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MEMORANDUM

TO: Board of Directors
North Coast Railroad Authority

FROM: Christopher J. Neary

DATE: June 3, 2009

RE: Jack Noble Crossing Agreement

Last fall, Jack Noble proposed to lease certain property for a truck crossing. Director Meyers took the lead on this matter and revised our standard lease form agreement which was subsequently presented to Mr. Noble for approval.

Mr. Noble's attorney then objected to the lease as was presented to him and supplied a redlined amendment to the lease. To avoid having to negotiate lease language, we typically utilize our standard form lease which was developed over a lengthy period of time by the Property Committee in the early part of this decade. This avoids the necessity of negotiating language for simple property arrangements. Typically, I have taken the position that we will not negotiate standardized lease language. However, in this case, we deviated from the standard form lease so I agreed with Mr. Noble's attorney to at least entertain consideration of the revisions proposed by him.

Almost simultaneously with receiving the extensive changes proposed by Mr. Noble's attorney we received a communication from Humboldt Baykeeper threatening to sue NCRA if it approved the lease. The premise of the Humboldt Baykeeper communication was that NCRA had to conduct a CEQA evaluation of Mr. Noble's entire operation which is permitted by the County of Humboldt. I told Mr. Noble's attorney that it was unlikely NCRA would spend the time to argue over the language of the lease and then undergo the expense of defending what appeared to be an opposition legal position. Mr. Noble has now consulted counsel specializing in CEQA and is satisfied that Humboldt Baykeeper for advancing its position and is therefore willing to indemnify NCRA from the cost of defending any such suit should NCRA be named as a defendant in a suit filed by Humboldt Baykeeper or any other plaintiff connected with this transaction.

For that reason, the matter is brought back before the Board. The options available to the Board are to: (1) reject the proposal; (2) approve the recommended changes including acceptance of the indemnity and forward the matter to Mitch Stogner for purposes of conducting the appropriate environmental review which could range from a categorical exemption to an EIR; or (3) refer the matter to the Property Committee in recognition of the fact that the NCRA Board will most likely not meet in July and Mr. Noble is now indicating there is some urgency to proceeding.

As a postscript, it would be helpful if the Board gave some direction on its willingness to entertain amendments to its standard form lease agreements. While our standard form lease agreement is by no means perfect, it has been adequate for many others whose attorneys have approved the document. In order to avoid having an unworkable standard form lease enshrined by failure to consider its amendment, I suggest that we adopt the middle ground. When somebody proposed amendments to the standard form lease, the changes should have to be considered by the Property Committee as a separate item as a permanent amendment to the standard form lease applicable to all future leases. While this will involve some delay for applicants, it would avoid having a hodge podge of lease agreements and minimize the difficulty in managing varied leases with varied lease provisions.

Please note the attached letter from William Bragg, a prominent attorney in Eureka who represents Jack Noble. Attached to the letter is an Addendum to the NCRA Private Roadway Agreement which is included in the matter to be considered by the Board and is approved as to form by the undersigned.

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June 2, 2009

Via email/mail/federal express & fax 459-3018

Christopher J. Neary
110 South Main Street, Suite C
Willits, California 95490

Re: Jack Noble / NCRA Private Roadway Agreement

Dear Chris:

Mr. Noble has not yet personally met with Mr. Clendenon but he is hopeful of doing so. I have gone through the revised agreement to determine if I could reduce the number of changes that were made in my redline version. Unfortunately I believe the changes I made are necessary not only to more particularly describe the project but to also equitably protect both parties' interests. I believe a lot of the changes were required because the standard contract really wasn't suitable in a number of instances to the type of project Mr. Noble is engaging in. There needed to be additional project descriptions. Be that as it may, we would like the board to consider the agreement as it was forwarded to you along with the enclosed addendum which indemnifies the NCRA against any CEQUA challenge.

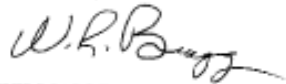
One other benefit of this agreement that you might point out to the full board and to which they probably haven't given much thought is the potential that the NCRA could very well lose the use of this spur rail through non-use. It is Mr. Noble's understanding that approximately 2/3's of that rail line goes across what originally was a common ownership of the present Fearrien and Noble ranches. At the time that the original owner entered into the agreement with the railroad she only granted an easement which was to revert back to the landowner in the event of abandonment of use. Mr. Noble is aware that the Fearrien interest has discussed seeking a declaration of abandonment on that basis. This lease could effectively prevent such a claim.

Chris Neary
Re: Noble/NCRA
June 2, 2009
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Mr. Noble will have his representatives present on the 10th to address any concerns that the board may have.

Thank you for your assistance.

Very truly yours,



WILLIAM R. BRAGG

WRB:pl
Enclosure

cc: Jack Noble

NCRA PRIVATE ROADWAY AGREEMENT

THIS COMMERCIAL LEASE ("Lease") is entered into as of the 15th day of October, December, 2008 by and between the NORTH COAST RAILROAD AUTHORITY, a legislatively created state agency ("Lessor"), and, Jack Noble, (Lessee").

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Premises

Subject to the terms and conditions set forth herein Lessor hereby leases to Lessee, and Lessee leases from Lessor, the real property and any improvements thereon located near Carlotta, County of Humboldt, State of California

("Premises") consisting of ~~private roadway extending from railroad crossing at River Bar Road (E.S. 1226.40) to railroad milepost 266.0 (E.S. 1306.45) traversing along the north side of NCRA owned railroad right-of-way approximately 1.5 miles. Width of leased area is between two feet from the ends of the cross-ties and 33 ft from center line of railroad tracks, the northerly edge of railroad property. Milepost 266.0 (E.S. 1306.45) traversing along the north side of NCRA owned railroad right-of-way approximately one mile to a point approximately 420 feet east of railroad milepost 265.0 at which point said private roadway shall cross existing tracks to the southside of NCRA owned railroad right-of-way, thence westerly approximately 3,000 feet to River Bar Road (E.P.S. 1226.40).~~ *See Exhibit "A"* together with the improvements thereon consisting of **Private Roadway**, as depicted on Exhibit A, which is attached to this Lease and incorporated into it by this reference.

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Effective Date

This Lease shall take effect on October December 15, 2008 ("Effective Date").

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Term

This Lease shall be for a term of *Fifteen Years, (180 Months)*, ("Lease Term") from the Effective Date, unless sooner terminated as provided herein.

Termination for Transit Activities

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Either party may terminate this Lease by giving thirty (30) calendar days of the written notice. Lessor may require Lessee to remove any or all of Lessee's Alterations upon termination, pursuant to the Section 25 below. LESSEE 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 LESSOR'S USE OR POSSESSION OF ANY PORTION OF THE PREMISIS.

Lessee

I. Use

The Premises shall be used by Lessee solely and exclusively for [a Private Roadway to transport commercial ranch produce](#) ("Permitted Use"). See attachment "B" ("Additional Conditions"). Lessee shall not use the Premises for any other use other than the Permitted Use without Lessor's prior written consent, which consent may be withheld by Lessor in its sole discretion.

Restriction on Use

Lessee 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. If any portion of Premises is located within twenty five (25) feet of the centerline of any active railroad tracks with operating trains, then Lessee and all employees, agents and contractors of Lessee shall comply with the restrictions stated in ***Exhibit "C", Contractors General Safety Requirements, Working Procedures*** that is attached to this Lease and incorporated into by this reference.

Regulatory Approvals

Lessee, at Lessee'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 Lessee's use of the Premises,

~~Lessor may terminate this lease forthwith if any such condition shall affect any other property of Lessor or shall affect the Premises after this Lease is no longer in effect. that is unacceptable to either party, that party may terminate this lease forthwith.~~

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Compliance with Laws

Lessee at Lessee's sole expense, shall at all times during the Term comply with all applicable laws, regulations, rules, orders, and any and all Amendments there to with respect to Lessee'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. Lessee shall furnish satisfactory evidence of such compliance upon request of Lessor.

Prior Rights

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

2. Condition of Premises

"AS IS" Rental. Lessor leases the Premises to Lessee on an "AS IS" basis, and Lessee acknowledges that Lessor 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

Lessee shall be solely responsible for conducting any inspections it may deem necessary or appropriate in determining whether to enter this Lease. Prior to the Effective Date, Lessee 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 Lessee's judgment might bear upon the value and suitability of the Premises for Lessee's purposes or Lessee's willingness to enter into this Lease. Lessee acknowledges that Lessor has made no representations and warranties regarding these matters, whether express or implied, and the Lessee has relied on its own inspections and examinations contemplated in this Section 3 and Lessee shall be deemed to have accepted the Premises "AS IS" with all faults.

4. Base Rent

Commencing as of the Effective Date, Lessee shall pay to Lessor **as** for the Premises the **one-time** fee of **Fifteen hundred dollars (\$1,500.00)** and **each year on the anniversary of the Effective Date of this agreement, Five hundred dollars (\$500.00)** ("Rent") subject to adjustment as provided in Section 7 below. Rent shall be payable

annually in advance to Lessor on the Effective Date anniversary there of this agreement, 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. If the Effective Date of this Lease is other than the first day of the calendar month, Rent shall be prorated for the fractional month and the Rent for said fractional month, together with the Rent for the first full month shall be payable in advance upon execution of this Lease.

5. Additional Rent

Additional Rent shall be paid to NCRA of twenty-five cents (\$0.25) per cubic yard of material hauled over the Leased Premises. ~~Yardage volumes shall be calculated by licensed independent surveyors of excavated areas at the sole cost of the Lessor. Payment will be made to NCRA on an annual basis no later than 30 days after yardage volumes are substantiated by license survey. Along with annual yardage volume payment Lessee agrees to provide a copy of any and all reports used to calculate yardage volume to NCRA.~~ Yardage volumes shall be determined through the use of the standard conversion formula converting weight to cubic yards based upon the public weigh master certificate generated by the public weigh master stationed at a dedicated scale which shall weigh each load of material hauled over the leased premises.

6. Rent Adjustments

Beginning one year following Effective Date, and continuing thereafter on each anniversary of the Effective Date during the Lease Term, including any extensions as it may be extended ("Anniversary Date"), Rent and Additional Rent shall be increased by the increase in the Consumer Price Index (San Francisco-Oakland-San Jose area), 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. Lessor shall calculate and give Lessee written notice of any such increase in the Rent as soon as practicable after each Anniversary Date. When such calculation is made, Lessee shall pay to Lessor any deficiency on demand. Should the Bureau discontinue the publication of index, or publish the index less frequently, or alter the index in some other manner, the Lessor in its discretion, shall adopt a substitute index or procedure, which reasonably reflects and monitors consumer prices.

6.7. Security Deposit

On or before the Effective Date Lessee shall pay to Lessor a Security Deposit in the amount of \$2,000. The Security Deposit shall secure Lessee's obligations under this Lease to pay Rent, additional Rent, and all other monetary amounts payable hereunder, to maintain the Premises and repair thereto, and to surrender the Premises to Lessor in clean condition and good repair upon termination of this Lease and to discharge Lessee's other obligations hereunder. The Lessor may use and commingle the Security Deposit with other funds of Lessor, no interest to be paid in any event to Lessee. If Lessee fails to perform its obligations hereunder, Lessor may, but without any obligation to do so, apply all or any portion of the Security Deposit toward fulfillment of Lessee's unperformed obligations. If Lessor does so apply any portion of the Security Deposit, Lessee's failure to remit to Lessor a sufficient amount in cash to restore the Security Deposit to its original amount within five (5) days after receipt of Lessor's written demand shall constitute a default hereunder. Lessor shall at the conclusion of this lease return the Security Deposit, or any remaining portion thereof, to Lessee without payment of interest thereon.

7.8. Late Charges; Interest

A. Late Charges

If any installment of rent or other sum due from Lessee is not received by Lessor within ten (10) days of the date it is due, then Lessee shall pay to Lessor 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 Lessor will incur by reason of late payment by Lessee which are impracticable to estimate. Acceptance by Lessor shall in no event constitute a waiver of Lessee's default or breach with respect to such overdue amount or prevent Lessor from exercising any other rights and remedies granted herein.

B. Interest

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

8.9. Taxes

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

9.10. Notices

All notices, payments, or other communications by either party to the other under this Lease 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:

To Lessor: 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

To Lessee: Jack Noble
 Van Duzen River Ranch
 PO Box 365
 Fortuna, Ca 95540

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

10.11. Alterations

Lessee may at its sole cost and expense complete the Alterations generally described in Exhibit B to this Lease. Other than these improvements, Lessee 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 Lessor, which consent shall not be unreasonably withheld or delayed. Any Alterations Lessee is permitted to make shall be made at Lessee's sole cost and expense except as the parties may otherwise expressly agree in writing. Prior to commencement of construction of the Alterations, Lessee shall deliver to Lessor, and obtain Lessor's written 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, Lessee shall also obtain and deliver to Lessor true copies of all city, county, and/or other regulatory permits required for construction of the Alterations. Lessee shall also submit true copies of any amendments to said permits within 10 days of the issuance thereof. Lessee shall keep the Premises free and clear of all liens of any kind. Lessee shall give the Lessor at least ten (10) days' prior written notice of commencement of any kind of work on Alterations, so that Lessor may post appropriate notices of non-responsibility, and Lessee hereby grants permission to Lessor to enter onto Premises for that purpose. Lessee at its cost shall, upon request by Lessor, provide to Lessor 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 Lessor. 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 Lessee by Section 17 below, as evidenced by a certificate of insurance delivered to and approved by Lessor. Lessor 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 Lessee shall be Lessor's property at the end of the Lease Term without compensation to Lessee, subject to the provisions of Section 23 below.

11.12. Option to Renew

Subject to the terms and conditions set forth in this Section, Lessee hereby is granted the right and option ("Renewal Option") to extend the term of this Lease for 15 additional **years** term(s) ("Renewal Term(s)"). Lessee shall exercise the Renewal Option, if at all, by giving written notice to Lessor of Lessee's election to extend the Term no earlier than

one hundred and eighty (180) days prior to the end of the Lease Term and no later than ninety (90) days prior to the end of the Lease Term. Lessee shall be entitled to exercise the Renewal Option only if:

Lessee has complied with all terms and conditions of the Lease prior to the date of exercise; and, Lessee is not at the time of exercise in default under the Lease.

The Renewal Term(s) shall be on the same terms and conditions of the Lease except with respect to Rent. Rent during the initial year of each Renewal Term shall equal the greater of the Rent as of the termination of the initial Term or the fair rental Value of the Premises as of the date of exercise, as determined by mutual agreement of the parties. If the parties are unable to agree on the fair rental value of the Premises within this thirty (30) day period, The Monthly Rental for the first year of the Renewal Term shall be determined as follows:

1. Within 15 days following the expiration of the 30 day period, Lessee, at Lessee's sole expense, shall obtain and deliver in writing to Lessor a determination of the fair rental value for the Premises as of the date of exercise, based on non-subleased space comparable in size, location and quality to the Premises for comparable term, taking into considerations all concessions and inducements generally being granted at such time, from a broker ("Lessee's Broker") licensed in the State of California and engaged in the retail brokerage business in the immediate area for at least the immediately preceding 5 years. If Lessor accepts such determination, the initial rent for the Renewal Term shall be an equal amount to the determination by Lessee's Broker.

2. If Lessor does not accept such determination, within 15 days after receipt of the determination of Lessee's Broker, Lessor ~~at Lessee's cost~~ shall designate a broker ("Lessor's Broker"), who shall meet the qualifications for Lessee's Broker establish in subsection (1) above, who shall obtain and deliver a determination of fair rental value of the Premises based on the criteria specified in subsection (1) above. If Lessee accepts such determination, the initial rent for the Renewal Term shall be an amount equal to the amount determined by Lessor's Broker.

3. If Lessee does not accept such determination, the two brokers shall name a third similarly qualified broker who shall determine the fair rental value of the Premises based on the criteria established in subsection (1) above. If Lessor's Broker and Lessee's Broker cannot agree on a third broker within 15 days of Lessee's rejection of Lessor's Broker's determination of fair rental value, either party may seek appointment ~~at Lessee's cost~~ of the third broker located within

the area of the property involved. The initial rent for the Renewal Term shall be an amount equal to the arithmetic average of the three determinations, provided, however, that if any broker's determination deviates more than 10% from the median of such determinations, the Monthly Rent for the initial year of the Renewal Term shall be an amount equal to the average of the two closest determinations.

4. Lessor shall pay the fees and costs of Lessor's Broker in connection with any determination hereunder, and Lessee shall pay the costs and fees of Lessee's Broker in connection with such determination. The costs and fees of any third broker shall be paid one-half by Lessor and one-half by Lessee. ~~Should the parties agree to enter into the Renewal Term upon the determination of the Monthly Rent as set out above, Lessee shall repay to Lessor Lessor's reasonable costs and fees paid by Lessor in connection with paragraphs 1—4 of this Section, within 90 days of Lessor providing to Lessee a bill therefore.~~

5. If the amount of the Monthly Rent for the initial year of the Renewal Terms is not known as of the commencement of the Renewal Term, then Lessee shall continue to pay the monthly Rent in effect at the expiration of the initial term of the Lease until the amount of the Monthly Rent for the initial year of the Renewal Term is determined. When such determination is made, Lessee shall pay to Lessor any deficiency upon demand.

6. The Rent determined for the first year of the Renewal Term shall be increased on each anniversary of the commencement date of the Renewal Term as provided in Section 6 of this Lease.

~~12-13.~~ *Utilities*

Lessee shall at its sole cost 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 Lease. If Lessor is required to contract with a utility to provide access for the service to Lessee at the Premises for Lessee's use, Lessee shall pay to Lessor the sum of \$200.00 upon receipt of a bill therefore to partially defray administrative costs.

~~13-14.~~ *Maintenance and Repair*

Lessee shall keep the Premises, including any improvements located thereon, in safe condition and in good order, condition and repair at all times during the Lease Term at Lessee's sole cost and expense. Lessee shall, at Lessee's sole expense repair any area damaged by Lessee, Lessee's agents, employees and visitors. Lessee acknowledges that Lessor is under no duty to repair or make improvements to the Premises for damages incurred by any and all means, including

Acts of God. If Lessee fails to perform Lessee's obligations under this Section, Lessor may enter upon the Premises after ten (10) days prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required) and perform such obligations on Lessee's behalf and expense as provided in Section 22(a) of this Lease. At the end of the Lease Term, Lessee shall surrender the Premises to Lessor in the same condition as when received, ordinary wear and tear accepted.

14. 15. Liens

Lessee 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 Lessee's leasehold interest therein by reason of such labor or materials furnished to the Premises at Lessee's instance or request. If any such liens are filed against the Premises, Lessee 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 Lessor. Lessee shall indemnify, hold harmless, and defend Lessor from and against any such liens.

15-16. Indemnification

Lessee shall indemnify, defend and hold harmless Lessor, 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 on Lessor's railroad tracks or providing Lessor services) and any other person acting on Lessor's behalf ~~and ("Indemnities") from 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 Lessee, (b) any act, omission, or neglect of Lessee, Lessee's officers, employees, agents, servants, sub lessees, concessionaires, contractors or visitors, and/or (c) any breach or default by Lessee of any of the terms, covenants or conditions of this Lease; provided, however that with respect to any Liability under sub-sections (a) and/or (b) above, Lessee 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 reasonable legal costs and charges, ~~including reasonable or willful misconduct by Lessee against any incurred by~~ Indemnities. Except in the case of gross negligence, willful misconduct or pre-existing conditions of the premises, Lessee waives any and all rights to any type of express or implied indemnity against Lessor, its directors, officers or employees. The provisions of this Section shall survive the expiration or termination of this Lease.

16-17. 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 Lessee, Lessor, 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 Lessee or the Premises, including, but not limited to the Consent Decree, dated July 14, 1999 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 Lessor 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 or animal 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.

“*Lessee’s Parties*” means Lessee’s employees, agents, customers, visitors, invitees, licensees, contractors, designees, or sub Lessee’s.

(b) Use of Hazardous Materials.

Lessee 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). Except in the normal operation of Lessee’s equipment and in the inherent make-up of the ranch produce being transported across the premises. Lessee and Lessee’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 Lessor (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 Lessor, whose approval will not be unreasonably withheld.

(ii). During the Term, Lessee 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). Except as it naturally occurs in rock or gravel. No asbestos-containing materials will be manufactured or installed for any purposes on or as part of the Premises, whether as part of Lessee’s Parties’ business operations or as Lessee improvements, unless approved in advance in writing by Lessor, whose approval will not be unreasonably withheld.

(iv). Lessee 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 Lessee nor any of Lessee’s Parties will install or use any underground storage tanks on the Premises unless specifically approved in advance in writing by Lessor, which approval may be withheld in Lessor’s sole discretion. If Lessor approves Lessee’s installation or use of underground storage tanks, Lessee 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 Lessor of that compliance. Lessee 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 and provide true copies of all such tests to Lessor.

(ii). At Lessor's option, upon the termination of this Lease at any time and for any reason, Lessee 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 167(A)) and Lessor, and deliver to Lessor a copy of a certificate of closure issued for the tanks by the Agencies.

(e). Lessor's Right of Entry and testing. Lessor and Lessor'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 Lessee or Lessee's Parties activities, or failure to act where Lessee had a duty to act, in connection with the Premises, Lessee will reimburse Lessor for the cost of conducting the tests and at Lessee's sole cost remove within 30 days any and all Hazardous Materials present on, under or about the Premises.

(f) Environmental Assessment. Lessor may require Lessee to retain a duly licensed environmental consultant acceptable to Lessor that will perform an environmental compliance audit of ~~the Premises and~~ Lessee's and Lessee's Parties' business activities and compliance with the provisions of this Lease. Lessor may require Lessee to cause the environmental compliance audit to be conducted on an annual basis, the cost of which will be the sole responsibility of Lessee. If the results of the environmental compliance audit indicate that Lessee is or may be in violation of Section 16, Lessee will be solely responsible for the cost of any additional testing required by Lessor. Lessee must promptly provide a copy of the report from the consultant to Lessor upon Lessee's receipt, and upon request must promptly provide to Lessor a copy of all data, documents, and other information gathered in connection with the report. ~~Lessee acknowledges that Lessee has been provided an adequate opportunity to conduct Lessee's own environmental investigation of the Premises with independent environmental experts and consultants and states that Lessee is unaware of any Hazardous Materials on, under, or about the Premises as of the Effective Date.~~

(g) Notification.

(i) Lessee must give immediate written notice to Lessor of:

(A) any enforcement, remediation, or other regulatory action or order, taken or threatened, by any Agencies 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 Lessee's use of the Premises;

(B) all demands or claims made or threatened by any third party against Lessee or Lessee'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 Lessee'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 Agencies under applicable Environmental Laws; and

(D) all incidents or matters where Lessee and Lessee's Parties are required to give notice to any Agencies pursuant to applicable Environmental Laws.

(ii) Lessee must promptly provide to Lessor copies of all materials, reports, technical data, Agencies inspection reports, notices and correspondence, and other information or documentation relating to incidents or matters subject to notification under this Lease. Also, Lessee must promptly furnish to Lessor copies of all permits, approvals, and registrations Lessee receives or submits with respect to Lessee'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 Lessee's or Lessee's Parties' activities, or failure to act where Lessee had a duty to act, in connection with [Lessee's use of](#) the Premises [\(excluding conditions that pre-existed Lessee's occupancy\)](#), Lessee must promptly take all action, at Lessee'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, Lessor's written approval of these actions will first be obtained, and the approval will not be unreasonably withheld. Lessor'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. Lessee will provide Lessor with at least three (3) business days' advance notice of any sampling, and upon request of Lessor, will split samples with Lessor. Lessee will also promptly provide Lessor with the results of any test, investigation, or inquiry conducted by or on behalf of Lessee or Lessee's Parties in connection with the presence or suspected presence of Hazardous Materials on, under, about, or from the Premises. Lessee must notify Lessor in advance and give Lessor the right to participate in any oral or written communications with regulatory agencies concerning environmental conditions in or arising from the Premises. Lessor has the right, but not the obligation, to assume control of any required remediation on the Premises at Lessee's expense if Lessee fails to notify Lessor and obtain Lessor's approvals as required under Section 167(h). Within thirty (30) days after Lessee's completion of any remediation of the Premises, Lessee must deliver to Lessor a letter from any and all applicable Agencies 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, safety, or the environment.

(ii) If Lessee or Lessee'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 167, Lessor may demand that Lessee promptly take action in accordance with Section 167(h)(i). If Lessee does not respond within thirty (30) days (unless there is an emergency, in which case Lessee must respond as soon as practicable, but not less than three (3) days), Lessor 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 Lessee'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

Upon request of Lessor but no more frequently than annually commencing On the date that is one year from the commencement of the Term ~~and annually after that~~, Lessee ~~must~~ shall provide Lessor with a letter certifying that Lessee has complied with all applicable Environmental Laws and the requirements of all applicable Agencies and that

no soil or groundwater contamination has occurred ~~as a result of Lessee's use of in, on, or originated from~~ the Premises.

(j). Expiration and Termination Procedures.

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

(i). an environmental assessment of the Premises to evaluate the environmental condition of the Premises and potential environmental liabilities arising from Lessee's use of the Premises and in accordance with Section 167(e);

(ii). all remedial or other work identified in the environmental assessment arising from Lessee's use of the Premises in accordance with Section 167(h) and any and all applicable Environmental, or governmental Agencies; and

(iii). all corrective, remedial, repair or other work necessary to correct any alleged violations, deficiencies, or hazards noted by any environmental, governmental Agencies arising from Lessee's use of the Premises; 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~~ arising from Lessee's use of the Premises, in accordance with all environmental Laws. Lessee will also obtain and provide to Lessor the written approval or verification of the satisfactory completion of the termination, closure, or transfer from any and all Agencies with jurisdiction over ~~the any~~ Environmental permit, license, or other approval.

(k). Indemnification.

(i) Lessee will indemnify, protect, defend, and hold harmless Lessor and Lessor's directors, officers and employees, agents, and each of their respective successors and assigns (individually and collectively "Lessor 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 Lessee's or Lessee'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 and~~ any Hazardous Materials that migrate from the Premises to other properties,

as a result (~~directly or indirectly~~) of Lessee's or Lessee's Parties' activities, or failure to act where Lessee had a duty to act, on or in connection with the Premises (~~excluding pre-existing conditions on the Premises~~).

(ii) This obligation by Lessee to indemnify, protect, defend and hold harmless Lessor 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 that was caused by Lessee's use of 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 Lessor to the presence of Hazardous Materials on or under the Premises, nor the strict compliance by Lessee with all Environmental Laws, will excuse Lessee from the indemnification obligation. This indemnity will survive the expiration or termination of this Lease. Further, if Lessor detects a deficiency in Lessee's performance under this indemnity and Lessee fails to correct the deficiency within ten (10) days after receipt of written notice from Lessor, Lessor 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, Lessor may join and participate if Lessee 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 of the Premises and the Lessee 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 extent permitted by law, except as may be 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) Lessee's violation of this Section 16; (2) Lessee's willful misconduct, or negligence (notwithstanding any active or passive negligence of NCRA); or (3) any other cause, other than the willful misconduct or negligence of NCRA, irrespective of whether occurring prior, or after the commencement of the Term hereof.~~

~~(A). Lessee's Release of Lessor. Lessee on behalf of Lessee and Lessee's successors, assigns, and successors-in-interest waives, releases, remises, acquits, and discharges Lessor Indemnities from any and all claims, actions, causes of actions, demands, rights, damages, costs, expenses, or compensation, direct or indirect, known or unknown, foreseen or unforeseen, that Lessee 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 Lessee or Lessee's Parties. Also, Lessee 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.~~

~~17.18. Insurance~~

Policies of Insurance. Lessee 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 Lessee shall secure Workers' Compensation coverage with an Employer's Liability limit of \$2,000,000. Lessee shall insure the procurement and maintenance of such insurance by all contractors or subcontractors engaged on the Premises.

Commercial General Liability. Lessee shall, at its own cost and expense, procure and maintain Commercial General Liability insurance. The policy shall include as additional insured the Lessor, 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 not less than 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 Lessor.

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 Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, trade fixtures and Lessee 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 Lessee for the replacement of personal property, trade fixtures and Lessee owned alterations and utility installations.

Railroad Protective Liability Insurance Upon request from Lessor, Lessee shall obtain and maintain, with respect to the operations it or any subcontractors perform, on, under, or 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, Lessee shall maintain any other insurance that may be required by law, statute or governmental regulations.

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

The insurance company(ies) issuing such policy(ies) shall give written notice to the Lessor 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, and Lessee shall, at least thirty (30) days prior to the expiration of such policies furnish Lessor evidence of renewal or insurance binders evidencing renewal or replacement thereof.

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 Lessee. Said policy shall protect Lessee and the ~~insured- Lessor~~ 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 ~~rated not less than A+ and shall be~~ acceptable to the Lessor. Such insurance company shall be authorized to transact business in the State of California.

18-19. Noise Levels Near Railroad Tracks

Lessee 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 Lessee or employees, agents, sub lessees, or invitees of Lessee. Therefore, Lessee agrees that no legal action or complaint of any kind whatsoever shall be instituted against Lessor on Lessee's behalf as a result of such noise levels, including any claims of nuisance or trespass. Lessee shall indemnify and save harmless Lessor against any loss, damage, liability or expense either might incur as a result of such action being taken by Lessee's employees, agents, sub lessees or invitees. PLEASE NOTE: as of the Effective Date of this agreement the rail is currently not used and no noise related to train operations is anticipated while this Lease is in effect.

19- 20. Reservations

Lessor hereby excepts and reserves the right, to be exercised by Lessor or by any other person who has obtained or may obtain permission or authority from Lessor, 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 Lessee's use of the Premises.

20-21. Mineral Rights

Lessor 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.

21-22. Default

a. **Defaults.** The occurrence of any of the following shall constitute a material breach and default ("Default") of this Lease by Lessee:

- (1) Any failure by Lessee to pay when due any of the Rent or other charges payable by Lessee;
- (2) A failure by Lessee to observe or perform any other provision of this Lease to be observed or performed by Lessee when such failure is not corrected within ten (10) days after written notice thereof from Lessor; or if such failure cannot be cured within this ten (10) day period, as determined by Lessor in its reasonable discretion, if such cure is not commenced within thirty (30) days of Lessor's written notice and thereafter diligently pursued to completion;
- (3) The abandonment or the vacation of the Premises by Lessee 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 Lessee 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 Lessee 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 Lessee,
- d. an assignment for the benefit of creditors by Lessee,
- e. the levy of a writ of execution ~~of~~ on the business of Lessee or the assets of Lessee 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.

22-23. Remedies

In the event of a default by lessee, Lessor may, at any time thereafter:

- (a) Cure said Default by Lessee at Lessee's expense. Lessee shall upon demand, immediately reimburse Lessor for the cost of such cure together with interest at the Interest Rate ~~(Prime Rate plus four percent)~~ from the date of the expenditure therefore by Lessor until such reimbursement is received by Lessor.
- (b) Maintain Lessee's right to Possession in which case this Lease shall continue in effect whether or not the Lessee shall have vacated or abandoned the Premises, in which event Lessor shall be entitled to enforce all of Lessor'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 Lessee's right to possession. No act by Lessor other than giving written notice to Lessee will terminate this Lease.

(c) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee 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 Lessee proves could be reasonably avoided, and all other damages incurred by Lessor by reason of Lessee'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 Lessor 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.

23.24. Surrender of the Premises; Holding Over

(a) Upon termination of this Lease, Lessee shall leave the Premises in a neat and clean condition satisfactory to Lessor and free of all personal property of Lessee. All repairs, Alterations and/or other improvements made by Lessee shall become the property of Lessor, provided that Lessor may, by written notice given to Lessee on not less than (10) days prior to the expiration of the Lease, require Lessee 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 Lessee fails to do so, Lessor may perform such removal and restoration work in which case Lessee shall pay Lessor within thirty (30) days after demand therefore an amount equal to the ~~Base +~~Rent (as in effect immediately before termination) for the period during which such removal is accomplished to compensate Lessor for the loss of rent to Lessor resulting from the unavailability of the Premises for leasing to another Lessee during such time, (2) the cost of removal of such improvements. Lessor shall use reasonable diligence on the removal of such improvements, ~~and (3) an amount equal to Lessor's loss of use of the Premises for so long as needed to restore Premises.~~

(b) If Lessee, without Lessor'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.

24. 25. Condemnation

If all or part of the Premises is acquired by eminent domain or by purchase in lieu thereof, Lessee shall have no claim to any compensation awarded for the taking of the Premises or any portion thereof, including Lessee'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 Lessee's Alterations or improvements, except as may be expressly provided in this Lease.

25. 26. Assignment and Subletting

Lessee shall not assign or encumber or otherwise Transfer, as defined below, its interest in this Lease without the prior written consent of Lessor. Lessor shall not unreasonably withhold consent to any Transfer in the event the proposed sub Lessee or assignee meets Lessor'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, Lessor shall be entitled as **additional** rent to the base 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 Lessee to the proposed Transferee and 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 Lessee, or a reorganization or merger of Lessee by operation of law. As a condition to Lessor's consideration of any Transfer, Lessee will pay to Lessor, whether or not consent is ultimately given, Lessor's reasonable attorney's fees incurred in connection with each request for such consent ~~together with an administrative fee of \$1500.00~~. No Transfer, even with Lessor's written consent thereto, shall release Lessee from its obligations hereunder. Lessor's consent to one transfer shall not constitute its consent to any other Transfer, or a waiver of Lessor's rights hereunder. Lessee'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 Lessee. Any purported Transfer in violation of this Section shall be void and constitute a default hereunder, and at the option of Lessor, terminate Lessee's right to utilize the Premises under this Lease.

26-27. Damage as to Which Lessee Bears No Responsibility

Scope of Damage Lessee shall notify Lessor in writing immediately upon the occurrence of any damage to the Premises as to which Lessee (including its employees, visitors, ...) is not, in whole or in part responsible for, and 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, Lessor shall elect in a written notice to Lessee within sixty (60) days of the Casualty Date whether to restore the Premises, at Lessor's expense, to their condition prior to the Casualty Date. If Lessor elects to restore the Premises, Lessor shall diligently pursue such restoration to completion at Lessor's sole cost and expense, provided that Lessee shall be responsible for the restoration, at Lessee's expense of Lessee's fixtures, equipment and other improvements installed by Lessee. Upon such an election, this Lease will remain in effect. If Lessor elects not to restore the Premises, Lessee shall elect within thirty (30) days of receipt of Lessor's election whether to restore the Premises at Lessee's sole cost and expense. If Lessee elects to restore the Premises, Lessee 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 Lessee elects not to restore the Premises, this Lease shall terminate as of the date of Lessee's election.

Lessee's Costs If Lessor restores the Premises, Lessee shall reimburse Lessor for the deductible or self insured retention under any of Lessor's Insurance up to but not to exceed an amount equal to the Base Rent applicable at the time the repairs are completed if and any, if the Casualty was caused or contributed to by the Lessee or Lessee's Invitees, ~~Lessee shall reimburse Lessor for~~ the excess of the costs to restore the Premises over the amount of the insurance proceeds if any from the Lessor's Insurance. Lessee shall have no right to any insurance proceeds other than proceeds that Lessee obtained with respect to Lessee'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.

27. Barricades

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

28. Costs

Lessee 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 Lessor, which costs Lessee agrees to pay upon demand.

29. 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 Lessor 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.

30-29. Miscellaneous Provisions

a. Non Waiver. Lessor'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 Lessee of any provision hereof, regardless of Lessor's knowledge or lack of knowledge of such preceding breach at the time of acceptance of such rent; nor shall such acceptance be a waiver in any way of Lessor'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 Lessee represents and warrants that he or she is duly authorized to execute and deliver this lease on behalf of Lessee, and that this Lease is binding upon Lessee in accordance with its terms. Lessor, as a condition precedent to this Lease, may require corporate or partnership resolutions as are reasonably necessary to establish the authority of Lessee 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 ~~4415~~, ~~4516~~, ~~4617~~, and ~~4718~~ of this Lease, and shall be entitled to seek attorney's fees and costs as provided in Section ~~2928~~ above and dispute arising from the enforcement of said rights.

i. Brokers. Lessor and Lessee 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. Lessor and Lessee 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 Lessor or Lessee, 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.

Lessor:

North Coast Railroad Authority

By: Mitch Stogner _____

Name (Print) _____

Executive Director NCRA

Lessee:

By: _____

Name:

(Print) _____

Title _____

*By

Name:

(Print) _____

Title:

APPROVED AS TO FORM:

Attorney for Authority:

*If Lessee 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.

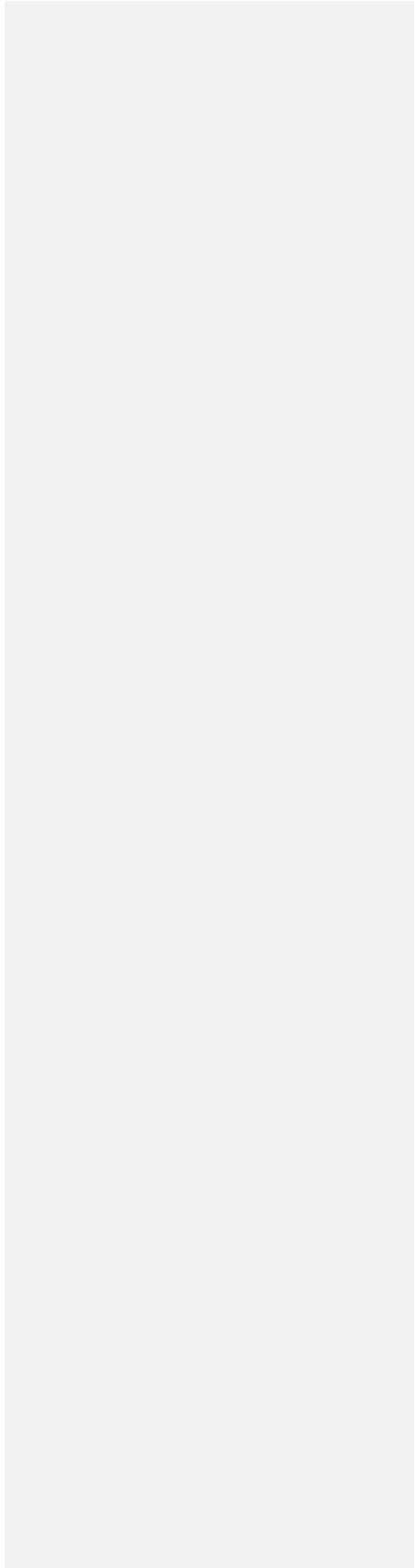


Exhibit "B"
Additional Conditions

Private Roadway

Carlotta

Lessor – North Coast Railroad Authority

Lessee – Jack Noble

Agreement Effective Date – ~~October~~ December 15, 2008

1. **Construction and Maintenance of Private Roadway**

A. Grading and road location are limited to no closer than 2 ft. from the ends of the crossties. Upon reconversion of the road to railroad use, the ballast slope will be replaced up to the tops of the crossties, any rail and crossties that are removed for the truck crossing must be replaced, and NCRA will be compensated for any damage to its track structure. This work shall be completed within 10 days of the Termination of the Lease to NCRA's satisfaction ;

B. All required resource permits will be the responsibility of the Lessee for the required grading and removal of vegetation on railroad property from River Bar Road Railroad Crossing to Railroad MP 266;

C. At the ~~entry of the property from the Van Duzen Ranch truck crossings~~ the existing track structure will be carefully removed and stored ~~(on railroad property immediately east of MP 266)~~ to allow for the required truck crossing of the rail bed without damaging the rail; or alternative truck protection approved by NCRA will be installed.

D. Grading required will not alter the existing drainage patterns. Any existing drainage structures shall be protected and maintained by the Lessee;

E. No truck traffic will be allowed at any location between 2 feet from the ends of the crossties and the centerline of track except for crossing the track at Milepost 266.0; and at the crossing located approximately 420 feet east of milepost 265.0.

EXHIBIT "C"

CONTRACTOR (Lessee) GENERAL SAFETY REQUIREMENTS

Presented to protect the employers and employees of all outside contractors or other **entities that will be working in or about the right of way of the Northwestern Pacific Railroad**

Safety is of prime importance in performing any of the service under contract with the Northwestern Pacific Railway Co., LLC (the Carrier"), the North Coast Railroad Authority, (the "Owner(s), and collectively referred to as the "Railroad"). The Railroad does not in any manner assume the control or responsibility of the Contractor, or other outside entity, to provide safe working conditions for the Contractor's employees, subcontractors, and ~~invitees~~**invitees in** requiring the Contractor, or other outside entity, to the Railroad's general safety requirements. The Contractor, or other outside entity, is responsible for compliance with Federal and State and local laws and any government regulations, including those related to Track Worker Protection when work is conducted on or around tracks. **Additionally, the Contractor, or other outside entity, is responsible for ensuring all local, State and Federal Safety Regulations are followed for all construction operations. These governing agencies will include, but are not limited to, the FRA (Federal Railroad Authority) and OSHA (Occupational Safety & Health Administration). If the Contractor is to be working within 25 feet of live track, its employees must be trained and certified in FRA Track Worker Safety and the Lessee shall insure this requirement is adhered to.**

Work in the proximity of a Railroad track is potentially dangerous. The Contractor, or other outside entity, and its employees, subcontractors and invitees are governed by the following Safety Rules and General Safety Requirements while on Railroad property. The Contractor, or other outside entity, are responsible for enforcement of these rules and requirements. The Railroad has the right to bar the Contractor, or other outside entity, its employees, subcontractors and invitees from working on Railroad property if the Railroad deems such persons are acting in an unsafe manner.

Safety rules cannot be all-inclusive. Workers must refrain from unsafe and improper practices, including both the violation of written rules and regulations, and rules of common sense.

1. The use of alcoholic beverages, intoxicants, narcotics, marijuana or other controlled substances by employees subject to duty or their possession or use while on duty or on Railroad property is prohibited. Workers must not report for duty under the influence of any alcoholic beverage, intoxicant, narcotic, marijuana or other controlled substance, or

medication, including those prescribed by a doctor, that may in any way adversely affect their alertness, coordination, reaction, response or safety.

2. Scuffling, horseplay, practical jokes and all conduct of a similar nature is prohibited.

3. All vehicle accidents resulting in damage to Railroad property will be reported immediately to the General Manager of the Northwestern Pacific Railroad Company and the NCRA.

All persons are prohibited from having firearms or other deadly weapons, including knives with a blade in excess of three inches, in their possession while on duty or on Railroad property, except those authorized to have them in the performance of their duties or those given special permission.

5. Good housekeeping is of the utmost importance in the prevention of accidents, injuries and fires. Clean-up will be conducted on a daily basis.

Tools or work materials must not be left in close proximity (less than 25 feet) to tracks.

7. Throwing waste, garbage, bottles, refuse, or other such materials on Railroad property or disposing of such at other than designated locations is prohibited. Each Contractor, or outside entity, will provide refuse containers at the work site and empty them on a daily basis.

8. Objects which constitute a slipping or tripping hazard must not be left in walking areas.

9. Open fires or fires in barrels are not allowed on Railroad property unless appropriate permits are acquired.

10. In all cases, established route of travel in and about the property must be used.

11. Railroad vehicles have an unquestioned right-of-way in all circumstances relating to work on or about the track area.

12. Workers must not wear or use anything which impairs vision or hearing. Listening to personal radios, tape players, telephones, or texting is prohibited while on duty.

13. All contractor employees working on the Company's property will be required to wear OSHA approved safety glasses with permanently attached side shields, hard hats and above-the-ankle, lace-up, hard toed safety boots with a defined heel and high visibility retro-reflective orange vests. During inclement weather, proper clothing to protect against frostbite, etc., will be worn. Particular attention to footing and the use of proper footwear is essential. Hearing protection, fall protection and respirators will be worn as required by local, State and Federal regulations. Office employees restricted to office work will not be required to comply.

14. All workers will become familiar with and be capable of recognizing Railroad equipment adjacent to the tracks.

15. Walking, stepping or standing on rails or ties, or sitting on any part of track structure except in performance of duty is prohibited. NOTE: The term "track structure" means the space between the rails and within eight feet outside the rails, unless otherwise specified.

16. Workers are prohibited from tampering with switches or any other Railroad equipment unless it is necessary for work operation and only in the presence of an authorized Railroad worker.

17. Workers must not go on or underneath rail cars. They must not occupy rail cars except in performance of their duty.

18. Workers must not cross tracks by crossing over or between cars that are coupled together.

19. Workers must not attempt to catch onto or ride any moving Railroad equipment, even though it may be moving slowly.

20. Workers must not take refuge from rain, heat, etc., under or in cars or other rail equipment.

21. Workers are warned that trains, locomotives or cars may be expected at any time, on any track, in either direction, and that they must watch for and keep clear of such movements. Workers must take extra precaution to be on the lookout for approaching trains, especially when working in multiple track territory, when field of vision is limited, or when noisy equipment is in use. A portable air horn may be used by a designated person to warn workers of approaching trains or equipment. Under certain conditions, trains and equipment can approach without being heard. Proper attention and protection are essential to personal safety when working near Railroad tracks.

22. Workers shall not work on the track, between tracks in multiple track territory, or nearer than 25 feet to the track without proper flag protection provided by the Railroad, unless the track is protected by track bulletin and work has been authorized by the Railroad. The Railroad must be given 72 hours notice to allow time to arrange for a flagman once the contractor has identified the need to be within 25 feet of the center line of track.

23. Any work within 25 feet of the rail, without consideration to height, must be stopped in the clear to acknowledge approaching and passing trains and be under the direction of the Railroad flagman.

24. Work in tunnels, on bridges and overpasses must be done in accordance with a safety plan agreed upon by the Chief Engineer or his/her representative prior to beginning work in these areas. When work is being done in tunnels, specific requirements must be met and work done under the Railroad's supervision.

25. Do not wave arms or objects violently except in an emergency; this is a STOP signal.

26. Workers must not make any movement toward an approaching train or operate machinery in a manner that would cause the engineer to believe that the track is going to be fouled.

27. Crossing tracks immediately in front of moving equipment is prohibited.

28. When necessary to cross any track, look both ways and keep at least 25 feet from the nearest end of stationary rail cars.

29. Machines may be operated across tracks only at established grade crossings. If it is necessary to do so at any other location, it may be done only with permission of and under the supervision of the Chief Engineer or his/her

representative on site. All heavy equipment provided or leased by the Contractor shall be equipped with audible backup warning devices.

30. Some rails are conductors of electrical current and are integral parts of the Railroad's operating system. Devices that could shunt this electrical current must not be laid across rails. No hand or portable tools will be left on the rails at any time. Use a wooden lath to provide separation when making measurements adjacent to the tracks.

31. Machines or vehicles must not be left unattended with the engine running. If a machine is left unattended, it must be in gear with brakes set. If it is equipped with blade, pan or bucket, that must be lowered to the ground.

32. All machinery and equipment left unattended on the right-of-way must be left inoperable and secured against movement.

33. When leaving work site areas at night and over weekends, the areas must be left in a condition that will ensure that Railroad employees who might be working in the area are protected from all hazards. Any open pits or holes shall be covered securely and a physical barrier such as a fence placed around the opening.

34. Machinery or equipment shall not be stored or left temporarily near a highway grade crossing in such a manner as to interfere with the sight distances of persons approaching that crossing. Prior to beginning work, the Contractor, or other outside entity, with concurrence of the Chief Engineer or his/her representative on site, will establish a storage area.

35. Cutting or knocking down trees or moving rocks and other materials that might fall on the track structure or on communications or power lines is prohibited, unless done with the approval and supervision of the Chief Engineer or his/her representative.

36. Workers must not create and leave any condition at the work site that would interfere with water drainage.

37. Safeguards and safety signs must be kept in place and in good condition. It is the responsibility of the Contractor, or other outside entity, to provide same.

38. Each person in charge of a work party must be familiar with the Mile Post location of the area in which work is being performed so that in cases of emergencies the exact location may be given to Railroad personnel.

39. In cases of emergency, it may be necessary for the Contractor's employees or agents to flag and stop approaching trains. Flagging equipment should consist of red fuseses and/or red flags.

40. When emergency flagging is necessary, Workers(employees of the Lessee or its Contractors) should protect against trains moving in both directions.

41. If required to perform emergency flagging, Workers must understand that a great distance is required in which to stop a moving train. The Railroad flagger must be at least 1.5 miles from the point being protected in order to provide minimum distance for the locomotive engineer to stop the train. A stop signal is given by swinging the lighted fusee or red flag at right angle to the track, but the engineer will recognize the stop signal if given violently in any manner from a point near the track. Workers, when giving a stop signal, must not stand on or within fouling distance of the track, as normally the engineer will not have the required stopping distance to stop short of the point where the signal is being given.

42. When an emergency exists or if any hazard is noticed on passing trains, the Engineer or his/her representative on site must be notified immediately.

43. High frequency radios (not CBs) shall be used by all crews for emergency communications between crews.

44. Radio transmitters must not be operated when located less than 250 feet from blasting operations.

45. When it is necessary to create a hazardous condition in performing work on or in the vicinity of a track, proper protection must be afforded in accordance with a safety plan submitted to and approved by the Chief Engineer or his/her representative prior to creating the hazardous condition, as well as taking any other precautions that may be necessary to protect the condition.

46. Before excavating, it must be ascertained by the Contractor, or other outside entity, if there are underground electric wires, cables, or pipe lines in the vicinity. Excavating on the right of way could result in damage to buried

cables resulting in delay to Railroad traffic. Before any excavation commences, contact the Northwestern Pacific signal and track representative in charge of the area. All underground and overhead wires are to be considered HIGH VOLTAGE and dangerous until verified with the company having ownership of the line. It is the Contractor's responsibility to notify any other companies that have underground utilities in the area before excavating.

47. If obstructions are encountered that do not appear on drawings, the Chief Engineer must be notified immediately before continuing excavation in the area. If the obstruction is a utility, and the owner of the utility can be identified, then the owner should also be notified immediately. If there is any doubt about the location of underground cables or lines of any kind, no work will be performed until the exact location has been determined. **There will be no exceptions to these instructions.**

48. All excavations regardless of depth will be shored where there is any danger to track structure or personnel.

49. No excavation will be left uncovered or unprotected overnight.

50. Holes or trenches in the vicinity of the track must be covered, guarded and protected when not being worked on.

51. Excavations, trenches or pits on or adjacent to public roads will be physically protected and denoted by highway barriers with flashing lights when not in use.

52. All excavations will be backfilled as soon as possible.

53. All power line wires must be considered dangerous and of high voltage unless informed to the contrary by proper authority. For lines rated 50KV or below, minimum clearance between the lines and any part of the equipment or load shall be 10 feet. For lines rated over 50KV, minimum clearance between the line and any part of equipment or load shall be 10 feet plus 0.4 inches for each 1KV over 50KV. If the capacity of the line is not known, minimum clearance of 20 feet must be maintained. A person shall be designated to observe clearance of the equipment and give a timely warning for all operations where it is difficult for an operator to maintain the desired clearance by visual means.

54. All work over or within water will meet local, State and Federal regulations.

55. When Contractor's, or other outside entities', employees are required to work on Railroad property after normal working hours or on weekends, the Railroad representative in charge of the project must be notified. **No one will be allowed to work alone** during the times specified above. When it is necessary to work during these times, a minimum of two employees are required to be present. This could be a Railroad employee with a Contractor employee or two Contractor employees.

56. Equipment and vehicles must operate at a safe speed, being aware of operating conditions as well as other equipment and persons working in close proximity. Extreme caution must be exercised at all grade crossings.

57. IN ALL CASES OF UNCERTAINTY, THE SAFEST COURSE MUST BE TAKEN!

58. Contractor General Safety Requirement: IMPORTANT: Disregard of any of these safety requirements may result in Contractor, or other outside entity, being shut down for a minimum of 48 hours on Railroad right-of-way while infraction is investigated. Based on findings of the investigation, it will be determined if the Contractor, or other outside entity, will be allowed to work on Northwestern Pacific right-of-way in the future.