



DEVELOPMENT SERVICES
DEPARTMENT

New Growth Division

CITY OF SACRAMENTO
CALIFORNIA

2101 ARENA BLVD
SUITE 200
SACRAMENTO, CA
95834

916-808-8368
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December 21, 2004

City Council
Sacramento, California

Honorable Members in Session:

SUBJECT: AMENDMENT OF THE AGREEMENT WITH REGIONAL TRANSIT FOR THE CONSTRUCTION AND RELOCATION OF AMTRAK/ FOLSOM LINE STATION SITE IMPROVEMENTS (RELATED TO LOT W)

LOCATION AND COUNCIL DISTRICT: Lot W (near the northeast corner of 2nd and I Streets, under Interstate 5). Council District 1

RECOMMENDATION:

This report recommends that the City Council approve proposed modifications to the Agreement with Regional Transit (RT), which also includes a Parking Lot Easement Agreement (Exhibit C) between the City and Union Pacific (UP), approved by Council on October 26, 2004, and authorize the City Manager to execute the modified Agreement with RT, by adopting the attached resolution.

CONTACT PERSONS: Carol Shearly, New Growth Manager, 808-5893

FOR COUNCIL MEETING OF: January 11, 2005 (afternoon)

SUMMARY:

On October 26, 2004, the City Council authorized the City Manager to execute an Agreement between RT and the City to grant an easement to Union Pacific (UP) to use Lot W to augment depot parking while the Amtrak/ Folsom Line light rail extension is under construction. Since that approval, negotiations between RT and UP/ Millennia have required changes to the originally approved agreement. Staff now recommends the Council approve those modifications by authorizing the City Manager to execute the modified agreement.

COMMITTEE/COMMISSION ACTION: None.

BACKGROUND INFORMATION:

Regional Transit is constructing the Amtrak/ Folsom Line light rail extension to the existing historic depot. The location of the light rail extension will result in fewer parking stalls to serve the depot. UP

is donating certain easements to Regional Transit (RT) for the construction and operation of the Amtrak/ Folsom light rail extension at the historic depot. Development of the Sacramento Intermodal Transportation Facility (SITF) will likely require the relocation of the station and light rail alignment to a new location at the Railyards. Staff recommends granting an exclusive easement to Union Pacific (UP) to use Lot W to augment the parking available for the depot while the light rail extension is being built and is operational.

On October 26, 2004, the City Council authorized the City Manager to execute an Agreement between RT and the City to grant such an easement to Union Pacific (UP) to use Lot W to augment depot parking while the Amtrak/ Folsom Line light rail extension is under construction among other things.

Since the Council approval, negotiations between RT and UP/ Millennia have proceeded. During the negotiations, a concern surfaced about payment of the cost of relocating the light rail tracks and station. As a result, modifications and clarifications of the agreement were needed. The following changes are proposed:

- 1) City agrees to address the cost of the light rail track relocation through the Sacramento Intermodal Transportation Facility (SITF) funding model rather than using the land use entitlement process since the need for the track relocation is primarily driven by the SITF conceptual design,
- 2) City retains liability for the use of Lot W on "black-out days" - days when the depot does not use the lot but it is reserved for Old Sacramento events,
- 3) Cost of converting 5th Street between H and I Streets is covered by RT rather than the City,
- 4) Clarification of movable improvements to the parking lot added by UP or Platinum Parking, the parking operator tenant,
- 5) Removal of the requirement that a barrier be constructed between Lot W and the depot parking lot upon expiration of the agreement, and
- 6) Clarification of assignment of the agreement by UP to any person or entity acquiring interest in the property, among other changes.

Related to the cost of track relocation, 1) above, RT agrees to relocate the station and track to a new location subject to the SITF planning process. City agrees to include the cost to relocate the track and station in the SITF project costs when the SITF project moves forward. If the SITF project does not move forward, the light rail track and station would not need to be relocated and the relocation cost would not be incurred. Because the need to move the light rail tracks is based on the currently approved SITF conceptual design, it seems appropriate include funding for the track relocation in the SITF funding model rather than have the private developer fund it.

Related to the cost of converting 5th Street, 3) above, the City anticipates RT will use a portion of the federal money transferred to RT or other funds to pay for the 5th Street conversion. The 5th Street conversion is intended to improve bus circulation, as well as auto circulation, around the existing historic depot.

FINANCIAL CONSIDERATIONS:

The original Agreement had the following financial considerations for the City: 1) loss of parking revenue at Lot W and 2) a \$3.6 million cost to relocate the light rail alignment and station. The

proposed modifications do not change the financial considerations.

Regarding the loss of parking revenue, Parking Division staff estimates that Lot W generates \$80,000 per year in revenue which may be lost if an easement is granted. However, the number of parking stalls to serve the depot will decrease from about 490 to about 275 stalls. Potentially some of the transit riders who would prefer to park at the depot may choose to park in a nearby City lot instead so the actual loss of revenue may be less than the projected loss. The Agreement allows the City to use the loss of parking revenue as a local match of the FTA grant funds. Regarding the cost to relocate the alignment and station, the Agreement indicates that the cost to relocate the station and track will be borne by the SITF project when it is developed. If for some unforeseen reason the SITF project is not developed, then the Amtrak/ Folsom alignment and station would not be required to be relocated. In either scenario, the City would not be required to pay the cost to relocate the light rail station or alignment.

ENVIRONMENTAL CONSIDERATIONS:

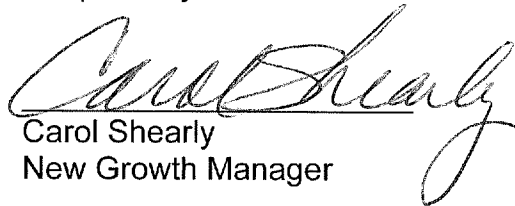
Approval of the agreement, which is not a discretionary project approval action, is not subject to the requirements of the California Environmental Quality Act under the general rule (15301) (b) (3) that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

POLICY CONSIDERATIONS:

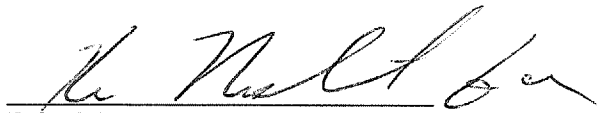
The recommended action conforms to the City of Sacramento Strategic Plan goals to: 1) establish and strengthen community and regional partnerships to enhance the quality of life, and 2) improve and diversify the transportation system.

ESBD CONSIDERATIONS: There are no ESBD considerations for this action.

Respectfully submitted:


Carol Shearly
New Growth Manager

RECOMMENDATION APPROVED:


ROBERT P. THOMAS
City Manager

Approved:


for MICHAEL MEDEMA
Interim Development Services Director

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RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

**APPROVAL OF MODIFICATIONS OF THE AGREEMENT FOR THE
CONSTRUCTION AND RELOCATION OF AMTRAK/ FOLSOM LINE STATION
SITE IMPROVEMENTS (RELATED TO LOT W) BETWEEN THE CITY AND
REGIONAL TRANSIT**

**NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
SACRAMENTO THAT:**

The City Manager is authorized to execute the modified Agreement for the Construction and Relocation of Amtrak/ Folsom Line Station Site Improvements (related to Lot W) between the City and Regional Transit as shown in Attachment 1.

MAYOR

ATTEST:

CITY CLERK

CS-NG

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

**AGREEMENT FOR THE CONSTRUCTION
AND RELOCATION OF AMTRAK/FOLSOM
LINE STATION SITE IMPROVEMENTS**

This Agreement for the Construction and Relocation of Amtrak/Folsom Line Station Site Improvements (the "Agreement") is entered into as of the [____] day of [____], 2004, by and between the **CITY OF SACRAMENTO**, a municipal corporation ("City"), and **SACRAMENTO REGIONAL TRANSIT DISTRICT**, a public corporation ("RT").

Recitals

A. **WHEREAS**, pursuant to that certain Donation Agreement and Escrow Instructions (the "RT-UP Agreement") made of even date herewith by and between RT and Union Pacific Railroad Company ("UP"), UP is donating certain easements to RT for transportation purposes, including the construction and operation of a light rail station (the "Initial Light Rail Station") at the historic Southern Pacific Railroad Depot and Railyards ("Railyards"), located at I and 5th Streets in Sacramento, in connection with RT's Amtrak/Folsom Line Project; and

B. **WHEREAS**, UP, as seller, has entered into that certain Purchase and Sale Agreement and Escrow Instructions, dated as of July 14, 2004, with Millennia Sacramento, III, LLC, a Delaware limited liability company ("Millennia"), as buyer, pursuant to which UP intends to sell the Railyards to Millennia subject to the terms and conditions of said Agreement; all references to UP in this Agreement shall be deemed to be references to Millennia, or any other successor in interest, as applicable; and

C. **WHEREAS**, UP is interested in developing the Railyards and the City is interested in both the private development of the Railyards and the development of the Sacramento Intermodal Transportation Facility ("SITF") at the Railyards; and

D. **WHEREAS**, the development of the Railyards or the development of the SITF likely will require the relocation of the Initial Light Rail Station and related improvements to a new location at the Railyards; and

E. **WHEREAS**, in order to facilitate the potential private development of the Railyards, the easements donated to RT are terminable by UP and subject to relocation to an alternate site at the Railyards; and

F. **WHEREAS**, the City desires to facilitate UP's donation of the Initial Light Rail Station and the subsequent relocation thereof to a new location at the Railyards; and

G. **WHEREAS**, the City and RT previously entered into an Agreement for FTA Grant Funds for Depot Improvements, dated June 26, 2001, pursuant to which RT granted a pass-through of FTA funds to the City for improvements to the Railyards Depot building and parking lot to improve passenger safety, access and appearance; and

H. **WHEREAS**, the City and RT now contemplate that the FTA grant funds will be used by RT and that the City will not be required to fund the local match requirement of the FTA grant.

Agreement

NOW THEREFORE, the parties hereto agree as follows:

1. **Purpose.** The purpose of this Agreement is to ensure that:

1.1 RT's investment of federal transportation funds in the Initial Light Rail Station is not lost;

1.2 Any future project approved by the City provides for continuous light rail service to the Railyards;

1.3 Replacement light rail facilities are constructed, in the event RT is required to relocate to an alternate site; and

1.4 The City makes available adjacent parking resources to mitigate the impact of parking lost due to RT's Initial Light Rail Station.

2. **Termination of Agreement for FTA Grant Funds for Depot Improvements.** Pursuant to Section 11 of the Agreement for FTA Grant Funds for Depot Improvements, the parties hereby terminate that agreement. In connection with such termination, the parties agree that City is no longer required to fund the local match requirement of said FTA Grant.

3. **Initial Site Improvements.**

3.1 Except as provided in Section 3.3, RT shall be responsible for the site improvements for the Initial Light Rail Station including: (i) the acquisition of property from UP; (ii) the design and construction of the track, station platform, electric substation, and related improvements; and (iii) the design and construction of the improvements to the Railyards parking lot as shown on **Exhibit A** hereto ("Parking Lot Improvements").

3.2 RT shall fully defend, indemnify and save harmless, City, its officers and employees, and each and every one of them, from and against all actions, damages, costs, liability, claims, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff

attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Liabilities"), to which any or all of them may be subjected, and whether or not such Liabilities are litigated, settled or reduced to judgment, to the extent such Liabilities (a) are caused by or result from any negligent act or omission or willful misconduct of RT, its subconsultants, subcontractors or agents, and their respective officers and employees, in connection with the performance or nonperformance of this Agreement, whether or not the City, its officers or employees reviewed, accepted or approved any service or work product performed or provided by RT, or (b) arise from or are in any way related to RT's use, acquisition, improvement, possession or occupancy of the property owned by UP, including, without limitation, Liabilities asserted by UP for lost revenue, compensation, severance damages and any remedy or compensation afforded to UP under Article 1, section 19 of the California Constitution, eminent domain law, or any other law or regulation in connection with the impact of RT's construction of the Initial Light Rail Station on parking located on UP's property.

3.3 Certain off-site improvements are necessary to construct the improvements set forth on **Exhibit A** and the responsibility for constructing such off-site improvements shall be allocated as follows: City shall be responsible for work associated with the conversion of Fifth Street to two-way traffic and RT shall be responsible for the pedestrian improvements at Fifth and I Streets, Fifth and H Streets, and near the entrance to Lot W.

4. **Relocation of Initial Light Rail Station.**

4.1 RT agrees to relocate the Initial Light Rail Station to the new location for such station and related facilities, which shall be determined by the SITF planning process. The replacement property will include (a) a replacement station site at the Railyards, (b) as necessary, replacement right-of-way between the replacement station site and a connection point to RT's preexisting operations, and (c) as necessary, a replacement electric substation ("Replacement Property").

4.2 UP has the right to give notice of termination under the easement for RT's Initial Light Rail Station after the City has given all necessary approvals required to enable implementation of the first phase of the SITF. Prior to giving the foregoing approvals, the City shall ensure: (a) that the Replacement Property has been secured and that RT has the necessary permanent rights to construct, operate, maintain, and replace, its facilities thereon, and (b) that RT's Relocation Expenses (defined below) are fully funded as part of the financing plan for the SITF. The City will, at the earliest opportunity, use its good-faith efforts to identify and pledge a source of funding for such Relocation Expenses. As used in this Agreement, "Relocation Expenses" means all hard and soft costs incurred by RT in relocating the Initial Light Rail Station and related facilities to the Replacement Property, including without limitation costs for administration, planning, environmental studies, other due diligence activities, design, engineering, construction, and testing.

5. **Grant of Easement for Replacement Parking.** Concurrently with the close of escrow under the RT-UP Agreement, the City shall grant to UP an exclusive easement for the construction, maintenance, operation, use, inspection, and repair of a parking lot on, over, and under, the City's "Parking Lot W" in the City and County of Sacramento, State of California, as such property is depicted in **Exhibit B** (the "Easement Property") attached hereto and made a part hereof, and more particularly described in the form of Grant of Easement attached hereto as **Exhibit C**, subject to the terms and conditions set forth herein, any and all applicable federal, state and local laws, orders, rules, regulations, and all matters set forth in the Grant of Easement.

5.1 The Grant of Easement provides that it shall expire on the effective date of the termination of RT's Initial Light Rail Easements (as defined in the Grant of Easement), which the City and RT anticipate will occur within five (5) years after the date first above written. If the Grant of Easement does not expire within five (5) years after the date first above written, then City and RT shall negotiate in good faith the terms and conditions upon which the Grant of Easement may continue in effect without cost to RT. If the City and RT are unable to agree on any such terms and conditions, RT agrees to pay the City the lesser of the following amounts annually until the Grant of Easement expires:

5.1.1 Eighty Thousand Dollars (\$80,000); provided that the foregoing amount shall be adjusted on July 1st each year by multiplying \$80,000 by a fraction, the numerator of which shall be the United States Department of Labor's Bureau of Labor Statistics Consumer Price Index for all Urban Consumers (CPI-U), All Items, U.S. City Average (1982-84=100), or the successor of such index (the "CPI"), for the preceding month of June, and the denominator of which shall be the CPI for September 2004 (i.e., 189.9); or

5.1.2 The net revenue that the City might reasonably have expected to receive annually from parking lot operations on the Easement Property if the Grant of Easement had expired as of the end of the fifth year following the date first above written.

6. **Condition Precedent.** The parties' obligations under this Agreement are conditioned upon the closing of escrow for the RT-UP Agreement and the recordation of easements for the Initial Light Rail Station.

7. **Miscellaneous.**

7.1 **Agreement Expenses.** Except as otherwise provided herein, the parties agree to bear their respective expenses, incurred or to be incurred in negotiating and preparing this Agreement and in closing and carrying out the transactions contemplated by this Agreement.

7.2 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

7.3 Entire Agreement. This Agreement, including all Exhibits hereto, is intended as the complete integration of all understandings between the parties, constitutes the entire agreement between the parties pertaining to the subject matter contained in it, and supersedes all prior or contemporaneous oral or written agreements, representations, statements, documents, or understandings of the parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect unless embodied in writing.

7.4 Amendment. No subsequent novation, renewal, addition, deletion, supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by the authorized representatives of the party to be bound.

7.5 Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

7.6 Timeliness. The City and RT hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

7.7 Notices. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (i) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above.

If to the City:

City of Sacramento

With copy to:

If to RT:

General Manager
1400 29th Street
P.O. Box 2110
Sacramento, CA 95812-2110
Telecopy: 916-[_____]

With copy to:

RT General Counsel
1400 29th Street
P.O. Box 2110
Sacramento, CA 95812-2110
Telecopy: 916-321-2975

7.8 Governing Law and Venue. This Agreement shall be construed in accordance with, and governed by, the laws of the State of California, and any action or proceeding, including arbitration, brought by any party in which this Agreement is subject, shall be brought in the Sacramento County.

7.9 Effect of Captions and Headings. The captions and headings of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

7.10 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

7.11 Number and Gender. When required by the context of this Agreement, each number (singular and plural) shall include all numbers, and each gender shall include all genders.

7.12 Further Assurances. Each party to this Agreement agrees to execute, acknowledge, and deliver such further instruments as may be necessary or desirable to accomplish the intent and purpose of this Agreement, provided that the party requesting such further action shall bear all costs and expenses related thereto.

7.13 Advice of Professionals. Each party has had the opportunity to be advised by legal counsel and other professionals in connection with this Agreement, and each party has obtained such advice as each party deems appropriate.

7.14 Negotiated Terms. The parties agree that the terms and conditions of this Agreement are the result of negotiations between the parties and that this Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or its professionals participated in the preparation of this Agreement.

7.15 Recitals and Exhibits. The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Agreement.

7.16 Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement except as necessary to carry out the intent of the parties in entering into this Agreement.

7.17 Liabilities. The City agrees to defend, indemnify and hold RT (together with the officers, directors, employees and representatives of RT) harmless from and against all claims, demands, liabilities, causes of action, actions, judgments, settlements, damages, costs and expenses (including, without limitation, reasonable attorneys' fees and litigation expenses) for personal injury, property damage or breach of contract arising out of, or related to, the City's exercise of any rights, or performance or nonperformance of any obligations, under or in connection with the Grant of Easement to UP. The provisions of this Section shall survive the Closing and the delivery of the Grant of Easement.

7.18 Survival. The parties agree that their respective rights, duties and obligations under any provision of this Agreement which by its terms imposes an obligation on RT or the City which is continuing in nature (collectively, the "Surviving Obligations"), shall survive the close of the escrow, or the termination of this Agreement, regardless of whether such termination is effected through mutual agreement or default or breach of this Agreement.

7.19 Not For The Benefit of Others. This Agreement and each and every provision herein is for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein shall be construed to create or increase any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

7.20 Attorneys Fees. If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding,

including the cost of the arbitrator appointed by it and the costs and expenses attributable to the services of the third arbitrator, in addition to any other relief to which it or they may be entitled. The provisions of this Section shall survive the Close of Escrow or the termination of this Agreement.

7.21 FTA Requirements. RT may, at its option, use funds granted by the FTA to pay various financial obligations arising under this Agreement. If FTA requires any change to this Agreement, both parties agree to negotiate in good faith a reasonable amendment to this Agreement that shall satisfy the requirements of the FTA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first above written.

**CITY OF SACRAMENTO,
a municipal corporation**

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

**SACRAMENTO REGIONAL TRANSIT DISTRICT,
a public corporation**

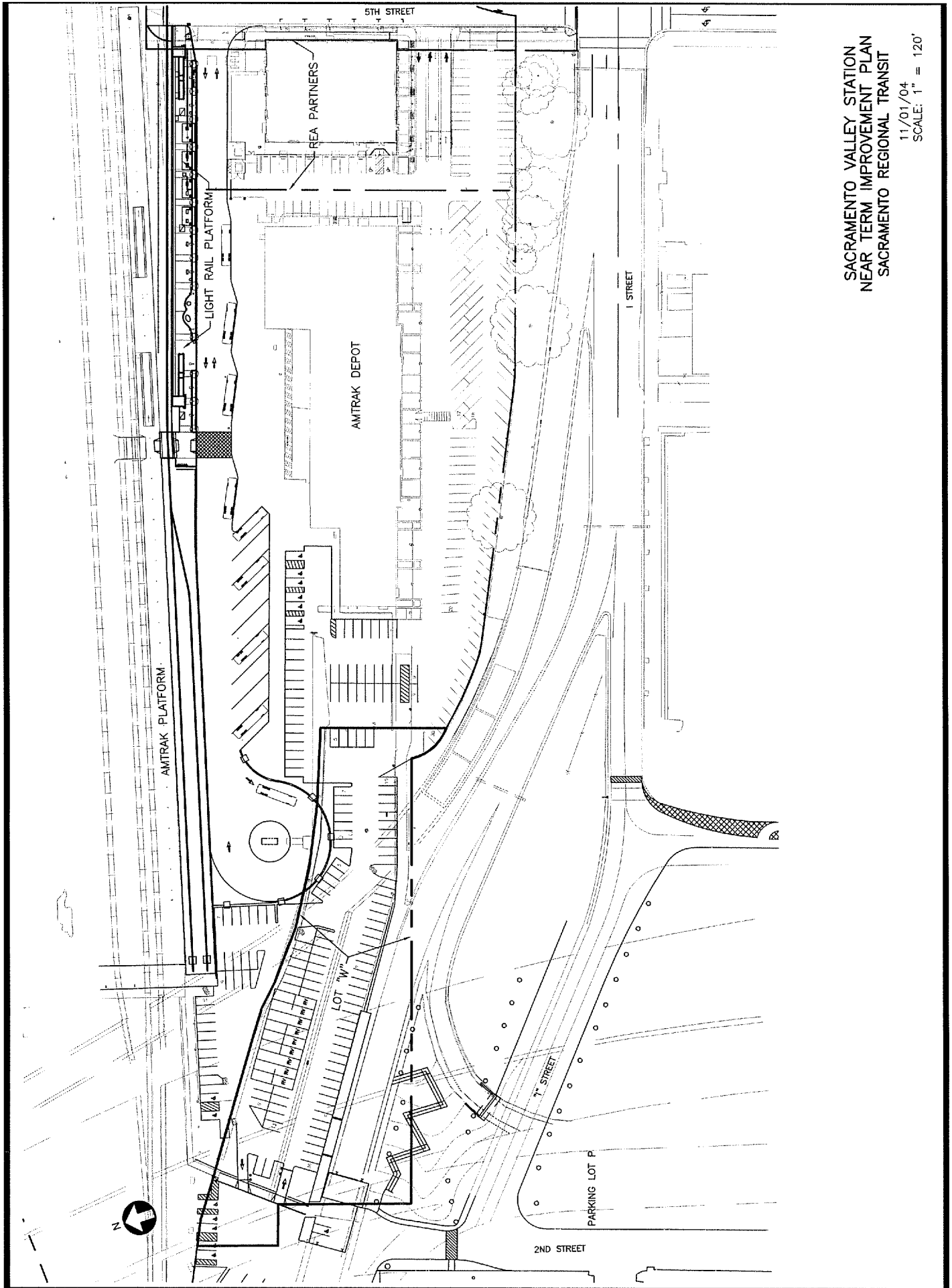
By: _____
Beverly A. Scott,
General Manager/CEO

APPROVED AS TO CONTENT:

By: _____
Michael R. Wiley,
Assistant General Manager
of Planning & Transit
System Development

APPROVED AS TO FORM:

By: _____
Mark Gilbert,
General Counsel



SACRAMENTO VALLEY STATION
 NEAR TERM IMPROVEMENT PLAN
 SACRAMENTO REGIONAL TRANSIT

11/01/04
 SCALE: 1" = 120'

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EXHIBIT C

PARKING LOT EASEMENT AGREEMENT

Recording Requested By:

When Recorded, Mail To:

Space above line for Recorder's use only

This instrument is exempt from Recording Fees
(Govt. Code §27383)

This EASEMENT AGREEMENT is made this ____ day of _____, 2004, by and between the CITY OF SACRAMENTO, a municipal corporation ("City"), and UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("UP").

Recitals

A. WHEREAS, UP and SACRAMENTO REGIONAL TRANSIT DISTRICT, a public corporation ("RT"), have entered into that certain Donation Agreement and Escrow Instructions ("RT-UP Agreement") dated [_____], 2004, in which UP is donating certain easements ("Initial Light Rail Station Easements") to RT for transportation purposes, including the construction and operation of a light rail station ("Initial Light Rail Station"), at the historic Southern Pacific Railroad Depot and Railyard in Sacramento, California ("Railyard"); and

B. WHEREAS, City desires that a light rail station be constructed at the Railyard; and

C. WHEREAS, in consideration of UP's performance of its obligations under the RT-UP Agreement, City has agreed to grant to UP an easement pursuant to the terms and conditions of this Easement Agreement to construct, maintain and operate certain parking lot improvements, which will require the use of City's Parking Lot W ("Parking Lot Improvements").

Agreement

NOW, THEREFORE, the parties do hereby agree as follows:

1. **Grant of Easement.**

1.1 **Grant of Easement.** For valuable consideration received, City hereby grants to UP an exclusive easement in, on, over, and under the real property situated in the City of Sacramento, County of Sacramento, State of California, known as City's Parking Lot W and as more particularly described in **Exhibit C-1** attached hereto ("Parking Lot Easement Property"), for the construction, maintenance, operation, use, inspection, and repair of the Parking Lot Improvements shown on **Exhibit C-2** attached hereto ("Parking Lot Improvements"), subject to all limitations, terms, and conditions set forth herein. The Parking Lot Improvements shall become the property of City upon expiration of this Easement Agreement, provided that any movable improvements added by UP or Platinum Parking of California, Inc. ("Platinum"), subsequent to the construction of the Parking Lot Improvements shown on **Exhibit C-2**, and the movable parking lot equipment financed by RT and installed by Vault Technologies on behalf of Platinum pursuant to the terms of the Parking Lot Construction Agreement among UP, RT, Platinum, and REA Partners, may be removed by UP or Platinum, as applicable, following the expiration of this Easement Agreement.

1.2 **Ingress and Egress.**

1.2.1 The Easement granted hereby shall include an unrestricted right of ingress and egress from and to UP's adjoining property on the East side of the Parking Lot Easement Property, as well as a restricted right of ingress and egress from and to Second Street on the West side (the "Second Street Entrance").

1.2.2 UP's right to use the Second Street Entrance for ingress and egress shall be unrestricted during the construction of the projects contemplated by (i) the Construction, Operations and Maintenance Agreement between UP and RT; (ii) the Parking Lot Construction Agreement among UP, RT, REA Partners and Platinum Parking; and (iii) the Easement Agreement for Bus Circulation Loop, among UP, RT, and REA Partners; all of which are dated of even date herewith.

1.2.3 Following the completion of construction activities under the foregoing agreements, UP's right to use the Second Street Entrance shall be limited to monthly pass-holders only.

1.2.4 Notwithstanding the foregoing, UP may open the Second Street Entrance to all vehicles, only if and when each of the following have occurred: (i) UP or its parking concessionaire shall have provided two (2) or more exit lanes leading from the Railyard to Fifth Street and, at the time of counting queued vehicles under (ii) below, each of the two or more exit lanes are in operation; (ii) the number of cars queued at any exit lane leading from the Railyard to Fifth Street exceeds five (5) cars; and (iii) UP or its parking concessionaire promptly notifies the CITY Department of Transportation, Parking Division, of such determination by telephone at (916) [_____]. If all of the foregoing conditions have been satisfied, UP or its parking concessionaire may open the Second Street Entrance to all vehicles and direct vehicles to that exit in addition to the other available exits serving the Railyard to Fifth Street; provided,

however, that the unrestricted use of the Second Street Entrance shall continue only so long as such heavy traffic flows persist within the Railyard (as evidenced by the continued queuing of more than five vehicles at the exit lanes other than the Second Street Entrance) and for a period of not more than one (1) hour thereafter.

1.2.5 The City reserves the right to expand or restrict the times or days that UP may use the Second Street Entrance if the City (i) determines in good faith that the then-current use of the Second Street Entrance is causing undue disruption to the flow of traffic within the Railyard or on Second Street, or (ii) has received written complaints from UP, nearby land owners or business owners, transit riders, or other interested persons. Prior to making any determination that expands or restricts the usage of the Second Street Entrance, City shall give UP and any complaining nearby land owners or business owners, transit riders, or other interested persons, a notice setting a date for a hearing on the matter (which date will not be less than thirty (30) days after the date of said notice). The hearing shall be conducted by the City Manager, or his or her designee which may include, at the City Manager's discretion, an employee of the City or independent hearing examiner. The City Manager shall determine the procedures and rules under which the hearing will occur. City may consider any evidence or testimony at such hearing and shall make a good faith determination whether use of the Second Street Entrance should be expanded or restricted.

2. **Black-Out Dates.** UP is prohibited from using the Parking Lot Easement Property on black-out dates specified by City. On or before December 31st of each year, City shall give UP written notice of the black-out dates for the upcoming calendar year, which shall not exceed 32 days. The black-out dates shall correspond to the following events:

2.1 Three (3) days for support vehicles for the Mardi Gras celebration. One (1) day for staging of the Mardi Gras parade.

2.2 One (1) day for support vehicles for Saint Patrick's Day activities. One (1) day for staging of the Saint Patrick's Day parade.

2.3 One (1) day for the Collector Fair vendor vehicles.

2.4 One (1) day for staging of the Jazz Jubilee parade. Six (6) days for staging, and for police and fire command posts, for the Jazz Jubilee. One (1) day for support vehicles for the Pacific Rim Street Festival.

2.5 One (1) day for support vehicles for Fourth of July activities. One (1) day for staging of the Fourth of July parade. Three (3) days for support vehicles for the Bridge-to-Bridge event.

2.6 Five (5) days for support vehicles for the Labor Day Gold Rush Days event. One (1) day for support vehicles for the Fall Collector's Fair.

2.7 Six (6) days to support other City-sponsored events and/or activities.

3. **Recreational Vehicle Parking.** UP shall maintain, and make available the tour bus, trailer, and handicapped-accessible parking spaces shown on the attached **Exhibit C-2**, which parking spaces will be constructed by RT pursuant to separate agreements.

4. **Expiration of Easement.**

4.1 The grant of easement set forth herein shall expire on the effective date of the termination of the Initial Light Rail Station Easements.

4.2 Upon expiration of this Agreement, UP agrees to execute such documents as reasonably requested by the City in order to clear title to the Parking Lot Easement Property.

5. Intentionally Deleted.

6. **Maintenance.** UP shall maintain, repair, and replace (as necessary) the Parking Lot Improvements (shown in **Exhibit C-2**) in accordance with all applicable laws, rules, and regulations, and in a condition reasonably suitable for the intended uses of the parking lot. The maintenance/repair items shall include, but are not limited to lighting, patching and sealing the pavement, sufficient drainage, fence repairs, wheel stops, striping, and oil spot maintenance.

7. **Indemnity.**

7.1 UP, to the extent it may lawfully do so, waives and releases any and all claims against City for, and agrees to indemnify, defend and hold harmless City, and its officers, agents and employees ("Indemnified Parties") from and against, any loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, City, UP, or any employee of City or UP) for personal injury or property damage caused to any person while on or about the Parking Lot Easement Property which arises from or relates to any use of the Parking Lot Easement Property by UP or any invitee, licensee or lessee of UP, any act or omission of UP, its officers, agents, employees, licensees, lessees or invitees, or any breach of this Easement by UP. The existence or acceptance by City of any insurance policies or coverages shall not affect or limit any of City's rights to indemnity and defense as set forth above, nor shall the limits of any such insurance limit the liability of UP hereunder. The foregoing provisions of this Section shall survive any expiration of this Agreement.

7.2 City, to the extent it may lawfully do so, waives and releases any and all claims against UP for, and agrees to indemnify, defend and hold harmless UP and Platinum, their officers, agents and employees ("Indemnified Parties") from and against, any loss, damage, injury, liability, claim, demand, cost or expense (including, without limitation, attorneys' fees and court costs), fine or penalty (collectively, "Loss") incurred by any person (including, without limitation, City, UP, or any employee of City or UP) for personal injury or property damage caused to any person while on or about the Parking Lot Easement Property which arises from or relates to any use of the Parking Lot Easement Property by City or any invitee, licensee or lessee of City, any act or omission of City, its officers, agents, employees, licensees, lessees or invitees,

or any breach of this Easement by City. The existence or acceptance by any Indemnitee of any insurance policies or coverages shall not affect or limit any of the Indemnitees' rights to indemnity and defense as set forth above, nor shall the limits of any such insurance limit the liability of City hereunder. The foregoing provisions of this Section shall survive any expiration of this Agreement.

8. **Remedies.** City shall have all remedies available at law or in equity, including the right to sue for damages and/or seek injunctive relief in the event of UP's breach hereof and failure to cure such breach within the time periods set forth in the following sentence. UP shall have the right to cure any such breach within thirty (30) days following receipt of said written notice. If the breach cannot reasonably be cured within said thirty (30) day period, UP shall not be in default if it commences to cure the breach within said thirty (30) day period and thereafter diligently prosecutes the cure to completion. This Easement Agreement may not be terminated until the expiration date set forth in Section 4.1.

9. **Possessory Interest Taxes.** UP acknowledges that this Easement Agreement may create a possessory interest subject to property taxation and agrees that the payment of any such taxes shall be UP's sole responsibility. City makes no representations to UP as to the current amount of such taxes or the amount that will be assessed upon completion of any improvements by UP. UP shall pay all such taxes when due.

10. **Compliance With Laws.** UP shall comply with all federal, state, and local laws and regulations, and all rules, regulations, or orders promulgated by any court, agency, municipality, board, or commission, applicable to the construction, maintenance, repair, and operation of the Parking Lot Improvements. If any failure by UP to comply with such laws, regulations, rules, or orders should result in any fine, penalty, cost, or charge being assessed against City or RT, UP shall promptly reimburse City or RT for such amount.

11. **Assignment.** UP may assign this Easement Agreement to any person or entity acquiring UP's interest in the Sacramento Amtrak Depot property. Otherwise, this Easement Agreement shall not be assigned by UP without the prior written consent of City. Except as set forth in the first sentence of this section, any purported assignment by UP of this Easement Agreement or any interest hereunder without the prior written consent of City shall be void and of no effect.

12. **Binding Effect.** This Easement Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties hereto, except as otherwise provided herein.

13. **Attorney's Fees.** If any legal action or any arbitration or other proceeding is brought for the enforcement or interpretation of this Easement Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Easement Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs in connection with that action or proceeding, in addition to any other relief to which it may be entitled.

14. **Nonwaiver.** Waiver of any breach or default hereunder shall not constitute a continuing waiver or waiver of any subsequent breach either of the same or of another provision of this Easement Agreement.

15. **Modification.** No waiver, alteration, modification, or termination of this Easement Agreement shall be valid unless made in writing and signed by the parties hereto.

16. **Ambiguities.** The parties have each carefully reviewed this Easement Agreement and have agreed to each term of this Easement Agreement. No ambiguity shall be presumed to be construed against either party.

17. **Headings.** The headings and captions in this Easement Agreement are included for reasons of convenience only and shall not affect the construction or interpretation of any of its provisions.

18. **Counterparts.** This Easement Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

19. **Recitals and Exhibits.** The recitals and contents of all Exhibits to this Agreement are incorporated by reference and constitute a material part of this Easement Agreement.

20. **Entire Agreement.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior oral or written agreements, promises, negotiations, representations, or modifications concerning this instrument not expressly set forth in this Easement Agreement shall be of no force and effect unless it is in writing and signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above written.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

**CITY OF SACRAMENTO,
a municipal corporation**

By: _____
City Manager

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

EXHIBIT C-1

Parking Lot Easement Property

All that certain real property located in the City of Sacramento, County of Sacramento, State of California, described as follows:

Commencing at the intersection of Second and "I" Streets as said intersection is shown and so designated on that certain Record of Survey filed in the Sacramento County Recorder's Office in Book 26 of Surveys at Page 18; thence along the center line of said Second (2nd) Street North 18°02'00" East 328.80 feet to a point in the southerly line of Union Pacific Railroad Company's right of way, said point being the True Point of Beginning; thence continuing along said center line North 18°02'00" East 79.25 feet to a point that is 31.58 feet southerly, measured at right angles from center line of said Company's mainline track (Sacramento – Ogden) at or near Engineer Station 3164+65; thence South 64°16'41" East 25.24 feet; thence South 54°53'30" East 40.98 feet; thence South 55°39'05" East 63.64 feet; thence South 55°39'41" East 78.45 feet; thence South 54°34'23" East 30.17 feet; thence South 45°07'09" East 27.55 feet; thence South 50°37'16" East 57.41 feet; thence South 58°54'04" East 60.24 feet; thence South 64°37'37" East 60.90 feet; thence South 69°08'30" East 75.45 feet; thence South 18°18'36" West 122.52 feet; thence along the arc of a 48.00 foot radius curve which is concave easterly, said arc being subtended by a chord which bears North 23°01'42.6" West 44.83 feet; thence North 71°32'52" West 431.82 feet; thence North 18°02'00" East 128.80 feet; thence North 71°32'52" West 40.00 feet to the Point of Beginning and containing an area of 1.598 acres, more or less.

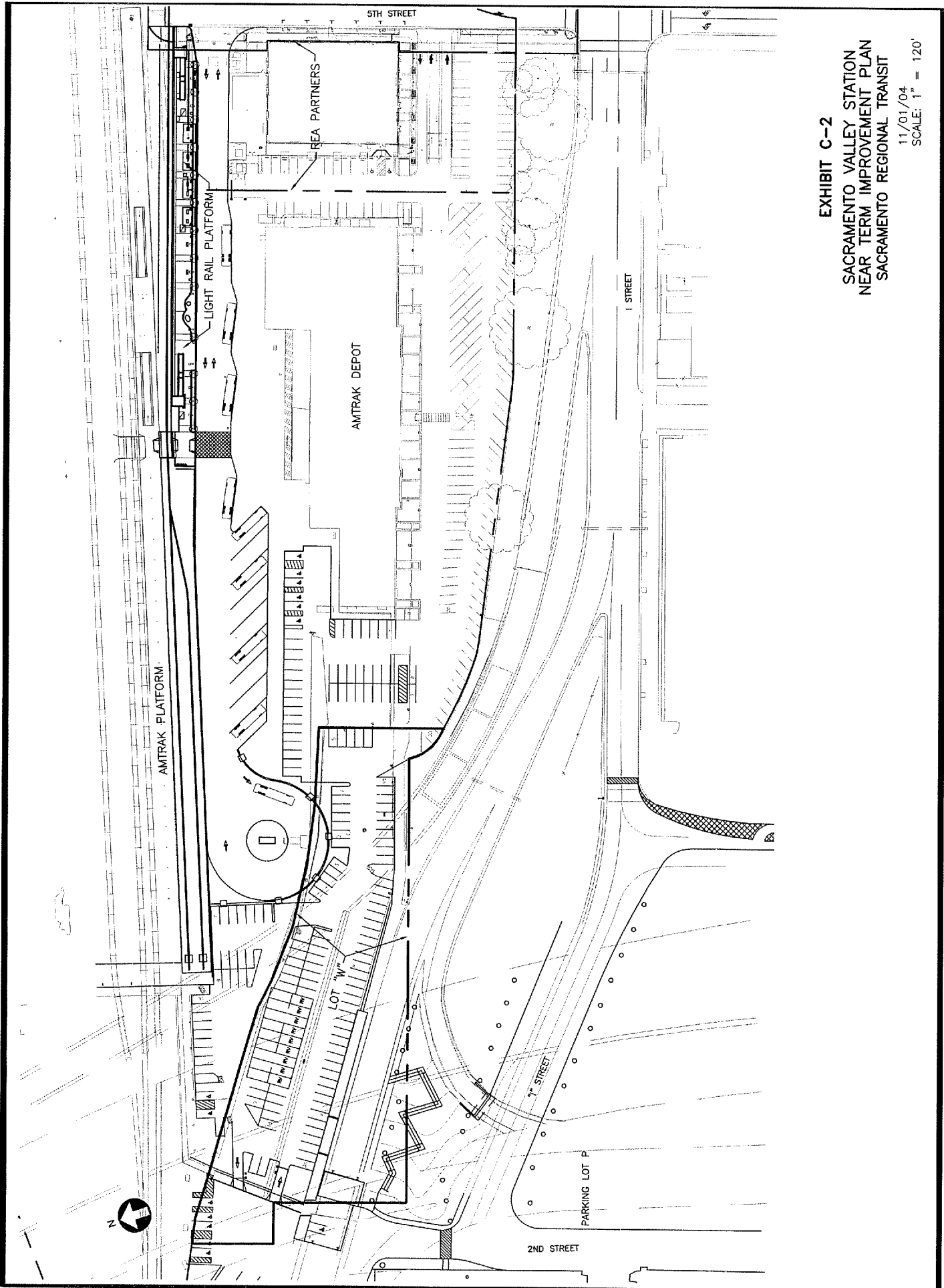


EXHIBIT C-2
SACRAMENTO VALLEY STATION
NEAR TERM IMPROVEMENT PLAN
SACRAMENTO REGIONAL TRANSIT
 11/01/04
 SCALE: 1" = 120'

...of