



# City of Emeryville

CALIFORNIA

## MEMORANDUM

**DATE:** February 16, 2021  
**TO:** Christine Daniel, City Manager  
**FROM:** Charles S. Bryant, Community Development Director  
**SUBJECT:** **Resolution Of The City Council Of The City Of Emeryville Authorizing The City Manager To Execute A Sublease For Bus Bays Between The City Of Emeryville And The National Railroad Passenger Corporation ("Amtrak") For The Bus Bays Located In The Podium Of The EmeryStation West/Transit Center Project At 5959 Horton Street**

### RECOMMENDATION

Staff recommends that the City Council adopt the above-entitled resolution, which authorizes the execution of a sublease with the National Railroad Passenger Corporation ("Amtrak") for four bus bays located in the podium of the EmeryStation West/Transit Center project at 5959 Horton Street.

### BACKGROUND

Since 1998, the former Emeryville Redevelopment Agency ("Former Agency") and the City of Emeryville ("City") have worked to remediate and redevelop the 1.58-acre property located at 59th Street and Horton Street directly north of the Amtrak Station (APN 049-1489-015 and a portion of APNs 049-1325-001-01 and 049-1325-001-02, the "Site").

On October 21, 2003, the Former Agency adopted Resolution No. RD56-03 designating the Site as a location for a proposed transit center/mixed use project ("Transit Center Project") and solicited redevelopment proposals from entities with real property interests in the Site. As a result of this process, the Former Agency selected Wareham Development Corporation ("Wareham") as the preferred developer with whom the Former Agency would exclusively negotiate regarding the Transit Center Project.

On September 6, 2005, the Former Agency and Wareham entered into an Exclusive Right to Negotiate Agreement (ERN) (Resolution No. RD54-05), which was amended three times prior to its expiration on April 30, 2010.

The EmeryStation West/Transit Center Project as contemplated in the ERN consists of:

#### Public Elements:

- 125 public parking spaces in a 2-level parking podium;
- At least four bus bays included in the parking podium;
- An open plaza on the upper podium level of the EmeryStation West building that would connect with the existing pedestrian bridge over the railroad tracks;
- An approximately 25,100 square foot public plaza situated between the Amtrak station and the EmeryStation West building, providing pedestrian, automobile and bus interconnections, and improved with both hardscape and landscape (the

“plaza improvements” intended to be funded by the Federal Highway Administration (FHA) grant funds); and

- Widening of the passenger platform west of the EmeryStation West building.

Private Improvements:

- 248,300 gross square feet of office/laboratory space in 7 stories on top of the two-story parking/transit podium;
- 2,400 square feet of ground level active space with retail and transit oriented functions;
- 675 parking spaces in a separate structure across Horton Street (“Heritage Square Garage”) serving Heritage Square and the commercial space in the EmeryStation West project; and
- 3,620 square feet of active commercial uses fronting Horton Street.

During the ERN period, Wareham secured entitlements and CEQA environmental clearance for the EmeryStation West/Transit Center Project, including Design Review and a Conditional Use Permit. These entitlements were approved by the City Council on February 16, 2010 (Resolution 10-33).

Also during the ERN period, a Final Feasibility Study and Remedial Action Plan (“FS/RAP”) and a Final Remedial Design and Implementation Plan (RDIP”) were prepared for the Site’s remediation. These documents were approved by the California Department of Toxic Substances Control (“DTSC”) on April 19, 2010 and February 11, 2011, respectively.

On January 21, 2014, the City Council approved three agreements to implement the Transit Center Project. These included an Agreement for Public Improvements Funding (the “Funding Agreement”), an Amended and Restated Environmental Remediation and Escrow Agreement, and a Development Agreement (Resolution Nos. 14-014, -015; Ord. No. 14-002).

The Funding Agreement is the mechanism through which the City provides the developer with redevelopment and transportation grant funds secured for the public parking and plaza elements of the Transit Center Project. Under this Agreement, once constructed, the City leases the public parking and bus bays from the developer for a twelve-year period. During the term of this lease, the rent paid to the developer equals the property tax revenues accruing to the City from the Transit Center Project. At the end of the twelve-year lease period, the City may exercise an option to acquire an easement and retain ongoing ownership of the public parking spaces and bus bays.

The twelve-year lease of the public parking and bus bays is effectuated through the Public Parking Lease and Option to Acquire Easement Agreement (the “City Parking Lease”), which is included as an exhibit to the Agreement for Public Improvements Funding. The City Parking Lease commencement date was January 1, 2019.

A building permit for the EmeryStation West/Transit Center Project was issued on November 4, 2016 and a certificate of occupancy was issued on April 30, 2019. Since that time, the parking portion of the podium has been open for public parking, and staff have worked to negotiate a sublease with Amtrak for its use of the bus bays.

## **DISCUSSION**

The following discussion outlines the terms of the proposed Bus Bay Sublease, which is Exhibit A of the attached resolution (the “Sublease”).

### *Premises*

The premises addressed by the Sublease include exclusive use of the four bus bays located in the podium, as well as nonexclusive use of the bus entry from Horton Street, drive aisle, and exit to Horton Street; and pedestrian use of stairs, elevators, and walkways to access the bus bays.

### *Term*

The initial term of the Sublease commences upon execution and ends five years later. After the initial term, one-year renewal terms are automatic unless either the City or Amtrak deliver a notice of termination to the other party no later than 180 days prior to the last day of the current term.

### *Rent*

As part of the grant funding provided for the project by the City through the Funding Agreement, on August 10, 2012 the City entered into an Intercity Rail Passenger Facility Contract with the State of California (the “STIP Grant Agreement”). This agreement provided \$4,200,000 in State Transportation Improvement Program (STIP) funds for construction of the podium. Pursuant to the STIP Grant Agreement, the City is required to make the bus bays available to State Funded Bus Services (as that term is defined by the STIP Grant Agreement) at no cost. Consequently, the Sublease does not require the payment of rent.

### *Use*

The Sublease grants Amtrak the exclusive use of the bus bays for the sole purpose of loading and unloading of passenger buses serving the Amtrak Station, the general public or future public transit operations in the vicinity. In order to comply with the aforementioned requirement in the STIP Grant Agreement to make the facility available to State Funded Bus Services upon request of the State, the Sublease further provides that in the event additional public transit operators provide service to the area, Amtrak must cooperate in good faith with the City to amend the Sublease to provide for shared use of the bus bays.

### *Maintenance*

Pursuant to the City Parking Lease, Wareham provides general maintenance, trash removal and cleaning of the premises. The Sublease acknowledges this arrangement, and Amtrak is responsible for maintenance or repairs necessitated by negligence or willful misconduct of Amtrak or its contractors or patrons.

### *Insurance*

The Sublease requires Amtrak to maintain commercial general liability insurance with limits of \$2,000,000 per occurrence and \$5,000,000 in the aggregate. Amtrak will fulfill these requirements through its corporate self-insurance program.

### *Landlord's Approval*

The City Parking Lease requires the City to obtain Wareham's prior approval of any subleases. Wareham's approval of the Sublease will be memorialized in a Landlord Approval of Sublease which is acknowledged in the Sublease. Wareham has reviewed and approved the Sublease as to form.

### **FISCAL IMPACT**

Other than nominal staff costs required to administer the Sublease, the Sublease has no direct fiscal impact to the City.

### **STAFF COMMUNICATION WITH THE PUBLIC**

There was no staff communication with the public on this topic.

### **CONCLUSION**

The City is required to make the bus bays available to State Funded Bus Services pursuant to the STIP Grant Agreement, and Amtrak has agreed to the terms of the Sublease as presented herein. Staff recommends the City Council adopt the attached resolution authorizing execution of the Bus Bay Sublease with Amtrak.

**PREPARED BY:** Chadrick Smalley, Economic Development and Housing Manager

**APPROVED AND FORWARDED TO THE  
CITY COUNCIL OF THE CITY OF EMERYVILLE:**



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Christine Daniel, City Manager

### **ATTACHMENTS:**

- Draft Resolution, including Exhibit A: Sublease For Bus Bays