



## MEMO

**To:** NCRA Property Committee  
**From:** Executive Director Stogner  
**Date:** January 11, 2012  
**Subject:** **Property Management Discussion**

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On December 14, 2011 the NCRA Board directed the Property Committee (Directors Kelley-Chair, Meyers, McCowen, and Wolter) to develop an updated plan for management of NCRA's property from Healdsburg to Samoa. The goal, as outlined in the December 14 staff memo, is to hire an individual with railroad real estate expertise to handle specific aspects of NCRA's property needs.

In developing the plan required to meet NCRA's property needs, the following issues should to be addressed:

A. Classifications of Property Uses/Encroachments and approval required for each:

1. Temporary rights-of-entry;
2. Private Roadway Crossings;
3. Utility Crossings;
4. Commercial Crossings;
5. Special Event Permits.

B. Types of Agreements:

1. License: gives permission to the owner, individual or entity to use property for specific purpose. Non-transferable and revocable;
2. Lease: specific term, longer term than license, transferable unless otherwise stated;
3. Easement: encumbers the title of property. Usually permanent and can be transferred.

Note: Exhibit "A" outlines current NCRA Property Policy as it appears in the NCRA Policies and Procedures Manual.

- C. Inventory:
1. What encroachments are we currently collecting on;
  2. What encroachments should we be collecting on;
  3. What new potential encroachments exist that would generate revenue for the agency.
- D. Revenue from Property Transactions (actual and projected):
- 2009-2010 - \$331,000  
2010-2011 - \$338,000  
2011-2012 - \$230,000 projected;
- E. NWP Co. rights and interests regarding property (see Exhibit B);
- F. Scope-of-work for local railroad property specialist to be hired hourly, through retainer, or under a commission arrangement.

### **Past Property Efforts**

When NCRA acquired the rail line in 1996, there were existing leases and other encroachments that were managed by Southern Pacific. In 1997, NCRA entered into an agreement with a real estate professional to continue management of these agreements. On March 15, 2001, the contract for this real estate professional was extended for one additional year. NCRA was paying a monthly fee of \$1,250.00, with a provision for the property manager to receive commissions on extraordinary agreements that were negotiated.

The agency began to manage NCRA property internally in 2002. Throughout 2003 and 2004, staff inventoried all of the documents related to NCRA property leases. The 2003/04 list was used to begin research, invoice users of property, and determine which encroachments were currently in use, which encroachments had current agreements, and which encroachments were expired or needed further review and attention.

In 2005, NCRA staff was required to turn its attention to other priorities including issuing an RFP and selecting a freight operator, securing capital funding to repair the first phase of the line, and completing all the necessary steps to restore commercial freight service. Since 2005, staff has been able to invoice current lessees and enter into new agreements for encroachments/crossings on an ad-hoc basis. Most recently, the Board has finalized agreements for permanent easements with Caltrans, Quaker Hill and Tyriss Corporation which increased property revenue significantly for the calendar year 2010.

### **Current Efforts**

The agency has been able to maintain the historical level of revenue from property management and collections. As stated, the increases in property revenue in Fiscal Year 2009 and fiscal year 2010 are due to the large one-time agreements with Caltrans (Willits Bypass), Quaker Hill, and Tyriss.

In many instances, however, staff has encountered resistance from land owners unwilling to enter into new agreements for encroachments/crossings or continue paying on existing agreements. The primary problem has been that NCRA lacks the funding and staff to enforce existing agreements.

Staff estimates that, if the property is adequately managed, there could be an increase of at least \$100,000 per year in property revenue, although this may take 2-5 years to accomplish.

### **NCRA's Current Property Management Policy**

In 2006, NCRA approved a Policies and Procedures Manual which includes the Property Conveyance Management Policy (See Exhibit A). The property policy includes the current fee schedule for encroachments/crossings, staff procedures, and types of agreements.

Staff believes that the fee structure should be set according to industry standards. This would mean setting rates that better reflect fair market value for usage. Staff has researched application fees charged by other rail lines and has found that the range of fees associated with submitting an application is from \$500.00 to \$4,000 (non-refundable) depending on the type of encroachment. There are also additional fees for "expedited review."

In terms of the applicant's needs, there are at least two classifications of leases/licenses: (1) usage which is convenient; (2) and usage which is absolutely necessary for the landowner to have access to adjoining property. In the first instance, the holders would not likely be interested in renewing at higher rates, in which case unnecessary private crossings could be eliminated. In the second instance, the holder would be inclined to renew, or suffer the loss of a necessary property attribute.

### **Types of Usage and Valuation of Railroad Property**

Usage of NCRA property varies. The most common uses are electrical and gas transmission lines, water and sewage lines, communication lines, including fiber optic installations, crossings both public and private, and land for storage or structures.

Staff believes that other possible revenue enhancing uses that should be explored are signboard agreements, additional telecommunication (fiber optics) agreements, and easements for trails.

Valuation of Railroad Property is a complex issue. Railroad corridors are unique in nature and, depending on the proposed use, many different forms of appraisal methods may be considered. Staff believes that for transactions outside of the current "Fee Schedule" or other extraordinary license /easements requests, outside appraisal/s should be utilized to determine the value of the right-of-way.

### **Scope of Work for Potential Property Specialist**

The successful management of NCRA property will result in much needed increases in the agency's unrestricted revenue. This can be accomplished by hiring a knowledgeable person to conduct a thorough inventory of the current uses on the NCRA right-of-way. An inventory of current uses would require the following:

1. Physical rail line tour. This will require use of a high rail vehicle and qualified person to operate the high rail vehicle;

2. Use of Parcel Quest or some other aerial mapping system (staff currently uses ParcelQuest);
3. Once the current usage is documented, comparisons to the agreements on file to determine outdated, expired or terminated agreements will be required;
4. Follow-up contact with current lease holders will be required to explain any fee increases will also be necessary;
5. Further follow-up with property owners will be required in some instances, to inform them of NCRA's intent to enter into new agreements.

The person selected for this position should have knowledge related to railroad property issues, the ability to utilize public property records to determine ownership of parcels, general legal knowledge related to railroad property transactions, and an understanding of railroad mapping, and other mapping programs, as well as an understanding of FMV for railroad properties.

Duties would include: road crossing analysis and inspection; determining alternative access; coordinating with NCRA's Operator, Legal Counsel and Engineer, negotiating private crossing agreements; researching agreements; identifying property ownership and responsibilities; reviewing maps; investigating and gathering facts on real estate assets; identifying and pursuing opportunities for additional property revenue. The successful applicant would also be expected to provide a periodic report to the Board.

#### **Payment for Service**

The person selected to conduct property management services could be paid as an at-will, hourly employee of NCRA or a contractor with a not-to-exceed contract. Staff believes that a one-year, \$25,000 contract may be all that's needed in the first year.

#### **Staff Recommendation:**

Authorize staff to negotiate a contract for an amount not to exceed \$25,000 per year, for a property specialist to perform the tasks outlined herein. Funds will need to be identified to carry the contract fees for 6-12 months. Thereafter, the fee is expected to be covered through increased property revenues generated by the successful applicant. The sufficiency of projected revenue should be reviewed quarterly to determine the success of this effort.

**EXHIBIT A**  
**CURRENT NCRA PROPERTY POLICY**

0800 Property Conveyance Management Policy

The NCRA has acquired the former Northwestern Pacific Railroad (NWPRR) Right-of-way north of Mile Post 68.22 in Healdsburg for the purpose of preserving it as a transportation corridor. Recognizing that the NCRA will receive requests for entry onto the right-of-way from time to time for various transportation and non-transportation purposes, the Board desires to enact policies to facilitate the timely processing of requests for easements, licenses or other encroachments. By adoption of the policies set forth below, the NCRA reaffirms the basic principle that protection and preservation of the former Northwestern Pacific (NWP) Right-of-way for transportation purposes is of paramount importance. Requests for entry onto the corridor will only be considered and/or granted if they can be accommodated in accordance with the aforementioned principle.

0801 Policy Regarding Processing of and Action upon Requests for Conveyance of  
Property Interests Involving NCRA Property

0801.1 Review of all Requests by NCRA Staff

NCRA staff will process for consideration all requests for entry onto property owned by the NCRA, including, without limit, requests for encroachments, licenses, leases, right-of-entry permits, special event permits, and easements (collectively, "Encroachment"). All requests will be submitted on the NCRA standard application form, along with an initial application fee in the amount set in the NCRA fee schedule as set forth in Chapter 0801.6 of this policy, and such supporting information as NCRA staff deems necessary to review the Encroachment request. Additional fees may be required depending on the type and nature of encroachment requested.

NCRA staff will analyze the Encroachment request for its compatibility with the current use and anticipated future development of the corridor for transportation purposes from engineering feasibility, planning, maintenance, and cost impact perspectives. NCRA staff's review will verify that:

1. The Encroachment request is in accordance with current and applicable railroad engineering standards and operational requirement and all applicable provisions of Public Utilities Commission regulations
2. The applicant's improvements are compatible with the broadest range of possible transportation alternatives for the right-of-way and will minimize the necessity for future relocation of any improvements
3. The granting of the Encroachment request is in full compliance with the requirements of applicable federal and state law, including any restrictions contained in grants and/or funding agreements for the right-of-way acquisition
4. The granting of the Encroachment request will not materially interfere with rail freight or passenger transit operations or cause additional expense or increase the liability exposures to the operator(s) of such services or the NCRA

5. The basic principle of protection and preservation of the Right-of-way for transportation purposes.

#### 0801.2 Encroachment Agreement

NCRA staff will analyze each Encroachment request in accordance with this policy, and, if it supports granting the request, NCRA staff will proceed to develop a proposed form of agreement with the party presenting the Encroachment request (i.e., grantee, licensee, lessee or permittee, herein collectively referred to as “Licensee”) for execution by either the Executive Director or the Chairperson of the Board of Directors, as provided for below in Chapters 0801.3 and 0801.4. The form of agreement shall contain, in addition to provisions deemed necessary or appropriate by legal counsel or due to the particular features of the Encroachment request, the following requirements:

1. That Applicant maintains and repairs to NCRA requirements, at its sole expense, its improvements that are constructed or placed on the Encroachment property.
2. That Applicant agrees to reimburse the NCRA for all costs and expenses incurred above the Application Fee in processing the application, evaluating and preparing the Encroachment Agreement and other related documents, and overseeing the construction or placement of improvements on NCRA property (including the cost of providing flagging and other support activities).
3. That Applicant and/or its contractor shall indemnify the NCRA, its directors, officers, staff, employees, agents, and representatives against liability arising out of Licensee’s use of the property.
4. That Applicant maintains the types of insurance at the insurance limits deemed necessary or appropriate by NCRA.
5. That Applicant shall provide a surety and/or performance bond or other acceptable form of security to insure satisfactory completion of any construction occurring on the Right-of-way during the period of such construction and, in the sole discretion of NCRA staff, Licensee shall provide a surety bond or other acceptable form of security to insure the satisfactory performance of any other obligations as deemed necessary or appropriate.
6. That Applicant agrees to relocate the improvements constructed or placed on the Encroachment property at its sole cost and expense, if such relocation is necessary for the development of the Right-of-way for public transportation purposes or to otherwise protect the Right-of-way as determined at the sole discretion of the NCRA, its successors or assigns.
7. That NCRA reserves the right to revoke the Encroachment agreement with 30-day notice without cause or breach.
8. That Applicant agrees to pay the fee for use of NCRA property in accordance with the schedule set forth in Chapter 0801.6 hereof as it may be amended from time to time.

NCRA staff shall forward the completed application and its recommendation to the Executive Director. If the request is within the authority of the Executive Director, as described below, the Executive Director shall decide whether or not to grant the Encroachment request. If the request is not within the authority of the Executive Director, the Executive Director shall determine whether it is appropriate for the Board’s consideration and, if appropriate, shall insure timely

consideration of the Encroachment request by the Board. Any decision by the Executive Director to deny an Encroachment request falling within his/her authority or not to schedule a request not within his authority for Board approval shall be final, subject only to the right of any Board member to bring the matter before the Property Committee for review and recommendation to the Board.

#### 0801.3 Authority of the Executive Director

The Executive Director may approve all requests for licenses, leases or right-of-entry permits that do not require NCRA Board approval, as provided in Chapter 0801.4 below (such as underground or overhead utility installations, filming or temporary construction uses of the Right-of-way, provided that (1) the Encroachment request will not have an adverse impact on the current use or future development of the corridor for transportation purposes, and (2) the Encroachment agreement shall be terminable upon no more than thirty (30) days' notice without cause.

#### 0801.4 North Coast Railroad Authority Review

After review and recommendation of the Property Committee, the Board of Directors of the NCRA shall review and approve, by signature of the Chairman of the Board, or disapprove the following types of Encroachment requests:

1. All Encroachment requests for permanent easement rights for any purpose. The NCRA hereby enunciates a policy that requests for permanent easements generally should be denied. However, the Board shall review each such request on a case-by-case basis to determine if the easement is compatible with the current use of and future development of the transportation corridor. The permanent easement may be granted provided the applicant pays appropriate compensation or provides other consideration for burdening the Right-of-way with the easement.
2. All Encroachment requests for at-grade crossings, public or private. The NCRA hereby enunciates a policy that requests for at-grade crossings should be denied. However, under special circumstances, an applicant may request an at-grade crossing, which shall be reviewed by the NCRA on a case-by-case basis. Upon review, if the NCRA determines that the requested crossing is necessary, and no other readily or reasonably feasible alternative exists, the NCRA may grant a temporary license for an at-grade crossing, terminable at will. The license agreement shall provide that upon termination, if the applicant has no other feasible alternative access, the applicant shall construct a suitable overcrossing or undercrossing at its sole cost and expense. Any crossings permitted will be subject to compliance with the regulations of the California Public Utilities Commission.
3. Any Encroachment request determined by NCRA staff to have probable adverse impacts on existing freight operations or the future development of the corridor for transportation purposes. NCRA approval is required for any Encroachment request that has probable adverse impacts on the current use or the future development of the corridor for transportation purposes.

4. All other Encroachment requests, which fall outside of the scope of authority for approval by the Executive Director as described in Chapter 0801.3, or are determined by the Executive Director to be appropriate for Board consideration. All other Encroachment requests as determined by the Executive Director to be appropriate for Board consideration shall be referred to the Property Committee for review and recommendation to the Board for approval or disapproval.

#### 0801.5 Form of Agreement

The form of agreement to be used in the event that an Encroachment request is granted shall be reviewed and approved by legal counsel.

#### 0801.6 Fee Schedule

The applicant shall be responsible to reimburse the NCRA for the Authority's actual costs and expenses of processing the application, preparing the encroachment agreement, and other related documents and overseeing the placement or construction of improvements to the property.

The following minimal fee schedule for Fiscal Year 2006-07 has been adjusted from the prior December 2002 rates based on the Consumer Price Index – All Consumers for San Francisco, Oakland, San Jose, CA. The following fees will be used, and all contracts will be written with an escalation provision based on an annual increase to take effect every July based on the CPI change from the current year April as compared to the prior year April.

The following fees will be accompanied by a \$324 application fee. Long term agreements may have higher fees depending on usage, and will include the escalation factor described above.

1. Temporary rights-of-entry permits: \$541 Private Roadway Crossings: \$324 per year
2. Utility Crossings: \$324 per year
3. Commercial Crossings: \$3,244 per year
4. Special Event Permits: \$108 per day
5. All other Encroachments: Market Value as determined by the Executive Director, Property Management Committee, or Board of Directors
6. Unauthorized Encroachments: Twice the applicable fee applied retroactively
7. Late fees for delinquent annual encroachment payments.

This fee schedule is subject to periodic revision from time to time by the NCRA Board of Directors.

### 0802 Property Management (Revenue) Procedures

#### 0802.1 Purpose

To establish an accurate, current database of leases, licenses and revenue generating easements, and any other revenue generating entitlements offered by the NCRA. QuickBooks is used to store information and produce reports and invoices. It contains information on the lessees,

licensees and holders of other entitlements, information on invoicing, payment history, term of lease, and expiration dates.

#### 0802.2 Annual Leases

A large portion of NCRA revenue is made up of annual lease payments for easements, temporary access permits, and other encroachments, along the railroad right-of-way. The leases are organized by a Mile Post system created by the previous owners of the railroad. The right-of-way begins in Healdsburg at Mile Post 68.22 and extends north to Samoa at Mile Post 302.9 in Humboldt County.

#### 0802.3 Changes to Leases

Historically, the accounts receivables have been, and will continue to be, fluid in nature. Property owners along the right-of-way are constantly changing ownership and more often than not, the NCRA is not notified of these changes as local parties fail to disclose legal agreements between the NCRA and property owners when title is changed.

#### 0802.4 Fee Schedule for Leases

The fee schedule for Encroachment permits is found in Chapter 0801.6, as well as the guidelines for preparing Encroachment permits and agreements. NCRA collects revenue in the form of application fees for accessing the right-of-way. Invoices for temporary access and special permits are billed as requests are made. Once a private roadway crossing or a utility crossing agreement is in place, it is reviewed and billed annually.

**EXHIBIT B**  
**NWP Co. Summary of Agreements Regarding Property**

**September 13, 2006 Lease Agreement**

On August 10, 2010 the NCRA Board extended the initial term of the September 2006 lease Agreement with NWP Co. to 6 years, covering the period September 13, 2006 to September 13, 2012. The “first option” extends the contract for 20 years, and on September 13, 2011 NWP Co. sent a letter to NCRA stating its intent to exercise this option.

•**V.D.** of the September 13, 2006 Agreement says that all of the premises conveyed to NWP Co. shall be used for railroad purposes unless NCRA and NWP Co. agree in writing that specific properties are not needed to provide railroad service and may be leased to others.

•**X.A.1.** of the Agreement establishes the Lease Payments Fund “to accept the required annual lease payments from NWP, to disburse to NCRA the required annual Administrative Payment, to make emergency and other repairs, to make capital improvements to the NWP line, and for other purposes.

•**X.B.1.** says that NWP shall make annual Lease Payments totaling 20% of its Net Income beginning in the first year after NWP earns Net Income in excess of \$5.0 million.

•**X.B.2.** grants NWP the right to manage, develop, lease and control all of the property that is not used for railroad service. This provision also says that “all real estate revenues received by NWP that are derived from all property owned by NCRA and leased by NWP, that is not used to provide railroad service but is leased to others, shall be paid to NCRA annually, subject to the maximum annual Administrative Payment requirement, as reduced by the total of NCRA’s income from other sources (as outlined in subsection C.1).

Note: This provision contemplates NWP assuming management of the property and boxcar lease as defined, and NWP making a total payment of \$1 mil. per year in unrestricted funding for the NCRA agency budget, \$500,000 of which would be derived from property leases and the boxcar lease managed by NWP, and \$500,000 of which would be paid as a lease payment for use of the trackway.

•**X.C.1.** As summarized in the note above, this provision says, “The Fund shall make maximum annual Administrative Payments to NCRA of \$1.0 mil. per year, adjusted for inflation. The maximum annual Administrative Payment to be paid to NCRA shall be reduced by the total of all of NCRA’s income from other sources, including but not limited to its income from real estate leases and fees, easements, crossing fees and charges, proceeds from the sale of its assets, and its boxcar lease, which the parties calculate at this time to total about \$500,000.” This provision goes on to say, “When the parties agree that management of NCRA’s real estate and crossing leases and fees, its leased box cars, and other sources will be transferred to NWP, then the Fund’s obligation to pay to NCRA shall increase to the maximum annual Administrative Payment of \$1.0 million per year”.....

**October 11, 2006 MOU between NCRA and NWP co. for Interim Financing**

This agreement sets an amount NWP Co. will pay to NCRA, at its sole discretion, while NCRA manages repairs under the TCRP program and says the following regarding property management:

- 1. “Unless otherwise agreed in writing, NCRA shall retain responsibility for and control of its revenue sources, including specifically all of its property and crossing lease revenue and rail car lease revenue until such time as the conditions for Lease Payments are satisfied.”

**June 2011 Amendment to 2006 Lease Agreement with NWP Co.**

The June 2011 Amendment, approved by the NCRA Board on June 20, 2011, made the following changes to the 2006 Lease Agreement regarding property management.

- 7. “Article X.B.2. relating to transfer of property management will be renegotiated. However, pending renegotiation of this agreement, the NCRA will retain any property proceeds for its own account.”

## Exhibit C

### Sample Employment Contract

The **NORTH COAST RAILROAD AUTHORITY** (“AUTHORITY”) and \_\_\_\_\_ (“CONTRACTOR”) enter into this contract which shall be effective on the date stated in Paragraph 1.

1. Duration of Contract

This contract shall commence on or about \_\_\_\_\_ and end \_\_\_\_\_, unless sooner terminated as specified herein.

2. Scope of Services

CONTRACTOR, for AUTHORITY’s benefit shall perform the services specified on Attachment A to this contract. Attachment A is made a part of this contract.

3. Compensation for Services

In consideration for CONTRACTOR’s performance, AUTHORITY shall pay compensation to CONTRACTOR according to the terms specified in Attachment B. Attachment B is made a part of this contract.

4. General Terms and Conditions

The rights and duties of the parties to this contract are governed by the general terms and conditions mutually agreed to and listed in Attachment C. Attachment C is made a part of this contract.

5. Insurance Limits

CONTRACTOR shall maintain the following insurance policy limits of coverage consistent with the further insurance requirements specified in Attachment C.

- (a) Comprehensive General Liability Insurance: \$1,000,000
- (b) Professional liability insurance: \$1,000,000
- (c) Comprehensive motor vehicle liability insurance: n/a

6. Termination

The number of days of advance written notice required for termination of this contract is 30 (thirty) days.

7. Specific Terms and Conditions (*check one*)

- There are no additional provisions to this contract.
- The rights and duties of the parties to this contract are additionally governed by the specific, additional terms mutually agreed to and listed in Attachment D. Attachment D is made a part of this contract.

8. Information about Contract Administrators.

The following names, titles, addresses, and telephone numbers are the pertinent information for the respective contract administrators for the parties.

Contract Administrator for AUTHORITY:

Contract Administrator for CONTRACTOR:

Name: Mitch Stogner

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

Title: Executive Director

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

Address: 419 Talmage Road, Suite M  
Ukiah, CA 95482

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No. 707.463-3280

Telephone No. \_\_\_\_\_

Fax No. 707.463-3282

Fax No. \_\_\_\_\_

**SIGNATURES**

APPROVED BY AUTHORITY:

APPROVED BY CONTRACTOR:

\_\_\_\_\_

\_\_\_\_\_

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

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

Chair, North Coast Railroad Authority

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

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

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

APPROVED AS TO LEGAL FORM:

General Counsel

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

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

**Attachment A**  
**SCOPE OF SERVICES**

Reporting to the Executive Director, the property specialist will be responsible for the following activities:

1. Become familiar with the existing leases on file in NCRA's office.
2. Conduct field visit of accessible portions of NCRA's right-of-way from Healdsburg to Samoa.
3. Use computer programs such as ParcelQuest to identify encroachments and determine property usage.
4. Work closely with NCRA staff to understand the current accounting, tracking, and billing, collections, application, and approval procedures.
5. Provide information on a weekly basis to staff to help prepare billing information.
6. Recommend a streamlined approach for application and approval procedures that will involve both NCRA as property owner and NWP Co. as the railroad operator.
7. Provide procedural recommendations to be considered by staff and NCRA's Policies and Procedures Committee and NCRA's Board.
8. Provide periodic status reports to the Board of Directors at monthly meetings.
9. Maintain a comprehensive database of active and inactive lease accounts.
10. Analyze existing leases to determine if NCRA is receiving fair market value, and make recommendations for implementing increased lease amounts where necessary.
11. From the observations in task 2 field visit, and task 3 computer observations, and based on input from NCRA and NWP Co. staff, identify "stealth" encroachments, and make recommendations for entering into new lease/license agreements.
12. Manage new encroachment permit/lease requests, including obtaining the application, contract negotiation, processing, document preparation, collections, and obtaining appropriate approvals from NCRA and NWP Co.
13. Where appropriate, market property.
14. Update Executive Director as needed regarding revenue projections and other property related developments.

**ATTACHMENT B**  
**Payment Schedule**

**B-1. BILLING**

Charges for services rendered pursuant to the terms and conditions of this contract shall be invoiced on the following basis: *(check one)*

- One month in arrears.
- Upon the complete performance of the services specified in Attachment A.
- The basis specified in paragraph B-4.

**B-2. PAYMENT**

Payment shall be made by AUTHORITY to CONTRACTOR at the address specified in paragraph 8 of this contract per paragraph B-4.

**B-3. COMPENSATION**

AUTHORITY shall pay CONTRACTOR: *(check one)*

- A total lump sum payment of \$\_\_\_\_\_
- A total sum not to exceed **\$25,000 (twenty-five thousand five hundred dollars)** for services rendered pursuant to the terms and conditions of this contract and pursuant to any special compensation terms specified in paragraph B-4.

**B-4. SPECIAL COMPENSATION TERMS: *(check one)***

- There are no additional terms of compensation.
- The following specific terms of compensation shall apply: *(specify)*

**End of attachment B**

**ATTACHMENT C**  
**General Terms and Conditions**

**C-1. INDEMNIFICATION.**

CONTRACTOR and AUTHORITY each agree to indemnify, defend and save harmless the other party and the other party's officers and employees, from and against any and all claims and losses whatsoever arising out of, or in any way related to, the indemnifying party's performance under this contract, including, but not limited to, claims for property damage, personal injury, death, and any legal expenses (such as attorneys' fees, court costs, investigation costs, and experts' fees) incurred by the indemnitee in connection with such claims or losses. A party's "performance" includes the party's action or inaction and the action or inaction of that party's officers and employees.

**C-2. GENERAL INSURANCE REQUIREMENTS.**

Without limiting CONTRACTOR's duty to indemnify AUTHORITY, CONTRACTOR shall comply with the insurance coverage requirements set forth in the contract and in this attachment. Those insurance policies mandated by paragraph C-3 shall satisfy the following requirements:

1. Each policy shall be issued by a company authorized by law to transact business in the State of California.
2. Each policy shall provide that AUTHORITY shall be given notice in writing at least thirty (30) days in advance of any change, cancellation, or nonrenewal thereof.
3. The comprehensive motor vehicle and comprehensive general liability policies shall each provide an endorsement naming the North Coast Railroad Authority and its officers, agents and employees as additional insureds.
4. The required coverage shall be maintained in effect throughout the term of this contract.

CONTRACTOR shall require all subcontractors performing work under this contract to obtain substantially the identical insurance coverage required of CONTRACTOR pursuant to this agreement.

**C-3. INSURANCE COVERAGE REQUIREMENTS.**

If required by paragraph 5 of the contract, CONTRACTOR shall maintain the following insurance policies in full force and effect during the term on this contract:

1. Comprehensive general liability insurance. CONTRACTOR shall maintain comprehensive general liability insurance, covering all of CONTRACTOR's operations with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
2. Professional liability insurance. CONTRACTOR shall maintain professional liability insurance with liability limits of not less than the amount set out in paragraph 5 of this contract.

3. Comprehensive motor vehicle liability insurance. CONTRACTOR shall maintain comprehensive motor vehicle insurance covering all motor vehicles (including owned, non-owned, and hired) used in providing services under this contract, with a combined single limit of not less than the amount set out in paragraph 5 of this contract.
4. Workers' compensation insurance. CONTRACTOR shall maintain a workers' compensation plan covering all of its employees as required by California Labor Code Section 3700, either through workers' compensation insurance issued by an insurance company or through a plan of self-insurance certified by the State Director of Industrial Relations. If CONTRACTOR elects to be self-insured, the certificate of insurance otherwise required by this contract shall be replaced with a consent to self-insure issued by the State Director of Industrial Relations.

#### **C-4. CERTIFICATE OF INSURANCE.**

Prior to the commencement of performance of services by CONTRACTOR and prior to any obligations of AUTHORITY, CONTRACTOR shall file certificates of insurance with AUTHORITY, showing that CONTRACTOR has in effect the insurance required by this contract. CONTRACTOR shall file a new or amended certificate promptly after any change is made in any insurance policy which would alter the information on the certificate then on file. In lieu of providing proof of insurance, CONTRACTOR may provide proof of self-insurance meeting requirements equivalent to those imposed herein. CONTRACTOR warrants that CONTRACTOR's self-insurance provides substantially the same protection to AUTHORITY as the insurance required herein. CONTRACTOR further agrees to notify AUTHORITY in the event any change in self-insurance occurs that would alter the obligations undertaken in this contract within thirty (30) days of such change.

#### **C-5. RECORDS TO BE MAINTAINED.**

CONTRACTOR shall keep and maintain accurate records of all costs incurred and all time expended for work under this contract. CONTRACTOR shall contractually require that all of CONTRACTOR's subcontractors performing work called for under this contract also keep and maintain such records. All such records, whether kept by CONTRACTOR or any subcontractor, shall be made available to AUTHORITY or its authorized representative, or officials of the State of California for review or audit during normal business hours, upon reasonable advance notice given by AUTHORITY, its authorized representative, or officials of the State of California.

#### **C-6. RETENTION OF RECORDS.**

CONTRACTOR shall maintain and preserve all records related to this contract for a period of three years from the close of the fiscal year in which final payment under this contract is made. CONTRACTOR shall also contractually require the maintenance of such records in the possession of any third party performing work related to this contract for the same period of time. Such records shall be retained beyond the three-year period, if any audit involving such records is then pending, until the audit findings are resolved. The obligation to insure the maintenance of the records beyond the initial three year period shall arise only if the

AUTHORITY notifies CONTRACTOR of the commencement of an audit prior to the expiration of the three year period.

#### **C-7. TITLE TO DOCUMENTS; COPYRIGHT.**

All reports produced by the CONTRACTOR or any subcontractor of CONTRACTOR shall, after completion and acceptance of the contract, become the property of AUTHORITY, and shall not be subject to any copyright claimed by the CONTRACTOR, subcontractor, or their agents or employees. Any use of completed or uncompleted documents for other projects by CONTRACTOR, any subcontractor, or any of their agents or employees, without the prior written consent of AUTHORITY is prohibited.

#### **C-8 INDEPENDENT CONTRACTOR.**

CONTRACTOR and its officers and employees, in the performance of this contract, are independent contractors in relation to AUTHORITY and not officers or employees of AUTHORITY. Nothing in this contract shall create any of the rights, powers, privileges or immunities of any officer or employee of AUTHORITY. CONTRACTOR shall be solely liable for all applicable taxes or benefits, including, but not limited to, federal and state income taxes, Social Security taxes, or ERISA retirement benefits, which taxes or benefits arise out of the performance of this contract. CONTRACTOR further represents to AUTHORITY that CONTRACTOR has no expectation of receiving any benefits incidental to employment.

#### **C-9. CONFLICT OF INTEREST.**

CONTRACTOR covenants that it presently has no interest and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. CONTRACTOR further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be used or employed.

#### **C-10. COMPLIANCE WITH APPLICABLE LAWS.**

CONTRACTOR shall comply with all applicable federal, state and local laws now, or hereafter, in force, and with any applicable regulations, in performing the work and providing the services specified in this contract. This obligation includes, without limitation, the acquisition, and maintenance of any permits, licenses, or other entitlements necessary to perform the duties imposed expressly or impliedly under this contract.

#### **C-11. NONDISCRIMINATION.**

CONTRACTOR shall not discriminate in the employment of persons necessary to perform this contract on any legally impermissible basis, including on the basis of the race, color, national origin, ancestry, religion, age, sex, or disability of such person.

#### **C-12 BANKRUPTCY.**

CONTRACTOR shall immediately notify AUTHORITY in the event that CONTRACTOR ceases conducting business in the normal manner, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or becomes subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or protection of the rights of creditors.

#### **C-13. PROHIBITION AGAINST ASSIGNMENT AND DELEGATION OF DUTIES.**

Except as specifically authorized herein, no rights under this contract may be assigned and no duties under this contract may be delegated by CONTRACTOR without the prior written consent of AUTHORITY, and any attempted assignment or delegation without such consent shall be void.

#### **C-14. NEGOTIATED CONTRACT.**

This contract has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this contract within the meaning of California Civil Code Section 1654.

#### **C-15. SEVERABILITY.**

Should any provision herein be found or deemed to be invalid, this contract shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect. To this end, the provisions of this contract are declared to be severable.

#### **C-16. ENTIRE CONTRACT.**

This contract is the entire agreement of the parties. There are no understandings or agreements pertaining to this contract except as are expressly stated in writing in this contract or in any document attached hereto or incorporated herein by reference.

#### **C-17. TIME IS OF THE ESSENCE.**

Time is of the essence in the performance of this contract.

#### **C-18. TERMINATION.**

Either party may terminate this contract, with or without cause, at any time. In order to terminate this contract, the terminating party shall give advance written notice to the other party. The termination shall be effective no earlier than the expiration of the number of days specified in paragraph 6 of this contract. The termination notice shall be made as specified in paragraph C-

19, below. In the event of termination, AUTHORITY shall pay CONTRACTOR for all work satisfactorily performed prior to the effective date of the termination.

#### **C-19. NOTICES.**

Notices to the parties in connection with the administration of this contract shall be given to the parties' contract administrator personally, by regular mail, or by facsimile transmission as more particularly specified in this paragraph. Notices will be deemed given on:

1. The day the notice is personally delivered to the contract administrator or the office of the party's contract administrator; or
2. Five days after the date the notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, with first-class postage fully prepaid; or
3. On the day that the notice is transmitted by facsimile to a party's facsimile number specified in paragraph 8 of this contract, provided that an original of such notice is deposited in the United States mail, addressed to a party's contract administrator as indicated in this contract, on the same day as the facsimile transmission is made.

#### **C-20. RESPONSIBILITY OF CONTRACT ADMINISTRATORS.**

All matters concerning this contract which are within the responsibility of the parties shall be under the direction of, or shall be submitted to, the respective contract administrators or to the party's employee specified, in writing, by the contract administrator. A party may, in its sole discretion, change its designation of its contract administrator and shall promptly give written notice to the other party of any such change.

#### **C-21. MATERIALITY.**

The parties consider each and every term, covenant, and provision of this contract to be material and reasonable.

#### **C-22. WAIVER.**

Waiver by either party of a breach of any covenant of this contract will not be construed to be a continuing waiver of any subsequent breach. AUTHORITY's receipt of consideration with knowledge of CONTRACTOR's violation of a covenant does not waive its right to enforce any covenant of this contract. The parties shall not waive any provisions of this contract unless the waiver is in writing and signed by all parties.

#### **C-23 AUTHORITY AND CAPACITY.**

CONTRACTOR and CONTRACTOR's signatory each warrant and represent that each has full authority and capacity to enter into this contract.

#### **C-24. BINDING ON SUCCESSORS.**

All of the conditions, covenants and terms herein contained shall apply to, and bind, the heirs, successors, executors, administrators and assigns of CONTRACTOR. CONTRACTOR and all of CONTRACTOR's heirs, successors, executors, administrators, and assigns shall be jointly and severally liable under this contract.

#### **C-25. CUMULATION OF REMEDIES.**

All of the various rights, options, elections, powers and remedies of the parties shall be construed as cumulative, and no one of them exclusive of any other or of any other legal or equitable remedy which a party might otherwise have in the event of a breach or default of any condition, covenant or term by the other party. The exercise of any single right, option, election, power or remedy shall not, in any way, impair any other right, option, election, power or remedy until all duties and obligations imposed shall have been fully performed.

#### **C-26. INDEPENDENT ADVICE.**

Each party hereby represents and warrants that in executing this contract it does so with full knowledge of the rights and duties it may have with respect to the other. Each party also represents and warrants that it has received independent legal advice from its attorney with respect to the matters set forth in this contract and the rights and duties arising out of this contract, or that such party willingly foregoes any such consultation.

#### **C-27. NO RELIANCE ON REPRESENTATIONS.**

Each party hereby represents and warrants that it is not relying, and has not relied, upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this contract may hereunder turn out to be other than, or different from the facts now known to such party as true, or believed by such party to be true. The parties expressly assume the risk of the facts turning out to be different and agree that this contract shall be effective in all respects and shall not be subject to rescission by reason of any such difference in facts.

#### **C-28. REDUCTION OF CONSIDERATION.**

CONTRACTOR agrees that AUTHORITY shall have the right to deduct from any payments specified in Attachment B any amount owed to AUTHORITY by CONTRACTOR as a result of any obligation arising prior to, or after, the execution of this contract. For purposes of this paragraph, obligations arising prior to the execution of this contract may include, without limitation, any property tax, secured or unsecured, which tax is in arrears. If AUTHORITY exercises the right to reduce the consideration specified in Attachment B, AUTHORITY, at the time of making a reduced payment, shall give CONTRACTOR notice of the amount of any offset and the reason for the reduction.

#### **C-29. COUNTERPARTS.**

This contract may be executed in any number of counterparts, each of which so executed shall be deemed to be an original. The counterparts shall together constitute one contract.

**END OF ATTACHMENT C.**

