

**STORAGE LICENSE AGREEMENT**  
*(Wastewater Treatment Plant Site)*

**THIS STORAGE LICENSE AGREEMENT (“Agreement”)** is made and entered into as of November 13, 2018 (“**Effective Date**”) by and between **THE CITY OF PACIFICA**, a municipal corporation (“**City**”) and **THE PACIFICA HISTORICAL SOCIETY**, a California non-profit public benefit corporation (“**Licensee**”).

**RECITALS**

**A.** City owns that certain property located at 700 Coast Highway, Pacifica, California and commonly known as the City of Pacifica Wastewater Treatment Plant (“**City Property**”).•

**B.** Licensee owns a historic railcar, commonly known as Ocean Shore Railcar #1409 (“**Railcar**”) and plans to perform renovation and repair work in order to preserve the Railcar as a historic landmark for civic and public use (“**Licensee's Work**”).

**C.** During performance of Licensee's Work, Licensee desires to store the Railcar, along with related tools, equipment, and personal property, on the City Property and to perform Licensee's Work on the City Property.

**D.** City has previously entered into a written agreement with Licensee for Licensee's Work for the period April 8, 2013 – April 8, 2015, with one two (2) year extension for the period April 8, 2015 – April 8, 2017 (“**Prior Agreement**”).

**E.** City is willing to provide to Licensee a non-exclusive license to temporarily store the Railcar and personal property on a designated location on the City Property, identified on the Site Plan attached hereto as Exhibit A and incorporated herein (“**Storage Site**”), all on the terms set forth herein. City is also willing to allow Licensee to perform Licensee's Work on the Storage Site, subject to the terms set forth herein.

**AGREEMENT**

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements herein set forth, and in reliance on the above Recitals, City and Licensee hereby agree as follows:

1. **Recitals.** The Recitals are true and correct and incorporated herein to the terms of the Agreement.

2. **License.**

a. **Licensed Use.** Subject to the terms and conditions of this Agreement, City grants to Licensee a non-exclusive license to use the Storage Site solely for the storage of the Railcar and Licensee's personal property and to conduct Licensee's Work, such uses being hereafter referred to as the "**Licensed Use**," and for no other use. Licensee shall have limited access to the Storage Site by scheduling work periods with City staff at the City Property. Licensee may

access the Storage Site only during the hours of 7:00 a.m. to 5:00 p.m., Monday through Sunday (“Approved Hours”). Licensee may access the Storage Site outside of the Approved Hours only upon written permission of City. Licensee acknowledges that neither City nor any agent of City has made any representation or warranty with respect to the suitability of the Storage Site for the Licensed Use. Licensee shall use the Storage Site in its "as is" condition; City shall have no obligation to improve the Storage Site for the Licensed Use.

b. Entry to Storage Site Limited to Licensee. Entry to the Storage Site is limited to Licensee, its employees, volunteers, contractors or subcontractors, and only for the Licensed Use. All other guests and invitees of Licensee require City's written permission before entry to the Storage Site. Licensee may not conduct tours of the Railcar during the term of this Agreement without prior permission from City. Licensee may not conduct fundraising activities or otherwise solicit donations, monetary or otherwise, on the Storage Site.

c. Preservation of Storage Site. A drainage system that services the City Property is located on the Storage Site. A creek is also located adjacent to the Storage Site, as shown in Exhibit B. Prior to commencing any Licensed Use, Licensee shall at its own expense and without contribution by City, place a tarp, barrier, or other suitable cover material ("Cover Material") over the area of the Storage Site where the Licensed Use will take place. The Cover Material shall cover the drainage system to ensure that no material, waste, debris, or hazardous materials (as defined from time to time by the appropriate governmental agencies) from Licensee's Work enters the drainage system or the creek. City shall approve the type of Cover Material to be used and placement of the Cover Material. Licensee shall take all reasonable measures to prevent materials, waste, or debris from its Licensed Use, including any hazardous materials, from entering into the drainage system or creek. At all times during the Term of this Agreement, Licensee shall maintain the Storage Site in a neat and clean condition, to the satisfaction of City. In the event the Storage Site is not maintained to the City's satisfaction upon notice from City, Licensee shall undertake maintenance activities to the satisfaction of City.

d. No Use of City Facilities. Licensee shall not have access to the facilities located on the City Property for its Licensed Use other than on the Storage Site. In particular, Licensee, its employees, volunteers, contractors, or subcontractors, shall not enter into the Wastewater Treatment Plant located on the City Property. Nor shall Licensee, its employees, volunteers, contractors, or subcontractors have use of any City tools, equipment, or other materials located in or on the City Property for the Licensed Use. Notwithstanding the above, Licensee, its employees, volunteers, contractors, or subcontractors may use the restrooms located in the Wastewater Treatment Plant during the facility's regular business hours.

e. Prohibited Use. Licensee shall not do or permit anything to be done in or about the Storage Site nor bring or keep anything therein which will in any way increase the existing rate of or affect or cause a cancellation of any fire or other insurance covering the City Property or the Storage Site or any of its contents. Licensee shall not store upon the Storage Site, or permit or suffer the storage upon the Storage Site of, any perishable goods, flammable materials, explosives or other dangerous materials or any hazardous materials (as defined from time to time by the appropriate governmental agencies). Licensee agrees that it will use the Storage Site in such manner as not to interfere with the daily operation of the City Property. Licensee shall neither use nor allow the Storage Site or the City Property to be used for any unlawful or objectionable

purpose, nor cause, maintain or permit any nuisance or waste in, on or about any portion of the City Property.

f. Compliance with Law. Tenant shall not use or allow anything to be done in or about the Storage Site or the City Property which will in any way conflict with any law, ordinance or governmental regulation or requirement of any board of fire underwriters or any duly constituted public authority now in force or hereafter enacted or promulgated affecting the use of the Storage Site, and shall promptly comply with all such laws or requirements at its sole cost and expense.

3. Term. Subject to the terms and conditions of this Agreement, the license granted in Section 1 above shall commence on the Effective Date of this Agreement (“**Commencement Date**”) and shall continue until and expire on the date (“**Termination Date**”) which is the earliest date of the following: (a) thirty (30) days following written notice of termination (“**Termination Notice**”) by either party; or (b) one (1) year from the Effective Date (“**Term**”).

4. Consideration. In consideration of the Licensed Use, the Licensee shall pay to City \$1.00 (One Dollar) for the Term of the Agreement, due on the Effective Date.

5. Use of Storage Site. Licensee's use of the Storage Site pursuant to this Agreement shall be at its sole risk and expense, and except as otherwise expressly provided herein, City shall not be required to provide any services (including, without limitation, lighting, utilities, maintenance or security services) in connection with such Licensed Use. Licensee may use its generator to provide electricity for Licensee's Work.

6. Restoration of Storage Site. At the conclusion of this Agreement and on or before the Termination Date, Licensee shall, at its sole cost and expense and with no contribution by City, restore the Storage Site to the same condition found on the Effective Date, to the satisfaction of City. Licensee shall, at its sole cost and expense and with no contribution by City, remove the Railcar and any and all equipment brought or stored on the Storage Site, including but not limited to building materials, tools, and personal property. Any items left by Licensee after the Termination Date may be removed and disposed of by City with no further notice to Licensee. In the event Licensee does not restore the Storage Site to the satisfaction of City, City may choose to perform any necessary repair or restoration of the Storage Site and seek reimbursement from Licensee for the reasonable cost of the repair or restoration.

7. Indemnification by Licensee; Waiver

a. Indemnity. Licensee shall indemnify, defend (with counsel selected by City) and hold City harmless from any loss, claim, damage or expense (including attorneys' fees and costs) including claims for bodily injury (including death) or property damage, resulting directly or indirectly from Licensee, or Licensee's employees', volunteers', contractors', subcontractors' or invitees' (the "**Indemnifying Party**"), use of: the City Property, the Storage Site or personal property, located therein; or from release of or exposure to toxic or hazardous materials

brought onto or created on the City Property by the Indemnifying Party as a result of the Licensed Use, including any liability for injury to the person (including death) or property of Licensee, its contractors, subcontractors, representatives, agents, officers, employees, invitees or trespassers, except to the extent such loss, claim, damage or expense results from City's sole negligence or willful misconduct. Furthermore, Licensee shall indemnify and defend (with counsel selected by City) and hold City harmless from any loss, claim, damage or expense (including attorneys' fees and costs) resulting from any claims or actions brought by any governmental or regulatory agency for violations of any laws, statutes, regulations, or standards arising from, resulting from, or in any way connected with the use, presence, or release of any hazardous materials brought onto or created on the City Property by the Indemnifying Party as a result of the Licensed Use. Licensee's obligations hereunder shall survive the expiration or termination of this Agreement, if the incident requiring such defense and indemnity occurred during the Term of this Agreement.

b. Waiver. Licensee, as a material part of the consideration rendered to City in entering into this Agreement, hereby waives all claims against City for damages or loss to the Railcar, any equipment brought or stored onto the Storage Site by Licensee or its contractors or subcontractors, goods, wares and merchandise, in upon and about the City Property or the Storage Site, and for death of or injury to Licensee, its agents, employees, contractors, subcontractors, representatives, or invitees in or about the City Property or the Storage Site from any cause except for City's sole negligence or willful misconduct.

8. Alterations. Licensee shall make no alterations, additions or improvements to the Storage Site or any part thereof, except as shall be required of Licensee under the provisions of Sections 5 and 8 of this Agreement.

9. Repairs and Maintenance; Services. During the Term, Licensee shall, at its sole cost and expense, maintain the Storage Site in an appropriate condition for the Licensed Use and provide such services as may be reasonably necessary in connection therewith. City shall have no obligation whatsoever to maintain or repair the City Property, including the Storage Site, in connection with the Licensed Use.

10. Assignment and Sublicensing. Licensee shall not assign or otherwise transfer its rights hereunder without the prior written consent of City. The terms and conditions of this Agreement shall be binding on and shall inure to the benefit of the parties and their respective heirs, executors, administrators, guardians, custodians, successors and assigns.

11. Notices. All notices, demands, requests, advices or designations that may be or are required to be given by either party to the other hereunder shall be in writing. All notices hereunder shall be sufficiently given, made or delivered if served personally or by national overnight courier service or if sent by United States certified or registered mail, postage prepaid, addressed as follows:

To City:

City of Pacifica  
170 Santa Maria Avenue Pacifica, California 94044 Attention: City Manager

With Copy To:

City of Pacifica  
170 Santa Maria Avenue  
Pacifica, California 94044 Attention: City Attorney

To Licensee:

Pacifica Historical Society  
Attention: Kathleen Manning, Chairperson, Ocean Shore Railroad Car Committee  
P.O. Box 752  
Pacifica, California 94044

Each notice referred to in this Section 10 shall be deemed to have been given on the third business day following the date of such mailing (or any earlier date evidenced by a receipt evidencing delivery from such national courier service or United States Postal Service) or immediately if personally delivered to the person to whose attention notices are to be directed. Either party may change its address for notices by giving notice to the other as above provided.

12. Insurance. For the duration of the Term, Licensee shall maintain comprehensive (or commercial) general liability insurance with respect to the Storage Site and the Licensed Use with limits of not less than One Million Dollars (\$1,000,000) combined single limit for personal injury, bodily injury or death or property damage or destruction (including loss of use thereof) for any one occurrence. The amounts of such general liability insurance may be increased from time to time as City may reasonably determine. Licensee's insurance shall name City as an additional insured, and shall contain language stating that it is primary and non-contributing with any insurance, self-insurance or joint self-insurance maintained by City. Licensee shall provide City with evidence of such insurance.

13. Defaults. The failure of Licensee to observe or perform any of the covenants or provisions of this Agreement to be observed or performed by Licensee, where such failure shall continue for a period of five (5) days after notice thereof by City to Licensee, shall constitute an **"Event of Default."**

14. Remedies. Upon the occurrence of any Event of Default. City may, at any time thereafter, without further notice to Licensee and without limiting City in the exercise of any right or remedy which City may have at law or in equity, terminate this Agreement.

15. Miscellaneous.

a. Amendments. No provision of this Agreement may be amended or added to except by an agreement in writing signed by the parties hereto or their respective successors in interest.

b. Attorneys' Fees. In the event any action, proceeding, mediation or arbitration is brought by either party against the other under this Agreement, the prevailing party shall be entitled to recover from the other party all costs and expenses including the fees of its attorneys in such action or proceeding in such amount as the court, the mediators or the arbitrators, as the case may be, may adjudge reasonable.

c. Interpretation. Unless the context clearly requires otherwise, (a) the plural and singular numbers shall each be deemed to include the other; (b) the masculine, feminine, and neuter genders shall each be deemed to include the others; (c) "shall," "will," or "agrees" are mandatory, and "may" is permissive; (d) "or" is not exclusive; (e) "includes" and "including" are not limiting; and (f) "days" means calendar days unless specifically provided otherwise.

d. Mortgage Subordination. Licensee agrees that this Agreement shall be subordinate to any mortgage or deed of trust now existing or that may hereafter be placed upon the City Property and to any and all advances made or to be made under said obligations and to any renewals, replacements, modifications, consolidations and extensions thereof, and Licensee agrees to execute any documents reasonably required to effectuate such subordination within five (5) days after written demand therefor, so long as such subordination documentation provides for the non-disturbance of Licensee with respect to the Licensed Use while no Event of Default exists and is continuing. In the event of the sale of the City Property, Licensee hereby agrees that it will attorn to the purchaser and recognize the purchaser as the City under this Agreement.

e. Choice of Law: Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any action or proceeding instituted arising out of or related to this Agreement shall be filed in a court of competent jurisdiction in San Mateo County, California.

f. Prior Agreements. This Agreement contains all of the agreements of the parties hereto with respect to the Licensed Use, and no prior or contemporaneous agreements or understandings pertaining to any such matters shall be effective for any purpose, except for contemporaneous written agreements, specifically referring to this Agreement, signed by both parties.

g. Counterparts. This Agreement may be executed in any number of counterparts, provided each of the parties hereto executes at least one counterpart; each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts, together, shall constitute but one Agreement.

h. Recordation. This Agreement shall not be recorded.

i. Relationship. It is understood by both City and Licensee that this Agreement shall not under any circumstances be construed or interpreted as creating an employer/employee relationship or a joint venture. Licensee shall at all times conduct itself as an independent contractor and not as an employee or agent of the City.

*[Signatures follow on the next page]*

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

LICENSEE:

PACIFICA HISTORICAL SOCIETY,  
a California non-profit public benefit corporation

By: \_\_\_\_\_  
Name: Kathleen Manning  
Its: Chairperson, Ocean Shore Railroad Car Committee

-AND-

LICENSOR I CITY:

THE CITY OF PACIFICA,  
a municipal corporation

By: \_\_\_\_\_  
Kevin Woodhouse, City Manager

Attest:

\_\_\_\_\_  
Sarah Coffey, City Clerk

Approved as to form:

\_\_\_\_\_  
Michelle Marchetta Kenyon, City Attorney