

OPERATING MEMORANDUM

Adopted Pursuant to Section 11.3 of the Implementing Development Agreement for the
Hercules Bayfront Project Recorded June 15, 2012

Bayfront Parking

This operating memorandum (the “Operating Memorandum”) is entered into pursuant to Section 11.3 of that certain Implementing Development Agreement dated March 14, 2012, and recorded in the Official Records of Contra Costa County on June 15, 2012 as Doc-2012-0142855-00 (the “Agreement”).

Section 11.3 of the Agreement provides for the use of operating memoranda to document minor changes, adjustments or clarifications to further the intended purposes of the Agreement, without an amendment to the Agreement.

All initially capitalized terms used herein shall have the definitions given to them in the Agreement, unless otherwise expressly provided herein.

The City and Owner refine and clarify the Agreement as follows:

Parking Agreement

The Parties agree that this Operating Memorandum constitutes an Implementation Agreement as contemplated by, and fully and finally satisfies the terms of, Condition 11(f) to the City Council’s July 23, 2019 Resolution No. 19-044.

The City and Owner agree to enter into a Bayfront parking operations agreement (the “Parking Operations Agreement”) with the goal of completing the Parking Operations Agreement by December 31, 2020, and in any event before train or ferry service become fully operational, that will govern

publicly-available parking serving the ITC Project, including the “Shared Private Parking,” (as defined in Section 7 below), on the terms and conditions described below. The Parking Operations Agreement shall become effective upon the earlier of train or ferry service becoming fully operational at the ITC Project; however, the Parking Operations Agreement, or elements thereof, may become effective sooner upon mutual agreement between City and Owner. The Parking Operations Agreement shall be recorded and shall be an obligation of any successors or assigns to the Owner, and shall include the following terms:

1. The City and Owner shall form a parking association or district (the “Parking Entity”) to establish and enforce the rules and manage the operations of the publicly-available parking serving the ITC Project, including Shared Private Parking, but will not have the authority to impose taxes and thus shall not be considered a taxing entity. The Parking Entity shall be managed by a supervisory board (the “Board”) comprised of Owner and City appointees.
2. The Board will establish rules and set rates and hours for on-street public parking, off-street public parking, and Shared Private Parking within the Bayfront Master Plan. Notwithstanding the foregoing, the hours the Shared Private Parking shall be available to the public will be Monday through Friday (excluding holidays) from 7:30 AM to 6:00 PM and at no other time.
3. The City will enforce public on-street and public off-street parking and the Owner will enforce Shared Private Parking, each at their sole cost and expense.
4. Parking policies may include:
 - 4.1. Demand-based pricing (“performance-based parking management”).
 - 4.2. Time limits
 - 4.3. Residential permits
5. The Board will adopt a budget for administration/operation of the Parking Entity on an annual basis and a year-end reconciliation of actual revenues and expenses will be performed. Owner and the

City agree that each Party shall pay for its proportionate share of the administrative/operational expenses of the Parking Entity.

6. Revenues from private parking (including Shared Private Parking) would be retained by Owner and revenues from the public parking would be retained by the Parking Entity. Certain revenues collected from Shared Private Parking spaces may be collected by the Parking Entity, depending upon operational considerations including customer convenience (such as a community distribution kiosk), but such revenues would be paid by the Parking Entity to Owner.
7. Owner agrees to share a total of 10% of its private parking spaces (exclusively in Blocks E, G, J, K, L, M, N, O, P, Q and R) in the Project, on a block-by block basis, for public use subject to the time limits in Section 2 and other operational considerations, once rail service becomes operational at the ITC Project (the “10% Shared Parking”). It is anticipated that at full-build-out this will equal 176 spaces.

In addition to the 10% Shared Parking, Owner agrees to share 40 additional parking spaces for shared public-private use (the “40 Shared Parking Spaces,”) once both rail and ferry service become fully operational at the ITC Project. The 40 Shared Parking Spaces shall be as designated by the Owner in consultation with the City, with the intent that they too will be equally distributed among the participating Blocks, and shall also be subject to the time limitations provided for in Section 2 above.

“Shared Private Parking” shall mean: (i) the 10% Shared Parking once rail or ferry service is operational, and (ii) the 10% Shared Parking and the 40 Shared Parking Spaces once both rail and ferry services are operational.

8. If actual parking demand is different than projected in the demand analysis prepared by CDM Smith dated October 14, 2019 (the “Demand Analysis”), Shared Private Parking supply could flex higher or

lower subject to a cap and a floor, pursuant to a process to be delineated in the Parking Operations Agreement.

9. Owner agrees that the City may provide public on-street parking around Block K, and Owner will not exercise its right to purchase the land under the former second crossing of Refugio Creek, provided such wrap around street can also be utilized for EVA purposes for the Project.
10. The ability of users to determine the location of public parking and Shared Private Parking in the Bayfront Master Plan area will be greatly simplified by use of common software and smartphone apps that map available parking supply by location and allow/promote daily parking reservations, as managed by the Association.
11. Parking wayfinding and directional signage will be consistent throughout the Bayfront Master Plan area, clearly signaling the location and entrances of public parking and Shared Private Parking locations.
12. City staff and Owner will explore the feasibility of options for connecting the below grade garages on the Owner owned Block G and the City owned Block I, where the ITC Project will be built, which create efficiency by the possible elimination of ramping the garage under the ITC Project.
13. Other City options to accommodate parking demand at even higher levels than projected by the Demand Analysis include shuttling from the Hercules Transit Center, and/or building a second level of parking below the ITC for a total of 158 spaces. Owner shall have no obligation whatsoever with respect to these options.
14. City and Owner agree that additional terms as may be necessary to incorporate into the Parking Operations Agreement shall be guided by and consistent with the Waterfront District Master Plan and the requirements of the Agreement.

Miscellaneous

Pursuant to Section 11.3 of the Agreement, this Operating Memorandum will be attached as an addendum to and made part of the Agreement.

The Agreement remains unmodified and in full force and effect, except as refined in this Operating Memorandum.

This Operating Memorandum is for the sole benefit of the parties hereto and their respective successors and assigns (to the extent permitted by the Agreement), and no third party beneficiaries are intended or created hereby.

As a condition of entering into this Operating Memorandum, Owner agrees to withdraw its October 21, 2019 “Notice of Default under Implementing Development Agreement and Notice of Mitigation Fee Act Protest.”

This Operating Memorandum may be executed in multiple counterpart copies, any one of which when duly executed, with all formalities hereof, shall be fully binding and effective as the original of this Operating Memorandum.

Each of the undersigned hereby executes this Operating Memorandum to evidence their respective agreement to the above terms of this Operating Memorandum, effective as of the date set forth below.

Operating Memorandum Effective Date: _____, ____

“CITY”

City of Hercules

David Biggs

City Manager

“OWNER”

Hercules Development Partners LP

Pat Patterson, COO, Development

Approved as to form:

By: _____

City Attorney

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DRAFT 2/18/20