

SHORT TERM REAL PROPERTY LEASE

MUSEUM OF HANDCAR TECHNOLOGY LLC

MONTEREY BRANCH LINE

WITHIN CITY OF MARINA AND COUNTY OF MONTEREY

LESSOR

TRANSPORTATION AGENCY FOR MONTEREY COUNTY

55-B PLAZA CIRCLE

SALINAS, CALIFORNIA 93901

LESSEE

MUSEUM OF HANDCAR TECHNOLOGY LLC

A Limited Liability Company

17926 Maplehurst Place

Canyon Country, CA 91387

May 1, 2020 through August 31, 2020

CHRISTINA WATSON christina@tamcmonterey.org (831) 775-0903

THIS LEASE is entered into between the Transportation Agency for Monterey County, LESSOR, and MUSEUM OF HANDCAR TECHNOLOGY LLC, a Limited Liability Company, LESSEE.

LESSOR, in consideration of the rent and agreements hereinafter set forth, does hereby LEASE to LESSEE, and LESSEE leases from LESSOR, those certain premises described as the raw land and railroad tracks located in the City of Marina and in the County of Monterey, California, as depicted in Attachment A (hereafter referred to as the "Property").

1. THE PROPERTY:

- a. Attachment A depicts two sub-components of the Property, identified as Area 1 and Area 2.
- b. The Property includes an encroachment into the LESSOR's railroad right of way, located in the County of Monterey, for an approximate length of three (3) miles of railroad track, including the Balloon Spur, and an area of fifty (50) by ten (10) feet for a fenced in storage area along the railroad spur tracks on the west side of Highway 1 (Area 1). The Property also includes a portion of LESSOR's land on the east side of the Highway 1, located in the City of Marina, near to buildings owned by LESSOR (Area 2).
- c. The LESSEE has indicated that they intend to use the Property for parking, storage of handcars, and other uses incidental to LESSEE's proof of concept recreational Handcar Demonstration Project (Project).
- d. LESSEE agrees to prohibit entry to the Property to anyone not participating in the Project and agrees to prohibit access to any existing buildings or structures within the fenced area.

2. TERM: The LEASE term shall be for four (4) months beginning May 1, 2020 and ending August 31, 2020, unless sooner terminated as provided in this LEASE. This LEASE is for a fixed four (4) month term and does not provide any guaranteed right of extension or holding over. If LESSEE desires to lease all or part of the Property in the future, the existence of this LEASE and/or past use of LESSOR property by LESSEE shall not be taken into consideration. LESSOR reserves its sole discretion to decide whether to enter into negotiations with LESSEE for any possible future use of LESSOR's property.

3. CONDITIONS TO LEASE: This LEASE is conditioned upon the following:

- a. LESSEE will obtain any approvals necessary to LESSEE's intended use from the City of Marina or other body with jurisdiction.

- b. The LESSEE will provide debris and brush clearance and repair certain railroad switches within Area 1 of the Property, as shown in Attachment A.
- c. LESSEE shall require all participants in the Project to sign waiver language, as shown in Attachment B, absolving and indemnifying LESSOR from any liability stemming from participation in the Project.

Failure by LESSEE to comply with this paragraph shall be deemed a default of this LEASE.

4. TERMINATION BY LESSOR:

- a. LESSEE understands and agrees that the LESSOR has future plans for the Property, such as the restoration of rail/transit service to the Monterey Peninsula and possibly other transportation or TAMC uses. Thus, LESSEE agrees to promptly vacate the Property upon termination of the LEASE, without liability to the LESSOR.
- b. LESSOR may terminate this LEASE if there is a default by the LESSEE with respect to any of the provisions of this LEASE or LESSEE's obligations under it, including the payment of the rent, after giving LESSEE notice of default and failure by LESSEE to cure the default within thirty (30) days. This provision, however, shall not be deemed to extend the term of the Lease by any cure period.

5. RENT:

- a. LESSEE agrees to pay LESSOR non-refundable rent in the amount of Four Thousand, Two Hundred Dollars (\$4,200) for Area 1.
 - b. LESSEE agrees to pay LESSOR non-refundable rent in the amount of Three Hundred, Ninety-Two Dollars (\$392) for the use of Area 2.
 - c. In addition to monetary compensation, LESSEE shall clear brush and debris and repair railroad switches as a partial, in-kind, payment for usage of approximately three miles of railroad tracks for the handcar operations.
6. DEPOSIT: LESSEE agrees to pay LESSOR a deposit of Ten Thousand Dollars (\$10,000.00) upon execution of this LEASE as a not-to-exceed amount for LESSOR staff and legal counsel for certain reasonable and necessary costs for the timely review, processing, and administration time to oversee and verify compliance with this LEASE; such as environmental compliance and site inspections before, during, and after the demonstration period. This amount shall be deposited into the "Handcar Trial Negotiation Services Fund" established by the "Advance Funding Agreement" dated December 2, 2019. Pursuant to

Paragraph 8 of said Agreement, by execution of this Lease, the term of the Advance Funding Agreement is hereby extended from its expiration date of June 30, 2020 to August 31, 2020.

7. DELIVERY OF PROPERTY: Upon expiration or termination of the LEASE, LESSEE agrees to deliver to LESSOR physical possession of the Property, in good condition, wear and tear, or damage from any other cause not directly attributable to the negligence of the LESSEE excepted.
8. AS IS CONDITION OF PROPERTY: LESSOR makes no representations as to the condition of the Property. LESSEE takes occupancy of the Property in an "as is" condition. Any permanent improvements to the Property provided by LESSEE pursuant to Paragraph 5.c. shall remain to the benefit of LESSOR. Non-permanent improvements, such as tenting, portable restrooms, and other items utilized for the demonstration project will be removed and Area 2 shall be cleaned and restored to its pre-LEASE condition. LESSOR will not repair or maintain nor contribute funding toward the repair or maintenance of the Property during the term of this LEASE. LESSEE shall not disturb the tracks or railroad ties in the easement of the PROPERTY, with the exception of repairs needed for the safety of LESSEE's handcar operations, as specified in Paragraph 5.c.
9. RESERVATIONS TO LESSOR: The Property is accepted as is and where is by LESSEE subject to any and all presently existing easements and encumbrances. LESSOR also reserves the right to install, lay, construct, maintain, repair and operate such security fencing, sanitary sewers, drains, storm water sewers, pipelines, manholes, and connections; water, oil and gas pipelines; telephone and telegraph power lines; and the appliances and appurtenances necessary or convenient in connection therewith, in, over, upon, through, across, and along the Property or any part thereof, and to enter the Property for any and all such purposes. LESSOR also reserves the right to grant franchises, easements, rights of way, and permits in, over, upon, through, across, and along any and all portions of the Property. No right reserved by LESSOR in this paragraph shall be so exercised as to interfere unreasonably with LESSEE's operations hereunder. LESSOR agrees that rights granted to third parties by reason of this paragraph shall contain provisions that the surface of the land shall be restored as nearly as practicable to its original condition upon the completion of any construction. LESSOR further agrees that should the exercise of these rights temporarily interfere with the use of any or all of the Property by LESSEE, the rent shall be reduced in proportion to the interference with LESSEE's use of the Property.
10. USE: The Property shall be used by the LESSEE solely and exclusively for the purposes described in Paragraph 1. LESSEE must obtain the LESSOR'S written permission prior to

installation of any structures, facilities or landscaping on the Property. LESSEE has proposed brush and weed clearance, debris removal, and railroad switch upgrades. LESSEE'S use of the Property, as provided in this LEASE, shall be in accordance with the following:

- a. Compliance with Applicable Laws. LESSEE shall comply with all laws concerning LESSEE'S use of the Property.
- b. Waste, Damage, Contamination or Destruction. LESSEE agrees not to commit or suffer to be committed any waste or injury or any public or private nuisance, and to keep the premises clean and clear of use or storage of hazardous materials as defined by local, state and federal laws, rules, or regulations, and clear of any refuse and obstructions, and to dispose of all garbage, trash and rubbish in a manner satisfactory to LESSOR. If the leased premises shall be damaged by LESSEE which damage puts the premises into a condition which is not decent, safe, healthy and sanitary, LESSEE agrees to make or cause to be made full repair of said damage caused by LESSEE and to restore the premises to the condition which existed prior to said damage, or LESSEE agrees to clear and remove from the leased premises all debris and contaminants resulting from said damage caused by LESSEE and rebuild or restore the premises to the condition which existed prior to such damage. LESSEE agrees to use any insurance proceeds which may become available from any such damage to first pay for the cost of any repairs and restorations.
- c. Interim Use of Property; Waiver of CC 1941, 1941.1, 1941.2, 1942.1. LESSEE acknowledges that LESSEE is not leasing structures or structures for the occupation of human beings and has been advised and understands that the LESSOR has acquired the premises for ultimate public use. In event that the premises become uninhabitable or unusable for any reason, including casualty loss, LESSEE shall have a pro-rata share of any rent paid returned. LESSEE specifically waives rights LESSEE may have under Civil Code Sections 1941, 1941.1, 1941.2, 1942.1.
- d. No Relocation Expense or Assistance. LESSEE acknowledges that premises have been leased on the condition that the LESSOR will not be liable for relocation expenses, goodwill compensation or assistance in the event of LESSEE displacement for public purpose, and LESSEE waives all rights to claim or receive compensation of any type for relocation and/or goodwill expenses or assistance.
- e. Eminent Domain. In the event the leased premises or any part thereof shall be taken for public purposes by condemnation as a result of any action or proceeding in eminent domain, then this LEASE and all right, title and interest hereunder shall cease on the date title to said premises or the portion thereof so taken vests in the condemning

authority.

11. LESSOR'S ENTRY ON PROPERTY: LESSOR and its authorized representatives shall have the right to enter the Property at all reasonable times for any of the following purposes:
 - a. To determine whether the Property is in good condition and whether LESSEE is complying with its obligations under this LEASE.
 - b. To do any maintenance and to make any restoration to the Property that LESSOR has the right and chooses to perform.
 - c. Conduct studies or testing related to transportation projects and uses.
12. SUPERVISION: LESSEE agrees to provide responsible adult supervision for all activities on the Property, including the exclusion of Project participants from LESSOR structures not part of the LEASE.
13. UTILITIES: No utilities such as water, electricity, gas or telephone services are available, or are to be provided by LESSOR. LESSEE may arrange for such utilities to be provided to the Property on a temporary basis at LESSEE'S expense without obtaining prior written approval from the LESSOR.
14. INSURANCE COVERAGE REQUIREMENTS: Without limiting LESSEE'S duty to indemnify, LESSEE shall maintain in effect throughout the term of this LEASE a policy or policies of insurance with the following minimum limits of liability.
 - a. Comprehensive general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence; and
 - b. Business automobile liability insurance, covering all motor vehicles, including owned, leased, hired and non-owned, used for purposes under this LEASE, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence; and
 - c. Worker's compensation insurance in the manner required by California Labor Code section 3700 and any other applicable state statute, and with Employers' Liability Limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

GENERAL INSURANCE REQUIREMENTS: All insurance required by this LEASE shall be with a company acceptable to LESSOR and authorized by law to transact insurance business in the State of California. All such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of two years following termination of this LEASE.

Each liability policy shall provide that LESSOR shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation or intended non-renewal thereof.

Liability policies shall provide an endorsement naming LESSOR, their directors, officers, agents and employees, as Additional Insureds and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the LESSOR and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by LESSEE'S insurance.

Prior to execution of this LEASE by LESSOR, LESSEE shall file certificates of insurance with LESSOR, showing that the LESSEE has in effect the insurance required by this LEASE. LESSEE shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy that would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

15. INDEMNIFICATION: In consideration for use of the Property, LESSEE agrees to indemnify, defend, and save harmless LESSOR and its officers, agents, and employees, from and against any and all claims, liabilities or losses whatsoever arising out of or in any way related to LESSEE'S use of the Property under this LEASE, including but not limited to claims for Property damage, personal injury, death, injuries to reputation, economic losses, and emotional distress, and any legal expenses (such as attorney's fees, court costs, investigation costs, and expert fees) incurred by the LESSOR in connection with such claims. "LESSEE'S use" includes LESSEE'S action or inaction and the action or inaction of its officers, employees, and agents, including but not limited to LESSEE'S customers. The obligation of LESSEE to indemnify does not extend to claims or losses arising out of the sole negligence or willful misconduct of the LESSOR or LESSOR'S directors, officers, agents, or employees.

LESSEE agrees to indemnify, defend and save harmless LESSOR and its directors, officers, agents and employees from and against any equipment or bodily injury damages sustained by any party using the Property.

16. **ABANDONMENT:** If LESSEE fails to obtain required permits and fails to commence actions necessary to prepare the Property for LESSEE's intended use by June 30, 2020, LESSEE will be considered to have abandoned the Property, and LESSOR may terminate the LEASE without further notice or opportunity for cure.
17. **WAIVER:** The waiver, by LESSOR or LESSEE, of any covenant or condition herein contained shall not vitiate the same or any other covenant or condition contained herein, and the terms and conditions contained herein shall apply to and bind the heirs, successors and assigns of the respective parties hereto.
18. **NOTICE:** Any notices that either party desires to or is required to give to the other party or any other person shall be in writing and either served personally, sent by email with delivery receipt requested, or sent by prepaid first class mail. Such notices shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Notice shall be deemed communicated within seventy- two (72) hours from the date of mailing, if mailed as provided in this paragraph.

Transportation Agency for Monterey County
Attention: Christina Watson
55-B Plaza Circle
Salinas, CA 93901
christina@tamcmonterey.org

MUSEUM OF HANDCAR TECHNOLOGY LLC,
A Limited Liability Company
Attention: Todd Clark
17926 Maplehurst Place
Canyon Country, CA 91387
todd@handcar.com

19. **SUCCESSORS AND ASSIGNS:** Subject to the restriction on assignment herein below written, this LEASE, and all terms, covenants, and conditions hereof, shall be binding upon and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the respective parties hereto.
20. **OWNERSHIP:** The LESSOR is the owner of the Property and all site improvements on the Property on the effective date of this LEASE. All right, title and interest in and to the Property and those site improvements shall belong to the LESSOR, including improvements made by LESSEE as described in Paragraph 5.c.
21. **POSSESSORY INTEREST AND PROPERTY TAXES:** Pursuant to California Revenue and Taxation Code section 107.6, notice is hereby given that LESSEE is responsible for any possessory interest, utility or personal Property taxes that may be imposed as a result of, or related to, this LEASE.
22. **ASSIGNMENT:** LESSEE shall not, without LESSOR's written consent and in LESSOR's sole

discretion, assign its rights or delegate its duties pursuant to this LEASE.

23. CAPTIONS: The captions in this LEASE are inserted only as a matter of convenience and for reference and in no way define the scope or the extent of this LEASE or the construction of any provision.
24. COUNTERPARTS: This LEASE may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument.
25. INTERPRETATION OF LEASE: The parties understand and agree that this LEASE has been arrived at through negotiation, and that neither LESSOR nor LESSEE is to be deemed the party which prepared this LEASE within the meaning of Civil Code section 1654.
26. ENTIRE AGREEMENT, AMENDMENTS: This LEASE embodies the entire agreement and understanding between the parties relating to the subject matter and may not be amended, waived or discharged, except by an instrument in writing executed by both parties. This LEASE supersedes all prior agreements and memoranda relating to its subject matter, with the exception of the Advance Funding Agreement entered into between the parties on December 2, 2019.

IN WITNESS WHEREOF the parties hereto have executed this LEASE this ____ day of _____, 2020.

LESSEE: MUSEUM OF HANDCAR TECHNOLOGY LLC, A Limited Liability Company

BY: _____

Todd Clark, Partner

TRANSPORTATION AGENCY FOR MONTEREY COUNTY, LESSOR

BY: _____

Debra L. Hale, Executive Director

Approved as to form:

TAMC Counsel

Attachment A



Area 1



Area 2, fenced area

SITE PLAN OF CHECK-IN AND INTERPRETIVE AREA



To handcars, 700 foot walk, approximately 2.5 minutes.

ROUTE DESCRIPTION

Handcars begin on the former spur accessed off 8th Street. Upon departure the handcars proceed south around the balloon loop and then north towards Marina. At the Highway 1 overhead crossing the handcars will reverse direction and follow the route back around the balloon loop and back to the starting spur. Although the track length is three miles, the travel distance is 6.5 miles. The excursion will require approximately 50 minutes to complete.

