

AGENDA REPORT

TO: Honorable Mayor and Members of City Council

FROM: Daniel Gho, Public Works Superintendent

MEETING DATE: February 18, 2015

SUBJECT Agreement with Union Pacific Railroad and the City of Pacific Grove for the Lease of the Railroad Right-of-Way

CEQA: This lease qualifies for a Class 1 (Existing Facilities) exemption under California Environmental Quality Act (CEQA) guidelines

RECOMMENDATION

Hold second reading and adopt an ordinance to lease the Railroad Right-of-Way (ROW) from Union Pacific Railroad Company.

DISCUSSION

In October of 2014 the City was approached by Union Pacific Railroad Company to discuss the possible lease of the ROW that runs through the City of Pacific Grove. This stretch of open trail land, that is approximately 1.4 miles in length and 8.35 acres of land, is used commonly by walkers and joggers. The agreement will include the trail portion of the ROW from the golf course to the northern border of the lot on Sinex Avenue. The City and Union Pacific have had a very good relationship over the years, working in collaboration to ensure the maintenance of the trail is up kept and that it is safe for all of our residents and visitors that use the trail. Union Pacific over the years has tried to sell the property but has had no success.

When the City was approached by Union Pacific to enter into a lease agreement for the 8.35 acre recreation trail the City weighed the potential advantages to leasing the property. By the City leasing this property it would give our residents and visitors unrestricted access to the trail for recreational activities, and opportunities to maintain and upgrade existing City infrastructure that crosses or runs parallel to the ROW. By entering into this agreement the City would also have access to the trail for maintenance purposes to ensure that adjoining properties remain safe and free of any potential hazards.

The Council introduced and held a first reading on February 4, 2015. A summary of the proposed ordinance has since been printed in a newspaper of general circulation. There have been no substantive changes to the proposed ordinance since the first reading.

FISCAL IMPACT

There is no fiscal impact by leasing the ROW as rent is waived for the entire term of the lease.

ATTACHMENTS

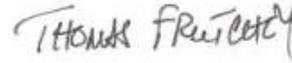
1. Ordinance
2. Lease Agreement with Union Pacific Railroad Company
3. Map of Railroad Right-of-Way

RESPECTFULLY SUBMITTED,



Daniel Gho
PUBLIC WORKS SUPERINTENDENT

REVIEWED BY,



Thomas Frutchey
CITY MANAGER

ORDINANCE NO. 15-_____

**AN ORDINANCE OF THE CITY OF PACIFIC GROVE
AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT FOR
THE 8.35 ACRE RAILROAD RIGHT OF WAY**

WHEREAS, Union Pacific Railroad Company owns the property known as the Railroad Right-of-Way; and

WHEREAS, since the 1980's the old railroad land has been used as a walking and recreation trail; and

WHEREAS, Staff has entered into discussions with Union Pacific Railroad about the possibility of leasing the 8.35 acre trail portion of the Railroad Right-of-Way, from the golf course to the Northern border of the lot on Sinex Avenue, but does not include the Sinex Avenue lot; and

WHEREAS, our City's legal department and Risk Manager have also been involved in the lease negotiation; and

WHEREAS, the rent will be waived for the entire term of the lease agreement; and

WHEREAS, this ordinance shall enable the City to lease the property known as the Railroad Right-of-Way from Union Pacific Company; and

WHEREAS, the leasing of the property qualifies for a Class 1(Existing Facilities) exemption under California Environmental Quality Act (CEQA) guidelines

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing recitals are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. The Agreement and Lease between the City of Pacific Grove and Union Pacific Railroad Company is hereby approved. The agreement shall remain in force according to terms and conditions thereof.

SECTION 3: The City Manager is authorized to execute all documents and to perform all other necessary City acts to implement the ordinance.

SECTION 4. If any provision, section, paragraph, sentence, clause, or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or

phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 5. In accord with Article 15 of the City Charter, this ordinance shall become effective on March 1 2015

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS
____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

Lease (Year To Year) 09-01-06
(Unimproved Property)
Form Approved, Law

Audit No. _____
Folder No. 02185-67

LEASE OF PROPERTY

THIS LEASE (“Lease”) is entered into on _____, 20____, between **UNION PACIFIC RAILROAD COMPANY** (“Lessor”) and **THE CITY OF PACIFIC GROVE**, whose address is City Hall 300 Forest Avenue, Pacific Grove, California 93950 (“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 Pacific Grove, California, shown on the print dated November 13, 2014, 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 beautification purposes, and as a public walking trail, and purposes incidental thereto, only, and for no other purpose.

Article 2. TERM.

The term of this Lease shall commence November 1, 2014, 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. Rent is waived for the entire term of the Lease.
- B. The above referenced rental amount is not meant to represent the Fair Rental Value of the Premises, nor is it otherwise reflective of the Fair Market Value of the Premises. This rental rate is offered solely as an accommodation to the Lessee.

Article 4. INSURANCE.

- A. Throughout the entire term of this Lease, Lessee shall maintain 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. Upon request of Lessor, Lessee shall provide to Lessor a certificate issued by its insurance carrier evidencing the insurance coverage required under **Exhibit C**.

D. All insurance correspondence shall be directed to: Real Estate Department, 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690, Folder No. 02185-67.

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

Lessor:

Lessee:

UNION PACIFIC RAILROAD COMPANY

CITY OF PACIFIC GROVE

By: _____

By: _____

Director - Real Estate

Name: _____

Title: _____

Industrial Lease (Year To Year) 09-01-06
(Unimproved Property)
Form Approved, Law

**EXHIBIT B
TO
INDUSTRIAL LEASE (UNIMPROVED YEAR TO YEAR)**

Section 1. IMPROVEMENTS.

No improvements placed upon the Premises by Lessee shall become a part of the realty.

Section 2. RESERVATIONS, TITLE AND PRIOR RIGHTS.

A. Lessor reserves to itself, its agents and contractors, the right to enter the Premises at such times as will not unreasonably interfere with Lessee's use of the Premises.

B. Lessor reserves (i) the exclusive right to permit third party placement of advertising signs on the Premises, and (ii) the right to construct, maintain and operate new and existing facilities (including, without limitation, trackage, fences, communication facilities, roadways and utilities) upon, over, across or under the Premises, and to grant to others such rights, providing that Lessee's use of the Premises is not interfered with unreasonably, and further provided Lessor complies with existing law and the municipal code in the exercise of Lessor's reserved rights. Notwithstanding anything to the contrary contained in this Agreement, Lessor, to the extent it may lawfully do so, agrees to indemnify, defend, and hold harmless Lessee from and against any loss, damage, claim, liability, cost or expense (including, without limitation, reasonable attorneys' fees and court costs) which may arise out of or result from the exercise by Lessor of any rights granted directly above in subsections (i) and (ii); provided, however, that Lessee shall not be indemnified for the negligence or willful misconduct of itself or its officers, employees, contractors or agents.

C. Lessee acknowledges that Lessor makes no representations or warranties, express or implied, concerning the title to the Premises, and that the rights granted to Lessee under this Lease do not extend beyond such right, title or interest as Lessor may have in and to the Premises. Without limitation of the foregoing, this Lease is made subject to all outstanding rights, whether or not of record. Lessor reserves the right to renew any such outstanding rights granted by Lessor or Lessor's predecessors.

D. Without limitation of Subparagraphs B. and C. above, Lessee shall not interfere in any manner with the use or operation of any signboards now or hereafter placed on the Premises or with any property uses in connection with such signboards (such as, by way of example and not in limitation, roadways providing access to such signboards). In no event may Lessee construct on the Premises any improvements that interfere in any manner with the visibility or operation of any signboards now or hereafter on the Premises or on property in proximity to the Premises.

Section 3. PAYMENT OF RENT.

Rent (which includes the fixed advance rent and all other amounts to be paid by Lessee under this Lease) shall be paid in lawful money of the United States of America, at such place as shall be designated by the Lessor, and without offset or deduction.

Section 4. TAXES AND ASSESSMENTS.

A. Lessee shall pay, prior to delinquency, all taxes levied during the life of this Lease on all personal property and improvements on the Premises not belonging to Lessor. If such taxes are paid by Lessor, either separately or as a part of the levy on Lessor's real property, Lessee shall reimburse Lessor in full within thirty (30) days after rendition of Lessor's bill.

B. If the Premises are specially assessed for public improvements, the annual rent will be automatically increased by 12% of the full assessment amount.

Section 5. WATER RIGHTS.

This Lease does not include any right to the use of water under any water right of Lessor, or to establish any water rights except in the name of Lessor.

Section 6. CARE AND USE OF PREMISES.

A. Lessee shall use reasonable care and caution against damage or destruction to the Premises. Lessee shall not use or permit the use of the Premises for any unlawful purpose, maintain any nuisance, permit any waste, or use the Premises in any way that creates a hazard to persons or property. Lessee shall keep the sidewalks and public ways on the Premises, and the walkways appurtenant to any railroad spur track(s) on or serving the Premises, free and clear from any substance which might create a hazard.

B. Lessee shall not permit any sign on the Premises, except signs relating to Lessee's business.

C. If any improvement on the Premises other than the Lessor Improvements is damaged or destroyed by fire or other casualty, Lessee shall, within thirty (30) days after such casualty, remove all debris resulting therefrom. If Lessee fails to do so, Lessor may remove such debris, and Lessee agrees to reimburse Lessor for all expenses incurred within thirty (30) days after rendition of Lessor's bill.

D. Lessee shall comply with all governmental laws, ordinances, rules, regulations and orders relating to Lessee's use of the Premises and this Lease, including, without limitation, any requirements for subdividing or platting the Premises.

Section 7. HAZARDOUS MATERIALS, SUBSTANCES AND WASTES.

A. Without the prior written consent of Lessor, Lessee shall not use or permit the use of the Premises for the generation, use, treatment, manufacture, production, storage or recycling of any Hazardous Substances, except that Lessee may use, if lawful, small quantities of common chemicals such as adhesives, lubricants and cleaning fluids in order to conduct business at the Premises. The consent of Lessor may be withheld by Lessor for any reason whatsoever, and may be subject to conditions in addition to those set forth below. It shall be the sole responsibility of Lessee to determine whether or not a contemplated use of the Premises is a Hazardous Substance use.

B. In no event shall Lessee (i) release, discharge or dispose of any Hazardous Substances, (ii) bring any hazardous wastes as defined in RCRA onto the Premises, (iii) install or use on the Premises any underground storage tanks, or (iv) store any Hazardous Substances within one hundred feet (100') of the center line of any main track.

C. If Lessee uses or permits the use of the Premises for a Hazardous Substance use, with or without Lessor's consent, Lessee shall furnish to Lessor copies of all permits, identification numbers and notices issued by governmental agencies in connection with such Hazardous Substance use, together with such other information on the Hazardous Substance use as may be requested by Lessor. If requested by Lessor, Lessee shall cause to be performed an environmental assessment of the Premises upon termination of the Lease and shall furnish Lessor a copy of such report, at Lessee's sole cost and expense.

D. Without limitation of the provisions of Section 12 of this Exhibit B, Lessee shall be responsible for all damages, losses, costs, expenses, claims, fines and penalties related in any manner to any Hazardous Substance use of the Premises (or any property in proximity to the Premises) during the term of this Lease or, if longer, during Lessee's occupancy of the Premises, regardless of Lessor's consent to such use or any negligence, misconduct or strict liability of any Indemnified Party (as defined in Section 12), and including, without limitation, (i) any diminution in the value of the Premises and/or any adjacent property of any of the Indemnified Parties, and (ii) the cost and expense of clean-up, restoration, containment, remediation, decontamination, removal, investigation, monitoring, closure or post-closure. Notwithstanding the foregoing, Lessee shall not be responsible for Hazardous Substances (i) existing on, in or under the Premises prior to the earlier to occur of the commencement of the term of the Lease or Lessee's taking occupancy of the Premises, or (ii) migrating from adjacent property not controlled by Lessee, or (iii) placed on, in or under the Premises by any of the Indemnified Parties; except where the Hazardous Substance is discovered by, or the contamination is exacerbated by, any excavation or investigation undertaken by or at the behest of Lessee. Lessee shall have the burden of proving by a preponderance of the evidence that any of the foregoing exceptions to Lessee's responsibility for Hazardous Substances applies.

E. In addition to the other rights and remedies of Lessor under this Lease or as may be provided by law, if Lessor reasonably determines that the Premises may have been used during the term of this Lease or any prior lease with Lessee for all or any portion of the Premises, or are being used for any Hazardous Substance use, with or without Lessor's consent thereto, and that a release or other contamination may have occurred, Lessor may, at its election and at any time during the life of this Lease or thereafter (i) cause the Premises and/or any adjacent premises of Lessor to be tested, investigated, or monitored for the presence of any Hazardous Substance, (ii) cause any Hazardous Substance to be removed from the Premises and any adjacent lands of Lessor, (iii) cause to be performed any restoration of the Premises and any adjacent lands of Lessor, and (iv) cause to be performed any remediation of, or response to, the environmental condition of the Premises and the adjacent lands of Lessor, as Lessor reasonably may deem necessary or desirable, and the cost and expense thereof shall be reimbursed by Lessee to Lessor within thirty (30) days after rendition of Lessor's bill. In addition, Lessor may, at its election, require Lessee, at Lessee's sole cost and expense, to perform such work, in which event, Lessee shall promptly commence to perform and thereafter diligently prosecute to completion such work, using one or more contractors and a supervising consulting engineer approved in advance by Lessor.

F. For purposes of this Section 7, the term "Hazardous Substance" shall mean (i) those substances included within the definitions of "hazardous substance", "pollutant", "contaminant", or "hazardous waste", in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq., as amended or in RCRA, the regulations promulgated pursuant to either such Act, or state laws and regulations similar to or promulgated pursuant to either such Act, (ii) any material, waste or substance which is (A) petroleum, (B) asbestos, (C) flammable or explosive, or (D) radioactive; and (iii) such other substances, materials and wastes which are or become regulated or classified as hazardous or toxic under any existing or future federal, state or local law.

Section 8. UTILITIES.

- A. Lessee will arrange and pay for all utilities and services supplied to the Premises or to Lessee.
- B. All utilities and services will be separately metered to Lessee. If not separately metered, Lessee shall pay its proportionate share as reasonably determined by Lessor.

Section 9. LIENS.

Lessee shall not allow any liens to attach to the Premises for any services, labor or materials furnished to the Premises or otherwise arising from Lessee's use of the Premises. Lessor shall have the right to discharge any such liens at Lessee's expense.

Section 10. ALTERATIONS AND IMPROVEMENTS; CLEARANCES.

- A. No alterations, improvements or installations may be made on the Premises without the prior consent of Lessor. Such consent, if given, shall be subject to the needs and requirements of the Lessor in the operation of its Railroad and to such other conditions as Lessor determines to impose. In all events such consent shall be conditioned upon strict conformance with all applicable governmental requirements and Lessor's then-current clearance standards.
- B. All alterations, improvements or installations shall be at Lessee's sole cost and expense.
- C. Lessee shall comply with Lessor's then-current clearance standards, except (i) where to do so would cause Lessee to violate an applicable governmental requirement, or (ii) for any improvement or device in place prior to Lessee taking possession of the Premises if such improvement or device complied with Lessor's clearance standards at the time of its installation.
- D. Any actual or implied knowledge of Lessor of a violation of the clearance requirements of this Lease or of any governmental requirements shall not relieve Lessee of the obligation to comply with such requirements, nor shall any consent of Lessor be deemed to be a representation of such compliance.

Section 11. AS-IS.

Lessee accepts the Premises in its present condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Lessee acknowledges that Lessor shall have no duty to maintain, repair or improve the Premises.

Section 12. RELEASE AND INDEMNITY.

- A. As a material part of the consideration for this Lease, Lessee, to the extent it may lawfully do so, waives and releases any and all claims against Lessor for, and agrees to indemnify, defend and hold harmless Lessor, its affiliates, and its and their officers, agents and employees ("Indemnified

Parties") from and against, any loss, damage (including, without limitation, punitive or consequential damages), injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, Lessor, Lessee, or any employee of Lessor or Lessee) (i) for personal injury or property damage caused to any person while on or about the Premises, or (ii) arising from or related to any use of the Premises by Lessee or any invitee or licensee of Lessee, any act or omission of Lessee, its officers, agents, employees, licensees or invitees, or any breach of this Lease by Lessee.

B. The foregoing release and indemnity shall apply regardless of any negligence, misconduct or strict liability of any Indemnified Party, except that the indemnity, only, shall not apply to any Loss determined by final order of a court of competent jurisdiction to have been caused by the sole active direct negligence of any Indemnified Party.

C. Where applicable to the Loss, the liability provisions of any contract between Lessor and Lessee covering the carriage of shipments or trackage serving the Premises shall govern the Loss and shall supersede the provisions of this Section 12.

D. No provision of this Lease with respect to insurance shall limit the extent of the release and indemnity provisions of this Section 12.

Section 13. TERMINATION.

A. Lessor may terminate this Lease for Lessee's default by giving Lessee notice of termination, if Lessee (i) defaults under any obligation of Lessee under this Lease and, after written notice is given by Lessor to Lessee specifying the default, Lessee fails either to immediately commence to cure the default, or to complete the cure expeditiously but in all events within thirty (30) days after the default notice is given, or (ii) Lessee abandons the Premises for a period of one hundred twenty (120) consecutive days.

B. Notwithstanding the terms of this Lease set forth in Article II, Lessor or Lessee may terminate this Lease without cause upon thirty (30) day's written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required in Section 15A, at which time Lessor shall refund to Lessee, on a pro rata basis, any unearned rental paid in advance. **Notwithstanding anything to the contrary in this Lease, if Lessee has not complied with the requirements of Section 15 A, this Lease, together with all terms contained herein (including payment of rent) will remain in effect until the requirements of Section 15A are met, unless Lessor, in its sole discretion, elects to terminate this Lease.**

Section 14. LESSOR'S REMEDIES.

Lessor's remedies for Lessee's default are to (a) enter and take possession of the Premises, without terminating this Lease, and relet the Premises on behalf of Lessee, collect and receive the rent from reletting, and charge Lessee for the cost of reletting, and/or (b) terminate this Lease as provided in Section 13 above and sue Lessee for damages, and/or (c) exercise such other remedies as Lessor may have at law or in equity. Lessor may enter and take possession of the Premises by self-help, by changing locks, if necessary, and may lock out Lessee, all without being liable for damages.

Section 15. VACATION OF PREMISES; REMOVAL OF LESSEE'S PROPERTY.

A. Upon termination howsoever of this Lease, Lessee (i) shall have peaceably and quietly vacated and surrendered possession of the Premises to Lessor, without Lessor giving any notice to quit or demand for possession, and (ii) shall have removed from the Premises all structures, property and other materials not belonging to Lessor, including all personal property and restored the surface to as good a condition as the same was in before such structures were erected, including, without limitation, the removal of foundations, the filling in of excavations and pits, and the removal of debris and rubbish.

B. If Lessee has not completed such removal and restoration prior to termination of this Lease, Lessor may, at its election, and at any time or times, (i) perform the work and Lessee shall reimburse Lessor for the cost thereof within thirty (30) days after bill is rendered, (ii) take title to all or any portion of such structures or property by giving notice of such election to Lessee, and/or (iii) treat Lessee as a holdover tenant at will until such removal and restoration is completed.

Section 16. FIBER OPTICS.

Lessee shall telephone Lessor during normal business hours (7:00 a.m. to 9:00 p.m., Central Time, Monday through Fridays, except for holidays) at 1-800-336-9193 (also a 24-hour, 7-day number for emergency calls) to determine if fiber optic cable is buried on the Premises. Lessor may change the telephone number and hours of operation by giving Lessee notice of the change. If cable is buried on the Premises, Lessee will telephone the telecommunications company(ies), arrange for a cable locator, and make arrangements for relocation or other protection of the cable. Notwithstanding compliance by Lessee with this Section 16, the release and indemnity provisions of Section 12 above shall apply fully to any damage or destruction of any telecommunications system.

Section 17. NOTICES.

Any notice, consent or approval to be given under this Lease shall be in writing, and personally served, sent by facsimile to (402) 501-0340, by email or by reputable courier service, or sent by certified mail, postage prepaid, return receipt requested, to Lessor at: Union Pacific Railroad Company, Attn: AVP - Real Estate, Real Estate Department, 1400 Douglas Street, Stop 1690, Omaha, Nebraska 68179; and to Lessee at the above address, or such other address as a party may designate in notice given to the other party. Mailed notices shall be deemed served five (5) days after deposit in the U.S. Mail. Notices which are faxed, emailed, are personally served or sent by courier service shall be deemed served upon receipt.

Section 18. ASSIGNMENT.

A. Lessee shall not sublease the Premises, in whole or in part, or assign, encumber or transfer (by operation of law or otherwise) this Lease, without the prior consent of Lessor, which consent may be denied at Lessor's sole and absolute discretion. Any purported transfer or assignment without Lessor's consent shall be void and shall be a default by Lessee.

B. Subject to this Section 18, this Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

Section 19. CONDEMNATION.

If, as reasonably determined by Lessor, the Premises cannot be used by Lessee because of a condemnation or sale in lieu of condemnation, then this Lease shall automatically terminate. Lessor shall be entitled to the entire award or proceeds for any total or partial condemnation or sale in lieu thereof, including, without limitation, any award or proceeds for the value of the leasehold estate created by this Lease. Notwithstanding the foregoing, Lessee shall have the right to pursue recovery from the condemning authority of such compensation as may be separately awarded to Lessee for Lessee's relocation expenses, the taking of Lessee's personal property and fixtures, and the interruption of or damage to Lessee's business.

Section 20. ATTORNEY'S FEES.

If either party retains an attorney to enforce this Lease (including, without limitation, the indemnity provisions of this Lease), the prevailing party is entitled to recover reasonable attorney's fees.

Section 21. RIGHTS AND OBLIGATIONS OF LESSOR.

If any of the rights and obligations of Lessor under this Lease are substantially and negatively affected by any changes in the laws applicable to this Lease, whether statutory, regulatory or under federal or state judicial precedent, then Lessor may require Lessee to enter into an amendment to this Lease to eliminate the negative effect on Lessor's rights and obligations to the extent reasonably possible.

Section 22. MODIFICATION, WAIVER OF DEFAULT, ENTIRE AGREEMENT.

No waiver, modification or amendment to this Lease, including specifically but not limited to, any indemnity and/or insurance requirement herein, shall be of any force or effect unless made in writing, signed by Lessor and Lessee and specifying with particularity the nature and extent of such waiver, modification or amendment. This Lease is the entire agreement between the parties, and supersedes all other oral or written agreements between the parties pertaining to this transaction, including, without limitation, Lease Audit No. _____ and any other lease under which all or any portion of the Premises was leased to Lessee. Notwithstanding the prior sentence, Lessee shall retain any and all obligations and liabilities which may have accrued under any other such agreements prior to the commencement of the term of this Lease.

Approved: Insurance Group
Created: 2/10/06
Last Modified: 7/2/07

EXHIBIT C
Union Pacific Railroad
Contract Insurance Requirements

Lease of Land

Lessee shall, at its sole cost and expense, procure and maintain during the life of this Lease (except as otherwise provided in this Lease) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$2,000,000 each occurrence and an aggregate limit of not less than \$4,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage). The policy must also contain the following endorsement, which must be stated on the certificate of insurance: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 10 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident, and coverage must include liability arising out of any auto (including owned, hired, and non-owned autos).

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Premises" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

Contractor's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.

Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Lessee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

In any and all Claims against Lessor by any employee of Lessee, Lessee's indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable under any workers compensation acts, disability benefits acts or other **employee benefits acts.**

D. Pollution Liability insurance. If permitted use as defined in this Lease includes any generation, handling, enrichment, storage, manufacture, or production of hazardous materials pollution liability insurance is required. Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If hazardous materials are disposed of from the Premises, Lessee must furnish to Lessor evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

E. **Umbrella or Excess** insurance. If Lessee utilizes umbrella or excess policies, these policies must “follow form” and afford no less coverage than the primary policy.

Other Requirements

F. All policy(ies) required above must include Lessor as “Additional Insured” using ISO Additional Insured Endorsement CG 20 11 (or a substitute form providing equivalent coverage). The coverage provided to Lessor as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 11, provide coverage for Lessor’s negligence whether sole or partial, active or passive, and shall not be limited by Lessee's liability under the indemnity provisions of this Lease.

G. Lessee waives all rights against Lessor and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers’ liability or commercial umbrella or excess liability insurance obtained by Lessee required by this agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this Lease, or (b) all punitive damages are prohibited by all states in which the Premises are located.

I. All insurance policies must be written by a reputable insurance company acceptable to Lessor or with a current Best's Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state where the Premises are located.

J. The fact that insurance is obtained by Lessee, or by Lessor on behalf of Lessee, will not be deemed to release or diminish the liability of Lessee, including, without limitation, liability under the indemnity provisions of this Lease. Damages recoverable by Lessor from Lessee or any third party will not be limited by the amount of the required insurance coverage.

LESSEE ESTOPPEL CERTIFICATE

THIS LESSEE ESTOPPEL CERTIFICATE (this "Certificate") is executed as of _____, 2015, by THE CITY OF PACIFIC GROVE ("Lessee") for the benefit of REIDO FARMS, LLC, a California limited liability company ("Buyer").

RECITALS

A. Buyer has entered into an agreement with UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Seller" or "Lessor") for the purchase from Seller of certain real property (the "Property") within the City of Pacific Grove, all of which is more particularly described in that certain Purchase and Sale Agreement and Escrow Instructions between Buyer and Seller, dated as of July 22, 2014.

B. Lessee leases a portion of the Property (the "Premises") pursuant to a lease between Lessor and Lessee, dated as of _____, 2015 (the "Lease").

C. Lessee acknowledges that Lessor's rights under the Lease are fully transferable, that Lessor may sell the Property and that Buyer, in agreeing to purchase the Property, is doing so in material reliance on this Certificate.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessee hereby certifies, warrants and represents to Buyer, its successors and assigns, as follows:

1. Lease Effective. A true, complete and correct copy of the Lease is attached to this Certificate. The Lease has been duly executed and delivered by Lessee and, subject to the terms and conditions thereof, the Lease is in full force and effect, the obligations of Lessee thereunder are valid and binding, and there have been no amendments, modifications or additions to the Lease (written or oral), other than those included in the Lease definition.

2. No Default. As of the date hereof and to the best of Lessee's knowledge, (a) there exists no breach of or default under the Lease, nor any condition, act or event which with the giving of notice or the passage of time, or both, would constitute such a breach or default, and (b) there are no existing claims, defenses or offsets that would affect Lessor's right to enforce all terms and obligations under the Lease.

3. Entire Agreement. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Premises, and Lessee claims no rights of any kind whatsoever in or to the Premises other than as explicitly set forth in the Lease. Lessee represents and warrants to Buyer that, other than those contained in writing in the Lease, there have been no representations, warranties or covenants made by Lessor to Lessee, either oral or in writing.

4. No Sublet/Assignment. There has not been and is presently no subletting of the Premises, or any part thereof, or assignment by Lessee of the Lease, or any rights therein, to any party.

5. Security Deposit. No security deposit is required or being held under the Lease.

6. No Purchase Option or Refusal Rights. Lessee does not have any option or preferential right to purchase all or any part of the Property.

7. Condition of Property. Lessee has no knowledge of any present condition or event that may give rise to a violation of any federal, state, county or municipal law, regulation, ordinance, statute, rule, order or directive (collectively, "Laws") applicable to the Premises. Lessee does not currently engage in or permit, and has not in the past engaged in or permitted, within or upon the Premises, any handling, storage, generation, discharge or disposal of any toxic or hazardous substances, materials or wastes which are regulated under any Laws.

8. Commencement Date. The term of the Lease commenced on_____.

9. Expiration Date. The term of the Lease will expire on _____ and, unless sooner terminated in accordance with the Lease, shall extend for one (1) year and thereafter shall automatically be extended from year-to-year.

10. Termination. The Lease may be terminated by either Lessor or Lessee, in their sole and absolute discretion, without cause and without liability relating to the exercise of such right, upon thirty (30) days written notice to the other party; provided, however, that at Lessor's election, no such termination by Lessee shall be effective unless and until Lessee has vacated and restored the Premises as required under the terms of the Lease. Sections 6, 7, 10 and 15 of the Lease are among the terms which impose certain responsibilities upon Lessee for maintaining the condition of the Premises and the requirements concerning the condition of the Premises when possession is returned following any termination.

11. No Commission. To the best of Lessee's knowledge and belief, there are no rental, lease or similar commissions payable with respect to the Lease.

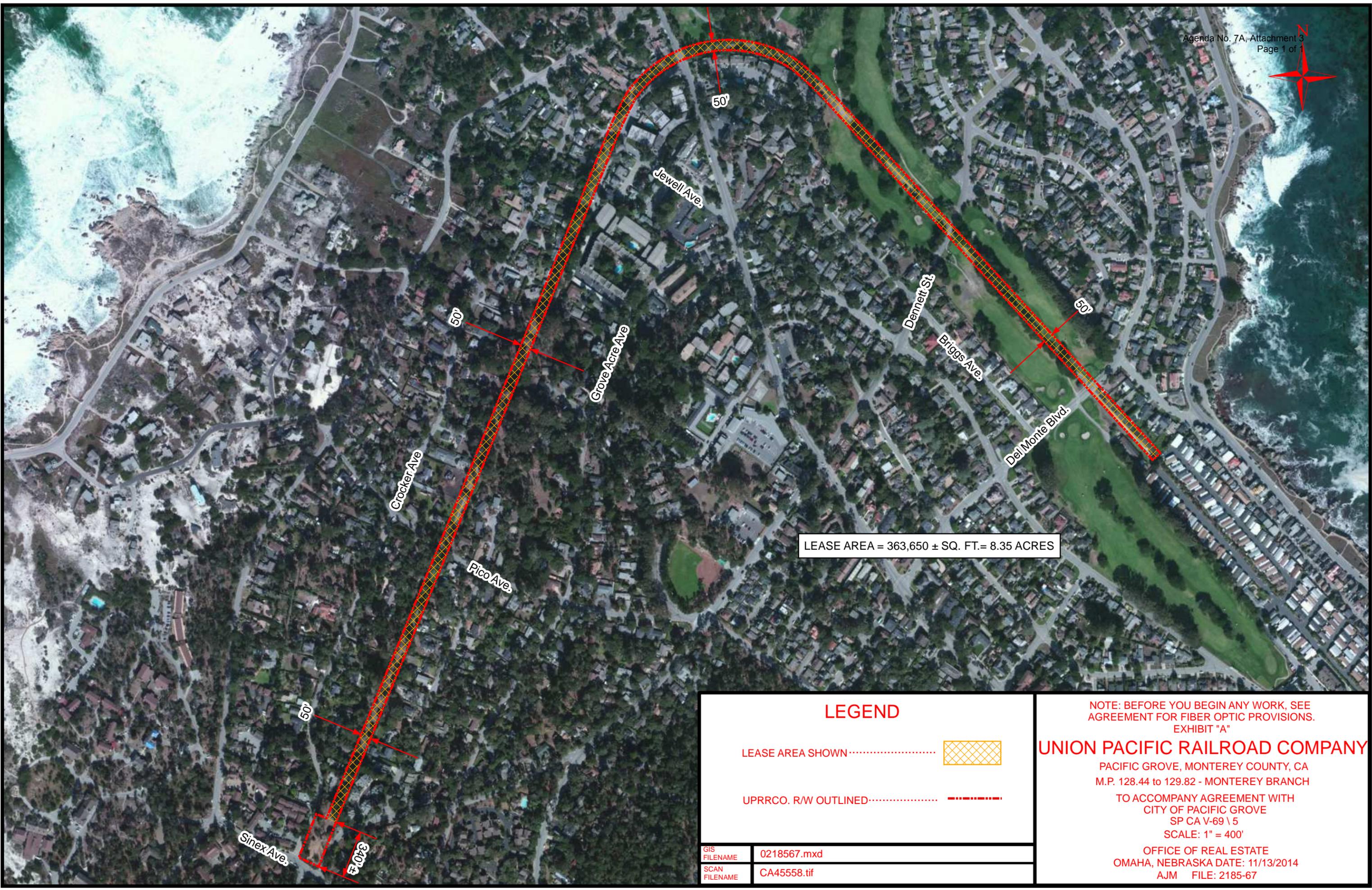
12. Possession. Lessee is in full and complete possession of the Premises and has accepted the Premises, including any improvements or other work of Lessor performed thereon pursuant to the terms and provisions of the Lease, and the Premises is in compliance with the Lease. There are no contributions, credits, deductions, concessions, rebates, unpaid or unreimbursed construction allowances, offsets or other sums due to Lessee from Lessor under the Lease, except _____.

13. Authority. The party executing this Certificate represents and warrants that he/she has full authority to do so and that all necessary actions and approvals have been obtained to authorize execution of this Certificate as binding upon the entity on whose behalf they are signing.

IN WITNESS WHEREOF, Lessee has executed this Certificate as of the date first written above.

By:_____

Its:_____



LEASE AREA = 363,650 ± SQ. FT.= 8.35 ACRES

LEGEND

- LEASE AREA SHOWN 
- UPRRCO. R/W OUTLINED..... 

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SCAN FILENAME	CA45558.tif

NOTE: BEFORE YOU BEGIN ANY WORK, SEE AGREEMENT FOR FIBER OPTIC PROVISIONS. EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

PACIFIC GROVE, MONTEREY COUNTY, CA
M.P. 128.44 to 129.82 - MONTEREY BRANCH

TO ACCOMPANY AGREEMENT WITH
CITY OF PACIFIC GROVE
SP CA V-69 \ 5
SCALE: 1" = 400'

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA DATE: 11/13/2014
AJM FILE: 2185-67