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OFFICE OF THE
CITY TREASURER

THOMAS P. FRIERY
TREASURER

DONALD E. SPERLING
ASSISTANT TREASURER

CITY OF SACRAMENTO
CALIFORNIA

May 12, 1987
87070TPFlv:shtbt

800 TENTH STREET
SUITE ONE
SACRAMENTO, CA
95814-2688

916-449-5318
OPERATIONS

916-449-5168
INVESTMENTS &
ADMINISTRATION

916-448-3139
DEX TRANSCEIVER

Budget & Finance Committee
Sacramento, California

SUBJECT: Resolution Authorizing City Manager and City Clerk to Execute
Reimbursement Agreement with Sacramento Regional Transit District
in Connection with Tax Benefit Transfer (Safe Harbor Lease)

Honorable Members in Session:

SUMMARY

This report recommends that the Council authorize the City Manager and City Clerk to execute a reimbursement agreement between City and Sacramento Regional Transit District (RT) in connection with an anticipated Safe Harbor Lease between RT and Zayre Corporation.

BACKGROUND

In January, 1987, the Budget and Finance Committee and the City Council approved the sale of Safe Harbor Benefits (a transfer of depreciation benefits from RT to a taxpaying entity) on twenty-six light rail vehicles owned by RT. Council approval was necessary because the transaction included a guaranty by the City of certain indemnification obligations undertaken by RT toward the purchaser of the tax benefits, Zayre Corporation. At the time, it was anticipated that there would be two transactions, one closing January 31, 1987 for those vehicles which had been accepted conditionally by RT on or before that date, and one closing later in 1987 for those vehicles accepted later (including a 10% retention on vehicles whose benefits were sold on January 31).

The first transaction closed on January 31, 1987 with proceeds of approximately \$1 1/2 million.

A second transaction is expected to close later in the calendar year, probably no earlier than September. Proceeds are expected to be in the neighborhood of \$500,000.

In connection with the second transaction, Zayre Corporation will again ask for a City guaranty. Further, Zayre is asking that RT make a written commitment now to complete the second transaction later in the year. In order to give that commitment, RT must know the terms of the side agreement, or reimbursement agreement, which will govern the relationship between City as guarantor and RT.

The terms of that side agreement have been negotiated to the satisfaction of RT and City staff. A copy is attached to this report. City staff believe the agreement imposes reasonable obligations on RT for maintenance of the vehicles during the safe harbor lease so as to reduce the risk of an event which would require Zayre to call in the City's guaranty. The reservation of up to two cars for substitution in the event of casualty further reduces the City's risk.

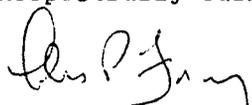
The RT Board of Directors is expected to approve the written commitment to Zayre on May 26, 1987, contingent upon City's approval of the reimbursement agreement.

Later in the year, you will be asked to approve the Guaranty Agreement.

RECOMMENDATION

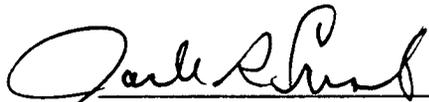
It is recommended that the Committee approve and forward to the full Council the attached resolution authorizing the City Manager and City Clerk to execute a reimbursement agreement between RT and City which will take effect upon closing of an anticipated Safe Harbor Lease transaction.

Respectfully submitted,


THOMAS P. FRIERY
City Treasurer

Attachments

RECOMMENDATION APPROVED:



JACK R. CRIST, Deputy City Manager

May 26, 1987
All Districts

REIMBURSEMENT AGREEMENT

THIS AGREEMENT is made and entered into between the CITY OF SACRAMENTO, a charter city, hereinafter referred to as "CITY," and the SACRAMENTO REGIONAL TRANSIT DISTRICT, a public corporation, hereinafter referred to as "RT," on this ____ day of _____, 1987.

RECITALS

WHEREAS, RT intends to transfer to a qualified corporate investor certain federal income tax benefits under a proposed safe harbor lease arrangement for certain Light Rail Vehicles (LRVs); and

WHEREAS, as part of the safe harbor lease transaction, RT will be required to provide certain indemnifications to the Lessor, and CITY has agreed to provided to the Lessor a guaranty of those indemnifications; and

WHEREAS, CITY has agreed to pay, on RT's behalf, any indemnification payment which becomes payable to the Lessor pursuant to the Section 168 Lease; and

WHEREAS, RT has agreed to undertake certain obligations in connection with CITY's agreement to make indemnification payments and to provide the guaranty, including an obligation to reimburse CITY for payments made to the Lessor under certain circumstances.

WITNESSETH

NOW, THEREFORE, RT AND CITY DO MUTUALLY AGREE AS FOLLOWS:

1. Safe Harbor Proceeds: Proceeds from the safe harbor lease transaction shall be paid to CITY without restriction. City shall pay from the proceeds any fees due to Paine Webber.

2. Depreciable Basis and Appraisal: Prior to the close of the proposed safe harbor lease transaction, RT agrees to make its records available to CITY's special counsel as necessary to verify the depreciable basis of the LRVs subject to the safe harbor lease, and to provide a certified appraisal confirming that the useful life of the LRVs subject to the safe harbor lease is not less than twenty-nine years.

3. Certifications: Upon the close of the safe harbor lease transaction, and annually thereafter at the close of each RT fiscal year, the RT General Manager shall certify to the City Manager the following:

- A. That title to the LRVs or substitute LRVs subject to the safe harbor lease transaction has not been transferred, other than title for tax purposes pursuant to the Section 168 Agreement, to a third party without prior written approval of the City Manager; and
- B. That the LRVs or substitute LRVs subject to the safe harbor lease transaction are not being used outside the continental United States without the prior written approval of the City Manager; and
- C. That the LRVs or substitute LRVs subject to the proposed safe harbor lease transaction are being used in the normal course of RT operations for mass commuting purposes.

4. LRV Maintenance; Casualty/Loss:

4.1 RT agrees to maintain each of the LRVs or substitute LRVs subject to the safe harbor lease in service for mass commuting purposes throughout the 26-year term of the safe harbor lease, i.e. from _____, 1987 through _____, 2013 or as the lease term may be adjusted pursuant to the Section 168 Lease.

4.2 RT agrees that should a casualty or loss occur to any of the LRVs or substitute LRVs subject to the safe harbor lease transaction, RT shall do one of the following:

- A. Repair the LRV at RT facilities and exercise all reasonable efforts to do so in an expeditious manner consistent with good transit operating practices; or
- B. Contract for the repair of the LRV in accordance with applicable RT bidding procedures and do so in an expeditious manner; or
- C. Substitute the LRV with another LRV that has an equal or greater depreciable basis available for safe harbor leasing; or
- D. Acquire, in accordance with RT purchasing procedures, a substitute LRV that has an equal or greater depreciable basis available for safe harbor leasing.

4.3 The RT General Manager shall notify the City

Manager of the option selected upon sustaining a casualty or loss that takes an LRV out of revenue service for more than ten (10) calendar days and shall keep the City Manager fully informed of all efforts undertaken and progress made to complete performance of the option selected.

4.4 The RT General Manager shall notify the City Manager in writing within five (5) calendar days after the occurrence of any one or more of the events described below:

- A. Occurrence of casualty to any vehicle whose Leased Interest is transferred under the Section 168 Lease;
- B. Occurrence of any Disqualifying Event, as defined in Section 168 Lease;
- C. Receipt from Lessor of any claim for indemnification under Section 168 Lease;
- D. Receipt from Lessor of any notice that claim has been made by the Internal Revenue Service which, if successful, would require Lessee to indemnify the Lessor under the Section 168 Lease;
- E. Receipt from Lessor of request to amend Section 168 Lease to comply with new Internal Revenue Service Regulations;
- F. Receipt from Lessor of notice of assignment of Section 168 Lease;
- G. Adjustment in basis of a Leased Interest pursuant to Section 5: ADJUSTMENT OF PURCHASE PRICE AND RENT of the Section 168 Lease;
- H. Any claim, allegation, or notice by Lessor that breach of Section 168 Lease has occurred; and
- I. Any amendment of any Lease Schedule.

5. Casualty Insurance:

5.1 RT agrees to maintain a policy or policies of casualty insurance for the LRVs subject to the Section 168 Agreement, excluding perils for collision, upset, overturn, earthquake and flood. Subject to the same retention level as established for the entire LRV fleet, and RT's ability to procure insurance upon good faith efforts made, said

policy or policies of casualty insurance shall be in an amount no less than the adjusted fair market basis of said LRVs.

5.2 Annually, upon replacement of the RT insurance coverage described in subparagraph 5.1, RT shall provide CITY with a Certificate of Insurance with Regional Transit as named insured pertaining to the RT LRVs and substitute LRVs subject to the Section 168 Agreement. The proceeds from losses insured under the casualty policy pertaining to the Section 168 Agreement LRVs shall be applied to the fullest extent necessary to discharge the obligations assumed by RT under subparagraphs 4.1 and 4.2 above.

6. Indemnification Payments; Contest: CITY agrees to make to the Lessor any indemnification payment which becomes payable from RT to the Lessor pursuant to the Lease. Upon the receipt from Lessor of any claim for indemnification, and prior to or after making payment, CITY shall be entitled to exercise, in RT's name and at CITY's sole cost and expense, any right possessed by RT under the Section 168 Lease to contest the indemnification claim or the circumstances giving rise thereto; provided, however, that CITY shall not unreasonably withhold any indemnification amount which becomes duly payable. RT shall cooperate fully with CITY's efforts to contest any claim by providing such records and by taking such actions as are reasonably necessary to assist CITY.

7. Reimbursement: RT shall reimburse CITY within 30 days after CITY's written demand therefor for any payment which CITY is required to make to the Lessor as a result of or arising from RT's wilful or negligent failure to perform any of its obligations under this Agreement. CITY agrees that RT's promise to reimburse CITY is made on condition that RT be permitted to reserve two (2) LRV's from the proposed safe harbor lease transaction - one (1) LRV to be 100% locally funded and the other to be partially locally funded.

8. Section 168 Agreement: RT and CITY agree that neither party will enter into any amendment, modification, change, waiver or termination of the Section 168 Agreement without the prior written consent of the other party, which consent shall not be withheld unreasonably.

9. Title Transfer and Property Damage: As necessary to avoid inadvertent transfer of title to the LRVs subject to the Section 168 Agreement, RT agrees that it shall affix such notice to the subject pink slips and secure same in such a manner as RT and CITY mutually agree upon. Additionally, a copy of this Agreement shall be

given to RT's Risk Management staff with the instruction that notice of any casualty to any of the LRVs leased hereunder shall be conveyed to the General Manager immediately upon its becoming known to the Risk Management staff.

10. Future Safe Harbor Lease Transactions: RT shall not enter into any other safe harbor lease transaction concerning RT's initial twenty-six (26) LRVs without the prior written consent of CITY.

11. Successors: The terms and provisions of this Agreement shall not inure to the benefit of any third party nor shall it be enforceable by any party not a party to this Agreement except successors in interest to any party hereto.

12. Term: This Agreement shall become effective upon the closing of the proposed safe harbor lease transaction. This Agreement shall remain in effect throughout the term of the proposed safe harbor lease agreement, provided that Articles 6 and 7 hereof shall remain in effect until all obligations arising thereunder are discharged.

13. Notices: Any notice required or desired to be given pursuant to this Agreement shall be deemed given when it is personally served or after it is deposited in the United States mail, postage prepaid, addressed as follows:

RT: David A. Boggs
General Manager
Sacramento Regional Transit District
P. O. Box 2110
Sacramento, CA 95810-2110

CITY: Walter Slipe
City Manager
City of Sacramento
915 "I" Street
Sacramento, CA 95814

14. Amendments: This Agreement may be amended in writing upon approval by the authorized officers of each party to this Agreement.

15. Entire Agreement: This Agreement embodies the entire agreement of the parties in relation to the matters herein described, and no other agreement or understanding, verbal or otherwise, exists between the parties.

IN WITNESS WHEREOF, RT AND CITY have entered into this Agreement on the day and year first hereinabove appearing.

CITY OF SACRAMENTO

SACRAMENTO REGIONAL
TRANSIT DISTRICT

By: _____
WALTER J. SLIPE,
City Manager

By: _____
WILLIAM R. MAZZA
Chairman

By: _____
DAVID A. BOGGS
General Manager

Approved as to Form:

Approved as to Form:

By: _____
JAMES P. JACKSON
City Attorney

By: _____
MARK W. GILBERT,
Attorney

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

RESOLUTION AUTHORIZING CITY MANAGER
AND CITY CLERK TO EXECUTE REIMBURSEMENT
AGREEMENT WITH SACRAMENTO REGIONAL TRANSIT DISTRICT
IN CONNECTION WITH TAX BENEFIT TRANSFER (SAFE HARBOR LEASE)

Be It Resolved By the Council of the City of Sacramento:

1. The City Manager and City Clerk are authorized to execute a reimbursement agreement with the Sacramento Regional Transit District, to become effective upon the closing of an anticipated Tax Benefit Transfer (Safe Harbor Lease) between Sacramento Regional Transit District as Lessee, Zayre Corporation as Lessor, and City as Guarantor.

Mayor

ATTEST:

City Clerk