



15

APPROVED
BY THE CITY COUNCIL

JUN 24 1997

OFFICE OF THE
CITY CLERK
4697-095

DEPARTMENT OF
UTILITIES
OFFICE OF THE DIRECTOR

CITY OF SACRAMENTO
CALIFORNIA
June 11, 1997

5770 FREEPORT BLVD.
SUITE 100
SACRAMENTO, CA
95822-2911
PH 916-433-6607
FAX 916-433-6652

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: GROUND LEASE AGREEMENT WITH SACRAMENTO REGIONAL TRANSIT DISTRICT

LOCATION AND COUNCIL DISTRICT: 1391 35th Avenue (District 4)

RECOMMENDATION:

Staff recommends that Council approve the attached resolution authorizing the City Manager and Clerk to enter into a ground lease agreement with the Sacramento Regional Transit District for 120,000 square feet of property to be used for employee and customer parking by the Department of Utilities.

CONTACT PERSON: Jim Sequeira, Director of Utilities, 433-6607

FOR COUNCIL MEETING OF: June 24, 1997

SUMMARY

The Real Estate Services Section of Public Works in association with the Department of Utilities and the City Attorney have negotiated a lease agreement for 2.75 acres of property located adjacent to the City's 35th Avenue Utilities Maintenance Yard (see attached map). The property would be used for employee and customer parking. The term of the agreement is for five (5) years with four successive five year optional extensions. It is the desire of the Department to ultimately purchase the acreage at such time the Sacramento Regional Transit District can sell this property.

City Council
June 11, 1997
Ground Lease Agreement with Sacramento Regional Transit District

COMMITTEE/COMMISSION ACTION

None

BACKGROUND INFORMATION

- ▶ The vacant property located along old railroad right-of-way between Fruitridge Road and 35th Avenue is currently owned by the Sacramento Regional Transit District.
- ▶ Part of this property is needed for City employee and customer parking associated with the proposed Utilities Department Administration and Engineering Building.
- ▶ A ground lease agreement has been negotiated between the City and the Sacramento Regional Transit District.
- ▶ Highlights of this agreement are:
 - Use: Parking for City facilities
 - Size: 120,000 square feet (2.75 acres)
 - Initial Term: Five (5) years
 - Options: Four, 5-year terms
 - Rent: \$1,000 per month
 - Special Terms: 25% rent credit to City upon purchase, up to maximum of \$6,000

ENVIRONMENTAL DETERMINATION

The City of Sacramento adopted a negative declaration for the Department of Utilities Administration and Engineering Building on November 7, 1996. In addition, no evidence of hazardous materials or related environmental impacts were found in the City's preliminary site assessment of the property, dated May 29, 1997.

FINANCIAL CONSIDERATIONS

Staff has prepared an estimate of value of the ground lease for the subject property. The monthly rental rate is considered to be reasonable given market conditions and the potential for credit toward purchase of the site.

Rent payments will be paid quarterly with funding for the lease payments available in the Department of Utilities operating budget (413-330-3350-4231).

City Council
June 11, 1997
Ground Lease Agreement with Sacramento Regional Transit District

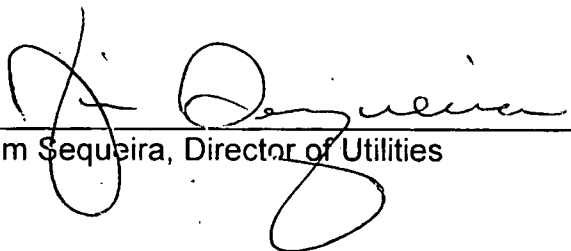
POLICY CONSIDERATIONS

The policy of leasing and/or purchasing property to support existing City operations is consistent with past City Council directives.

MBE/WBE

None. No goods or services are being procured with this action.

Respectfully submitted,

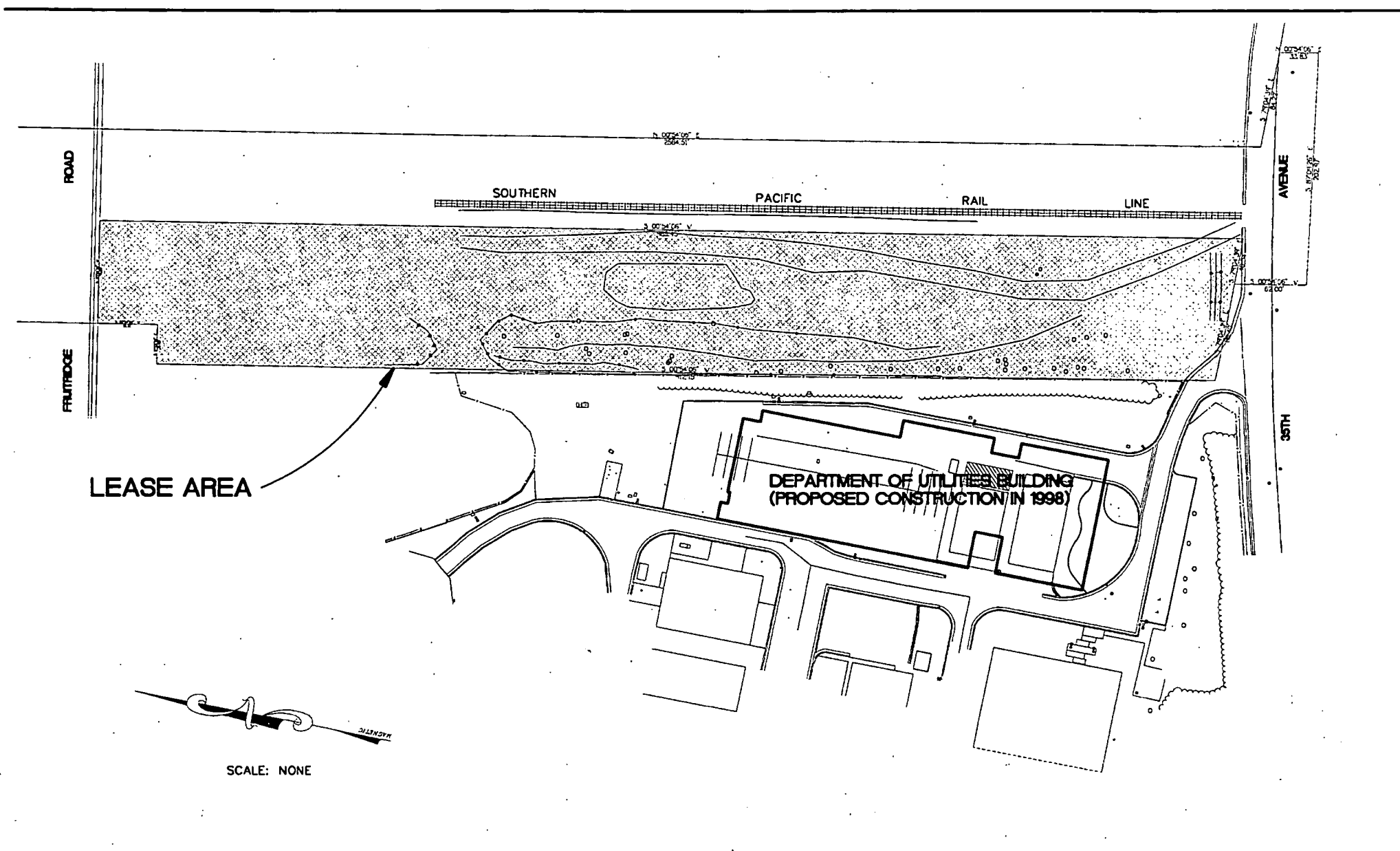


Jim Sequeira, Director of Utilities

RECOMMENDATION APPROVED:



William H. Edgar
City Manager



LEASE AREA

DEPARTMENT OF UTILITIES BUILDING
(PROPOSED CONSTRUCTION IN 1998)

LEASE AREA BOUNDARIES

EXHIBIT A

GROUND LEASE FOR PARKING PURPOSES

THIS GROUND LEASE is made and entered into on this ____ day of _____, 199_, by and between the **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation, hereinafter referred to as the "Lessor," and the **CITY OF SACRAMENTO**, hereinafter referred to as "Lessee."

WITNESS

For and in consideration of the rental and of the agreements hereinafter set forth to be kept and performed by the Lessee, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the premises herein described for the term, at the rental rate and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.

1. DEFINITION

Except as expressly provided to the contrary in this Lease, any reference to "premises" is to the described real property and any described appurtenances, exclusive of any improvements hereafter located on the premises (the "Premises"), notwithstanding that any such improvements may or shall be construed as affixed to and as constituting part of the real property, and without regard to whether ownership of the improvements is in the Lessor or in the Lessee.

2. GENERAL DESCRIPTION

The Premises consists of approximately 120,000 square feet of land situated in the City of Sacramento. The land is unimproved. A map illustrating the location of the subject Premises is provided as Exhibit "A."

3. LEGAL DESCRIPTION

A legal description of the Premises is set forth in Exhibit "B." In case of conflict between Exhibit "A" and Exhibit "B," Exhibit "B" shall prevail.

4. OWNERSHIP INTEREST

Lessor holds a fee interest in the Premises and hereby grants this Lease to Lessee. This Lease is limited by and subordinate to Lessor's ownership interest in the Premises. The State of California owns certain rights affecting the Premises that may affect this Lease. Lessor shall not be responsible for obtaining any additional consent from the State to Lessee's use of the Premises in accordance with this Lease (if required); however, Lessor shall cooperate with Lessee's efforts to obtain such consent as necessary.

5. CONDITION OF THE PREMISES

- A. Lessee hereby accepts the Premises in the condition existing as of the date of execution hereof, subject to all applicable laws and regulations. Lessee acknowledges that neither Lessor nor any agent of Lessor has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for the conduct of Lessee's business, nor has Lessor agreed to undertake any modification, alteration or improvement to the Premises.
- B. Lessee shall use its best efforts to make the Premises safe for all persons entering the Premises at Lessee's request or direction. Lessee shall take all actions necessary to prevent trespassers from entering dangerous areas during construction of Lessee's improvements.

6. TERM

- A. This Lease shall commence on July 1, 1997 and shall continue until July 1, 2002 (hereafter referred to as the "Initial Term"), unless extended or terminated sooner as provided in this Lease.
- B. Lessee is hereby granted and shall have the right and option to extend the term of the Lease for up to four (4) successive five (5) year periods following expiration of the Initial Term (each such successive five (5) year period is hereafter referred to as an "Option Period"), provided notice is given to Lessor as required herein and provided further that Lessee is not in default when such notice is given. In order to exercise its option to extend the term for the first Option Period, Lessee shall provide written notice of such extension to Lessor at least ninety (90) days prior to expiration of the Initial Term. In order to exercise its option to extend the term for the second, third or fourth Option Periods, Lessee shall provide written notice of each such extension to Lessor at least ninety (90) days prior to expiration of the immediately preceding Option Period.
- C. Lessee may terminate this Lease for its convenience at any time by giving Lessor written notice specifying a termination date no less than ninety (90) days after the date of the notice.
- D. Lessor has not selected any particular option(s) for the extension of Lessor's light rail system nor has Lessor made any determination as to whether any particular option(s) are more or less feasible or preferable. However, if Lessor selects and executes a federal funding agreement for a light rail extension project that does not require the use of any portion of the Premises and if Lessor determines that the Premises may be sold,

Lessor and Lessee may negotiate and execute a separate agreement for Lessee's purchase of the Premises after Lessor has satisfied all legal requirements for the disposition of surplus real estate. If it is necessary to obtain consent to such purchase from the State of California, Lessor shall not be responsible for obtaining such consent, but shall cooperate with Lessee's efforts to obtain such additional consent as necessary. This Lease shall automatically terminate upon conveyance of title to the Premises to Lessee.

7. LESSEE'S COVENANT TO PAY

Lessee shall pay without abatement, deduction, or set off the following sums:

A. Rent

Three thousand dollars (\$3,000.00) to Lessor as quarterly rent, payable in full in advance on the first day of each quarter commencing on July 1, 1997. One fourth of each such payment shall be credited toward Lessee's future purchase of the Premises (if any) to a maximum credit of six thousand dollars (\$6,000.00). Said rent shall not be construed to represent prevailing market rent, nor shall said rent be used in any way to determine the fair market value of the Premises. Said quarterly rent and credit shall be prorated to the month following the date of termination or cancellation of this Lease.

The rent applicable for the first Option Period shall be the prevailing market rate at the time the option is exercised as agreed by the Lessor and Lessee. If the parties fail to reach agreement, the rent applicable for the first Option Period shall be the rent for the Initial Term plus 10% of the initial rent. The rent applicable for the second, third and fourth Option Periods shall be the prevailing market rate at the time each option is exercised as agreed by the Lessor and Lessee. If the parties fail to reach agreement, the rent applicable for the second, third and fourth Option Periods shall be the rent for the last preceding Option Period plus 10% of the last rent charged.

B. Utilities

Lessee shall pay all charges incurred for furnishing electricity, refuse service and any other public utilities to said Premises during the term of this Lease or any renewals or extensions thereof. Lessee shall make all such payments directly to the collection authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

C. Property Tax

All real and personal property taxes, general and special assessments, and other charges of every description levied on or assessed against the Premises and/or improvements thereon are the responsibility of Lessee. Lessee shall make all such payments directly to the collecting authority before delinquency and before any fine, interest or penalty shall become due or imposed by operation of law for their nonpayment.

8. USE OF PREMISES/LESSOR'S RIGHT OF INSPECTION

Lessee shall use and permit the use of the Premises only for parking vehicles. Any and all other uses are strictly prohibited. Lessee shall not use the Premises or permit anything to be done in or about the Premises which constitutes a nuisance or waste. Lessee shall not park or store wrecked or inoperable vehicles of any kind on the Premises. Lessee shall not conduct or permit vending or sale of any goods or services upon the Premises. The occupancy and use of the Premises shall not be such as will permit hazardous or unreasonably objectionable smoke, fumes, vapors or odors to rise above the ground surface. Lessee agrees that under no circumstances shall Lessee store on said Premises pesticides, chemicals, flammables, explosives, petroleum products or other materials deemed by Lessor to be a potential fire, toxic or other hazard to the Premises. Lessee shall comply with all local, state and federal laws and regulations in its use of the Premises. Lessor has made no representation regarding any such law or regulation. Lessee shall maintain said Premises in a clean and sanitary manner. Lessor, through its employees/agents, reserves the right of entry to enter in and upon the Premises at all reasonable times during the term of this Lease for the purpose of the inspection, protection and maintenance of the Premises and any of Lessor's improvements thereon. Lessor further reserves the right of entry and immediate possession of the Premises for Lessor and the State in case of an emergency, and during such period Lessee shall be relieved, to the degree of interference, from the performance of obligations, conditions and covenants specified herein. For purposes of this paragraph, "emergency" shall mean an imminent threat of property damage or harm to persons necessitating immediate possession of the Premises by Lessor or the State. Lessee shall not enter into any agreements restricting the use, granting easements over, or otherwise encumbering the Premises.

9. LESSEE IMPROVEMENTS

Subject to Lessor's approval under Paragraph 11, below, Lessee may pave, landscape and/or install median strips, gates, fences, walls, landscape irrigation and other related improvements on all or any portion of the Premises.

Lessee shall not excavate more than four feet below the surface of the Premises without Lessor's approval which approval shall not be unreasonably withheld. Should Lessor approve excavations more than four feet below the surface, Lessee and/or its contractors shall promptly and before any conditions are disturbed notify RT in writing of any:

- A. Material that the City or its contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.
- B. Subsurface or latent physical conditions at the site differing from those indicated in the contract or other documents provided to City or its contractor.
- C. Unknown physical conditions at the site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

10. SIGNAGE

Except for identifying, directional, or regulatory signs included in plans previously approved by Lessor, Lessee shall not construct, erect, maintain or permit any sign, banner or flag upon the Premises without the prior written approval of Lessor. The term "sign" means any card, cloth, paper, metal, painted or wooden sign of any character placed for any purpose on or to the ground or any tree, wall, bush, rock, fence, building, structure, trailer or thing. Lessor may remove any unauthorized sign, banner, or flag and Lessee shall be liable for the cost of such removal.

11. LESSOR'S PRIOR APPROVAL OF IMPROVEMENTS

Before any work of construction, alteration or repair of improvements to the Premises is commenced, Lessee shall submit to Lessor for Lessor's approval two (2) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice in California. Substantive changes to preliminary construction plans must also be submitted to Lessor for Lessor's approval. Lessor shall review and either approve or disapprove such preliminary plans, including any substantive changes thereto within twenty (20) days after they are submitted to Lessor by Lessee. If Lessor fails to provide Lessee with written notification that such plans are either approved or disapproved within such twenty (20) day period, the plans shall be deemed approved. Lessor shall not unreasonably disapprove such plans or any part thereof and Lessor shall set forth

the reasons for any disapproval in Lessor's notification of disapproval to Lessee. Lessee shall not complete the final construction plans until the preliminary plans, including any substantive changes thereto are either approved by Lessor or are deemed approved as provided herein. Lessee shall deliver to Lessor two (2) sets of final construction plans. Lessee may not change the contour or grade of the land without prior approval by the Lessor. All improvements shall be constructed within the exterior property lines of the Premises, except that improvements may be constructed on property occupied by the Lessee adjacent to the Premises, and Lessee may perform work on property owned by Lessor beyond the Premises on utilities, access or other off site improvements required by the final construction plans after obtaining an encroachment or utility permit from Lessor. Lessor's approval of such plans does not constitute design approval in that Lessor shall not be liable for any defective design or a defective condition of the property created by Lessee.

12. NOTICE OF INTENT TO CONSTRUCT

Lessee shall notify Lessor of its intention to commence construction of improvements at least ten (10) days before commencement of any such work or delivery of any materials. Lessor shall have the right to post and maintain on the Premises any Notices of Nonresponsibility provided for under applicable law and to inspect the Premises in relation to the construction at all reasonable times. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to Lessor and shall comply with all applicable governmental permits, laws, ordinances and regulations.

13. PAYMENT BOND

Unless the construction is to be performed by Lessee's employees, Lessee shall furnish to Lessor a construction payment bond within ten (10) days before Lessee commences construction. The bond shall be that of a responsible surety company, licensed to do business in California, in an amount not less than one hundred percent (100%) of the total cost of construction of the improvements and shall remain in effect until the entire cost of the work has been paid in full. The bond shall state that it is conditioned to secure the completion of the proposed construction, free from all liens and claims of contractors, subcontractors, mechanics, laborers, and materialmen. Lessee may satisfy its obligation under this section by providing Lessor a copy of the payment bond provided by the contractor retained by Lessee to perform construction on the Premises, provided that such bond complies with the requirements of this section.

14. CONTAMINATION

After expiration, cancellation or termination of this Lease, Lessor at its own expense may obtain an environmental site assessment. Lessee shall pay the cost of remediating any condition caused by its use of the Premises including, without limitation, hazardous materials which leaked from vehicles parked on the Premises. Lessee shall not be responsible for remediating or paying for the remediation of any condition not caused by Lessee's use of the Premises.

15. MAINTENANCE OF THE PREMISES

Throughout the Lease term, Lessee shall, at Lessee's sole cost and expense, maintain the Premises and all improvements in good condition and repair and in accordance with all applicable laws, rules, and ordinances. Nothing in this provision defining the duty of maintenance shall be construed as limiting any right by Lessor or Lessee to alter, modify, demolish, remove, or replace any improvement. Lessor's prior approval is not required for Lessee's minor repairs, alterations or additions to improvements. "Minor" means a construction cost not exceeding ten percent (10%) of the value of the improvements, or an amount less than One Thousand Dollars (\$1,000.00), whichever is less.

16. OWNERSHIP OF IMPROVEMENTS

Title to improvements existing on the Premises at the commencement date of this Lease is retained by Lessor. Title to improvements constructed on the Premises by Lessee as permitted by this Lease shall be owned by Lessee until expiration of the term or termination of this Lease. Title to such improvements at Lease expiration or termination shall depend on whether improvements will remain or will be removed from the Premises as set forth below.

17. REMOVAL OF IMPROVEMENTS/SURRENDER OF THE PREMISES

Upon cancellation, expiration of the term (including any extensions(s) of the term) or termination of this Lease, Lessor may, at Lessor's election, demand the removal from the Premises of all or certain fixtures and improvements constructed on the Premises by Lessee as specified in the notice provided for below. A demand to take effect at the normal expiration of the term (including any extension(s) of the term) or on any termination shall be effected by notice given within ninety (90) days of the Lease expiration or termination date. Lessee shall comply with the terms of the notice within ninety (90) days after receipt. The duty imposed by this provision includes, and is not limited to, the duty to demolish and remove all improvements, fill in all excavations, return the surface to grade, and leave the Premises safe and free from debris and hazards.

Lessee may also elect to remove all or a portion of the improvements constructed on the Premises by Lessee upon cancellation, expiration of the term (including any extension(s) of the term) or termination of this Lease, provided that the portion of the Premises where the improvements are removed is returned to the condition required under this paragraph. Lessee shall retain title to all improvements removed by Lessee as provided herein.

18. INSURANCE REQUIREMENTS

Insurance requirements are contained in Exhibit C , attached and incorporated by this reference. Lessee may satisfy these requirements by an affidavit of self-insurance submitted to and approved by Lessor's risk manager, said approval shall not be unreasonably withheld. In addition, Lessee shall insert the contents of Exhibit C into its agreements with its contractors working under this Lease.

The requirements as to the types and limits of insurance coverage to be maintained by Lessee are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Lessee pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

Before commencement of the Lease, Lessee shall furnish Lessor with Certificates of Insurance (or an affidavit of self-insurance) representing all insurance required by this Lease. Unless Lessee is self-insured, Lessee shall deliver to Lessor evidence of all insurance policy renewals prior to January 1st of each year during the term of this Lease. If Lessee fails to procure or maintain the insurance required by this section in full force and effect, Lessor may take out insurance and pay the premiums thereon, and repayment thereof shall be the sole obligation of Lessee which is due and payable upon demand. In addition, if Lessee fails to procure or maintain insurance as required under this section, Lessee shall cease and desist use of the Premises and shall prevent public access to the Premises.

Nothing in this Lease is intended to make the public or any member thereof a third party beneficiary hereunder, nor is any term or condition or other provision of the Lease intended to establish a standard of care owed to the public or any member thereof.

19. INDEMNIFICATION

Lessee agrees to indemnify, defend, and hold Lessor harmless from liability and claims of liability for any action, claims, costs, damages, demands, expenses including reasonable attorneys' fees and reasonable allocated costs of Lessor's staff counsel, judgments, liabilities and losses to which Lessor may be subject for injury of any type, death or property damage arising from or connected with the

use of the Premises by Lessee (collectively, "Claims") whether or not caused in part by Lessor except that Lessee shall have no duty to indemnify, defend or hold Lessor harmless for any Claim of any type caused in whole or in part by Lessor's active negligence, Lessor's sole negligence or Lessor's willful misconduct. Lessor's approval of the design for Lessee's improvements, whether or not deemed negligent, shall not be construed to be active or sole negligence.

Lessee shall not be liable for any condition of the Premises, whether known or unknown, which is merely revealed by the Lessee's use of the Premises. However, should any discharge, leakage, spillage, emission or pollution ("release") of any type occur upon or from the Premises caused by the Lessee's use of or presence on the Premises, Lessee shall be liable for the costs of remediating any contamination caused by such release. Lessor agrees to indemnify, defend and hold Lessee harmless from liability and claims of liability for the costs of remediating any contamination caused by a release of any type occurring upon or from the Premises caused by Lessor's use of or presence on the Premises prior to Lessee's occupancy of the Premises.

Lessee's duty to indemnify shall not be construed to limit or qualify Lessee's obligation to provide insurance set forth in paragraph 18, above.

20. ASSIGNMENT/SUBLEASE

Lessee is expressly prohibited from subleasing or assigning this Lease to another party. In the event of the dissolution of Lessee, this Lease may be cancelled by Lessor.

21. CANCELLATION FOR BREACH

Either party may cancel this Lease in the event of a material default or breach by the other party. The parties agree that each of the following events is a material default and breach by Lessee:

- A. Nonpayment of rent, taxes or other sums to be paid by Lessee as set forth in this Lease.
- B. Failure to maintain the Premises in good condition.
- C. Sublease or assignment of this Lease without Lessor's consent.
- D. Change in use or improvements to the property without prior approval by Lessor.
- E. Failure to maintain required insurance.

- F. Abandonment or vacation of the Premises by Lessee. Failure to occupy and operate the Premises for sixty (60) consecutive days at any time after the construction of improvements by Lessee shall be deemed an abandonment or vacation.
- G. Discrimination against any person on the ground of race, color, national origin, sex, religion or disability in the use of the Premises.

Lessee shall have thirty (30) days after receipt of notice of default under subparagraphs A,B, or D, above to cure such default. Waiver of any default or breach hereunder shall not constitute a continual waiver or a waiver of any subsequent breach either of the same or of another provision of this Lease.

22. TERMINATION FOR TRANSIT PURPOSES

Lessor has not selected any particular option(s) for the extension of Lessor's light rail system nor has Lessor made any determination as to whether any particular option(s) are more or less feasible or preferable. However, if Lessor's Board of Directors determines at a public meeting that the Premises or any portion thereof are required for extension of Lessor's light rail system or for any other transit-related purpose, Lessor may terminate this Lease in its entirety or partially by giving written notice to Lessee of such termination at least two years prior to the effective date of such termination. Lessor shall use its best efforts to notify Lessee of any such board meeting by written notice delivered to Lessee no less than ten (10) calendar days prior to such meeting.

23. LESSOR'S REMEDIES

In the event of any material default or breach by Lessee, Lessor may at any time thereafter, without limiting Lessor in the exercise of any right of remedy at law or in equity which Lessor may have by reason of such default or breach, take one of the following actions:

- A. Maintain this Lease in full force and effect and recover the rent and other monetary charges as they become due, without terminating Lessee's right to possession, irrespective of whether Lessee shall have abandoned the Premises.
- B. Terminate Lessee's right to possession by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Premises to Lessor. In such event Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default.

C. Lessor may cure Lessee's default breach at Lessee's cost. If Lessor, at any time, by reason of such default or breach, pays any sum or does any act that requires payment of any sum, that amount shall be due and payable by Lessee upon demand by Lessor.

The remedies given to Lessor in this Lease shall not be exclusive but shall be cumulative and in addition to all other remedies now or hereafter allowed by law or authorized elsewhere in this Lease.

24. NONWAIVER

The waiver by Lessor of any breach by Lessee of any of the provisions of this Lease shall not constitute a continuing waiver or waiver of any subsequent default or breach by Lessee either of the same or a different provision of this Lease.

25. HOLDING OVER

This Lease shall terminate without further notice at the expiration of the term. Any holding over by Lessee after expiration shall not constitute a renewal or extension or give Lessee any rights in or to the Premises except as otherwise expressly provided in this Lease.

26. NOTICES

Termination of this Lease pursuant to the provisions set forth above and any other communications required during the term of this Lease shall be given in writing and either personally delivered to the recipient named below or sent via certified U.S. mail, return receipt requested, postage prepaid and addressed as follows:

TO LESSOR: Engineering Services Division
 Sacramento Regional Transit District
 1400 29th Street (P.O. Box 2110)
 Sacramento CA 95816 (95812-2110)

TO LESSEE: City of Sacramento
 Department of Utilities
 5770 Freeport Blvd. Ste 100
 Sacramento, CA 95822-2911

27. GOVERNING LAW

The interpretation and enforcement of this Lease shall be governed by the laws of the State of California, the state in which this Lease was signed and where the

Premises are located. The parties agree to submit any disputes arising under this Lease to a court of competent jurisdiction located in Sacramento County, California.

28. MODIFICATION

No waiver, alteration, modification or termination of this Lease shall be valid unless made in writing and signed by the authorized parties hereof.

29. SEVERABILITY

If any term, covenant, or condition of this Lease is held by a court of competent jurisdiction to be invalid, the remainder of this Lease shall remain in effect.

30. INTEGRATION

This Lease embodies the entire agreement of the parties in relation to the scope of services herein described, and no other agreement or understanding, verbal or otherwise, exists between the parties.

31. WAIVER

The failure or refusal of the Lessee to inspect the Premises or improvements, to read the lease or documents, or to obtain legal or other advice relevant to this transaction constitutes a waiver of any objection, contention, or claim that might have been based on such inspection, reading or advice.

32. ATTORNEY'S FEES

In the event of any controversy, claim or dispute relating to this Lease or breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable expenses, attorney's fees and costs.

33. TITLE VI CLAUSES

All or a portion of the subject property and/or improvements have been all or partially funded by financial assistance from the United States Department of Transportation, Federal Transit Administration. Lessee agrees to comply with the required federal nondiscrimination clauses as set forth below:

- A. The Lessee does hereby covenant and agree that facilities constructed, maintained, or otherwise operated on the said property described in this Lease, shall be maintained and operated in compliance with all other requirements imposed pursuant to Title 49, *Code of Federal Regulations*,

Department of Transportation, Subtitle A. Office of the Secretary, Part 21, Nondiscrimination of Federally-Assisted Programs of the Department of Transportation of Title VI of the *Civil Rights Act* of 1964, and as said regulations may be amended.

- B. The Lessee does hereby covenant and agree that (1) no person on the grounds of sex, race, color, religion, handicap, or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing services thereon, no person on the grounds of sex, race, color, religion, handicap or national origin shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination, and (3) that the Lessee shall use the Premises in compliance with all of the requirements imposed by or pursuant to Title 49, *Code of Federal Regulations*, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - effectuation of Title VI of the *Civil Rights Act* of 1964, and as said regulations may be amended.
- C. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and repossess said land and facilities thereon, and hold the same as if said Lease had never been made or issued.

34. SURVIVAL

Paragraphs 7B, 7C, 14, 17, 19, 27, 32, 35 and 36 shall survive the expiration, termination or cancellation of this Lease.

35. BINDING ON SUCCESSORS

This Lease shall be binding on and shall inure to the benefit of the successors and assigns of Lessor.

36. CONDEMNATION

If all or a portion of the Premises is taken by a governmental entity or other entity possessing the power of eminent domain, the Lessor shall receive all compensation related to the value of the property. If a taking impairs the Lessee's use of the Premises, the Lease may be terminated by Lessee and shall thereafter be of no further force or effect. Nothing herein shall be read to limit the right of the Lessee to claim against the condemning entity any right to relocation expenses or other compensation not related to the value of the property. This Paragraph shall have no force and effect if Lessor no longer owns the Premises when such taking occurs.

37. AMBIGUITIES

The parties have each carefully reviewed this Lease and have agreed to each term of this Lease. No ambiguity shall be presumed to be construed against either party.

IN WITNESS WHEREOF, the parties have entered into this Ground Lease on the day and year first hereinabove appearing.

**LESSEE:
CITY OF SACRAMENTO**

**LESSOR:
SACRAMENTO REGIONAL
TRANSIT DISTRICT**

By: _____

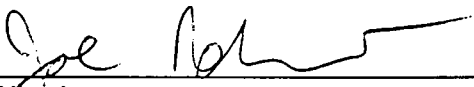
By: _____
PILKA ROBINSON, General Manager

ATTEST:

By: _____
City Clerk

By: _____
SUSAN ITELSON, Attorney

APPROVED AS TO FORM:

By:  _____
City Attorney

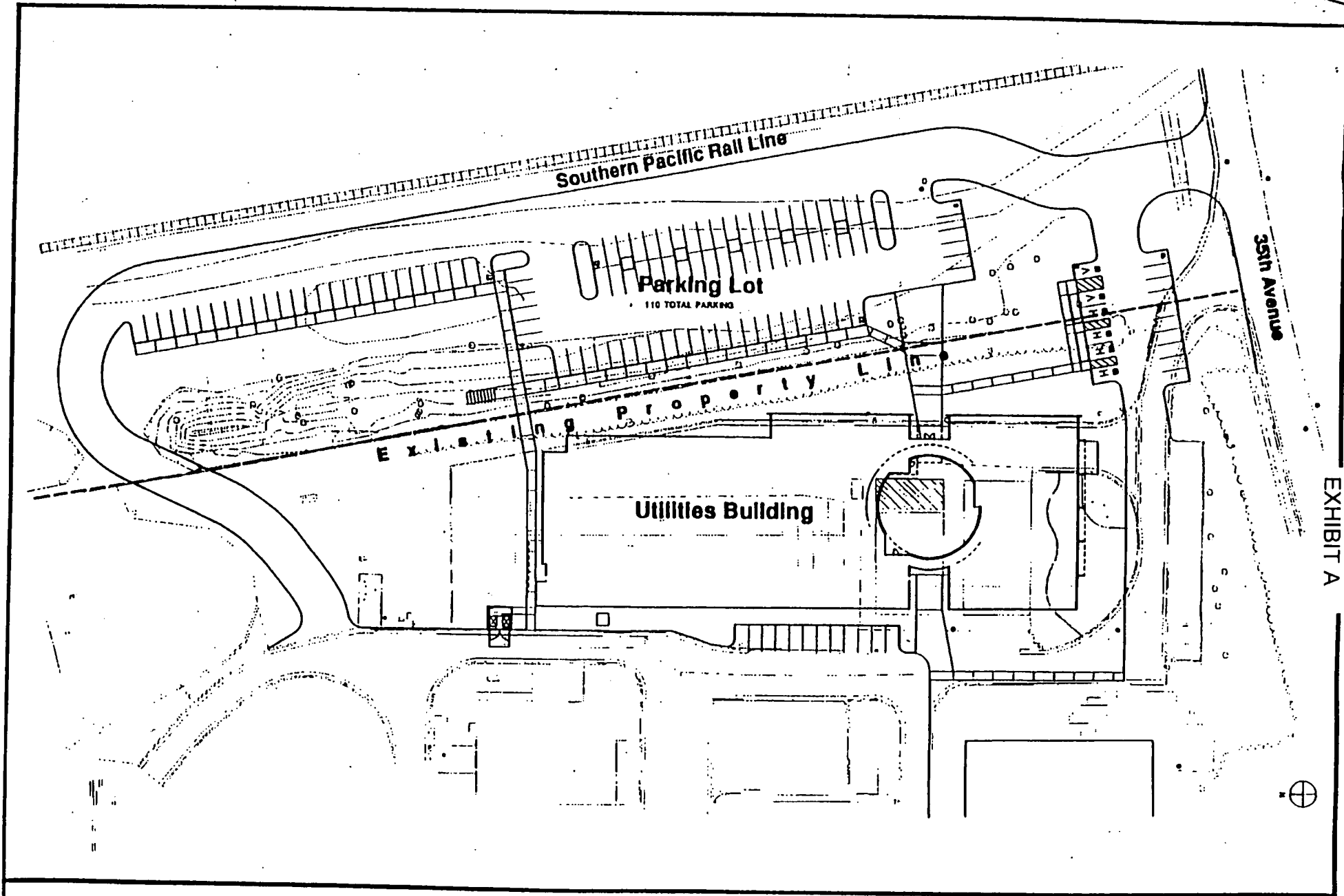


EXHIBIT A

Figure 1
Building Site

Initial Study
Utilities Dept. Building

LEGAL DESCRIPTION

A parcel of land situated in Section 26, T.8N., R.4E., M.D.B.&M., in the City of Sacramento, County of Sacramento, State of California described as follows:

A portion of Parcel 7 as described in Grant Deed as recorded in Official Records in Book 840802 at Page 821 in said County more particularly described as follows:

Commencing at the NE corner of Lot 213 as shown on the plat of "Southland Park Hills, Unit No. 3" recorded on Book 36 of maps, Map No.18 Official Records of said County, said corner being in the westerly line of land described in deed dated December 12, 1905 from Rancho Del Rio Land and Development Company to Sacramento Southern Railroad Company, recorded January 8, 1906 in Deed Book 233, Page 166, Official Records of said County; thence N 0° 54' 06" E along said westerly line 62.00 feet to the True Point of Beginning for this description; thence from said Point of Beginning N 79° 04' 38.5" W along the southerly line of land described in deed dated June 21, 1906 from L. A. Burke, et vir to Sacramento Southern Railroad Company, recorded August 23, 1906 in Deed Book 247, Page 17, Official Records of said County, 86.40 feet; thence N 0° 54' 06" E along the westerly line of last said land, 912.15 feet to the Southwest corner of Parcel 3 as described in Book 2362, Page 70 of Official Records of said County; thence along the most southerly line of said Parcel 3, S 89° 05' 54" E 35.00 feet; thence N 0° 54' 06" E along the easterly line of last said land, 51.21 feet to the southerly line of Fruitridge Road as described in Book 4839, Page 618 Official Records of said County; thence along said southerly line of Fruitridge Road S 89° 05' 54" E 90.00 feet to a point that bears 20.00 feet westerly at right angles from the centerline of the original Southern Pacific Rail Road tracks; thence S 0° 54' 06" W parallel with said tracks 984.57 feet to a point that bears S 79° 04' 38.5" E from the Point of Beginning; thence N 79° 04' 38.5" W 35.46 feet to the Point of Beginning.

EXHIBIT C

INSURANCE REQUIREMENTS

City and City's contractors, at their sole cost and expense and for the full term of this Contract or any renewal thereof, shall obtain and maintain at least all of the following minimum insurance requirements prior to commencing any work or receiving payments therefor under this Contract:

A. Comprehensive General Liability

A policy with a minimum limit of not less than \$1,000,000 combined single limit for bodily injury and property damage, providing at least all of the following minimum coverages:

1. Premises Operations, including X, C and U coverage
2. Owners' and Contractors' Protective
3. Blanket Contractual
4. Completed Operations
5. Products

B. A COMPREHENSIVE BUSINESS AUTO policy with a minimum limit of not less than \$500,000 combined single limit for bodily injury and property damage, providing at least all of the following coverages (without deductibles):

1. Coverages shall be applicable to any and all leased, owned, hired, or non-owned vehicles used in pursuit of any of the activities associated with this Contract.
2. Any and all mobile equipment including cranes which is not covered under the above Comprehensive Business Auto policy shall have coverage provided for under the Comprehensive General Liability policy.

C. A WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY policy written in accordance with the laws of the State of California and providing coverage for any and all employees of City and its contractors.

1. The policy shall provide Workers' Compensation coverage (Coverage A).
- 2) This policy shall also provide coverage of \$100,000 Employers' Liability (Coverage B).

D. ENDORSEMENTS: All of the following endorsements are required to be made a part of each of the above-required policies as stipulated below:

1. "Sacramento Regional Transit District (herein referred to as RT), its employees, officers, agents and contractors are hereby added as additional insureds."
2. "This policy shall be considered primary insurance as respects any other valid and collectible insurance RT may possess, including any self-insured retention RT may have, and any other insurance RT does possess shall be considered excess insurance only."
3. "This insurance shall act for each insured and additional insured as though a separate policy had been written for each. This, however, will not act to increase the limit of liability of the insuring company."
4. "Thirty (30) days' prior written notice of cancellation shall be given to RT in the event of cancellation." Such notice shall be sent to:

Sacramento Regional Transit District
Personnel & Risk Manager
PO Box 2110
Sacramento CA 95812-2110

5. Endorsement # 4 (30 days' notice) listed above is the only endorsement required to be made a part of the Workers' Compensation and Employers' Liability policy.

E. PROOF OF COVERAGE: All required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by the Contractor's insurance company as evidence of the stipulated coverages. This Proof of Insurance shall then be mailed to:

Sacramento Regional Transit District
Personnel & Risk Manager
PO Box 2110
Sacramento CA 95812-2110

F. SPECIAL PROVISIONS

The foregoing requirements as to the types and limits of insurance coverage to be maintained by City and its contractors are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by City pursuant to this Contract, including, but not limited to, the provisions concerning indemnification.

RESOLUTION NO. 97-356

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

APPROVED
BY THE CITY COUNCIL
JUN 24 1997
OFFICE OF THE
CITY CLERK

RESOLUTION AUTHORIZING THE CITY MANAGER AND CITY CLERK TO ENTER INTO A GROUND LEASE AGREEMENT WITH THE SACRAMENTO REGIONAL TRANSIT DISTRICT FOR 120,000 SQUARE FEET OF PROPERTY TO BE USED FOR EMPLOYEE AND CUSTOMER PARKING BY THE DEPARTMENT OF UTILITIES

BE IT RESOLVED BY THE SACRAMENTO CITY COUNCIL THAT:

The City Manager and City Clerk are authorized to enter into a ground lease agreement with the Sacramento Regional Transit District for 120,000 square feet of property to be used for employee and customer parking by the Department of Utilities.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____