



3

REF: 90-06-03

**DEPARTMENT OF
PUBLIC WORKS**

**CITY OF SACRAMENTO
CALIFORNIA**

1023 J STREET
SUITE 202
SACRAMENTO, CA
95814-2877

OFFICE OF ENGINEERING
AND TRANSPORTATION SERVICES
PARKING

916-449-5354

June 5, 1990

Budget and Finance Committee/
Transportation and Community Development Committee
Sacramento, California

Honorable Members in Session

SUBJECT: Renewal of Owner Participation Agreement for Tenth and K
Investors, Inc. and City Parking Lots B and E

SUMMARY

This report recommends that the City enter into a parking agreement with Tenth and K Investors, Inc., owners of the building at 1025 10th Street.

BACKGROUND

In October 1979, the City Council adopted a resolution authorizing execution of an agreement for the City to provide 65 monthly parking permits for the business tenants of 1025 10th Street distributed among Lots H, Lot B and Lot E. Ownership of the building changed and a new agreement was negotiated in 1987. The new three year agreement was executed in March 1987 for 65 monthly permits in Lot B and Lot E only.

The current owner, 10th and K Investors, Inc., has requested the City enter into a new 10 year parking agreement and has agreed to pay an adjusted rate which includes a 15% surcharge for guaranteed parking availability through the term of the OPA. Under the proposed terms of the parking agreement, the rates charged the owner would be based upon prevailing City rates, plus a 15% surcharge for the guarantee of continued parking availability.

City Parking staff recommends the proposed new agreement for two reasons. First, it is often essential to the economic viability of older, renovated buildings, such as 1025 10th Street, that they be provided parking in City facilities. Second, the rates set forth in the parking agreement includes a 15% surcharge which

acknowledges the value of the guarantee of monthly permits for the period of the OPA.

FINANCIAL DATA

The current rate for parking spaces under the OPA is \$58 for Lot B and \$67 for Lot E. According to the proposed agreement, effective July 1, 1990 the rate would increase to \$84 or \$92 according to the assigned parking facility. The estimated rates over the term of the parking agreement, assuming an increase of approximately 20% in 1990-91 and an annual increase of 7% thereafter, would be as follows:

	<u>Lot B</u>		<u>Lot E</u>	
	Regular	Surcharged	Regular	Surcharged
1990-1991	\$73	\$84	\$80	\$92
1991-1992	78	89	86	98
1992-1993	83	95	92	106
1993-1994	89	102	98	113
1994-1995	95	109	105	121
1995-1996	102	117	112	129
1996-1997	109	125	120	138
1997-1998	117	134	128	147
1998-1999	125	144	137	158
1999-2000	134	154	147	169
2000-	Option to negotiate one 5 year renewal.			

The City anticipates receiving approximately \$948,900 in gross operating revenues from this OPA during the ten year period of the contract.

POLICY CONSIDERATIONS

The action proposed in this report establishes a precedent for a surcharge on parking rates for long term parking agreements. When this item is brought before the Budget & Finance Committee, another long term parking agreement renewal will be presented for another downtown building, providing for a similar surcharge. The surcharge recognizes the value added to downtown properties for the guarantee of long term parking availability.

MBE/WBE

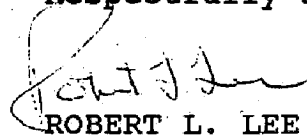
No impact.

June 5, 1990
Budget and Finance Committee/
Transportation and Community Development Committee
Page 3

RECOMMENDATION

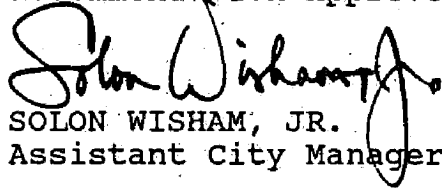
Staff recommends approval of the attached resolution which authorizes the City Manager to execute the parking agreement between the City and 10th and K Investors, Inc. the building owner.

Respectfully submitted,



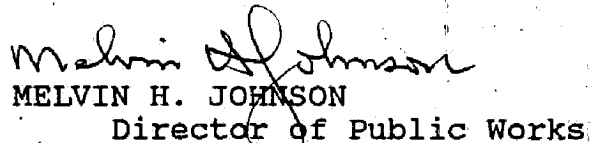
ROBERT L. LEE
Deputy Director of Public Works

Recommendation Approved:



SOLON WISHAM, JR.
Assistant City Manager

Approved:



MELVIN H. JOHNSON
Director of Public Works

Contact Person to
Answer Questions

All Districts

MARK MORGAN, PARKING ADMINISTRATOR
449-5354

JMM/BN/lmn

RESOLUTION NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF SACRAMENTO AND TENTH & K INVESTORS, INC. FOR THE SALE OF 65 MONTHLY PARKING PERMITS.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

The City Manager is hereby authorized to execute that certain agreement between the City of Sacramento and Tenth & K Investors, Inc., for the sale of 65 monthly permits, under the terms and conditions therein.

MAYOR

ATTEST:

CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

PARKING AGREEMENT

This parking Agreement is made at Sacramento, California, on this _____ day of _____, 1990, by and between the City of Sacramento, a municipal corporation ("City") and 10th & K Investors, Inc., a California corporation ("Investors") who agree as follows:

1. **Background and Purpose.** Investors owns the building ("Building") located at 1025 10th Street, formerly occupied by Roos Atkins. Investors desires to secure an assured supply of parking spaces for persons whose principal place of business or employment is located in the Building. For the consideration set forth herein, City is willing to make available to Investors sixty-five (65) monthly parking permits designated for use at certain specified City parking facilities.

2. **Term.** This Agreement shall commence on July 1, 1990 and shall remain in force, unless otherwise terminated, until July 1, 2000; provided that, upon the expiration of this term, the parties shall use their best efforts to negotiate a five (5) year extension of this Agreement on such terms and conditions as may then be deemed appropriate.

3. **Allocated Permits.** During the term of this Agreement, City shall allocate to Investors a total of sixty-five (65) monthly parking permits ("Allocated Permits"). Thirty (30) of these permits shall be designated for use on the upper level of City's Lot B (10th & I Streets), and thirty-five (35) shall be designated for use at City's Lot E (13th & J Streets).

4. **Permit Issuance.** As of July 1, 1990, City shall issue to Investors sixty-five (65) of the Allocated Permits. Of this number, thirty (30) shall be designated for use

at Lot B and thirty-five (35) for use at Lot E. Any of these permits which are subsequently cancelled by Investors or by City as provided herein, shall be returned to the pool of Allocated Permits and shall be available for issuance to Investors upon ten (10) days notice of a request for issuance. Issuance of any Allocated Permit shall be deemed effective as of the first day of the month in which the issuance occurs. The amount due for any such permit shall be calculated as provided in paragraph 7 and shall be paid prior to issuance.

5. Renewal of Issued Permits. Each issued permit, unless otherwise cancelled, shall be automatically renewed as of the first day of every month succeeding the month in which the permit was issued.

6. Cancellation of Issued Permits.

6.1 By Investors. Any issued permit may be cancelled at any time by Investors upon thirty (30) days written notice of cancellation to City, provided that the effective date of cancellation shall be the last day of the month in which the thirty (30) day notice period expires.

6.2 By City. In addition to its right to cancel issued permits for the reasons set forth in paragraphs 9, City may cancel issued permits under the following circumstances:

(a) If City undertakes a project to redevelop the Lot B property and thereby must close and excavate that property, City may cancel all issued permits designated for use on the upper level of Lot B upon thirty (30) days written notice of cancellation; provided that, at the request of Investors, City shall use its best efforts to redesignate these permits for use at another City parking facility.

(b) In the event that any of the parking facilities which may be designated for use by Investors under this Agreement are damaged such that they may not be used for parking, or such that their use is so restricted that Investors' issued permits may in City's judgment no longer be accommodated, then City may cancel the affected permits until such time as the damaged facilities have been restored; provided that, at the request of Investors, City shall use its best efforts to redesignate the affected permits for use during the interim at another City parking facility.

6.3 Effect of Cancellation. Upon cancellation, an issued permit shall be deemed allocated but unissued, and shall be subject to reissuance under the provisions of paragraph 4.

7. Payment for Issued Permits. Except as provided in paragraph 4, payment for issued permits shall be made on a monthly basis. The rate of payment shall be equal to one hundred fifteen percent (115%) of City's then prevailing monthly permit rate for the parking facility to which the issued permits are assigned. Payment shall be due prior to the third business day of each month of the term of this Agreement, and shall cover use of the affected permits for the month in which payment is due.

8. Distribution of Issued Permits. Investors shall distribute issued permits only to persons who are either tenants or employees in the Building. Ten days prior to the first day of each month during the term of this Agreement, Investors shall provide City with a current list of all of the persons to whom issued permits have been distributed. This list shall indicate the names of such persons, their vehicle license number, employer, and business telephone number.

9. **Unauthorized Use of Issued Permits.** In the event that any issued permit is used by any person not eligible for distribution and not listed on Investors' current list of distributees, the affected permit shall be immediately cancelled by City and removed from the pool of Allocated Permits. Multiple incidents of such misuse shall constitute a default by Investors and shall entitle City to terminate this Agreement.

10. **Nondiscrimination.** Investors covenants that there shall be no discrimination against any person or group of persons on account of race, color, creed, sex, national origin or ancestry in the distribution or use of issued permits. Any breach of this covenant shall constitute a default by Investors and shall entitle City to terminate this Agreement.

11. **Access to Records.** City shall have reasonable access to the records of Investors regarding administration of all permits issued hereunder.

12. **Assignment.** Investors' rights under this Agreement shall not be assigned without the prior written consent of the City, provided such consent shall not be unreasonably withheld.

13. **Obligations of City.** City shall maintain and operate each parking facility to which any issued permits may be assigned, in a manner consistent with the operation of all other similarly situated parking facilities within the City. Subject to such reasonable rules relating to the use of these facilities as may from time to time be established by City, the users of issued permits shall have the right of ingress and egress twenty-four (24) hour per day, three hundred sixty-five (365) days per year; provided such rights shall be subject to such reasonable interference as may be made necessary from time to time by the repair,

reconstruction or maintenance of the parking facility or any appurtenances thereto or associated improvements. Any user of an issued permit may be excluded from the facility to which the permit is assigned if the user repeatedly fails to comply with the rules for use of the facility.

14. Conflict. In the event of a conflict between any provision of this Agreement and any rule, regulation or law enacted by any governmental agency including, without limitation, City, the County of Sacramento, the Sacramento Air Quality Maintenance District or any state or federal agency, the enactment of the governmental agency shall prevail and the obligations of the parties to this Agreement shall be modified accordingly.

15. Subordination. This Agreement shall be subject and subordinate at all times to the lien of any mortgage or mortgages or trust deed or deeds or evidence of obligation which may now exist upon or which may be placed upon any parking facility designated by City for Investors' use herein. Investors covenants that it will execute and deliver to City, or to the nominee of City, proper subordination agreements to this effect at any time upon the request of City and without payment being made therefor.

16. Attorney's Fees and Costs. If either party shall bring any suit or proceeding to enforce the terms of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

17. Notice. Any notice required or desired to be given pursuant to this Agreement, shall be given either by personal service or by certified mail, return receipt requested, postage fully prepaid, at the following respective addresses:

City

City of Sacramento
City Manager
915 I Street
Sacramento, CA 95814

Investors

Investors
c/o Mr. Lee Chen
3500 Country Club Drive
El Macero, CA 95618

The address for notice may be changed from time to time by giving notice according to the foregoing.

18. **Complete Agreement.** The foregoing contains all of the terms and conditions of the Agreement between City and Investors.

19. **Condemnation.** In the event any portion or all of any parking facility designated for Investors' use herein should be taken by eminent domain or acquired under the threat or the exercise of the power of eminent domain, Investors shall have no interest whatsoever in any proceeds from such taking.

20. **Security.** The nature of any permits issued pursuant to this Agreement is that of a license and no relationship of landlord and tenant shall arise from this Agreement. City shall not be responsible for the personal security of any person or property in any of the parking facilities designated for Investors' use herein beyond the limits of the City responsibility to persons generally.

21. **Termination for Default.** In the event of any default by Investors, City shall have the right to terminate this Agreement. No failure of City to terminate this Agreement for default upon any breach shall constitute a waiver of the right to terminate this Agreement for the same or any other default subsequently occurring.

22. Time of the Essence. Time is of the essence to each and every term and condition of this Agreement.

CITY OF SACRAMENTO,
a municipal corporation

BY: _____
CITY MANAGER

10th & K INVESTORS,
a California corporation

BY: _____

ATTEST:

CITY CLERK

Approved as to form:

DEPUTY CITY ATTORNEY

PARKING AGREEMENT

This parking Agreement is made at Sacramento, California, on this _____ day of _____, 1990, by and between the City of Sacramento, a municipal corporation ("City") and 10th & K Investors, Inc., a California corporation ("Investors") who agree as follows:

1. **Background and Purpose.** Investors owns the building ("Building") located at 1025 10th Street, formerly occupied by Roos Atkins. Investors desires to secure an assured supply of parking spaces for persons whose principal place of business or employment is located in the Building. For the consideration set forth herein, City is willing to make available to Investors sixty-five (65) monthly parking permits designated for use at certain specified City parking facilities.

2. **Term.** This Agreement shall commence on July 1, 1990 and shall remain in force, unless otherwise terminated, until July 1, 2000; provided that, upon the expiration of this term, the parties shall use their best efforts to negotiate a five (5) year extension of this Agreement on such terms and conditions as may then be deemed appropriate.

3. **Allocated Permits.** During the term of this Agreement, City shall allocate to Investors a total of sixty-five (65) monthly parking permits ("Allocated Permits"). Thirty (30) of these permits shall be designated for use on the upper level of City's Lot B (10th & I Streets), and thirty-five (35) shall be designated for use at City's Lot E (13th & J Streets).

4. **Permit Issuance.** As of July 1, 1990, City shall issue to Investors sixty-five (65) of the Allocated Permits. Of this number, thirty (30) shall be designated for use

at Lot B and thirty-five (35) for use at Lot E. Any of these permits which are subsequently cancelled by Investors or by City as provided herein, shall be returned to the pool of Allocated Permits and shall be available for issuance to Investors upon ten (10) days notice of a request for issuance. Issuance of any Allocated Permit shall be deemed effective as of the first day of the month in which the issuance occurs. The amount due for any such permit shall be calculated as provided in paragraph 7 and shall be paid prior to issuance.

5. Renewal of Issued Permits. Each issued permit, unless otherwise cancelled, shall be automatically renewed as of the first day of every month succeeding the month in which the permit was issued.

6. Cancellation of Issued Permits.

6.1 By Investors. Any issued permit may be cancelled at any time by Investors upon thirty (30) days written notice of cancellation to City, provided that the effective date of cancellation shall be the last day of the month in which the thirty (30) day notice period expires.

6.2 By City. In addition to its right to cancel issued permits for the reasons set forth in paragraphs 9, City may cancel issued permits under the following circumstances:

(a) If City undertakes a project to redevelop the Lot B property and thereby must close and excavate that property, City may cancel all issued permits designated for use on the upper level of Lot B upon thirty (30) days written notice of cancellation; provided that, at the request of Investors, City shall use its best efforts to redesignate these permits for use at another City parking facility.

(b) In the event that any of the parking facilities which may be designated for use by Investors under this Agreement are damaged such that they may not be used for parking, or such that their use is so restricted that Investors' issued permits may in City's judgment no longer be accommodated, then City may cancel the affected permits until such time as the damaged facilities have been restored; provided that, at the request of Investors, City shall use its best efforts to redesignate the affected permits for use during the interim at another City parking facility.

6.3 Effect of Cancellation. Upon cancellation, an issued permit shall be deemed allocated but unissued, and shall be subject to reissuance under the provisions of paragraph 4.

7. Payment for Issued Permits. Except as provided in paragraph 4, payment for issued permits shall be made on a monthly basis. The rate of payment shall be equal to one hundred fifteen percent (115%) of City's then-prevailing monthly permit rate for the parking facility to which the issued permits are assigned. Payment shall be due prior to the third business day of each month of the term of this Agreement, and shall cover use of the affected permits for the month in which payment is due.

8. Distribution of Issued Permits. Investors shall distribute issued permits only to persons who are either tenants or employees in the Building. Ten days prior to the first day of each month during the term of this Agreement, Investors shall provide City with a current list of all of the persons to whom issued permits have been distributed. This list shall indicate the names of such persons, their vehicle license number, employer, and business telephone number.

9. Unauthorized Use of Issued Permits. In the event that any issued permit is used by any person not eligible for distribution and not listed on Investors' current list of distributees, the affected permit shall be immediately cancelled by City and removed from the pool of Allocated Permits. Multiple incidents of such misuse shall constitute a default by Investors and shall entitle City to terminate this Agreement.

10. Nondiscrimination. Investors covenants that there shall be no discrimination against any person or group of persons on account of race, color, creed, sex, national origin or ancestry in the distribution or use of issued permits. Any breach of this covenant shall constitute a default by Investors and shall entitle City to terminate this Agreement.

11. Access to Records. City shall have reasonable access to the records of Investors regarding administration of all permits issued hereunder.

12. Assignment. Investors' rights under this Agreement shall not be assigned without the prior written consent of the City, provided such consent shall not be unreasonably withheld.

13. Obligations of City. City shall maintain and operate each parking facility to which any issued permits may be assigned, in a manner consistent with the operation of all other similarly situated parking facilities within the City. Subject to such reasonable rules relating to the use of these facilities as may from time to time be established by City, the users of issued permits shall have the right of ingress and egress twenty-four (24) hour per day, three hundred sixty-five (365) days per year; provided such rights shall be subject to such reasonable interference as may be made necessary from time to time by the repair,

reconstruction or maintenance of the parking facility or any appurtenances thereto or associated improvements. Any user of an issued permit may be excluded from the facility to which the permit is assigned if the user repeatedly fails to comply with the rules for use of the facility.

14. **Conflict.** In the event of a conflict between any provision of this Agreement and any rule, regulation or law enacted by any governmental agency including, without limitation, City, the County of Sacramento, the Sacramento Air Quality Maintenance District or any state or federal agency, the enactment of the governmental agency shall prevail and the obligations of the parties to this Agreement shall be modified accordingly.

15. **Subordination.** This Agreement shall be subject and subordinate at all times to the lien of any mortgage or mortgages or trust deed or deeds or evidence of obligation which may now exist upon or which may be placed upon any parking facility designated by City for Investors' use herein. Investors covenants that it will execute and deliver to City, or to the nominee of City, proper subordination agreements to this effect at any time upon the request of City and without payment being made therefor.

16. **Attorney's Fees and Costs.** If either party shall bring any suit or proceeding to enforce the terms of this Agreement, the prevailing party in such suit or proceeding shall be entitled to recover from the other party reasonable costs and expenses, including attorney's fees.

17. **Notice.** Any notice required or desired to be given pursuant to this Agreement, shall be given either by personal service or by certified mail, return receipt requested, postage fully prepaid, at the following respective addresses:

City

City of Sacramento
City Manager
915 I Street
Sacramento, CA 95814

Investors

Investors
c/o Mr. Lee Chen
3500 Country Club Drive
El Macero, CA 95618

The address for notice may be changed from time to time by giving notice according to the foregoing.

18. Complete Agreement. The foregoing contains all of the terms and conditions of the Agreement between City and Investors.

19. Condemnation. In the event any portion or all of any parking facility designated for Investors' use herein should be taken by eminent domain or acquired under the threat or the exercise of the power of eminent domain, Investors shall have no interest whatsoever in any proceeds from such taking.

20. Security. The nature of any permits issued pursuant to this Agreement is that of a license and no relationship of landlord and tenant shall arise from this Agreement. City shall not be responsible for the personal security of any person or property in any of the parking facilities designated for Investors' use herein beyond the limits of the City responsibility to persons generally.

21. Termination for Default. In the event of any default by Investors, City shall have the right to terminate this Agreement. No failure of City to terminate this

Agreement for default upon any breach shall constitute a waiver of the right to terminate this Agreement for the same or any other default subsequently occurring.

22. Time of the Essence. Time is of the essence to each and every term and condition of this Agreement.

CITY OF SACRAMENTO,
a municipal corporation

BY: _____
CITY MANAGER

10th & K INVESTORS,
a California corporation

BY: _____

ATTEST:

CITY CLERK

Approved as to form:

DEPUTY CITY ATTORNEY