

LEASE OF PROPERTY

THIS LEASE ("Lease") is entered into on December 22, 2008, between UNION PACIFIC RAILROAD COMPANY ("Lessor") and CITY OF SAN LUIS OBISPO, a California municipal corporation, whose address is Public Works Department, 919 Palm Street, San Luis Obispo, California 93401 ("Lessee").

IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

Article 1. PREMISES; USE.

Lessor leases to Lessee and Lessee leases from Lessor the premises ("Premises") at San Luis Obispo, California, shown on the prints dated June 25, 2008, marked **Exhibit A**, hereto attached and made a part hereof, subject to the provisions of this Lease and of **Exhibit B** attached hereto and made a part hereof. The Premises may be used for construction and maintenance of a seven-foot-tall vandal-resistant security fence, landscaping, and pavement encroachments associated with Lessee's adjoining pedestrian/bicycle trail, and purposes incidental thereto, only, and for no other purpose.

Article 2. TERM.

The term of this Lease shall commence October 1, 2008, and, unless sooner terminated as provided in this Lease, shall extend for one year and thereafter shall automatically be extended from year to year.

Article 3. RENT.

A. Lessee shall pay to Lessor, in advance, fixed rent of One Dollar (\$1.00) annually. (WAIVED).

B. As further consideration, Lessee agrees to control vegetation and abate trash and debris in accordance with any and all current and future local, state, and federal laws on all of Lessor's properties that are not under lease to a third party and that lie within the city limits of the City of San Luis Obispo, subject to the following terms:

- a. Lessee is responsible for vegetation control and trash abatement only on those parts of Lessor's property that lie ten or more feet from the nearest rail on any railroad track.
- b. Under no circumstances, shall Lessee or anyone acting on its behalf come or place materials or equipment any closer than twenty five (25) feet from any railroad track located on Lessor's property without a railroad flagman present. Lessor shall provide, at no cost to Lessee, a flagman for any work done under this Article upon Lessee's request to Lessor's Manager-Vegetation Control at least 72 hours in advance of commencing work.

- c. During any work that Lessee does on Lessor's property, Lessee shall have fire-suppression equipment on site. At a minimum, this equipment shall include a 50-gallon tank of water with an application hose. Lessee agrees to follow any additional precautions that may be required under Lessor's current Fire Prevention Plan, a copy of which Lessee acknowledges receiving. Lessor shall provide Lessee with any updated version of the Fire Suppression Plan that may be issued.
- d. In the event that city limits should change, the locations to which the requirements of this Article apply shall change accordingly.
- e. Lessee shall be responsible for any fine, citation, or other penalty issued against Lessor due to Lessee's failure to meet its obligations under this Article.
- f. Lessee agrees to release, indemnify, and defend Lessor against any losses, claims, or injuries that arise in connection with Lessee's work or obligations under this Article under the terms and conditions set forth in Section 12 of Exhibit B to the same extent that those provisions apply to the Premises.

Article 4. INSURANCE.

A. Before commencement of the term of this Lease, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C** hereto attached and made a part hereof.

B. Not more frequently than once every two years, Lessor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.

C. All insurance correspondence, certificates and endorsements shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 02040-46.

Article 5. SPECIAL PROVISION – FENCE/BARRICADE, NO TRESPASSING SIGNS, LANDSCAPING APPROVAL, FENCING ON OPPOSITE SIDE OF TRACKS.

A. Lessee, at Lessee's sole cost and expense, shall construct and maintain, at all times during the term of this Lease, a seven-foot-tall vandal-resistant fence of a design satisfactory to Lessor along the entire length of the Premises in the location shown on the attached Exhibit A. Maintenance of the fence includes, but is not limited to, the removal of all graffiti by keeping the fence painted black at all times. No posters or banners of any kind may be attached to the fence. If such posters or banners are discovered, Lessee shall remove them immediately. No items that could obstruct vision between the Premises and Lessor's railroad corridor are allowed on the Premises or fence. Should the fence become damaged, Lessee shall repair it within five days of discovering or receiving notice of the damage. If Lessee does not perform timely repairs to the fence, Lessor shall have the option of making repairs and billing Lessee for the actual costs of repairs, including any additive rates that may apply to the work.

B. Lessee, at Lessee's sole cost and expense, shall install and maintain, at all times during the term of this Lease, "No Trespassing" signs at intervals along the fence line on the Premises as determined by Lessor's Police Department and in conformance with any City of San Luis Obispo regulations regarding such signs.

C. Prior to installation of landscaping on the Premises, Lessee shall obtain approval of said landscaping plans from Lessor's Manager-Vegetation Control. No landscaping that could obstruct vision between the Premises and Lessor's Railroad corridor will be allowed.

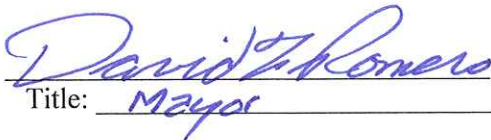
D. Lessee shall cooperate with California Polytechnic State University and Lessor in efforts to encourage adjoining landowners on the opposite side of the tracks from the Premises to install and maintain fences or take other measures to prevent trespassing onto Lessor's right of way.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first herein written.

Lessor:
UNION PACIFIC RAILROAD COMPANY

Lessee:
CITY OF SAN LUIS OBISPO

By: 
General Director - Real Estate

By: 
Title: Mayor

NOTE: New Lease