

## NOTICE OF SPECIAL MEETING

### PLEASANT HILL BART STATION LEASING AUTHORITY

April 19, 2021 @ 1:00 PM

\*Meeting Remotely Until Further Notice\*

To slow the spread of COVID-19, the Health Officer's Shelter Order of March 10, 2021, prevents public gatherings (**Health Officer Order**). In lieu of a public gathering, the Pleasant Hill BART Station Leasing Authority meeting will be accessible via Zoom to all members of the public as permitted by the Governor's Executive Order N29-20.

Join from PC, Mac, Linux, iOS or Android: <https://cccouny-us.zoom.us/j/82517987818> or  
Telephone: Dial: USA 214 765 0478 or 888-278-0254 (US Toll Free) - Conference code:  
841892

1. Call to Order and Roll Call
2. Accept the Record of the Meeting of February 19, 2019
3. Public Comment on Items in Notice

*The Board shall provide the public with an opportunity to address the Board on any item described in the notice of special meeting before or during consideration of such item. Persons who wish to address the Board with respect to an item that is on the agenda will be limited to three minutes. Persons wishing to speak are asked to fill out a speaker card.*

4. Action on Resolution 29 - Resolution approving the Second Amendment to License Agreement, dated April 19, 2021, between the Pleasant Hill Bart Station Leasing Authority, a joint powers agency, and Avalon Oak Road, L.P., a Delaware limited liability company, related to parking on Block D. *CEQA: Second Addendum to Mitigated Negative Declaration, Adopted August 18, 2015. No further CEQA analysis required per CEQA Guidelines Section 15162.*
5. Adjourn

## ANNOTATED AGENDA FOR SPECIAL MEETING

### PLEASANT HILL BART STATION LEASING AUTHORITY

10:00 AM on February 19, 2019

Contra Costa Transportation Authority (CCTA) Board Room  
2999 Oak Road, First Floor  
Walnut Creek, California

1. Call to Order and Roll Call – The meeting was called to order by Chair Anderson. Board members Allen, Anderson, Foley, and Mitchoff were present. Staff in attendance included Sean Brooks (BART), Kimberly Koepell (BART), John Rennel (BART), Maureen Toms (CCC), Kathleen Andrus (CCC), Jim Kennedy (JK2), Heather Gould (Goldfarb Lipman), and Tim Kelly (Keyser Marsten Associates)
2. Action on Resolution 25 - Resolution designating Chair of the Pleasant Hill BART Station Leasing Authority. Resolution 25, designating Board Member Allen as Chair, was approved. (M/S Anderson/Mitchoff, 4-0-0)
3. Action on Resolution 26 - Resolution adopting a budget July 1, 2019 – June 30, 2022 for the Pleasant Hill BART Station Leasing Authority. Resolution 26, Approving the budget, with a request to clarify future presentations of the budget to make sure they are more clear, was approved. (M/S Mitchoff/Foley, 4-0-0)
4. Public Comment on Items in Notice- No Public Comments

The Board shall provide the public with an opportunity to address the Board on any item described in the notice of special meeting before or during consideration of such item. Persons who wish to address the Board with respect to an item that is on the agenda will be limited to three minutes. Persons wishing to speak are asked to fill out a speaker card.

5. Accept the Record of the Meeting of August 22, 2018. The Record of Meeting was approved. (M/S Anderson/Mitchoff, 4-0-0)
6. Closed Session Conference with Real Property Negotiator

*Citizens may address the Board regarding a Closed Session item prior to the Board adjourning into the Closed Session, by first providing a speaker card to the Secretary.*

- Pursuant to Government Code Section 54956.8
- Property Location: Block D of the Pleasant Hill/Contract Costa Centre BART Station Transit Village APN No. 148-221-043

- Authority Negotiators: Maureen Toms and Sean Brooks, Authority Co-Executive Directors.
- Negotiating Parties:
  - Pleasant Hill BART Station Leasing Authority
  - Pleasant Hill Transit Village Associates, LLC
  - Harvest Properties
- Price and terms of payment will be considered.

7. Reconvene in Open Session

8. New Business: Action on Resolution 27 - Consider a resolution:

- a. Approving the Fifth Amendment to Disposition and Development Agreement, and related addendum, allowing for the disposition and development of Block D.
- b. Authorizing the Co-Executive Directors to execute and implement the Fifth Amendment to Disposition and Development Agreement and related addendum.
- c. CEQA: Exempt Under CEQA Guidelines 15162.

**Resolution 27 was approved (M/S Anderson/Mitchoff, 4-0-0)**

9. New Business: Action on Resolution 28 - Consider a resolution:

- a. Authorizing the Co-Executive Directors to negotiate and enter into one or more reimbursement agreements for outstanding costs relating to the negotiation of amendments to the Disposition and Development Agreement and related conveyance closings, pertaining to both Block C and Block D.
- b. CEQA: Exempt Under CEQA Guidelines 15061 (b)(3)

**Resolution 28 was approved. (M/S Anderson/Mitchoff, 4-0-0)**

10. Adjourn



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## PLEASANT HILL BART STATION LEASING AUTHORITY

- Contra Costa County
- San Francisco Bay Area Rapid Transit District

30 Muir Road  
Martinez, CA 94553

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**TO:** Pleasant Hill BART Station Leasing Authority Governing Board

- Supervisor Karen Mitchoff
- Supervisor Candace Andersen
- BART Director Debora Allen
- BART Director Mark Foley

**FROM:** Maureen Toms, Co-Executive Director

**DATE:** April 19, 2021

**SUBJECT:** Agenda Item 4 - Resolution Approving the Second Amendment to the License Agreement that permits Block D to be used for temporary parking

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### Recommendation

Adopt Resolution 29, approving the Second Amendment to License Agreement, dated April 19, 2021, between the Pleasant Hill Bart Station Leasing Authority (the "Authority") and Avalon Oak Road, L.P. (the "Developer"), extending the term and correctly reflecting that a portion of the Block D/Phase II Property may no longer to be used as a laydown area for construction taking place on Block C.

### Background

The Pleasant Hill BART Station Leasing Authority and Pleasant Hill Transit Village Associates, LLC are parties to a Disposition and Development Agreement dated December 19, 2005, as amended (the "DDA"). The DDA governs the disposition and development of Block C and Block D of the Contra Costa Transit Village. Block D is currently a fenced parking lot which is intended to be developed for commercial use.

### License Agreement

In 2015, the Authority and the Developer negotiated a license agreement that permitted the Developer to temporarily provide public parking on Block D. The license agreement limited the time period during which Block D can be used for parking. The license agreement also permitted the Co-Executive Directors of the Authority to extend the term of the parking operation for up to two six-month periods, if, in their judgment, an extension is compatible with the long-term development of Block C and Block D. As consideration for providing this temporary service to BART and the community, any revenue derived from the temporary operation a parking facility on Block D will be retained by the Developer.

On October 23, 2017, the parties amended the License Agreement to (i) extend its term, and (ii) permit a portion of the Phase II Property to be used as a laydown area for construction taking place on

Block C construction. The construction of Block C has been completed and the term of the parking expires at the end of April 2021.

The Second Amendment of to the License Agreement (i) extends its term to April 30, 2023, with possible extensions, and (ii) correctly reflect that a portion of the Phase II Property may no longer to be used as a laydown area for construction taking place on Block C.

## CEQA

Addendum #2 identifies the minor technical changes of the Third Amendment to the Disposition and Development Agreement and the License Agreement, which were not identified in the Mitigated Negative Declaration for the Preliminary Development Plan and Addendum #1 for the Final Development Plan an (DP043099) and Subdivision (SD058950). In accordance with CEQA Guidelines Section 15164(d), the Authority considered Addendum #2 along with the Mitigated Negative Declaration and Addendum #1 prior to making a decision on the Amendment to the Agreement and the License Agreement. Addendum #2 addresses the minor technical changes included in the Second Amendment to the License Agreement under consideration. Subsequent environmental review under the California Environmental Quality Act ("CEQA") is not required because (a) none of the circumstances under CEQA Guidelines 15162 have occurred since the County Board of Supervisors approved the preliminary development plan; (b) the modification to the license agreement is exempt under California Government Code 65457 and California Public Resources Code Section 21155.4.

## **Attachments**

Attachment A - Second Amendment - License Agreement  
Attachment B - Resolution 29

SECOND AMENDMENT  
LICENSE AGREEMENT

This Second Amendment to License Agreement (“Second Amendment”) is dated April \_\_, 2021, and is between the PLEASANT HILL BART STATION LEASING AUTHORITY, a joint powers agency, established and existing pursuant to the joint powers agency law of the State of California (Government Code Section 6500 et seq.) (the “Authority”), and AVALON OAK ROAD, L.P., a Delaware limited liability company (the “Developer”).

RECITALS

A. The Authority and the Developer are parties to a License Agreement dated September 1, 2015, as supplemented by letter agreement dated October 19, 2015, establishing the “Start Date” as October 16, 2015 (as so supplemented, the “License Agreement”).

B. Under the License Agreement, the Developer is permitted to use the Phase II Property to operate a private parking lot. The term of the License, as it has been extended to date, expires on April 30, 2021.

C. Pursuant to the First Amendment dated December 4, 2017, the parties agreed to allow a portion of the Phase II Property to be used as a laydown area for construction taking place on Block C. The construction on Block C is complete.

D. The parties desire to amend the License Agreement to (i) extend its term, and (ii) correctly reflect that a portion of the Phase II Property may no longer to be used as a laydown area for construction taking place on Block C.

The parties therefore agree as follows:

AGREEMENT

1. All capitalized terms used but not defined in this Second Amendment or the License Agreement have the meaning set forth in the DDA.
2. Section 2 of the License Agreement is deleted in its entirety and replaced with the following:
  2. Grant of License. In consideration for the Developer operating the Parking Facility, the Authority hereby grants the Developer and Developer hereby accepts, a nonexclusive revocable license (the “License”) to enter upon and use the Phase II Property for the purpose of (i) making improvements to the Phase II Property that are set forth in Exhibit D or otherwise approved in writing by the Authority, (ii) operating the Parking Facility on the terms and conditions set forth in this Agreement, including Exhibit A –
3. Section 3 of the License Agreement is deleted in its entirety and replaced with the following:

3. Term of License.

(a) Subject to Section 3(b), the term of this License begins on the Effective Date and ends on April 30, 2023, unless earlier terminated in accordance with this Agreement.

(b) If requested by the Developer in writing, the term of the License may be extended for up to two (2) twelve-month periods with the prior written consent of the Co-Executive Directors if, in their judgment, an extension is compatible with the long-term development of the real property that is the subject of the DDA.

4. Section 6 of the License Agreement is deleted in its entirety and replaced with the following:

6. Condition of Phase II Property. At its sole cost and expense, the Developer shall maintain the Phase II Property in good condition, free and clear of all debris, weeds, graffiti, and litter. The Developer may not suffer or permit any dangerous condition to be created, exist, or continue on the Phase II Property. The Developer may not bring, use or store on the Phase II Property any Hazardous Materials (as defined in the DDA), other than commercially reasonable amounts of such materials that are used in the ordinary course of operating the Parking Facility. The Developer shall cause any such materials to be used and stored in accordance with all applicable environmental laws, ordinances and regulations. The Developer shall not take any action or permit any omission that would cause the Authority to default under the Master Lease.

[Remainder of Page Intentionally Left Blank]

5. This Second Amendment may be executed in counterparts, all of which taken together shall be deemed one original agreement.

The parties are signing this Second Amendment as of the date first above written.

AUTHORITY:

PLEASANT HILL BART STATION  
LEASING AUTHORITY, a public body  
corporate and politic:

By:

\_\_\_\_\_  
Maureen Toms, Co-Executive Director

By:

\_\_\_\_\_  
Sean Brooks, Co-Executive Director

DEVELOPER:

AVALON OAK ROAD, L.P.,  
a Delaware limited partnership

By: Avalon Oak Road GP, LLC,  
a Delaware limited liability company,  
its General Partner

By: AvalonBay Communities, Inc.,  
a Maryland corporation  
its Sole Member

By: \_\_\_\_\_

Name:

Title:



THE PLEASANT HILL BART STATION LEASING AUTHORITY

Adopted this Order on April 19, 2021 by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Resolution No.: 29

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**SUBJECT:** Approving the second amendment to the Block D license agreement to extend the license agreement for parking on Block D, to April 30, 2023, plus two optional twelve-month extensions and correctly reflect that a portion of the Phase II Property may no longer to be used as a laydown area for construction taking place on Block C.

The Authority and Developer are parties to a Disposition and Development Agreement dated December 19, 2005, as amended (the "DDA"). The DDA governs the disposition and development of Block C and Block D of the Contra Costa Transit Village. Block D is currently a fenced parking lot that is intended to be developed for commercial use.

The Authority and the Developer amended the DDA on August 24, 2015 to clarify the terms of the Developer's rights with respect to Block D and the fees to be paid for those rights, and to enter into a license agreement that will permit the Developer to operate a temporary parking facility on Block D.

The Authority and the Developer amended the license agreement on February 23, 2017 to allow for a portion of the site to be used as a construction laydown area for the development of Block C and extend the license agreement for parking on Block D, to April 30, 2020, plus up to two optional six-month extensions.

The Authority and the Developer desire to amend the license agreement to (i) extend its term, and (ii) correctly reflect that a portion of the Phase II Property may no longer to be used as a laydown area for construction taking place on Block C.

NOW, THEREFORE, BE IT RESOLVED, that Board approves the Second Amendment to the License Agreement to, (i) extend its term to April 30, 2023, with two optional extensions taking the agreement up to April 2025, and (ii) correctly reflect that a portion of the Phase II Property may no longer to be used as a laydown area for construction taking place on Block C.

BE IT FURTHER RESOLVED, that the Authority authorizes the Co-Executive Directors to approve the assignment of the Block D license agreement to an affiliate of Developer.

BE IT FURTHER RESOLVED, that Board approves the Second Amendment to the License Agreement, in substantially the form on file with the Authority, subject to those changes that are consistent with the Staff Report and agreed to by the Co-Executive Directors of the Authority.

BE IT FURTHER RESOLVED, that subsequent environmental review under the California Environmental Quality Act ("CEQA") is not required because (a) none of the circumstances under CEQA Guidelines 15162 have occurred since the County Board of Supervisors approved the preliminary development plan; (b) the modification to the license agreement is exempt under California Government Code 65457 and California Public Resources Code Section 21155.4.

#### **CERTIFICATE OF SECRETARY**

I certify that I am the duly elected and acting Secretary of the Pleasant Hill BART Station Leasing Authority and that the above resolution was approved by the Board of Directors of the Authority on April 19, 2021.

Executed on April 19, 2021.

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Maureen Toms, Secretary