



Office of the City Manager

**01**  
**Special Meeting Item**

ACTION CALENDAR  
September 16, 2024

To: Honorable Mayor and Members of the City Council  
From: LaTanya Bellow, Interim City Manager  
Submitted by: Jordan Klein, Director, Planning and Development Department  
Subject: Ashby BART Transit Oriented Development (TOD)

RECOMMENDATION

Adopt a Resolution authorizing the City Manager and City Attorney to draft and advance for adoption contractual agreements with San Francisco Bay Area Rapid Transit District (BART) in order to effectuate transit-oriented development in accordance with the attached term sheet.

SUMMARY

The City and BART have been closely collaborating over the past several years to advance TOD at the Ashby and North Berkeley BART sites. The existing property ownership interests of the City and BART and various site constraints make development of the Ashby BART site complex. The attached term sheet (**Exhibit A to Attachment 1**) is the culmination of discussions over the past 18 months between the City and BART negotiating teams led by Mayor Arreguin and BART Board Director Lateefah Simon. The proposed real estate transaction structure would result in the City relinquishing its air rights over the western parking lot (West Lot) in return for fee simple ownership of the eastern parking lot (East Lot) and specified community benefits. The term sheet also defines how the City and BART will work together on developer solicitations, project entitlement and other identified milestones.

FISCAL IMPACTS OF RECOMMENDATION

There are a variety of potential fiscal impacts to the City related to Ashby BART TOD, including the allocation of affordable housing funding, capital expenditures related to the Adeline Street roadway reconfiguration, potential establishment of financing districts, and operational costs related to on-street parking management adjacent to the station. This action for Council consideration does not have direct fiscal impacts; the binding real estate transfer agreement and future funding commitments will return to Council for action. Staff will provide more detail about potential fiscal impacts in advance of future proposed actions.

## CURRENT SITUATION AND ITS EFFECTS

Over the past 18 months, City and BART negotiating teams, led by Mayor Jesse Arreguin and BART Board Director Lateefah Simon respectively, have been engaging to resolve issues in order to advance to developer solicitation(s) for the Ashby BART site. The City negotiating team believes that the term sheet (**Exhibit A to Attachment 1**) advances both the City and BART's respective objectives, and maximizes community benefits to the extent possible while ensuring economic feasibility of the project. Factors that informed the term sheet include the site property ownership interests, site constraints, the framework for community benefits, and economic feasibility. These factors and the key elements of the term sheet are summarized below.

### A. Ashby BART Station Site

The existing property ownership interests of the City and BART, various site constraints, and planned redesign of the Adeline Street right-of-way make development of the Ashby BART site complex.

The Ashby BART station site consists of two parcels: a 4.4 acre parcel bounded by Adeline Street, Ashby Avenue and Martin Luther King Jr. Way which includes the BART station building and surface parking lot ("West Lot"), and a 1.9 acre surface parking lot (located east of Adeline Street) bounded by Woolsey Street, Tremont Street, Adeline Street and Essex Street ("East Lot"). BART owns the two parcels in fee simple, but as a result of an agreement between the City and BART in October 1964, and subsequent agreements and transactions including those related to the construction of the Ed Roberts Campus, the City of Berkeley retains an option to acquire the air rights over the West Lot for \$55,000.

The Ashby BART station currently has a traction power substation (TPSS) located in the northern portion of the West Lot, parallel to Adeline Street, which provides electricity to run the BART trains. As part of a systemwide program, BART plans to upgrade, replace and expand the TPSS at Ashby BART. The operational and safety requirements associated with the TPSS and overall access to the Ashby Station constrain future TOD (see Background section for more information).

### B. Framework for Community Benefits

The framework for community benefits, and other project requirements defined in the term sheet, reflect the Memorandum of Agreement (MOA) and the Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas (JVP) adopted by City Council and the BART Board of Directors in June 2022 (**Attachment 2**) the Adeline Corridor Specific Plan<sup>1</sup>, and input from "Equitable Black Berkeley" (EBB). EBB is an initiative spearheaded by the Mayor's Office, in

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<sup>1</sup> Adeline Corridor Specific Plan (adopted December 2020): <https://berkeleyca.gov/sites/default/files/2022-03/Adeline-Corridor-Specific-Plan.pdf>

partnership with Healthy Black Families, that is exploring innovative funding proposals and policies for the Ashby BART station and “Adeline Community” area. The effort is part of a grant-funded, community-driven effort to develop options to support equity, opportunity and the well-being of Berkeley’s African-American community. The central premise established by EBB for Ashby BART is that the project must begin to reverse and repair the inter-generational harm that resulted from the development of the Ashby BART station and redlining.<sup>2</sup>

### C. Key Elements of the Term Sheet

The term sheet is intended to provide transparency and accountability for the City, BART, the community and potential developers based on all the information currently available. There are some unknown elements that will become clearer after development teams are selected and more information is known about funding sources, prevailing economic conditions and proposed development concepts for the site and related public infrastructure. While the term sheet is non-binding, it will form the basis for enforceable agreement(s) between the City and BART, which City staff anticipate bringing back to Council in fall 2024. The term sheet addresses:

- How the City and BART will resolve the respective ownership interests in the site and proceed with the developer solicitation process, the entitlement process and related negotiations.
- Objectives and minimum project requirements for design, affordability and infrastructure at the Ashby BART site.
- Anticipated City and BART contributions to the development project(s).
- Other agreements and actions necessary to effectuate and enforce the City and BART’s agreed upon requirements on future development terms, including City-adopted Objective Design Standards, master leases with the project developers, and affordable housing funding regulatory agreements between the City and the project developers.

During the negotiations, the City and BART each engaged real estate consultants (Century | Urban and Economic & Planning Systems, Inc., respectively) to jointly evaluate the financial position and ownership interests of each of the respective agencies. The resulting real estate transaction structure and community benefits are based on those analyses. Staff’s recommendation is that these terms provide the City fair consideration in exchange for the relinquishment of its air rights, advance the goals

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<sup>2</sup> November 29, 2022 City Council Meeting, Item 8: Grant Approval: San Francisco Foundation to support the Equitable Black Berkeley Initiative, <https://berkeleyca.gov/sites/default/files/documents/2022-11-29%20Item%2008%20Grant%20Approval%20San%20Francisco%20Foundation.pdf>

and priorities established in the JVP, and maximize community benefits while ensuring that the Ashby TOD project remains economically feasible.

Elements of the term sheet are summarized below.

**1. Real Estate Transaction Structure/Disposition of City's Air Rights Option.**

As proposed, the City of Berkeley would relinquish its air rights option in return for the transfer of fee simple ownership of the East Lot to the City, and a commitment from BART that the West Lot project will provide specified community benefits outlined below.

**2. Project Requirements and Community Benefits.**

- a. Affordable and Market Rate Housing. A minimum of 35 percent of new housing units to be developed shall be affordable or Below Market Rate (BMR) housing, with a goal of 50 percent, in accordance with income targets identified in the JVP (or other Affordable Housing Framework adopted by the City Council for the Ashby BART station area). At least 50 percent of the first 602 new housing units developed on the West Lot (or 301 units) must be affordable units; the total residential component of development on the West Lot (including any additional units, whether density bonus or otherwise, beyond the initial 602 units) must include a minimum of 35 percent affordable units. Development on the East Lot shall include a minimum of 300 bedrooms, provided that a capacity study determines that doing so is feasible for a project with a maximum height of 85 feet.

The inclusion of market rate housing within the project reflects the expectation that the City will pursue the formation of an Enhanced Infrastructure District (EIFD) to help finance infrastructure needs at the site. An EIFD would capture the City's share of property tax increment over a period of up to 45 years. Income restricted lower income housing units would generally be exempt from property tax so only market rate units would contribute to the tax increment.<sup>3</sup> While some community members have advocated for the Ashby TOD project to be 100% affordable, the funding to finance that amount of affordable housing does not currently exist. Even with the City's reservation of affordable housing funding, the project would need to rely on application to multiple cycles of future state and federal funding, which would add significant delay and uncertainty to the TOD project. For those reasons, BART would not likely agree to requiring 100% affordability at the site. Additionally, there is not a consensus among stakeholders that the entirety of the Ashby BART site

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<sup>3</sup> Senate Bill 628 "Enhanced Infrastructure Financing Districts" (1/2/2015), Assembly Bill 464 "Enhanced Infrastructure Financing Districts: allowable facilities and projects" (6/29/2021), Assembly Bill 336 "Enhanced infrastructure financing districts: public financing authority: members: joint powers authorities" (6/29/2021).

should be 100% affordable. Some stakeholders have advocated for a mixed-income community in order to better promote economic mobility and to provide a source of funding (e.g., property tax increment) that goes towards infrastructure and services.<sup>4</sup>

On July 30, 2024 the City Council adopted a referral sponsored by Mayor Arreguin asking staff to analyze and return with actions to initiate a possible EIFD for the Ashby BART Station Area.

- b. Berkeley Flea Market. The Ashby TOD project will include a permanent home for the Berkeley Flea Market and other public markets and microenterprise businesses. The City of Berkeley will allow a portion of adjacent Adeline Street right-of-way to also be utilized to support the Berkeley Flea Market (and other public programming). The project will include an installation celebrating the history of the Flea Market, office space for the Flea Market administration, and additional amenities to facilitate these uses. The City Council approved a preferred concept to redesign Adeline Street at Ashby BART in November 2022. The City has been awarded grant funding, to be administered by the Public Works Department, to advance engineering design for Adeline Street at Ashby BART as well as on Adeline Street from Martin Luther King Jr. Way to the Berkeley-Oakland border.
- c. West Lot Civic Commercial Uses and Amenities. The West Lot development shall include a minimum of 5,000 net rentable square feet of ground-floor space at below market rate rent for community-based organizations, including the Berkeley Flea Market. The West Lot development may incorporate the public artwork by Mildred Howard that was recently commissioned and installed by the City of Berkeley; the permanent location will be determined in consultation with the artist when more is known about construction plans for the Ashby BART TOD project and/or the redesign of Adeline Street.
- d. Connection to Adeline Street and Streetscape Improvements. The JVP and the Adeline Corridor Specific Plan prioritize that future development should connect directly to the greatest extent possible with Adeline Street. The West Lot development shall include at-grade improvements that will include public open space and expanded sidewalks, as shown in the preferred right-of-way redesign concept for Adeline Street at Ashby BART selected by the City Council (see Background section below for more details). Connectivity with

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<sup>4</sup> 4/27/21 City Council Item #31: City Affordable Housing Funds: Ashby and North Berkeley BART Station Areas and Future Housing Funding Notices of Funding Availability (NOFA), Attachment 2, p.36 regarding estimate of City subsidy needed to exceed 35% affordable housing:  
<https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2031%20City%20Affordable%20Housing%20Funds%20%20Ashby%20and%20North%20Berkeley%20BART%20Station%20Areas%20and%20Future%20Housing%20Funding%20Notices%20of%20Funding%20Availabilit....pdf>

Adeline Street at Ashby Avenue and the southern portion of the parcel is required (“Adeline Plaza Extensions”), and connectivity within the middle portion of the parcel (“BART Terrace Improvements”) will be included in the project if feasible (see Attachment 1: Exhibit A, Section II.C and Appendix C: Infrastructure Map) .

- e. Community Benefits Fund. Beyond construction of the TOD project itself, the Ashby BART TOD project can play a deeper role in repairing and reversing the intergenerational harm generated by the displacement of homes and businesses as a result of construction of the Ashby BART station. Equitable Black Berkeley has been central in shaping the proposal that a portion of the revenue generated from the future development project must be dedicated to a fund to be used for and by the greater South Berkeley community. The City intends to require that a portion of the net project profit from the East Lot mixed-income or market rate development parcels shall be allocated to create a reparative community benefits fund for South Berkeley.

### 3. Public Infrastructure

Development at the Ashby BART site will require substantial public infrastructure investments, including station access elements, plazas and sidewalks, other streetscape improvements, access and circulation, and replacement parking for BART patrons. Appendix C of the term sheet illustrates and delineates many of those elements.

- a. Funding sources and maintenance responsibility. For each infrastructure component, the term sheet establishes the relative priority level (i.e., essential, high, or medium), anticipated funding sources, which of the parties has responsibility in the event of a funding shortfall, and which of the parties has responsibility for maintenance. These elements are summarized in Appendix E. The term sheet also stipulates processes by which the City, BART and/or the future developer will resolve cost-overruns and cooperate to seek grant funding.
- b. Special funding mechanisms. The term sheet establishes that the City will pursue formation of an EIFD over the West Lot to help finance infrastructure improvements. The term sheet establishes priorities for those funds, with Adeline Street plazas identified as first priority. The term sheet also stipulates that the West Lot Developer shall commit a capital contribution of at least \$1 million dollars towards the “South Plaza Extension” prior to being able to access any EIFD funds for that infrastructure component. The City may, in its discretion, also form an EIFD on the East Lot to improve the economic feasibility of development on the East Lot. The parties also agree to pursue formation of a Community Facilities District to fund ongoing maintenance responsibilities of West Lot and Adeline Street infrastructure.

- c. Adeline Street reconfiguration. Improvements to Adeline street, including a road diet, sidewalk expansions, establishment of protected bikeways, and improved traffic signals and transit operations, are considered essential to the TOD project. Existing funding for the project is through preliminary engineering only. The term sheet establishes that the City and BART shall work collaboratively to identify funding for remaining project phases. It also establishes that the parties shall endeavor to coordinate the design and construction of the roadway reconfiguration with other public infrastructure components. However, development of the West Lot project may proceed prior to completion of the roadway reconfigurations and associated streetscape improvements.
- d. Traction Power Substation (TPSS). The definition of public infrastructure explicitly excludes construction and operation of the TPSS; BART and/or the West Lot Developer will bear responsibility for those costs. The term sheet also establishes that the BART will construct aesthetic measures to screen the TPSS from pedestrians, such as a mural, art wall or green wall within the City's right of way, or other mutually-agreeable screening treatment. The City and BART will cooperate in seeking external funding for those improvements, and the West Lot Developer may satisfy a portion of the City's public art requirement by providing those improvements, provided that they meet the City's standards for public art.
- e. BART rider replacement parking. The term sheet stipulates that parking for BART rider patrons on the West Lot will be the sole discretion of BART, and the East Lot (under the City's ownership) will not be required to include any BART rider parking. However, the term sheet establishes that the West Lot project shall maintain at least the current number of parking spaces for persons with disabilities, to the extent that an occupancy study demonstrates demand for those spaces.

#### 4. Other Parameters

- a. Timeline. The City and BART agree to execute binding legal documentation that memorializes the terms of agreement in fall 2024. A schedule of additional project milestones is projected in Attachment 1, Exhibit A, Appendix B.
- b. City Affordable Housing Funding. Fifty percent of the \$53 million in affordable housing funds (Measure O and Housing Trust Fund Program) that the City has reserved for the North Berkeley and Ashby BART Transit Oriented Development (TOD) projects, or \$26.5 million, will be invested in the Ashby BART TOD. Of that, \$18.5 million shall be allocated for the West Lot and \$8 million shall be set aside for the East Lot. The funds have been provisionally allocated based upon lot size and anticipated affordable housing units at each

site. The funds are also subject to affordability requirements, project milestones, compliance with the applicable (to-be-developed) Objective Design Standards, the City's Housing Trust Fund Guidelines and other requirements outlined in the attached term sheet. The City's funding may only be used to finance affordable housing in excess of the 20% requirement of the City's inclusionary policy.

- c. Developer Solicitation. The City and BART will each pursue separate solicitations for development for the West Lot and East Lot, respectively. The City and BART may choose to coordinate concurrent solicitations or, as is more likely, proceed on different timelines, depending on market conditions, funding availability, and broader City and BART goals and objectives.

The solicitation process shall consist of Request for Proposals (RFP) or a Request for Qualifications (RFQ)/RFP. The process shall also include a public meeting that includes presentations from respondents, who will be asked to demonstrate how their proposal addresses the negative impacts to African American residents, businesses and cultural institutions displaced by the construction of the Ashby station.

For the East Lot, the City will collaborate with BART to provide input and guidance on the proposals received. However, BART will not participate in the solicitation process other than to ensure that BART's access and operations requirements are satisfied and that the East Lot includes a minimum of 300 bedrooms, provided that a capacity study determines that doing so is feasible. For the West Lot, BART will collaborate with the City to provide input and guidance on the proposals received. The West Lot selection committee will be comprised of seven members: four BART representatives, two City representatives and a representative from Equitable Black Berkeley approved by the City.

- d. Objective Design Standards. The term sheet outlines the process to develop Objective Design Standards (ODS) for the East Lot and West Lot. The ODS process will generally be timed with developer selection. The Berkeley community, BART and the selected developer(s) will be given the opportunity to provide input into the ODS to ensure that the resulting document is consistent with what can feasibly be developed and aligned with the intent of the JVP. BART shall provide in its real estate agreements with future developer(s) for the West Lot that compliance with the ODS is required. The City may also require compliance with ODS in the restrictive covenant on the West Lot, and as a condition of providing affordable housing subsidy to the West Lot development.

Appendix D of the term sheet establishes requirements for ODS for the West Lot. These include that the ODS must allow at least 600,000 gross residential

square footage within buildings no taller than 85 feet, and also (alternatively) shall allow for at least 750,000 gross residential square footage within buildings that may be taller than 85 feet but within the maximum height allowed by the ODS.

- e. Enforcement of Public Benefits and Project Requirements. To ensure agreed upon obligations for the East Lot and West Lot, the legal documents (e.g., Exclusive Negotiating Agreement, ground lease provisions, easements and covenants) for each lot will require the developer(s) to comply with all mutually agreed upon project requirements, community benefits, and access rights, and to maintain those provisions for the life of the lease, except as the City may otherwise agree.

### *Next Steps*

As noted in the term sheet, the City and BART agree to execute binding legal documentation that memorializes the terms of agreement in fall 2024. City staff will bring such agreements back to Council for approval.

### BACKGROUND

Spurred by the passage of Assembly Bill 2923 (AB 2923) in 2018, the City and BART have been collaborating to facilitate transit-oriented development at the Ashby and North Berkeley BART sites. The City Council and BART Board of Directors executed a Memorandum of Understanding (MOU) in March 2020 and a Memorandum of Agreement (MOA) in June 2022 that outlined key milestones to advance to a solicitation for developer teams. Many of these milestones have been completed:

- April 2021: Reservation by City Council of \$53 million of City affordable housing funding for the Ashby and North Berkeley BART sites.
- June 2022: Adoption by City Council of new zoning and General Plan amendments consistent with AB 2923; approval of the City and BART Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas (JVP); and approval of the City and BART Memorandum of Agreement (MOA).
- November 2022: Approval by City Council of a preferred design concept to redesign the Adeline Street Right-Of-Way; provided information about the City's policies for managing parking Around BART Stations.
- July 2022: North Berkeley BART Station Site - Issuance of BART's Request for Qualifications (RFQ) for developer teams and the City's Notice of Funding Availability.
- November 2022: North Berkeley BART Station Site - Initiation of the City's process to develop Objective Design Standards.

- December 2022: North Berkeley BART Station Site - Approval by BART Board of Directors of selected developer team.
- July 2023: North Berkeley BART Station Site - Adoption by City Council of the Affordable Housing Framework for Development at the North Berkeley BART Station Area.
- December 2023: North Berkeley BART Station Site - Adoption by City Council of North Berkeley BART Station Area Objective Design Standards.
- September 2024: Expected City approval of North Berkeley Housing Partners' project application for streamlined land use entitlements pursuant to AB 2011.

### **Ashby Station Infrastructure and Operations and Future Development**

BART has been planning systemwide traction power substation (TPSS) upgrades and/or expansion at Ashby and other stations on its Richmond line.<sup>5</sup> The Adeline Corridor Specific Plan and the JVP identify a goal to create an at-grade connection between Adeline Street and the future TOD on the West Lot. BART has held two community meetings to present information about Ashby BART station operation and infrastructure needs and how they impact the connection of future TOD to Adeline Street. At the April 2023 meeting, BART staff presented information about the design process and constraints that informed their design for the new TPSS planned for Ashby station. BART staff presented the maintenance, access and clearance requirements for any development on top or adjacent to the substation; opportunities for at-grade connections between the future TOD and Adeline Street was the most constrained in the northern two-thirds of the Adeline Street frontage due to the requirements of the TPSS and safety requirements due to station egress.<sup>6</sup>

In response to community members' public comments and a letter from Mayor Arreguin expressing concerns about the planned expansion of the TPSS at the Ashby Station, and the resultant impacts on the proposed development project and the adjacent public realm, BART has indicated a willingness to consider additional design modifications related to improving visual impact of TPSS and connectivity to Adeline Street. At a November 2023 community meeting, BART staff presented design modifications under

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<sup>5</sup> BART runs trains using electrical power provided by Pacific Gas & Electric (PG&E), which in turn supplies to over one hundred substations throughout the system that convert electricity to the voltage required to propel BART cars. These substations exist throughout the BART system. A traction power substation also exists at the North Berkeley BART station at the southeast corner of the intersection of Virginia and Acton Streets.

<sup>6</sup> April 20, 2023 – Ashby BART TOD - BART Operations Requirements and Adeline Street Connection - Community Meeting presentation: [bart.gov/sites/default/files/docs/23\\_0420\\_Ashby\\_Presentation.pdf](https://www.bart.gov/sites/default/files/docs/23_0420_Ashby_Presentation.pdf); November 8, 2023 Ashby BART TOD – TPSS Update - Community Meeting presentation: [https://www.bart.gov/sites/default/files/2023-11/20231108\\_Ashby%20Community%20Meeting%20Slides.pdf](https://www.bart.gov/sites/default/files/2023-11/20231108_Ashby%20Community%20Meeting%20Slides.pdf)

consideration that would reduce the footprint of the staging area and visual impacts from the planned TPSS upgrade on the public realm and the Ashby transit-oriented development (TOD) project (see **Attachments 4 and 5** for more detail on these concerns and BART's responses). Since then, BART has been conducting further analysis of the feasibility of the various potential measures that were presented to the public in November 2023. As noted in the term sheet, costs related to upgrading TPSS infrastructure, as well as aesthetic measures (e.g., decorative fencing with artistic treatments) along Adeline Street, and along the public facing edges at the north and south ends of the replacement TPSS, to screen the replacement TPSS from pedestrians shall be the sole responsibility of BART.

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Creating equitable, transit-oriented mixed-use development that includes affordable housing and housing support services for Berkeley's most vulnerable community members is a City Strategic Plan goal, which also helps advance the environmental goals of being a global leader in addressing climate change, advancing environmental justice and protecting the environment. In March 2022, the City published an environmental impact report pursuant to the California Environmental Quality Act ("CEQA") for the Ashby and North Berkeley BART station projects. Because this term sheet is nonbinding, no further CEQA documentation is required at this time.

### RATIONALE FOR RECOMMENDATION

The parameters in the attached term sheet have been carefully crafted over the past 18 months by the City and BART negotiating teams. The parties believe that the proposed package of terms best advance mutual objectives for high-density transit-oriented development and community benefits that are economically feasible. Extensive economic and real estate analysis conducted by third-party consultants demonstrate that these deal terms provide the City fair consideration in exchange for the relinquishment of its air rights, advance the goals and priorities established in the JVP, and maximize community benefits while ensuring that the Ashby TOD project remains economically feasible.

The real estate transaction structure to resolve the property ownership interests of the City and BART for the Ashby BART site provides multiple advantages, including:

- **Streamlined Solicitation and Land Control:** The City and BART will each own their own property (the East Lot and the West Lot, respectively) and therefore control decision making and benefit from future revenue/community benefits. The City will have sole ownership and control of the developer solicitation for the East Lot, including exploring opportunities for rental and home ownership. The East Lot also has fewer complex infrastructure issues than the West Lot.
- **Actionable Financial Execution:** If the City were to exercise its option to purchase the West Lot air rights, the result would be joint ownership of the site. Any

development project on the site would therefore require tri-party negotiations and would generate a great deal of uncertainty for prospective developers. The City's real estate advisors have advised that such a project would be unlikely to secure financing. Therefore, the proposed deal structure produces a clear and actionable path forward.

- **Community Benefits:** The proposed real estate transaction leverages the City's option to purchase the air rights on the West Lot to ensure that the Ashby TOD project will provide these tangible community benefits: a requirement of 50% affordable housing of the first 602 units on the West Lot, below-market-rate commercial space for the Berkeley Flea Market and other local community-serving non-profits, establishment of a community benefits fund for South Berkeley, and requirements that the future development connect to Adeline Street at Ashby and at the southern portion of the West Lot.
- **Enhanced Affordable Housing and Infrastructure Financing Potential:** The high levels of affordable housing included in the TOD should enhance competitiveness for grant funding for affordable housing and infrastructure (e.g., Affordable Housing Sustainable Communities, Infrastructure and Infill Grants).

#### ALTERNATIVE ACTIONS CONSIDERED

The Council could consider not authorizing the City Manager to advance contractual agreements with BART in accordance with the attached term sheet. In such a case, given the respective property rights of the City and BART on the Ashby West Lot, advancement of transit-oriented development at this site and associated community benefits identified in the term sheet would not move forward. On the East Lot which BART owns fee simple, BART would have the option to move a project forward independently of the City with a developer solicitation, or BART could choose instead to prioritize working with another City in its Transit-Oriented Development work plan. The project would be eligible for the State Density Bonus and/or a streamlined approval process under AB 2923, dependent on the levels of affordable housing proposed as part of the project. The project would also be subject to the City's existing affordable housing requirement (20 percent).

#### CONTACT PERSON

Alisa Shen, Principal Planner, Planning and Development, 510-981-7409.

#### Attachments:

1: Resolution

Exhibit A: Term Sheet for Ashby BART Transit-Oriented Development (TOD)

2: June 2022 City and BART Memorandum of Agreement for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas

3: July 18, 2023 City Council Worksession report: Ashby BART Station Transit-Oriented Development (TOD)

4: July 28, 2023 Mayor Arreguin Letter to BART General Manager Robert Powers

5: November 3, 2023 BART General Manager Robert Powers Letter to Mayor Arreguin

RESOLUTION NO. ##,###-N.S.

ASHBY BART TRANSIT-ORIENTED DEVELOPMENT (TOD)

WHEREAS, the City of Berkeley (“City”) and the San Francisco Bay Area Rapid Transit District (“BART”) executed a Memorandum of Understanding (“MOU”) to cooperatively pursue Transit Oriented Development (“TOD”) at the Ashby and North Berkeley BART station areas in March 2020; and

WHEREAS, in furtherance of the MOU, the City and BART executed a Memorandum of Agreement (“MOA”) regarding the projects at the North Berkeley and Ashby BART station areas in June 2022; and

WHEREAS, the MOA identified additional complex issues that required resolution prior to issuance of solicitation(s) for developer teams for the Ashby BART site; and

WHEREAS, the City and BART negotiating teams led by Mayor Jesse Arreguin and BART Board Director Lateefah Simon have been exploring and discussing options to resolve issues needed to advance to developer solicitation(s) for the Ashby BART site; and

WHEREAS, during the negotiations, the City and BART each engaged real estate consultants (Century | Urban and Economic & Planning Systems, Inc., respectively) to jointly evaluate the financial position and ownership interests of each of the respective agencies; and

WHEREAS, the resulting real estate transaction structure, community benefits and other project requirements included in the term sheet (Exhibit A) are based on those analyses; and

WHEREAS, the term sheet (Exhibit A) provide the City fair consideration in exchange for the relinquishment of its air rights, advance the goals and priorities established in the City and BART Joint Vision and Priorities for Ashby and North Berkeley BART Transit-Oriented Development (“JVP”), and maximize community benefits while ensuring that the Ashby TOD project remains economically feasible.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Council authorize the City Manager and City Attorney to draft and advance for adoption contractual agreements with BART in order to effectuate transit-oriented development in accordance with the attached term sheet.

Exhibit

A: Term Sheet for Ashby BART Transit-Oriented Development

**TERM SHEET FOR ASHBY BART TRANSIT-ORIENTED DEVELOPMENT**

This Term Sheet is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the San Francisco Bay Area Rapid Transit District (“BART”) and the City of Berkeley (“City”) (collectively the “Parties”) in connection with their cooperative pursuit of transit-oriented development (“TOD”) at the Ashby BART Station (“the Ashby Project” or “Project”). This Term Sheet is made in furtherance of the Memorandum of Agreement signed on June 29, 2022, between BART and the City (“MOA”), the Memorandum of Understanding between BART and the City, signed on March 3, 2020 (“MOU”), and the Joint Vision and Priorities Document approved by the City on June 2, 2022, and by BART on June 9, 2022 (“JVP”), which address TOD projects at the North Berkeley and Ashby BART Stations. This Term Sheet solely addresses the Ashby Project and the business terms thereon amongst the Parties.

**RECITALS**

- A. In 2020, the Parties entered into the MOU to identify their shared vision and priorities for TOD at the North Berkeley and Ashby BART Stations, to provide clarity on the process and timelines for pursuing development, and to begin to identify the roles and responsibilities of the City and BART in that process. Among other things, the MOU called on the City to establish a Community Advisory Group, reserve funding to support affordable housing development at the sites, and to adopt zoning for the sites consistent with Assembly Bill 2923 (“AB 2923”).
- B. On December 8, 2020, the City adopted the Adeline Corridor Specific Plan and certified a corresponding environmental impact report, which set forth a comprehensive plan for development, including new affordable and market rate housing, in the area of the City including the Ashby BART Station.
- C. On April 27, 2021, the Berkeley City Council unanimously adopted Resolution 69,833-N.S. which, in part, provisionally reserves \$53 million of City-controlled funds as the subsidy needed to achieve at least 35% affordable housing at each of the Ashby and North Berkeley BART sites, and allows for a portion of the funding to be allocated to predevelopment uses.
- D. On June 2, 2022, the Berkeley City Council approved the JVP with Resolution 70,402-N.S. and on June 9, 2022, the BART Board approved the JVP. The JVP expresses the City and BART’s shared, high-level expectations for future development of both the Ashby and North Berkeley BART stations. The JVP was

incorporated into BART's Request for Qualifications ("RFQ") for development of the North Berkeley BART Station site.

- E. On June 28, 2022 the Berkeley City Council adopted Chapter 23.202.150 in its Zoning Ordinance, as part of the City of Berkeley Municipal Code, adding a "Residential - BART Mixed Use (R-BMU)" zoning district, as well as additional conforming amendments to the General Plan and other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into its Zoning Ordinance, to govern development at the North Berkeley and Ashby BART Stations consistent with AB 2923.
- F. On November 29, 2022, the Berkeley City Council adopted Resolution No. 70,622-N.S. approving a conceptual design for a street reconfiguration and new plaza along Adeline Street between Ashby Avenue and Martin Luther King, Jr., Way, in order to increase safety for pedestrians and bicyclists and to enhance access to the Ashby BART Station.
- G. To the extent that this Term Sheet provides for the negotiation of terms that contradict or are inconsistent with the MOA, MOU or JVP on matters relating to the Ashby Project, this Term Sheet, being latest in time, shall supersede the MOA, MOU and JVP with respect to guiding the negotiation of final agreements. The MOA, MOU and JVP remain in effect except to the extent superseded by agreements negotiated pursuant to this Term Sheet with respect to the Ashby Station.
- H. The purpose of this Term Sheet is to set forth the principal business and legal terms on which BART and the City will negotiate an Exchange Agreement and related deeds and easement agreements and other agreements necessary to effectuate the Parties' intent, as expressed in this Term Sheet. These definitive agreements, if approved, will provide for the relinquishment of the City's option to purchase air rights over the West Lot in exchange for the City's fee simple ownership of the East Lot, and for establishing certain minimum community benefits and project requirements for the West Lot and East Lot, including a minimum of 50% onsite affordable housing for the first 602 units on the West Lot and a minimum of 35% onsite affordable housing on the East Lot as more particularly described in Section II.A, below. The Parties have determined the exchange of property rights and land value is an equitable exchange with the City receiving additional community benefits in the form of additional affordable housing units and community benefits on the West Lot, in addition to fee simple ownership of the East Lot, as compensation for the release of its option to purchase air rights over the West Lot.

## PROPOSED TERMS AND CONDITIONS

### *I. Framework for Development at Ashby BART Station*

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**A. Property.** The Ashby BART Station site consists of two parcels: (1) a 4.4-acre parcel that makes up the block surrounded by Adeline Street, Ashby Avenue and Martin Luther King Jr. Way, which includes surface parking lots and BART's traction power substation (Assessor Parcel Number (APN) 053-1597-039-04) ("West Lot"), and (2) a 1.9-acre surface parking lot located on the east side of Adeline Street on the block surrounded by Woolsey Street, Tremont Street, Adeline Street and Essex Street (APN 053-1703-009-00) ("East Lot") (collectively the West Lot and the East Lot are referred to herein as the "Property"). Adeline Street and the Ed Roberts Campus are located between the two parcels. The two parcels are owned in fee simple by BART. In addition, the City retains an option to purchase air rights over the West Lot pursuant to an agreement dated as of October 22, 1964, as amended, between BART and the City ("Air Rights Option"). The Air Rights Option, if exercised by the City, would provide the City with ownership of the air rights ten feet above the parking lot located on the West Lot shown on the diagram attached as **Appendix A**.

### **B. Background and Scope of Term Sheet.**

1. The Parties share a desire to transform the Property from its current primary use as surface parking to a transit-oriented development that will provide much needed housing (including affordable housing), enliven Adeline Street, and benefit the surrounding community, while continuing to ensure access to the Ashby BART Station. The current property interests of the Parties in the Property and various site constraints make development of the Property complex, and there are many unknowns that will become clearer after developer teams are selected and more information is known about funding sources, prevailing economic conditions and proposed development concepts for the sites. The Term Sheet serves as a roadmap for how the City and BART will work together to effectuate an economically feasible transaction structure among the Parties as well as with the selected developer(s).
2. The Term Sheet outlines how the Ashby Project negotiation and entitlement process will proceed; the objectives and minimum requirements for the Ashby Project in terms of design, affordability, and infrastructure; the anticipated City and BART contributions to the Ashby Project; and the terms of an exchange that will rationalize the Parties' ownership interests in the Property. The Term Sheet is intended to provide transparency and accountability for the City, BART, the community, and potential developers based on all the information currently

available. The Term Sheet is intended to form the basis for negotiating an enforceable exchange agreement between BART and the City. In addition, the Term Sheet memorializes certain understandings of the Parties with respect to other agreements and actions that will be necessary to effectuate and enforce the Parties' agreed requirements on future Project developers, including City-adopted Objective Design Standards ("ODS"), master leases with the Project developers, and affordable housing funding and regulatory agreements between the City and the Project developers. The following provisions in this Term Sheet are non-binding but are intended to guide the binding provisions of the enforceable exchange agreement.

**C. Entitlement Streamlining.** Public Utilities Code section 29010.7(b) ("Section 29010.7(b)") establishes that TOD projects at BART stations that meet certain minimum requirements will be eligible for entitlement streamlining pursuant to Senate Bill 35, codified by Government Code section 65913.4 (as amended, "SB 35"). To minimize entitlement risk, reduce project costs and accelerate the entitlement phase of development, the Parties intend that the developers of the West Lot and East Lot shall have the ability to utilize applicable state and/or local laws providing for applicable entitlement streamlining mechanisms including, but not limited to, Section 29010.7(b) and SB 35, to the extent a project qualifies for streamlined review under those laws, such that project entitlements will be ministerial and not subject to discretionary review; provided, however, any projects developed on the West and East Lots must comply with all applicable mitigation measures adopted in connection with the City's adoption on June 28, 2022 of the Residential - BART Mixed Use (R-BMU) zoning district and all applicable standard conditions of approval relied upon in the associated EIR, as set forth in Appendix F.

**D. Real Estate Transaction Structure**

1. The City and BART will rationalize their respective interests in the Property through an exchange that will occur through one or more escrows by which the City will relinquish its Air Rights Option in the West Lot and vacate any portion of the existing Adeline Street right of way within the West Lot that is not currently in use as a public street or sidewalk in exchange for (1) the transfer of fee simple ownership of the East Lot to the City, subject to existing easements thereon but free and clear of any reserved rights of BART (including any easement for mid-block pedestrian passage) except as may be provided in the Exchange Agreement, (2) the minimum affordability requirements described in this Term Sheet, including the requirement that at least 50% of the first 602 new housing units to be developed on the West Lot be affordable (and that at least 35% of the total number of housing units be affordable in the event that more than 602 units are constructed), (3) the provision of 5,000 square feet of community/civic commercial

ground floor interior space on the West Lot at 50% of market rate rent, and (4) the other terms and conditions of the Exchange Agreement as set forth in this Term Sheet.

2. BART, as owner of the West Lot, and the City, as future owner of the East Lot, would separately solicit development proposals for their respective properties and enter into an Exclusive Negotiating Agreement (“ENA”) with a selected developer or development team for each of their respective properties. (For the avoidance of doubt, references in this Term Sheet to ‘a developer’ shall include a development team in the event that more than one developer is duly selected to develop the East Lot, or in the event that more than one developer is duly selected to develop the West Lot.) Each ENA will provide for the negotiation of one or more ground leases, or, on the East Lot, the negotiation of a ground lease or contract of sale, to commence following the termination of the Air Rights Option in the West Lot, or following transfer of title in the East Lot, as applicable.
3. It is anticipated that the West Lot will be entitled as one project with multiple parcels by BART’s selected developer on the West Lot (the “West Lot Developer”). The City shall be obligated to re-convey the Air Rights Option to BART within 10 days following BART’s execution of an ENA with the West Lot Developer, and BART shall be obligated to convey fee simple ownership of the East Lot to the City at the same time that the Air Rights Option is re-conveyed to BART by the City, or at such later date as may be specified by the City, provided that in the latter case, BART shall have at least 10 days’ notice prior to conveyance of fee simple ownership of the East Lot to the City. It shall be a condition precedent to these transfers that the zoning for the West Lot as of the date of this Term Sheet has not been modified or changed to be more restrictive or to reduce the development capacity prior to BART entering into an ENA with the West Lot Developer.
4. Upon (a) the delivery of the Air Rights Option reconveyance to BART and (b) completion of street vacation proceedings for any portion of the existing Adeline Street right of way within the West Lot that is not currently in use as a public street or sidewalk, the West Lot shall be encumbered with covenants imposing and allowing the City to enforce the requirements for development on the West Lot as described in this Term Sheet, including, but not limited to, the minimum affordability requirements, the requirement that the West Lot Developer comply with the ODS adopted by the City for the site (provided that the ODS comply with the requirements set forth in **Appendix D**), applicable mitigation measures adopted in connection with the City’s adoption on June 28, 2022 of the Residential – BART Mixed Use (R-BMU) zoning district, and all applicable standard conditions of approval relied upon by the TOD Zoning EIR. The East Lot shall also be

encumbered with covenants imposing and allowing BART to enforce the requirements for development on the East Lot as described in this Term Sheet, including but not limited to a requirement that City's ODS for the East Lot allow for at least 248 residential units and at least 300 bedrooms. Such covenants shall run with the land. The West Lot covenant shall be recorded at close of escrow for the Air Rights Option reconveyance, and the East Lot covenant shall be recorded at close of escrow on the East Lot conveyance.

5. No later than the City Council's approval of the Exchange Agreement, the City shall direct staff to initiate street vacation proceedings for any portion of the existing Adeline Street right of way within the West Lot, including but not limited to any portion of the approximately 900-foot-long strip of the West Lot abutting the existing Adeline Street sidewalk as shown on San Francisco Bay Area Rapid Transit District Amended Record Map of Right of Way RRW 9, dated December 7, 1971 in book 68 of maps, at page 150 ("Parcel R9-2") within the right of way, that is not currently in use as a public street or sidewalk.

**E. Surplus Land Act.** AB 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661) made changes to the Surplus Land Act ("SLA") found in Government Code Sections 54220 et seq. Generally, the purpose of the amendments is to promote affordable housing development on unused or underutilized public land throughout the state to address the existing affordable housing crisis. The amendments to the SLA adopted via AB 1486 and AB 1255 clarify and strengthen reporting and enforcement provisions of the SLA to promote increased compliance with the Act. The parties shall confirm adherence to the SLA and shall jointly work with the California Department of Housing and Community Development ("HCD") to comply with all requirements under the SLA in connection with conveyance by BART of the East Lot to the City, and with a Request for Proposals or similar document ("RFP") for the West Lot or the East Lot.

**F. City Funding**

1. The City will make available a total of \$53 million in affordable housing funds (e.g., Measure O Funding and Affordable Housing Trust Fund Revenues), including up to \$4 million in predevelopment funds (collectively the "City Funds"), for the North Berkeley and Ashby Projects, of which it anticipates 50% of this funding will be invested at the Ashby Project for permanently affordable housing units in the amount of \$26.5 million. As part of the developer selection processes, up to \$2,000,000 in City pre-development loan funds shall be made available, with half of the proceeds available to the West Lot and half of the proceeds available to the East Lot, the award of which shall be subject to City Council approval.
2. The City may, but shall not be obliged to, condition funding for the West Lot project and East Lot project, respectively, on each project's compliance with the

applicable ODS adopted pursuant to the process described in Section II.F, provided the ODS comply with the requirements of **Appendix D**. The funding shall also be subject to affordability requirements, project milestones, and other requirements set forth in the funding agreements between the City and developer(s).

3. Of the City Funds allocated to the Ashby Project, \$18.5 million shall be held aside for the West Lot and \$8.0 million shall be held aside for the East Lot, in all events subject to the limitations in paragraph 4 below. The funds have been provisionally allocated based upon lot size and anticipated affordable housing units at each site. The funds shall be used only to support development of affordable units over and above 20% of the total units (including density bonus units) in the project.
4. Any commitment of City funds to the Ashby Project's West Lot or East Lot shall comply with the City's Housing Trust Fund Guidelines, and in no event shall the City be obligated to provide more than an average of \$200,000 per rent-restricted affordable unit (i.e., units that are in perpetuity affordable to very low income or lower-income households as defined in California Health and Safety Code sections 50052.5 and 50053), counting only units provided above and beyond 20% of the total units (including density bonus units) in the project. The City Funds shall be available to buildings which are 100% affordable housing, or, at the City's sole discretion, to affordable units dispersed amongst mixed-income housing buildings which meet the Housing Trust Fund Guidelines.

#### **G. Developer Solicitation Process**

1. BART shall pursue a separate solicitation for development of the West Lot, and the City shall pursue a separate solicitation for development of the East Lot, in accordance with the following:
2. BART and the City shall each conduct a solicitation whereby an RFP or RFP/RFQ is issued to solicit qualified developers, and respondents will be asked to submit their qualifications, as well as proposals demonstrating workable business frameworks for development that are consistent with the specific goals outlined in the JVP and the developer solicitation document(s). Because time is of the essence, both the City and BART shall take every action to ensure that the milestone targets included in the Schedule (attached as **Appendix B**) are achieved and sufficient staff is dedicated by both BART and the City to meet the Schedule.
3. The RFP or RFP/RFQ for the East Lot shall include, without limitation, a request to respondents to demonstrate how their proposal addresses (i) the negative impacts to African American residents, businesses, and cultural institutions displaced by construction of the Ashby Station, (ii) the JVP priority to "maximize the number of new homes;" the number of residential units shall be a quantitative factor in the

City's evaluation of proposals, and (iii) the requirement that the project include at least 300 bedrooms. In the event that the East Lot capacity study currently underway by Raimi & Associates concludes that 300 bedrooms is not feasible for a project on the site with a maximum height of 85 feet, the City and BART shall meet and confer to discuss alternative requirements to mitigate the reduced capacity. BART staff will not participate in the solicitation process for the East Lot other than to review and approve solicitation materials with respect to matters relating to BART access and operations in order to ensure that BART's access and operational requirements are satisfied. Following the receipt of proposals, the selection process will include a public meeting of shortlisted RFP respondents that includes presentations from the respondents. The East Lot selection committee will make a recommendation to the Berkeley City Council based upon selection criteria prepared by the City. The Berkeley City Council shall consider and act upon the East Lot selection committee's recommendation of a developer for the East Lot.

4. The RFP or RFP/RFQ for the West Lot shall include, without limitation, a request to proposers to demonstrate (i) how they would incorporate an exhibit honoring the history of the Berkeley Flea Market, (ii) how their proposal addresses the negative impacts to African American residents, businesses, and cultural institutions displaced by construction of the Ashby Station; and (iii) how their proposal would provide a direct connection from the project to Adeline Street, which shall be a quantitative factor in the evaluation of proposals. The City will have two three-week periods as specified in the Schedule to provide suggestions and input on the West Lot RFP or RFP/RFQ for BART's consideration. The West Lot selection committee will be composed of four BART representatives, two City representatives, and a representative from Equitable Black Berkeley ("EBB") approved by the City Manager (total of 7). Following the receipt of proposals, the selection process will include a public meeting of shortlisted RFP respondents that includes presentations from the respondents. The West Lot selection committee will make a recommendation to the BART General Manager based upon selection criteria prepared for the RFP or RFQ/RFP. The BART General Manager shall make a recommendation of a developer to the BART Board of Directors which the BART Board of Directors shall consider and act upon.

**H. Timeline.** The Parties shall use best efforts to complete and execute the Exchange Agreement by November 26, 2024, as specified in the Schedule in Appendix B.

**I. Enforcement of Public Benefits and Project Requirements.** BART recognizes the City needs assurance that the portion of the Ashby Project to be built on the West Lot will

provide the agreed public benefits and comply with the agreed project requirements. The City similarly recognizes that BART needs assurance that the development of the East Lot will provide its agreed share of public benefits. To this end, the ENA and ground lease provisions (or, in the case of an eventual sale of the East Lot by the City, the contract of sale) for each lot will require the developer to comply with all project requirements and community benefits required by the Exchange Agreement, and to maintain those requirements for the life of the lease or, in the event that the City elects to sell the East Lot to a developer, that said requirements and benefits run with the land. These requirements will also be incorporated into restrictive covenants that will run with the land as a condition of BART's acquisition of the City's Air Rights Option and the City's acquisition of BART's interest in the East Lot. The form of the covenants will be included in the Exchange Agreement between City and BART and provided to prospective developers in the RFQs/RFPs.

## ***II. Public Benefits and Project Requirements***

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### **A. Affordable & Market Rate Housing**

1. The City and BART each have an interest in having the Ashby Project developed with high density use, to maximize the amount of new housing and to enhance transit ridership. To this end, BART and the City shall require that any development on their respective parcels achieve a minimum of 75 units per acre.
2. On the West Lot, at least 50% of the first 602 units shall be affordable units. In the event that the total residential component of the West Lot project has more than 602 total housing units (whether through density bonus or otherwise), there shall be no fewer than 301 affordable units, and overall at least 35% of the units (including density bonus units) shall be affordable units. BART and the West Lot Developer shall consult with the City to explore economic potential for additional affordable units, with an aspirational goal of up to 50% affordability based on economic feasibility and availability of funding resources if the West Lot includes more than 602 total housing units, taking into consideration development costs, values and potential for additional City subsidy or funding from external sources.
3. At least 35% of the new housing units to be developed on the East Lot, inclusive of units built to satisfy the City's inclusionary requirement and including any units that may be added as a result of a density bonus, shall be affordable, with a goal of achieving 50% affordability. The City and the East Lot Developer shall explore economic potential for additional affordable units, with the goal of 50% affordability for the total project, taking into consideration development costs, values and potential for additional City subsidy.
4. Any affordable units on the East Lot or West Lot that are provided to satisfy the

City's inclusionary housing ordinance and are included in a mixed-income building shall be rent- and income-restricted in perpetuity as required by the City's inclusionary housing ordinance. All other affordable units shall be rent- and income-restricted (i) for the duration of the applicable ground lease (each of which shall have a minimum duration of 99 years), including any lease term extensions, or (ii) for 99 years, for any units on the East Lot that the City chooses to sell rather than ground lease.

5. The affordability requirements identified below shall be incorporated into the ground leases for both the East and West Lots (or in the contract of sale for the East Lot should the City decide to sell that lot), and will also be enforceable by the City pursuant to regulatory agreements between the City and the developer(s), in accordance with the income targets identified in the JVP:
  - i. At least 35% of new housing, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of Area Median Income ("AMI").
  - ii. At least 20% of the required 35% affordable units referred to in subparagraph (i) must be affordable to Extremely Low-Income ("ELI") households, which are defined as those earning up to 30% of AMI.
  - iii. Of the required 35% affordable units referred to in subparagraph (i), additional affordable units aside from the ELI units should prioritize Very Low Income (up to 50% of AMI) households and Low Income (up to 80%) households but may include some housing restricted to households with moderate incomes (up to 120% of AMI), provided that the moderate-income units have rents that are still below market and are not funded by City subsidies.
  - iv. While the aforementioned goals are established in the JVP and the City and BART have policies regarding affordable housing requirements, any project receiving the City's Housing Trust Fund ("HTF") funding must meet the City's HTF Guidelines. BART's TOD Policy provides that BART will consider a deeper land discount to its determination of ground lease rent for affordable units that serve very low income (<50% AMI), low income (51-80% AMI) and/or transit-dependent populations.
  - v. Affordable units shall be constructed prior to or concurrently with any market-rate housing component on the parcels. No market rate housing on a Party's parcel will receive its notice to proceed until an affordable housing project on another parcel owned by that Party receives its notice to proceed. In the event there are multiple phases of market rate or affordable housing, a phasing plan shall be approved by the City to ensure

consistency with the JVP goal of affordable housing being built along with market rate housing, with such approval not to be unreasonably withheld.

- vi. Affordable units may be clustered into one or more 100% affordable housing buildings (provided the minimum developer equity contribution described below is satisfied) or dispersed amongst mixed-income housing buildings, but must be designed in a way that integrates with the larger project and shares comparable design standards and quality.
6. The RFPs or RFQs/RFPs for the West Lot and East Lot shall state the applicable minimum onsite affordability requirements for each lot, as set forth in this Term Sheet. In the event respondents to the RFP or RFQ/RFP for the West Lot propose a project that includes more than 602 units, said respondents will be requested to provide a detailed pro forma demonstrating how the respondent could potentially increase the affordability of the full project, inclusive of any density bonus units, beyond the required 35% minimum to reach an aspirational goal of up to 50%, as discussed in Section II.A.2. The respondents to the RFP or RFQ/RFP for the East Lot shall also be requested to provide in their response to the RFP a detailed pro forma demonstrating how the development team could potentially achieve a goal of 50% affordability, as discussed in Section II.A.3.
  7. In order to facilitate the provision of affordable housing, BART will provide the West Lot Developer with a discount on land costs for the BART-owned parcels on the West Lot in keeping with BART's Framework for Financial Return from Affordable Housing. BART shall require the West Lot Developer to utilize this land discount solely for the benefit of the affordable components of the West Lot.

#### **B. Developer Contribution for Affordable Housing**

1. For projects on the East or West Lots that will meet all or a portion of the City's affordable housing requirements through clustering as described in Section II.A.5.vi above, the developers of market-rate housing shall be required to contribute funding to assist in the construction of the clustered affordable units. A plan for either Lot to provide some or all affordable units in 100% affordable housing projects shall not eliminate or reduce the obligation of the market-rate units to contribute to such affordable units.
2. The amount of this developer contribution shall be calculated by 1) multiplying \$56.25 (as this amount may be adjusted biennially pursuant to City of Berkeley Resolution No. 70,698-N.S.) by the Total Residential Unit Floor Area of the project or projects after excluding the floor area in any 100% affordable housing buildings and any floor area in market rate or mixed income buildings that is included as a result of the state density bonus; and then 2) multiplying the result

by the percentage of the City's 20% affordable housing requirement remaining after accounting for any on-site Affordable Units provided within mixed income buildings that comply with all of the requirements of Berkeley's Inclusionary Housing Ordinance (codified in Berkeley Municipal Code section 23.328). For example, buildings that are 10% affordable would contribute \$28.12 per foot (half of \$56.25), adjusted for inflation. For the purpose of calculating the Total Residential Unit Floor Area, the area resulting from the density bonus is the total Residential Unit Floor Area (for the whole market rate/mixed income project) times the proportion of total units in the project in excess of those allowed under base zoning (the "Density Bonus Percentage"). As a result of this formula, a project that clustered all affordable units in 100% affordable buildings would contribute \$56.25 times (as adjusted) the base residential square footage of any market rate buildings, excluding any density bonus square footage. A project that included some affordable units on-site within the market rate buildings would make a pro-rated contribution.

3. The City shall require that the West Lot Developer submit an Affordable Housing Compliance Plan ("AHCP") to confirm that the requisite amount is shown as a source in the affordable proforma(s) and as a use in the market rate proforma(s). If the AHCP is completed before BART's Board of Directors approves a final term sheet with West Lot Developer, then BART shall review and approve the AHCP prior to City review. The City may condition its affordable housing funding on compliance.
4. Market rate units built through the density bonus shall not be subject to any further affordability requirements or in-lieu fee obligations; provided, however, that the application of the density bonus to the West Lot shall not yield a project that has less than 35% affordable housing as a proportion of the total units on the West Lot.

### **C. Public Infrastructure**

1. *Definitions and Summary.*
  - i. Future transit-oriented development at the Ashby Project will require substantial investments in public infrastructure, which may include, but is not limited to, reconfiguration of Adeline Street, Woolsey Street, Ashby Avenue, and Martin Luther King ("MLK") Junior Way; plaza improvements along Adeline Street and extensions of the plaza to connect to the new development; BART rider parking for vehicles and bicycles; new pedestrian, bicycle, transit, and passenger loading; lighting; station improvements necessitated by the West Lot project including but not limited to a new station entry plaza, stairs, ramping, and Traction Power Substation ("TPSS")

access area and crane area; and vehicular access roads (“Public Infrastructure”). Public Infrastructure does not include infrastructure necessary to serve a specific development parcel, the cost of which shall be borne by the developer selected by the City for the East Lot (the “East Lot Developer”), or by the West Lot Developer, as applicable. Public Infrastructure also does not include BART’s construction or operation of a new TPSS, which is anticipated to be on the West Lot.

ii. The location of certain specific Public Infrastructure and TPSS Improvements anticipated to be needed for the development of the West Lot are depicted on the diagram attached hereto as **Appendix C** (“Infrastructure Map”). The “TPSS Improvements” consist of improvements 7A and 7B as depicted on the Infrastructure Map. Public Infrastructure shown in Appendix C consists of the following categories:

- Roadway Reconfigurations. The “Roadway Reconfigurations” consist of improvements:
  - 1A (“Adeline Street Reconfiguration”), and
  - 3B (“MLK/Adeline/Woolsey Intersection Redesign”).
- Adeline Plaza Improvements. The “Adeline Plaza Improvements” consist of improvements:
  - 1B (“Adeline Main Plaza”),
  - 2A (“Ashby/Adeline Corner Plaza”), and
  - 3A (“MLK/Adeline/Woolsey Plaza”).
- Adeline Plaza Extensions. The “Adeline Plaza Extensions” consist of improvements:
  - 11 (“South Plaza Extension”), and
  - 2B (“Ashby/Adeline Corner Plaza Extension”).
- BART Terrace Improvements. The “BART Terrace Improvements” consist of improvements:
  - 9A (“Existing BART Terrace”), and

- 9B (“BART Terrace Extension”)
  - Sidewalk Improvements. The “Sidewalk Improvements” consist of improvements:
    - 15 (“Ashby Sidewalk Widening”),
    - 16 (“MLK Sidewalk Widening (north)”), and
    - 17 (“MLK Sidewalk/Bikeway Widening (south)”)
  - BART Improvements. The “BART Improvements” consist of improvements:
    - 4B (“Required Emergency Access”),
    - 5 (“TPSS Access Area”),
    - 6 (“Station Entrance Plaza”),
    - 8 (“North Plaza Stair (to be rebuilt)”),
    - 10 (“South Plaza Stair (to be rebuilt)”),
    - 12 (“South Platform Egress Stair and BART Storage (access to be reconfigured)”),
    - 13 (“BART Vents (to be extended above plaza)”), and
    - 14 (“ADA/Bike Ramp (new)”).
- iii. The funds to construct and maintain Public Infrastructure and the TPSS Improvements are expected to come from a combination of sources. The responsibilities of the parties with respect to constructing, maintaining, and seeking funding for Public Infrastructure and the TPSS Improvements shall be as set forth in this Term Sheet and in the matrix attached hereto as **Appendix E** (“Infrastructure Matrix”). To the extent there is a conflict between the Term Sheet and the Infrastructure Matrix, the Term Sheet shall control.
- iv. The Parties understand that available funding sources, financing estimates, and economic conditions could change as this Project proceeds. The Parties

shall cooperate to prepare a mutually agreeable financing strategy for Public Infrastructure that will respect the priorities for external funding identified in the term sheet, except to the extent the parties agree that flexibility is needed to maximize the external funding available for Public Infrastructure. BART shall require the West Lot Developer to collaborate with the Parties in preparing the financing strategy. Failure of the Parties and the West Lot Developer to prepare such a financing strategy shall not preclude either party from applying for external funding nor relieve either party of the obligations identified in this Term Sheet to cooperate on funding applications. Parties acknowledge that the financing strategy may need to be updated over time to reflect availability of financing sources.

2. General Responsibilities of the Parties. Except as otherwise provided in this Term Sheet and in the Infrastructure Matrix, BART and/or the West Lot Developer shall be responsible for constructing and maintaining the TPSS Improvements (7A and 7B) and the Public Infrastructure on the West Lot, the City and/or the East Lot Developer shall be responsible for constructing and maintaining Public Infrastructure on the East Lot, and the City shall be responsible for constructing and maintaining the Roadway Reconfigurations and the Adeline Plaza Improvements. The parties shall take future maintenance costs into consideration when designing and costing Public Infrastructure.
3. External Funding. Throughout the development process, BART, the City, the West Lot Developer, and the East Lot Developer shall collaborate on securing funding for Public Infrastructure. Such collaboration may include, for example, coordination on the scope and requests for applications to state funding sources that support transit-oriented development such as the Affordable Housing & Sustainable Communities (“AHSC”), Infill Infrastructure Grants (“IIG”), and Transit and Intercity Rail Capital (“TIRCP”) programs. The anticipated external funding sources for each of the Public Infrastructure are identified in, but shall not be limited to, those sources listed in the Infrastructure Matrix. To the extent external funding opportunities are limited, first priority for use of grant funds shall be given to “essential” improvements, second priority shall be given to “high priority” improvements, and third priority shall be given to “medium priority” improvements, as those priorities are identified in the Infrastructure Matrix (**Appendix E**). BART and the City shall make good faith efforts to develop an infrastructure grant funding strategy that seeks to maximize the total amount of grant funding available for the essential improvements.
4. Eastside Elevator. It is anticipated that BART may (but is not required to) determine that it is necessary to make upgrades to the elevator on the east side of Adeline Street that is used by BART riders to access the station (the “Eastside Elevator”). In the event

that BART, in its sole discretion, determines that upgrades to the Eastside Elevator are necessary, BART shall be responsible for securing grants or other funding for such upgrades. To the extent necessary, and as a showing of good faith, the City or the East Lot Developer will cooperate with BART in seeking external funding to support BART-related infrastructure needs necessitated by the East Lot project. However, if external funding is unavailable, neither the City nor the East Lot developer shall be responsible for construction or maintenance funding for BART-related infrastructure.

5. Adeline Plaza Improvements (1B, 2A, and 3A). Adjacent to the West Lot, within the City's right of way, the City shall be responsible for constructing and maintaining Adeline Plaza Improvements (Adeline Main Plaza, Ashby/Adeline Corner Plaza, and MLK/Adeline/Woolsey Plaza), including improvements related to the anticipated flea market space, which may include, but are not limited to, public open plazas, plantings, and green space. The City, BART, and the West Lot Developer shall collaborate on securing funding for the Adeline Plaza Improvements with the goal of marshalling financial resources from external sources (such as from the county, region, or state) and, for Adeline Main Plaza (1B), through the City's formation of an Enhanced Infrastructure Financing District ("EIFD") for the West Lot, which is more particularly described in Section II.D.1, below. For purposes of determining priority in allocating EIFD funds or external funding for the project, the Adeline Main Plaza (1B) is considered essential to the project, the Ashby/Adeline Corner Plaza (2A) is considered high priority, and MLK/Adeline/Woolsey Plaza (3A) is considered medium priority.
6. Traction Power Substation (7A and 7B).
  - i. The TPSS Improvements (7A and 7B) consist of a new Traction Power Substation ("TPSS") proposed by BART, together with related improvements, which are 100% designed and will be constructed in the locations shown in Appendix C labeled 7A and 7B. All direct, indirect, and ongoing operating costs associated with the TPSS Improvements shall be the sole responsibility of BART. BART currently anticipates using the TPSS Access Area (5) to provide the crane access required for TPSS maintenance. BART shall not use the existing Adeline Street sidewalk or future Adeline Plaza Improvements for crane access unless BART provides temporary or permanent supports sufficient to support the crane, at BART's sole cost and expense. BART's construction of the TPSS shall conform to the location shown as 7A and 7B in Appendix C. BART shall meet and confer with the City before materially altering the TPSS location and shall work in good faith to address any concerns with the revised location that the City may identify. Any increased TPSS infrastructure construction or operating costs that may result from

modifications to the TPSS location shall be the sole responsibility of BART; neither the City nor the East Lot developer shall be responsible for such costs.

- ii. The TPSS Improvements shall include decorative fencing with artistic treatments or other mutually agreeable screening treatment, along Adeline Street, and along the public facing edges at the north and south ends of the replacement TPSS, to screen the replacement TPSS from pedestrians (the “TPSS Screening Improvements”). BART shall be responsible for the construction and maintenance of the TPSS Screening Improvements. The City shall cooperate with BART in seeking external funding for the TPSS Screening Improvements, but the obligation to construct and maintain the improvements shall not be contingent on the availability of such funding.

7. West Lot BART Infrastructure. BART is committed to supporting the West Lot Developer in seeking external funding to pay for the BART Improvements and any other BART-related infrastructure needs necessitated by new development that may result in costs above and beyond those a developer would incur on similar privately-owned property. To the extent these external funding sources are not sufficient to cover the costs of BART-related infrastructure, such funding shortfall shall be considered a factor affecting project feasibility for purposes of this Term Sheet. BART shall also be responsible for, and may seek external funding for, any necessary upgrades to ventilation, lighting, vertical circulation, utilities, or other BART-related infrastructure, which responsibility may be delegated to the West Lot Developer. As indicated on the Infrastructure Matrix, BART has identified certain BART Improvements as essential to the West Lot project and the sole responsibility of West Lot Developer. However, the ultimate responsibility for the BART Improvements as between BART and West Lot Developer shall be determined by BART in its sole discretion. The City shall have no responsibility for the construction or maintenance of the BART Improvements or any other BART-related infrastructure on the West Lot.
8. Adeline Plaza Extensions (11 and 2B). The Adeline Plaza Extensions consist of the South Plaza Extension (11) and the Ashby/Adeline Corner Plaza Extension (2B). South Plaza Extension is an extension of the southern portion of the Adeline Main Plaza by providing an expanded plaza area and/or public accessways on the West Lot. The South Plaza Extension (11) shall comprise at least 4,800 square feet, and shall be extended as necessary to bridge any gap and connect with the adjacent TOD building. The Ashby/Adeline Corner Plaza Extension (2B) is an extension of Ashby/Adeline Corner Plaza (2A), at the intersection of Adeline Street and Ashby Avenue, and shall connect Ashby/Adeline Corner Plaza (2A) to the adjacent TOD building through an expanded plaza area and/or public accessways on the West Lot.

- i. Purpose. The intended purpose of the Adeline Plaza Extensions is to provide at-grade pedestrian connectivity between the Adeline Plaza Improvements and one or more new TOD buildings with commercial and/or residential uses having frontages that support activation of the Adeline Main Plaza (1B), and that complement market activities there. The Adeline Plaza Extensions shall be improved with elements such as a wider sidewalk, outdoor seating area, outdoor dining area, landscaping, or other usable open space.
- ii. Use by Berkeley Flea Market. At least 50% of the area of the South Plaza Extension shall be publicly accessible open space. The publicly accessible portion of the South Plaza Extension shall be made available for nonexclusive use by the Berkeley Flea Market.
  - In the event that BART retains possession of the applicable portion of the South Plaza Extension, the Berkeley Flea Market's use shall be via a "Concession Permit" (or a similar document permitting the Berkeley Flea Market use) issued by BART, on financial terms comparable to the Flea Market's current arrangement with BART, as adjusted for inflation, and subject to the Berkeley Flea Market materially satisfying all requirements thereunder, including but not limited to review and approval of the proposed use, which permit shall not be unreasonably withheld.
  - In the event that the West Lot Developer has a right to possess the applicable portion of the South Plaza Extension, BART's ground lease shall obligate the West Lot Developer to make at least 50% of the area open and available to the public, and to, at the Berkeley Flea Market's option, enter into an agreement for the use of at least 50% of the area of the South Plaza Extension by the Berkeley Flea Market on financial terms comparable to the Flea Market's current arrangement with BART, as adjusted for inflation and, subject to the terms of the ground lease and to the Berkeley Flea Market satisfying all reasonable requirements of the West Lot Developer.
  - The 50% area to be used by the Berkeley Flea Market shall be configured to avoid interference with required building emergency egress and BART rider ingress/egress.
- iii. Delivery. The South Plaza Extension (11) is considered essential to the West Lot development and shall be included in the final project. The Parties acknowledge that the technical issues involved in providing at-grade

pedestrian connectivity between a new TOD building and Adeline Street, and the costs associated therewith, have not been fully evaluated at this time. BART shall use good-faith efforts to work with the West Lot Developer to ensure that the final project will deliver at-grade pedestrian connectivity between a new TOD building and Adeline Main Plaza (1B) using high quality design and materials; provided that, in the event of a funding shortfall, BART, City and West Lot Developer shall work in good faith to identify value-engineering and other cost saving measures as provided in paragraph iii below. The Ashby/Adeline Corner Plaza Extension (2B) is considered a high priority improvement and shall be included in the final project to the extent consistent with project feasibility.

- iv. Funding. The City, BART, and the West Lot Developer shall collaborate on securing external funding for the Adeline Plaza Extensions (such as from the county, region, state, or federal government). In addition, the South Plaza Extension (11), to the extent eligible for EIFD funding under state law, shall be given priority among plaza extensions for EIFD funding as more particularly described in Section II.D.1.i, below, contingent upon West Lot Developer committing to a capital contribution of no less than \$1 million for the South Plaza Extension.
- v. Funding Shortfall. If revenues from the EIFD (including related interim bridge financing) and external funding sources are insufficient (or unavailable) to fund the South Plaza Extension, the parties will meet and confer to discuss value engineering measures to ensure the economic feasibility of the project; provided, however, that in no event shall the South Plaza Extension be constructed using low-quality materials. The West Lot Developer shall be responsible for the costs of constructing the Adeline Plaza Extensions in the event of any funding shortfalls. Neither City nor BART shall be required to contribute funds towards the Adeline Plaza Extensions.
- vi. EIFD Bridge Financing. The Parties acknowledge that EIFD funds may not be available until after the improvements associated with the Project are complete and on the tax rolls. The parties will collaborate on a plan to provide bridge financing through creation of a Community Facilities District (“CFD”) or other financing mechanism to be offset, reimbursed, or refinanced when EIFD revenues become available. The City shall be responsible for the maintenance of the public portions of the Adeline Plaza Extensions, which shall be funded by the CFD identified in Section II.D.3. Any portions of the Adeline Plaza Extensions which are for the exclusive use

of the West Lot project shall be maintained by Developer and shall not be eligible for CFD funding.

9. BART Terrace Improvements (9A and 9B). The BART Terrace Improvements consist of improvements to the Existing BART Terrace (9A) abutting the proposed Adeline Plaza, and any BART Terrace Extension (9B) necessary to connect the Existing BART Terrace to the adjacent TOD Building. As with the Adeline Plaza Extensions, the purpose of any BART Terrace Extension is to provide at-grade pedestrian connectivity between the Adeline Plaza Improvements and one or more new TOD buildings with commercial and/or residential uses having frontages that support activation of the Adeline Main Plaza (1B), and that complement market activities there.

i. Use by Berkeley Flea Market. The Existing BART Terrace shall be publicly accessible open space, and at least 50% of the area shall be made available for nonexclusive use by the Berkeley Flea Market.

- In the event that BART retains possession of the applicable portion of the Existing BART Terrace, the Berkeley Flea Market's use shall be via a "Concession Permit" (or a similar document permitting the Berkeley Flea Market Use) issued by BART, on financial terms comparable to the Flea Market's current arrangement with BART, as adjusted for inflation, and subject to the Berkeley Flea Market materially satisfying all requirements thereunder, including but not limited to review and approval of the proposed use, which permit shall not be unreasonably withheld.
- In the event that the West Lot Developer has a right to possess the applicable portion of the Existing BART Terrace, BART's ground lease shall obligate the West Lot Developer to make the area open and accessible to the public, and, at the Berkeley Flea Market's option, to enter into an agreement for the use of at least 50% of the area of the Existing BART Terrace by the Berkeley Flea Market on financial terms comparable to the Flea Market's current arrangement with BART, as adjusted for inflation and, subject to the terms of the ground lease and to the Berkeley Flea Market satisfying all reasonable requirements of the West Lot Developer.
- The 50% area to be used by the Berkeley Flea Market shall be configured to avoid interference with building emergency egress, and BART rider ingress/egress.

- ii. Delivery. BART and/or the West Lot Developer shall be responsible for constructing any improvements to the Existing BART Terrace and, if it is included in the final Project design, for constructing the BART Terrace Extension. EIFD funding may be made available for eligible BART Terrace Improvements if external funding is insufficient to cover construction costs, consistent with Section II.D.1.ii below. The BART Terrace Improvements are considered a high priority and shall be included in the final project to the extent consistent with project feasibility.

10. Roadway Reconfigurations (1A and 3B).

- i. Overview. The Adeline Street Transportation Improvements Project is expected to repurpose two of the existing four traffic lanes to create a new public pedestrian plaza and protected bikeways, along with upgraded traffic signal infrastructure and enhanced public transit operations on Adeline Street. The project scope of work includes redesigning the intersections of Adeline/Ashby and MLK/Adeline/Woolsey adjacent to Ashby BART. The component of the project to reconfigure Adeline Street is identified in Appendix C as 1A (Adeline Street Reconfiguration), and the component to reconfigure the MLK/Adeline/Woolsey intersection is identified in Appendix C as 3B (MLK/Adeline/Woolsey Intersection Redesign).
- ii. Funding of Roadway Reconfigurations. The Adeline Street Reconfiguration (1A) is considered essential to the project. Existing funding for the Adeline Street Reconfiguration is through Preliminary Engineering only, and funding for subsequent engineering design and construction phases has not yet been identified. The City and BART shall work collaboratively to identify funding for remaining project phases. The MLK/Adeline/Woolsey Intersection Redesign (3B) is considered a high priority improvement. The West Lot Developer shall collaborate with the City on securing funding for the Roadway Reconfigurations, including, for example, by coordinating on the scope and requests for applications to state funding sources. However, the costs of the Roadway Reconfigurations shall not be borne by BART or the West Lot Developer, but rather by grants, subsidies, or other publicly available funding sources.

11. Sidewalk Improvements (15, 16, and 17). The Sidewalk Improvements consist of the widening of the sidewalks along Ashby Avenue and MLK Way, and the widening of the sidewalk and construction of a new protected bikeway along MLK Way at the southern portion of the West Lot. The Sidewalk Improvements have a medium priority. West Lot Developer is responsible for the construction of the Sidewalk

Improvements and the costs thereof. The City shall be responsible for maintenance of the improved sidewalks.

12. BART Rider Parking. BART rider parking on the West Lot shall be the sole responsibility of BART and shall be within the sole discretion of BART, except that BART shall commit to providing ADA parking spaces in a quantity sufficient to meet user demand (up to the current amount at the station [16]), but in no event fewer than the quantity required by law. BART will monitor ADA space occupancy during the conceptual design process to determine the appropriate number of ADA spaces prior to construction. BART shall not require BART rider parking, including ADA parking, on the East Lot. The City, at its sole discretion and subject to any required public process and approvals, may elect to accommodate some or all of BART's ADA parking obligation within the City's right of way for the purpose of reducing costs and allowing external funding to be directed to other Public Infrastructure.
13. Coordination and Construction Process. The City, BART, and the West Lot Developer shall endeavor to coordinate the design and construction of the Roadway Reconfigurations, Adeline Plaza Improvements, the Adeline Plaza Extensions, the BART Improvements, and any other public infrastructure necessary for the project that may affect those improvements, to promote efficiency, seek compatibility of design and materials, and minimize conflicts with other City projects. To facilitate coordination and increase efficiency, the City, BART, and/or the West Lot Developer may enter into construction and reimbursement agreements providing for a single party to construct multiple improvements concurrently, with costs allocated as provided in this Term Sheet. However, development of the West Lot project and necessary Public Infrastructure may proceed prior to completion of the Roadway Reconfigurations and the Adeline Plaza Improvements. Additionally, nothing in this Term Sheet is intended to bar the City from assessing any regular public works fees on the developer associated with processing development permits and mitigating development impacts.
14. Specific Maintenance Responsibility for BART-Related Infrastructure. BART shall be responsible for the costs of maintaining any BART-related infrastructure, such as the Eastside Elevator, the TPSS, and the BART Improvements, regardless of whether such infrastructure is on the East Lot, the West Lot, or within the City's right of way, with the exception of any on-street ADA parking spaces, which shall be maintained by the City.

#### **D. Special Funding Mechanisms for Public Infrastructure**

1. West Lot EIFD. The City will make good faith efforts to pursue formation of an EIFD over the West Lot to improve the economic feasibility of development on the West Lot and potentially increase the level of affordable housing on the site. The City commits to making a good faith effort to form the EIFD within 12 months of approval of the entitlements for the West Lot Project. BART and the developer shall provide the requisite consents to (and refrain from protesting) formation. Priority of funds will be as follows:
  - i. (a) The South Plaza Extension (11) (to the extent eligible under state law, and contingent upon West Lot Developer committing to a capital contribution of no less than \$1 million for the South Plaza Extension) and (b) Adeline Main Plaza (1B).
  - ii. The BART Terrace Improvements (9A and 9B) and Ashby/Adeline Corner Plaza (2B).
  - iii. Public Infrastructure costs with no other available funding source, but excluding the BART Improvements or any other BART-related infrastructure (such as BART rider parking).
  - iv. Affordable housing funding gap for units in excess of the City's current inclusionary housing requirement.
  - v. Tax increment "pay as you go" financing to reimburse the developer(s) for eligible capital and maintenance costs for improvements financed by the EIFD.
2. East Lot EIFD. The City may, in its discretion, form an EIFD on the East Lot to improve the economic feasibility of development on the East Lot. The City may use the proceeds from the East Lot EIFD for any eligible costs associated with the East Lot development, provided that the funds shall not be applied toward any BART-related infrastructure.
3. Community Facilities District. The City's costs of maintaining the Adeline Plaza Improvements and the Adeline Plaza Extensions shall be covered by a CFD consisting solely of the West Lot, to fund ongoing maintenance responsibilities carried out by the City. The CFD shall only cover maintenance expenses for the public portions of the Adeline Plaza Extensions; it shall not cover maintenance of any portion that is for the exclusive use of the West Lot project. The City will initiate the formation of the CFD. The Parties will collaborate on developing the local goals and policies and, with the West Lot Developer, on determining the CFD's rate and method of apportionment, which determination shall take into account the impact that such additional tax burden

will have on the feasibility of the West Lot Project. BART shall give (and shall require West Lot Developer to give) any consents necessary to form the CFD, and BART or the West Lot Developer, as applicable, will vote in favor of formation of the CFD. The Parties acknowledge that a CFD will impact the feasibility of the Project by increasing the tax burden on the West Lot TOD, and agree to seek external funding sources if the CFD cannot feasibly generate enough revenue to cover the maintenance costs of the Adeline Plaza Improvements and Adeline Plaza Extensions.

## **E. Other Design and Development Considerations**

1. West Lot Civic Commercial Uses & Amenities.
  - i. The West Lot development shall be required to include a minimum of 5,000 net rentable square feet of ground floor interior space for community-based organizations, non-profits, and/or small and minority-owned businesses, including the Berkeley Flea Market, with triple net lease rents less than or equal to 50% of fair market (triple net) rent during the term of the ground lease. Tenants for this space, other than the Berkeley Flea Market may be recommended by the City but are subject to the West Lot Developer's sole discretion.
  - ii. The West Lot development may incorporate the public artwork by Mildred Howard that was recently commissioned by the City.
2. The Berkeley Flea Market. Following the completion of the Adeline Plaza Improvements (1B, 2A, and 3A), the South Plaza Extension (11), and the BART Terrace Improvements (9A and 9B), those areas shall be made available (consistent with Sections II.C.8.ii and II.C.9.i) as vending space for the Berkeley Flea Market on terms comparable to its current arrangement with BART, as adjusted for inflation, and potentially for other public markets and microenterprise businesses. The City may allow some portion of adjacent right-of-way to also be utilized to support the Berkeley Flea Market (and other public programming), such as for vendor parking at the curb on weekends. BART will not terminate its current arrangement with the Berkeley Flea Market nor increase its rent until the West Lot Developer requires possession of the West Lot for purposes of commencing construction. If, at that time, the Adeline Main Plaza (1B) is not yet completed, the City will assist the Berkeley Flea Market in identifying and securing a suitable alternate location.
3. Community Benefits Fund. The City intends to require that a portion of net project profit from the East Lot mixed income or market rate development parcels shall be allocated to create a reparative community benefits fund for South Berkeley residents,

as follows: By the earlier of (i) the beginning of the fourth year after a Temporary Certificate of Occupancy (“TCO”) is approved for a market rate or mixed income parcel on the East Lot, or (ii) stabilization (i.e., 95% occupancy) is achieved for such parcel, the developer of the parcel shall fund its pro rata share, as calculated pursuant to the next sentence, of an \$150,000 contribution to the Community Benefits Fund, to be paid annually on the anniversary of the date the first payment was due, with annual cost of living adjustments of no less than 3.0% per annum. The percentage of the total to be paid by each qualifying parcel shall be calculated by dividing the parcel’s net rentable or net sellable square footage by the total net rentable or net sellable square footage of all market rate or mixed income development approved or proposed on the East Lot. The final terms of any community benefits fund shall be established by the City in its sole discretion.

## F. Objective Design Standards

1. *Overview.* The Parties desire to maintain the ability for the City and community to provide effective input as to the design of development proposed at the Ashby Project. The Parties agree that the primary vehicles for City and community input are set forth in section 23.202.150 of the City’s Zoning Code, in the JVP, and in the ODS that will be developed separately for the West Lot and the East Lot. The Parties agree that the intent of ODS is to allow the City, the community, BART, and the developer to have a strong voice in the design quality of the development at the Ashby Station. The following sections describe the Parties’ mutual understandings regarding the ODS and ODS process for the West Lot. The process and content of any ODS for the East Lot shall be determined by the City in its sole discretion provided that the ODS must allow for at least 248 units and at least 300 bedrooms.
2. *Binding Nature of ODS.* The Parties understand and agree that pursuant to Section I.C of this Term Sheet and applicable law, a development application that qualifies for streamlined review shall be subject to ODS that will be duly adopted by the City prior to the submittal of the development application, and that such ODS shall be enforceable as permit conditions by the City. The West Lot Developer shall not submit any development application (including a preliminary application) before the earlier of the adoption of the ODS or the expiration of the ODS Approval Period. In addition, as part of the consideration for the City’s relinquishment of its option rights in the West Lot air space, the covenant encumbering the West Lot shall require that development comply with ODS that meet the requirements of **Appendix D**. BART shall ensure through its property agreements with the West Lot Developer that development on the West Lot adheres to ODS meeting the requirements of **Appendix D**. Notwithstanding anything to the contrary herein or in Appendix D, the West Lot Developer may invoke waivers, incentives or other exceptions, to the extent permitted

by law, but only with respect to (a) zoning requirements other than those set forth in or modified by the ODS, (b) ODS requirements pertaining to minimum square footage of active or non-residential ground floor uses, but only to the extent such requirements exceed 15,000 square feet, inclusive of the 5,000 square feet of community/civic commercial space, and (c) other ODS requirements that do not pertain to height limits, setbacks/step-backs, open space or massing breaks.

3. *Development of West Lot ODS.* BART has retained a consultant, Raimi & Associates (“Raimi”), directed by the City, to work with both Parties, community stakeholders, and the West Lot Developer to create ODS for the West Lot. Raimi has prepared a “Capacity Study based on a circulation framework and other development assumptions mutually agreed upon by the Parties. The Capacity Study shall be incorporated into the Exchange Agreement and serves to establish the net developable area of the site for purposes of determining ODS compliance with the requirements of **Appendix D**, as more particularly described therein. The process for adoption of ODS shall occur in two phases: the “Preliminary ODS” and the “Final ODS.” Raimi and City shall complete the Preliminary ODS for the West Lot by November 19, 2024 in advance of the release of the RFP or RFQ/RFP so that it may be included as an exhibit to the RFP or RFQ/RFP. The public and BART shall be given an opportunity to review and comment on the Preliminary and Final ODS, as will the West Lot Developer following developer selection. BART and West Lot Developer shall make good faith efforts to provide the City with information regarding the proposed project design necessary to develop ODS, and any other input they may have on draft or proposed ODS, in a timely fashion. During the ODS Approval Period, the City shall consider the input of the public, BART, and the West Lot Developer in the preparation of Final ODS to be considered for adoption by the Planning Commission and City Council, and shall make a good faith effort to address any objections raised by BART and the West Lot Developer relating to the impact of ODS on project feasibility or design.
4. *Requirements for ODS.* The Parties agree that the ODS shall comply with the requirements set forth in **Appendix D**. Main topics in the ODS may include but are not limited to:
  - Public realm improvements
  - Building form and massing
  - Building façade design
  - Open space and landscape
5. *Appendix D Compliance – Process for Objecting.* Prior to submitting proposed Final ODS to the Planning Commission, the City shall provide them to BART and the West

Lot Developer. If BART or the West Lot Developer object to any of the proposed Final ODS based on noncompliance with the requirements set forth in **Appendix D**, they shall submit such objections to the City, along with an explanation of the basis for the objections, within fifteen (15) business days of receipt. If objections are timely submitted, the City, BART and West Lot Developer shall promptly meet and confer in good faith to resolve the objections and make any revisions before the proposed Final ODS are submitted to the Planning Commission. If BART or West Lot Developer believes the Final ODS recommended by the Planning Commission for approval by Council would not comply with **Appendix D**, BART or West Lot Developer shall have fifteen (15) business days following the Planning Commission's recommendation to submit their objections to the City, along with an explanation of the basis for them, and the City, BART, and the West Lot Developer shall promptly meet and confer in good faith to resolve them prior to submittal to the City Council. If no objections based on **Appendix D** requirements are raised within the applicable fifteen (15) business day period, or if timely raised objections are resolved through the meet and confer process, the Final ODS approved by Council will be deemed to satisfy the requirements set forth in **Appendix D** unless modified by Council in a manner that affects compliance with the **Appendix D** requirements. Nothing in this paragraph is intended to limit the ability of BART or West Lot Developer to provide comments on the Preliminary or Final ODS at any time prior to final approval, or to raise concerns or objections to proposed ODS based on considerations other than compliance with **Appendix D**.

6. *Approval of West Lot ODS.* Once a complete draft of Final ODS has been prepared and the process for resolving any objections described in the preceding paragraphs 3 and 5 has been completed, City staff will submit the draft Final ODS to the Planning Commission for recommendation. Following the Commission's recommendation and completion of the process for resolving objections to that recommendation, the City shall submit the Final ODS for the West Lot to the City Council for adoption no later than nine months after the execution of the ENA for the West Lot ("Approval Period"). Should the City believe that, due to a force majeure event (including but not limited to war, terrorist attack, pandemic, natural disaster, or other similar occurrence beyond the City's control), the City is unable to adopt West Lot ODS within the Approval Period, the City may request an extension of the Approval Period from BART not more than 30 days after the commencement of the force majeure event, which request shall identify the force majeure event and specify how it has affected the City's ability to adopt West Lot ODS within the Approval Period. The extension of the Approval Period requested shall be of a duration equal to the duration of the impact of the force majeure event on the City's ability to adopt the West Lot ODS. BART's approval shall not be unreasonably withheld.

7. *Funding of ODS*. The City shall bear full responsibility for any costs to develop ODS on the East or West Lot in excess of the available grant funding or those costs incurred after the grant expenditure deadline.

### ***III. Other***

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- A. Additional Requirements.** The Ashby Project must comply with all relevant applicable BART and City policies and ordinances to the extent allowable by law. BART's relevant policies can be found at [www.bart.gov/TOD](http://www.bart.gov/TOD) and currently include its Transit-Oriented Development Policy, Affordable Housing Policy, AB 2923 Development Principles, Project Stabilization Agreement Policy for Transit-Oriented Development, and Labor Peace Agreement Policy for Transit-Oriented Development Hotel Operations.
- B. Term Sheet Non-Binding.** While this Term Sheet summarizes certain terms and conditions for the Ashby Project, it is not intended to be contractually binding on the City or BART. No legal obligation will exist regarding the transactions described in this Term Sheet, unless and until the parties have negotiated, executed and delivered mutually acceptable agreements approved by each Party's decision-making body in accordance with all legal requirements, including, to the extent applicable, the California Environmental Quality Act (CEQA).

(Signatures on following page)

CITY OF BERKELEY

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PAUL BUDDENHAGEN  
CITY MANAGER

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JESSE ARREGUÍN  
MAYOR

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

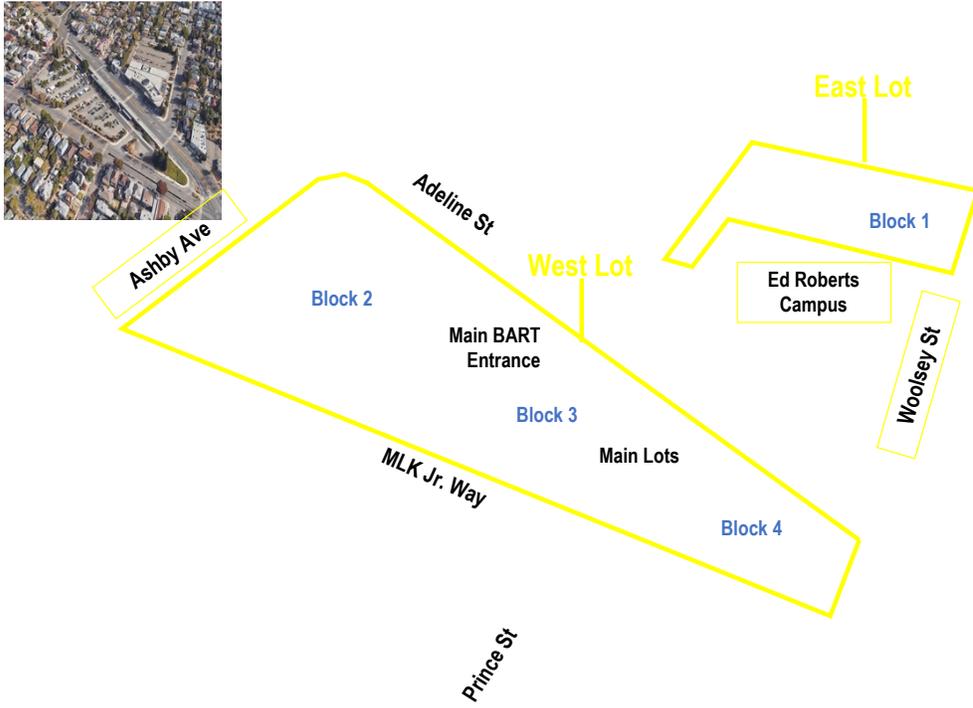
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ROBERT M. POWERS  
GENERAL MANAGER

**LIST OF EXHIBITS**

- Appendix A Ashby Project Aerial
- Appendix B Schedule
- Appendix C Infrastructure Map
- Appendix D ODS Requirements
- Appendix E Infrastructure Matrix
- Appendix F City Standard Conditions of Approval Relied on in R-BMU Zoning EIR
- Appendix G Capacity Study

APPENDIX A: ASHBY PROJECT AERIAL



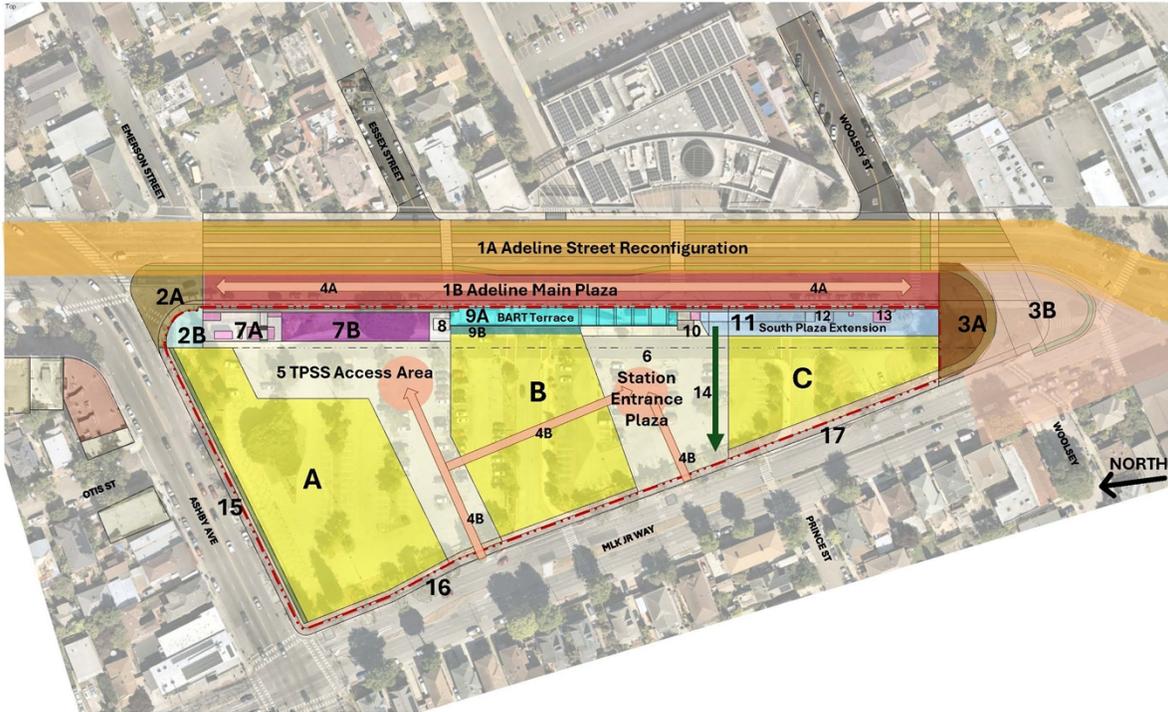
## APPENDIX B: SCHEDULE

Activity	Lead Party	Milestone	Outside Date
Term Sheet Execution	BART & City	The Parties execute the Term Sheet following approval by City Council	23-Sep-24
Provide Draft RFP for City 1st Review	BART	BART to transmit to City combined Request for Proposals and Notice of Funding Availability for City Predevelopment Funding (RFP)	24-Sep-24
Provide Draft Exchange Agreement documents for BART's Review	City	City to transmit to BART all proposed documents related to property exchange and covenants	24-Sep-24
Complete 1st Round Comments on Developer Solicitation Document (RFP)	City	City to transmit to BART language on Notice of Funding Availability for City Predevelopment Funding as well as general comments on RFP	15-Oct-24
Provide Draft RFP for City 2nd Review	BART	BART to transmit revised RFP to City	29-Oct-24
Complete 2nd Round Comments on Developer Solicitation Document (RFQ-P)	City	City to provide final comments on RFP	19-Nov-24
Preliminary ODS Complete	City	City finalizes Preliminary ODS for inclusion in RFP	19-Nov-24
Exchange Agreement Approval	City	City Council authorizes execution of Exchange Agreement documents aligned with terms approved by City Council and presented to BART Board	19-Nov-24
Exchange Agreement Execution	BART & City	The Parties execute binding documents related to the exchange of property interests that will be effectuated following ENA execution	26-Nov-24
Developer Solicitation Issuance	BART	BART issues combined RFP and Notice of Funding Availability for City Predevelopment Funding to developer community	3-Dec-24

Activity	Lead Party	Milestone	Outside Date
Developer Selection	BART Board of Directors	Identified development team (selected by a BART-City-EBB panel), with demonstrated capacity to complete affordable housing projects representing at least 35% of anticipated housing for the entire site.	26-Jun-25
Execution of an Exclusive Negotiating Agreement (“ENA”)	BART	ENA signed with Developer	No later than 9 months after Developer selection
City Affordable Housing Funding - Predevelopment Funding	City	Council award of predevelopment funds (if requested) to Developer	No later than 60 days after Developer Selection
Adoption of Objective Design Standards	City	Objective Design Standards adopted by City Council	No later than 9 months after ENA execution
Infrastructure Financing Strategy	City & BART with collaboration by West Lot Developer	Draft strategy prepared by City and BART with collaboration by West Lot Developer	No later than 9 months after ENA execution; failure to complete this shall not constitute default under any binding agreement.
City Application	Development team	Development team submits a complete application for a Master Development Permit, or for at least one affordable housing building’s entitlements/permit	No sooner than Adoption of ODS (or 9 months from execution of ENA, whichever comes first) and no later than 3 years from execution of ENA
Project Financing	Development team	For each affordable housing project, development team secures complete project financing. If this milestone is not met, the City may rescind the development funding reservation for that project component.	31-Dec-33

APPENDIX C: INFRASTRUCTURE MAP

Note: The number and footprint of structural elements, as well as the spaces between them, have not been designed and are illustrative. The actual location of various structural elements may differ from the depictions below.



**Public Areas**

- Adeline Street Reconfiguration\*\*\*
- Adeline Main Plaza
- Ashby/Adeline Corner Plaza\*\*, \*\*\*
- Ashby/Adeline Corner Plaza Extension\*\*
- Existing BART Terrace
- BART Terrace Extension\*
- South Plaza Extension\*\*
- MLK/ Adeline/Woolsey Plaza\*\*, \*\*\*
- MLK/ Adeline/Woolsey Intersection Redesign\*\*, \*\*\*
- Ashby Sidewalk Widening
- MLK Sidewalk Widening (north)
- MLK Sidewalk/Bikeway Widening(south)
- TPSS Access Area\*\*
- Station Entrance Plaza\*\*

- 1A
- 1B
- 2A
- 2B
- 9A
- 9B
- 11
- 3A
- 3B
- 15
- 16
- 17
- 5
- 6

**Other Elements**

- North Platform Egress Stair & BART Vents and TPSS Equipment 7A
- TPSS Replacement Area 7B
- North Plaza Stair (to be rebuilt) 8
- South Plaza Stair (to be rebuilt) 10
- ← ADA Pedestrian/Bike Connection/Ramp (new)\*\*14
- South Platform Egress Stair & BART Storage (access to be reconfigured) 12
- BART Vents (to be extended to/above plaza) 13
- - - Estimated BART Property Line
- - - Estimated Zone of Influence
- Development Areas\*\* (A, B, C)
- ⬮ Required Emergency Access \*\*, \*\*\*\* 4B
- Adeline Main Plaza EVA 4A

\*Potential extension, not required, building could be built up to Existing BART Terrace  
 \*\* Location and geometry flexible if all performance requirements are met  
 \*\*\* Funding for Adeline St Reconfiguration subject to identification of City financial resources to fund improvements; City has identified these improvements as a top priority for funding.  
 \*\*\*\* 4A refers only to that segment of 4 within the City's ROW; 4B refers only to that segment of 4 within BART's parcel.

## APPENDIX D: ODS REQUIREMENTS

### Requirements for Objective Design Standards on West Lot

The City's future ODS for the West Lot shall be binding on BART and the West Lot Developer without respect to any waivers, incentives or other exceptions that may otherwise be available under the Density Bonus Law or other provision of law, and BART shall require the West Lot Developer to comply with the Final ODS utilizing its real estate agreements, provided that:

1. City zoning is consistent with AB 2923 in that it allows a density of at least 75 dwelling units per acre and a height of at least 7 stories, and does not require parking in excess of the AB 2923 maximums;
2. The ODS is adopted by the City of Berkeley for the West Lot within the Approval Period;
3. The City's Preliminary and Final ODS include standards that are applicable to development that qualifies for a density bonus under the state Density Bonus Law and allows for greater heights than existing zoning ("ODS Density Bonus Standards"). The ODS Density Bonus Standards must (a) allow heights of at least 85 feet without a maximum number of stories, and (b) allow (but not require) that development occur in BART's Zone of Influence ("ZOI");
4. The ODS Density Bonus Standards, when applied to a hypothetical development that (a) is within the net developable area ("NDA") footprint shown in the Capacity Study and (b) has a height no greater than 8 stories, allow for a gross residential square footage of at least 600,000 sq ft.; and
5. The ODS Density Bonus Standards, when applied to a hypothetical development within the NDA that has a height over 85 feet but within the maximum height allowed by the ODS Density Bonus Standards, allow for a gross residential square footage of at least 750,000 square feet.

The Parties agree that an 8-story development under ODS Density Bonus Standards meeting the above requirements will allow for at least 600 units, based on an average net floor area of 750 square feet per unit, assuming a 75% efficiency factor.

Notwithstanding the foregoing, the West Lot Developer may invoke waivers, incentives or other exceptions, to the extent permitted by law, but only with respect to (a) zoning requirements other than those set forth in or modified by the ODS, (b) ODS requirements pertaining to minimum square footage of active or non-residential ground floor uses, but only to the extent such requirements exceed 15,000 square feet, inclusive of the 5,000 square feet of community/civic commercial space, and (c) other ODS requirements that do not pertain to height limits, setbacks/step-backs, open space or massing breaks.

### **Net Developable Area**

The NDA is defined as the gross developable area of the West Lot, as shown in Appendix G, the Capacity Study. The NDA assumes development will occur in the BART ZOI. The NDA shown in the Capacity Study shall not be altered for purposes of determining compliance of ODS with the requirements of this Appendix D, regardless of any later alterations made to the location of BART infrastructure, public site circulation, or building footprints, or any other considerations of development feasibility that may arise in connection with a proposed development project.

The final NDA shall be used solely for the purposes of calculating ODS Capacity and shall not otherwise bind BART, the City or the West Lot Developer in any manner, including with respect to the size, location or configuration of the development footprint for the final project.

### **ODS Capacity**

The amount of gross residential square footage allowed under the applicable Density Bonus Standards (“ODS Capacity”) shall be calculated by applying R-BMU zoning requirements to a hypothetical project eligible for density bonus within the NDA at the heights specified in paragraphs 4 and 5 above, as applicable, and accounting for square footage that is lost due to required setbacks, step-backs, massing breaks, or other required features (e.g. fire and life safety requirements) required under by the ODS Density Bonus Standards. The determination of ODS Capacity shall be made by Raimi if mutually agreed by the Parties, or if not, then a design professional such as a member of the American Institute of Certified Planners (AICP) or licensed architect, to be selected by mutual agreement of BART and the City. The determination of ODS Capacity shall use the same extrinsic assumptions used in the agreed-upon Capacity Study (to the extent not impacted by the ODS), including without limitation the number of stories (with respect to paragraph 4 above only), space required for emergency access, and the amount of parking assumed for each building. ODS Capacity will be calculated for the entirety of the West Lot development and not individual buildings or blocks. For purposes of the ODS Capacity calculation, residential square footage shall not include square footage for parking.

## APPENDIX E: INFRASTRUCTURE MATRIX

Map ID	Infrastructure Cost Category	Priority	Funding Sources	Responsibility in the Event of Funding Shortfall	Maintenance Responsibility
<b>PUBLIC AREAS</b>					
1A	Adeline Street Reconfiguration ***	Essential	Bond Funds/ Alameda County/OBAG 4/Grants & Subsidies	City	City
1B, 4A	Adeline Main Plaza ***	Essential	Grants & Subsidies/IIG/AHSC/EIFD	City	City (CFD-funded)
2A	Ashby/ Adeline Corner Plaza **, ***	Essential	Grants & Subsidies/IIG/AHSC	City	City (CFD-funded)
2B	Ashby/ Adeline Corner Plaza Extension **	Essential	Developer Contribution/Grants & Subsidies/IIG/AHSC	Developer	City (CFD-funded)
9A	Existing BART Terrace	High	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	BART	BART
9B	BART Terrace Extension *	High	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	Developer	Developer
11	South Plaza Extension **	Essential	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	Developer	City (CFD-funded)
3A	MLK/ Adeline/ Woolsey Plaza **, ***	Medium	Grants & Subsidies/IIG/AHSC	City	City (CFD-funded)
3B	MLK/ Adeline/ Woolsey Intersection Redesign **, ***	High	Bond Funds/ Alameda County/OBAG 4/Grants & Subsidies/IIG/AHSC/City's General Fund	City	City
15	Ashby Sidewalk Widening	Medium	Developer Contribution	Developer	City
16	MLK Sidewalk Widening (north)	Medium	Developer Contribution	Developer	City
17	MLK Sidewalk/Bikeway Widening (south)	Medium	Developer Contribution	Developer	City
5	TPSS Access Area including crane area **	High	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	BART
6	Station Entrance Plaza **	Essential	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	BART
-	BART Parking - ADA Rider Parking & Staff Parking (station agents, police)	Essential	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	BART
-	BART Rider Parking - General	Medium	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	BART
<b>OTHER INFRASTRUCTURE ELEMENTS</b>					
7A	North Platform Egress Stair, BART Vents & TPSS Equipment	Essential	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	BART
7B	TPSS Replacement Area	Essential	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	BART
8	North Plaza Stair (to be rebuilt)	High	BART or Developer Contribution/Grants/Subsidies	Developer	BART
10	South Plaza Stair (to be rebuilt)	Essential	Developer Contribution/Grants/Subsidies	Developer	BART
14	ADA and Bike Ramps (new) **	Essential	Developer Contribution/Grants/Subsidies	Developer	Developer
12	South Platform Egress Stair + BART Storage (access to be reconfigured)	High	Developer Contribution/Grants/Subsidies	Developer	BART
13	BART Vents (to be extended above plazas)	High	Developer Contribution/Grants/Subsidies	Developer	BART
4B	Required Emergency Access + Turn Around **, ****	Essential	BART or Developer Contribution/Grants/Subsidies	BART/ Developer	Developer

**Notes:**

- \* Potential extension, not required if building is built up to Existing BART Terrace.
- \*\* Location and geometry flexible if all performance requirements are met.
- \*\*\* Funding for Adeline St Reconfiguration subject to identification of City financial resources to fund improvements; City has identified these improvements as a top priority for funding.
- \*\*\*\* 4A refers only to that segment of 4 within the City's ROW; 4B refers only to that segment of 4 within BART's parcel.

**APPENDIX F: CITY STANDARD CONDITIONS OF APPROVAL RELIED ON IN R-BMU ZONING EIR**

1. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:
  - A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
  - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
  - C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
    - i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
    - ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.
2. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:

- A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.
  - B. If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
  - C. In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
  - D. If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
  - E. If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
3. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.

4. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.
  
5. Construction Hours. Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
  
6. Construction Noise Reduction Program. The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070, Prohibited Acts. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
  - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
  - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
  - C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
  - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
  - E. Prohibit unnecessary idling of internal combustion engines.
  - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.

- G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
  - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
  - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.
7. Construction Noise Management. Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
8. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall consider project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake study of existing conditions (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage.

This study shall establish the baseline condition of these structures, including, but not limited to, the location and extent of any visible cracks or spalls; and include written descriptions and photographs.

The study shall be reviewed and approved by the Building and Safety Division and the Zoning Officer prior to issuance of a grading permit. Upon completion of the project, the structures (or, in case of large buildings, of the portions of the structures) previously inspected will be resurveyed, and any new cracks or other changes shall be compared to pre-construction conditions and a determination shall be made as to whether the proposed project caused the damage. The findings shall be submitted to the Building and Safety Division and the Zoning Officer for review. If it is determined that project construction has resulted in damage to the structure, the damage shall be repaired to the pre-existing condition by the project sponsor, provided that the property owner approves of the repair.

9. Avoid Disturbance of Nesting Birds. Initial site disturbance activities, including vegetation and concrete removal, shall be prohibited during the general avian nesting season (February 1 to August 30), if feasible. If nesting season avoidance is not feasible, the applicant shall retain a qualified biologist to conduct a preconstruction nesting bird survey to determine the presence/absence, location, and activity status of any active nests on or adjacent to the project site. The extent of the survey buffer area surrounding the site shall be established by the qualified biologist to ensure that direct and indirect effects to nesting birds are avoided. To avoid the destruction of active nests and to protect the reproductive success of birds protected by the MBTA and CFGC, nesting bird surveys shall be performed not more than 14 days prior to scheduled vegetation and concrete removal. In the event that active nests are discovered, a suitable buffer (typically a minimum buffer of 50 feet for passerines and a minimum buffer of 250 feet for raptors) shall be established around such active nests and no construction shall be allowed inside the buffer areas until a qualified biologist has determined that the nest is no longer active (e.g., the nestlings have fledged and are no longer reliant on the nest). No ground-disturbing activities shall occur within this buffer until the qualified biologist has confirmed that breeding/nesting is completed and the young have fledged the nest. Nesting bird surveys are not required for construction activities occurring between August 31 and January 31.

**APPENDIX G: CAPACITY STUDY**

[To be inserted]

## MEMORANDUM OF AGREEMENT RE NORTH BERKELEY AND ASHBY TRANSIT-ORIENTED DEVELOPMENTS

This Memorandum of Agreement (“MOA”) is entered into on this 30<sup>th</sup> day of June, 2022, by and between the San Francisco Bay Area Rapid Transit District (“BART”) and the City of Berkeley (“City”) (collectively the “Parties”) to cooperatively pursue transit-oriented development (“TOD” or “the Projects”) at the North Berkeley and Ashby BART stations. This MOA is made in furtherance of the Memorandum of Understanding between BART and City, signed on March 3, 2020 (“MOU”, attached hereto as Exhibit A), and the Joint Vision and Priorities Document approved by the City on June 2, 2022 and by BART on June 9, 2022 (“JVP,” attached hereto as Exhibit B), which addressed TOD projects at the North Berkeley and Ashby BART Stations. These projects are individually referred to respectively as the “North Berkeley Project” and “Ashby Project,” and collectively as the “Projects.” This MOA primarily addresses the North Berkeley Project. The Parties anticipate amending this MOA to address additional issues specific to the Ashby BART Project.

This MOA is not intended to cover all issues that may arise between BART and the City with respect to the Projects, but is intended to provide the Parties and potential developers a basic understanding as to how the Project negotiation and entitlement processes will proceed; the objectives and minimum requirements for the Projects in terms of design, affordability, and infrastructure; and the anticipated City and BART contributions to the Projects.

### RECITALS

- A. In 2020, the Parties entered into the MOU to identify their shared vision and priorities for development of TODs at the North Berkeley and Ashby BART stations, to provide clarity on the process and timelines for pursuing development, and to begin to identify the roles and responsibilities of the City and BART in that process. Among other things, the MOU called on the City to establish a Community Advisory Group, reserve funding to support affordable housing development at the sites, and to adopt zoning for the sites consistent with AB 2923.
- B. On April 27, 2021, the Berkeley City Council unanimously adopted Resolution 69,833-N.S. which, in part, provisionally reserves \$53 million of City-controlled funds as the subsidy needed to achieve 35% affordable housing at the Ashby and North Berkeley BART sites, allows for a portion of the funding to be considered for predevelopment, and directs the Berkeley City Manager (“City Manager”)

- to investigate a new bond measure that could fund housing and/or housing related infrastructure needs at the two BART Stations and in the Adeline Corridor, or in the City as a whole, and to establish a timeline and community process for said bond measure, with a goal of maximizing affordable housing (up to 100%) at either or both sites.
- C. On June 28<sup>th</sup>, 2022 the Berkeley City Council adopted a new Chapter 23.202.150 in its Zoning Ordinance, as part of the City of Berkeley Municipal Code, adding a “Residential - BART Mixed Use (R-BMU)” zoning district, as well as additional conforming amendments to the General Plan and other sections of the Municipal Code in order to ensure that the provisions are comprehensively and consistently incorporated into its Zoning Ordinance, to govern development at the North Berkeley and Ashby BART stations.
- D. On June 2, 2022, the Berkeley City Council approved the JVP, and on June 9, 2022, the BART Board approved the JVP. The JVP expresses the City and BART’s shared, high-level expectations for future development of both the Ashby and North Berkeley BART Stations. This document will be incorporated into BART’s future Requests for Qualifications (“**RFQs**”) for development of the Ashby and North Berkeley Station development, and will help guide the process from developer selection through project construction. Further negotiations will occur pertaining to the potential solicitation at the Ashby BART Station.
- E. With the above milestones completed, the purpose of this MOA is to clarify the processes that BART and/or the City will pursue from this date forward in seeking to realize construction of the North Berkeley Project, as well as to set out certain agreements with respect to the Ashby Project.
- F. As part of the work funded by a San Francisco Foundation Breakthrough Grant (“Equitable Black Berkeley”), the City of Berkeley is contracting with Creative Development Partners to support an innovative reparative approach to financing with a goal of increasing affordable housing, and supporting BART and the City to meet the goals of the JVP developed with input from the City’s Community Advisory Group (CAG).
- G. Outstanding issues remain to be addressed prior to advancing development of the Ashby Project, including, but not limited to, ensuring a new permanent location for the Berkeley Flea Market can be provided, the City’s option to acquire air rights for the Western Parking Lot, the potential reconfiguration of Adeline

Street, the design and funding of station infrastructure, and the role of BART and the City in the developer solicitation process. It is anticipated that an amendment to this MOA, as well as completion of related agreements and documentation, will be needed in order to advance solicitation of a developer for the Ashby Project.

### MUTUAL AGREEMENT OF THE PARTIES

#### I. Relationship to MOU

- A. This MOA amends and expands upon the MOU (Exhibit A) between the Parties to reflect changes in the anticipated project schedule and encompass topics not addressed in the MOU. The MOU remains in effect and its terms are only changed to the extent specifically noted in this MOA, or where provisions of this MOA are in direct conflict with provisions in the MOU, in which case the provisions of this MOA shall prevail. Terms of the MOU that are not in conflict with this MOA shall remain in effect.

#### II. Timeline for the Projects

- A. The Summary Table below reflects activities for the Projects anticipated to take place after the date of this MOA. It supersedes the Activities and Timelines Summary Table in section III of the MOU. BART and the City agree that the milestones and associated dates may be revised upon mutual written agreement of the City Manager or her designee and of the BART General Manager ("**General Manager**") or his designee. If the Parties do not complete an activity or a milestone by the date provided for said activity or milestone, and if the parties cannot identify a mutually acceptable later date for completion of the activity or milestone, then either Party may, upon 30 days' written notice to the other Party, terminate this agreement as it applies to the Station to which the activity or milestone relates.

#### B. Activities and Timelines Summary Table

Activity	Lead Party	Milestone	Outside Date
1. Developer(s) Solicitation – North Berkeley Project	BART	RFQ Release for North Berkeley Project and Notice of Funding Availability for City Predevelopment Funding	July 1, 2022

2. Developer(s) Selection – North Berkeley Project	BART Board of Directors	Identified development team (selected by a panel with equal City and BART representation), with demonstrated capacity (as outlined in the RFQ), to complete affordable housing projects representing at least 35% of anticipated housing for the entire site. If the milestone is not met, the City may rescind the \$500k in predevelopment funding available through the RFQ.	June 30, 2023
3. Execution of an Exclusive Negotiating Agreement (“ENA”) – North Berkeley Project	BART	ENA signed with Developer	No later than 9 months after Developer selection
4. City Affordable Housing Funding - Predevelopment Funding – Both Projects	City	Council award of predevelopment funds (if requested) to Developer	No later than 60 days after Developer Selection for each respective Station
5. Adoption of Objective Design Standards – Both Projects	City	Objective Design Standards adopted by City Council	No later than 9 months after ENA execution for each respective Station assuming both parties meet the terms outlined in Section IV.F below
6. Affordable Housing Strategy – Both Projects	City	Identify additional funding streams, if any and finalize City affordable housing funding plan	June 30, 2023

7. City Application - Both Projects	Development team	Development team must submit a complete application for a Master Development Permit, or for at least one affordable housing building's entitlements/permit	No sooner than 9 months and no later than 3 years from execution of ENA for each respective Station
8. Project Financing	Development team	For each affordable housing project, development team must secure complete project financing. If this milestone is not met, the City may rescind the development funding reservation for that project.	December 31, 2031

### III. Phasing and Funding for Affordable Housing for the North Berkeley Project

The Parties will strive to deliver new housing within 10 years to reflect the urgency of the climate and housing crises, acknowledging that housing, including affordable housing, may be developed in multiple phases over a number of years.

The Parties have committed to working together proactively to maximize the number of permanently affordable, deed-restricted housing units at the North Berkeley site, dependent on timely identification of sufficient funding and balanced with other JVP goals and BART infrastructure needs. The RFQ, ENA and other transaction documents will reflect the following agreement as a requirement: At a minimum, the North Berkeley Project shall include regulated affordable units comprising at least 35% of the new housing units to be developed at the site, inclusive of any bonus units granted as part of a density bonus application, at the affordability levels in the JVP, as described below. Affordability restrictions shall run for the duration of the ground lease(s) for all affordable housing components of the Project, which leases shall have a minimum duration of 65 years, and for any extensions thereto. In addition to the terms of said ground leases, the affordability restrictions will be enforceable by the City pursuant to regulatory agreements between the City and the developer(s).

#### Affordability Levels in the JVP:

- 1) At least 35% of new housing must be affordable to households earning an average of up to 60% of Area Median Income ("AMI").
- 2) At least 20% of the required 35% affordable units must be affordable to households earning no more than 30% of AMI ("Extremely Low Income" or "ELI", and

- 3) Additional affordable units aside from the ELI units should prioritize low income (80% of AMI) and very low income (50% of AMI) households but may include some housing restricted to households with moderate incomes (up to 120% of AMI), provided that the moderate-income units have rents that are still below market and shall not include City subsidy.

While the aforementioned goals are established in the JVP and the City and BART have policies regarding affordable housing requirements, any project receiving the City's Housing Trust Fund ("HTF") funding must meet the HTF Guidelines, which require that 40% of any City subsidized units be affordable to households earning up to 60% of AMI, and an additional 20% of City subsidized units to be affordable to households earning up to 30% of AMI. BART's TOD policy also provides a priority for affordable units that serve very low income (<50% AMI), low income (51-80% AMI) and/or transit-dependent populations.

#### **A. BART Land Discount**

In order to facilitate the provision of deeply affordable housing, BART will provide the selected developer with a discount on land costs. In keeping with BART's *Framework for Financial Return from Affordable Housing*, higher levels of discount will be available to projects that provide more units at lower income levels. BART shall require the selected developer for the North Berkeley Project to utilize this land discount solely for the benefit of the affordable components of this Project. For the avoidance of doubt, the Parties acknowledge that this Section III.A applies to the North Berkeley Project only. The City and BART will address the BART discount on land costs for the Ashby Project at a later time.

#### **B. City Funding**

The City will make available a total of \$53 million in affordable housing funds, including up to \$4 million in predevelopment funds, for the Projects, and allocate funding to the Projects subject to each project's compliance with the Objective Design Standards (consistent with conditions in Section IV below), affordability requirements, project milestones (including without limitation the milestones noted in Section II.B above), and other requirements to be set forth in the funding agreements between the City and developer.

City will work to ensure an equitable distribution of City subsidy funding. It is anticipated that up to 50% of the City subsidy funds will be invested at the North Berkeley Project. However, if differences in timing of the Projects, the availability of outside subsidy, planned affordability levels or other factors result in a greater need for funding at one site than the other, the City may, in consultation with BART, choose to allocate the funding differently. A minimum of \$20 million in City subsidy funds will be available to be invested at the North Berkeley Project, subject to Council approval of an

HTF Program application. City acknowledges that the Minimum Requirements for housing affordability may not be achievable without this allocation.

The anticipated sources of City funding are as follows:

- 1) **Measure O Funding:** The City has reserved \$40 million in Measure O funding. It is the City's intention to invest up to \$20 million of these funds in the North Berkeley Project unless a different funding allocation is determined as noted above.
- 2) **Affordable Housing Mitigation Fees:** In addition, the City has reserved \$13 million in additional funding for the North Berkeley and Ashby sites from future Affordable Housing Mitigation Fee revenue, or from an alternative source of funding to be identified by the City by June 30, 2023, inclusive of any funds invested in predevelopment. It is the City's intention to invest up to 50% of this total (\$6.5 million) at the North Berkeley site.
- 3) **Potential Future Bond Measure:** The City Manager is investigating a new bond measure, as described above in Recital B, which if passed by the voters could provide additional City funds to increase the provision of affordable housing within the projects.

### **C. Predevelopment Funding**

As authorized by City Council, the City will reserve up to \$2 million in predevelopment funding for the North Berkeley site from its HTF to enable nonprofit affordable housing developers to undertake predevelopment expenses. The predevelopment funding described in this Section III.C will only be available to nonprofit affordable housing developers, but shall be available whether the nonprofit is the lead developer or a member of a development team. In the event that there is a joint venture, the City will review the joint venture operating agreement and organization chart for the sole purpose of confirming the roles and relationship of the venture partners and the period of time the joint venture will be in force. The predevelopment funding will be made available in two phases:

1. **Phase 1 predevelopment funding** is available during the RFQ process to support a non-profit developer to fund early predevelopment costs. The RFQ will jointly serve as an application for this Phase I predevelopment funding from the City. Following developer selection by the BART Board of Directors, the City will consider approval of up to \$500,000 total for eligible non-profit developers requesting this funding. Disbursement of the Phase 1 predevelopment funding will be conditioned upon execution of an ENA, the terms of which are consistent with the requirements of this MOA.
2. **Phase 2 project-specific predevelopment funding** consistent with the HTF Guidelines and implementing procedures, including site planning, infrastructure

planning, access planning, engineering, architecture and financing expenses (but excluding land acquisition costs). Following the submittal of an affordable housing proposal and financing plan (including a project pro forma), an eligible developer may then request the remaining predevelopment funds (up to \$1.5 million), which the City will recommend the Council approve if it determines the developer's proposal and financing plan are feasible and meet funding agreement conditions. Disbursement of the Phase 2 predevelopment funding will be conditioned upon execution of an ENA, the terms of which are consistent with the requirements of this MOA.

City predevelopment funding will, via the mechanism of the Predevelopment Loan Agreement between the City and the developer, be secured by the work products created by the developer, which shall become the property of the City if the developer defaults. As to other shared costs, predevelopment funding may be used to pay for no more than the pro-rata share attributable to the portion of the project restricted to serving tenants with incomes up to 120% of AMI plus any associated manager's units based on net rentable square footage. For Phase 1, the pro rata share will be determined based on the percentage of housing up to 120% AMI per the selected developer's preliminary development concept. Phase 2 can only fund predevelopment costs that are directly tied to a standalone 100% affordable development.

The Parties will work together to ensure that the submittal requirements and selection process provide an opportunity for the City to evaluate potential applications for eligibility for predevelopment and development subsidy from the City's HTF and Measure O bond proceeds prior to selection. The City agrees to accept the executed ENA as proof of site control for purposes of committing predevelopment funds. The terms and conditions for disbursement of City predevelopment funds will be established in a Predevelopment Loan Agreement between the City and the developer/borrower.

The Predevelopment Loan Agreement may require that developer reimburse the City for disbursed predevelopment loan funds if entitlement milestones are not met per Section II Table B., or if the proposed project is inconsistent with any Objective Design Standards then in force, or other terms and conditions of the Predevelopment Loan Agreement.

#### **D. Development Funding for the Projects**

The Parties expect funding for affordable housing development to come from City subsidies (Measure O and HTF), a developer contribution associated with any market rate development, and other sources. The affordable housing developer will be responsible for

identifying and leveraging available funding sources, including state and federal funding programs.

BART and the City require that development submittals in response to the developer solicitations include a preliminary development concept. This shall include a preliminary phased development timeline, the desired dates for receiving and drawing on funding commitments from the City, and the anticipated completion of affordable housing. The phased development timeline will include concurrency requirements to ensure that affordable units are constructed prior to or concurrently with any market-rate housing component. No market rate housing will receive its notice to proceed until an affordable housing project receives its notice to proceed. In the event there are multiple phases of market rate or affordable housing, the phasing plan shall be approved to ensure consistency with the JVP goal of affordable housing being built along with market rate housing.

The City will award development subsidy loan funds remaining after the award of any predevelopment funding based on detailed proposals provided by the selected affordable housing developer. The final commitment of development funding reserved for the North Berkeley site will be awarded based on compliance with the Objective Design Standards – Provided the Objective Design Standards satisfy the requirements in Section IV - and the City's HTF Guidelines and the terms and conditions of the funding agreement described below.

The City's development funds shall be subject to the terms of a funding agreement with the affordable housing project developer and shall be contingent on compliance with the Minimum Requirements, attached hereto as Exhibit C, as well as the requirements set forth in the funding agreement, including the following:

- 1) The project must comply with EIR mitigation measures and relevant City of Berkeley standard conditions of approval.
- 2) The project must abide by any applicable requirements to give preference for residents of Berkeley who are facing displacement (or who have been displaced from Berkeley in the past due to economic or discriminatory reasons).
- 3) The development team must comply with project-labor provisions required of City of Berkeley projects.
- 4) The development team must comply with the City's local hire policies (Community Workforce Agreement, First Source), and submit a plan for compliance that is acceptable to the City, including additional measures the team will include to increase local hire outcomes.

The award of City development funds will be conditioned upon entitlement and construction milestones established in the reservation resolution and funding agreement adopted by City Council, consistent with the approved application for funding. The City Council may grant the City Manager authority to extend timelines within established parameters.

The City's contribution of affordable housing funding cannot be used to fund the units required by the City's inclusionary requirements and shall be applied towards any affordable housing units in excess of the City's inclusionary requirements at the time of entitlement. The developer of any market rate component of the project must comply with the inclusionary requirement without City subsidy and will be expected to demonstrate how they are satisfying the City's inclusionary requirements.

**E. Performance Milestones**

The City's commitment to the use of funds for North Berkeley site is conditioned on the milestones shown in Section II. Table B. If either BART or the development team fails to meet the milestones in Table B, as may be extended as provided herein, the City would then have the option to release the site's portion of the reserved funds for use in other affordable housing projects elsewhere in the city.

**F. Revised Affordable Housing Strategy for the Projects**

The City of Berkeley will pursue its best efforts to secure additional local affordable housing subsidy to increase the proportion of affordable housing provided at the Projects, whether through the issuance of another voter-approved affordable housing bond and/or other financing mechanisms.

As referenced above in Table II. B, Activity 6, the City reserves the right to, by June 30, 2023, identify additional funding streams to increase the total affordable housing proportion for the Projects to be higher than 35% of units.

**IV. AB 2923 Streamlining, Objective Design Standards and JVP for the Projects**

**A. Entitlement Streamlining**

Public Utilities Code section 29010.7(b), codified by the adoption of AB 2923, establishes that TOD projects at BART stations that meet certain minimum requirements will be eligible for streamlining pursuant to Government Code section 65913.4., codified by the adoption of Senate Bill 35 ("SB 35"). To minimize entitlement risk, reduce project

costs and accelerate the entitlement phase of development, the Parties intend that the developers of the Projects shall have the ability to utilize any state laws providing for entitlement streamlining mechanisms included but not limited to AB 2923 and SB 35, to the extent a Project qualifies for streamlined review, such that project entitlements are ministerial and not subject to discretionary review.

**B. Community Input and Objective Design Standards**

In recognition of the City's significant contribution of funding for the Projects' affordable housing component, the Parties desire to maintain the ability for the City and community to provide effective input as to the character of development proposed at the Projects. The Parties agree that the primary vehicles for City and community input have been the newly adopted section 23.202.150 of the City's Zoning Code and the newly adopted JVP, and additional community input will occur in developing the Objective Design Standards ("ODS"), as addressed in Section V.C, below. The Parties understand and agree that under AB 2923 and SB 35, a development application that qualifies for streamlined review is subject to ODS that have been duly adopted by the City prior to the submittal of the development application consistent with the timeline shown in section II.B, and that such ODS are enforceable as permit conditions by the City, provided the ODS are compliant with conditions in this Section IV.

**C. Development of Objective Design Standards**

BART will fund, and has retained, a consultant, to be directed by the City, to work with both Parties and community stakeholders to create a set of ODS and bring them to the City Council for adoption. ODS will be created separately for the North Berkeley and Ashby stations, and the process will be generally timed to coincide with developer selection of each Station as referenced in Section II.B above. The Berkeley community, BART, and the selected Developer will be given the opportunity to provide input into the Objective Design Standards to ensure the resulting document is consistent with what can feasibly be developed at each station and aligned with the intent of the JVP.

**D. Objective Design Standards Review and Approval**

Once a complete draft of Objective Design Standards has been prepared for each site, City staff will bring the draft to the Planning Commission for recommendation and to the City Council for adoption by ordinance. Prior to Planning Commission review, the City will provide BART an opportunity for final review and comment on the final draft of the Objective Design Standards.

**E. Requirements for Objective Design Standards**

The Parties agree that the intent of the Objective Design Standards is to allow the City, the community, BART, and the developer to have a strong voice in the design quality of the development at both stations. The Parties further agree that the Objective Design Standards shall be consistent with the Zoning and with state law, including but not limited to SB 35, and that they shall be consistent with the sections of the JVP addressing the physical form of the Projects to the extent feasible.

The Objective Design Standards process will include 1) a circulation/access framework, prepared with input from the City and BART; 2) a preliminary set of objective design standards, prepared with input from the City and BART; and 3) a final set of objective design standards completed with additional input from community stakeholders and the selected developer. Main topics in the Objective Design Standards may include but are not limited to:

- Station functionality
- Public realm improvements
- Building form and massing
- Building façade design
- Building placement (i.e. transitions in height/scale)
- Open space and landscape

**F. Requirement to Comply**

BART's AB 2923 Development Principles, adopted by the BART Board of Directors in August 2020, states that *"if a jurisdiction shares BART's commitment to regional climate, housing, and equity goals – as evidenced by zoning BART property for the highest feasible density, use and height – BART commits to encouraging consistency with that jurisdiction's objective design standards in its development agreements."*

Consistent with the Development Principles, BART agrees that a zoning of a minimum of 75 units per acre and at least 7 stories in height satisfies the Development Principles of this policy. BART agrees to enforce the City's Objective Design Standards through its ENA and other real estate agreements, provided that the resulting ODS are consistent with applicable state law, including but not limited to SB 35, and with all other requirements for the ODS established by this MOA, and so long as they do not diminish the zoning envelope by more than ten percent (10%) below what AB 2923 heights and floor-area-ratio would allow, as calculated based on the maximum square footage that could be built with a reasonable circulation framework and open space provided, utilizing the methodology attached hereto as Exhibit D.

In addition, BART shall, in its ENA, require the developer to make good faith efforts to cooperate with the City in the development of Objective Design Standards so that they can be brought forward for review and approval. In the event the City cannot adopt the ODS within 9 months of execution of the ENA due to occurrences or circumstances beyond the City's reasonable control, including but not limited to, acts of God, fire, strikes or other labor disturbances, riots, civil commotion, war, sabotage, pandemic, failure of the developer to make good faith efforts to cooperate with the City in the development of the Objective Design Standards, or any other cause similar to those herein specified which cannot be controlled by the City, then the City Manager and General Manager may agree to extend the deadline for adoption of the ODS to a mutually agreeable, later date.

## V. **Developer Selection Process for North Berkeley Project**

### A. **General**

To solicit developers or developer teams for the North Berkeley site, BART will issue an RFQ. BART will work closely with the City to draft the RFQ and to evaluate respondents (as outlined in the sections below) and make the developer selection. The City will work with BART to incorporate the eligibility criteria outlined in the HTF Guidelines into the RFQ, to ensure the selected developer team is qualified to deliver on the goal of providing at least 35% affordable housing at the site. The RFQ will also describe the Minimum Project Requirements defined in Exhibit C.

The RFQs will be intended to solicit interested developers or developer teams and to evaluate their experience, ability to successfully deliver a project, general project concept and financial wherewithal. Respondents requesting City funding will be required to provide additional information on the affordable housing projects including a financing plan and pro forma.

### B. **Selection Committee**

A selection committee will be formed by BART staff, consisting of six or eight members, divided equally between City and BART representatives as identified by each respective party.

### **C. Evaluation Process**

Initial responses will be evaluated by the selection committee and a shortlist of up to four teams will be created. Shortlisted teams will be asked to present at a community townhall and may be asked to submit supplemental materials. After the townhall (referenced below in section F) has taken place, shortlisted firms will be interviewed by the selection committee and then the committee will score the teams and present a recommended selection to the General Manager and City Manager. If the General Manager and City Manager are not both in agreement with the recommendation of the selection committee, the Parties agree to meet and confer in good faith to reach agreement, but the General Manager retains sole discretion to make a recommendation to the BART Board of Directors. The City Manager retains sole discretion to make a recommendation to the full Berkeley City Council on the City's predevelopment and development funding award.

### **D. Predevelopment Funding**

The submittals received in response to the RFQ will also serve as applications for affordable housing predevelopment funds from the City, although developer teams comprised solely of one or more for-profit development companies shall not be eligible for such funding, in keeping with City policy. Following developer selection by BART Board of Directors, City staff will bring the selected team's application for predevelopment funding of up to \$500k to the City Council for approval. The selected developer team may apply for an additional \$1.5 million in City predevelopment funds for specific affordable housing projects proposed at the North Berkeley BART site.

### **E. Selection Criteria**

The selection criteria have been derived from the JVP, as well as applicable policies of BART, the City of Berkeley's HTF Guidelines and affordable housing funding policies. Proposals will be evaluated based on depth and quantity of affordable units, among other criteria. The selected development team's responses must demonstrate a commitment to affordable housing, and feasible plans to produce it at these sites. The selected team must have a track record in the production of affordable housing and will need to demonstrate their capacity to deliver on the goal to develop at least 35% affordable housing at the North Berkeley site. The RFQ will emphasize that the development team will be held accountable for making affordability the first priority.

**F. Public Involvement in Selection Process**

Shortlisted firms will be asked to present their qualifications at an online or in-person townhall hosted jointly by the City and BART, open to the general public. Community members who attend will be offered the opportunity to give structured feedback on a number of aspects of the presentations, but will not be asked to rank or score the respondents overall. This feedback will be assembled by BART and City staff or consultants and transmitted to the selection committee.

**VI. BART/City Cooperation on the Projects****A. Commitment to Cooperate**

BART and the City agree that the development of the Projects is both a shared opportunity and a shared responsibility, and commit to working collaboratively throughout the development process.

**B. Project Funding**

BART and City will proactively work with developers to secure grants (state, federal) and financing for the Projects, which is necessary to realize the public benefits described in this MOA. BART will take priority on use of Infrastructure Infill Grant Program (“IIG”) funding for station access infrastructure. Any available IIG funding not needed for station access costs will be made available for affordable housing infrastructure. BART will source funding for BART ridership replacement parking, and City will support a joint application for IIG funding for this purpose if no other funding sources are available.

**C. Parking Strategy**

The City will take the lead, working with BART, to identify ways to mitigate impacts of spillover parking, including possible developer requirements. The City will determine its new on-street parking strategy surrounding the Projects by November 1, 2022. The City will implement this plan no later than execution of BART’s first ground lease with developer.

**VII. Timeline for Ashby Project and Related Agreements**

Development of a TOD project at the Ashby Station will require resolution of a number of items specific to that site, including, without limitation, the City’s option to acquire air

rights for the Western Parking Lot, identification of a new location for Berkeley Community Flea Market, the potential reconfiguration of Adeline Street, the design and funding of station infrastructure, affordable housing requirements, and the role of the City in the RFQ, potential RFP and ENA process. The Parties have been working to resolve these items and will make a good faith effort to complete the aforementioned items by the dates provided below. BART and the City agree that the milestones and associated dates may be revised upon mutual written agreement of the City Manager or her designee and of the BART General Manager ("**General Manager**") or his designee.

The Parties will incorporate the dates below as part of an amended MOA to be negotiated by the Parties. It is understood that if the Parties are unable to reach resolution on the aforementioned items, and these dates are not met, BART reserves its right to reprioritize its transit-oriented development work plan and advance a different developer solicitation elsewhere in its system in early 2023.

Notwithstanding the foregoing or anything to the contrary contained herein, if the Parties are unable to reach resolution on the aforementioned items or to agree to an amended MOA as contemplated in the first paragraph of this Section VII, this MOA shall continue in full force with respect to those provisions that relate to the North Berkeley Project.

Milestone	Date
Agreement on nature of solicitation and its content for Ashby TOD Project	September 30, 2022
Agreement on process for issuance of Ashby solicitation including schedule, City's role in evaluation, evaluation criteria	
Clear milestones for Equitable Black Berkeley process and agreement on its relationship to RFQ	
Amended MOA for Ashby project to be Approved by City Council and BART Board	November 1, 2022
Resolution of City option for air rights at Ashby BART West lot, and City Council action.	
Agreement on new Flea Market location by City Council which may include some portion of the Adeline right of way to be used for a Flea Market; City Council agreement on roadway reconfiguration for Adeline Street	
Execution of agreements related to air rights	November 30, 2022

Release of Ashby Solicitation (contingent on meeting above milestones)	March 31, 2023
Finalize City affordable housing funding plan including % and level of affordable housing at Ashby	June 30, 2023
City Council adoption of Objective Design Standards for Ashby TOD	No later than 9 months after ENA assuming both parties meet the terms outlined in Section IV.F above
Development Team for Ashby must submit a complete application for a Master Development Permit, or for at least one affordable housing building's entitlements	No later than three years of execution of the ENA
Development team for Ashby must secure complete project financing for affordable housing components	December 31, 2031

### **VIII. Continuing Community Participation**

After its final meeting on December 6, 2021, the Community Advisory Group (“CAG”) has completed its intended function. The Parties agree to continue community participation in the development of the BART stations in a mutually agreed upon framework.

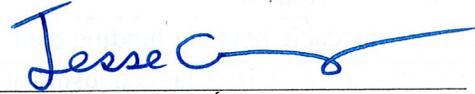
### **IX. Miscellaneous**

Notwithstanding any provision herein to the contrary, nothing in this MOA shall be construed as limiting the discretionary decision-making authority of the City or BART. No party shall be liable for, or shall be entitled to, any monetary damages for breach of this MOA, and each party expressly waives its rights to damages. There are no intended third-party beneficiaries of this MOA, and no third party shall have any enforcement or other rights under this MOA against City or BART.

CITY OF BERKELEY

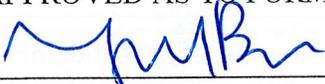


DEE WILLIAMS-RIDLEY  
CITY MANAGER



JESSE ARREGUÍN  
MAYOR

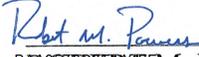
APPROVED AS TO FORM



FARIMAH FAIZ BROWN  
CITY ATTORNEY

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

DocuSigned by:



ROBERT M. POWERS  
GENERAL MANAGER

## EXHIBIT A

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into on this 3<sup>rd</sup> day of March, 2020, by and between the San Francisco Bay Area Rapid Transit District ("BART") and the City of Berkeley ("City") to cooperatively pursue transit oriented development ("TOD") and the implementation of Assembly Bill 2923 ("AB 2923") at the Ashby and North Berkeley BART Stations.

RECITALS

- A. BART and the City both acknowledge that the region faces a shortage of affordable homes and a climate crisis that requires a significant reduction in vehicle miles traveled; and
- B. BART and the City have adopted District- and City-wide policies that prioritize creating affordable homes and reducing greenhouse gas emissions; and
- C. Publicly-owned land at the Ashby and North Berkeley BART stations provides a rare opportunity to create more homes, including below-market-rate affordable homes, in a manner that reduces residents' reliance on driving; and
- D. State law AB 2923 (AB 2923, Stats. 2018, Chp. 1000) requires BART to adopt TOD zoning standards for BART-owned property surrounding its stations and requires that the City's local zoning conform with TOD zoning standards by July 1, 2022; and
- E. BART and the City are committed to enabling multiple opportunities for community input and engagement that inform site master planning and zoning; and
- F. The purpose of this agreement is to:
  1. Identify a shared vision and priorities for development for BART and the City, and set forth steps needed to pursue this vision and priorities;
  2. Clarify the processes that BART and/or the City will pursue to address the activities and timelines outlined below in Section III; and
  3. Provide greater clarity for all parties, including BART, the City, and members of the public, on the currently-planned steps, timelines, and the Parties' roles and responsibilities needed in seeking to commence construction of TOD on BART-owned property at both the Ashby and North Berkeley BART Stations.

## MUTUAL UNDERSTANDING OF THE PARTIES

### **I. Framework for Development at Ashby and North Berkeley BART Stations**

- A. Goals and objectives for TOD have been established for Ashby and North Berkeley BART stations by the City through two separate processes. Similarly, BART has adopted policies and performance targets guiding its TOD program as a whole. These documents will inform the Parties' respective goals and objectives with regard to TOD at the Ashby Station and North Berkeley Station.
- B. The Draft Adeline Corridor Specific Plan (published in May 2019) sets forth a vision, policies and objectives for the Ashby BART Station area. Specifically, Policy 3.7 of the Plan, shown in Exhibit 1, includes seven objectives relating to affordable housing, public space, development parameters, public art, pedestrian and bicycle connections, transportation and demand management and community engagement. The final adopted plan objectives shall be incorporated into this exhibit when available.
- C. On May 9, 2019, the Berkeley City Council unanimously approved the City's goals and objectives for North Berkeley BART development, which are shown in Exhibit 2. The City's goals focus on community input, station access, affordability, livability and environmental sustainability.
- D. The City of Berkeley's General Plan Policy LU-32 — Ashby BART Station states:

Encourage affordable housing or mixed-use development including housing on the air rights above the Ashby BART station and parking lot west of Adeline Street.

- A. Consider a joint City/BART development plan for the Ashby BART site to encourage and ensure appropriate development design, density, and parking to accommodate the BART station and transit-oriented development. Development at the Ashby BART station should include multi-family, transit-oriented housing and ground-floor commercial space. If feasible, at least 50% of the housing units should be affordable to low- and very-low-income households. *(Also see Housing Policy T-18.)*
- B. Consider revising the zoning for the site to reduce the on-site parking requirements for new housing above the BART station. *(Also see Transportation Policy T-16.)*
- E. In 2016, the BART Board adopted three policies which set overall goals for BART's transit-oriented development (TOD) program:
  - 1. A TOD Policy (Exhibit 3), setting the goals of creating complete communities, advancing sustainable communities, increasing ridership, capturing the value of transit,

enhancing transportation choice, and increasing affordability with a district-wide affordability target of 35%.

2. An Affordable Housing Policy, which requires a 20% affordable housing minimum for its projects, and favors projects with the greatest depth and quantity of affordable housing (Exhibit 4).
  3. A Station Access Policy (Exhibit 5) to guide access practices and investments through 2025. The policy is designed to support the broader livability goals of the Bay Area, reinforce sustainable communities, increase the share of BART passengers walking and biking to the stations, and enable riders to get to and from stations safely, comfortably, affordably, and cost-effectively.
- F. Together these documents, as well as further engagement of community stakeholders and additional collaboration and activities as set forth in this MOU, lay the groundwork for future development at the Ashby and North Berkeley BART Stations.

## II. Scope of Agreement

A. This MOU applies to development of the following properties, henceforth known as the “BART Properties”:

1. Ashby BART Western Parking Lot: Bounded by Ashby Ave, Adeline St, and Martin Luther King Jr Way. Site is owned by BART, with an option to the City to retain the air rights above 10 feet;
2. Ashby BART Eastern Parking Lot: Located on the east side of the station, behind the Ed Roberts campus, which is owned by BART; and
3. North Berkeley BART Main Parking Lot: Bounded by Sacramento, Delaware, Acton and Virginia Streets. Site is owned by BART.

B. In order to ensure that development of the BART Properties is, to the extent possible, consistent with the vision and priorities established by the City and BART, during the TOD planning process outlined in this MOU there will be an opportunity to consider infrastructure enhancements to other areas that are owned by BART or the City. These may include the following (henceforth known as “Surrounding Areas”):

1. North Berkeley BART: auxiliary parking lots owned by BART, and areas owned by the City that abut the Ohlone Greenway;
2. Other public infrastructure (e.g., streets, crosswalks, bicycle paths, on-street parking, stormwater and sewer infrastructure) within a one-mile radius of the BART Properties; and
3. Proposed changes to access and circulation at each Station would be identified through the Station Access Study described in Section III.F of this MOU, as well as through the development master plan or entitlement process. Any such changes would therefore be subject to public review and comment, and to approval by the Parties.

## III. Activities and Timelines

Activities and Timelines – Summary Table

Activity	Lead Party	Milestone	Date
1. Community Advisory Process and other community engagement activities	City	Establish a Community Advisory Group to inform site zoning and to facilitate community input on site master planning and zoning	Initiate December 2019
2. Zoning for Ashby and North Berkeley BART Stations	City	<ul style="list-style-type: none"> <li>a. Zoning alternatives proposed</li> <li>b. Draft CEQA document released</li> <li>c. Planning Commission and community review</li> <li>d. Planning Commission approval</li> <li>e. Council zoning approval</li> </ul>	Complete by June 2021
3. BART AB 2923 Guidance Document	BART	<ul style="list-style-type: none"> <li>a. Draft Guidance</li> <li>b. Final Guidance</li> </ul>	<ul style="list-style-type: none"> <li>a. February 2020</li> <li>b. July 2020</li> </ul>
4. City Affordable Housing Funding	City	Decision on set-aside of City funding for affordable housing to Ashby and North Berkeley Stations	December 2020 (pending further definition of zoning and site capacity)
5. Developer Solicitation(s)	BART	Decision on timeline to initiate solicitation of developer(s) (as part of BART's 10-Year TOD Work Plan)	July 1, 2020
6. Station Access Studies	BART	Station Access Studies Completed	Timeline dependent upon Developer solicitation(s) for each station

**A. Community Advisory Process and other Community Engagement Activities**

1. Pursuant to the Draft Adeline Corridor Specific Plan (Policy 3.7) and the North Berkeley BART Development Goals and Objectives adopted by the City Council on May 9, 2019, an advisory group consisting of members of the community will be created for the purposes of providing input:
  - a. To the City Planning Commission as it considers zoning standards that will be consistent with the City's obligations under AB 2923 for the Ashby and North Berkeley BART station areas; and
  - b. To the City and BART as the Parties establish a joint vision and priorities document ("Joint Vision and Priorities") that will be incorporated in eventual Requests for Proposal/Requests for Qualifications for potential developers of the BART Properties.
2. The City will be responsible for the selection and all logistics and funding for the Community Advisory Process.
3. Contingent on availability of funding, the City will also organize public participation design charrettes that inform predictable form-based design standards that BART will incorporate into guidelines for future development of the BART properties.
4. BART will support the City's efforts by participating in meetings, presenting information, as necessary, and considering input arising from the Community Advisory Process as part of its larger community engagement for AB 2923, TOD and station access studies in the City.

**B. Zoning Ashby and North Berkeley BART Stations.** As required by AB 2923, the City will pursue rezoning of developable, BART-owned property within ½-mile of the Ashby and North Berkeley Stations. The City will be responsible for all logistics and funding required for these rezoning efforts. As the agency responsible for local zoning regulations, the City will work in good faith with BART to coordinate the City's rezoning efforts with BART's development of AB 2923 guidance.

**C. BART AB 2923 Guidance.** BART and the City understand that AB 2923 requires further clarification related to height, floor-area-ratio, density, bicycle parking minimums, automobile parking minimums and maximums. To address these points of clarification, BART will publish a guidance document offering all affected local jurisdictions information on AB 2923. As the

agency responsible for determining whether local zoning conforms to state law, BART will be responsible for all logistics and funding required for the AB 2923 guidance document. The guidance document will provide guidance on TOD zoning standards for all local jurisdictions as those jurisdictions seek to comply with their obligations under AB 2923.

#### **D. City Affordable Housing Funding Decision**

1. The voters of Berkeley recently established three important new sources of funding to support the creation and preservation of affordable housing, keep vulnerable people housed, and rehouse the homeless:
  - a. Measure O provides for issuance of \$135 million in bonds to fund capital expenditures for a variety of types of affordable housing;
  - b. Measure P established a real estate transfer tax on the most expensive one-third of real estate sales with a stated intent to rehouse the homeless and fund the services they need to remain housed; and
  - c. Measure U1 increased the gross receipts tax on most residential rental properties with a stated intent to fund affordable housing and protect Berkeley residents from homelessness.
2. The above measures establish advisory panels which advise the City Council as it makes determinations regarding the allocation of these and other affordable housing monies (such as City Housing Trust Fund resources) and related resources such as public land and inclusionary units.
3. The City will set-aside appropriate funding, including development fees and other above-mentioned sources, to support deed-restricted affordable housing at a range of income levels to meet BART and the City's affordable housing goals at the Ashby and North Berkeley BART Stations (as referenced in Section I).

#### **E. Developer Solicitation(s)**

1. Consistent with its standard practice, BART will issue Requests for Qualifications ("RFQ"), Requests for Proposals ("RFP") or both to initiate the process of identifying and recommending potential developers of the BART Properties to the BART Board of Directors. The committee(s) established to evaluate RFQ/RFP submissions will include City Representatives and BART staff as well as an independent financial consultant, who

will evaluate the capabilities of each proposer to deliver the project. The criteria used to select the developer(s) with whom to negotiate will be based on the BART Station Development Joint Vision and Priorities that will take into account community input as outlined in Section III.A.

2. For the Ashby BART Western Parking Lot, which is owned by BART with an option to the City to retain the air rights above 10 feet, and assuming that the City exercises said option, the City and BART will enter into a separate agreement detailing how they will share decision-making authority in the developer solicitation processes.
3. The evaluation committee's role is to make a recommendation to the BART Board of Directors regarding the developer(s) with whom BART will negotiate for the development of TOD. The BART Board of Directors has the sole discretion and authority to determine whether, and with whom, BART will enter into an exclusive negotiating agreement ("ENA") relating to potential TOD development on the BART Properties. It is anticipated that, among other things, the ENA will require the developer to advance the proposed project through the City's entitlement process, lead or participate in a community engagement process, fund a Station Access Study for BART (see below), pay BART an option fee in exchange for exclusive negotiating rights, and reimburse BART for its expenses, including engineering review, outside legal fees, and outside consultant expenses.

#### **F. Station Access Study**

1. Per the draft policies in the Adeline Corridor Plan, Council-adopted goals and objectives for development of the North Berkeley BART property, BART's TOD Policy, and the requirements of AB 2923, a Station Access Study must be prepared prior to development of the BART Properties that identifies sustainable access options for both the Ashby and North Berkeley BART Stations in light of potential changes to the BART Properties and surrounding areas resulting from TOD. AB 2923 added Section 29010.6(h) to the California Public Utility Code, which requires BART—with respect to any station where BART commuter parking is reduced as a result of a TOD project on land where TOD zoning standards apply—to develop and fund an access plan that maintains station access for at least the number of customers affected by the reduced number of commuter parking spaces, with specific consideration for customers who live further than one-half mile from the station.
2. The Station Access Studies will evaluate a range of access options that support BART's goals to increase the share of BART patrons who access the stations via modes other than the private automobile, and that maximize the potential number of homes

(including homes restricted to low, very low, and extremely low-income households) on site. In exploring alternatives to parking, the Studies will evaluate whether and how to offer viable, multimodal access to BART for the station catchment areas, and how to ensure that TOD and associated improvements result in an overall increase in the number of people who use the BART Stations. The Studies will identify infrastructure needs on and near BART's property to improve access for riders using all modes, including pedestrians, bicyclists, community members with access and functional needs, shared mobility users, and patrons using public and private transportation.

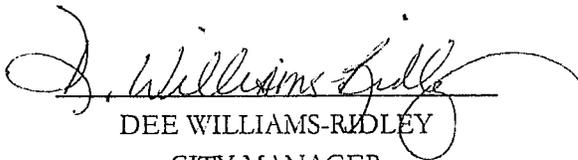
3. BART will be responsible for all logistics required for the Station Access Studies. BART will fund these Studies in advance, but may require reimbursement for the Studies from a developer or developers pursuant to an ENA with said developer(s). Findings from the Ashby and North Berkeley BART station access studies will be presented to the community.

#### **IV. Zoning and Solicitation Process; Retention of Decision-making Authority by City and BART**

- A. To demonstrate its commitment to advancing development at BART property, and in consideration for its inclusion as a high priority in BART's 10-year work plan for development, the City will: 1) complete rezoning of the properties by June 2021, and 2) make a decision by the end of December 2020 to set-aside funding sufficient to assure BART, in its sole discretion, that at least 35% of the housing units proposed to be constructed at the BART Properties would be deed-restricted to low, very low and/or extremely low affordable housing. The City recognizes that meeting this level of affordability will require significant local, state, and federal subsidy. The Planning Commission has a target date of December 2020 to review zoning alternatives as a show of progress towards completion of zoning by June 2021.
- B. To support the City's zoning process, BART agrees to provide guidance that will be applicable to North Berkeley Station and all other stations in the BART system to which AB 2923 applies. BART will work with the City of Berkeley to explore possible approaches to conformance with AB 2923 zoning standards in the context of the built form characteristics of a surrounding lower density neighborhood. The City will consult with BART regarding zoning alternatives for the North Berkeley Station that conform with AB 2923 zoning standards.
- C. It is understood that both BART and the City desire for more work to be completed in support of zoning, such as site master planning or objective design guidelines. At the time of this MOU, the City and BART are actively working to identify additional resources to accelerate this work.

- D. The City and BART will meet in December 2020 to review the City's efforts undertaken pursuant to Section III.B and III.D, in order to:
1. Determine whether the City has approved a set-aside of sufficient funding to meet the 35% affordable housing minimum for each station as described in Section IV.A;
  2. Negotiate possible additional City participation in the solicitation processes; and
  3. Agree upon the timing of the developer solicitations for the BART Properties in December 2020.
- E. If the zoning for the Ashby and North Berkeley Stations and the set-aside of City affordable housing funds occurs after the dates indicated for those actions in the timeline in Section IV.A above, BART may re-evaluate the inclusion of these stations in its 10-year work plan. Likewise, if BART does not proceed with developer solicitations for the BART Properties as determined in Section III.D, the City may reallocate affordable housing funding to other projects.
- F. Notwithstanding any other provision in this MOU, nothing herein shall be construed to limit or restrict the discretionary decision-making authority of the City or of BART. The Parties acknowledge that any reference to a project or proposed project in this MOU or in any document that may be created in connection with this MOU does not constitute a Project or Project approval by either Party as those terms are defined in CEQA and discussed in *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116 (2008).

## CITY OF BERKELEY

  
DEE WILLIAMS-RIDLEY  
CITY MANAGER

  
JESSE ARREGUÍN  
MAYOR

## SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



ROBERT POWERS  
GENERAL MANAGER

## **Exhibit B: Joint Vision & Priorities for Transit-Oriented Development for Ashby and North Berkeley BART Stations**

### **Background**

The December 10, 2019 Memorandum of Understanding (MOU) between BART and the City of Berkeley calls for the City and BART, with input from the City's Community Advisory Group (CAG) to establish a "joint vision and priorities" document. The goal of this document is to provide a concise statement of the City and BART's shared, high-level expectations for future development of both the Ashby and North Berkeley BART properties.

Per the MOU, this "joint vision and priorities" document will be incorporated into future Request(s) for Qualifications (RFQs) for development of both the Ashby and North Berkeley Station development, and will help guide the process from developer selection through project construction. This City-BART Joint Vision and Priorities document was one of three key outcomes of the CAG process for both North Berkeley and Ashby BART development (along with updated zoning consistent with AB 2923, and the RFQs for developers). This once-in-a-generation opportunity to create vibrant new neighborhoods for Berkeley merits elevated, world-class design for built and landscaped elements, including affordable housing.

### **Affordable Housing**

#### VISION

New housing at a variety of income levels at both the Ashby and North Berkeley BART Stations will address the City's housing crisis, stem the displacement of residents—especially of the African American community in Berkeley—and support more equitable access to housing for lower-income families and individuals. New housing must also be created quickly to reflect the urgency of the climate and affordability crises, capturing the inherent environmental and equity benefits of walkable, affordable transit-oriented housing in Berkeley's most transit-rich areas. North Berkeley and Ashby will provide a new model for delivering affordable housing in neighborhoods that are rich in infrastructure and strategically located to make regional transit, economic opportunity, and community amenities more broadly and equitably accessible.

#### Shared Priorities

- A. **Housing Priorities.** Maximize the number of new homes, and especially permanently affordable, deed-restricted homes. We anticipate a range of 500-1200 units at each station with a variety of unit sizes, including units appropriate for multi-generational families/households.
- B. **Urgency.** Deliver new housing, including affordable units, within 10 years, by 2031, to reflect the urgency of the climate, affordability, and housing crises.

- C. **Affordable Housing Goal.** The City and BART will strive to maximize the number of permanently affordable, deed-restricted housing units within the funding that can be identified.
1. Affordable housing may be developed in multiple phases over a number of years.
  2. The amount of affordable housing which can be provided at each site within the 10-year time frame will depend on many outside factors including the availability of state and federal housing resources.
  3. At a minimum, at least 35% of the new units at each site will be restricted affordable housing. It is anticipated that each site could achieve at least 50% affordable housing, subject to the timely availability of financing.
  4. The City and BART will work together to support selected developers in proactively assembling affordable housing subsidies in order to exceed the 35% minimum.
  5. If both sites are able to provide at least 50% affordable housing in a way that is financially feasible, and if additional funding becomes available, the priority for that additional funding would be to maximize the number of affordable units at Ashby station in recognition of the ongoing threat of displacement to the historic community of South Berkeley.
- D. **Income Targets:** At least 35% of new housing at each site must be affordable to households earning an average of up to 60% of Area Median Income (AMI). Of that, at least 20% (or 7% of total units at each site) must be affordable to Extremely Low-income households, those earning up to 30% of AMI. Additional affordable units should prioritize Very Low Income (up to 50% of AMI) households and Low Income (up to 80%) households but may include some housing restricted with households with incomes up to 120% of AMI, consistent with the more specific direction provided in the City-BART Memorandum of Agreement.
- E. **Sequencing.** Affordable housing should be built prior to, or along with, any market rate housing.
- F. **Displacement Prevention.** Affordable housing should provide a preference for residents of Berkeley who are facing displacement, or who have been displaced from Berkeley in the past due to economic or discriminatory reasons.
- G. **Developer Selection.** In the developer selection process, prioritize a nonprofit master developer or a partnership between a private developer and one or more community-based organizations who have experience showing accountability towards equity goals in the City of Berkeley.
- H. **Developer Accountability.** The selected developers must have a demonstrated commitment and feasible plans to produce affordable housing and be willing to be held accountable for making affordability the first priority. Selecting a developer who merely pledges a best effort to provide affordable units would not be sufficient.

- I. **Funding.** BART and the City of Berkeley should proactively seek new, innovative funding solutions to help achieve two truly visionary, equitable, and sustainable projects.
- J. **Clustering and Integration.** Affordable units may be clustered into one or more 100% affordable housing buildings on the BART sites but must be designed in a way that integrates with the larger project and shares comparable design standards and quality.
- K. **Inclusive Housing Design.** The selected developer will prioritize affordable housing for renters with various needs, including but not limited to families, people with physical or mental disabilities, and formerly homeless people.

#### Priorities for Ashby

- A. **Adeline Corridor Affordable Housing Goal.** Consistent with the Adeline Corridor Specific Plan, the City and BART should strive for a goal of 100% deed-restricted affordable housing, prioritizing extremely low, very-low and low-income affordable housing.
- B. **Residents with Disabilities.** Ashby BART should be developed in a way that prioritizes the inclusion of residents with disabilities, who are likely to benefit from proximity to the Ed Roberts Campus, specifically as part of the development of the East Parking Lot at Ashby Station.
- C. **South Berkeley Preference.** To address past and current displacement, the development should provide a preference to applicants who either currently live in South Berkeley or have been displaced from the community. This preference must be implemented in a way which is consistent with the City's Fair Housing goals and federal law.

#### **Public and Civic Space**

##### VISION

New public and civic space at both Ashby and North Berkeley BART will provide a community anchor, open space amenity, and memorable neighborhood gathering space that is accessible to all. It will be available for programmed community uses and activities, as well as for informal, unprogrammed public use by residents, visitors, and transit riders alike. New public space will maximize greenery (to the extent feasible) and enhance the ability of all community members to walk, roll, and take transit, supporting better station access and healthy, climate-friendly active transportation. North Berkeley will be a nexus of active transportation centered along a major new connection of the Ohlone Greenway. Ashby will be anchored by a market and oriented along a street built for people and multiple modes of transportation.

### Shared Priorities

- A. **Maintenance Costs.** New civic space should be maintained by the developer and/or lessee to minimize the ongoing cost of operations and maintenance to BART and the City.
- B. **New Public Space.** Pursue new public space design in a way that delivers on the vision while maximizing the number of on-site affordable housing units.
- C. **Station Access.** Design the public realm to support priorities in the Access section of this document.

### Priorities for Ashby

- A. **Hub for African American Life.** Reinforce South Berkeley's historic role as a hub for African American culture and life in the Bay Area.
- B. **Flea Market.** Provide a permanent, viable home for the Berkeley Community Flea Market – offering supportive amenities such as public restrooms, limited office/storage space, electrical and water access and weather protection - in a prominent location.
- C. **Stakeholder Input.** Public space will be designed with input from the Flea Market, Lorin Business Association, neighborhood residents, representatives from the disability community, and other neighborhood stakeholders. Facilities for the Flea Market will be designed in collaboration with the vendors and Community Services United.
- D. **Adeline Design.** Reconfigure Adeline Street to transform a four-lane arterial into a safer space for all modes of transportation, creating a more walkable, vibrant place. Flea Market and/or other public activities may occur on some or all of this portion of Adeline Street.
- E. **Green Space.** Expand the availability of green space for the neighborhood.

### Priorities for North Berkeley

- A. **Ohlone Greenway Connection.** The development should include a landscaped (as feasible given BART operational needs) protected bikeway that connects the disjointed ends of the Ohlone Greenway to each other and to BART, providing a primary access route and orientation of the development that enables a prioritized pedestrian and bicycle connection from approximately the southeast corner of the site to the northwest corner of the site and across the streets.
- B. **Public Space Use.** Public space should provide opportunities for both active and passive public use, with strong connections to the station entrance, the Ohlone Greenway, or other public spaces and pedestrian facilities.

- C. **Street Design.** The design of surrounding streets should be considered as a strategy to accommodate public space needs, increase the tree canopy, and improve safety for pedestrians and bicycles. Explore the feasibility of reducing the width and number of traffic lanes in adjacent streets to their original (pre-BART) condition, aligning curbs with adjacent blocks in a manner that builds upon and is consistent with the City and BART's recent Complete Streets and roadway improvement projects in the area. Streets may retain their current width where there is some functional use for the extra space, such as bike lanes and cycle tracks that previously did not exist, and there may be bulb-outs at intersections. Perimeter sidewalks should consider generous pedestrian space and tree canopy.

## Land Use

### VISION

Land uses at Ashby and North Berkeley Stations will serve community needs; provide significant amounts of new housing; complement neighborhood businesses, services, and institutions; create a welcoming environment for all; support BART ridership; and improve quality of life for current and future residents. Ground-floor residential and non-residential uses should be pedestrian-oriented and contribute positively to public space and the pedestrian experience.

### Shared Priorities

- A. **Overall Mix of Uses.** At both stations, the predominant use will be transit-oriented housing and transit uses, complemented by fully accessible public, green, and recreational space (including for all ages and abilities) and appropriate non-residential uses. Additional priorities for these uses are found in the Affordable Housing, Public and Civic Space, and Station Access and Parking Management sections of this document.
- B. **Non-residential Spaces.** Curate and program any non-residential spaces to provide interest and character, encourage community gathering, support social interactions, and provide unique neighborhood activities and services. Any non-residential uses should be customized to meet the unique needs of each station and neighborhood.

### Priorities for Ashby

- A. **Role of Non-residential Uses.** Non-residential uses at Ashby should reinforce the area's historic role as a center of neighborhood commerce, cultural expression, social connection, and economic empowerment.
- B. **Non-Residential Active Frontages.** Non-residential uses should have active frontages oriented towards Adeline Street, Ashby Avenue, and the future Flea Market public space. Ground-floor uses should activate public space and complement the Flea Market, while promoting everyday activities when the Flea Market isn't occurring.

C. **Prioritized Non-residential Uses.** The following types of potential non-residential uses should be prioritized, though not all are anticipated to be present in any one development project<sup>1</sup>:

1. The Berkeley Flea Market, and indoor or outdoor spaces related to the Flea Market
2. Businesses and organizations that reinforce the neighborhood's historic role as a center of Black culture and identity
3. Businesses, organizations, or services that are oriented towards, or provide economic opportunity for people in the neighborhood or their descendants who were involuntarily displaced, interned, or historically disenfranchised on the basis of race
4. New uses that expand and complement the role and mission of the Ed Roberts Campus and empower those living with disabilities
5. Spaces for cultural activities, performance, display, community activities, or other uses and amenities that support the area's role as an arts and culture district.

#### Priorities for North Berkeley

- A. **Role of Non-residential Uses.** Non-residential uses such as retail, services, or indoor community spaces are anticipated to have a limited role at North Berkeley.
- B. **Non-residential Active Frontages.** Non-residential uses that do occur should be oriented with active frontages towards the station entry or other interior areas and/or Sacramento Street.
- C. **Respect Neighborhood Needs.** Non-residential uses that do occur should be focused towards meeting neighborhood needs and complementing the existing range of businesses and services already available nearby.
- D. **Potential Non-Residential Uses.** Non-residential uses may include the following<sup>2</sup>:
1. Uses that help reduce the need for driving in North Berkeley, such as commuter-focused amenities, childcare, community services, or satellite locations for existing community businesses or organizations
  2. Small-scale walkable retail or café type uses
  3. Space for activities, gatherings, or events.

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<sup>1</sup> Specific permitted and prohibited uses for Ashby Station will be identified in the zoning code.

<sup>2</sup> Specific permitted and prohibited uses for North Berkeley Station will be identified in the zoning code.

## Building Form

### VISION

New buildings at Ashby and North Berkeley Stations will be beautiful, creatively designed, well-proportioned, create visual and physical connections with the neighborhood through its architectural design and contribute positively to the physical fabric and long-term quality of life of the neighborhood. They will provide elements that neighborhood residents currently enjoy – such as natural light, air, direct outdoor access, variety, quiriness, walkability, and sociability – in a denser, transit-oriented format that supports BART ridership. Buildings should exhibit a level of architectural diversity that expresses the social, racial, economic, and design diversity that is desired at both stations. Ground-floor spaces and building frontages should activate public space, while providing a sense of place and character to the stations and the surrounding neighborhood.

### Shared Priorities

- A. **Height Variation.** AB 2923 does not permit the City's zoning controls to restrict building height below seven stories on the station sites. The City and BART will support variations in building height and form at both stations. It is anticipated that some buildings and some portions of buildings will be shorter than the maximum height in keeping with good urban design practice.
- B. **Context.** Building design should consider the scale and character of the surrounding built environment.
- C. **Location and Orientation.** Locate and design new buildings to enhance public spaces while mitigating impacts on existing neighbors through site orientation, setbacks, lines of sight between buildings, landscape and topography.
- D. **Equitable Design Quality.** Design affordable housing units in a way that integrates with the larger project and shares comparable design standards and quality.
- E. **Small Blocks.** Prioritize site designs with smaller blocks and building footprints instead of larger blocks.
- F. **Architectural Variety.** Design buildings to provide visual interest with variation in height, scale, massing, rooflines, materials, and architectural elements.
- G. **Building Scale.** Provide regular breaks in building forms, as well as both horizontal and vertical detail to respond to the existing neighborhood context and character, particularly at the edges of the site. Provide adequate perimeter space for pedestrian volume and tree canopy/vegetation
- H. **Unit Diversity.** Encourage building forms that allow a diversity of unit sizes, types, and configurations.

- I. **Sunlight.** Seek to configure buildings and include design strategies that allow sunlight to reach public spaces, and design outdoor spaces, outdoor seating and active retail frontages, if provided, to maximize southern, western, and/or eastern exposure.
- J. **Outward-facing Entrances.** For ground-floor housing units, encourage outward-facing entrances with a range of design treatments and access strategies. These could include stoops, front doors, courtyard and forecourt entrances, ramped or at-grade universally accessible entries, outward-facing and visually permeable lobby entrances, and transition spaces from private frontages to public spaces.
- K. **Ground-floor Non-residential Frontages.** For ground-floor non-residential uses, provide frequent windows and doors, visual connection between indoors and outdoors, frontage onto public space, direct access to the pedestrian circulation network, and activation strategies such as outdoor seating, dining, display spaces, public art, and architectural detailing.
- L. **Universal Accessibility.** Preference for building designs with universally accessible units and elevator redundancy to promote accessibility for seniors and those with disabilities.
- M. **BART Entrances.** Ensure that BART entrances are featured prominently and integrated into the overall site plan.
- N. **Integrated Green Space.** Integrate gardens, courtyards, roof terraces, trees, native landscaping, and other green spaces into building architecture and site design.

#### Priorities for Ashby

- A. **Massing and Height Focus.** Focus density, larger building forms and height towards Adeline Street and Ashby Avenue on the west parking lot parcel, and towards the rear of the Ed Roberts Campus on the east parking lot parcel.
- B. **Active Frontages.** Connect new buildings to Adeline Street and Ashby Avenue with direct pedestrian access, minimal setbacks, and active frontages to complement the existing active uses across the street.
- C. **Site Design.** Ensure that building form, scale, and the overall site plan provide sufficient space for the Flea Market and other civic and community uses.

#### Priorities for North Berkeley

- A. **Massing and Height Focus.** Focus density, larger building forms and height towards the Ohlone Greenway and the center of the site, as well as towards Sacramento Street.

- B. **Massing Breaks and Step-downs.** Provide massing breaks, step-downs in height, and frequent pedestrian building entrances along Delaware Street, Acton Street, and Virginia Street, with building forms and frontages that create a residential character and scale.
- C. **Active Frontages.** Prioritize active frontages, public space programming, and car-free activities along the Ohlone Greenway.

## Station Access

### Vision

Station access investments in and around the stations will enhance community vibrancy, safety, equity, and health while improving the quality of the public space and pedestrian experience, both within and beyond the station areas. Priority access investments are those that encourage people to walk, bike, roll, ride transit, and use shared micro-mobility options, while still providing flexibility for changing technologies and trends. Access investments will be distributed equitably to improve the experience for people of all ages, all abilities, and all income levels getting to and moving through the stations.

### Shared Priorities

- A. **Housing and Community Benefits.** Favor affordable housing and other community benefits over BART rider parking and TOD resident parking in any physical or financial decision-making.
- B. **Non-Automobile Access.** Increase the share of BART riders who access the stations via modes other than driving alone and parking. Prioritize access improvements in the surrounding neighborhoods and within the station areas that offer safe, comfortable, affordable, cost-effective alternatives for all BART customers, particularly those with mobility challenges. Future access planning should consider the rapid evolution for mobility trends and technologies and consider the adaptability of the station access plans to future foreseeable and unforeseeable mobility patterns and their ability to handle ridership growth without running into capacity constraints.
- C. **Equitable Access.** Provide safe and secure station access options for people of all ages, abilities, races and ethnicities, genders, and income levels.
- D. **Parking Options.** Minimize the need for new structured on-site BART customer parking by maximizing the use of available parking capacity along the corridor (such as Center Street parking garage, shared parking with the TOD or with other sites, and on-street parking management around site perimeters).
- E. **Transportation Demand Management.** Any future development must include aggressive and innovative Transportation Demand Management strategies to reduce the vehicle miles traveled (VMT) and greenhouse gas (GHG)

emissions by residents, visitors, and employees by 20% by complying with BART's Transportation Demand Management program.

- F. **Parking and Traffic Impacts.** Limit the impacts of parking and driving on residents of the developments and surrounding neighborhoods (such as noise, air quality, GHG, and collisions) through transportation demand management, multi-modal circulation and access planning, infrastructure improvements, parking management, and other best practices.
- G. **Market Rate Pricing for Parking.** Explore parking pricing that is better aligned with market demand as a possible strategy to promote BART rider and on-street parking availability, with consideration of the impacts of parking pricing on low-income residents and BART riders.
- H. **Prioritize Curb Space.** Buses and shuttles will be located to prioritize people with disabilities, active loading of passengers (over waiting vehicles), services available to the public, and the number of people transferring to BART. Different types of passenger loading zones will be incorporated for quick pick-ups and drop-offs, those that need to wait for their passenger, accessible loading areas, ride apps and taxis.
- I. **Wayfinding and Signage.** Provide clear, accessible, adaptable station access signage and wayfinding to facilitate how people get to/from and through the station area consistent with the Metropolitan Transportation Commission's standards.
- J. **BART-related drop-off zones.** Strive to locate BART-related drop-off zones on-site and connections to transit on-site or on 4-lane corridors.

#### Priorities for Ashby

- A. **Pedestrian & Bicycle Connections.** Provide high-quality, safe pedestrian and bicycle connections to and through the site, including an off-street protected bicycle facility extending along Adeline Street, at least between Ashby Avenue and the intersection with MLK Way, with the potential to extend further through related Adeline improvement efforts.
- B. **Adeline Design.** Reconfigure Adeline Street to transform a four-lane arterial into a safer space for all modes of transportation, creating a more walkable, vibrant place.

Priorities for North Berkeley

- A. **Adjacent Streets.** Consider the role and design of adjacent streets – including Sacramento Street, Delaware Street, Virginia Street, and Acton Street – in multi-modal access planning for the North Berkeley Station.
  
- B. **Commuter Parking Priority.** Where parking would be provided, maximize parking for commuters over parking for residential and/or potential community, non-profit, or retail uses.

## Exhibit C: Minimum Project Requirements for the North Berkeley Project

### Housing

- The residential program for the Project should include at least 1,000 bedrooms with a variety of unit sizes.
- At least 35% of the new housing units to be developed at the North Berkeley Project, inclusive of units built to satisfy the City's inclusionary requirement and any units that may be added as a result of a density bonus, shall be affordable or Below Market Rate (BMR) for the duration of BART's ground lease(s) for all affordable housing components of the Project, which leases shall have a minimum duration of 65 years, and for any extensions thereto. In addition to the terms of said ground leases, the affordability restrictions will be enforceable by the City pursuant to regulatory agreements between the City and the developer(s), in accordance with the income targets identified in the JVP as follows:
  - At least 35% of new housing must be affordable to households earning an average of up to 60% of Area Median Income ("AMI").
  - At least 20% of the required 35% affordable units must be affordable to Extremely Low-Income ("ELI") households, those earning up to 30% of AMI.
  - Of the required 35% affordable units, additional affordable units aside from the ELI units should prioritize Very Low Income (up to 50% of AMI) households and Low Income (up to 80%) households but may include some housing restricted to households with moderate incomes (up to 120% of AMI), provided that the moderate-income units have rents that are still below market and shall not include City subsidy.
  - While the aforementioned goals are established in the JVP and the City and BART have policies regarding affordable housing requirements, any project receiving the City's Housing Trust Fund ("HTF") funding must meet the HTF Guidelines, which require that 40% of any City subsidized units be affordable to households earning up to 60% of AMI, and an additional 20% of City subsidized units to be affordable to households earning up to 30% of AMI. BART's TOD policy also provides a priority for affordable units that serve very low income (<50% AMI), low income (51-80% AMI) and/or transit-dependent populations.
- Affordable units shall be constructed prior to or concurrently with any market-rate housing component. No market rate housing will receive its notice to proceed until an affordable housing project gets its notice to proceed. In the event there are multiple phases of market rate or affordable housing, the phasing plan shall be approved to ensure consistency with the JVP goal of affordable housing being built along with market rate housing.
- Affordable units may be clustered into one or more 100% affordable housing buildings on the Property but must be designed in a way that integrates with the larger project and shares the comparable design standards and quality.

### Public & Civic Space

- The cost, if any, to BART and the City of operating and maintaining the new civic space must be minimized.
- The project must provide a connection to the Ohlone Greenway.
- Station access improvements must provide options for people of all ages, abilities, races and ethnicities, genders and income levels.
- Neither the City nor BART will be responsible for maintenance of roads and pathways created on the parcels to facilitate the project.

### Station Access & Parking

- Affordable housing and other community benefits will be prioritized over on-site BART rider parking and TOD resident parking. The BART Board will establish a maximum amount of on-site BART rider parking for each station.
- Consistent with current Berkeley Municipal Code, project residents will not be able to secure residential parking permits (“RPP”) for City streets, to prioritize new residents utilizing more sustainable transportation options and address concerns from nearby residents about parking spillover.

### Additional Minimum Requirements

- The project must comply with all relevant applicable BART and City policies and ordinances to the extent allowable by law. BART’s relevant policies can be found at [www.bart.gov/TOD](http://www.bart.gov/TOD) and currently include its Transit-Oriented Development Policy, Affordable Housing Policy, AB 2923 Development Principles, Project Stabilization Agreement Policy for Transit-Oriented Development, and Labor Peace Agreement Policy for Transit-Oriented Development Hotel Operations.
- Developers must show a feasible path to obtaining entitlements by January 1, 2025, and to completion of construction by 2031, and must make best efforts to meet those deadlines.

## **Exhibit D: Methodology for Establishing Developer Requirement to Comply with Objective Design Standards**

BART will require the developer to comply with City's future Objective Design Standards ("ODS") for the North Berkeley BART site utilizing its real estate agreements, provided:

1. The City's adopted zoning for the Project, as it relates to AB 2923, allows a minimum of 75 units per acre, at least 80 feet, and at least 7 stories in height;
2. The ODS will be adopted by the City of Berkeley for the BART property within 9 months of ENA execution as provided for in the MOA
3. The ODS are consistent with the City's Zoning Ordinance;
4. The ODS are consistent with state law including but not limited to SB 35 and, as it relates to parking standards, AB 2923; and
5. The gross square footage allowable under the ODS ("ODS Capacity") is not less than 90% of the baseline square footage allowable under AB 2923 floor to area ratio (FAR) ("AB 2923 Baseline Capacity"), as specified below.

### **Net Developable Area**

Both the ODS Capacity and AB 2923 Baseline Capacity will utilize the same net developable area in their calculations. This is defined as the gross site area of the North Berkeley BART Project, exclusive of the auxiliary lots, and exclusive of surface areas utilized for public site circulation, public civic space, and BART infrastructure. The Net Developable Area will be determined based on the following methodology:

- The Selected Developer's preliminary development concept shall establish the initial concept for the net developable area.
- Within 30 calendar days of ENA execution, both BART and City staff shall provide comments to one another on changes required to ensure the net developable area is compatible with BART and City operational and fire/life safety needs.
- Within 45 calendar days of ENA execution, BART and City staff shall meet to combine their respective comments into a single set of changes to be submitted to the developer. If BART and City staff cannot resolve any conflicts between their comments within this time, the City's Planning Director and BART's Chief Planning & Development Officer shall confer to address any disputes.
- The Selected Developer shall have 30 additional calendar days after receipt of the combined BART and City comments to incorporate them into the final net developable area. Both BART and the City must mutually agree that the Selected Developer has addressed all comments. If the Selected Developer believes that comments would result in an inability to deliver a feasible development, the Selected Developer must notify BART and the City within 15 calendar days of receiving the combined BART and City comments so that the City and BART can confer to resolve any issues.
- The final Net Developable Area shall be used solely for the purposes of calculating AB 2923 Baseline Capacity and ODS Capacity, and shall not bind BART, the City or the Selected Developer in any way to this concept for their final project.

**AB 2923 Baseline Capacity**

The AB 2923 Baseline Capacity shall be calculated by multiplying the net developable area by 4.2, which is the minimum floor area ratio for Urban Neighborhood/City Center projects required by AB 2923.

**ODS Capacity**

The ODS Capacity shall be determined by calculating the gross square footage that is allowable on the Net Developable Area under the R-BMU zoning and under the ODS, accounting for square footage that is lost due to required setbacks, stepbacks, massing breaks, or other required features (e.g. fire and life safety requirements). This determination shall be made by a design professional such as a member of the American Institute of Certified Planners (AICP) or licensed architect, to be selected by mutual agreement of BART and the City.

**Timing for Determining ODS Capacity**

The ODS Capacity must be calculated prior to public release of the final draft ODS, to ensure that there will be transparency to the community about whether BART will require the developer to comply with the ODS.

**Other Conditions**

BART will not require developer compliance with any increase in parking requirements above the 0.5 spaces per unit required in AB 2923, but will require compliance related to height and massing provided above conditions are met. Square footage for parking will not count towards the ODS Capacity or Baseline Capacity Calculations.

Both Baseline and ODS Capacity will be calculated for the entirety of the Project, and not individual buildings or blocks.



Office of the City Manager

WORKSESSION  
July 18, 2023

To: Honorable Mayor and Members of the City Council  
 From: Dee Williams-Ridley, City Manager  
 Submitted by: Jordan Klein, Director, Planning and Development  
 Subject: Ashby BART Station Transit-Oriented Development (TOD)

SUMMARY

This report provides an update on activities to facilitate transit-oriented development (TOD) at the Ashby BART station area, including:

- The City's Option to Acquire Air Rights to the Western Parking Lot
- Draft Framework for Community Benefits
- Ashby BART Station Infrastructure and Operations and Future Development
- Additional Funding Sources for Affordable Housing and/or Infrastructure.

The purpose of this worksession is to update the City Council on efforts related to the Ashby BART TOD project and to obtain input about the draft framework for community benefits and other aspects of the project.

CURRENT SITUATION AND ITS EFFECTS

For the past several years, the City and BART have been collaborating to facilitate transit-oriented development at the North Berkeley and Ashby BART sites. The City Council and BART Board of Directors executed a Memorandum of Understanding (MOU) in March 2020 and a Memorandum of Agreement (MOA) in June 2022 that outlined key milestones to advance to a solicitation for developer teams. Several of the milestones outlined in these agreements have been completed already, including:

- Reservation of \$53 million of City Affordable Housing Funding for the North Berkeley and Ashby BART Sites in April 2021.
- New zoning and General Plan amendments consistent with Assembly Bill 2923 adopted in June 2022.

- City and BART adoption of Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station (“JVP”) in June 2022.
- Council approval of preferred option for redesign of Adeline Street at Ashby BART that includes new plaza as a permanent location for the Berkeley Flea Market (November 2022).
- Issuance of a Request for Developer Qualifications and Notice of Funding Availability for the North Berkeley BART station area in July 2022 and selection of a developer team in December 2022.

Due to the additional complex issues that must be resolved prior to issuance of solicitation(s) for developer teams for the Ashby BART station area, the efforts to advance TOD at the North Berkeley and Ashby BART stations are on different timelines. These outstanding issues were identified in the June 2022 MOA. The status of efforts to resolve them are described in more detail below.

#### **A. City’s Option to Acquire Air Rights for the Western Parking Lot**

As a result of an agreement between the City and BART in October 1964 (prior to the construction of BART), and subsequent agreements and transactions including those related to construction of the Ed Roberts Campus, the City of Berkeley retains an option to acquire the air rights over the western parking lot for \$55,000. This arrangement requires cooperation between the City and BART in devising the ultimate terms of a transaction to develop this site.

City staff from the City Manager’s Office, Planning and Development, City Attorney’s Office, Health Housing and Community Services, and Public Works have conducted extensive research to inform options under discussion by the City (led by Major Jesse Arreguin) and BART (led by BART Board Director Lateefah Simon). The negotiating teams are exploring options that would protect and advance both the City’s and BART’s respective objectives, while establishing processes and parameters that do not dissuade the most qualified developer teams from participating in future developer solicitations. Staff anticipates returning to Council in the fall to discuss property negotiations and disposition.

#### **B. Draft Framework for Community Benefits**

The June 2022 MOA outlines a set of minimum requirements for the North Berkeley BART station area transit-oriented development, many of which are derived from the JVP and other City and BART Board-adopted requirements (e.g., project labor requirements). Since the JVP establishes both minimum expectations for development as well as aspirational goals, the intent in the MOA is to clearly convey a minimum level of requirements any potential developer team would be required to

meet for the North Berkeley BART site. The MOA also establishes mechanisms by which BART, the City, or both will reinforce these requirements. Requirements for the North Berkeley BART station area include a project with a residential program with a minimum of 1,000 bedrooms in a variety of sizes, minimum affordability requirements, and a connection to the Ohlone Greenway, among other elements.

The draft framework for community benefits and other project requirements for the Ashby BART site being negotiated by the City and BART reflect: the June 2022 MOA, the JVP, the Adeline Corridor Specific Plan, and key input from a parallel effort, “Equitable Black Berkeley”. Equitable Black Berkeley (EBB) is an initiative spearheaded by the Mayor’s Office, in partnership with Healthy Black Families, that is exploring innovative funding proposals and policies for the Ashby BART station and “Adeline Community” area. This effort is part of a grant-funded, community-driven effort to develop options to support equity, opportunity and the well-being of Berkeley’s African American community.<sup>1</sup> The central premise established by EBB for Ashby TOD is that the project must begin to reverse and repair the inter-generational harm that resulted from the development of the Ashby BART station and redlining.

As noted above, the City has a property interest (the option to acquire air rights) in the western parking lot at Ashby BART, which makes the City a necessary partner in determining the use of the site. The City Council and the BART Board of Directors must ultimately approve the community benefits for Ashby BART, as well as any related agreements and real estate transaction documents. Many of the details, including funding sources and enforcement mechanisms, are still being negotiated, and will be affected by the disposition of the City’s air rights option. The City and BART negotiation teams have been discussing elements of the draft community benefits framework. To date, the BART Board of Directors has not had the opportunity to review or discuss this draft community benefits framework.

The draft framework for community benefits for the Ashby BART station area includes the following elements:

1. **Affordable housing:** Minimum of 35% of new housing units to be developed shall be affordable or Below Market Rate (BMR) housing, with a goal of 50%, in accordance with income targets identified in the JVP (or other Affordable Housing Framework adopted by the City Council for the Ashby BART station area). The draft framework for community benefits reflects proposals being explored to finance the anticipated infrastructure/right-of-way improvements and affordable housing at the Ashby BART site. These proposals include the potential of forming an Enhanced Infrastructure District (EIFD). An EIFD encompassing Ashby (or both Ashby and North Berkeley stations) could capture the City’s share

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<sup>1</sup> <https://healthyblackfam.org/e4bb>

of any property tax increment over a 45-year period. Income restricted lower income housing units would generally be exempt from property tax so only market rate units would contribute to the tax increment.<sup>2</sup> While some community members have advocated for the Ashby TOD project to be 100% affordable, the funding to finance that amount of affordable housing does not currently exist. Even with the City's reservation of its affordable housing funding, the project would need to rely on application to multiple cycles of future state and federal funding which would add significant delay and uncertainty to the TOD project; for those reasons, BART would not likely agree to this as a minimum requirement. Additionally, there is not a consensus among stakeholders that the entirety of the Ashby BART site should be 100% affordable. Some stakeholders have advocated for a mixed-income community (with 100% affordable projects, including at moderate income levels and market rate projects that could have below market rate inclusionary units) in order to better promote economic mobility and to provide a source of funding (e.g. property tax increment) that goes towards affordable housing and infrastructure needs.<sup>3</sup>

2. **Permanent home for the Berkeley Flea Market.** The Ashby TOD project will include a permanent home for the Berkeley Flea Market and other public markets and microenterprise businesses (e.g., with a plaza, market stalls, and/or other relevant amenities). The City of Berkeley will allow some portion of adjacent Adeline Street right-of-way to also be utilized to support the Berkeley Flea Market (and other public programming). The project will include an installation celebrating the history of the Flea Market, office space for the Flea Market administration, and additional amenities to facilitate the Flea Market and other public markets and microenterprise businesses.
3. **Ground floor space for civic uses at below market rate rent.** Consistent with the vision to have the Ashby BART station area be a vibrant neighborhood center that includes affordable space for community non-profits, the draft framework for community benefits includes a requirement that space at below market rate rent be provided to civic and community uses. The location and amount of space is still being negotiated.

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<sup>2</sup> Senate Bill 628 "Enhanced Infrastructure Financing Districts" (1/2/2015), Assembly Bill 464 "Enhanced Infrastructure Financing Districts: allowable facilities and projects" (6/29/2021), Assembly Bill 336 "Enhanced infrastructure financing districts: public financing authority: members: joint powers authorities" (6/29/2021).

<sup>3</sup> 4/27/21 City Council Item #31: City Affordable Housing Funds: Ashby and North Berkeley BART Station Areas and Future Housing Funding Notices of Funding Availability (NOFA), Attachment 2, p.36 regarding estimate of City subsidy needed to exceed 35% affordable housing:  
<https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2031%20City%20Affordable%20Housing%20Funds%20%20Ashby%20and%20North%20Berkeley%20BART%20Station%20Areas%20and%20Future%20Housing%20Funding%20Notices%20of%20Funding%20Availabilit....pdf>

4. **A plaza and/or development that is adjacent and connected to Adeline Street at southern portion of the west parking lot.** The JVP and the Adeline Corridor Specific Plan prioritize that future development should connect directly to the greatest extent possible with Adeline Street. The Ashby TOD project shall be directly connected to Adeline Street at the southern end of the western parking lot (which could be possible through construction of a podium), as shown in the preferred right-of-way redesign concept for Adeline Street at Ashby BART selected by the City Council (see section C below for more details). The connection could become part of the future plaza and/or development. The source of funding for this aspect of the future TOD is still under negotiation and includes identifying grant funding.
5. **A reparative community benefits fund for South Berkeley.** Beyond construction of the TOD project itself, the Ashby BART TOD project can play a deeper role in repairing and reversing the intergenerational harm generated by the displacement of homes and businesses as a result of construction of the Ashby BART station. Equitable Black Berkeley has been central in shaping the proposal that a portion of the revenue generated from the future development project must be dedicated to a fund to be used for and by the greater South Berkeley community. A community advisory committee or similar body would direct the expenditure of the funds. The source of funding for this benefit is still subject to negotiation.

There are also other project elements under discussion which would be included in the future solicitation(s) for developer teams where prospective teams would be encouraged to use their creativity and expertise to include in their project proposals, such as:

- An accessible gymnasium on the east parking lot (to the west of Adeline Street and the Ed Roberts Campus), complementary to existing service providers for persons with disabilities;
- Development that interfaces directly with Adeline Street to the greatest extent possible in additional locations other than the southern portion of the west parking lot (in a manner that meets BART's station operations and BART and the City's life safety requirements);
- Additional publicly accessible civic space, green space or other amenities.

The City and BART have also been discussing other aspects of the project and have reached agreement or are nearing agreement on:

- A two-part developer solicitation process. Due in part to the additional complexity to develop the Ashby BART station site, the solicitation process must consist of a two-part process that includes a request for developer

qualifications, followed by a request for proposals from a short-list of respondents.

- Incorporation of the public artwork by Mildred Howard that was recently commissioned by the City of Berkeley (with the specific location subject to consultation with the artist).
- An interpretive display that satisfies Cultural Resources Mitigation Measure CR-1 in the Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project EIR.<sup>4</sup>

### C. Ashby BART Station Infrastructure and Operations and Future Development

The Adeline Corridor Specific Plan and the JVP identify a goal to create an at-grade connection between Adeline Street and the planned development on the west parking lot. On April 20, 2023 BART held a community meeting to present information about Ashby BART station operation and infrastructure needs and how that impacts the connection of the future TOD to Adeline Street.<sup>5</sup> BART staff presented information about the design process and constraints that led to the current configuration of the new Traction Power Substation (TPSS) planned for the Ashby Station.<sup>6</sup> BART staff presented the maintenance, access, and clearance requirements for any development on top of or adjacent to the substation (Attachment 1).

BART staff also presented conceptual studies for opportunities for TOD to connect directly to Adeline Street, given safety and operational constraints. Based on information available at this time, the opportunities to connect to future development on the west parking lot to connect to Adeline Street appear to be most constrained in the northern two-thirds of the Adeline Street frontage due to the requirements of the TPSS and safety requirements related to station egress. As noted above, the preferred right-of-way redesign concept for Adeline Street at Ashby BART selected by the City Council included the potential for an expanded plaza at the southern end of the western parking lot. It is anticipated that the future solicitation(s) for developer teams will invite teams to propose creative solutions to maximize opportunities to connect to Adeline Street while still maintaining BART's safety and operational requirements for the Ashby station.

<sup>4</sup> <https://berkeleyca.gov/sites/default/files/documents/2022-07-06%20MMRP.pdf>

<sup>5</sup> Presentation from BART's 4/20/23 community meeting is available at: [https://www.bart.gov/sites/default/files/docs/23\\_0420\\_Ashby\\_Presentation.pdf](https://www.bart.gov/sites/default/files/docs/23_0420_Ashby_Presentation.pdf)

<sup>6</sup> BART runs trains using electrical power provided by Pacific Gas and Electric (PG&E), which in-turn supplies to over one hundred substations throughout the system that convert electricity to the voltage required to propel BART cars. These substations exist in all kinds of communities throughout the BART system. A traction power substation also exists at the North Berkeley BART station at the southeast corner of the intersection of Acton and Virginia Streets.

#### D. Additional Funding Sources for Affordable Housing and/or Infrastructure

The City and BART recognize that to achieve mutual goals for TOD at the Ashby BART station area, additional funding will need to be identified and secured beyond what the development project can provide to support desired levels of affordable housing, the redesign of Adeline Street, support for the Berkeley Flea Market and other community benefits. City and BART staff are seeking grant and other funding opportunities on an on-going basis. At this juncture, City and BART staff have submitted and/or been awarded the following:

- In 2020 BART secured major grants from Caltrans and the Federal Transit Administration to support planning for TOD, providing approximately \$1,700,000 for work specifically targeting Berkeley BART station area TOD projects, including affordable housing finance and economic analysis, station access planning, and community engagement.
- In June 2023, the City was awarded a \$600,000 grant from the Alameda County Transportation Commission to further refine the preferred concept for redesign of Adeline Street at Ashby BART station.
- In May 2023, BART and the City submitted an application to the State of California's 2021 Regional Early Action Planning Grants (REAP) 2.0 for the Affordable Housing Predevelopment Loan Fund and City of Berkeley Community Benefits Fund.<sup>7</sup>
- In June 2023, the City nominated the Ashby and the North Berkeley BART Station Areas for the Metropolitan Transportation Commission/Association of Bay Area Governments' Priority Site Pilot Program (which provides regional predevelopment funding).

Advancing TOD at the Ashby and North Berkeley BART stations is a Strategic Plan Priority, advancing our goals to:

- Create affordable housing and housing support service for our most vulnerable community members.

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<sup>7</sup> As part of the required application process, the City Council adopted Resolution 70,687-N.S. on January 31, 2023 to authorize the City Manager to execute a grant agreement with the California Housing and Community Development Department should BART and the City be awarded the grant. The application includes \$10 million for BART to create a predevelopment loan fund to help BART partner with local community development organizations who work in Disadvantaged Communities and often lack the working capital to finance predevelopment work themselves. The application also includes \$1 million to the City of Berkeley to set up its first Enhanced Infrastructure Financing District (EIFD) in the Ashby BART station area in order to increase the number of affordable residential homes in the Ashby TOD project and provide a revenue stream to provide investment in the community that surrounds the Ashby BART station.

- Champion and demonstrate social and racial equity.
- Be a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

### BACKGROUND

Spurred by the passage of Assembly Bill 2923, the City and BART have been closely collaborating for the past few years to advance TOD at the Ashby and North Berkeley BART station areas. A first set of key milestones outlined in the March 2020 MOU between BART and the City of Berkeley were completed in June 2022. These milestones included:

- **Reservation of \$53 million of City Affordable Housing Funding for the North Berkeley and Ashby BART Sites.** The City Council approved a reservation of \$53 million in City affordable housing funds to support at least 35% of the housing units proposed at each of the stations being deed-restricted low, very low and/or extremely low-income affordable housing.
- **New zoning and General Plan amendments consistent with Assembly Bill 2923.** Zoning for the Ashby and North Berkeley BART station areas was amended to be consistent with AB 2923. The zoning amendments established a new Residential - BART Mixed Use (R-BMU) zoning district and amended the Zoning Map to apply the new R-BMU zoning district to the Ashby and North Berkeley BART sites. General Plan amendments added a new land use classification (the Ashby/North Berkeley BART Transit-Oriented Development) and the General Plan was updated for the Ashby and North Berkeley BART sites.
- **City and BART Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station (“JVP”).** The JVP was informed by an 18-month community process that included public meetings with a Council-appointed Community Advisory Group and the community at-large. The JVP builds on the framework provided by the City and BART’s adopted plans, policies and regulations, and the additional land use, site planning and financial feasibility studies undertaken as part of this planning process. The JVP is organized around five key topics: Affordable Housing, Public and Civic Space, Land Use, Building Form, and Station Access, and is incorporated into the City and BART Memorandum of Agreement (See Referenced Links: June 2022 MOA, Exhibit C). The JVP was adopted by both the City Council and the BART Board of Directors in June 2022.

- **City and BART Memorandum of Agreement (“MOA”).** The June 2022 MOA clarifies the processes that BART and/or the City will pursue to develop BART-owned property at North Berkeley BART Station and includes a timeline for pending actions related to the Ashby BART site.

Completion of these milestones enabled BART to issue a Request for Qualifications for developer teams and the City to issue a Notice of Funding Availability for the North Berkeley BART Station Area in July 2022. On December 1, 2022, the BART Board of Directors approved the selection of a development team to build housing at the North Berkeley BART station site. The team comprises lead nonprofit developer BRIDGE, nonprofit development partners East Bay Asian Local Development Corporation (EBALDC) and Insight Housing (formerly Berkeley Food and Housing Project), and market-rate developer Avalon Bay Communities. As outlined in the June 2022 MOA, the City initiated a process to develop Objective Design Standards (ODS) for the North Berkeley BART site in November 2022. Staff is anticipating bringing draft ODS to the Council in November/December 2023.

In addition, in November 2022, the City Council completed a milestone in the June 2022 MOA related to the Ashby BART station area.<sup>8</sup> On November 29, 2022, the City Council selected a preferred concept to redesign the Adeline Street right-of-way at Ashby BART (between Ashby Avenue and Martin Luther King Jr. Way) in order to improve safety and access, and to create a new public plaza that would serve as the new permanent home for the Berkeley Flea Market.<sup>9</sup> The Council adopted a resolution to authorize the City Manager to direct staff to proceed with the preliminary engineering and detailed engineering design based on the recommended conceptual design with Two-Lane Adeline option as the conceptual, pending identification of funding. Redesigning Adeline Street at Ashby BART supports future housing development plans for the Ashby BART station by designing future plaza space that could accommodate the needs of the Berkeley Flea Market that currently utilizes the parking lot (west of Adeline Street).

## ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Creating equitable, transit-oriented mixed-use development that includes affordable housing and housing support services for Berkeley’s most vulnerable community members is a City Strategic Plan goal, which also helps advance the environmental goals of being a global leader in addressing climate change, advancing environmental justice, and protecting the environment.

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<sup>8</sup> In addition to the June 2022 MOA, a Council Budget Referral (Feb. 2020) and a recommendation from the Adeline Corridor Specific Plan (Dec. 2020) also identified studying potential reconfigurations of Adeline Street to increase safety and opportunities for public space as a priority.

<sup>9</sup> 11/29/22 City Council Meeting, Item 15: Adeline Street at Ashby BART Conceptual Design:

<https://berkeleyca.gov/sites/default/files/documents/2022-11-29%20Item%2015%20Adeline%20Street%20at%20Ashby%20BART.pdf>

POSSIBLE FUTURE ACTION

Following further negotiation meetings between the City and BART, it is anticipated that staff will return to Council in Fall 2023 with proposed amendments to the City and BART's June 2022 Memorandum of Agreement (MOA), as well as related agreements and documentation in order to advance solicitation of developer(s) for the Ashby BART station area.

FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are a variety of potential fiscal impacts to the City related to Ashby BART TOD, including the allocation of affordable housing funding, capital expenditures related to Adeline Street roadway reconfiguration, and operational costs related to on-street parking management adjacent to the stations. The actions for possible future consideration by the City Council do not result in direct fiscal impacts, since future funding commitments will return to Council for action. Staff will provide more detail about these potential fiscal impacts in advance of possible future actions.

CONTACT PERSON

Alisa Shen, Principal Planner, Planning Department, (510) 981-7409.

Links to Referenced Documents:

1: June 2022 City and BART Memorandum of Agreement for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas:

<https://berkeleyca.gov/sites/default/files/documents/UpdatedMOA%20North%20Berkeley-Ashby%20TOD%2005.16.23.pdf>

Attachment:

1: Ashby Substation Access and Clearance Requirements, BART Memorandum, March 15, 2023.



## Ashby Substation Access and Clearance Requirements

**Summary:** This document summarizes the design process and constraints that led to the current configuration of the new Traction Power Substation (TPSS) planned for the Ashby Station. BART understands a desire exists to create an at grade-connection between Adeline Street and the planned development on the western surface parking lot, so this document also aims to outline the maintenance, access, and clearance requirements for any development on top of or adjacent to the substation.

**Background:** BART runs trains using electrical power provided by Pacific Gas and Electric (PG&E), which in-turn supplies to over one hundred substations throughout the system that convert electricity to the voltage required to propel BART cars. These substations exist in all kinds of communities throughout the BART system and are not unique to South Berkeley.

Substation improvements are part of a systemwide effort allowing BART to provide more frequent and timely service and to upgrade and replace aging infrastructure. Measure RR was an approved 2016 bond measure that includes funds to rebuild substations. New substations are included in the Core Capacity program which is partially funded by the Federal government. The construction schedule of the substations has been impacted by the pandemic and ensuing price escalation.

**Current Design:** BART street level facilities allows for more efficient maintenance and emergency access to the traction power equipment, and makes replacing the equipment much less complicated and expensive. The at-grade preference is being pursued at Ashby Passenger Station (Alternative #3), but it is worth noting that BART considered three alternatives at the location:

1. Installing the substation within the footprint of the existing underground facility.
2. Building the Alternating Current (AC) and Direct Current (DC) houses in one large facility adjacent to the existing TPSS
3. Separating the AC and DC houses in a narrower facility adjacent to the existing TPSS.

The first alternative was eliminated because the space couldn't accommodate the new equipment needed for a modern power system. The second alternative eliminated the accessible path to the station at the corner of Adeline St. and Ashby Ave.

The third alternative was ultimately selected because it was most cost effective, and most efficient to maintain.

The following sections detail the access needs that were incorporated into the current design and must be merged into any buildings adjacent to or over the planned substation at the Ashby Passenger Station.



## Ashby Substation Access and Clearance Requirements

### Access Requirements

1. Vehicular Access:
  - a. A minimum of 6 unobstructed parking spaces directly adjacent the facility must be provided for BART service trucks and vans.
  - b. Access to the substation must be provided by specified entrance and exit points, as well as turnarounds for cranes and emergency vehicles must be provided. As required by the California Building Code requirement for Emergency Vehicle Access (EVA) lanes.
  - c. These access points will need to be exclusive to BART and first responders, and that they are separated by bollards.
2. Crane Access: Cranes with a rating axis between 80 and 800-tons must be able to access the facility and manipulate these transformers. This requires the following:
  - a. A clear width of 30 feet for a crane, with an additional 5 feet-clear on both sides to accommodate outriggers.
  - b. A clear length of 175-feet to accommodate a 60-foot crane, the equipment trailer, and working clearances around and between vehicles.
  - c. Any cover over the Ashby TPSS must allow a crane to be staged next to the facility to extend a lifting boom and attached hoisting into the substation, lift it above the wall surrounding the facility, and place it onto a flatbed or carrier vehicle. **Figure 1** shows the working range of a crane BART has identified as capable of lifting all substation equipment. Any development over the substation must accommodate the vertical space necessary to support the operating radius of a capable crane.
  - d. The clearance between the Ashby TPSS and any development must also provide adequate space for replacing electrical equipment. Airspace must be provided to accommodate the hoist and swing of equipment capable of lifting a minimum of 60,000 pounds as refer in Figures 1 & 2. Figures 1 & 2 illustrate the dimensions of equipment known to be capable of meeting BART's maintenance needs.
3. Staging Requirements:
  - a. A secure laydown area of at least 43' x 36' must be included adjacent to the substation to store equipment.
  - b. An additional area must be reserved to accommodate three trailers housing a temporary substation. The average trailer measures 38' L x 9' W x 14' H, so 1,200 square feet (trailers situated end-end-end) or 1,350 sq ft (trailers situated side-side-by side) adjacent to the substation will be required in the event the substation fails. All areas would be off-limits to the public, would need to comply with all applicable building code requirements, and must always be accessible by BART maintenance staff and first responders.



## Ashby Substation Access and Clearance Requirements

### Fire and Life Safety Requirements

This document does not preclude those requirements mandated by the California Building Code, California Occupational Safety and Health Administration, National Electrical Code, Title 24, or any other applicable local, state, and Federal building or safety codes.

# working range – MEGALIFT

## 142'-197' MEGALIFT lift

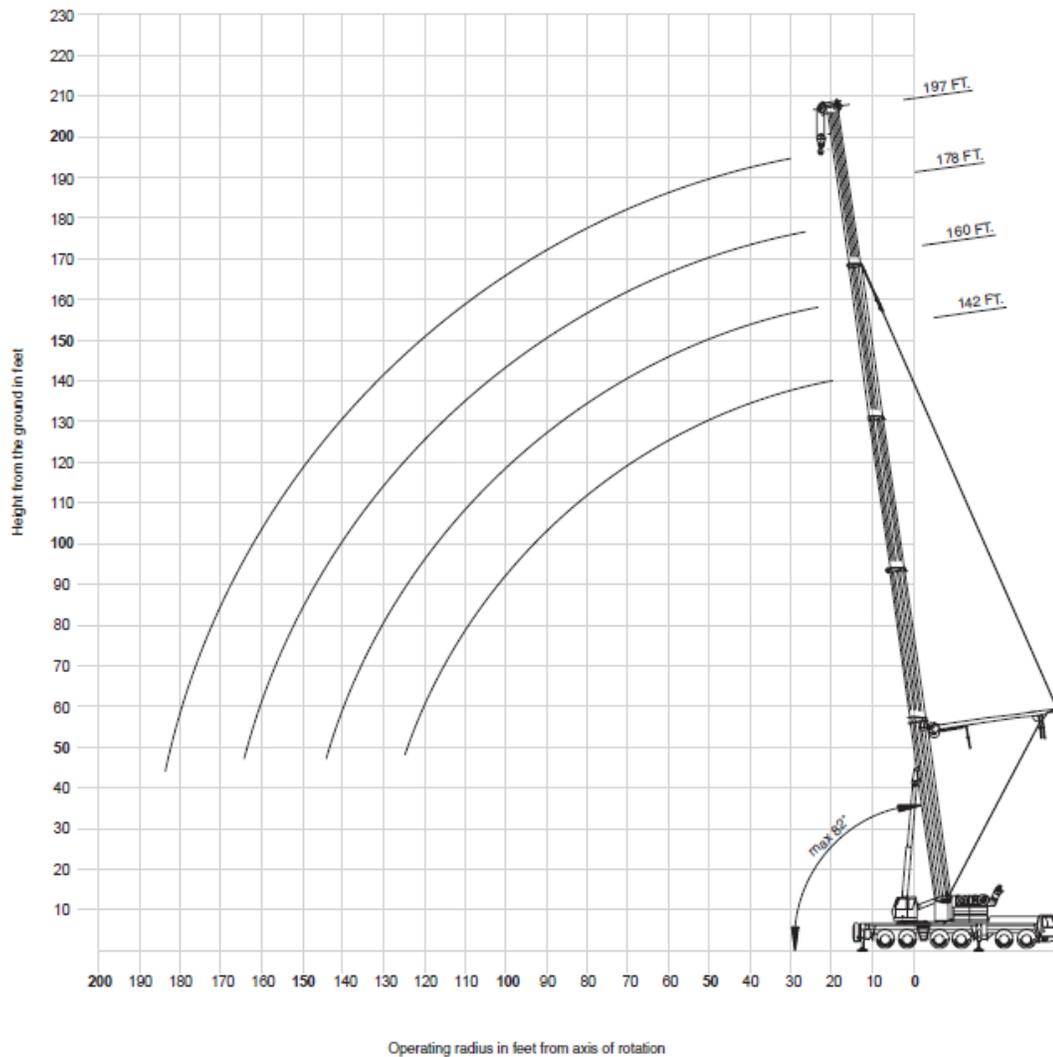


Figure 1: Typical Crane Operating Radius



# Ashby Substation Access and Clearance Requirements

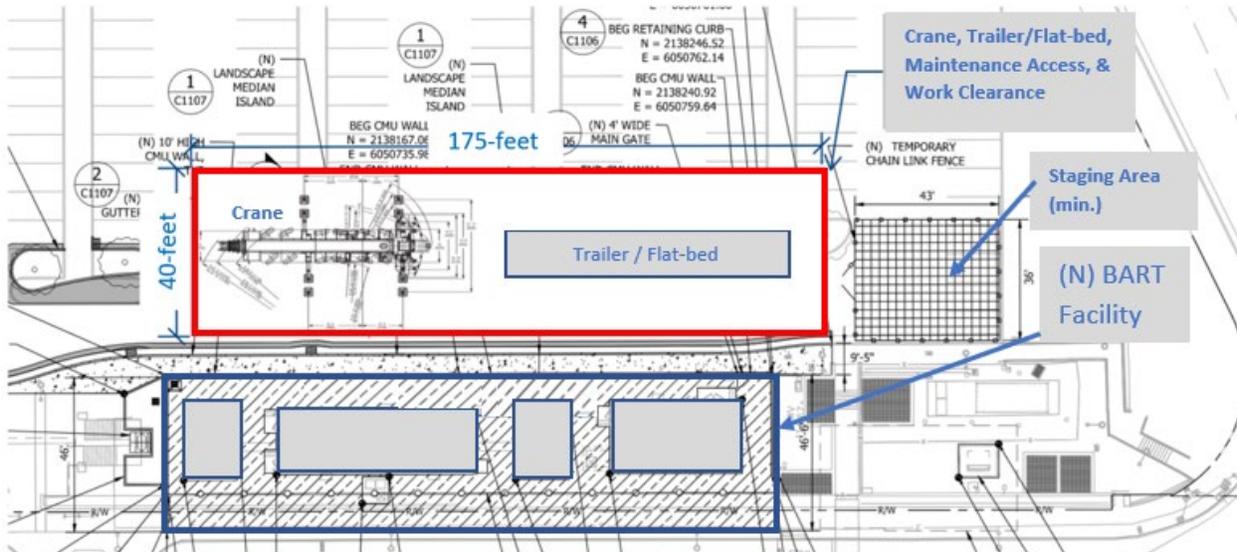


Figure 2: Typical layout of Crane and Trailer at High Voltage (HV) Substation

N.T.S



Office of the City Manager

WORKSESSION  
July 18, 2023  
(Continued from November 29, 2022)

To: Honorable Mayor and Members of the City Council  
From: Dee Williams-Ridley, City Manager  
Submitted by: Liam Garland, Director, Public Works  
Subject: City Policies for Managing Parking Around BART Stations

SUMMARY

This report provides an overview of the parking management programs and policies the City of Berkeley will use to manage parking demand around the Ashby and North Berkeley BART stations as new housing is built. In residential areas, the City will evaluate new resident and/or Council initiated requests to join the Residential Preferential Parking (RPP) Program. In commercial areas, the City will consider the use of demand-responsive pricing to generate parking availability for local customers and/or accommodate some BART parking demand under the goBerkeley program.

CURRENT SITUATION AND ITS EFFECTS

BART's planned housing at the Ashby and North Berkeley stations is expected to significantly affect parking conditions around the stations. While BART has been conducting a planning process for station access needs—the Berkeley-El Cerrito Corridor Access Plan (BECCAP)<sup>1</sup> with anticipated completion in Winter 2022/23—the City seeks to mitigate future parking demand using existing parking programs, including the Residential Preferential Parking (RPP) Program in residential areas and goBerkeley demand-responsive pricing in commercial areas.

Planned Changes to Parking Supply and Demand

As part of the new housing developments, BART will not provide 100% replacement of existing BART rider parking spaces. After BART presented recommended BART rider parking maximums for the two stations to the BECCAP Advisory Committee and Community in March 2022,<sup>2</sup> in June 2022, the BART Board approved a maximum of 85 rider parking spaces (16% of the current 535 spaces) for Ashby and 200 rider parking spaces (29% of the current 700 spaces, including 80 spaces in the two auxiliary lots) for North Berkeley.<sup>3</sup> Based on the analysis and outreach from the BECCAP, BART expects that those who historically parked at the two stations will: 1) walk, bike, bus or

<sup>1</sup> BECCAP Project website: <http://bit.ly/3NSm6C1>

<sup>2</sup> BECCAP Advisory Committee/Community Meeting, March 9, 2022, p. 22: <https://bit.ly/3BTdR2W>

<sup>3</sup> BART Board Meeting, June 9, 2022: <https://bit.ly/3DTT8gK>

rideshare to access BART, 2) work from home, or 3) park at Downtown Berkeley parking garages or other off-street options.<sup>4</sup> Yet, there may still be spillover parking into surrounding neighborhoods. Note: BART has not determined the final amount of on-site rider parking at the two stations. The final parking number will be determined after the future development teams advance design together with the community, and BART, the City and the Developer teams have a better understanding of funding opportunities for access/parking improvements, design considerations, and community benefit tradeoffs.

The amount of on-site parking for residents at the new housing developments is still under consideration. Regardless, per City policy, residents of the new developments will not be eligible for RPP permits and could seek parking on nearby residential streets.

#### Managing Parking in Residential Areas

Residential parking in the immediate vicinity of the Ashby and North Berkeley BART stations is within the boundaries of the RPP Program, though the number of streets that have “opted-in” to the Program, i.e., streets that are signed and enforced for RPP time limit restrictions, vary between the two stations.<sup>5</sup> The City expects resident-initiated opt-in requests around Ashby BART and North Berkeley BART to grow over the next several years, particularly after new housing is built. Residents may choose to petition for RPP to mitigate demand from residents of the new housing developments as well as partially displaced BART patrons.

To accommodate these requests, the City will follow existing guidelines for RPP Opt-Ins, summarized in Berkeley Municipal Code (BMC) Section 14.72.050.<sup>6</sup> The BMC also allows for Council to initiate opt-in requests if so desired. Streets that are outside of the RPP Program boundary are not eligible to opt-in; Council action would be required to allocate additional funding for Parking Enforcement staff and equipment to expand the Program.

#### Managing Parking in Commercial Areas

Parking on Adeline Street across from the Ashby BART station and along University Avenue south of the North Berkeley BART station is managed under the goBerkeley parking program. Parking on Ashby Avenue and MLK Jr Way fronting Ashby BART is either controlled by RPP, time limits, or unregulated. Adeline Street south of Woolsey Street is time limited, though the City is evaluating whether to install metered parking in this area as part of a parking benefit district. There is no parking on the periphery of the North Berkeley BART site, but this could change with future housing development.

Based on outreach with merchants and/or other stakeholders, the City could convert existing time limited or unregulated parking in commercial areas or on the periphery of

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<sup>4</sup> BECCAP Advisory Committee/Community Meeting, March 9, 2022, p. 23-24: <https://bit.ly/3BTdR2W>

<sup>5</sup> City of Berkeley RPP Web Map: <https://bit.ly/3LLDpDY>

<sup>6</sup> Berkeley Municipal Code 14.72.050: “Designation of a residential permit parking area”  
<https://berkeley.municipal.codes/BMC/14.72.050>

station areas to goBerkeley metered parking. Consistent with on-street parking elsewhere in the City, the goals will be to ensure customer parking availability and turnover by periodically observing parking behavior and adjusting prices for optimum availability – 65-85% occupied, or 1-2 open spaces. goBerkeley features “Premium” zones with prices driven by customer demand and shorter time limits that encourage turnover, and in the vicinity of Ashby and North Berkeley, could exclude BART patrons. If there is surplus capacity, some areas may be designated as Value zones with longer time limits that could be used by BART patrons, but priced to maintain adequate turnover.

goBerkeley allows the City to be flexible in the face of changing conditions. Pending further discussion, the City could implement an escalating price scale that starts at low prices for short stays, but scales up to higher prices for all-day parking, potentially providing parking for local customers while accommodating some BART patrons. In the vicinity of Ashby BART, this could provide a new source of revenue supporting a Lorin parking benefit district.

### BACKGROUND

In September 2018, Governor Jerry Brown signed Assembly Bill (AB) 2923,<sup>7</sup> state legislation that affects zoning requirements on existing BART-owned property within one-half mile of stations in Alameda, Contra Costa and San Francisco Counties.

The City of Berkeley has been working closely with BART to develop the zoning and site planning parameters that meet the requirements of AB 2923, the goals of the City and the community, and the goals of BART as the property owner. The City and BART executed a Memorandum of Understanding (MOU) in March 2020 that established a framework for development of the Ashby and North Berkeley BART stations, including a community advisory process and other community engagement; milestones and a timeline to develop zoning that complies with AB 2923; solicitation of developer(s); and further studies/planning for the two station areas.<sup>8</sup>

In June 2022, the City Council adopted zoning at the North Berkeley and Ashby BART stations that complies with AB 2923. As outlined in the original City-BART Memorandum of Understanding (MOU) and the new Memorandum of Agreement (MOA), the planning effort moving forward will build upon separate community engagement efforts that have been underway for several years relating to the Ashby and North Berkeley BART stations, and other adopted plans and policies of the City and of BART. The MOA establishes a timeline for milestones regarding the addressing of potential spillover impacts to parking around the North Berkeley and Ashby BART stations that includes this City Council update regarding use of existing tools for on-street parking strategy in November 2022.

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<sup>7</sup> AB 2923: <https://bit.ly/3DYji3m>

<sup>8</sup> Current City of Berkeley/BART Memorandum of Understanding (MOU): <https://bit.ly/3CfJFR8>

### ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Incremental expansion of the RPP Program to include additional blocks may have a minor beneficial environmental effect, and may make alternative transportation options more attractive. A modal shift by commuters to walking, bicycling, public transportation, or carpooling may also lead to a decrease in greenhouse gasses. However, based on expansion of RPP to other areas, the “two-hour shuffle” (i.e., moving a vehicle every two hours to avoid a ticket) may also begin to occur in new RPP areas among commuters who continue to drive. This behavior would have an adverse impact on traffic congestion, air quality, and excess fuel consumption.

Parking management in commercial areas using demand-responsive pricing under the goBerkeley parking program should improve parking management and lessen traffic congestion and vehicle emissions, as drivers are anticipated to spend less time searching for available parking spaces. Reducing greenhouse gas emissions produced by vehicular traffic is one of the City’s 2009 Climate Action Plan goals.

### POSSIBLE FUTURE ACTION

The City will continue to monitor parking demand in the vicinity of the Ashby and North Berkeley BART stations, processing RPP opt-in requests and/or discussing parking options in commercial areas with merchants and business groups as warranted.

### FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

There are no immediate fiscal impacts. The parking management policies discussed in this report are baseline programs and the housing projects are still being planned.

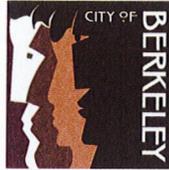
Moving forward, each incremental expansion of RPP within the Program’s current boundaries will incur costs for the procurement and installation of new signage. Depending on the geographic scope of new opt-in petitions, discussions with the Police Department’s Parking Enforcement may be needed to verify that existing staffing and equipment levels are sufficient to absorb the new areas. Expansion beyond the existing boundaries of the RPP Program will require new staff and equipment.

Fiscal impacts of potential new goBerkeley parking meters in commercial areas near or fronting the BART stations are difficult to forecast as parking behaviors resulting from demand-responsive price adjustments may vary. However, as in other areas of the City, incremental parking revenue should be sufficient to cover expected expenditures of the program, including the purchase of new meter equipment.

### CONTACT PERSON

Liam Garland, Director of Public Works, (510) 981-6300  
Danette Perry, Parking Services Manager, (510) 981-7057  
Gordon Hansen, Senior Planner, (510) 981-7064

Office of the Mayor

Jesse Arreguín  
Mayor

July 28, 2023

Dear General Manager Powers,

The City of Berkeley appreciates and values our partnership with San Francisco Bay Area Rapid Transit District (BART) to pursue transit-oriented development (TOD) at the North Berkeley and Ashby station areas. The City is unwavering in our pursuit of equitable, sustainable, and financially feasible projects at these sites that will provide essential housing and amenities for Berkeley and the region.

While significant progress has been made to advance the North Berkeley TOD, we have not yet completed negotiations over the Ashby TOD including the city's option to purchase the air rights above the Ashby BART West Parking Lot. Nevertheless, I am personally committed to completing these negotiations promptly, and have scheduled weekly meetings with BART Director Lateefah Simon to discuss and work through the remaining issues. I fully expect that our agencies will be prepared to bring a revised agreement before our respective governing bodies in fall 2023 for review and approval, and to release a solicitation in early 2024 to recruit development partners.

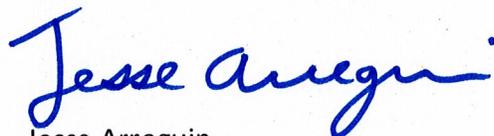
Although I and the rest of the Berkeley City Council are strongly committed to advancing a project at Ashby station area, there is significant concern recently expressed by community members regarding BART's plan to expand the traction power sub-station (TPSS) at the site. At a special meeting of the Berkeley City Council on July 18th regarding the Ashby TOD project, dozens of community members—who are otherwise overwhelmingly supportive of the project — expressed dismay regarding the expansion of this infrastructure in the heart of the South Berkeley community that will significantly impede our efforts to re-weave the community fabric that was disrupted by BART construction decades ago. At the hearing, Council members and community members posed many questions, including the following questions to which we still are seeking responses:

- When will BART provide more information regarding the TPSS expansion project, including visual renderings that clearly demonstrate the full impacts of the project?
- Has BART seriously considered the feasibility of moving the TPSS underground or to another location that is less directly impactful on the South Berkeley community and the future TOD and associated amenities? What are the estimated costs of or other barriers to relocating the facility?
- Will BART commit to partnering with the City of Berkeley and community members to pursue grant funding to relocate the facility underground or to a less impactful location, such as the US Department of Transportation's Reconnecting Communities and Neighborhoods Grant Program?
- If the TPSS cannot be moved underground or relocated, are there other ways that its footprint and staging area can be reduced in order to minimize the constraints on development and other negative impacts that it generates?

We recognize that BART's core mission is to operate a public transportation system that is vital to the health and wellbeing of our region, and understand that the purpose of the TPSS is to improve the performance, reliability, and safety of the Richmond BART line. Nevertheless, I implore BART's engineering and planning teams to use creative thinking to revise plans for the Ashby TPSS to enable us to improve placemaking, connectivity, and civic life at the future development project. We cannot repeat the historic patterns of infrastructure investments that disproportionately divide and impact low-income communities and people of color. Additionally, given the City of Berkeley's option to purchase the air rights for the Ashby station west parking lot, the City has a fiduciary interest in the disposition of this issue.

I know that BART and the City of Berkeley have a shared vision to promptly deliver an outstanding project at Ashby station. The City of Berkeley is steadfast in our commitment to work collaboratively through these issues with you and your team to achieve that outcome. I will follow up on this letter with a phone call to you to discuss these issues. Thank you again for your partnership.

Sincerely,



Jesse Arreguin  
Mayor, City of Berkeley



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
 2150 Webster Street, P.O. Box 12688  
 Oakland, CA 94604-2688  
 (510) 464-6000

2023

November 3, 2023

Janice Li  
 PRESIDENT

Mark Foley  
 VICE PRESIDENT

Robert Powers  
 GENERAL MANAGER

Mayor Jesse Arreguín  
 2180 Milvia St.  
 Berkeley, CA 94704

Dear Mayor Arreguín,

## DIRECTORS

Debora Allen  
 1ST DISTRICT

Mark Foley  
 2ND DISTRICT

Rebecca Saltzman  
 3RD DISTRICT

Robert Raburn, Ph.D.  
 4TH DISTRICT

John McPartland  
 5TH DISTRICT

Elizabeth Ames  
 6TH DISTRICT

Lateefah Simon  
 7TH DISTRICT

Janice Li  
 8TH DISTRICT

Bevan Duffy  
 9TH DISTRICT

BART and the City of Berkeley have worked through many challenging issues as we move forward with planning that will facilitate development of transit-oriented development (TOD) at the North Berkeley and Ashby stations. We can see the positive outcome of our partnership in North Berkeley as North Berkeley Housing Partners, the development team selected by the City and BART, moves forward with its entitlements for a project of approximately 750 housing units, of which 50% will be affordable. Under the leadership of you and Director Simon, significant progress has been made to identify project requirements and community benefits for future TOD at Ashby Station as well as a method to resolve the City's air rights option over a portion of the West Lot.

As your July 2023 letter noted, one of the outstanding issues that impacts TOD development at Ashby relates to BART's plans for a replacement traction power substation (TPSS) at the Ashby Station. The City has requested additional information about the location, design, and potential for underground placement of the TPSS. At the City of Berkeley's request, BART has undertaken additional analysis of the following key points:

### 1. Additional Information Regarding TPSS

As BART moves beyond its 50<sup>th</sup> year of operations and faces the demands of the coming decades, the aging system must be brought up to date. Electricity powers BART's trains. Without sufficient electricity we cannot operate our system to reliably serve the traveling public. BART has a systemwide program to upgrade and replace our traction power substations on most every line, including the substation at Ashby Station. The traction power substation that is currently in place at Ashby will be replaced as part of this effort to replace aging and failing infrastructure, upgrade for increased demand, and provide system redundancy that is critical to enabling BART to provide more frequent and reliable service. Other traction power system upgrades or replacement locations on the Richmond line include Downtown Berkeley Station, North Berkeley Station, El Cerrito Plaza Station, El Cerrito del Norte Station, Richmond Station, and Richmond Yard.

Traction power substations are required throughout the BART system to provide the needed electricity to power the system. The TPSS location at Ashby Station is critical due to its important location within the BART system. It serves the Richmond line and also provides balanced power distribution and voltage levels with the Concord and San Francisco/Millbrae lines that come through MacArthur Station.

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The planning and design evaluations for the TPSS at Ashby Station started in 2016 considering design standards, constructability, maintainability, accessibility for emergency response, and minimizing BART rider impacts. BART considered three options for the layout of the TPSS as shown on Figure 1, below:

1. Option 1: Installing the substation within the existing facility (shown in yellow in Figure 1)
2. Option 2: Installing all equipment of the substation in one large facility adjacent to the existing substation (shown in green in Figure 1)
3. Option 3: Separating the equipment in multiple houses in a narrower facility adjacent to the existing TPSS (shown in red and overlapping part of green in Figure 1)

**Figure 1.**



Option 1 (yellow) was eliminated because the existing underground space could not accommodate the new equipment needed for system redundancy and BART electrical loads. Option 2 (green) was eliminated due to pedestrian safety and station access concerns.

Option 3 (red) was ultimately selected because it is near existing infrastructure with access routes to the system that minimize energy losses and support train motor voltage level requirements. It provides energy efficiency, access for BART personnel 24/7, adequate space and clearances for maintenance, equipment access, and it provides the space to build a double-ended TPSS, which is needed to improve system capacity and reliability. In addition, this location avoids the flooding issues that are experienced at the existing underground substation location. There are no other locations in proximity to Ashby that can provide the same level of service.

Construction of the TPSS is expected to last approximately 2 years and to cost approximately \$30 to \$35 million. To date, roughly \$3 million in engineering design costs have been expended to complete the engineering design for the TPSS. BART is now working to advance to the next phases of the project.

The existing underground traction power substation will be removed after the Ashby TPSS is installed and commissioned. The existing utility house and pad-mounted switching equipment within the house will remain in place. We do not have renderings that demonstrate the future TPSS at this time.

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## 2. Feasibility of Moving the TPSS to another location

During the investigation of the “Here/There” site (see Figure 2) BART determined that the “Here/There” site is not feasible because its location would result in voltage drop conditions which would jeopardize the service capacity and reliability to the trains serving Ashby Station as well as other locations along the Richmond, Concord and San Francisco/Millbrae lines.

**Figure 2. Here/There Site**



## 3. Feasibility of Undergrounding the TPSS

Placing a substation underground creates an increased safety risk to first responders, maintenance staff, and others. Underground options would only be considered when there is absolutely no alternative. Only a small number (less than 15%) of BART Traction Power Substations are underground. A pre-existing vault space would not only pose the same risks, it would also cost 40% to 50% more than an above ground option. Also, there is no space in the existing underground vault at Ashby to accommodate the double-ended design of the replacement TPSS. Additional examination of undergrounding the TPSS would include design change costs as well as costs to investigate the site for potential utilities and other conflicts. This additional investigation would be additive to the “expected” 40% to 50% additional cost incurred when undergrounding a substation.

## 4. Feasibility of Reducing Footprint and/or Laydown Area

BART has examined several opportunities to reduce the TPSS footprint and laydown area and to address specific questions we have heard from the City and residents:

- a. Can the substation be covered so that there is no gap or wall between the back of sidewalk and the staging area?** Yes, see below.

A cover for the TPSS could be designed and installed, provided design constraints include the required vertical clearance and air circulation for the area as well as designated and un-obstructed maintenance and fire access. The definition of “covering” that we are using here refers to a podium or roof and not a building. The covering would need to meet current building codes and fire separation requirements. To minimize impact to power restoration, maintenance cost, and replacement cost, non-BART facilities would not be permitted on the cover. Maintenance and fire access requirements include the access to the hatches and/or to any access point that would allow the removal and replacement of transformers and other large heavy equipment.

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The costs associated with providing a cover to the TPSS, including engineering and design, is not included in BART's TPSS infrastructure budget and would need to be funded through other sources.

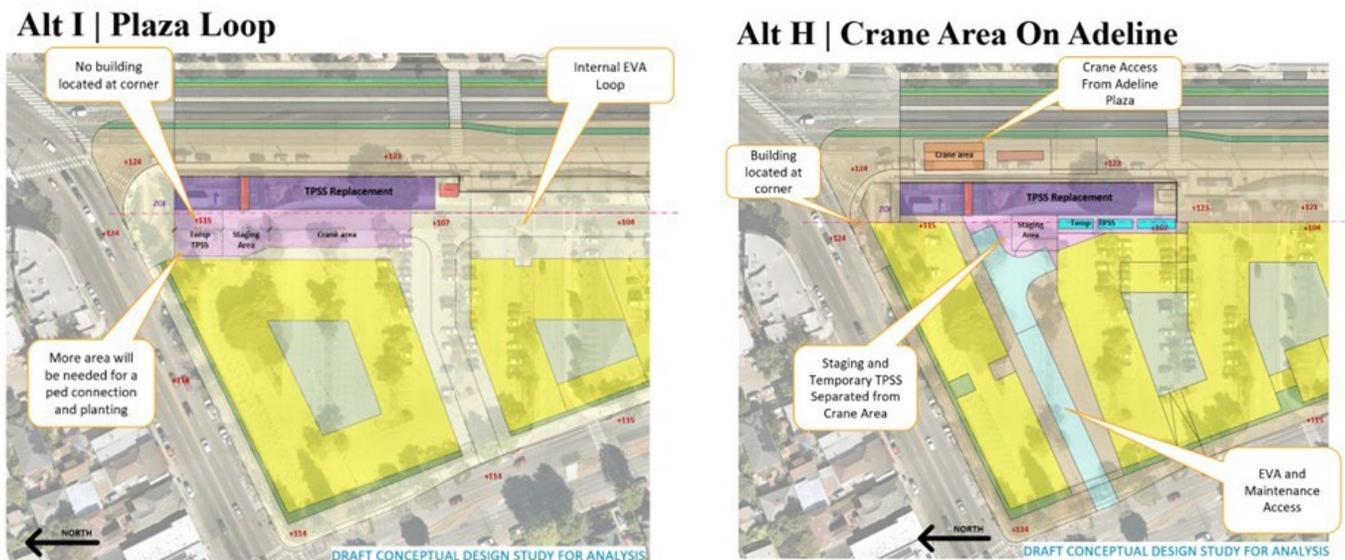
**b. Can the laydown area be decreased in size? Yes, see Figure 3.**

The laydown area could be reduced by the size of the access roadway (approximately 40' by 150'), as shown in Alt H in Figure 3, provided the City of Berkeley would approve a long-term right for location of the crane on the Adeline sidewalk that is supported by an engineering assessment. This would create a significant opportunity to locate the TOD closer to the intersection of Ashby and Adeline.

The laydown area would still be required for the initial construction of the TPSS. It would also be used for the on-going maintenance of the TPSS. For example, the laydown area may be needed for future repair/refurbishment work or replacement of heavy equipment (transformers, equipment houses). A temporary traction power substation may be required to be operational for months or years while repairs or replacement of existing equipment is underway.

As shown in Figure 3, moving the crane to the Adeline sidewalk would create a significant opportunity to locate the TOD closer to the intersection of Ashby and Adeline, creating a stronger connection between the TOD and existing commercial buildings. In addition, shrinking the staging area in such a significant manner would minimize the "gap" between Adeline and the TOD and would open up the potential for buildings to front Adeline south of the TPSS area, pending study of station access. It should be noted that this alternative must be vetted with Berkeley Fire.

**Figure 3. TPSS Access Analysis**



**c. Can the existing equipment be replaced into the proposed TPSS footprint? No, not in its current configuration.**

The existing sub-transmission line equipment (circuit breakers and switches) would not fit in the proposed TPSS footprint. They could be relocated next to the proposed TPSS footprint; however, this would extend the proposed TPSS footprint by approximately 64' in length. The estimated cost would be about \$7 million in addition to the cost of relocating the existing stairs.

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BART does not favor this proposal as the greater distance between the tunnel and switches' new location would necessitate longer cable connections, greater cost, and additional complexity to the project.

Even if this alternative could be funded there would be no gain for developable area as this area is within the zone of influence.

**5. Will BART partner with the City of Berkeley in a DOT Reconnecting Communities and Grant Program?**

BART believes that it has responded to the City's questions regarding the TPSS and provided a pathway to reducing the footprint and staging area to minimize the constraints on development of the Ashby TOD. BART would like to move forward with next steps towards a TOD at Ashby Station and not further delay the project with a future grant application for a potential study from the US Department of Transportation Reconnecting Communities and Neighborhoods. In our experience, the timeline for these types of grants is approximately three years following grant award. We cannot proceed with development of the Circulation Framework, which will be the precursor to the Objective Design Standards and the developer solicitation, until the footprint of the TPSS is established. Postponing the developer selection process for three years would delay TOD development and is not advisable given the City and BART's shared goals of delivering housing at Ashby Station.

I hope that this information is useful. BART appreciates the City of Berkeley's partnership and looks forward to upcoming milestones that will bring us closer to realizing our shared vision for TOD at Ashby Station.

Sincerely,



Robert M. Powers  
BART General Manager

cc: Jordan Klein, City of Berkeley Planning Director  
Lateefah Simon, BART Board Director (District 7)