

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF HERCULES AND BAYFRONT HERCULES PARTNERS**

This Memorandum of Understanding (MOU) is between the City of Hercules (CITY) and Hercules Bayfront (OWNER); individually a “party,” and collectively the “parties.” This MOU identifies the responsibilities and understanding between both parties for enabling temporary public transit use of an existing easement on OWNER’s properties on Bayfront Boulevard.

1. RECITALS

OWNER, a California General Partnership, owns two parcels of land adjacent to Bayfront Boulevard in Hercules, identified as Assessor’s Parcel Numbers 404-490-102-5 and 404-490-101-7 (PROPERTIES). The PROPERTIES are encumbered by an existing public use easement recorded on the Final Map for Subdivision 8407 (Hercules Village, recorded December 12, 2001) which provides that “areas marked ‘a.e.’ or ‘access easement’ are dedicated to the City of Hercules and to the homeowners of Subdivision 8407 for ingress and egress purposes including emergency vehicle access, construction, maintenance of works, improvements and structures, whether covered or open, or the clearing of obstructions and vegetation.”

The CITY owns and maintains Bayfront Boulevard and has previously established and affirmed the CITY’s commitment to constructing the Regional Intermodal Transportation Center (RICT) project, a publicly-sponsored project to be located on Bayfront Boulevard and serving the Hercules Waterfront District. The RITC will provide the community and region as a whole significantly enhanced transit options, including a train station, bus service, and connection to potential future ferry service.

The first phase of the Bayfront Transit Village Project is under construction and anticipated to be complete in the second quarter of 2020, precipitating increased demand for local bus service, which is provided by the West Contra Costa Transit Authority (WestCAT). Currently—and until the RITC is constructed—there is insufficient public roadway in the Waterfront to facilitate bus turn-arounds on Bayfront Boulevard as part of WestCAT’s preferred route of service, whereby buses would drive to and from the Waterfront District via John Muir Parkway and Bayfront Boulevard. However, with minor improvements, existing private roadways with public access easements on the OWNER’s two parcels on Bayfront Boulevard could enable buses to turn around at Bayfront Boulevard and Railroad Avenue and thus provide bus service to the Waterfront District on an interim basis until either (a) the RITC is completed or (b) the OWNER is prepared to begin developing the PROPERTIES, whichever occurs first.

2. RESPONSIBILITIES AND UNDERSTANDING OF THE CITY

1. The CITY shall establish a staff liaison to serve as the main point of contact to OWNER. The CITY agrees to respond to OWNER within two CITY business days to correspondence or contact.
2.
 - a) The CITY shall be responsible for installing and maintaining alleys, driveways, and curbs and other improvements needed for interim bus service on PROPERTIES and adjacent public right-of-ways for the duration of the MOU, per the civil engineering plan in Attachment A.
 - b) The CITY shall be responsible for removing temporary improvements needed for interim bus service within six (6) months of either the expiration of the term, or termination of this MOU.
3. The CITY shall clear the PROPERTIES of weeds and overgrowth for the duration of the MOU as needed to:
 - Meet Rodeo-Hercules Fire District's fire prevention standards; and
 - Maintain the property free of weeds and plant growth in excess of twelve (12) inches in height (per Chapter 18 of the Hercules Municipal Code, "Property Maintenance Code").

3. RESPONSIBILITIES AND UNDERSTANDING OF OWNER

1. OWNER shall allow expanded public use of alleys and roadways for interim bus service for the duration of this MOU.
2. OWNER shall establish a liaison to serve as the main point of contact to the CITY. OWNER agree to respond to the CITY within two CITY business days to correspondence or contact.
3. Except for CITY-provided weed and plant abatement (as provided above), OWNER shall be responsible for maintaining the PROPERTIES free of trash, debris, and any other materials or activities constituting a nuisance or posing a threat to public safety, welfare, and nearby properties.

4. UNDERSTANDING OF BOTH PARTIES

1. Each Party shall indemnify and hold the other harmless from and against any and all claims, demands, actions, rights of action, damages, costs and expenses which shall or may arise by virtue of anything done or omitted to be done by the indemnifying Party (or through or

by its Agents) in breach of the terms of this MOU. The indemnifying Party shall be notified promptly of the existence of the claims, demands, actions, or rights of action and shall be given reasonable opportunity to defend same in which defense the Party to be indemnified shall cooperate. If the indemnifying Party fails forthwith upon notice to assume such defense, then the Party to be indemnified may proceed with the defense thereof including settlement, in which case the indemnifying Party shall bear the costs of defense including attorneys' fees and shall pay the amount of any judgment or settlement.

2. Nothing in this MOU shall limit OWNER's right to develop the PROPERTIES consistent with the Waterfront District Master Plan, the CITY'S Zoning Ordinance, and other regulatory documents, as applicable.
3. Amendments. Both parties agree to meet, review, and update if needed this MOU each calendar year by January 31. This MOU may be amended only in writing, signed by the CITY and OWNER. Proposed major amendments to this MOU are subject to City Council approval.
4. Disputes. Both parties agree if any issue arises outside of responsibilities outlined in this MOU, that both parties will meet and discuss such issue within ten business days of receipt of notice of request to meet.
5. Term. This MOU is for a term of three (3) years, and may be extended on an annual basis until either (a) the RITC is completed, or (b) the OWNER is prepared to begin developing the PROPERTIES, or (c) if terminated pursuant to Section 4.5 below.
6. Termination. At any time, either party may for any reason, including but not limited to WestCAT suspension of service, give six months (180 days) written notice to the other party if it desires to terminate the expanded use for interim bus service of the existing public easement on the PROPERTIES as specified in this MOU between the CITY and OWNER. Such written notice shall be provided to WestCAT at the same time any such notice to the other party is given.

The CITY and OWNER have executed this MOU as of the dates set forth with the signatures below. The effective date of this MOU shall be the date it is signed by the CITY.

CITY OF HERCULES

CITY MANAGER SIGNATURE

DATE

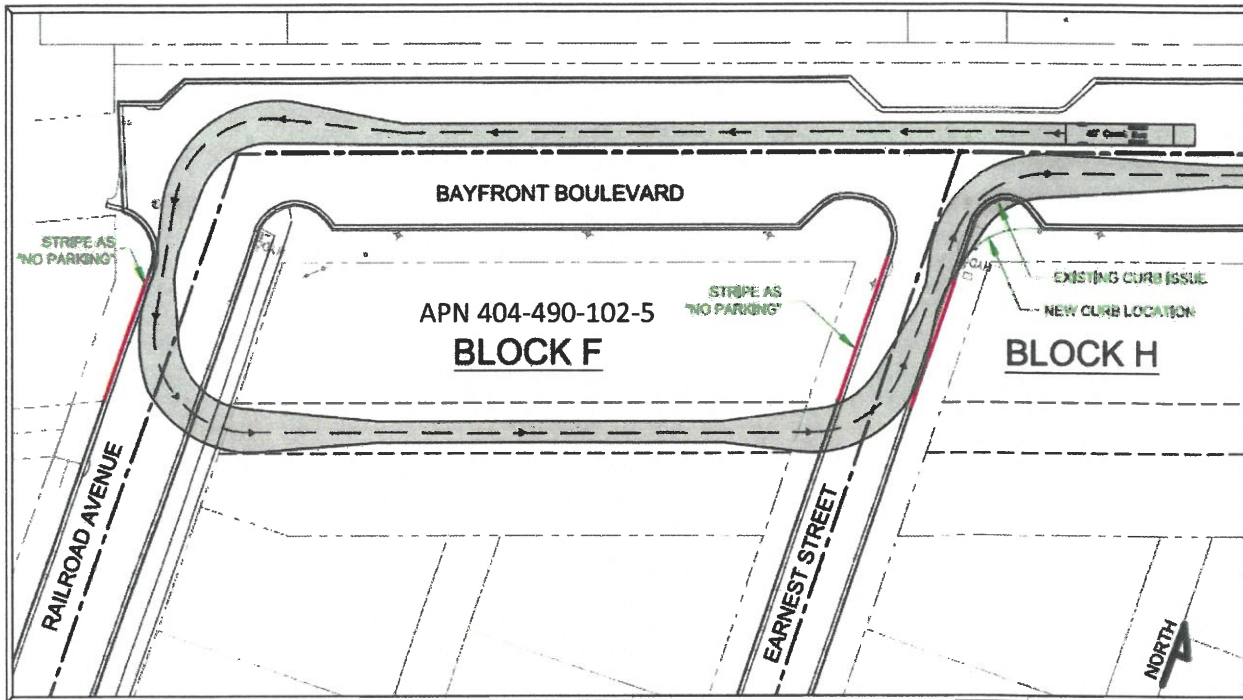
OWNER



OWNER REPRESENTATIVE SIGNATURE

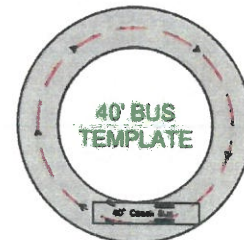
9/12/19
DATE

ATTACHMENT A
OWNER SITE PLAN



CITY OF HERCULES
BAYFRONT BOULEVARD

OPTION 1: "BLOCK F"- BUS TURN AROUND



SEPTEMBER-17-2018

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