



City Council Report

915 I Street, 1st Floor
Sacramento, CA 95814

www.cityofsacramento.org

File #: 2016-01222

Consent Item 08

Title: Agreement: 22nd and W Streets Parking Agreement with Buzz Oates LLC

Recommendation: Pass a Motion authorizing the City Manager or his designee to execute a parking agreement with Buzz Oates LLC for the surface parking lot located at 22nd and W Streets below the W/X Freeway.

Location: Between 22nd, 23rd, W, and X Streets, Districts 4 and 5

Contact: Matt Eierman, Parking Services Manager (916) 808-5849, Department of Public Works

Presenter: None

Department: Public Works

Attachments:

- 1-Description/Analysis
- 2-Parking Agreement

Description/Analysis

Issue Detail: The City of Sacramento leases from Caltrans, the surface lot located between 22nd, 23rd, W, and X Streets below the W/X Freeway. Buzz Oates LLC owns and operates an office building near this parking lot and would like to enter into a parking agreement with the City for the 22nd and W surface parking lot to ensure there is a source of convenient parking for tenants of this building.

Policy Considerations: This recommendation supports the Central City Parking Master Plan goal to make parking safe, secure, attractive and convenient.

Economic Impacts: None

Environmental Considerations: This project is exempt from the California Environmental Quality Act under Section 15301, "Operation of existing public structures or facilities involving no expansion of use."

Sustainability: This action supports the City of Sacramento's sustainability goals to improve and optimize the transportation infrastructure.

Commission/Committee Action: None

Rationale for Recommendation: By approving the parking agreement with Buzz Oates LLC, the City will secure a long-term source of parking for tenants of Buzz Oates' nearby office building. Buzz Oates' tenants will have access to the 22nd and W parking lot spaces, Monday through Friday, 7:00 a.m. to 6:00 p.m. and Saturdays 7:00 a.m. to 1:00 p.m. The term of the agreement will commence November 1, 2016 and expire January 31, 2026.

Financial Considerations: Each month, Buzz Oates will guarantee the City a baseline rate of \$7,064 to reserve the 22nd and W parking lot for its tenants. Buzz Oates' tenants, however, will contract with, and pay directly to, the City for monthly parking permits for the lot. Monthly parking for the lot is currently \$55. The City may also sell parking on the lot to third parties for hours outside of those reserved for Buzz Oates' use. Total monthly fees received from Buzz Oates' tenants, plus any parking fees received from third parties, will be deducted from Buzz Oates' monthly baseline rate. In addition, Buzz Oates will pay the City \$1,380 for 23 parking spaces reserved for the Department of Water Resources ("DWR"). This amount is in addition to the baseline rate. Based on Buzz Oates' baseline rate plus the DWR rate, total revenue (Parking Fund, Fund 6004) collected over the term of the parking agreement will exceed \$937,284.

Local Business Enterprise (LBE): There are no LBE considerations associated with the requested action.

Parking Agreement

(Parking at the 22nd & W Parking Lot)

This Agreement (“**Agreement**”) is made on Oct. 24, 2016, between the CITY OF SACRAMENTO (“**City**”), a charter municipal corporation, and BUZZ OATES LLC, a California limited liability company (“**Oates**”), who agree as follows:

Recitals

A. City, as tenant, and The State of California’s Department of Transportation (“**CalTrans**”), as landlord, entered into Parking and Open Storage Agreement (City Agreement No. 2015-1984) for Lease Area No. 03-SAC050-0011-02 (FLA 80-16) (the “**Parking Lease**”) pursuant to which Caltrans leases to City certain premises (“**Premises**”) located in the City of Sacramento below the underside of Highway 50 between W, X, 22nd and 23rd Streets. The Premises are currently improved as a parking lot containing 328 parking spaces (“**Parking Spaces**”) as depicted on Exhibit A. Pursuant to the Parking Lease, City may use the Premises for public parking.

B. Oates, together with certain co-owners, currently owns nearby office buildings at 2201 Broadway and 2200 X Streets (“**Oates Property**”) that are or may be leased or occupied by tenants (“**Tenants**”). Oates desires to acquire the right for designated employees of Tenants of the Oates Property (individually a “**Parking User**” and collectively the “**Parking Users**”) to use the Parking Spaces. City is willing to grant to Oates such rights to use the Parking Spaces on the terms and conditions set forth herein.

C. City and Oates previously entered into that certain Parking Agreement, City Agreement No. 2016-0426 (Parking at the 22nd & W Parking Lot) dated February 1, 2016 with respect to the use of the Parking Spaces (“**Existing Parking Agreement**”).

Agreement

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the parties agree as follows:

1. **Term of Agreement.** This term of this Agreement (“**Term**”) commences on November 1, 2016 (“**Commencement Date**”) and expires January 31, 2026. Upon the Commencement Date, this Agreement shall replace the Existing Parking Agreement.

2. **Grant of Right to Use Parking Spaces.** During the Term, City shall make the Parking Spaces available for parking by designated Parking Users during Business Hours (defined below) on the terms and conditions of this Agreement. “**Business Hours**” means the hours of 7:00 a.m. to 6:00 p.m. Monday through Friday, excluding holidays recognized by the City of Sacramento, and 7:00 a.m. to 1:00 p.m. on Saturday. From 3:30 p.m. to 6:00 p.m. Monday through Friday, City shall have the right to use any then-vacant Parking Spaces (excluding the Assigned DWR Parking Spaces) for event parking support; provided, however, that if any designated Parking Users are unable to park in the Premises between 3:30 p.m. and 6:00 p.m., then such designated Parking Users shall be provided a parking space on one of the Adjacent Parking Lots (defined below).

Unauthorized vehicles on the Premises outside of Business Hours may be cited per the applicable state or local vehicle codes. City shall also make the Assigned DWR Parking Spaces (defined below) exclusively available for Parking Users affiliated with a current Tenant of the Oates Property, the Department of Water Resources (“DWR”) both during and outside of Business Hours. At the expiration of the current term of DWR’s lease, the Assigned DWR Parking Spaces shall thereafter be treated no differently from the other Parking Spaces. Use of the Parking Spaces is allocated and coordinated as follows:

(a) Oates has the right from time to time to allocate one or more unreserved Parking Spaces to a Tenant and shall advise City in writing of the allocation. The Parking User(s) associated with such Tenant are required to execute City’s standard form of agreement which is attached hereto as **Exhibit B (“Parking User Agreement”)**. Effective upon the Commencement Date, Oates designates the twenty-three (23) Parking Spaces located in the area depicted on **Exhibit C** attached hereto as “DWR Parking” (the “Assigned DWR Parking Spaces”) for use by employees of one of Oates’s existing Tenants, the Department of Water Resources.

(b) Except to the extent directed otherwise by Oates, and except for the Assigned DWR Parking Spaces, City shall directly bill Parking Users pursuant to the Parking User Agreement(s) a parking fee not to exceed City’s monthly market parking rates (“**Parking User Fee**”) for the use of such allocated Parking Spaces.

3. Monthly Parking Fee. Every month, Oates shall pay seven thousand sixty-four dollars (\$7,064) (“**Baseline Rate**”) less any parking fees the City receives from Parking Users or fees from third party customers using the Lot during that month (collectively “**Parking Fees**”). In addition to Baseline Rate, Oates will pay City for the Assigned DWR Parking Spaces (“**DWR Rate**”) at a rate equal to the City’s market rate for the Lot multiplied by twenty-three (23) parking spaces. The DWR Rate will not be deducted from the Baseline Rate. If total monthly Parking Fees equal or exceed the Baseline Rate, then Oates will not owe City a fee for that month. City will not owe Oates any compensation in the event Parking Fees exceed the Baseline Rate. The Baseline Rate (as adjusted by any Parking Fees) and the DWR Rate shall be paid in arrears as follows: City shall invoice Oates for the amount due for the preceding month and payment shall be due within fifteen (15) days of receipt of such invoice. If full payment is not received within fifteen (15) days after receipt of the monthly invoice, the total fee for that month will be increased 10%. Failure to make payment within thirty (30) days after receipt of the monthly invoice shall constitute a default by Oates, and this Agreement shall be subject to termination by City for such default, pursuant to the procedures specified in section 7.

4. Overflow Spaces. City leases from Caltrans the parking lots located between W, X, 20th and 22nd Streets (“**Adjacent Parking Lots**”). The Adjacent Parking Lots are depicted on Exhibit D attached hereto. City agrees to use reasonable efforts to make the Parking Spaces available for use by Parking Users; provided, however, that if City is unable from time to time to make sufficient Parking Spaces available for Parking Users at the Premises, then City agrees to make alternative parking spaces available at the Adjacent Parking Lots.

5. Obligations. City shall be solely responsible for keeping the Parking Spaces in good condition and repair in accordance with City standards for its public parking lots. Oates shall have no obligation hereunder to maintain or repair the Parking Spaces.

6. **Parking Enforcement.** City will add the Premises to its regular patrol schedule. City will retain all citation revenue. Citation revenue will not be used to determine the Monthly Fee described in Section 3.

7. **Termination.**

(a) **Automatic Termination.** The Agreement shall automatically terminate in the event of any termination of the Parking Lease.

(b) **Termination for Default.** In addition to provisions for termination specified elsewhere in this Agreement, City shall provide written notice of a default to Oates, who shall forthwith use its best efforts to take action to remedy the default or violation. In the event Oates fails, within ten (10) days from the date of the notice or such longer time period as may be specified by City, to take the necessary corrective action, this Agreement will terminate automatically, upon written notice from City to Oates, provided that City may, in its discretion, extend the time for correction. The termination procedures specified above shall not apply in the event that the City determines in its sole discretion that an emergency situation exists, in which case City may take any action deemed necessary by City to respond to the emergency situation.

8. **Damage to or Destruction of the Lot.**

(a) **Temporary Damage:** In the event that some or all of the Parking Spaces are temporarily damaged to such an extent that it may not be used for parking, City may suspend this Agreement until such time as the damaged parking spaces have been restored, in which case the Monthly Fee shall be equitably abated until restoration is complete. At the request of Oates, and only to the extent that City determines, in its sole and exclusive judgment after considering the parking space requirements of other City parking customers and City employees, that space is available in another nearby City parking facility or facilities, City shall make replacement parking spaces available. Oates shall pay for such redesignated parking spaces in accordance with the provisions of this Agreement. Oates may reject any proposed redesignation of parking spaces, in which case this Agreement shall be suspended until such time as the damaged facilities have been restored. City shall use reasonable and diligent efforts to complete the restoration of such temporary damage.

(b) **Destruction:** If, despite City's reasonable efforts, the City is prevented or delayed, or is rendered unable to provide Oates the Parking Spaces described in this Agreement by reason of any act of God, strike, lockout, labor trouble, restrictive governmental laws or regulations, or any other cause not the fault of the City, which removes the City's right to possess and occupy the Parking Spaces for purposes of operating parking services hereunder, the City's performance hereunder shall be excused, in which case Oates's obligation to pay the Monthly Fee shall be equitably abated while such performance is excused. Nothing in this Agreement shall be construed to obligate the City to reconstruct the Premises in order to perform its obligations under this Agreement, nor shall cause an extension of the term of this Agreement.

9. **Nondiscrimination.** Oates covenants that there shall be no discrimination against any person or group of persons on account of race, color, creed, sex, marital status, disability, national origin, ancestry, or any other basis prohibited by local, state, or federal law or regulation, in the distribution or use of permits. Any breach of this covenant shall constitute a default by Oates, and this Agreement shall be subject to termination by City pursuant to the procedures specified in section 7.

10. Assignment. Oates' rights under the Agreement shall not be transferred or assigned, by operation of law or otherwise, without the prior written consent of City which shall not to be unreasonably withheld, conditioned or delayed, provided, however, that Oates may assign this Agreement in connection with any sale or other transfer to the party(s) acquiring the Oates' Property pursuant to a written assignment whereby such acquiring party assumes the obligations of Oates hereunder and which is otherwise in a form reasonably acceptable to City. Any other attempt to transfer or assign without having first obtained such consent which is not cured within ten days of written notice from City will constitutes a default under this Agreement. In addition to any other relevant and reasonable conditions, City shall be entitled to condition its consent to a request for assignment on the execution by the assignee or transferee of an agreement satisfactory in form and content to the City Attorney, under which the assignee or transferee expressly assumes the obligations specified in this Agreement. Upon full execution of such an assumption agreement, Oates shall be released from all of its obligations hereunder which otherwise would accrue, from and after the effective date of the assumption agreement.

11. Conflict. In the event of a material conflict between any provisions of this Agreement and any rule, regulation or law enacted by any governmental agency including, but not limited to City, the County of Sacramento, the Sacramento Air Quality Maintenance District or any successor thereto, or any state or federal agency or legislative body, the enactment of the governmental agency or legislative body shall prevail and the obligations of the parties to this Agreement shall be modified accordingly. In the event that City determines that the provisions of this section would require modification of the Agreement, City shall so notify Oates and the parties shall meet and endeavor in good faith to reach resolution of the issues.

12. Subordination. This Agreement shall be subject and subordinate at all times to the lien of any mortgage or trust deed or deeds or other evidence of obligation which may now exist upon or which may be placed upon the Premises, or any other lot which in the future is utilized as a substitute lot for parking permits issued pursuant to this Agreement. "Evidence of obligation," for purposes of this section, includes but is not limited to documents relating to any form of public financing (e.g., bonds, certificates of participation) wherein the said parking facilities or any of them are used as an asset securing the public financing in any manner. Oates covenants that it will execute and deliver to City, or its nominee, at no cost to City and subject to no conditions or other limitations, proper subordination agreements to this effect at any time upon the request of City.

13. Notice. Any notice, documentation, or other communication required or desired to be given pursuant to this Agreement shall be given in writing either by personal service, by certified mail, return receipt requested, postage fully prepaid or by national overnight delivery service, to the following respective addresses:

City

City of Sacramento
Parking Services Division
Attn: Parking Services Manager
300 Richards Blvd., 2nd Floor
Sacramento, CA 95811

Oates

c/o Buzz Oates Management Services
Attn: Asset Manager
555 Capitol Mall, Suite 900
Sacramento, CA 95814

The above addresses may be changed by written notice in accordance with this section.

14. **Relationship of Parties.** No agency or relationship of landlord and tenant shall arise from this Agreement.

15. **Indemnity and Hold Harmless.** Oates shall indemnify and save harmless the City, its officers, employees, and agents and each and every one of them, from and against any and all liability, loss, expense, including reasonable attorney's fees, or claims for injury or damages arising out of, caused by or resulting from the negligent or intentional acts or omissions of Oates, its directors, trustees, officers, employees, or agents in connection with this Agreement occurring on the Premises, provided that in no event shall any Tenants, Tenant employees or other Parking Users be deemed agents of Oates. The provisions of this section shall survive any termination of this Agreement, notwithstanding anything herein to the contrary.

16. **Security.** As set forth in the Parking User Agreements, City shall not be responsible for the personal safety or security of any Parking Users or for any personal property in the Parking Spaces, or in any substitute or alternate facilities furnished pursuant to this Agreement or otherwise.

17. **Failure To Terminate Not A Waiver.** No failure of either party to terminate this Agreement for default upon any breach shall constitute a waiver of the right to terminate this Agreement for the same or any other default or violation subsequently occurring.

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

19. **Complete Agreement.** This Agreement contains all of the terms and conditions of the agreement between City and Oates regarding the matters set forth herein.

20. **Execution.** By their signatures below, each of the following represent that they have authority to execute this agreement and to bind the party on whose behalf their execution is made.

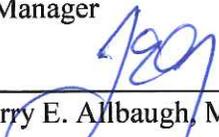
[SIGNATURES LOCATED ON FOLLOWING PAGE]

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

OATES:

BUZZ OATES LLC, a California limited liability company

By: Oates Advisors LLC, a California limited liability company, Manager

By: 
Larry E. Allbaugh, Manager

Date: Oct. 24, 2016

Federal Tax ID

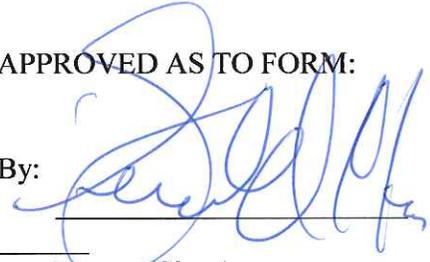
City of Sacramento
Business Operations Tax Cert. No.

CITY:

CITY OF SACRAMENTO,
A Municipal Corporation

By: _____

APPROVED AS TO FORM:

By: 

Deputy City Attorney

ATTEST:

By: _____

City Clerk

**EXHIBIT A—
The Premises and Parking Spaces**

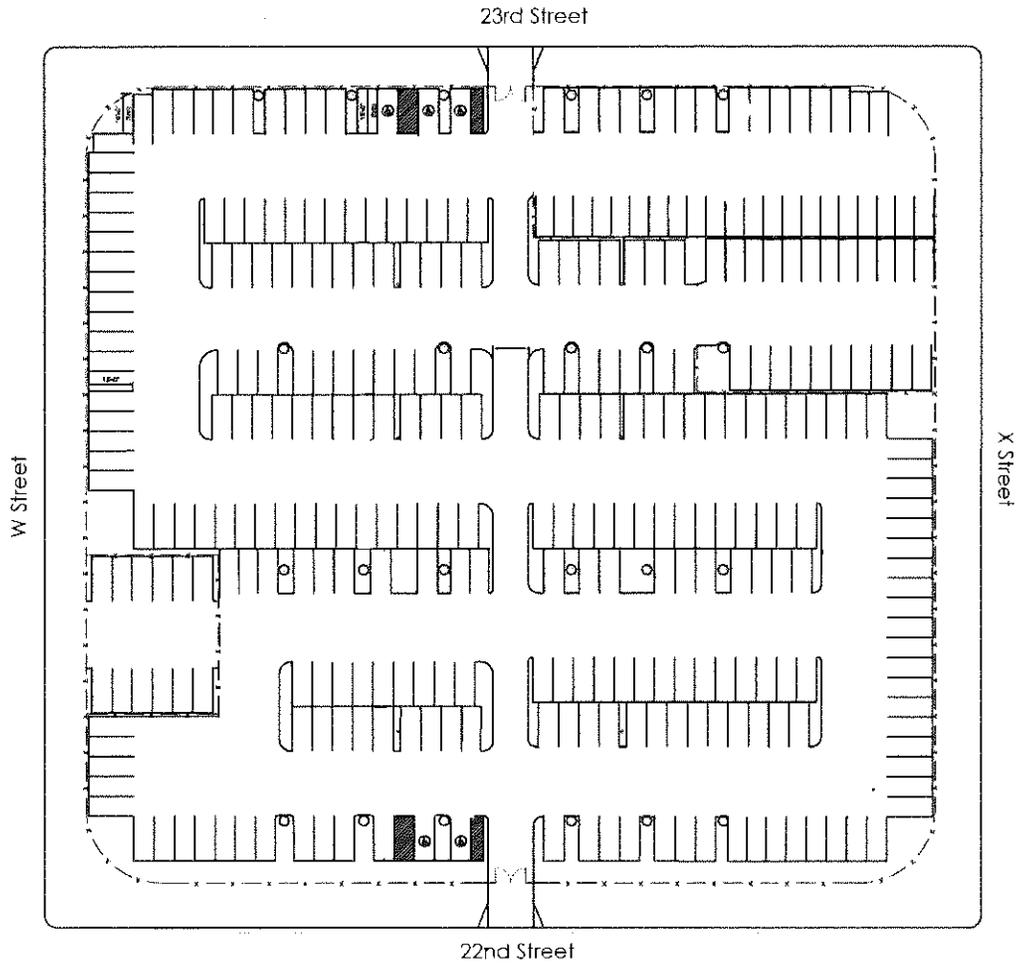


EXHIBIT B
Form of Parking User Agreement



**Access Card – Monthly Garage
 Application/Agreement**

Please check one:
 New Account
 Replacement Card

Name (Individual or Company) _____ Date: _____
Last Name First Name MI

Address _____
Street City State Zip

Phone Number _____
Residence Work Email

Vehicle License (Record all vehicles): _____ I want to start parking on: _____

Card Pick-Up Locations (Please Check One)	
On the 4 th business day after submitting paperwork your access card will be available for pick-up at the location you choose below. Note that all fees must be paid before your access card can be picked up. Admin fees will not be accepted at the garages.	
<input type="checkbox"/> Revenue Counter – 915 I St., Room 1214	Services A.I. garages. Walk-in customers, please call (916) 808-5110 for customer service counter hours.
<input type="checkbox"/> Downtown Plaza East Garage – 597 L St.	Services Downtown Plaza East & West Garages. Walk-in customers only between 9:00 a.m.- 4:00 p.m.
<input type="checkbox"/> City Hall Garage – 914 H St.	Services City Hall and Capitol Garages. Schedule pick-up time with Parking Lot Supervisor by calling (916) 808-5351.
<input type="checkbox"/> Old Sacramento Garage – 2 nd & I St.	Services Old Sacramento and Tower Bridge Garages. Schedule pick-up time with Parking Lot Supervisor by calling (916) 808-5642.

Mailing Address:
 City of Sacramento, Parking Services Division
 300 Richards Blvd, Second Floor
 Sacramento, CA 95811
 Phone: (916) 808-5110 Fax (916) 808-5115

Physical Address:
 City of Sacramento, Revenue Services
 915 I Street, Room 1214
 Sacramento, CA 95814

Parking Agreement – Rights and Responsibilities

- Access Card Use:** This access card authorizes one (1) passenger vehicle to park in a designated garage at any single time. The access card is for the garage designated and no definite space will be assigned. The access card is for the sole use of the registered access card holder and is non-transferable. Daily market rates will apply if customer does not use the access card. Parking spaces are rented on a calendar month basis, running from the first through the last day of the month. To properly use the garage the access card must be scanned at the entrance and exit. If access card is used out of sequence it will automatically become inactive. No overnight parking is allowed.
- Payment:** Full payment is due on or before the 1st of each month. A \$10.00 late fee per card will be charged on the 6th calendar day if full payment is not received on or before the 5th of the month. If all fees due are not received by the 10th day, all access cards registered under the account will be deactivated until the account is paid in full. All delinquent amounts must be paid before the access card can be reactivated. Access card owners will be responsible for any and all fees resulting from delinquent payments. A parking space is not guaranteed for delinquent accounts.
Payment Options:
 - Automatic Credit Card Deduction:** Credit cards will be deducted in the first week of each month.
 - Payments by Mail:** Only checks and money orders will be accepted. Please list account number on check. Please make checks payable to: City of Sacramento.
 - Cash Customers:** Cash paying customers must visit the Customer Service Desk during our regular office hours.
- Rates and Fees:** An administrative fee will be imposed for all new, lost, stolen, or damaged access cards. The monthly fee is subject to change. Notice of changes will be published at the facility. Only half month pro-rated fees are calculated when opening new accounts. All fees are non-refundable.
- Closing or Changes to Account:** Access card holders must close or make changes to account by submitting a Change Order Form found on our website at www.cityofsacramento.org/transportation/parking or providing written notification to the Parking Division. Additional fees may apply if account closures are requested incorrectly. Access card holders will be charged for any and all use of the access card. No refunds will be granted to customers closing accounts after the 1st of each month. Companies must close or request changes to account by submitting written notification on company letterhead including a list of all affected card numbers.
- Exceptions:** Lot supervisors and/or attendants are not authorized to make or allow any exceptions to this agreement and operating regulations.
- Liability:** Liability is limited as posted in the parking facility and as stated herein. The access card holder waives and releases any claim for injury, damage, or loss resulting directly or indirectly from any action or failure to act by the City of Sacramento and its employees under this agreement, including but not limited to, any loss of vehicle or contents, or any damage to vehicle by vandalism, theft or accident. Access card holders are advised not to leave articles of personal property of any value in vehicle and agree not to hold City of Sacramento responsible for loss of property or damages resulting from loss of property left in vehicle in violation of this agreement.
- Cancellation:** The City of Sacramento reserves the right to cancel the access card and terminate this agreement without notice, upon the failure of the access card holder to pay any fee or charge, or to perform any act or obligation imposed or required under this agreement.

Customer Signature: _____ Date: _____

Customer Service Rep: _____ Date: _____ Office Use Only Accounting Rep: _____ Date: _____

Individual Access Card Company Account Carpool

Access Card # _____ Account # _____ Participant # _____ Garage Name: _____ Amount Paid: _____

EXHIBIT C

Assigned DWR Parking Spaces

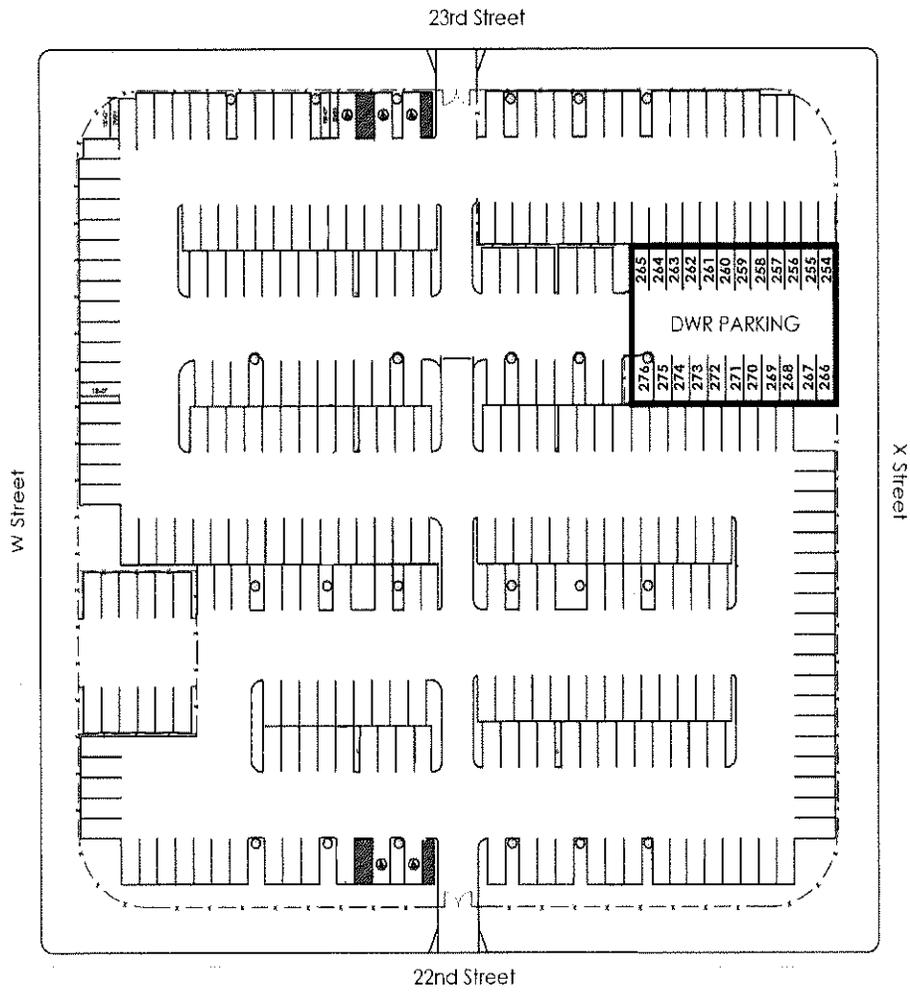


EXHIBIT D
ADDITIONAL PARKING LOTS

