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MEMORANDUM OF OPINION

TO: Board of Directors, North Coast Railroad Authority
CC: Mitch Stogner; NWP Co.; Douglas Bosco; Kirk Trost
FROM: Christopher J. Neary, General Counsel
NO: 2009-07
DATE: December 7, 2009
RE: Quaker Hill Crossing

At the September Board Meeting the Board of Directors approved an agreement regarding Grant of Permanent Crossing Agreement with Quaker Hill Project Associates. The Agreement contemplated that Northwestern Pacific Railroad Company would approve the Agreement. In October NWP Co. requested several changes to the Agreement which requires Board consideration and approval.

1. The Agreement provides at Paragraph 3.B.(ii) that Quaker Hill would pay to NCRA the sum of \$3,600 annually for maintenance expenses and to maintain an insurance policy for the newly installed crossing gates. The Agreement calls for this amount to be paid directly to NCRA, although the maintenance function would fall upon NWP Co. It was always contemplated that NCRA would in turn pay this sum to NWP Co. NWP Co. requests that it be memorialized in the Agreement. Therefore, at the conclusion of the paragraph, we propose adding the following language:

"NCRA agrees to pay to its Operator all sums paid to it under this paragraph immediately upon the receipt of such funds by NCRA."

2. In the same paragraph the Agreement approved by the Board in September contemplated that Quaker Hill or its successor shall maintain an insurance policy on the newly installed crossing gates. NWP Co. likewise noted that because it will be

responsible for repair of the crossing gates, insurance proceeds received by NCRA as insurance proceeds for loss shall in turn be paid to NWP Co. Accordingly, amendment language is proposed as follows:

“NCRA shall pay to its Operator immediately upon receipt, all insurance proceeds paid to NCRA by reason of the insurance policy referenced in Paragraph 3.B(ii).”

3. On September 9, John Williams of NWP Co. indicated that NWP Co. would be unwilling to assume any liability for accidents or damage at the public crossing because that liability now belongs solely to Quaker Hill as the holder of the private railroad crossing agreement. He suggests that either NCRA or Quaker Hill indemnify NWP Co. for liability incurred at this public crossing. We have raised the issue with Quaker Hill and it is unwilling to provide such indemnification as it intends to transfer its rights under this Agreement to the City of Healdsburg once its project is completed and the City of Healdsburg has in no uncertain terms indicated that it would not cooperate in providing an indemnity.

The only alternative is for NCRA to provide the indemnity to Quaker Hill. NWP Co. makes the point that NCRA is receiving the compensation for the easement and it should therefore bear the risk occasioned by the incremental liability. Accordingly this transaction will not occur unless NCRA agrees to indemnify NWP Co. To accommodate the finalization of the Agreement, the following language should be considered as an amendment to Paragraph 3.B(ii):

“NCRA shall indemnify its Operator for any liability for accidents or damage at the proposed public crossing as a result of the construction of the crossing contemplated by this Agreement and shall maintain an insurance policy naming its Operator(s) as additional insured with limits of Six Million Dollars (\$6,000,000) unless such coverage is otherwise available to the Operator with no further scheduled premium increase, with such insurance policy to be effective upon the commencement of operations.”

The cost of such insurance would be \$8,241.88 per year as indicated in the attached quotation from Alegany Insurance Holdings, LLC. While this properly belongs with the owner of the crossing, the owner of the crossing has declined to provide such insurance and this Agreement will not proceed unless NCRA agrees to bear the cost.

4. Lastly, NWP Co. is concerned that the Easement Agreement should not persist if Quaker Hill or its successors fail to maintain their obligations under the Agreement.

The actual Easement Agreement is attached as Exhibit "B" to the Agreement. To accommodate NWP Co's concern in this regard, we are proposing adding Paragraph 9 to the Easement Agreement as follows:

"By the terms of that certain Agreement Regarding Grant of Permanent Crossing Easement dated December 2009 between Quaker Hill Project Associates, a California limited partnership and North Coast Railroad Authority, Grantee is required to pay the sum of \$3,600 annually for NCRA's maintenance of crossing improvements due and payable on the 30th day of each month and to maintain an insurance policy for damage to the crossing gates caused by the public in an amount of \$50,000 per occurrence naming NCRA and NWP Co. or NCRA's successor operator as the case may be, as additional insureds. In the event that Quaker Hill or its successors fail to meet its obligations under the Agreement regarding Grant of Permanent Crossing Easement, this Easement shall terminate upon a Decree of Declaratory Relief in the Superior Court of California, County of Sonoma, to the effect that the payment of the obligations, with time being of the essence, have not been made by Quaker Hill Project Associates, or its successor, after thirty days' written demand to the obligor to comply. In the event that this provision is invoked by NCRA, the Superior Court shall enter a Decree declaring this Easement null and void if it finds: (1) Quaker Hill or its successor has failed to meet its obligations under this Agreement; (2) NCRA has provided written notice and opportunity to cure for at least a thirty day period; and (3) the obligation remains uncured after Notice. The invocation of the jurisdiction of the Superior Court is solely for the purpose of affording due process to Quaker Hill or its successor as to whether or not there has been compliance, and the Court shall not consider any other factor in law or equity to excuse performance or to allow the easement to remain in effect in the face of default."

I am enclosing a copy of the Agreement approved in September; and NWP Co.'s letter dated October 8, 2009.

**AGREEMENT REGARDING GRANT OF
PERMANENT CROSSING EASEMENT**

THIS AGREEMENT REGARDING GRANT OF PERMANENT CROSSING EASEMENT is made and entered into as of _____, 2009, by and between the **North Coast Railroad Authority**, a legislatively created state agency ("NCRA"), and **Quaker Hill Project Associates**, a California limited partnership ("**Quaker Hill**").

Recitals

WHEREAS, NCRA owns that certain railroad right-of-way running between Healdsburg, California and Eureka, California; and

WHEREAS, effective May 1, 2004, NCRA granted to Quaker Hill a lease for a private road crossing, and pipeline crossing at milepost 70.85, and a spur track at milepost 70.89 (the "**Lease**"); and

WHEREAS, Quaker Hill, with the cooperation of the City of Healdsburg (the "**City**"), intends to (i) file an application with the California Public Utilities Commission ("**PUC**") to convert the road crossing at milepost 70.85 to a public crossing, (ii) construct improvements to such crossing (as approved by the PUC) in accordance with the terms and conditions of the Lease, (iii) transfer the new crossing gates, signals, trackage and related appurtenances to NCRA upon completion thereof, and (iv) relinquish the "Private Road Crossing License" referenced in Exhibit "A" of the Lease upon NCRA's grant of a permanent Easement Agreement, as provided in this Agreement.

Agreement

NOW, THEREFORE, the parties agree as follows:

1. PUC Application: The City's application to the PUC will propose improvements to the public crossing as shown on **Exhibits A-1, A-2 and A-3** (the "**Crossing Improvements**"). NCRA and its contracted freight operator, Northwestern Pacific Railroad Company ("**NWP Co.**"), will actively support the City's application to the PUC.
2. Construction of Crossing Improvements; Modification of Crossing Improvements for Double Tracking:
 - a. NCRA hereby consents to the construction of the Crossing Improvements in accordance with Section 10 of the Lease. Prior to the commencement of construction, NCRA and NWP Co. shall have reviewed and approved all engineering specifications and drawings for the Crossing Improvements, which approval will not unreasonably be withheld, conditioned, or delayed.
 - b. Quaker Hill will construct the Crossing Improvements in accordance with all of the terms and conditions of the Lease related to construction of improvements,

provided that in lieu of the performance bond referenced in Section 10 of the Lease, Quaker Hill will provide NCRA with a bond in an amount not less than fifty percent (50%) of the total estimated cost of the Crossing Improvements to be conveyed to NCRA, securing payment to any contractors, subcontractors and persons renting equipment or furnishing labor or materials to Quaker Hill for such Crossing Improvements. The bonding surety shall be licensed to do business in the State of California and shall have an A.M. Best financial strength rating of at least B+. If the bonding surety's rating falls below B+, Quaker Hill shall replace the bond with a bond issued by a qualified surety within 30 days after receipt of written notice from NCRA.

- c. NCRA and/or NWP Co. shall have the right to monitor and inspect the work in progress, test, and approve the completed Crossing Improvements, which approval will not unreasonably be withheld, conditioned, or delayed.
- d. If NCRA, Sonoma Marin Area Rail Transit, and/or NWP Co. obtain all the necessary permits to construct a parallel track within the existing railroad right-of-way within ten (10) years following the date of this Agreement, Quaker Hill, or its successor(s) in interest to the property located at 16977 Healdsburg Avenue (the "**Quaker Hill Property**"), will modify the Crossing Improvements, as necessary to accommodate the parallel track.

3. Grant of Permanent Crossing Easement; Amendment to Lease:

- a. Within ten (10) days after the date first above written, NCRA will execute (with signatures acknowledged by a notary public) and deliver to Quaker Hill an Easement Agreement in the form attached as **Exhibit B**.
- b. In consideration of NCRA's execution and delivery of the Easement Agreement, Quaker Hill, or its successor or assignee, will:
 - (i) Pay to NCRA (i) the sum of \$125,000 as compensation for the property rights conveyed herein, due and payable in two installments. The first installment of \$50,000 shall be due and payable concurrently with NCRA's execution and delivery of the Easement Agreement. The foregoing \$50,000 payment shall be non-refundable, irrespective of the action taken by the PUC. The second installment of \$75,000 shall be due and payable within ten (10) days following the PUC's approval of the public crossing contemplated by this Agreement. Interest at a rate of 5% per annum shall accrue and be paid in monthly (based on a 30-day month) on the unpaid balance of the second installment of \$75,000 beginning 18 months after the PUC has accepted a complete public crossing application from the City and ending upon payment of the second installment of \$75,000. Accrued interest shall be paid on the 30th day of each month beginning on the 30th day of the 18th month following acceptance of the completed public crossing application by the PUC. The foregoing interest payments shall be non-refundable, irrespective of the action taken by the PUC.

- (ii) Pay to NCRA the sum of \$3,600 annually for NCRA's maintenance of the Crossing Improvements, due and payable on the 30th day of the month following the transfer of the Crossing Improvements to NCRA, and on the 30th day of that month each year thereafter. Upon the transfer of the public improvements to NCRA, Quaker Hill or its successors shall maintain an insurance policy for damage to the crossing gates caused by the public in the amount of \$50,000 per occurrence. The insurance policy shall be written by an insurer licensed to do business in the State of California and shall have an A.M. Best financial strength rating of at least B+. If the insurer's rating falls below B+, Quaker Hill shall replace the insurance policy with a policy issued by a qualified insurer within 30 days after receipt of written notice from NCRA. The policy shall name the NCRA and NWP Co. as additional insureds and, if possible, shall provide for 30 days' notice of cancellation. If Quaker Hill or its successors in interest fail to maintain the required insurance, NCRA may purchase the insurance and charge the premium amount to Quaker Hill or its successors, as applicable. The required payment of the annual maintenance amount and property damage insurance shall be evidenced by a recorded memorandum on title to the Quaker Hill Property.
- c.
 - (i) Upon NCRA's execution and delivery of the Easement Agreement, the "Private Road Crossing License" referenced in Exhibit "A" of the Lease will automatically terminate and the rent payable under Section 4 of the Lease will be reduced to \$500 per year to account for the reduction in the leased area. Except for the termination of the "Private Road Crossing License" under the Lease and the rental reduction, all other terms and conditions of the Lease (including, without limitation, the rental adjustment provisions in Section 5 of the Lease) will remain in full force and effect.
 - (ii) Notwithstanding the termination of the "Private Road Crossing License," the Indemnification and Insurance provisions of the Lease (Sections 15 and 17, respectively) will continue to apply to the road crossing until the Easement Agreement is assigned to the City of Healdsburg, at which point said provisions will terminate with respect to the road crossing.
 - (iii) NCRA and Quaker Hill acknowledge and agree that the rights and obligations under the Lease and under this Agreement are the rights and obligations of NCRA and Quaker Hill or its successors, as lessor and lessee, and not the City.

4. Transfer of Crossing Gates, Trackage and Related Appurtenances:

- a. Upon completion of the Crossing Improvements, NCRA and/or NWP Co. will test and approve the Crossing Improvements, which approval will not unreasonably be withheld, conditioned, or delayed.

- b. In addition, Quaker Hill will notify the FRA and PUC of the completion of the Crossing Improvements and afford them the opportunity to inspect and approve the same. If the FRA or PUC have not inspected the Crossing Improvements within 45 days after delivery of such notice by Quaker Hill, the FRA or PUC, as applicable, will be deemed to have approved the same for purposes of this Agreement only.
 - c. Following the foregoing approvals of the Crossing Improvements, Quaker Hill will transfer to NCRA, and NCRA will accept, the crossing gates, trackage and related appurtenances by a Bill of Transfer and Delivery in the form of **Exhibit C**.
5. Payment for Cost Recovery Services: NCRA has determined that its review of the plans and specifications for the Crossing Improvements, and inspections during construction, may require NCRA to incur costs which are chargeable to Quaker Hill. Therefore:
- a. Quaker Hill will pay all reasonable costs relating to the review of the plans and specifications for the Crossing Improvements, including all related personnel, direct, indirect, overhead and inspection costs, as well as the cost of consultants retained by NCRA to assist in the foregoing, even if Quaker Hill's application to the City is subsequently withdrawn, disapproved, approved subject to conditions, or modified upon approval.
 - b. Concurrently with any request to review plans and specifications for the Crossing Improvements, Quaker Hill will deposit with NCRA the sum of \$5,000, to be held and applied by NCRA to the payment of all cost recovery expenses as they accrue. NCRA will keep a detailed account of all disbursements from deposited funds, and on a regular basis, will furnish a statement of said account to Quaker Hill. Within ten (10) days after final inspection of the Crossing Improvements and acceptance thereof by the City, NCRA will return to Quaker Hill, without interest, all funds remaining on deposit after payment of all cost recovery expenses. If at any time the balance on deposit is reduced to \$1,000, or less, Quaker Hill will, within ten (10) business days after receipt of a written request from NCRA, make an additional deposit in the amount specified in said written request, provided that such amount will be less than the amount originally deposited and will represent NCRA's reasonable estimate of its ongoing or remaining costs.
 - c. If Quaker Hill does not submit requested funds within the time period set forth above, NCRA may stop all work related to the Crossing Improvements until the payment is made. Quaker Hill further acknowledges and agrees that Quaker Hill's failure to provide the requested funds may result in NCRA stopping its review of the plans and specifications until all costs have been paid. Interest will accrue on all costs unpaid thirty days after a deposit or reimbursement request is made by NCRA at seven percent (7%) per annum and NCRA is entitled to recover its costs, including attorney's fees, in collecting unpaid accounts.

6. Notices: All notices and other communications under this Agreement will be in writing and will be deemed to have been duly given (i) on the date of delivery, if delivered personally to the party to whom notice is given, or if made by telecopy on a regular business day directed to the party to whom notice is to be given at the telecopy number listed below, or (ii) one business day following deposit with an overnight courier, or (iii) at the earlier of actual receipt or the third business day following deposit in the United States mail, postage prepaid. Notices and other communications will be directed to the parties at the addresses shown below. A party may change its person designated to receive notice, its telecopy number, or its address from time to time by giving notice to the other party in accordance with the procedures set forth in this Section.

NCRA: Attention: Mitch Stogner
 419 Talmadge Road
 Ukiah, CA 95480
 Fax: (707) 463-3282

Quaker Hill: Craig R. Harrington
 Quaker Hill Development Corporation
 P.O. Box 2240
 Healdsburg, CA 95448
 Fax: (707) 431-9577

7. Suspension or Termination of Agreement: Prior to commencement of the construction of the Crossing Improvements, Quaker Hill may elect to suspend, or terminate this Agreement in its entirety, upon ten (10) days' written notice to NCRA.
8. Entire Agreement. Modifications in Writing: This Agreement contains the Parties' entire agreement. Any modifications or additions to this Agreement must be made in writing by the Parties.
9. Assignment. Quaker Hill may assign this Agreement to another person or entity, subject to NCRA's prior written approval, which approval shall not unreasonably be withheld, conditioned or delayed.
10. Exhibits and Schedules: All Exhibits and Schedules attached to this Agreement are incorporated herein by this reference.
11. Authorization. This Agreement will only be executed by authorized representatives of the Parties. The persons executing this Agreement represent that they have the express authority to enter into agreements on behalf of their respective Parties.

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

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

QUAKER HILL PROJECT ASSOCIATES

NORTH COAST RAILROAD
AUTHORITY

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Attest: _____
Name: _____
Title: _____

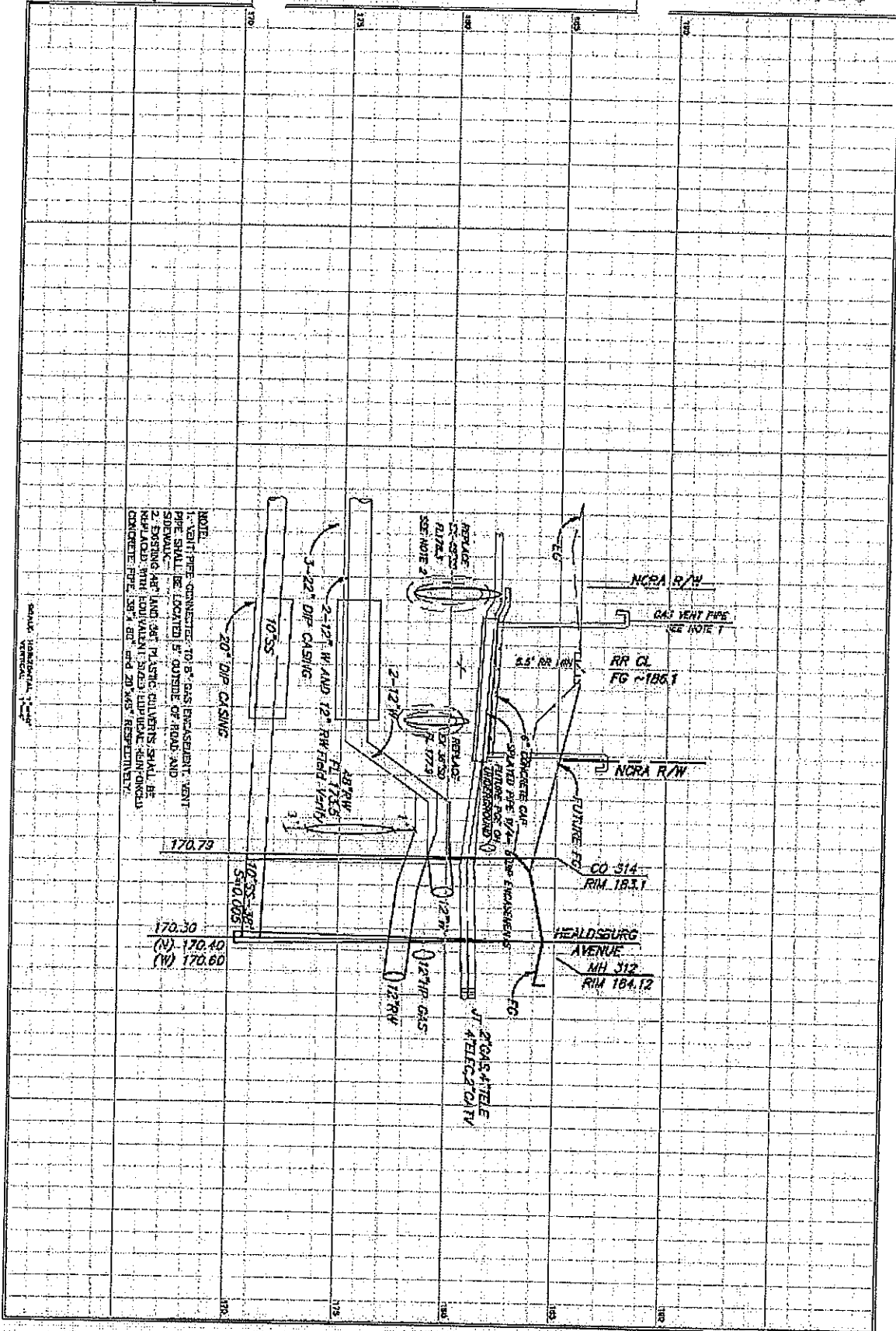
Approved as to the rights and obligations of NWP Co.:

NORTHWESTERN PACIFIC RAILROAD COMPANY

By: _____
Name: _____
Title: _____

EXHIBITS A-1, A-2 & A-3

Crossing Improvements



NOTE:
 1. VENT PIPE CONNECTED TO B. GAS ENCLOSURE VENT PIPE SHALL BE LOCATED 5' OUTSIDE OF ROAD AND 2' FROM CURB AND SET IN STONE CONCRETE. SHALL BE REPLACED WITH 1/2\"/>

QUAKER HILL DEVELOPMENT COMPANY LOCATED IN PEPPERHARBOR, CALIFORNIA	DESIGNED BY 	DRAWN BY CAE	CARROLL • MALU Civil Engineers • Design Planners • Land Developers • Landscape Architects 11 Third Street, Suite 200, CA 94913 Tel: (415) 441-4411 Fax: (415) 441-2513
	FUTURE RAILROAD CROSSING MP 70.85	CHECKED BY RSC & WMS	

EXHIBIT B

Form of Permanent Crossing Easement

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

(Space Above For Recorder's Use)

**EASEMENT AGREEMENT
Street Crossing of Railroad Line**

THIS GRANT OF EASEMENT is made and entered into as of _____, 20[___], by and between the **North Coast Railroad Authority**, a legislatively created state agency ("NCRA"), and **Quaker Hill Project Associates**, a California limited partnership ("**Grantee**").

Recitals

WHEREAS, NCRA owns that certain railroad right-of-way running between Healdsburg, California and Eureka, California; and

WHEREAS, effective May 1, 2004, NCRA and Grantee entered into a lease for a private road crossing, and pipeline crossing at milepost 70.85, and a spur track at milepost 70.89 (the "**Lease**"); and

WHEREAS, by separate agreement with NCRA, Grantee has agreed to terminate the "Private Road Crossing License" referenced in Exhibit "A" of the Lease in consideration of the rights granted to Grantee hereunder.

Agreement

NOW, THEREFORE, the parties agree as follows:

1. NCRA hereby grants to Grantee the right to construct, reconstruct, maintain and use a street or highway and underground public utilities, hereinafter collectively termed "**highway**," upon and across the real property described and depicted on the attached **Schedules 1 and 2**.

2. This grant is subject and subordinate to the prior right of NCRA, its successors and assigns, to use all of the property described in the performance of its duty as a common carrier, and there is reserved unto NCRA, its successors and assigns, the right to construct, reconstruct, maintain, use and remove existing and future transportation, communication, power and pipeline facilities in, upon, over, under, across or along said property. In the event NCRA's trackage facilities are removed from said property, NCRA shall not be obligated to make any change in the grade of said highway, nor shall such removal affect NCRA's title to the underlying property.

This grant is subject to all licenses, leases, easements, restrictions, conditions, covenants, encumbrances, liens and claims of title which may affect said property, and the word "grant" shall not be construed as a covenant against the existence thereof.

3. This grant shall not be construed as conveying or otherwise vesting in Grantee the right to install or authorize the installation of any above-ground utility facilities, except as necessary for maintenance of said highway.
4. Grantee shall obtain any necessary governmental authority to construct, reconstruct, maintain and use said highway. Any contractor performing work on the property herein described shall comply with NCRA's Contractor General Safety Requirements attached hereto as **Schedule 3**.
5. Except as herein otherwise provided, Grantee shall bear the entire expense of constructing, reconstructing and maintaining said highway. The crossing of said highway over any tracks of NCRA shall be constructed and maintained at the grade of said tracks now or hereafter existing. After the construction or reconstruction of said highway has been completed, NCRA shall maintain (i) the surface of that portion of said highway between lines two (2) feet outside the rails of each track located thereon, and (ii) the above-grade railroad crossing improvements at the Crossing, including crossing gates, lights, cantilevers, foundations, signal conduit, signage and electronic control devices to operate the railroad crossing, but excluding signal conduit and wiring for the pre-emption of traffic signals (which will be the Grantee's responsibility). Should NCRA abandon tracks leading to said highway, NCRA may abandon its rails, ties and appurtenant materials and leave same in place. In such event, NCRA shall not be liable for maintenance of the portion of said highway specified above.
6. Should Grantee at any time abandon the use of said property or any part thereof, the rights granted shall cease to the extent of the use so abandoned, and NCRA shall at once have the right, in addition to but not in qualification of the rights herein above reserved, to resume the exclusive possession of said property or the part thereof the use of which is so abandoned.
7. Grantee may assign this Indenture to any person or entity, including the City of Healdsburg.
8. This Indenture shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Schedules 1 & 2 of Exhibit B
Legal Description of Crossing Property

**Schedule 1 of
Exhibit B**

INGRESS, EGRESS, PUBLIC ACCESS AND UTILITY EASEMENT

Lying within the County of Sonoma, State of California, and being a portion of the lands of North Coast Railroad Authority, as described by deed recorded under Document Number 1996-038424, Official Records of Sonoma County, said portion being more particularly described as follows:

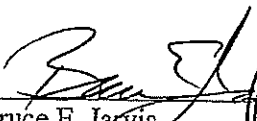
Commencing at a 6-inch x 6-inch concrete highway right-of-way monument on the northwesterly right-of-way line of Healdsburg Avenue (formerly Highway 101), at beginning of curve station 174+25.62 as shown on that record of survey map filed in Book 594 of Maps, Page 26, Sonoma County Records, also being on the southerly line of Parcel 4 of the lands of Quaker Hills Project Associates, as described in deed recorded under Document Number 1990-049770, Official Records of Sonoma County, from which a 6-inch x 6-inch concrete highway right-of-way monument bears South 44°00'04" East 60.00 feet; thence southwesterly along the northwesterly right-of-way line of Healdsburg Avenue, South 46°00'22" West 428.49 feet; thence leaving said right-of-way line, North 88°21'03" West 36.35 feet; thence North 42°46'33" West 28.41 feet to the southeasterly line of said lands and the POINT OF BEGINNING; thence southwesterly along said southeasterly line, South 44°34'47" West 70.08 feet; thence leaving said easterly Railroad right-of-way line North 42°46'31" West 80.09 feet to the northwesterly line of said lands; thence northwesterly along said northerly line, North 44°34'47" East 70.08 feet; thence leaving said northerly line South 42°46'33" East 80.09 feet to the POINT OF BEGINNING.


Containing 5,606 square feet more or less

Being a portion of APN 091-060-033.

See Exhibit "B" for graphic depiction.

This description prepared by Carlile • Macy.

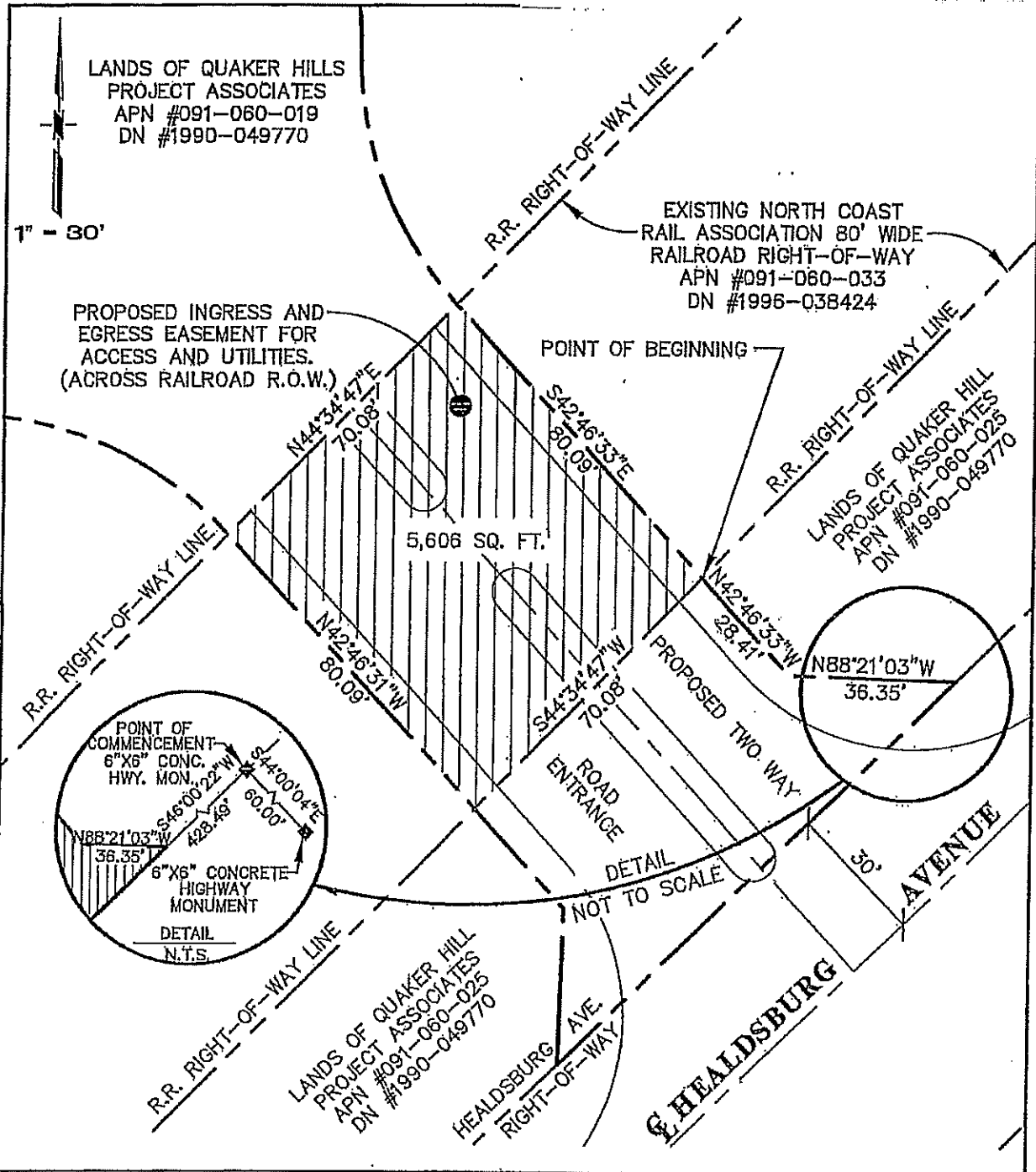

Bruce E. Jarvis
PLS 5143
Exp. 6/30/11



SEP 11 2009
Date

END OF DESCRIPTION

Schedule 2 of Exhibit B



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OWNER AND MAILING ADDRESS	PROPERTY AREAS	CITY OF HEALSBURG		
P419 TALMAGE ROAD #M UKIAH, CA. 95482	TAKE _____ REMAINDER _____ TOTAL _____	QUAKER HILL PROJECT ASSOCIATES		
A.F. No. 091-060-033 O.R. No. 1996-038424 O.R. No. _____	CITY ACQUISITION DEED O.R. _____			
		DWN. WJE CHK. JS	APPROVED	R-

Schedule 3 of Exhibit B

CONTRACTOR 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

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, and/or the Northwestern Pacific 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 or subcontractors 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 laws and any government regulations, including those related to Track Worker Protection when work is conducted around tracks. **Additionally, the Contractor, or other outside entity, is responsible for ensuring all 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, his employees must be trained and certified in FRA Track Worker Safety.**

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, is responsible for enforcement of these rules and requirements. The Carrier 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.

CONTRACTOR GENERAL SAFETY REQUIREMENTS (Cont.)

4. 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.
6. 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 or tape players 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 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.

CONTRACTOR GENERAL SAFETY REQUIREMENTS (Cont.)

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 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 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.

CONTRACTOR GENERAL SAFETY REQUIREMENTS (Cont.)

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 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 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 representative.

CONTRACTOR GENERAL SAFETY REQUIREMENTS (Cont.)

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 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 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 representative prior to creating the hazardous condition, as well as taking any other precautions that may be necessary to protect the condition.

CONTRACTOR GENERAL SAFETY REQUIREMENTS (Cont.)

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 State and Federal regulations.
55. When Contractor, or other outside entity, employees are required to work on Railroad property after normal working hours or on weekends, the Railroad representative in charge

CONTRACTOR GENERAL SAFETY REQUIREMENTS (Cont.)

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.

EXHIBIT C

BILL OF TRANSFER AND DELIVERY

Quaker Hill Project Associates, a California limited partnership ("**Quaker Hill**"), does hereby transfer and deliver to the **North Coast Railroad Authority**, a legislatively created state agency ("**NCRA**"), its successors and assigns, the following described personal property, to wit:

1. All at-grade and below-grade improvements constructed by Quaker Hill located within two feet of the outside edge of NCRA's tracks at the at-grade roadway crossing of NCRA's railroad right-of-way in Healdsburg, CA at Milepost 70.85 (the "**Crossing**"), but not including below-grade utilities and conduit owned by the City of Healdsburg to serve Quaker Hill's property.
2. All above-grade railroad crossing improvements constructed by Quaker Hill on NCRA's right-of-way at the Crossing, including crossing gates, lights, cantilevers, foundations, signal conduit, signage and electronic control devices to operate the railroad crossing, but excluding signal conduit and wiring for the pre-emption of traffic signals.

IN WITNESS WHEREOF, Quaker Hill and NCRA have each duly executed this instrument effective as of the _____ day of _____, [____].

QUAKER HILL PROJECT ASSOCIATES

NORTH COAST RAILROAD
AUTHORITY

By: _____
Its: _____

By: _____
[Name/Title]

Attest: _____
[Name/Title]

NORTHWESTERN
PACIFIC
RAILROAD
COMPANY

October 8, 2009

Mr. Mitch Stogner
Executive Director
North Coast Railroad Authority
419 Talmage Road, Suite M
Ukiah, CA 95482

RE: Quaker Hill Agreement

Mitch,

I am returning unsigned the 5 copies of the "Agreement Regarding Grant of Permanent Crossing Easement" proposed to be entered into by NCRA and Quaker Hill Project Associates at MP 70.85.

Although NWP Co. is opposed to this project in principle, believing that construction of an overpass would be the safer alternative, I am willing to sign the proposed NCRA – Quaker Hill Agreement if and when an agreement that is acceptable to NWP Co. has been authorized and executed by the NCRA Board that addresses the following issues:

1. In accordance with the provisions of Paragraph 3.b.(ii), NCRA will agree to pay to NWP Co. the sum of \$3,600 annually for NWP Co.'s maintenance of the crossing improvements. Further, NCRA shall agree to pay all amounts received from Quaker Hill immediately upon their receipt by NCRA on or about the 30th day of each month.
2. In accordance with that same Paragraph 3.b.(ii), NCRA shall agree to pay to NWP Co. immediately upon receipt all insurance proceeds received as a result of the insurance policy for damage to the crossing gates caused by the public.
3. As I explained to the NCRA Board on September 9, 2009, NWP Co. is unwilling to assume any of the liability for accidents or damage at the proposed public crossing because that liability now belongs solely to Quaker Hill as the holder of the private railroad crossing agreement. Therefore, the NCRA – Quaker Hill Agreement must be modified so that Quaker Hill (or its successor) shall indemnify NWP Co. for all liability incurred at this public crossing. Further,

206046.doc

Mr. Mitch Stogner
October 8, 2009

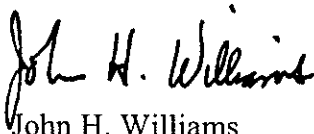
Page 2

Quaker Hill shall maintain an insurance policy that will cover all crossing liability from whatever cause in the amount of \$6,000,000. Alternatively, Quaker Hill shall pay to NWP Co. the amount of \$8,242 annually in accordance with the insurance quotation contained in Attachment A, that amount to be indexed annually for inflation by the CPI.

4. The NCRA – NWP Co. Agreement shall stipulate that if any of the payments detailed in the previous three paragraphs are not made in full in a timely manner, then NWP Co. may immediately close the public crossing at MP 70.85, without opposition from NCRA, Quaker Hill, or the City of Healdsburg.

Please let me know how you would like to proceed with this matter.

Sincerely,



John H. Williams
President

JHW/ja

Enclosures

cc: Christopher J. Neary, Douglas H. Bosco



RSUI Group, Inc.
15303 Ventura Boulevard
Suite 500
Sherman Oaks, CA 91403

Phone (818) 922-6700
Fax (818) 922-6699

September 08, 2009

Rathbone, King & Seeley
100 Pine Street
23rd Floor
San Francisco, CA 94111
Fax: (415) 421-0620

ATTENTION: ANGELA WILLIAMS

RE: Primary Casualty Quote

Submission Number: 111841
Company: Landmark American Insurance Company - (Best rating: A XII)
Coverage: Railroad Protective Liability
Insured: Northwestern Pacific Railroad Co
Palo Alto, CA
Contractor: Summit Signal
Job: Install new crossing, including panels, gates and flashers on 4
quadrants. Maintain grade crossing warning signals.
Policy Dates: September 14, 2009 - September 14, 2010

Form And Coverages

2001 ISO - Occurrence With Defense Outside Limit - Railroad Protective Liability. Please contact the underwriter if you have any questions about the standard provisions of this form.

Each Occurrence: \$2,000,000
General Aggregate: \$6,000,000

Policy Attachments and Forms

- State Fraud Statement RSG 99022 0908
- Amendment - Pre-Existing Damage Or Injury RSG 16039 0708
- California - Service Of Suit RSG 92062 0208
- California Changes CG 3234 0105
- California Surplus Lines Disclosure Notice RSG 99019 0109
- Common Policy Conditions IL 00 17 11 98
- Defense Costs Amended RSG 14060 0306
- Exclusion - Absolute Asbestos RSG 16004 0903
- Exclusion - Cross Suits RSG 16014 0604
- Exclusion - FEELA RSG 16025 0903
- Exclusion - Fungi or Bacteria RSG 16026 0903
- Exclusion - Lead RSG 16032 0903
- Exclusion - Silica or Mixed Dust RSG 16080 0304
- Exclusion - Violation of Statutes That Govern E-Mails, Fax, Phone Calls RSG 16102 0808
- Exclusion of Certified Acts of Terrorism and Other Acts of Terrorism CG 21 75 0608
- Ins Req All Work Performed On Behalf Of Any Insured - RRP RSG 14077 0809
- Minimum Premium and Minimum Retained RSG 14026 1206
- Nuclear Energy Liability Exclusion Endorsement IL 00 21 07 02
- Railroad Protective Liability Coverage Form CG 00 35 10 01
- War Liability Exclusion CG 0064 1202

	<u>Premium Amount</u>	B/W Fee: \$500
		SLA Tax: \$225
		Stamp Fee: \$ 16.88
Flat Charge:	\$7,500.00	
TRIA Premium:	\$500.00	
Minimum Earned Premium:	\$7,500.00	Total premium w/Fees: \$8,241.88 w/o TRIA
Gross Premium:	\$8,000.00	
Commission:		Based on Estimate Of: \$0.00
		Comm. %: 10

Comments:

THE PREMIUM AMOUNT DOES NOT INCLUDE SURPLUS LINES TAX. YOUR OFFICE IS RESPONSIBLE FOR THE COLLECTION AND FILINGS.

Please read all terms and conditions shown above carefully as they may not conform to specifications shown on your submission.

Please note: Certificates of Insurance do not amend, extend or alter coverage afforded by any Landmark American Insurance Company policy and are the responsibility of the insured to maintain for their records.

This Quote is valid until 09/14/2009.

We greatly appreciate your business.

Jason Porter



OFFER OF TERRORISM COVERAGE

In accordance with the Terrorism Risk Insurance Act, we are required to offer the insured coverage for losses resulting from an act of terrorism, not otherwise excluded by this policy, and as covered by the Terrorism Risk Insurance Act. All other policy provisions will apply to coverage for such act of terrorism. The insured must choose whether or not to pay the premium described below under **DISCLOSURE OF PREMIUM** for coverage for acts of terrorism that are **certified by the Secretary of the Treasury** as covered acts under the Terrorism Risk Insurance Act, or not to pay the premium, and reject this offer of coverage at the time of binding.

If the premium shown in the **DISCLOSURE OF PREMIUM** is "waived" this policy will be issued covering certified acts of terrorism and no action from the insured is required.

DISCLOSURE OF PREMIUM

If you accept this offer at the time of binding, the premium covering acts of terrorism **that are certified by the Secretary of the Treasury** under the Terrorism Risk Insurance Act is \$500.00.

DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES

The United States Government, Department of Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

This Endorsement Changes The Policy. Please Read It Carefully.

**INSURANCE REQUIREMENT
ALL WORK PERFORMED ON BEHALF OF ANY INSURED**

This endorsement modifies insurance provided under the following:

RAILROAD PROTECTIVE LIABILITY COVERAGE FORM

You, as a condition of this insurance, will require by written contract that all contractors working on your behalf maintain primary insurance naming you as an additional insured, which insurance shall be evidenced by certificates of insurance maintained by you and shall include the following:

1. COMMERCIAL GENERAL LIABILITY coverage written on an "occurrence" basis with a current policy period for limits of at least:
 - \$1,000,000 each occurrence
 - \$1,000,000 general aggregate
 - \$1,000,000 products – completed operations aggregate
2. You are included as an additional insured, as is required by your contract and reflected by the certificate.
3. This policy will be excess over, and will not contribute with, any insurance provided by a subcontractor.

This insurance shall not apply to "bodily injury", "property damage" or "physical damage to property" arising out of "your work" performed by any contractor or subcontractor on behalf of any insured, unless all of the above conditions have been met.

This endorsement effective
forms part of Policy Number
issued to
by