

MAINTENANCE AND REIMBURSEMENT AGREEMENT
HERCULES TRANSIT CENTER
BART REPLACEMENT PARKING FACILITY
HERCULES, CALIFORNIA

This Maintenance and Reimbursement Agreement ("Agreement") is made and entered into this ____ day of August 2017 (the "Effective Date"), by and between the City of Hercules, a municipal corporation ("Hercules"), the San Francisco Bay Area Rapid Transit District ("BART"), and the Western Contra Costa Transit Authority ("WCCTA") on the following terms and conditions. Hercules, BART and WCCTA may be referred to individually as a "Party" or collectively the "Parties".

RECITALS

A. Effective April 10, 2006, BART and Hercules entered into an Exchange Option Agreement (the "EOA") whereby BART agreed to exchange its 6.25 acre site 15 which includes its Park and Ride Lot ("Hercules Transit Center") and several undeveloped acres of land located at the corner of Sycamore and San Pablo Avenues (the "PNR Site") for an unimproved 8.69 acre parcel of land owned by Hercules, commonly described as Contra Costa County Assessor's Parcel #406-070-043 (the "C-1 Parcel") with the intent that a Replacement Parking Facility ("RPF") be constructed on the C-1 Parcel. A C-1 parcel map and site plan drawing of the RPF is attached hereto as Exhibit A and incorporated herein by this reference.

B. BART now owns the C-1 Parcel and the RPF and the Hercules Transit Center operation has been relocated from the PNR site to the RPF.

C. On September 25, 2005, the BART Board of Directors adopted Resolution No. 4965 authorizing the General Manager to implement a parking fee program including new parking rates and charges for the Hercules Park and Ride lot. The authorized fees have been applied to the Hercules Transit Center operation at the Replacement Parking Facility.

D. The RPF, sited upon the C-1 Parcel, is located within the boundaries of the City of Hercules.

E. Proper operation, maintenance, and repair of the RPF are in the best interests of and will benefit the Parties to this Agreement as well as the entire region.

F. In July 2009, BART, WCCTA, and the Redevelopment Agency of the City of Hercules entered into a one year Maintenance and Reimbursement Agreement (the "Original Agreement") intended to determine the primary responsibilities of the parties regarding maintenance and operation of the parking program at the RPF.

G. The terms of the July 2009 Original Agreement were never continued by written agreement of the Parties as required by Section 1.03 of the Original Agreement.

H. The Parties have agreed to a means to reconcile the paid parking revenues and operating expenses since the inception of the Original Agreement through June 30th 2017 and have agreed to the amount owed by the Hercules Successor Agency to BART.

I. Since the Original Agreement became effective, redevelopment agencies across California have been dissolved, so that any new agreement should designate the City of Hercules, and not the Redevelopment Agency, as the appropriate Party to represent the City's interests.

J. For the above reasons, the Parties agree that the Original Agreement has effectively expired, and wish to enter into a New Agreement that properly identifies the current participating Parties, and the primary responsibilities of the respective Parties.

The Parties intend hereby to enter this Agreement whereby the City of Hercules will assume primary responsibility for keeping the RPF in good maintenance, condition and repair, and operating the paid parking program at the RPF, which is expected to generate the funds necessary for its proper maintenance and repair.

NOW, THEREFORE, in consideration of the mutual promises and covenants of this Agreement and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article 1. Term of this Agreement

1.1 Term. The term of this Agreement is 4 years, from August 1, 2017 until July 31, 2021. Upon expiration of the 4-year term, the Agreement shall automatically be extended for six successive 1-year terms, unless a Party provides notice to the other two Parties to terminate the automatic extension. Notice to terminate the automatic extension is to be in writing and received at least sixty (60) days before the automatic extension would become effective on August 1.

1.2 Termination. This Agreement may be terminated at any time by written mutual agreement of the Parties. Such written agreement shall include provisions for wind-down of operations and final settlement of all financial matters.

1.3 Extension. This Agreement may be extended beyond its term for an additional length of time by written mutual agreement of the Parties.

Article 2. Operation of the BART Paid Parking Program

2.1 Commencement. BART commenced its paid parking program at the new location of the Hercules Transit Center, which is the Replacement Parking Facility ("RPF"), upon the opening date of the RPF.

2.2 Operation by Hercules. BART agrees that the paid parking program at the RPF be operated by Hercules, as BART's agent, according to the roles and responsibilities more particularly described in Exhibits B and C, attached hereto and incorporated by reference. Hercules agrees to require its paid parking program contractor to include BART and WCCTA as additional insured parties for liability resulting from acts or omissions of said contractor in connection with operation of the paid parking program.

2.3 Transit Revenue. BART agrees that WCCTA shall receive the revenue for transit fares when such fares are included in parking rates charged to the public under the paid parking program,

and WCCTA agrees to receive such revenue as full payment for fares charged to BART patrons between the Hercules Transit Center and BART's El Cerrito del Norte station.

2.4 Self-Funding of RPF Maintenance. BART agrees that the costs of maintaining the RPF are to be funded by revenues obtained from the paid parking program at the RPF. The parties agree that if the revenues obtained from said parking program are insufficient to cover maintenance and repair, as described in Article 3.4 below, and/or operation of the paid parking program, as described in this Article 2, the Parties shall meet and confer to determine the means to pay for such maintenance and repair costs.

Article 3. Maintenance and Repair of the Replacement Parking Facility

3.1 Maintenance and Repair by Hercules. BART and Hercules agree that Hercules will prepare an annual operating budget which includes maintenance and repair, and then maintain and repair both the RPF and BART's C-1 parcel (for maintenance, repair and operation purposes hereinafter collectively referred to as the "RPF") on behalf of BART as described in this Article. Hercules agrees to require its maintenance and repair contractor to include BART and WCCTA as additional insured parties for liability resulting from the acts or omissions of said contractor in connection with maintenance and repair of the RPF.

3.2 Budgeting of Maintenance and Repair. At least once each fiscal year, Hercules shall prepare and submit to the Parties for their consideration a budget for anticipated RPF maintenance and repair costs for the current or ensuing fiscal year. The Parties shall thereafter negotiate any proposed changes to the submitted budget and shall adopt a mutually agreed budget upon commencement of operations and prior to the start of each ensuing fiscal year.

3.3 Hercules Implementation of Budgeted Maintenance and Repair. Once a budget is adopted, and except for damage repair as provided in (d) below, Hercules shall coordinate, procure, implement, incur costs within budget and account for all normal, typical and usual maintenance and repair of the RPF. Hercules shall then claim all such costs, including reasonable administrative, supervision and overhead costs, against the revenues generated from the paid parking program.

3.4 Parties' Responsibilities for Maintenance and Repair.

- (a) Hercules Responsibilities. Hercules shall initially expend funds, to be reimbursed from revenues generated from the paid parking program to accomplish maintenance and repair tasks including without limitation:
 - (i) Emptying all trash receptacles not less than three times per week and more frequently as needed; and
 - (ii) Keeping the RPF pavement and pavement markings in good order, condition and repair; and
 - (iii) Maintain in good order the restroom, bus shelters and lighting fixtures; and
 - (iv) Provide or pay for water, power and wastewater services; and

- (v) Providing for landscape maintenance services including, but not limited to, plant, tree and shrub and sprinkler system maintenance and repair; and
 - (vi) Remove trash and graffiti from all surfaces as needed; and
 - (vii) Repairing fencing, benches and signs as required; and
 - (viii) Monitoring the RPF on a weekly basis to determine other operating, maintenance and repair needs; and
 - (ix) Planning, coordinating and conducting an annual meeting of the Parties.
- (b) BART Responsibilities. BART shall, at its sole cost and expense:
- (i) Attend, and cause a representative of its police force to attend, an annual meeting of the Parties; and
 - (ii) Promptly notify Hercules of any maintenance and repair needs of which it becomes aware at the RPF.
- (c) WCCTA Responsibilities. WCCTA shall, at its sole cost and expense:
- (i) Reimburse Hercules for cleaning, maintenance and supplies in the restroom, to which WCCTA shall control and limit access to only its employees; and
 - (ii) Reimburse Hercules for maintenance and repair costs for unusual pavement or striping wear due to bus traffic in the areas traveled by WCCTA buses; and
 - (iii) Attend the annual meeting of the Parties; and
 - (iv) Promptly notify Hercules of any maintenance and repair needs of which it becomes aware at the RPF.
- (d) Notwithstanding anything to the contrary in this Agreement, if a Party or any person acting under the authority of that Party, including any licensee, invitee, agent, employee, tenant, guest or family member thereof, damages the RPF, the responsible Party shall pay all costs to repair or replace the damaged portion of the RPF.

3.5 Emergency Repairs. Notwithstanding anything in this Agreement to the contrary, any Party may make such emergency repairs as that Party, in the exercise of its reasonable business judgment, considers necessary in order to render the RPF safe for its intended use (the "Repairing Party"). The Repairing Party shall immediately notify the other Parties (the "Non-Repairing Parties") in writing of the reason for and the cost of the emergency repairs, together with such supporting documentation as may be reasonably requested by the Non-Repairing Parties. The emergency repair costs shall be charged against parking revenues, or, if such charges cause more than a ten per cent deviation from the budgeted amount remaining in the current fiscal year, the Parties shall meet and confer to determine the means to pay for such deviation.

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3.6 Budgeting of Capital Improvements. Concurrently with the preparation of an annual

operating budget, Hercules will prepare a Capital Improvement Budget which proposes improvements to the RPF and immediate area and which will identify which of the Parties shall undertake and implement the Capital Improvements.

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3.7 Implementation of Capital Improvement Budget. Once a Capital Improvement Budget is adopted, any of the Parties may coordinate, procure, implement, incur improvement costs within budget and shall be reimbursed all such costs, including reasonable administrative, supervision and overhead costs, against the revenues generated from the paid parking program.

3.8 Insurance. BART shall, at its sole cost and expense, cause its general liability insurance or self-insurance policies to include full coverage for liability arising from the ownership, use, maintenance and repair of the RPF, to the extent that such liability is not a result of the acts or omissions of Hercules' contractors for the paid parking program or maintenance and repair, and to the extent that such liability is not a result of the active negligence or willful misconduct of an Indemnitee (other than BART) as defined in Section 5.07 below.

Article 4. Alternative Dispute Resolution Procedures

4.1 Resolution Notice. If any dispute arises between Parties regarding the rights or duties of the Parties under this Agreement, any Party may submit a written request to the other Parties to have the dispute resolved in accordance with the provisions of this Article 4 (the "Resolution Notice"). The Resolution Notice shall specify the nature of and basis for the dispute for which resolution is sought

4.2 Resolution Meeting. No later than 20 business days following the receipt of the Resolution Notice by the other Parties, duly authorized representatives of all Parties shall meet and negotiate in good faith in an effort to resolve the dispute. Each representative shall be duly authorized to bind the Party it represents to a resolution of the dispute and shall be prepared to devote a full day to the negotiations. If a Party refuses or fails to meet for any reason or if the dispute cannot be resolved as a result of the meeting, the Parties shall in good faith attempt to resolve the dispute in accordance with the procedures described in Section 4.03.

4.3 Mediation. Any dispute that remains unresolved after the Resolution Meeting described in Section 4.2 above shall immediately be submitted to non-binding, neutral mediation before a mutually acceptable, neutral retired judge or justice at the Walnut Creek or San Francisco Offices of the Judicial Arbitration and Mediation Services ("JAMS"). If within five (5) days after the Resolution Meeting the Parties are unable to agree upon the selection of a neutral mediator, then the first available retired judge or justice at JAMS shall serve as the neutral mediator. The Parties agree to dedicate at least one full day (8 hours) to the mediation process. Each primary contact, or the duly authorized person acting in their absence, shall attend the mediation and shall have full authority to resolve the dispute. Additionally, to expedite the resolution of any dispute that is not resolved by mediation, the Parties agree to each bring to the neutral mediation a list of at least five (5) neutral arbitrators, including their resumes, whose availability for an arbitration hearing within fifteen (15) days after the mediation has been confirmed.

The mediation shall be held in Contra Costa County or such other county mutually agreed upon by the Parties. The mediation shall be subject to the provisions of California Evidence Code sections 1115 through 1128, or any successor statutes thereto, except as the Parties may agree otherwise in writing or orally in accordance with the requirements of California Evidence Code section 1118. There shall be no stenographic record of the mediation process. The expenses of person participating in the mediation at the request of any Party shall be paid by that Party. The expenses of the mediator shall be borne equally by the Parties unless they agree otherwise.

If mediation is unsuccessful, the parties may pursue their respective remedies at law or equity.

Article 5 Miscellaneous

5.1 Amounts Owed to BART by Hercules Successor Agency. The Parties agree that the City shall use its best efforts to have the amount owed to BART as established on Exhibit D added to the Successor Agency Recognized Obligation Payment Schedule (ROPS) and to secure approval of the addition from the State Department of Finance for the repayment to BART by the Hercules Successor Agency.

5.2 No Joint Venture; No Public Rights. No provision of this Agreement shall be deemed to constitute the Parties as partners or joint venturers of one another, or in any way to obligate any Party for the performance of any obligation of the other Party not expressly assumed in this Agreement.

5.3 Binding Effect. All of the terms, covenants and conditions of this Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. Any person accepting a deed or other instrument conveying, granting or assigning any property affected or benefited by this Agreement or any portion thereof or interest therein shall take title subject to this Agreement and such person shall be deemed to have assumed all of the applicable obligations imposed on the Parties with regard to such property regardless of whether this Agreement is mentioned in such deed or other instrument.

5.4 Amendments. This Agreement may be amended only by a written instrument which is executed by the Parties. No other method of amendment or termination of this Agreement will be effective for any purpose.

5.5 No Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute a waiver of, acquiescence in or consent to, any other, further or succeeding breach of the same or any other term, covenant or condition.

5.6 Interpretation. If any term or provision of this Agreement shall, to any extent, be invalid or unenforceable under applicable law, then the remaining terms and provisions of this Agreement shall not be affected, and each such remaining term and provision shall be valid and enforced to the fullest extent permitted by applicable law. This Agreement shall be construed and enforced in accordance with the laws of the State of California.

5.7 Notices. All notices and payments required under the terms of this Agreement shall

be sent to the Parties at the addresses set forth below:

Hercules: City of Hercules
111 Civic Drive
Hercules, California 94547
Attention: City Manager

BART: San Francisco Bay Area Rapid Transit District
Real Estate and Property Development Department
300 Lakeside Drive, 22nd Floor
Oakland, California 94612
Attention: Department Manager

With a Copy to: San Francisco Bay Area Rapid Transit District
Office of the General Counsel
300 Lakeside Drive, 23rd Floor
Oakland, California 94612

WCCTA: General Manager
Western Contra Costa Transit Authority
601 Walter Avenue
Pinole, California 94564

Any notice or payment shall be deemed given and received when personally delivered or seventy-two (72) hours after deposit into the United States mail, certified or registered, return receipt requested, addressed to the appropriate foregoing address, or to such other address as a Party may specify by written notice delivered as provided in this paragraph.

5.8 Indemnification. Each of the Parties here to (each, an "Indemnitor") agrees to defend, indemnify, and hold harmless each of the other Parties hereto, their directors, officers, agents, and employees (each, an "Indemnitee"), from all claims, demands, suits, loss, damages, injury, and liability, direct or indirect (including any and all costs and expenses in connection therewith), to the extent incurred by reason of any act or failure to act, of Indemnitor, its directors, officers, agents, or employees and contractors, under or in connection with this Agreement. Each Indemnitor agrees at its own cost, expense, and risk to defend any and all claims, action, suits or other legal proceedings brought or instituted against Indemnitees, their directors, officers, agents and employees, arising out of or resulting from any activity related to this Agreement, and to pay and satisfy any resulting judgments. The foregoing indemnification shall be applicable regardless of BART's appointment of Hercules as its Agent for the paid parking program. The foregoing indemnification obligation shall not apply to liability arising solely from active negligence or willful misconduct of an Indemnitee, its directors, officers, agents, or employees.

The Parties have executed, acknowledged and delivered this Agreement as of the date first above written.

City of Hercules

By: _____

Its: _____

Date: _____

Approved as to Form:

City Attorney

San Francisco Bay Area Rapid Transit District

By: _____

Its: _____

Date: _____

Approved as to Form:

Office of General Counsel

West Contra Costa Transit Authority

By: _____

Its: _____

Date: _____

EXHIBIT B
HERCULES TRANSIT CENTER
PAID PARKING PROGRAM

Names of Facilities and Operations

BART is the owner and operator of the Hercules Park and Ride Lot, and will be the owner and operator of the Replacement Parking Facility. The program of operation, regardless of which facility is used, has been identified and branded to the public as "Hercules Transit Center."

BART's Paid parking Program

BART has implemented a system-wide program of paid automobile parking at its parking facilities, including at its property in Hercules. The purposes of the paid parking program are to encourage the use of transit properties for transit purposes, and to generate revenue to support transit.

Hercules Appointed BART's Agent; Scope of Agency

BART hereby appoints the City of Hercules ("Hercules") as its Administrative and Fiscal Agent ("Agent") for the paid parking program at the Hercules Transit Center.

Hercules shall consult with BART in identifying the manner in which a paid parking program is to be introduced and operated at the RPF, including the vendor, equipment, placement of equipment and operation of the program (the "Program Parameters"). BART shall have final approval of the Program Parameters and shall designate its approval in writing to the City.

Duties of Hercules and BART

As Agent, Hercules shall perform the following duties:

- H1. Inform the public, via signage and other means, of the rates and charges applicable for automobile parking at the RPF.
- H2. Issue daily and monthly permits ("Permits") for automobile parking at the RPF by selling Permits to the public; and providing related information and services to the public by telephone and other means.
- H3. Enforce compliance with permit conditions by patrol and issuance of notices of violations ("Tickets").
- H4. Collect and account for revenue from Permits ("Permit Revenue") and from Tickets ("Ticket Revenue")
- H5. Select and contract a vendor to perform some or all of duties (H1) through (H4).
- H6. Remit a sum to WCCTA, monthly, equal to the portion of Permit Revenue collected for transit fares.

- H7. Remit a sum to BART, monthly, equal to the amount of Operating Income to BART as computed under the heading "Distribution of Operating Income" below.
- H8. Appoint a single BART Program Manager for routine communication and decisions about the day-to-day operation of the paid parking program.
- H9. Perform other related acts, and assume other responsibilities, necessary and reasonably related to the businesslike performance of duties (H1) through (H7); such other acts and responsibilities subject to prior written notice and approval of BART.

As Owner and Operator, BART shall perform the following duties:

- B1. Establish rates and charges for daily and monthly automobile parking at the RPF. The initial rates and charges shall be as set forth in Exhibit C.
- B2. Provide signage and other equipment as needed to announce the paid parking program to the public; such media to identify the paid parking program as a policy of BART and not Hercules.
- B3. Appoint a Customer Access Manager to assist and direct Hercules in the day-to-day operation of the paid parking program.

Distribution of Operating Income

Hercules shall, on behalf of BART, collect Permit Revenue from the public. Each month, the following amounts shall be deducted from Permit Revenue, in the following order:

1. Transit Revenue to WCCTA.
2. Costs of collecting Ticket Revenue, including vendor costs and allocations of staff costs for accounting and other administrative services related to issuing permits, serving the public, and revenue accounting and distribution.
3. Maintenance and Repair Costs for the RPF, as agreed by the Parties in the body of this Agreement, and pursuant to the annual adopted Operating Budget.
4. Capital Improvements Costs for the RPF, as agreed by the Parties each year.

The amount remaining, if any, after deductions (1) through (4) in the order listed, is the "Operating Income" of the paid parking program and shall be paid annually from Hercules to BART.

Ticket Revenue

Hercules shall also collect Ticket Revenue. The amount of Ticket Revenue remaining after paying the costs of collecting Ticket Revenue shall be remitted to Hercules for the purpose of partially reimbursing public safety costs incurred by the City of Hercules Police Department on BART property in the City of Hercules.

EXHIBIT C
INITIAL PARKING RATES AND CHARGES
FOR THE
PAID PARKING PROGRAM
AT THE
HERCULES TRANSIT CENTER

Daily Paid Parking

A \$3.00 daily parking fee will be charged which includes two one-way dated WCCTA bus tickets valid to and from the BART El Cerrito del Norte Station.

Reserved Parking

The monthly fee for the Monthly Reserved Parking permit is \$63.00. The monthly fee for the discounted monthly reserved parking permit with a 31-day unlimited-use pass for WCCTA is \$80.00.

Adjustments To The Parking Rates And Charges

BART shall be responsible for any adjustments in the daily parking fee and the monthly reserved permit fee. The Customer Access Manager shall notify the Agency in writing of any fee adjustments and when they are to become effective. Unless modified by an action of the BART Board of Directors, the daily parking fee may be adjusted within a range of \$3.00 to \$8.00 and the monthly reserved permit fee may be adjusted within a range of \$42.00 to \$105.00 based on the utilization of the RPF, if such adjustment is necessary to ensure that priority in use is provided to BART patrons using WCCTA access from the lot to the El Cerrito del Norte BART Station.