

MARIN CONSENT DECREE SECURITY AGREEMENT

THIS AGREEMENT ("Agreement") is entered into by and between NORTH COAST RAILROAD AUTHORITY, a public agency ("NCRA") and the NORTHWESTERN PACIFIC RAILROAD COMPANY, a California corporation ("NWP"), its successors and assigns, and is effective as of January 22, 2009.

RECITALS

- A. NCRA, NWPY and the CITY OF NOVATO stipulated to a Consent Decree in Marin County, California, Superior Court, Case No. CV 074645, approved and entered by the Court on November 3, 2008 (the "Consent Decree");
- B. The Consent Decree requires expenditure of funds for various public improvements, amelioration of perceived adverse effects of freight traffic on residents adjacent to tracks, and attorneys' fees;
- C. NWP has agreed to provide financing for the aforesaid expenditure of funds in the form of a loan or loans to NCRA secured by real property and increased collateral security for funds previously advanced by NWP and funds expected to be advanced by NWP in the future under the Bridge Financing and Security Agreement ("Bridge Financing Agreement"), entered into by and between the parties on September 12, 2007.

IT IS NOW THEREFORE AGREED by and between the parties as follows:

1. **Loan Proceeds.** NWP shall loan to NCRA a total of \$325,000.00 for the payment of Novato's attorneys' fees, \$100,000.00 for ameliorative measures as provided in Section XI of the Consent Decree, and an amount not to exceed \$1,250,000.00 for improvements specified in Section VI of the Consent Decree, provided, however, that NCRA demonstrates to the satisfaction of NWP, in its sole discretion, that all other possible alternative funding for such improvements have been exhausted, including, but not limited to, unallocated portions of California Traffic Congestion Relief Program funds, Intermodal Surface Transportation Efficiency Act ("ISTEA") funds, funds made available by the Sonoma-Marín Area Rail Transportation program and other public funds.
2. **Request for Loan Proceeds.** NCRA shall provide NWP with timely, itemized requests for loan proceeds no less than ten days prior to the time when such proceeds will be required for meeting the obligations referenced herein.
3. **Repayment of Loan Proceeds.** NCRA's obligation to repay all funds loaned by NWP to NCRA pursuant to this Agreement shall be evidenced by one or more Notes in the form approved by NWP and all due and payable no later than five years from the effective date hereof at such time and place specified by NWP, unless NWP through no fault of its own is unable to operate by September 2010, in which case, the payment may be accelerated. The Note(s) shall

provide for payment of simple interest at the rate of eight percent (8%) per annum on any unpaid balance.

4. Collateral Security. As security for performance under the terms of this Agreement, NCRA pledges:

- a. **Railcar Security.** As security for performance under the terms of this Agreement, NCRA pledges thirty-five (35) boxcars now under lease, further described as car marks NCXX 1000-1034, inclusive, along with the lease and proceeds therefrom and all work equipment listed in Exhibit A, attached hereto. NCRA may file and/or record appropriate liens on said security, including but not limited to financing statements to perfect such security.

In addition, NCRA shall safeguard and protect said security to the reasonable satisfaction of NWP and shall not cause any of the security items to be otherwise collateralized, transferred, disposed of or wasted.

- b. **Alternative Security.** NCRA agrees to promptly make formal inquiry to the Department of Transportation as to whether there is any legal impediment to its offering its Ukiah Depot Property as security. It further agrees to consider the matter at its April 9, 2009 meeting of its Board of Directors and at such time, or as soon thereafter as is practicable, to make a determination as to whether or not there is any legal impediment to its offering the Ukiah Depot as security.

In the event that the Board of Directors in good faith makes a determination that the Ukiah Depot property may be offered as security for any obligations referenced in this Agreement, NWP may by written notice to NCRA indicate its willingness to terminate its Railcar Security as to this Agreement and have such obligations secured by the Ukiah Depot Property, in which case it shall offer to terminate any Financing Statement on the Railcars upon delivery by NCRA to NWP of a replacement promissory note, and deed of trust, in the form of which shall be approved as to form by the NCRA Board of Directors and NWP, whereupon NWP shall cause such termination immediately upon the perfection of the replacement security.

As used herein, the term "Ukiah Depot Property" shall mean the property described in that certain Resolution of the NCRA Board bearing Number 2009-01, of even date, which Resolution is incorporated herein by this reference, as being the Ukiah Depot Property, and the Surface Easement, excluding the Mainline Parcel.

5. Improvement of Prospective Collateral Security. NCRA agrees to commence within thirty days of the effective date hereof all actions necessary to enforce against the Southern Pacific Company and/or its successor, Union Pacific Company its/their contractual obligations to remediate the Ukiah Depot site and diligently pursue such enforcement until such time as the site

is free and clear of any toxic contamination and, from time to time, to report to NWP progress related thereto.

6. Other Improvements. As partial consideration for the obligations set forth herein, NCRA agrees to develop a project description for ISTEA funds to allocate as much funding as is required to automate the Black Point Swing Bridge, and to construct an interchange track on the Russian River Division in the vicinity of Lombard approximately one mile in length as proposed by NWP.

7. Status of Agreement. This Agreement supercedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements between the parties with respect to said matters, and each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally, in writing or otherwise, have been made by either party or anyone acting on behalf of either party, which is not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. With the exception of providing additional collateral security for the Bridge Financing Agreement, this Agreement does not alter or change the provisions of the Bridge Financing Agreement. This Agreement does not alter or change the October 11, 2006 Memorandum of Understanding between NCRA and NWP.

8. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successor(s) and assigns of the parties hereto.

9. Summary of Key Dates and Events. For purposes of clarifying the relationship between the parties it is understood that upon execution of this Agreement:

- a. The Bridge Financing Agreement provides that all funds secured thereby are to be retired as "Advance Lease Payments," unless the default provision of Paragraph 8 thereof applies;
- b. The principal and interest on all loan funds under the Bridge Financing Agreement are due on September 10, 2010 unless NCRA is in default pursuant to Paragraph 8 thereof;
- c. The Bridge Financing Agreement loan financing costs will be payable as a credit against future lease payments, unless NWP is not operating as a common carrier under the Resurrection Agreement through no fault of NWP, in which case, the loan financing costs shall be immediately due and payable as of such date.

10. Severability. In the event that any provision of this Agreement is held to be invalid, void, or unenforceable, the remainder of the Agreement shall nonetheless remain in full force and effect and shall not otherwise be affected, impaired or invalidated.

11. Notice. Any notices required herein or any other information passing between the parties shall be addressed to the following:

NWP: John Williams, President
Northwestern Pacific Railroad Co.
385 Sherman Ave., Ste. 1
Palo Alto, CA 94306-1840

NCRA: Mitch Stogner, Executive Director
North Coast Railroad Authority
419 Talmage Rd., Ste. M
Ukiah, CA 95482

12. Venue and Attorneys Fees. In the event legal action is brought by the parties hereto, the venue shall be the Superior Court of the State of California, County of Sonoma. The prevailing party shall be entitled to reasonable attorneys' fees and costs as determined by the Court.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

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

NORTH COAST RAILROAD
AUTHORITY

NORTHWESTERN PACIFIC RAILROAD
CO.

ALLAN HEMPHILL
Chairman of the Board of Directors

JOHN WILLIAMS
President

Date:

Date:

CHRISTOPHER J. NEARY
General Counsel

Date:

