

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into this 28th day of February, 2018 by and between the City of El Cerrito ("City") and the San Francisco Bay Area Rapid Transit District ("BART") to cooperatively pursue study of the feasibility of transit oriented development and a potential new library at the El Cerrito Plaza BART Station.

I. RECITALS

- a) In 2014, the City adopted the San Pablo Avenue Specific Plan ("Plan"), which includes the El Cerrito Plaza BART Station area and describes residential development, retail, commercial and office uses, and established the public facilities, planning and development standards (including reduced parking ratios) which control new development in the Plan area.
- b) Over the past 15 years, a number of attempts to develop transit oriented development at either the El Cerrito Plaza or Del Norte BART stations in El Cerrito have been considered but none have come to fruition.
- c) The El Cerrito Plaza BART Station offers a unique opportunity because of its desirable location and adjacency to the El Cerrito Plaza and San Pablo Avenue shopping and entertainment areas.
- d) The goals of the City and BART in regard to transit oriented development, affordable housing and required parking appear to now be more aligned than ever before and the market for new housing at transit locations is incredibly strong.
- e) The City has been in the process of exploring opportunities for developing a new, safe, modern library in the City for nearly 15 years and, although a measure that was placed before the voters of El Cerrito in 2016 to obtain funds necessary for the new library did not pass, the El Cerrito City Council has directed staff to continue to evaluate opportunities for construction of a new library and the El Cerrito Plaza BART Station may be a desirable location for the new library, which could be integrated into a transit oriented development.
- f) The City and BART desire to cooperate in analyzing joint development possibilities on BART property at the El Cerrito Plaza BART Station, including the possibility of a new library that could serve the residents of El Cerrito and potentially generate additional ridership for BART.
- g) The City and BART have identified, through their own individual planning efforts, general development objectives of mutual interest which could be addressed through feasibility analysis, including:
 - 1) To establish development parameters which will create a high density, transit oriented development with a mix of both market rate and affordable housing that integrates into the surrounding single family neighborhood.

- 2) To examine potential activities, (including a new library), and land uses which will complement and strengthen the ongoing revitalization of the area around El Cerrito Plaza and along San Pablo Avenue.
- 3) To analyze development opportunities on the El Cerrito Plaza BART site in consideration of the vision outlined in the Plan and in BART's Transit Oriented Development Policy, Performance Targets and Guidelines.
- 4) To analyze the feasibility of including a new, modern and safe library as part of potential development at the El Cerrito Plaza BART site.

It is the intent of the Parties that this MOU will result in a report regarding the feasibility of development of the Site for consideration by each Party. However, neither this MOU nor the report prepared pursuant thereto, shall constitute prior approval by either Party of any development project recommended or discussed in such report.

II. MUTUAL UNDERSTANDING OF THE PARTIES

In light of the foregoing Recitals, the City and BART desire to cooperatively pursue joint feasibility analysis for development of the El Cerrito Plaza BART Station sites, generally bounded by Fairmont Avenue, Richmond Street, Liberty Street, and Central Avenue, Richmond Street, Willow Street, and the Ohlone Greenway.

1. Project Management

The feasibility analysis will be managed jointly. As necessary, the City will identify consultants to assist with the feasibility analysis, subject to the consideration and approval of appropriate BART staff. The City and BART will jointly negotiate the scope of consulting services and monitor performance of the consultant. The City and not BART will contract for the services of the consultant.

The City shall indemnify, defend with counsel acceptable to BART, and hold harmless BART and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with City's negligence or willful misconduct in connection with this MOU, except to the extent such Liability is caused by the negligence or willful misconduct of BART.

Furthermore, City shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits loss, damages, injury and liability, direct or indirect (including any and all costs and expenses in connection therewith), incurred as a result of or in connection with the contract with the consultant; and City agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, under

or in connection with the contract with the consultant; and City agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of the contract with the consultant, and to pay and satisfy any resulting judgments excluding only any such claims, actions, suits or other legal proceedings to the extent caused by the negligence or willful misconduct of BART or its employees.

BART shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with BART's negligence or willful misconduct in connection with this MOU, except to the extent such Liability is caused by the negligence or willful misconduct of City.

2. Funding Provisions

If consultants are required for the completion of the feasibility analysis, their fee for services will be funded by the City of El Cerrito, which will assume the payment responsibilities of this consulting contract. The City will serve as the fiscal agent for the consulting contract, receiving invoices from the contractor and processing progress payments. Under no circumstances shall the total contract amount exceed \$25,000, without the express written approval in advance of both parties.

3. Schedule

The City and BART will pursue implementation of the feasibility study immediately upon execution of this MOU. The Parties intend to complete the feasibility analysis no later than the end of March 2018 and to present a recommendation to their respective legislative bodies as soon as possible thereafter requesting direction on future transit oriented development at the El Cerrito Plaza BART station.



Scott Hanin, City of El Cerrito, City Manager



Date



Sean Brooks, BART, Department Manager, Property Development



Date

