



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
[www. CityofSacramento.org](http://www.CityofSacramento.org)

CONSENT
June 26, 2007

Honorable Mayor and
 Members of the City Council

Title: Parking Operations Management Agreement with S. Thomas Enterprises

Location/Council District: Sacramento Valley Station, Council District 1

Recommendation: Adopt a **Resolution** authorizing:

1. The City Manager to execute the parking operations management agreement (Attachment – A) with S. Thomas Enterprises of Sacramento, LLC. (“Thomas”) authorizing the City to manage parking lots located at 6th & H Streets and 7th & G Streets, adjacent to the Sacramento Valley Station owned by Thomas for a term of three years with one option to extend for an additional three years and providing a \$5,000.00 monthly management fee to be paid to the City; and
2. The City’s management of the Thomas parking lots following the expiration of the prior parking operations management agreement on March 27, 2007 through commencement of the new parking operations management agreement on the terms and conditions of the new parking operations management agreement including the \$5,000 monthly management fee and release of parking revenue collected by the City and due to Thomas.

Contact: Howard Chan, Parking Services Manager, 808-7488

Presenters: None

Department: Transportation

Division: Parking Services

Organization No: 3461

Description/Analysis

Issue: On December 28, 2006 the City entered into a parking operations management agreement with Thomas whereby the City would manage surface parking lots on property owned by Thomas. These lots, containing 588 parking spaces, are located at 6th & H Streets and 7th & G Streets, adjacent to the Sacramento Valley Station. That agreement expired March 28, 2007 and both parties would like to enter into a long term agreement allowing the City to continue managing the surface lots that service the Sacramento Valley Station and surrounding businesses.

Policy Considerations: This agreement supports the City of Sacramento's Strategic Plan to expand economic development throughout the City.

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

Rationale for Recommendation: The surface lots owned by Thomas contain 588 parking spaces. This new agreement will allow the City to continue to operate these surface parking lots, providing adequate parking for visitors of the Sacramento Valley Station and surrounding businesses.

Financial Considerations: Each month, the City will calculate the amount of revenue collected from its operation of the lots during the prior month. From this amount, the City will pay Thomas an amount equal to total revenue less operating expenses and a management fee to the City of \$5,000.

From the expiration of the prior agreement on March 27, 2007 to the effective date of the new agreement, the City has continued to manage and operate the lots and will be compensated by Thomas a management fee of \$5,000 per month.

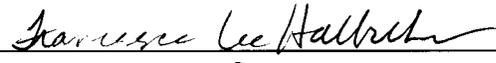
Emerging Small Business Development (ESBD): There are no ESBD considerations contemplated with the requested action.

Respectfully Submitted by: _____



Howard Chan
Parking Services Manager

Approved by: _____



Jerry Way
for Director of Transportation

Recommendation Approved:



RAY KERRIDGE
City Manager

6/26

Table of Contents:

	Report	Pg	1
Attachments			
1	Resolution	Pg	4
2	Attachment A – Parking Operations Management Agreement with S. Thomas Enterprises:	Pg	5

RESOLUTION NO.

Adopted by the Sacramento City Council

**PARKING OPERATIONS MANAGEMENT AGREEMENT WITH
S THOMAS ENTERPRISES OF SACRAMENTO, LLC.**

BACKGROUND

- A. On December 28, 2006 the City entered into a Parking Operations Management Agreement with S. Thomas Enterprises of Sacramento, LLC. ("Thomas") whereby the City would manage surface parking lots on property owned by Thomas. These lots, containing 588 parking spaces, are located at 6th & H Streets and 7th & G Streets, adjacent to the downtown rail yards. The agreement expired March 28, 2007.
- B. To continue providing convenient parking to patrons of the Sacramento Valley Station and to surrounding businesses, the City would like to enter into a new 3-year agreement with a 3-year option.
- C. Each month, the City will calculate the amount of revenue collected from its operation of the lots during the prior month. From this amount, the City will pay Thomas an amount equal to total revenue less operating expenses and a City management fee of \$5,000.
- D. For the time period between the expiration of the prior agreement on March 27, 2007 and the commencement date of the new agreement, Thomas will compensate the City a management fee of \$5,000 per month.

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL
RESOLVES AS FOLLOWS:**

- Section 1. The City Manager is authorized to execute an agreement with S. Thomas Enterprises of Sacramento, LLC authorizing the City to manage parking lots located at 6th & H Streets and 7th & G Streets, adjacent to the Sacramento Valley Station owned by Thomas for a term of three years with one option to extend for an additional three years and providing a \$5,000.00 monthly management fee to be paid to the City.
- Section 2. The City's management of the Thomas parking lots following the expiration of the prior parking operations management agreement on March 27, 2007 through commencement of the new parking agreement on the terms and conditions of the new parking agreement including the \$5,000 monthly management fee and release of parking revenue collected by the City and due to Thomas is authorized.

PARKING OPERATIONS MANAGEMENT AGREEMENT

This Parking Operations Management Agreement ("Agreement") is made and entered into this _____ day of _____, 2007 ("Effective Date"), by and between S Thomas Enterprises of Sacramento, LLC ("Owner") and the City of Sacramento ("Manager").

1. SITE

The term "Site" shall refer to the land and any improvements and facilities located thereon at Sacramento, County of Sacramento, State of California, as identified in the map attached hereto as Exhibit A.

2. TERM

This Agreement shall be for a term of three (3) years from Effective Date hereof. Manager may extend the term for one additional three (3) year period, by providing a written notice of extension to Owner not less than 180 days prior to the expiration of the initial three (3) year term.

3. PURPOSE

The Site shall be used solely and exclusively for improvement and operation of parking lots (Lots). Manager shall not use the Site nor any portion thereof for any use other than for improvement and operation of parking lots, and shall not make any alternations, improvements or additions thereto except as provided for in this Agreement.

4. COMPENSATION AND MANAGEMENT FEE

(a) Beginning on the Effective Date of this Agreement, all "Revenue", which term as used herein shall be all amounts collected in connection with the

operation of the Lots, collected by Manager will be used to offset Operating Expenses (as defined below). Monthly Net Revenue shall be "Monthly Revenue" (as defined below) minus "Monthly Operating Expenses" (as defined below).

(a) (i) For purposes of this Agreement "Monthly Revenue" means the total amount of cash receipts generated from all business operations conducted upon or from the Lots, whether operated by Manager or nominees, during any one month this Agreement is in effect, without any type of deduction whatsoever.

(a)(ii) For purposes of this Agreement "Operating Expenses" means all reasonable expenses incurred in connection with the operation and maintenance of the Lots (see Exhibit C for description of estimated Operating Expenses for FY 2008).

(a)(iii) "Monthly Operating Expenses" as used herein shall mean Operating Expenses incurred or attributed for any particular calendar month.

(b) The Manager shall be responsible for collecting all Revenue, performing billings and collecting accounts receivable in relation to Manager's operation of the Lot. All Revenue will be deposited in the Manager's account, which shall be a segregated account used solely for Revenue. Manager will keep full and accurate records of billed and collected Revenue.

(c) Each month, Manager will calculate the Monthly Net Revenue and the "Monthly Owner Proceeds", which term as used herein shall be the Monthly Net Revenue minus the Management Fee (as defined below), for the immediately preceding month. Manager shall pay the Monthly Owner Proceeds

to Owner within forty-five (45) days of the first day of each calendar month in arrears. Manager shall provide brief details of the income sources in a form reasonably acceptable by Owner.

(d) On or before July 1 of each year during the Term, Manager shall prepare and submit to Owner, for Owner's review and approval, an operating budget for the next successive calendar year (the "Operating Budget"), which shall include a projection of Revenue and Operating Expenses for the ensuing year.

(e) Owner shall pay Manager a fixed fee of Five Thousand (\$5,000) per month ("Monthly Management Fee"). Such fee will first be paid from the Monthly Net Revenue, if any. If Monthly Net Revenue is not available or is not sufficient to pay the Monthly Management Fee, Manager shall notify Owner of the amount of the deficiency as provided for in this Agreement and Owner shall pay Manager the amount of the deficiency within forty-five (45) days after notice is sent to Owner by Manager.

5. OWNER'S RIGHT TO AUDIT

Owner reserves the right for Owner's employees or appointees to conduct examinations, without notification, of the financial reports, files, books and records maintained for Owner by Manager no matter where such financial reports, files, books and records are located. Owner also reserves the right to perform any and all additional audit tests relating to Manager's activities, duties, and obligations hereunder, either at the Site or at any office of Manager.

6. INDEMNITY AND INSURANCE

Manager shall defend, indemnify and hold harmless Owner, its members, managers, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of Manager, its officers, directors, agents, employees, volunteers or contractors. Likewise, Owner shall defend, indemnify and hold harmless Manager, its Council, officers, directors, agents, employees and volunteers from and against all demands, claims, actions, liabilities, losses, damages and costs, including reasonable attorneys' fees, arising out of or resulting from the performance of the Agreement, caused in whole or in part by the negligent or intentional acts or omissions of Owner, its officers, directors, agents, employees, volunteers or contractors.

It is the intention of Manager and Owner that the provisions of the aforementioned paragraph be interpreted to impose on each party responsibility to the other for the acts and omissions of their respective officers, directors, agents, employees, volunteers, and contractors. It is also the intention of Manager and Owner that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, directors, agents, employees, volunteers, and contractors.

While this Agreement is in effect, Manager, at Manager's expense, shall maintain and furnish Owner evidence of insurance set forth in Owner's "General Insurance Requirements" form attached hereto as Exhibit "B" and made a part hereof. Owner acknowledges that Manager is self-insured and agrees that Manager's program of self-insurance fulfills any and all insurance requirements provided for in Exhibit B.

7. IMPROVEMENTS

Subject to Owner's written consent as provided for in this Agreement, and subject to Manager obtaining any requisite governmental permits for the construction and operation of a surface commercial parking lot on the Site, Manager shall make such improvements ("Improvements") to the Site as Manager shall deem necessary for use of the Site as a commercial surface parking lot for automobiles, including, but not limited to, generally the following:

- (i) Redesign the parking layout and traffic flow patterns for the managed Site;
- (ii) Grade and pave or repave the Site for use as a parking lot;
- (iii) Construct additional drive aisles and furnish and install fencing and additional lighting standards and fixtures, including necessary wiring;
- (iv) Furnish and install cashier terminals, booths, signage and other parking control equipment; and
- (v) Such other items as Manager deems appropriate or necessary to the proper operation of the parking facility.

All such costs for Improvements shall be the sole responsibility of Owner. Any construction, reconstruction or altering of Improvements shall, at Owner's expense, be installed, constructed and maintained in accordance with applicable building and other codes, in a good and workmanlike manner to the satisfaction of Owner, and in accordance with all requirements of all departments, boards, bureaus, officials and authorities having jurisdiction in the matter. All necessary permits for such construction (including any permits required to cross public streets) shall be obtained by Manager.

8. AFFECT ON INSURANCE

Manager and its agents shall not do or permit anything to be done in or about the Site nor bring nor keep anything to be done in or about the Site which will in any way increase the existing rate or affect any insurance upon the Site, or cause a cancellation of any insurance policy covering the Site or any part thereof, nor shall Manager or its agents keep, use or sell or permit to be kept, used or sold in or about the Site any articles which may be prohibited by a standard form policy of fire insurance.

9. HAZARDOUS MATERIALS

Manager shall not use, generate, manufacture, produce, store, release, discharge, or dispose of , on, under or about the Site, or transport to or from the Site, any Hazardous Materials (defined below) or allow its agents or any other person or entity to do so. The term "Hazardous Materials" shall mean (i) those substances included within the definition of "hazardous substances," "hazardous materials," "toxic substances," or "solid waste" under the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. section 9601 et seq., and the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. sections 6901 et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. sections 1801 et seq., and in the regulations promulgated pursuant to said laws; (ii) those substances listed in the United States Department of Transportation Table (49 C.F.R. 172.101 and amendments thereto) or designated by the Environmental Protection Agency (or any successor agency) as Hazardous Substances; (iii) such other substances, materials and wastes which are or become regulated under applicable local, state or federal law, or the United States government, or which are classified as hazardous or toxic under federal, state or local laws or regulations, and (iv) any material, waste or substance which is (a) petroleum, (b) asbestos, (c) polychlorinated biphenyls, (d) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act of 1977, 33 U.S.C. sections 1251 et seq., (33 U.S.C. section 1321) or listed pursuant to section 307 of the Clean Water Act of 1977 (33 U.S.C. section 1317).

10. THIRD PARTIES

Manager and its agents shall not do or permit anything to be done in or about the Site which will in any way obstruct or interfere with the rights of any third parties or injure or annoy such parties or cause structural injury to the Site. Manager shall not use or allow the Site to be used for any unlawful, immoral, hazardous or objectionable purpose, nor shall Manager cause, maintain or permit

any nuisance in, on, or about the Site. Manager and its agents shall not commit or suffer to be committed any waste in or upon the Site.

11. COMPLIANCE WITH LEGAL REQUIREMENTS

(a) Manager and its agents shall not use the Site or permit anything to be done in or about the Site which will in any way violate any law, statute, ordinance, order, rule, regulation or requirement of duly constituted public authorities or quasi-public authorities now in force or which may hereafter be enacted or promulgated (collectively, "Laws"). Manager shall obtain, prior to taking possession of the Site, any permits, licenses or other authorizations required for the lawful operation of its business at the Site.

(b) Site Lien-Free. Manager shall indemnify and hold Owner harmless from and keep the Site free from any liens, claims, demands, encumbrances or judgments, including all costs, liabilities and attorneys' fees with respect thereto, created or suffered by reason of any labor or services performed for, or materials used by or furnished to, Manager or its agents with respect to the Site. The foregoing obligation of Manager shall survive the termination of this Agreement; Owner shall have the right, at all times, to post and keep posted on the Site any notices permitted or required by law, or which Owner may deem proper, for the protection of Owner and the Site, and any other party having an interest therein, from mechanics' and materialmen's liens including, without limitation, a notice of non-responsibility. In the event Manager is required to post an improvement bond with a public agency in connection with any work performed by Manager on or to the Site, Manager shall include owner as an additional obligee.

(c) Notice of Lien: Bond. Should any liens be filed against, or any action be commenced affecting, the Site or Manager's interest in the Site, if any, Manager shall give Owner notice of such lien or action within three (3) days after Manager receives notice of the filing of the lien or the commencement of the action. In the event that Manager shall not, within twenty (20) days following the imposition of such lien, cause such lien to be released of record by payment or posting of a proper bond, Owner shall have, in addition to all of the remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as Owner shall deem proper, including payment of the claim giving rise to such lien or posting of a proper bond. All such sums paid by Owner and all expenses incurred by Owner in connection therewith, including attorneys' fees and costs, shall be payable to Owner by Manager on demand by Owner.

12. IMPOSITION OF CONDITIONS

Should any governmental body seek to impose any condition on approval of Manager's use of the Site or the zoning thereof, or for the issuance of any map, license, or permit, Manager covenants to notify Owner accordingly; and if such condition is unacceptable to Owner for any reason, Owner may terminate this Agreement.

13. CONDITION OF SITE

Manager acknowledges that neither Owner nor any agent of Owner has made any representation or warranty with respect to the condition of the Site or with respect to the suitability of the same for the conduct of Manager's business,

nor has Owner or any agent of Owner agreed to undertake any modification, alteration or improvement to the Site. Manager further acknowledges that manager has independently investigated the Site and is satisfied that the Site is suitable for manager's intended use. By taking possession of the Site, Manager shall be deemed to have accepted the Site as being in satisfactory condition and repair and to have accepted the Site in their condition existing as of the date of such possession, subject to all applicable laws, covenants, conditions, restrictions, easements and other matters of public record and any rules and regulations from time to time promulgated by Owner governing the use of the Site.

14. SUBTERRANEAN FACILITIES

The absence of markers, monuments or maps indicating the presence of subterranean facilities within the Site, whether belonging to Owner or otherwise, does not constitute a warranty or representation by Owner or its agents that none exist. Manager accepts this Agreement with full cognizance of the potential presence of such facilities within the Site, acknowledging that the costs of Manager's use of the Site may increase by reason thereof, and acknowledging that the owner or owners thereof may have acquired the right to continue to maintain such facilities by the passage of time.

15. NOISE LEVELS NEAR RAILROAD TRACKS

Manager hereby recognizes and acknowledge that railroad tracks are located on or adjacent to the Site (the "Tracks"). Manager recognizes that the operation of trains over the Tracks is likely to produce noise levels which may be

considered objectionable by Manager and its agents. Manager hereby waives any claim for damages for any injury or inconvenience to or interference with Manager's business, any loss of occupancy or quiet enjoyment of the Site, and any other loss occasioned by the noise produced by the operation of trains over the Tracks. Manager agrees to indemnify, defend and hold Owner and its agents harmless from and against any loss, damage, liability or expense incurred by Owner or its agents as a result of any action or complaint of any kind whatsoever initiated against Owner or its agents from Manager's agents.

16. PRIOR APPROVAL OF WORK

Manager shall not, without Owner's prior written consent, make any further alterations, further improvements, or additions of any kind in, on or about the Site costing in excess of \$5,000 without the prior written consent of Owner. Any alterations, improvements or additions in, on or about the Site that Manager shall desire to make in excess of \$5,000 shall be presented to Owner in written form, with proposed detailed plans and such other information as Owner may request. If Owner shall give its written consent, the consent shall be deemed conditioned upon Manager's acquiring a permit for constructing such improvement from the appropriate governmental agencies, the furnishing of a copy thereof to Owner upon request prior to the commence of the work, and compliance by manager with all conditions of said permit in a prompt and expeditious manner.

17. MAINTENANCE AND REPAIR

Manager shall keep and maintain the Site and all improvements thereon in good repair and in a neat and satisfactory condition, and shall promptly make all

repairs and replacements, subject to the provisions of paragraph 16, that may become necessary to the Site or improvements thereon, whether structural or nonstructural, ordinary or extraordinary. All notices and signs upon the Site shall be neat and properly maintained. Owner shall have the right to enter the Site at all reasonable times to inspect the same.

18. UTILITIES AND SERVICES

All charges for water, gas, light, heat, power, electricity, telephone or other communication service, janitorial service, trash pick-up, sewer and all other services supplied to or consumed on the Site (collectively, "Services") directly related to this parking operation, and all taxes, levies, fees or surcharges therefore shall be the sole responsibility of Owner as an Operating Expense pursuant to Section 4 above. Manager shall be solely responsible for arranging for services to be supplied to the Site and shall contract for all of the Services in Manager's name prior to the Effective Date. The Effective Date shall not be delayed by reason of any failure by Manager to so contract for Services. The lack or shortage of Services due to any cause whatsoever shall not affect any obligation of Manager under this Agreement, and Manager shall faithfully keep and observe all the terms, conditions and covenants of this Agreement and pay all Fees due hereunder, all without diminution, credit or deduction.

19. SURRENDER OF SITE

Upon termination of this Agreement, Manager, without further notice, shall deliver up to Owner possession of the Site. In the event of such failure or refusal of Manager to surrender possession of the Site, Owner shall have the right to

reenter the Site and remove therefrom Manager or any other person, firm, or corporation claiming by, through, or under Manager. Manager will have thirty (30) days after termination of this Agreement to remove any personal property and improvements from the Site.

20. NOTICES

All notices shall be in writing and shall be deemed to have been given when delivered personally or deposited in the United States mail, registered or certified, postage prepaid, or delivered by overnight courier, and addressed to the party to whom the notice is directed at the address set forth below. Either party may change the address for notices or Owner may change the address for payments by giving the other party written notice to that effect.

ADDRESS FOR NOTICES

To Owner:

S. Thomas Enterprises of Sacramento, LLC
431 I Street
Suite 202
Sacramento, California 95814
Attention: Mr. Suheil J. Totah

With a copy to:

Cushing, Morris, Armbruster & Montgomery, LLP
229 Peachtree Street, N.E., Suite 2110
Atlanta, Georgia 30303
Attention: Jeffrey F. Montgomery, Esq.
Phone No.: (404) 521-2323
Fax No.: (404) 658-9865
E-Mail: jfm@cmamlaw.com

And a copy to Manager:

Parking Services Manager
921 10th Street, 1st Floor
Sacramento, CA 95814

ADDRESS FOR PAYMENTS TO OWNER

S. Thomas Enterprises of Sacramento, LLC
431 I Street
Suite 202
Sacramento, California 95814
Attention: Mr. Suheil J. Totah

21. ATTORNEYS' FEES

In the event any party hereto shall bring any action or legal proceeding for damages for an alleged breach of any provision of this Agreement, to recover Fees, to enforce an indemnity obligation, to terminate the tenancy of the Site, or to enforce, protect, interpret or establish any term, condition, or covenant of this Agreement or right or remedy of either party, the prevailing party shall be entitled to recover, as part of such action or proceeding, reasonable attorneys' fees and court costs, including attorneys' and costs for appeal, as may be fixed by the court or jury.

22. RECORDATION OF AGREEMENT

Neither party hereto shall record this Agreement.

23. OWNER'S RIGHT-OF-ENTRY

Manager shall permit Owner and the agents of Owner to enter into and upon the Site at all reasonable times for the purpose of inspecting the Site, posting notices of nonresponsibility, "for lease" or "for sale" signs, exhibit the Site to prospective tenants, buyers, or lenders, protecting the Site in the event of an emergency, altering or improving the Site, conducting environmental audits, and

exercising any rights reserved by Owner pursuant to this Agreement, all without abatement of any Fees due hereunder. Manager hereby waives any claim for damages for any injury or inconvenience to or interference with Manager's business, any loss of occupancy or quiet enjoyment of the Site, and any other loss occasioned by any entry into the Site in accordance with this Section 23 or any other provision of this Agreement. Owner shall have the right to use any and all means which Owner may deem proper to open the doors and gates in an emergency, in order to obtain entry to the Site. Any entry to the Site by Owner as permitted by this Agreement shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or detainer of, the Site, or any portion thereof.

24. TIME OF ESSENCE

Time is of the essence of each provision of this Agreement.

25. TERMINATION OF AGREEMENT

Owner and Manager may unconditionally terminate this Agreement by providing the other party written notice no less than ninety (90) days prior to the date of termination.

Termination or expiration of this Agreement shall not release any party hereto from any liability or obligation hereunder, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to such termination or expiration.

26. SEVERABILITY

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

27. RELATIONSHIP OF PARTIES

Nothing contained in this Agreement shall be deemed or construed by the parties or by any third person or court to create the relationship of partnership or of joint venture between Owner and Manager, and neither the method of computation of fee nor any other provisions contained in this Agreement nor any acts of the parties shall be deemed to create any relationship of owner of real property and holder of a limited agreement to use the same for the purposes set forth herein.

28. SUCCESSORS

The covenants, conditions and agreements contained in this Agreement shall be binding on the parties hereto and on their respective heirs, successors, assigns and legal representatives.

29. EXHIBITS

All exhibits attached to this Agreement shall be deemed to be incorporated herein by the individual reference to each such exhibit, and all such exhibits shall be deemed to be a part of this Agreement as though set forth in full in the body of this Agreement.

30. OWNER AND AGENT

The term "Owner" as used in this Agreement, so far as the covenants or obligations on the part of Owner are concerned, shall be limited to mean and include only the owner at the time in question of fee title or right to control the Site. In the event of any transfer(s) of such interest, the Owner herein named (and in the case of any subsequent transfers or conveyances, the grantor) shall have no further liability under this Agreement to Manager except as to matters of liability which have accrued and are unsatisfied as of the date of such transfer, it being intended that the covenants and obligations contained in this Agreement on the part of Owner shall be binding on Owner and its successors and assigns only during and in respect of their respective period of ownership of the fee; provided that any funds in possession of Owner or the then grantor and as to which Manager has an interest, less any deductions permitted by law or this Agreement, shall be turned over to the grantee. The covenants and obligations of Owner as contained in this Agreement shall, subject to the provisions of this Section 30, be binding upon each Owner and such Owner's heirs, personal representatives, successors and assigns only during its respective period of ownership. Except as provided in this Section 30, this Agreement shall not be affected by any transfer of Owner's interest in the Site, and Manager shall attorn to any transferee of Owner.

31. AUTHORITY

The undersigned parties hereby warrant that they have proper authority and are empowered to execute this Agreement on behalf of Owner and Manager, respectively.

32. CAPTIONS

The Captions contained in this Agreement are for purposes of convenience only and are not to be used to interpret or construe this Agreement.

33. MANAGER'S ESTOPPEL.

Manager shall, from time to time, upon not less than ten (10) days prior written request by Owner, execute, acknowledge and deliver to Owner a written statement certifying that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified and stating the modifications), the dates to which the Fees have been paid, that Manager has no offsets or defenses against Owner under this Agreement, and whether or not to the best of Manager's knowledge Owner is in default hereunder (and if so, specifying the nature of the default), it being intended that any such statement delivered pursuant to this paragraph may be relied upon by a prospective purchaser of Owner's interest or by a mortgagee of Owner's interest or assignee of any security deed upon Owner's interest in the Site.

34. COUNTERPARTS

This Agreement may be signed in counterparts, each of which shall be deemed an original but all of which, when taken together, shall be one and the same agreement.

35. ENTIRE AGREEMENT AND AMENDMENT

This Agreement sets forth the entire agreement between the parties with respect to the use of the Site and supersedes all prior agreements, communications, and representations, oral or written, express or implied, since the parties intend that this be an integrated agreement. No addition to, or modification of, any term or provision of this Agreement shall be effective until and unless such addition or modification is set forth in written instrument signed by both Owner and Manager.

[Signatures on following page]

DATED: 6-13-07

DATED: _____

OWNER:
S Thomas Enterprises of Sacramento, LLC

MANAGER:
CITY OF SACRAMENTO,
a Municipal Corporation

BY: [Signature]

BY: _____
CITY MANAGER

Its: VICE PRESIDENT

APPROVED AS TO FORM:

BY: [Signature]
DEPUTY CITY 6-13-07
ATTORNEY

ATTEST:

BY: _____
CITY CLERK

EXHIBIT B
GENERAL INSURANCE REQUIREMENTS
("GIR")

Owner shall be furnished evidence of insurance in connection with the foregoing Agreement. Such insurance shall be written by an insurance company having a Best's rating of B+13 or better and licensed to do business in the state where the Site is located, meeting the requirements stated below in form satisfactory to Owner, for each of the following types of insurance in amounts not less than the amounts herein specified.

Liability Insurance Requirements

1. **COMPREHENSIVE GENERAL LIABILITY INSURANCE OR COMMERCIAL GENERAL LIABILITY INSURANCE ON AN OCCURRENCE BASIS** shall have a combined single limit of not less than \$2,000,000 per occurrence and shall provide for the following:
 - a) such insurance is primary, without right of contribution from other insurance which may be in effect.
 - b) such insurance shall not be invalidated by the acts or omissions of other insureds.
 - c) Such insurance shall be materially modifiable or cancelable without thirty (30) days' prior written notice to Owner (except in the case of cancellation for nonpayment of premium in which case cancellation shall not take effect until at least ten (10) days' notice has been given to Owner). This provision is referred to below as "Notice of Modification or Cancellation."
 - d) Owner shall be named as additional insured.
 - e) Contractual liability with deletion of the exclusion for operations within fifty (50) feet of railroad track and deletion of the exclusion of explosion, collapse, or underground hazard, if applicable. (NOTE: For any license or permit involving property within fifty (50) feet of track, the exclusion for operations within fifty (50) feet of track will apply unless eliminated by endorsement).
 - f) Site, products/completed operations, and personal injury coverage.
 - g) Severability-of-interest clause.
 - h) In the case of commercial general liability insurance, the policy must also provide for aggregate coverage at each location and for reinstatement of the aggregate in the event the limits of the policy are exhausted.
 - i) If the proposed use of the Site involves a hazard which poses particular risk to the environment, the policy must cover sudden and accidental pollution on a named-peril basis to address the hazard.

2. **COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE** shall have a combined single limit of not less than \$2,000,000 per occurrence and shall provide for the following:
 - a) Such insurance is primary, without right of contribution from other insurance which may be in effect.
 - b) Such insurance shall not be invalidated by the acts or omissions of other insureds.
 - c) Notice of Modification or Cancellation. d) Severability-of-interest-clause.

3. **WORKERS' COMPENSATION INSURANCE** shall have limits not less than those required by statute, shall cover all persons employed by Owner in the conduct of its operations on the Site and shall provide for the following:
 - a) Waiver of subrogation against Owner.
 - b) Notice of modification or Cancellation
 - c) All states endorsements.
 - d) Coverage for Longshore and Harbor Workers Act, if applicable.

4. **EMPLOYERS' LIABILITY INSURANCE** shall have a limit of not less than \$1,000,000 and shall be endorsed to provide for (a) Notice of modification or Cancellation and (b) waiver of subrogation against Owner.

5. **UMBRELLA OR EXCESS LIABILITY INSURANCE** will provide that if the underlying aggregate is exhausted, the excess coverage will drop down as primary insurance, and will provide for Notice of Modification or Cancellation.

**Thomas Enterprises - Sacramento Valley Station Overflow Parking Lots
Estimated FY2008 Budget (July 07 - June 08)**

Revenue	July	August	September	October	November	December	January	February	March	April	May	June	Total
Monthly Contracts	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	47,000	564,000
Daily Parkers	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	21,000	252,000
Total Revenue	68,000	816,000											
Expenses													
Labor													
Attendant	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	1,200	14,400
Maintenance	300	300	300	300	300	300	300	300	300	300	300	300	3,600
Collections	600	600	600	600	600	600	600	600	600	600	600	600	7,200
Payroll Tax & Burden	714	714	714	714	714	714	714	714	714	714	714	714	8,568
Sub-total	2,814	33,768											
Insurance	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	2,940	35,280
Bank Fee	315	315	315	315	315	315	315	315	315	315	315	315	3,780
Power Sweeping	350	350	350	350	350	350	350	350	350	350	350	350	4,200
Supplies	350	350	350	350	350	350	350	350	350	350	350	350	4,200
Phone	75	75	75	75	75	75	75	75	75	75	75	75	900
Printing	250	250	250	250	250	250	250	250	250	250	250	250	3,000
Security	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	1,000	12,000
Uniforms	75	75	75	75	75	75	75	75	75	75	75	75	900
Utilities	500	500	500	500	500	500	500	500	500	500	500	500	6,000
Sub-total	5,855	70,260											
Administrative Overhead	586	586	586	586	586	586	586	586	586	586	586	586	7,026
Management Fee	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	5,000	60,000
Total Expenses	14,255	171,054											
Net Receipts	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	53,746	644,946