

DRAFT - FOR INTERNAL REVIEW ONLY

January 17, 2019

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”) is made as of this ____day of _____, 2019, by and between the North Coast Railroad Authority, a public agency formed pursuant to Government Code Section 93000 et seq. (“NCRA”) and the City of Blue Lake, a municipal public entity (“City”).

RECITALS

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

NOW THEREFORE, in consideration of the mutual covenants, conditions and agreements recited herein and made a material part hereof, the NCRA and City agree as follows:

1. Definitions.

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

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

3. Use. NCRA hereby grants to the City a non-exclusive license to access and use the License Property to construct, install, maintain, reconstruct, remove, repair and manage a multi-modal

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public path, for shared use by, including but not limited to, bicyclists, pedestrians, wheelchairs, joggers, and other non-motorized uses. Motorized vehicles shall be permitted access and use as needed by the City, its agents and contractors, for construction and maintenance purposes, and by emergency response personnel.

4. Term. The term of this Agreement shall be twenty five (25) years (the “Term”) commencing on _____ (the “Commencement Date”), and, unless sooner terminated or extended as herein provided, shall terminate on _____.
5. Conditions Precedent. This Agreement shall be null and void in the event the City fails to obtain funding and all regulatory permits required for trail construction.
6. License Fee. In lieu of either a one-time or annual license fee payment, the City shall provide maintenance to completed trail segments located in the License Property as follows: a) maintain drainage structures; and, b) provide all vegetation management, including tree trimming and removal. Said maintenance shall be performed to standards as determined by the City in its discretion, however in no event may the City use a lesser standard than that typically used in its maintenance of other similar public trails and paths. The City, at its sole discretion and expense, may perform such additional maintenance as it deems appropriate within the License Property.
7. Trail Construction.
 - (a) *Trail Construction, Timing*. The City may construct trail improvements in the License Property in segments as funding allows. Individual trail segments shall not be open for public use until completion of the trail improvement in said segment. Where required by permitting or other regulatory authorities, NCRA reasonably agrees to execute and deliver applications for permits, licenses or other authorizations relating to the Rail Corridor. Trail segments shall be constructed in accordance with approved Construction Plans, and all applicable laws, rules, regulations and permits. The City shall provide 15 days advance written notice to NCRA prior to beginning construction on any trail segment. The City shall provide 15 days advance written notice to the NCRA prior to opening any trail segment for public use.
 - (b) *Construction Plan Approval*. The City shall submit detailed construction ready plans and specifications (“Construction Plans”) to the NCRA for review and approval prior to constructing any trail segment. Within one hundred twenty (120) days of receipt, the NCRA shall provide comments and input on the Construction Plans to the City. Failure to provide comments to the City within this time period shall be deemed approval by the NCRA of the Construction Plans.
 - (c) *Construction Plan Contents*. Construction Plans shall include, but not be limited to, specifications for temporary construction fencing, permanent landscaping, fencing or other trail demarcation and setbacks, and signage.
8. Ongoing Maintenance.
 - (a) The City shall, during the Term, at its own cost and expense and without any cost or expense to NCRA:
 - (i) Keep and maintain all trail improvements (subject to City's right to remove) in good and neat order and repair and shall allow no nuisances to exist or be maintained therein. NCRA shall not be obligated to make any trail repairs of any kind; and

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(ii) Comply with and abide by all applicable federal, state, and local laws and regulations affecting the License Property.

9. Insurance. The City shall maintain general liability coverage in the amount of no less than \$2,000,000 per occurrence and aggregate. Insurance shall be placed with a carrier having a current A.M. Best rating of at least A:VII or with the Redwood Empire Municipal Insurance Fund (“REMIF”). Evidence of coverage shall be provided to NCRA annually.
10. Indemnification. To the maximum extent allowed by law, the City agrees to indemnify, defend and hold harmless NCRA, including its officers, employees, agents contractors, successors and assigns, from and against all loss, liability (including liability with respect to death, injury and personal and property damage), claims, demands, suits, liens, claims of lien, damages, costs and expenses, arising out of or connected in any manner with the use or misuse of the License Property by the City, members of the public, or any act or omission by the city therewith. Such indemnity shall apply notwithstanding NCRA’s active or passive negligence, and shall be deemed to apply to any and all losses resulting from the City’s negligence, action or inaction, or any other cause other than willful misconduct or the sole negligence of NCRA. This provision shall survive any termination of the License for actions or inactions that may arise during the time this License is in effect.
11. Assumption of Risk and Waiver. To the maximum extent allowed by law, the City assumes any and all risk of loss, damage or injury of any kind to NCRA, its officers, employees, agents contractors, successors and assigns, including without limitation, trail improvements and any other property under the control of the City which is on the License Property. The City’s assumption of risk shall include loss or damage to the City, its officers, employees, agents, contractors, assigns and successors. The City hereby waives all claims and demands against NCRA for such loss, damage or injury, and waives the benefit of California Civil Code Section 1542, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known to him must have materially affected his settlement with the debtor.
12. Abandonment. In the event of action by the City Council for the City of Blue Lake to abandon the use of the License Property, or any part thereof, this Agreement shall terminate to the extent of the portion so abandoned or discontinued.
13. Surrender. Upon termination of this Agreement, including but not limited to a termination resulting from expiration of the license term, breach, or abandonment of all or a portion of the trail improvements, the City may remove, at its own cost and expense, any and all trail improvements. Upon removal of any trail improvements, the City may, in its sole discretion, (i) reasonably restore the affected portion of the License Property to a state or condition as it existed prior to the construction of trail improvements, (ii) leave all or a portion of the trail improvements in place, or (iii) replace the trail improvements with comparable improvements approved by NCRA.
14. Breach. In the event the City breaches, or fails to keep, observe or perform any covenant, term or condition of this Agreement, in addition to all other rights and remedies of NCRA provided hereunder or by law, after written notice or demand, and the City’s failure to cure the breach within thirty (30) days of notice, or fewer days in the event the breach impacts public health, welfare or safety, NCRA may terminate this Agreement and thereafter recover possession of the License Property by lawful means.
15. Waiver. No waiver of any default under this Agreement shall constitute or operate as a waiver of any subsequent default hereunder, and no delay, failure or omission in exercising or enforcing any right, privilege, or option under this Agreement shall constitute a waiver, abandonment or

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relinquishment thereof or prohibit or prevent any election under or enforcement or exercise of any right, privilege, or option hereunder.

16. Notices. Except as otherwise provided hereunder; any notice or communication to NCRA, or the City shall be in writing and be mailed by postage prepaid. Notices or communications shall be addressed to the parties at the following addresses, which may be changed at any time by notice to the other party:

To NCRA:

Executive Director
North Coast Railroad Authority
419 Talmage Road, Ste M
Ukiah, CA 95482

To City:

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

Any notice mailed in the manner above set forth shall be deemed to have been received unless returned to the sender by the post office. Notice may be sent by email when simultaneously provided using one of the methods set forth above.

17. Severability. In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Lease, but this Lease shall be construed as if such invalid, illegal, or unenforceable provisions had not been contained herein.
18. Time of the Essence. Time is of the essence of each and all of the agreements, covenants, and conditions of this Lease.
19. Consents. Whenever in this Lease the consent or approval of either NCRA or City is required or permitted, the party requested to give such consent or approval will act promptly and will not unreasonably withhold its consent or approval.
20. Attorneys Fees. In the event of any action or proceeding at law or in equity between NCRA and City to enforce any provision of this Lease or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such litigation shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees, incurred therein by such prevailing party, and if such prevailing party shall recover judgment in any such action or proceeding, such costs, expenses and attorney's fees shall be included in and as a part of such judgment.
21. Integration. This instrument constitutes the entire agreement between NCRA and City with respect to the subject matter hereof and supersedes all prior offers and negotiations, oral or written. This Lease may not be amended or modified in any respect whatsoever except by an instrument in writing signed by NCRA and City.
22. Amendments. This Lease may be modified only in writing and only if signed by the parties at the time of the modification.
23. Assignment and Subletting. City may assign this Agreement, or any interest herein, at any time provided that, (i) NCRA has consented to the assignment, (ii) the assignment shall be in writing, duly executed and acknowledged by City and the assignee, in form satisfactory to NCRA, providing that the assignee assumes and agrees to perform and observe all the agreements, covenants and conditions of this Lease on the part of City to be performed and observed, and (iii) an executed original of such assignment shall be delivered to NCRA.

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24. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

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

**NORTH COAST RAILROAD
AUTHORITY:**

CITY OF BLUE LAKE:

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

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

Approved as to form:

City Attorney

Date: _____