

AGREEMENT AND SITE LEASE

THIS AGREEMENT made and entered into this 5th day of October, 1977, by and between the State of California through its duly qualified Chancellor of the California State University and Colleges, hereinafter referred to as "Trustees," and the Fullerton Arboretum Authority, a joint powers agency created by Trustees and the Redevelopment Agency of the City of Fullerton, hereinafter referred to as "Authority."

WITNESSETH:

WHEREAS, the State of California owns the properties hereinafter described and referred to as the "Fullerton Arboretum Site," which are part of the California State University and Colleges and in particular the California State University, Fullerton, which campus is hereinafter referred to as "University"; and,

WHEREAS, the Authority was established to assist in the development and administration of the Fullerton Arboretum; and the Arboretum is planned as a facility for the benefit of the University, the City of Fullerton, and the public; and,

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1           WHEREAS, the Authority is permitted and authorized  
2 under the laws of the State of California to lease or otherwise  
3 acquire real property necessary for the use of the Authority, for  
4 botanical gardens and related facilities, and to improve,  
5 preserve, take care of, and manage the same; and  
6

7           WHEREAS, the Trustees and the Authority are permitted  
8 and authorized under the laws of the State of California to  
9 contract for the care, maintenance, and control of such real  
10 property; and  
11

12           WHEREAS, it is the opinion of the Trustees that a more  
13 advantageous use, care, maintenance, and control of the real  
14 property hereinafter described, for the purposes of the Univer-  
15 sity, will be had and obtained if said property is operated and  
16 developed for an arboretum and botanical garden, and to that  
17 end the use, care, maintenance, and control of said property  
18 be placed under the jurisdiction of the Authority; and  
19

20           WHEREAS, the Authority is willing to assume, upon the  
21 terms herein contained, the care, maintenance, and control of  
22 said real property, for arboretum and educational purposes and  
23 of maintaining and developing the same for said purposes as an  
24 educational facility and botanical garden.  
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1 FINDINGS

2  
3 The Chancellor of the California State University and Colleges  
4 finds that:

5  
6 (1) The purposes for which the property described herein  
7 is to be used under this lease are related to the activities of  
8 the University, or to the activities or organizations of students  
9 or activities or organizations of members of the faculty thereof.

10  
11 (2) Administration by the Authority of the functions and  
12 activities described herein, instead of administration by the  
13 Trustees, will allow for improvements to be made on University  
14 land for the benefit of the University and the Authority.

15  
16  
17 NOW, THEREFORE, in consideration of the promises, made  
18 herein, the Trustees and Authority agree as follows:

19  
20 1. That following the execution and delivery of this  
21 agreement in five executed copies, an original to each of the  
22 parties hereto and upon the date of the award of the first  
23 construction contract to develop the Fullerton Arboretum and in  
24 no event later than March 31, 1978, the Authority shall have,  
25 approximately 43 years from and after the date hereof, until

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1 December 3, 2020 the care, maintenance, and control of the  
2 University properties described in Attachment A, pages 1 and 2  
3 to this agreement, which description is incorporated by  
4 reference, and which land is referred to herein as the "Arboretum  
5 Site," for the purposes of establishing an arboretum, and during  
6 said period of years the Authority shall have use of the  
7 Arboretum Site for the purposes of developing, maintaining,  
8 using, and operating the same for an arboretum.

9  
10 2. That while the Authority develops, maintains,  
11 operates, controls, and uses the Arboretum Site for an arboretum  
12 pursuant to the Fullerton Arboretum Authority Agreement the same  
13 shall be accessible for the educational use of such properties by  
14 University subject to the use of the properties for Arboretum  
15 purposes. Operations of the Authority shall be coordinated with  
16 the Trustees' operations and shall be under the general super-  
17 vision of Trustees' officials.

18  
19 3. Should the Authority fail or neglect to continue  
20 to maintain, operate, and use the Arboretum Site as an arboretum,  
21 the right of the Authority to continue to develop, maintain,  
22 control, use, or operate said property shall cease and Trustees  
23 shall have the right to re-enter said real property and be  
24 restored to full and unqualified rights of use, possession, and  
25 ownership.

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1 4. The Authority covenants and agrees that neither  
2 said property nor any part thereof shall be used for any purpose  
3 except for an arboretum, park, botanical garden, amphitheatre,  
4 educational or historical facility, or related use; and that all  
5 such uses shall be consistent with the systemwide guidelines and  
6 policies which have been or may hereafter be adopted by the  
7 Trustees or the Chancellor.  
8

9 5. It is understood and agreed by and between the  
10 parties hereto, however, that the Authority may enter into an  
11 operational lease with a nonprofit university auxiliary organi-  
12 zation to carry out the purposes of this agreement, and any such  
13 lease to such nonprofit corporation shall not be construed to be  
14 in violation of this agreement provided that any such lease must  
15 first be approved in writing by the Trustees before becoming  
16 effective.  
17

18 6. The Authority agrees that during the term of this  
19 agreement it will not enter into or make any concession agree-  
20 ments with any person, firm, corporation, or association whatso-  
21 ever for use of the Arboretum property without the approval of  
22 the Trustees.  
23

24 7. This lease and agreement is not assignable by the  
25 Authority either in whole or in part, nor shall the Authority  
26 sublet the leased premises or any part thereof without written  
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1 approval of the Trustees. The Authority may, subject to the  
2 approval of Trustees, grant concessions on the Arboretum Site  
3 consistent with the use thereof for arboretum and educational  
4 purposes. Any such concessions are to be primarily for the  
5 benefit and enjoyment of the public using the Arboretum and not  
6 primarily for profit purposes to the Authority.  
7

8 8. It is understood and agreed between the parties  
9 hereto that any charges, fees, or collections made by the  
10 Authority or its lessee for services, benefits, or accommodations  
11 to the general public in connection with the operation and  
12 management of said Arboretum shall be limited as far as practi-  
13 cable to the actual needs for maintenance, capital improvement,  
14 safety, sanitation, and bodily comfort, and that unnecessary  
15 commercialization for profit shall not be engaged in or  
16 permitted.  
17

18 9. Capital Improvements. It is further agreed that  
19 any or all capital development, construction, or improvement shall  
20 be subject to the approval of the Trustees.  
21

22 The leased premises shall not be altered or changed  
23 in any manner or respect without the written consent of the  
24 President of the University, and changes that may be authorized  
25 shall be made under the direction of the President of the  
26

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1 University and at the expense of the Authority. Permanent capital  
2 alterations shall have prior approval of the Chancellor of the  
3 California State University and Colleges.

4  
5 10. Exhibit "A" describes the Arboretum Site proper-  
6 ties referred to in this agreement. The use conveyed herein is  
7 subject to all easements, liens, encumbrances, or encroachments  
8 of record; further, Trustees reserve the right to grant such  
9 further easements, encroachments, or other developments as may  
10 be required to aid the University and which will not substan-  
11 tially interfere with Arboretum project, and in instances  
12 of a University need for the Arboretum Site, or parts thereof,  
13 for University facilities to meet the demands of the educational  
14 objectives and programs of the University; and subject to the use  
15 of the property for civil defense purposes in the event of a  
16 state or national emergency.

17  
18 11. This agreement may be terminated and the  
19 provisions of this agreement may be altered, changed, or amended  
20 by mutual consent in writing of all the parties hereto.

21  
22 12. After construction and prior to operation of the  
23 Arboretum facility by the Authority, the Authority shall provide  
24 either directly or through an operating contractor adequate  
25 insurance coverage, including as a minimum:

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1 (a) The Authority shall maintain in force during  
2 the term of this lease and all extensions thereof public  
3 liability and property damage insurance and products liability  
4 insurance in the sum of One Hundred Thousand Dollars  
5 (\$100,000.00) for injury to or death of any one person for each  
6 occurrence, in the sum of Three Hundred Thousand Dollars  
7 (\$300,000.00) for injury to or death of more than one person for  
8 each occurrence, and in the sum of Fifty Thousand Dollars  
9 (\$50,000.00) for damage to property and products damage for each  
10 occurrence. Fire and extended coverage insurance coverage shall  
11 be supplied in the sum of \$30,000.00. These policies of  
12 liability insurance shall contain the following special endorse-  
13 ment:

14  
15 "The State of California, the California State  
16 University and Colleges, Board of Trustees, and  
17 all of its other departments, boards, and commissions  
18 and its officers, employees, and agents are hereby  
19 declared to be additional insureds under the terms  
20 of this policy as to the activities of the Authority."

21  
22 "This insurance policy will not be cancelled without  
23 thirty (30) days' prior written notice to said  
24 California State University and Colleges, Board of  
25 Trustees. The State of California is not liable for  
26 the payment of premiums or assessments on this policy."

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1           No cancellation provision in any insurance policy shall  
2 be construed in derogation of the continuous duty of Authority to  
3 furnish insurance during the term of this agreement and lease.  
4 Said policy or policies shall be underwritten to the satisfaction  
5 of Trustees. A complete and signed certified copy of the policy  
6 shall be submitted to the Trustees concurrently with the  
7 execution of the agreement and lease. At least thirty (30) days  
8 prior to the expiration of any policy, a signed certified copy of  
9 the policy showing that such insurance coverage has been renewed  
10 or extended shall be filed with the Trustees.

11  
12           (b) The Authority agrees to indemnify and save  
13 harmless the Trustees, its officers, agents, and employees from  
14 any and all loss, damage, or liability that may be suffered or  
15 incurred by the Trustees, its officers, agents, and employees  
16 caused by, arising out of, or in any way connected with the use  
17 of the leased premises herein described by the Authority.

18  
19           13. It is understood and agreed that at any time the  
20 Trustees and its agents shall have the right to enter the leased  
21 premises or any part thereof for the purpose of examination or  
22 supervision.

23  
24           14. The Authority shall reimburse the State for  
25 expenditures incurred by the State as result of activities of  
26 the Authority under the terms of this agreement. This reimburse-

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1 ment shall include, but not be limited to, utility costs,  
2 custodial services, maintenance costs, and supplies, where such  
3 services and activities are not provided as part of University's  
4 contribution pursuant to Sections 9(B) and 9(D) of the Fullerton  
5 Arboretum Authority Agreement. Said reimbursement shall be  
6 computed on a simple but equitable basis, pursuant to the  
7 provisions of the State Administrative Manual, Section 8755.  
8 The University Business Manager with the approval of the  
9 University President shall determine and specify such costs and  
10 the amount thereof and reimbursement shall be made by Authority  
11 within thirty (30) days of receipt of a notice of such  
12 determination.

13  
14 15. The Authority agrees that it will keep and  
15 maintain the leased property in a clean and orderly condition  
16 and shall at its own expense, at reasonably frequent intervals,  
17 and in a lawful manner dispose of all waste from the leased  
18 property.

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IN WITNESS WHEREOF, the parties thereto have caused  
the execution of this instrument by their duly authorized  
representatives, the day and year first above written.

Department of General Services

TRUSTEES OF THE CALIFORNIA  
STATE UNIVERSITY AND COLLEGES

By *James E. Westhead*  
TITLE: Assistant Vice Chancellor  
Physical Planning and Development

ATTEST: *Pauline A. Gray*  
TITLE: Legal Administrative Aide

ATTEST: Arboretum Authority

By *Asa M. York*  
Secretary, Arboretum Authority

By *Marshall D. McParthy*  
President

<i>James E. Westhead</i>	POLICY	BUDGET
Department of General Services		
<b>APPROVED</b>		
NOV 1 1977		
BY <u><i>John J. ...</i></u>		
Chief Land Agent		

## LEGAL DESCRIPTION

The lands herein described are in the City of Fullerton, County of Orange, State of California, and being a portion of Fractional Section 25, Township 3 South, Range 10 West, in the Rancho San Juan de Santa Ana, as shown on a map recorded in Book 51, Page 7 of Miscellaneous Maps, records of Orange County, California, described as follows:

Commencing at a point in the north line of said Section, said north line being also the center line of Yorba Linda Boulevard, 100 feet wide, as shown on Record of Survey recorded in Book 93, Pages 3 and 4 of Record of Surveys of said County, said point being South 89° 52' 34" East 197.26 feet from the centerline intersection of said Boulevard with Associated Road, 80 feet wide, as shown on said Record of Survey; thence South 0° 07' 26" West 184.32 feet to the True Point of Beginning of this description. Thence continuing South 0° 07' 26" West 165.73 feet; thence South 38° 11' 05" East 119.54 feet; thence South 9° 02' 34" East 210.04 feet; thence South 17° 42' 53" East 576.09 feet; thence South 0° 00' 07" East 698.92 feet; thence North 89° 59' 53" East 15.02 feet; thence South 0° 00' 07" East 1.5 feet to the beginning of a curve concave southwesterly, having a radius of 113.50 feet, a radial line from said beginning having a bearing of South 0° 00' 07" East; thence easterly and southerly along the arc of said curve, through a central angle of 90° 00' 00" an arc distance of 178.29 feet; thence along the tangant of said curve South 0° 00' 07" East, 63.40 feet to the beginning of a tangant curve, concave northeasterly, having a radius of 61.50 feet; thence southerly and easterly along said curve through a central angle of 90° 00' 55" an arc distance of 96.52 feet to a tangant line; thence North 89° 58' 58" East along said tangant line, a distance of 111.04 feet; thence North 0° 01' 02" West 436.28 feet; thence North 59° 34' 22" East, 15.71 feet; thence North 14° 40' 02" West 36.69 feet to the beginning of a tangant curve concave southeasterly, having a radius of 49.50 feet; thence northerly and easterly along the arc of said curve, through a central angle of 89° 39' 42", a distance of 77.46 feet to a tangant line; thence North 74° 59' 40" East along said tangant line 12.27 feet; thence North 15° 00' 17" West 71.67 feet to the beginning of a tangant curve concave easterly, having a radius of 525.00 feet; thence northerly along the arc of said curve through a central angle of 45° 37' 04", a distance of 417.99 feet to a tangant line; thence North 30° 36' 47" East along said tangant line 809.42 feet to an intersection with a non-tangant curve, concave southwesterly, having a radius of 398.79 feet, said intersection having a radial bearing of South 59° 09' 43" West; thence westerly along the arc of said curve, through a central angle of 40° 43' 03" a distance of 283.40 feet to a tangant line; thence North 71° 33' 20" West along said tangant line 537.90 feet to the beginning of a tangant curve concave southeasterly, having a radius of 301.50 feet; thence southwesterly along said curve, through a central angle of 59° 07' 21" an arc distance of 311.11 feet to a tangant line; thence South 49° 19' 19" West along said tangant line 24.85 feet to the beginning of a tangant curve, concave northwesterly, having a radius of 172.50 feet; thence westerly along said curve, through a central angle of 17° 53' 18" an arc distance of 53.86 feet to the point of beginning.

ASSOCIATED ROAD

**BASIS OF FEES:**

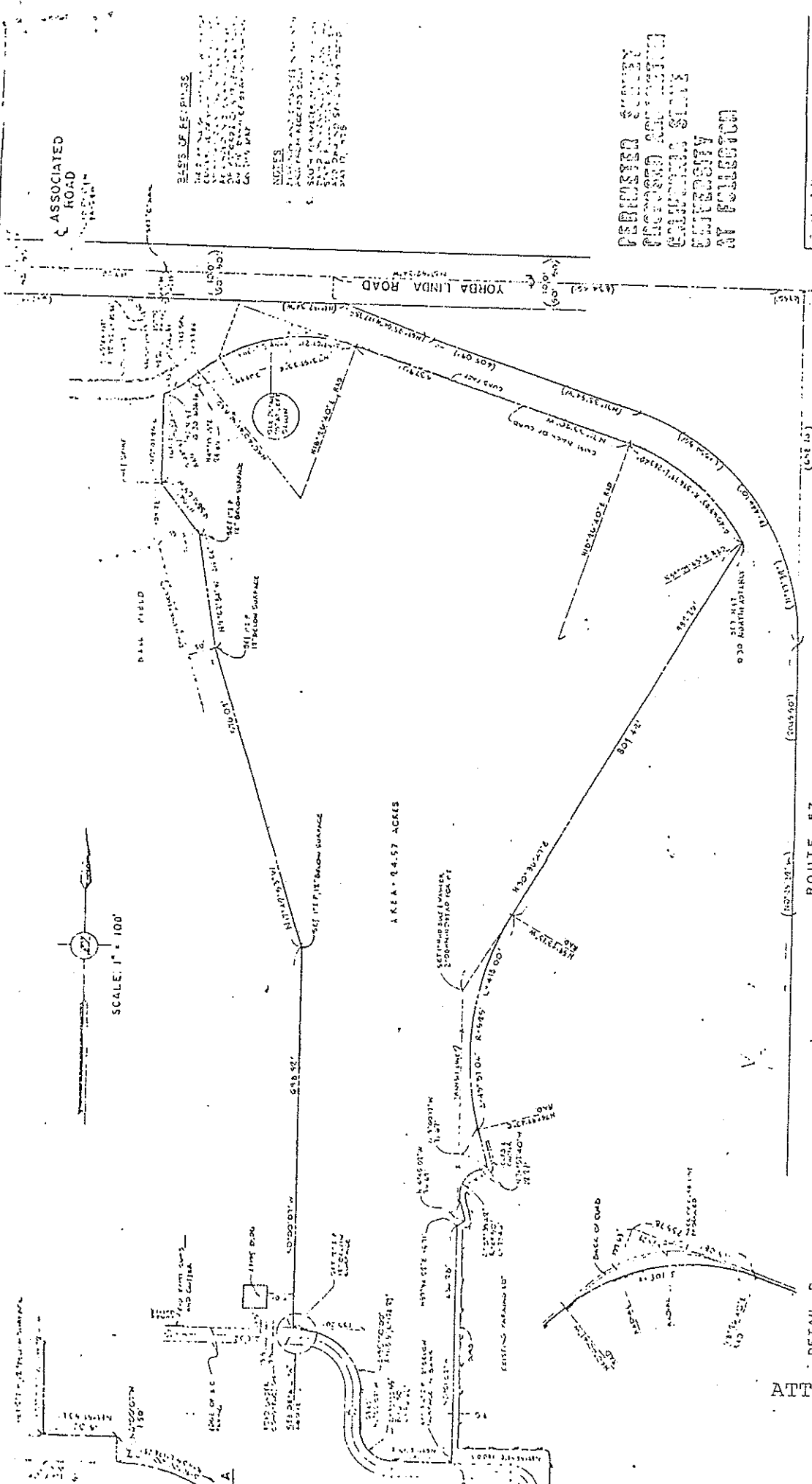
THESE FEES ARE BASED ON THE FOLLOWING ASSUMPTIONS:  
 1. THE PROJECT IS A STANDARD RESIDENTIAL DEVELOPMENT.  
 2. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE ZONING ORDINANCE.  
 3. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE SUBDIVISION MAP ACT.  
 4. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE ENGINEERING REGULATIONS.  
 5. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE HEALTH DEPARTMENT REGULATIONS.  
 6. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE WATER DEPARTMENT REGULATIONS.  
 7. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE PUBLIC WORKS DEPARTMENT REGULATIONS.  
 8. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE FIRE DEPARTMENT REGULATIONS.  
 9. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE POLICE DEPARTMENT REGULATIONS.  
 10. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE PLANNING DEPARTMENT REGULATIONS.  
 11. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE COMMUNITY DEVELOPMENT DEPARTMENT REGULATIONS.  
 12. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE ENVIRONMENTAL HEALTH SERVICES DEPARTMENT REGULATIONS.  
 13. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE PUBLIC UTILITIES DEPARTMENT REGULATIONS.  
 14. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE TRANSPORTATION DEPARTMENT REGULATIONS.  
 15. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE COMMUNITY SERVICES DEPARTMENT REGULATIONS.  
 16. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE COMMUNITY DEVELOPMENT DEPARTMENT REGULATIONS.  
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 18. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE PUBLIC UTILITIES DEPARTMENT REGULATIONS.  
 19. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE TRANSPORTATION DEPARTMENT REGULATIONS.  
 20. THE PROJECT IS TO BE DEVELOPED IN ACCORDANCE WITH THE CITY OF ORANGE COMMUNITY SERVICES DEPARTMENT REGULATIONS.

**NOTES:**

1. ALL DIMENSIONS ARE IN FEET AND DECIMALS THEREOF.  
 2. ALL DIMENSIONS ARE TO BE TAKEN FROM THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.  
 3. ALL DIMENSIONS ARE TO BE TAKEN FROM THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.  
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 20. ALL DIMENSIONS ARE TO BE TAKEN FROM THE CENTERLINE OF THE ROAD UNLESS OTHERWISE NOTED.

PREPARED BY  
 PERCIVAL SWINNEY  
 CIVIL ENGINEER  
 1000 S. MAIN ST.  
 ORANGE, CALIF. 92667  
 PHONE 714-951-1111

PROJECT OF  
 GRC ENGINEERING SERVICE  
 2200 S. MAIN ST.  
 ORANGE, CALIF. 92667  
 PHONE 714-951-1111



SCALE: 1" = 100'

AREA: 0.457 ACRES

ROUTE 57  
ORANGE FREEWAY

DETAIL B

AGREEMENT AND SITE LEASE  
AMENDMENT NO. 1:

The October 4, 1971 Agreement and Site Lease between the State of California and the Fullerton Arboretum Authority is amended as follows:

1. The property description of the Arboretum site is changed by substitution of a new Attachment A (September 17, 1985) for the original Attachment A. The original Attachment A is hereby deleted. The new Attachment A (September 17, 1985), attached hereto is hereby adopted.
2. Annex No. 1 to Attachment A as adopted by Amendment No. 2 to the Fullerton Arboretum Agreement (March 28, 1979) is also added to the Site Lease to provide a description of the Arboretum parking lot.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to the Fullerton Arboretum Agreement and Site Lease to be executed and attested by their proper officers thereunto duly authorized effective on the last date of execution of this amendment.

Executed in Long Beach, California this \_\_\_\_\_ day  
of \_\_\_\_\_, 1987.

TRUSTEES OF THE CALIFORNIA  
STATE UNIVERSITY

By \_\_\_\_\_  
Name  
Title

Attest: \_\_\_\_\_

Executed in Fullerton, California on this 15<sup>th</sup> day  
of September, 1987.

FULLERTON ARBORETUM AUTHORITY

By E. William Kyle  
Name  
Title President

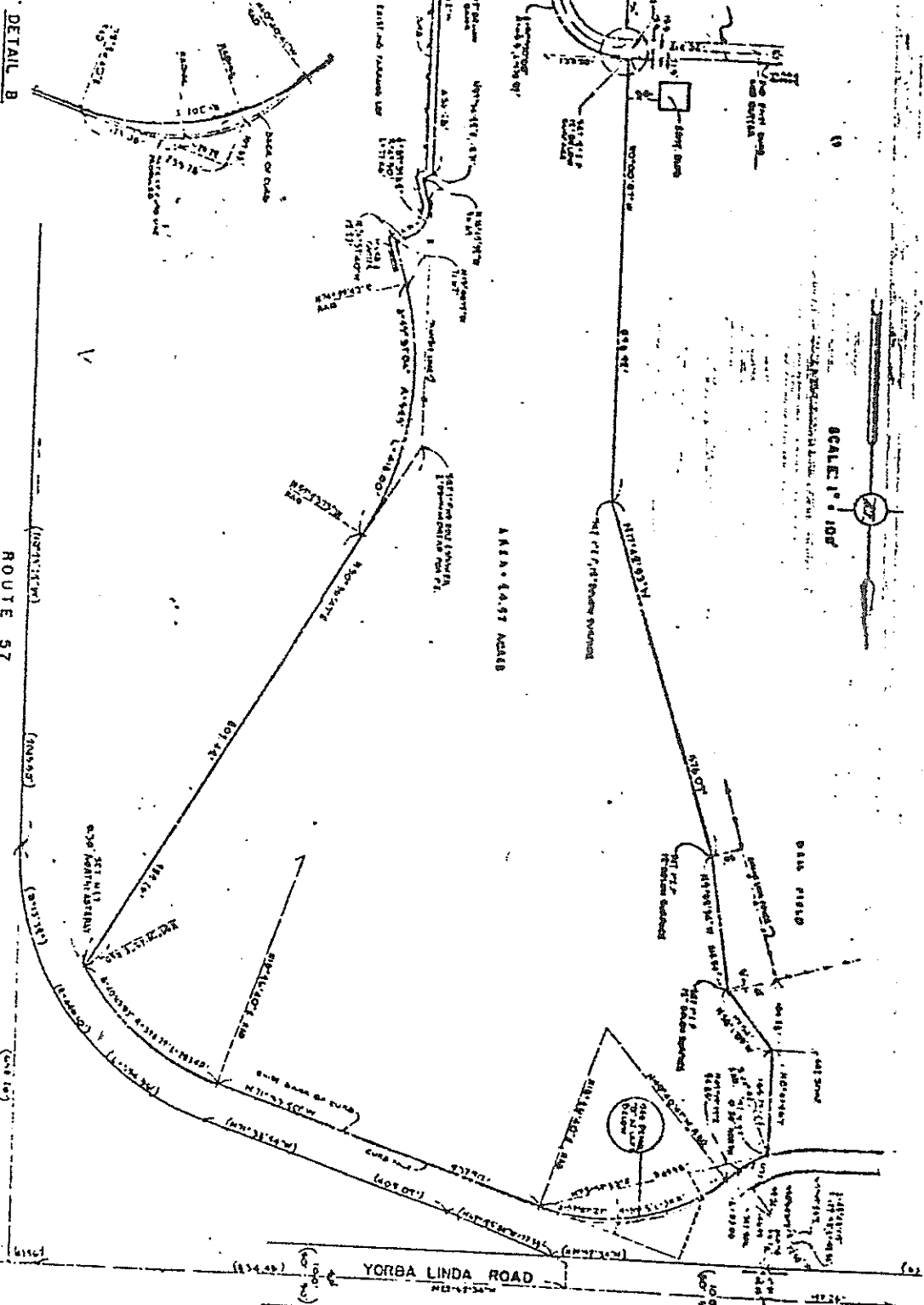
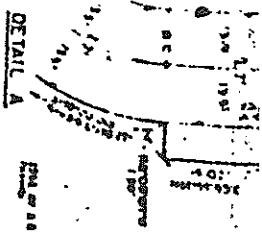
Attest: \_\_\_\_\_

APPROVED:

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

By: \_\_\_\_\_  
Name  
Title

Date: \_\_\_\_\_



SCALE 1" = 100'

AREA - 14.57 ACRES

ROUTE 57  
ORANGE FREEWAY

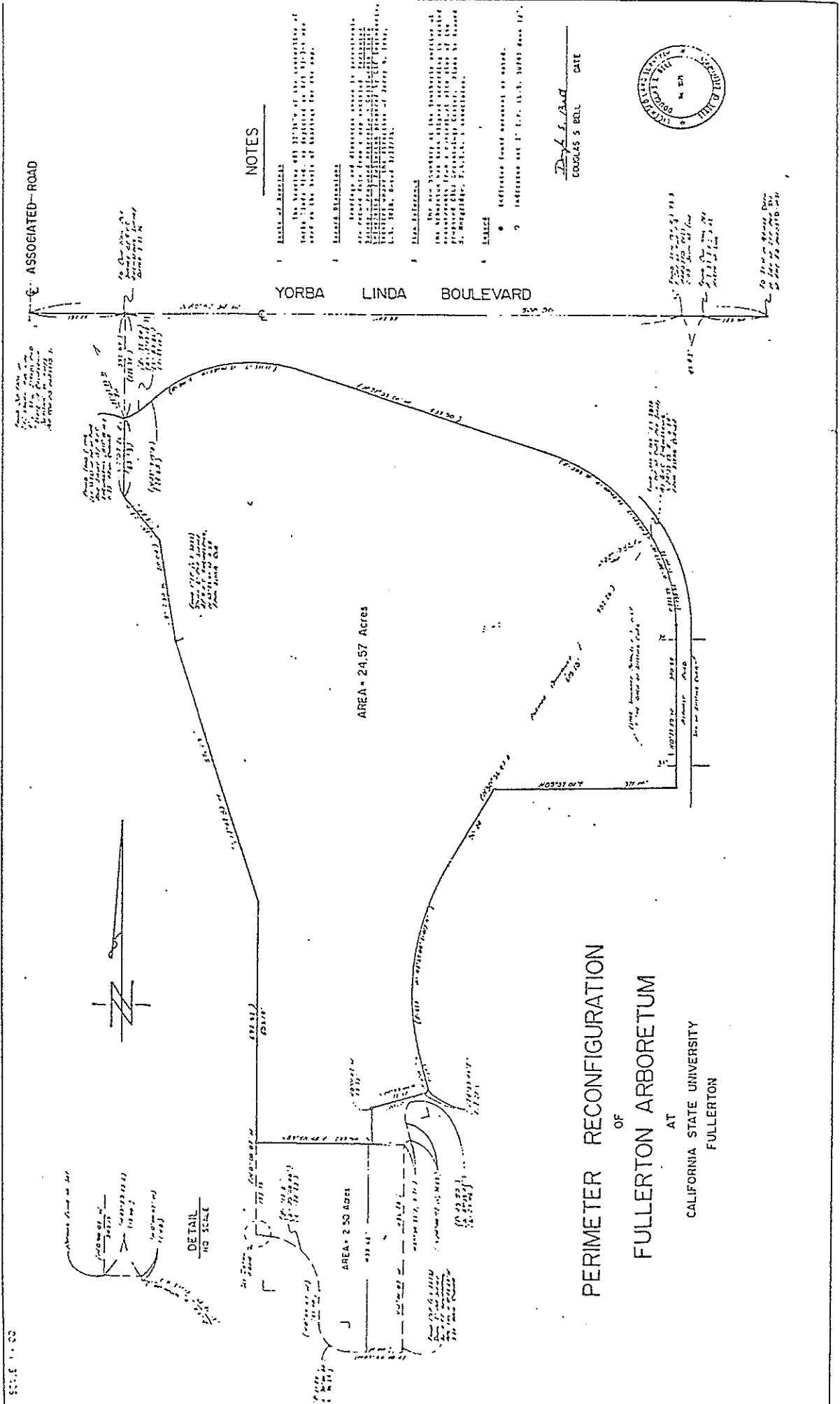
ASSOCIATED  
ROAD  
125116

**AREA OF ACQUISITION**  
 The area shown on this plan is the area of acquisition for the proposed project. It is bounded by the centerline of the proposed project and the centerline of the existing road. The area of acquisition is shown in black on this plan.

**PERMITTED STATE  
 PROJECTS AND/OR  
 CALIFORNIA STATE  
 UNIVERSITY  
 AT FULLERTON**

PREPARED BY  
**GKC ENGINEERING SERVICE**  
 2550 SERRA AVE., SUITE 100  
 FULLERTON, CALIF. 92631  
 (714) 842-2272  
 UNDER THE DIRECTION OF  
 [Signature]

September 17, 1985



SCALE 1" = 50'

DETAIL  
1/4" = 50'

AREA - 2.50 Acres

AREA - 24.57 Acres

PERIMETER RECONFIGURATION  
OF  
FULLERTON ARBORETUM  
AT  
CALIFORNIA STATE UNIVERSITY  
FULLERTON

NOTES

1. **Method of Measurement**  
The boundary and interior of the perimeter of the site were measured by the use of a total station for the 1985.
2. **Method of Measurement**  
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5. **Method of Measurement**  
The boundary and interior of the perimeter of the site were measured by the use of a total station for the 1985.

DOUGLAS S. BELL  
DATE




TO THE CALIFORNIA STATE UNIVERSITY  
FULLERTON



# Memorandum

To: Members of the Fullerton  
Arboretum Commission

Date: September 14, 1987

From:   
William G. Knight  
Assistant General Counsel  
Office of General Counsel

Subject: Site Lease Amendment

In reviewing Amendment No. 4 to the Fullerton Arboretum Agreement, the Department of General Services recommended that the Agreement and Site Lease for the Arboretum be similarly amended.

Attached is such an amendment. It also adds to the Site Lease the legal description of the Arboretum parking lot. A resolution in support of this amendment would be:

RESOLVED by the Fullerton Arboretum Commission, that Amendment No. 1 to the Agreement and Site Lease as presented to the Commission, is approved and the President of the Commission is hereby authorized to execute the amendment on behalf of the Commission.

Be advised that the amendment is between the Commission and the California State University. Pursuant to the provisions of the Fullerton Arboretum Authority Agreement, our office serves as counsel for both of the signing parties.

WGK:lr:7814a

Attachment

AGREEMENT AND SITE LEASE  
AMENDMENT NO. 1:

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2. Annex No. 1 to Attachment A as adopted by Amendment No. 2 to the Fullerton Arboretum Agreement (March 28, 1979) is also added to the Site Lease to provide a description of the Arboretum parking lot.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 1 to the Fullerton Arboretum Agreement and Site Lease to be executed and attested by their proper officers thereunto duly authorized effective on the last date of execution of this amendment.

Executed in Long Beach, California this \_\_\_\_\_ day  
of \_\_\_\_\_, 1987.

TRUSTEES OF THE CALIFORNIA  
STATE UNIVERSITY

By \_\_\_\_\_  
Name  
Title

Attest: \_\_\_\_\_

Executed in Fullerton, California on this 15<sup>th</sup> day  
of September, 1987.

FULLERTON ARBORETUM AUTHORITY

By E. William Hylle  
Name President  
Title

Attest: \_\_\_\_\_

APPROVED:

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

By: \_\_\_\_\_  
Name  
Title

Date: \_\_\_\_\_