

Orange Countywide Oversight Board

Agenda Item No. 9a

Date: 9/17/2024

From: Successor Agency to the Anaheim Redevelopment Agency

Subject: Resolution of the Countywide Oversight Board Approving License/Right-of-Entry Agreement between the City of Anaheim as Successor to the Anaheim Redevelopment Agency and the City of Anaheim

Recommended Action:

Approve resolution approving License/Right-of-Entry Agreement between the City of Anaheim as Successor to the Anaheim Redevelopment Agency and the City of Anaheim

The Anaheim Successor Agency ("**Successor Agency**") requests Countywide Oversight Board ("**Oversight Board**") approval of a License/Right-of-Entry Agreement ("**License Agreement**") between the City of Anaheim as Successor to the Anaheim Redevelopment Agency ("**Agency**") and the City of Anaheim ("**City**").

Southern California Edison Company ("**Edison**") entered into an Option Agreement with Katella Operating Properties, LLC ("**KOP**") on March 5, 1999, for property located at 1604 South Anaheim Boulevard (the "**Property**"). KOP then entered into a Sublicense/Sublease Agreement with the Agency (now the Successor Agency) on April 30, 2001 (the "**KOP Sublease Agreement**"). The Agency then entered into a Sub-Sublease Agreement with American Sports Center ("**ASC**"), which was terminated on March 31, 2023, after an ASC default.

The Successor Agency is seeking approval from the Countywide Oversight Board for a new License Agreement with the City for use by the Anaheim Convention Center ("**ACC**") for truck marshaling whereby freight trucks will store truck trailers related to convention center events. The License Agreement will not require physical improvements to the Property by ACC.

The KOP Sublease Agreement is an approved enforceable obligation and is identified on the Successor Agency's Recognized Obligation Payment Schedule ("**ROPS**") under Line-Item No. 70. The current monthly payment to KOP is \$50,400.81 (\$604,809.72 per fiscal year), which is paid through the Redevelopment Property Tax Trust Fund ("**RPTTF**").

Under the License Agreement, ACC (through the City) would pay \$20,000 per month (\$240,000 per fiscal year) to the Successor Agency, and assume all Property maintenance, security, and management duties. The initial License Agreement term is five (5) years with two (2) five-year options to extend, which would expire on May 21, 2029. The License Agreement also includes scheduled monthly rent increases of 3% per year after the initial five-year term as shown in the monthly payment schedule in Attachment 3.

Both Edison and KOP have reviewed and approved the Successor Agency's request to enter into a license agreement with ACC. Further, the License Agreement was approved by the City, serving as the Successor Agency Board, at its meeting on May 21, 2024. It should be noted that due to restrictions contained in the KOP Sublease Agreement, most of the Property is not suitable for uses requiring improvements.

If the License Agreement is approved by the Oversight Board, the new payment amount requested from the RPTTF for Line-Item No. 70, starting with the ROPS 2025-26, will be \$30,400.81 per month (\$364,809.72 per fiscal year), which is a reduction of \$20,000 per month (\$240,000 per fiscal year) from the ROPS 24-25. The amount of future RPTTF payment requests for Line-Item No. 70 will be calculated in accordance with the monthly rent schedule in Attachment 3.

Impact on Taxing Entities

Approval of the License Agreement will reduce the amount of RPTTF requested by approximately \$20,000 per month (\$240,000 per fiscal year) for ROPS 2025-26, which would increase the residual RPTTF to the taxing entities.

Staff Contact(s)

Sergio Ramirez, Economic Development Director
sramirez@anaheim.net

Stephen Stoewer, Senior Project Manager
SStoewer@anaheim.net

Attachments

1. Resolution
2. City Council Minutes
3. License/Right-of-Entry Agreement

**RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD
RESOLUTION NO. 24-030**

A RESOLUTION OF THE ORANGE COUNTYWIDE OVERSIGHT BOARD APPROVING
LICENSE/RIGHT-OF-ENTRY AGREEMENT BY AND BETWEEN THE SUCCESSOR
AGENCY TO THE ANAHEIM REDEVELOPMENT AGENCY AND THE CITY OF
ANAHEIM

WHEREAS, the former Anaheim Redevelopment Agency (“Former Agency”) previously was a community redevelopment agency that was previously organized and existing under the California Community Redevelopment Law, Health and Safety Code Section 33000, *et seq.*, and previously authorized to transact business and exercise powers of a redevelopment agency pursuant to action of the City Council of the City of Anaheim (“City”); and

WHEREAS, Assembly Bill x1 26 added Parts 1.8 and 1.85 to Division 24 of the California Health and Safety Code, which caused the dissolution of all redevelopment agencies and wind down of the affairs of former agencies, including as such laws were amended by Assembly Bill 1484 and by other subsequent legislation (“Dissolution Law”); and

WHEREAS, as of February 1, 2012 the Agency was dissolved pursuant to the Dissolution Law, and as a separate public entity, corporate and policy the Successor Agency to the Anaheim Redevelopment Agency (“Successor Agency”) administers the enforcement obligations of the Former Agency and otherwise unwinds the Former Agency’s affairs; and

WHEREAS, prior to July 1, 2018 under the Dissolution Law, in particular Sections 34179 and 34180, all actions of the Successor Agency were subject to the review and approval by a local seven-member oversight board, which oversaw and administered the Successor Agency’s activities during the period from dissolution until June 30, 2018; and

WHEREAS, as of, on and after July 1, 2018, under the Dissolution Law, in particular Section 34179(j), in every California county there shall be only one oversight board that is staffed by the county auditor-controller, with certain exceptions that do not apply in the County of Orange; and

WHEREAS, as of, on and after July 1, 2018, the Orange Countywide Oversight Board (“Oversight Board”) was established through the Orange County Auditor-Controller in compliance with Section 34179(j), which serves as the oversight board to the 25 successor agencies existing and operating in Orange County, including Successor Agency and all other successor agencies in Orange County; and

WHEREAS, Southern California Edison Company (“**Edison**”) entered into an Option Agreement with Katella Operating Properties, LLC (“**KOP**”) on March 5, 1999, for property located at 1604 South Anaheim Boulevard (the “**Property**”). **KOP** then entered into a Sublicense/Sublease Agreement with the Agency (now the Successor Agency) on April 30, 2001 (the “**KOP Sublease Agreement**”); and

WHEREAS, The Successor Agency then entered into a Sub-Sublease Agreement with American Sports Center (“**ASC**”), which was terminated on March 31, 2023, after an ASC default; and

WHEREAS, The KOP Sublease Agreement is an approved enforceable obligation and is identified on the Successor Agency's Recognized Obligation Payment Schedule ("**ROPS**") under Line-Item No. 70. The current monthly payment to KOP is \$50,400.81 (\$604,809.72 per fiscal year), which is paid through the Redevelopment Property Tax Trust Fund ("**RPTTF**"); and

WHEREAS, The Successor Agency is seeking approval of a new license/right of entry agreement with the City (the "**License Agreement**") for use by the Anaheim Convention Center ("**ACC**") for the purpose, among others, of truck marshaling whereby freight trucks will store truck trailers related to convention center events; and

WHEREAS, Under the License Agreement, ACC (through the City) would pay \$20,000 per month (\$240,000 per fiscal year) to the Successor Agency, and assume all Property maintenance, security, and management duties. The initial License Agreement term is five (5) years with two (2) five-year options to extend and includes scheduled monthly rent increases of 3% per year after the initial five-year term; and

WHEREAS, If the License Agreement is approved by the Oversight Board, the new payment amount requested from the RPTTF for Line-Item No. 70 starting in ROPS 2025-26 will be \$30,400.81 per month (\$364,809.72 per fiscal year), during the initial five-year term of the License Agreement, which is a reduction of \$20,000 per month (\$240,000 per fiscal year) from the ROPS 2024-25.

NOW, THEREFORE, BE IT RESOLVED BY THE ORANGE COUNTYWIDE OVERSIGHT BOARD:

SECTION 1. The foregoing recitals are incorporated into this Resolution by this reference, and constitute a material part of this Resolution.

SECTION 2. The Orange Countywide Oversight Board hereby approves the License Agreement and the execution thereof by the Successor Agency.

SECTION 3. Under Section 34179(h) written notice and information about certain actions taken by the Orange Countywide Oversight Board shall be provided to the DOF by electronic means and in a manner of DOF's choosing. The Orange Countywide Oversight Board's action shall become effective five (5) business days after notice in the manner specified by the DOF unless the DOF requests a review.

SECTION 4. This Resolution shall take effect immediately upon its adoption.



ANAHEIM CITY COUNCIL ACTION AGENDA

MAY 21, 2024

CITY COUNCIL

SUCCESSOR AGENCY TO THE ANAHEIM REDEVELOPMENT AGENCY

PUBLIC FINANCING AUTHORITY

HOUSING AND PUBLIC IMPROVEMENTS AUTHORITY

HOUSING AUTHORITY

Ashleigh E. Aitken
Mayor

Norma Campos Kurtz
Mayor Pro Tem
District 4

Jose Diaz
Council Member
District 1

Carlos A. Leon
Council Member
District 2

Natalie Rubalcava
Council Member
District 3

Stephen Faessel
Council Member
District 5

Natalie Meeks
Council Member
District 6

▪ **ORDER OF BUSINESS:** Public sessions of all regular meetings of the City Council/Successor Agency to the Redevelopment Agency/Housing Authority/Public Financing Authority/Housing and Public Improvements Authority begin at 5:00 P.M. Public hearings begin at 5:30 P.M. unless otherwise noted. Closed sessions begin at 3:00 P.M. or such other time as noted. Closed sessions may be preceded by one or more public workshops. If a workshop is scheduled, the subject and time of the workshop will appear on the agenda. Not all of the above agencies may be meeting on any given date. The agenda will specify which agencies are meeting. All meetings are in the Anaheim City Hall, Council Chamber, 200 S. Anaheim Blvd., Anaheim, CA 92805 or such other location as noted. Pursuant to Government Code Section 54954.2(a)(2), no action or discussion by the City Council shall be undertaken on any item not appearing on the posted agenda, except to briefly provide information, ask for clarification, provide direction to staff, or schedule a matter for a future meeting.

▪ **REPORTS:** All agenda items and reports are available for review in the City Clerk's Office and www.anaheim.net/councilagendas. Any writings or documents provided to a majority of the City Council regarding any item on this agenda (other than writings legally exempt from public disclosure) are available at the Office of the City Clerk, located at 200 S. Anaheim Blvd., 2nd Floor, Anaheim, CA 92805 and by contacting the office by phone, 714-765-5166, or email to cityclerk@anaheim.net.

▪ **PUBLIC COMMENTS:** There are two Public Comment periods with speakers having one opportunity to address the City Council, except for scheduled public hearing items. Public comments are limited to three (3) minutes per speaker, unless a different time limit is announced. The City uses speaker cards that must be submitted to the City Clerk in order to address the City Council. Prior to the business portion of the agenda, the City Council and all other related agencies meeting on such date will convene in joint session for the first Public Comment period where speakers will be permitted to speak on specific agenda item(s). This first Public Comment period is limited to 90 minutes or until all agenda item speakers have been heard, whichever is later. Any remaining time shall be provided to non-agenda item speakers until the 90 minute time limitation is exhausted. The second Public Comment period will be opened by the Mayor if any non-agenda item speakers were not called during the first Public Comment period. For public hearings, the Mayor or Chairperson will separately call for testimony at the time of each public hearing. Testimony during public hearings is subject to the following time limits: Project applicant or issue initiator: twenty minutes for initial presentation and ten minutes for rebuttal; Residents within the noticed area of the subject property: ten minutes; All other members of the public: three minutes. Public hearings regarding legislative matters: five minutes. The Mayor or Chairperson may limit the length of comments during public hearings due to the number of persons wishing to speak or if comments become repetitious or irrelevant. Speakers shall refrain from profane language and other disruptive remarks or behavior which disrupts or disturbs the meeting, or risk being removed (AMC 1.12.017). Additionally, members of the public may correspond with the City Council and all other related agencies, on any agenda items or matters within the jurisdiction of such governing bodies, by submitting comments electronically for City Council consideration by sending them to publiccomment@anaheim.net. **To ensure distribution to the City Council prior to consideration of the agenda, please submit comments at least 2 hours prior to the scheduled start time of the meeting.** Those comments, as well as any comments received after that time, will be distributed to the City Council, posted on the City's website, and will be made part of the official public record of the meeting. Current and archived public comments are available at www.anaheim.net/publiccomment. Contact the City Clerk's Office at 714-765-5166 or cityclerk@anaheim.net with any questions.

▪ **ADDITIONS/DELETIONS:** Items of business may be added to the agenda upon a motion adopted by a minimum 2/3 vote finding that there is a need to take immediate action and that the need for action came to the attention of the City or Agency subsequent to the agenda being posted. Items may be deleted from the agenda upon request of staff or upon action of the Council or Agency.

▪ **CONSENT CALENDAR:** Consent Calendar items will be acted on by one roll call vote unless a member(s) requests an item(s) be discussed and/or removed from the Consent Calendar for separate action.

▪ **SERVICIOS DE TRADUCCION (TRANSLATION SERVICES: SEE LAST PAGE OF AGENDA FOR DESCRIPTION IN ENGLISH):** La ciudad provee servicios de interpretación al español en las juntas del Consejo. La interpretación simultánea al español se ofrece por medio del uso de audifonos y la interpretación consecutiva (español a inglés) también está disponible para cualquiera que desee dirigirse al Ayuntamiento, declarando su petición en el podio. No tiene que usar los servicios de interpretación de la Ciudad; las personas pueden proveer su propio intérprete, si lo desean. Debido a que existen muchos dialectos y regionalismos, la Ciudad no puede garantizar que los intérpretes puedan traducir a un dialecto o regionalismo en particular y rehúsa cualquier responsabilidad que surja de tales servicios. Para servicios de interpretación en otros idiomas, comuníquese con la oficina de la Ciudad (City Clerk), cuando menos 48 horas antes de la junta programada.

200 S. Anaheim Blvd.
Anaheim, CA 92805
Tel: (714) 765-5166
Fax (714) 765-4105
www.anaheim.net

ANAHEIM CITY COUNCIL
ANAHEIM, CALIFORNIA
MAY 21, 2024
2:30 P.M.

Call to order the Anaheim City Council. **2:35 p.m.**

MEMBERS PRESENT: Mayor Aitken and Council Members Kurtz, Diaz, Leon, Rubalcava, Faessel, and Meeks.

2:30 P.M. - CLOSED SESSION

ADDITIONS/DELETIONS TO CLOSED SESSION: None

PUBLIC COMMENTS ON CLOSED SESSION ITEMS: One (1) in-person speaker; no electronically submitted comments were received related to closed session.

Recess to closed session. **2:39 p.m.**

1. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Subdivision (d)(1) of Section 54956.9 of the California Government Code
Name of Case: Gaetz et al. v. City of Anaheim, et al., USDC Case No. 5:23-cv-01368

2. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
Initiation of litigation pursuant to paragraph (4) of subdivision (d) of California Government Code Section 54956.9: Two potential cases

3. **CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION**
(Significant exposure to litigation pursuant to paragraph (2) of Subdivision (d) of California Government Code Section 54956.9): One potential case
(A copy of the claim against the City is included in the agenda packet and available for review by contacting the City Clerk's Office and on-line electronically with the agenda at: www.anaheim.net/councilagendas.)

4. **CONFERENCE WITH LABOR NEGOTIATORS**
(Subdivision (a) of Section 54957.6 of the California Government Code)
Agency Designated Representative: Linda Andal, Human Resources Director
Name of Employee Organizations: (1) American Federation of State, County and Municipal Employees (General Management, Professional/Technical, and Confidential Units); (2) Anaheim Police Management Association; (3) Teamsters, Local 952; (4) Anaheim Municipal Employees Association, Police Cadet Unit; (5) International Brotherhood of Electrical Workers (IBEW), Local 47; and IBEW, Local 47 Part-Time Customer Service Employees; (6) Service Employees' International Union, United Service Workers West; (7) Anaheim Firefighters Association, Local 2899; (8) Anaheim Municipal Employees Association (General, Clerical, Part-Time Units); (9) Anaheim Police Association; (10) International Brotherhood of Electrical Workers, Local 47 (Professional Management and Part-Time Management Units)

5. **CONFERENCE WITH LABOR NEGOTIATORS**
(Subdivision (a) of Section 54957.6 of the California Code)
Agency Designated Representative: Linda Andal, Human Resources Director
Name of Employee Organization: Anaheim Municipal Employees Association, Police Cadet Unit

Reconvene the Anaheim City Council. **4:40 p.m.**

MEMBERS PRESENT: Mayor Aitken and Council Members Diaz, Leon, Faessel, and Meeks. Mayor Pro Tem Kurtz joined the meeting at 4:41 p.m. Council Member Rubalcava joined the meeting at 4:43 p.m.

4:30 P.M. - WORKSHOP

WORKSHOP: Workforce Development Workshop

PUBLIC COMMENTS ON WORKSHOP: One (1) in-person speaker; no electronically submitted comments were received related to the workshop.

5:00 P.M.

INVOCATION: Cantor Zev Brooks, Temple Beth Emet

FLAG SALUTE: Council Member Stephen Faessel

PRESENTATIONS: Recognizing Sister Johnellen Turner, O.P. for 17 years of service to St. Catherine's Academy

Accepted by Sister Johnellen Turner

Recognizing Anaheim Elementary School District Superintendent Dr. Christopher Downing's Retirement

Accepted by Dr. Christopher Downing

Recognizing Strong Water Anaheim for receiving Orange County's sole nomination for the 2024 James Beard Foundation Awards

Accepted by Ying Chang, Robert Adamson, and family

Presentation by League of California Cities

Presented by Connor Medina, Regional Public Affairs Manager, League of California Cities Orange County Division

ACCEPTANCE OF OTHER RECOGNITIONS (To be presented at a later date):

Recognizing May 22, 2024, as Harvey Milk Day

Accepted by Peg Corley, Executive Director, LGBTQ Center Orange County

Recognizing May 19-25, 2024, as National Public Works Week

Accepted by Rudy Emami, Director of Public Works

Recognizing May 19-25, 2024, as National Travel and Tourism Week

Accepted by Pepe Avila, Vice President, Tourism & Partnership, Visit Anaheim

Recognizing May 2024, as National Cities, Towns, and Villages Month

Accepted by Connor Medina, Regional Public Affairs Manager, League of California Cities Orange County Division

Call to order the Successor Agency to the Anaheim Redevelopment Agency, Anaheim Public Financing Authority, Anaheim Housing and Public Improvements Authority and Anaheim Housing Authority (in joint session with the City Council).
6:01 p.m.

ADDITIONS/DELETIONS TO THE AGENDAS: None

PUBLIC COMMENTS (all agenda items, except public hearings): Eleven (11) in-person speakers; City Clerk Theresa Bass reported fifteen (15) public comments were received electronically prior to 12:30 p.m. (Total of sixteen (16) public comments received via email).

[Public Comments Submitted – May 21, 2024 City Council Meeting](#)

(limited to 90 minutes, or until all agenda item speakers have been heard; any time remaining shall be provided to non-agenda item speakers)

COUNCIL COMMUNICATIONS:

Mayor Pro Tem Kurtz stated that at the Council meeting of May 7, there was a public comment regarding a meeting on April 13 with Disney consultant Joe Haupt that she did not add to her public calendar. She clarified that she attended a DisneylandForward community meeting at Walnut Village and Mr. Haupt was in attendance, but she did not have a scheduled meeting with him. She highlighted the Ice Cream with a Cop event that she attended at Tocumbo Ice Cream and shared a photograph of the event. Mayor Pro Tem Kurtz thanked the Anaheim Police Department and volunteers who took the time to provide information to residents in attendance. She noted that Anaheim Police Department volunteers spend hundreds of hours visiting residents who are homebound, provide house checks for individuals on vacation, and provide information to residents regarding how to contact the Police Department or other City departments. Mayor Pro Tem Kurtz thanked all the children and parents who participated in the event.

Council Member Diaz shared that his office will be hosting a Beach Boulevard Business Assistance Community meeting on Thursday, May 30, 2024 from 4:00 p.m. to 6:00 p.m. at the West Anaheim Youth Center. On Wednesday, June 5 at 7:00 p.m. the District 1 and District 2 Offices will be hosting a District Community Meeting at the Brookhurst Community Center.

Council Member Faessel requested adjourning the City Council meeting in memory of three individuals. He shared that "Speed" Castillo was an Anaheim High School District administrator, teacher, coach, and counselor. He was the Orange County liaison of officials for the CIF Southern Section. Speed Castillo will be fondly remembered by many Anaheim High School graduates. Jon Urbanek was a longtime swimming coach at Anaheim High School, and then went on to become an Olympic swim coach. He was 87. Lastly, Marie Santangelo, a 50-year resident of District 5, was a devoted wife, mother, and grandmother who recently passed away. Her husband Ray, daughter Stephanie, and grandson Luke will miss her. Council Member Faessel highlighted and shared photographs of events he attended including the Mexico en el Corazón event at Pearson Park. He shared that Mexico's finest musical groups performed at the event at no cost to residents. He attended the Gun Buyback event at the Brookhurst Community Center. His wife Susan attended the Disney VolunTEARS book giveaway at Sunkist Elementary School. Council Member Faessel shared that he joined Congressman Lou Correa and Assemblymember Avelino Valencia at South Junior High School to celebrate all the community and parent volunteers. Council Member Faessel attended the Community Development Block Grant 50th Anniversary event at the Downtown Community Center. He thanked Housing and Community Development Director Grace Ruiz-Stepter and Deputy Director Sandra Lozeau for organizing the event. He also thanked all the non-profit organizations who were in attendance and do remarkable work in the community.

Council Member Rubalcava thanked everyone who participated in the public comment process. She highlighted and shared photographs of events she attended in District 3 including the Children's Festival at Pearson Park hosted by Museo Museum and Cultural Center. There were a lot of groups who participated including Vibrant Minds, Green Bird, Anaheim Beautiful Teen Ambassadors, members of the Halloween Parade team, and the SWAT team. Her office hosted and funded a Teacher Appreciation Lunch at Anaheim High School. Lunch was served to over 300 teachers by El Pollo Fino. Council Member Rubalcava thanked community leader Sofia Romero for hosting a community walk at Bush Street and Rose Street. She thanked Public Utilities General Manager Dukku Lee and Anaheim's Community Police Team including Sergeant Lopez and Officer Avila, for attending the event. Some of the issues discussed were graffiti, gang activity, and infrastructure challenges that will be fixed. She stated that a playground was built at Little People's Park, and she was grateful to work alongside so many people who truly love the City including City staff, Parks Commissioners and District 3 Representative Carlotta Rhea Clark, Council Member Meeks, Police Chief Armendariz, Community Police Team, and hundreds of volunteers who came together to create a safe space for kids to play, socialize and thrive. The playground features a zipline, two slides, swings, a climbing wall, see-saw, drums and chimes, and an educational panel where kids can learn sign language. Little People's Park was the site where the Chicano riots of 1978 occurred between the Anaheim Police Department and Mexican American residents. This conflict helped improve ties between the police and the neighborhood's Mexican American community. Since then, the City has come a long way and continues to celebrate Chicano history and value the relationship with law enforcement. She mentioned that last year the Anaheim City Council adopted August as Chicano Heritage Month. She noted that the Little People's Park playground sits alongside two iconic art murals including the 300-foot Chicano mural created in 2023 along the park's south edge and Emilio Vasquez's historic Chicano mural across the street at Sohan American Market. The playground is located at 220 West Elm Street and will officially open May 17. Council Member Rubalcava thanked Director of Community Services Sjany Larson-Cash and her team, CarMax Foundation, KABOOM!, and Anaheim Family YMCA because they were instrumental in ensuring that the playground was built in two days. She stated she would like to pause and honor a great life that was recently lost. Mr. Espiridion Castillo was best known by his nickname "Speed." He earned the name in high school when he ran the 400-yard dash in 50 seconds and 800 yards in two minutes and 10 seconds. Speed was born in New Mexico and grew up in Arizona, but he was a big part of Anaheim. Speed was best known as a longtime referee for Anaheim High School sports and as a security officer at Disneyland. He also served as a Personnel Commissioner with the Anaheim Union High School District. Speed was often there to help students who couldn't afford graduation expenses or with other help. He was recently inducted into the Anaheim High School Hall of Fame. He was a proud Air Force veteran who also served in the Korean War and with the Strategic Air Command. She requested adjourning the City Council meeting in memory of Speed Castillo.

Council Member Leon shared that throughout the month of May, he has been recognizing graduating seniors across District 2 from Magnolia High School, Loara High School, Savanna High School, as well as the Brookhurst Project S.A.Y Program. He congratulated the 2024 graduating class for their exceptional dedication, hard work and perseverance throughout their academic journey. For District 2 residents living near Nutwood, he shared that he is continuing to meet with various stakeholders and trying to find a long-term solution for securing that area, especially by the railroad tracks between Crescent Avenue and Katella Avenue. He attended the Anaheim Car Club's Second Annual Car Show and presented the club with a certificate of recognition in honor of their events and hard work. He thanked the Anaheim Car Club for making the event possible and for bringing Chicano pride to the City of Anaheim. He also attended the Children's Art Festival at Pearson Park. He thanked the Museo Museum and Cultural Center as well as the City's Community Services team for organizing the event. He also thanked all the organizers, volunteers, performers, and attendees. Council Member Leon congratulated Bowl and Plate Eatery, the May Restaurant of the Month. They are located off Magnolia Avenue and Ball Road. Every dish tells a story of a 10-year friendship and love for Vietnamese and Thai cuisine. This is a great spot to indulge in a celebration of multicultural Asian food that will tantalize taste buds and leave individuals craving for more. He invited everyone to visit Bowl and Plate Eatery. He

stated that he joins his colleagues in remembering Speed Castillo. He sent his thoughts and prayers to his daughter, family, and all who knew him.

Mayor Aitken thanked Attorney General Rob Bonta and Supervisors Doug Chaffee and Vicente Sarmiento for hosting the Gun Buyback Program in the City of Anaheim. She noted that 337 firearms were voluntarily turned in by community members in exchange for gift cards. Firearms turned in included assault rifles, handguns, and homemade 3D-printed weapons. She thanked the Anaheim Police Department for leading the event with the help of other local Police Departments. Mayor Aitken stated that seeing so many community members turn in firearms to make their communities safer was a great way to start Mother's Day. She joined Mayor Pro Tem Kurtz and Council Member Leon in welcoming Mobility 21 at a reception honoring members of the California Transportation Commission, which was hosted at ARTIC. The group is dedicated to finding transportation solutions in Southern California and as the Mayor of Anaheim, member of SCAG, and OCTA Board Member, it was nice to welcome the California Transportation Commission to Anaheim.

CITY MANAGER'S UPDATE:

City Manager Vanderpool noted that the Anaheim Public Library will be launching this year's Summer Reading Program for all ages, "The Adventure Begins at Your Library," from May 28, 2024 to August 4, 2024. He invited everyone to join the fun. He shared that the Anaheim Public Library Communications Team beat out over 334 entries from across the country to receive the ALA PR Xchange Award in the External Communications category for their monthly Anaheim Public Library e-Newsletter. He shared that Anaheim Public Utilities is hosting their annual OC Green Expo on June 8, 2024 between 10:00 a.m. and 2:00 p.m. along Center Street Promenade. Residents are invited to learn how to be more sustainable by reducing energy and water use, planting a shade tree, test driving a zero-emission vehicle, and recycling e-waste and organics. Join city departments, non-profits, and eco-friendly organizations at this free event. Please visit anaheim.net/greenexpo to register.

Recess the Anaheim City Council, Anaheim Public Financing Authority, Anaheim Housing and Public Improvements Authority, and Anaheim Housing Authority. **7:03 p.m.**

5:00 P.M. - SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY

Item pulled for discussion:

Council Member Meeks: Item No. 2

MOTION: SF/CL to approve the Consent Calendar as presented. ROLL CALL VOTE: 7-0. Motion carried.

CONSENT CALENDAR:

1. Approve a License Agreement with the City of Anaheim, in a monthly rental rate of \$20,000 for the initial term with a 3% annual rate increase for each subsequent year, for necessary truck marshaling space for the staging and storing of freight trucks and trailers in conjunction with Convention Center events, for a five-year term with two five-year optional renewals, and authorize the City Manager, or designee, to execute, implement, and administer the License Agreement on behalf of the Successor Agency [related to City Council Agenda Item No. 19].

2. RESOLUTION NO. SA-2024-001 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM AS THE SUCCESSOR AGENCY TO THE ANAHEIM REDEVELOPMENT AGENCY authorizing the City Manager, or designee, to execute and administer licenses and right of entry agreements allowing for temporary beneficial use of real property assets until such time as these properties are ready for disposition or development [related to City Council Agenda Item No. 24].

Item No. 2 Discussion. MOTION: NM/CL ROLL CALL VOTE: 7-0. Motion carried.

3. RESOLUTION NO. SA-2024-002 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM AS THE SUCCESSOR AGENCY TO THE ANAHEIM REDEVELOPMENT AGENCY declaring certain properties to be “Exempt Surplus Land” pursuant to California Government Code Section 54221(f)(1) [includes determination that the action will not result in a direct or indirect physical change in the environment and does not constitute an “approval” of a “project” pursuant to California Environmental Quality Act Guidelines Sections 15004 and 15352].

4. Approve minutes of the Successor Agency to the Anaheim Redevelopment Agency meeting of March 26, 2024.

Adjourn the Successor Agency to the Anaheim Redevelopment Agency. **7:13 p.m.**

Reconvene the Anaheim Public Financing Authority. **7:13 p.m.**

5:00 P.M. - PUBLIC FINANCING AUTHORITY

MOTION: SF/CL to approve the Consent Calendar as presented. ROLL CALL VOTE: 7-0. Motion carried.

CONSENT CALENDAR:

5. RESOLUTION NO. APFA-2024-002 A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ANAHEIM PUBLIC FINANCING AUTHORITY amending the dates and times for regular meetings of the Authority for the 2024 calendar year and rescinding Resolution No. APFA-2024-001 [rescheduling the meeting of August 6 to August 13, 2024; and the meeting of July 2 to July 23, 2024].

6. Approve minutes of the Public Financing Authority meeting of January 23, 2024.

Adjourn the Anaheim Public Financing Authority. **7:14 p.m.**

Reconvene the Anaheim Housing and Public Improvements Authority. **7:14 p.m.**

5:00 P.M. – HOUSING AND PUBLIC IMPROVEMENTS AUTHORITY

MOTION: CL/NK to approve the Consent Calendar as presented. ROLL CALL VOTE: 7-0. Motion carried.

CONSENT CALENDAR:

7. RESOLUTION NO. AHPIA-2024-002 A RESOLUTION OF THE GOVERNING BOARD OF THE ANAHEIM HOUSING AND PUBLIC IMPROVEMENTS AUTHORITY amending the dates and times for regular meetings of the Authority for the 2024 calendar year and rescinding Resolution No. AHPIA-2024-001 [rescheduling the meeting of August 6 to August 13, 2024; and the meeting of July 2 to July 23, 2024].

8. Approve minutes of the Housing and Public Improvements Authority meeting of January 23, 2024.

Adjourn the Anaheim Housing and Public Improvements Authority. **7:15 p.m.**

Reconvene the Anaheim Housing Authority. **7:15 p.m.**

5:00 P.M. - HOUSING AUTHORITY

MOTION: NK/NM to approve the Consent Calendar as presented. ROLL CALL VOTE: 7-0. Motion carried.

CONSENT CALENDAR:

9. RESOLUTION NO. AHA-2024-002 A RESOLUTION OF THE GOVERNING BOARD OF THE ANAHEIM HOUSING AUTHORITY amending the dates and times for regular meetings of the Authority for the 2024 calendar year and rescinding Resolution No. AHA-2024-001 [rescheduling the meeting of August 6 to August 13, 2024; and the meeting of July 2 to July 23, 2024].

5:00 P.M. PUBLIC HEARING: 7:16 p.m.

At 7:16 p.m., Council Member Diaz recused himself due to a conflict of real property interest as his residence is within 500 feet from the subject property and left the dais.

10. Public hearing to consider a resolution of public interest, convenience and necessity for the acquisition of property located at 831 S. Beach Boulevard (APN 079-164-13).

RESOLUTION NO. AHA-2024-003 A RESOLUTION OF THE GOVERNING BOARD OF THE ANAHEIM HOUSING AUTHORITY finding and determining that the public interest, convenience and necessity require the acquisition of certain real property located at 831 S. Beach Boulevard for public purposes (APN 079-164-13).

Item No. 10 Discussion. Mayor Aitken opened the public hearing at 7:32 p.m. Two (2) in-person speakers; No electronic public comments submitted. Mayor Aitken closed the

public hearing at 7:41 p.m.

MOTION: NR/NK ROLL CALL VOTE: 6-0-1. (AYES: Mayor Aitken and Council Members Kurtz, Leon, Rubalcava, Faessel, and Meeks; ABSTAIN (recusal): Council Member Diaz). Motion carried.

Adjourn the Anaheim Housing Authority. **7:45 p.m.**

Reconvene the Anaheim City Council. **7:45 p.m.**

5:00 P.M. - CITY COUNCIL

Council Member Diaz returned to the dais at 7:45 p.m.

Item pulled for discussion:

Council Member Leon: Item No. 28

MOTION: SF/CL Waive reading of all ordinances and resolutions and adopt the consent calendar. ROLL CALL VOTE: 7-0. Motion carried.

CONSENT CALENDAR:

11. Receive and file minutes of the Library Board meeting of April 8, 2024 and the Senior Citizen Commission meetings of February 15, 2024 and March 21, 2024.
12. Approve recognitions recognizing Hephatha Lutheran Church and School's Golden 50th Anniversary; Gilbert High School's Sports Intervention Program; Maryanne Rogers for turning 100 years old on July 27, 2024; Anaheim Police Department for participating in the 2024 End of Watch Memorial Bike Ride; August 14-17, 2024 as Toastmasters International Week, and celebrating the 100th Anniversary of Toastmasters; and June 19, 2024 as Juneteenth.
13. Receive and file the list of Professional Service Agreements executed by the City Manager in April 2024.
14. Adopt a Seven-Year Transportation Capital Improvement Program for Fiscal Years 2024-25 through 2030-31.
15. Award the contract to the lowest responsible bidder, Allison Mechanical, Inc., in the amount of \$877,000, for the Anaheim Convention Center North Pony Chiller Installation and Related Work Project; find that, pursuant to Public Contract Code Section 3400(c)(2), a particular brand of equipment was specified in the solicitation for bid in order to match other products in use at the Anaheim Convention Center North Facility; authorize the Director of Public Works to execute the contract and related documents and to take the necessary actions to implement and administer the contract; and authorize the Finance Director to execute the Escrow Agreement pertaining to contract retentions.

16. Approve the Professional Services Agreement with thirty-four consultants, each in an amount not to exceed \$400,000 per Work Order Package with a total contract amount not to exceed \$1,000,000 per contract year per consultant company plus a 15% contingency for as needed professional engineering and design services to support the Design Services Section of the Department of Public Works for a three year term with two one-year optional renewals; authorize the Director of Public Works to execute the agreements and to take the necessary actions to implement and administer the agreements; and authorize de minimis changes that do not substantially change the terms and conditions of the agreements, so long as such changes are determined to be de minimis by the City Attorney's Office [AKM Consulting Engineers; Architerra Design Group; Ardurra Group, Inc.; Aztec Engineering California, Inc.; Biggs Cardosa Associates, Inc.; BKF Engineers; Cannon Corporation; Cho Design Associates, Inc.; David Evans and Associates, Inc.; David Volz Design; DRC Engineering Inc.; EEC Environmental; Fuscoe Engineering, Inc.; GHD Inc.; Harris and Associates; Hunsaker and Associates; IDS Group, Inc.; Infrastructure Engineers; JMDiaz Inc.; Kreuzer Consulting Group; Mark Thomas and Company, Inc.; Nichols Consulting Engineers, Chtd.; Nuvis; NV5, Inc.; Onward Engineering; Pacific Advanced Civil Engineering, Inc.; Q3 Consulting; Rick Engineering Company; Stantec Consulting Services; TKE Engineering, Inc.; Verde Design Group Landscape; Willdan Engineering; Wood Rogers, Inc.; and Woodard and Curran].
17. Approve the Professional Services Agreement with Chicago Title Company, in an amount not to exceed \$250,000 per Work Order Package with a total contract amount not to exceed \$1,000,000 per contract year plus a 15% contingency for as needed extra services, for Title Report and Escrow Services to support the Design Services Section of the Department of Public Works for a three year term with two one-year optional renewals; authorize the Director of Public Works to execute the agreement and to take the necessary actions to implement and administer the agreement; and authorize de minimis changes that do not substantially change the terms and conditions of the agreement, so long as such changes are determined to be de minimis by the City Attorney's Office.
18. Approve the Professional Services Agreements with three consultants, each in an amount not to exceed \$200,000, for on-call broker services to support current and future economic development activities for a two year term beginning July 1, 2024 with two additional two-year extensions; and authorize the City Manager, or designee, to execute, administer, and implement the agreements [CBRE, Inc., Jones Lang LaSalle Brokerage, Inc., and Kosmont Real Estate Services, dba Kosmont Realty].
19. Approve a License Agreement with the Successor Agency to the Anaheim Redevelopment Agency, in a monthly rental rate of \$20,000 for the initial term with a 3% annual rate increase for each subsequent year, for necessary truck marshaling space for the staging and storing of freight trucks and trailers in conjunction with Convention Center events, for a five-year term with two five-year optional renewals, and authorize the City Manager, or designee, to execute, implement, and administer the License Agreement on behalf of the Successor Agency [related to Successor Agency to the Anaheim Redevelopment Agency Agenda Item No. 01].
20. Approve the Memorandum of Understanding (MOU) with the Orange County Continuum of Care, County of Orange, and Cities of Irvine and Santa Ana for Round 5 of the Homeless Housing Assistance and Prevention Program Commitment to Partnership and Participation in a regionally coordinated homelessness action plan; authorize the City Manager, or designee, to execute the MOU and to take the necessary actions to implement activities to coordinate homelessness housing interventions and supportive services in the region consistent with the guidance issued by the State of California's Interagency Council on Homelessness.

21. Approve the First Amendment to Agreement with HeliStream, Inc. to increase the not-to-exceed amount from \$120,000 to \$250,000 for helicopter pilot training.

22. RESOLUTION NO. 2024-040 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM adopting the FY 2024-25 project list for the Road Repair and Accountability Act of 2017.

23. RESOLUTION NO. 2024-041 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM declaring its intention to amend Ordinance No. 6469 granting a non-exclusive franchise to Chapman University for transportation services within and around the City of Anaheim and stating the terms and conditions upon which said franchise is amended, and establishing a time and date of a public hearing to consider said amendment [includes determination that the request is exempt from the provisions of the California Environmental Quality Act pursuant to Section 21080(b)(10) of the California Public Resources Code as this request involves passenger transportation service on existing streets] [Public Hearing scheduled for Council Meeting of June 18, 2024].

24. RESOLUTION NO. 2024-042 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM authorizing the City Manager, or designee, to execute and administer licenses and right of entry agreements allowing for temporary beneficial use of real property assets until such time as these properties are ready for disposition or development [related to Successor Agency to the Anaheim Redevelopment Agency Agenda Item No. 02].

25. RESOLUTION NO. 2024-043 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM declaring a certain property to be “Exempt Surplus Land” Pursuant to California Government Code Section 54221(f)(1) [includes determination that the action will not result in a direct or indirect physical change in the environment and does not constitute an “approval” of a “project” pursuant to California Environmental Quality Act Guidelines Sections 15004 and 15352] [located at the southwest corner of Lincoln Avenue at Manchester Avenue].

26. RESOLUTION NO. 2024-044 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM amending the dates and times for regular meetings of the Anaheim City Council for the 2024 calendar year and rescinding Resolution No. 2024-008 [rescheduling the meeting of August 6 to August 13, 2024; and the meeting of July 2 to July 23, 2024].

27. ORDINANCE NO. 6578 (INTRODUCTION) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANAHEIM amending a portion of Ordinance No. 6570, *nunc pro tunc*, to correct clerical drafting errors pertaining to the amendment of a certain section of the Anaheim Municipal Code [Chapter 18.14 (Public and Special-Purpose Zones) of Title 18 (Zoning)].

28. Approve the Public Art Guidelines, a document that implements the Public Art Plan and outlines the administration of the Public Art Program, as authorized by Anaheim Municipal Code Chapter 17.37 (Public Art).

ORDINANCE NO. 6579 (INTRODUCTION) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANAHEIM amending Chapter 17.37 (Public Art) of Title 17 (Land Development and Resources) of the Anaheim Municipal Code for the purpose of promoting the

installation, maintenance, and restoration of public art and determining that this ordinance is exempt from the requirements to prepare additional environmental documentation per California Environmental Quality Act (CEQA) Guidelines, Sections 15060(c)(2), 15060(c)(3) and 15061(b)(3) because it will not result in a direct or reasonably foreseeable indirect physical change in the environment.

ORDINANCE NO. 6580 (INTRODUCTION) AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANAHEIM amending Chapters 18.06 (Multi-Family Residential Zones); 18.08 (Commercial Zones); 18.10 (Industrial Zone); 18.14 (Public and Special-Purpose Zones); 18.20 (Platinum Triangle Mixed Use (PTMU) Overlay Zone); 18.30 (Downtown Mixed Use (DMU) Overlay Zone); 18.32 (Mixed Use (MU) Overlay Zone); 18.36 (Types of Uses); 18.44 (Signs); 18.62 (Administrative Reviews); 18.120 (Anaheim Canyon Specific Plan No. 2015-1 (SP 2015-1) Zoning and Development Standards); and 18.122 (Beach Boulevard Specific Plan No. 2017-1 (SP 2017-1) Zoning and Development Standards) of Title 18 (Zoning) of the Anaheim Municipal Code; Adjustment No. 14 to the Anaheim Canyon Specific Plan No. 2015-1 (SP 2015-1) Zoning and Development Standards; Adjustment No. 8 to the Beach Boulevard Specific Plan No. 2017-1 (SP 2017-1) Zoning and Development Standards; and finding and determining that this ordinance is not subject to the requirements to prepare additional environmental documentation per California Environmental Quality Act (CEQA) Guidelines, Section 15061(b)(3) because it will not have a significant effect on the environment [Development Application No. 2023-00037].

Item No. 28 Discussion. MOTION: JD/NR ROLL CALL VOTE: 7-0. Motion carried.

29. Approve minutes of the City Council meeting of October 17, 2023.

BUSINESS CALENDAR:

30. Receive a presentation on the Orange County Office of Campaign Finance and Ethics Commission [Informational Item].

Discussion. Informational item; no action taken.

5:30 P.M. PUBLIC HEARING: 8:45 p.m.

31. Public hearing to consider the proposed vacation/abandonment of a segment of Orange Avenue lying west of Brookhurst Street and directly adjacent to Lot 2 of Tract No. 19192 and approve the Purchase and Sale Agreement for the sale of excess right-of-way to OrangeAveM 2024 LLC.

RESOLUTION NO. 2024-045 A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANAHEIM vacating a segment of Orange Avenue lying west of Brookhurst Street and directly adjacent to Lot 2 of Tract No. 19192 (Abandonment No. ABA 2023-00414).

Approve the Purchase and Sale Agreement with OrangeAveM 2024 LLC, in the amount of \$85,000, for the sale of excess right-of-way; authorize the Public Works Director to execute the Agreement; authorize the Public Works Director, or designee, to execute the agreement and all necessary documents, including escrow documents required to close escrow; authorize the Mayor to execute the Quitclaim Deed; authorize the City Clerk to hold the recordation of the Resolution and Quitclaim Deed until authorized to record.

Item No. 31 Discussion. Mayor Aitken opened the public hearing at 8:48 p.m. One (1) in-

person speaker; No electronic public comments submitted. Mayor Aitken closed the public hearing at 8:54 p.m. MOTION: NM/JD ROLL CALL VOTE: 7-0. Motion carried.

REPORT ON CLOSED SESSION ACTIONS: None

PUBLIC COMMENTS (non-agenda items): None

(opened only if any remaining non-agenda speakers were not called to speak during the first Public Comment period)

COUNCIL AGENDA SETTING:

Council Member Leon requested recognition for the Orange County Greek Food Festival and organizers.

Council Member Rubalcava requested recognition for the Anaheim High School Wrestling Team coach for being selected Wrestling Coach of the Year.

Mayor Pro Tem Kurtz requested to add enforcement and education for both landlords and tenants to the discussion regarding eviction policies, a presentation regarding how the City is going to address illegal fireworks on the 4th of July, an update regarding e-Discovery for public records requests, and recognition for the Bharat Patel family for 50 years of service in the resort area.

ADJOURNMENT: 9:02 p.m. in memory of Espiridion “Speed” Castillo, Marie Santangelo, and Jon Urbanchek.

Next regular City Council meeting is scheduled for June 11, 2024.

All agenda items and reports are available for review in the City Clerk’s Office and www.anaheim.net/councilagendas, and the Central Library. Any writings or documents provided to a majority of the City Council regarding any item on this agenda (other than writings legally exempt from public disclosure) will be available at the Office of the City Clerk, located at 200 S. Anaheim Blvd., 2nd Floor, Anaheim, CA 92805 during regular business hours and by contacting the office by phone, 714-765-5166, or email to cityclerk@anaheim.net.

If requested, the agenda and backup materials will be made available in appropriate alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal rules and regulations adopted in implementation thereof.

Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such reasonable modification, accommodation, aid, or service by contacting the City Clerk’s Office either in person at 200 South Anaheim Boulevard, Anaheim, California, by telephone at (714) 765-5166, or via email to cityclerk@anaheim.net, no later than 8:00 AM on the day of the scheduled meeting.

TRANSLATION SERVICES: Spanish interpreting services are provided at City Council meetings. Simultaneous Spanish interpretation is provided through the use of headsets and consecutive interpretation (Spanish-to-English) is also available to anyone addressing the Council by stating your request at the podium. The use of city provided interpreters is not required and persons are welcome to use their own interpreter. Because many dialects and regionalisms exist, the City cannot guarantee that interpreters will be able to interpret into a particular dialect or regionalism, and disclaims any liability alleged to arise from such services. For translation services in other languages, contact the City Clerk’s office no later than 48 hours prior to the scheduled meeting.

VIEW CITY COUNCIL MEETINGS LIVE AND ARCHIVED: Anaheim City Council meeting videos can be viewed live on the City's website at www.anaheim.net/councilvideos.



POSTING STATEMENT: On May 17, 2024, a true and correct copy of this agenda (revised) was posted on the kiosk outside City Hall, 200 S. Anaheim Blvd., Anaheim, CA. Internet Access to City Council, Agency, and Authority agendas and related material is available prior to meetings at www.anaheim.net.

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (“Agreement”), dated for purposes of identification only as of May 21, 2024 (the “Date of Agreement”) is entered into by and between the City of Anaheim acting as Successor Agency to the Anaheim Redevelopment Agency, a public body, corporate and politic (the “Successor Agency”) and the City of Anaheim, a charter city and municipal corporation duly organized and existing under the laws of the State of California (the “City”) (individually referred to herein as “Party” and collectively referred to as “Parties”) and is made with reference to the following facts:

RECITALS

A. On March 5, 1999, Katella Operating Properties, LLC (“KOP I”), as Optionee, entered into an “Option Agreement” with Southern California Edison Company (“Edison”), as Optionor, with reference to an approximately nine (9) acre parcel located at Claudina Way (both east and west side) north of Interstate 5 and east of South Anaheim Boulevard in the City of Anaheim (the “Property”). KOP I assigned its rights and interest in the Option Agreement to Katella Operating Properties II, a California limited liability company (“KOP II”), which assignment was consented to by Edison on November 8, 2000. A redacted form of the Option Agreement is attached hereto as Exhibit “A” and incorporated herein by reference. The legal description of the Property is attached to the Option Agreement as Exhibit “B” and incorporated herein by reference.

B. On April 30, 2001, KOP II, as sublicensor/sublessor, and the Agency, as sublicensee/sublessee, entered into that certain Sublicense/Sublease Agreement (the “Sublicense/Sublease”) pursuant to which the Agency licensed the Property from KOP II subject to the terms and conditions of the Option Agreement and the Sublicense/Sublease. Edison consented to the Sublicense/Sublease pursuant to that certain letter dated February 20, 2001, a copy of which is attached hereto as Exhibit “C”.

C. On March 1, 2003, the Anaheim Redevelopment Agency (“Agency”) entered into a Sublicense/Sub-Sublease Agreement with G.D. Heil, Inc. with respect to a portion of the Property consisting of approximately 1.51 acres (the “G.D. Heil Lease Site”).

D. Successor Agency, as successor in interest to the Agency’s rights under the sublicense/sublease, is willing to permit the City to use the remainder of the Property, as shown on Exhibit B attached hereto and incorporated by reference (the “Site”) for the purpose of marshalling trucks in connection with the City’s operation of the Anaheim Convention Center (the “Permitted Activity”), subject to the Option Agreement.

AGREEMENT

1. The Parties acknowledge the following with respect to the Option Agreement.
 - a. KOP II had previously licensed the Property from Edison pursuant to (1) the Option Agreement and (2) the authority and upon and subject to the conditions prescribed by General Order No. 69-C of the California Public Utility Commission (“CPUC”) dated and effective July 10, 1985, a copy of which is attached hereto as Exhibit “E” and incorporated herein by reference.
 - b. CPUC General Order No. 69-C required that all licenses in effect on Edison’s operating property be made conditional upon the right of Edison either upon order of the CPUC or

upon Edison's own motion, to commence and resume the use of the property in question, whenever, in the interest of its service to its patrons or consumers, it shall appear necessary or desirable to do so. Alternatively, Edison might obtain authorization to lease such operating property, through order of the CPUC, by filing an application thereof in accordance with Section 851 of the California Public Utilities Code. Edison filed such application and received the required authorization pursuant to CPUC Decision D-03-01-040, dated and effective January 16, 2003, a copy of which is attached hereto as Exhibit "F" and incorporated herein by reference ("CPUC Decision"). Pursuant to Article II and Section 3.1 of the Option Agreement, KOP II's license from Edison was thus converted to a forty (40) year lease, deemed to commence on March 1, 2003, and to end on February 28, 2043. Pursuant to Section 1(d) of the Sublicense/Sublease, Agency's sublicense from KOP II, was then converted into a sublease. KOP II and Agency subsequently entered into a First Amendment to Sublicense/Sublease Agreement, dated October 15, 2003, which acknowledged the conversion of the license under the Option Agreement into a lease and extended the term of the Sublicense/Sublease to February 28, 2043.

c. As of the date of the Option Agreement, March 5, 1999, Edison intended to add a transmission line at the Site which may have required one or more additional tower(s) or pole(s) or a modification to the existing tower(s) or pole(s) collectively described as "Transmission Modifications". If Edison were to determine to add a Transmission Line it would develop a detailed plan depicting the transmission modifications plan ("Transmission Modifications Plan") and thereafter construct the Transmission Modifications which were originally expected to be completed on or about December 31, 2000 ("Transmission Modification Completion Date"). Edison and KOP II agreed that the Transmission Modification Completion Date was an estimate only and might be extended at Edison's sole discretion. Edison has not as of the date hereof submitted a Transmission Modifications Plan to KOP II.

d. Except as set forth in Article 2 below, with respect to the Site, the terms of the Option Agreement and the Sublicense/Sublease shall be applicable as between the Successor Agency as licensor, and City as licensee, as though the Successor Agency were the "Optionor" or "Sublessee" (as the case may be) and the City the "Optionee" or "Sublessee" (as the case may be) thereunder.

e. ARTICLE I and ARTICLE II are hereby made inapplicable.

(1) The "Term" of this Agreement shall commence on May 21, 2024.

(2) The initial Term shall expire five (5) years from the commencement of the Term (unless earlier terminated due to the termination or expiration of the Option Agreement, the Sublicense/Sublease, or as otherwise provided herein).

(3) Provided the City is not otherwise in default of any provisions of this Agreement at the time of the exercise of the option provided herein, or at any time prior to the commencement of the option term, the City shall have two (2) consecutive five (5) year options to extend the Term hereof only by providing prior written notice to the Successor Agency no more than six (6) months nor less than three (3) months prior to the expiration of the Term or any properly extended term. Failure of the City to exercise any option provided herein shall cause such option, together with any remaining options to extend, to immediately cease and terminate.

f. The City accepts the Site in an "AS IS" condition. The Successor Agency expressly disclaims any warranty or representation with regard to the condition (including, without limitation, the environmental condition of the Site), safety or security of the Site, or the suitability of

the Site for the City's intended use. All references in the Option Agreement to the Property are deemed "Site" herein.

g. Section 3.1 is inapplicable. The rent shall be determined and payable as follows:

(1) During the initial Term of five (5) years:

(i) The initial monthly Rent for the Property, commencing in the first year of the Term, shall be Twenty Thousand Dollars (\$20,000),

(ii) The monthly Rent shall increase thereafter, in each subsequent year, at the rate of three percent (3%) annually.

(2) Should the City opt to extend the lease term pursuant to Section 2 above, during either of the two (2) optional extended terms, the monthly Rent shall as show in Exhibit H, Monthly Rent Schedule.

(3) All Rent payable hereunder shall be net to the Successor Agency and the City shall be responsible for all taxes, assessments and other costs associated with the Property, including, without limitation, all property taxes, assessments, license fees, public charges levied, assessed or imposed on the City's business operation, fixtures or other personal property on the Site, utilities and all other operating costs.

(4) Rent shall be payable by the City to a trustee (the "Trustee") selected by the Successor Agency in accordance with the Sublicense/Sublease, to which Trustee will be instructed by the Successor Agency to remit funds in the following order: (i) first amounts due Edison under the Option Agreement, (ii) second to discharge any other financial obligation of KOP II to third parties, if any, under the Option Agreement relating to the Site, (iii) third, to discharge any other financial obligation of the Successor Agency to KOP II, if any, under the Sublicense/Sublease, and (iv) fourth, any balance to the Successor Agency.

h. Section 5.1 is inapplicable. The City shall use the Site for the purpose of marshalling trucks in connection with the City operation of the Convention Center.

i. Section 6.1 is inapplicable.

j. Section 9.9 is inapplicable.

k. Section 10.4 is inapplicable. The City may not assign, license or otherwise transfer its interest in or to the Site without the prior written consent of the Successor Agency, which consent shall not be unreasonably withheld.

l. In the event the City is entitled to compensation under the terms of the Option Agreement pursuant to Section 13.2(f) thereof, or otherwise, any such compensation shall be divided seventy-five (75%) percent to the Successor Agency (but not to exceed the actual "hard" construction costs incurred by Agency) and the balance to KOP II.

m. In all places in the Option Agreement where consent of the Optionor is required or where Optionor requires access of any kind (specifically Article XII), this shall apply to Edison unless the context expressly dictates otherwise.

- n. The City has heretofore completed any and all investigations of the Site.
- o. As a condition precedent to the commencement of the Term, the Parties must obtain consent from Edison pursuant to Article X of the Option Agreement.

2. Successor Agency hereby grants to City and its agents, contractors, subcontractors and their invitees a license to enter the Site for the purpose of conducting the Permitted Activity (the "License") and for no other purposes without the prior written approval of Successor Agency. The License shall include such rights of ingress and egress over and through the Site as are reasonably necessary to implement the Permitted Activity. This Agreement shall run for a term commencing on the Effective Date and terminating upon the 5th Anniversary of the Effective Date with two (2) options to extend for addition five (5) year periods (the "License Term").

3. The Parties shall diligently seek the Consent from Edison. In the event the Parties are unable to receive executed Consent from Edison within six (6) months from the Date of Agreement, then this Agreement shall automatically terminate and City shall vacate the Site within thirty (30) days. In the event this Agreement terminates pursuant to the provisions described in the immediately preceding sentence, the Successor Agency shall have no liability to City for any costs or expenses incurred by City hereunder.

4. The City will utilize the Site for the Permitted Activity.

5. Prior to commencing any activities under this Agreement, City shall secure all permits needed to carry out the actions to be performed on the Site pursuant to this Agreement.

6. With regard to actions performed on the Site under this Agreement, City shall not permit to be placed against the Site, or any part thereof, any design professional's, mechanic's, materialmen's, contractor's, or subcontractor's liens (collectively, "Liens"). City shall indemnify, defend and hold harmless Successor Agency from all liability for any and all liens, claims and demands, together with costs of defense and reasonable attorneys' fees, arising from any Liens. Successor Agency reserve the right, at its sole cost and expense, at any time and from time to time, to post and maintain on the Site, or any portion thereof, or on the improvements on the Site, any notices of non-responsibility or other notice as may be desirable to protect Successor Agency against liability. In addition to, and not as a limitation of Successor Agency's other rights and remedies under this Agreement, should City fail, within ten (10) days of written request from Successor Agency, either to discharge any Lien or to bond for any Lien, or to defend, indemnify, and hold harmless Successor Agency from and against any loss, damage, injury, liability or claim arising out of a Lien, then Successor Agency, at its option, may elect to pay such Lien, or settle or discharge such Lien and any action or judgment related thereto and all costs, expenses and attorneys' fees incurred in doing so shall be paid to Successor Agency by City upon written demand.

7. City shall, in all activities undertaken pursuant to this Agreement, comply and cause its contractors, agents and employees to comply with all federal, state and local laws, statutes, orders, ordinances, rules, regulations, plans, policies and decrees. Without limiting the generality of the foregoing, City, at its sole cost and expense, shall obtain any and all permits which may be required by any law for any activities City desires to conduct or have conducted pursuant to this Agreement. Successor Agency shall provide reasonable assistance to City in obtaining such permits.

8. This License Agreement is not assignable.

9. It is expressly understood that this Agreement does not in any way whatsoever grant or convey any permanent easement, lease, fee or other interest in the Site to City.

10. Any notices, requests or approvals given under this Agreement from one party to another shall be in writing and shall be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, by certified mail, return receipt requested, to the addresses of the other party as stated in this Section, and shall be deemed to have been received at the time of personal delivery or three (3) days after the date of deposit for mailing. Notices shall be sent to:

To City: City of Anaheim
200 South Anaheim Boulevard
Anaheim, California 92805
Attention: Executive Director
Copy to: City Attorney

with a copy to: Tom Morton, Executive Director
800 W. Katella Avenue, MS 13
Anaheim, California 92805

with a copy to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.
Tel: 949-725-4140

To Successor Agency: Sergio M. Ramirez, Economic Development Director
200 South Anaheim Boulevard, 7th Floor
Anaheim, California 92805
Attention: Director
Copy to: City Attorney

With copies to: Stradling Yocca Carlson & Rauth
660 Newport Center Drive, Suite 1600
Newport Beach, California 92660
Attention: Thomas P. Clark, Jr.
Tel: 949-725-4140

11. This Agreement shall be governed by the laws of the State of California. Any legal action brought under this Agreement must be instituted in the Superior Court of Orange County, State of California, in an appropriate court in that county, or in the Federal District Court in the Central District of California.

12. This Agreement shall be interpreted as a whole and in accordance with its fair meaning and as if each party participated in its drafting. Captions are for reference only and are not to be used in construing meaning.

13. No modification, rescission, waiver, release or amendment of any provision of this Agreement shall be made except by a written agreement executed by Successor Agency and City.

14. Successor Agency represent and warrant that Successor Agency has the authority to enter into this Agreement, but otherwise make no representations and warranties with respect to the Site.

15. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute one and the same instrument.

16. This Agreement shall take effect immediately upon the execution of this Agreement by City and approval by Edison and all required governmental entities (the "Effective Date").

17. This License may be terminated by either party upon sixty (60) days written notice.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have hereto executed this Agreement as of the respective dates set forth below.

SUCCESSOR AGENCY:

CITY OF ANAHEIM, a public body, corporate and politic

Dated: 5/27/24

By: [Signature]
CM

ATTEST:

[Signature]

Theresa Bass, Agency Secretary



APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: [Signature]
Ryan O. Hodge, Deputy City Attorney

APPROVED AS TO FORM:

STRADLING YOCCA CARLSON & RAUTH

By: [Signature]
Thomas P. Clark, Jr.

CITY:

CITY OF ANAHEIM, a charter city and municipal corporation

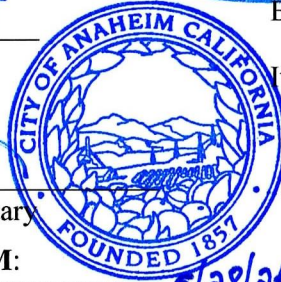
Dated: 5/24/24

By: [Signature]
Its: CM

ATTEST:

[Signature]

Theresa Bass, Agency Secretary



APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY 5/28/24

By: [Signature]
Ryan O. Hodge, Deputy City Attorney

EXHIBIT A

Property No. POBVP799A12
Account No. 2863

OPTION AGREEMENT

This Option Agreement (this "Agreement") is entered into this 5TH day of MARCH 1996 by and between Southern California Edison Company, a California corporation, ("Option"), and Katella Operating Properties, LLC, ("Optionee") (individually referred to herein as "Party" and collectively referred to as "Parties") and is made with reference to the following facts:

RECITALS

- A. Optionor is a public utility company regulated by the California Public Utilities Commission ("CPUC") and is in the business of generating, transmitting and distributing electrical power to its customers throughout the Southern California area.
- B. Optionee is a developer/operator of Industrial, Commercial and Storage facilities in Southern California.
- C. Optionor is the owner of that certain real property located in the County of Orange State of California, consisting of approximately nine acres of land as more particularly described in Exhibit A attached hereto and incorporated herein (the "Property").
- D. Optionor's System Planning Department ("S/P") intends to add a transmission line at the Property which may require one or more additional tower(s) or pole(s) or a modification to the existing tower(s) or pole(s), collectively described as ("Transmission Modifications"). S/P will develop a detailed plan depicting the Transmission Modifications ("Transmission Modifications Plan") and thereafter construct the Transmission Modifications which are expected to be completed on or about December 31, 2000 ("Transmission Modifications Completion Date"). Optionor and Optionee agree that the Transmission Modifications Completion Date

LW960750.023 (02/11/99)

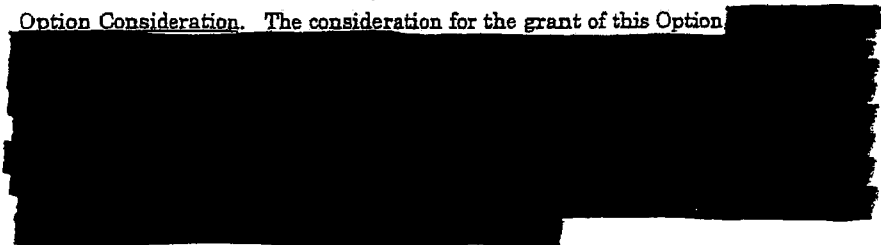
-1-

is an estimate only and may be extended at Optionor's sole discretion. Optionee acknowledges the foregoing and agrees to cooperate in all respects with Optionor regarding the Transmission Modifications. Optionor shall provide Optionee with a minimum of ninety (90) days notice to vacate those areas required by Optionor during construction of said Transmission Modifications. Optionee agrees to clear said areas within said ninety (90) day period.

- E. Optionee desires to obtain from Optionor, and Optionor desires to grant to Optionee, an option to license the Property upon the terms and conditions set forth in this Agreement.

ARTICLE I

OPTION TO LICENSE

- 1.1 Grant of Option. Optionor hereby grants to Optionee the exclusive right and sole option to license the Property for the development and operation of a R. V. /Vehicle/Truck/Industrial Uses (the "Option"), on the terms and conditions set forth in this Agreement.
- 1.2 Term of Option. The term of the Option shall commence on the date first written above (the "Execution Date") and shall expire at 5:00 p.m. California time on the latter of (i) thirty (30) days following Optionee's receipt of the CPUC's order referenced in Section 2.3, or (ii) nine months from the Execution Date (the "Option Term") unless prior thereto, Optionee has validly exercised the Option pursuant to and in compliance with Section 1.4. In the event the CPUC's order is not received at least thirty (30) days prior to the first anniversary of the Execution Date, the Option Term shall automatically extend with no additional Option Consideration (hereinafter defined) until thirty (30) days following Optionee's receipt of the CPUC's order.
- 1.3 Option Consideration. The consideration for the grant of this Option 
- 1.4 Exercise of Option. The Option may be exercised only by delivery of an unconditional written notice of exercise to Optionor not later than 5:00 p.m.

California time on the last day of the Option Term and upon Optionee's satisfaction of all of the following conditions:

- (a) Optionee has obtained Optionor's approval of all plans and working drawings pursuant to Section 6.2.
- (b) Optionee has obtained all permits and approvals required by any governmental agency having jurisdiction for Optionee's use of the Property pursuant to Section 6.2. Optionee shall attach copies of such permits and approvals to the notice of exercise of Option.
- (c) Optionee has submitted to Optionor satisfactory evidence of Optionee's ability to finance the cost of development of the Property in accordance with Section 6.2 and the financial viability of Optionee's proposed operations on the Property.
- (e) Optionee has submitted to Optionor evidence of insurance coverage pursuant to Article XI.
- (f) Optionee has furnished to Optionor a performance bond pursuant to Section 6.2.

Upon receipt of Optionee's notice of exercising the Option, Optionor shall have ten (10) days to determine if Optionee has satisfied the foregoing conditions. If Optionor reasonably determines that Optionee has not satisfactorily fulfilled all of the foregoing conditions, Optionor shall notify Optionee in writing of the specific unsatisfied conditions. If the Option Term has expired or will expire within ten (10) days of Optionee's receipt of such notification, Optionee may within five (5) days of receipt of Optionor's notification elect to (a) arbitrate the issue of whether Optionee has satisfied the conditions, or (b) extend the Option Term pursuant to Section 1.5 below and satisfy the conditions. In the event Optionee elects to arbitrate the issue ***of whether Optionee has satisfied the conditions, Optionee shall simultaneously tender the payment for extension of the Option Term, to take effect or be refunded as appropriate upon completion of the arbitration.

In the event the Option is duly exercised prior to its expiration, and Optionor determines that Optionee has satisfied the foregoing conditions, this Agreement shall be construed as a binding contract for the licensing of the Property on the terms and conditions set forth herein (the "License").

- 1.5 Extension of Option Term. Optionee may extend the Option Term prior to the expiration of the then current Option Term by delivering a written notice of such extension to Optionor and a cashier's check [REDACTED]

1.6 Property Investigation and Document Review. Commencing on the date first written above and continuing until the earlier of the termination of this Agreement or the expiration of the Option Term, Optionee and its representatives, employees, contractors and agents shall have the right, at Optionee's sole expense and risk, and in accordance with the following terms and conditions: (i) to physically inspect and investigate the Property and to conduct any and all tests, inspections and studies thereof as Optionee may consider appropriate, and (ii) to review and to make copies of all documents in Optionor's possession pertaining to the Property, at Optionor's offices during normal business hours. Optionee acknowledges and agrees that the Option Term shall not be extended except in accordance with Section 1.5 as a result of Optionee's obtaining, failure to obtain, or delay in obtaining any document or material, provided that Optionor has not committed a material default of its obligations set forth in this Section 1.6. If Optionee exercises the Option, Optionee shall be deemed conclusively and irrevocably to have fully approved the condition of the Property and the findings of all tests, inspections, studies and reviews thereof.

Optionee shall conduct such investigation and document review in accordance with the following terms and conditions:

- (a) Optionee shall obtain a temporary entry permit from Optionor and shall abide by the terms and conditions thereof.
- (b) Optionee shall provide Optionor with copies of all surveys, reports and findings regarding the Property upon expiration of the Option Term.
- (c) Optionee agrees to repair any damage or disturbance it shall cause to the Property and to restore the Property to its original condition.
- (d) Optionee agrees to indemnify, defend and hold harmless Optionor from any and all liabilities for injury to persons and/or damage to property arising out of any act or omission of Optionee, its agents or invitees.
- (e) Optionee shall, at its expense, obtain and deliver to Optionor for Optionor's approval, certificates and certified copies of all policies and endorsements as evidence that the following types and amounts of insurance are in effect during any entry onto the Property pursuant to this Agreement:
 - (i) Comprehensive general liability insurance endorsed for contractual liability, with a combined single limit of not less than one million Dollars (\$1,000,000.00) per occurrence for bodily injury and/or property damage.
 - (ii) Comprehensive auto liability insurance endorsed for all owned and non-owned vehicles with a combined single limit of at least one million Dollars (\$1,000,000.00) per occurrence.
 - (iii) A program of workers' compensation insurance, or a state approved self-insurance program, in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including

Employers' Liability, with Two Hundred Fifty Thousand Dollars (\$250,000.00) limits.

Such policy/ies shall protect Optionor and certified copies of all policies and endorsements evidencing such insurance as being in effect are to be delivered to Optionor prior to entry. Optionee shall obtain a written obligation on the part of all insurance carriers to notify Optionor in writing, thirty (30) days prior to any cancellation of such policies. Optionor shall be included as an additional named insured on such policy/ies except for any Workers' Compensation policy. All such policies shall contain language to the effect that (1) the insurer waives the right of subrogation against Optionor and against any and all of Optionor's officers, employees, agents and representatives; and (2) the policies are primary and non-contributing with any insurance that may be carried by Optionor (except with respect to any Workers' Compensation Policy).

ARTICLE II

LICENSE

- 2.1 General Order 69-C. The License is given pursuant to the authority of and upon and subject to the conditions prescribed by CPUC General Order No. 69-C dated and effective July 10, 1985, which by this reference is incorporated herein and made a part hereof.
- 2.2 License Term. The License shall be for an initial term of FORTY (40) years (the "License Term") commencing on the date Optionee exercises the Option (the "License Commencement Date").
- 2.3 Lease Approval. CPUC General Order No. 69-C required that all licenses in effect on Optionor's operating property be made conditional upon the right of Optionor, either upon order of the CPUC or upon Optionor's own motion, to commence and resume the use of the property in question, whenever, in the interest of its service to its ~~patrons or consumers,~~ it shall appear necessary or desirable to do so. Alternatively, Optionor may obtain authorization to lease such operating property, through order of the CPUC, by filing an application thereof in accordance with Section 851 of the California Public Utilities Code. Optionor agrees to file an application with the CPUC following execution of this Agreement and upon the Transmission Modifications Completion Date (or such earlier date after delivery of the Transmission Modifications Plan to Optionee as Optionor may desire) and to use its best efforts to secure approval to lease the Property to Optionee. In the event the CPUC issues an order authorizing Optionor to lease the Property, a Lease will be created upon Optionee's exercise of the Option, the terms of which shall be subject to the terms of this Agreement, with the exception of Sections 2.1, 2.4 and 2.5 and subject to any conditions imposed by the CPUC (the "Lease"). Optionor shall deliver to Optionee a copy of any such order by the CPUC, and Optionee shall have thirty (30) days to elect either to (a) abide by any conditions imposed by the

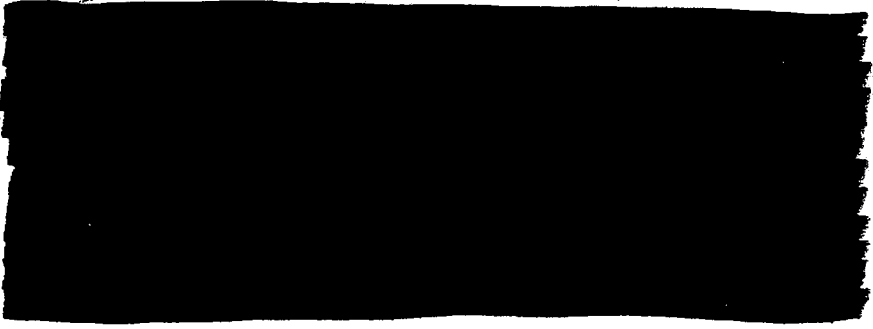
order; or (b) decline to abide by such conditions. If Optionee and Optionor do not mutually agree to abide by such conditions, then this Agreement will constitute a License effective upon Optionee's exercise of the Option. In the event the CPUC imposes conditions which would also be applicable to a License and Optionee and Optionor do not mutually agree to abide by such terms, then this Agreement shall automatically terminate, and Optionee shall vacate the Property within (30) days. If Optionee agrees to abide by such conditions, then this Agreement shall constitute a Lease, effective upon exercise of the Option by Optionee. Optionor makes no representation or warranty to Optionee regarding the outcome or the length of the Section 851 application process. In the event the CPUC prohibits Optionor from licensing the Property in accordance with this Agreement, then this Agreement shall automatically terminate, and Optionee shall vacate the property within (30) days. In the event this Agreement terminates pursuant to this Section 2.3, Optionor shall have no liability to Optionee for any costs and expense incurred by Optionee hereunder.

- 2.4 License Termination. The License may be canceled by Optionor upon twelve (12) months prior written notice to Optionee that the Property is required by Optionor to service its patrons or consumers. No such termination or cancellation hereof shall release Optionee from any liability or obligation (whether of indemnity or otherwise) which may have attached or accrued previous to or which may be accruing at the time of, or by reason of such termination. Optionee shall have the right to terminate the License within 60 days of receipt of the Transmission Modifications Plan in the event the Transmission Modifications Plan indicates that Optionee's use of the Property will be materially and adversely impacted and Optionor and Optionee are unable to agree upon an equitable adjustment in the Base License Fee. For the purpose of this Section 2.4, "material and adverse impact" shall mean (a) a reduction in usable area of 25% or more, or (b) a physical impact which precludes Optionee from obtaining City approval to use the Property for its Initial Use. In the event Optionee terminates the License in accordance with this Section, Optionor shall not be liable to Optionee for costs and expenses incurred by Optionee or any claims or damages resulting from the termination of the License.
- 2.5 Nonpossessory Interest. Neither License nor Optionee's exercise of the rights given hereunder shall confer upon Optionee any property interest or possessory interest in the Property and Optionee shall not claim any such interest.

ARTICLE III

RENT

- 3.1 Base and Additional Rent and Adjustments. Optionee agrees to pay in lawful money of the United States as rent ("Rent") for the use of the Property during the term of this Agreement, without deduction, abatement, prior demand or offset, at the times and in the manner as hereinafter provided, the following sums:



LW960750.025 103/02/00



3.2 Late Payment Charges. Optionee acknowledges that late payment by Optionee to Optionor of the Rent will cause Optionor to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Such costs include, without limitation, processing, accounting and interest charges. Therefore, if any installment of the Rent is not received by the 30th day after the due date, Optionee will be charged a ten percent (10%) "late fee" on all amounts outstanding up to the maximum rate allowed by law. The parties agree that this late charge represents a fair and reasonable estimate of the costs that Optionor will incur by reason of late payment by Optionee. Acceptance of any late charge shall not constitute a waiver of Optionee's default with respect to the overdue amount, or prevent Optionor from exercising any of the other rights and remedies available to Optionor.

Checks for Rent payments shall be made payable to: Southern California Edison.

ARTICLE IV

TAXES; ASSESSMENTS

4.1 On Real and Personal Property. Optionor shall pay all real property tax assessed against the Property by the State Board of Equalization and Optionee shall pay without abatement, offset or deduction all other personal property taxes, general and special assessments, and other charges of every description levied or assessed against the Property, improvements located on the Property constructed by Optionee, personal property of Optionee located on or in the land or improvements, the leasehold estate, or any subleasehold estate, to the full extent of installments falling due during the License Term. Nothing herein shall require Optionee to pay

any taxes assessed against any equipment or improvements belonging to Optionor. Optionee shall make all payments direct to the charging authority at least five (5) days before delinquency and before any fine, interest, or penalty shall become due or be imposed by operation of law for their nonpayment. If, however, the law expressly permits the payment of any or all of the above items in installments (whether or not interest accrues on the unpaid balance), Optionee may, at Optionee's election, utilize the permitted installment method, but shall pay each installment with any interest before delinquency.

- 4.2 Prorations. All payments of taxes or assessments or both, except permitted installment payments, shall be prorated for the initial License Term year and for the year in which the License terminates. For permitted installment payments of which at least the first installment fell due before the commencement of the License Term, Optionee shall pay all installments falling due after commencement of the License Term. For permitted installment payments of which the first installment falls due during final years of the License Term, Optionee shall pay only the installment(s) falling due before expiration of the License Term.
- 4.3 For Other Property of Optionor. If the Property is assessed with other property of Optionor for purposes of property taxes, assessments, or other ad valorem or improvement levies (collectively referred to in this paragraph as taxes), all taxes imposed on the entire parcel of which the Property is a part shall, until the Property is separately assessed, be prorated and Optionee shall pay that fraction of the entire tax equal to the fraction that the value of the Property (excluding Optionor's improvements and equipment) bears to the value of the total property included in the assessment.
- 4.4 Optionee's Right to Contest. Optionee may contest the legal validity or amount of any taxes, assessments, or charges for which Optionee is responsible under this Agreement, and may institute such proceedings as Optionee considers necessary. If Optionee contests any tax, assessment, or charge, Optionee may withhold or defer payment under protest but shall protect Optionor and the Property from any lien by adequate surety bond or other appropriate security.
- ~~Optionor appoints Optionee as Optionor's attorney-in-fact for the purpose of making all payments to any taxing authorities and for the purpose of contesting any taxes, assessments, or charges, conditioned on Optionee's preventing any liens from being levied on the Property or on Optionor (other than the statutory lien of Revenue and Taxation Code Section 2187).~~
- 4.5 Proof of Compliance. Optionee shall furnish to Optionor, at least three (3) days before the date when any tax, assessment, or charge would become delinquent, receipts or other appropriate evidence establishing their payment. Optionee may comply with this requirement by retaining a tax service to notify Optionor whether the taxes have been paid.

ARTICLE V

USES: PURPOSES

- 5.1 Uses. Optionee shall use and permit the use of the Property for construction and operation of a R. V. /Vehicle/Truck/Industrial Uses, Storage facility ("Initial Use") and for any other purposes permitted by law, consistent with Optionor's use of the site for its power lines and equipment for which Optionee has obtained Optionor's prior written consent, which consent shall not be unreasonably withheld. During the Interim License Period, use of the Property shall be limited to those improvements for open storage, vehicle and equipment parking, fencing and other uses depicted on Exhibit "A" except that no structures shall be constructed on the Property during the Interim License Period. Upon completion of the Transmission Modifications, Optionee shall commence construction and use of the Property for its Initial Use, based upon those uses depicted on the site plan attached hereto as Exhibit "A", as modified by mutual agreement of Optionor and Optionee to reflect the Transmission Modifications, if any. It is understood and agreed that the proposed improvements shown on the attached Exhibit "A" are conceptual in nature. All final improvements will require written approval by Optionor prior to construction.
- 5.2 Land Use Restrictions. Optionee may obtain zoning changes or conditional use permits, required for the Initial Use. Any zoning changes or conditional use permits for any use other than the Initial Use shall require Optionor's consent. Optionor shall, at Optionee's notice or request, join with Optionee in applications and proceedings to obtain necessary use or zoning changes, but without cost or expense to Optionor.
- 5.3 Condition of Property. Optionee hereby accepts the Property in its condition existing as of the date of the execution hereof, subject to all applicable zoning, municipal, county, state and federal laws, ordinances and regulations governing and regulating the use of the Property. Optionee acknowledges that neither Optionor nor any agent of Optionor has made any representation or warranty with respect to the condition of the Property or the suitability thereof for the conduct of Optionee's business, nor has Optionor agreed to undertake any modification, alteration or improvement to the Property except as provided in this Agreement.
- 5.4 Acceptance of the Property. Except as may be otherwise expressly provided in this Agreement, the taking of possession of the Property by Optionee shall in and of itself constitute acknowledgment that the Property is in good and licensable condition, and Optionee agrees to accept the Property in its presently existing "as is" condition. Optionor shall not be obligated to make any improvements or modification thereto except to the extent otherwise expressly provided for in this Agreement.

- 5.5 Property Investigation. Optionee represents to Optionor that it will have made a sufficient investigation of the condition of the Property existing immediately prior to exercising the Option (including investigation of the surface, subsurface and groundwater for contamination and hazardous substances) and will be satisfied (a) that the Property will safely support the type of improvements to be constructed and maintained by Optionee upon the Property, (b) that the Property is otherwise fully fit physically and lawfully for the uses required and permitted by this Agreement, and (c) that the Optionee accepts all risks associated therewith.
- 5.6 Optionor's Representations. Optionor does not know and has no reasonable cause to believe that any release of any hazardous substance has come to be located on or beneath the Property. Prior to the commencement of the License Term, Optionor will make available to Optionee, for review and inspection, records in the possession or control of the Optionor which might reflect the potential existence of hazardous substances on or beneath the Property and Optionor will provide Optionee access to the Property for a reasonable time and upon reasonable terms and conditions for purposes of providing to Optionee the opportunity to investigate, sample and analyze the soil and groundwater on the Property for the presence of hazardous substances. The phrase "hazardous substance", as used herein, has the same meaning as that phrase has under Section 25359.7 of the California Health and Safety Code.
- 5.7 Compliance with Laws. Optionee shall, except as otherwise expressly provided in this Agreement, be solely responsible, without any cost or expense to Optionor, to take all actions necessary to improve and continuously use the Property as required by this Agreement and in compliance with all applicable laws, statutes, zoning requirements, ordinances, governmental rules or regulations or requirements of any duly constituted public authority now or later in force, or with the requirements of the State Fire Marshall or other similar body now or hereafter constituted, relating to or affecting the condition, use or occupancy of the Property. The judgment of any court of competent jurisdiction or the admission of Optionee in any action against Optionee, whether Optionor is a party thereto or not, that Optionee has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of that fact as between Optionor and Optionee. Optionee shall not allow the ~~Property to be used~~ for any unlawful purpose, nor shall Optionee cause, maintain or permit any nuisance in, on or about the Property. Optionee shall not commit or suffer to be committed any waste in or upon the Property.
- 5.8 Petroleum Products. Except as otherwise expressly permitted by Optionor, Optionee shall not install facilities for, or operate on the Property, a gasoline or petroleum supply station, nor shall the transportation or storage of gasoline or petroleum products be permitted except those products stored within an operable vehicle for exclusive use by that vehicle. Breach of any of these covenants, terms and conditions shall give Optionor authority to immediately terminate this Agreement. Optionor shall not exercise its right to immediately terminate this Agreement in the event of a breach of any of the covenants, terms and conditions of this Section by virtue of the placement of any such material on the Property by any sublicensee, subtenant or other user, provided that Optionee includes in all

sublicenses, sublease or other use agreements, a prohibition on such activities and Optionee uses commercially reasonable efforts to enforce such provisions. Notwithstanding the foregoing, in the event Optionee fails to cure such breach within forty-eight (48) hours after discovery of same, or such other reasonable time period as Optionor may grant to Optionee, Optionor shall have the authority to immediately terminate this Agreement.

5.9 Explosives And Flammable Materials. The Property shall not be used for the manufacture of flammable materials or explosives, or for any storage of flammable materials or explosives. Further, the Property shall not be used by Optionee for any other purposes deemed by Optionor to be a potential fire or other hazard. The operation and maintenance of the Property shall be subject to regulations issued by Optionor so as to protect against fire or other hazard impairing the use, safety and appearance of the Property. The occupancy and use of the Property shall not be such as will permit hazardous or objectionable smoke, fumes, vapors or odors to rise above the surface of the Property. Breach of any of these covenants, terms and conditions shall give Optionor authority to immediately terminate this Agreement. Optionor shall not exercise its right to immediately terminate this Agreement in the event of a breach of any of the covenants, terms and conditions of this Section by virtue of the placement of any such material on the Property by any sublicensee, subtenant or other user, provided that Optionee includes in all sublicenses, subleases, or other use agreements, a prohibition on such activities and Optionee uses commercially reasonable efforts to enforce such provisions. Notwithstanding the foregoing, in the event Optionee fails to cure such breach within forty-eight (48) hours after discovery of same, or such other reasonable time period as Optionor may grant to Optionee, Optionor shall have the authority to immediately terminate this Agreement.

5.10 Hazardous Substances. Except as otherwise expressly permitted in this Agreement, Optionee shall not use, create, store or allow any hazardous substances on the Property. Fuel stored in a motor vehicle for the exclusive use in such vehicle is excepted. In no case shall Optionee cause or allow the deposit or disposal of any hazardous substances on the Property without Optionor's prior written approval. Optionor, or its agents or contractors, shall at all times have the right to go upon and inspect the Property and the operations thereon to assure compliance with the requirements herein stated. This inspection may include taking samples of substances and materials present for testing, and/or the testing of soils. Breach of any of these covenants, terms and conditions shall give Optionor authority to immediately terminate this Agreement. Optionor shall not exercise its right to immediately terminate this Agreement in the event of a breach of any of the covenants, terms and conditions of this Section by virtue of the placement of any such material on the Property by any sublicensee, subtenant or other user, provided that Optionee includes in all sublicenses, subleases or other use agreements, a prohibition on such activities and Optionee uses commercially reasonable efforts to enforce such provisions. Notwithstanding the foregoing, in the event Optionee fails to cure such breach within forty-eight (48) hours after discovery of same, or such other reasonable time period as Optionor may grant to Optionee, Optionor shall have the authority to immediately terminate this Agreement. Optionee shall be

responsible for and bear the entire cost of removal and disposal of hazardous substances introduced to the Property during Optionee's period of use of the Property. Optionee shall also be responsible for any clean-up and decontamination on or off the Property necessitated by the introduction of such hazardous substances on the Property. Optionee shall not be responsible for or bear the cost of removal or disposal of hazardous substances introduced to the Property during any period prior to commencement of Optionee's period of use of the Property. Optionee shall hold Optionor, and its officers and employees harmless from all responsibility, liability and claim for damages resulting from the presence or use of hazardous substances on the Property during Optionee's period of use of the Property to the extent that such presence or use results from any action of Optionee or any sublicensee, subtenant, assignee or other user.

- 5.11 Height Limitations. Any equipment used by Optionee or its agents, employees or contractors, on and/or adjacent to the Property, will be used and operated so as to maintain a minimum clearance of seventeen (17) feet from all overhead electrical conductors.
- 5.12 Access and Clearances. Optionee will provide Optionor with adequate access to all of Optionor's facilities on the Property and at no time will there be any interference with the free movement of Optionor's equipment and materials over the Property. Optionor may require Optionee to provide and maintain access roads within the Property, at a minimum of sixteen (16) feet in width, together with commercial driveway aprons and curb depressions capable of supporting a gross load of forty (40) tons on a three-axle vehicle. Unless otherwise specified in writing by Optionor, Optionee will make no use of the area directly underneath Optionor's towers and will maintain the following minimum clearances at all times:
- a. 50 feet from all tower legs.
 - b. 10 feet from all steel poles, wood poles and anchors.

NOTE: Additional clearance shall be required for structures and other material improvement.

- 5.13 Parkways and Landscaping. Optionee will keep parkway and sidewalk areas adjacent to the Property free of weeds and trash. Optionee will maintain parkways and provide landscaping that is compatible with adjoining properties and that is satisfactory to Optionor.
- 5.14 Fencing. Optionee may install fencing on the Property with prior written approval from Optionor. Such fencing will include double drive gates, a minimum of sixteen (16) feet in width, designed to accommodate Optionor's locks, in locations specified by Optionor. Optionee will ground and maintain all fencing.
- 5.15 Wrecked Vehicles. Optionee shall not park or store wrecked or inoperable vehicles of any kind on the Property.

- 5.16 Reservations for Billboards. Optionor reserves the right to license a portion of the Property to third parties for construction and maintenance of billboards. The location of the billboards will be mutually agreed upon by Optionee and Optionor.
- 5.17 Cell Sites. Optionor reserves the right to license a portion of the site to third parties for construction and maintenance of cell sites. The location of the cell sites will be mutually agreed upon by Optionee and Optionor. Optionee shall not unreasonably withhold its concurrence.
- 5.18 Signs. Optionee may construct, erect, maintain or permit upon the Property signs, advertising placards, names, insignia, trademarks and descriptive words or materials (collectively, the "signs") as shall have first received the written approval of Optionor as to size and location. No signs readily visible from the exterior of the Property shall be permitted on or within the Property other than those:
- (a) Identifying the name, business or products of the person or entity using or occupying the Property; or
 - (b) Offering all or part of any portion the property or of Optionee's operations on the Property for sale or lease.
- 5.19 Electric and Magnetic Fields. There have been numerous scientific studies about the potential effects of power frequency electric and magnetic fields ("EMF"). There are several sources of EMF, including household appliances and electric power facilities. After many years of research, scientists have not found that exposure to power-frequency EMF causes disease in humans. Research on this topic is continuing. Whenever anyone plans to lease Optionor's property that is in close proximity to Optionor's electric facilities, Optionor wants to share with those involved in the development, information or literature it has about EMF. Optionor has attached as Exhibit "D" to this lease a brochure that explains some basic facts about EMF. Please let Optionor know if you have questions or wish to have additional information.
- 5.20 Induced Voltage. Licensee hereby acknowledges that any structures (including, but not limited to buildings, fences, light poles), it may construct or erect under the terms of this License will be in close proximity to one or more high voltage (66 kilovolt or above) electric transmission lines and/or substation facilities. Such structures ("Structures") may be susceptible to induced voltages, static voltages and/or related electric fault conditions (hereinafter collectively referred to as "Induced Voltages") unless appropriate grounding or other mitigation measures are incorporated into the Structures. If not properly mitigated, Induced Voltages can result in a variety of safety and/or nuisance conditions, including, but not limited to, electric shocks or other injury to individuals contacting the Structures or other utilities connected to the Structures (including, but not limited to, natural gas lines, water lines or cable television lines), or interference with or damage to sensitive electronic equipment located in or around the Structures. Appropriate measures to mitigate Induced Voltages, if required, will vary from case to case because of factors such as electric facility configuration and voltage, other utilities involved, or sensitivity of electronic equipment. Licensee will be responsible to determine what,

if any, Induced Voltages mitigation measures should be undertaken regarding the Structures, and to implement such mitigation measures at its sole cost and expense.

Licensee agrees for itself and for its contractors, agents, licensees, invitees and employees, to save harmless and indemnify Edison, its parent, subsidiaries, and affiliated entities and their respective officers and employees from and against any and all claims, loss, damage, actions, causes of action, expenses and/or liability arising from or growing out of loss or damage to property, including Edison's own personal property, or injury to or death of persons, including employees of Edison caused by or resulting from or connected to Induced Voltages on or related to the Structures.

ARTICLE VI

IMPROVEMENTS

- 6.1 Construction. Within thirty (30) days after the License Commencement Date, Optionee shall comply with the Conditions of Major Construction below and shall commence the construction of a R. V. /Vehicle/Truck/Industrial Uses, Storage Facility.
- 6.2 Conditions of Major Construction. Before any major work of construction, alteration, or repair (except for that work described in Section 7.2) is commenced on the Property, and before any building materials have been delivered to the Property by Optionee or under Optionee's authority, Optionee shall comply with the conditions or procure Optionor's written waiver of the condition or conditions specified in the waiver:
- (a) Plans, Specifications. Optionee shall deliver to Optionor for Optionor's approval four (4) sets of preliminary construction plans and specifications prepared by an architect or engineer licensed to practice as such in the State of California, including but not limited to preliminary grading and drainage plans, soil tests, utilities, sewer and service connections, locations of ingress and egress to and from public thoroughfares, curbs, gutters, parkways, street lighting, designs and locations for outdoor signs, storage areas, and landscaping, all sufficient to enable potential contractors and subcontractors to make reasonably accurate bid estimates and to enable Optionor to make informed judgment about the design and quality of construction and about any effect on the reversion. All improvements shall be constructed within the exterior property lines of the Property; provided that required work beyond the Property on utilities, access, and conditional use requirements do not violate this provision.
- (b) Optionor's Approval. Optionor shall not unreasonably disapprove preliminary plans and specifications. Approval or disapproval shall be communicated in the manner provided for notices; and disapproval shall be accompanied by specification of the grounds for disapproval; provided that Optionor's failure to disapprove within thirty (30) days after delivery to Optionor

shall be conclusively considered to be approval. Optionee shall not deliver working drawings to any government body for a building permit until preliminary plans are approved as in this paragraph. Disapproval and election to submit revised plans and specifications shall not extend the time for commencing or completing constructing.

(c) Final Plans: Specifications. Optionee shall prepare final working plans and specifications substantially conforming to preliminary plans previously approved by Optionor, submit them to the appropriate governmental agencies for approval, and deliver to Optionor four (4) complete sets as approved by the governmental agencies. Changes from preliminary plans shall be considered to be within the scope of the preliminary plans if they are not substantial or if they are made to comply with suggestions, requests or requirements of a governmental agency or official in connection with the application for permit or approval, and if they do not depart substantially in size, utility, or value from the minimum requirements of Section 6.2(a).

(d) Notice of Intent to Construct. Optionee shall notify Optionor of Optionee's intention to commence a work of improvement at least ten (10) days before commencement of any such work or delivery of any materials. The notice shall specify the approximate location and nature of the intended improvements. Optionor shall have the right to post and maintain on the Property any notices of nonresponsibility provided for under applicable law, and to inspect the Property in relation to the construction at all reasonable times.

(e) Optionor's Approval of General Contractor. Optionee shall furnish Optionor with a true copy of Optionee's contract with the general contractor and with evidence of the general contractor's financial condition for Optionor's approval.

Optionor may disapprove by notice given within ten (10) days following delivery of the copy of the contract. The notice shall specify the grounds for disapproval. Optionor shall not unreasonably disapprove and shall be considered to have approved in the absence of notice of disapproval given within ten (10) days after Optionee furnishes the contract and evidence specified above. If Optionee elects to act ~~as general contractor~~, reference above to contract and evidence shall be considered to apply to the subcontractor of each subcontract in excess of Fifty Thousand Dollars (\$50,000).

(f) Approval of Construction (Interim) Financing.

(i) Documentation. Optionee shall deliver to Optionor true copies of all documents to evidence the commitment of financing for any new construction. "Financing" includes both the construction (or interim) and take-out (also called permanent or long-term) loan. Optionor may require by notice that no construction commence until the take-out loan is firmly committed but may disapprove the financing only if it violates an express provision of this Agreement.

(ii) Optionor's Right to Assume Optionee's Financing. Optionor shall have the right but not the obligation to assume Optionee's financing for any improvements on the Property. Optionee shall cause the lender to execute all documentation facilitative of this right. Optionor's exercise of this right shall not constitute a waiver of any other right Optionor may have against Optionee, any surety or guarantor or anyone else.

(g) Assurance of Completion. Optionee shall furnish Optionor a bond as described below if, and promptly after, Optionor gives notice of demand within 15 days after Optionee has complied with all the foregoing conditions of major construction. The bond shall be that of a responsible surety company, licensed to do business in California, in an amount not less than Eight Hundred Fifty Thousand Dollars (\$850,000) and shall remain in effect until the entire cost of the work shall have been paid in full and the new improvements shall have been insured as provided in this Agreement. The bond shall state the following:

(i) 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 for twenty months following commencement of construction;

(ii) That the construction work shall be effected by Optionee, the general contractor or on their default, the surety;

(iii) That in default of such completion and payment, such part of the amount of the bond as shall be required to complete the work shall be paid to Optionor as liquidated and agreed damages for the nonperformance of Optionee's agreements, it being agreed that the exact amount of Optionee's damages is difficult and impractical to ascertain; and

(iv) That the surety will defend and indemnify Optionor against all loss, cost, damage, expense and liability arising out of or connected with the work of improvement.

Optionor ~~may, but shall not~~ unreasonably, disapprove the bond. The bond shall be deemed approved unless notice of disapproval is given within 15 working days after receipt of the proposed bond.

(h) Required Governmental Permits. Optionee shall procure and deliver to Optionor at Optionee's expense evidence of compliance with all then applicable codes, ordinances, regulations, and requirements for permits and approvals, including but not restricted to grading permits, building permits, zoning and planning requirements, and approvals from various governmental agencies and bodies having jurisdiction.

(i) Builder's Risk and Other Insurance. Optionee shall deliver to Optionor (i) certificates of insurance (naming Optionor as an Additional Insured/Loss Payee) evidencing coverage for "builder's risk", (ii) evidence of workers' compensation

insurance covering all persons employed in connection with the work and with respect to whom death or bodily injury claims could be asserted against Optionor or the Property, and (iii) evidence that Optionee has paid or caused to be paid all premiums for the coverage described above in this paragraph and any increase in premiums on insurance provided for in the Section on insurance, sufficient to assure maintenance of all insurance above during the anticipated course of work. Optionee shall maintain, keep in force and pay all premiums required to maintain and keep in force all insurance above at all times during which work is in progress.

(j) Diligent Prosecution to Completion. Once work is begun, Optionee shall with reasonable diligence prosecute to completion all construction of improvements, additions, or alterations. Construction required at the inception of the License shall be completed and ready for use within six (6) months after commencement of construction, provided that the time for completion shall be extended for as long as Optionee shall be prevented from completing the construction by delays beyond Optionee's reasonable control; but failure, regardless of cause, to complete construction within eight (8) months following the License Commencement Date shall, at Optionor's election exercised by notice, terminate this Agreement subject, however, to Section 9.3. All work shall be performed in a good and workmanlike manner, shall substantially comply with plans and specifications submitted to Optionor as required by this Agreement, and shall comply with all applicable governmental permits, laws, ordinances, and regulations.

(k) Protection of Optionor Against Cost or Claim. Optionee shall pay or cause to be paid the total cost and expense of all works of improvement, as that phrase is defined in the Mechanics' Lien Law in effect when the work begins. No such payment shall be construed as Rent. Optionee shall not suffer or permit to be enforced against the Property or any part of it any mechanic's, materialmen's contractor's or subcontractor's lien arising from any work of improvement, however it may arise. However, Optionee may in good faith and at Optionee's own expense contest the validity of any such asserted lien, claim, or demand, provided Optionee has furnished the bond required in California Civil Code Section 3143 (or any comparable statute hereafter enacted for providing a bond freeing the Property from the effect of such a lien claim).

Optionee shall defend and indemnify Optionor against any liability and loss of any type arising out of work performed on the Property by Optionee, together with reasonable attorneys' fees and all costs and expenses incurred by Optionor in negotiating, settling, defending, or otherwise protecting against such claims.

(l) Optionor's Right to Discharge Lien. If Optionee does not cause to be recorded the bond described in California Civil Code Section 3143 or otherwise protect the Property under any alternative or successor statute, and a final judgment has been rendered against Optionee by a court of competent jurisdiction for the foreclosure of a mechanic's, materialmen's, contractor's, or subcontractor's lien claim, and if Optionee fails to stay the execution of the judgment by lawful means or to pay the judgment, Optionor shall have the right, but not the duty, to pay or otherwise discharge, stay, or prevent the execution of any such judgment or

lien or both. Optionee shall reimburse Optionor for all sums paid by Optionor under this paragraph, together with all Optionor's reasonable attorneys' fees and costs, plus interest on those sums, fees, and costs at the rate of ten percent (10%) per year from the date of payment until the date of reimbursement.

(m) Notice of Completion. On completion of any substantial work of improvement during the License Term, Optionee shall file a notice of completion.

(n) Notice of Changes in Plans. On completion of any work of improvement, Optionee shall give Optionor notice of all changes in plans or specifications made during the course of the work and shall, at the same time and in the same manner, supply Optionor with "stamped" drawings accurately reflecting all such changes. Optionor acknowledges that it is common construction industry practice to make numerous changes during the course of construction on substantial projects.

(o) Notice of Take-Out (Permanent Financing). Optionee shall promptly deliver to Optionor (i) evidence that the supplier of any construction financing has accepted or approved of the completed improvements; and (ii) evidence that the take-out (permanent) financing has been recorded and the funds properly disbursed, together with copies of the note and the encumbrance securing it.

ARTICLE VII

MAINTENANCE AND REPAIRS

7.1 Optionee Required to Maintain Property. Throughout the License Term, Optionee shall, at Optionee's sole cost and expense, maintain the Property and all improvements in good condition and repair, ordinary wear and tear excepted, and in accordance with all applicable laws, rules, ordinances, orders and regulations of (i) federal, state, county, municipal, and other governmental agencies and bodies having jurisdiction and all their respective departments, bureaus, and officials; (ii) the insurance underwriting board or insurance inspection bureau having or claiming jurisdiction; and (iii) all insurance companies insuring all or any part of the Property or improvements or both.

Except as provided below, Optionee shall promptly and diligently repair, restore, and replace as required to maintain or comply as above, or to remedy all damage to or destruction of all or any part of the improvements. The completed work of maintenance, compliance, repair, restoration, or replacement shall be equal in value, quality, and use to the condition of the improvements before the event giving rise to the work, except as expressly provided to the contrary in this Agreement. Optionor shall not be required to furnish any services or facilities or to make any repairs or alterations of any kind in or on the Property. Optionor's election to perform any obligation of Optionee under this provision on Optionee's failure or refusal to do so shall not constitute a waiver of any right or remedy for Optionee's

default, and Optionee shall promptly reimburse, defend, and indemnify Optionor against all liability, loss, cost, and expense arising from it.

Nothing in this provision defining the duty of maintenance shall be construed as limiting any right given elsewhere in this Agreement to alter, modify, demolish, remove, or replace any improvement, or as limiting provisions relating to condemnation or to damage or destruction during the final years of the License Term. No deprivation, impairment, or limitation of use resulting from any event or work contemplated by this paragraph shall entitle Optionee to any offset, abatement, or reduction in Rent or to any termination or extension of the License Term.

7.2 Damage or Destruction During Final Years of License Term. Optionee is relieved of the obligation to, but may, repair, restore, or reconstruct improvements damaged or destroyed during the final three (3) years of the License Term if (i) the work of repairing, restoring, or reconstructing would require construction costs in excess of eighty percent (80%) of the replacement value of all of the improvements; and (ii) Optionee complies with all of the following conditions:

(a) Optionee gives Optionor notice of the damage or destruction promptly but not later than ten (10) days after the event, detailing facts that qualify the casualty under this provision.

(b) Optionee is not in default under any provision or condition of this Agreement.

(c) Optionee pays in full, or has paid in full any outstanding indebtedness incurred by Optionee and secured by an encumbrance or encumbrances on the License.

(d) Optionee delivers possession of the Property to Optionor and quitclaims all right, title and interest in the land and improvements if, and promptly after, ceasing to do business on the Property.

(e) ~~Optionee causes to be discharged all liens and encumbrances resulting from any act or omission of Optionee.~~

(f) Optionee relinquishes all remaining options to extend the License Term, provided that the giving of notice of damages or destruction as a condition of relief from the obligations to repair, restore, or reconstruct shall be conclusively construed as such a relinquishment.

(g) Optionee relinquishes and transfers to Optionor all insurance proceeds resulting from the casualty.

7.3 Change of Use. Nothing herein shall be deemed to restrict Optionee from demolishing all or any portion of the improvements in connection with (a) any change of use of the Property, or (b) any demolition and reconstruction of the

improvements for the same use, provided Optionor has approved the new use and Optionee complies with the Conditions of Major Construction.

ARTICLE VIII

OWNERSHIP OF IMPROVEMENTS

- 8.1 Exclusion of Existing Improvements. Title to improvements on the Property at the License Commencement Date is retained by Optionor and this Agreement is subject to any rights of ownership in the improvements. The parties covenant for themselves and all persons claiming under them that the improvements are real property.
- 8.2 Ownership of New Improvements During License Term. All improvements constructed on the Property by Optionee as permitted by this Agreement shall be owned by Optionee until expiration of the License Term or sooner termination of this Agreement. Optionee shall not, however, remove any improvements from the Property nor waste, destroy, or modify any improvements on the Property, except as permitted by this Agreement. The parties covenant for themselves and all persons claiming under them that the improvements are real property.
- 8.3 Ownership at Termination. All improvements constructed on the Property by Optionee as permitted or required by this Agreement shall, during the term of this Agreement, be and remain the property of Optionee; provided, however, that Optionee's rights and powers with respect to the improvements are subject to the terms and limitations of this Agreement and Optionee's interest in such improvements shall terminate upon the expiration or earlier termination of this Agreement.

Notwithstanding the foregoing, at the expiration or earlier termination of this Agreement (except in the case of a condemnation pursuant to Section 13.1), Optionor may, at Optionor's election, demand the removal from the Property of all fixtures and improvements or of certain fixtures or improvements or both, as specified in the notice provided for below. A demand to take effect at the normal expiration of the License Term shall be effected by notice given at any time within six (6) months before the expiration date. A demand to take effect on any other termination of this Agreement shall be effected by notice given in or concurrently with notice of such termination or within ten (10) days after such termination. Optionee shall comply with the notice before the expiration date, for normal termination, and within sixty (60) days after the notice for other termination. The duty imposed by this provision includes but is not limited to the duty to demolish and remove all foundations, fill all excavations, return the surface to grade, and leave the Property safe and free from debris and hazards; provided that, after compliance with a demand for removal of less than all fixtures and improvements,

Optionee shall be required to remedy only willful and negligent injuries to the Property or remaining improvements or fixtures.

- 8.4 New Lease to Lender. If this Agreement is terminated but Optionor enters into a new lease with a lender pursuant to the provisions of Article IX, then the provisions of Sections 8.2 and 8.3 shall apply only upon termination of such subsequent lease.

ARTICLE IX

ENCUMBRANCE; SUBORDINATION; ASSIGNMENT; SUBLICENSING

- 9.1 Optionee's Right to Mortgage Lease. Optionee shall have the right at any time and from time to time to subject the License and any or all improvements to one or more mortgages or deeds of trust as security for a loan or loans or other obligations of Optionee (any such instruments being herein referred to as a "mortgage" and the lender as a "mortgagee"), provided that:
- (a) The mortgage and all rights acquired under it shall be subject to each and all of the covenants, conditions, and restrictions stated in this Agreement and to all rights and interests of Optionor except as otherwise provided in this Agreement.
- (b) Optionee shall give Optionor prior notice of any such mortgage, and shall accompany the notice with a true copy of the note and mortgage.
- 9.2 Request for Notice of Default. On the recording of the mortgage, Optionee shall, at Optionee's expense, record in the office of the county recorder where the Property is located a written request, executed and acknowledged by Optionor, for a copy of all notices of default and all notices of sale under the mortgage as provided by the statutes of the State of California. Inclusion in the body of the recorded mortgage itself of a request for notice having the effect described above shall constitute compliance with this provision.
- 9.3 Termination of Agreement. Optionor agrees that it will not terminate this Agreement because of any default or breach hereunder on the part of Optionee if the mortgagee within sixty (60) days after service of written notice on the mortgagee by Optionor of its intention to terminate said Agreement for such default or breach, shall:
- (a) Cure such default or breach if the same can be cured by the payment or expenditure of money provided to be paid under the terms of this Agreement, or if such default or breach is not so curable, commence and thereafter to diligently pursue to completion steps and proceedings for the exercise of the power of sale under and pursuant to the mortgage in the manner provided by law; and
- (b) Keep and perform all of the covenants and conditions of this Agreement requiring the payment or expenditure of money by Optionee until such time as the License shall be sold upon foreclosure pursuant to the mortgage, or shall be released or reconveyed thereunder, or shall be transferred upon judicial foreclosure;

provided, however, that if the mortgagee shall fail or refuse to comply with any and all of the conditions of this section, then and thereupon Optionor shall be released from the covenants of forbearance herein contained, and all rights of Optionee and/or mortgagee and those who claim under Optionee, under this Agreement, shall terminate.

(c) In the event of a judicial foreclosure sale or trustee's sale of mortgagee's security interest pursuant to the laws of the State of California, or an assignment in lieu of foreclosure, the transferee, be it mortgagee or others, shall succeed to all of the right, title and interest of Optionee.

(d) The prior written consent of Optionor shall not be required:

(i) to a transfer of the License at foreclosure sale under the mortgage, under judicial foreclosure, or by an assignment in lieu of foreclosure; or

(ii) to any subsequent transfer by the mortgagee if the mortgagee is the purchaser at such foreclosure sale; provided that in either such event the mortgagee forthwith gives notice to the Optionor in writing of any such transfer, setting forth the name and address of the transferee, the effective date of such transfer and the express agreement of the transferee assuming and agreeing to perform all of the obligations of this mortgage, together with a copy of the document of which such transfer was made and the payment to Optionor of the processing fee provided in Section 10.2. Any subsequent transfer of the License shall be subject to the conditions relating to consent by Optionor as set forth in this Agreement.

(e) The mortgage and all rights acquired thereunder shall be subject to each and all of the covenants, conditions, and restrictions set forth in this License and to all rights and interests of Optionor hereunder, except as otherwise provided therein. In the event of any conflict between the provisions of this Agreement and the provisions of any mortgage, the provisions of this Agreement shall control.

(f) No mortgage which Optionee may execute or create at any time shall include the Optionor's right, title and interest in and to the Property, nor shall any such mortgage subordinate or be deemed to subordinate the fee title to the Property or Optionor's interest in the License to the security interest created by such mortgage. It is the intention and agreement of the parties hereto that during the entire term of this Agreement, Optionor's right, title and interest in and to the Property shall not be subject to any liens or encumbrances of any kind or nature created by Optionee. Nothing contained in any such mortgage, and no such mortgage, shall release or be deemed to release Optionee from the full and faithful observance and performance of any covenants and conditions in this Agreement and on the part of Optionee to be observed and performed, nor be deemed to constitute a waiver of any rights of Optionor hereunder.

(g) On the commencement of the License Term, the Property shall be free and clear of all mortgage liens except the lien of a trust indenture dated October 1, 1923

by and between Optionor and Harris Trust and Savings Bank, and D. G. Donovan as amended and supplemented.

- 9.4 No Amendment. This Agreement shall not be amended without the written consent of any existing mortgagee.
- 9.5 Liability of Mortgagee. Notwithstanding anything to the contrary in this Agreement, no mortgagee shall be liable for any of the obligations of Optionee hereunder except for any period during which such mortgagee is the owner of the Lease hereunder.
- 9.6 Estoppel Certificate. Upon request of a mortgagee or prospective mortgagee, Optionor shall from time to time execute and deliver to such mortgagee an estoppel certificate certifying (subject to such exceptions as may then exist) that this Agreement is in full force and effect, the Optionee is not then in default hereunder, and any such other matters as such Mortgagee may reasonably request.
- 9.7. New License. In case of the termination of this Agreement because of any event of default or in the event of rejection or disaffirmance of this Agreement, pursuant to bankruptcy law or other law affecting creditors' rights, Optionor shall give prompt notice thereof to the mortgagee, Optionor shall, on written request of the mortgagee, made at any time within thirty (30) business-days after the giving of such notice by Optionor, enter into a new license on the Property with the mortgagee within thirty (30) business days after receipt of such request, which new license shall be effective as of the date of such termination of this Agreement for the remainder of the term of this Agreement, at the rent provided for herein, and upon the same terms, covenants, conditions and agreements as are herein contained, and the licensee under such new license shall have the same right, title and interest in and to the property and the improvements thereon as Optionee had under this Agreement.
- 9.8 Participation by Mortgagee. Any mortgagee shall have the right to receive notice from Optionee of any threatened or pending taking, or any contest of real property taxes affecting the Property, and to participate therein.
- 9.9 Exercise of Option. ~~If any renewal option is not exercised in a timely manner,~~ Optionor shall give written notice to any mortgagee, which shall have the right to exercise such option on behalf of Optionee within twenty (20) days of receipt of such notice.
- 9.10 Modification of Mortgagee. Optionor shall agree to reasonable modifications of this Agreement requested by any prospective mortgagee, so long as such modifications do not materially adversely affect Optionor's rights hereunder as determined by Optionor in its sole discretion.

ARTICLE X

ASSIGNMENT: SUBLETTING

KOP NOT
ASSIGNING
License

10.1 Optionee's Right to Assign. Optionee shall have the absolute right to ~~assign or~~ otherwise transfer Optionee's interest in the License to a permitted assignee, defined as follows:

(a) An assignee whose net worth on the date of the assignment is reasonably adequate to permit such assignee to perform all its obligations hereunder, in light of standard industry practice. Net worth shall mean the amount by which the total of all assets shall exceed the total of all liabilities as determined by an independent certified public accountant in accordance with generally accepted accounting principles. For purposes of this paragraph, the sale, assignment, transfer, or other disposition of any of the issued and outstanding capital stock of Optionee, or of the interest of any general partner or joint venture or syndicate member if Optionee is a partnership or joint venture or syndicate, which shall result in changing the control of Optionee, shall be construed as an assignment of the License. The term "control" in provisions of this Agreement relating to assignment, means fifty percent (50%) or more of the voting power of the corporation.

(b) A successor, which for these purposes is defined as:

(i) Any corporation that controls or is controlled by Optionee.

(ii) Another corporation in connection with a corporate reorganization, or the merger of Optionee into, or the consolidation of Optionee with, another corporation or corporations.

(iii) Any successor of all or substantially all of Optionee's business or assets unless the assignment would otherwise be prohibited by provisions of this Agreement pertaining to bankruptcy.

10.2 Conditions Precedent to Assignment. The following are conditions precedent to Optionee's right of assignment:

(a) Optionee shall give Optionor reasonable notice of the proposed assignment with appropriate documentation as evidence that the proposed assignee qualifies as a permitted assignee.

(b) Except as otherwise provided in this Agreement for a permitted mortgagee, the proposed assignee shall, in recordable form, expressly assume all the covenants and conditions of this Agreement.

(c) Optionee shall pay Optionor the sum of Five Hundred Dollars (\$500.00) to enable Optionor adequately to investigate the proposed assignee's qualifications as a permitted assignee.

10.3 Optionor's Approval of Assignee. The effective date of the assignment shall be thirty (30) days after Optionee's notice of the proposed assignment unless, within that time, Optionor gives notice of a valid objection that the proposed assignee is not a permitted assignee. Optionor's failure to give notice during that time shall constitute a waiver of objection to the assignment.

10.4 Optionee's Nonliability After Assignment. On any assignment made in accordance with the provisions and conditions of this Agreement, but not until completion of improvements, lien free, as required of Optionee under this Agreement, Optionee shall have no further obligation under this Agreement and, as between Optionor and Optionee, shall be considered to have assigned to assignee all claims against Optionor arising under this Agreement. Nothing herein contained shall be construed to release Optionee from any liability or obligation arising before the effective date of the assignment.

10.5 Optionor's Right to First Offer.

(a) During the term of this Agreement, before Optionee may sell or otherwise transfer its interest in the License or the improvements constructed on the Property (collectively, "Optionee's Property"), Optionee agrees to first offer Optionee's Property to Optionor by giving written notice ("Optionee's Offer") of the terms and conditions upon which Optionee is willing to sell Optionee's Property. Optionee's Offer shall include the price as well as the amount of cash payable as a deposit and upon the close of sale and the estimated closing date. Optionor will have thirty (30) days following receipt of Optionee's Offer within which to notify Optionee that Optionor accepts Optionee's Offer on the terms and conditions therein contained. If Optionor accepts Optionee's Offer, the closing of such sale will be governed by the terms of Optionee's Offer. If Optionor does not accept Optionee's Offer in writing within thirty (30) days after the date of Optionor's receipt thereof, Optionee may sell Optionee's Property to any other person at the price and on the terms and conditions not materially more favorable to the buyer than those stated in Optionee's Offer subject, however, to the foregoing provisions of this Article.

(b) If Optionee does not complete a transfer of Optionee's Property within one hundred eighty (180) days of the expiration of the aforementioned thirty (30) day period, or if Optionee intends to transfer Optionee's Property, or a portion thereof, on terms and conditions which are materially more favorable to the buyer than those stated in Optionee's Offer, then the transaction or any further transaction shall be deemed a new determination by Optionee to sell Optionee's Property, and the prior provisions of this Agreement to provide Optionor with a first right of offer shall again be applicable.

(c) A counteroffer by Optionor shall not be deemed a rejection of Optionee's Offer of the right to purchase if Optionor subsequently exercises the right to purchase on the terms set forth in Optionee's Offer within the specified thirty (30) day period or any extension thereof as may be agreed upon by the parties.

(d) Optionor's right of first offer as provided herein shall be extinguished if Optionor fails to exercise its right to purchase Optionee's Property within the thirty (30) day period provided above and Optionee thereafter transfers Optionee's Property to a third party and on the terms set forth in Optionee's Offer within the one hundred eighty (180) day period specified above.

10.6 Right to Sublicense. Optionee shall have no right to sublicense all or any part of the Property or the improvements or both; For the purpose of this agreement, the term Sublicense shall not include the letting of (individual spaces) all or any portion of the property to their ultimate user.

ARTICLE XI

INSURANCE

11.1 Property Insurance. Throughout the License Term, at Optionee's sole cost and expense, Optionee shall, for the mutual benefit of Optionor and Optionee, insure the Property and the improvements against loss or damage by fire and such risks pursuant to the terms of an extended coverage casualty insurance policy, including without limitation vandalism and malicious mischief. The amount of the insurance shall be sufficient to prevent either Optionor or Optionee from becoming a coinsurer under the provisions of the policies but in no event shall the amount be less than (i) ninety-five percent (95%) of the then actual replacement cost, excluding costs of replacing excavations and foundations, but without deduction for depreciation (the "Full Insurable Value"); (ii) the amount of insurance Optionee is required to maintain pursuant to any encumbrance of the License interest; and (iii) Optionor to be endorsed Loss Payee. Optionor may, not more than once every twenty-four (24) months, request the carrier of the insurance then in force to determine the Full Insurable Value. The determination shall be conclusive.

11.2 Comprehensive General Liability Insurance. Throughout the License Term, at Optionee's sole cost and expense, Optionee shall, for the mutual benefit of Optionor and Optionee, obtain and keep in force Comprehensive General Liability insurance against claims and liability for personal injury, death or property damage arising from the use, occupancy, or condition of the Property and improvements, providing protection of at least a combined single limit of Two Million Dollars (\$2,000,000.00). Optionor shall be named as an Additional Insured.

11.3 Policy Form, Content and Insurer. All insurance shall be carried only by responsible insurance companies admitted to do business in California. All such policies shall be nonassessable and shall contain language that (i) any loss shall be payable notwithstanding any act or negligence of Optionor that might otherwise

result in a forfeiture of the insurance, (ii) the insurer waives the right of subrogation against Optionor and against Optionor's agents and representatives, (iii) the policies are primary and noncontributing with any insurance that may be carried by Optionor, and (iv) the policies cannot be canceled or materially changed except after thirty (30) days' notice by the insurer to Optionor or Optionor's designated representative. Optionee shall furnish Optionor with copies of all such policies promptly on receipt of them or with certificates evidencing the insurance. Concurrently with the execution of this Agreement, Optionee shall furnish Optionor with binders representing all insurance required by this Agreement.

- 11.4 Failure to Insure. Optionee shall deliver to Optionor evidence satisfactory to Optionor of Optionee's payment of insurance premiums. Optionee is required to maintain pursuant to the terms of this Agreement. If Optionee fails to obtain or maintain the insurance required by this Agreement or fails to deliver to Optionor the copies of policies and evidence of payment required by this Agreement, Optionor may, at Optionor's election and without notice to Optionee, obtain and maintain the insurance at Optionee's expense.
- 11.5 Optionor's Nonliability. Optionor shall not be liable, and Optionee shall defend and indemnify Optionor against all liability and claims of liability for damage or injury to persons or property on or about the Property from any cause except to the extent caused by Optionor's negligence or willful misconduct. Optionee waives all claims against Optionor for damage or injury to persons or property arising, or asserted to have arisen, from any cause whatsoever except to the extent caused by Optionor's negligence or willful misconduct.

ARTICLE XII

RIGHT OF ENTRY

- 12.1 Inspection, Maintenance, Construction and Operation of Electrical Transmission Facilities. Optionor, through its employees, agents or representatives, and other city, county, state and federal agencies, through their agents or representatives, shall have full right and authority to enter in and upon the Property at any and all reasonable times during the term of the License for the purpose of inspecting the same without interference or hindrance by Optionee, its agents or representatives. At any time after Industrial, Commercial, and Storage Facility are constructed on the Property, Optionee shall provide a contact person, name and phone number, available during normal business hours as well as a contact person, available 24 hours, or otherwise available at Optionee's office. All agreements between Optionee and users of Industrial, Commercial, and Storage Facility shall contain provisions which (a) prohibit the storage of hazardous substances in those units, and (b) require the user to comply with all applicable terms of this Agreement. Optionor reserves the right of entry for the purpose of inspecting the Property, or the doing of any and all acts necessary or proper on said Property in connection with the protection, maintenance, reconstruction, and operation of the electrical structures and their appurtenances; provided, further, that Optionor reserves the further

right, at its discretion, to immediate possession of the same in case of any national or other emergency, or for the purpose of preventing sabotage, and for the protection of said electrical facilities, in which event the term of this License shall be extended for a period equal to the emergency occupancy by Optionor, and during said period Optionee shall be relieved, to the degree of interference, from the performance of conditions or covenants specified herein. All agreements which Optionee enters into for the sublicense or use of all or any part of the Property shall contain a provision, approved by Optionor, which describes Optionor's right of entry as set forth in this Article.

- 12.2 Modification And Emergency Situations. Optionee agrees that Optionor may be required to perform work on all or a part of the electrical facilities which are situated on and above the Property. Optionor shall have the right to impose temporary restrictions on Optionee's right to enter, occupy, and use the Property and to construct improvements thereon as Optionor deems are reasonably necessary without interference from Optionee. In the event Optionor determines that it needs to obtain temporary possession of all or a portion of the Property, or needs to place restrictions on Optionee's use of the Property, Optionor shall, at least thirty (30) days prior to the effective date of the commencement of such possession or restriction notify Optionee in writing describing the extent of the possession or restrictions and the effective date of their commencement. Upon the effective date of said notice, Optionee shall peaceably surrender possession of the Property and comply with the restriction as stated therein. The Base Rent shall be reduced for the period of repossession by an amount equal to the proportion which the area of the portion of the Property which Optionee is restricted from using or which has been surrendered to Optionor to the total area of the Property. This reduction in Base Rent shall be Optionee's sole remedy against Optionor for Optionee's inability to possess or use the entire area of the Property. Optionee shall conduct its operations on the Property in such a manner so as not to unreasonably interfere with Optionor's or its contractor's performance of any work done on or above the Property. Optionee acknowledges that the performance of the work may cause damage to paving or other improvements constructed by Optionee on the Property. Optionee expressly agrees to hold Optionor harmless from all such damage to its improvements, except that at the conclusion of the work, Optionor shall restore the Property to its preexisting condition at no cost to Optionee.
- 12.3 Insulator Washing. Optionee acknowledges that from time to time, Optionor, its employees, agents and/or contractors will enter the Property to wash insulators located on Optionor's overhead electrical facilities with distilled water. Optionee agrees to indemnify and hold harmless Optionor from any and all claims and/or damage resulting from said operation except to the extent such damage or claim results from Optionor's negligence or willful misconduct.
- 12.4 Optionor's Use. Optionor's access to and use of the Property shall be limited to such access and use as provided for in this Agreement, as may be reasonably necessary to operate and service its equipment and access billboards, cell sites, or for such other reasons as may be reasonably necessary to comply with CPUC orders and requirements. Any use by Optionor shall be in compliance with all applicable

laws and regulations, and Optionor shall indemnify Optionee and hold it harmless from and against any loss, claim, or liability arising from such use.

ARTICLE XIII

CONDEMNATION

13.1 Condemnation by Entity Other Than Optionor. The following provisions of this Section shall apply when a whole or a part of the Property is taken by an entity other than Optionor:

(a) Definitions. The following definitions apply in construing provisions of this Agreement relating to a taking of all or part of the Property by eminent domain or inverse condemnation by an entity other than Optionor:

(i) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by an entity having that power, or by inverse condemnation, and (2) a voluntary sale or transfer to any condemnor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(ii) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the Property.

(iii) "Substantial taking" means a taking of a portion of the Property by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Optionee's ability to use the remainder for the purposes permitted under this Agreement.

(iv) "Partial taking" means any taking of the Property that is not either a total or substantial taking.

(b) Termination of License As To Part Condemned. In the event the whole or ~~any part of the~~ Property is taken by condemnation by an entity, other than Optionor, the License shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by the entity.

(c) Partial Taking. If a part of the Property is taken by condemnation but there is no substantial taking of the Property, Optionee shall continue to be bound by the terms, covenants, and conditions of this Agreement except that Base Rent shall be reduced in the same ratio as the value of the portion of the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the part is taken.

(d) Substantial Taking. If the part taken by condemnation constitutes a substantial taking of the Property, Optionee may elect to:

(i) Terminate the License and be absolved of obligations hereunder, which have not accrued at the date possession is taken by condemnation; or

(ii) Continue to occupy the remainder of the Property and remain bound by the terms, covenants and conditions of this Agreement except that Base Rent shall be reduced in the same ratio as the value of the portion or the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the part is taken by condemnation.

(iii) Optionee shall give written notice of its election to terminate the License within thirty (30) days of the date possession of the part is taken by condemnation. If Optionee fails to give Optionor its written notice of termination within the time specified, this Agreement shall remain in full force and effect except that the Base Rent shall be reduced as provided in this section.

(iv) If Optionee continues to occupy the remainder, Optionee, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the Property as nearly as possible to its value, condition and character immediately prior to such taking; provided, however that in the case of a taking for temporary use, Optionee shall not be required to effect restoration until such taking is terminated. Optionee shall submit to Optionor its plans for the restoration of the remainder within ninety (90) days of the date possession of the part is taken by condemnation.

(e) Adjustment of Rent. Should a portion of the Property be condemned and the Rent be reduced as provided above, the reduced Rent shall continue to be subject to adjustment in accordance with Section 3.1.

(f) Compensation. The following provisions shall govern the division of any condemnation award:

(i) If during the term of this Agreement, the Property, or any portion thereof, is condemned, the court in such condemnation proceedings shall be requested to make separate awards to Optionor and Optionee as to their respective interests in the Property, and Optionor and Optionee agree to request such action by the court.

(ii) In the event that Optionor and Optionee are unable to obtain separate awards with respect to their respective interests in the Property, then the net award received (after deductions of reasonable fees and expenses of collection, including, but not limited to, reasonable attorney's fees) shall be fairly and equitably apportioned between Optionor and Optionee to reflect their respective interests in the Property. The portion of the award to be received by Optionor shall reflect the taking of fee simple estate in and to the Property based upon the fair market value of the Property as of the date

preceding the day on which title to the Property vests in the condemning authority. The portion of the award to be received by Optionee shall be based upon the taking and reduction of Optionee's interest created by this Agreement, the taking of any building and other improvements constructed or placed by Optionee on the Property to the extent of the then unamortized value of these improvements for the remaining term of the License, loss or interruption of business, and the cost of any restoration or repair necessitated by such taking or condemnation. Such values shall be determined as of the time of condemnation by agreement of the parties or by arbitration in the manner set out in Section 14.9.

Optionee shall assert no claim for loss of bonus value. For the purpose of this section, "bonus value" means that value attributable in the event that the Rent Optionee is obligated to pay under this Agreement is less than the fair market rental of the Property.

13.2 Condemnation By Optionor. The following provisions of this Section 13.2 shall apply when a whole or a part of the Property is taken by Optionor:

(a) Definitions The following definitions apply in construing provisions of this Agreement relating to a taking of all or part of the Property by eminent domain or inverse condemnation by Optionor:

(i) "Condemnation" means (1) the exercise of the power of eminent domain, whether by legal proceedings or otherwise, by Optionor, and (2) a voluntary sale or transfer to Optionor, either under the threat of condemnation or while legal proceedings in condemnation are pending.

(ii) "Award" means all compensation, sums, or anything of value awarded, paid or received upon a total or partial condemnation of the Property.

(iii) "Substantial taking" means a taking of a portion of the Property by condemnation which, assuming a reasonable amount of reconstruction on the remainder, substantially impairs Optionee's ability to use the remainder for the purposes permitted under this Agreement.

(iv) "Partial taking" means any taking of the Property that is not either a total or substantial taking.

(b) Termination of License as to Part Condemned. Optionee acknowledges that Optionor has the power of eminent domain to acquire property for public purposes and that Optionor may exercise that power to take all or any part of the Property by condemnation. In the event the whole or any part of the Property is taken by condemnation by Optionor in the lawful exercise of its power of eminent domain, this Agreement shall cease as to the whole or the part condemned upon the date possession of the whole or that part is taken by Optionor.

(c) Partial Taking. If a part of the Property is taken by condemnation but there is no substantial taking of the Property, Optionee shall continue to be bound by the terms, covenants, and conditions of this Agreement except that Base Rent shall be reduced in the same ratio as the value of the portion of the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the part is taken by Optionor.

(d) Substantial Taking. If the part taken by condemnation constitutes substantial taking of the Property, Optionee may elect to:

(i) Terminate the License and be absolved of obligations hereunder which have not accrued at the date possession is taken by Optionor; or

(ii) Continue to occupy the remainder of the Property and remain bound by the terms, covenants and conditions of this Agreement except that Base Rent shall be reduced in the same ratio as the value of the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the part is taken by Optionor.

(iii) Optionee shall give written notice of its election to terminate the License within thirty (30) days of the date possession of the part is taken by Optionor. If Optionee fails to give Optionor its written notice of termination within the time specified, this Agreement shall remain in full force and effect except that the Base Rent shall be reduced as provided in this section.

(iv) If Optionee continues to occupy the remainder, Optionee, whether or not the award upon the taking by condemnation is sufficient for the purpose, shall, at its expense, within a reasonable period of time, commence and complete restoration of the remainder of the Property as nearly as possible to its value, condition and character immediately prior to such taking; provided, however, that in the case of a taking for temporary use, Optionee shall not be required to effect restoration until such taking is terminated. Optionee shall submit to Optionor its plans for the restoration of the remainder within ~~ninety~~ (90) days of the date possession of the part is taken by Optionor.

(e) Adjustment of Rent. Should a portion of the Property be condemned and the Rent be reduced as provided above, the reduced Rent shall continue to be subject to adjustment in accordance with Section 3.1

(f) Compensation. Upon Optionor's exercise of its power of condemnation to acquire all or any part of the Property, Optionor agrees to reimburse Optionee for the then unamortized value of the real property improvements taken. The unamortized value of the improvements taken shall be determined by multiplying the unamortized value of the total improvements, utilizing twelve (12) year straight line depreciation as shown in Exhibit "C" attached hereto by the percentage that the value of the portion of the Property taken bears to the value of the total Property (excluding improvements then in existence) as of the date possession of the Property

is taken by Optionor. If Optionor exercises its power of condemnation after all of Optionee's improvements have been depreciated utilizing twelve (12) year straight line depreciation, then Optionor shall not be obligated to compensate Optionee for any such improvements. Optionee agrees that the sum Optionor is obligated to pay Optionee pursuant to this section, if any, shall be Optionee's sole and exclusive remedy for Optionor's condemnation of the property.

Optionee shall assert no claim for loss of bonus value or relocation assistance. For the purposes of this Section, "bonus value" means that value attributable to the fact that the Rent Optionee is obligated to pay under this Agreement is less than the fair market rent of the Property.

Any disagreement between the parties to any provisions of paragraph 13.2 shall be subject to the arbitration provisions of paragraph 14.8.

ARTICLE XIV

DEFAULT; REMEDIES

14.1 Optionee's Default. Each of the following events shall be a default by Optionee and a breach of this Agreement:

(a) Failure to Perform Agreement Covenants. Abandonment or surrender of the Property, or failure or refusal to pay when due any installment of Rent or any other sum required by this Agreement to be paid by Optionee or to perform as required or conditioned by any other covenant or condition of this Agreement.

(b) Attachment or Other Levy. The subjection of any right or interest of Optionee in the Property to attachment, execution, or other levy, or to seizure under legal process, if not released within sixty (60) days, provided that the foreclosure of any mortgage permitted by provisions of this Agreement relating to purchase or construction of improvements shall not be construed as a default within the meaning of this paragraph.

(c) Insolvency, Bankruptcy. The filing of a voluntary or involuntary petition by or against Optionee under any law for the purpose of adjudicating Optionee a bankrupt; or for extending time for payment, adjustment, or satisfaction of Optionee's liabilities; or for reorganization, dissolution, or arrangement on account of or to prevent bankruptcy or insolvency, unless the assignment or proceeding, and all consequent orders, adjudications, custodies, and supervisions are dismissed, vacated, or otherwise permanently stayed or terminated within sixty (60) days after the assignment, filing, or other initial event.

14.2 Notice and Right To Cure.

(a) Notice. As a precondition to pursuing any remedy for an alleged default by Optionee, Optionor shall, before pursuing any remedy, give notice of default to

Optionee and to all mortgagees whose names and addresses were previously given to Optionor in a notice or notices from Optionee. Each notice of default shall specify in detail the alleged event of default and the intended remedy.

(b) Mortgagee's Right To Cure Default. Each mortgagee under a mortgage then existing, under provisions of this Agreement permitting mortgages relating to purchase or construction of improvements, shall have sixty (60) days after service of notice of default within which, at mortgagee's election, either:

(1) To cure the default if it can be cured by the payment or expenditure of money; or

(2) If mortgagee does not elect to cure by the payment or expenditure of money, or if the default cannot be so cured, to cause the prompt initiation of foreclosure, to prosecute it diligently to conclusion, and to perform and comply with all other covenants and conditions of this Agreement requiring the payment or expenditure of money by Optionee until the License shall be released or reconveyed from the effect of the mortgage or until it shall be transferred or assigned pursuant to or in lieu of foreclosure.

(c) Optionee's Right To Cure Defaults. If the alleged default is nonpayment of Rent, taxes, or other sums to be paid by Optionee as provided in this Agreement, Optionee shall have ten (10) days after notice is given to cure the default. For the cure of any other default, Optionee shall promptly and diligently after the notice, commence curing the default and shall have thirty (30) days after notice is given, to complete the cure plus any additional period that is reasonably required for the curing of the default.

(d) Optionor's Right To Cure Optionee's Defaults. After expiration of the applicable time for curing a particular default, or before the expiration of that time in the event of emergency, Optionor may at Optionor's election, but is not obligated to, make any payment required of Optionee under this Agreement, or perform or comply with any covenant or condition imposed on Optionee under this Agreement ~~or any such note or document~~, and the amount so paid plus the reasonable cost of any such performance or compliance, plus interest on such sum at the rate of ten percent (10%) per year from the date of payment, performance, or compliance (herein called act), shall be deemed to be payable by Optionee with the next succeeding installment of Rent. No such act shall constitute a waiver of default or of any remedy for default or render Optionor liable for any loss or damage resulting from any such act.

14.3 Optionor's Remedies. If any default by Optionee shall continue uncured, following notice of default as required by this Agreement for the period applicable to the default under the applicable provision of this Agreement, Optionor has the following remedies in addition to all other rights and remedies provided by law or equity, to which Optionor may resort cumulatively or in the alternative:

(a) Termination. Optionor may at Optionor's election terminate this Agreement by giving Optionee notice of termination. On the giving of the notice, all Optionee's rights in the Property and in all improvements shall terminate. Promptly after notice of termination, Optionee shall surrender and vacate the Property and all improvements in broom-clean condition, and Optionor may reenter and take possession of the Property and all remaining improvements. Termination under this paragraph shall not relieve Optionee from the payment of any sum then due to Optionor or from any claim for damages previously accrued or then accruing against Optionee.

(b) Reentry Without Termination. Optionor may at Optionor's election reenter the Property, and, without terminating this Agreement, at any time and from time to time re-license the Property and improvements or any part or parts of them for the account and in the name of Optionee or otherwise. Any re-licensing may be for the remainder of the term or for a longer or shorter period. Optionor may execute any license made under this provision either in Optionor's name or in Optionee's name and shall be entitled to all rent from the use, operation, or occupancy of the Property or improvements or both. Optionee shall nevertheless pay to Optionor on the due dates specified in this Agreement the equivalent of all sums required of Optionee under this Agreement, plus Optionor's expenses less the avails of any relicensing. No act by or on behalf of Optionor under this provision shall constitute a termination of this Agreement unless Optionor gives Optionee notice of termination.

(c) Optionee's Personal Property. Optionor may at Optionor's election use Optionee's personal property and trade fixtures or any of such property and fixtures without compensation and without liability for wear and tear caused by ordinary usage, or store them for the account and at the cost of Optionee. The election of one remedy for any one item shall not foreclose an election of any other remedy for another item or for the same item at a later time.

(d) Recovery of Rent. Optionor shall be entitled at Optionor's election to each installment of Rent to any combination of installments for any period before termination, plus interest at the rate of ten percent (10%) per year from the due date of each installment. Avails of relicensing shall be applied, when received, as follows: (1) to Optionor to the extent that the avails for the period covered do not exceed the amount due from and charged to Optionee for the same period, and (2) the balance to Optionee.

(e) Damages. Optionor shall be entitled at Optionor's election to damages in an amount that would have fallen due as Rent between the time of termination of this Agreement and the time of the claim, judgment, or other award, less the avails of all relicensing plus interest on the balance at the rate of ten percent (10%) per year.

(f) Assignment of Sublicense Fees. Optionee assigns to Optionor all rents and other sums falling due from sublicenses, and concessionaires (herein called sublicenses) during any period in which Optionor has the right under this Agreement, whether exercised or not, to reenter the Property for Optionee's default,

and Optionee shall not have any right to such sums during that period. This assignment is subject and subordinate to any and all assignments of the same rent and other sums made, before the default in question, to a mortgagee under any mortgage permitted by provisions of this Agreement relating to purchase or construction of improvements. Optionor may at Optionor's election reenter the Property and improvements with or without process of law, without terminating this Agreement, and either or both collect these sums or bring action for the recovery of the sums directly from such obligors. Optionor shall receive and collect all sublicense fees and avails from relicensing, applying them: first, to the payment of reasonable expenses (including attorneys' fees or brokers' commissions or both) paid or incurred by or on behalf of Optionor in recovering possession, placing the Property and improvements in good condition, and preparing or altering the Property or improvements for relicensing; second, to the reasonable expense of securing new licensees; third, to the fulfillment of Optionee's covenants to the end of the term; and fourth, to Optionor's uses and purposes. Optionee shall nevertheless pay to Optionor on the due dates specified in this Agreement the equivalent of all sums required of Optionee under this Agreement, plus Optionor's expenses, less the avails of the sums assigned and actually collected under this provision. Optionor may proceed to collect either the assigned sums or Optionee's balances or both, or any installment or installments of them, either before or after expiration of the term, but the period of limitations shall not begin to run on Optionee's payments until the due date of the final installment to which Optionor is entitled nor shall it begin to run on the payments of the assigned sums until the due date of the final installment due from the respective obligors.

- 14.4 Note of Optionor's Default: Optionee's Waiver. Optionor shall not be considered to be in default under this Agreement unless (a) Optionee has given notice specifying the default and (b) Optionor shall have failed to cure the default within thirty (30) days after notice is given, plus any additional time that is reasonably required for the curing of the default if the default is not reasonably susceptible to being cured during this period, so long as Optionor continuously and diligently proceeds to cure the default. Optionee shall have the right of termination for Optionor's default only after notice to and consent by all mortgagees under mortgages then existing under provisions of this Agreement relating to purchase or construction of improvements.
- 14.5 Unavoidable Default or Delay. Any prevention, delay, nonperformance, or stoppage due to any of the following causes shall excuse nonperformance for a period equal to any such prevention, delay, nonperformance, or stoppage, except the obligations imposed by this Agreement for the payment of Rent, taxes, insurance, or obligations to pay money that are treated as Rent. The causes referred to above are: strikes, acts of public enemies of this state or of the United States, riots, insurrections, civil commotion, inability to obtain labor or materials or reasonable substitutes for either, governmental restrictions or regulations or controls (except those reasonably foreseeable in connection with the uses contemplated by this Agreement), casualties not contemplated by insurance provisions of this Agreement, or other causes beyond the reasonable control of the party obligated to perform.

14.6 Waiver: Voluntary Acts. No waiver of any default shall constitute a waiver of any other breach or default, whether of the same or any other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by either party shall give the other any contractual right by custom, estoppel, or otherwise. The subsequent acceptance or Rent pursuant to this Agreement shall not constitute a waiver of any preceding default by Optionee other than default in the payment of the particular Rent payment so accepted, regardless of Optionor's knowledge of the preceding breach at the time of accepting the Rent, nor shall acceptance of Rent or any other payment after termination constitute a reinstatement, extension, or renewal of the Agreement or revocation of any notice or other act by Optionor.

14.7 Attorneys' Fees. If either party brings any action or proceeding to enforce, protect, or establish any right or remedy, the prevailing party shall be entitled to recover reasonable attorneys' fees.

14.8 ARBITRATION OF DISPUTES
THE PARTIES DESIRE TO AVOID AND SETTLE WITHOUT LITIGATION FUTURE DISPUTES WHICH MAY ARISE BETWEEN THEM RELATIVE TO THIS AGREEMENT. ACCORDINGLY, THE PARTIES AGREE TO ENGAGE IN GOOD FAITH NEGOTIATIONS TO RESOLVE ANY SUCH DISPUTE. IN THE EVENT THEY ARE UNABLE TO RESOLVE ANY SUCH DISPUTE BY NEGOTIATION, THEN SUCH DISPUTE CONCERNING ANY MATTER WHOSE ARBITRATION IS NOT PROHIBITED BY LAW AT THE TIME SUCH DISPUTE ARISES SHALL BE SUBMITTED TO ARBITRATION IN ACCORDANCE WITH THE ARBITRATION RULES OF THE AMERICAN ARBITRATION ASSOCIATION (HEREINAFTER 'RULES') THEN IN EFFECT AND THE AWARD RENDERED BY THE ARBITRATORS SHALL BE BINDING AS BETWEEN THE PARTIES AND JUDGMENT ON SUCH AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

THREE NEUTRAL ARBITRATORS SHALL BE APPOINTED BY THE AMERICAN ARBITRATION ASSOCIATION AND AT LEAST ONE OF SUCH ARBITRATORS SHALL BE AN ATTORNEY-AT-LAW AND ALL DECISIONS AND AWARDS SHALL BE MADE BY A MAJORITY OF THEM EXCEPT FOR DECISIONS RELATING TO DISCOVERY AND DISCLOSURES AS SET FORTH HEREIN.

NOTICE OF A DEMAND FOR ARBITRATION OF ANY DISPUTE SUBJECT TO ARBITRATION BY ONE PARTY SHALL BE FILED IN WRITING WITH THE OTHER PARTY AND WITH THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES AGREE THAT AFTER ANY SUCH NOTICE HAS BEEN FILED, THEY SHALL, BEFORE THE HEARING THEREOF, MAKE ~~DISCOVERY AND DISCLOSURE~~ OF ALL MATTERS RELEVANT TO SUCH DISPUTE, TO THE EXTENT AND IN THE MANNER PROVIDED BY THE CALIFORNIA CODE OF CIVIL PROCEDURE. ALL QUESTIONS THAT MAY ARISE WITH RESPECT TO THE OBLIGATION OF DISCOVERY AND DISCLOSURE AND THE PROTECTION OF THE DISCLOSED AND DISCOVERED MATERIAL SHALL BE REFERRED TO A SINGLE ARBITRATOR WHO SHALL BE AN ATTORNEY-AT-LAW AND ONE OF THE THREE NEUTRAL ARBITRATORS APPOINTED FOR DETERMINATION, AND HIS DETERMINATION SHALL BE FINAL AND CONCLUSIVE. DISCOVERY AND DISCLOSURE SHALL BE COMPLETED NO LATER THAN NINETY (90) DAYS AFTER FILING OF SUCH NOTICE OF ARBITRATION UNLESS EXTENDED BY SUCH SINGLE ARBITRATOR UPON A SHOWING OF GOOD CAUSE BY EITHER PARTY TO THE ARBITRATION. THE ARBITRATORS MAY CONSIDER ANY MATERIAL WHICH IS RELEVANT TO THE SUBJECT MATTER OF SUCH DISPUTE EVEN IF SUCH MATERIAL MIGHT ALSO BE RELEVANT TO AN ISSUE OR ISSUES NOT SUBJECT TO ARBITRATION HEREUNDER. A STENOGRAPHIC RECORD SHALL BE MADE OF ANY ARBITRATION HEARING.

THE PARTIES SHALL SHARE THE COST OF ARBITRATION.

THIS AGREEMENT SHALL BE CONSTRUED, AND THE LEGAL RELATIONS BETWEEN THE PARTIES HERETO SHALL BE DETERMINED, IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF CALIFORNIA.

NOTICE: BY INITIALLING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALLING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE 'ARBITRATION OF DISPUTES' PROVISION TO NEUTRAL ARBITRATION.

OPTIONOR ME

OPTIONEE CHF gpc

- 14.9 Appraisal: Appointment of appraisers shall be made in the following manner unless expressly provided to the contrary in the applicable provisions of this Agreement. Neither party may require appraisal of any matter for which appraisal is not specified in the applicable provision of this Agreement.

In the event Optionor and Optionee cannot mutually agree upon one appraiser, there shall be three appraisers appointed as follows:

- (a) Within ten (10) days after notice requiring appraisal, each party shall appoint one appraiser and give notice of the appointment to the other party.
- (b) The two appraisers shall choose a third appraiser within ten (10) days after appointment of the second.
- (c) The appraised value shall be determined by averaging the two (2) appraisals which are closest.

ARTICLE XV

ADDITIONAL PROVISIONS

- 15.1 Captions, Attachments, Defined Terms. The captions of the articles of this Agreement are for convenience only and shall not be deemed to be relevant in resolving any question of interpretation or construction of any section of this Agreement. Exhibits attached hereto and addenda and schedules initiated by the parties, are deemed by attachment to constitute part of this Agreement and are incorporated herein. The words "Optionor" and "Optionee", as used herein, shall include the plural as well as the singular. Words used in neuter gender include the masculine and feminine and words in the masculine or feminine gender include the neuter. If there be more than one Optionor or Optionee, the obligations hereunder imposed upon Optionor or Optionee shall be joint and several.
- 15.2 Entire Agreement. This instrument along with any exhibits and attachments hereto constitutes the entire agreement between Optionor and Optionee relative to the Property and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Optionor and Optionee. Optionor and Optionee agree hereby that all prior or contemporaneous oral agreements between and among themselves and their agents and representatives relative to the licensing of the Property are merged in or revoked by this Agreement.
- 15.3 Severability. If any terms or provision of this Agreement shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.
- 15.4 Costs of Suit. If Optionee or Optionor shall bring any action for any relief against the other, declaratory or otherwise, arising out of this Agreement, including any suit by Optionor for the recovery of Rent or possession of the Property, the losing party shall pay the successful party a reasonable sum for attorney's fees which shall be deemed to have accrued on the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Should Optionor, without fault on Optionor's part, be made a party to any litigation instituted by Optionee or by any third party against Optionee, or by or against any person holding under or using the Property by license of Optionee, or for the foreclosure of any lien for labor or materials furnished to or for Optionee or any such other person or otherwise arising out of or resulting from any act or transaction of Optionee or of any such other person, Optionee shall save and hold Optionor, harmless from any judgment rendered against Optionor or the Property or any part thereof, and all costs and expenses, including reasonable attorney's fees, incurred by Optionor in connection with such litigation.

- 15.5 Time, Joint and Several Liability. Time is of the essence of this Agreement and each and every provision hereof. All the terms, covenants and conditions contained in this Agreement to be performed by either party if such party shall consist of more than one person or organization, shall be deemed to be joint and several, and all rights and remedies of the parties shall be cumulative and non-exclusive of any other remedy at law or in equity.
- 15.6 Binding Effect; Choice of Law. The parties hereto agree that all the provision hereof are to be construed as both covenants and conditions as though the words importing such covenants and conditions were used in each separate section hereof; and all of the provisions hereof shall bind and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Agreement shall be governed by the laws of the State of California.
- 15.7 Waiver. No covenant, term or condition or the breach thereof shall be deemed waived, except by written consent of the party against whom the waiver is claimed and any waiver of the breach of any covenant, term or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term or condition. Acceptance by Optionor of any performance by Optionee after the time the same shall have become due shall not constitute a waiver by Optionor of the breach or default of an covenant, term or condition unless otherwise expressly agreed to by Optionor in writing.
- 15.8 Holding Over. If Optionee remains in possession of all or any part of the premises after the expiration of the term hereof, with or without the express or implied consent of Optionor, such tenancy shall be from month to month only and not a renewal hereof or an extension for any further term, and in such case, Rent and other monetary sums due hereunder shall be payable in the amount and at the time specified in this Agreement and such holding over shall be subject to every other term, covenant and agreement contained herein.
- 15.9 Recording. Optionee shall not record this Agreement without Optionor's prior written consent, and such recordation shall, at the option of Optionor, constitute a noncurable default of Optionee hereunder. Either party shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Agreement for recording purposes.
- 15.10 Notices. All notices or demands of any kind required or desired to be given by Optionor or Optionee hereunder shall be in writing and shall be deemed delivered forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid, addressed to the Optionor or Optionee respectively at the addresses set forth below:

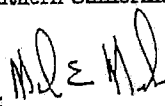
Optionee: Katella Operating Properties LLC
c/o The Brookhollow Group
151 Kalnus Dr., Suite F-1
Costa Mesa, CA 92626

Optionor: Southern California Edison
Corporate Real Estate
Real Estate Revenue Division
100 N. Long Beach Blvd., Suite 1004
Long Beach, CA 90802

- 15.11 Corporate Authority. If Optionee is a corporation, each individual executing this Agreement on behalf of said corporation represents and warrants that he/she is duly authorized to execute and deliver this Agreement.
- 15.12 No Partnership. Nothing in this Agreement shall be construed to render the Optionor in any way or for any purpose a partner, joint venturer or associate of Optionee.
- 15.13 Days. All references to days in this Agreement shall mean business days.

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

"OPTIONOR"
Southern California Edison

By: 
MARK E. MILKULKA
Director
Corporate Real Estate Department

"OPTIONEE"
Katella Operating Properties, LLC


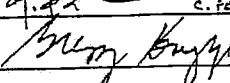
By:  C. PEDALEN, GENERAL MANAGER
By:  G. KNAPP, General Manager

EXHIBIT "A"
SITE PLAN

LW960750.023 (02/11/99)

-43-

EXHIBIT "B"

SUBJECT TO ITEMS

Covenants, conditions, restrictions, reservations, exceptions, rights and easements, whether or not of record, including, but not limited to the following:

- a. A reservation of the use and control of cienegas and natural streams of water, if any naturally upon, flowing across, into or by said tract, and the right of way for and to construct irrigation or drainage ditches through said tract to irrigate or drain the adjacent land, as reserved in the deed from the Stearns Rancho Company, a corporation, recorded December 12, 1901 in Book 30, page 294 of Deeds.
- b. An easement for road purposes over the West 20 feet of Parcel 7, as conveyed to Orange County by deed recorded March 9, 1921 in Book 386, page 187, of deeds of said orange county.
- c. An easement for road purposes over the West 20 feet of Parcel 7, as conveyed to Orange County by deed recorded March 29, 1921 in Book 278, page 293, of Official Records, in the Office of the County recorder of said Orange county of said Orange county.

EXHIBIT "C"



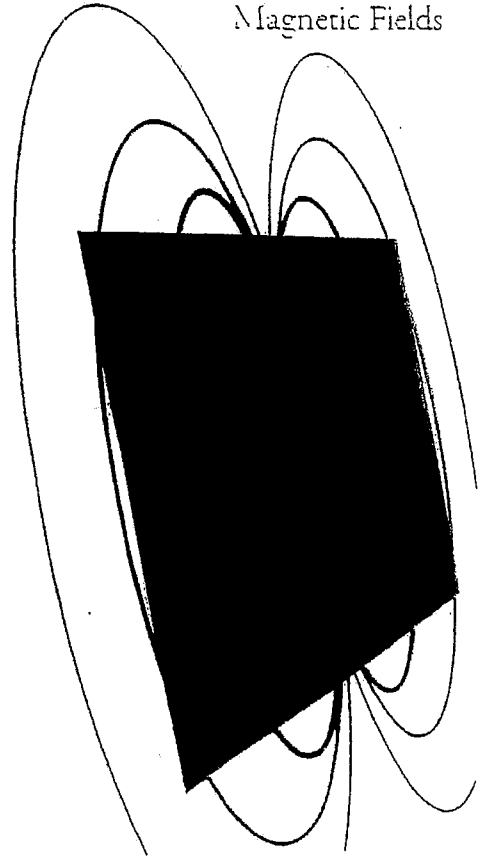
EXHIBIT "D"
EMF BROCHURE

LW960750.023 (02/11/99)

-46-



Understanding EMF Electric and Magnetic Fields



SCE 16-2577 (DWN) REV 1/98

 Printed on recycled paper

Reaching over to turn off the electric clock, relaxing in front of the television or making breakfast—electric and magnetic fields, or EMF, are present throughout our environment.

Electric and magnetic fields are a natural consequence of our use of electricity. Whenever an electric charge or current is present—either natural or manmade—fields of electric and magnetic force occur.

The earth itself has an intense magnetic field. Think about the natural relationship between the earth and a compass. What causes the compass needle to point north is the earth's magnetic field. Electric charges, currents and fields are naturally found in all living organisms—including humans.

Manmade fields surround any wire that is carrying electricity, including household wiring, electrical appliances, and transmission lines. These are called power frequency electric and magnetic fields because they are created from manmade electricity. The electric current from manmade fields is much weaker than the electric current that naturally flows through our body—too weak to be felt.

In the past few years, there has been an increasing amount of public attention focused on the subject of power frequency electric and magnetic fields, even though the subject has been under the scrutiny of researchers since the early 1970s. However, while progress has been made and we've learned a lot, more research is necessary to determine whether these fields are a health hazard. The needed research is being done by the California Department of Health Services and leading state and national research institutions.

ELECTRIC FIELDS

Electric pressure on a wire, or voltage, produces an electrical field around the wire carrying the electricity. By plugging an ordinary lamp into an electrical outlet, voltage enters the lamp cord and creates an electrical field. The higher the voltage the stronger the electrical field. The strength of these fields is measured by the unit of volts per meter (V/M).

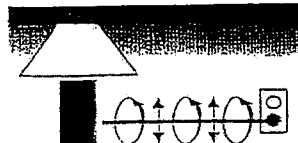
ELECTRIC FIELD ONLY



MAGNETIC FIELDS

A magnetic field is the force produced by current, or the flow, of electricity through a wire. For example, when you switch a lamp on, current flows through the cord and this movement of electricity creates a magnetic field. There is no magnetic field when the lamp is turned off. The strength of magnetic fields is measured in gauss. Since a gauss is such a large unit of measure, you will see magnetic fields reported in units of milliGauss (mG: 1 gauss = 1000 milliGauss).

ELECTRIC AND MAGNETIC FIELD



HOW STRONG ARE THEY?

The strength of both electric and magnetic fields diminishes quickly as you move away from the electrical object, just like the heat and light from a candle falls off with distance. In addition to distance, trees, buildings and most other objects shield the electric field, but have no effect on the magnetic field.

As a rule, household appliances and wiring create magnetic fields higher than or equal to those typically found near power lines. In any situation, exposure to electric and magnetic fields may depend on the source, the distance from you to the source, and the time spent near the source.

ARE THEY HARMFUL?

Most scientists agree that health effects from EMF have not been established. Dozens of studies have been completed since the 1970s and new research will continue until scientists agree on whether or not a health hazard exists. However, current scientific data about electric and magnetic fields is inconsistent. Some studies report a relationship between residential and occupational exposure to EMF and an elevated risk of various cancers while other studies, equally well done, do not find this relationship.

Coverage by local newspapers, magazines and major television networks have generated stories on the possible health risk from exposure to EMF from electric power lines and electrical appliances. Some of the media

coverage referred to research studies that reported an increase in cancer, especially childhood cancer, for people living near power lines.

You may want to measure the level of electric or magnetic fields in your home. However, we do not know how to interpret the readings to determine any potential health impacts. There is no safe or unsafe level of electric or magnetic fields established and agreed upon by health scientists. Because of this, measurements in your home cannot be compared to any kind of benchmark level to determine a degree of safety. At a customer's request, Edison will provide magnetic field readings.

WHAT EDISON IS DOING

At Edison, we understand the public's concern about EMF at home, at work and around power lines.

First and foremost is our commitment to providing reasonably-priced electricity to our customers in a safe, reliable and environmentally sound manner. That's why Edison is pursuing an integrated research approach that:

- PROVIDES FUNDING FOR RESEARCH STUDIES — Edison has joined with other agencies to provide funding to leading universities for research and direct funding to outside laboratories.
- PARTICIPATES IN JOINT STUDIES — Edison is currently participating with the California Public Utilities Commission and the California Department of Health Services to determine a range of options to reduce EMF from electric utility facilities.
- CONDUCTS RESEARCH WITHIN EDISON — We are reviewing the designs of our transmission lines, substations and other facilities should a health hazard be found. We are also trying to determine the effect EMF has on our electrical workers.
- KEEPS CURRENT ON ALL LITERATURE AND RESEARCH STUDIES — We continually monitor current studies on the issue and participate in national and international seminars to review the results of ongoing research.

5

OUR COMMITMENT

If future research shows that electric and magnetic fields associated with electricity are a health hazard, we will take every reasonable action necessary to protect our customers and employees.







To date, the scientific literature is not convincing enough to justify expensive measures to reduce electric or magnetic fields. In the meantime, there are questions that need to be answered and we will continue to search for those answers. We are conducting research to develop and evaluate engineering steps for reducing fields from electric facilities.

Since more research is needed to resolve this controversy, we will continue to support studies, and encourage outside agencies and governmental bodies to do the same.



Edison will continue to provide the most up-to-date information and services available to customers, employees, legislators, local governments and public interest groups about EMF.

MAGNETIC FIELDS AT HOME

(Measurements are in milliGauss)

| | 1.2 | 1.2 | 39 |
|---|-------------------------|-----|-----|
|  | MICROWAVE OVEN | | |
| | 750 | 40 | 1 |
| | to | to | to |
| | 2,000 | 80 | 8 |
|  | CLOTHES WASHER | | |
| | 8 | 2 | 0.1 |
| | to | to | to |
| | 400 | 30 | 2 |
|  | ELECTRIC RANGE | | |
| | 60 | 4 | 0.1 |
| | to | to | to |
| | 2,000 | 40 | 1 |
|  | FLUORESCENT LAMP | | |
| | 400 | 5 | 0.1 |
| | to | to | to |
| | 4,000 | 20 | 3 |
|  | HAIR DRYER | | |
| | 60 | 1 | 0.1 |
| | to | to | to |
| | 20,000 | 70 | 3 |
|  | TELEVISION | | |
| | 25 | 0.4 | 0.1 |
| | to | to | to |
| | 500 | 20 | 2 |

MAGNETIC FIELDS OUTSIDE

| | | |
|--|---|---|
|  | DISTRIBUTION LINES 1 to 80 mG Under the Line |  |
| | TRANSMISSION LINES 5 to 300 mG Edge of Right Way | |

More detailed information about EMF is contained in a brochure called "Questions & Answers about EMF." To receive a free copy and to find out about other free services Edison provides, including EMF testing and workshops, contact the EMF Education Center at (508) 290-4551.

EDISON'S POLICY ON ELECTRIC AND MAGNETIC FIELDS

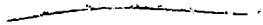
After many years of research, scientists have not found that exposure to power-frequency electric and magnetic fields (EMF) causes disease in humans. Research on this topic is continuing.

We are aware that some members of the public are concerned about the potential health effects of power-frequency electric and magnetic fields. We recognize and take seriously our responsibilities to help resolve these concerns. Realizing that we need to better understand electric and magnetic fields and respond to the current uncertainty, we believe Edison's responsibilities are to:

- Provide balanced, accurate information to our employees, customers, and public agencies, including providing EMF measurements and consultation to our customers upon request.
- Support existing research programs at the California Department of Health Services and National Institute of Environmental Health Sciences to resolve the key scientific questions about EMF.
- Conduct research to develop and evaluate no- and low-cost designs for reducing fields from electric utility facilities.
- Take appropriate no- and low-cost steps to minimize field exposures from new facilities and continue to consult and advise our customers with respect to existing facilities.
- Research and evaluate occupational health implications and provide employees who work near energized equipment with timely, accurate information about field exposure in their work environment.
- Assist the California Department of Health Services, the California Public Utilities Commission, and other appropriate local, state, and federal governmental bodies to provide reasonable, uniform regulatory guidance.

EXHIBIT B

LEGAL DESCRIPTION OF SITE



DOC# 040824-122621 0010

EXHIBIT B-1

10-0298-80 (A)
01-15-03

EXHIBIT B
LEGAL DESCRIPTION
FOR
"THE SITE"

That portion of the Northerly one half of the Southwest one quarter of Section 23, Township 4 South, Range 10 West, San Bernardino Meridian, in the City of Anaheim, County of Orange, State of California, within the Rancho San Juan Cajon De Santa Ana, as said Section is shown on a map recorded in Book 51, Page 10 of Miscellaneous Maps, in the office of the County Recorder of said County, being more particularly described as follows:

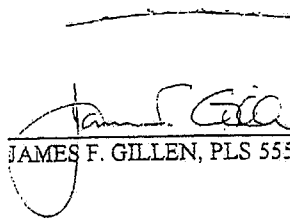
Parcel 1 in said City of Anaheim, County of Orange, State of California as shown on a map filed in Book 60, Pages 46 through 50 inclusive of Records of Survey in the office of said County Recorder.

EXCEPTING therefrom Claudina Street, as described in that certain Easement Deed recorded on September 27, 1968 in Book 8735, Page 784 of Official Records, in the office of said County Recorder.

Also EXCEPTING therefrom that certain property described as Parcel No. 200438-1 and Parcel No. 200438-2 in that certain Grant Deed recorded January 26, 1998 as Instrument No. 19980041990 of Official Records in the office of said County Recorder.

Containing an area of 9.145 acres more or less.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements, if any, of record.



JAMES F. GILLEN, PLS 5557



q/10-0298-80/a/vexhioib/jfg/irm

EXHIBIT C
EDISON LETTER AGREEMENT

EXHIBIT C-1

DOCSID: 9002293 / 22 21 9110



Messrs. Charles H. Fedalen, Jr.
Gregory J. Knapp
Katella Operating Properties II
151 Kalmus Drive F-1
Costa Mesa, CA 92626

February 20, 2001

Subject: Barre-Villa Park TL R/W
Claudina Way Property

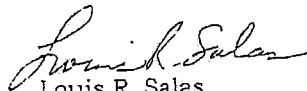
Gentlemen:

You have kept us apprised of your discussions with the Anaheim Redevelopment Agency ("ARA") regarding a potential sublicense/lease of the property subject to your Option Agreement dated March 5, 1999 ("Claudina Way Property"). Under such a sublicense/lease, Katella Operating Properties II ("KOP") would remain the Optionee and fully responsible under the Option Agreement. ARA would use the Claudina Way Property for parking and interim storage, and ultimately for parking and circulation if ARA develops a hotel on property it owns to the south of the site. Any uses and improvements by ARA would be subject, in all respects, to the terms of the Option Agreement.

This letter will clarify that your potential sublicense/lease to ARA is permitted under Section 10.6 (Right to Sublicense) of the Option Agreement. If, in the future, ARA (with KOP's consent) desired to sublicense/lease its interest to an acquiror of the site owned by ARA, this is permitted as well under Section 10.6, provided that KOP remains the Optionee and is fully obligated under the Option Agreement.

Should you have any questions regarding this matter, please call me at (714) 934-0819.

Sincerely,


Louis R. Salas
Project Manager

14799 Chestnut St.
Westminster, CA 92683

EXHIBIT D
LEGAL DESCRIPTION OF THE PROPERTY

DOI-NR-2003-0026-220210110

EXHIBIT D-1

10-0298-80 (A)
01-15-03

EXHIBIT D
LEGAL DESCRIPTION
FOR
"THE PROPERTY"

That portion of the Northerly one half of the Southwest one quarter of Section 23, Township 4 South, Range 10 West, San Bernardino Meridian, in the City of Anaheim, County of Orange, State of California, within the Rancho San Juan Cajon De Santa Ana, as said Section is shown on a map recorded in Book 51, Page 10 of Miscellaneous Maps, in the office of the County Recorder of said County, being more particularly described as follows:

Parcel 1 in said City of Anaheim, County of Orange, State of California as shown on a map filed in Book 60, Pages 46 through 50 inclusive of Records of Survey in the office of said County Recorder.

EXCEPTING therefrom that portion of said Parcel 1 lying Southwesterly of the Northeasterly right-of-way line of Claudina Street, as described in that certain Easement Deed recorded on September 27, 1968 in Book 8735, Page 784 of Official Records, in the office of said County Recorder.

Containing an area of 1.536 acres more or less.

Subject to covenants, conditions, reservations, restrictions, rights of way and easements, if any, of record.



JAMES F. GILLEN, PLS 5557



q/10-0298-80/a/v/exhibitd/jfg/lm

EXHIBIT E

GENERAL ORDER NO 69-C

EXHIBIT E-1

DOCSOC/147224) v11/022621-0110

A-59

EXHIBIT "E"

GENERAL ORDER 69-C
(Supersedes General Order No. 69-B)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Easements on Property of Public Utilities

Resolution No. L-230

Adopted July, 10, 1985, Effective July, 10, 1985

IT IS HEREBY ORDERED, that all public utilities covered by the provisions of Section 851 of the Public Utilities Code of this State be, and they are hereby authorized to grant easements, licenses or permits for use or occupancy on, over or under any portion of the operative property of said utilities for rights of way, private roads, agricultural purposes, or other limited uses of their several properties without further special authorization by this Commission whenever it shall appear that the exercise of such easement, license or permit will not interfere with the operations, practices and service of such public utilities to and for their several patrons or consumers;

PROVIDED, HOWEVER, that each such grant, other than a grant by a public utility to the State of California or a political subdivision thereof for a governmental use superior to the use by the public utility under the provisions of Section 1240.610 2 of the Code of Civil Procedure, or a grant to the United States Government or any agency thereof for a governmental use, shall be made conditional upon the right of the grantor, either upon order of this Commission or upon its own motion to commence or resume the use of the property in question whenever, in the interest of its service to its patrons or consumers, it shall appear necessary or desirable to do so;

AND PROVIDED, FURTHER, that nothing herein applies, or shall be deemed to apply to crossings of railroads or street railroads by private or public roads, passageways or footpaths, at grade or otherwise;

AND PROVIDED, FURTHER, that the term "political subdivision" as used in this General Order is defined as set forth in Section 1402 of the Public Utilities Code.

The effective date of this order shall be July 10, 1985.

EXHIBIT F

CPUC DECISION D-03-01-040

EXHIBIT F-1

DOCSOC/1472241v11/022621-0110

A-61



KATELLA
OPERATING
PROPERTIES, LLC

March 3, 2003

Mr. Kerry Kemp
Project Manager
Anaheim Redevelopment Agency
201 S. Anaheim Blvd., Suite 1003
Anaheim, CA 92805

Dear Kerry:

Pursuant to my previous letter to you dated January 22, 2003, the CPUC issued an Order, effective January 16, 2003, approving the lease between SCE and KOP II. In accordance with Section 1d. of the Sublicense/Sublease Agreement between KOP II and ARA, we are providing to you a copy of this Order (Note: Please refer to Page 8 of the enclosure for the actual Order by the CPUC). This Order, as indicated, was approved without additional conditions.

Please contact either Greg or me if you have any questions.

Best regards.

Sincerely,

CHIP

Chip Fedalen

CF/sj
Enclosure

cc: Gregory J. Knapp

151 KALMUS DRIVE • F-1 • COSTA MESA • CALIFORNIA • 92626
714-850-3900 • FAX 714-434-3502
tbg@brookgrp.com

ALJ/KJB/sid

Mailed 1/21/2003

Decision 03-01-040 January 16, 2003

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (U 338-E) for Authority to Lease Available Land on the Barre-Villa Park Transmission Right of Way to Katella Operating Properties II, LLC.

Application 02-09-020
(Filed September 17, 2002)

**OPINION GRANTING APPROVAL UNDER
PUBLIC UTILITIES CODE SECTION 851 FOR A
LEASE OF UTILITY PROPERTY**

We grant the Application of Southern California Edison Company (SCE) for authority to lease available land under Public Utilities Code Section 851.¹ The SCE property consists of a 9.1-acre site located on a portion of SCE's Barre-Villa Park transmission right of way (ROW) in the City of Anaheim (Site). The Site is part of the Barre-Villa Park 220 kilovolt (kV) system. The lease is sought to permit Katella Operating Properties II, LLC (KOP II or Lessee) to construct and operate a recreational vehicle, and vehicle and industrial storage facility on the Site or sublease the Site to the City of Anaheim for parking lot uses.

Background

The Site is subject to an Option to License Agreement (Option Agreement) between SCE and Katella Operating Properties, LLC (KOP) dated March 5, 1999. On November 8, 2000, with SCE's consent, KOP assigned the Option Agreement

¹ All statutory references are to the Public Utilities Code unless noted otherwise.

to KOP II. On May 1, 2001, KOP II exercised the option to license the Site. On March 26, 2002, SCE and KOP II entered into a First Amendment to the Option Agreement (Amendment). No construction activities have occurred on the Site under the license.

SCE and KOP II desire to convert the license into a lease. If we authorize the lease, KOP II will either operate a vehicle and industrial storage facility on the Site or sublease it to the City of Anaheim for use as a parking lot. The City has reserved developments rights on the Site by sublicensing it from KOP II.

Terms of the Proposed Lease

[Note: Selected economic terms redacted]...The Option Agreement provides that KOP II's activities must not interfere with the operation of the electric facilities that cross the Site, use any portion of the Site directly beneath SCE's towers, or store hazardous substances, explosives or flammable materials on the Site. Further, KOP II must maintain a minimum clearance of seventeen (17) feet from all overhead electrical conductors and minimum radii of fifty (50) feet around all tower legs and ten (10) feet around all poles and anchors. KOP II must also provide access roads to the Site that are at least sixteen (16) feet wide and capable of supporting a gross load of forty (40) tons on a three-axle vehicle.

SCE retains various rights under the Option Agreement including the rights to:

- Approve KOP II's construction plans and specifications,
- Enter the Site at any and all reasonable times to inspect the property,
- Impose temporary restrictions on KOP II's right to enter, occupy and use the Site in order to perform necessary work on the electrical facilities located on the Site,
- Take back all or part of the leasehold by eminent domain or inverse condemnation and
- License portions of the Site for construction and maintenance of billboards and cell sites.

KOP II is also required to:

- Pay all personal property taxes, general or special assessments, or other fees levied against the Site or the improvements to be constructed thereon,
- Obtain all permits and approvals for construction and any zoning changes or use permits required for operation of its business on the Site,
- Maintain appropriate comprehensive general liability, auto liability and worker's compensation insurance and
- Indemnify SCE against all liability for damages or injury to persons on the Site, including damage or injury resulting from induced voltage, except to the extent caused by SCE's negligent or willful misconduct.

Determination of Best Secondary Use

The primary use of facilities located on the Site is the transmission and distribution of electricity in Orange County. SCE's above-ground electric lines crossing the Site, and their associated restrictions and height clearances limit the potential secondary uses. SCE states that its objective has been to select secondary uses for its property that provide the highest revenue consistent with its utility safety and reliability obligations, and that it has determined that the KOPS II project offers the highest potential revenue. To evaluate the rental potential of the Site, SCE analyzed the rent paid for comparable parking and storage facilities in Orange County as a function of the effective gross income of the facilities. SCE believes that the rent it will receive falls within the acceptable market range and is in line with revenues it receives in numerous other similar Commission-approved transactions.

Developer Selection

SCE states that it selected KOP II as the developer of the project because of the proposed use of the Site and the background and financial position of the principals of the developer group. KOP II is a California limited liability company engaged in the development and management of vehicle parking and storage facilities. Its principals have 65 years of combined experience in real estate development, finance and management. Their individual experience includes management of large financial enterprises, commercial real estate brokerage and real estate law.

Environmental Review

Because CEQA applies to discretionary projects to be carried out or approved by public agencies and because the Commission must act on the Section 851 application and issue a discretionary decision without which the

project cannot proceed, the Commission must act as either a Lead or Responsible Agency under CEQA. The Lead Agency is the public agency with the greatest responsibility for supervising or approving the project as a whole (CEQA guidelines Section 15051(b)).

In this case, the City of Anaheim (City) is the Lead Agency. The Commission is a Responsible Agency for this proposed project. CEQA requires that the Commission consider the environmental consequences of a project that is subject to its discretionary approval. In particular, the Commission must consider the Lead Agency's environmental documents and findings before acting upon or approving the project. (CEQA Guidelines 15050(b)). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

The Site is part of a commercial/ industrial redevelopment project for which a Final Environmental Impact Report (EIR) was adopted by the City of Anaheim in 1993. In a letter dated February 5, 2002, the City's Redevelopment Agency advised KOP II that its staff had concluded that the 1993 EIR adequately addresses CEQA requirements for the proposed project on the Site. In the 1993 EIR, utilities were found to have no significant impact on the environment in the development area and no mitigation measures were required. We conclude that no further environmental review by the Commission is required, and that it can be seen with certainty that the lease and its associated development will have no significant effect on the environment.

Revenue Treatment

All revenues from the proposed lease will be treated as Other Operating Revenue (OOR). In D.99-09-070, the Commission adopted a gross revenue sharing mechanism for certain of SCE's operating revenues. The sharing

mechanism applies to OOR, except for revenues that (1) derive from tariffs, fees or charges established by the Commission or by the Federal Energy Regulatory Commission; (2) are subject to other established ratemaking procedures or mechanisms; or (3) are subject to the Demand-Side Management Balancing Account.

Under the sharing mechanism, applicable gross revenues recorded from non-tariffed products and services like the proposed lease are to be split between shareholders and ratepayers after the Commission-adopted annual threshold level of OOR has been met. For those non-tariffed products and services deemed "passive" by the Commission, the revenues in excess of the annual threshold are split between shareholders and ratepayers on a 70/30 basis. The lease proposed here is "passive" for sharing purposes.²

Discussion

As a lease of utility-owned real property, the proposed transaction falls squarely within the requirements of Section 851, which requires Commission approval before a utility can sell, lease, assign, mortgage, or otherwise encumber the whole or any part of its property that is necessary or useful in the performance of its duties to the public. The task of the Commission in a Section 851 proceeding is to review the transaction, "[T]o ensure that it will not impair the utility's ability to provide service to the public." (D.96-04-045.) We have reviewed the Option Agreement and the proposed lease, and find that they

² See Attachment B to SCE's Advice Letter 1286-E, which identifies the *Secondary Use of Transmission Right of Ways and Land* and the *Secondary Use of Distribution Right of Ways, Facilities and Substations* as categories of non-tariffed products and services. Advice Letter 1286-E was filed on January 30, 1998, pursuant to Rule VII.F of the Affiliate Transaction Rules contained in Appendix A of D.97-12-088.

A.02-09-020 ALJ/KJB/sid

do not impair SCE's ability to provide utility service to the public. Because the proposed lease will generate revenues from the secondary use of Site and ratepayers will share in those revenues, the Application should be approved.

Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Public Utilities Code Section 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

Assignment of Proceeding

Michael Peevey is the Assigned Commissioner and Karl Bemederfer is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. In order for KOP II to construct its facilities on the Site, a lease from SCE is required.
2. Lease of the Site to KOP II is consistent with the current uses of the related SCE properties.
3. The lease and associated construction will not impair SCE's ability to provide service to the public.
4. The Site was included in a Final Environmental Impact Report adopted by the City of Anaheim in 1993.
5. The 1993 EIR adequately addressed CEQA requirements for the project on the Site and imposed no mitigation measures on SCE.
6. It can be seen with certainty that construction and operation of the facilities contemplated by the lease as proposed in the Application will have no significant effect on the environment.

A.02-09-020 ALJ/KJB/sid

7. All revenue from the lease in excess of a Commission-established threshold will be treated as Other Operating Revenue and shared 70/30 between SCE and its ratepayers, pursuant to D.99-09-070.

8. There is no known opposition to granting the authorization requested.

Conclusions of Law

1. Approving the requested lease is in the public interest.

2. The Final Environmental Impact Report adopted by the City of Anaheim in 1993 is adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.

3. No additional CEQA review by the Commission is required.

4. The proposed revenue sharing conforms to the Commission's order in D.99-09-070.

5. A public hearing is not necessary.

6. The Application should be granted as set forth in the following order.

7. This decision should be effective today in order to allow KOP II to expeditiously enter into the lease with SCE and begin paying rent for the benefit of SCE and its ratepayers as soon as possible.

O R D E R

IT IS ORDERED that:

1. Southern California Edison Company's (SCE) Application for authority to lease a portion of its Barre-Villa Park transmission Right of Way to KOP II, Inc. is granted, as described above.

2. All revenue from the lease shall be treated as Other Operating Revenue subject to the sharing mechanism set forth in Decision 99-09-070.

A.02-09-020 ALJ/KJB/sid

3. SCE shall notify the Director of the Commission's Energy Division in writing of any amendment, extension or termination of the lease agreement, within 30 days after such amendment, extension or termination is executed.

4. Application 02-09-020 is closed.

This order is effective today.

Dated January 16, 2003, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I dissent.

I reserve the right to join Commissioner Wood's dissent.

/s/ LORETTA M. LYNCH
Commissioner

I dissent.

I reserve the right to file a dissent.

/s/ CARL W. WOOD
Commissioner

EXHIBIT G

ANNUAL SCHEDULE FOR PAYMENTS AND CREDIT SCE EASEMENT

DOCSOC/1472241v11/022621-0110

EXHIBIT G-1

EXHIBIT B

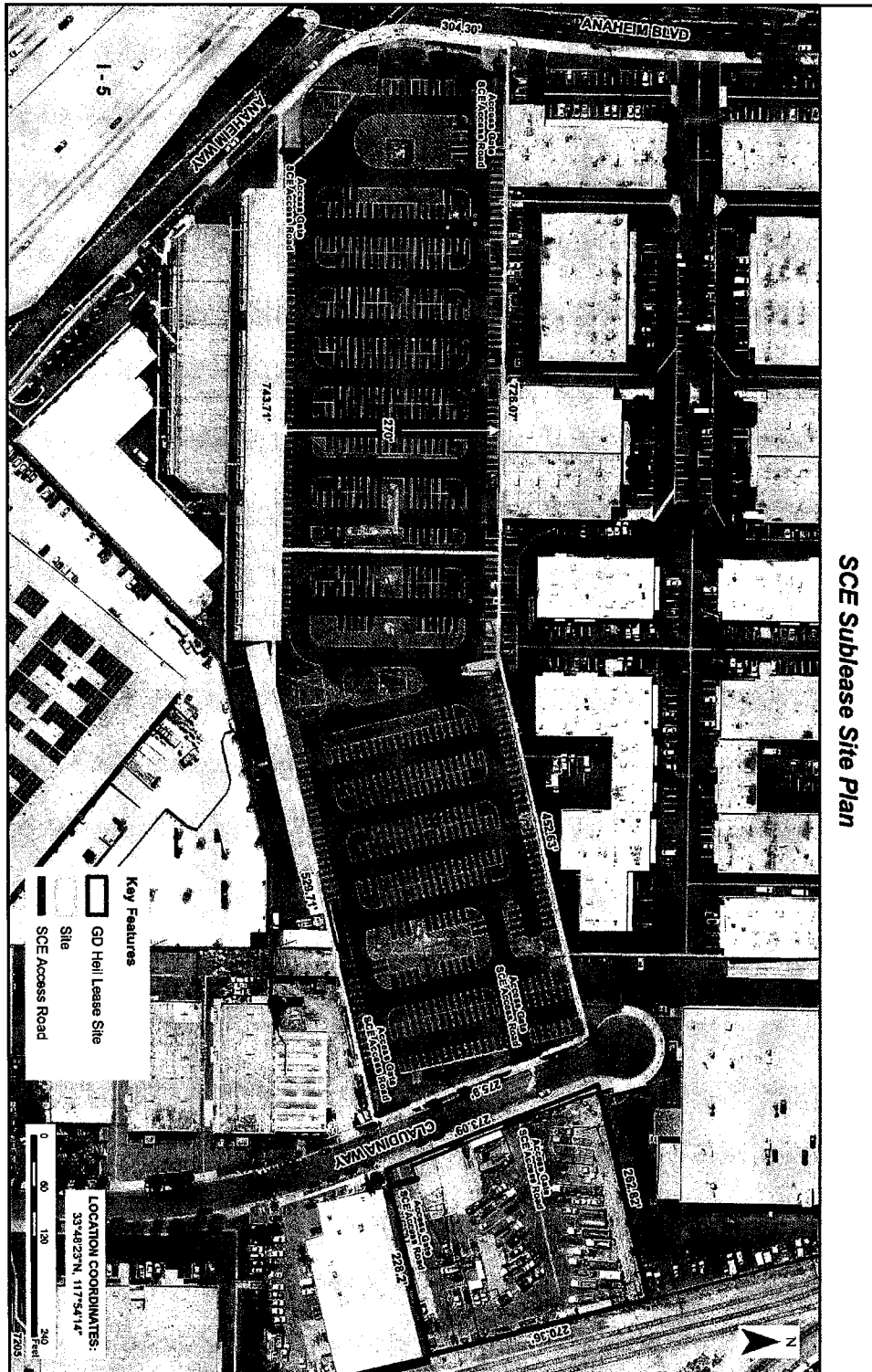


EXHIBIT H

Monthly Rent Schedule

| Year | Monthly Rent |
|-------------|---------------------|
| 1 | \$20,000.00 |
| 2 | \$20,000.00 |
| 3 | \$20,000.00 |
| 4 | \$20,000.00 |
| 5 | \$20,000.00 |
| 6 | \$20,600.00 |
| 7 | \$21,218.00 |
| 8 | \$21,854.54 |
| 9 | \$22,510.18 |
| 10 | \$23,185.48 |
| 11 | \$23,881.05 |
| 12 | \$24,597.48 |
| 13 | \$25,335.40 |
| 14 | \$26,095.46 |
| 15 | \$26,878.33 |