

ATTACHMENT E
APPROVE PARKING COVENANT TO THE
CITY OF HANFORD

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF HANFORD
319 N. Douty
Hanford, CA 93230

NO FEE FOR RECORDING
PURSUANT TO GOVERNMENT CODE
SECTIONS 6103, 27383, and 27388.1

(Space Above This Line for Recorder's Office Use Only)

REAL PROPERTY PARKING COVENANT

Recitals:

WHEREAS, the CITY OF HANFORD, a municipal corporation ("City"), and KINGS COUNTY AREA PUBLIC TRANSIT AGENCY, a joint powers authority ("KCAPTA"), executed that Purchase and Sale Agreement and Escrow Instructions ("PSA"), dated March 18, 2014, under which KCAPTA acquired real property ("7th Street Property") from City; and

WHEREAS, the PSA is incorporated herein by reference; and

WHEREAS, PSA Section 13.1(b) indicates that, as a condition of the City's sale of the 7th Street Property to KCAPTA, KCAPTA would maintain no less than sixty (60) vehicular parking stalls at the 7th Street Property for public use; and

WHEREAS, PSA Section 13.1(c) states that KCAPTA is responsible for the maintenance, repair, and improvement of the required parking stalls to ensure that they remain usable by the public; and

WHEREAS, pursuant to PSA Section 13.1(d), the duty to maintain, repair, and improve the required parking stalls to run with the 7th Street Property, and such obligations were to be described in the Grant Deed ("Deed") under which title to the 7th Street Property was conveyed from City to KCAPTA; and

WHEREAS, City and KCAPTA inadvertently omitted the parking provisions from the Deed; and

WHEREAS, KCAPTA intends to sell the 7th Street Property and does not wish to encumber the property with the parking covenants required under PSA Section 13.1; and

WHEREAS, KCAPTA owns that real property ("Transit Center Property") more particularly described in the attached Exhibit "A," which is incorporated herein by reference; and

WHEREAS, KCAPTA intends to develop the Transit Center Property, which shall include public parking; and

WHEREAS, KCAPTA and City desire to apply the vehicular parking covenants described in PSA Section 13.1 to the Transit Center Property instead of the 7th Street Property.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein, the KCAPTA and City agree as follows:

1. *Parking Stalls for Public Use.*

- a. PSA Section 13.1 is hereby deleted in its entirety and shall have no effect.
- b. KCAPTA shall construct, when it develops the first phase of its transit center project, and will thereafter maintain, repair, and improve, at least sixty (60) vehicular parking stalls ("**Parking Stalls**") at the Transit Center Property. The Parking Stalls will be available for public use at all times; provided however, the Parking Stalls may be periodically taken out of service for required maintenance, repair, and improvement work, which KCAPTA will undertake and complete in a diligent manner.
- c. KCAPTA may, in its sole discretion and without the need to obtain City's consent, modify the Transit Center Property's improvements following the construction of the Parking Stalls. Such right will include, without limitation, construction of a structure above the Parking Stalls or relocation or reconfiguration of the Parking Stalls. KCAPTA must, however, obtain City's consent if KCAPTA intends to modify the Transit Center Property's improvements in a manner that reduces the number of Parking Stalls to less than the number identified in subsection b. above.
- d. KCAPTA will be solely responsible for the construction and subsequent maintenance, repair, and improvement of the Parking Stalls. KCAPTA will undertake all necessary maintenance, repair, and improvement work to ensure that the parking stalls remain usable by the public. City will have no obligation to reimburse KCAPTA for any costs associated with the Parking Stalls.
- e. The duty to construct the Parking Stalls and to subsequently maintain, repair, and improve the Parking Stalls shall run with the land and shall be an ongoing obligation of KCAPTA and its successors-in-interest.

2. *Miscellaneous.*

- a. In the event of any action between KCAPTA and City seeking enforcement of any of the terms and conditions of this Covenant, the prevailing party in such action shall be awarded, in addition to damages and/or injunctive or

other relief, its reasonable costs and expenses, including, but not limited to, reasonable attorneys' fees. Any such action shall be venued in Kings County, California or in the Federal District Court in Fresno, California.

- b. Except as otherwise expressly provided herein, any notice, consent, authorization or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, one (1) business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or five (5) business days after being mailed by certified mail, return receipt requested and addressed as follows:

To KCAPTA: Kings County Area Public Transit Agency
Attn: Executive Director
610 W 7th Street
Hanford, CA 93230

To City: City of Hanford
Attn: City Manager
319 N. Douty
Hanford, CA 93230

- c. This Covenant supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the Parking Stalls and contains all of the covenants and agreements between the parties regarding said matters. Except as is otherwise provided herein, each party to this Covenant acknowledges that no representations, inducements, promises or agreements, orally or in writing, have been made by any party or anyone acting on behalf of any party which are not embodied in this Covenant and no other agreement, statement or promise shall be valid or binding.
- d. The covenants and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.
- e. Amendments to this Covenant shall be effective only if they are in writing and executed by KCAPTA and City.
- f. KCAPTA and City agree to perform all further acts, and to execute, acknowledge, and deliver any documents that may be reasonably necessary, appropriate or desirable to carry out the purposes of this Covenant.
- g. A waiver of any breach of this Covenant by either party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or any other provision of this Covenant.
- h. Time is of the essence with respect to performance hereunder.

IN WITNESS WHEREOF, KCAPTA and City have executed this Covenant in Hanford, California on the dates identified below.

KCAPTA

**KINGS COUNTY AREA PUBLIC
TRANSIT AUTHORITY**

Date: _____

By: _____
Joe Neves
Board Chairperson

CITY

CITY OF HANFORD

Date: _____

By: _____
TRAVIS PADEN
Mayor

STATE OF CALIFORNIA)
) SS
COUNTY OF KINGS)

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

(SEAL)

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A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) SS
COUNTY OF KINGS)

On _____, 202__, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the persons, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(SEAL)

NOTARY PUBLIC

EXHIBIT "A"

Legal Description