with the NCRA to assume the duties of Trail Manager as required by federal law, or a local or non-profit entity assumes responsibility equivalent to that of Trail Manager, as required by federal law and NCRA's Guidelines for Trail Projects.
 2. This Resolution will remain in effect unless rescinded. The Board, in or after September 2009, may review this Resolution.
 3. The Executive Director of NCRA or the designee thereof, is NCRA's sole spokesman to any public agency regarding the subject matter of this Resolution, including, but not limited to the City of Blue Lake, the City of Arcata, the County of Humboldt, the
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Surface Transportation Board, the Department of Transportation, and/or the California Transportation Commission.

Introduced and adopted this 13th day of August 2008 at a regular meeting of the Board of Directors of North Coast Railroad Authority by the following vote:

AYES:

NOES:

ABSENT:

ATTEST:


MITCH STOGNER, Secretary


ALLAN HEMPHILL
Chairman of the Board



North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482
707-463-3280

May 11, 2016

CALTRANS
Division of Local Assistance, MS 1
1120 N Street, MS 1
Attn: Office of Active Transportation and Special Programs
Sacramento, CA 94274-0001

Re: Support for the City of Blue Lake's Annie & Mary Trail, Phase 1 Project


Dear Application Review Committee,

The North Coast Railroad Authority (NCRA) is writing to support the City of Blue Lake's funding application to the state Active Transportation Program (ATP) for the Annie & Mary Trail, Phase 1 Project. The City of Blue Lake seeks ATP funds to design and construct the first portion of the Annie & Mary Trail, located along Railroad Avenue within city limits. Portions of the City's project may lie within the Arcata & Mad River Railroad (A&M) right-of-way, which is owned by NCRA. Advancing the Annie & Mary Trail, with the ultimate goal of connecting the cities of Arcata and Blue Lake, has been a regional transportation priority for nearly two decades.

The A&M railroad line has a rich history going back to the 1850s. For much of the 19th and 20th centuries, this line served as a branch line to the Northwestern Pacific main line and provided a critical transportation and economic link in Humboldt County. Train operations ceased in the 1990s due to safety concerns regarding line conditions. In 2008, the NCRA passed Resolution No. 2008-11 to express its willingness to cooperate with local entities to effectuate multi-modal transportation use of the A&M line. Resolution No. 2008-11 noted that the A&M roadbed is outside the prospective contract limits of NCRA's contract operator (NWP Co.), and it is unlikely and infeasible that the NCRA will operate trains on the A&M roadbed in the near future.

NCRA continues to be willing to cooperate with the City of Blue Lake and others to realize multi-modal transportation use of the A&M line. This approval is conceptual for funding application purposes only. Final design review by NCRA will be required prior to construction for all work to be performed within NCRA's right-of-way. In addition, an entity such as the City of Blue Lake will be required to enter into an agreement to manage and maintain the constructed trail within the right-of-way.

We are pleased to support Blue Lake's Annie and Mary Trail, Phase 1 Project and encourage financial assistance for this worthwhile project.

Sincerely,

Mitch Stogner, Executive Director

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made as of this ____ day of _____, 2019, 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 Blue Lake, a municipal public entity (“City”).

RECITALS

- A. NCRA is the property owner or easement holder of the Arcata and Mad River Railroad railway right-of-way corridor (“A&M Rail Corridor”) located in Humboldt County. The A&M Rail Corridor is a branch line of the mainline Northwestern Pacific Railroad railway right-of-way corridor (“NWP Rail Corridor”) starting at the junction located at Korblex, NWP post mile 295.57 (the north side of West End Road).
- B. NCRA adopted Resolution 2008-11 recognizing the A&M Rail Corridor as being appropriate for multi-modal transportation use.
- C. NCRA adopted a Policy and Procedures Manual for the design, construction, safety, operations, and maintenance of shared use public trails located within the NWP Rail Corridor (“Rails-with-Trails”). This Rails-with-Trails Policy and Procedures Manual is not applicable for the A&M Rail Corridor.
- D. The City seeks to develop a non-motorized path within the A&M Rail Corridor located in the City of Blue Lake jurisdictional area consistent with Senate Bill No. 1029.
- E. NCRA desires to issue a license to the City to use the A&M Rail Corridor for the Annie & Mary Trail Phase 1 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.

- (a) “Commencement Date” is defined in Section 4.
- (b) “Construction Plans” is defined in Section 7.
- (c) “A&M Rail Corridor” is defined in Recital A.
- (d) “NWP Rail Corridor” is defined in Recital A.
- (e) “Rails-with-Trails” is defined in Recital B.
- (f) “Rails with Trails Policy and Procedures Manual” is that specific document adopted by the NCRA on May 13, 2009, amended August 12, 2009, and includes all future amendments thereto.
- (g) “License Property” is defined in Section 2.

2. Description of License Property. The property subject to this Agreement (the “License Property”) is defined as that specific section of the A&M Rail Corridor, beginning in the west at or near Chartin Road and terminating in the east at or near H Street specifically excluding therefrom any and all City roads and other City rights-of-way.

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. City's use under this Agreement shall be subject and subordinate to any agreements entered into by NCRA for the purposes of preserving the NWP Rail Corridor.

4. Term. The term of this Agreement shall be twenty five (25) years (the "Term") commencing on _____ (the "Commencement Date"), and, unless sooner terminated or extended as herein provided, shall terminate on _____.
 - (a) Extension of term. Upon the election of both parties, evidenced by written notice provided by each party hereto of its election to extend no later than ninety (90) days prior to the completion of the existing term, this Agreement may be extended upon the same terms as set forth herein for additional five-year terms. The election by only one party to this Agreement to extend its term shall be of no force or effect.
5. Conditions Precedent. This Agreement shall be null and void in the event (1) the City fails to obtain funding and all regulatory permits required for trail construction, or (2) the California Transportation Commission does not approve this Agreement pursuant to California Government Code section 93020.
6. License Fee. In lieu of either a one-time or annual license fee payment, the City shall provide maintenance to completed trail segments located in the License Property as follows: a) maintain drainage structures; and, b) provide all vegetation management, including tree trimming and removal. Said maintenance shall be performed to standards as determined by the City in its reasonable discretion, however in no event may the City use a lesser standard than that typically used in its maintenance of other similar public trails and paths. The City, at its sole discretion and expense, may perform such additional maintenance 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 15 days advance written notice to NCRA prior to beginning construction on any trail segment. The City shall provide 15 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.
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. Insurance. The City shall maintain general liability coverage in the amount of no less than \$2,000,000 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 annually.
- 10. Indemnification. To the maximum extent allowed by law, the City agrees to indemnify, defend and hold harmless NCRA, including its officers, employees, 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, arising out of or connected in any manner with the use or misuse of the License Property by the City, members of the public, or any act or omission by the city therewith. 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 negligence, action or inaction, or any other cause other than willful misconduct or the sole negligence of NCRA. This provision shall survive any termination of the License for actions or inactions that may arise during the time this License is in effect.
- 11. Assumption of Risk and Waiver. To the maximum extent allowed by law, the City assumes any and all risk of loss, damage or injury of any kind to NCRA, its officers, employees, agents, contractors, successors and assigns, including without limitation, trail improvements and any other property under the control of the City which is on the License Property. 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:

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.
- 12. Abandonment. In the event of action by the City Council for the City of Blue Lake 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.
- 13. 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, NCRA may direct the City to remove, at its own cost and expense, any and all trail improvements. Upon removal of any trail improvements, the City shall, upon direction from 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.
- 14. 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, NCRA may terminate this Agreement and thereafter recover possession of the License Property by lawful means.

15. 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.
16. 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
 419 Talmage Road, Ste M
 Ukiah, CA 95482

To City:

City Manager
 City of Blue Lake
 111 Greenwood Road / PO Box 458
 Blue Lake, CA 95525

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.

17. 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.
18. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.
19. 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.
20. Attorney's 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, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment.
21. 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.
22. Amendments. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.
23. 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.

24. 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
AUTHORITY:**

CITY OF BLUE LAKE:

By: _____
Name: _____
Its: _____
Date: _____

By: _____
Name: _____
Its: _____
Date: _____

Approved as to form:

City Attorney

Date: _____