Request for Developer Proposals for Transit-Oriented Development & Notice of Funding Availability

Ashby BART Station – West Lot









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Ashby BART-West Lot Project Website: www.bart.gov/TODAshby

RFP Schedule (partial & subject to change)

December 3, 2024
December 16, 2024, noon
December 17, 2024, 9:30am
January 9, 2025
January 27, 2025
March 3, 2025, 4:00pm
March 14, 2025
March 21-24, 2025
April 24, 2025
April 17, 2025
May 22, 2025



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I. INTRODUCTION

The San Francisco Bay Area Rapid Transit District ("BART" or the "District") and the City of Berkeley ("City") jointly request proposals from qualified entities that will result in the construction of an equitable transit-oriented development ("TOD") at the Ashby BART Station (the "Station"). The location of the Station is shown in Figure 1.

BART is soliciting proposals to select a developer who will work jointly with BART, the City, and the community to establish, build, and manage a feasible development program at the Station. Concurrently, the City will consider applications from qualified entities for predevelopment funding for affordable housing at the Property through a Notice of Funding Availability ("NOFA"). BART's and the City's intent in this joint Request for Developer Proposals ("RFP") and NOFA is to align the parallel solicitation and evaluation processes of BART and the City to allow for simplification and efficiency for both the agencies and prospective developers.



Figure 1: Location of Ashby BART Station



BART currently controls three developable parcels at the Station:

- The west parking lot between Adeline Street and Martin Luther King Jr. Way consists of two parcels totaling +/- 4.4 acres (the "West Lot" or the "Property")
- The east parking lot adjacent to Tremont Street and Woolsey Street is +/-1.9 acres ("East Lot"). The West Lot, East Lot, and a prior phase of TOD known as the Ed Roberts Campus are shown in Figure 2.

The City has an option to purchase the air rights ("Air Rights Option") 10 feet above most of the West Lot. BART and the City have determined that the Air Rights Option is an impediment to development of the West Lot. Pursuant to the terms of an Exchange Agreement (Attachment 1), the City and BART have agreed that the City will relinquish its Air Rights Option in the West Lot in exchange for fee simple title in the East Lot and specified community benefits. Once both transactions have closed, the City will own the East Lot outright and BART will own the West Lot outright.

This property offering consists of solely the West Lot, consisting of Assessor's Parcel Number 053-1597-039-04 as well as a second parcel known as "Parcel R9-2"¹ which does not yet have an APN. The Property characteristics, context, and standards for development are described in the sections that follow. The City intends to conduct a separate solicitation and NOFA for development of the East Lot.

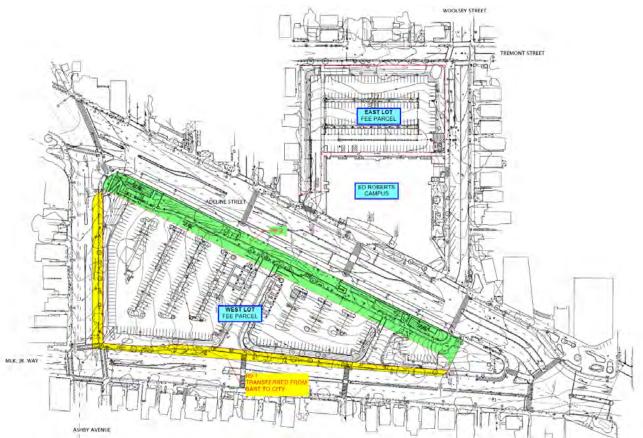


Figure 2: West Lot including Parcel R9-2; East Lot; Ed Roberts Campus

¹ As shown in Figure 2 and the ALTA survey (which will be made available to registered RFP respondents), Parcel R9-2 is a 900-foot-long strip of the West Lot abutting the Adeline Street sidewalk as shown on San Francisco Bay Area Rapid Transit District Amended Record Map of Right of Way RRW 9, dated Dec. 7, 1971 in book 68 of maps, at page 150. To facilitate TOD on the West Lot, the City has agreed to quitclaim to BART any rights, interest, and title it may have in it.



Following BART's acceptance of submittals in response to this RFP, an evaluation committee ("Evaluation Committee") will evaluate the responses. The Evaluation Committee will be composed of four (4) members selected by BART and three (3) members selected by the City including one member representing the Equitable Black Berkeley initiative (described in Section II.B.1, below). The Evaluation Committee will assess the quality of the RFP responses and BART's General Manager will make a recommendation of a developer or developer team for approval by the BART Board of Directors.

If authorized by the BART Board of Directors, BART intends to enter into an Exclusive Negotiating Agreement ("ENA") with a developer or developer team ("Selected Developer") for development of a mixed-use, mixed-income development at the Property (the "West Lot Project" or "Project"). If a proposed development concept and term sheet resulting from the ENA is approved by the BART Board of Directors, BART and the Selected Developer will seek to negotiate and enter into a long-term ground lease agreement. <u>BART's Transit-Oriented Development Policy</u> favors ground leases, rather than sale of property, as the standard disposition strategy for joint development, except in cases where alternative approaches are required to achieve specific development objectives.

This RFP also serves as notification to interested and eligible developers ("Respondents") that the City intends to accept applications for predevelopment funding for affordable rental housing in accordance with City Council Resolution 69,833–N.S. of April 27, 2021. The City Council's Resolution provisionally reserves \$53 million of City-controlled funds, to be divided between the TODs at the North Berkeley BART and Ashby BART Stations, as the subsidy needed to achieve a minimum of 35% on-site affordable housing at each, and allows for a portion of the funding to be utilized for predevelopment costs associated with affordable housing. The City hereby announces the availability of initial predevelopment funding of up to \$1,000,000 for the West Lot Project. Eligible Respondents may apply for initial pre-development funding as described in Section VIII.L, below, but are not required to request such funding.

An additional \$17.5 million in City funding will be available for the development of affordable housing as part of the West Lot development program, with the balance of the Ashby BART Station TOD funding being reserved for a future affordable housing development on the East Lot.



II. SUMMARY OF THE OFFERING

A. Property and Station Description

1. Property Characteristics

The Property is in the southern portion of the City and is generally bounded by Ashby Avenue to the north, Martin Luther King, Jr. ("MLK Jr.") Way to the west, and Adeline Street to the east and south. The West Lot slopes down roughly 10' from Adeline Street and is currently utilized largely as parking, totaling approximately 350 spaces, for BART riders.

The Property is adjacent to, and provides the primary access to, the underground Ashby BART Station concourse and tracks. In addition to BART rider parking, the Property includes passenger pick up and drop off facilities, a taxi stand, shuttle loading, carshare parking, and bicycle parking, an underground BART traction power substation ("TPSS"); pedestrian facilities such as sidewalks, ramping, and stairs; vents; platform egress stairs; and access to a BART storage facility.

BART generally does not intend to lease areas containing its transit infrastructure or that are otherwise necessary for its transit operations or maintenance, which include, but are not limited to, those approximately shown in blue in Figure 3. Note that parcel sizes are flexible if all performance metrics



Figure 3: Leasable and Non-Leasable Areas of the West Lot, Zone of Influence, and Future Adeline Main Plaza



are met, as indicated. The Selected Developer will be responsible for undertaking parcel subdivision(s) so that the West Lot Project is on separate legal parcels from areas to be retained by BART. Some of the areas retained by BART, such as the Station Entrance Plaza, TPSS Staging Area, TPSS Access Drive, and South Plaza Extension may nevertheless be improved by the Selected Developer and/or may become a future lessee's responsibility to maintain.

Note that BART has developed Basis of Design Criteria (Attachment 2) and a Circulation Framework (Attachment 3) for the Station that address BART's operational and access needs, anticipated circulation to and through the Station (taking into account the City-led Redesigning Adeline Street at Ashby BART project described in Section II.C.2.b), and key fire/life safety requirements of BART and the Berkeley Fire Department.

BART plans to build a larger replacement at-grade TPSS along Adeline Street between Ashby Avenue and the station entrance as shown in Attachment 3A. Its construction start date is still to be determined, but extensive engineering design work has already been completed on it.

In order to avoid adverse effects on existing BART substructures, a portion of the site is designated a Zone of Influence (ZOI) as approximately indicated in Figure 3. Any buildings on the ZOI must meet BART's specific structural requirements. The actual extent of the ZOI shall be determined by the geotechnical engineer for the proposed structure(s), with review by BART structural engineers.

2. Transit Context

The Ashby Station is located along BART's Richmond line and is served by two routes with the following terminus points: Millbrae - Richmond, and Berryessa/North San José - Richmond, as shown in Figure 1. These routes, known as the red line and orange line, offer one-seat service to destinations including Oakland, San Francisco, San Francisco International Airport, and Berryessa/North San José. When the Santa Clara Valley Transportation Authority (VTA) completes BART Silicon Valley Phase II (estimated 2040), the Ashby BART Station is expected to have one-seat service to four additional BART stations: three in the city of San José (28th Street/Little Portugal, Downtown San José, and Diridon) and one in the city of Santa Clara adjacent to the existing Caltrain Station.

BART currently runs three trains an hour in each direction on both the red line (Millbrae - Richmond) and orange line (Berryessa/North San José - Richmond) every day from early morning to 9:00 PM, resulting in trains every 10 minutes in each direction at the Station. From 9:00 PM to about 1:00 AM only the orange line serves the Station, resulting in trains every 20 minutes in each direction.

BART has been investing in its <u>Transbay Core Capacity Program</u>, a suite of improvements that includes more rail cars and a new train control system that will enable more frequent service and more 10-car trains. By 2028, BART will have the ability to run up to 12 trains per hour in each direction on the Richmond Line, resulting in trains every five minutes in each direction at the Ashby Station. The timing to implement more frequent service and longer trains will largely depend on ridership demand.

From Ashby BART Station, travel times by BART to the following key stations are as follows:

- 20 minutes to Embarcadero BART Station in downtown San Francisco
- Seven minutes to 19th Street/Oakland BART Station in uptown Oakland
- Two minutes to Downtown Berkeley BART Station

Ashby BART Station primarily serves residents of Berkeley as well as a lesser number from Oakland and Emeryville to the south. The Station is underground and surrounded by a mix of commercial and



residential uses in buildings that range from one to six stories. The Station has two fare gate arrays at its concourse level directly underneath Adeline Street; an elevator with access to the station concourse from the east side of Adeline Street; and two elevators with access between the concourse and the platform serviced by their own Americans with Disabilities Act ("ADA")-compliant accessible fare gate.

Current weekday ridership for Ashby as of October 2024 averages 2,199 entries, the 32nd highest ridership in the 50-station BART system. (Pre-pandemic weekday ridership for the Station as of February 2020 averaged 5,125 entries, which was the 28th highest ridership out of the 48 BART stations then in service.)

In the station's vicinity, the Alameda - Contra Costa Transit District ("AC Transit") and a variety of privately-operated shuttles have pickups and drop offs. Certain anticipated changes to the transportation network are described in Section II.C.2, below.

3. Area Context

Ashby BART station is located in South Berkeley, the historic center of Berkeley's African American community. Chapter 2 of the City's <u>Adeline Corridor Specific Plan</u> (adopted December 2020) and Appendix A – Historic Resources Evaluations to the <u>Final Environmental Impact Report for the Ashby and North Berkeley BART Stations Transit-Oriented Development Zoning Project (SCH#2020110320)</u> provide information about the rich history of the area, including the Station's "associations with an evolving history of social activism and community building originating in Berkeley's Black community, which centered on the 'undergrounding' of the Ashby BART Station and use of the station parking lot on weekends as the location of the Berkeley Flea Market."

The Station is neighborhood-serving with station entrances located on the east and west sides of Adeline Street, a north-south regional roadway that also serves as a designated route for freight and emergency vehicle access. The West Lot is surrounded by two other major roadways: MLK Jr. Way, a north-south arterial within the City of Berkeley's right-of-way, and Ashby Avenue/State Route 13, an east-west state highway owned and operated by the California Department of Transportation ("Caltrans"). All the surrounding roadways have cobra-head LED street lighting on both sides of the streets.

Across MLK Jr. Way are mostly two-story residences, while commercial and mixed-use buildings are found across Adeline Street and Ashby Avenue. Major regional destinations along the perimeter include the Ed Roberts Campus (a center dedicated to disability rights that was built as a prior phase of TOD), the Shotgun Players theater, and several antique stores.

There is a Class II bike lane on Adeline Street in each direction that connects to Class IV separated bike lanes on Adeline Street north of Ashby Avenue. Additionally, Woolsey Street east of Adeline Street is a Class III Bicycle Boulevard. Eight- to 10-foot-wide public sidewalks are found on both sides of the street of the station's perimeter, most of which have street furniture/curb zones with mature street trees.

Ashby BART Station is centrally located to various commercial areas and destinations, including:

• The Lorin District, a historical and diverse commercial area with extensive access to retail, dining, personal and family services, employment, arts and theater, buildings of worship, and the South Berkeley Farmers Market;



- The Berkeley Flea Market, which hosts a variety of vendors and artists, and has been in operation on the West Lot on weekends since the early 1970s;
- One block to Tarea Hall Pittman South Branch Berkeley Public Library;
- Two blocks to Shattuck Avenue, a commercial street with a wide variety of goods and services;
- Two blocks to Berkeley Bowl, a regionally significant grocery store;
- Two blocks to Malcolm X Elementary, a Berkeley public school;
- 0.4 miles to Sacramento Street shopping, dining, and services;
- 0.6 miles to Telegraph Avenue shopping, dining, and services; and
- One mile to the heart of downtown Berkeley.

B. City - BART Collaboration to Date

1. Early Collaboration and Community Engagement: 2020 - 2021

The City is strongly supportive of TOD at Ashby BART Station (as well as at North Berkeley BART station, where TOD is now in predevelopment with an anticipated groundbreaking of late 2025). To advance TOD, as well as to address the need for rezoning triggered by Assembly Bill 2923 ("AB 2923," described in Section IV.C.1 below), the Berkeley City Council ("City Council") and the BART Board of Directors both unanimously approved a *Memorandum of Understanding* ("MOU"). The MOU was executed in March 2020 and is provided with this RFP as Exhibit A of Attachment 4. The MOU set forth the framework and timeline for planning and rezoning efforts for the Ashby and North Berkeley BART Stations, building on previous community input processes that the City conducted for the *Adeline Corridor Specific Plan*. The MOU was amended in December 2020 to extend the original timeline in light of the COVID-19 pandemic.

In April 2021, City Council provisionally reserved \$53 million in City affordable housing funds for onsite affordable housing at the Ashby and North Berkeley TODs, beyond what would be required under City's and BART's ordinary requirements, to be divided equally between the two station sites.

In June 2022 the City and BART executed a *Memorandum of Agreement re North Berkeley and Ashby Transit-Oriented Developments* ("MOA"), provided as Attachment 4, to address additional topics related to City - BART collaboration. BART expects Respondents to have familiarized themselves with the MOU, the MOA, the Exchange Agreement, and other documents created through the City - BART collaboration, all of which are available either as Attachments to this RFP or online at the links provided in this RFP.

Pursuant to the MOU, the City created a BART Community Advisory Group ("CAG") which met in 2020 and 2021 with the support of City and BART staff and consultants to develop a vision for affordable housing, land use, station access, building form, and new public space. This vision, described in more detail below, is intended to shape TOD that would benefit the current and future residents as well as BART riders. The broader public also provided input at eight public meetings of the CAG, three community workshops, two online open houses, surveys, and many office hours sessions, as well as at in-person tabling at outdoor markets.

In a parallel effort, since 2020, Healthy Black Families (HBF) has been actively collaborating with the City on the Equitable Black Berkeley (also known as Equity 4 Black Berkeley) initiative, funded by a



grant from the San Francisco Foundation. HBF has engaged a broad and diverse representation of the Black community, encouraging participation in BART community and Board meetings. This engagement aims to ensure that the community's vision for a thriving Black Berkeley – addressing harm repair, promoting a right to return (now enshrined in the City's Housing Preference Policy), advocating for extensive affordable housing, improving health equity, and expanding opportunities for economic development – is communicated effectively. Through its data collection process, HBF identified key community priorities and amplified the voices of Black residents in shaping the TOD decisions during the City's strategic planning process for the larger Adeline Corridor redevelopment.

2. Joint Vision and Priorities, Rezoning, and Approval of Changes to Adeline Street: 2022

The CAG was instrumental in shaping the City - BART *Joint Vision and Priorities for Transit-Oriented Development for Ashby and North Berkeley Stations* ("JVP") provided with this RFP as Exhibit B of Attachment 4. Respondents are directed to review this document, as well as each of the attachments to this document, and to consider them in responding to this solicitation.

The JVP expresses the City's and BART's shared, high-level expectations for future development at these two stations. The JVP forms the basis for the "Memorandum of Covenants," a document to be recorded against the Property that is included as Schedule 4.3.4 to Attachment 1, the Exchange Agreement. The JVP is intended to guide the TOD from solicitation through construction and operation and will inform the City's funding decisions. The JVP was reviewed by the City Planning Commission on November 3, 2021, and April 6, 2022; unanimously adopted by City Council on June 2, 2022; and unanimously approved by BART's Board on June 9, 2022.

With the input of the CAG, the City drafted new zoning regulations applicable to the BART properties surrounding the North Berkeley and Ashby stations. On June 28, 2022, City Council adopted amendments to the City's Zoning Ordinance which created 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, as further described in Section V.A.

In November 2022, City Council approved a preferred concept for the redesign of Adeline Street at Ashby BART, further described in Section II.C.2.b.ii, below. The goals of that project include reducing vehicle travel lanes to increase safe access to BART and creating a public plaza, the "Adeline Main Plaza," to accommodate the Berkeley Flea Market as well as other programming,

3. Circulation Framework, Design Standards, and Property Exchange Negotiation: 2023-2024

Following approval of the JVP and adoption of the zoning, the City and BART collaborated to identify and address challenges related to site circulation, emergency vehicle access, and the impact of the future replacement TPSS on the site's development potential. Further, since the City's Air Rights Option was an impediment to development of the West Lot, the City and BART each undertook economic analysis related to a potential exchange. Per the terms of this exchange, as approved by the BART Board and Berkeley City Council, the City will relinquish its Air Rights Option in the West Lot in exchange for fee simple title in the East Lot and specified community benefits. The City's and BART's governing bodies have approved the terms of the exchange and the parties anticipate entering into the Exchange Agreement no later than December 16, 2024. The Exchange Agreement provides that the air rights will be terminated over the West Lot Property upon execution of an ENA with the



Selected Developer. The Selected Developer will be required to propose and build a project that is consistent with the project requirements and community benefits set forth in the Exchange Agreement.

Stakeholders and community members who provided feedback during this period stressed the importance of the Project contributing to the vitality of Adeline Street where the City intends to create the Adeline Main Plaza described in the prior section. Accordingly, the community benefits specified in the Exchange Agreement include specified at-grade connections between the future TOD buildings and the Adeline Street sidewalk/plazas, as described below in Section III.C.1 and in Attachment 5, Adeline Connections Memo.

BART received a grant from the Federal Transit Administration to support the development of the City's Objective Design Standards ("ODS") for BART's Ashby properties (as well as those at North Berkeley). The City's Preliminary ODS will be provided as an addendum to this RFP on or about December 10, 2024. The City Council is expected to consider the Ashby ODS for adoption within 9 months following the execution of the ENA. The process for revising, finalizing, and adopting ODS is described in Section III.D.1 below.

Upon the City's quitclaim of its air rights option and any interest in Parcel R9-2, shown on Figure 2, the West Lot parcels shall be encumbered with covenants imposing, and allowing the City to enforce, the requirements for development on the West Lot as described in the Memorandum of Covenants, which include, but are 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 the Exchange Agreement, including those in Schedule 9.2.1), applicable mitigation measures adopted in connection with the City's adoption on June 28, 2022 of the R-BMU zoning district, and all applicable standard conditions of approval relied upon by the R-BMU Environmental Impact Report ("EIR") (see Section V.A, below, and Attachment 10, Mitigation Monitoring and Reporting Program).

C. Ashby BART Station Access

1. Background

BART sees TOD as a critical strategy for recovering ridership lost during the COVID-19 pandemic since TOD residents take BART more often for work, school, errands, and recreational trips as demonstrated in <u>Travel of TOD Residents in the San Francisco Bay Area: Examining the Impact of Affordable Housing</u> (2020) by J. Barajas, K. Frick, and R. Cervero.

BART staff will work with the Selected Developer to ensure that site design for the West Lot Project seamlessly connects the station with existing neighborhoods per the forthcoming *Station Access Plan*. This plan, funded by the Selected Developer, is required as part of any future ENA (per Attachment 8, Form of ENA). The *Station Access Plan* will identify pedestrian, bicycle, transit, and emerging mobility connectivity with the larger areas surrounding the Ashby BART Station, as well as parking management passenger loading activity, and BART maintenance and emergency vehicle access needs. This plan will incorporate access considerations in light of BART's planned construction of a replacement TPSS, a crucial project to improve the operational reliability and resiliency of the BART system. The replacement TPSS, which will be constructed and maintained by BART, will be larger than the existing one and will be located as shown in Figure 3, north of the west station entrance.



BART's preliminary, high-level circulation needs and constraints, as well as key fire/life safety requirements of BART and the Berkeley Fire Department, are included in Attachment 3, *Circulation Framework*, which is provided as a guide to respondents in preparing their preliminary development concepts. It does not supplant the *Station Access Plan*, which may determine different needs based on more in-depth demand analysis for each mode of access. Respondents' preliminary development concepts (see Section VIII.F) should address the performance standards described in the *Circulation Framework* as well as operational needs described in the *BART Basis of Design Criteria* (Attachment 2). Beyond meeting these needs, BART will prioritize walking and biking and minimize vehicular circulation through the Property, in keeping with adopted policies and guidelines described below in Section IV as well as in the JVP.

In 2023, BART completed work on the <u>Berkeley-El Cerrito Corridor Access Plan</u> (BECCAP), which was funded by grants from Caltrans (Sustainable Transportation Planning) and the Federal Transit Administration. The BECCAP identifies strategies by which BART riders can continue to access BART once on-site parking is reduced by TODs that are constructed on parking lots at three Richmond line BART Stations – Ashby, North Berkeley, and El Cerrito Plaza. More information can be found at the BECCAP website, <u>www.bart.gov/beccap</u>.

Figures 4 through 6 below show current pedestrian, biking, and vehicle access in and around the station area.

2. Pre-Pandemic and Current Ashby BART Station Access

Pre-Pandemic. Prior to the pandemic, 82% of Ashby BART riders walked, rolled, biked, took the bus, or were dropped off to access the Station. The remaining 18% of riders drove and parked, a percentage that dropped from 25% in roughly a decade as walking, biking, and drop-off increased. On average weekdays, the Station's parking lots filled at 9:00 AM, which was later than 60% of BART stations with parking lots. This indicated less parking demand compared to other stations in the system.

Current trends. During October 2024, average weekday ridership (calculated as the number of entries) for the system was approximately 44% of pre-pandemic levels, while ridership at the Ashby BART Station was approximately 43%. Ridership at the Station has generally been within a couple of percentage points of the system ridership trends since 2020. Current parking demand at Ashby is lower than pre-COVID demand at 30-50% utilization, so the lots and underlying land are underutilized.

a. Accessibility considerations

The BART system is generally designed to help people of all abilities (including those with sight, hearing, and mobility challenges) navigate to and from the public right-of-way through the stations and onto the trains. Access to and from the Station for people in wheelchairs and with other mobility challenges is provided at both station entrances on the east and west sides of Adeline Street. The station concourse's east entrance can be accessed by an elevator on Adeline Street or from an ADA-compliant accessible ramp through Ed Roberts Campus. The station concourse's west entrance can be accessed by an ADA-compliant accessible ramp on the southwest corner of Ashby Avenue and Adeline Street or from the sidewalks and crosswalks in the station parking lots connected to MLK Jr. Way. The future development must prioritize universal accessibility as discussed in the JVP (Exhibit B of Attachment 4), adhere to Public Right of Way Accessibility Guidelines ("PROWAG"), and engage the disabled community in the design process.



b. Pedestrian and bike access

As outlined in the JVP (Exhibit B of Attachment 4), the development must prioritize pedestrian and bike access to and throughout the site.

A continuous sidewalk network and the ability to do most daily errands on foot in the Lorin District and on Shattuck Avenue and Adeline Street in the Station's vicinity contribute to the area's Walk Score® of 95.

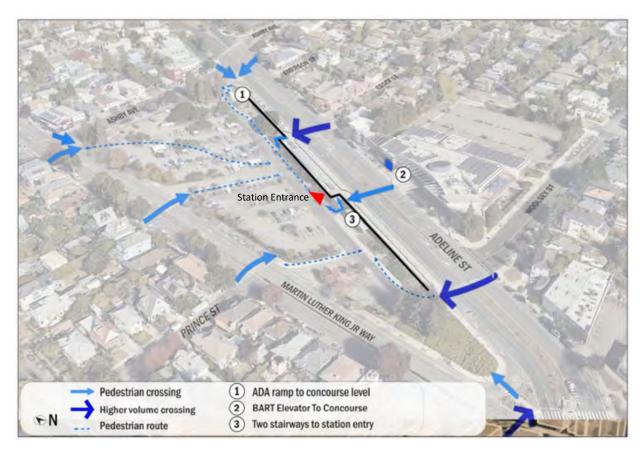


Figure 4: Schematic plan view of current pedestrian circulation in and around the Property

Designated bikeways are found on Adeline Street (Class II bike lanes and Class IV separated bike lanes), the north-south King Street (Class III bicycle boulevard), the east-west Russell Street (Class III bicycle boulevard), and Woolsey Street (Class III sharrows) east of Adeline Street. The streets surrounding the station are all major arterials, each with four lanes of high-volume traffic. Nonetheless, the Bike Score® is 95. Riders walk and bike from all directions to the Ashby BART Station, with most trips originating in Berkeley.





Figure 5: Schematic plan view of current biking circulation in and around the Property

i. Ashby BART West Lot Bikeway and Related City Projects

BART is leading the construction of a Class IV <u>bikeway (See Figure 5 above), the Woolsey/Prince</u> <u>Connector Project</u>, through the southern end of Ashby Station's West Lot that connects Prince Street/MLK Jr Way to Woolsey Street/Adeline Street. BART largely completed construction on this in November 2024.

This BART project complements the City-led <u>Woolsey-Fulton Bicycle Boulevard Project</u> that will install pedestrian and bicyclist improvements at the aforementioned intersections and implement a Class III bike boulevard on Woolsey Street east of Adeline Street and Fulton Street south of Dwight Way. Another City-led project, the <u>Shattuck to MLK Bus Stops Safety Project</u>, will install additional intersection improvements of the Russell Street crossings at Adeline Street and at Shattuck Avenue, and the Woolsey Street crossing at Shattuck Avenue. Both City-led projects are expected to be completed in 2026. Together, these improvements will encourage more people to choose modes other than driving and parking.

ii. Adeline Redesign: Adeline Street Transportation Improvements Project

The City-led Adeline Street Transportation Improvements Project is expected to repurpose two of the existing four traffic lanes to create a new public pedestrian plaza adjacent to the West Lot ("Adeline Main Plaza") and protected bikeways, along with upgraded traffic signal infrastructure, enhanced public transit operations, and intersection realignment to create new opportunities for public space on Adeline Street from Ashby Ave to the Berkeley/Oakland border at Adeline St./Stanford Ave./62nd



St./MLK Jr Way intersection. The "Adeline Main Plaza" could provide a permanent home for the Berkeley Flea Market (which currently uses the West lot on weekends) as well as open space and space for community events like Juneteenth and other programming. The project scope of work also includes redesigning the intersections of Adeline/Ashby, Adeline/Woolsey and Adeline/MLK adjacent to Ashby BART. The goals of the project are improving safety and access for all modes of transportation and all ages and abilities, while also meeting the needs of public transit and emergency vehicles. In addition to the Adeline Main Plaza, the Adeline Street/MLK Jr Way and Adeline Street/Stanford Avenue/MLK Jr Way intersections have been identified through the Adeline Corridor Specific Plan as opportunities for future public space or development.

This project is considered by both the City and BART to be an essential priority per the Infrastructure Matrix that is provided as Schedule 8.1.3 to Attachment 1.

iii. Bike Parking

There are four options for parking a privately-owned bike at the Ashby BART Station: a self-serve bike station with a 128-bike capacity, 40 on-demand bicycle lockers, 6 single-user keyed bike lockers, and 134 bicycle parking spaces at racks, for a total of 308 bike parking spaces. The bike station and on-demand bicycle lockers are accessed using the BikeLink card or mobile app. The bike station is located on the west side, south of the station entrance. All on-demand bike lockers and keyed bike lockers are found on the west side. 120 bike rack spaces are found outside the paid station area, 98 on the west side and 22 on the east side, while 14 bike rack spaces are found inside the paid station area.

The public has provided feedback through the <u>CAG</u> and <u>BECCAP</u> outreach efforts that there is high demand for secure bike parking, particularly for over-sized bikes.. The lack of availability of adequate secure storage is a barrier to expanding the use of privately-owned bicycles as a mode to access the Ashby BART Station. BART staff will work with the Selected Developer to enhance opportunities for secure bike parking as part of the West Lot Project.

c. Micromobility

The Bay Wheels bike share program has up to 23 bikes and docks available at the Ashby BART Station, located south of the west entrance next to the bike station. The City of Berkeley offers a <u>permit</u> <u>program for micromobility providers</u>. While the demand for scooters, dockless bike share, and other devices is unknown at this point, micromobility presents significant potential to help overcome "first-mile/last-mile" access to the Ashby BART Station considering the reduced level of BART parking. The development will need to incorporate micromobility device space for at minimum the 23 shared bike docks, and consider micromobility circulation needs.

Dockless micromobility providers are required to enter into a property use agreement with BART to deploy and collect mobility devices, such as shared bikes and scooters, on all BART-owned or operated property, including restrictions on where the devices may be ridden and parked. BART staff will work with the Selected Developer to incorporate emerging mobility opportunities into the future access strategy for the West Lot Project.



d. Passenger loading (transit, shuttle, ride-hail apps, taxi and private vehicles)

AC Transit serves bus stops on the streets surrounding the Ashby Station with two local routes, one transbay route, and one transbay all-night route. Specifically, they serve Adeline Street (Route F Adeline-Market Transbay), MLK Jr. Way (Route 12 MLK Jr.-Temescal-Grand), and Ashby Avenue (Route 7 Arlington-Shattuck-Ashby and Route 800 Richmond-Oakland Transbay All Nighter). Additionally, AC Transit serves stops on Shattuck Avenue at the Ashby Avenue and Woolsey Street intersections with a local line, Route 18 Solano-Shattuck-MLK Jr.

The City-led <u>Shattuck to MLK Bus Stops Safety Project</u> will relocate bus stops to far sides of the intersections and install bus shelters and seating where feasible at the Shattuck Avenue/Ashby Avenue, Shattuck Avenue/Woolsey Street, and MLK Jr. Way/Prince Street intersections. AC Transit is conducting a comprehensive review of their bus network in their <u>Realign</u> study to respond to shifts in ridership patterns due to the pandemic. They plan to implement service changes recommended in the study in December 2024.



Figure 6: Schematic plan view of current vehicle circulation in and around the Property



The West Berkeley Shuttle, privately funded by Bayer HealthCare and Wareham Development, has a stop in the station's West Lot and provides service to West Berkeley business destinations. While BART does not have a complete list of shuttle operators, other privately run employer coaches pick up and drop off in the West lot and on Adeline Street adjacent to the Station and provide access to employment destinations across the Bay Area.

Passenger loading for taxis, ride-hail apps, wheelchair-accessible ride services, and private vehicles is currently located in the West Lot along the station entrance frontage. There is also a passenger loading zone on the west side of Adeline Street between Essex Street and the mid-block crosswalk at the Ed Roberts campus entrance.

The *Circulation Framework* (Attachment 3), JVP (Exhibit B of Attachment 4) and <u>BART's</u> <u>Multimodal Access Design Guidelines</u> ("MADG") describe how the curb space both adjacent to the station and within the station area will need to be prioritized when the West Lot is developed. The Station Access Plan (see Section IV.A.4) and developer negotiations will identify how passenger loading and access roads can create a more seamless integration with the development.

e. On-site BART parking

On June 9, 2022, the BART Board of Directors approved a maximum of 85 on-site BART rider parking spaces once the Project is constructed. More information on the analysis used to establish these numbers can be found at <u>the Ashby and North Berkeley TOD Presentation</u> to the BART Board on May 26, 2022. BART intends to seek grant funding, in collaboration with the Selected Developer, for design and construction costs for the maximum of 85 BART rider parking spaces. BART will only provide parking up to the approved maximum if funding is secured. If no funding is secured, BART will not provide (nor expect the Selected Developer to provide) BART rider parking as part of the Project.

There are currently 16 ADA spaces for BART riders at Ashby. The BART Board determined that accessible parking would be provided pursuant to ADA requirements, which would be four ADA-compliant accessible parking spaces if 85 total spaces are provided. BART may pursue flexible design of garage space to allow for increases in the number of ADA spaces if demand for those spaces increases. BART will monitor accessible parking space occupancy during the conceptual design process to determine the appropriate number of accessible parking spaces prior to construction.

If BART rider parking is built, BART is open to exploring the potential for shared parking arrangements between the West Lot Project and BART. However, given the significant reduction in BART parking, opportunities for shared parking may be limited or nonexistent.

f. On-street parking

Currently, some streets within a 10-minute walk of the Ashby BART Station are regulated either by parking meters or residential preferential parking (RPP) permits. RPP regulations limit parking by non-permit holders to two hours on weekday days. More information can be found on the City of Berkeley's <u>Residential Preferential Parking Permits website</u>. Additionally, per City of Berkeley Municipal Code ("BMC"), residents of newly constructed residential units are not eligible for RPP permits. The Selected Developer will be expected to accept this condition regardless of any future changes in City code.



III. TRANSACTIONAL TERMS AND MINIMUM PROJECT REQUIREMENTS

A. Predevelopment Process

The Selected Developer will lead the predevelopment process and will fund all predevelopment costs, including reimbursing BART for a Station Access Plan as described in Section X.B. The Selected Developer may request up to \$1 million of predevelopment funding to support affordable housing costs from the City of Berkeley. In addition, the Selected Developer will be responsible for undertaking parcel subdivision(s) to form legal parcels separate from the area(s) to be retained by BART.

B. Joint Development Process

1. Exclusive Negotiating Agreement ("ENA")

Subject to BART Board approval of a Selected Developer, BART and the Selected Developer will seek to negotiate and execute an ENA outlining the parties' roles and responsibilities during a 24-month period. To develop the Project, the Selected Developer is expected to entitle the Property through the City's entitlement process during the ENA phase, discussed in Section VI. BART's template ENA is provided as Attachment 9 of this RFP.

2. Other Agreements between BART and Selected Developer

Subject to the successful negotiation of key terms between BART and the Selected Developer, BART staff will seek authorization from the BART Board of Directors to enter into a Ground Lease Option Agreement with the Developer. During the Option period, prior to execution of ground leases, BART will expect commercially reasonable option consideration that escalates annually.

As BART service confers a range of benefits on surrounding property, and BART and the region's physical needs and interests change over time, BART's TOD Policy indicates a preference of ground leases for 66 years or less, except in cases where alternative approaches are required to achieve specific development objectives (e.g., Low Income Housing Tax Credit-funded affordable housing, where the tax credit award requires a ground lease term of no less than 75 years). At Ashby, BART has agreed per the Exchange Agreement that with any lease term extensions, the term of the ground leases for affordable housing shall be no less than 99 years.

BART has an interest in ensuring that all components (including any on- or off-site infrastructure) and phases of a TOD project, as approved by the Board, are ultimately constructed. Respondents, particularly those responding as a joint venture ("JV") or group, should expect that an eventual Ground Lease Option Agreement will contain mechanisms to further that interest which will likely include, but are not limited to, requirements that (1) there be no default under any executed ground leases as a precondition to later exercise of options for subsequent ground leases, and (2) the development team ensure delivery of infrastructure components of the TOD. JVs must consider how to apportion the risks relating to such requirements among each other pursuant to a partnership agreement or other method.

The successful construction and operation of the Project will likely require additional agreements between BART and the Developer including maintenance agreements, easement agreements, shared facilities memoranda of understanding, and other agreements to be determined.



3. Entitlement/Design Review

The Project will be subject to the City's streamlined entitlement and design review procedures described in Sections V and VI of this RFP, subject to any relevant state laws. In addition, to the extent that aspects of the Project may impact BART service and operations (e.g., general impact on Station facilities, structural impacts, Station access during and after construction, passenger safety, intermodal facilities, utility lines, long term facilities expansion needs, and maintenance), BART staff from relevant impacted departments will review the proposed design of the Project. BART's review will include, among other considerations, conformance of any Project work that may impact transit operations or infrastructure to the <u>BART Facilities Standards</u>, provision of adequate wayfinding signage that meets forthcoming regional standards, and access to the faregates within the Project. The Selected Developer is expected to reimburse BART for review time by staff and any necessary external consultants to address possible impacts. Review will occur at the conceptual design, final design, and construction stages of the Project. To ensure expediency in the design review process and provide Respondents a sense of BART's expectations for the site, BART's Basis of Design Criteria are attached to this RFP as Attachment 2.

C. Infrastructure

1. Infrastructure Program and Priorities

The Project will require substantial infrastructure investments which may include, but is not limited to, BART rider parking, plaza improvements, and new pedestrian, bicycle, and vehicular access roads. The Selected Developer will be expected to deliver significant elements of the infrastructure program, as outlined in the Infrastructure Map and Infrastructure Matrix that are provided as Schedules 8.1.2 and 8.1.3, respectively, to Attachment 1.

Notably, as described in detail in Attachment 5, the Adeline Connections Memo, the community benefits specified in the Exchange Agreement include at-grade connections between the future TOD buildings and the Adeline Street sidewalk/plazas, to create expanded plaza area and/or public accessways on the West Lot:

- Along the section of sidewalk south of the Station entrance, it is a Project requirement that a building connect directly to Adeline Street ("South Plaza Extension").
- At the Ashby/Adeline corner as well at the Existing BART Terrace (depicted in Att. 6), at-grade connections from the TOD building to the sidewalk/plaza are required unless they are found to be infeasible.

The intended purpose of these plaza extensions is to provide at-grade pedestrian connectivity between the Adeline Plaza Improvements and new TOD buildings with commercial and/or residential uses having frontages that support activation of the Adeline Main Plaza, 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.



The City would bear the costs of maintenance of the South Plaza Extension and Ashby/Adeline Corner Plaza Extension (together, the "Adeline Plaza Extensions") as long as they are open to the public, and the Selected Developer would bear the cost of maintenance of any BART Terrace Extension.

2. Infrastructure Funding

Throughout the development process, BART is committed to working closely with the Selected Developer to seek external funding to support BART-related infrastructure needs that may result in costs above and beyond those a developer would incur on similar privately-owned property. It is expected that BART and Selected Developer, and the City as appropriate, will collaborate on securing funding when needed, including, for example, coordination on the scope and requests for applications to state funding sources that support TOD such as the Affordable Housing & Sustainable Communities, Infill Infrastructure Grants, and Transit and Intercity Rail Capital programs.

The City intends to pursue formation of an Enhanced Infrastructure Financing District ("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 has committed to making a good faith effort to form the EIFD within 12 months of approval of the entitlements for the Project. Priority of funds will be as follows [note that the numbers such as 2B, 9A, and so on are those used to identify the specified areas in the Infrastructure Map and Infrastructure Matrix provided as Schedules 8.1.2 and 8.1.3, respectively, to Attachment 1].

- 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 (4B, 5, 6, 8, 10, 12, 13, 14) 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.

EIFD funds may not be available until after the improvements associated with the Project are complete and on the tax rolls. The City, BART, and the Selected Developer 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'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 Project. The City will initiate the formation of the CFD. BART and the City will collaborate on developing the local goals and policies and, with the Selected 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 Project. BART shall give (and shall require the Selected Developer to give) any consents necessary to form the CFD. BART and the City acknowledge that a CFD will impact the feasibility of the Project by increasing the tax burden on the Project, 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.

D. Development Parameters

1. Program; Objective Design Standards

The residential program for the Project should include at least 600 units.

The commercial program must include a minimum of 5,000 net rentable square feet, based on BOMA ANSI 2017 standards, for 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 such lease ("Discounted Commercial Space"). Tenants for the Discounted Commercial Space, other than the Berkeley Flea Market, may be recommended by the City but are subject to the West Lot Developer's sole discretion.

As detailed in the Exchange Agreement, the City and BART have agreed upon a process for the preparation of Objective Design Standards ("ODS") that will apply to the West Lot Project. The City's Preliminary ODS will be provided as an addendum to this RFP on or about December 10, 2024, and should be reflected in a proposal. The City's Final ODS will be binding on the Selected Developer: provided that the ODS meet the requirements outlined within Schedule 9.2.1 of the Exchange Agreement (Attachment 1), BART will require the Selected Developer to comply with the Final ODS for the West Lot through its real estate agreements.

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 Discounted Commercial Space, and (c) other ODS requirements that do not pertain to height limits, setbacks/stepbacks, open space or massing breaks.

The ODS for the Project will comply with the requirements specified in the Exchange Agreement, will build on the JVP and zoning standards, and will address the following topics:

- Site context and policy framework
- Land Use Standards: Active ground floor frontages, building heights
- Public Realm Standards: Streetscape design (such as sidewalks, street trees, frontage character and building setbacks), station entrance plaza design, internal access drive design, and TPSS access and staging area design
- Building Design Standards: Maximum facade length and massing breaks, corner buildings, façade design (such as vertical rhythm and pattern, vertical façade articulations, ornamental façades, and building projections), and design elements (such as fenestration, materials, and public art).



With the leadership of a consultant team directed by the City, the ODS for the West Lot Project will be crafted in phases:

- The City's Preliminary ODS will be provided as an addendum to this RFP on or about December 10, 2024. The Preliminary ODS are based on the R-BMU zoning, the JVP, the Circulation Framework and other analyses of site constraints. Following developer selection, the final ODS will be developed for the West Lot Project with input from the community and the Selected Developer. The Selected Developer should plan to engage with the ODS process immediately upon selection by the BART Board; this engagement may start before the ENA is executed.
- Finally, the City Planning Commission is expected to review the ODS, and City Council is expected to consider them for adoption no later than 9 months from execution of the ENA.

BART's ENA will require that the Selected Developer adhere to the ODS, provided the ODS meet the requirements set forth in the Exchange Agreement (BART's template ENA is provided as Attachment 9 of this RFP). The ENA will also require the Selected Developer to submit a development application to the City after adoption of ODS, or no sooner than 9 months from ENA execution, whichever is sooner. Respondents are directed to review the Exchange Agreement provided in Attachment 1 which addresses ODS in greater detail.

2. Affordable Housing

a) Affordability Levels and Targeting

The BART Board adopted an Affordable Housing Policy on January 28, 2016. This Policy requires that "the percentage of affordable units and/or depth of unit affordability based on Area Median Income ("AMI") categories in any residential developments at its stations shall be a part of the District's assessment of RFQ/RFP responsiveness. There shall be a priority on residential units made available to very low (< 50% AMI) and low (51-80% AMI) income households." This priority is reflected in the evaluation criteria provided in Section IX.C.

The City and BART strive to maximize the number of permanently affordable, rent-restricted homes on-site, within the funding that can be secured in a timely manner. As a minimum standard, BART will require at least 50% of the first 602 residential units at the West Lot Project to be rent-restricted as affordable for the duration of the ground lease(s), and any extensions thereon, in accordance with the income targets identified as follows:

- i. At least 35% of new on-site housing must be affordable to households earning an average of up to 60% of AMI.²
- ii. At least 20% of the required 35% on-site affordable units must be affordable to Extremely Low-Income ("ELI") households, those earning up to 30% of AMI.

 $^{^{2}}$ BART anticipates that any TOD ultimately constructed on the Property will meet or exceed the standards described in Government Code section 54221(f)(1)(F)(ii), based on the development parameters described above. See Section IV.C.2.



iii. Of the required 35% on-site 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 rent-restricted to households with moderate incomes (up to 120% of AMI), provided that the moderate-income units have rents that are consistent with Tax Credit Allocation Committee (TCAC) Adopted Guidelines and Market Study Guidelines and shall not include City subsidy.

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 Selected 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.

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 receives its notice to proceed. In the event there are multiple phases of market rate or affordable housing, the phasing plan shall be subject to approval by the City and BART to ensure consistency with the JVP goal of affordable housing being built on pace 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 West Lot Project and shares comparable design standards and quality. The Selected Developer will be responsible for ongoing monitoring fees for units that fulfill their affordable housing obligations as well as those that are funded by City, and any units not funded by City but that are restricted and not subject to monitoring by another funder. Information on the City's affordable housing monitoring fees is available on the City's <u>Below Market Rate Rental webpage</u>. The City will entertain equivalent financial offers from the Selected Developer.

3. Berkeley Affordable Housing Requirements

Berkeley currently has local Affordable Housing Requirements for housing development BMC Chapter 22.20, "Mitigation and Fees--Conditions for Approval of Development Projects") which require new residential projects to either pay a fee or dedicate 20% of the onsite units as BMR affordable units, with half affordable to households earning 50% or less of AMI and half to households earning 80% or less. The City may update these requirements from time to time. References herein to the City's Affordable Housing Requirements shall be inclusive of future, applicable amendments to Chapter 22.20 or to any portion of Title 23 ("Zoning") of the Municipal Code that impose requirements for the development of affordable housing as a condition of approval of housing development projects.

4. Occupancy Preferences

On July 11, 2023, the Berkeley City Council adopted an Affordable Housing Preference Policy applicable to new affordable units. The Policy establishes preferences designed to assist people who



were displaced from Berkeley or are facing displacement in Berkeley to receive priority for new affordable housing units. More information about the policy is available on the City's <u>Affordable Housing Preferences webpage</u>.

E. Financing Sources

The Selected Developer is expected to utilize all standard sources of debt and equity commonly available for similar projects, including the potential use of Low-Income Housing Tax credits for eligible affordable units as well as other funding sources offered by the State of California. The City or BART will work with the Selected Developer to seek public financing resources not obtainable without City or BART support.

In addition, the City has provisionally reserved \$18.5 million of City-controlled funds to facilitate achieving 50% of all units as affordable housing at the West Lot Project. The funds will be used to support the development of on-site affordable units in excess of the current requirement under the City's Affordable Housing Requirements of 20 percent. Any commitment of City funds to the project shall comply with the City's <u>Housing Trust Fund Guidelines</u> and the maximum per-unit subsidy included below, unless otherwise amended.

The City subsidy will be available to buildings which are 100% affordable housing and to affordable units dispersed amongst mixed-income housing buildings that meet the Housing Trust Fund Guidelines (including units with an average income limit of 60% of AMI with at least 20% of units targeting households earning 30% of AMI or less). Respondents may include additional moderate-income units in their overall affordable housing mix but may not request city subsidy for those units. Additional information regarding the City affordable housing funding is provided in Section VII below.

As described in Section III.C.2, above, related to infrastructure funding, 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 fourth priority for EIFD funding is to fill affordable housing funding gap(s) for units in excess of the City's current inclusionary housing requirement.

F. Potential Land Value Discount

To aid in achieving BART's portfolio-level 35% affordability goal, the District's TOD policy, as amended in 2020, includes a <u>framework</u> for discounting BART's land up to a 30% below fair market value for typical TODs that incorporate affordable housing, and up to 60% for certain TODs with at least 35% affordable housing rent-restricted to an average of 45% AMI or below. This discount is applied in the aggregate, across the entirety of the Station site, but must be used <u>solely</u> for the benefit of the affordable component(s) of the Project. Respondents are directed to familiarize themselves with this framework, which, along with all other documents on BART's TOD website, should be part of Respondents' due diligence.



IV. RELEVANT BART POLICIES & PROCEDURES

BART operates approximately 110 miles of rapid rail service serving 50 stations in five counties of the Bay Area (Alameda, Contra Costa, San Francisco, San Mateo and Santa Clara Counties). BART owns over 250 acres of developable property and has completed TOD projects at 16 stations. This section describes policies and procedures guiding BART's TOD program.

A. BART Policies and Guidelines Affecting Transit-Oriented Development

1. BART TOD Goals and Guidelines

BART is the steward of a large-scale public investment which includes important real property assets essential to BART's operation. These assets also contribute to the ongoing financial viability of the transit system. As such, a key criterion for TOD on BART-owned property, which will be included in any and all option agreements and ground leases that may ultimately be entered into, is that TOD developments may not negatively impact BART's transit operations, as determined in BART's sole discretion.

By promoting high quality, intensive development on and near BART-owned properties, the District can increase ridership, support long-term system sustainability, and generate new revenues for transit. BART's TOD goals, as contained in the District's <u>TOD Policy</u> adopted by the BART Board of Directors on June 9, 2016 and amended April 23, 2020, consist of:

- 1. *Complete Communities*. Partner to ensure BART contributes to neighborhood/district vitality, creating places offering a mix of uses and incomes.
- 2. *Sustainable Communities Strategy.* Lead in the delivery of the region's land use and transportation vision to achieve quality of life, economic, and greenhouse gas reduction goals.
- 3. *Ridership*. Increase BART ridership, particularly in locations and times when the system has capacity to grow.
- 4. *Value Creation and Value Capture*. Enhance the stability of BART's financial base by capturing the value of transit, and reinvesting in the program to maximize TOD goals.
- 5. *Transportation Choice*. Leverage land use and urban design to encourage non-auto transportation choices both on and off BART property, through enhanced walkability and bikeability, and seamless transit connectivity.
- 6. *Affordability*. Serve households of all income levels by linking housing affordability with access to opportunity.

Additionally, the BART Board adopted performance targets for the TOD Program in 2016. These targets can be found online at <u>www.bart.gov/TOD</u>. Most notably, BART aims to produce 20,000 housing units and 4.5 million square feet of office/commercial space on its properties by 2040, with a goal that 35% of housing built on BART properties, or 7,000 units, will be affordable. The targets establish a system-wide parking maximum of 0.9 spaces/unit and 1.6 spaces/1,000 square feet of office for BART properties.



A full summary of BART's policies and expectations related to transit-oriented development on and beyond its property can be found on the <u>BART TOD Guidelines</u> website. Respondents should familiarize themselves with these guidelines and policies.

2. Project Stabilization Agreements, Small and Local Businesses, and Prevailing Wages

On November 17, 2011, the BART Board <u>adopted a policy</u> requiring a Project Stabilization Agreement ("PSA") with local hire provisions to be utilized on TOD projects. Refer to <u>BART's TOD website</u> to review all applicable policy documents.

BART is also committed to fostering opportunities for small and local businesses and will work with developers to facilitate connections with relevant, certified small businesses seeking to work on the Project; see Section VXI.C.

Lastly, any ground lease entered into as a result of this RFP will require that the tenant may not pay less than prevailing wages for the construction of all improvements to be constructed pursuant to that ground lease, with prevailing wages to be determined in accordance with the applicable wage determination rates pursuant to the California Labor Code, or pursuant to wage scales negotiated by the tenant in the above-referenced PSA.

3. BART Station Access Policy

In June 2016, the BART Board adopted a <u>Station Access Policy (PDF)</u> to guide BART rider access practices and investments through 2025.

The Station Access Policy describes five station types on a scale from "urban" to "auto-dependent," as well as the primary and secondary investments to be pursued for each type. Depending on the station type, investment priorities may variably emphasize improvements in biking, walking, passenger loading, or bus connection. Ashby Station is classified as an "Urban with Parking" station where investments in walking, biking, and transit access are prioritized so that BART passengers are less reliant on driving and parking. Reducing the need for parking helps BART advance the access policy goals, as well as its TOD policy goals to maximize the amount of housing on BART property (given the high construction cost and limited funding sources for providing structured BART replacement parking).

The Station Access Policy identifies the following goals:

- a. **Safer, Healthier, Greener:** Advance the region's safety, public health, and greenhouse gas (GHG) and pollution-reduction goals.
- b. **More Riders:** Invest in station access to connect more riders cost effectively, especially where and when BART has available capacity.
- c. **More Productive and Efficient:** Manage access investments, programs, and current assets to achieve goals at the least cost.
- d. **Better Experience:** Be a better neighbor, and strive for an excellent customer experience, including on the first and last mile of the trip to and from BART stations.
- e. **Equitable Services**: Invest in access choices for all riders, particularly those with the fewest choices.



f. **Innovation and Partnerships:** Be an innovation leader, and establish durable partnerships with municipalities, access providers, and technology companies.

In December 2016, the BART Board adopted <u>Performance Measures (PDF)</u> with targets to help evaluate how BART is doing in implementing the Station Access Policy. A key performance measure is the home-based access mode share target, which seeks to increase active access (access by walking and bicycling) systemwide from 44% to 52%. BART's <u>2015 Station Profile Study</u> revealed that 70% of riders walk or bike from home to access the Ashby BART Station. That data is currently being updated.

4. Station Access Plan

The Project will be built in an operating, high-capacity transit environment. Maintaining and enhancing BART customer access during and following construction is a high priority for BART. As noted above, BART's Station Access Policy calls for increasing the amount of people who travel to the system by modes other than a single-occupancy vehicle, so this study will focus in particular on infrastructure, program and policy improvements aimed at making it easier, safer, and faster to travel to BART by walking, biking, and taking transit. BART will lead an access plan for the Station, the costs of which will be reimbursed by the Selected Developer as described in Section X.B of this RFP.

The purpose of the Ashby BART Station Access Plan is to evaluate current and projected access needs to the Ashby BART Station in the absence of the developments at the Ashby BART Station, assess how the proposed developments will impact those needs, and propose solutions to ensure safe and efficient access to the Ashby BART Station. Given that the development will replace minimal BART rider parking, a focus of the study will be to identify viable transportation options for customers who have historically parked at the Station.

Specifically, the Station Access Plan will:

- a. Build on the analysis and strategies identified in the <u>Berkeley-El Cerrito Corridor Access Plan</u> (BECCAP see Section II.C.1) and the JVP to identify existing and future station access needs by BART customers traveling by all modes and BART operations-related vehicles and personnel. It will ensure that the Project maintains and enhances access from the community to the Station. Particular attention will be paid to walk access (up to a half-mile from the Station) and bike, transit, and emerging mobility access (up to a mile from the Station).
- b. Detail curb space management needs for passenger loading by shuttle, private vehicles, taxis and ride-app vehicles considering the reduced parking supply envisioned as part of the development. (Note that there are currently no public bus stops on-site).
- c. Identify on-site pedestrian and bicycle circulation enhancements required to ensure long term functionality and capacity of the Station entrances.
- d. Assess potential transit benefits that could be leveraged from the Ashby BART developments to make it easier and/or faster to use bus transit to access the Ashby BART Station.
- e. Prioritize the proposed improvements to identify those to be provided by the Selected Developer in the Project and develop a funding strategy for remaining enhancements.



Once the Selected Developer has submitted a conceptual development plan to BART, a second phase of the Station Access Plan will evaluate the ability of the plan to accommodate the access needs identified through the process outlined above, with consideration to financial feasibility of the Project, potential grant and other subsidy sources, and accommodation of space for long term improvements that may not be made as part of the development itself.

5. Transportation Demand Management Requirements

In August 2020, the BART Board adopted a set of development principles which state that "BART's travel demand management ("TDM") requirements will encourage reduction of drive-alone trips from TOD projects, in favor of walking, bicycling, transit and/or carpooling/vanpooling. TDM requirements will encourage developer participation in district-based strategies to support enhancements in the surrounding area, such as transit connectivity to BART. Developers will regularly monitor compliance with BART's TDM requirements and participate in travel behavior reporting."

The Project will participate in BART's TDM program, as described in the <u>BART Transportation</u> <u>Demand Management Program for Transit-Oriented Development (PDF)</u>. Respondents are directed to familiarize themselves with its requirements, which include ongoing monitoring and reporting, and to consider incorporating TDM elements into their preliminary development concepts.

6. Multimodal Access Design Guidelines ("MADG")

BART's <u>MADG (PDF)</u> is focused on the rider experience with the goal of prioritizing active and highoccupancy modes to ensure that the station areas contribute to the community fabric and encourage BART ridership. By prioritizing human activity, the MADG encourages station area design to:

- Reduce conflicts between modes;
- Enable direct, efficient access and seamless connectivity between multiple modes; and
- Make station areas easy to navigate.

Internal circulation within the Project will be expected to comply with these guidelines and other best practices in pedestrian- and bicycle-centered street design.

7. BART Art Policy

Through its <u>Art in Transit Policy</u> (2018), BART will defer to the City's "Percentage for Art on Private Projects" requirement (see Section V.D. below). However, BART policy does not allow for the option of in-lieu payments in place of the provision of on-site art projects.

B. Regional Requirements Affecting BART Properties

The Project will be required to comply with all applicable NPDES (National Pollutant Discharge Elimination System) Stormwater Permit requirements. Stormwater management from any parcels subject to the City of Berkeley's building permit authority shall be regulated under the Municipal Regional NPDES Permit issued to the City of Berkeley and the City of Berkeley's Clean Stormwater Ordinance, whichever is stricter. Stormwater management for parcels not under the building permit authority of the City of Berkeley will be regulated under BART's Phase II Small MS4 (municipal separate storm sewer system) General Permit and the Trash Amendments (Water Code 13383 Orders),



issued by the California State Water Resources Control Board. Stormwater runoff from the City of Berkeley's property is subject to the Municipal Regional Stormwater Permit issued by the San Francisco Bay Regional Water Quality Control Board. The Project will be required to comply with all provisions of these permits and orders and will be required to enter into maintenance agreements for stormwater management with both the City and BART that will include stormwater infrastructure maintenance, and submitting annual inspection and maintenance reports for the life of the Project.

C. State Law Affecting BART Properties

1. Assembly Bill 2923

In 2018, Governor Jerry Brown signed <u>AB 2923</u> (Chiu/Grayson, 2018), state legislation that affects zoning requirements on developable, BART-owned property within a half-mile of station entrances in Alameda, Contra Costa, and San Francisco counties. AB 2923 includes several components, including, but not limited to:

- *TOD Standards:* Affected local jurisdictions had until July 1, 2022, to rezone BART's property to align with or exceed AB 2923 Baseline Zoning Standards, as indicated in <u>A Technical Guide to Zoning for AB 2923 Conformance</u>. At the Ashby BART Station, AB 2923 standards currently apply to both the West Lot and East Lot. They call for zoning that at a minimum, allows 75 dwelling units per acre, building heights of seven stories, and a 4.2 floor-area-ratio. Vehicle parking requirements include no minimums for any use, and maximums of 0.5 spaces per residential unit and 2.5 spaces per 1,000 square feet of office space. Shared and unbundled vehicle parking must be allowed. Bicycle parking requirements include a minimum of one long-term secure parking space per dwelling unit. BART determined on August 25, 2022 that the City's adopted R-BMU zoning conforms with these requirements.
- *Development Streamlining:* Developers in an ENA with BART to develop its property may apply for expedited approval from local cities and counties, as articulated in Senate Bill 35, as amended by SB 423, if:
 - a. the project is at least 50% residential;
 - b. a minimum of 20% of proposed housing is affordable to low- or very low- income households;
 - c. the height is within one story of the tallest approved height within a half-mile; and
 - d. the construction plan meets required labor standards described in the bill.
- 2. 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.



BART shall confirm adherence to the SLA and shall jointly work with the California Department of Housing and Community Development to comply with all requirements under the SLA in connection with conveyance by BART of the East Lot to the City, and with this RFP for the West Lot.

It is BART's intent that any ground lease of the Property in connection with the Project will meet the requirements for the Property to be declared "exempt surplus land" pursuant to Government Code section 54221(f)(1)(G). This subsection requires at least 300 units with at least 25 percent of units being affordable to 'lower income households' as defined in Health and Safety Code section 50079.5 and with an affordable rent as defined in Health and Safety Code sections 50052.5 and 50053.



V. RELEVANT CITY PLANS AND POLICIES

The City of Berkeley comprises a total area of 17.7 square miles (10.5 square miles of land and 7.2 square miles of water) located on the eastern shore of the San Francisco Bay with a population of nearly 122,600. It is well served by regional transportation, being home to three BART stations, major bus lines, and with direct access to Interstate 80. Developing high quality transit-oriented mixed-use development that offers housing at all income levels, provides commercial and economic development uses and amenities, and reduces vehicle miles traveled and greenhouse gas emissions is a high priority for the City.

A. City of Berkeley: Residential-BART Mixed Use ("R-BMU") Zoning

On June 28, 2022, the Berkeley City Council adopted the R-BMU zoning district, which applies to the entirety of the Property. Adoption of the R-BMU zoning district included an Environmental Impact <u>Report</u>. The EIR analyzed a buildout projection for the Ashby Property summarized in the table below³:

Lot Area	4.4 acres (West Lot)
	1.9 acres (East Lot)
Project Area ¹	6.1 acres
Building Gross Square Footage (sf)	1,000,000
Residential Units	1,200
Non-Residential (sf)	100,000
Height	7 stories
FAR	3.8
Density (du/acre)	200
Parking for Development (spaces)	350
Parking Spaces/Unit	0.3
Parking for BART Riders (spaces)	0
¹ Project Area does not include area used for BART facilities/infrastructure.	

Table 1: Ashby BART EIR Buildout Projection

The R-BMU zoning district includes regulations for allowed land uses, basic development standards, a selection of specific development and design standards, and the R-BMU District Master Development Permit (MDP) process described in Section VI below.

³ The EIR also included analysis of a project Alternative (Alternative 3) that included up to 1,800 units, and a maximum height of 12 stories, at the Ashby BART station. The EIR found no additional significant impacts beyond those disclosed for the proposed project.



1. Allowed Land Uses

The initial establishment of land uses at the Property will be established through the MDP process. After the initial establishment of land uses through the MDP, subsequent allowed land uses in the R-BMU can be found in BMC Section 23.202.020 (Residential Districts—Allowed Land Uses). As a residential district, the R-BMU prohibits land uses that are not explicitly listed in BMC Section 23.202.020.

2. Development Standards

The basic development standards for the Property are summarized in the table below:

Lot Area, Minimum	None	
Private Usable Open Space, Minimum ^{1, 2}		
Per Dwelling Unit	40 sf/du	
Per Group Living Accommodation Resident	15 sf/resident	
Public Open Space, Minimum		
Per Dwelling Unit	35 sf/du	
Per Group Living Accommodation Resident	18 sf/resident	
Floor Area Ratio (FAR) Maximum	4.2	
Main Building Height, Maximum ³	80 ft and 7 stories	
Residential Density, Minimum	75 du/acre	
Residential Parking	None required; no more than 0.5	
	spaces per unit	
Non-residential Parking	None required; no more than 1.5	
	parking spaces per 1,000 sf	
¹ Private Usable Open Space may be provided as any combination of personal and common private space.		
² Additional public space may substitute for up to 50% of required Private Usable Open Space.		
³ Building Height Measurement: In the case of a roof with a parapet wall, building height shall be measured to the top of		
the roof and parapets may exceed the height limits by up to five feet by right.		

The R-BMU zoning district sets forth requirements for permitted street-facing ground-floor uses. Requirements related to the Ashby BART site are excerpted below (See also BMC Section 23.202.150, Table 23.202-20 and Figure 23.202-3).



FRONTAGE LOCATIONS	PERMITTED STREET-FACING GROUND FLOOR USES
Along Ashby and MLK	Non-Residential Uses or non-residential accessory spaces to
	residential buildings, such as community rooms. At least 50% of
	the combined frontage of MLK and Ashby must include active
	ground-floor uses. [1] Active uses at corner locations are
	encouraged.
Along Adeline	Non-Residential Uses or non-residential accessory spaces to
	residential buildings, such as community rooms.
Along Woolsey, Tremont [2],	Residential or Non-Residential Uses
or fronting interior public	
spaces	

Table 3: R-BMU - Ashby BART Permitted Street-Facing Ground Floor Uses

[1] Active uses are commercial uses in the following use categories: Retail; Personal and Household Services; Food and Alcohol Service, and Entertainment.

[2] Public entrances for non-residential uses fronting Tremont Street must be located on Woolsey Street.

The R-BMU zoning district also includes specific development and design standards related to private/public open space design, rooftop open space, setbacks, upper-story setbacks, ground floor frontages, on-site pedestrian access, transparency, building entrances and parking design. As noted above, in order to satisfy requirements set forth in the City- and BART-approved Exchange Agreement, the Preliminary ODS will propose standards that account for the possibility of waivers and incentives under the state density bonus law, which a developer may use to avoid some zoning standards in the R-BMU zoning.

B. Transportation Demand Management

In addition to BART's Travel Demand Management Requirements discussed in Section IV.A.5, the City of Berkeley has Transportation Demand Management ("City *TDM*") requirements found in <u>Chapter 23.334 of the Berkeley Zoning Code</u>. The purpose of the City TDM requirements is "to reduce vehicle trips, encourage public transit use and promote bicycle and pedestrian safety" and "to reduce private vehicle travel and promote mode shift to more sustainable transportation options." The City TDM requirements are applicable to residential projects with ten or more units, including residential portions of mixed-use projects. To the extent BART or the City's TDM requirements overlap, the Selected Developer is only obligated to meet them once; to the extent there are conflicts or different expectations, the Selected Developer is obligated to meet the more stringent requirement.

C. Other Planning Efforts

Other efforts undertaken by the City of Berkeley that are relevant to the development of the Station includes:

• Ashby and North Berkeley BART Station FEIR Mitigation Monitoring and Reporting Program (Attachment 10) (2020)



- <u>City of Berkeley referral to establish a Black Arts & Culture District in the Adeline Corridor</u> (2024)⁴
- Berkeley 2020 Pedestrian Plan (2020)
- Berkeley Bicycle Plan (2017)
- <u>Berkeley Vision Zero Action Plan</u> (2020)
- <u>Berkeley Transit-First Policy Implementation Plan</u> (2023)
- <u>City of Berkeley Housing Element 2015-2023</u> (2015)
- <u>Berkeley Climate Action Plan</u> (2009)

D. Berkeley Municipal Code – Zoning Ordinance

Other relevant sections of the Berkeley Municipal Code include:

- Section 23.316 Percentage For Public Art on Private Projects
- Section 23.322 Parking and Loading
- <u>Section 23.328 Inclusionary Housing</u>
- <u>Section 23.344 Transportation Demand Management</u>

E. City Labor Requirements

The City of Berkeley updates City labor requirements from time to time. Development of the Property will be subject to the then-current labor standards. This section describes the current standards that may apply, and the Selected Developer will be responsible for verifying requirements with the City of Berkeley throughout the development process.

Private developments within City limits consisting of construction, alteration, or demolition of 50,000 square feet or more may be subject to the HARD HATS Ordinance (<u>BMC 13.107</u>), which requires contractors on covered projects to participate in state accredited apprenticeship programs and make health care expenditures on behalf of their construction workers. Covered contractors will be deemed in compliance with HARD HATS if they sign a project labor agreement with the Building and Construction Trades Council of Alameda County or can show that they have signed a valid collective bargaining agreement with a labor union that requires participation in a state-approved apprenticeship program and the provision of health care expenditures to all construction craft employees.

To the extent that a Respondent applies for City funding, applicants should be aware that the City requires that publicly funded construction projects over \$100,000 except for contractors and bidders with fewer than five employees, comply with the First Source Ordinance (<u>BMC 13.26</u>), and give preference to the hiring of local jobseekers for new and replacement positions.

⁴ The proposal recommends designating the Adeline Corridor as the Black Arts and Culture District. The goal is to emphasize community involvement and cultural well-being, with Healthy Black Families and Equitable Black Berkeley playing a key role in the planning committee. This district will include a Black Arts and Culture Center, promoting affordable housing, new businesses, and encourage learning through the arts. The district aims to celebrate Berkeley's history of arts and social justice while attracting more Black families and Cal alumni.



Additionally, all employers, regardless of where they are located, must pay the Berkeley minimum wage (<u>BMC 13.99</u>) to their employees who perform at least two hours of work within the geographic limits of the City of Berkeley, and certain entities may be subject to the City of Berkeley's Living Wage Ordinance (<u>BMC 13.27</u>).



VI. CITY OF BERKELEY ENTITLEMENT PROCESS

A. City's Role as Lead Agency and Land Use Entitlement Authority

The City will serve as lead agency pursuant to CEQA for any required environmental review. Proposed development on the Property will be evaluated for consistency with the analysis in the Ashby and North Berkeley BART Zoning Standards EIR. If the project is determined to be consistent with the EIR, no further environmental review will be required.

Any questions about City policies or processes should be directed to City of Berkeley - Planning and Development Department, at (510) 981-7400; planning@cityofberkeley.info; 1947 Center Street, Berkeley, CA 94704.

B. Master Development Permit ("MDP") Process

In order to allow for the predictable buildout of the West Lot and achieve a high standard of site and building design that fulfills the JVP relating to affordable housing, public and civic space, land use, building form and station access, the R-BMU zoning district includes an MDP process.

The MDP process requires the submission of a Preliminary Development Plan ("PDP"). A PDP includes a plan for the entire development with streets and throughways, the location and approximate dimensions of all structures, proposed activities for each structure, public uses, landscaping features and other relevant operational details. The PDP shall also include a table demonstrating that it meets the R-BMU development and design standards and compliance with any City-adopted Objective Design Standards, as well as a general phasing plan for development.

Unless the Project has invoked streamlining under applicable state law, the PDP shall be reviewed by the Zoning Adjustment Board ("ZAB") at a noticed public hearing. The ZAB shall find that 1) the PDP is consistent with General Plan, zoning, design guidelines or any other relevant ordinance adopted by the City Council; and 2) that the location, design, and size are consistent with the JVP. A decision of the ZAB on a PDP is appealable to the City Council. If streamlined approval is invoked by the Developer, then City staff will review the Project for conformance with all application requirements and development standards as set forth in the Zoning Ordinance, Objective Design Standards, and other applicable regulations.

After a PDP is approved, an applicant may submit a Final Development Plan ("FDP") for one or more phases of the Project identified in the PDP. The FDP shall be sufficiently detailed to indicate the ultimate operation and appearance of the development, including compliance with any City-adopted Objective Design Standards. Unless the Project has invoked streamlining under applicable state law, an FDP shall be reviewed by the ZAB. A decision of the ZAB on a FDP is appealable to the City Council. Upon approval of an FDP, a Master Development Permit shall be issued. If streamlined approval is invoked by the Developer, then City staff will review the Project for conformance with all application



requirements and development standards as set forth in the Zoning Ordinance, Objective Design Standards, and other applicable regulations.



VII. CITY OF BERKELEY AFFORDABLE HOUSING FUNDING

The City of Berkeley's Housing Trust Fund ("HTF") program was established in 1990. The purpose of the HTF program is to support the creation and preservation of affordable housing in Berkeley. The City's Housing Advisory Commission advises the City Council on HTF allocations.

The City has provisionally reserved a total of \$53 million in affordable housing subsidy funds to support providing HTF-eligible affordable on-site housing units at the Ashby and North Berkeley BART projects in addition to what would be required under City's Affordable Housing Requirements for at least 20% on-site affordable units and BART's ordinary requirement for at least 20% affordable units at TOD sites. Up to \$18.5 million is available to be invested in the Project in compliance with the City's HTF Guidelines and maximum per unit subsidy included below, unless otherwise amended by HTF Guidelines or City Council.

The City Council's funding reservation supports the community's desire to maximize the provision of affordable housing at these sites as articulated in the JVP. Applicants for City funding are encouraged to demonstrate how they can leverage available funding to maximize total affordability on the site. The City intends to make funding available in a way that maximizes the Project's affordability while also ensuring that scarce City subsidy funds are used to provide additional affordable housing units beyond what would be required under existing City Affordable Housing Requirements. See Section III.D.2 above for information regarding the status of Berkeley's Affordable Housing Requirements.

The City hereby announces the availability of Phase I predevelopment loan funding of up to \$1,000,000 for the West Lot Project. Eligible respondents may apply for Phase I predevelopment loan funding as described in Section VIII.L, below but are not required to request such funding at this time.

Respondents opting to request predevelopment loan funding must submit the supplementary materials listed in Section VIII.L.

A. City Resources

Of the \$53 million reserved by City Council, \$40 million will be provided from the Measure O bond funds and \$13 million from reserved Affordable Housing Mitigation Fees or other local sources. Up to \$18.5 million is provisionally available to the West Lot Project. The predevelopment funding available is included in this total.

Developers meeting the threshold requirements in the HTF Guidelines for experience may apply for development funding for HTF affordable units following the predevelopment period. Staff anticipates Measure O funds will be available after the third and fourth bond issuances, currently projected for 2025 and 2027.

All City-funded affordable projects are expected to comply with the City's HTF Guidelines and the requirements outlined in this Section VII to receive the City subsidy. The HTF Guidelines establish instructions for the operation of the HTF program. They are not a comprehensive statement of laws and regulations that apply to affordable housing funding and development in Berkeley. In addition to these guidelines, the operation of the HTF program must comply with City procurement and contracting requirements as well as state or federal requirements when state or federal funds are used. In case of a



conflict, City, State, and Federal requirements will prevail over the HTF Guidelines. The City Manager may establish additional requirements to implement the HTF program. The City Council may consider waiving or modifying HTF program guidelines in the interest of meeting the specific needs of an affordable project.

B. Predevelopment Funding

1. Predevelopment Loan Funding Available through the RFP

Up to \$1,000,000 in City predevelopment loan funds are available to a nonprofit applicant through this RFP, subject to City Council approval. The Selected Developer must execute an ENA with BART prior to drawing upon predevelopment loan funds. Eligible predevelopment costs include: ENA deposit, fees related to the station access plan, and other costs related to the development of the Property, to be approved by the City. City funds may only pay a prorated share of reasonable Property soft costs, in proportion to the amount of the site dedicated to stand alone affordable housing. Eligible respondents should reference the submittal requirements identified in Section VIII.L.

In the event the developer team does not proceed with development of the Project, the City shall have the option to cause borrower to assign, transfer and deliver to the City, all third party written reports which borrower has commissioned with loan proceeds with respect to the development and entitlement, including any architect or consulting agreements with any third parties providing design or development services with respect to the Ashby affordable units and all work product produced under any such agreements.

C. City Affordable Housing Subsidy Process

Once a developer has been selected, and an FDP is under review by the City, the Selected Developer or Project sponsor(s) may apply for the City's HTF development subsidy (up to \$18.5 million inclusive of the predevelopment funding in compliance with the City's maximum per unit subsidy guideline included below, unless additional funds are available through a ballot measure or other mechanism). To apply, the developer must submit an application through the City's HTF program, which must include the items listed in Section VIII.L below if not already provided through a predevelopment application, and:

- Include an Affordable Housing Compliance Plan, as described below, covering the entire development site (including all market and affordable buildings), and describing the specific strategy that will be used to meet BART and the City's Affordable Housing Requirements.
- Ensure that the market rate portions of the West Lot Project contribute financially to the provision of Affordable Housing in an amount at least equal to the Developer Minimum Contribution Standard (defined below)
- Ensure that the request for City Affordable Housing Subsidy complies with the City's existing Housing Trust Fund Guidelines which may be found at <u>Housing-Trust-Fund-Guidelines.pdf</u> (berkeleyca.gov) and
- Ensure that the request for City Affordable Housing Subsidy does not exceed the Maximum Per Unit City Subsidy (defined below).



• Demonstrate compliance with applicable components of the Memorandum of Covenants set forth in Schedule 4.3.4 to Attachment 1, the Exchange Agreement.

Development subsidy funds, beyond the predevelopment funds, will not be disbursed prior to complete project entitlement and execution of BART ground lease.

1. Affordable Housing Compliance Plan

Any commitment for City funding beyond the predevelopment stage will require an Affordable Housing Compliance Plan ("AHCP") approved by the Berkeley City Council. The developer will be required to submit a revised plan for approval if project plans change after the AHCP is approved.

The AHCP shall include:

- a. A description of the proposed means of compliance with the City's Affordable Housing Requirements, including any request for alternative means of compliance such as clustering of the inclusionary units.
- b. Site Plan identifying the location of the market rate and affordable housing units/developments.
- c. Unit and bedroom count for the market rate units and the affordable units, including the specific affordability restrictions (depth of affordability) for each set of units.
- d. Phasing Plan covering the entire site and demonstrating that the affordable units will be constructed in advance of or concurrent with the market rate units.
- e. A description of the proposed developer contribution to affordable housing accompanied by a comparison to the Expected Developer Contribution (as defined in Section VII.J) identified in the developer's response to the RFP. This description will identify specific inkind and cash contributions as well as their likely timing. The land discount granted by BART cannot be included as an in-kind contribution for the purposes of the developer contribution. Further guidance on in-kind contributions will be provided at a later date.
- f. When the developer contribution is in a form other than a cash contribution in the amount described in Section VII.C.2(a) or (b), Developer shall provide a report completed by a third-party economic analysis firm approved by the City of Berkeley which:
 - i. Compares the proposed level of affordability (number of units and depth of AMI affordability) to the level that would be provided by a hypothetical development project on the Property that complied with the City's Affordable Housing Requirements through the on-site compliance option,
 - ii. Provides a financial analysis estimating the developer capital contribution that would be required to provide the City's inclusionary units on-site and comparing that to the developer's proposed affordable housing capital contribution as part of their finance plan; and



- iii. Reviews individual and combined project return metrics, economics, and annual cash flow to validate project feasibility and to ensure a customary market rate return.
- 2. Developer Contribution for Affordable Housing

The City Council and City staff shall review, evaluate, and approve a developer minimum contribution for affordable housing ("Developer Minimum Contribution Standard"). This is the minimum amount of developer contribution to fund the City's on-site affordable housing units inclusive of any future density bonus units, while preserving development feasibility. Subject to City Council approval, to ensure that City subsidy is increasing the commensurate level of on-site affordability that would otherwise be provided, any developer applying for City Affordable Housing Subsidy shall demonstrate a developer capital contribution equal to the greater of:

- a. The then-current City housing mitigation and/or inclusionary in-lieu housing fee amount per unrestricted market rate unit (or aggregate square footage of the market rate units) to be developed on the Property (including any bonus units available as a result of the density bonus), or
- b. \$200,000 per on-site affordable unit required by the City's affordable housing regulations (inclusionary unit).

The developer contribution shall be provided by the developer of record towards the affordable housing units at the Property. The contribution may be in the form of one or more cash contributions, or through documented in-kind expenditures approved by the City on behalf of the affordable housing projects. Affordable housing units funded with the developer capital contribution will be subject to the terms of the City's of Berkeley's Housing Trust Fund Guidelines, including but not limited to City monitoring and oversight. The value of any land discount (e.g., to ground rent) provided by BART may not be counted toward the developer in-kind contribution. The City will provide guidance for identifying appropriate and reasonable in-kind expenditures and pro-rating project wide expenditures for this purpose; pro-rating will be validated with a future cost certification study.

3. Maximum Per Unit City Subsidy

The City will limit its subsidy to no more than an average of \$200,000 per rent-restricted lower income unit, counting only units provided beyond the 20% which would be required by the City's Affordable Housing Requirements.

The City subsidy will be available to buildings which are 100% affordable housing or HTF affordable units dispersed amongst mixed income housing buildings, which meet the Housing Trust Fund Guidelines (including an average income limit of 60% of AMI with at least 20% of units targeting households earning 30% of AMI or less), and any other requirements in this RFP. Applicants may include additional moderate-income units in their overall affordable housing mix and for the purposes of counting the affordable housing share for the scoring criteria but may not request City subsidy for those units.



VIII. SUBMITTAL REQUIREMENTS

Respondents must submit a package comprised of the items listed in Section VIII.A through K below and may, at their option, apply for City of Berkeley predevelopment funding for affordable housing by submitting the additional materials listed in Section VIII.L ("Optional Predevelopment Funding Application").

Please submit clear, complete, and concise responses with the information requested below, including a table of contents at the front of the response. With the exception of site plans, which may be as large as 11" x 17", submittals should be on letter sized ($8 \frac{1}{2}$ " x 11") paper, using a standard font and font size no smaller than 11 point. Proposals should be organized as follows, using tabs to separate sections.

A. Transmittal Letter

The transmittal letter should include the following information:

- 1. Name, address, telephone and website address, etc. for the lead development entity.
- 2. Legal structure of lead development entity or anticipated entity (e.g., corporation, JV, limited partnership, etc.), jurisdiction where registered, and date of legal establishment.
- 3. Name, title, address, telephone number, and e-mail address of the person designated as the primary contact for the lead development entity.
- 4. Names and relationships of all entities included in the submittal (e.g., nonprofit affordable housing developer, master planning architect/urban design firm, commercial space/cultural facilities consultant, community engagement consultant, transportation consultant, etc.).

B. Development Program Table

Please complete Exhibit 9A showing information on the development program, community benefits package, external funding source assumptions, and extraordinary project cost assumptions. For the purposes of this exhibit, "community benefits" are defined as improvements benefiting the general public and/or contributing to local and regional equity, which may include:

- o Housing restricted to occupancy by households at or below 120% AMI
- Public infrastructure, including but not limited to that listed in this RFP, such as a connection between Adeline Street south of the station entrance and the Project
- Open space, transportation improvements or services, civic amenities that are accessible to the public
- Commercial space for community-based organizations, non-profits, and/or small and minority-owned businesses, including the Berkeley Flea Market, at a discounted rent
- Gathering space/meeting rooms that can be regularly utilized by the general public at a discounted rate
- City housing and transportation impact fees, Berkeley Unified School District impact fees



- Programs offered by the development that are made available to the general public, excluding programs available only to Project tenants
- Other aspects of the development that would enhance the quality of life for the general public in South Berkeley, excluding amenities available only to Project tenants

C. Team Summary

BART does not require respondents to identify at this time all the professionals who might eventually be involved in the Project; only developer(s) and architect(s) are required to be identified at this time. Respondents must identify the firm names of any architects or other consultants or partners. To the extent that team members can be identified to ensure your team addresses the submittal requirements and evaluation criteria, please do so by providing the following information for each member of your team:

- 1. Team members (firms) as known and an organizational chart identifying roles and responsibilities, covering essential activities to be evaluated.
- 2. Identification of key individual team members and project manager or managers, including the team members and project manager for the market rate and affordable project/s, and up to a two-page resume for each of these individuals.
- 3. Description of core business activities of each team member, including specific experience with affordable housing development and operations.
- 4. Number of years in business for each team member.
- 5. Number of full-time employees for each team member.
- 6. Optional: supplemental materials such as company brochures, for each team member.
- 7. If more than one development entity is proposed, provide:
 - a. an executed, binding written agreement, such as a JV agreement, documenting:
 - i. the relationship between/among all entities
 - ii. the ownership percentage each entity (or its affiliate) will have in each building/project component
 - iii. the roles and responsibilities of each party, including those with respect to delivering public infrastructure
 - b. A brief narrative description of this working relationship, and,
 - c. a description of the entities' prior working relationships.

Respondents must notify BART of any changes to its team following RFP submittal and once selected, BART must approve any changes or substitutions to key team members.

D. Small Business Participation

BART strongly encourages Small Business ("SB") participation in all phases of the Project. Respondents should take all steps necessary to provide an equal opportunity for SBs to participate, including, but not limited to performing the following during this solicitation phase and/or, if selected, throughout the development process as noted:



- 1. Outreach to Small Businesses (solicitation/development).
- 2. Advertise in publications anticipated to reach Small Businesses (development).
- 3. Participate in BART sponsored networking events (solicitation/development)

On Attachment 6 please indicate the SB participation commitment offered by your team, covering both predevelopment and construction of the Project, as well as the SB certification status of the development team members listed in Section VIII.C, above. While the teams may only be identifying predevelopment firms at this point, the SB participation commitment percentage reflected in Attachment 6 is based on the overall West Lot Project cost covering both predevelopment and construction. Submissions will be scored based on the SB participation commitment percentage reflected in Attachment 6. The Selected Developer will be required to submit quarterly SB utilization reports as part of the Exclusive Negotiation Agreement requirements.

SB firms include Small Businesses and Disabled Veteran Business Enterprises (DVBEs) certified by the California Department of General Services (DGS), Local Small Businesses (LSBs) certified as SBs by DGS and whose principal place of business is located in one of Alameda, Contra Costa, or San Francisco County, and Lesbian, Gay, Bisexual and Transgender Business Enterprises (LGBTBEs) certified by the California Public Utilities Commission or the National Gay and Lesbian Chamber of Commerce and certified as an SB by DGS, Additional information on SBs can be found at: www.bart.gov/about/business/ocr/programs.

BART will facilitate a Networking Session to help proposers identify firms with the experience requested at this stage. More information about the Pre-Submittal Conference and Networking Session can be found in Section XI of this RFP.

E. Description of Relevant Experience

Each proposed development entity must have completed <u>at least three projects</u> of a similar size and scope, with at least one of the development partners having completed a stand-alone nonprofit affordable housing project. Using Attachment 7, Qualifying Project Form (available as a Word document on project website), please provide a description of <u>up to three relevant projects per</u> <u>development entity</u> completed in California in the 10 years prior to the RFP deadline by the development team (maximum four pages per project, inclusive of photos and site plan) that are reflective of this RFP's goals. The lead member(s) of the proposed development team for the West Lot Project should have had a lead role in these past projects. BART is particularly interested in completed projects that address the criteria shown in Section IX.C, below.

Development entities without the required minimum experience may enter into JV agreements with eligible entities in order to be eligible. Respondents submitting as a JV must provide a binding JV agreement in their response to Section VIII.C.7.a, above, establishing roles and responsibilities of each entity in the partnership that are acceptable to BART; and must demonstrate that the entity with the majority ownership interest in the JV both holds majority control of the JV and satisfies the experience requirements of the preceding paragraph.



F. Preliminary Development Concept

Please provide a brief narrative with supporting materials as needed (maximum ten pages in total), of the mixed-use transit-oriented development concept being proposed for the BART Property. Assume replacement of 85 BART patron parking spaces on site for vehicles, including 16 ADA spaces⁵, as well as replacement of all bicycle parking and bikeshare docks described above.

Please include the following information:

- 1. Site Plans, Elevations, and Sections, no larger than 11" x 17" detailing the following:
 - a. The location and layout of proposed development
 - b. Mix of uses and their locations (including market rate and affordable housing, ground floor commercial spaces, BART patron parking, and any parking serving the Project)
 - c. Façade elevations of each building; depict and clarify planned massing if not evident from axes elevations.
 - d. Identify and present expected *primary* architectural systems and materials that will guide the aesthetic character of the Site.
 - e. Proposed lot lines, lot widths and setbacks for all buildings in the development
 - f. Conceptual renderings and layouts for public open spaces
 - g. Conceptual layout of site circulation and access that will enable successful integration of the Project with surrounding uses while providing clear and direct access to BART for all transportation modes and to all users with consideration of PROWAG and BART and City design guidelines, including MADG described above.
 - h. Building heights and stories
 - i. Proposed public spaces with dimensions labeled
 - j. Connections between Adeline Street and the Project with dimensions labeled
 - k. Existing parcel boundaries, station entrance locations and streets
- 2. Project Schedule and Phasing:
 - a. Provide an estimated development schedule, including all major predevelopment and development activities, breaking out anticipated phases of development separately beginning from the time BART executes an ENA and ending with construction completion of the final phase or building.
 - b. Describe development phasing assumptions, and assumptions regarding real estate market / marketability of different uses that may influence or inform this phasing.

⁵ As described in Section II.C.2.e, the actual number of BART rider parking spaces including ADA spaces will be finalized during predevelopment; BART requests that respondents utilize these assumptions solely to ensure consistency across all submittals and to understand respondents' approaches to BART rider parking in the design of the Project.



- c. Identify whether BART rider parking is to be provided within the first building to be constructed, and if not, provide phasing diagrams demonstrating where at least 85 parking spaces will be provided until the new BART rider parking is delivered.
- 3. Concept Statement: A concise narrative describing the site plan and development concept, including:
 - a. Rationale for the Site concept described above. The narrative may make reference to market information, emerging real estate trends, developer experience on similar projects, or other logic for the scale and mix of uses proposed in the Site development concept.
 - b. Description of how this development concept aligns or does not align with the JVP, and reasons for any deviations from it.
 - c. Preliminary ideas for an urban design and public realm that demonstrate approach to successful placekeeping/placemaking, activation of plazas, and sightlines from buildings toward plazas and streets.
 - d. Explanation of your approach to locating and screening any parking for new residents/users and BART riders, description of how your concept would differ if fewer than 85 BART parking spaces were replaced, and mitigating strategies to reduce the demand for residential parking.
 - e. Explanation of how your approach best meets the goals BART has articulated for accommodating circulation on and around the Property.
 - f. Any other proposed innovative or creative project elements that contribute to successful transit-oriented development.
 - g. Any notable public amenities.
 - h. Economic Fluctuations: Given pandemic-related disruptions to the national economy, and the recent climate of escalating construction costs, how might you propose to advance a project at the Station in a volatile economy?
 - Interpretive Display: The <u>City's Environmental Impact Report for the Ashby and</u> <u>North Berkeley BART Stations Transit Oriented Development (TOD) Zoning</u> <u>Project</u> (SCH#2020110320) dated March 2022 describes the significant history of the Berkeley Flea Market on the property. Show how your preliminary development concept incorporates an exhibit honoring the history of the station as required by the City's Mitigation Monitoring and Reporting Program (Attachment 10).

G. Narrative

Please provide responses to the following questions related to the team's experience and approach. (maximum six pages).

1. **Community Engagement:** Please describe your experience, if any, with community outreach and participation in highly engaged localities, especially on complex design projects. What lessons from your prior work will you apply in gaining community acceptance for your



development program while adhering to the project schedule? In particular, how have you handled discussions around the potential tradeoffs between different amenities in a project?

- 2. **Community-Serving Ground Floor Commercial Space:** Please describe your strategy for activating the ground floor with uses that are viable in today's market.
 - a. Which spaces will be occupied by market rate commercial tenants, and what types of occupants do you envision?
 - b. Which space(s) will be designated for the Discounted Commercial Space and how would it deliver benefit to the community?

Note: Other than the Berkeley Flea Market, <u>do not</u> identify specific beneficiaries of the community benefits package (e.g. nonprofits or business that would occupy discounted space). Teams identifying beneficiaries by name will lose points in the evaluation process. BART will work with the Selected Developer to come up with a fair and reasonable process for identifying private beneficiaries of community benefits.

3. **Reparative Framework:** Demonstrate how your proposal will address the negative impacts to the African American residents, businesses and cultural institutions displaced by construction of the Ashby station.

4. Urban Design

- a. Description of approach to urban design both internally to the site, including the TPSS maintenance areas, as well as interfacing with each of the three street frontages.
- b. How does your concept balance at-grade connection to Adeline Street with project feasibility? Proposals that do not connect buildings via a South Plaza Extension, BART Terrace Extension, and Ashby/Adeline Corner Extension as described in Attachment 5 should outline the design and financial analysis and reasoning for not connecting.

5. Structural Needs

- a. Summarize and further describe any information related to the assumed cost of structural connections between the Project and Adeline Street. Ensure consistency with the assumptions in Exhibit 9.
- b. The station's Zone of Influence impacts the eastern edge of the site. If your concept shows buildings encroaching on the ZOI, please describe how you involved a structural engineer in developing your approach, and identify that engineer.
- 6. **Open Space Maintenance**: As stated in the JVP, neither BART nor the City are able to take responsibility for the operating and maintenance costs of new civic and open space within the Property. Given this, what are your assumptions about funding the ongoing costs associated with operations and maintenance (e.g. development pro forma, CFD, BID)?
- 7. Local Housing Priorities: Describe how the preliminary development concept addresses local needs and priorities referenced in City plans and policies including the Housing Element and the Consolidated Plan. In particular, describe how your concept addresses the following priorities:



- a. Reduction in chronic homelessness
- b. Units for extremely-low income households (<30% AMI)
- c. Universal design
- d. Promotion of diversity in the City's affordable housing inventory in terms of unit size, population served, tenure, etc.

H. Financial Proposal

As described below, please provide details regarding the project's feasibility and the initially proposed financial terms for a ground lease with BART. These details will be understood to represent Respondents' current expectations based on expected project costs and revenues, as well as phasing and financing considerations. BART expressly acknowledges that the financial terms for this project are subject to refinement through additional due diligence and negotiations regarding physical design, programming, and community benefits, among other factors.

- 1. Proforma: Proposers shall complete the MS Excel document "Development Pro Forma Financial Table" included as Attachment 9B, and submit electronically both as a PDF (all pages except instructions) and Excel workbook (with formulas intact) separately from the hard copy proposal documents. The proforma provides Proposers an opportunity to illustrate how they intend to maximize development potential while supporting the goals and objectives of BART, the City, and the community. It quantifies preliminary program revenues and expenses via a pro forma Statement of Cash Flows for each year through estimated build-out of the Proposer's program. Include all estimated and known project costs, including applicable fees, and make note of assumed funding that is contingent on another entity's action (e.g., tax credits for affordable housing). Note that costs should assume that a Project Stabilization Agreement is required per BART policy. The completed pro forma gives BART an understanding of the Respondent's approach, expected project economics, and provides a basis for business terms negotiation. Note that the proforma will indicate an unleveraged Internal Rate of Return (IRR) for the overall project; please ensure that this return reflects an acceptable rate of return for the project, as it will serve as a benchmark for ongoing negotiations. If you prefer to use another metric for project feasibility, please describe that metric and explain its significance in the text of your proposal, including how it relates to the IRR calculated on the spreadsheet. Proforma line items can be modified and expanded as appropriate for this purpose. More specific instructions are included in the MS Excel file.
- 2. **BART Financial Offer**: Please fill out Attachment 9C, providing greater detail on your proposed ground lease and other financial offer to BART. Please only submit electronically as a pdf and as part of the Excel workbook which includes Exhibits 9A, 9B, 9C, and 9D. Do not include this attachment in your written proposal.
- 3. **Development Financing Plan:** Provide an explanation of the project's expected financial structure including potential sources and amounts of equity and debt financing, as well as any expected public financing (e.g., affordable housing, below market-rate office space, etc.).



Identify assumed reliance on external funding sources (grants, tax credits, etc.) and your team's experience and competitiveness securing these funding sources. Note in particular if the project assumes the introduction of new financing mechanisms to the area, such as Federal Opportunity Zones, EIFDs, Business Improvement Districts or others. Specifically, describe how the predevelopment costs and the initial phases of site improvements and construction investments will be funded, and identify the anticipated source of the Respondent's up-front funding. Define assumptions and caveats of development timing and sources. Ensure all information provided is consistent with the proforma.

- 4. **Market Conditions:** Summarize market conditions affecting proforma, including expected lease rates and any assumptions regarding tenanting. Describe planned/existing marketing initiatives to attract anchor/key tenants to the site. Address marketing plans for each planned tenancy type (e.g., residential, retail, etc.). Summarize phasing and timing assumptions, and the relationship of building phases. Identify any critical factors that could impact the timing of a portion or all of the development. Describe the team's contingency plan for changes to cost assumptions (impacts on lease revenues, community benefits, project design, etc.).
- 5. **Partnership Structure**: If the proposal contemplates use of a limited liability company or another project-specific entity to hold the assets upon execution of the ground lease, identify the entity that will provide any necessary completion or financing guarantees. These partnership descriptions shall show entity liability throughout the life of the development (i.e., predevelopment, construction and asset management).
- 6. **Performance Guarantees**: Describe the team's commitment to timely development, including any recommended metrics that could be used to evaluate whether external factors might create a reasonable delay in the project. Identify any financial or other terms to guarantee delivery of project milestones on schedule. These terms will not be binding at this point, but will offer a sense of how the Selected Developer can work with BART in the execution of an Exclusive Negotiating Agreement.

I. Demonstration of Financial Capacity and Related Information

Please provide the following information to demonstrate your capacity to undertake and complete the proposed development.

1. Financial Statements for the previous three fiscal years for the lead developer and any team members that expect to be involved financially in the Project, including guarantors and nonprofit development partners. Certified statements are preferred. *Financial statements must be provided in a separate, sealed envelope labeled "Financial Statements" and should be provided solely on portable digital media such as a thumb drive; paper copies of financial statements attements are discouraged.*



- 2. Most recent annual report(s) for each of the team members that expect to be involved financially in the Project.
- 3. List five most recent projects and related financing structure and project value from inception to completion (i.e. construction financing & permanent financing, sources of debt and sources of equity for each)
- 4. List of any current non-performing loans as well as loan defaults in the past 10 years for each of the team members.
- 5. Description of instances in which the lead development company or any key team member has been involved in litigation or other legal dispute regarding a real estate venture during the past 10 years. Include information regarding the outcome of the litigation or dispute.
- 6. Information about instances in which any member of the development team has ever filed bankruptcy or had projects that have been lost to foreclosure.

Any submittals that do not provide this information by the deadline will be considered nonresponsive and ineligible. Any concern regarding disclosure of this information to BART should be communicated in advance of the deadline, so that alternative arrangements may be made to ensure required information can be evaluated.

Note that BART requires that neither the Selected Developer nor any of its principals, members or partners has been convicted of or admitted or assumed (including any plea of no contest) criminal or civil liability for any felony or fraud, or any act of moral turpitude; nor has a history of significant and material building code violations concerning the construction of similar projects; nor has been a party adverse to BART or the City in any lawsuits, claims or other actions within the preceding five (5) years; and has disclosed in writing any lawsuits or other actions as to which the proposed developer or any of its principals, members or partners has been adverse to BART or the City during any prior period.

J. Exclusive Negotiating Agreement (ENA) Comments

After reviewing BART's form of ENA, Attachment 8 to this RFP, please provide any proposed revisions that would be needed in order to accept and execute the ENA, along with a signed cover letter. If none, provide a signed statement to that effect.

K. References

Provide references with sufficient information to ensure easy contact – and ensure your contacts can be reached for reference checks. This should include company/organization names, titles, telephone numbers, and e-mail addresses for individuals who can provide information related to the following items:

- 1. Financial contacts Identify at least 3 contacts that have provided members of the development team with debt or equity financing of at least the magnitude likely to be required for the proposed Project.
- 2. Public or Government Identify 3 public officials of a government agency, county, city or other public agency who have been involved with a project completed by members of the



development team (e.g., city managers, redevelopment staff, planning directors, economic development directors, etc.), specifying the role the agency or locality played in the development (e.g. funder, lessor, etc.).

L. Optional Predevelopment Funding Application

As stated in Section VII, the City is offering up to \$1,000,000 for the West Lot Project in predevelopment loan funding to support the development of at least 50% on-site affordable housing at the West Lot Project.

Shortlisted Respondents wishing to access this funding must provide the materials and information described below as part of an optional part 2 submittal packet .

Only nonprofit developers are eligible to apply for predevelopment loan funding from the City to support activities solely related to stand-alone nonprofit affordable housing development. This funding is intended to support a pro-rated ENA deposit and Station Access Plan reflective of the affordable housing's share.

Please provide the following information to demonstrate the feasibility of the proposed affordable housing units.

- 1. An overview of the financing plan and strategy for the affordable project/s, as well as any affordable units dispersed amongst mixed income parcels, including:
 - a. Total development cost including a breakdown of ground rent, vertical building costs, and infrastructure cost.
 - b. Expected Developer Contribution to affordable housing that meets or exceeds the Developer Minimum Contribution Standard outlined above.
 - c. Expected City subsidy request that meets the requirements of the City's HTF Guidelines and the standards for Maximum City Subsidy outlined above.
 - d. Other anticipated affordable housing subsidy sources itemized with amounts.
- 2. Development schedule for the affordable units, including schedule for financing the Project and backup plan if key funding awards are not achieved.
- 3. Signed acknowledgement of HTF Guidelines and threshold eligibility criteria for Respondents interested in HTF predevelopment and development financing. This form will be provided to shortlisted Respondents.
- 4. A Predevelopment application (available on request from the City's affordable housing contact), including but not limited to:
 - a. Project description/concept for the affordable housing development(s).
 - b. Sources and uses for predevelopment activities.
 - c. Predevelopment Certification Form.
 - d. Audited financials for the past three years.



- e. Staffing plan including personnel that will be assigned to the Project, their percentage of time (capacity) assigned to the Project, and biography.
- f. Strategies for ensuring that residents have an opportunity to access new jobs that are created through the development of affordable housing.



IX. SUBMITTAL AND EVALUATION PROCESS

A. Submittal of Proposals

Respondents must provide 7 copies (one unbound original and 6 bound copies) and one digital copy of their Proposal. However, financial statements must be provided in a separate, sealed envelope labeled Financial Statements and should be provided solely on portable digital media such as a thumb drive; paper copies of financial statements are discouraged. All materials and the required proposal deposit must be submitted to:

San Francisco Bay Area Rapid Transit District Attn: Shannon Dodge Principal Property Development Officer Property Development Department 2150 Webster St., 9th floor Oakland, CA 94612 sdodge@bart.gov

Proposals should include a deposit check of Twenty-Five Thousand Dollars (\$25,000) payable to "San Francisco Bay Area Rapid Transit District" to secure the team's position as an eligible Respondent. The deposit check will be securely retained by the Property Development Department, and the check of the Selected Developer, if any, will be deposited while the other checks will be voided and returned. If the Selected Developer decides to forego the opportunity to develop, the deposit will be retained by BART as liquidated damages to cover expenses of BART staff time associated with this solicitation.

If BART decides to forego the opportunity to develop this Property prior to execution of the Exclusive Negotiating Agreement, the deposit will be returned in full to the Selected Developer. Otherwise, the deposit will be put towards the \$100,000 Exclusive Negotiating Agreement deposit described in Section X.A.

All Submittals must be received by BART at the above address no later than 4:00 P.M, local time, on Monday, March 3, 2025. Material received after this time may not be accepted.

Shortlisted respondents may, at their option, submit the additional materials listed in the RFP which will be due on April 24, 2025, if they wish to apply for City of Berkeley predevelopment funding for affordable housing.

B. Submittal Confidentiality

The California Public Records Act (California Government Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless exempt from disclosure by law, materials submitted may be made available to the public.



C. Evaluation of Proposals

An Evaluation Committee ("Committee") will be created to evaluate and assess the submitted proposals. The Committee will consist of four representatives selected by BART and three representatives selected by the City, including one representing Equitable Black Berkeley. The Committee will review and score proposals in accordance with the following criteria. Following the initial written evaluation, the Committee may create a "shortlist" of the top-scoring teams.

Shortlisted teams will be invited to interview so that the Committee can further understand their proposals and responsiveness to the requirements of the RFP. Finalist team(s) will also have an opportunity to present their qualifications and experience in a public Developer Finalist Forum at which attendees will be invited to provide feedback. The Committee will score the interviews and presentations and will recommend the most qualified Respondent to BART's General Manager for recommendation to the BART Board of Directors.

Separately, the City will evaluate the Optional Predevelopment Funding Applications; if one was submitted by the recommended Respondent, the City will determine if that Respondent will be considered by City Council for an award of predevelopment funding for affordable housing.





	1		
CRITERIA			Total Possible Score
1. Quality of Development Team's Experience with Directly Relevant Projects*	A. Master Planned, Mid-Rise Development. Developer and architect have successfully completed comparable, mixed-use projects at similar scale delivering on goals similar to those articulated in the <i>Joint Vision and Priorities (JVP)</i> . For full points, team experience <u>must</u> include new construction of (1) master planned projects with multiple buildings; (2) mid-rise housing of 6+ floors; (3) public/civic space, such as plazas.		5
*References will be considered in scoring. BART may also consider past experience with team.	B. Transit-Oriented Development/Public Agency Partnerships: Developer and architect experienced with projects integrating enhanced pedestrian, bicycle, and/or transit connectivity, as well as other best practices in TOD. Experience with joint development on public land deals, Redevelopment deals, or similar work, especially ground lease deals; transit agency partnership experience will be awarded more points.		5
22.5 points C. Design. Completed projects have features such as variation in height, architectural variety, regular breaks in building form, and horizontal and vertical details that respond to the surrounding built environment, and deliver on accessibility and sustainability goals. Design tea experienced with projects reflecting a broader community vision (e.g., community advisory group, specific plan)		oond to the ty goals. Design team	5
	D. Ground Floor Activation. Completed projects exhibit neighborhood-se oriented ground floor activation which contributes positively to public space place, interest, and character to the surrounding neighborhood. Projects w complementary ground floor uses will be awarded more points. Highlight an arts/cultural elements.	e, providing a sense of rith multiple,	5
	E. Community Engagement: Demonstrated success in working in challe jurisdictions to garner support/entitlements for projects with greater density surrounding built environment. Experience leading effective community dial and programming of sites, and possible tradeoffs. Experience addressing of development impact from neighboring residents, business, and property ov	y and height than logue about design concerns related to	2.5
2. Preliminary Development Concept and Proposed Project Approach	evelopment Concept and Proposed Project		7.5
17.5	B. Approach to affordable housing. Approach meets or exceeds RFP r that 50% of the first 602 units must be affordable at the AMI levels describ points shall be awarded for greater number of affordable bedrooms, lower a level, and innovative financial models that increase affordability. Approach local funding environment.	ed in RFP. More average affordability	5
	C. Feasibility. Concept demonstrates deep understanding of financing of product type (e.g., affordable housing, market rate housing, middle income retail/services/ nonprofit space) as well as public infrastructure such as pla reflect viable approach to balancing market feasibility, financial/schedule fe goals, City goals, and BART needs.	e housing, azas. Responses	2.5
	D. Demonstration of overall innovation and creativity. Proposed app experience demonstrate developer(s)' commitment to pushing innovation in introducing new product types to a submarket (higher densities, lower park construction technologies); middle income housing (80% - 120% AMI); into civic amenities in new ways; synergistic combinations of ground floor uses incorporating new small business entities; financing innovation.	n the field: e.g. king ratios, new egrating public or	2.5



3. Capability/Fit of Development Team, Including Lender References	A. Financial Capability/Lender References. Demonstrated ability to secure funding and financing for a long term, multi-phase project, based on past projects, team members with financing capabilities. Experience with public-private partnership and federal, state and local government & transit agencies. For full points, demonstrated success meeting public infrastructure needs, and with securing external grant or other funding sources.		5
15 points	 B. Nonprofit/Community-Based Organization Participation. Development team: (i) Includes a nonprofit master developer, OR (ii) Is a partnership between a for-profit developer and one or more community-based nonprofit organizations that have experience showing accountability towards equity goals in the City of Berkeley or similar juridictions. More points will be awarded to partnerships with a nonprofit as senior partner, and with nonprofit(s) in a development role, as exhibited by JV agreement or similar. 		5
	C. Acceptance of ENA Template. Willingness to execute ENA in form provided.	n substantially the same	2
4. Roles and Responsibilities	 A. Roles. Firms identified offer strong overall qualifications for key predevelopment needs. Project manager experience is highly relevant to this Project. (i) If a team, relationship between parties is clearly defined, as exhibited by JV agreement or similar identifying the percentage ownership anticipated for each component of the project. (ii) If supportive housing is included in program, team includes service provider with demonstrated success serving the population identified (persons with disabilities, formerly homeless persons, seniors, etc). 		4
8 points	B. Small Business Participation. Small business participation correflected in Attachment 4, Project Team.	ommitment percentage as	4
5. Financial Offer	 A. Proforma. Developer has completed the required proforma, with reasonable and substantiated assumptions regarding development costs, values, internal and external financing sources, and financial returns to the developer. Developer has assumed reasonable and reliable expected sources and uses of financing for predevelopment, construction, and operations. Proforma includes market-rate developer contributions to affordable housing funding, and maximizes the amount of affordability (units and/or lower price points) given the City's contribution to affordable housing. 		5
	B. BART Financial Offer. Developer has proposed reasonable value proposed ground lease payments, including escalation factors, mar participation in cash flow above priority returns for developers/invester payments relate to BART's Financial Return Framework.	ket resets, and BART	10
20 Points	C. Performance Guarantees. Developer has a reasonable approach to determining project performance milestones and guarantees, including lease option payments and phase-by-phase and total project delivery requirements and/or conceptual default/cure provisions.		5
Written Submittal Tota			80
Developer Candidate F	Forum: 8 points		
Ability to represent development and BART in a public setting, as demonstrated by the communication skills of the presenters and feedback received from members of the public in attendance.		8	
Interview: 12 points 1. CONTENT			
Team's understanding of the issues and ability to balance needs of multiple stakeholders and deliver a viable project.		5	
 capability to address th the investment and com ability to think strategic (if more than one development 	y-to-day project managers demonstrate: e critical issues facing this site; mitment to delivering a successful development; ally and creatively about issues; opment partner proposed) the collaborative nature sitive working relationship with City and BART.		4
3. PRESENTATION Ability to represent develops by the communication sk	opment and BART in a public setting, as demonstrated kills of the presenters.		3
Interview Total			12
Cumulative Total P	Points		100
	UIIIG		<u>100</u>

RFP & NOFA: ASHBY BART WEST LOT TRANSIT-ORIENTED DEVELOPMENT



D. Rights of BART

This RFP does not obligate BART to select a development team for the Property, nor does it commit BART to enter into an Exclusive Negotiating Agreement. Costs incurred in preparation and submittal of responses are the sole responsibility of the proposers.

BART may require additional evidence of qualifications to perform the services described in this RFP.

BART reserves the right to, in its sole discretion:

- 1. Reject any or all proposals or advertise for new proposals.
- 2. Modify the RFP process including, but not limited to, modifying the timeline set forth in Section XI Schedule of Activities (with appropriate notice to respondents).
- 3. Postpone interviews or the evaluation process.
- 4. Remedy technical errors in this RFP.
- 5. Approve or disapprove of the use of particular partners/subcontractors.
- 6. Waive weaknesses, informalities and minor irregularities in proposals, permit corrections, and seek and receive clarifications to a proposal.
- 7. Conduct interviews at its discretion or bypass oral interview phase.
- 8. Hold meetings, conduct discussions, and communicate with the teams responding to this RFP to seek an improved understanding and evaluation of the responses.
- 9. Negotiate with any, all, or none of the respondents.

E. Rights of the City

This RFP does not obligate the City to approve an award of predevelopment or development funding for affordable housing, nor does it constrain the City's discretion under applicable laws to approve, disapprove, or condition any development application or other request for City approval, or to adopt land use or other regulations that may affect the Project.

This RFP does not create any contractual or property right as against the City in the Selected Developer or any team responding to the RFP. Respondents are solely responsible for the costs of submitting Proposals or otherwise responding to this RFP, and understand that this RFP does not guarantee that a Respondent will be selected, that funding will be awarded, or that a proposed Project will be approved.

The City reserves the right, in its sole discretion, to modify the process for awarding funding, adopting design standards, or taking other actions reserved by law to the City's discretion. The City may request additional information from the Selected Developer as the City may deem necessary or appropriate to its consideration of providing project funding, and may impose additional conditions on any such funding in its sole discretion. Selected Developer understands and agrees that the project requirements set forth in this RFP exceed the minimum requirements for development under applicable law, and that the City, in consideration for providing project funding, may require the Selected Developer to waive or limit rights or remedies it may have as against the City as they relate to development of the Property.



X. PREDEVELOPMENT COSTS

There are certain predevelopment costs that are associated with the Project. In addition to the proposal deposit referred to in Section IX.A, they are as follows:

A. Exclusive Negotiating Agreement (ENA) Deposit

The ENA provides the Selected Developer an initial period during which it may exclusively negotiate the terms of the development with BART. Throughout the joint development effort between BART and the Selected Developer, the Selected Developer will be asked to fund BART's Ashby BART Transit-Oriented Development working account for the purposes of covering BART staff time, direct costs, and outside consultant expenses, including design and engineering review, community outreach, term sheet negotiation, drafting and negotiation of option agreements and leases, and outside counsel expenses connected with the foregoing.

BART will provide an estimated budget for expenses associated with the ENA term. The developer will be expected to fully cover BART expenses related to the West Lot Project, for the purposes described in the preceding paragraph. The actual expenses incurred, and payable to BART, may vary from the estimated budget.

To fund this account, BART will require the Selected Developer to take the following actions:

- The initial Twenty-Five Thousand Dollar (\$25,000) deposit provided upon submittal of the proposal from the Selected Developer will be deposited by BART upon selection of developer by the BART Board of Directors.
- Upon execution of the ENA the Selected Developer must make an additional deposit by submitting a check to BART totaling Seventy-Five Thousand Dollars (\$75,000), for a total ENA deposit of One Hundred Thousand Dollars (\$100,000).
- The Selected Developer must make all checks payable to the San Francisco Bay Area Rapid Transit District with the following note in the memo: "Ashby BART Station ENA Deposit".

The above-mentioned deposit will be placed in an account controlled by BART to fund BART's predevelopment expenditures associated with the Project, as described above.

When the project account is depleted below \$25,000 due to project-related expenses, the Selected Developer will be obligated to deposit additional money into this account to assure sufficient funding for BART predevelopment and construction expenditures for the Project.

B. Station Access Plan

The Selected Developer will be required to fund an Access Plan that will be managed by BART and prepared by one of BART's on-call consultants, addressing issues described in Section IV.A.4 of this RFP. The estimated cost of the Access Plan is \$150,000 - \$175,000. The Selected Developer will be required to reimburse BART for its full cost regardless of whether it is within this range. The first phase of the Access Plan must be completed prior to submittal of a development proposal to the City.



XI. SCHEDULE OF ACTIVITIES

The timeline on page 2 and the information below is provided for Respondents' scheduling information, but is subject to change at the discretion of BART and the City.

A. RFP Timeline

EVENT	DATE
RFP Issuance	December 3, 2024
Respondent Registration Deadline (optional)	December 16, 2024, noon
Pre-Submittal Conference & Networking Session (optional)	December 17, 2024, 9:30am
Final Questions & Requests for Clarification Due	January 9, 2025
BART Response to RFP Questions/Clarifications	January 27, 2025
Proposals Due	March 3, 2025, 4:00pm
Shortlist Announced	March 14, 2025
Interviews	March 21-24, 2025
Predevelopment Funding Requests Due to City (optional)	April 24, 2025
Developer Finalist Presentations (approximate)	April 17, 2025
BART Board Considers Authorization to Enter into	
Exclusive Negotiating Agreement	May 22, 2025

B. Optional Registration for RFP

Registration is for parties interested in responding to the RFP. Interested parties are not required to register in order to respond. However, in order to submit questions about this RFP, access the Pre-Submittal Conference described in the next section, and receive other information regarding this opportunity, developers and potential Respondent team members must submit a completed RFP Registration Form at <u>https://bit.ly/3AOdYAF</u> by December 16 at noon.

C. Pre-Submittal Conference and Networking Session

An optional Pre-Submittal Conference will be held in person on Tuesday, December 17 from 9:30am-11:00am in the BART Board Room on the ground floor of 2150 Webster Street in Oakland (nearest BART station: 19th Street/Oakland). This time and location are subject to change; please confirm them on the project website at the URL stated on page 2.

The Pre-Submittal Conference will offer potential Respondents the chance to ask clarifying questions following a brief presentation. Responses to questions from registered potential Respondent team members will be included in a response document for distribution. The Pre-Submittal Conference will be recorded and the recording will be available online approximately 10 business days after the event.

Immediately following the Pre-Submittal Conference, the District's Office of Civil Rights ("OCR") will facilitate a Networking Session for subconsultants to meet with potential Respondents for participation opportunities. Mr. Fei Liu from OCR is the point of contact for this effort. Developers who would like to set up a designated table to represent their firm as a potential prime during the



Networking Session are advised to contact Mr. Fei Liu at <u>fliu@bart.gov</u> no later than December 10 and confirm your firm's presence at the Networking Session.

D. Submittal of Questions and Requests for Clarification

Registered parties should submit their questions or requests for clarification regarding this solicitation in writing, emailed to Ms. Shannon Dodge at <u>sdodge@bart.gov</u> using the subject header "Ashby RFP Questions." All questions must be received by the date stated in the RFP Timeline, above, in order to ensure their timely response well in advance of the RFP deadline. Responses to questions from registered potential Respondent team members will be included in a response document for distribution.



XII. GLOSSARY OF ACRONYMS

Note: Many of the documents listed below are hyperlinked in the body of the RFP.

	Spelled out	Notes
AB	Assembly Bill	California law passed by the state's assembly
AC Transit	Alameda-Contra Costa Transit District	Primary public bus operator around the Ashby BART Station
ADA	Americans with Disabilities Act	
AMI	Area Median Income	
BART	San Francisco Bay Area Rapid Transit District	
BECCAP	Berkeley–El Cerrito Corridor Access Plan	BART study identifying strategies to improve rider access to BART along the Red/Orange Line after TOD is built on surface parking lots at El Cerrito Plaza, North Berkeley, and Ashby BART Stations.
BMC	Berkeley Municipal Code	
BMR	Below Market Rate	
CAG	Community Advisory Group	City of Berkeley convened in 2020-2021 to provide input into zoning for BART's property at the North Berkeley and Ashby Stations, as well as into the JVP.
Caltrans	California Department of Transportation	Owns Ashby Avenue-State Route 13 adjacent to the Ashby BART Station
CFD	Community Facilities District	
City Counci	Berkeley City Council	
District	San Francisco Bay Area Rapid Transit District	
EIFD	Enhanced Infrastructure Financing District	
EIR	Environmental Impact Report	
ELI	Extremely Low Income	
ENA	Exclusive Negotiating Agreement	
FDP	Final Development Plan	
HBF	Healthy Black Families, Inc.	Community non-profit organization working on the Equitable Black Berkeley initiative
HTF	Housing Trust Fund	City of Berkeley affordable housing funding resource
IRR	Internal Rate of Return	
JV	Joint Venture	
JVP	Joint Vision and Priorities	The Joint Vision and Priorities for Transit-Oriented Development for Ashby and North Berkeley Stations is a document developed with input from the CAG and adopted by Berkeley City Council and BART's board of directors in June 2022
MADG	Multimodal Access Design Guidelines	BART's 2016 design guidelines for rider access to stations by all modes
MLK Jr Way	Martin Luther King Jr. Way	
MOA	Memorandum of Agreement	Executed by Berkeley and BART June 2022
MOU	Memorandum of Understanding	Executed by Berkeley and BART March 2020
MS	Microsoft	



MS4	Municipal Separate Storm Sewer Systems	Regulated by the State Water Resources Control Board
NOFA	Notice of Funding Availability	
OCR	Office of Civil Rights	BART office responsible for ensuring equitable treatment of those doing business with BART, among other roles.
ODS	Objective Design Standards	City of Berkeley is leading development of standards that enable ministerial review of development projects
PDP	Preliminary Development Plan	
PROWAG	Public Right of Way Accessibility Guidelines	
PSA	Project Stabilization Agreement	
R-BMU	Residential-BART Mixed Use	Land use zoning applied to the North Berkeley and Ashby BART Stations
RFP	Request for Proposals	
RPP	Residential Parking Permit	
SB	Senate Bill	California law passed by the state's senate
SLA	Surplus Land Act	Found in California's AB 1486 (Statutes of 2019, Chapter 664) and AB 1255 (Statutes of 2019, Chapter 661)
TCAC	Tax Credit Allocation Committee	
TDM	Travel Demand Management	Also known as Transportation Demand Management
TOD	Transit-Oriented Development	
TPSS	Traction Power Substation	Infrastructure that powers BART trains
VTA	Valley Transportation Authority	Operates in Santa Clara County
ZAB	Zoning Adjustment Board	A City of Berkeley appointed body
ZOI	Zone of Influence	Area designated to prevent any construction- or excavation-related impacts on existing BART facilities



List of Attachments

- 1. Form of Exchange Agreement
- 2. BART Basis of Design Criteria
- 3. Circulation Framework
- 4. City-BART Memorandum of Agreement re North Berkeley and Ashby Transit-Oriented Developments (2022)
- 5. Adeline Connections Memo
- 6. Project Team Small Business Participation
- 7. Qualifying Project Form
- 8. Form of Exclusive Negotiating Agreement (ENA)
- 9. Workbook
 - a. Summary Template
 - b. Proforma
 - c. Financial Offer
 - d. Financial Return Framework Template
- 10. Mitigation Monitoring and Reporting Program



Attachment 1

Form of Exchange Agreement

ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT

This ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT (the "Agreement") is entered into as of [INSERT], 2024 (the "Effective Date"), by and between the City of Berkeley ("City"), a California charter city, and the San Francisco Bay Area Rapid Transit District ("BART"), a California rapid transit district. Each party to this Agreement may be referred to herein as a "Party" and collectively, referenced to herein as the "Parties."

RECITALS

A. The Parties share a desire to transform the current surface parking lots at the Ashby BART station into 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 City and BART each have an interest in having this area developed with high density use to maximize the amount of new housing and to enhance transit ridership.

B. In 2020, the Parties entered into a memorandum of understanding ("**MOU**") to identify their shared vision and priorities for transit-oriented development 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 adopt zoning for the sites consistent with Assembly Bill 2923 (California Public Utilities Code sections 29010.1 et seq.) ("**AB 2923**").

C. 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.

D. 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.

E. On June 2, 2022, the Berkeley City Council approved the Joint Vision & Priorities for Transit-Oriented Development for Ashby and North Berkeley BART Stations ("**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.

F. 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.

G. On June 30, 2022, the City and BART entered into a Memorandum of Agreement ("**MOA**") amending and expanding upon the MOU.

H. 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.

I. On December 7, 2023, the BART Board of Directors authorized BART staff to complete negotiations on a nonbinding Term Sheet for Ashby BART Transit-Oriented Development ("Term Sheet") and to enter into an agreement effectuating the Term Sheet.

J. On September 16, 2024, the Berkeley City Council approved the nonbinding Term Sheet For Ashby BART Transit-Oriented Development setting forth the principal business and legal terms on which BART and the City will negotiate an Exchange Agreement and related documents necessary to provide for the relinquishment of the City's option to purchase air rights over the West Lot (as defined) in exchange for the City's fee simple ownership of the East Lot (as defined), 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 therein.

K. This Exchange Agreement is intended to be a binding agreement that supersedes the MOU, MOA, and the Term Sheet as they relate to transit-oriented development at the Ashby BART Station.

L. The Parties acknowledge that there are other contractual relationships between the Parties, and such contractual relationships are not modified by this Agreement to the extent that they do not relate to or impact transit-oriented development at the Ashby BART Station, or unless explicitly done herein.

M. After a duly noticed public hearing held on _____, and a second reading on _____, the City Council of the City of Berkeley adopted Ordinance No. ______ approving this Agreement, and authorizing the acquisition of the East Lot, the disposition of the Air Rights Option, and the other actions required pursuant to this Agreement (the "**City Authorizing Ordinance**").

Now, therefore in consideration of the foregoing and other consideration, the sufficiency of which is hereby agreed to, the Parties agree as follows:

ARTICLE 1. DEFINITIONS; EXCHANGE; QUITCLAIM; ESCROW

1.1. <u>General Definitions.</u>

1.1.1. <u>West Lot</u>. "**West Lot**" means that real property designated as Alameda County Assessor Parcel Number 053-1597-039-04, and that unassessed approximately 900-footlong strip of land abutting the existing Adeline Street sidewalk shown as Parcel R9-2 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, the legal description of which is in <u>Schedule</u> <u>1.1.1</u>.

1.1.2. <u>East Lot</u>. "**East Lot**" means that real property designated as Alameda County Assessor Parcel Number 053-1703-009, the legal description of which is in <u>Schedule 1.1.2</u>.

1.1.3. <u>West Lot Close Of Escrow</u>. "**West Lot Close Of Escrow**" is defined in Article 4.1.

1.1.4. <u>East Lot Close Of Escrow</u>. "**East Lot Close Of Escrow**" is defined in Article 4.2.

1.1.5. <u>Air Rights Option</u>. "**Air Rights Option**" means the City's option to purchase air rights over the West Lot pursuant to an unrecorded agreement dated as of October 22, 1964, as amended, between BART and the City.

1.1.6. <u>Flea Market Permit</u>. "**Flea Market Permit**" means Permit No. R10-0423 between BART and Community Services United to operate or provide for the operation of the Berkeley Flea Market upon BART property at the Ashby BART station.

1.1.7. <u>Area Median Income</u>. "**Area Median Income**" or "**AMI**" means the "Median Income" for the "Alameda County Area" as set forth in the regulations of the California Department of Housing and Community Development promulgated at Section 6932 of Title 25 of the California Code of Regulations (as may be amended from time to time, "**Section 6932**").

1.1.8. <u>Extremely Low Income Households</u>. "**Extremely Low Income Households**" means households earning no more than the "Extremely Low" limits by household size for the "Alameda County Area" as set forth in Section 6932.

1.1.9. <u>Very Low Income Households</u>. "**Very Low Income Households**" means households earning no more than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households, as set forth in Section 6932.

1.1.10. <u>Low Income Households</u>. "**Low Income Households**" means households earning no more than the "Low Income" limits by household size for the "Alameda County Area" but more than Very Low Income Households, as set forth in Section 6932.

1.1.11. <u>Moderate Income Households</u>. "**Moderate Income Households**" means households earning no more than the "Moderate Income" limits by household size for the "Alameda County Area" but more than Low Income Households, as set forth in Section 6932.

1.1.12. <u>Affordable Housing</u>. "**Affordable Housing**" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. Affordable Housing also includes housing subject to enforceable legal conditions restricting its availability for lease or sale to Moderate Income Households, except that no City funds may be used for Moderate Income units, and any Moderate Income units must have rents that are below market.

1.1.13. <u>TOD</u>. "**TOD**" means transit-oriented development.

1.1.14. <u>EIFD</u>. "**EIFD**" means Enhanced Infrastructure Financing District pursuant to Chapter 2.99 of Part 1 of Division 2 of Title 5 of the Government Code.

1.1.15. <u>CFD</u>. **"CFD**" means a Community Facilities District pursuant to Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code.

1.1.16. <u>Ground Lease</u>. "**Ground Lease**" means a long-term lease between City or BART, on the one hand, and a developer of the East Lot or West Lot, respectively, on the other, pursuant to which the developer will own all or most of the improvements on the land for the term of the lease.

1.1.17. <u>Ground Lease Option</u>. "**Ground Lease Option**" means an agreement between City or BART, on the one hand, and a developer of the East Lot or West Lot, respectively, on the other, pursuant to which the developer has one or more options to enter into one or more Ground Leases on the applicable parcel.

1.1.18. <u>Ground Lease Agreements</u>. "**Ground Lease Agreements**" means the Ground Lease Option and the related Ground Lease(s), collectively, which, taken together, establish the rights and responsibilities of the City or BART, on the one hand, and a developer of the East Lot or West Lot, on the other, in furtherance of an overall development project on the East Lot or West Lot, as applicable.

1.1.19. <u>Parcel R9-2</u>. "**Parcel R9-2**" means the unassessed approximately 900-foot-long strip of land abutting the existing Adeline Street sidewalk shown as Parcel R9-2 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.

1.1.20. Reciprocal Easement Agreement. "**Reciprocal Easement Agreement**" means the agreement executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

1.2. <u>Real Property Exchange</u>. Subject to the terms and conditions hereinafter set forth, BART agrees to grant to City the East Lot and City agrees to quitclaim to BART the Air Rights Option and to quitclaim to BART any rights, title, and interest it may have in Parcel R9-2, subject to a reserved utilities easement.

1.3. <u>Escrow</u>.

1.3.1. <u>Opening Escrow</u>. No later than two (2) business days after the Effective Date, the parties shall submit this Agreement to the Old Republic Title Company (the "**Escrow Holder**"), having its office at the address set forth under Article 14.2. Upon receipt of a fully executed copy of this Agreement, Escrow Holder shall open an escrow account ("**Escrow**") pursuant hereto and deliver the Acknowledgement of Escrow Holder to the parties.

1.3.2. <u>Escrow Instructions</u>. This Agreement shall constitute the initial instructions for the Escrow; provided, however, that each party may provide closing or other instructions for the Escrow that do not conflict with this Agreement. The parties shall, on demand, execute those additional escrow instructions consistent with this Agreement and deposit with the Escrow Holder all instruments and funds as may be necessary and appropriate to close the transactions in accordance with this Agreement. In case of any conflict between them, this Agreement will supersede the Escrow Holder's form of general instructions or general provisions for the Escrow to the extent of such conflict.

ARTICLE 2. PROPERTY DOCUMENTS; TITLE; NHDA DISCLOSURE

Preliminary Report. The Parties acknowledge receipt of preliminary title reports 2.1. for the East Lot and for a portion of the West Lot, dated March 27, 2024, prepared by Escrow Holder and attached hereto as Schedule 2.1(a) and Schedule 2.1(b), respectively, (the "2024 PTRs"), which 2024 PTRs include hyperlinks to the recorded documents related to the title exceptions listed in such 2024 PTRs. City hereby approves of all of the title exceptions and matters referenced in the 2024 PTRs. City shall obtain updated Preliminary Reports from Escrow Holder ("Updated Reports") during the period prior to the effectiveness of the City Authorizing Ordinance and BART Authorizing Resolution. The Updated Reports will be attached as <u>Schedule 2.1(c)</u> and <u>Schedule 2.1(d)</u> upon City's execution of the Agreement. If City objects to any title exceptions that are included in the Updated Reports that are not included in the 2024 PTRs (individually, "Objectionable Additional Exception" and collectively, "Objectionable Additional Exceptions"), (a) City shall provide BART with written notice of such objection by the time of BART's execution of this Agreement and (b) BART, in BART's sole and absolute discretion, shall have until the date that is three (3) business days prior to the West Lot Close Of Escrow or the East Lot Close Of Escrow, respectively, to cause Escrow Holder to issue an update to the Updated Reports that removes such Objectionable Additional Exception. BART shall not cause or consent to any additional title encumbrances on the East Lot or West Lot between the Effective Date and the West Lot Close Of Escrow or the East Lot Close Of Escrow, respectively.

2.2. <u>Title Insurance</u>. The parties acknowledge that City may desire to obtain at the East Lot Close of Escrow (a) a title insurance policy covering the East Lot (the "**Title Policy**")

and (b) a number of endorsements to the Title Policy (collectively, "**Endorsements**"). The parties agree that (1) the issuance of the Title Policy or any Endorsements shall not be a condition precedent to the Close of Escrow, (2) in no event shall BART be obligated to provide any indemnity or other documents to permit City to obtain such Title Policy or Endorsements, (3) in no event shall either the East Lot Close Of Escrow or the West Lot Close Of Escrow be extended to permit City to obtain such Title Policy or Endorsements, and (4) City shall be solely responsible for the delivery of any documents and payment of any premiums required by the Escrow Holder as a condition to the issuance of the Title Policy or Endorsements.

2.3. <u>Disclosures Regarding Community Facilities Districts</u>. Both the East Lot and the West Lot are within the boundaries of the California Home Finance Community Facilities District No. 2014-1 and are each subject to special assessments to fund Community Facilities District No. A/C-3 for the East Bay Regional Parks District ("**Districts**"). The Parties each hereby acknowledge the prior receipt of the Notices of Special Tax related to each of the Districts. By the East Lot Close Of Escrow and West Lot Close Of Escrow, the Parties shall have investigated and evaluated those matters considered relevant and important concerning the Districts and will understand the potential financial, title, and other legal impacts of the Districts.

Natural Hazard Disclosure Act. Each party acknowledges that BART, by the East 2.4. Lot Close Of Escrow, is required to disclose if the East Lot lies within the following natural hazard areas or zones: (a) a special flood hazard area (any type Zone "A" or "V") designated by the Federal Emergency Management Agency (Cal. Gov. Code § 8589.3); (b) an area of potential flooding shown on a dam failure inundation map designated pursuant to Cal. Gov. Code § 8589.5 (Cal. Gov. Code § 8589.4); (c) a very high fire hazard severity zone designated pursuant to Cal. Gov. Code § 51178 or 51179 (in which event the owner maintenance obligations of Cal. Gov. Code § 51182 would apply) (Cal. Gov. Code § 51183.5); (d) a wildland area that may contain substantial forest fire risks and hazards designated pursuant to Cal. Pub. Resources Code § 4125 (in which event [i] the property owner would be subject to the maintenance requirements of Cal. Pub. Resources Code § 4291 and [ii] it would not be the state's responsibility to provide fire protection services to any building or structure located within the wildland area except, if applicable, pursuant to Cal. Pub. Resources Code § 4129 or pursuant to a cooperative agreement with a local agency for those purposes pursuant to Cal. Pub. Resources Code § 4142) (Pub. Resources Code § 4136); (e) an earthquake fault zone (Pub. Resources Code § 2621.9); or (f) a seismic hazard zone (and, if applicable, whether a landslide zone or liquefaction zone) (Pub. Resources Code § 2694). THESE HAZARDS MAY LIMIT CITY'S ABILITY TO DEVELOP THE EAST LOT, TO OBTAIN INSURANCE, OR TO RECEIVE ASSISTANCE AFTER A DISASTER. THE MAPS ON WHICH THESE DISCLOSURES ARE BASED ESTIMATE WHERE NATURAL HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT THE PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. CITY MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING THOSE HAZARDS AND OTHER HAZARDS THAT MAY AFFECT THE PROPERTY.

ARTICLE 3. CONDITIONS PRECEDENT TO CLOSING

3.1. <u>City Conditions Precedent to Close of Escrow</u>. The obligation of City to quitclaim the Air Rights Option to BART shall be subject to the fulfillment on or before the

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West Lot Close Of Escrow of all of the following conditions, except to the extent waived by the City in its sole and absolute discretion:

3.1.1. <u>BART Escrow Deposits</u>. BART has deposited the West Lot Covenants, East Lot Deed and all other required documents into escrow in accordance with this Agreement.

3.1.2. <u>Condition of Title.</u> BART has caused Escrow Holder to issue an update to the Updated Report that removes all Objectionable Additional Exceptions as of the date that is three (3) business days prior to the West Lot Close Of Escrow and there has otherwise been no material change in the condition of title for the East Lot.

3.1.3. <u>Physical Condition</u>. There has been no material change in the physical condition of the East Lot as of the date of the West Lot Close Of Escrow.

3.1.4. <u>Covenants</u>. BART has performed and observed, in all material respects, all covenants and agreements of this Agreement that are to be performed and observed by BART as of the West Lot Close Of Escrow.

3.2. <u>BART Conditions Precedent to Close of Escrow</u>. The obligation of BART to grant the East Lot to City shall be subject to the fulfillment on or before the West Lot Close Of Escrow of all of the following conditions, except to the extent waived by BART in its sole and absolute discretion:

3.2.1. <u>No New Zoning Restrictions</u>. The zoning for the West Lot has not been modified or changed since September 17, 2024, to be more restrictive or to reduce the development capacity of the West Lot.

3.2.2. <u>City Escrow Deposits.</u> City has deposited the East Lot Covenants, the Air Rights Quitclaim, the Parcel R9-2 Quitclaim Deed and all other required documents into escrow in accordance with this Agreement.

3.2.3. <u>Covenants</u>. City has performed and observed, in all material respects, all covenants and agreements of this Agreement that are to be performed and observed by City as of the West Lot Close Of Escrow.

3.3. <u>Mutual Conditions Precedent to Close of Escrow</u>. The obligation of either City or BART to close escrow shall be subject to the fulfillment on or before the West Lot Close Of Escrow of all of the following conditions, except to the extent waived by City or BART as to their respective obligations to close, each in its sole and absolute discretion:

3.3.1. <u>West Lot Exclusive Negotiating Agreement</u>. BART has entered into an Exclusive Negotiating Agreement with a master developer for development of the West Lot consistent with this Agreement.

3.3.2. <u>No Legal Actions</u>. There shall be no legal actions challenging the City Authorizing Ordinance or BART Authorizing Resolution.

3.3.3. <u>No Referendum</u>. The City shall not have received a petition to referendum the City Authorizing Ordinance pursuant to California Elections Code Division 9, Sections 9235 through 9247.

3.3.4. <u>Covenants</u>. BART has performed and observed, in all material respects, all covenants and agreements of this Agreement that are to be performed and observed by BART.

3.3.5. <u>Title</u>. East Lot shall be free and clear of any reserved rights of BART, including any easement for mid-block pedestrian passage, or any title encumbrances that would obviate East Lot ability to provide future residential development per Section 10.1 of the Agreement.

ARTICLE 4.

CLOSINGS

4.1. <u>West Lot Close Of Escrow Time and Place</u>. Subject to the prior satisfaction or waiver of the conditions precedent set forth in Articles 3.1, 3.2 and 3.3, the closing of the West Lot transaction ("**West Lot Close Of Escrow**") shall be held at the offices of Escrow Holder at the address described in Article 14.2 and shall occur within 10 days after a West Lot Exclusive Negotiating Agreement is executed that complies with Article 5.1 or at such other date as the Parties may mutually agree (the "**West Lot Closing Date**"). The West Lot Closing Date shall not occur sooner than six months after the Effective Date unless the City consents thereto.

4.2. <u>East Lot Close Of Escrow Time and Place</u>. Subject to the prior satisfaction or waiver of the conditions precedent set forth in Articles 3.1, 3.2, and 3.3, the closing of the East Lot transaction ("**East Lot Close Of Escrow**") shall be held at the offices of Escrow Holder at the address described in Article 14.2 and shall occur on the West Lot Closing Date or at such later date as may be specified in writing by the City (the "**East Lot Closing Date**"), provided that at least 45 days' prior written notice is given to BART. The East Lot Closing Date shall not occur sooner than six months after the Effective Date unless the City consents thereto.

4.3. <u>City's Obligations at or Prior to West Lot Close Of Escrow</u>. City shall deliver the following to Escrow Holder at least one (1) business day prior to the West Lot Closing Date:

4.3.1. a duly executed and notarized original quitclaim deed conveying the Air Rights Option to BART in the form substantially similar to <u>Schedule 4.3.1</u> (the "Air Rights Quitclaim Deed");

4.3.2. a duly executed and notarized original quitclaim deed quitclaiming to BART any rights, title and interest in Parcel R9-2 in the form substantially similar to <u>Schedule</u> <u>4.3.2</u> (the "**Parcel R9-2 Quitclaim Deed**");

4.3.3. a duly executed and notarized original signature page on the covenants and restrictions on the East Lot attached as <u>Schedule 4.3.3</u> ("**East Lot Covenants**");

4.3.4. a duly executed and notarized original signature page on the covenants and restrictions on the West Lot attached as <u>Schedule 4.3.4</u> ("**West Lot Covenants**");

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4.3.5. a fully executed original City Authorizing Ordinance;

4.3.6. a duly executed certificate of acceptance for the East Lot Deed;

4.3.7. such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of City;

4.3.8. an executed closing statement reasonably acceptable to City; and

4.3.9. such other documents or affidavits as may be customarily and reasonably required by the Escrow Holder.

4.4. <u>BART's Obligations at or Prior to West Lot Close Of Escrow</u>. BART shall deliver the following to Escrow Holder at least one (1) business day prior to the West Lot Closing Date:

4.4.1. a duly executed and notarized original signature page on the East Lot Covenants;

4.4.2. a duly executed and notarized original signature page on West Lot Covenants;

4.4.3. a duly executed and notarized original grant deed conveying the East Lot to City in the form substantially similar to <u>Schedule 4.4.4</u> (the "**East Lot Deed**");

4.4.4. a duly executed certificate of acceptance for the Air Rights Quitclaim

4.4.5. such evidence as the Escrow Holder may reasonably require as to the authority of the person or persons executing documents on behalf of BART;

4.4.6. an executed closing statement reasonably acceptable to BART; and

4.4.7. such other documents or affidavits as may be customarily and reasonably required by the Escrow Holder.

4.5. <u>East Lot Credits and Prorations</u>.

4.5.1. <u>Items to be Prorated</u>. All (a) expenses, real property taxes, bonds and assessments affecting the East Lot, and (b) utility service charges for the East Lot shall be apportioned as of 12:01 a.m., on the East Lot Closing Date as if City were vested with title to the East Lot during the entire day upon which the East Lot Closing Date occurs.

4.5.2. <u>Basis of Proration</u>. BART shall be charged at the East Lot Close Of Escrow an amount equal to that portion of the proration items which relate to the period before the East Lot Closing Date and City shall be charged at the East Lot Close Of Escrow an amount equal to that portion of the proration items which relate to the period after the East Lot Closing

Deed:

Date, each on a basis of, as applicable, a thirty (30) day month or a three hundred and sixty (360) day year.

4.5.3. <u>Initial Use of Estimates; True Up Based on Final Amounts</u>. Any expense amount which cannot be ascertained with certainty as of the East Lot Close Of Escrow shall be prorated on the basis of the parties' reasonable estimates of such amount. Once the previously estimated amounts have been finalized, the parties shall prorate these new amounts pursuant to this Agreement and each party shall pay any amount due to a third party within ten (10) business days after receipt of the final amount. If either party has overpaid an amount based on the prior estimate, the other party shall reimburse the overpaying party within ten (10) business days after receipt of the final amount.

4.6. <u>Transaction Taxes and Closing Costs</u>.

4.6.1. <u>Counsel fees</u>. Each Party shall pay the fees of its counsel in connection with this transaction.

4.6.2. <u>Closing Funds</u>. The Parties shall pay Escrow Holder closing funds ("**Closing Funds**") as follows:

A. <u>BART Costs For West Lot Close Of Escrow</u>. BART shall pay the following costs and expenses for the West Lot Close Of Escrow (the "**BART West Lot Charges**"): (a) One hundred percent (100%) of the documentary/real property transfer tax or similar tax/fee charged by the County of Alameda or City of Berkeley related to the transfer of the Air Rights Option from City to BART, if any; (b) 50% of the fee charged by Escrow Holder; (c) the recording fees for the Parcel R9-2 Quitclaim Deed; (d) surveyor costs to prepare a metes-and-bounds legal description of Parcel R9-2; and (e) the recording fees for the Air Rights Quitclaim Deed, the West Lot Covenants, and any other documents recorded by or on behalf of BART.

B. <u>City Costs For West Lot Close Of Escrow</u>. City shall pay 50% of the fee charged by Escrow Holder for the East Lot Close Of Escrow (the "**City West Lot Charges**").

C. <u>City Costs For East Lot Close Of Escrow</u>. City shall pay the following costs and expenses for the East Lot Close Of Escrow (the "**City East Lot Charges**"): (a) One hundred percent (100%) of the documentary/real property transfer tax or similar tax/fee charged by the County of Alameda or City of Berkeley related to the transfer of the East Lot from BART to City, if any; (b) 50% of the fee charged by Escrow Holder; (c) any premiums for the Title Policy or any Buyer's Endorsements requested by City; and (d) the recording fees for the East Lot Covenants, and any other documents recorded by or on behalf of City.

D. <u>BART Costs For East Lot Close Of Escrow</u>. BART shall pay 50% of the fee charged by Escrow Holder for the East Lot Close Of Escrow (the "**BART East Lot Charges**").

4.6.3. <u>Miscellaneous Costs</u>. All costs and expenses incident to this transaction and the East Lot Close Of Escrow and West Lot Close Of Escrow, and not specifically described above, shall be apportioned per the custom of the County.

4.7. <u>West Lot Close Of Escrow Procedures</u>. When all items required by Articles 4.3 and 4.4 have been timely deposited with Escrow Holder, and Escrow Holder has been notified by both Parties that all of the applicable conditions precedent in Article 3 have been either satisfied or waived, Escrow Holder shall effect the West Lot Close Of Escrow as follows:

4.7.1. Attach the BART certificate of acceptance to the Parcel R9-2 Quitclaim Deed, and the Air Rights Quitclaim Deed and record the Parcel R9-2 Quitclaim Deed, the Air Rights Quitclaim Deed, and the City Authorizing Ordinance in the Official Records of Alameda County;

4.7.2. Record the West Lot Covenants in the Official Records of Alameda County;

4.7.3. Pro rate taxes, assessments and other charges pursuant to Article 4.8 and pay the applicable charges from the Closing Funds;

4.7.4. Pay the City West Lot Charges from the Closing Funds;

4.7.5. Deliver to BART and City conformed copies of the Air Rights Quitclaim Deed and West Lot Covenants.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, then, prior to the West Lot Close Of Escrow, Escrow Holder shall notify BART and City and retain all funds and documents pending receipt of further instructions jointly issued by BART and City.

4.8. <u>East Lot Close Of Escrow Procedures</u>. When all items required by Articles 4.3 and 4.4 have been timely deposited with Escrow Holder, Escrow Holder has been notified by both Parties that all of the applicable conditions precedent in Article 3 have been either satisfied or waived, and the City has given notice of the East Lot Closing Date, Escrow Holder shall effect the East Lot Close Of Escrow as follows:

4.8.1. Attach the City certificate of acceptance to the East Lot Deed and record the East Lot Deed in the Official Records of Alameda County;

4.8.2. Record the East Lot Covenants in the Official Records of Alameda County;

4.8.3. Pro rate taxes, assessments and other charges pursuant to Article 4.8 and pay the applicable charges from the Closing Funds;

4.8.4. Pay the City East Lot Charges from the Closing Funds;

4.8.5. Deliver to City and BART conformed copies of the East Lot Deed and East Lot Covenants.

If Escrow Holder is unable to simultaneously perform all of the instructions set forth above, then, prior to the East Lot Close Of Escrow, Escrow Holder shall notify City and BART and retain all funds and documents pending receipt of further instructions jointly issued by City and BART.

ARTICLE 5. DEVELOPER SOLICITATION

5.1. <u>General</u>. BART shall pursue a separate solicitation for development of the West Lot and City shall pursue a separate solicitation for development of the East Lot, in accordance with this Article. These solicitations shall conform to applicable requirements, if any, of the Surplus Land Act (Government Code §§ 54220 et seq.). BART and City shall each conduct a solicitation whereby a Request For Proposals ("**RFP**") or Request For Qualifications and Proposals ("**RFQ/RFP**") 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 requirements of this Agreement and the specific goals outlined in the JVP and the developer solicitation document or documents. It is expected that successful respondents to the RFPs or RFQ/RFPs would enter into an Exclusive Negotiating Agreement ("**ENA**") with BART for the negotiation of a Ground Lease Option granting one or more options for one or more Ground Leases or contract of sale (or some combination thereof) on the East Lot, respectively.

5.2. <u>Schedule</u>. Both the City and BART shall take every feasible action to ensure that their respective milestone targets included in Schedule 5.2 ("**Schedule**") are achieved and sufficient staff is dedicated by both BART and the City to meet the Schedule.

5.3. <u>East Lot RFP or RFQ/RFP</u>. The RFP or RFQ/RFP for the East Lot shall additionally include, without limitation: (a) 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"; and (iii) the requirement that the project include at least 300 bedrooms; (b) the applicable minimum onsite Affordable Housing requirements, as set forth in this Agreement; and (c) a request to respondents to provide a detailed pro forma demonstrating how the development team could potentially achieve a goal of 50% Affordable Housing.

5.3.1. <u>BART Non-Participation</u>. 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.

5.3.2. <u>Selection Process</u>. Following the receipt of proposals, the selection process will include a public meeting of shortlisted RFP or RFQ/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. Without limiting the City's consideration of other factors, in keeping with the JVP priority to maximize the number of new homes, the number of residential units shall be a positive quantitative factor in the City's evaluation of proposals. The Berkeley City Council shall consider and act upon the East Lot selection committee's recommendation of a developer for the East Lot.

5.3.3. <u>East Lot Developer</u>. The "**East Lot Developer**" is the RFP or RFQ/RFP respondent, if any, selected by the Berkeley City Council who also enters into an ENA or Ground Lease, as applicable, with the City for development of the East Lot.

5.4. West Lot RFP or RFQ/RFP. The RFP or RFQ/RFP for the West Lot shall include, without limitation: (a) 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; and (b) the applicable minimum onsite Affordable Housing requirements, as set forth in this Agreement; and (c) a request that respondents who would propose a project that includes more than 602 units provide a detailed pro forma demonstrating how the respondent could potentially increase the Affordable Housing of the full project, inclusive of any density bonus units, beyond the required 35% minimum to reach an aspirational goal of up to 50%.

5.4.1. <u>Selection Process</u>. The West Lot evaluation 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 evaluation process will include a public meeting of shortlisted respondents that includes presentations from the respondents. Without limiting the evaluation committee's or BART's consideration of other factors, the extent to which a proposal would provide a direct connection from the project to Adeline Street shall be a quantitative factor in the evaluation of proposals. In the event that the West Lot evaluation committee concludes that one or more respondents have submitted a satisfactory proposal, the West Lot evaluation committee will recommend the most qualified respondent to the BART General Manager based upon the 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.

5.4.2. <u>West Lot Developer</u>. The "**West Lot Developer**" is the RFP or RFQ/RFP respondent selected by BART who also enters into an ENA or Ground Lease Agreements, as applicable, with BART for development of the West Lot. For the avoidance of doubt, references in this Agreement to the West Lot Developer shall include a development team and/or any of its members in the event that more than one developer is duly selected by the BART Board to develop the West Lot.

5.5. <u>West Lot Lease Conditions</u>. The Ground Lease Agreements entered into with the West Lot Developer for the West Lot shall, taken as a whole, include, and BART shall enforce,

the following conditions:

5.5.1. All of the West Lot City Funds Conditions, as defined in Article 7.2.

5.5.2. A requirement that development of the West Lot include commercial space in accordance with the requirements of Article 6.1.

5.5.3. At least 50% of the first 602 units shall be Affordable Housing 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 Housing units and overall at least 35% of new housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of Area Median Income. At least 20% of that 35% must be affordable to Extremely Low Income Households. Of that same 35%, and other than units for Extremely Low Income Households, priority should be given to units for Very Low Income Households and units for Low Income Households, provided that any units within that 35% for Moderate Income Households have rents that are still below market and are not funded by any City subsidies.

5.5.4. Any project receiving the City's Housing Trust Fund ("**HTF**") funding must meet the City's HTF Guidelines.

5.5.5. BART will provide a discount on land costs in keeping with BART's Framework for Financial Return from Affordable Housing ("**Framework**"), provided the lessee utilizes this land discount solely for the benefit of the Affordable Housing components of the West Lot. As described in the Framework, BART will consider a deeper land discount to its determination of Ground Lease rent for affordable units that serve Very Low Income Households, Low Income Households, or transit-dependent populations.

5.5.6. Those provisions of Article 8.2.5(B)(2) and 8.2.6(A)(2), as applicable, related to the Berkeley Flea Market.

5.5.7. A requirement that the Public Infrastructure construction or maintenance costs required to be paid by the West Lot Developer pursuant to Article 8 shall be paid by the West Lot Developer, and that West Lot Developer shall comply with all of the obligations of West Lot Developer set forth in Article 8.

5.5.8. A requirement that West Lot Developer comply with all obligations of West Lot Developer set forth in Article 9, and that any development of the West Lot comply with applicable ODS (as defined herein) to the extent required by this Agreement.

5.5.9. A requirement that the South Plaza Extension shall be included in any development of the West Lot, and that the BART Terrace Improvements shall be included in any development of the West Lot to the extent consistent with project feasibility.

5.5.10. A requirement that the West Lot Developer 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 ("**2022 Mitigation Measures**") and all

applicable standard conditions of approval relied upon in the associated EIR, as set forth in Schedule 5.5 ("**Standard Conditions**").

5.5.11. Substantial construction of the West Lot development contemplated by this Agreement shall commence within 1 year of the signing of the lease.

5.5.12. If the Ground Lease will include Affordable Housing, a term of at least 99 years.

5.6. <u>East Lot Lease Conditions</u>. Any Ground Lease or contract of sale entered into with the East Lot Developer for the East Lot shall include the following conditions:

5.6.1. East Lot City Funds Conditions, as defined in Article 7.3.

5.6.2. A requirement that any development of the East Lot comply with applicable ODS to the extent required by this Agreement.

5.6.3. A requirement that the East Lot Developer comply with all applicable 2022 Mitigation Measures and all applicable Standard Conditions.

5.6.4. At least 35% of new housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of Area Median Income. At least 20% of that 35% must be affordable to Extremely Low Income Households. Of that same 35%, and other than units for Extremely Low Income Households, priority should be given to units for Very Low Income Households and units for Low Income Households, provided that any units within that 35% for Moderate Income Households have rents that are still below market and are not funded by any City subsidies.

5.6.5. Any project receiving the City's Housing Trust Fund ("HTF") funding must meet the City's HTF Guidelines.

5.6.6. A requirement that the Public Infrastructure construction and maintenance costs required to be paid by the East Lot Developer pursuant to Article 8 shall be paid by the East Lot Developer, and that East Lot Developer shall comply with all of the obligations of East Lot Developer set forth in Article 8.

5.6.7. Any Ground Lease for the East Lot for Affordable Housing development shall have a minimum duration of 99 years.

5.7. <u>BART Cooperation re East Lot Entitlements.</u> In the event the City elects to defer the East Lot Close Of Escrow beyond the West Lot Close Of Escrow, BART shall not unreasonably withhold the requisite consents as landowner that may be required for entitlement applications for the East Lot, provided that in no event shall any such consent obligate BART to compensate the City for its costs in processing said entitlement applications, or to defend and indemnify the City for any claims or litigation arising out of the entitlement process. BART shall also not unreasonably withhold issuance of a permit to enter in connection with providing the City and East Lot Developer access to the East Lot as may be reasonably required to conduct predevelopment activities, provided that the City and/or East Lot Developer, as applicable,

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complies with the provisions of said permit.

ARTICLE 6. COMMUNITY BENEFITS

6.1. West Lot Civic Commercial Uses & Amenities.

6.1.1. The West Lot development shall be required to include a minimum of 5,000 net rentable square feet, based on BOMA ANSI 2017 standards, for 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 such 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.

6.1.2. The West Lot development may incorporate the public artwork by Mildred Howard that was recently commissioned by the City.

6.2. <u>The Berkeley Flea Market</u>. 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), and consistent with Articles 8.2.5(B) and 8.2.6(A), those areas (or portions thereof as applicable) shall be made available as vending space for the Berkeley Flea Market on terms comparable to the Flea Market Permit, 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 the Flea Market Permit 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.

6.3. <u>Community Benefits Fund.</u> The City intends to require that a portion of net project profit from the East Lot mixed income or market rate development parcels 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 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.

ARTICLE 7. CITY FUNDING

7.1. <u>City Provision Of Affordable Housing Funds</u>. During the term of this Agreement, and subject to the provisions of this Agreement, City intends to make available a total of \$53 million for Affordable Housing on the East Lot, West Lot, and the North Berkeley BART station, including up to \$4 million in predevelopment funds (collectively the "**City Funds**"). Of these City Funds, City intends to dedicate \$18.5 million for Affordable Housing on the West Lot and \$8.0 million for Affordable Housing on the East Lot.

7.1.1. <u>Predevelopment Funds</u>. As part of the developer selection processes, up to \$2,000,000 in City pre-development loan funds are expected to be made available, with half of the proceeds available to the West Lot Developer and half of the proceeds available to the East Lot Developer.

7.1.2. <u>City Council Approval Required</u>. City Council approval shall be required for each award, grant, loan, or other transfer of City Funds for Affordable Housing on the East Lot or West Lot.

7.1.3. <u>Discretion to Condition City Funds</u>. City may make City Funds for Affordable Housing subject to affordability requirements, project milestones, objective design standards consistent with the provisions of Schedule 9.2.1, and other standard requirements set forth in funding agreements or regulatory agreements between City and West Lot Developer or East Lot Developer, which may be recorded against the applicable developer's Ground Lease interest in the West Lot or East Lot, respectively, and be enforced by City.

7.2. <u>West Lot City Funds Conditions</u>. City shall condition all City Funds for Affordable Housing on the West Lot on the covenants, conditions, and restrictions in Schedule 4.3.4 and those additional conditions in Schedule 7.2 (together "**West Lot City Funds Conditions**").

7.3. <u>East Lot City Funds Conditions</u>. City shall condition all City Funds for Affordable Housing on the East Lot on the on the covenants, conditions, and restrictions in Schedule 4.3.3 and those additional conditions in Schedule 7.3 (together "**East Lot City Funds Conditions**").

ARTICLE 8. PUBLIC INFRASTRUCTURE; SPECIAL FUNDING MECHANISMS

8.1. <u>General Provisions</u>

8.1.1. <u>Public Infrastructure Definitions</u>. Future transit-oriented development at the Ashby BART station, the East Lot, and the West Lot 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 Junior Way ("**MLK**"); 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 171223.5

but not limited to a new station entry plaza, stairs, ramping, and Traction Power Substation ("**TPSS**") access area and crane area; an Eastside Elevator; and vehicular access roads (individually or collectively "**Public Infrastructure**"). Public Infrastructure does not include infrastructure necessary to serve a specific development parcel, the cost of which shall be borne by 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.

8.1.2. <u>Infrastructure Map</u>. The location of certain specific Public Infrastructure and TPSS Improvements anticipated to be needed for the development of the West Lot are depicted on <u>Schedule 8.1.2</u> ("**Infrastructure Map**"). The "**TPSS Improvements**" consist of improvements 7A and 7B as depicted on the Infrastructure Map. Public Infrastructure shown in the Infrastructure Map consists of the following categories:

A. <u>Roadway Reconfigurations.</u> The "**Roadway Reconfigurations**" consist of improvements:

(1) 1A ("Adeline Street Reconfiguration"), and

(2) 3B ("MLK/Adeline/Woolsey Intersection Redesign").

B. <u>Adeline Plaza Improvements.</u> The "**Adeline Plaza Improvements**" consist of improvements:

- (1) 1B ("Adeline Main Plaza"),
- (2) 2A ("Ashby/Adeline Corner Plaza"), and
- (3) 3A ("MLK/Adeline/Woolsey Plaza").
- C. <u>Adeline Plaza Extensions.</u> The "Adeline Plaza Extensions"

consist of improvements:

- (1) 11 ("South Plaza Extension"), and
- (2) 2B ("Ashby/Adeline Corner Plaza Extension").

D. <u>BART Terrace Improvements.</u> The "**BART Terrace Improvements**" consist of improvements:

- (1) 9A ("**Existing BART Terrace**"), and
- (2) 9B ("BART Terrace Extension")
- E. <u>Sidewalk Improvements</u>. The "**Sidewalk Improvements**" consist
 - (1) 15 ("Ashby Sidewalk Widening"),

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- (2) 16 ("MLK Sidewalk Widening (north)"), and
- (3) 17 ("MLK Sidewalk/Bikeway Widening (south)")
- F. <u>BART Improvements.</u> The "**BART Improvements**" consist of

improvements:

- (1) 4B ("Required Emergency Access"),
- (2) 5 ("TPSS Access Area"),
- (3) 6 ("Station Entrance Plaza"),
- (4) 8 ("North Plaza Stair (to be rebuilt)"),
- (5) 10 ("South Plaza Stair (to be rebuilt)"),
- (6) 12 ("South Platform Egress Stair and BART Storage (access to

be reconfigured)"),

- (7) 13 ("**BART Vents (to be extended above plaza**)"), and
- (8) 14 ("**ADA/Bike Ramp** (new)").

8.1.3. <u>Expected Funding Sources</u>. The funds to construct and maintain Public Infrastructure and the TPSS Improvements are expected to come from a combination of sources. The responsibilities and priorities of the parties with respect to constructing, maintaining, and seeking funding for Public Infrastructure and the TPSS Improvements shall be as set forth in the body of this Agreement and in the matrix attached hereto as <u>Schedule 8.1.3</u> ("**Infrastructure Matrix**"). To the extent there is a conflict between the body of this Agreement and the Infrastructure Matrix, the body of this Agreement shall control.

8.1.4. <u>Financing Strategy</u>. 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 this Agreement, 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 Agreement to cooperate on funding applications. The Parties acknowledge that the financing strategy may need to be updated over time to reflect availability of financing sources.

8.1.5. <u>Overall Responsibilities of the Parties</u>. Except as otherwise provided in this Agreement, 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.

8.1.6. External Funding Opportunities. 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 Corridor ("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. 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.

8.2. Specific Public Infrastructure Improvements.

8.2.1. <u>Eastside Elevator</u>. BART may, but is not required to, determine whether 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.

8.2.2. <u>Adeline Plaza Improvements (1B, 2A, and 3A)</u>. 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 Article 8.3.1 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.

8.2.3. <u>TPSS</u> Improvements.

A. <u>Location</u>. The TPSS Improvements shall be constructed in the locations shown as 7A and 7B on the Infrastructure Map, provided that, if BART believes a material change in location is necessary, BART shall meet and confer with 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.

B. <u>Costs</u>. All direct, indirect, and ongoing operating costs associated with the TPSS Improvements shall be the sole responsibility of BART. 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.

C. <u>Access</u>. The TPSS Access Area (5) is expected 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.

D. <u>TPSS Screening Improvements</u>. 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.

8.2.4. West Lot BART Improvements and BART-Related Infrastructure. BART shall support 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 on the West Lot 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 such BART-related infrastructure, such funding shortfall shall be considered a factor affecting project feasibility for purposes of this Agreement. 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, provided that the ultimate responsibility as between BART and West Lot Developer for such BART-related infrastructure shall be determined by BART in its sole discretion and may be delegated in whole or in part to the West Lot Developer. 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.

8.2.5. <u>Adeline Plaza Extensions (11 and 2B)</u>. 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.

A. <u>Purpose</u>. 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.

B. <u>Use by Berkeley Flea Market</u>. 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.

(1) In the event that BART rather than the West Lot Developer retains possession of the portion of the South Plaza Extension to be made available for nonexclusive use the Berkeley Flea Market, 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 Permit, 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.

(2) In the event that the West Lot Developer's Ground Lease grants it possession of the portion of the South Plaza Extension to be made available for nonexclusive use by the Berkeley Flea Market, that 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 Permit, 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.

(3) 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.

C. <u>Delivery</u>. 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 subparagraph E 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.

D. <u>Funding</u>. 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 Article 8.3, below, contingent upon West Lot Developer committing to a capital contribution of no less than \$1 million for the South Plaza Extension.

E. <u>Funding Shortfall</u>. 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 West Lot development; 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.

F. <u>CFD Bridge Financing</u>: The Parties acknowledge that EIFD funds may not be available until after the improvements associated with the West Lot project are complete and on the tax rolls. The parties will collaborate on a plan to provide bridge financing through creation of a 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 Article 8.3. Any portions of the Adeline Plaza Extensions which are for the exclusive use of the West Lot project shall be maintained by the West Lot Developer.

8.2.6. <u>BART Terrace Improvements (9A and 9B)</u>. 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.

A. <u>Use by Berkeley Flea Market</u>. 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.

(1) In the event that BART rather than the West Lot Developer retains possession of the portion of the Existing BART Terrace to be made available for nonexclusive

use by the Berkeley Flea Market, 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 Permit, 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.

(2) In the event that the West Lot Developer's lease grants it possession of the portion of the Existing BART Terrace to be made available for nonexclusive use by the Berkeley Flea Market, 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 Permit, 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.

(3) 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.

B. <u>Delivery</u>. 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 West Lot 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 the priorities in Article 8.3.1 below. The BART Terrace Improvements are considered a high priority and shall be included in the final West Lot project to the extent consistent with project feasibility.

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

A. <u>Overview</u>. The City's 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 the Infrastructure Map as 1A (Adeline Street Reconfiguration), and the component to reconfigure the MLK/Adeline/Woolsey intersection is identified in the Infrastructure Map as 3B (MLK/Adeline/Woolsey Intersection Redesign).

B. <u>Funding of Roadway Reconfigurations</u>. 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.

8.2.8. <u>Sidewalk Improvements (15, 16, and 17)</u>. 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.

8.2.9. <u>BART Rider Parking</u>. 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.

8.2.10. <u>Coordination and Construction Process</u>. 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 Agreement. 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 Agreement is intended to bar the City from assessing any regular public works fees associated with processing development permits and mitigating development impacts.

8.2.11. <u>Maintenance Responsibility for BART-Related Infrastructure</u>. 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.

8.3. Special Funding Mechanisms for Public Infrastructure

8.3.1. <u>West Lot EIFD</u>. 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 West Lot Developer shall provide the requisite consents to (and refrain from protesting) formation. Priority of funds will be as follows:

A. (a) Adeline Main Plaza (1B) and (b) 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).

B. The BART Terrace Improvements (9A and 9B) and Ashby/Adeline Corner Plaza (2B).

C. 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 or the Eastside Elevator).

D. Affordable Housing funding gap for units in excess of the City's current inclusionary housing ordinance requirement.

E. Tax increment "pay as you go" financing to reimburse the West Lot Developer for eligible capital and maintenance costs for improvements financed by the EIFD.

8.3.2. <u>East Lot EIFD</u>. 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.

8.3.3. <u>Community Facilities District</u>. The City's costs of maintaining the Adeline Plaza Improvements and the Adeline Plaza Extensions shall be covered by a CFD to be formed 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.

A. <u>Formation</u>. If proceedings for the establishment of a community facilities district are instituted pursuant to section 53318 of the Government Code, City shall then comply with its obligation to institute the proceedings to establish the CFD and otherwise comply with the procedures to create a CFD under Article 2 of Chapter 2.5 of Part 1 of Division 2 of Title 5 of the Government Code. 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 will vote (and, if applicable, require West Lot Developer to vote) in favor of formation of the CFD.

B. <u>Future Project Feasibility</u>. The Parties acknowledge that a CFD will impact the feasibility of the Project by increasing the tax burden on the West Lot, 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.

ARTICLE 9. OBJECTIVE DESIGN STANDARDS

9.1. <u>General</u>. City intends to adopt new binding objective design standards ("**ODS**") applicable to the West Lot and East Lot, respectively, to allow the City, community, BART, and developers to have a strong voice in the design quality of the development at the Ashby Station. Those ODS shall be made applicable to the West Lot Developer and East Lot Developer through any mechanisms allowable by law, including permit conditions, the West Lot and East Lot Covenants, and this Agreement, and compliance with those ODS may be made a condition of disbursement of the City Funds. Except as otherwise provided in Schedule 9.2.1, and with respect to the West Lot only, BART shall ensure that ODS apply to development notwithstanding the availability of waivers, incentives, or other exceptions to development standards that may be available under law. This Article describes the nature and process for the West Lot ODS. The process and content of any ODS for the East Lot shall be determined by City in its sole discretion provided that the ODS must allow for at least 248 units and at least 300 bedrooms.

9.2. <u>Development of West Lot ODS</u>.

9.2.1. <u>ODS Requirements</u>. ODS for the West Lot (**"West Lot ODS**") shall be developed that comply with the ODS requirements (**"ODS Requirements**") of <u>Schedule 9.2.1</u>. Main topics in the ODS may include but are not limited to:

- A. Public realm improvements;
- B. Building form and massing;
- C. Building façade design; and
- D. Open space and landscape.

9.2.2. <u>Capacity Study</u>. A capacity study ("**Capacity Study**") is incorporated into this Agreement as <u>Schedule 9.2.2</u>. The Capacity Study establishes the net developable area of the West Lot for purposes of determining the compliance of the ODS with the ODS Requirements.

9.2.3. <u>ODS Process</u>. The process for adoption of ODS shall occur in three phases: (i) the "**Preliminary ODS**", (ii) the "**Final ODS**", and (iii) the approval by the City Council of the Final ODS, with any modifications approved by the Council. The public and BART shall be given an opportunity to review and comment on all three phases, and the West Lot Developer will be given an opportunity to review and comment following developer selection. 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.

9.2.4. <u>Preliminary ODS</u>. Raimi & Associates ("**Raimi**") and City shall complete the Preliminary ODS for the West Lot by December 10, 2024, in advance of the release of the 171223.5 27

RFP or RFQ/RFP so that it may be included as a supplement within one week of the issuance to the RFP or RFQ/RFP.

9.2.5. Final ODS. Prior to submitting proposed Final ODS to the Planning Commission, the City shall provide the Final ODS 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 ODS Requirements, 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 the ODS Requirements, 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 the ODS 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 the ODS Requirements unless modified by Council in a manner that affects compliance with the ODS 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 the ODS based on considerations other than compliance with the ODS Requirements.

9.2.6. Approval of West Lot ODS. Once a complete draft of Final ODS has been prepared and the process for resolving any objections described in this Article has been completed, City staff will submit the draft Final ODS to the Planning Commission for recommendation. Following the Planning 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 of an extension request shall not be unreasonably withheld.

9.3. <u>Funding of ODS</u>. The City shall bear full responsibility for any costs to develop ODS on the East or West Lot in excess of the currently available grant funding or those costs incurred after the grant expenditure deadline.

ARTICLE 10. REPRESENTATIONS AND WARRANTIES

10.1. <u>Representations and Warranties of BART</u>. The execution of this Agreement by City is made in material reliance on the following representations and warranties made by BART:

10.1.1. Other than the Flea Market Permit and the Reciprocal Easement Agreement, no portion of the East Lot or West Lot is subject to a lease, license, or any other occupancy agreement.

10.1.2. To BART's actual knowledge, there are no matters affecting record title to the East Lot or West Lot that are not shown in the 2024 PTRs.

ARTICLE 11. NO NEW CONTRACTS OR ENCUMBRANCES

11.1. <u>New Contracts; Contract Modifications; Encumbrances</u>. Other than as provided in this Agreement, neither Party shall enter into any leases, contracts to sell, or other agreements, amendments, waivers, modifications or consents affecting title to the East Lot that will survive the East Lot Close of Escrow or affecting title to the West Lot that will survive the West Lot Close Of Escrow, or that otherwise affect the use, operation or enjoyment of the East Lot or the West Lot after the Closing. Neither Party shall voluntarily create or suffer any additional liens, encumbrances, covenants, conditions, obligations, burdens, easements, rights of way affecting the East Lot or West Lot that will survive the closing as to that lot.

ARTICLE 12.

TERMINATION; DEFAULT

12.1. <u>Termination</u>. Any of the following events shall constitute a ground to terminate ("**Termination Ground**"):

12.1.1. No developer submits a timely response to the West Lot RFP or RFQ/RFP that meets all the applicable requirements of this Agreement, or the West Lot evaluation committee determines that none of the responses to the West Lot RFP or RFQ/RFP should be recommended to BART's General Manager, and BART does not issue a revised West Lot RFP or RFQ/RFP within 1 year of the original submittal deadline, and City reasonably concludes that no developer is likely to submit a response that meets all the applicable requirements of this Agreement.

12.1.2. No developer submits a timely response to the East Lot RFP or RFQ/RFP that meets all the applicable requirements of this Agreement, or the East Lot evaluation committee determines that none of the responses to the East Lot RFP or RFQ/RFP should be recommended, and the City does not issue a revised East Lot RFP or RFQ/RFP within 1 year of the original submittal deadline, and BART reasonably concludes that no developer is likely to submit a response that meets all the applicable requirements of this Agreement.

12.1.3. No Ground Lease Option of the West Lot with the West Lot Developer is executed within 7 years of the Effective Date, or no Ground Lease of the West Lot with the West Lot Developer is executed within 15 years of the Effective Date and City reasonably concludes that no Ground Lease of the West Lot is likely to be executed.

12.1.4. No Ground Lease Option of the East Lot with the East Lot Developer is executed within 7 years of the Effective Date, or no Ground Lease or other conveyance of the East Lot with the East Lot Developer is executed within 15 years of the Effective Date and BART reasonably concludes that no Ground Lease or other conveyance of the East Lot is likely to be executed.

12.1.5. Construction has not begun on the West Lot within 1 year of the Effective Date of the execution of a Ground Lease with the West Lot Developer.

12.1.6. Construction has not begun on the East Lot within 1 year of the execution of a Ground Lease with the East Lot Developer.

12.2. <u>Meet and Confer</u>. Upon written notice by one Party to the other Party of the occurrence of any Termination Ground, the Parties shall meet and confer in good faith for a period of not less than 6 months (unless an earlier resolution is reached) to try to resolve the issue, including by an amendment to this Agreement. This meet-and-confer period may be extended for additional 6-month periods upon the mutual agreement of both Parties. No Party may invoke any remedies at law or in equity arising from or relating to any Termination Ground before the procedures described by this Article 12.2 are tried and are unsuccessful in resolving the Termination Ground. Any statutes of limitations or other limitations periods arising from or relating to any Termination Ground shall be tolled while the procedures described by this Article 12.2 are being pursued.

12.3. <u>Failure to Reach Agreement Before Commencement of Construction</u>. If, following the procedures in Article 12.2, the Parties cannot reach agreement, and construction has not begun on either the East Lot or the West Lot, the Parties shall take the following steps to unwind this transaction, which shall be specifically enforceable:

12.3.1. Execute and record the "**West Lot Notice Of CC&R Termination**" in Schedule 12.3.1;

12.3.2. Execute and record the "**East Lot Notice Of CC&R Termination**" in Schedule 12.3.2;

12.3.3. City shall execute a grant deed for the East Lot to BART;

12.3.4. BART shall execute an air rights option for the West Lot to City in substantially the same form as the Air Rights Option.

12.4. <u>Failure to Reach Agreement After Commencement of Construction</u>. If, following the procedures in Article 12.2, the Parties cannot reach agreement, and construction has begun on either the East Lot or the West Lot, the Parties may pursue any remedies at law or in equity arising from any Termination Ground.

12.5. <u>Remedies For Material Breach</u>. No Party may bring any action at law or in equity for other material breaches of this agreement without first giving the other Party written notice and a 30-day opportunity to cure.

ARTICLE 13. DISCLAIMERS; RIGHT TO PHASE 2 ASSESSMENT

13.1. <u>No Reliance on Documents</u>. Neither Party makes any representations or warranties as to the truth or accuracy of any materials, data or information delivered by one to the other in connection with the transaction contemplated hereby; (b) all materials, data and information delivered in connection with the transaction contemplated hereby are provided as a convenience only and any reliance on or use of such materials, data or information shall be at that Party's sole risk; and (c) no Party, affiliate, or the person or entity which prepared any report or reports delivered by either Party shall have any liability for any inaccuracy in or omission from any such reports.

13.2. East Lot Phase 2 Assessment. Within 6 months of the Effective Date, City shall have the right, at its sole cost, to conduct a Phase 2 environmental site assessment on the East Lot (the "Phase 2 ESA"), subject to a BART permit to enter, which shall not be unreasonably refused. The City shall share all results of the Phase 2 ESA with BART. If, based on the Phase 2 ESA, the City reasonably determines that compliance with Environmental Laws requires remediation of soil or groundwater contamination on the East Lot in order to develop it as contemplated in this Agreement, and that the cost of said remediation would increase the cost to develop the East Lot by more than \$55,000, City shall have the right, in its sole discretion, to terminate this agreement by providing notice thereof to BART no later than six months after the Effective Date.. If City exercises this termination option, City and BART shall take all measures necessary to return the parties to the status quo ante prior to the Effective Date.

For purposes hereof, "**Environmental Laws**" means all federal, state and local laws, ordinances, rules, and regulations now or hereafter in force, as amended from time to time, and all federal and state court decisions, consent decrees, and orders interpreting or enforcing any of the foregoing, in any way relating to or regulating human health or safety, or industrial hygiene or environmental conditions, or protection of the environment, or pollution or contamination of the air, soil, surface water or groundwater, and includes the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq., and the Clean Water Act, 33 U.S.C. § 1251, et seq.

ARTICLE 14. MISCELLANEOUS

14.1. <u>Assignment</u>. Subject to the provisions of this Article 14.1, the terms and provisions of this Agreement are to apply to and bind the permitted successors and assigns of the parties hereto.

14.2. <u>Notices</u>. Any notice pursuant to this Agreement shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) United States Mail, postage prepaid, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon receipt or refusal to accept delivery. Notwithstanding the foregoing, notice may be given by electronic mail, deemed given upon sending, provided such notice is concurrently delivered by one of the methods set forth in the initial sentence of this Article. The initial addresses for notices given pursuant to this Agreement shall be as follows:

If to BART:	Director of Transit-Oriented Developmen BART 2150 Webster St. Oakland, CA 94612		
With copy to:	BART Office of the General Counsel 2150 Webster St. Oakland, CA 94612		
If to City:	Farimah Brown City Attorney City of Berkeley 2180 Milvia Street Berkeley, CA 94704 Email: <u>fbrown@cityofberkeley.info</u>		

With copy to:

If to Escrow Holder:	Old Republic Title Company
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14.3. <u>Modifications</u>. This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

14.4. <u>Entire Agreement</u>. This Agreement, including the exhibits and schedules hereto, contains the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes all prior written or oral agreements and understandings between the parties pertaining to such subject matter, except to the extent expressly provided herein.

14.5. <u>Further Assurances; Cooperation</u>. Each party agrees that it will execute and deliver such other documents and take such other action, whether prior or subsequent to the East Lot Close Of Escrow and the West Lot Close Of Escrow, as may be reasonably requested by the other party to consummate the transaction contemplated by this Agreement.

14.6. <u>Counterparts</u>. This Agreement may be executed in counterparts, all such executed counterparts shall constitute the same agreement, and the signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. In addition, this Agreement may be executed by electronic signature or facsimile which will be deemed an original.

14.7. <u>Severability</u>. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect; provided that the invalidity or unenforceability of such provision does not materially diminish the benefits accruing to, or materially increase the burdens on, any party hereunder.

14.8. <u>Applicable Law; Venue</u>. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Each party hereby consents to the exclusive jurisdiction of the state and federal courts sitting in Alameda County, California, in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement.

14.9. <u>Injunctive Relief</u>. The Parties agree that damages would not provide an adequate remedy for material breaches of this Agreement, and that injunctive relief and specific performance are appropriate remedies.

14.10. <u>No Third Party Beneficiary</u>. The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of the Parties only and are not for the benefit of any third party; and, accordingly, no third party shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at the East Lot Close Of Escrow and the West Lot Close Of Escrow.

14.11. <u>Captions</u>. The section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent and for any purpose, to limit or define the text of any section or any subsection hereof.

14.12. <u>Construction</u>. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to take effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

14.13. <u>Date of Performance</u>. If the date on which any performance required hereunder is other than a business day, then such performance shall be required as of the next following business day.

14.14. <u>Attorneys' Fees</u>. In any court action to enforce the terms of this Agreement, the prevailing Party shall be entitled to recover from the other Party all costs and expenses incurred by the prevailing Party in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and disbursements.

14.15. <u>Nonmerger</u>. Except as otherwise expressly set forth herein, all the terms and provisions of this Agreement, including without limitation all obligations, releases and indemnities of the parties hereto, shall survive the East Lot Closing and the West Lot Closing.

14.16. <u>Time of Essence</u>. The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation and provision hereof and that failure to timely perform any of the terms, conditions, obligations or provisions hereof by either party shall constitute a material breach of and a non-curable (but waivable) default under this Agreement by the party so failing to perform.

14.17. Effective Date. This Agreement shall become effective thirty-five (35) days after the City Council's filing of a notice of determination or notice of exemption following adoption of the City Authorizing Ordinance, (which notice of determination or notice of exemption shall have been filed no more than three business days after adoption of the City Authorizing Ordinance) if no legal actions are pending against the City with respect to the City Authorizing Ordinance and the City has not received a petition to referendum the Authorizing Ordinance within thirty (30) days after the City Council's adoption of the Authorizing Ordinance. If any legal action is filed challenging this Agreement or the City Authorizing Ordinance, the Effective Date shall be stayed pending final resolution of such legal action unless City waives the stay.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Effective Date.

BART:

CITY:

Bay Area Rapid Transit District, a California rapid transit district City of Berkeley, a California charter city

By:	By:
Name:	Name:
Its:	Its:

Approved as to Form:

Approved as to Form:

Name:

General Counsel

Name:

City Attorney

ACKNOWLEDGMENT

Escrow Holder executes this Acknowledgment below for the purpose of acknowledging that, as of the date set forth below it has received a fully executed copy of the foregoing Exchange Agreement and Escrow Instructions made by and between BART and City and agrees to be bound by the provisions thereof including, without limitation, the instructions set forth in Article 1.4 thereof.

ESCROW HOLDER:

Old Republic Title Company

By:			
Its:			
Date:			

SCHEDULE 1.1.1 Legal Description of the West Lot

Real property in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

Attached hereto and made a part hereof the following Filed maps:

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

SCHEDULE 1.1.2 Legal Description of the East Lot

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder's Serial Number 2008255323, and shown Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

SCHEDULE 2.1(a)

East Lot Preliminary Title Report, dated March 27, 2024

ORDER NO. : 1117028175

EXHIBIT A

The land referred to is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for elevator, stair, transformer access, BART surface entranceway, BART concourse, sidewalk and Adeline driveway as described in "Reciprocal Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder's Serial Number 2008255323, and shown Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009



555 12th Street, Suite 2000 Oakland, CA 94607 (510) 272-1121 Fax: (510) 208-5045

PRELIMINARY REPORT

Our Order Number 1117028175-JM

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT 2150 Webster Street, 9th Floor, Oakland, CA 94612

When Replying Please Contact:

Julie Massey JMassey@ortc.com (510) 272-1121

Property Address:

Ashby Bart Station Woolsey & Tremont Streets, Berkeley, CA 94703

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY, as issuing Agent of Old Republic National Title Insurance Company, hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit I attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit I. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit I of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of March 27, 2024, at 7:30 AM

OLD REPUBLIC TITLE COMPANY

For Exceptions Shown or Referred to, See Attached

Page 1 of 6 Pages

OLD REPUBLIC TITLE COMPANY ORDER NO. 1117028175-JM

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Owner's Policy of Title Insurance - 2022; AND ALTA Loan Policy of Title Insurance - 2021. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee as to Parcel(s) One and an Easement as to Parcel(s) Two

Title to said estate or interest at the date hereof is vested in:

San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

The land referred to in this Report is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for elevator, stair, transformer access, BART surface entranceway, BART concourse, sidewalk and Adeline driveway as described in "Reciprocal Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. in Official Records under Recorder's Serial Number 2008255323, and shown Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

- 1. Taxes and assessments, general and special, for the fiscal year 2024 2025, a lien, but not yet due or payable.
- 2. Taxes and assessments, general and special, are currently not assessed because of a statutory exemption. Should the statutory exemption change, taxes may be levied against the land.

- 3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.
- 4. The herein described property lying within the proposed boundaries of a Community Facilities District, as follows:

District No	: Clean Energy
For	: Alameda County
Disclosed By	: Assessment Map
Recorded	August 24, 2015 in Official Records under Recorder's Serial Number
	2015-235594

Further information may be obtained by contacting: County of Alameda

5. Any special tax which is now a lien and that may be levied within the East Bay Regional Park District Community Facilities District No. A/C-3, a notice of which was recorded as follows:

Instrument Entitled	:	Notice of Special Tax Lien
Ву	:	Board of the East Bay Regional Park District
Recorded	:	January 31, 2019 in Official Records under Recorder's Serial
		Number 2019-0015593

NOTE: Among other things, there are provisions in said Notice for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is exempt at this time.

Further information may be obtained by contacting:

Name	:	EBRPD
Address	:	Oakland, CA

6. Matters as contained or referred to in an instrument,

Entitled	:	Ordering the Vacation of Portions of Prince Street between Tremont
		and Adeline Streets, Francisco Street between Sacramento and Acton
		Streets, and Short Street between Delaware and Virginia Streets in
		the City of Berkeley
Executed By	:	City of Berkeley
Recorded	:	February 2, 1972 in Book 3053 of Official Records, Page 230

7. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as shown on the filed map.

For	:	Limited access
Affects	:	Westerly portion

- 8. Any rights, easements, interests or claims that may exist or arise by reason of, or reflected by, recitals shown or noted in the filed map(s) referenced in the legal description herein.
- 9. Terms and provisions as contained in an instrument,

Entitled Executed By	:	Reciprocal Easements Agreement The Ed Roberts Campus, a California nonprofit benefit corporation and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et
Recorded	:	seq. August 18, 2008 in Official Records under Recorder's Serial Number 2008255323

Note: Reference is made to said instrument for full particulars.

10. An easement affecting that portion of said land and for the purposes stated herein and incidental purposes as provided in the following

Granted To	:	The Ed Roberts Campus, a California nonprofit public benefit corporation
For	:	Limited Access Area for ingress and egress from the ERC Property
Recorded	:	August 18, 2008 in Official Records under Recorder's Serial Number
Affects	:	2008255323 as described therein and shown map attached to as Exhibit K

- 11. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.
- 12. Any unrecorded and subsisting leases.

- 13. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.
- 14. The requirement that satisfactory evidence be furnished to this Company of compliance with applicable statutes, ordinances and charters governing the ownership and disposition of the herein described land.

------ Informational Notes -----

A. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument		
Entitled	:	Grant Deed
By/From	:	Samuel W. Davis, et al
То	:	San Francisco Bay Area Rapid Transit District
Recorded	:	September 8, 1964 in Book 1306 of Official Records, Page 651

various deeds of record in 1964 & 1965

NOTE:

The following statement is deemed attached as a coversheet to any declaration, governing document, or deed identified in the above exceptions:

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Information for processing a "Restrictive Covenant Modification" form:

- 1. Print a complete copy of the document in question. Strike out what you believe to be unlawful restrictive language in the document.
- 2. Print and complete the "Restrictive Covenant Modification" ("RCM") form. Note that the signature on the form must be acknowledged by a notary public or other qualified officer.
- 3. Submit the completed RCM form and the document with your strike-outs to the County Clerk-Recorder's Office for the county where the property is located. No fee is required for this service.
- 4. The County Clerk-Recorder's Office will forward the RCM form and the document with your strike-outs to the Office of the County Counsel, who will determine whether the document contains any unlawful restrictions.
- 5. The Office of the County Counsel will return the RCM form and the document with your strike-outs to the County Clerk-Recorder's Office along with its determination. If approved, a Deputy County Counsel will sign the RCM, and the County Clerk-Recorder's Office will record, image and index it. If the Office of the County Counsel determines that the document does not contain an unlawful restriction, the County Clerk-Recorder's Office will not record the RCM.
- 6. The approved RCM will be returned to the submitter by mail.

The "Restrictive Covenant Modification" form is linked below:

Restrictive Covenant Modification form

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE OWNER'S POLICY OF TITLE INSURANCE – 2022

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- **1.** a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - any governmental forfeiture, police, regulatory, or national security power.

c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

- 2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
- **3.** Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:

b.

- i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
- ii. for any other reason not stated in Covered Risk 9.b.
- 5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.
- 6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.
- 7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

PART II

(Variable exceptions such as taxes, easements, CC&R's, etc., are inserted here)

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY OF TITLE INSURANCE – 2021

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- **1.** a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - b. any governmental forfeiture, police, regulatory, or national security power.

c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

- 2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
- **3.** Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law.
- 5. Invalidity or unenforceability of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury law or Consumer Protection Law.
- 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:
 - to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 13.b.
- 7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.
- 8. Any lien on the Title for real estate taxes or assessments imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.b.
- 9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY OF TITLE INSURANCE – 2021 (Continued)

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

NOTE: The 2021 ALTA Loan Policy may be issued to afford either Standard Coverage or Extended Coverage. In addition to variable exceptions such as taxes, easements, CC&R's, etc., the Exceptions from Coverage in a Standard Coverage policy will also include the Western Regional Standard Coverage Exceptions listed as 1 through 7 below:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

****** ** OLD REPUBLIC TITLE *****

FACTS

WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	 The types of personal information we collect and share depend on the product or service you have with us. This information can include: Social Security number and employment information Mortgage rates and payments and account balances Checking account information and wire transfer instructions When you are no longer our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

Go to www.oldrepublictitle.com (Contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do		
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit https://www.oldrepublictitle.com/privacy-policy	
How does Old Republic Title collect my personal information?	 We collect your personal information, for example, when you: Give us your contact information or show your driver's license Show your government-issued ID or provide your mortgage information Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies. 	
Why can't I limit all sharing?	 Federal law gives you the right to limit only: Sharing for affiliates' everyday business purposes - information about your creditworthiness Affiliates from using your information to market to you Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the State Privacy Rights section location at https://www.oldrepublictitle.com/privacy-policy for your rights under state law. 	

Definitions	
Affiliates	 Companies related by common ownership or control. They can be financial and nonfinancial companies. Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., and Mississippi Valley Title Services Company
Non-affiliates	Companies not related by common ownership or control. They can be financial and non- financial companies. • Old Republic Title does not share with non-affiliates so they can market to you
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • Old Republic Title doesn't jointly market.

Affiliates Who May b	be Delivering This Notic	ce		
American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.	eRecording Partners Network, LLC
Genesis Abstract, LLC	Guardian Consumer Services, Inc.	iMarc, Inc.	L.T. Service Corp.	Lenders Inspection Company
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mississippi Valley Title Services Company	Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.
Old Republic Escrow of Vancouver, Inc.	Old Republic Exchange Company	Old Republic National Ancillary Services, Inc.	Old Republic Title and Escrow of Hawaii, Ltd.	Old Republic National Title Insurance Company
Old Republic Title Company	Old Republic Title Company of Conroe	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma	Old Republic Title Company of Oregon
Old Republic Title Company of St. Louis	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.	Old Republic Title, Ltd.	RamQuest Software, Inc.
Republic Abstract & Settlement, LLC	Sentry Abstract Company	Surety Title Agency, Inc.	Trident Land Transfer Company, LLC	

Updated: January 1, 2024

Privacy Notice for California Consumers

This Privacy Notice for California Consumers supplements the information contained in the Master Privacy Notice for Old Republic Title and applies to consumers that reside in the State of California. The terms used in this Privacy Notice have the same meaning as the terms defined in the California Consumer Privacy Act ("CCPA").

What Personal Information We Collect

In accordance with the CCPA, personal information is information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information does not include:

Information outside the scope of the CCPA such as:

- Health or medical information covered by the Health Insurance Portability Act of 1996 (HIPAA) and the California Confidentiality of Medical Information Act (CMIA).
- Personal Information covered by the Gramm-Leach-Bliley Act (GLBA), the Fair Credit Reporting Act (FCRA), the California Financial Information Privacy Act (FIPA), and the Driver's Privacy Protection Act of 1994,
- Publicly available information or lawfully obtained, truthful information that is a matter of public concern, and
- De-identified or aggregated consumer information.

Please see the chart below to learn what categories of personal information we may have collected about California consumers within the preceding twelve months, the sources of and business purposes for that collection and the third parties to whom the information has been disclosed, if any.

Category	Examples	Sources	Business Purpose for Collection	Categories of Third Parties with Whom Information is Shared
Identifiers	Real name, alias, postal address, unique personal identifier, online	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or	Service providers associated with the transaction for a business

	identifier, Internet protocol address, email address, email address, account name, social security number, driver's license number, passport number or other similar identifiers Social security number, driver's license number, passport number are collected	Title Agents associated with the transaction	complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	purpose
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e))	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents associated with the transaction	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose

r				1
	number, or			
	any other			
	financial			
	information,			
	medical			
	information,			
	or health			
	insurance			
	information.			
	"Personal			
	information"			
	does not			
	include			
	publicly			
	available			
	information			
	that is lawfully			
	made available			
	to the general			
	public from			
	federal, state,			
	or local			
	government			
	records.			
	Social security			
	number,			
	driver's license			
	number or			
	state			
	identification			
	card number,			
	passport			
	number, bank			
	account			
	number,			
	citizenship,			
	immigration			
	status are			
	collected			
Characteristics	Age (40 years	Consumers,	Underwriting or	Service
of protected	or older), race,	Lenders,	providing other	providers
classifications	color,			•
under	ancestry,	Brokers,	products or services,	associated with
California or	national origin,	Attorneys,	responding to	the transaction
federal law	citizenship,	Real Estate	policyholder/consumer	for a business
	religions or	Agents, and	claims, inquiries or	purpose
	creed, marital	Title Agents	complaints. Other	

	status, medical	• • •	availte an an a' d'	
	condition,	associated	audit or operational	
	physical or	with the	purposes.	
	mental	transaction		
	disability, sex			
	(including			
	gender,			
	gender			
	identity,			
	gender			
	expression,			
	pregnancy or childbirth and			
	related			
	medical			
	conditions), sexual			
	orientation,			
	veteran or			
	military status,			
	or genetic			
	information			
	(including			
	familial			
	genetic			
	information).			
	informationy.			
	Marital status,			
	sex, physical			
	disability,			
	citizenship is			
	collected			
Internet or	Browsing	Consumers,	To provide access to	Not Disclosed
other	history, search		•	
electronic	history,	Lenders,	certain online	
network	information	Brokers,	services. To	
activity	about a	Attorneys,	understand the	
	consumer's	Real Estate	interests of visitors to	
	interaction	Agents, and	our online services, to	
	with a	Title Agents	support certain	
	website,	associated	features of our site, for	
	application, or	with the	navigation and to	
	advertisement.	transaction	display certain	
			features more	
			effectively. Detecting	
			security incidents,	

fraudulent, or illegal activity. Other audit or operational purposes.

What Personal Information We Disclose and Why We Disclose It

The CCPA requires us to tell you what categories of personal information we "sell", "share" or "disclose." We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, including the personal information of persons under 16 years of age, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA. When it is necessary for a business purpose, we may disclose your personal information with a service provider or contractor, and we enter into a contract with the service provider or contractor that limits how the information may be used and requires the service provider to protect the confidentiality of the information.

In the preceding twelve months, we have disclosed the following categories of personal information for the following business purposes. Where the personal information is shared with third parties, as that term is defined in the CCPA, the category of the third party is indicated.

Category	Examples	Business Purpose for Disclosure	Categories of Third Parties with Whom Information is Shared
Identifiers (Including social security number,	Real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver's license number, passport number or	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or	Service providers associated with the transaction for a business purpose
driver's license number,	other similar identifiers	complaints, detecting security incidents, protecting against	

Exhibit A

and passport number)		malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e)) (Including Social security number, driver's license number or state identification card number, passport number, bank account number, citizenship, and immigration status)	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Characteristics of protected classifications under California or federal law (Including marital status, sex, citizenship, and physical disability)	Age (40 years or older), race, color, ancestry, national origin, citizenship, religions or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, or genetic information (including familial genetic information).	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Internet or other electronic	Browsing history, search history, information about a consumer's interaction with a	To provide access to certain online services. To	Not Disclosed

network	website, application, or	understand the	
activity	advertisement.	interests of visitors to	
		our online services, to	
		support certain	
		features of our site, for	
		navigation and to	
		display certain	
		features more	
		effectively. Detecting	
		security incidents,	
		protecting against	
		malicious, deceptive,	
		fraudulent, or illegal	
		activity. Other audit or	
		operational purposes.	

We may also transfer to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business.

Our Retention of Your Personal Information

The length of time that we retain personal information largely depends upon the purpose for which the information was collected rather than the category of the information as set forth in this Notice. When establishing retention periods, we consider applicable statutes of limitation and legal and regulatory requirements and guidelines. Personal information is generally retained for periods of time that permit the company to meet its legal and regulatory obligations.

Your Rights and Choices

The CCPA provides California consumers with certain rights regarding their personal information. This chart describes those rights and certain limitations to those rights.

Right	What This Means
Notice	At or before the time your personal information is collected, you will be given written notice of the categories of personal information to be collected, the purposes for which the categories of personal information will be used, and whether that information is sold or shared.
Access	At your verifiable request, but no more than twice in a twelve month period, we shall disclose to you: 1) the categories of personal information we have collected about you, 2) the categories of sources for the personal information we collected about you, 3) our business or commercial purpose for collecting, selling or sharing your personal information, 4) the categories of third parties to whom we disclose your personal information, 5) the specific pieces of information we have collected about you, 6) the categories of personal

	information disclosed about you for a business purpose and the categories of persons to whom your personal information was disclosed for a business purpose, and 7) if we sold or shared personal information, the categories of personal information sold or shared and the categories of third parties to whom it was sold or shared.
Deletion	 You have the right to request that we delete any of your personal information that we collected from you, subject to certain exceptions. Once we receive and verify your request, we will delete (and direct our service providers and contractors to delete) your personal information from our records unless an exception applies. We may deny your request if retention of the information is necessary for us or our service providers to: Complete the transaction for which we collected the personal information, provide a good or service that you requested, take actions reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform our contract with you. Help to ensure security and integrity to the extent the use of your personal information is reasonably necessary and proportionate to that purpose. Debug to identify and repair errors that impair existing intended functionality. Exercise free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law. Comply with the California Electronic Communications Privacy Act (Cal. Penal Code §1546 et seq.) Engage in public or peer reviewed scientific, historical, or statistical research that conforms or adheres to all other applicable ethics and privacy laws, when the information's deletion is likely to render impossible or seriously impair the research's completion, if you previously provided informed consent. Enable solely internal uses that are reasonably aligned with consumer expectations based on your relationship with us and compatible with the context in which you provided the information. Comply with a legal obligation. Or if it is the type of personal information that falls outside the scope of the CCPA, (HIPAA, CIMA, GLBA, or publicly available information.
Correct	You have the right to request that we correct inaccurate personal information about you, taking into account the nature of the personal information and the purposes of the processing of the personal information. After we receive and verify your request, we will use commercially reasonable efforts to correct the inaccurate personal information as directed by you.
Opt-Out of Sale or Sharing	With some limitations, you may direct a business that sells or shares personal information to third parties not to sell or share the personal information to these third parties.
	A business may not sell or share the personal information of persons less than sixteen years of age without their affirmative consent, and in the case of those less than thirteen years of age, the consent must come from a parent.

Opt-In to Sale or Sharing	
Limit Use of Sensitive Personal Information	You may direct a business to limit the use of your sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations.
Non-Discrimination	 We will not discriminate against you for exercising your rights under the CCPA. Unless otherwise permitted by the CCPA we will not: Deny you goods or service Charge you different prices or rates for goods or services, including through granting discounts or other benefits, or imposing penalties Provide a different level or quality of goods or services Suggest that you will receive a different price or rate for goods or services

To Exercise Your Rights

To Opt-out of the Sale or Sharing of Your Personal Information

The CCPA gives consumers the right to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA.

To Limit the Use of Sensitive Personal Information

The CCPA gives consumers the right to direct a business to limit the use of the consumer's sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations. We do not use or disclose sensitive personal information for purposes other than those purposes specified in Section 7027, subsection (m) of the California Consumer Privacy Act Regulations. If we begin using or disclosing your sensitive personal information outside of those purposes, then we will provide you with the option to limit our use or disclosure through a clear and conspicuous link on our internet homepage.

To Request Access to, Correction or Deletion of Your Personal Information

To exercise your access, correction or deletion rights described above, please submit a verifiable consumer request to us by either: Calling us at 1-855-557-8437 or contacting us through our website <u>https://ccpa.oldrepublictitle.com</u>.

Only you or your representative that you authorize to act on your behalf (Authorized Agent) can make a verifiable consumer request for your personal information. You may also make a request for your minor child. The verifiable request must provide enough information that allows us to reasonably verify you are the person about whom we collected personal information. We cannot respond to your request or provide you with personal information if we cannot verify your identity or authority to make the request and to confirm the personal information relates to you.

We work to respond to a verifiable consumer request within 45 days of its receipt. If we require additional time, we will inform you of the extension period (up to an additional 45 days), and the reason for the extension in writing. If you have an account with us, we will deliver our response to that account. If you do not have an account with us, we will deliver our response by mail or electronically, depending on your preference. The response we provide will also explain any reasons why we cannot comply with a request.

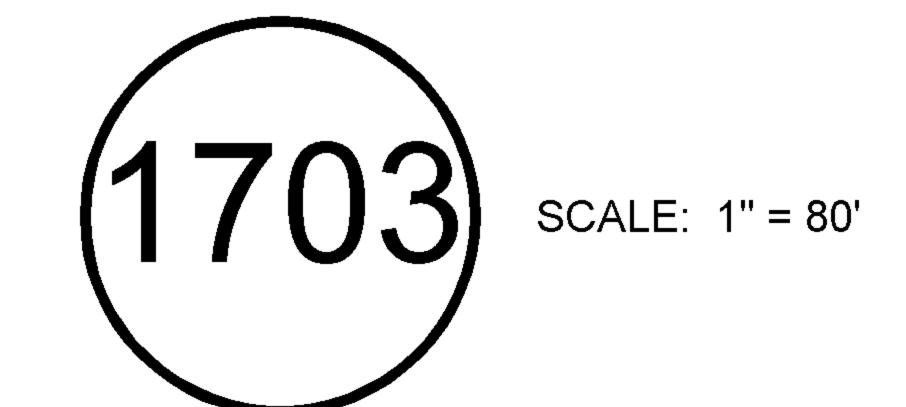
You may only make a consumer request for access twice within a twelve-month period. Any disclosures we provide will apply to the twelve-month period preceding the consumer request's receipt.

Contact Us

If you have any questions regarding our Privacy Notice or practices, please contact us or send your written request to: <u>CCPA@oldrepublictitle.com</u>, 1-855-557-8437, or 3000 Bayport Drive, Suite 1000 Tampa FL 33707

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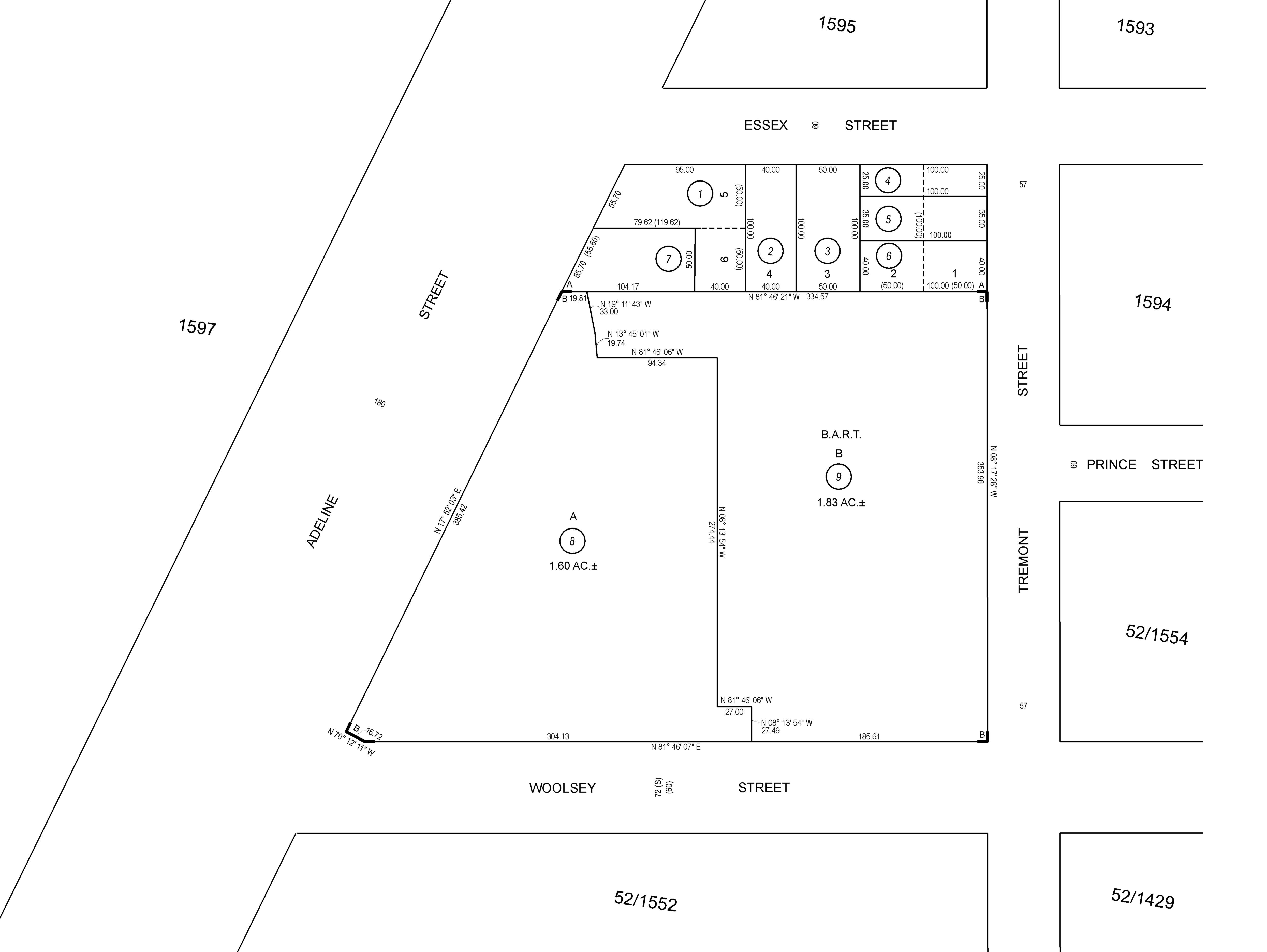




Code Area Nos. 13-000

(A) AMENDED MAP OF THE NEWBURY TRACT 9/23

(B) P.M.9797 308/76-78



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SBE:	11	REF: .

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NME

SCHEDULE 2.1(b)

Preliminary Title Report for West Lot Excluding Unassessed Parcel, dated March 27, 2024



555 12th Street, Suite 2000 Oakland, CA 94607 (510) 272-1121 Fax: (510) 208-5045

PRELIMINARY REPORT

2nd amend

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT 2150 Webster Street, 9th Floor Oakland, CA 94612

Attention: Shannon Dodge

When Replying Please Contact:

Our Order Number 1117025336-JM

Julie Massey JMassey@ortc.com (510) 272-1121

Property Address:

3100 Adeline Street, Berkeley, CA 94703

In response to the above referenced application for a policy of title insurance, OLD REPUBLIC TITLE COMPANY, as issuing Agent of Old Republic National Title Insurance Company, hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit I attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the Homeowner's Policy of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit I. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit I of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

Dated as of March 27, 2024, at 7:30 AM

OLD REPUBLIC TITLE COMPANY

For Exceptions Shown or Referred to, See Attached

Page 1 of 5 Pages

2nd amend

The form of policy of title insurance contemplated by this report is:

CLTA Standard Coverage Owner's Policy of Title Insurance - 2022; AND ALTA Loan Policy of Title Insurance - 2021. A specific request should be made if another form or additional coverage is desired.

The estate or interest in the land hereinafter described or referred or covered by this Report is:

Fee

Title to said estate or interest at the date hereof is vested in:

San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

The land referred to in this Report is situated in the County of Alameda, City of Berkeley, State of California, and is described as follows:

Lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp0.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page(s) 40.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971 as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 7 through RRW 26, filed for record on September 20, 1971 in Book 68 of Maps, at Pages 122 through 146, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

At the date hereof exceptions to coverage in addition to the Exceptions and Exclusions in said policy form would be as follows:

- 1. Taxes and assessments, general and special, for the fiscal year 2024 2025, a lien, but not yet due or payable.
- 2. Taxes and assessments, general and special, are currently not assessed because of a statutory exemption. Should the statutory exemption change, taxes may be levied against the land.
- 3. The lien of supplemental taxes, if any, assessed pursuant to the provisions of Section 75, et seq., of the Revenue and Taxation Code of the State of California.

OLD REPUBLIC TITLE COMPANY

ORDER NO. 1117025336-JM 2nd amend

4. The herein described property lying within the proposed boundaries of a Community Facilities District, as follows:

District No	:	2014-1
For	:	Clean Energy
Disclosed By	:	Notice of Special Tax Lien
Recorded	:	August 24, 2015 in Official Records under Recorder's Serial Number
		2015-235594

Further information may be obtained by contacting:

5. Any special tax which is now a lien and that may be levied within the East Bay Regional Park District Community Facilities District No. A/C-3, a notice of which was recorded as follows:

Instrument Entitled	:	Notice of Special Tax Lien
Ву	:	Board of the East Bay Regional Park District
Recorded	:	January 31, 2019 in Official Records under Recorder's Serial
		Number 2019-0015593

NOTE: Among other things, there are provisions in said Notice for a special tax to be levied annually, the amounts of which are to be added to and collected with the property taxes.

NOTE: The current annual amount levied against this land is exempt at this time.

Further information may be obtained by contacting:

Name	:	EBRPD
Address	:	Oakland, CA

- 6. Rights of the public, County and/or City, in and to that portion of said land lying within the lines of Martin Luther King Jr. Way, Ashby Avenue and Adeline Street.
- 7. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.
- 8. Any unrecorded and subsisting leases.
- 9. The requirement that this Company be provided with a suitable Owner's Declaration (form ORT 174). The Company reserves the right to make additional exceptions and/or requirements upon review of the Owner's Declaration.

OLD REPUBLIC TITLE COMPANY

ORDER NO. 1117025336-JM 2nd amend

10. The requirement that satisfactory evidence be furnished to this Company of compliance with applicable statutes, ordinances and charters governing the ownership and disposition of the herein described land.

------ Informational Notes ------

- A. The applicable rate(s) for the policy(s) being offered by this report or commitment appears to be section(s) 1.1 and 2.1.
- B. NOTE: The last recorded transfer or agreement to transfer the land described herein is as follows:

Instrument		
Entitled	:	Quitclaim Deed
By/From	:	The Ed Roberts Campus, a California nonprofit public benefit corporation
То	:	San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.
Recorded	:	August 18, 2008 in Official Records under Recorder's Serial Number 2008255321

OLD REPUBLIC TITLE COMPANY ORDER NO. 1117025336-JM 2nd amend

NOTE:

The following statement is deemed attached as a coversheet to any declaration, governing document, or deed identified in the above exceptions:

If this document contains any restriction based on age, race, color, religion, sex, gender, gender identity, gender expression, sexual orientation, familial status, marital status, disability, veteran or military status, genetic information, national origin, source of income as defined in subdivision (p) of Section 12955, or ancestry, that restriction violates state and federal fair housing laws and is void, and may be removed pursuant to Section 12956.2 of the Government Code by submitting a "Restrictive Covenant Modification" form, together with a copy of the attached document with the unlawful provision redacted to the county recorder's office. The "Restrictive Covenant Modification" form can be obtained from the county recorder's office and may be available on its internet website. The form may also be available from the party that provided you with this document. Lawful restrictions under state and federal law on the age of occupants in senior housing or housing for older persons shall not be construed as restrictions based on familial status.

Information for processing a "Restrictive Covenant Modification" form:

- 1. Print a complete copy of the document in question. Strike out what you believe to be unlawful restrictive language in the document.
- 2. Print and complete the "Restrictive Covenant Modification" ("RCM") form. Note that the signature on the form must be acknowledged by a notary public or other qualified officer.
- 3. Submit the completed RCM form and the document with your strike-outs to the County Clerk-Recorder's Office for the county where the property is located. No fee is required for this service.
- 4. The County Clerk-Recorder's Office will forward the RCM form and the document with your strike-outs to the Office of the County Counsel, who will determine whether the document contains any unlawful restrictions.
- 5. The Office of the County Counsel will return the RCM form and the document with your strike-outs to the County Clerk-Recorder's Office along with its determination. If approved, a Deputy County Counsel will sign the RCM, and the County Clerk-Recorder's Office will record, image and index it. If the Office of the County Counsel determines that the document does not contain an unlawful restriction, the County Clerk-Recorder's Office will not record the RCM.
- 6. The approved RCM will be returned to the submitter by mail.

The "Restrictive Covenant Modification" form is linked below:

Restrictive Covenant Modification form

CALIFORNIA LAND TITLE ASSOCIATION STANDARD COVERAGE OWNER'S POLICY OF TITLE INSURANCE – 2022

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- **1.** a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - any governmental forfeiture, police, regulatory, or national security power.

c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

- 2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
- **3.** Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 9 or 10); or
 - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser had been given for the Title at the Date of Policy.
- 4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction vesting the Title as shown in Schedule A is a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:

b.

- i. to the extent the instrument of transfer vesting the Title as shown in Schedule A is not a transfer made as a contemporaneous exchange for new value; or
- ii. for any other reason not stated in Covered Risk 9.b.
- 5. Any claim of a PACA-PSA Trust. Exclusion 5 does not modify or limit the coverage provided under Covered Risk 8.
- 6. Any lien on the Title for real estate taxes or assessments imposed or collected by a governmental authority that becomes due and payable after the Date of Policy. Exclusion 6 does not modify or limit the coverage provided under Covered Risk 2.b.
- 7. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

PART I

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

PART II

(Variable exceptions such as taxes, easements, CC&R's, etc., are inserted here)

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY OF TITLE INSURANCE – 2021

EXCLUSIONS FROM COVERAGE

The following matters are excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

- **1.** a. any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) that restricts, regulates, prohibits, or relates to:
 - i. the occupancy, use, or enjoyment of the Land;
 - ii. the character, dimensions, or location of any improvement on the Land;
 - iii. the subdivision of land; or
 - iv. environmental remediation or protection.
 - b. any governmental forfeiture, police, regulatory, or national security power.

c. the effect of a violation or enforcement of any matter excluded under Exclusion 1.a. or 1.b.

Exclusion 1 does not modify or limit the coverage provided under Covered Risk 5 or 6.

- 2. Any power of eminent domain. Exclusion 2 does not modify or limit the coverage provided under Covered Risk 7.
- **3.** Any defect, lien, encumbrance, adverse claim, or other matter:
 - a. created, suffered, assumed, or agreed to by the Insured Claimant;
 - b. not Known to the Company, not recorded in the Public Records at the Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - c. resulting in no loss or damage to the Insured Claimant;
 - d. attaching or created subsequent to the Date of Policy (Exclusion 3.d. does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - e. resulting in loss or damage that would not have been sustained if consideration sufficient to qualify the Insured named in Schedule A as a bona fide purchaser or encumbrancer had been given for the Insured Mortgage at the Date of Policy.
- 4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business law.
- 5. Invalidity or unenforceability of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury law or Consumer Protection Law.
- 6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights law, that the transaction creating the lien of the Insured Mortgage is a:
 - a. fraudulent conveyance or fraudulent transfer;
 - b. voidable transfer under the Uniform Voidable Transactions Act; or
 - c. preferential transfer:
 - to the extent the Insured Mortgage is not a transfer made as a contemporaneous exchange for new value; or
 - ii. for any other reason not stated in Covered Risk 13.b.
- 7. Any claim of a PACA-PSA Trust. Exclusion 7 does not modify or limit the coverage provided under Covered Risk 8.
- 8. Any lien on the Title for real estate taxes or assessments imposed by a governmental authority and created or attaching between the Date of Policy and the date of recording of the Insured Mortgage in the Public Records. Exclusion 8 does not modify or limit the coverage provided under Covered Risk 2.b. or 11.b.
- 9. Any discrepancy in the quantity of the area, square footage, or acreage of the Land or of any improvement to the Land.

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY OF TITLE INSURANCE – 2021 (Continued)

EXCEPTIONS FROM COVERAGE

Some historical land records contain Discriminatory Covenants that are illegal and unenforceable by law. This policy treats any Discriminatory Covenant in a document referenced in Schedule B as if each Discriminatory Covenant is redacted, repudiated, removed, and not republished or recirculated. Only the remaining provisions of the document are excepted from coverage.

This policy does not insure against loss or damage and the Company will not pay costs, attorneys' fees, or expenses resulting from the terms and conditions of any lease or easement identified in Schedule A, and the following matters:

NOTE: The 2021 ALTA Loan Policy may be issued to afford either Standard Coverage or Extended Coverage. In addition to variable exceptions such as taxes, easements, CC&R's, etc., the Exceptions from Coverage in a Standard Coverage policy will also include the Western Regional Standard Coverage Exceptions listed as 1 through 7 below:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.

2. Any facts, rights, interests, or claims that are not shown by the Public Records at Date of Policy but that could be (a) ascertained by an inspection of the Land, or (b) asserted by persons or parties in possession of the Land.

3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records at Date of Policy.

4. Any encroachment, encumbrance, violation, variation, easement, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records at Date of Policy.

5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

6. Any lien or right to a lien for services, labor, material or equipment unless such lien is shown by the Public Records at Date of Policy.

7. Any claim to (a) ownership of or rights to minerals and similar substances, including but not limited to ores, metals, coal, lignite, oil, gas, uranium, clay, rock, sand, and gravel located in, on, or under the Land or produced from the Land, whether such ownership or rights arise by lease, grant, exception, conveyance, reservation, or otherwise; and (b) any rights, privileges, immunities, rights of way, and easements associated therewith or appurtenant thereto, whether or not the interests or rights excepted in (a) or (b) appear in the Public Records or are shown in Schedule B.

****** ** OLD REPUBLIC TITLE *****

FACTS

WHAT DOES OLD REPUBLIC TITLE DO WITH YOUR PERSONAL INFORMATION?

Why?	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What?	 The types of personal information we collect and share depend on the product or service you have with us. This information can include: Social Security number and employment information Mortgage rates and payments and account balances Checking account information and wire transfer instructions When you are no longer our customer, we continue to share your information as described in this notice.
How?	All financial companies need to share customers' personal information to run their everyday business. In the section below, we list the reasons financial companies can share their customers' personal information; the reasons Old Republic Title chooses to share; and whether you can limit this sharing.

Reasons we can share your personal information	Does Old Republic Title share?	Can you limit this sharing?
For our everyday business purposes — such as to process your transactions, maintain your account(s), or respond to court orders and legal investigations, or report to credit bureaus	Yes	No
For our marketing purposes — to offer our products and services to you	No	We don't share
For joint marketing with other financial companies	No	We don't share
For our affiliates' everyday business purposes — information about your transactions and experiences	Yes	No
For our affiliates' everyday business purposes — information about your creditworthiness	No	We don't share
For our affiliates to market to you	No	We don't share
For non-affiliates to market to you	No	We don't share

Go to www.oldrepublictitle.com (Contact Us)

Who we are	
Who is providing this notice?	Companies with an Old Republic Title name and other affiliates. Please see below for a list of affiliates.

What we do		
How does Old Republic Title protect my personal information?	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings. For more information, visit https://www.oldrepublictitle.com/privacy-policy	
How does Old Republic Title collect my personal information?	 We collect your personal information, for example, when you: Give us your contact information or show your driver's license Show your government-issued ID or provide your mortgage information Make a wire transfer We also collect your personal information from others, such as credit bureaus, affiliates, or other companies. 	
Why can't I limit all sharing?	 Federal law gives you the right to limit only: Sharing for affiliates' everyday business purposes - information about your creditworthiness Affiliates from using your information to market to you Sharing for non-affiliates to market to you State laws and individual companies may give you additional rights to limit sharing. See the State Privacy Rights section location at https://www.oldrepublictitle.com/privacy-policy for your rights under state law. 	

Definitions	
Affiliates	 Companies related by common ownership or control. They can be financial and nonfinancial companies. Our affiliates include companies with an Old Republic Title name, and financial companies such as Attorneys' Title Fund Services, LLC, Lex Terrae National Title Services, Inc., and Mississippi Valley Title Services Company
Non-affiliates	Companies not related by common ownership or control. They can be financial and non- financial companies. • Old Republic Title does not share with non-affiliates so they can market to you
Joint marketing	A formal agreement between non-affiliated financial companies that together market financial products or services to you. • Old Republic Title doesn't jointly market.

Affiliates Who May be Delivering This Notice							
American First Title & Trust Company	American Guaranty Title Insurance Company	Attorneys' Title Fund Services, LLC	Compass Abstract, Inc.	eRecording Partners Network, LLC			
Genesis Abstract, LLC	Guardian Consumer Services, Inc.	iMarc, Inc.	L.T. Service Corp.	Lenders Inspection Company			
Lex Terrae National Title Services, Inc.	Lex Terrae, Ltd.	Mississippi Valley Title Services Company	Old Republic Branch Information Services, Inc.	Old Republic Diversified Services, Inc.			
Old Republic Escrow of Vancouver, Inc.	Old Republic Exchange Company	Old Republic National Ancillary Services, Inc.	Old Republic Title and Escrow of Hawaii, Ltd.	Old Republic National Title Insurance Company			
Old Republic Title Company	Old Republic Title Company of Conroe	Old Republic Title Company of Nevada	Old Republic Title Company of Oklahoma	Old Republic Title Company of Oregon			
Old Republic Title Company of St. Louis	Old Republic Title Information Concepts	Old Republic Title Insurance Agency, Inc.	Old Republic Title, Ltd.	RamQuest Software, Inc.			
Republic Abstract & Settlement, LLC	Sentry Abstract Company	Surety Title Agency, Inc.	Trident Land Transfer Company, LLC				

Updated: January 1, 2024

Privacy Notice for California Consumers

This Privacy Notice for California Consumers supplements the information contained in the Master Privacy Notice for Old Republic Title and applies to consumers that reside in the State of California. The terms used in this Privacy Notice have the same meaning as the terms defined in the California Consumer Privacy Act ("CCPA").

What Personal Information We Collect

In accordance with the CCPA, personal information is information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information does not include:

Information outside the scope of the CCPA such as:

- Health or medical information covered by the Health Insurance Portability Act of 1996 (HIPAA) and the California Confidentiality of Medical Information Act (CMIA).
- Personal Information covered by the Gramm-Leach-Bliley Act (GLBA), the Fair Credit Reporting Act (FCRA), the California Financial Information Privacy Act (FIPA), and the Driver's Privacy Protection Act of 1994,
- Publicly available information or lawfully obtained, truthful information that is a matter of public concern, and
- De-identified or aggregated consumer information.

Please see the chart below to learn what categories of personal information we may have collected about California consumers within the preceding twelve months, the sources of and business purposes for that collection and the third parties to whom the information has been disclosed, if any.

Category	Examples	Sources	Business Purpose for Collection	Categories of Third Parties with Whom Information is Shared
Identifiers	Real name, alias, postal address, unique personal identifier, online	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or	Service providers associated with the transaction for a business

	identifier, Internet protocol address, email address, email address, account name, social security number, driver's license number, passport number or other similar identifiers Social security number, driver's license number, passport number are collected	Title Agents associated with the transaction	complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	purpose
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e))	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card	Consumers, Lenders, Brokers, Attorneys, Real Estate Agents, and Title Agents associated with the transaction	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose

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	number, or			
	any other			
	financial			
	information,			
	medical			
	information,			
	or health			
	insurance			
	information.			
	"Personal			
	information"			
	does not			
	include			
	publicly			
	available			
	information			
	that is lawfully			
	made available			
	to the general			
	public from			
	federal, state,			
	or local			
	government			
	records.			
	Social security			
	number,			
	driver's license			
	number or			
	state			
	identification			
	card number,			
	passport			
	number, bank			
	account			
	number,			
	citizenship,			
	immigration			
	status are			
	collected			
Characteristics	Age (40 years	Consumers,	Underwriting or	Service
of protected	or older), race,	Lenders,	providing other	providers
classifications	color,			•
under	ancestry,	Brokers,	products or services,	associated with
California or	national origin,	Attorneys,	responding to	the transaction
federal law	citizenship,	Real Estate	policyholder/consumer	for a business
	religions or	Agents, and	claims, inquiries or	purpose
	creed, marital	Title Agents	complaints. Other	

	status, medical	• • •	availte an an a' d'	
	condition,	associated	audit or operational	
	physical or	with the	purposes.	
	mental	transaction		
	disability, sex			
	(including			
	gender,			
	gender			
	identity,			
	gender			
	expression,			
	pregnancy or childbirth and			
	related			
	medical			
	conditions), sexual			
	orientation,			
	veteran or			
	military status,			
	or genetic			
	information			
	(including			
	familial			
	genetic			
	information).			
	informationy.			
	Marital status,			
	sex, physical			
	disability,			
	citizenship is			
	collected			
Internet or	Browsing	Consumers,	To provide access to	Not Disclosed
other	history, search		•	
electronic	history,	Lenders,	certain online	
network	information	Brokers,	services. To	
activity	about a	Attorneys,	understand the	
	consumer's	Real Estate	interests of visitors to	
	interaction	Agents, and	our online services, to	
	with a	Title Agents	support certain	
	website,	associated	features of our site, for	
	application, or	with the	navigation and to	
	advertisement.	transaction	display certain	
			features more	
			effectively. Detecting	
			security incidents,	

fraudulent, or illegal activity. Other audit or operational purposes.

What Personal Information We Disclose and Why We Disclose It

The CCPA requires us to tell you what categories of personal information we "sell", "share" or "disclose." We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, including the personal information of persons under 16 years of age, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA. When it is necessary for a business purpose, we may disclose your personal information with a service provider or contractor, and we enter into a contract with the service provider or contractor that limits how the information may be used and requires the service provider to protect the confidentiality of the information.

In the preceding twelve months, we have disclosed the following categories of personal information for the following business purposes. Where the personal information is shared with third parties, as that term is defined in the CCPA, the category of the third party is indicated.

Category	Examples	Business Purpose for Disclosure	Categories of Third Parties with Whom Information is Shared
Identifiers (Including social security number,	Real name, alias, postal address, unique personal identifier, online identifier, internet protocol address, email address, account name, social security number, driver's license number, passport number or	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or	Service providers associated with the transaction for a business purpose
driver's license number,	other similar identifiers	complaints, detecting security incidents, protecting against	

Exhibit A

and passport number)		malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	
Personal information described in California Customer Records statute (Cal. Civ. Code § 1798.80(e)) (Including Social security number, driver's license number or state identification card number, passport number, bank account number, citizenship, and immigration status)	Name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information. "Personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints, detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Characteristics of protected classifications under California or federal law (Including marital status, sex, citizenship, and physical disability)	Age (40 years or older), race, color, ancestry, national origin, citizenship, religions or creed, marital status, medical condition, physical or mental disability, sex (including gender, gender identity, gender expression, pregnancy or childbirth and related medical conditions), sexual orientation, veteran or military status, or genetic information (including familial genetic information).	Underwriting or providing other products or services, responding to policyholder/consumer claims, inquiries or complaints. Other audit or operational purposes.	Service providers associated with the transaction for a business purpose
Internet or other electronic	Browsing history, search history, information about a consumer's interaction with a	To provide access to certain online services. To	Not Disclosed

network	website, application, or	understand the	
activity	advertisement.	interests of visitors to	
		our online services, to	
		support certain	
		features of our site, for	
		navigation and to	
		display certain	
		features more	
		effectively. Detecting	
		security incidents,	
		protecting against	
		malicious, deceptive,	
		fraudulent, or illegal	
		activity. Other audit or	
		operational purposes.	

We may also transfer to a third party the personal information of a consumer as an asset that is part of a merger, acquisition, bankruptcy, or other transaction in which the third party assumes control of all or part of the business.

Our Retention of Your Personal Information

The length of time that we retain personal information largely depends upon the purpose for which the information was collected rather than the category of the information as set forth in this Notice. When establishing retention periods, we consider applicable statutes of limitation and legal and regulatory requirements and guidelines. Personal information is generally retained for periods of time that permit the company to meet its legal and regulatory obligations.

Your Rights and Choices

The CCPA provides California consumers with certain rights regarding their personal information. This chart describes those rights and certain limitations to those rights.

Right	What This Means
Notice	At or before the time your personal information is collected, you will be given written notice of the categories of personal information to be collected, the purposes for which the categories of personal information will be used, and whether that information is sold or shared.
Access	At your verifiable request, but no more than twice in a twelve month period, we shall disclose to you: 1) the categories of personal information we have collected about you, 2) the categories of sources for the personal information we collected about you, 3) our business or commercial purpose for collecting, selling or sharing your personal information, 4) the categories of third parties to whom we disclose your personal information, 5) the specific pieces of information we have collected about you, 6) the categories of personal

	information disclosed about you for a business purpose and the categories of persons to whom your personal information was disclosed for a business purpose, and 7) if we sold or shared personal information, the categories of personal information sold or shared and the categories of third parties to whom it was sold or shared.
Deletion	 You have the right to request that we delete any of your personal information that we collected from you, subject to certain exceptions. Once we receive and verify your request, we will delete (and direct our service providers and contractors to delete) your personal information from our records unless an exception applies. We may deny your request if retention of the information is necessary for us or our service providers to: Complete the transaction for which we collected the personal information, provide a good or service that you requested, take actions reasonably anticipated within the context of our ongoing business relationship with you, or otherwise perform our contract with you. Help to ensure security and integrity to the extent the use of your personal information is reasonably necessary and proportionate to that purpose. Debug to identify and repair errors that impair existing intended functionality. Exercise free speech, ensure the right of another consumer to exercise their free speech rights, or exercise another right provided for by law. Comply with the California Electronic Communications Privacy Act (Cal. Penal Code §1546 et seq.) Engage in public or peer reviewed scientific, historical, or statistical research that conforms or adheres to all other applicable ethics and privacy laws, when the information's deletion is likely to render impossible or seriously impair the research's completion, if you previously provided informed consent. Enable solely internal uses that are reasonably aligned with consumer expectations based on your relationship with us and compatible with the context in which you provided the information. Comply with a legal obligation. Or if it is the type of personal information that falls outside the scope of the CCPA, (HIPAA, CIMA, GLBA, or publicly available information.
Correct	You have the right to request that we correct inaccurate personal information about you, taking into account the nature of the personal information and the purposes of the processing of the personal information. After we receive and verify your request, we will use commercially reasonable efforts to correct the inaccurate personal information as directed by you.
Opt-Out of Sale or Sharing	With some limitations, you may direct a business that sells or shares personal information to third parties not to sell or share the personal information to these third parties.
	A business may not sell or share the personal information of persons less than sixteen years of age without their affirmative consent, and in the case of those less than thirteen years of age, the consent must come from a parent.

Opt-In to Sale or Sharing	
Limit Use of Sensitive Personal Information	You may direct a business to limit the use of your sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations.
Non-Discrimination	 We will not discriminate against you for exercising your rights under the CCPA. Unless otherwise permitted by the CCPA we will not: Deny you goods or service Charge you different prices or rates for goods or services, including through granting discounts or other benefits, or imposing penalties Provide a different level or quality of goods or services Suggest that you will receive a different price or rate for goods or services

To Exercise Your Rights

To Opt-out of the Sale or Sharing of Your Personal Information

The CCPA gives consumers the right to direct a business that sells or shares personal information about the consumer to third parties not to sell or share the consumer's personal information. We do not sell and will not sell your personal information as that term is commonly understood. We also do not sell and will not sell your personal information, as that term is defined by the CCPA. We do not share your personal information as that term is defined in the CCPA.

To Limit the Use of Sensitive Personal Information

The CCPA gives consumers the right to direct a business to limit the use of the consumer's sensitive personal information to that use which is necessary to perform the services or provide the goods reasonably expected by an average consumer who requests those goods or services and certain other limited uses as described in the CCPA and applicable regulations. We do not use or disclose sensitive personal information for purposes other than those purposes specified in Section 7027, subsection (m) of the California Consumer Privacy Act Regulations. If we begin using or disclosing your sensitive personal information outside of those purposes, then we will provide you with the option to limit our use or disclosure through a clear and conspicuous link on our internet homepage.

To Request Access to, Correction or Deletion of Your Personal Information

To exercise your access, correction or deletion rights described above, please submit a verifiable consumer request to us by either: Calling us at 1-855-557-8437 or contacting us through our website <u>https://ccpa.oldrepublictitle.com</u>.

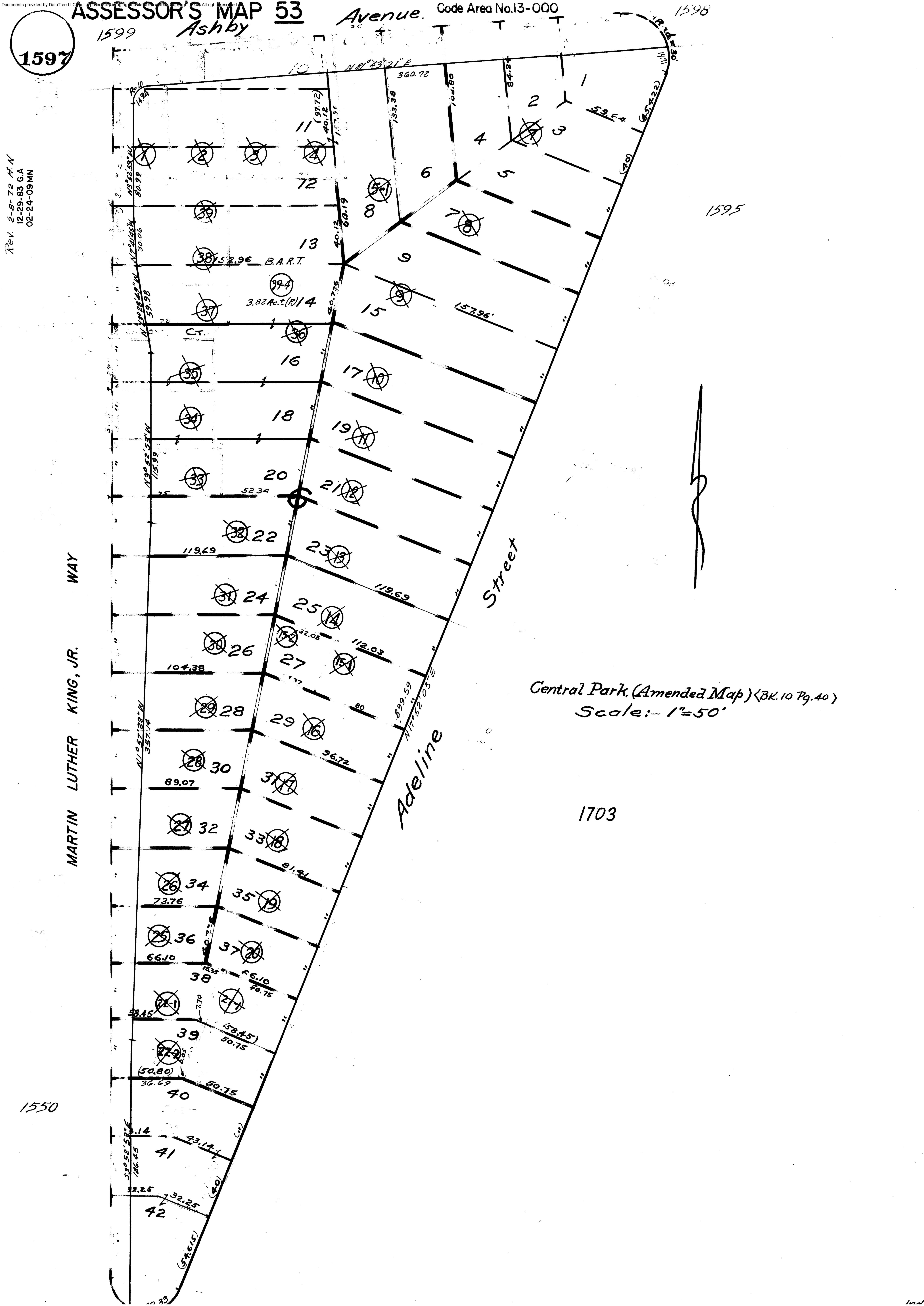
Only you or your representative that you authorize to act on your behalf (Authorized Agent) can make a verifiable consumer request for your personal information. You may also make a request for your minor child. The verifiable request must provide enough information that allows us to reasonably verify you are the person about whom we collected personal information. We cannot respond to your request or provide you with personal information if we cannot verify your identity or authority to make the request and to confirm the personal information relates to you.

We work to respond to a verifiable consumer request within 45 days of its receipt. If we require additional time, we will inform you of the extension period (up to an additional 45 days), and the reason for the extension in writing. If you have an account with us, we will deliver our response to that account. If you do not have an account with us, we will deliver our response by mail or electronically, depending on your preference. The response we provide will also explain any reasons why we cannot comply with a request.

You may only make a consumer request for access twice within a twelve-month period. Any disclosures we provide will apply to the twelve-month period preceding the consumer request's receipt.

Contact Us

If you have any questions regarding our Privacy Notice or practices, please contact us or send your written request to: <u>CCPA@oldrepublictitle.com</u>, 1-855-557-8437, or 3000 Bayport Drive, Suite 1000 Tampa FL 33707



Ind. I

SCHEDULE 2.1(c) Updated East Lot Preliminary Title Report

[Will be attached upon execution of the Exchange Agreement.]

SCHEDULE 2.1(d) Updated West Lot Preliminary Title Report

[Will be attached upon execution of the Exchange Agreement.]

<u>SCHEDULE 4.3.1</u> Quitclaim Deed – West Lot Air Rights Option

RECORDING REQUESTED BY:

Old Republic Title Company

WHEN RECORDED MAIL TO:

San Francisco Bay Area Rapid Transit District 2150 Webster Street, 9th Floor Oakland, CA 94612 Attn: Real Estate Manager

APN 053-1597-039-04

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383

The undersigned grantor(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Revenue & Taxation Code § 11922 () computed on full value of property conveyed, or () computed on full value less of liens and encumbrances remaining at time of sale.

() Unincorporated area: (X) City of Berkeley, CA

Quitclaim Deed (Extinguishment of Option to Purchase Air Rights)

Quitclaim Deed (Extinguishment of Option to Purchase Air Rights)

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF BERKELEY, a municipal corporation of the State of California ("City"), hereby remises, releases and forever guitclaims to

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("BART"),

all of City's rights under that certain unrecorded agreement dated as of October 22, 1964, as amended, between BART and the City ("Air Rights Agreement") to acquire an interest in that real property situated in the City of Berkeley, County of Alameda, State of California more particularly described in "EXHIBIT A" attached hereto and incorporated herein by reference ("Subject Property"),

City has consented to, accepted, approved, and authorized this Quitclaim Deed pursuant to its Ordinance No. (add Ordinance number) entitled (add name of Ordinance). This Quitclaim Deed is recorded for the purpose of extinguishing all right, title, and interest that the City has in the Subject Property arising from the Air Rights Agreement, including without limitation any option to purchase air rights in the Subject Property. Accordingly, for tax assessment purposes this Quitclaim Deed is not a change of ownership under Revenue and Taxation section 60, et seq.

Mail tax statements to owners of record.

Date:_____

CITY OF BERKELEY

By: Its: (Seal) By: _____, City Clerk Attest:__

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.				
State of California)			
County of) ss.)			
On before	ne,, personal	ly appeared		

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_

Notary Public

[seal]

CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Quitclaim Deed (Extinguishment of Option to Purchase Air Rights) dated _______ from the City of Berkeley to the San Francisco Bay Area Rapid Transit District, a rapid transit district, is hereby accepted by the undersigned officer or agent on behalf of the San Francisco Bay Area Rapid Transit District pursuant to authority conferred by resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District entitled "In The Matter of Authorizing Acceptance of Deeds and Grants", bearing No. 291, adopted on October 24, 1963, and the San Francisco Bay Area Rapid Transit District consents to recordation thereof by its duly authorized officer.

Dated: _____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By:

Title:

EXHIBIT A

(Subject Property)

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: Non-Assessed Parcel.

Attached hereto and made a part hereof the following Filed maps:

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

SCHEDULE 4.3.2 Quitclaim Deed – R9-2 Parcel

RECORDING REQUESTED BY:

Old Republic Title Company

WHEN RECORDED MAIL TO:

San Francisco Bay Area Rapid Transit District 2150 Webster Street, 9th Floor Oakland, CA 94612 Attn: Real Estate Manager

APN: Non-Assessed Parcel

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383

The undersigned grantor(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Revenue & Taxation Code § 11922 () computed on full value of property conveyed, or () computed on full value less of liens and encumbrances remaining at time of sale.

() Unincorporated area: (X) City of Berkeley, CA

Quitclaim Deed

Quitclaim Deed

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

CITY OF BERKELEY, a municipal corporation of the State of California ("City"),

hereby remises, releases and forever quitclaims to

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.,

the real property situated in the City of Berkeley, County of Alameda, State of California more particularly described in **"EXHIBIT A"** attached hereto and incorporated herein by reference ("Subject Property"), reserving therefrom the rights specified in said "EXHIBIT A."

City intends pursuant to this Quitclaim Deed to relinquish its right, title, and interest in the Subject Property, including without limitation its public rights-of-way, except the rights reserved herein, in accordance with the "Ashby BART Station Transit-Oriented Development Exchange Agreement" consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. *(add Ordinance number)* entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby BART Station Property", recorded *(concurrently herewith OR on _____ as Instrument Number _____ in the Official Records of Alameda County, California)*.

Mail tax statements to owners of record.

Date:_____

CITY OF BERKELEY

Its:

By:

(Seal)

Attest:______, City Clerk

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.			
State of California)		
County of) ss.)		
0	6		
On be	fore me,	, personally appeared	

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_

Notary Public

[seal]

CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Quitclaim Deed dated _______ from the City of Berkeley to the San Francisco Bay Area Rapid Transit District, a rapid transit district, is hereby accepted by the undersigned officer or agent on behalf of the San Francisco Bay Area Rapid Transit District, pursuant to authority conferred by resolution of the Board of Directors of the San Francisco Bay Area Rapid Transit District entitled "In The Matter of Authorizing Acceptance of Deeds and Grants", bearing No. 291, adopted on October 24, 1963, and the San Francisco Bay Area Rapid Transit District consents to recordation thereof by its duly authorized officer.

Dated:

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By:

Title:

EXHIBIT A

(Subject Property)

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

RESERVING THEREFROM an easement to the City of Berkeley for stormwater drainage and sanitary pipe line facilities (collectively "Facilities") and appurtenances therefor, together with access thereto, including without limitation for the use, installation, maintenance, repair, replacement, upgrade, improvement, removal of obsolete or redundant Facilities, inspection, and testing thereof.

Except in the event of an emergency necessitating immediate access, City shall use good faith efforts to provide BART with at least 10 business days' advance notice of any work within the easement area, and shall provide at least 72 hours' advance notice of such work. In the event of an emergency, BART shall be notified within 24 hours of entry onto, or work within, said easement area. All such work within the easement area shall be performed in a manner so as to not unreasonably interfere with or damage BART's facilities on or adjacent to R9-2.

Except where the installation of new or expanded Facilities is required by law or a California state regulatory agency, the installation of any new or expanded Facilities within the easement area/R9-2 shall be subject to BART's review and approval consistent with its standard practices, which approval shall not be unreasonably withheld. In the event that law or a California state regulatory agency requires installation within R9-2 of new or expanded Facilities, or installation of other utilities not within the scope of this easement, the City and BART shall work together in good faith to ensure that the installation complies with all regulatory agency timelines and requirements and that said Facilities or other utilities do not unreasonably interfere with or damage BART's facilities on or adjacent to R9-2. The City's compliance with regulatory timelines and requirements shall be prioritized as part of this coordination process.

APN: Non-Assessed Parcel

SCHEDULE 4.3.3 East Lot Covenants

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

San Francisco Bay Area Rapid Transit District 2150 Webster Street, 9th Floor Oakland, CA 94612 Attn: Real Estate Manager

APN 053-1703-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title

The undersigned(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Rev. & Tax. Code § 11922

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area: (X) City of Berkeley, State of California

MEMORANDUM OF COVENANTS

Memorandum of Covenants

This Memorandum of Covenants ("Memorandum") is made by the City of Berkeley, a charter city ("Owner") effective as of the date of its recordation in the Official Records of Alameda County, California ("Effective Date").

<u>RECITALS</u>

A. Owner is the fee simple owner of the real property in the City of Berkeley ("City"), County of Alameda, State of California, identified by Assessor Parcel Number 053-1703-009 ("Property"), more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

B. Owner and the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("BART"), entered into that certain ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT dated _____ ("Exchange Agreement"), by which, inter alia, BART agreed to convey the Property to Owner, and Owner agreed to quitclaim to BART certain of Owner's interests in a parcel of land owned by BART ("West Lot") situated in the City and more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

C. In addition, Owner agreed as part of the land exchange to record against the Property this Memorandum, for the purpose of imposing certain conditions, covenants, and restrictions on the future development of the Property ("Covenants").

NOW, THEREFORE, in consideration of the Covenants, the consideration received by Owner pursuant to the Exchange Agreement, and other good and

valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner thus declares that the Property, and all portions thereof and interests therein, shall be irrevocably held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the Covenants described below, which shall be equitable servitudes and shall run with land, and shall be binding on any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, and such person's or entity's heirs, successors, and assigns, and shall inure to the benefit of the West Lot and BART as the owner of the West Lot, as follows:

MEMORANDUM OF COVENANTS

Development Requirements

1. Any development of the Property shall achieve a minimum density of 75 dwelling units per acre.

Affordable Housing Requirements

2. At least 35% of any new housing units developed on the Property, including any units that may be added as a result of a density bonus, shall be Affordable Housing units. Owner, together with any developer(s) of the property, shall explore the potential for exceeding the 35% requirement, with the goal of 50% of Affordable Housing units, taking into consideration development costs, values and potential for additional City subsidy.

"Affordable Housing" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. "Extremely Low Income Households" means households earning less than the "Extremely Low" limits by household size for the "Alameda County Area" as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Very Low Income Households" means households earning less than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Low Income Households" means households earning less than the "Low Income" by household size for the "Alameda County Area" but more than Very Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations.

3. Any Affordable Housing units that are provided to satisfy the requirements of the City's inclusionary housing ordinance (Chapter 23.238 of the Berkeley Municipal Code) ("Inclusionary Housing Ordinance") and are included in a mixed-income building shall be rent- and income-restricted in perpetuity as required by the Inclusionary Housing Ordinance. All other Affordable Housing 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 Property that are not subject to a ground lease.

- 4. Development of the Property shall meet the following minimum affordability requirements:
 - (a) At least 35% of the housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of AMI.
 - (b) At least 20% of the required 35% affordable units referred to in subparagraph (a) must be affordable to Extremely Low-Income ("ELI") households, which are currently defined as those earning up to 30% of AMI.
 - (c) Of the required 35% affordable units referred to in subparagraph (a), additional affordable units aside from the ELI units should prioritize Very Low Income Households (up to 50% of AMI) and Low Income Households (up to 80% of AMI) but may include some housing restricted to Moderate Income Households (up to 120% of AMI), provided that the moderateincome units have rents that are still below market and are not funded by City subsidies.

5. Any project on the Property that includes construction of both Affordable Housing units and market-rate housing units shall construct the Affordable Housing units prior to or concurrently with any market-rate housing.

6. Affordable Housing units developed on the Property may be clustered into one or more buildings with 100% Affordable Housing buildings or dispersed amongst mixedincome housing buildings, but such Affordable Housing units must be designed in a way that integrates with the larger project on the Property and shares comparable design standards and quality.

7. If a development project will meet all or a portion of the requirements of the Inclusionary Ordinance through clustering as described in Paragraph 6, Owner or developer shall contribute funding towards such clustered Affordable Housing units in an amount calculated as follows: (1) multiplying \$56.25 (as this amount may be adjusted biennially pursuant to City Resolution No. 70,698-N.S.) by the total residential unit floor area of the project or projects less 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 any density bonus ("Net Residential Unit Floor Area"); 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 Housing units provided within mixed income buildings that comply with all of the requirements of the Inclusionary Housing Ordinance. For example, buildings that are 10% Affordable Housing units would contribute \$28.12 per foot (half of \$56.25), adjusted for inflation.

For the purpose of calculating the Net Residential Unit Floor Area, the floor 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 By way of example, a project that clustered all Affordable Housing units in 100% Affordable Housing 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 Housing units on-site within the market rate buildings would make a prorated contribution.

8. The application of the State Density Bonus Law to the Property shall not yield a project that is less than 35% Affordable Housing as a proportion of the total units on the Property, or less than 50% Affordable Housing for the first 602 units.

Objective Design Standards

9. The objective design standards adopted by the City must allow at least 248 residential units with at least 300 bedrooms.

General Provisions

10. <u>Covenants Running with the Land:</u> This Memorandum and the rights and obligations in this Memorandum are covenants running with the land and are binding upon any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, including any leasehold interest, and such person's or entity's heirs, successors, and assigns. The Covenants shall inure to the benefit of the West Lot and shall be enforceable by BART as the owner of the West Lot, for so long as BART owns any portion of the West Lot; provided, however, that the Covenants shall not be enforceable by the owner of any portion of the West Lot conveyed by BART to a private party. All the terms and provisions of this Memorandum shall be enforceable as equitable servitudes and are covenants running with the land pursuant to applicable law, including without limitation Section 1468 of the California Civil Code.

11. <u>Term</u>: The provisions of this Memorandum shall remain in force and effect for ninety-nine years after the effective date of the first Ground Lease, as defined in the Exchange Agreement, for a portion of the Property, unless amended or terminated pursuant to Paragraph 14 below.

12. <u>Severability:</u> Invalidation of any of the provisions contained in this Memorandum, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions of this Memorandum or its application to any other person, which shall remain in full force and effect.

13. <u>Integrated Agreement:</u> This Memorandum constitutes Owner's entire declaration of covenants, conditions, and restrictions concerning the subjects of this Memorandum; provided, however, that nothing herein shall limit the obligations of Owner or any other party to comply with all of its obligations under the Exchange Agreement. The City ordinance authorizing the Exchange Agreement is recorded in the Official Records of Alameda County.

14. <u>Amendment and Termination:</u> No amendment or modification of this Memorandum shall be valid unless in writing, executed by Owner and BART, and recorded in the Official Records of Alameda County, California. This Memorandum shall terminate if a Notice Of Termination, signed by Owner and BART, with respect to the Property is recorded.

15. <u>Mortgage Protection:</u> Breach of any restriction or provision of this Memorandum does not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Memorandum are binding and effective as to any mortgagee or beneficiary of a deed of trust that acquires fee title by foreclosure, trustee's sale, or otherwise.

16. <u>Rights Inseverable:</u> The rights or obligations created in this Memorandum shall not be severable from the Property, nor separately conveyed therefrom.

17. <u>Authority to Make and Record Memorandum:</u> Owner has consented to, accepted, approved, and authorized this Covenant, has authorized its execution by the below signatory, and has authorized its recordation in the Official Records of Alameda County, California pursuant to its Ordinance No. *(add Ordinance number)* entitled *(add name of Ordinance)* adopted on *(add date of adoption)*.

18. <u>Captions and Capitalized Terms</u>: The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Memorandum. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Memorandum.

19. <u>Construction</u>: This Memorandum shall be construed in accordance with the laws of the State of California.

OWNER:

Date:_____

CITY OF BERKELEY, a charter city

By:

Its:

(Seal)

Attest:	
Ву:	, City Clerk

Approved as to Form

By: Its:

BART:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

By:

Its:

Approved as to Form

By: Its: A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)) ss. County of _____)

On ______, a Notary Public in and for said State, personally appeared ______ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Notary Public

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)) ss. County of _____)

On ______, a Notary Public in and for said State, personally appeared ______ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____

Notary Public

[seal]

SCHEDULE 4.3.4 West Lot Covenants

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

Farimah Brown City Attorney City of Berkeley 2180 Milvia Street Berkeley, CA 94704

APN 053-1597-039-04 & unassessed parcel SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Rev. & Tax. Code § 11922

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area: (X) City of Berkeley, State of California

MEMORANDUM OF COVENANTS

Memorandum of Covenants

This Memorandum of Covenants ("Memorandum") is made by the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Owner") effective as of the date of its recordation in the Official Records of Alameda County, California ("Effective Date").

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley ("City"), County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1597-039-04 and the non-assessed parcel (collectively "Property"), more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County. APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

Attached hereto and made a part hereof the following Filed maps:

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

B. Owner and City entered into that certain ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT dated _____ ("Exchange Agreement"), by which, inter alia, the City agreed to quitclaim to Owner certain of the City's interests in the Property, and Owner agreed to convey to City a parcel of land owned by Owner ("East Lot") situated in the City and more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

C. In addition, Owner agreed as part of the land exchange to record against the Property this Memorandum, for the purpose of imposing certain conditions, covenants, and restrictions on the future development of the Property ("Covenants").

NOW, THEREFORE, in consideration of the Covenants, the consideration received by Owner pursuant to the Exchange Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner thus declares that the Property, and all portions thereof and interests therein, shall be irrevocably held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the Covenants described below, which shall be equitable servitudes and shall run with land, and shall be binding on any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, and such person's or entity's heirs, successors, and assigns, and shall inure to the benefit of the East Lot and City as the owner of legal or equitable title to the East Lot, as follows:

MEMORANDUM OF COVENANTS

Development Requirements

1. Except to the extent waived or modified by the City in its sole and absolute discretion, any development project on the Property shall 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 ("2022 Mitigation Measures")

2. Except as may be modified by the City in its sole and absolute discretion, any development project on the Property shall comply with the standard conditions of approval set forth in Exhibit 1.

3. Development of the Property shall achieve a minimum residential density of 75 dwelling units per acre.

Affordable Housing Requirements

4. At least 50% of the first 602 housing units developed on the Property shall be Affordable Housing.

"Affordable Housing" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. "Extremely Low Income Households" means households earning less than the "Extremely Low" limits by household size for the "Alameda County Area" as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Very Low Income Households" means households earning less than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Low Income Households" means households earning less than the "Low Income" by household size for the "Alameda County Area" but more than Very Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations.

5. In the event that more than 602 total housing units are built on the Property (inclusive of any density bonus units), 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. Owner, together with any developer(s) of the Property, shall consult with City to explore the potential for exceeding the 35% requirement for projects greater than 602 units, with an aspirational goal of up to 50% Affordable Housing units, based on economic feasibility and availability of funding resources if the West Lot is to be developed with more than 602 total housing units, taking into consideration development costs, values and potential for additional City subsidy or funding from external sources.

6. Any Affordable Housing units that are provided to satisfy the requirements of the City's inclusionary housing ordinance (Chapter 23.238 of the Berkeley Municipal Code) ("Inclusionary Housing Ordinance") and are included in a mixed-income building shall be rent- and income-restricted in perpetuity as required by the Inclusionary Housing Ordinance. All other Affordable Housing units shall be rent- and income-restricted for the duration of the applicable ground lease (each of which shall have a minimum duration of 99 years), including any lease term extensions.

- 7. Development of the Property shall meet the following minimum affordability requirements:
 - (a) At least 35% of the housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of AMI.
 - (b) At least 20% of the required 35% affordable units referred to in subparagraph (a) must be affordable to Extremely Low-Income ("ELI") households, which are currently defined as those earning up to 30% of AMI.
 - (c) Of the required 35% affordable units referred to in subparagraph (a), additional affordable units aside from the ELI units should prioritize Very Low Income Households (up to 50% of AMI) and Low Income Households (up to 80% of AMI) but may include some housing restricted to Moderate Income Households (up to 120% of AMI), provided that the moderateincome units have rents that are still below market and are not funded by City subsidies.

8. Any project receiving the City's Housing Trust Fund ("HTF") funding shall also meet the City's HTF Guidelines, provided that said Housing Trust Fund Guidelines do not restrict or otherwise regulate the project's height, density, or development capacity.

9. Any project on the Property that includes construction of both Affordable Housing units and market-rate housing units shall construct the Affordable Housing units prior to or concurrently with any market-rate housing. In the event there are multiple phases of market rate or affordable housing, development of market rate and affordable housing shall be in accordance with a phasing plan approved by the City.

10. Affordable Housing units developed on the Property may be clustered into one or more buildings with 100% Affordable Housing buildings or dispersed amongst mixed-income housing buildings, but such Affordable Housing units must be designed in a way that integrates with the larger project on the Property and shares comparable design standards and quality.

11. If a development project will meet all or a portion of the requirements of the Inclusionary Ordinance through clustering as described in Paragraph 10, Owner or developer shall contribute funding towards such clustered Affordable Housing units in an amount calculated as follows: (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 less 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 any density bonus ("Net Residential Unit Floor Area"); 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 Housing units provided within mixed income buildings that comply with all of the requirements of the Inclusionary Housing Ordinance. For example, buildings that are 10% Affordable Housing units would contribute \$28.12 per foot (half of \$56.25), adjusted for inflation.

For the purpose of calculating the Net Residential Unit Floor Area, the floor 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. By way of example, a project that clustered all affordable units in 100% Affordable Housing 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 Housing units on-site within the market rate buildings would make a prorated contribution.

12. The application of the State Density Bonus Law to the Property shall not yield a project that is less than 35% Affordable Housing as a proportion of the total units on the Property, or less than 50% Affordable Housing for the first 602 units.

Community Benefits

13. Development of the Property shall include at least 5,000 square feet (based on BOMA ANSI 2017 standards) of community/civic commercial ground floor interior space

for community-based organizations, non-profits, and/or small and minority-owned businesses such as the Berkeley Flea Market, to be leased (triple net) at no more than 50% of fair market triple net rent.

14. Development of the Property shall make space available to the Berkeley Flea Market in accordance with the requirements of the Exchange Agreement.

Public Infrastructure

15. Development of the Property shall comply with all obligations and requirements in the Exchange Agreement pertaining to Public Infrastructure, as that term is defined in the Exchange Agreement.

Objective Design Standards.

16. No application for any development project on the Property (including any preliminary application) shall be submitted to City before the earlier of (a) the City's adoption of objective design standards ("ODS") in accordance with the Exchange Agreement, or (b) the deadline for adopting ODS specified in Article 9 of the Exchange Agreement, as may be modified in accordance with the Exchange Agreement.

17. Except as provided in Paragraph 18 below, all development on the Property shall comply with ODS adopted in accordance with all relevant provisions of the Exchange Agreement, notwithstanding any waivers, incentives, concessions or other exceptions available by law

18. An application for development of the Property may seek waivers, incentives, concessions or other exceptions to otherwise applicable zoning or land use regulations 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 described in Paragraph 13, and (c) other ODS requirements that do not pertain to height limits, setbacks/step-backs, open space or massing breaks.

General Provisions

19. <u>Covenants Running with the Land:</u> This Memorandum and the rights and obligations in this Memorandum are covenants running with the land and are binding upon any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, including any leasehold interest, and such person's or entity's heirs, successors, and assigns. The Covenants shall inure to the benefit of the East Lot and shall be enforceable by City as the holder of legal or equitable title in the East Lot, for so long as the City holds such title in any portion of the East Lot; provided, however, that the Covenants shall not be enforceable by the owner of any portion of the East Lot conveyed by the City to a private party. All the terms and provisions of this Memorandum shall be enforceable as equitable servitudes and are covenants running with the land pursuant to applicable law, including without limitation Section 1468 of the

California Civil Code.

20. Subdivision and Development of the Property.

a) The City understands and acknowledges that, in order to achieve the intent of the Exchange Agreement, the Property may be subdivided into separate parcels (collectively the "Parcels" and individually a "Parcel"), and developed in separate phases pursuant to Ground Lease Agreements, as that term is defined in the Exchange Agreement. In the likely event that the subdivision and Ground Lease Agreements contemplate that one or more Parcels will be retained by Owner for use in connection with its transit operations, City agrees to terminate this Memorandum with respect to that Parcel (or those Parcels) only.

b) In the event that the phased development of the Property results in a period of time during which one or more of the requirements described in paragraphs 1-17 have not been met, said noncompliance shall not constitute a breach of this Memorandum provided that: i) the executed Ground Lease Option will result in full compliance with said requirements upon execution of all of the related Ground Leases and completion of construction thereunder, and ii) phasing of the projects on the Property is consistent with the provisions of Paragraph 9 of this Memorandum.

c) In the event that the phased development of the Property results in one or more, but fewer than all of the Parcels being responsible for full compliance with one or more of the requirements described in paragraphs 1-17, the City shall not unreasonably withhold its consent to an amendment to this Memorandum that identifies said Parcel or Parcels as being solely responsible for satisfying said requirements. Any subsequent breach of said responsibility shall be enforced against the responsible Parcel or Parcels only, and the Ground Lease tenants of the other parcels shall not be deemed to be in violation of their obligations under this Memorandum.

21. <u>Term:</u> The provisions of this Memorandum shall remain in force and effect for ninety-nine years after the effective date of the first Ground Lease, as defined in the Exchange Agreement, for a portion of the Property, unless amended or terminated pursuant to Paragraph 24 below.

22. <u>Severability:</u> Invalidation of any of the provisions contained in this Memorandum, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions of this Memorandum or its application to any other person, which shall remain in full force and effect.

23. <u>Integrated Agreement:</u> This Memorandum constitutes Owner's entire declaration of covenants, conditions, and restrictions concerning the subjects of this Memorandum; provided, however, that nothing herein shall limit the obligations of Owner or any other party to comply with all of its obligations under the Exchange Agreement. The City ordinance authorizing the Exchange Agreement is recorded in the Official Records of Alameda County.

24. <u>Amendment and Termination:</u> No amendment or modification of this Memorandum shall be valid unless in writing, executed by Owner and City, and

recorded in the Official Records of Alameda County, California. This Memorandum shall terminate if a notice of termination, signed by Owner and City, with respect to the Property is recorded.

25. <u>Mortgage Protection:</u> Breach of any restriction or provision of this Memorandum does not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Memorandum are binding and effective as to any mortgagee or beneficiary of a deed of trust that acquires fee title by foreclosure, trustee's sale, or otherwise.

26. <u>Rights Inseverable:</u> The rights or obligations created in this Memorandum shall not be severable from the Property, nor separately conveyed therefrom.

27. <u>Authority to Make and Record Memorandum</u>: Owner has consented to, accepted, approved, and authorized this Covenant, and all requisite action has been taken by Owner in connection with its execution by the below signatory, and Owner authorizes its recordation in the Official Records of Alameda County, California.

28. <u>Captions and Capitalized Terms:</u> The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Memorandum. Capitalized terms not defined herein shall, unless otherwise indicated, have the meanings ascribed to such terms in the Exchange Agreement.

29. <u>Construction</u>: This Memorandum shall be construed in accordance with the laws of the State of California.

OWNER:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

By:

Its:

Approved as to Form

Its:

<u>CITY:</u>

Date:_____

CITY OF BERKELEY, a charter city.

By: Its: Approved as to Form

By: Its:

Exhibit 1

- 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-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.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

On _____, , before me, _____, a Notary Public in and for said State, personally appeared ______ who _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

On _____, , before me, _____, a Notary Public in and for said State, personally appeared ______ who _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

<u>SCHEDULE 4.4.4</u> Grant Deed – East Lot

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Sections 6103 and 27383

The undersigned grantor(s) declare(s): Documentary Transfer Tax is \$0.00; Exempt pursuant to Revenue & Taxation Code § 11922 (X) computed on full value of property conveyed, or () computed on full value less of liens and encumbrances remaining at time of sale. () Unincorporated area: (X) City of Berkeley, CA

Grant Deed

Grant Deed

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Grantor"),

hereby GRANTS to

CITY OF BERKELEY, a municipal corporation of the State of California,

all that property in the City of Berkeley, County of Alameda, State of California, more particularly described in **"EXHIBIT A"** attached hereto and incorporated herein by reference ("Property"), free and clear of any reserved rights of Grantor (including without limitation any claim of easement for mid-block pedestrian passage).

Grantor has consented to, accepted, approved, and authorized this conveyance of land pursuant to its Resolution No. *(add Resolution number)* entitled *(add name of Resolution)*.

Dated: _____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

By:

Its:

Approved as to Form

By: Its: A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California	
County of) SS.)
On before me,	, personally appeared

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Notary Public

[seal]

CERTIFICATE OF ACCEPTANCE

(Government Code Section 27281)

This is to certify that the interest in real property conveyed by this Grant Deed dated ______ from the San Francisco Bay Area Rapid Transit District to the City of Berkeley, a political corporation and/or governmental agency, is hereby accepted by the undersigned officer or agent on behalf of the City of Berkeley, pursuant to authority conferred by City Council Resolution ______ adopted on ______, and the City of Berkeley consents to recordation thereof by its duly authorized officer.

Dated: _____

CITY OF BERKELEY

By:

Title: City Manager

ATTEST:

CITY CLERK

Approved as to form:	
Date:	
By:	
City Attorney	

EXHIBIT A

The real property situated in the City of Berkeley, County of Alameda, State of California, described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

SCHEDULE 5.2 Schedule

Activity	Lead Party	Outside Date
Exchange Agreement Execution	BART & City	10-Jan-25
West Lot Developer Solicitation Issuance	BART	10-Dec-24
West Lot Consideration of Developer Selection	BART Board of Directors	No later than 7 months after West Lot Developer Solicitation Issuance
Execution of an Exclusive Negotiating Agreement or other appropriate agreement (" ENA ") with West Lot Developer	BART	No later than 9 months after West Lot Developer selection
City Affordable Housing Predevelopment Housing funds (if requested) to East Lot Developer and/or West Lot Developer	City	No later than 60 days after Developer selection
Adoption of Objective Design Standards for West Lot	City	No later than 9 months after ENA execution, subject to potential 30-day extension for approved force majeure event
Infrastructure Financing Strategy: Draft strategy prepared by City and BART with collaboration by West Lot Developer	City & BART with collaboration by West Lot Developer	No later than 9 months after ENA execution; failure to complete this shall not constitute default.
West Lot Developer submits a complete application for a Master Development Permit, or for at least one affordable housing building's entitlements/permit	West Lot Developer	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: 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.	West Lot Developer and East Lot Developer	31-Dec-2035

SCHEDULE 5.5

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 onsite 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-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 grounddisturbing 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.

SCHEDULE 7.2 West Lot City Funds Conditions

- 1. West Lot City Funds shall be used only to support development of Affordable Housing units on the West Lot over and above 20% of the total units (including density bonus units).
- 2. West Lot City Funds shall comply with the City's Housing Trust Fund Guidelines, provided that said Housing Trust Fund Guidelines do not restrict or otherwise regulate the project's height, density, or development capacity.
- 3. The City shall not be obligated to provide more than an average of \$200,000 per Affordable Housing unit, counting only those Affordable Housing units provided above and beyond 20% of the total units (including density bonus units) in the West Lot project in the event that market rate units are planned, and counting only those units that are affordable to Extremely Low Income Households, Very Low Income Households, and Low Income Households.
- 4. West Lot City Funds shall be available to buildings which are 100% Affordable Housing, or, at the City's sole discretion, to Affordable Housing units dispersed amongst mixed-income housing buildings which meet the City's Housing Trust Fund Guidelines.
- 5. For any West Lot Developer planning to construct market-rate units and to cluster Affordable Housing units into one or more 100% Affordable Housing buildings, West Lot City Funds shall only be available to a developer who submits an Affordable Housing Compliance Plan ("AHCP") to confirm that the project's affordable proforma(s) shows the following developer contribution as a source and the market rate proforma(s) shows the following developer contribution as a use. 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.

If the AHCP is completed before BART's Board of Directors approves the final terms with West Lot Developer, then BART shall review and approve the AHCP prior to City review.

West Lot City Funds shall only be available to a developer who agrees to all feasible measures to mitigate significant development impacts 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.

SCHEDULE 7.3 East Lot City Funds Conditions

- 1. East Lot City Funds shall be used only to support development of Affordable Housing units on the East Lot over and above 20% of the total units (including density bonus units).
- 2. East Lot City Funds shall comply with the City's Housing Trust Fund Guidelines.
- 3. The City shall not be obligated to provide more than an average of \$200,000 per Affordable Housing unit, counting only those Affordable Housing units provided above and beyond 20% of the total units (including density bonus units) in the project, and counting only those Affordable Housing Units that are affordable to very low income or lower-income households as defined in California Health and Safety Code sections 50052.5 and 50053.
- 4. East Lot City Funds shall be available to buildings which are 100% Affordable Housing, or, at the City's sole discretion, to Affordable Housing units dispersed amongst mixed-income housing buildings which meet the City's Housing Trust Fund Guidelines.
- 5. East Lot City Funds shall only be available to a developer who agrees to all feasible measures to mitigate significant development impacts, as determined by City.

SCHEDULE 8.1.2 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.



*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.

SCHEDULE 8.1.3 INFRASTRUCTURE MATRIX

Map ID	Infrastructure Cost Category	Priority	Funding Sources	Responsibility in the Event of Funding Shortfall	Maintenance Responsibility
PUBLIC A	AREAS				
LA	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 **	High	Developer Contribution/Grants & Subsidies/IIG/AHSC	Developer	City (CFD-funded)
9.A.	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/AH9C	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

OTHER INFRASTRUCTURE ELEMENTS

7A	North Platform Egress Stair, BART Vents & TPSS Equipment	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
7 B	TPSS Replacement Area	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
3	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
4	ADA and Bike Ramps (new) **	Essential	Developer Contribution/Grants/Subsidies	Developer	Developes
2	South Platform Egress Stair + BART Storage (access to be reconfigured)	High	Developer Contribution/Grants/Subsidies	Developer	BART
15	BART Vents (to be extended above planas)	High	Developer Contribution/Grants/Subsidies	Developer	BART
B	Required Emergency Access + Turn Around ** , ****	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	Developez

Notes

1 15 152 152

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 Addime SR Reconfiguration usingles 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.

SCHEDULE 9.2.1 ODS REQUIREMENTS

The City's future Objective Design Standards (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 City for the West Lot within the Approval Period;
- 3. 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 allow 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 Schedule 9.2.2, 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 Schedule 9.2.2, 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 these ODS Requirements, 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.

SCHEDULE 9.2.2 CAPACITY STUDY

Purpose

BART and the City of Berkeley engaged Raimi + Associates to analyze the development capacity of the Ashby BART Station West Lot to inform their negotiations over future transitoriented development projects at the site. The net developable area of the site, as defined below, will be used to calculate the total amount of development that is permitted under the objective design standards for the site that are to be developed and adopted by the City of Berkeley, to ensure that the ODS meet the provisions of Schedule 9.2.1. ODS meeting the provisions of Schedule 9.2.1 will be binding on the West Lot Developer via restrictive covenants and BART's real estate agreements.

Methodology

Net developable area (NDA) is defined as the developable area of the West Lot, exclusive of surface areas utilized for public site circulation and BART infrastructure. For the purpose of this capacity study, hypothetical West Lot development areas were determined by the access requirements for the site that were established in consultation with BART and City of Berkeley transportation planners, engineers and public safety staff. An additional emergency vehicle access (EVA) is required through development area B. The total NDA is calculated as 123,000 square feet (see table 1), or approximately 2.82 acres.

Raimi + Associates created architectural models of hypothetical buildings within the NDA, as shown in Figure 1, using the site design assumptions agreed upon by the parties and listed below, for the purpose of estimating the maximum potential development capacity of the site.



Figure 1. Net Developable Area

V BART Station Entrance

Table 1. Net Developable Area

Development Area A	~58,300 SF
Development Area B	~41,400 SF
Development Area C	~23,300 SF
Net Developable Area	123,000 SF

Site Design Assumptions

- Gross residential floor area, as calculated in "Capacity Findings" below, includes residential units, horizontal and vertical circulation, common spaces, and utility and maintenance spaces.
- Estimated unit counts assume an average gross unit size 1000 sf. Unit counts were calculated per floor per building and rounded down to number of full units per floor.
- Approximately 12,850 square feet of commercial / non-residential space. Any additional commercial space would reduce residential floor area and unit count.
- Development project is assumed to take advantage of state density bonus waivers and concessions to supersede the following R-BMU zoning provisions:
 - Maximum height of 7 stories
 - Active frontage location requirements
 - Parking structure design, underground or located behind conditioned building space
 - On-site pedestrian access from Ashby Avenue
- Mid-rise construction, with Buildings A and B up to 7 stories, and Building C up to 8 stories (requires all access to Building C to be from Adeline or MLK, no access to Station Entrance Plaza).
- EVA modeled through building B included a 60-foot wide connection that included a 20-foot wide emergency vehicle accessway (to be expanded to 26 feet if aerial operations required) and landscaped/stoop areas to activate the through access. The emergency vehicle access is likely to be required to be designed as a pedestrian pathway in the ODS. Bridges will be allowed over the EVA if they do not exceed 30 feet in depth and include a minimum 20 feet high passageway for emergency vehicles.
- 65-foot wide double loaded corridor buildings. In practice, this would be an average and provide space for building articulation, projections, and balconies that may increase or decrease the building width.
- Construction within the BART tunnel Zone of Influence is assumed (8,220 sf of net developable area, about 7% of total net developable area).
- Sidewalks: 13 feet on Ashby, 15 feet on MLK north of station access, 22 feet on MLK south of station access which also includes two-way cycletrack.
- Vehicle Parking:
 - BART rider parking: minimum 11 ADA spaces + 3 staff spaces (co-located in a residential garage).
 - Residential parking goal: 1 space per 5 units (not necessarily located evenly across the site; spaces may be in one garage located within a single building). Goal is only achievable with parking below grade under Building C, which may be costly.
- Bike Parking:
 - Bike station: minimum of 128 spaces 3,000 to 4,000 sf

- Shared bike facilities: 23 spaces, external to buildings, easy access to station at 3 feet per bike = ~70 linear feet.
- Bike lockers: minimum 46 lockers, internal space, ~2,250 sf, about 102 feet x 22 feet
- Bike racks: minimum 134 racks at 3 feet per 2 bikes, 200 linear feet of bike racks.
- Approximately 17,000 sf reduction of floor area is assumed for façade articulation and other design requirements that would likely result from ODS, including the following potential requirements:
 - Maximum building length fronting Ashby Avenue shall not exceed 240 feet.
 - Façade planes shall not exceed 160 measured from a building corner or major building break.
 - Major breaks shall be a minimum 8 feet wide and 8 feet in depth.
 - Where ground floor residential units front MLK Jr Way, the first two floors shall be set back a minimum of 5 feet to provide space for stoops, landscaping, and improve privacy for ground floor units.
 - Enclosed Courtyards shall have a minimum width of 60 feet.

Capacity Findings

Raimi + Associates estimated the West Lot development capacity at approximately 632,000 square feet of gross residential floor area, or approximately 624 dwelling units (see Table 2).

These assumptions and findings shall be used solely for the purposes of calculating ODS Capacity per Schedule 9.2.1, 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.

	Gross Residential Floor Area, square feet (SF)	Commercial / Non- residential Floor Area, SF	Total Floor Area, SF	Dwelling Units	Residential Parking Spaces	Other Parking
Building A	299,158	4,390	303,548	298	118	
Building B	189,854	3,915	193,769	187	-	28
Building C	143,311	4,570	147,881	139	-	
Totals	632,323	12,875	645,198	624	118	28

Table 2. Estimated Development Capacity

SCHEDULE 12.3.1 West Lot Notice of CC&R Termination

RECORDING REQUESTED BY:
Old Republic Title Company
AND WHEN RECORDED RETURN TO:
San Francisco Bay Area Rapid Transit District 2150 Webster Street, 9th Floor Oakland, CA 94612 Attn: Real Estate Manager
APN 053-1597-039-04 & unassessed parcel

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Rev. & Tax. Code § 11922

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area: (X) City of Berkeley, State of California

TERMINATION OF COVENANTS AFFECTING REAL PROPERTY

Termination of Covenants Affecting Real Property

This Termination of Covenants Affecting Real Property ("Termination") is made by and between the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Owner") and the City of Berkeley, a charter city ("City"), effective as of the date of its recordation in the Official Records of Alameda County, California.

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley, County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1597-039-04 and the non-assessed parcel (collectively "Property"), more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

B. Owner caused the Memorandum of Covenants affecting the Property to be recorded on ______ as Instrument Number ______ in the Official Records of Alameda County, California ("Memorandum of Covenants").

C. Section 24 of the Memorandum of Covenants provides that the Memorandum of Covenants shall be terminated upon the recordation of a notice of termination, signed by Owner and City, in the Official Records of Alameda County, California.

D. Owner and City have agreed that the conditions for the termination of the Memorandum of Covenants have been satisfied, and they desire that the Memorandum of Covenants is terminated.

E. City's termination of the Memorandum of Covenants is authorized in accordance with the "Ashby Bart Station Transit-Oriented Development Exchange Agreement" dated ______, consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. ______ entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby Bart Station Property", recorded on ______ as Instrument Number ______ in the Official Records of Alameda County, California.

NOW, THEREFORE, for valuable consideration, receipt of which is acknowledged, Owner and City agree as follows:

AGREEMENT TERMINATING COVENANTS

1. Owner and City agree that the above recitals are accurate.

2. Owner and City agree that the Memorandum of Covenants is hereby terminated, and of no further force and effect, as of the date of recordation of this Termination. Upon recordation of this Termination, the Memorandum of Covenants shall no longer affect or encumber the Property in any way.

(signatures on following page)

OWNER:

Date:	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.		
	By: Its:		
	Approved as to Form		
	By: Its:		
<u>CITY:</u>			
Date:	CITY OF BERKELEY, a charter city.		
	By:		
	Its:		
	Approved as to Form		

By: Its: A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of)

On _____, before me, _____, a Notary Public in _____, a Notary Public in _____, a notary Public in ______, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
) ss.
County of)

On _____, before me, _____, a Notary Public in _____, a Notary Public in _____, a notary Public in ______, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

SCHEDULE 12.3.2 East Lot Notice of CC&R Termination

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

Farimah Brown City Attorney City of Berkeley 2180 Milvia Street Berkeley, CA 94704

APN 053-1703-009

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Rev. & Tax. Code § 11922

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area: (X) City of Berkeley, State of California

TERMINATION OF COVENANTS AFFECTING REAL PROPERTY

Termination of Covenants Affecting Real Property

This Termination of Covenants Affecting Real Property ("Termination") is made by and between the City of Berkeley, a charter city ("Owner") and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("BART"), effective as of the date of its recordation in the Official Records of Alameda County, California.

<u>RECITALS</u>

A. Owner is the fee simple owner of the real property in the City of Berkeley, County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1703-009 ("Property"), more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

B. Owner caused the Memorandum of Covenants affecting the Property to be recorded on ______ as Instrument Number ______ in the Official Records of Alameda County, California ("Memorandum of Covenants").

C. Section 14 of the Memorandum of Covenants provides that the Memorandum of Covenants shall be terminated upon the recordation of a notice of termination, signed by Owner and BART, in the Official Records of Alameda County, California.

D. Owner and BART have agreed that the conditions for the termination of the Memorandum of Covenants have been satisfied, and they desire that the Memorandum of Covenants is terminated.

Ε. City's termination of the Memorandum of Covenants is authorized in accordance with the "Ashby Bart Station Transit-Oriented Development Exchange Agreement" dated _____, consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. ______ entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby Bart Station Property", recorded on _____ as Instrument Number _____ in the Official Records of Alameda County, California.

NOW, THEREFORE, for valuable consideration, receipt of which is acknowledged, Owner and BART agree as follows:

AGREEMENT TERMINATING COVENANTS

1. Owner and BART agree that the above recitals are accurate.

2. Owner and BART agree that the Memorandum of Covenants is hereby terminated, and of no further force and effect, as of the date of recordation of this Termination. Upon recordation of this Termination, the Memorandum of Covenants shall no longer affect or encumber the Property in any way.

OWNER:

Date:_____ CITY OF BERKELEY, a charter city.

By:

Its:

Approved as to Form

By: Its:

(signatures continued on following page)

BART:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

By:

Its:

Approved as to Form

By: Its: A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

On _____, , before me, _____, a Notary Public in and for said State, personally appeared ______ who _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

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WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

RECORDING REQUESTED BY: Old Republic Title Company AND WHEN RECORDED RETURN TO: San Francisco Bay Area Rapid Transit District 2150 Webster Street, 9th Floor Oakland, CA 94612 Attn: Real Estate Manager

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Rev. & Tax. Code § 11922

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area: (X) City of Berkeley, State of California

TERMINATION OF COVENANTS AFFECTING REAL PROPERTY

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<u>RECITALS</u>

A. Owner is the fee simple owner of the real property in the City of Berkeley, County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1597-039-04 and the non-assessed parcel (collectively "Property"), more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

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C. Section 24 of the Memorandum of Covenants provides that the Memorandum of Covenants shall be terminated upon the recordation of a notice of termination, signed by Owner and City, in the Official Records of Alameda County, California.

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E. City's termination of the Memorandum of Covenants is authorized in accordance with the "Ashby Bart Station Transit-Oriented Development Exchange Agreement" dated ______, consented to, accepted, approved, and authorized by the City pursuant to Ordinance No. ______ entitled "Ordinance Authorizing Exchange of Real Property for Development of Ashby Bart Station Property", recorded on ______ as Instrument Number ______ in the Official Records of Alameda County, California.

NOW, THEREFORE, for valuable consideration, receipt of which is acknowledged, Owner and City agree as follows:

AGREEMENT TERMINATING COVENANTS

1. Owner and City agree that the above recitals are accurate.

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(signatures on following page)

OWNER:

Date:	SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.			
	By: Its:			
	Approved as to Form			
	By: Its:			
<u>CITY:</u>				
Date:	CITY OF BERKELEY, a charter city.			
	By: Its:			
	Approved as to Form			

By: Its: A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

On _____, , before me, _____, a Notary Public in and for said State, personally appeared ______ who _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

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WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]



Attachment 2

BART Basis of Design Criteria



San Francisco Bay Area Rapid Transit

MEMORANDUM

То:	Ashby Station West Lot Transit Oriented Development (TOD) Team
Da	November 22, 2024
te:	
Re:	Ashby Station West Lot TOD Basis of Design Criteria

Attached is a summary of criteria to be incorporated into the Ashby Station West Lot Transit Oriented Development (TOD) Basis of Design (BOD). These criteria are intended to provide the Developer's Design Team with information to develop a comprehensive, project-specific BOD that will be submitted and reviewed by BART to communicate how the development intends to address the operational and design needs of the District. This initial statement of criteria is not intended to replace future criteria that will result from site specific field and technical investigations. The development team is responsible for verification of actual field conditions and addressing code compliance requirements as they apply to this development both from the local agencies and from BART.

Should additional information be required, a request should be made through Shannon Dodge in Real Estate and Property Development. Some information will require Security Sensitive Information (SSSI) clearance, and some files may be required to view on BART property only.

BART Permits:

- 1) Permits for development on BART property are required. Permits must be applied for well in advance of anticipated work, and will be required for:
 - a. Site Investigation (drilling, monitoring, surveying of BART facilities)
 - b. All construction and staging.
 - c. Operation of facilities in and under the BART Operating Envelope and station.
- 2) BART Permit conditions will include limitations to minimize passenger impacts, maintain emergency access, maintain the security of the station, and mitigate any impacts on the maintenance and station operations.

Design Considerations for BOD:

The development team should prepare a BOD submittal that addresses the operational requirements and constraints included herein. The submittal should also include a list of assumptions detailing which entity would be responsible for maintaining the proposed infrastructure. For example:



BART is assumed to maintain lighting in the station and Traction Power Substation (TPSS) areas, but the Developer should maintain lighting in public spaces near the proposed development and station area). Lighting on BART property shall comply with the foot-candle requirements of the BART Facility Standard (BFS) Design Criteria Section 31 (Design Criteria 31). Lighting on leased parcels shall comply with the foot-candle requirements of the local permitting jurisdiction, except for the pathway(s) to be used by BART customers and personnel. Lights not maintained by BART shall be connected to a new power source from PG&E and metered to the Development.

The following is a table template to ensure BART and the City of Berkeley understand the design assumptions for the project. Submission of this Maintenance Responsibility Matrix shall be required in advance of submitting plans for review by BART:

Owner	List of Assets	Maintenance Provider	Additional Permitting Agencies	Design Criteria	Design Criteria Exception Request
BART				BFS	
Developer or Third-Party					
City or other agency					

After BART receives the BOD submittal, it will review and provide comments to help ensure the project design is compliant with all applicable codes and requirements based on the maintenance responsibilities as identified. BART's comments will be provided on a Comment Response Form (CRF). The Developer Team's response must be provided on the latest version of the CRF either in advance of, or with, each plan submittal to BART.

Design Considerations for the Developments:

Based on the initial case study presented in the TOD feasibility work and various public outreach and meetings for Ashby BART station, the following criteria have been developed for the West Lot at Ashby Station. Relevant sections of the BFS can be provided for reference, if needed. The Developer team shall address the following in the BOD Criteria:

- A) Utilities
 - a. Any new water line connections serving the District are to be clear and away from the private structural developments. All the requirements of National Fire Protect Association 13 (NFPA 13) and BFS are applied.
 - b. Irrigation: No underground irrigation lines are permitted above the cut and cover tunnel
 - c. Gas: No gas lines will be permitted above the BART cut and cover tunnel.
 - d. Sewer and Water connections to existing BART facilities shall not be disrupted during operation hours.



- e. The development shall be required to install new utility services for all infrastructure associated with the development and not along BART's main access roadway or reserved TPSS area (described below in F, TPSS Requirements and Setbacks).
- f. Services/Mainlines: Utility services to be proposed for buildings should be made from the existing streets to the proposed buildings and not on BART maintenance and emergency access roadway. No mains or services should be designed to run through BART Station or through the TPSS areas described below in F, TPSS Requirements and Setbacks.
- g. Stormwater Design: The project will be required to comply with all applicable NPDES (National Pollutant Discharge Elimination System) Stormwater Permit requirements. Stormwater management from any parcels subject to the City of Berkeley's permit authority shall be regulated under the Municipal Regional NPDES Permit issued to the City of Berkeley and the City of Berkeley's Clean Stormwater Ordinance, whichever is stricter. Stormwater management for parcels not under the building permit authority of the City of Berkeley will be regulated under BART's Phase II Small MS4 (municipal separate storm sewer system) General Permit and the Trash Amendments (Water Code 13383 Orders), issued by the California State Water Resources Control Board. Stormwater runoff from the City of Berkeley's property is subject to the Municipal Regional Stormwater Permit issued by the San Francisco Bay Regional Water Quality Control Board. The project will be required to comply with all provisions of these permits and orders and will be required to enter into maintenance agreements for stormwater management with both the City and BART that will include stormwater infrastructure maintenance, and submitting annual inspection and maintenance reports for the life of the project.
- h. Lighting for BART entries, remainder parcel(s), and/or BART customer access path shall meet the BFS.
- i. Development needs to protect all BART's existing vent structures, and any relocation or adjustment will need to comply with the BFS.
- B) Structural Design for Buildings
 - a. A minimum horizontal setback of 7.5 feet from all BART underground structures (station, cut & cover tunnel, ventilation shafts, etc.) must be verified and maintained for all phases of construction. BART will review and permit all buildings within the Zone of Influence (ZOI). Prior to acceptance of the BOD, a field verification survey locating the BART infrastructure must be completed and submitted to BART for review.
 - b. Design shall meet the requirements of the BFS for working over and/or near the BART cut and cover facilities. In addition, the project must meet the requirements of the California Building Code (CBC, including the provision for Fixed Rail Transit) and City of Berkeley Building Department.
 - c. Buildings exceeding the height limits specified on Table 12.2-1, Design Coefficients and Factors for Seismic Force-Resisting Systems of American Society of Civil Engineers 7 (ASCE), Minimum Design Load for Buildings and Other Structures must comply with the Performance-Based Procedure specified in ASCE 7. The seismic design and review process shall be conducted in



accordance with Tall Buildings Initiative Guidelines for Performance-Based Seismic Design of Tall Buildings (most current version) developed by the Pacific Earthquake Engineering Center.

- d. Shoring and temporary/permanent structural components incorporated into the construction staging plan or ultimate design that may impact BART facilities must be designed to BFS structural design criteria.
- e. Impacts to Ground Water must be taken into consideration during the concept design and all phases of construction. Should a ground water impact of more than 2 feet be anticipated, a ground water recharge plan will be required.
- f. No additional structural or live loads may be imposed on the station in any phase of construction.
- C) Station Maintenance and Accessibility
 - a. Existing Station Entrances shall remain operational at all times.
 - b. All BART maintenance facilities need to have a minimum access for Ford F350 or similar truck; maintenance access to BART storage at the south end along Adeline needs to be maintained.
 - c. All existing station egress/ingress shall remain operational at all times, with the possible exception of the northern exterior stair (connecting Adeline Street to the concourse level) which may, subject to BART's review and approval, be removed if necessary to accommodate the building program.
 - d. A clearance of at least 10 feet shall be maintained around the perimeter of all BART structures (TPSS and PG&E vaults, and any potential extension of ventilation shafts).
 - e. BART cash truck staging and loading area shall be provided at the front of the BART station entrance.
 - f. Parking for BART maintenance trucks must be provided close to the TPSS areas, specifically (2 stalls sized for Ford F250 or similar trucks which need to be accessible 24 hours a day, 7 days a week).
 - g. Roadway access to TPSS is recommended to be designed for the closest possible route to the TPSS area without having to maneuver through private developments.
 - h. Construction shall not commence without a phasing and staging plan detailing how patrons and emergency vehicles will access the station throughout all phases of construction. The plan shall detail Americans with Disabilities (ADA)-compliant modes of ingress and egress.
 - i. System Service shall require a BART trash enclosure for a minimum of one 3cubic yard trash bin and two 50-gallon recycle containers in close proximity to the station.
 - j. ADA access to all BART entrances from public rights of way must be provided in the design.
 - k. An overland release plan depicting the flow of storm water in the event all piping fails must be provided. The overland release plan must demonstrate that storm water will flow away from all station entrances.



- I. Waterproofing replacement is needed over BART tunnel for all work proposed above the BART tunnel.
- m. Trees on BART property, or landscaping that will be maintained by BART, shall comply with the landscaping requirements of the BFS.
- n. Planting over BART tunnel is limited to contained planters without irrigation system and to be reviewed and approved by BART.
- D) Safety and Security
 - a. Emergency access shall be identified and designed in compliance with Fire Department, City and BART standards and regulations.
 - b. Areas reserved exclusively for emergency vehicles or BART maintenance vehicles shall be protected by bollards, striping, signage, or other means to prevent public access.
 - c. Design of TOD shall consider preventive measures for public safety and security. Following principles of Crime Prevention Through Environmental Design (CPTED), the buildings shall be designed to provide natural surveillance of publicly accessible areas, and avoid creating inactive areas/spaces that could negatively impact BART operations and safety.
 - d. BART Police Department (BPD) will review and approve all security assessments and measures to ensure compliance with regulatory standards and best practices.
 - e. Access for BPD to park at any station entrance must be provided. At minimum, two stalls shall be provided that are accessible 24 hours a day, 7 days a week.
- E) Fire Protection
 - a. These standards apply to all planned buildings on BART property.
 - BFS
 - NFPA (1, 10, 14, 70E, 72, 101, etc.)
 - NFPA 130
 - CBC
 - California Fire Code
 - City of Berkeley: Municipal building codes, Fire Department access needs
 - Industry Standards (ASME, ANSI, IEEE, IBC, IFC, etc.). These standards apply to all planned buildings on BART property.
- F) TPSS Requirements and Setbacks
 - a. Development needs to reserve the location for BART's 100% designed TPSS improvements project.
 - b. A 50-foot setback from BART's improved TPSS is preferred. This accommodates the potential need for BART to perform repairs, stage maintenance equipment, and incorporate access by emergency vehicles. The 50-foot setback can include roadway access for emergency and maintenance vehicles with entrance and exit points, and may overlap with the areas described in c., d, and e. below.
 - c. Crane access and staging area to TPSS shall be provided; A clear width of 30 feet and length of 150 feet is needed to accommodate a crane and flatbed layout for BART to perform TPSS repairs.
 - d. A construction staging area of minimum 40 feet by 50 feet near BART TPSS is needed for TPSS improvements and repairs.



- e. A temporary TPSS area of the size of 50 feet by 50 feet or 20 feet by 130 feet is required to be reserved for the installation of a temporary TPSS, which could be in place for years if the permanent TPSS is ever out of commission.
- f. The reserved setback and temporary TPSS areas as required by BART must not be improved with any permanent facilities. Uses of these areas when not required for BART operations and maintenance are subject to BART's review and approval.

Submittal Requirements

The initial submittal shall be for the BOD as outlined above. Subsequent submittals shall include the following plans/information for various phases of the improvement process:

- A) A Site Development Plan shall include the following:
 - a. Building locations and extents, utility connections, proposed landscaping, parking, and storm water management concept.
 - b. An access plan for vehicles, bicycles, and pedestrians.
 - c. A storm water improvement plan to comply with the BART MS4 permit.
 - d. Identification of areas for BART maintenance access including dedicated parking for BART maintenance trucks (these areas need to be accessible 24/7)
 - e. A clear layout of the various reserved areas for TPSS as described above in in F, TPSS Requirements and Setbacks, under "Design Considerations for the Developments".
 - f. Renderings and Profiles/Elevations
- B) A Staging and Traffic Control Plan shall include:
 - a. Possible locations of all equipment that could impact BART facilities, i.e., cranes, vehicles in excess of H-20 loading, material storage locations, etc.
 - b. Construction Phasing, including mode of traffic circulations during construction (pedestrian, bicycle, and auto)
 - c. Construction Fencing Plan, including plan and profile
- C) A Structural Design Plan shall include:
 - a. Proposed building footprint(s), heights, vertical and lateral force resisting systems, and foundation types.
 - b. Shoring Plan/Excavation support system including design assumptions
 - c. Ground Water Management Plan
 - d. Vibration, Settlement, and/or other Displacement Monitoring Plan
 - e. A list of building codes with which the design will comply.
- D) Safety and Security Plan
 - a. Identify operable windows.
 - b. Identify balconies and roof top outdoor areas.
 - c. Identify plan for vehicular access protection to station entrances and ventilation structures.



d. Identify access for Fire (Fire Access Map to include Development Building accesses) and Police Services including dedicated parking at all BART station access points.



Attachment 3

Circulation Framework

Ashby Station West Lot TOD Circulation Framework

DECEMBER 2024

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This document was prepared by Raimi + Associates in consultation with the following:

1. Introduction

1.1 Purpose

The purpose of the Circulation Framework is to outline requirements for transit-oriented development (TOD) on the West Lot of the Ashby BART Station. These requirements will be included in the developer solicitation to inform respondents. The Circulation Framework includes requirements for fire and life safety, public access to the Station, BART maintenance, Traction Power Substation (TPSS), and other requirements that limit the location of development. The Circulation Framework assumes the flea market will be relocated to Adeline Street as part of the city-led Adeline Street Transportation Improvements Project that will create a new public plaza running the length of the BART property on Adeline Street.

The Circulation Framework was developed in close collaboration with BART staff from Planning and Development, Office of Infrastructure Delivery, and Operations, as well as City of Berkeley staff from Planning, Public Works, and the Fire Department. The Circulation Framework is written to be precise in specific needs of each stakeholder and will clearly outline flexibility in design where it is possible. While this document attempts to provide detailed guidance for fire and life safety, the Berkeley Fire Department will review development applications and has the authority to require additional measures that ensure first responders are able to access the BART Station and each proposed building.

1.2 Site Overview

Figure 1, outlines key information in understanding the West Lot including topographic considerations, BART facilities, station access, and emergency egress locations.



FIGURE 1 - BASE CONDITION DIAGRAM/MAP

1.3 Project Goals

Goals for the Circulation Framework are informed by the City - BART Joint Vision and Priorities for Transit-Oriented Development for North Berkeley and Ashby BART Stations (JVP), which was approved by Berkeley City Council and BART Board of Directors, as well as the <u>Residential BART</u> <u>Mixed Use District</u> (R-BMU zoning). The Circulation Framework goals also reflect additional outreach with community members, stakeholders, BART staff, and City of Berkeley staff. The site strategy diagram below outlines key requirements and locates aspects of the project goals. The goals are as follows:

- 1. Meet all fire and life safety requirements and needs for the site
- 2. Maintain a functional transit station
- 3. Create an inviting BART station experience
- 4. Maximize accessibility for all users and maintain station access for all modes of transportation
- 5. Maximize the number of new homes
- 6. Maximize building frontage facing Adeline Street and Adeline/Ashby Corner Plaza
- 7. Enable financial feasibility for development





Ashby Station West Lot TOD

2. Circulation Requirements

This Circulation Framework outlines requirements for all modes of station access and maintenance, as well as recommendations and examples of how the requirements and recommendations may be satisfied. These requirements and recommendations are in addition to the requirements of the zoning and building codes and BART's *Ashby West Lot Transit Oriented Development Basis of Design Criteria*. The *Ashby BART Station Access Plan*, which will be funded by the selected developer, will identify future access needs and evaluate improvements. This could include additional circulation requirements, loading zones, and/or changes to these requirements that may supersede this document. The requirements and recommendations will impact the location and footprint of development on the West Lot.

To illustrate the complex web of requirements for development on the West Lot, this document includes potential development scenarios and conceptual site plans that meet the requirements. These illustrative diagrams are not preferred site design concepts. The following two diagrams (Option 1, figure 3 and Option 2, figure 4) summarize the key requirements of the Circulation Framework in two potential development scenarios for TOD development. The diagrams also function as legend for site and infrastructure terminology used throughout the document. More detailed drawings of Development Scenario Option 1 are provided throughout the document as a conceptual example for key requirements.

Key Elements of the Circulation Framework

- Provide two points from public rights-of-way for emergency vehicles to access the Main Station Entrance
- Provide physically separated and/or delineated ADA and bicyclist access from Adeline Street to the Main Station Entrance.
- Provide physically separated and/or delineated ADA and bicyclist access from MLK Jr Way to the Main Station Entrance.
- Provide emergency and maintenance vehicle access to the TPSS Replacement Area
- Provide TPSS maintenance staging area and area for an emergency temporary TPSS.

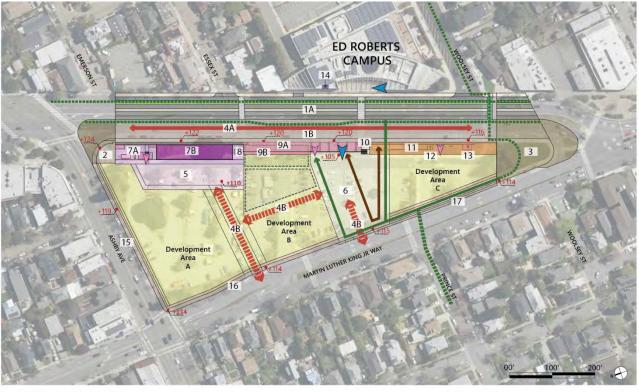


FIGURE 3 – POTENTIAL DEVELOPMENT SCENARIO MEETING PROJECT REQUIREMENTS (OPTION 1)

<u>+11</u> 4	Estimated Site Elevation	6
V	BART Station Entrance	7
V	BART Station Emergency Egress	
1A	Adeline Street Reconfiguration	7
1B	Adeline Main Plaza	8
2	Corner Plaza Extension	9/
3	Woolsey Intersection Redesign	9
4 4 A	Adeline Main Plaza Emergency Vehicle Access	1
4 B	Required Emergency Access	1
5	Staging Area: Emergency Vehicle Access, BART Maintenance Staging Area, and	1

BART Maintenance Staging Area, and Temporary TPSS Area

- 6 Station Entrance Plaza
- 7A North Platform Egress Stair + BART Vents and TPSS Equipment
- TPSS Replacement Area
- 8 North Plaza Stair (to be rebuilt)
- 9A Existing BART Terrace
- B BART Terrace Extension
- 0 South Plaza Stair (to be rebuilt)
- 11South Plaza Extension12South Platform Egress
 - South Platform Egress Stair + BART Storage (access to be reconfigured)

15

16

17

......

Ashby Sidewalk Widening

MLK Sidewalk Widening (north)

BART Site Bicycle Path of Travel

BART Site ADA Ramp Access

Bike Parking Under Podium

BART Parking Under Podium

MLK Sidewalk/Bikeway Widening (south)

City of Berkeley Proposed Bicycle Path of Travel

BART Vents (to be extended 10' above plaza grade)Elevator Access

Ashby Station West Lot TOD



FIGURE 4 - POTENTIAL DEVELOPMENT SCENARIO MEETING PROJECT REQUIREMENTS (OPTION 2)

		and the second
<u>+11</u> 4	Estimated Site Elevation	6
V	BART Station Entrance	7A
Ý	BART Station Emergency Egress	
1A	Adeline Street Reconfiguration	7B
1B	Adeline Main Plaza	8
2	Corner Plaza Extension	9A
3	Woolsey Intersection Redesign	9B
4 A	Adeline Main Plaza Emergency Vehicle	10
	Access	11
4 B	Required Emergency Access	12
5	Staging Area: Emergency Vehicle Access,	13
	BART Maintenance Staging Area, and Temporary TPSS Area	14
	icinpolary in borned	

Station Entrance Plaza

A	North Platform Egress Stair + BART Vents and TPSS Equipment	
Έ	TPSS Replacement Area	
3	North Plaza Stair (to be rebuilt)	

- Existing BART Terrace ł
- **BART Terrace Extension** 3
 - South Plaza Stair (to be rebuilt)
- 1 South Plaza Extension
 - South Platform Egress Stair + BART Storage (access to be reconfigured)
 - BART Vents (to be extended 10' above plaza grade)
- **Elevator Access** 4

- 15 Ashby Sidewalk Widening
- 16 MLK Sidewalk Widening (north)
- 17 MLK Sidewalk/Bikeway Widening (south)
- BART Site Bicycle Path of Travel
- City of Berkeley Proposed Bicycle Path of Travel
 - BART Site ADA Ramp Access
 - Bike Parking Under Podium
 - **BART Parking Under Podium**

2.1 Public Rights-of-Way

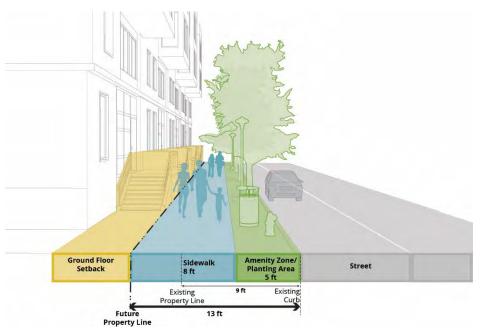
This section outlines the requirements for widened sidewalks on Ashby Avenue and Martin Luther King Jr. Way (MLK Jr Way) and the conceptual plans for the reconfiguration of Adeline Street to include the Adeline Main Plaza and roadway narrowing as part of the city-led Adeline Street Transportation Improvements Project. Through the development process, lot-line adjustments will be made to move property lines to the future back-of-walk locations following the requirements below for sidewalk redesigns. Additional details related to the sidewalk design and streetscape character will be located in the preliminary *Ashby BART West Lot Objective Design Standards* (ODS) and regulated by the final ODS adopted by the City of Berkeley. For the sake of this document, it is assumed all existing curbside parking on Ashby Avenue and MLK Jr Way of the West Lot's perimeter will be converted to loading zones for people and/or goods.. The *Ashby BART Station Access Plan* will evaluate curb space in detail and may modify these recommendations or make additional recommendations.

2.1.1 Ashby Avenue

The existing sidewalk is 9 feet wide with regularly spaced street trees. As part of the TOD project, the sidewalk will be widened to 13 feet. A minimum 5-foot-wide front building setback is required per the R-BMU zoning. The existing curb space currently designated for street parking will be converted to loading zones for people and/or goods, as shown in Figure 5 below. (note, a 45-inch sanitary sewer pipe runs below the sidewalk approximately one to two feet from the current back-of-walk)

FIGURE 5 - ASHBY AVE STREET SECTION DIAGRAM





2.1.2 Martin Luther King Jr. Way

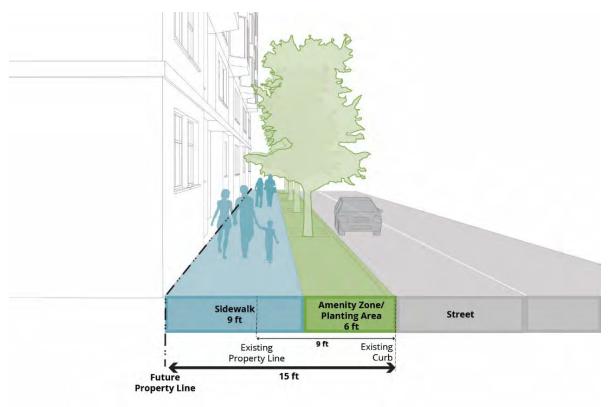
The existing sidewalk is 9 feet wide with regularly spaced street trees. To meet the bike circulation goals, MLK Jr Way will have two different sidewalk conditions, as outlined below. The existing curb space currently designated for street parking will be converted to loading zones for people and/or goods.

MLK Jr Way North of Station Entrance Plaza

The sidewalk will be widened to 15 feet from Ashby Avenue to the Station Entrance Plaza, as shown in Figure 6.

FIGURE 6 - MLK JR WAY STREET SECTION DIAGRAM (NORTH OF STATION ENTRANCE)

9 ft Sidewalk– 6 ft Street Tree Planter - Street

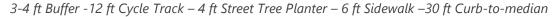


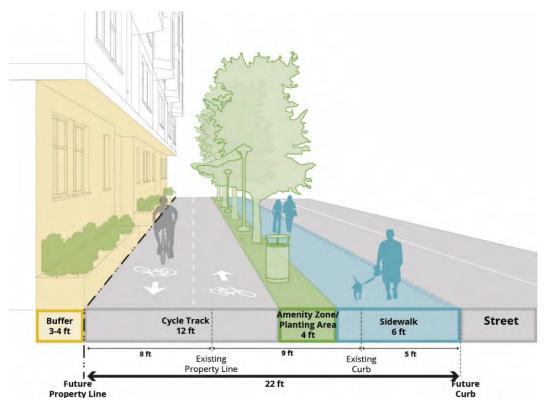
MLK Jr Way South of Station Entrance Plaza

The sidewalk area shall include a Class IV two-way elevated separated bikeway (cycle track) separated from the sidewalk connecting from the Station Entrance Plaza to the intersection of Woolsey Street/ Adeline Street/ MLK Jr Way. The section below moves the curb 5 feet within the existing curb-to-median area, reducing the two travel lanes and parking lane from a width of 35 feet to 30 feet. (note, a 45-inch sanitary sewer pipe runs the length of MLK Jr Way a few feet west of the existing curb line, street tree plantings should remain in roughly the same location as the current trees, as shown below). As part of a City-led project, the Prince Street crossing of MLK Jr Way will be enhanced for pedestrian and cyclist access in the near-term (figure 8). The Woolsey Street/ Adeline Street/ MLK Jr Way intersection is being redesigned and implemented by the City of Berkeley as part of the Adeline Street reconfiguration project (figure 6).

The ground floor of building(s) fronting this part of MLK should be set back to create a buffer of at least 3 feet from the cycle track to the building. This area may be planted, including above grade planters, as long as planters do not exceed 18 inches in height. The main entrance to building(s) fronting this part of MLK should be set back from the cycle track a minimum 15 feet. Entrances to accessory spaces, including utility rooms or refuse collection rooms, shall be set back a minimum of 5 feet to provide space for door swings and entry and exit without impeding on the cycle track.

FIGURE 7 - MLK JR WAY STREET SECTION DIAGRAM (SOUTH OF STATION ENTRANCE)





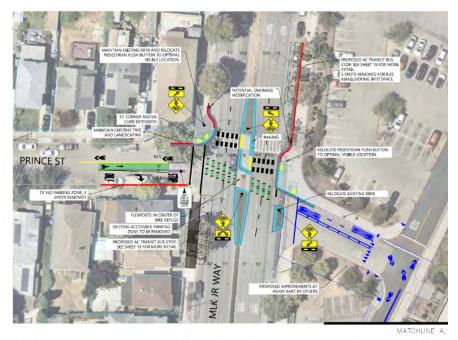
MLK Jr Way Center Median

The center median turn pockets and crosswalks shall be reconfigured on MLK Jr Way in consultation with the City of Berkeley and BART to meet maintenance, emergency, residential, and BART customer access needs to the new development, Station Entrance Plaza, and access driveways. The City is designing the Prince Street and MLK Jr Way intersection improvements which will reconfigure the median to improve pedestrian and cyclist access to and from the Ashby BART Station area (figure 8).

2.1.3 Connecting the East/West Woolsey/Prince Bike Boulevard

The Woolsey/Prince Bike Boulevard will be enhanced to go through the Ashby BART Station area prior to construction of the TOD. The City-led Adeline Street Transportation Improvements Project will realign the connection from Woolsey Street to Prince Street around the south side of the Ashby BART Station property. Figure 8 shows a preliminary conceptual drawing of the new crossing. The cycle track connection described above is critical to continuing the connection to Prince Street and the station entrance. BART and the City will coordinate interim conditions. When the TOD is implemented, changes to the intersection may be needed, including relocation of the proposed bus stop. These issues will be studied in the *Ashby TOD Access Plan*.

FIGURE 8 – PRELIMINARY CONCEPTUAL IMPROVEMENTS TO THE PRINCE STREET PEDESTRIAN/BIKE CROSSING (SOURCE: CITY OF BERKELEY)



GENERAL NOTES 1. EXISTING SHARROW SYNBOLS TO BE REMOVED 2. CONFLICTING MARKINGS TO BE REMOVED, ALL OTHER MARKINGS TO DEVENJORS CONCEPTUAL DESIGN PLAN - MLK JR WAY AT PRINCE STREET SCALE: 1" = 20'

2.1.4 Access and Operations for Refuse Collection

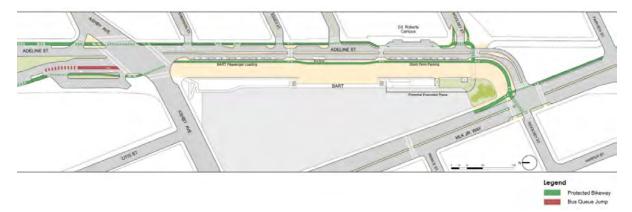
The developer will need to work closely with Berkeley's Zero Waste Division (ZWD) to prioritize refuse collection on site. ZWD identifies the goal of not storing or placing refuse containers in the public right of way. If refuse containers must be placed in the public right of way on collection days, they must not block sidewalks, bikeways, or traffic lanes.

2.1.5 Adeline Street and Adeline Main Plaza

Adeline Street Transportation Improvements Project (City of Berkeley)

As part of a city-led project, Adeline Street's roadway will be narrowed and the sidewalk will be widened. This expansion will provide a new plaza and location for the Berkeley Flea Market, which currently occurs every weekend on the West Lot. This project will develop preliminary engineering plans and conduct public engagement and environmental analysis for multimodal improvements on Adeline Street from just north of Ashby Avenue to the southern Berkeley city limit at the Stanford Avenue/Adeline Street/ MLK Jr Way intersection. This design will be based on concepts approved by Berkeley City Council in 2022 and discussed in the 2020 Adeline Corridor Specific Plan. The project will repair sidewalks and streetscape, provide more effective loading zones for local businesses, and repurpose existing general-purpose vehicle lanes for pedestrian crossing safety and transit operations improvements, low-stress bikeways, landscaping, and public space.

FIGURE 9 - CONCEPT DIAGRAM - ADELINE STREET TRANSPORTATION IMPROVEMENTS PROJECT (SOURCE: CITY OF BERKELEY)



The City will convert two of the existing four vehicle lanes of Adeline Street between Ashby Avenue and MLK Jr Way to create a pedestrian plaza to provide additional community space, referred to as the Adeline Main Plaza. The new Adeline Main Plaza can serve as a permanent location for the Berkeley Flea Market, and potentially other public markets and events. At this time, the City only has funding for preliminary engineering, and not urban design, construction, or plaza programming. The majority of BART customers pick-up and drop-off, including buses and shuttles, will occur on Adeline Street with the new design. This City project will be closely coordinated with planning for BART's Ashby TOD project.

Pedestrian and cyclist intersection improvements could include items such as lighting, pavement markings, signal modifications, curb extensions at roadway crossings, and pedestrian median refuges. The project will include transit treatments to improve the operations of AC Transit Lines F and 12, which connect Berkeley, UC Berkeley, BART stations, Emeryville, Oakland, and San Francisco. As part of the project, the City will evaluate transit features that may include a busonly lane or queue jump lanes, as well as upgraded bus stops and bus boarding islands.

2.2 Station Access

In addition to the information below, please reference BART's Multimodal Access Design Guidelines (2017) and Station Experience Design Guidelines (2018), which provide general information regarding station access. The sections below provide supplemental information specific to this development site.

2.2.1 BART Customer Access

BART customer access to the station will be maintained at the two existing station entrances. The Main Station Entrance is located 15 feet below the west side of Adeline Street, opening up onto the existing parking lot. This Main Station Entrance and emergency egress will be maintained for pedestrian access. The Main Station Entrance will open up to a pedestrian plaza connecting the station entrance to MLK Jr Way, known as the Station Entrance Plaza. The Station Entrance Plaza will include emergency and maintenance vehicle access. Detailed requirements for pedestrian, bike, and vehicular access to the Main Station Entrance are provided below in the requirements for the Station Entrance Plaza. In addition to the Main Station Entrance, the Ed Roberts Campus station entrance provides elevator and stair access to the concourse level from the east side of Adeline Street. The Ed Roberts Campus is a prior phase of TOD consisting of an 80,000 square foot universally designed campus offering disability-related programs and services. More specificity about loading zones for people and goods, including ADA-accessible loading zones, will be identified in the *Ashby Station Access Study* that will be led by BART and funded by the selected developer. FIGURE 10 - BART CUSTOMER ACCESS DIAGRAM



2.2.2 Pedestrian Access

Pedestrian BART customer access to the station on the West Lot will change with the TOD. Existing BART customer access from the north will be rerouted through the Adeline Main Plaza and MLK Jr Way following development. The location of new buildings along Ashby Avenue will remove the existing stairs and ADA ramp access points at the corners. Similarly, from the south, the sidewalk from Adeline Street down to the station entrance will be removed for a building fronting Adeline Street. Pedestrian access to the Main Station Entrance will be from the new Station Entrance Plaza that will span from MLK Jr Way to the new Adeline Main Plaza. The design requirements for the Station Entrance Plaza(Section 3.1) outline vertical circulation requirements including an ADA path from both MLK Jr Way and Adeline Street to the Main Station Entrance. Pedestrian access using the stairs and the elevator on the east side of Adeline through the Ed Roberts Campus will remain unchanged.

2.2.3 Bike Access

Cyclist access will be reconfigured similar to the pedestrian access described above with the primary access point from Adeline Street and MLK Jr Way being through the Station Entrance Plaza. Vertical circulation for cyclists to the station entrance and through the West Lot is complicated by the site topography. A goal of the project is to have ramped cyclist access from Adeline Street to the Main Station Entrance and a connection from the Prince Street Bicycle Boulevard to the Woolsey Street Bicycle Boulevard that is delineated from pedestrian and ADA access. More details about the potential connections as well as bicycle parking requirements are provided in the 3.1 Station Entrance Plaza section of this document.

2.2.4 Private Vehicle Access

All BART customer pick-up and drop-off, whether by bus, van, shuttle, ride share, or private vehicle is anticipated to be served on the West Lot's street perimeter and will not be required within the site. New pedestrian connections from the vehicle pick-up and drop-off areas are provided below in the requirements for the Station Entrance Plaza(section 3.1).

2.2.5 Vehicle Parking Requirements

The TOD shall include vehicle parking as listed below. Vehicle and bike parking made available during construction must not be less than the final planned amount of BART customer and staff spaces. Structured parking on the West Lot, if provided, shall be accessed from MLK Jr Way or the TPSS emergency access drive. Vehicle entrances from the Station Entrance Plaza are prohibited.

Parking Adjacent to Main Station Entrance (Surface spaces or within a parking structure):

- 2 Police Spaces (to be surface spaces within Station Entrance Plaza)
- 2 BART Maintenance Spaces, 24/7 access for Ford F250 or similar trucks (may be provided within parking structure with direct access to Main Station Entrance)
- 2 BART Staff Spaces with direct access to Main Station Entrance
- ADA Spaces for BART Customers (assume 16 spaces including van spaces as required by code)

Other Parking within the West Lot Development Area

- Up to 85 BART customer spaces inclusive of 16 ADA spaces (Note: this is the number to be shown in preliminary development concepts for the TOD; final number may be less)
- No residential parking is required, maximum 0.5 spaces per unit permitted
- Up to 6 spaces for carshare located on-site or on-street
- Parking areas should be designed to accommodate EV charging

2.3 Fire and Life Safety

This section is an outline of fire and life safety requirements for the Ashby TOD. While this document attempts to provide detailed guidance for fire and life safety, the Berkeley Fire Department will review development applications and has the authority to require additional measures that ensure first responders are able to access the BART Station and each proposed building. Please note, the City of Berkeley adopted Appendix D-Fire Apparatus Access Roads. This document and the BART *Ashby Station Transit Oriented Development Basis of Design Criteria* outline BART maintenance and service requirements that may constrain location or configuration of EVA requirements.

2.3.1 Emergency Vehicle Access Requirements

Two points of access to Station Entrance Plaza

The Main Station Entrance requires two points of access from public rights-of-way for emergency vehicles. The two points of access are required to be separated by either half the distance of the block length from Ashby Avenue to Adeline Street (approximately 500 feet apart) or shall circumnavigate around a building of significant mass. A new residential or mixed-use building is considered a building of significant mass, see figure 11.

Primary Access Location – Station Entrance Plaza

To meet first responder and BART access and maintenance needs, the primary access point shall be from MLK Jr Way and roughly in line with the Main Station Entrance to provide a visual connection to the street.

The primary access point shall include a vehicle turnaround that will give first responders and BART maintenance vehicles access to the Main Station Entrance. The turnaround may be integrated into a pedestrian plaza design and shall, at a minimum, meet turnaround requirements outlined in Appendix D, Section D103 of the California Fire Code. Vehicle turnaround shall be designed to restrict private vehicles through passive design elements like mountable curbs and materials delineating the area for pedestrian and bikes; bollards or gates are prohibited.

Secondary Access Location

The location and design of the secondary access point is flexible. At a minimum, the secondary access point shall connect a public right-of-way to the TPSS area and connect to the primary access at the Station Entrance Plaza. The access drive shall have a minimum 26-foot width where fire units may need to lay fire water supply hose or set up an aerial fire apparatus. If there are areas where this does not apply, then a 20-foot width may be acceptable upon review and approval by the Berkeley Fire Department. The secondary access point shall be separated from the primary access point by either half the distance of the block length (approximately 500 feet apart) or shall circumnavigate around a building of significant mass. The access drive may be entered from either MLK Jr Way or Ashby Avenue.

FIGURE 11- EMERGENCY ACCESS SUMMARY DIAGRAM



- Point of Safety and Safe Dispersal Area
- Emergency Vehicle Access (EVA)
- Primary Access Point to Main Station Entrance (clear path of travel to MLK Jr Way)
- Primary Access Point to TPSS/North Platform Emergency Egress Stair (Clear path of travel to MLK Jr Way)
- (4) TPSS EVA/Maintenance Turn-around
- (5) Secondary Access to Station Entrance Plaza
- (6) North Plaza Stair (to be rebuit)
- South Platform Egress Stair Exit
- 10 Ed Roberts Station Egress Stair
- 1 Elevator Access
- (2) Adeline Main Plaza Emergency Vehicle Access

The secondary EVA may include building bridges over the access drive. Where the EVA passes under any overhead bridges, other than a momentary overhead obstruction, an Alternative Materials and Methods Request (AMMR) will be required by the Fire Department. Building bridges shall have a minimum 13.5-foot height clearance and shall not be deeper than 30 feet. The access drive shall have a minimum 26-foot width where fire units may need to lay fire water supply hose or set up an aerial fire apparatus. If there are areas where this does not apply, then a 20-foot width may be acceptable upon review and approval by the Berkeley Fire Department. See Preliminary ODS for Secondary Access drive design details.

Adeline Main Plaza

The Adeline Main Plaza shall include a minimum 20 feet wide EVA that extends the length of the plaza to provide emergency vehicle access in proximity to and above the TPSS area, TOD buildings fronting Adeline Street, and the Station Entrance Plaza. The EVA should be delineated through surface materials and bollards or planters. The placement of bollards and planters

should ensure no vehicles will encroach within the Existing BART Terrace nor within areas of the plaza that cantilever over BART property. These areas are not structurally rated to support the weight of private or emergency vehicles.

Design Vehicle Requirements

The primary and secondary emergency vehicle access shall meet the standards set forth in Appendix D of the California Fire Code. In addition, the EVA shall meet the turning radius requirements for WB-40 design vehicle.

2.3.2 Points of Safety

Points of safety are areas outside of the station's emergency exits that are required for BART customers to reach during a station evacuation or emergency. National Fire Protection Association Standard for Fixed Guideway Transit and Passenger Rail Systems (NFPA 130) specifies fire and life safety requirements for transit stations which require BART customers to be able to reach a point of safety from the platform within 6 minutes. Points of safety must lead to a public right-of-way or a safe dispersal area with unencumbered access for emergency responders. Figure 12 shows the existing points of safety at the station. It is assumed that the TOD may encroach on or otherwise encumber the existing safe dispersal areas outside of the emergency exit locations so provisions must be made to maintain proper evacuation accommodations both during construction and in the final site layout. The following requirements and safety measures for providing Points of Safety/Safe Dispersal Area are provided to ensure the safety and efficiency of emergency evacuations at the Ashby BART Station, supporting the emergency preparedness of the facility.

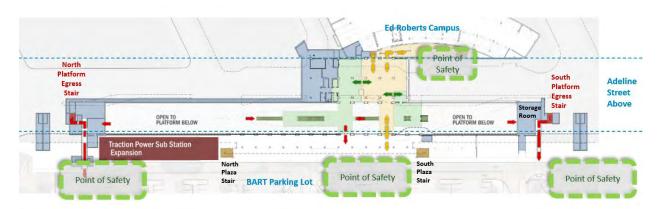


FIGURE 12 - STATION CONCOURSE LEVEL DIAGRAM - EXISTING CONDITION

Determining Evacuation Loads

NFPA 130 governs the criteria for evacuating station occupants to a point of safety. The design evacuation load for the Ashby BART Station requires up to 4,600 BART customers to be evacuated in a worst-case scenario. It is assumed that the emergency exit stairs from the platform level would accommodate 40% of BART customers, while the remaining 60% would exit via the Main Station Entrance, following typical assumptions for California Assembly Occupancies. Evacuees at the north and south emergency egress points would proceed to nearby points of safety, while those exiting at the Main Station Entrance would exit to a point of safety outside the concourse and disperse to a designated area at the Station Entry Plaza.

FIGURE 13 - EVACUATION REQUIREMENTS				
Ashby Station NFPA Passenger Load Working Assumptions				
1. Per NFPA 5.3.2.5,				
a. Max 10 car t	rain load	2,000	Passengers	
b. Non-peak d	rection 400 Passengers	400	Passengers	
1. Faregate peak hour	entries for 2019	1,143	Passengers	
2. Peak hour Headway	s 7.5 minutes, 8 trains/hour			
a. Surge factor	of 1.5	1,714	Passengers	
1. Entraining load for o	one headway (1714/8)	214	Passengers	

428 Passengers

4,542 Passengers

FIGURE 13 - EVACUATION REQUIREMENTS

2. One train out of service (2*214)

Evacuation Load ¹	4,542	Passengers
West Station Entrance	2,725	Passengers
North Emergency Exit	908	Passengers
South Emergency Exit	908	Passengers
Ed Roberts	-	Passengers

Safe Dispersal Area Requirements at Points of Safety

3. 2,000 + 400 + 428 + 1,714 Est. Passenger Load

Safe dispersal areas should accommodate the distributed evacuation loads from the station at the point of safety at each emergency exit. For each person, five square feet (SF) must be allocated. Based on BART's evacuation assessments, the following safe dispersal areas are required.

٠	Main Station Entrance		13,626 SF
٠	South Platform Emergency Egress Stair	_	4,542 SF

- If Combined, Main + South Platform Egress Stair 18,168 SF
- North Platform Emergency Egress Stair
 4,542 SF

Station Entrance Plaza Point of Emergency Egress/Safe Dispersal Area

Based on recommendations from BART's Director of Fire-Life Safety and the City of Berkeley's Fire Officials, BART customers at the north and south emergency points of safety would likely intuitively move to the primary dispersal area located at the Station Entrance Plaza served by an emergency command center or to the nearest public right-of-way. The connection must be direct and intuitive to the evacuees with a line of sight to the Station Entrance Plaza dispersal area.

Based on the Station Entrance Plaza being designated as a Safe Dispersal Area under the California Fire and Building Codes, the requirement to support the expected number of evacuees would be 5 SF per evacuee. This equates to 2,820 persons (4,600 x 3/5 = 2,820) at 5 SF each, necessitating a total dispersal area of approximately 14,000 SF at the main station entry point of safety if only those exiting the main entry are considered. If the total occupant load including the north and south exits are considered, then 23,000 SF would be required. The estimated size of the Station Entrance Plaza excluding vertical circulation and MLK Jr Way sidewalk is approximately 25,000 sf.

North Platform Egress Stair / Point of Safety

The emergency exit for the north station platform is situated between the ventilation structures and the electrical equipment enclosure on the north side of the site, near the intersection of Ashby and Adeline. It is crucial that the North Platform Egress Stair remains fully operational throughout the construction period. A designated path leading to a "point of safety" must be maintained and accessible to BART customers, allowing them to reach a safe dispersal area within 6 minutes or less from the platform.

Access for emergency vehicles must be ensured to this point of safety, which might be located near the future TPSS access area. The safe dispersal area, potentially situated within the TPSS maintenance staging area, should not disrupt emergency operations or block access for emergency vehicles.

Additionally, a direct and unobstructed route must be provided from the North Platform Egress Stair to the Station Entrance Plaza or to a public right-of-way. This pathway is essential for BART customers to evacuate the station swiftly in an emergency and access the emergency response services available at the Station Entrance Plaza. The North Plaza Stair shall be rebuilt to connect to the staging area to provide pedestrian egress from this area to Adeline Street.

South Platform Egress Stair

Currently, emergency egress from the south side of the station platform exits into a point of safety in the parking area located at the south end of the site. It is essential that a point of safety is accessible within 6 minutes or less from the platform. Retaining the current point of safety could significantly constrain or prevent development along the Adeline Main Plaza and South

Plaza Extension area. To optimize buildable space and establish a direct building connection to Adeline Street for the proposed development, the egress routes from the South Plaza Egress Stair need to be reconfigured to ensure a protected path of travel to a new exit discharge location. This new exit configuration would align with a point of safety that fulfills the egress requirements as specified in NFPA 101, Life Safety Code, Chapters 7 and 12, with exceptions as outlined in NFPA 130. The egress reconfiguration can be implemented within a fire-rated exit passageway according to NFPA 101 and local building codes, which set the criteria for fire resistance and emergency egress, ensuring access to a safe dispersal area reachable by emergency responders.

Adjacent to the egress stair, BART accesses a storage room located at the far south end of the station at the concourse level from the parking area, which includes direct access via a ramp. Continuous access to this storage room must be maintained along a pathway free of stairs.

Existing surge vents and surface vents located south of the stairs will be maintained in their current configuration. Plaza area or sidewalks extended to be directly adjacent to these vents will require the vent structure to extend the vent discharge to at least 10 feet above the new sidewalk/plaza grade in compliance with code. The intake vent will be required to be extended to the new sidewalk/plaza grade. Both vents shall be in continuous working order throughout any construction period.



FIGURE 14 - SOUTH PLATFORM EGRESS STAIR AND STORAGE ROOM - EXISTING CONDITIONS

South Platform Egress Stair Rebuild Options

Three options are available to maintain egress from the South Platform Egress Stair emergency exit:

- 1. **Corridor to Station Entrance Plaza.** A fire-rated corridor that qualifies as an area of refuge constructed adjacent along the west side exterior of the station box to accommodate egress from the point of exit to the Station Entrance Plaza.
- 2. Staircase to Adeline Main Plaza. A fire-rated staircase extension to Adeline Street level.
- 3. **Egress to Podium Structure.** Direct egress into a point of safety within a TOD podium structure with a direct accessible path of travel to a public way or area of safe dispersal with EVA.

Option 1 - Fire-Rated Exit Passageway Egress to Station Entrance Plaza

In this option, a direct route from the South Platform Egress Stair to the Station Entrance Plaza is established through a newly constructed exit passageway corridor. The exit passageway is to be constructed outside and adjacent to the station box at the floor level of the storage room and exiting at the main station entry elevation. This corridor will lead to a safe dispersal area at the Station Entrance Plaza. It must be designed to be fire resistant with a minimum rating of 1 hour and equipped with suitable emergency ventilation and lighting systems. The corridor is required to be at least 8 feet wide and 8.5 feet tall, maintaining a floor slope no greater than 2%. The clear exit door width at the end of the corridor must be at least 6 feet wide and 7 feet high, fitted with panic hardware on the emergency exit side. Additionally, this arrangement includes a connection to the storage room directly from the corridor.

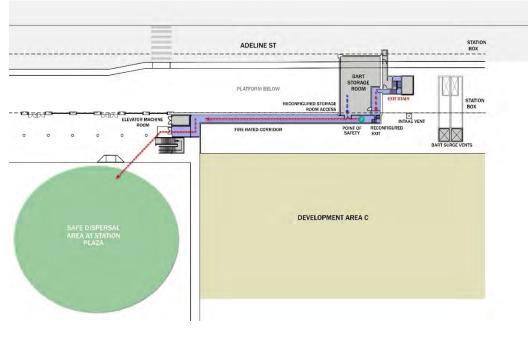
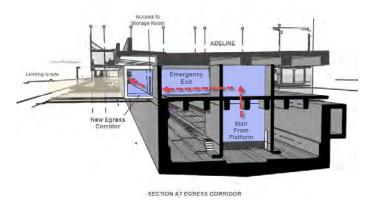


FIGURE 15 - SOUTH PLATFORM EGRESS STAIR - OPTION 1 DIAGRAM

Ashby Station West Lot TOD

FIGURE 16 - OPTION 1 SECTION



Option 2 - Fire-Rated Exit Passageway and Egress Stair to Adeline

This option provides an egress path from the South Platform Egress Stair through a newly established fire-rated exit passageway corridor leading up to the public way/safe dispersal area at the Adeline Main Plaza. New stairs would be required to accommodate the grade change located adjacent to the vent structure.

The existing surge vents and surface vent located south of the stairs would need to be modified to extend at least 10 feet above the sidewalk level to meet code requirements. Access to the BART storage area is required to be preserved either through an enclosed corridor, similar to Option 1, or access could be integrated into a parking podium in Development Area C.

The clear dimensions of the corridor and stairway shall be 5 feet wide minimum and 8 feet high. The exit door shall have a minimum total clear width of 4 feet and a minimum height of 7 feet and be equipped with panic hardware on the emergency exit side.

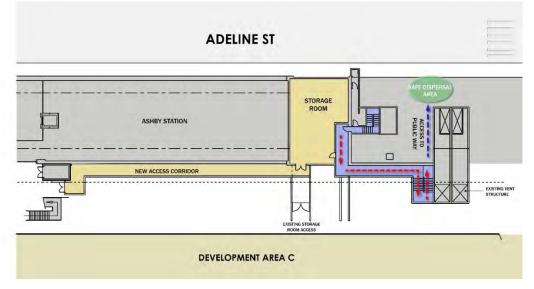


FIGURE 17 - SOUTH PLATFORM EGRESS STAIR ACCESS - OPTION 2 DIAGRAM

Ashby Station West Lot TOD

Option 3 - Egress into a Parking Podium in Development Area C

With this option, the current egress discharge point at the south stair would be maintained together with access to the storage room from an at grade location within Development Area C, either at an open-air safe dispersal area or within the parking podium. A safe discharge area within a parking garage, also referred to as an "area of refuge," involves several considerations aimed at protecting people during an emergency until they can be safely evacuated or rescued. It should be marked and located near exits or along emergency evacuation routes to a safe dispersal area or public way. The area shall be positioned such that emergency response personnel can evacuate the station. The area must be served by emergency lighting and mechanical ventilation systems that are capable of maintaining safe air quality even during power failure.

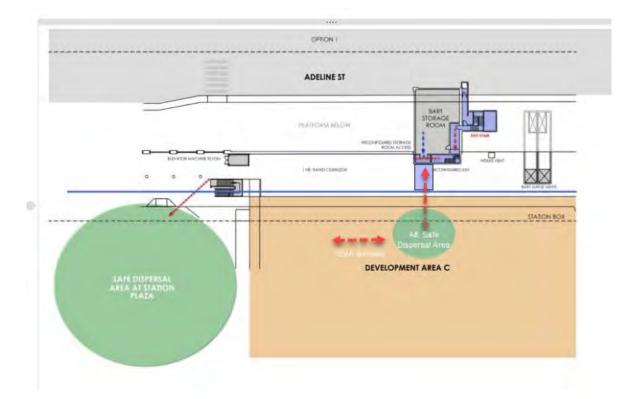


FIGURE 18 - SOUTH PLATFORM EGRESS STAIR ACCESS - OPTION 3 DIAGRAM

2.3.3 TOD Construction and Phasing

Station Access During Construction

This guide outlines criteria for maintaining BART customer and personnel access during station construction. This is not comprehensive, and all construction phasing should be planned with BART. It is crucial to ensure constant access for BART customers, operational needs, and emergency services:

- Existing station entrances must remain operational at all times.
- Clear, accessible paths to the station entrance must always be available to BART customers.
- Adequate emergency exits must be provided at all times.
- Existing station emergency egress points must remain operational with unobstructed access for emergency vehicles. Only one of the platform emergency egress stairs (south or north) may be temporarily out of service at a time and only with permission from BART.
- Pick-up/drop-off and bus/shuttle loading zones must be accessible at all times.
- Access to BART refuse collection.
- Two parking spaces for station agents located as close as possible to station entrance
- Vehicle and bike parking made available during construction must not be less than the final planned amount of BART customer and staff spaces
- BART maintenance personnel must have access to the station and TPSS areas at all times.
- A potential crane staging area must be preserved adjacent to the TPSS, ensuring TPSS can commence construction during TOD construction if needed.
- BART criteria must be strictly followed to avoid impacting the station box or other BART structures during construction.

3. TOD Public Realm Design

The Adeline Street frontage is divided into 5 sub-areas based on the existing conditions and potential to connect to Adeline Street. A key goal of the Ashby BART TOD is to maximize building frontage facing the Adeline Main Plaza. Due to station access and mechanical equipment, connections to Adeline Street are not feasible in areas X and Y. Development Areas A, B, and C all have potential for buildings to make connections to Adeline Street or the Corner Plaza at Ashby Avenue. The following section will outline circulation elements related to each section below. The *Ashby Station West Lot TOD: Adeline Connections Memo* outlines opportunities and constraints to connect the TOD to Adeline Street.

- A. Ashby /Adeline Corner Plaza
- B. North of Station Entrance Area/Existing BART Terrace Connection
- C. South of Station Entrance Area/South Plaza Extension
- X. TPSS and BART Equipment Area (Connection not feasible, see section below for design details)
- Y. Station Entrance Plaza Area (Connection not feasible, see section above for design details)

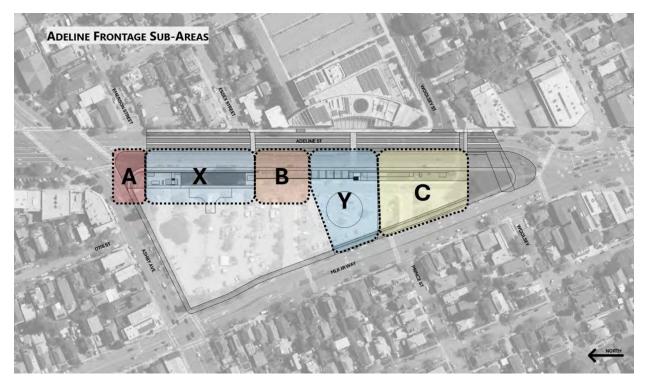
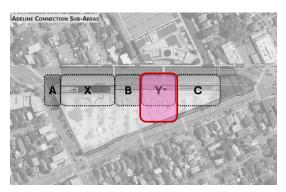


FIGURE 19 - ADELINE FRONTAGE SUB-AREAS DIAGRAM

3.1 Station Entrance Plaza Design

Key Plan Y



3.1.1 Area Y Goals

- Provide safe and convenient pedestrian and bike connections to the Main Station Entrance.
- Provide ADA accessible pathways to the Main Station Entrance.
- Provide access for first responders and meet all fire and life safety access requirements.
- Provide BART maintenance and operations access to the station.
- Create a public open space for the community and increase access to greenery.

3.1.2 Area Y Requirements

Emergency and Maintenance Access

The Station Entrance Plaza shall include a turnaround that meets the requirements outlined in Appendix D, Section D103 of the California Fire Code for first responders and BART maintenance and operations access. The turnaround may be designed primarily for pedestrian and bike access if it meets the turning radius requirements of the fire department design vehicles. The turnaround will likely be used multiple times a day by official vehicles. In addition to, or designed within, the turn-around space, the plaza shall include a parking area for two Police Department vehicles.

Access into the Station Entrance Plaza shall be designed to restrict private vehicle access without the use of bollards or gates. The design should include passive elements to restrict private vehicle access like mountable curbs and materials delineating the area for pedestrians and cyclists while maintaining adequate turning radius for design vehicles into the plaza area. The median in MLK Jr Way should be designed to provide for left hand turns for emergency vehicles only and should not include a dedicated turning lane.

Vertical Access

Stair Access

A new stair connection shall be built between the Adeline Main Plaza area and the Main Station Entrance. The existing South Plaza Stair is insufficient given the reconfiguration of key uses, such as the BART customer drop-off areas, flea market relocation, and anticipated building in Development Area B that would remove the North Plaza Stair as an access point to the station entrance. A new stair shall be built with a minimum width of 12 feet, with its Adeline Street entry point preferably co-located with the pedestrian and bike ramps described below to create a clear station entrance gateway to the vertical circulation elements. Integrated bicycle stairway channels meeting BART standard specifications are required.

ADA Pedestrian Ramp Access

A pedestrian ramp connection that meets ADA and Universal Design Access requirements shall connect from the Adeline Main Plaza and MLK Jr Way to the station entrance. The connection shall be physically separated and/or delineated from bike access and be designed to minimize conflicts between cyclists and pedestrians, particularly for people in wheelchairs or using other mobility assistive devices. The design of the ramp is encouraged to minimize steep grades and switchbacks. The goal is to have a continuous pathway with a slope less than 5% to the Station Entrance Plaza and Main Station Entrance to the extent possible. The pathway will likely require sections of ramp or plaza that exceed 5% to reach the Main Station Entrance. (see figures 20 and 21)

ADA Access

ADA access to the station is provided in multiple locations. The Ed Roberts Campus BART station entrance has an existing elevator connecting to the station gates. The second ADA access point will continue to be the Main Station Entrance off of MLK Jr Way. From Adeline Street, access to the Main Station Entrance will change since the existing ADA ramp at the corner of Ashby Avenue and Adeline Street to the parking lot level will be removed. Access from the northwest corner of Adeline Street/Ashby Avenue will be rerouted along the Adeline Main Plaza to a new access point above the Main Station Entrance. This access point will include the ADA Pedestrian Ramp described above. Drop off and pick up areas will be located on Adeline Street and MLK Jr Way. ADA parking for BART customers will be provided within the development in a location with direct access to the Station Entrance Plaza.

Bike Access

Bike access shall include a physically separated and/or delineated bike ramp connection from the Adeline Main Plaza to the required cycle track within the MLK Jr Way sidewalk area, clearly marked for use of cyclists and not pedestrians. In addition, the Station Entrance Plaza shall include a bike connection (or shared connection with emergency and maintenance vehicles) to the station entrance and bike parking facilities. The cycling path of travel should be clearly delineated in order to avoid conflicts with pedestrians. (see figures 20 and 21)



FIGURE 20 - EXAMPLE DESIGN CONCEPT: STATION ENTRANCE PLAZA SECTION DIAGRAM

Bike Connection/Ramp

ADA Pedestrian Connection/Ramp

Bike Parking

Bike parking for BART customers and bikeshare users shall be provided within the existing BART property, close to the Main Station Entrance, as follows:

- Bike station: minimum of 128 spaces (may be provided within a TOD building)
- Bike racks: minimum 134 racks (up to 80% allowed within a TOD building)
- Bike lockers: minimum 46 BikeLink electronic on-demand lockers, which shall be furnished with power and data connections (may be provided within a TOD building or exterior wall of a TOD building)
- Bike share docks wired for e-bike charging (BayWheels): 23 spaces, located within the plaza and accessible by vehicle for maintenance.

BART Facilities

Elevator Machine Room

The elevator machine room located between the existing Bike Station and the South Plaza Stair shall be retained and properly ventilated.

BART Trash Facilities

Per the *BART Basis of Design*, a BART trash enclosure shall be provided for a minimum of one 3cubic yard trash bin and two 50-gallon recycle containers in close proximity to the station. Additionally, Berkeley's Zero Waste Division may require green waste bins. This enclosure may occur within a TOD building and shall have ramp access to the turnaround or other refuse collection location with minimal pull distance.

Window Banks North of Station Egress Doors

The area under the Existing BART Terrace north of the station entrance and emergency egress doors may be enclosed and converted to BART bike parking facilities or BART maintenance space. This space may be integrated into the podium space under Development Area B (shown in Figure 21) if all fire separation requirements are met.



FIGURE 21 - EXAMPLE DESIGN CONCEPT: STATION ENTRANCE PLAZA

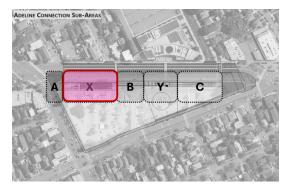
(6) Bike Parking

- 10 BART Rider and Resdiential Loading Areas
- (1) Bus Stop
- (12) Prince St Enhanced Ped/Bike Crossing
- (13) Elevator Access

3.2 Traction Power Substation (TPSS)

The TPSS and its future replacement is key to BART's functional needs to run trains along this rail corridor. This section will outline the maintenance and access requirements of the TPSS and the implications for TOD. The future permanent location of the TPSS (TPSS Replacement Area in figure 22) will be located south of the North Platform Egress Stair and is significantly larger than the existing TPSS, approximately 180 feet by 40 feet. In addition to the new TPSS facility, the TPSS has defined access and staging requirements including space for a temporary TPSS for use in emergency situations.

Key Plan X



3.2.1 Access and Maintenance Requirements

The following spatial requirements may be integrated into open space design with the understanding that the space may be required for BART maintenance or emergency needs at any time. It is encouraged that the emergency access and maintenance access areas are relatively flat to create usable open space (with any recreational use of space subject to approval by BART). The emergency access and TPSS staging area may function as the safe dispersal area for the North Platform Egress Stair. Figure 22 outlines one potential layout that has been vetted with BART and Berkeley Fire Department.

- 1. Emergency Vehicle Access. Emergency vehicle access is required to the TPSS replacement area and the North Platform Egress Stair. The access shall include a vehicle turn-around that meets the standards of Appendix D of the California Fire Code. At a minimum, the emergency access drive shall be a minimum 26 feet wide. The 26-foot width is required where fire units may need to lay fire water supply hose or set up aerial fire apparatus. If there are areas where these do not apply, then a 20-foot width may be acceptable upon review and approval by the Berkeley Fire Department.
- 2. Emergency Access and Egress from Adeline Street. Pedestrian access shall be maintained from Adeline Street to the TPSS Staging Area and the North Platform Egress Stair between Development Area A and B, figure 22. The access should be achieved through rebuilding the North Plaza Stair to connect directly from the BART Terrace to the

staging area. This access point will provide first responder access to this area from Adeline Street.

- 3. **Staging and Maintenance Access**. Staging and maintenance access shall be provided to the TPSS replacement area. The maintenance access shall include the following:
 - a. A minimum 8-foot-wide access way adjacent to the TPSS for the length of the structure, including BART facilities north of the North Platform Egress Stair. The access way is not required to connect to the Ashby/Adeline Corner Plaza.
 - b. No buildings shall be located within 10 feet of all BART equipment and vents.
 - c. Access shall be provided to all entrances to the TPSS area including the doorway at the northern end of the TPSS Replacement Area (elevation ~113 feet) and the 8.5-foot-wide door at the center of the TPSS Replacement Area (elevation ~110 feet).
 - d. A maintenance and construction staging area with minimum dimensions of 40 feet by 50 feet near BART TPSS is needed for TPSS improvements and repairs.
 - e. Parking for BART maintenance trucks must be provided in close proximity to the TPSS areas, specifically 2 stalls sized for Ford F250 or similar trucks which need to be accessible 24 hours a day, 7 days a week. These stalls are in addition to those required in Section 2.2.5. The stalls may be provided within the staging area.
 - f. A temporary TPSS area of the size of 50 feet by 50 feet or 20 feet by 130 feet is required to be reserved for the installation of a temporary TPSS, which could be in place for years if the permanent TPSS is ever out of commission. The temporary TPSS area shall be directly west of the TPSS Replacement Area. Adequate space shall be included to install and remove the temporary TPSS.

4. Crane Access.

a. The TPSS area requires crane access for construction and maintenance of the facility. Detailed specifications for the crane access are provided in the *Ashby Station Transit Oriented Development Basis of Design Criteria*. An area the size of 40 feet by 150 feet is required for crane access. The area needs to be in proximity to the TPSS Replacement area to reach the equipment.

5. Dual Use of Temporary TPSS and Staging Areas

a. The Temporary TPSS area and BART maintenance staging area may be designed as a dual use area for TOD residents and/or public open space. The open space design and uses will need to be vetted by BART and shall not include any permanent structures but may include hardscape designs with temporary, movable components that allow for access needs. Ball courts are discouraged due to the risks to persons and BART facilities associated with balls landing in the TPSS area. BART will not be responsible for replacement of facilities that impede or are removed for emergency and maintenance access. Maintenance access in extreme situations may require BART use and occupancy of these areas for months or years.



FIGURE 22 - TPSS AREA EXAMPLE DESIGN CONCEPT

TPSS Equipment + BART Vents

(1)



Attachment 4

City – BART Memorandum of Agreement (2022)

RFP & NOFA: ASHBY BART WEST LOT TRANSIT-ORIENTED DEVELOPMENT

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

This Memorandum of Agreement ("MOA") is entered into on this 30th 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 transitoriented 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 <u>Exhibit A</u>), 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 <u>Exhibit B</u>), 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 <u>69,833-N.S.</u> 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 28th, 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.

Activity	Lead Party	Milestone	Outside Date
 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

B. Activities and Timelines Summary Table

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 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 <u>Exhibit C</u>, 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. <u>Performance Milestones</u>

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. <u>Revised Affordable Housing Strategy for the Projects</u>

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. <u>Requirement to Comply</u>

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. <u>General</u>

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.

Milcstone	Date
Agreement on nature of solicitation and its	September 30, 2022
content for Ashby TOD Project	
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	November 1, 2022
Approved by City Council and BART Board	
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

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JESSE ARREGUÍN MAYOR

APPROVED AS TO FORM

FARIMAH FAIZ BROWN CITY ATTORNEY

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT



But M. Paus BROBERT M. POWERS GENERAL MANAGER

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("MOU") is entered into on this <u>3</u>^{cd} day of <u>March</u>, 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

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	 a. Zoning alternatives proposed b. Draft CEQA document released c. Planning Commission and community review d. Planning Commission approval e. Council zoning approval 	Complete by June 2021
3. BART AB 2923 Guidance Document	BART	a. Draft Guidance b. Final Guidance	a. February 2020 b. July 2020
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

Activities and Timelines – Summary Table

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 putsue rezoning of developable, BART-owned property within ¹/₂-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.

E 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 Hollpwood*, 45 Cal. 4th 116 (2008).

CITY OF BERKELEY

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CITY MANAGER

JESSE ARREGUÍN MAYOR

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

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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 minimizes 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 bulbouts 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 project¹:
 - 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 following²:
 - 1. Uses that help reduce the need for driving in North Berkeley, such as commuterfocused 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.

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

² 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, quirkiness, 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 <u>www.bart.gov.TOD</u> 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.



Attachment 5

Adeline Connections Memo

Ashby Station West Lot TOD: Adeline Connections Memo

DECEMBER 2, 2024

TABLE OF CONTENTS

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Area A: Ashby/Adeline Corner Plaza	.3
Area B: North of Station Entrance Area - Existing BART Terrace Connection	.7
Area C: South of Station Entrance Area - Adeline Plaza Extension	2

TOD Connections to Adeline

A primary goal of the Ashby BART TOD project is to optimize building frontage along the Adeline Main Plaza at the Adeline Street level to enhance the connection between the TOD and the surrounding community. Achieving this requires overcoming several design, engineering and construction challenges. This document outlines the design opportunities, challenges, and requirements for making connections to the Adeline Main Plaza and Adeline Street. The document provides information on technical and engineering issues on how TOD buildings can connect to existing infrastructure so that they can front the Adeline Main Plaza. This document works in conjunction with information in the following documents:

- Ashby BART Exchange Agreement
- Ashby Station West Lot TOD Circulation Framework
- BART Facilities Standards (BFS)
- Ashby BART West Lot TOD PRELIMINARY Objective Design Standards

To facilitate better understanding of the connections, the frontage along Adeline Street is divided into 5 sub-areas based on the existing conditions and potential to directly connect the TOD to Adeline Street, as shown in Figure 1. Note that Figure 1 is a conceptual site plan only and is not a preferred site design concept. As detailed in the *Ashby Station West Lot TOD Circulation Framework*, building locations are flexible as long as all performance metrics are met.

FIGURE 1 - ADELINE CONNECTION SUB-AREAS DIAGRAM



BART Station Entrance

Areas A, B, and C all have potential to build direct connections to Adeline Street. In areas X and Y, connections to Adeline Street are considered not to be practical or feasible due to station access, the Traction Power Substation (TPSS), station ventilation structures and other mechanical equipment. This document provides additional detail about connections for areas A, B, and C. Information regarding the requirements for areas X and Y is provided in the *Ashby Station West Lot TOD Circulation Framework*. The requirements for making connections to Adeline are outlined in the RFP and summarized below in Figure 2.

In general:

The TOD project should maximize connections to Adeline in Areas A, B, and C to the extent feasible. Proposals that do not maximize connections should outline the design and financial analysis and reasoning for not connecting.

FIGURE 2 – CONNECTIONS TO ADELINE SUMMARY TABLE

	Connections to Adeline					
А	Ashby/Adeline Corner Plaza Area	Connection required if				
В	North of Station Entrance Area/Existing BART Terrace Area	feasible				
С	South of Station Entrance Area/Adeline South Plaza Area	Connection required				
Х	TPSS and BART Equipment Area	Connection not feasible, see				
Y	Station Entrance Plaza Area	Circulation Framework for design details				

Summary of Challenges

The challenges to connecting new TOD buildings to Adeline Street include the structural integrity of the BART station box, existing BART infrastructure and utilities, and the different interface conditions connecting to existing sidewalk and plaza infrastructure. The connections are further complicated by the need to ensure uninterrupted operation of and customer access to the transit station during construction.

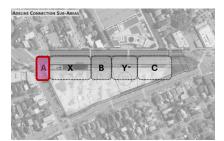
Given these challenges, the TOD developer must meticulously plan for connecting the TOD buildings with the BART station and Adeline Street to balance project goals with engineering feasibility. The following section outlines the key issues, underlying assumptions for connections, specific design goals for each segment along Adeline Street, and the development expectations to be included to ensure the connections are cohesive and structurally sound.

Area A: Ashby/Adeline Corner Plaza

The goal for this area is to create an active public space at the corner and to locate a building as close to the corner as possible to align with the eastern facade location of the building across Ashby Avenue. The area includes multiple overlapping projects including the Ashby/Adeline Corner Plaza, extending the plaza to the TOD and improvements and relocation of the TPSS.

The Ashby/Adeline Corner Plaza is a proposed City project that is expected to extend the Adeline Main Plaza (frontage along areas X, B, Y, and C) northward to Ashby Avenue, as shown in Figure 1. The TOD Ashby/Adeline Corner Plaza Extension - a link from the TOD to that Corner Plaza - is considered a high priority and must be included in the TOD to the greatest extent possible consistent with project feasibility (see Figure 3 below). If feasible, the Ashby/Adeline Corner Plaza Extension will connect the new development to Adeline Street with a plaza that is activated on the ground floor with food and beverage use, services, or retail. The plaza extension is expected to include removing the existing ADA access ramp and adjacent trees on BART property. The ADA access to the station entrance will be relocated approximately 700 feet south to directly connect BART customer loading areas and Adeline Main Plaza to the Station Entrance Plaza. While the plaza extension is within the station box zone of influence (ZOI), the TOD building is not expected to be within the ZOI or require connection to any existing BART infrastructure.

KEY PLAN A



Area A Urban Design Goals

- Create an active public space at the corner.
- Locate a building as close to the corner as possible to align with the eastern facade location of the building across Ashby Avenue.

Area A Design Opportunities

- Locate a building as close as allowable to the BART equipment area with direct access to a new corner plaza located at a similar grade as sidewalk adjacent to the Ashby Avenue/Adeline Street intersection.
- Integrate the corner plaza with ground floor commercial space with the opportunity for outdoor seating.
- Integrate placemaking public art into the corner plaza design to create an identity marker for the TOD district.
- Screen BART vents and equipment with trees, landscaping and/or art features.

Area A Requirements

- A clearance of at least 10 feet shall be maintained around the perimeter of all BART structures.
- At the TPSS Staging Area level, a pathway shall be maintained to the BART equipment housing to the north of the North Platform Egress Stair and vents and have a minimum width of 8 feet. An ADA or other access pathway is not required to connect to the Ashby/Adeline Corner Plaza Extension.

Area A Challenges and Constraints

- The Ashby/Adeline Corner Plaza Extension will be built within the Station Box ZOI and is expected to require a retaining wall to make up the grade differential from the existing intersection grade down to the TPSS Equipment and BART Vents.
- Access to the existing TPSS, BART surge vents, and the North Platform Egress Stair must always be maintained and operational during construction.
- Connections to the sidewalk and parapet wall along Adeline at the north corner must be engineered to accommodate any attached structure and designed for a remaining useful life of 50 years. Replacement of the parapet wall above the sidewalk can be considered.

Area A Example Design Concepts

FIGURE 3 - ASHBY/ADELINE CORNER PLAZA EXAMPLE CONCEPT DIAGRAM





FIGURE 4 – AREA A EXISTING CONDITIONS VIEW LOOKING EAST FROM PARKING LOT

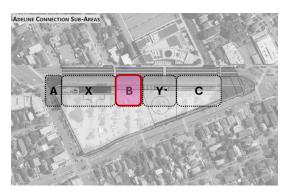
FIGURE 5 – AREA A EXISTING CONDITIONS VIEW FROM ASHBY AVENUE LOOKING SOUTH



Area B: North of Station Entrance Area - Existing BART Terrace Connection

Area B provides an opportunity for TOD buildings to connect directly to the existing BART Terrace for approximately 140-150 feet of building length along Adeline. The BART Terrace Extension - a link from the Existing BART Terrace to the TOD - is considered a high priority and shall be included in the TOD to the extent it's consistent with project feasibility.

Key Plan B



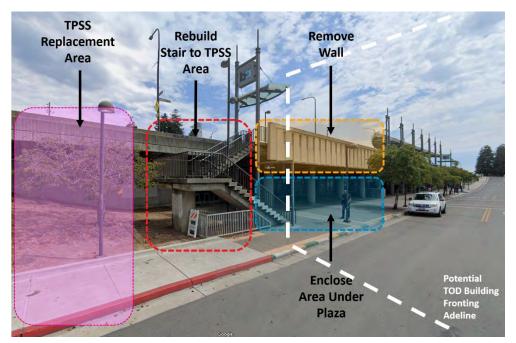
Urban Design Goals

- Maximize building frontage connecting to the Existing BART Terrace north of the Station Entrance Plaza.
- Create an active ground floor that engages with the Adeline Main Plaza Area.

Design Opportunities

- A building located within the ZOI can connect to the Existing BART Terrace between the existing North Plaza Stair and the emergency egress doors to the Station Entrance Plaza to the south.
- The area under the Existing BART Terrace between the existing North Plaza Stair and the emergency egress doors to the Station Entrance Plaza may be enclosed and converted into bike parking facilities (see technical issues below).

FIGURE 6 – AREA B EXISTING CONDITIONS



Area B Requirements

• The existing North Plaza Stair shall be rebuilt to connect to the TPSS staging area.

Area B Challenges and Constraints

- The existing canopy and BART signage will likely need to be removed and replaced in order to connect to the existing Adeline BART Terrace.
- Building within the Station Box ZOI
 - Both temporary and permanent foundation setbacks and criteria within the ZOI are specified in BART Facilities Standards (BFS). (see figure 7)
- Connections to BART Terrace
 - The connection between the TOD podium and the BART Terrace structure must allow for differential movement. Anticipated movement may result from concrete long-term creep and shrinkage, temperature fluctuations, wind, and earthquakes.
 - To accommodate these movements, a fire-rated joint will be required. On the plaza side the joint must be integrated into the existing deck structure. It is the responsibility of the developer to engineer this connection to ensure a joint at the interface is feasible.
 - In order to engineer the connection, in-situ material properties of the existing structure will need to be determined through non-destructive, and as needed, destructive testing.
 - The interface location is occupied by a precast concrete Balustrade in area B and a cast-in-place concrete planter parapet. Removal of these items is required.

Refer to BFS Specification: SECTION 02 41 19 SELECTIVE STRUCTURE DEMOLITION

• An invasive joint installation would be highly complex, so it is recommended that the developer consider a non-invasive movement joint (see figure 8).

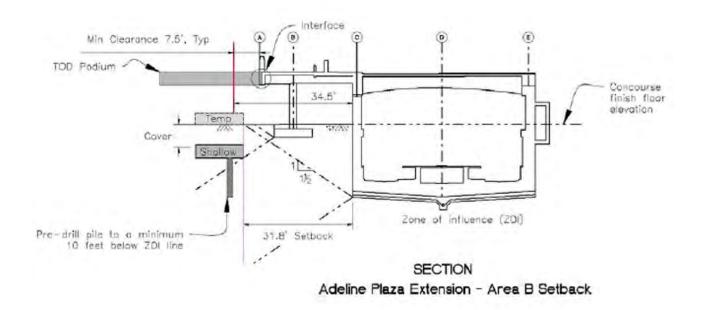
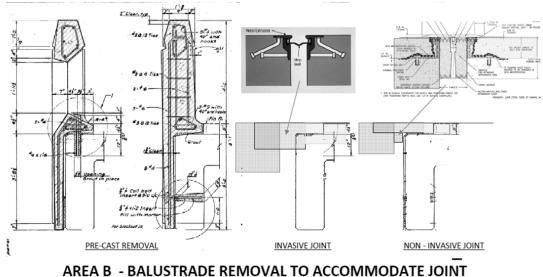


FIGURE 7 – AREA B: CONNECTING TO BART TERRACE

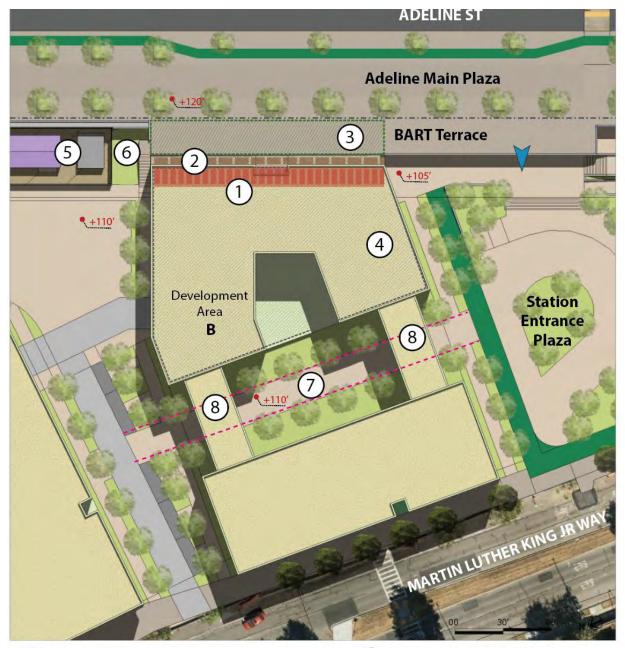




- INVASIVE EXPANSION JOINT CHALLENGE- REMOVE BALLUSTRADE OVER STATION ENTRANCE, VERIFY EXISTING
- INVASIVE EXPANSION JOINT CHALLENGE- REMOVE BALLUSTRADE OVER STATION ENTRANCE, VERIFY EXISTING CONDITIONS, PREP SURFACES, MODIFY CANTILEVER TO SUPPORT EXPANSION JOINT BY REMOVING PORTION OF CANTILEVER OR ADD JOINT SUPPORT BRACKET.
- NON- INVASIVE EXPANSION JOINT CHALLENGE- REMOVE BALLUSTRADE OVER STATION ENTRANCE, REMOVE PORTION OF TOPPING SLAB, VERIFY EXISTING CONDITIONS, PREP SURFACES.

Area B Example Design Concepts

FIGURE 9 - TOD DEVELOPMENT AREA B CONCEPTUAL PLAN



+110' Estimated Site Elevation

-- Estimated BART Property Line

- BART Station Entrance (below BART Terrace)
- (1) Commercial Frontage along BART Terrace
- BART Terrace Extension

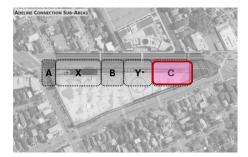
- Bike Parking (below BART Terrace)
- 4 Vehicle Parking Podium
- 5 TPSS Replacement Area
- (6) North Plaza Stair (to be rebuilt)
- (8) Potential Bridges over Emergency Vehicle Access



FIGURE 10 – EXAMPLE DESIGN CONCEPT; TOD DEVELOPMENT AREA B SECTION

Area C: South of Station Entrance Area - Adeline Plaza Extension

Key Plan C



Area C requires development to front the Adeline Main Plaza area south of the station entrance. The South Plaza Extension - a link from the southern part of the Adeline Main Plaza to the TOD is considered an essential priority and shall be included as part of the TOD project with a requirement to build at least 4,800 square feet of plaza space. Development Area C will also frame the south side of the Station Entrance Plaza. Along the north side of the development block, a ramp for pedestrians and bikes will be required to connect Adeline Street to the main station entrance. Additional information is provided in the *Ashby Station West Lot TOD Circulation Framework*.

Area C Unique Conditions

The existing cantilevered sidewalk along Adeline transitions to grade south of the South Platform Egress Stair, intersecting with a concrete planter-parapet. To maintain the current plaza deck elevation, the planter-parapet must be removed and replaced with a movement joint connecting the extension to the TOD structure. This may necessitate removing or modifying portions of the existing plaza or attaching a joint support system to the structure.

The South Plaza Extension's width is dictated by the required minimum 10 feet setback from the BART exhaust vent (24 feet west of the balustrade edge) and the TOD foundation setback (16'-3"). While cantilevering over this distance is impractical, lightweight engineered backfill can provide necessary support. (see figures 14 and 15) The extension must also provide access to the BART storage room and platform egress, depending on the chosen configuration.

Modifications to existing BART ventilation structures are required. The exhaust vent, if adjacent to a sidewalk or public walkway must extend 10 feet above plaza grade, to meet California Mechanical Code (CMC) and both intake and exhaust vents must accommodate operational, maintenance, and aesthetic requirements. The design of the extension and associated features must integrate seamlessly with the Circulation Framework to enhance functionality and ensure compliance. (see figures 17 and 19)



FIGURE 11 - AREA C EXISTING CONDITIONS PLAN AND VIEW FROM PARKING LOT

Area C Urban Design Goals

- Maximize building frontage connecting to the South Plaza Extension south of the Station Entrance Plaza.
- Create an active ground floor that engages with the Adeline Main Plaza area.

Area C Design Opportunities

- The Adeline Main Plaza area shall be extended to new building(s) at Development Area C by new structure(s) that connects the new development(s) to the existing sidewalk cantilever. This new connection is referred to as the South Plaza Extension throughout this document.
- The width of the South Plaza Extension is flexible.
- The area below the South Plaza Extension must be designed to access the BART storage room and may be designed to access the South Platform Egress Stair.

- The design of the South Plaza Extension, Development Area C, and the Station Entrance Plaza's pedestrian and bike connection can and should be integrated to create a cohesive experience.
- Development Area C may extend up to 8 or 9 stories within a mid-rise construction type if all entrances and emergency egress exits are located toward Adeline Street and MLK Jr Way. Any entrances fronting a lower elevation like the Station Entrance Plaza will lower the overall height of the building as interpreted by the fire department, thus lowering the height of the highest habitable finished-floor which will be the limiting factor in the number of stories regardless of the allowed building height.
- Three options are available to maintain egress from the South Platform Egress Stair. These options are outlined in detail in the Ashby Station West Lot TOD Circulation Framework:
 - 1. Direct egress into a point of safety within a TOD podium structure with a direct accessible path of travel to a public way or area of safe dispersal with EVA.
 - 2. A fire-rated corridor that qualifies as an area of refuge constructed adjacent along the west side exterior of the station box to accommodate egress from the point of exit to the station plaza.
 - 3. A fire-rated staircase extension to Adeline Street level

Area C Requirements

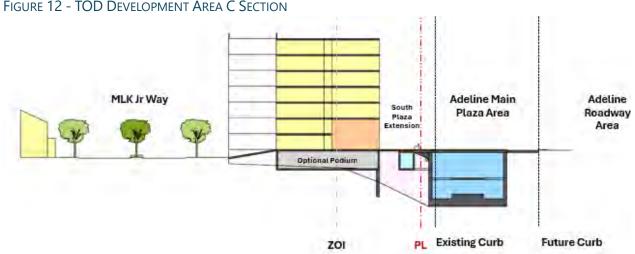
- The South Plaza Extension shall be a minimum of 4,800 square feet.
- Vertical circulation from the South Plaza Extension and Adeline Main Plaza are required to be built per the requirements of the *Circulation Framework*.
- BART vents shall be modified and rebuilt to extend to the South Plaza Extension.
- The exhaust vent design modification shall meet all venting requirements and shall vent a minimum of 10 feet above plaza level. The intake vent design modifications must bring the vent intake cover to sidewalk/plaza grade.
- The vent shall be functional throughout construction (see technical issues below)
- Access to the South Platform Egress Stair and BART Storage room shall be reconfigured and meet all access and fire/life safety requirements.
- Access must be maintained at all times during construction unless specifically authorized by BART and the City of Berkeley Fire Department.

Area C Challenges and Constraints

Connection between the TOD Building Podium and the South Plaza Extension:

- To create the South Plaza Extension, the distance from the TOD buildings to the sidewalk is likely too wide to cantilever a structure from the building podium. Light-weight engineered backfill such as lightweight cellular concrete can be considered to fall within similar embankment pressures to the existing conditions.
- To maximize building footprint, building within the ZOI is likely.

- Drainage and utilities at the sidewalk overhang must be retained as well as accommodations for plaza drainage.
- Both temporary and permanent foundation setbacks from BART structures are specified • in the BFS. Generally, the TOD foundation setback in Area C is required to be a minimum 16'-3" from the balustrade edge. (see figure 15)
- In addition to foundation setbacks, BFS: Structural Design and Construction Near • Existing BART Structures, Release–R3.2, Issued December 2020 also specifies the minimum clearance between any parts of the BART Structures to the exterior face of substructures be 7 feet-6 inches.
- On the plaza side the joint must be supported on an existing structure that was not designed to have a joint at the interface location.
- The joint type connecting the TOD to the South Plaza Extension is a critical factor. Requirements are detailed in BFS specifications, BFS Specification, 07 95 00 Expansion Control, requires an invasive movement joint with the extrusions positively connected to the supporting structure. A fire-rated joint will be required.
- The interface between the TOD podium and the Plaza must allow for differential • movement. Anticipated movement may result from concrete long-term creep and shrinkage, temperature fluctuations, wind, and earthquakes.
- To design the connection, the material properties of the existing structure must be determined using non-destructive testing and, if necessary, destructive testing. There is concern about the condition of the concrete at the invasive expansion joint interface, as well as the need to verify the existing conditions beneath the planter-parapet.



Area C Example Design Concepts

FIGURE 12 - TOD DEVELOPMENT AREA C SECTION

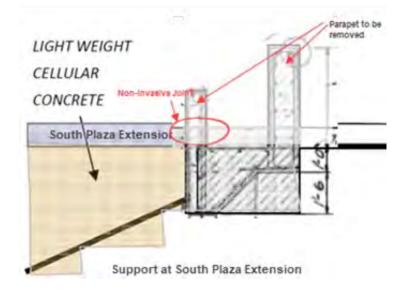


FIGURE 13 - TOD DEVELOPMENT AREA C CONCEPTUAL SITE PLAN

- +110' Estimated Site Elevation
- ---- Estimated BART Property Line
- V South Platform Egress Stair Point
- (1) South Plaza Stair (new)
- 2 South Plaza Extension
- (3) BART Intake Vent (to be extended to plaza grade)
- (4) BART Exhaust Vent (to be extended 10' above plaza grade)
- 5 South Platform Egress Stair + BART Storage (access to be reconfigured)
- [6] Potential Emergency Egress and Storage Access Tunnel
- (7) Ashby BART Station Gateway Element
- Ground Floor Commercial Frontage
- 9 Pedestrian/Bike Access Routes (<5% grade)
- (10) Residential Development C Entrance

Area C Engineering Details

FIGURE 14 – AREA C: SOUTH PLAZA EXTENSION FROM ADELINE STREET SIDEWALK





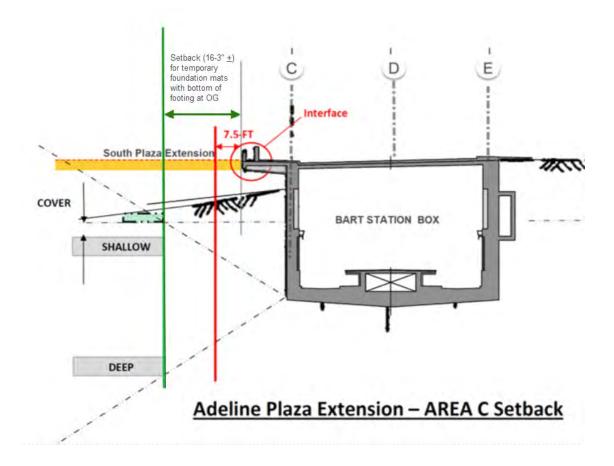
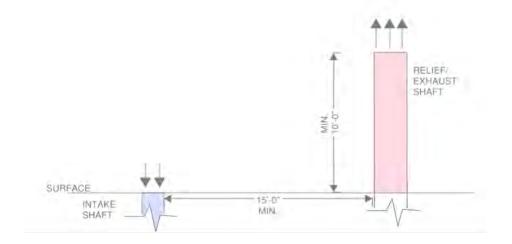




FIGURE 16 – AREA C EXISTING CONDITION ADELINE STREET SIDEWALK DETAIL

FIGURE 17 – AREA C CLEARANCE REQUIREMENTS BETWEEN VENTILATION SHAFTS





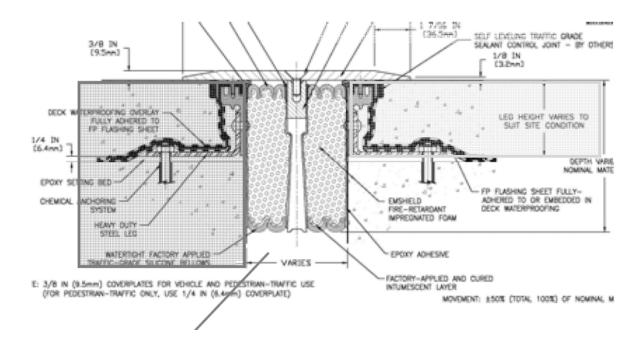
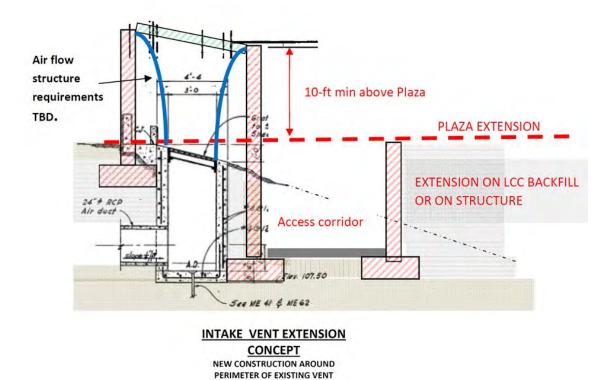


FIGURE 19 – AREA C EXHAUST VENT AT SOUTH PLAZA EXTENSION





Attachment 6: Project Team - Small Business Participation

Name, Address, Point of Contact, Email, and Phone		Nature of Participation
Nos. of All Firms Participating on the Agreement (Including Prime and Subconsultants)	Check if SB	
Name of Firm:		
Address:		
Point of Contact:		
Email:		
Phone Number:		
Name of Firm:		
Address:		
Point of Contact:		
Email:		
Phone Number:		

(To be Completed by Proposer Only – use multiple pages as needed)

The SB participation commitment offered by Proposer will be_____%.

Name of Authorized Officer of Proposer (Print or Type)

Signature of Authorized Officer of Proposer



Attachment 7: Qualifying Project Form

(available in MS Word on project website)

1. Project name and address						
2. Type of real estate product						
3. Lead developer entity & project manager name						
4. Role(s) of RFP Respondent(s) (<i>i.e.</i> managing partner, limited partner, consultant, etc; identify if joint venture)						
5. General contractor						
6. Architect						
7. Construction dates (month/year of construction start & completion						
8. Construction type(s) (indicate material, <i>i.e.</i> wood, steel, etc)						
9. Unit mix (<i>i.e.</i> # of studios, 1- Bdrms, etc; <u>most restricted</u> Area Median Income breakdown, average affordability level)	≤ 30% AMI mber of ∪	•	•	80% AMI	120% AMI	Market rate
 10. Population breakdown (<i>i.e.</i> Family Rental, Senior Rental, Supportive Housing, Student, etc.) 11. Private amenities Included (<i>i.e.</i> community room, front desk, 				 		
laundry, resident courtyards)						
12. Public amenities Included (if						
any, <i>i.e.</i> placemaking/placekeeping elements, civic facilities, or other community benefits)						



13. For any public amenities,	
describe how were they funded,	
including operations &	
maintenance	
14. Total residential square	
footage	
15. Total square footage of non-	
residential or commercial Area (if	
any leasable non-residential area)	
16. Non-residential space: describe	
approach to ground floor activation	
and pedestrian orientation	
17. Off-street parking amount and	
breakdown (residential/other)	
18. How does residential parking	
provided compare with local	
parking ratio requirements? (i.e,	
equal to, greater than, or less than	
due to a waiver or variance)	
19. Is parking cost bundled with	
rent, or is it separately priced?	
20. Summary of financing sources	
(indicate construction and	
permanent financing sources and	
amounts, as well as equity sources)	
21. Total development cost	
(include per unit and per square	
foot cost)	
22. Government affordable	
housing program involvement	
(briefly describe)	
23. Contact Information for	
lenders (current)	
24. Is project on a ground lease?	
25. Does project involve a business	
relationship with a public agency?	
If so, please describe.	
26. Community engagement	
(describe any unique approaches)	
27. Awards received by project	
28. Brief project narrative	
(optional)	



Attachment 8

Form of Exclusive Negotiating Agreement (ENA)

EXCLUSIVE NEGOTIATING AGREEMENT FOR DEVELOPMENT AT THE ASHBY BART STATION

This Exclusive Negotiating Agreement (the "Agreement"), effective as of this _____ day of _____, 2025 (the "Effective Date"), is entered into by and between the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code Section 28500, et seq. ("BART"), and ______, a _____[state of registration] [entity type]_____ ("Developer"). Developer and BART are together referred to as the "Parties."

RECITALS

- A. BART controls approximately 4.4 acres at the west parking lot of the Ashby BART Station comprised of station facilities and parking (the "Property"). The Property consists of two parcels, Assessor's Parcel Number 053-1597-039-04 as well as an unassessed second parcel, "R9-2," and is bounded by Ashby Avenue to the north, Adeline Street to the east, and Martin Luther King, Jr. Way to the west.
- B. On _____, BART and the City of Berkeley ("City") entered into the Ashby BART Station Transit-Oriented Development Exchange Agreement ("Exchange Agreement"). Pursuant to the terms of the Exchange Agreement, the City will quitclaim any rights, title, and interest in the Property within ten days of the Effective Date.
- C. On May 22, 2025, the BART Board of Directors authorized the General Manager of BART to execute an Exclusive Negotiating Agreement ("ENA") with the Developer for development at the Property, with a term of twenty-four (24) months and an option to extend an additional twelve (12) months. The Board further authorized BART to pursue development with the second ranked team from the competitive process if the terms of this ENA are not substantially met by the Developer.
- D. BART and the Developer desire to enter into this Agreement to assess the possibility of developing the Property with a mix of residential and non-residential uses (the "Project"). Certain minimum requirements for the Project are described in <u>Exhibit 1</u>, the "Minimum Project Requirements."
- E. The purpose of this Agreement is to allow the Parties to determine the feasibility of the Project and to negotiate the terms of an option agreement for one or more long-term ground lease(s) of the Property ("Option Agreement"). BART generally does not intend to lease areas containing its transit infrastructure or that are otherwise necessary for its transit operations or maintenance; the Developer will be responsible for undertaking parcel subdivision(s) in order to separate the area to be leased from the remainder of the Property.

NOW THEREFORE, the Parties agree as follows:

1. **NEGOTIATIONS**

1.1. Length of Negotiation Period; Extension

Unless extended by mutual agreement, or as otherwise provided herein, the period for negotiation of the terms and conditions of the Option Agreement shall be twenty-four (24) months, commencing on the Effective Date and terminating twenty-four (24) months thereafter (the "Negotiation Period"); provided, however, that the Negotiation Period may be terminated earlier pursuant to the termination provisions of this Agreement.

Upon a request by the Developer and payment of a fee in the amount of One Hundred Thousand Dollars (\$100,000) ("Extension Fee"), BART may, in its sole discretion, agree to amend this agreement to extend the Negotiation Period for up to an additional twelve (12) month period. The Extension Fee will be applied to additional BART Costs, as defined below.

1.2. <u>Good Faith Negotiations</u>

The Parties shall negotiate diligently and in good faith during the Negotiation Period toward an Option Agreement. Assuming successful negotiation of the Option Agreement and that the activities listed in Section 3 are completed within the Negotiation Period and any extension thereof, the Option Agreement would give the Developer an option to lease the Property upon satisfaction of certain terms and conditions to be included in the Option Agreement, and according to the terms of the ground lease or leases attached to the Option Agreement (such ground lease or leases of the Property, or any portion thereof, being defined collectively as the "Ground Lease").

Because BART has a growing portfolio of TOD projects on its property, and in the interest of being able to efficiently manage that portfolio, it is BART's expectation that, except with respect to the agreed-to particulars of the project and site improvements, the Option Agreement and Ground Leases will be generally consistent with BART's previously executed ground lease option agreements and ground leases. Among other terms, the Option Agreement will provide for commercially reasonable option fees as well as Developer's payment of BART's ongoing staff review costs and outside counsel and consultant bills related to the Project within thirty (30) days after being invoiced therefor, other than those that have been fully paid under Section 2, BART Fees and Costs.

An non-binding Initial Summary of Terms reflecting certain initial terms and conditions of Option Agreement is attached to this Agreement as <u>Exhibit 2</u>, Subject to revisions as mutually agreed by BART and Developer during the Negotiation Period, <u>Exhibit 2</u> will be used by BART and Developer as a general basis for negotiating key terms and provisions of the Option Agreement and Ground Lease. BART and Developer acknowledge that <u>Exhibit 2</u> is subject to modifications for reasons that may include, but are not limited to, matters discovered during Developer's due diligence or raised during the community

engagement process and changed facts and circumstances regarding the Project, its environmental clearance, and its financial feasibility.

Negotiations will commence following full execution of this Agreement and shall continue during the term of this Agreement while the Developer conducts due diligence on the Property and the Project, the Developer submits certain information to BART, the Parties undertake preliminary planning and analysis of the Project, and the Developer pursues entitlements for the Project.

1.3. <u>Exclusive Negotiations</u>

BART shall not negotiate the development of the Property with any other person or entity or solicit or entertain bids or proposals to do so, during the Negotiation Period.

2. BART FEES AND COSTS

2.1 <u>Exclusivity Fee</u>

In consideration for BART entering into this Agreement the Developer shall make an initial, non-refundable payment of Seventy-Five Thousand Dollars (\$75,000) to BART within 30 days after the Effective Date, which payment, together with the Twenty-Five Thousand Dollar (\$25,000) deposit received with the Developer's proposal, for a total aggregate amount of One Hundred Thousand Dollars (\$100,000), is defined as the "Exclusivity Fee." Payment of the Exclusivity Fee shall be in the form of a check or wire to the San Francisco Bay Area Rapid Transit District. The Exclusivity Fee will be used by BART to compensate it for the BART Costs (as defined below).

"BART Costs" are defined as those costs incurred by BART with respect to negotiating and preparing documents for the Option Agreement and the Ground Lease(s) of the Property, including financial consultant costs, outside legal counsel, surveys, engineering, appraisals, studies, and other services in connection with this Agreement, which costs are subject to the terms and conditions of this Section 2.

An estimated budget showing anticipated BART Costs during the Negotiation Period is attached to this Agreement as **Exhibit 3** (the "ENA Budget"). All third-party consultant costs, legal fees, and labor costs incurred by BART will be paid at cost by the Developer if they are within the cost categories shown on the ENA Budget. If BART anticipates that BART Costs will exceed the amount provided in the ENA Budget, BART will notify Developer and will provide Developer an updated budget. Developer understands and acknowledges that the ENA Budget is provided as a courtesy. BART Costs can vary significantly depending on the progression of negotiations and the particulars of the project. In no event shall the ENA Budget constitute a cap on BART Costs.

BART shall first apply the Exclusivity Fee toward payment of BART Costs. When and if the remaining Exclusivity Fee decreases to Thirty-Five Thousand Dollars (\$35,000) or less, BART shall, on an ongoing basis, furnish the Developer with a statement showing how the funds have been applied to BART Costs, which statements will show the actual payments

made by BART, as well as costs incurred but not yet paid by BART. As the Exclusivity Fee account is drawn down to incur and pay for the BART Costs, within thirty (30) days after being informed by BART that the balance of the Exclusivity Fee is \$35,000 or less, Developer shall, on an ongoing basis, provide additional payment to BART in an amount sufficient to restore the balance of the account to \$100,000.

2.2 Access Plan Fee

In addition to the Exclusivity Fee, the Developer shall pay for the costs of completing a Station Access Plan, as further described in Section 3.3, by making an additional initial non-refundable deposit (the "Access Plan Fee") of ____[AMOUNT]____ Dollars (\$___,___), within thirty (30) days after the Effective Date. BART shall use this Access Plan Fee to cover consultant and labor expenses associated with the completion of a two-phase Access Plan, to determine the station access infrastructure improvements associated with the development. The Developer shall submit payment within thirty (30) days after being invoiced therefor of any additional Access Plan Fee. Payment of the Access Plan Fee shall be in the form of a check or wire to the San Francisco Bay Area Rapid Transit District.

2.3 <u>Refund of Fees Upon Termination</u>

The Exclusivity Fee and Access Plan Fee ("the Fees") shall be non-refundable except that (i) if this Agreement is terminated due to a BART default, the Developer shall be entitled to receive, within forty-five (45) days of such default, a refund of the unused portion of the Fees or unused portion of any additional deposits, but shall not receive a refund of any BART Costs that have been incurred or paid at the time of said default, and (ii) if this Agreement is terminated voluntarily by the Developer, the Developer shall be entitled to receive, within forty-five (45) days of such voluntary termination, a refund of the unused portion of the Access Plan Fee, and the unused portion of the Exclusivity Fee, except that BART shall retain a portion of the Exclusivity Fee equal to Twenty-Five Thousand Dollars (\$25,000) as well as any amounts that BART has incurred, but not paid at the time of said Developer, BART will retain the Exclusivity Fee and any Extension Fee that has been paid, and the Developer shall be entitled to receive, within thirty (30) days of termination, a refund of any unused portion of the Access Plan Fee.

3. SCHEDULE OF PERFORMANCE

The Developer shall perform the activities delineated in this section, including but not limited to submitting the specified information, during the Negotiation Period and within the time periods set forth in a schedule of performance mutually agreeable to all Parties

The initial schedule of performance (the "Schedule of Performance") is attached hereto and incorporated herein by this reference as **Exhibit 4**. Developer may request in writing an extension of the date of any delivery in the schedule, to be reasonably approved by BART staff, so long as the extension does not exceed the term of the Agreement.

3.1 <u>Developer Information</u>

Developer shall provide the following information for BART review:

3.1.1 An updated written description of the specific and general roles, responsibilities, and obligations of Developer, Developer's members or partners, and any other entity participating in the legal entities established by Developer for purposes of developing each component of the Project. Additionally, the written description of roles, responsibilities, and obligations shall identify the principals and other personnel, to the extent identified, from each participating party by name, title or position, and areas of responsibility within the development entity.

3.1.2 Copies of balance sheets and income/loss statements prepared in accordance with generally accepted accounting principles, and other financial documentation as reasonably requested by BART covering the last two years of Developer, Developer's members or partners, and any other entity having a direct interest in Developer or in any SPE (as that term is defined below) created in connection with developing the Property.

3.1.3 A written statement concerning any litigation in which Developer or Developer's partners or members are a party. Developer shall provide to BART copies of any filed litigation documents in connection with any litigation listed in such written statement within five (5) business days of BART's written request.

3.1.4 All documents related to Developer's not for profit, corporate, LLC, or partnership status, and the status of its members or partners having a direct interest in Developer or in any SPE (as that term is defined below) created in connection with developing the Property.

3.2 <u>Community Engagement</u>

3.2.1 Within 45 days of the Effective Date, Developer shall submit to BART for its review a Community Engagement Program ("CEP"). The CEP identifies community stakeholders, includes a narrative description of Developer's approach to engagement, specifies a schedule for public meetings, workshops, or charrettes, and describes work products to summarize community feedback and priorities for public benefits. The CEP will also include a description of Developer's process to engage with BART, the City of Berkeley ("City"), and other public agencies as needed.

3.2.2 Developer shall provide a summary of community engagement activities and stakeholder feedback during the Agreement as part of Developer's quarterly progress reports, as well as a description of the project public benefits package.

3.3 Access Plan

A transportation planning consultant, contracted to BART, shall conduct an Access Plan funded by the Access Plan Fee. This Access Plan is in addition to, and not replacing, any City-required access or circulation studies for the entitlement or environmental review process. The scope, budget, and timeline for the Access Plan is provided in <u>Exhibit 5</u>.

3.4 Objective Design Standards

- 3.4.1 The City is leading a process of preparing Objective Design Standards for the Property ("ODS") for adoption by the City. In order to allow for a more accurate analysis of Project design options, Developer shall make good faith efforts to cooperate with the City in the development of ODS so that they can be brought forward for review and adoption.
- 3.4.2 The Project shall adhere to the ODS adopted by the City for the Property provided that the ODS meet the requirements in **Exhibit 6**, ODS Requirements (Schedule 9.2.1 from the Exchange Agreement).
- 3.4.3 In no event shall Developer submit a planning, entitlement or development permit application to the City prior to the earlier of (a) the City's adoption of ODS or (b) the date that is 9 months from the date of this Agreement (or, in the event of force majeure impacting the City's ability to adopt ODS, no more than 30 additional days later if such extension is mutually agreed by BART's General Manager and the City Manager).

3.5 Project Development and Financing Plan

- 3.5.1 Developer shall prepare a Preliminary Development Plan ("PDP"), including a master site plan, conceptual architectural designs, preliminary financial feasibility information, a preliminary financing plan, and key financial terms for the transaction with BART.
 - 3.5.1.1 The preliminary financial feasibility information shall include market analysis, achievable rents/sales prices, construction cost trends, and an estimated absorption schedule of the elements included in the Project description reasonably acceptable to BART. The transactional terms shall reasonably satisfy BART that the Project is feasible based on market conditions.
 - 3.5.1.2 Developer shall provide a list of lenders and investors who will be approached for financing the Project (which list may be supplemented or amended by the Developer from time to time), accompanied by letters of interest and/or intent from debt and equity partners, if any, expressing willingness to provide Project financing.

- 3.5.1.3 Developer shall also provide one or more preliminary project development pro formas for each component of the Project with the sources (including anticipated potential grant sources) and uses of funds, a 20-year cash flow analysis, and an annotated operating budget for the mixed-use elements of the Project to a level of detail reasonably acceptable to BART.
- 3.5.2 Developer shall submit a Community Benefits Plan that summarizes the Project's public benefits and details the costs of the benefits. The Community Benefits Plan will also include a rationale for those benefits not required by BART, as they relate to identified community needs and priorities. Developer will do a "reality check" to provide a private-sector assessment of estimated capital and operating costs attributable to each of the desired elements, along with potential funding sources, including anticipated potential grant sources.
- 3.5.3 Developer shall submit a Final Development Plan ("FDP"), including schedule, refined financial feasibility assessment, refined project budget, cash flow and operating budget, and refined transaction with BART for each component of the Project. The FDP shall include:
 - 3.5.3.1 Detailed and itemized project pro formas linked to the schedule for construction and leasing of each component of the Project. Pro formas shall include a Project development budget, a statement describing the sources and uses of funds including equity contributions, a 20-year cash flow analysis, and an annotated operating budget to a level of detail reasonably acceptable to BART.
 - 3.5.3.2 Detailed Project development schedule, which shall include construction phasing and leasing/absorption of all phases of the Project.
 - 3.5.3.3 An updated market feasibility study performed by an economic consultant or qualified Real Estate Broker that analyzes the market feasibility, achievable rents, and estimated absorption schedule of the entire Project elements included in the Project description.
 - 3.5.3.4 Letters of interest and/or intent from lenders and equity partners expressing willingness to provide Project financing.

3.6 <u>Funding Applications</u>

At least 10 business days prior to applying for any public source of funds requiring submission of a project proforma, Developer shall submit to BART for its review the application proforma to ensure that the Project acquisition cost is represented consistently with the transaction terms most recently submitted to BART as part of Developer's proposal, PDP, or FDP.

- 3.7 <u>Entitlement Process</u>
 - 3.7.1 If applicable, Developer will select, fund and contract with an environmental consultant and submit a project description to the City, as the CEQA lead agency, for environmental review under CEQA.
 - 3.7.2 Developer will prepare and submit all applicable planning, entitlements, and development permit applications to City. Developer shall not submit any such application without prior written approval from BART.
 - 3.7.3 Developer will work with the City to complete any necessary environmental impact studies under CEQA if applicable.
 - 3.7.4 Developer will seek City Planning Commission action for all necessary environmental, design, and zoning approvals.

3.8 <u>Negotiated Documents</u>

- 3.8.1 Developer will submit a Proposed Option Agreement Term Sheet that provides financial terms, a preliminary schedule of performance for the entirety of the Project, and other relevant transactional elements.
- 3.8.2 Developer and BART shall negotiate a Draft Term Sheet that provides financial terms, a preliminary schedule of performance for the entirety of the Project, and other relevant transactional elements.
- 3.8.3 Developer and BART shall negotiate a Final Term Sheet.
- 3.8.4 Assuming that BART and Developer are successful in negotiating a Final Term Sheet, BART staff shall seek approval of the Final Term Sheet by the BART Board of Directors and authorization to prepare and execute the Option Agreement and related transactional documents.
- 3.8.5 Upon Board Authorization of the Final Term Sheet, Developer and BART staff shall negotiate a final execution version of the Option Agreement(s).
- 3.8.6 Developer affirms that it has reviewed the Exchange Agreement between BART and the City, and acknowledges that all negotiated documents must be consistent with the Exchange Agreement.
- 3.9 <u>Components of the Project</u>. BART and the Developer acknowledge and agree that the Project will consist of multiple components. The Developer anticipates that each such component will be structured with a single purpose entity owning the

applicable component, and each such single purpose entity will be controlled by the Developer (each single purpose entity so controlled is an "SPE"). The Developer intends that each component will be the subject of a separate Ground Lease under the Option Agreement, with BART as the ground lessor and the applicable SPE as the ground lessee. For purposes of this Section 3.7 "controlled by" means a SPE in which the Developer acts as a general partner or managing member of such SPE. Developer acknowledges that: (i) nothing in this Section shall abridge the discretion of the BART Board of Directors pursuant to Section 10 of this Agreement, and (ii) the Option Agreement may impose additional limitations or preconditions with respect to SPEs having a vested right to execute a ground lease.

4. REPORTS

4.1 Quarterly Progress Reports

Upon full execution of this Agreement, Developer shall provide BART with written progress reports after each calendar quarter on all material matters pertaining to the Project. The progress reports shall include, but not be limited to, updates on the following areas: key milestones achieved and those expected to be achieved in the next quarter, financing, schematic design, entity organizing documents, market analysis, community engagement activities, and any alterations to the Project program and design, or changes to the proforma previously submitted to BART.

4.2 <u>Small Business Enterprise Utilization Report</u>

Developer shall maintain records to verify Small Business (SB) participation in the activities undertaken in connection with this Agreement. Such records shall show the name and business address of each SB participating in the Agreement and the total dollar amount actually paid each SB and the date of payment. A report based on these records and certified to be correct by Developer shall be submitted quarterly. Developer shall include with the quarterly report any other efforts made which are relevant to meeting the SB participation goal commitment. Developer shall submit with the first quarterly report copies of all SB subcontracts and purchase orders that have been entered into or issued in connection with the Agreement and shall submit with subsequent quarterly reports copies of any new such subcontracts or purchase orders. The quarterly report shall include copies of all invoices submitted by each SB during the reporting period. BART will verify with each SB the amount actually paid to the SB. SB participation will not be counted toward Developer's SB goal commitment until the SB has been paid.

5. SITE ACCESS AND COOPERATION

BART shall reasonably cooperate with Developer or Developer's consultants in obtaining access to the Property for performing any tests, surveys and inspections deemed reasonably necessary or appropriate by Developer to assess the feasibility of the Project ("Inspections"). Developer or its

consultants must apply for, execute, and comply with the terms of a BART "Permit to Enter," substantially in the form attached as <u>Exhibit 7</u>, as a condition of entering the Property.

BART shall reasonably cooperate with Developer in the provision of information and assistance in the filing, processing and obtaining of regulatory approvals, and, to the extent required by law, join with the Developer as a co-applicant in the filing for such regulatory approvals; provided, however, that BART shall have sole and absolute discretion to determine reasonable cooperation and the necessity of BART being a co-applicant on such approvals.

BART shall reasonably cooperate with Developer by providing documents in BART's possession that would assist Developer with the due diligence activities required in this Agreement. Relevant staff from Developer's team may require security clearance from BART in order to access security sensitive information.

6. OBLIGATIONS OF BART

During the Negotiation Period, BART shall act in good faith in all dealings with the Developer. BART shall also reasonably assist the Developer in conducting meetings with the community and stakeholders, and in the entitlement process, including CEQA compliance. However, the Developer shall retain sole responsibility for meeting all requirements set forth in this Agreement except for those specifically established for BART or within the sole control of BART.

BART shall reasonably cooperate with Developer to seek external funding to support BARTrelated infrastructure needs from funding sources that support TOD such as Affordable Housing & Sustainable Communities ("AHSC"), Infill Infrastructure Grants ("IIG"), and Transit and Inter-City Rail Corridor Program ("TIRCP"). BART will take priority on use of IIG and TIRCP funding for station access infrastructure. Any available IIG funding not needed for station access costs will be available for affordable housing infrastructure. BART shall have sole and absolute discretion to determine reasonable cooperation with respect to seeking external funding and may, in its determination, consider whether and to what extent any conditions that may be imposed in connection with such funding are consistent with BART's operation. The intent of this paragraph is to identify and cooperate in seeking grants and similar, alternative sources of project funding, and is not intended to apply to Developer's efforts to obtain commercial mortgage loans.

7. BART APPROVAL OF DEVELOPER SUBMISSIONS

7.1 <u>Communication</u>

The primary point of contact at BART for receipt of all correspondence and for coordinating, interacting with, and requesting approvals from various departments shall be Shannon Dodge, Principal Property Development Officer, at sdodge@bart.gov, or 510-464-6936, or at the address noted in Section 14, Notices, below.

7.2 Submissions Acceptance and Rejections

Unless another time is specifically stated in this Agreement, within thirty (30) days after BART receives any information or documents required to be submitted by Developer pursuant to this Agreement, BART shall inform Developer of its acceptance or rejection of the submission. BART may approve those portions of a submission that are satisfactory and reject those portions that are not or may approve all a submission subject to conditions requiring further submissions for BART review and approval. If BART rejects all or any part of a submission BART shall provide to the Developer written notice of the reasons for such rejection within said thirty (30) days, Developer shall then have thirty (30) days to correct or supplement its submission. The time limits in this Section shall not apply to the CEQA review process.

BART will make every effort to respond to Developer's submittals within the time periods specified herein. Failure to do so, however, shall not be deemed as approval of a submittal.

7.3 <u>Basis of Design</u>

Developer will include a Basis of Design document with all drawing submittals to BART. This document will be initially provided by BART, and will provide an ongoing record of how the Developer's drawings have been modified to address critical BART operational, maintenance, and access issues. The document shall be submitted to BART in a format showing previous and current versions, to reflect the evolution of the projects with BART and the Developer's agreements as they pertain to design.

BART and the Developer agree that as the development program is refined, the Basis of Design document may be modified to reflect new concerns that emerge with more detailed drawings.

7.4 <u>Community and Public Information</u>

Developer shall present to BART staff any material to be utilized in external public communications for advance review within ten (10) business days before release to the public. Such material includes but is not limited to meeting agendas, presentations, marketing collateral, and project reports. If Developer fails to provide previous notice as described in this section more than five (5) times without BART staff waivers or authorization, BART has the right to terminate this Agreement due to Developer default.

8. EFFECT OF NEGOTIATIONS

Developer understands and acknowledges that BART execution of a negotiated Option Agreement and attachments, including without limitation, any form(s) of ground lease attached thereto, is

subject to prior approval by BART's Board of Directors, at its sole and absolute discretion, and that the Draft and Final Term Sheets are non-binding. If the terms of a mutually satisfactory Option Agreement have not been negotiated during the Negotiation Period, or if BART's Board of Directors declines to authorize execution of Option Agreement for any reason, then, without further action, this Agreement shall automatically terminate and neither Party shall have any further rights or obligations, except with regard to the Exclusivity Fee as set forth in Section 2.

9. TERMINATION AND EXTENSIONS

9.1 <u>Time of the Essence</u>

Time is of the essence in this Agreement. Any Party's failure to timely perform according to the terms and conditions of this Agreement shall be considered a material breach of this Agreement, subject to notice and cure periods provided in this Agreement.

9.2 Notice to Developer of Breach

In the event that Developer fails to materially perform any of Developer's obligations pursuant to the terms and conditions of this Agreement within the time herein specified, BART shall promptly give Developer written notice of such default. Developer shall have a period of fifteen (15) business days from receipt of such written notice from BART to Developer with respect to monetary defaults, or thirty (30) business days from receipt of such written notice from BART to Developer with respect to non-monetary defaults, within which to cure such default if such default is capable of being cured by the Developer. Provided, however, that with respect to any default capable of being cured by the Developer but which cannot be cured by Developer within such initial period, the default shall not be deemed to be uncured if Developer commences to cure within such initial period and diligently prosecute the cure to completion, and that the time required to prosecute such cure to completion will not require an extension of the Agreement. Cure periods related to any permit to enter provided by BART will be subject to the provisions of said permit.

9.3 <u>Termination Upon Developer Default</u>

If Developer fails to cure any material default during the cure period described above, BART shall have the right to terminate this Agreement upon written notice of termination to Developer, and thereafter neither of the Parties shall have any further rights or obligations hereunder, except as to the Exclusivity Fee as set forth in Section 2. In no event shall BART be entitled to any damages, of any kind or character, from Developers, except as to the Exclusivity Fee and Extension Fee.

9.4 BART's Discretion to Extend Time for Performance

Without limiting the right of BART staff to extend the date of any delivery in the schedule of performance or to approve a revised schedule of performance pursuant to Section 3 of this Agreement as long as any such extension is within the twenty-four (24) month Negotiation Period, BART may, subject to any necessary approval by the Board of Directors, determine that it is in BART's best interest, to extend the time for the Developer's performance of any of the terms and conditions of this Agreement. Any extension shall be granted in BART's sole and absolute discretion, and in no event shall this provision or any other provision of this Agreement be construed as conveying any right or entitlement to an extension.

9.5 Default by BART

In the event that BART fails to materially perform any of its obligations under this Agreement, Developer shall have the right to terminate this Agreement by written notice to BART. Upon termination of this Agreement, neither of the Parties shall have any further rights or obligations hereunder, except that the remaining Exclusivity Fee shall be returned to Developer as set forth in Section 2. In no event shall Developer be entitled to any damages, of any kind or character, from BART.

9.6 <u>Termination by Developer</u>

Developer shall have the right to terminate this Agreement if at any time following the Effective Date the Developer determine the Project is economically infeasible or for any other reason in the Developer' sole and absolute discretion. Upon termination of this Agreement, none of the Parties shall have any further rights or obligations hereunder, except as to the Fees as set forth in Section 2.

10. LIMITATIONS

The BART Board of Directors shall have the sole and absolute discretion to approve or disapprove execution of the Option Agreement with Developer and to make appropriate findings under CEQA. No Option Agreement will be brought to the Board for approval prior to completion of the required environmental process and City approvals. Any costs incurred by Developer, Developer's members or partners, or other members of the Project development team to comply with its obligations under this Agreement or to negotiate documents shall be the sole responsibility of Developer, and in no event shall BART have any responsibility to pay for or reimburse Developer for any of said costs.

In addition, notwithstanding any other provision herein, BART, in the exercise of its independent judgment as a responsible agency pursuant to CEQA, retains the sole and absolute discretion to (i) request modification of the Project to reduce or avoid significant environmental impacts; (ii) select feasible mitigation measures and/or alternatives to reduce or avoid significant environmental impacts; (iii) balance the benefits of the Project against any significant environmental impacts that

cannot be avoided, prior to taking any final action, and/or (iv) select the "no project alternative" and determine not to proceed with the Project.

Developer understands and acknowledges that BART is subject to the California Public Records Act, and will therefore make information regarding the Property, the Project, Developer, and this Agreement available to the public upon request as required by said law. Notwithstanding the foregoing, Developer may request that financial and other information proprietary to Developer that is delivered to BART's consultants be treated, to the extent legally permissible, as confidential information. Whether said treatment is legally permissible shall be in BART's sole discretion. Developer agrees to indemnify and hold BART harmless and, at BART's option, provide legal defense for BART from all claims and demands, including attorneys' fees, assessed against BART that result from BART refusing to make public documents that Developer have designated as proprietary or confidential.

11. NO ASSIGNMENT

This Agreement is personal to Developer and is not assignable to any other person or entity without the prior written consent of BART, which may be given or withheld in BART's sole discretion. Any attempt to assign this Agreement or any part of the Agreement without the prior written consent of BART shall constitute a breach of this Agreement and shall be void and of no force and effect.

12. INFORMATION

Within thirty (30) days of the Effective Date, BART shall promptly furnish to Developer all material information within its possession or control concerning the Property, including without limitation, copies of all topographical surveys, environmental reports, engineering studies, soil-bearing test data, and any similar reports and studies with respect to the Property.

13. SEVERABILITY

In the event any section or portion of this Agreement is determined to be unenforceable or invalid for any reason, the remaining provisions shall remain in effect, and the Parties shall take further actions as may be reasonably necessary and available to them to effectuate the intent of the Parties as to the remaining portions of the Agreement.

14. NOTICES

All notices under this Agreement shall be in writing and shall be deemed to have been duly given (i) if delivered by hand and receipted for by the party to whom said notice or other communication shall have been directed, or (ii) mailed by certified or registered mail with postage prepaid, on the third (3rd) business day after the date on which it is so mailed, or (iii) if emailed, when the recipient, by an email sent to the email address for the sender or by a notice delivered by another

method in accordance with this section acknowledges having received that email, with an automatic "read receipt" not constituting acknowledgment of an email. All notices under this Agreement shall be addressed to:

DEVELOPER:	Entity Name Address Attn: Email:
BART:	BART Property Development Department 2150 Webster Street, 9 th floor Oakland, CA 94612 Attn: Shannon Dodge, Principal Property Development Officer Email: <u>sdodge@bart.gov</u> and to:
	BART Office of the General Counsel 2150 Webster Street, 10 th floor Oakland, CA 94612 Attn: Stephen Muzio, Attorney Email: <u>smuzio@bart.gov</u>

15. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of California, except for those provisions preempted by federal law.

16. COUNTERPARTS

This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement.

(Signatures on following page)

IN WITNESS WHEREOF, this Exclusive Negotiating Agreement has been executed by the Parties on the dates indicated below.

"BART"

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code Section 28500, et seq.

By: _____

Kasheica McKinney

Dated: _____, 2025

Its: Director of Transit-Oriented Development

"DEVELOPER"

By: _____

[Name]

Its:

Dated: _____, 2025

Exhibits:

- 1. Minimum Project Requirements
 - A. Form of Memorandum of Covenants
 - B. Framework for Determining Financial Return from Affordable Housing
- 2. Non-Binding Term Sheet
- 3. ENA Budget
- 4. Schedule of Performance
- 5. Access Plan Scope, Budget, and Schedule
- 6. Objective Design Standards Requirements
- 7. Form of Permit to Enter

EXHIBIT 1

MINIMUM PROJECT REQUIREMENTS

1A. FORM OF MEMORANDUM OF COVENANTS

RECORDING REQUESTED BY:

Old Republic Title Company

AND WHEN RECORDED RETURN TO:

Farimah Brown City Attorney City of Berkeley 2180 Milvia Street Berkeley, CA 94704

APN 053-1597-039-04 & unassessed parcel SPACE ABOVE THIS LINE FOR RECORDER'S USE

Document Entitled to Free Recordation Pursuant to Government Code Section 27383. Government Agency Acquiring Title.

The undersigned(s) declare(s):

Documentary Transfer Tax is \$0.00; Exempt pursuant to Rev. & Tax. Code § 11922

- () computed on full value of property conveyed, or
- () computed on full value less value of liens and encumbrances remaining at time of sale.
- () unincorporated area: (X) City of Berkeley, State of California

MEMORANDUM OF COVENANTS

Memorandum of Covenants

This Memorandum of Covenants ("Memorandum") is made by the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq. ("Owner") effective as of the date of its recordation in the Official Records of Alameda County, California ("Effective Date").

RECITALS

A. Owner is the fee simple owner of the real property in the City of Berkeley ("City"), County of Alameda, State of California, consisting of the parcel identified by Assessor Parcel Number 053-1597-039-04 and the non-assessed parcel (collectively "Property"), more particularly described as follows:

PARCEL ONE:

Being lots 1 through 42, inclusive, Block 6, as shown on that certain map entitled "Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp.", which map was filed in the Office of the Recorder of the County of Alameda, State of California on March 14, 1889, in Book 10 of Maps Page 40.

Said Lots 1 through 42, are as shown on the San Francisco Bay Area Rapid Transit District Record Maps of Right of Way RRW 9 and RRW 10A.

Said RRW 9 in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County.

Said RRW 10A in Book 68 of Maps at Page 127, filed for record on September 20, 1971, in Book 68 of Maps at Pages 122-146, Document 71-122851, in the Office of the Recorder of Alameda County.

EXCEPTING THEREFROM the interest conveyed to City of Berkeley by Grant Deed recorded November 5, 1971, as Instrument No. 71-146356 in Reel 2989, Image 645 of Official Records and being more particularly described as follows:

Parcel R9-1 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157, Document 71-167837, in the Office of the Recorder of Alameda County. APN: 053-1597-039-04

PARCEL TWO:

Parcel R9-2 as shown on the San Francisco Bay Area Rapid Transit District Record Map of Right of Way RRW 9, in Book 68 of Maps at Page 150, filed for record on December 22, 1971, in Book 68 of Maps at Pages 147-157 as Document 71-167837, in the Office of the Recorder of Alameda County.

APN: non-assessed parcel.

Attached hereto and made a part hereof the following Filed maps:

Amended Map of Central Park, Alcatraz and Newbury Stations, Oakland Twp., Book 10 of Maps at Page 40, Record Map of Right of Way RRW 10A in Book 68 of Maps at Page 127, Record Map of Right of Way Cover Sheet Book 68 of Maps at Page 147, Record Map of Right of Way RRW 9 Book 68 of Maps at Page 150.

B. Owner and City entered into that certain ASHBY BART STATION TRANSIT-ORIENTED DEVELOPMENT EXCHANGE AGREEMENT dated _____ ("Exchange Agreement"), by which, inter alia, the City agreed to quitclaim to Owner certain of the City's interests in the Property, and Owner agreed to convey to City a parcel of land owned by Owner ("East Lot") situated in the City and more particularly described as follows:

PARCEL ONE:

Parcel B as shown on Parcel Map 9797, filed August 12, 2008, in Book 308 of Parcel Maps at pages 76 through 78, inclusive, Official Records of Alameda County.

PARCEL TWO:

Easements for sidewalk and Adeline driveway as described in "Reciprocal Easements Agreement" executed by and between The Ed Roberts Campus, a California nonprofit public benefit corporation, and San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq., in Official Records under Recorder's Serial Number 2008255323, and shown on Parcel Map 9797 recorded August 12, 2008 in Book 308 of Parcel Maps, at Pages 76-78.

APN: 053-1703-009

C. In addition, Owner agreed as part of the land exchange to record against the Property this Memorandum, for the purpose of imposing certain conditions, covenants, and restrictions on the future development of the Property ("Covenants").

NOW, THEREFORE, in consideration of the Covenants, the consideration received by Owner pursuant to the Exchange Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner thus declares that the Property, and all portions thereof and interests therein, shall be irrevocably held, sold, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the Covenants described below, which shall be equitable servitudes and shall run with land, and shall be binding on any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, and such person's or entity's heirs, successors, and assigns, and shall inure to the benefit of the East Lot and City as the owner of legal or equitable title to the East Lot, as follows:

MEMORANDUM OF COVENANTS

Development Requirements

1. Except to the extent waived or modified by the City in its sole and absolute discretion, any development project on the Property shall 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 ("2022 Mitigation Measures")

2. Except as may be modified by the City in its sole and absolute discretion, any development project on the Property shall comply with the standard conditions of approval set forth in Exhibit 1.

3. Development of the Property shall achieve a minimum residential density of 75 dwelling units per acre.

Affordable Housing Requirements

4. At least 50% of the first 602 housing units developed on the Property shall be Affordable Housing.

"Affordable Housing" means housing subject to enforceable legal conditions restricting its availability for lease or sale to Extremely Low Income Households, Very Low Income Households, or Low Income Households. "Extremely Low Income Households" means households earning less than the "Extremely Low" limits by household size for the "Alameda County Area" as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Very Low Income Households" means households earning less than the "Very Low Income" limits by household size for the "Alameda County Area" but more than Extremely Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations. "Low Income Households" means households earning less than the "Low Income" by household size for the "Alameda County Area" but more than Very Low Income Households as adopted from time to time by the California Department of Housing and Community Development, currently promulgated at Section 6932 of Title 25 of the California Code of Regulations.

5. In the event that more than 602 total housing units are built on the Property (inclusive of any density bonus units), 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. Owner, together with any developer(s) of the Property, shall consult with City to explore the potential for exceeding the 35% requirement for projects greater than 602 units, with an aspirational goal of up to 50% Affordable Housing units, based on economic feasibility and availability of funding resources if the West Lot is to be developed with more than 602 total housing units, taking into consideration development costs, values and potential for additional City subsidy or funding from external sources.

6. Any Affordable Housing units that are provided to satisfy the requirements of the City's inclusionary housing ordinance (Chapter 23.238 of the Berkeley Municipal Code) ("Inclusionary Housing Ordinance") and are included in a mixed-income building shall be rent- and income-restricted in perpetuity as required by the Inclusionary Housing Ordinance. All other Affordable Housing units shall be rent- and income-restricted for the duration of the applicable ground lease (each of which shall have a minimum duration of 99 years), including any lease term extensions.

- 7. Development of the Property shall meet the following minimum affordability requirements:
 - (a) At least 35% of the housing units, inclusive of density bonus units, must be affordable to households earning an average of up to 60% of AMI.
 - (b) At least 20% of the required 35% affordable units referred to in subparagraph (a) must be affordable to Extremely Low-Income ("ELI") households, which are currently defined as those earning up to 30% of AMI.
 - (c) Of the required 35% affordable units referred to in subparagraph (a), additional affordable units aside from the ELI units should prioritize Very Low Income Households (up to 50% of AMI) and Low Income Households (up to 80% of AMI) but may include some housing restricted to Moderate Income Households (up to 120% of AMI), provided that the moderateincome units have rents that are still below market and are not funded by City subsidies.

8. Any project receiving the City's Housing Trust Fund ("HTF") funding shall also meet the City's HTF Guidelines, provided that said Housing Trust Fund Guidelines do not restrict or otherwise regulate the project's height, density, or development capacity.

9. Any project on the Property that includes construction of both Affordable Housing units and market-rate housing units shall construct the Affordable Housing units prior to or concurrently with any market-rate housing. In the event there are multiple phases of market rate or affordable housing, development of market rate and affordable housing shall be in accordance with a phasing plan approved by the City.

10. Affordable Housing units developed on the Property may be clustered into one or more buildings with 100% Affordable Housing buildings or dispersed amongst mixed-income housing buildings, but such Affordable Housing units must be designed in a way that integrates with the larger project on the Property and shares comparable design standards and quality.

11. If a development project will meet all or a portion of the requirements of the Inclusionary Ordinance through clustering as described in Paragraph 10, Owner or developer shall contribute funding towards such clustered Affordable Housing units in an amount calculated as follows: (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 less 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 any density bonus ("Net Residential Unit Floor Area"); 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 Housing units provided within mixed income buildings that comply with all of the requirements of the Inclusionary Housing Ordinance. For example, buildings that are 10% Affordable Housing units would contribute \$28.12 per foot (half of \$56.25), adjusted for inflation.

For the purpose of calculating the Net Residential Unit Floor Area, the floor 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. By way of example, a project that clustered all affordable units in 100% Affordable Housing 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 Housing units on-site within the market rate buildings would make a prorated contribution.

12. The application of the State Density Bonus Law to the Property shall not yield a project that is less than 35% Affordable Housing as a proportion of the total units on the Property, or less than 50% Affordable Housing for the first 602 units.

Community Benefits

13. Development of the Property shall include at least 5,000 square feet (based on BOMA ANSI 2017 standards) of community/civic commercial ground floor interior space

for community-based organizations, non-profits, and/or small and minority-owned businesses such as the Berkeley Flea Market, to be leased (triple net) at no more than 50% of fair market triple net rent.

14. Development of the Property shall make space available to the Berkeley Flea Market in accordance with the requirements of the Exchange Agreement.

Public Infrastructure

15. Development of the Property shall comply with all obligations and requirements in the Exchange Agreement pertaining to Public Infrastructure, as that term is defined in the Exchange Agreement.

Objective Design Standards.

16. No application for any development project on the Property (including any preliminary application) shall be submitted to City before the earlier of (a) the City's adoption of objective design standards ("ODS") in accordance with the Exchange Agreement, or (b) the deadline for adopting ODS specified in Article 9 of the Exchange Agreement, as may be modified in accordance with the Exchange Agreement.

17. Except as provided in Paragraph 18 below, all development on the Property shall comply with ODS adopted in accordance with all relevant provisions of the Exchange Agreement, notwithstanding any waivers, incentives, concessions or other exceptions available by law

18. An application for development of the Property may seek waivers, incentives, concessions or other exceptions to otherwise applicable zoning or land use regulations 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 described in Paragraph 13, and (c) other ODS requirements that do not pertain to height limits, setbacks/step-backs, open space or massing breaks.

General Provisions

19. <u>Covenants Running with the Land:</u> This Memorandum and the rights and obligations in this Memorandum are covenants running with the land and are binding upon any person or entity now or hereafter having any right, title or interest in the Property, or any part thereof, including any leasehold interest, and such person's or entity's heirs, successors, and assigns. The Covenants shall inure to the benefit of the East Lot and shall be enforceable by City as the holder of legal or equitable title in the East Lot, for so long as the City holds such title in any portion of the East Lot; provided, however, that the Covenants shall not be enforceable by the owner of any portion of the East Lot conveyed by the City to a private party. All the terms and provisions of this Memorandum shall be enforceable as equitable servitudes and are covenants running with the land pursuant to applicable law, including without limitation Section 1468 of the

California Civil Code.

20. Subdivision and Development of the Property.

a) The City understands and acknowledges that, in order to achieve the intent of the Exchange Agreement, the Property may be subdivided into separate parcels (collectively the "Parcels" and individually a "Parcel"), and developed in separate phases pursuant to Ground Lease Agreements, as that term is defined in the Exchange Agreement. In the likely event that the subdivision and Ground Lease Agreements contemplate that one or more Parcels will be retained by Owner for use in connection with its transit operations, City agrees to terminate this Memorandum with respect to that Parcel (or those Parcels) only.

b) In the event that the phased development of the Property results in a period of time during which one or more of the requirements described in paragraphs 1-17 have not been met, said noncompliance shall not constitute a breach of this Memorandum provided that: i) the executed Ground Lease Option will result in full compliance with said requirements upon execution of all of the related Ground Leases and completion of construction thereunder, and ii) phasing of the projects on the Property is consistent with the provisions of Paragraph 9 of this Memorandum.

c) In the event that the phased development of the Property results in one or more, but fewer than all of the Parcels being responsible for full compliance with one or more of the requirements described in paragraphs 1-17, the City shall not unreasonably withhold its consent to an amendment to this Memorandum that identifies said Parcel or Parcels as being solely responsible for satisfying said requirements. Any subsequent breach of said responsibility shall be enforced against the responsible Parcel or Parcels only, and the Ground Lease tenants of the other parcels shall not be deemed to be in violation of their obligations under this Memorandum.

21. <u>Term:</u> The provisions of this Memorandum shall remain in force and effect for ninety-nine years after the effective date of the first Ground Lease, as defined in the Exchange Agreement, for a portion of the Property, unless amended or terminated pursuant to Paragraph 24 below.

22. <u>Severability:</u> Invalidation of any of the provisions contained in this Memorandum, or of the application thereof to any person by judgment or court order, shall in no way affect any of the other provisions of this Memorandum or its application to any other person, which shall remain in full force and effect.

23. <u>Integrated Agreement:</u> This Memorandum constitutes Owner's entire declaration of covenants, conditions, and restrictions concerning the subjects of this Memorandum; provided, however, that nothing herein shall limit the obligations of Owner or any other party to comply with all of its obligations under the Exchange Agreement. The City ordinance authorizing the Exchange Agreement is recorded in the Official Records of Alameda County.

24. <u>Amendment and Termination:</u> No amendment or modification of this Memorandum shall be valid unless in writing, executed by Owner and City, and

recorded in the Official Records of Alameda County, California. This Memorandum shall terminate if a notice of termination, signed by Owner and City, with respect to the Property is recorded.

25. <u>Mortgage Protection:</u> Breach of any restriction or provision of this Memorandum does not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but all of the restrictions and other provisions of this Memorandum are binding and effective as to any mortgagee or beneficiary of a deed of trust that acquires fee title by foreclosure, trustee's sale, or otherwise.

26. <u>Rights Inseverable:</u> The rights or obligations created in this Memorandum shall not be severable from the Property, nor separately conveyed therefrom.

27. <u>Authority to Make and Record Memorandum</u>: Owner has consented to, accepted, approved, and authorized this Covenant, and all requisite action has been taken by Owner in connection with its execution by the below signatory, and Owner authorizes its recordation in the Official Records of Alameda County, California.

28. <u>Captions and Capitalized Terms:</u> The captions preceding the text of each section are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Memorandum. Capitalized terms not defined herein shall, unless otherwise indicated, have the meanings ascribed to such terms in the Exchange Agreement.

29. <u>Construction</u>: This Memorandum shall be construed in accordance with the laws of the State of California.

OWNER:

Date:_____

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT, a rapid transit district established pursuant to Public Utilities Code section 28500 et seq.

By:

Its:

Approved as to Form

Its:

<u>CITY:</u>

Date:_____

CITY OF BERKELEY, a charter city.

By: Its: Approved as to Form

By: Its:

Exhibit 1

- 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-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.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

On _____, , before me, _____, a Notary Public in and for said State, personally appeared ______ who _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California) ss.

On _____, , before me, _____, a Notary Public in and for said State, personally appeared ______ who _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ Notary Public

[seal]

1B. FRAMEWORK FOR DETERMINING FINANCIAL RETURN FROM AFFORDABLE HOUSING



Framework for Determining Financial Return from Affordable Housing

"The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large-scale public investment. This includes real estate assets essential to BART's transit operations, and real estate assets that can be used to catalyze transit-oriented development in furtherance of BART's purpose and goals."

- BART Transit-Oriented Development (TOD) Policy

BART's land assets represent an investment of public resources over the course of several decades. As the steward of this investment, it is BART's responsibility to ensure its transitoriented development projects are addressing public needs. In negotiating the terms of its deals, BART staff work to advance the six core goals of the TOD Policy: Complete Communities, Sustainable Communities Strategy, Ridership, Value Creation and Value Capture, Transportation Choice, and Affordability.

Each negotiation is a balance of these goals, which reflect BART's vision for the public good to be achieved from BART's TOD Investments. The following framework describes BART's intentions toward its own financial return expectations for affordable housing, with consideration for the ongoing need to balance BART's Board Adopted TOD Goals.

Baseline Considerations for Financial Return from TOD Projects

Fair Market Value: BART expects to receive fair market value for its property in its ground leases, except as stipulated in this framework.

Sources of Revenue from TOD: BART will consider all types of revenue in its real estate transactions, including: sales proceeds, baseline ground lease payments, lease option payments, participation in gross (or, for affordable housing, residual) receipts, transit benefit fees or other property transfer fees, other one-time or ongoing payments.

Net Ridership Gains: All new projects must result in a net gain in ridership to BART. BART does not consider ridership gains as revenue that will replace fair market value for its land.

Parking Revenue: BART now charges for parking at all its stations where commuter parking is provided. The revenue BART receives from its parking may be considered as one baseline measurement of BART's fair market value return.

Methodology for Evaluating Financial Return to BART

BART expects to receive fair market value for its land from every TOD project, except as stipulated in this framework. Fair market value is defined as a dollar amount in an open and competitive market that a well-informed seller, who desires but is not required to sell, would



accept, and that a well-informed buyer, who desires but is not required to buy, would pay for property after due consideration of all the elements affecting value.

The fair market value will serve as the basis for BART's expected financial return from TOD projects. BART staff will use the following process to ensure that fair market return is achieved:

- 1) Establish the expected fair market value of the property prior to negotiation of financial terms, using an appraisal or other standard industry method of property valuation, considering:
 - a. Applicable zoning, including Section 29010 of the CA Public Utilities Code (AB 2923, Chiu/Grayson, 2018).
 - b. BART's Board adopted policies, including BART's project stabilization agreement requirements and affordable housing requirements which may suppress land value.
 - c. Intended uses as articulated in the developer's proposal and agreed to by BART.
 - d. Appraisal performed for BART, or appraisal/valuation scope is approved in writing by BART.
 - e. Competitive offers made during the solicitation process, where applicable.
- 2) As the term sheet is negotiated, BART staff will work to ensure that the net present value of expected compensation from the developer is in line with fair market value of the property. The fair market value expectation may be revisited based on changing market conditions, availability of outside funding, or other factors.
- 3) A discount to fair market value may be considered for projects that provide affordable housing above and beyond BART's minimum requirements as stated in the TOD Policy. Details about this discount are provided below.

Consideration of Discount for Affordable Housing

The affordable housing discount framework covers the following parameters.

- 1) Depth of Affordability: Average income served as a percent of Area Median Income (input parameter)
- 2) Percent Affordable Units of Total Units Provided: Number of affordable units included, divided by the total number of residential units provided in the project (input parameter)
- 3) Discount: Potential percent discount from fair market value of land to be offered by BART (output parameter)
- 4) Conditions: Other BART expectations for developers receiving a discount from BART

For projects exceeding BART's minimum affordable housing requirement of 20 percent, BART may consider providing an additional discount not to exceed 60 percent of fair market value, using the tiered approach shown in Figure 1. The discount will be calculated from the value of the residential portion of the overall project. A project must be eligible for the tier in order to be considered for the minimum amount of discount in that tier.



- **No discount** will be provided for affordable housing at BART TOD properties with less than 35% deed-restricted affordable housing, unless the affordable component is primarily offering supportive housing for very low-income individuals (see High Discount below) or the project includes a high rise residential component desired by BART as noted in Figure 1. No discount will be provided for affordable projects exclusively serving moderate income households, those earning over 80% of Area Median Income (AMI).
- A Low Discount of 10 to 20% will be considered for affordable housing projects with units restricted to an average of 61% 80% of AMI. These units will typically include some moderate-income housing (affordable to 80 120% AMI) as well as some housing affordable to lower incomes.
- A Standard Discount of 20 to 30% will be considered for affordable housing projects with units restricted to an average AMI of 46% 60%. This is considered the typical range for a "standard" affordable housing project. High rise residential projects will be considered for a Standard Discount if at least 30% of their units are affordable, provided they meet the same income threshold.
- A High Discount of 30 to 60% will be considered for affordable housing projects with units restricted to an average AMI of 45% or below. A High Discount will also be considered for supportive housing projects with units restricted to an average AMI of 45% or below. "Supportive housing" includes affordable buildings offering on-site social services for vulnerable residents (e.g. formerly homeless households, differently abled residents, emancipated foster youth, etc.) so that they may thrive and retain their housing.

		Affordable Housing as % of Total Project Units		
		Less than 35% of Units Affordable (except as noted)	35% and above	
Income Served Area Median*	Market Rate/Moderate (81% or more)			No Discount
	Affordable/ Moderate (61% - 80%)			Low Discount
Average Inco as % of Are	Affordable – Mostly Low/Very Low (46% - 60%)	Projects with High Rise - eligible if 30% of units affordable		Standard Discount
Ave as	Deeply Affordable – Very/Extremely Low (45% or less)	Supportive Housing Only		High Discount

Figure 1: Framework for an Affordable Housing Discount on BART-Owned Property

* Average AMI of deed-restricted affordable units only



Share of Affordable Housing (x axis): BART will calculate the share of deed-restricted affordable housing as a percentage of residential units in the overall BART TOD project.

Average Income Served (y axis): BART will evaluate average income served for the affordable component(s) of the project only, based on its deed restrictions and consistent with standard methodologies established by the California Tax Credit Allocation Committee for its funding applications.

High Rise Thresholds: In some locations BART will be incentivizing high rise development with buildings taller than 12 stories. Because current sources of subsidy discourage production of below market rate units in a high rise, affordable housing is more likely to be provided in a midrise adjacent building in these projects. As such it may be harder for a project with a high rise to hit BART's 35% affordability goal. Projects including a residential high rise will be subject to a different standard for calculating the share of affordable housing: the threshold to be eligible for the Standard Discount will be 30% deed-restricted affordable units, not 35%.

Conditions

Projects seeking to receive a discount must work to meet the following conditions. If these conditions cannot be met, developers must provide justification to BART staff. To be considered for the <u>maximum</u> allowable discount in a tier, the project must meet most of the conditions described below.

- **"But for" test:** Third party consultant will review sources and uses and pro forma to ensure all possible sources of subsidy have been exhausted.
- Benefits: Must deliver exceptional level of benefit to BART or the community.
- Local support: Commitment by the jurisdiction to provide funding.
- **Revenue-Sharing:** BART shares in residual receipts over the term of the ground lease.
- Leverage: Leverage BART's discount as a project contribution to ensure a project is more competitive for local, state, regional and/or federal sources of subsidy to support affordable housing and station access projects.
- **Transportation:** A project should pursue eligible sources of revenue that provide additional funding to transportation or infrastructure on BART property, such as Affordable Housing & Sustainable Communities (AHSC) or the Infill Infrastructure Grant. When applying for these sources, a Project receiving a discount should prioritize eligible BART improvements. Transit pass requirements of programs such as AHSC should be met with flexible Clipper card purchases (or equivalent) to enable and encourage BART ridership.

Board Approval

The final determination of fair market value, and explanation for any discount, will be presented to the Board when a project term sheet is presented for review and approval.

EXHIBIT 2

INITIAL SUMMARY OF TERMS

[TO BE COMPLETED FOLLOWING DEVELOPER SELECTION] The following is an initial summary of terms that is non-binding and subject to further negotiation between BART and the development team.

Residential Units & Bedrooms: # units; # bedrooms

Affordability: % market rate % restricted as affordable for the duration of ground lease % affordable to households with incomes up to...AMI* % affordable to households with incomes up to... [etc.]

Community-serving, Non-leasable uses: # SF; proposed uses

Retail/Commercial/Nonresidential Leasable Space:	Market Rate: # SF	
	<50% of market rent: # SF	

Public Benefits Provided & Maintained by Developer: [List]

Public Benefits Provided by Developer & Maintained by BART or City as specified: [List]

Parking:Residential parking ratio at Building A: # spaces : # unit
Residential parking ratio at Building B: # spaces : # unit [etc.]
dedicated parking for non-residential uses (if any)
Garage will accommodate # spaces parking for BART riders
During buildout, project to be phased to maintain agreed minimum of BART parking

Small Business Participation: % commitment

Project Phasing and Schedule

Phase	Program	Construction start	Occupancy
		(quarter & year)	(quarter & year)
1			
etc.			

Lease Term:

Lease Payments: [reference exhibit in submitted RFP proposal]

Financing Structure Summary:

Conditions Precedent to Long Term Lease Execution: Completion of the ENA's conditions and requirements. Receipt of all City permits and all required BART permits and approvals. Receipt of proof of financing.

* Area Median Income for Alameda County, as published annually and adjusted for household size

EXHIBIT 3

ENA BUDGET

ANTICIPATED BART COSTS FOR 24-MONTH E.N.A. PHASE¹

Category	Purpose	Estimated Budget
BART Staff: Property Development ²	Property Development staff time for coordination to advance project through BART process	\$TBD
BART Staff: Planning	Planning staff time to manage Access Plan, and conduct and coordinate plan review with respect to access	\$TBD
Design review ^{3,4}	Civil, Structural, Infrastructure Delivery, Safety, Customer Access, Police, and any other department required to review design proposals and plans in Pre-Entitlement stage, and to coordinate with City	\$TBD
Outside Consultant: Economic Analysis (EPS) ⁴	Support BART with term sheet negotiation and pro forma analysis	\$TBD
Outside Counsel ⁴	Negotiate and prepare documents for Option Agreement and Ground Lease(s)	\$TBD
Appraisal	Perform appraisal of the TOD parcels to support term sheet negotiation	\$TBD
Community Outreach	BART staff and/or consultant support for developer-led community outreach	\$TBD
	Total	\$TBD

¹ Budget is estimate only. Changes to Schedule of Performance and multiple design, term

sheet/pro forma, or legal iterations may require additional budget and/or addition of new budget categories.

² Property Development staff budget will be a fixed fee for the 24-month ENA period; this line item is capped and reflects only a fraction of BART's actual cost.

³ Assumes up to 3 reviews of conceptual design elements followed by 1 full preapplication package review. If additional pre-entitlement design review is required, costs may be subject to increase beyond anticipated budget. During ENA phase, this work is expected to be performed in-house by BART staff, but outside consultants may be utilized for review as needed.

⁴ All external costs for consultants and outside counsel shall be reimbursed at cost. BART will notify developer if cost is estimated to exceed the anticipated budget for those costs.

SCHEDULE OF PERFORMANCE

[To be provided by developer]

ACCESS PLAN SCOPE, BUDGET, AND SCHEDULE

[To be prepared by BART's consultant and provided following developer selection]

OBJECTIVE DESIGN STANDARDS (ODS) REQUIREMENTS

SCHEDULE 9.2.1 ODS REQUIREMENTS

The City's future Objective Design Standards (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 City for the West Lot within the Approval Period;
- 3. 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 allow 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 Schedule 9.2.2, 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 Schedule 9.2.2, 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 these ODS Requirements, 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.

SCHEDULE 9.2.2 CAPACITY STUDY

Purpose

BART and the City of Berkeley engaged Raimi + Associates to analyze the development capacity of the Ashby BART Station West Lot to inform their negotiations over future transitoriented development projects at the site. The net developable area of the site, as defined below, will be used to calculate the total amount of development that is permitted under the objective design standards for the site that are to be developed and adopted by the City of Berkeley, to ensure that the ODS meet the provisions of Schedule 9.2.1. ODS meeting the provisions of Schedule 9.2.1 will be binding on the West Lot Developer via restrictive covenants and BART's real estate agreements.

Methodology

Net developable area (NDA) is defined as the developable area of the West Lot, exclusive of surface areas utilized for public site circulation and BART infrastructure. For the purpose of this capacity study, hypothetical West Lot development areas were determined by the access requirements for the site that were established in consultation with BART and City of Berkeley transportation planners, engineers and public safety staff. An additional emergency vehicle access (EVA) is required through development area B. The total NDA is calculated as 123,000 square feet (see table 1), or approximately 2.82 acres.

Raimi + Associates created architectural models of hypothetical buildings within the NDA, as shown in Figure 1, using the site design assumptions agreed upon by the parties and listed below, for the purpose of estimating the maximum potential development capacity of the site.



Figure 1. Net Developable Area

V BART Station Entrance

Table 1. Net Developable Area

Development Area A	~58,300 SF
Development Area B	~41,400 SF
Development Area C	~23,300 SF
Net Developable Area	123,000 SF

Site Design Assumptions

- Gross residential floor area, as calculated in "Capacity Findings" below, includes residential units, horizontal and vertical circulation, common spaces, and utility and maintenance spaces.
- Estimated unit counts assume an average gross unit size 1000 sf. Unit counts were calculated per floor per building and rounded down to number of full units per floor.
- Approximately 12,850 square feet of commercial / non-residential space. Any additional commercial space would reduce residential floor area and unit count.
- Development project is assumed to take advantage of state density bonus waivers and concessions to supersede the following R-BMU zoning provisions:
 - Maximum height of 7 stories
 - Active frontage location requirements
 - Parking structure design, underground or located behind conditioned building space
 - On-site pedestrian access from Ashby Avenue
- Mid-rise construction, with Buildings A and B up to 7 stories, and Building C up to 8 stories (requires all access to Building C to be from Adeline or MLK, no access to Station Entrance Plaza).
- EVA modeled through building B included a 60-foot wide connection that included a 20-foot wide emergency vehicle accessway (to be expanded to 26 feet if aerial operations required) and landscaped/stoop areas to activate the through access. The emergency vehicle access is likely to be required to be designed as a pedestrian pathway in the ODS. Bridges will be allowed over the EVA if they do not exceed 30 feet in depth and include a minimum 20 feet high passageway for emergency vehicles.
- 65-foot wide double loaded corridor buildings. In practice, this would be an average and provide space for building articulation, projections, and balconies that may increase or decrease the building width.
- Construction within the BART tunnel Zone of Influence is assumed (8,220 sf of net developable area, about 7% of total net developable area).
- Sidewalks: 13 feet on Ashby, 15 feet on MLK north of station access, 22 feet on MLK south of station access which also includes two-way cycletrack.
- Vehicle Parking:
 - BART rider parking: minimum 11 ADA spaces + 3 staff spaces (co-located in a residential garage).
 - Residential parking goal: 1 space per 5 units (not necessarily located evenly across the site; spaces may be in one garage located within a single building). Goal is only achievable with parking below grade under Building C, which may be costly.
- Bike Parking:
 - Bike station: minimum of 128 spaces 3,000 to 4,000 sf

- Shared bike facilities: 23 spaces, external to buildings, easy access to station at 3 feet per bike = ~70 linear feet.
- Bike lockers: minimum 46 lockers, internal space, ~2,250 sf, about 102 feet x 22 feet
- Bike racks: minimum 134 racks at 3 feet per 2 bikes, 200 linear feet of bike racks.
- Approximately 17,000 sf reduction of floor area is assumed for façade articulation and other design requirements that would likely result from ODS, including the following potential requirements:
 - Maximum building length fronting Ashby Avenue shall not exceed 240 feet.
 - Façade planes shall not exceed 160 measured from a building corner or major building break.
 - Major breaks shall be a minimum 8 feet wide and 8 feet in depth.
 - Where ground floor residential units front MLK Jr Way, the first two floors shall be set back a minimum of 5 feet to provide space for stoops, landscaping, and improve privacy for ground floor units.
 - Enclosed Courtyards shall have a minimum width of 60 feet.

Capacity Findings

Raimi + Associates estimated the West Lot development capacity at approximately 632,000 square feet of gross residential floor area, or approximately 624 dwelling units (see Table 2).

These assumptions and findings shall be used solely for the purposes of calculating ODS Capacity per Schedule 9.2.1, 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.

	Gross Residential Floor Area, square feet (SF)	Commercial / Non- residential Floor Area, SF	Total Floor Area, SF	Dwelling Units	Residential Parking Spaces	Other Parking
Building A	299,158	4,390	303,548	298	118	
Building B	189,854	3,915	193,769	187	-	28
Building C	143,311	4,570	147,881	139	-	
Totals	632,323	12,875	645,198	624	118	28

Table 2. Estimated Development Capacity

FORM OF PERMIT TO ENTER

Permit application portal: https://bartca.portal.opengov.com/



PERMIT NO.

Permittee.

PERMIT TO ENTER (TEMPORARY WORK)

Subject to the following covenants, terms, conditions and restrictions, the San Francisco Bay Area Rapid Transit District (hereinafter "District" or "BART") hereby grants permission to ______ (hereinafter "Permittee") (collectively, the "Parties").

The Permittee submitted a BART Permit application dated ______ and attached hereto as Exhibit E and incorporated into this Permit. BART grants Permittee authorization to complete the Detailed scope of work as quoted from Exhibit E and as described as

"scope of work printed here"

Permittee is authorized to complete the scope of work at or near the location identified as ______ (hereinafter "Premises"), as shown on Exhibit "A," attached hereto and incorporated herein by this reference.

1. Subject to Section 17 below, the term of this Permit shall commence on ______, and end on ______, provided, however, that at any time during the term, the Permit may be terminated by either party upon thirty (30) days prior written notice to the other party. Said notice shall be sent certified mail, return receipt requested, to:

"PERMITTEE NAME, ADDRESS AND CONTACT INFORMATION HERE"

Or

Real Estate and Property Development Department San Francisco Bay Area Rapid Transit District P.O. Box 12688 Oakland, CA 94604 Attention: Department Director

The notice period shall begin to run upon receipt of said notice.

- 2. The fee for this Permit shall be calculated pursuant to the attached Fee Schedule (Exhibit D) in effect when staff time is expended, pursuant to the policy adopted by the BART Board of Directors in Resolution No. 4989. A nonrefundable application fee of **\$** shall be paid prior to issuance of this Permit. Reimbursement for the estimated BART staff time required to process this Permit is **\$ TBD**, shall be paid prior to issuance of this Permit. Permittee will receive a true up debit or credit based on the actual BART staff time required to review the Permit. Any additional fees to reimburse BART for plan review and inspection shall be billed to Permittee and paid to BART within thirty (30) days of the invoice date. A 10% late fee will be assessed on the balance if payment is not received within said 30 days of the invoice date. The late fee will be increased to 20% on the original balance if payment is not received within 60 days of the invoice date. BART reserves all rights to pursue all appropriate remedies to collect outstanding payments and penalties that have not been paid by Permittee within 90 days of the invoice date.
- 3. Permittee's right to use this area shall be non-exclusive and nontransferable and shall be for the sole purpose of performing the Work. In no event shall BART's property be deemed to be a public right-of-way. Overnight parking is prohibited on BART's property.
- 4. Conditions of Use:

Construction conditions will be inserted here and provided by BART's I&E team after they review the scope of work, plans, drawings, and specifications.

- a.
- b.
- с.
- 5. The cost of repair and any and all losses caused by Permittee's damage to any BART property or facility, or resultant loss of service, shall be at the sole expense of Permittee. Any damage to BART property or facilities shall be repaired or remedied by Permittee or BART, at BART's discretion, and at Permittee's sole cost and expense. Permittee agrees to reimburse BART promptly for any such damage. Repairs shall comply to BART Facilities Standards.
- 6. Permittee shall have the duty and hereby agrees to exercise reasonable care to properly maintain BART's property pursuant to this Permit,

including but not limited to, removing debris dumped or placed on the Premises during the term of this Permit, from any source, and to exercise reasonable care inspecting for and preventing any damage to any portion of BART's property.

- 7. Permittee acknowledges that said Work constitutes an encroachment upon BART's property and agrees to perform said Work in accordance with and subject to the provisions of this Permit, applicable provisions of the "General Terms and Conditions Relating to Utility Permits," attached hereto as Exhibit "B" and incorporated herein by reference, and all applicable state and local laws. Where there is a conflict between the provisions of this Permit and the "General Terms and Conditions Relating to Utility Permits," this Permit shall prevail.
- 8. Permittee agrees to notify BART's Resident Engineer Mr. Carlos Muñoz at (510) 368-6748 (cmunoz@bart.gov), at least 14 calendar days prior to any use of the Premises. Should Permittee require any utility hook-ups, Permittee must obtain any and all necessary permits and pay all fees in connection therewith. Permittee shall not perform any work on BART property until all necessary permits, licenses and environmental clearances have been obtained.
- 9. Permittee shall not (a) use, generate, or store, or allow its employees, contractors or agents to use, generate, or store any Hazardous Materials on the Premises, except for those materials required to perform the Work permitted under this Permit and in compliance with all federal, state and local laws and regulations for the protection of the environment, human health and safety, as now in effect or hereafter amended (hereinafter "Environmental Laws"); or (b) release or dispose of, or allow its employees, contractors or agents to release or dispose of, any Hazardous Materials on the Premises. "Hazardous Materials" are those materials now or hereafter (a) defined as hazardous substances or hazardous wastes pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. section 9601 et seq.) or the Resource Conservation and Recovery Act (42 U.S.C section 6901 et seq.); (b) listed in the Hazardous Substances List, Title 8, California Code of Regulations, G.I.S.O. Section 337-339, or those which meet the toxicity, reactivity, corrosivity or flammability criteria of the above Code; (c) characterized, regulated or subject to permitting or warning requirements as hazardous or toxic materials, substances, chemicals, pollutants, contaminants or wastes, or as materials for which removal, remediation or disposal is required, under any Environmental Laws; or (d) otherwise posing a present or potential hazard to human health, welfare or the environment.

- 10. BART shall at all times have the right to go upon and inspect the Premises and the operations conducted thereon to assure compliance with any of the requirements in this Permit. This inspection may include, but is not limited to, taking samples of substances and materials present for testing.
- 11. Permittee shall be responsible for and bear the entire cost of removal and disposal, in compliance with Environmental Laws, for all Hazardous Materials and non-hazardous wastes introduced to the Premises during Permittee's use and possession of the Premises. Permittee shall also be responsible for any remediation on or off the Premises necessitated by such Hazardous Materials or non-hazardous wastes. As used herein, "remediation" includes any investigation or post-cleanup monitoring that may be necessary in compliance with Environmental Laws. For purposes of disposal, Permittee shall be the generator of any such Hazardous Materials and shall provide a generator identification number on manifests for such disposal as required by Environmental Laws.
- To the extent that any New Environmental Condition is caused by, or any 12. Pre-existing Environmental Condition is contributed to or exacerbated by, Permittee's acts or omissions (including those of its employees, contractors and agents) during its use and possession of the Premises, Permittee shall, at BART's discretion, either (a) perform remediation of such New Environmental Condition or Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such New Environmental Condition or Pre-Existing Environmental Condition. A "New Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises as of the commencement date of this Permit. A "Pre-Existing Environmental Condition" is defined as the release or threatened release of Hazardous Materials on, about, under or emanating from the Premises prior to the commencement date of this Permit.
- 13. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith) arising from the introduction on the Premises of any Hazardous Materials or non-hazardous wastes by Permittee (including its employees, contractors and agents) or from any New Environmental Condition caused by, or any Pre-existing Environmental Condition

contributed to or exacerbated by, the acts or omissions of Permittee (including those of its employees, contractors and agents) during its use and possession of the Premises.

- 14. Permittee agrees to assume responsibility and liability for, and defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, losses, damages, injury, and liability, direct or indirect (including any and all costs, fees and expenses in connection therewith), caused by acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, except to the extent such losses are caused by the gross negligence or willful misconduct of BART. Permittee agrees at its own cost, expense, and risk to defend any and all actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees arising from the acts or omissions of Permittee, its employees, contractors and agents in connection with the Work done pursuant to this Permit, and to pay and satisfy any resulting judgments, settlements or other expenses associated therewith.
- 15. To the extent that a governmental agency with jurisdiction requires remediation of any Pre-Existing Environmental Condition that is discovered as a result of Permittee's activities pursuant to this Permit, and is not contributed to or exacerbated by the acts or omissions of Permittee, its employees, contractors or agents, Permittee shall, at BART's discretion, either (a) perform remediation of such Pre-Existing Environmental Condition, at Permittee's cost and expense, in compliance with Environmental Laws and subject to the approval of a governmental agency with jurisdiction; or (b) indemnify BART against all costs incurred by BART in performing remediation of such Pre-Existing Environmental Condition.
- 16. Permittee agrees that no easement, lease, or other property right is acquired by Permittee through this Permit.
- 17. Upon any use of BART property by Permittee other than that authorized by this Permit, or upon failure of the Permittee to conform to any of the terms and conditions of this Permit, BART may terminate this Permit immediately.
- 18. Insurance shall be provided by Permittee as stated in Exhibit "C," attached hereto and incorporated herein by reference. Insurance shall be approved by BART's Insurance Manager prior to any use of the Premises.
- 19. Permittee shall comply with the federal Clean Water Act of 1977 and all laws, ordinances, rules, and regulations applicable to the Project

("Applicable Law") including, without limitation, any building, zoning or environmental laws, including applicable Storm Water Pollution Prevention Plans ("SWPPP"). Permittee shall provide any notice(s) required by any Applicable Law. Permittee is responsible for identifying and implementing California Stormwater Quality Association (CASQA) Best Management Practices (BMPs) to prevent pollutant discharges to the storm drain system. Permittee shall not perform any work on BART property until all necessary permits, licenses and environmental clearances have been obtained.

- 20. Counterparts. This Permit may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument and shall become effective when there exist copies hereof which, when taken together, bear the authorized signatures of each of the parties hereto. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Permit.
- 21. In the event the Permittee withdraws its Permit application, Permittee agrees to reimburse BART for staff time spent to date working on the withdrawn application.
- 22. As required by public jurisdictions with authority, the Permittee must also obtain authorization for this project from the city, county, state, or other public entities.

Signatures on Next Page

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

Date_____

Ву_____ Abigail Thorne-Lyman, Director Real Estate and Property Development

ACCEPTED by Permittee

Sign	
Print	Date
Title	

PERMIT NO.



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

GENERAL TERMS AND CONDITIONS RELATING TO UTILITY PERMITS

Exhibit B

All Utility Permits issued by the San Francisco Bay Area Rapid Transit District to privately and publicly owned utilities relating to poles, wires, cables and other overhead structures, pipes, conduits, manholes and other miscellaneous underground facilities, railroad crossings, storm drains, flood control and minor work are subject to the following General Terms and Conditions contained herein as well as the specific conditions set forth on the face of the Permit.

1. DEFINITION:

Each Utility Permit (hereinafter referred to as "Permit") is issued by the San Francisco Bay Area Rapid Transit District (hereinafter referred to as BART) by the Manager of Real Estate Services.

Applicant (hereinafter referred to as "Permittee") understands and agrees that except as otherwise provided, all Permits issued by BART are subject to the terms and conditions contained herein.

2. REVOCABILITY AND MODIFICATION:

Any Permits issued hereunder are revocable upon thirty (30) days written notice by BART, and the terms and conditions thereof shall be subject to modification by BART at any time. Any Permit is revocable immediately in the event of any use other than that authorized by the Permit, or upon failure of the Permittee to conform to any of the terms and conditions of the Permit.

3. NEW WORK PERFORMED ON EXISTING PERMIT:

No new work can be initiated by a Permittee based upon a prior Permit unless that Permit specifically sets forth the nature and method of such future work at the time of the original approval and if the prior Permit has not expired.

If occupation of BART right-of-way is under easement or previous agreement with BART, new installations and work must be applied for to provide BART with notice and record of new work, and for inspection and approval by BART relating to construction and safety procedures. All prior rights shall be fully protected in such cases.

4. ACCEPTANCE OF PROVISIONS:

It is understood and agreed by Permittee that doing any work under a Permit shall constitute an acceptance of the terms and conditions contained herein except as otherwise specifically provided in the Permit.

5. NO PRECEDENT ESTABLISHED:

It is understood and agreed by Permittee that approval of a particular action under a Right of Entry or Permit shall not establish a precedent for similar future requests by Permittee.

6. NOTICE PRIOR TO STARTING WORK:

Before starting work on which full inspection is required in the Permit, the Permittee shall notify BART's Special Services Section in writing fourteen days in advance of the day work is to begin. Five days notice shall be given on Permits where partial inspection is specified.

7. PERMIT AT SITE OF WORK:

The Permit or a copy thereof shall be available at the site of the work and must be shown to any representative of BART on demand.

8. PERMITS FROM OTHER AGENCIES:

The party or parties to whom a Permit is issued shall, whenever the same is required by law, secure the written order or consent to any work under a Permit from the Public Utilities Commission of the State of California or any other public agency having jurisdiction and any Permit shall not be valid until such order or consent is obtained.

9. PROTECTION OF TRAFFIC WHEN APPLICABLE:

Adequate provisions shall be made for the protection of the traveling public when construction affects cross streets along BART right-of-way. Warning signs, lights, safety devices and other measures required for the public safety shall conform to requirements of the Vehicle Code.

10. RAIL CLEARANCE AT OR NEAR GRADE:

No construction material shall be stored, nor equipment parked within 10 feet, measured at right angles, from the outer edge of the BART aerial structure or BART right-of-way fence, whichever is greater. Construction equipment operating adjacent to BART tracks or facilities shall be so situated and restrained so as not to fail in a manner that would potentially damage BART facilities or to interfere with BART's operating envelope. Any activity within 10 feet, measured at right angles, of BART's aerial structure or rail shall be conducted during non-revenue service hours and shall be subject to Track Allocation clearance.

11. LIMIT OF EXCAVATION AT OR NEAR GRADE:

No excavation is to be made closer than 10 feet, measured at right angles, from the edge of rail except as specified in the Permit. Depth of excavation shall be subject to inspection and approval by BART's Special Services Section.

12. STANDARDS OF CONSTRUCTION:

All work performed within BART right-of-way shall conform to Civil and Structural Design Criteria, latest revision, by this reference made a part hereof.

13. APPROVAL BY BART:

All work shall be subject to inspection and approval by BART. The type of inspection will be specified in each Permit.

14. CLEAN UP OF RIGHT-OF-WAY:

Upon completion of the work, the right-of-way shall be left in the same condition as existed before work started.

15. MAINTENANCE:

Permittee agrees, by acceptance of a Permit, to exercise reasonable care to properly maintain any installation placed in BART right-of-way and to exercise reasonable care in preventing damage to any portion of right-of-way or to BART's facilities as a result of work done under a Permit.

16. RESTORATION:

Within 30 days of the expiration or earlier termination of a Permit, Permittee shall, at its sole expense, restore to its former condition any portion of the right-of-way or of any BART facility which has been disturbed by Permittee, except as provided otherwise in the Permit. Restoration shall include, but not be limited to, removal of improvements, equipment, materials, debris, and the like, and repair of any damage. If Permittee fails to restore BART property as required herein, BART may perform such restoration at Permittee's sole expense.

17. CARE OF DRAINAGE:

If the work contemplated in any Permit interferes with established drainage, provision shall be made by Permittee to re-establish equal drainage conditions as may be directed by BART, at Permittee's sole expense.

18. SUBMISSION OF PLANS:

For installation of all underground facilities and surface work, Permittee shall submit for approval a plan showing location and details with its application. Three sets of as-built plans shall be filed with BART upon completion and approval of work. Any substantial change from plans submitted with the application must be approved by BART prior to commencement of work.

19. EXPENSE OF INSPECTION, PREPARATION, AND ADMINISTRATION:

On installations made under request of Permittee which require the presence of any employee of BART as inspector, the cost of such inspection during the work shall be paid by Permittee upon presentation of bills therefor. In addition, Permittee agrees to promptly pay BART for costs involved in the preparation, administration and processing of the Permit and its provisions upon presentation of bills therefor per the fee schedule in Resolution No. 4515, adopted by the District's Board of Directors.

20. LIABILITY FOR DAMAGES:

Permittee agrees to assume responsibility and liability for all damage, loss or injury of any kind or nature whatever to persons or property, caused by or resulting from or in connection with work done by Permittee under a Permit or which may arise out of failure on Permittee's part to perform their obligations under any Permit. In the event any claim of such liability is made against BART, or any department, officer, or employee thereof, Permittee shall defend, indemnify and hold them, and each of them harmless from such claim, and pay and satisfy any resulting judgments. At its sole discretion, BART may require that Permittee obtain a bond and/or insurance in connection with the Permit.

21. FUTURE MOVING OF INSTALLATIONS:

It is understood by Permittee that whenever BART construction, re-construction or maintenance work on BART right-of-way may be required, and upon request by BART, the Permittee's installation shall be

immediately moved by and at the sole expense of Permittee except as otherwise provided for by a specific Permit provision.

22. ROUTINE MAINTENANCE OF PERMITTEE'S FACILITIES:

Permittee may perform routine work maintenance on Permittee's facilities in accordance with the Terms and Conditions set forth in the Permit. It will be necessary to provide fourteen days' prior written notice, unless otherwise stated, to BART's Construction Liaison prior to commencing any work within the property boundaries of BART. In emergencies, the Permittee shall notify BART's Construction Liaison by telephone and then follow up by confirming letter relating to the emergency and the disposition of the emergency.

23. PIPES, CONDUITS AND MISCELLANEOUS FACILITIES:

BART's Civil and Structural Design Criteria, latest revision, sets forth specification for installation and maintenance of all underground facilities within BART right-of-way. In addition to BART criteria, all installation and maintenance procedures by Permittee shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California. When abandonment of facilities is contemplated, Permittee shall notify BART.

24. POLES, WIRES, CABLES AND OVERHEAD STRUCTURES:

Poles shall be located as specifically directed in the Permit. In addition to BART's Civil and Structural Design Criteria, latest revision, all clearances and types of construction shall be in accordance with the applicable orders of the Public Utilities Commission of the State of California. Whenever it is necessary to secure permission from abutting property owners, such authority must be secured by Permittee prior to commencing work. Where removal of old poles, guys and stubs is necessary, the entire length of the abandoned pole, guy or stub shall be removed from the ground and the hole backfilled and thoroughly tamped.

25. CLEARANCE OF TREES:

All new pole line construction must allow sufficient vertical clearance for trees 40 feet in height. At locations where growing trees are in place, or Permittee's facilities are already in place, normal construction standards may be followed at the option of Permittee with the ultimate provision to clear a 40-foot tree. Protected cable, tree wire, or plastic tree wire guards may be used on telephone lines through trees provided neither the tree nor its appearance will be damaged. No guy wires are to be attached to trees or BART structures.

26. TRIMMING OF TREES:

Trimming of trees will be permitted only where specifically stated in a Permit. Except when specifically authorized in the Permit, removal of trees will generally be prohibited since all trees within BART right-of-way have been placed as landscaping. Permittee shall be required to conduct tree trimming at no cost to BART. In general, only light trimming of branches two inches or less in diameter will be permitted. The shapeliness of the trees must be preserved. If the permit requires inspection by BART during progress of the work, the cost of inspection shall be borne by the Permittee.

27. SERVICE CONNECTIONS:

These terms and conditions do not authorize installation of utility service connections within BART right-ofway regardless of location of Permittee's facilities. All such service connections or excavations to abandon services must be covered by individual Permits. Exhibit C Page 1 of 4

EXHIBIT "C"

Permit No. ***SAMPLE TEMPLATE***

Permittee:

Description of Work:

Location:

INSURANCE

At all times during the life of this Permit, or as may further be required by this Permit, Permittee at its own cost and expense, shall provide the insurance specified as follows:

1. <u>Evidence Required</u>

At or before execution of this Permit, Permittee shall provide District with a certificate of insurance executed by an authorized representative of the insurer(s) evidencing that Permittee's insurance complies with this Exhibit, including a copy of all required endorsements. Permit number [ENTER NUMBER] shall be included in the space provided on the standard Certificate of Insurance form provided.

The Certificate Holder should be addressed to the following:

San Francisco Bay Area Rapid Transit District Risk Management and Insurance Insurance Department – BHQ09 P.O. Box 12688 Oakland, California 94604-2688

2. <u>Notice of Cancellation, Renewal, Reduction or Material Change in Coverage.</u>

All policies shall be endorsed to provide District with thirty (30) days prior written notice of any cancellation, reduction or material change in coverage. Notices shall be sent to the Director of Risk Management & Insurance, San Francisco Bay Area Rapid Transit District, P. O. Box 12688, Oakland, California 94604-2688. If requested, the Permittee shall annually submit to the Risk Management and Insurance Department, certifications confirming that the insurance required has been renewed and continues in place.

3. <u>Qualifying Insurers</u>

All policies shall be issued by Insurers authorized to write business in California which hold a current policy holders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

Exhibit C Page 2 of 4

4. <u>Insurance Required</u>

- A. <u>Commercial General Liability Insurance</u> for bodily injury (including death) and property damage which provides limits of not less than Three Million Dollars (\$3,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate as applicable.
 - 1) Coverage shall include:
 - a) Premises and Operations;
 - b) Products/Completed Operations;
 - c) Broad Form Property Damage;
 - d) Blanket contractual liability coverage;
 - e) Personal Injury liability;
 - f) Cross-Liability and Severability of Interests;
 - g) Independent Contractors Liability; and
 - h) Explosion, Collapse and Underground (XCU) *
 - 2) Such insurance shall include the following endorsements:
 - a) Inclusion of District, its directors, officers, representatives, agents and employees as additional insured as respects to Permittee's ongoing and completed operations in connection with this Permit;
 - b) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of District will be called upon to contribute to a loss; and
 - c) Waiver of Subrogation Endorsement in favor of the District, its directors, officers, representatives, agents and employees.
 - 3) For all applications involving construction or demolition work within 50 feet, vertically or horizontally, of the BART trackway and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing, the General Liability Insurance <u>must not exclude coverage therein</u>.
- B. <u>Automobile Liability</u> for bodily injury (including death) and property damage which provides a coverage limit of at least One Million Dollars (\$1,000,000) combined single limit per occurrence applicable for all owned, non-owned and hired vehicles.
 - 1) Coverage shall be endorsed to include the following:
 - a) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement.

Exhibit C Page 3 of 4

- C. <u>Statutory Workers' Compensation and Employer's Liability Insurance</u> for not less than One Million Dollars (\$1,000,000) per accident applicable to Employer's Liability coverage for all employees engaged in services or operations under this Permit. The policy shall include broad form allstates/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the District, its directors, officers, representatives, agents and employees. Should any such work be subcontracted, Permittee shall require each subcontractor of any tier to similarly comply with this Exhibit, all in strict compliance with federal and state law.
- D. <u>Railroad Protective Liability</u> for bodily injury (including death), property damage, and physical damage, including loss of use thereof, to railroad property with limits of not less than Two Million Dollars (\$2,000,000) per occurrence and Six Million Dollars (\$6,000,000) in the aggregate annually applicable to all operations of Permittee and its contractors or subcontractor(s) within 50 feet vertically or horizontally of BART's trackway. BART shall have the right to approve of the policy wording. The named insured shall be San Francisco Bay Area Rapid Transit District. Prior to commencing work or entering BART property, Permittee or its contractor shall file the original copy of the policy with BART's Department Manager, Insurance. This coverage shall be maintained for the term of this Agreement (Permit).

The following coverages may be required based on the scope of work being performed in connection with the permit:

- A. <u>*Contractor's Pollution Liability (CPL) Insurance</u> for bodily injury (including death) and property damage, including natural resource damage and diminished value with coverage limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising from the actual or alleged discharge, dispersal, seepage, migration, escape, or accidental release of contaminants, pollutants (including lead and asbestos) or hazardous waste as defined in California Health and Safety Code (H&S) Section 25117 and listed in the California Administrative Code Title 22 Society Security, Division 4.5, Environmental Health Section 66261 and consequential containment, clean-up, disposal and penalties associated therewith.
- B. <u>Professional Liability Insurance</u> for damages arising out of Permittee's acts, errors or omissions. The policy shall provide a coverage limit of not less than One Million Dollars (\$1,000,000) per claim/aggregate as respects Permittee's services under this Permit. Such insurance shall be maintained for a period of not less than two (2) years following completion of services. *(Required if scope of work includes surveys, inspections, geotechnical investigations related to BART sponsored work)*.

C. <u>Contractor's Equipment Insurance</u> for tools and equipment owned, leased or rented and used by the Contractor or Subcontractors in the performance of the Scope. The Property Insurance shall extend to equipment, materials and supplies stored off the Project site or in transit to the Project site to be furnished as part of the Scope and incorporated into the Project. Coverage is to be provided on an "All-Risk" basis excluding Earthquake for the full replacement cost of all equipment. (Only required if tools or equipment (i.e. monitoring devices) will be left on BART property overnight and unattended).

5. <u>Special Provisions</u>

- A. The foregoing requirements as to the types and limits of insurance coverage to be maintained by Permittee, and any approval of said insurance by District is not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Permittee pursuant to this Permit, including but not limited to the provisions concerning indemnification.
- B. The District acknowledges that some insurance requirements contained in this Exhibit may be fulfilled by a funded self-insurance program of the Permittee. However, this shall not in any way limit liabilities assumed by the Permittee under this Permit. Any self-insurance program must be approved by the District.
- C. Should any of the work be contracted, Permittee shall require each of its contractors or subcontractors of any tier to provide the aforementioned coverage or Permittee may insure Contractor or Subcontractor(s) under its own policies.
- D. District reserves the right to terminate or suspend the Permit in the event of non-compliance with the insurance requirements of this Exhibit. In no event shall any suspension entitle Permittee to an extension of the term of the Permit specified in this Exhibit.
 - * (Note: XCU coverage (Section 4.A.1.h); Transport of hazardous material or hazard-containing material (Section 4.B); and Pollution Liability Insurance are only required when applicable (excavation, borings, etc.).)

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Coverage limits may be increased, at the discretion of the District's Risk Manager, relative to risk involved.

EXHIBIT D

FY2024-25 BART FEE SCHEDULE PERMITS, EASEMENTS, SPECIAL EVENTS & PLAN REVIEW

Effective Date is 7/1/2024

	APPLICANT	APPLICATION PROCESSING FEE (See Note 1)	AS-BUILT DEPOSIT (See Note 4)	AVERAGE HOURLY STAFF RATE	INSPECTION FEE (See Note 1)	CEQA REVIEW FEE (See Note 1)	
		CONSTRU	CTION, WIREI	LESS AND UTI	LITY		
PERMITS	Public Agency	None. (See Note 2)	\$2,500 - \$5,000	\$193.00/hr – 2 hour min.	\$193.00/hr – 2 hour min. 4 hour min. after BART business hours (if needed)	\$193.00/hr	
PER	All Others	\$2,550.				(See Note 3)	
S		PROPERTY INTEREST I	REQUESTED (1	BOARD APPRO	OVAL REQUIRED)		
MENT	Public Agency	None. (See Notes 2 and 5)	\$2,500- \$5,000	\$193.00/hr –	\$193.00/hr 2 hour min.	\$193.00/hr	
EASEMENTS	All Others	\$2,470 plus value of property interest. (See Note 5)		2 hour min.	4 hour min. after BART business hours	(See Note 3)	
_		PROJECTS AI	DJACENT TO I	BART RIGHT C	OF WAY		
PLAN REVIEW ONLY	Public Agency	None (See Note 2)	None	\$193.00/hr – 2 hour min.		\$193.00/hr	
PLAN OI	All Others	\$2,550		\$193.00/hr – 2 hour min.	None	(See Note 3)	
SPECIAL EVENTS	All	\$970 per day + additional operational costs such as police services, if needed.		N/A		N/A	

- Note 1 This fee schedule will be amended at the beginning of each fiscal year pursuant to Board Resolution No. 5560, adopted by the Board on June 8, 2023. Reimbursement of staff time is based on the fees in effect when staff time is charged. The rate for staff time is a calculated average.
- Note 2 Pursuant to Government Code Section 6103, public agencies are exempt from administrative application fees. Reimbursement of staff time for plan review and inspections is not exempt (Government Code Section 6103.7).
- Note 3 BART is subject to the California Environmental Quality Act (CEQA) in granting entitlements for use. In addition to the hourly fee for environmental review and for preparation of any required documentation by BART, applicants will be responsible for reimbursing BART for any applicable filing fees.
- Note 4 The as-built deposit is \$2,500.00 for projects less than \$250,000.00 and is \$5,000.00 for projects of \$250,000.00 or more. Deposit to be reimbursed upon submittal of accepted as-built to BART, submitted within 180 days of permit expiration.
- Note 5 Entities seeking a property interest are required to present a fair market value, by a qualified appraiser, offer with appropriate documentation, which will be reviewed by BART Staff. If documentation is not provided or deemed insufficient, entity must reimburse BART for cost of appraisal. BART's Transit-Oriented Development projects are subject to separate negotiation.
- Note 6 Station retail, expressive activity, and film/photo/video permits are handled separately of this schedule. Events impacting BART operations may be charged additional fees and/or a deposit will be required to offset additional BART costs.
- Note 7 A time extension or amendment for an existing permit may be granted by BART for a fee of \$850 at BART's discretion.



SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

APPLICATION FOR PERMIT OR PLAN REVIEW (CONSTRUCTION) - Permit Exhibit E

BART Use Only			
BART Permit No.	_ Activity Code / Work Order N	0	
Date:			
Applicants Reference / Work order no			
PRIMARY CONSTRUCTION APPLICANT - PE	RMITTEE		
Company Name:			
Address:		State:	Zip:
County:			
Contact Name:			
Contact Phone:	Contact email:		
Signature		Date:	
Re: Application is made for permission and/or Zone of Influence:			gint of way
PROJECT DETAILS			
Target Project Start Date:	Target Project End Dat	:e:	
Estimated Project Duration:	Estimated Project C	Cost:	
Work site Location; address (actual or nea	arest), cross streets, APN, Latitud	e and Longitude,	,
, City	, County	/	<i>,</i> CA.
Nearest BART Station	(a map is red	quired with your	application)
Submitted Documents (electronic copy)):		
□ Drawings □ Maps □ Plans	s and Specs \Box Estimated	Project Cost Det	ails

Detailed Scope of Work (describe in detail the work requested for this permit):

Temporary Construction Stag	ging & Parking Area	Permanent Cor	nstruction Improvements
Repair Existing Permanent Ed	quipment/Facilities	□ Excavation	
U Wireless/fiber/cable installat telecommunication facility	tion or repair, not loca	ited within the existin	ng BART owned or leased
List/Describe type of equipmen	t to be used:		
Type of construction (check all	that apply)		
 Utility relocation Survey/Historical Survey Pothole 			 Fiber Optic Pull New Development Entry Access Only
If applicable, where is the condu	uit/pipe located? \Box S	urface 🗌 Undergrou	ind?
Excavation Length	, 🗆 Width	and [□ Depth
Conduit type is		_ number of ducts are	
Is there buried cable \Box Yes \Box	No		
Surface type to be disturbed (if	any)		
Describe the method of work			
Is the proposed work in the BAR	RT operating envelope	? □ Yes □ No?	
Is the proposed work in the BAF	RT Zone of Influence?	□ Yes □ No?	
Is the proposed work area with	n 50 feet (vertical or h	norizontal) of the Trac	ckway? 🗆 Yes 🗆 No?
If yes, please specify an	d explain		

Environmental Review
Specify any changes to existing landscape or irrigation:
Specify any review of CEQA:
Identify any document and certifications:
Project approval date:
Will any excavated materials be transported off permit area \Box Yes \Box No?
Will work involve fuel or known hazardous material on BART premises \Box Yes \Box No?
If yes, please specify and / or explain (include any fuel storage capacity)

APPLICANT SUBMITTAL INSTRUCTIONS

The initial Application Fee and reimbursement estimate for BART staff time for this permit shall be calculated per the Fee schedule in Resolution No. 4989, adopted by the District's Board of Directors. **The nonrefundable Permit Application Fee is \$976.00** which is due and payable with the submittal in this Permit Application. Said fee is waived for public agencies and not-for-profits. BART staff will start the review of your application after payment is received.

If the project falls within the BART operating envelope and/or within 50 feet (vertical or horizontal) of the Trackway, evidence of railroad protective liability coverage may be required.

Applicant agrees to submit the As-built drawings (if required) after final inspection and sign-off. Failure to submit As-built may result in forfeiture of refundable deposit. Please allow 4 to 6 weeks for processing this application.

Joint Construction Applicant / Co-Permittee (If any)

Company Name:			
Address:	City:	State:	Zip:
County:			
Contact Name:	Contact Title:		
Contact Phone:	Contact email:		
Signature		Date:	



Attachment 9

Workbook

See Excel file, available for download separately



Attachment 10

Mitigation Monitoring and Reporting Program

Mitigation Monitoring and Reporting Program

The Environmental Impact Report (EIR) identifies the applicable mitigation measures that will be implemented to reduce the impacts associated with the Ashby and North Berkeley BART Stations Transit-Oriented Development (TOD) Zoning Project. The California Environmental Quality Act (CEQA) requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in section 21081.6(a)(1) of the Public Resources Code:

...the public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.

Section 21081.6 also provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined as part of adopting an Environmental Impact Report.

The mitigation monitoring table lists those mitigation measures that may be included as performance standards in the zoning, contractual obligations, and/or conditions of approval for the project. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure. Future project applicants will have the responsibility for implementing the measures that apply to development activity, and BART and the various City of Berkeley departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.

Mitigation Measure/Condition of Approval	Implementation Procedures	Monitoring and Reporting Action	Monitoring Timing	Monitoring Responsibility	Compliance Verification (Initial, Date Comments)
Air Quality					
AQ-1: Construction Emissions Measures					
As part of the City's development approval process, the City shall require applicants for future development projects within the project sites to comply with the current Bay Area Air Quality Management District's basic control measures for reducing construction emissions of PM_{10} (Table 8-2, Basic Construction Mitigation Measures Recommended for All Proposed Projects, of the May 2017 BAAQMD CEQA Guidelines).	Project applicants shall comply with BAAQMD control measures for reducing construction emissions.	Review all demolition, grading, and building permits to ensure compliance.	Prior to permit approval and during construction	t City of Berkeley Department of Planning & Development	
Biological Resources					
BIO-1: Worker Environmental Awareness Program					
Prior to initiation of construction activities (including staging and mobilization), all personnel associated with project construction shall attend a Worker Environmental Awareness Program (WEAP) training, conducted by a qualified biologist, to aid workers in recognizing special status resources that may occur in the construction area. The specifics of this program shall include identification of the sensitive species and habitats, a description of the regulatory status and general ecological characteristics of sensitive resources, and review of the limits of construction and mitigation measures required to reduce impacts to biological resources within the work area. A fact sheet conveying this information shall also be prepared for distribution to all contractors, their employers, and other personnel involved with construction. All construction employees shall sign a form provided by the trainer indicating they have attended the WEAP and understand the information presented to them. The form shall be submitted to the City to document compliance.	Project applicants shall ensure construction personnel attend a WEAP training conducted by a qualified biologist and consisting of the required program components. Project applicants shall prepare and distribute fact sheet and ensure signatures by construction personnel.	Monitor compliance with WEAP training and verify signed forms have been submitted.	Prior to ground disturbing activities	City of Berkeley Department of Planning & Development	

Mitigation Measure/Condition of Approval	Implementation Procedures	Monitoring and Reporting Action	Monitoring Timing	Monitoring Responsibility	Compliance Verification (Initial, Date, Comments)
BIO-2: Special-status Bat Species Avoidance and Minimiz	ation				
Development that involves removal of mature trees large enough to contain crevices and hollows that could support bat roosting, focused surveys to determine the presence/absence of roosting bats shall be conducted prior to demolition or tree removal. If active maternity roosts are identified, a qualified biologist shall establish avoidance buffers applicable to the species, the roost location and exposure, and the proposed construction activity in the area. If active non-maternity day or night roosts are found on the project site, measures shall be implemented to passively relocate bats from the roosts prior to the onset of construction activities. Such measures may include removal of roosting site during the time of day the roost is unoccupied or the installation of one-way doors, allowing the bats to leave the roost but not to re-enter. These measures shall be presented in a Bat Passive Relocation Plan that shall be submitted to, and approved by, CDFW prior to issuance of grading permit.	For development that involves removal of mature trees, project applicants shall obtain a qualified biologist to conduct surveys. Based on the results of the survey, project applicant shall incorporate measures to relocate bats.	For construction that meets the criteria, review and approve presence/absence survey. If active maternity roosts are identified, review all demolition, grading, and building permits to ensure relocation measures have been implemented.	Prior to issuance of grading permit Ongoing during construction activities	City of Berkeley Department of Planning & Development	

Cultural Resources

CR-1: Ashby BART Station Interpretive Display

The proposed project shall be designed to include a permanent, high-quality on-site interpretive display in a publicly-accessible location, preferably near or within the publicly accessible civic plaza at the Ashby BART Station. The display shall focus on the station's history, particularly the community-led effort for the station to be underground and the subsequent use of the land by the community. The interpretive display will be prepared by a professional exhibit designer and historian meeting the Secretary of the Interior's Professional Qualification Standards (36 CFR Part 61). The goal of the interpretive display is to educate the public about the property's historic themes and associations within broader cultural contexts and shall include incorporate

Project applicants shall prepare and
implement a
permanent, high
quality on-site
interpretive display
meeting the
requirements of the
measure.
Project applicants
shall obtain review
and approval of the
display from the City

Review/approve a permanent, high quality on-site interpretive display in a publicly- accessible location

City of Berkeley Department

of Planning & Development

Mitigation Measure/Condition of Approval	Implementation Procedures	Monitoring and Reporting Action	Monitoring Timing	Monitoring Responsibility	Compliance Verification (Initial, Date, Comments)
elements of public art as appropriate. Plans for the display shall be subject to review and approval by the Land Use Planning Division prior to installation.	of Berkeley and BART.				
Geology and Soils					
GEO-1: Paleontological Resources Studies					
 Because the project sites are underlain by geologic units assigned a high paleontological sensitivity, paleontological resources may be encountered during ground-disturbing activities associated with project construction (e.g., grading, excavation, or other ground disturbing construction activity). 1. Qualified Paleontologist. The project applicant shall retain a Qualified Paleontological resources. The following measures prior to excavations that have potential to impact paleontological resources. The Qualified Paleontologist shall direct all mitigation measures related to paleontologist is defined by the SVP standards as an individual preferably with an M.S. or Ph.D. in paleontology or geology who is experienced with paleontological procedures and techniques, who is knowledgeable in the geology of California, and who has worked as a paleontological mitigation project supervisor for a least two years (SVP 2010). a. The qualified professional paleontologist shall design a Paleontological Resources Mitigation and Monitoring Program (PRMMP) for submission to the City prior to the issuance of grading permits. The Plan will outline the procedures and protocol for conducting paleontological monitoring and mitigation. Monitoring shall be conducted by a qualified paleontological monitor who meets the minimum qualifications per standards set forth by the SVP. The PRMMP shall address the following procedures and protocols: Timing and duration of monitoring 	Project applicants shall retain a qualified paleontologist. Project applicants shall implement a Worker Environmental Awareness Training (WEAP) on paleontological resources. Project applicants shall hire paleontological monitor, and if fossils are discovered, follow procedures for managing resources. Project applicants shall prepare final Paleontological Monitoring report and shall obtain review and approval of the report from the City of Berkeley.	Verify that qualified paleontologist has been retained and measures have been implemented	Prior to issuance of grading permit, periodically during construction	City of Berkeley Department of Planning & Development	

Mitigation Measure/Condition of Approval	Implementation Procedures	Monitoring and Reporting Action	Monitoring Timing	Monitoring Responsibility	Compliance Verification (Initial, Date, Comments)
 Procedures for work stoppage and fossil collection The type and extent of data that should be collected with any recovered fossils Identify an appropriate curatorial institution Identify the minimum qualifications for qualified paleontologists and paleontological monitors Identify the conditions under which modifications to the monitoring schedule can be implemented Details to be included in the final monitoring report. Prior to issuance of a grading permit, copies of the PRMMP shall be submitted for review to the Department of Planning and Development at the City of Berkeley. Paleontological Worker Environmental Awareness Program (WEAP). Prior to any ground disturbance, the applicant shall incorporate information on paleontological resources into the Project's Worker Environmental Awareness Training (WEAP) materials, or a stand-alone Paleontological Resources WEAP shall be submitted to the Department of Planning and Development at the City of Berkeley. The Qualified Paleontologist or his or her designee shall conduct training for construction personnel regarding the appearance of fossils and the procedures for notifying paleontological staff should fossils be discovered by construction staff. The Paleontological WEAP training shall be fulfilled simultaneously with the overall WEAP training, or at the first preconstruction meeting at which a Qualified Paleontologist attends prior to ground disturbance. Printed literature (handouts) shall accompany the initial training. Following the initial WEAP training, all new workers and contractors must be trained prior to conducting ground disturbance work. 					

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 Paleontological Monitoring. Paleontological monitoring shall be conducted during any ground disturbing construction activities (i.e., grading, trenching, foundation work) in previously undisturbed (i.e., intact) Pleistocene alluvial fan and fluvial deposits (Qpaf), as well as ground disturbance exceeding depths of five feet within project areas mapped as Quaternary young (late to middle Holocene) alluvial and fluvial deposits (Qhaf)). Paleontological monitoring shall be conducted by a qualified paleontological monitor, who is defined as an individual who has experience with collection and salvage of paleontological resources and meets the minimum standards of the SVP (2010) for a Paleontological Resources Monitor. The duration and timing of the monitoring will be determined by the Qualified Paleontologist and the location and extent of proposed ground disturbance. If the Qualified Paleontologist determines that full-time monitoring is no longer warranted, based on the specific geologic conditions at the surface or at depth, he/she may recommend that monitoring be reduced to periodic spotchecking or cease entirely. Paleontological monitoring is not required for ground-disturbing activities that impact previously disturbed sediments (e.g., artificial fill) only. Fossil Discoveries. In the event of a fossil discovery by the paleontological monitor or construction personnel, all work in the immediate vicinity of the find shall cease. A Qualified Paleontologist shall evaluate the find before restarting construction activity in the area. If it is determined that the fossil(s) is (are) scientifically 					
 significant, the Qualified Paleontologist shall complete the following conditions to mitigate impacts to significant fossil resources: a. Salvage of Fossils. If fossils are discovered, all work in the immediate vicinity shall be halted to allow the paleontological monitor, and/or lead paleontologist to evaluate the discovery and determine if the fossil may 					

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 be considered significant. If the fossils are determined to be potentially significant, the qualified paleontologist (or paleontological monitor) shall recover them following standard field procedures for collecting paleontological as outlined in the PRMMP prepared for the project. Typically, fossils can be safely salvaged quickly by a single paleontologist and not disrupt construction activity. In some cases, larger fossils (such as complete skeletons or large mammal fossils) require more extensive excavation and longer salvage periods. In this case the paleontologist shall have the authority to temporarily direct, divert or halt construction activity to ensure that the fossil(s) can be removed in a safe and timely manner. If fossils are discovered, the Qualified Paleontologist (or Paleontological Monitor) shall recover them as specified in the project's PRMMP. b. Preparation and Curation of Recovered Fossils. Once salvaged, significant fossils shall be identified to the lowest possible taxonomic level, prepared to a curation-ready condition, and curated in a scientific institution with a permanent paleontological collection (such as the UCMP), along with all pertinent field notes, photos, data, and maps. Fossils of undetermined significance at the time of collection 					
may also warrant curation at the discretion of the Qualified Paleontologist.					
5. Final Paleontological Mitigation Report. Upon completion of ground disturbing activity (and curation of fossils if necessary) the Qualified Paleontologist shall prepare a final mitigation and monitoring report outlining the results of the mitigation and monitoring program. The report should include discussion of the location, duration and methods of the monitoring, stratigraphic sections, any recovered fossils, and the scientific significance of those fossils, and where fossils were curated. The report shall be submitted to the Department of Planning and					

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Development at the City of Berkeley. If the monitoring efforts produced fossils, then a copy of the report shall also be submitted to the designated museum repository.					
Greenhouse Gas Emissions					
GHG-1: Renewable Electricity Resources					
 Applicants for future development allowed under the proposed project shall prepare and implement a Greenhouse Gas Reduction Program (GGRP) that includes on-site GHG reduction measures to reduce the project's total remaining GHG emissions to 1.2 MT of CO2e per service person per year or less (a total of approximately 1,027 MT of CO2e per year). Potential options include, but would not be limited to: Supply 100 percent of electricity from renewable energy resources. Current options include opting into EBCE's Renewable 100, PG&E's Solar Choice, or PG&E's Regional Renewable Choice. Install additional electric vehicle charging stations beyond those required under BMC Chapter 19.37 within proposed parking areas. Implement a transportation demand program that includes measures beyond those required City of Berkeley Transportation Demand Management (TDM) requirements. Program measures may include priority parking spaces for carpools, electric rideshare vehicles for residents and employees, and a bicycle sharing program. Comply with BMC Chapter 12.80 prohibiting the installation of natural gas infrastructure in newly constructed buildings. Use electric-powered construction equipment. 	Project applicants shall prepare and implement a GHG Reduction Program. Project applicants shall obtain review and approval of the report from the City of Berkeley.	Verify GHG Reduction Program has been prepared and implemented	During project review	City of Berkeley Department of Planning & Development, Applicants for future development	

Mitigation Monitoring and Reporting Program

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HAZ-1: Property Assessment – Phase I and II ESAs					
Prior to issuance of a grading permit, the project applicant will retain a qualified environmental professional (EP), as defined by ASTM E-1527 to prepare a project specific Phase I ESA in accordance with standard ASTM methodologies, to assess the land use history of the property that will be developed. The determination of specific areas that require a Phase II ESA (i.e., soil, groundwater, soil vapor subsurface investigations) will be evaluated by the project applicant after the site-specific Phase I ESAs have been completed. The Phase II ESA will be completed prior to construction and will be based on the results of the Phase I ESA. Specifically, if the Phase I ESAs identify recognized environmental conditions or potential concern areas, the project applicant will retain a qualified environmental consultant, California Professional Geologist (PG) or California Professional Engineer (PE), to prepare a Phase II ESA of the project site that will be developed, to determine whether the soil, groundwater, and/or soil vapor has been impacted at concentrations exceeding regulatory screening levels for commercial/industrial land uses. As part of the Phase II ESA, the qualified environmental consultant will screen the analytical results against the San Francisco Regional Water Quality Control Board environmental screening levels (ESL). These ESLs are risk- based screening levels for direct exposure of a construction worker under various depth and land use scenarios. The lead agency will review and approve the Phase I ESA prior to demolition and grading (construction). If the Phase II ESA for the development site indicates that contaminants are detected in the subsurface at the project site, the project applicant will take appropriate steps to protect site workers and the public. This may include the	Project applicant will retain a qualified EP to prepare a Phase I ESA. Based on the results, project applicants will retain a qualified EP to prepare a Phase II ESA and based on the results, implement measures to protect the public and workers.	Review Phase I and Phase II ESAs	Prior to issuance of building or engineering permits	City of Berkeley Department of Planning and Development	

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preparation of a Soil Management Plan for Impacted Soils (see Mitigation Measure HAZ-2) prior to project construction. If the Phase II ESA for the contaminant site indicates that contaminants are present at concentrations exceeding hazardous waste screening thresholds for contaminants in soil and/or groundwater (California Code of Regulations [CCR] Title 22, Section 66261.24 Characteristics of Toxicity), the project applicant will take appropriate steps to protect site workers and the public. This may include the completion of remediation (see Mitigation Measure HAZ-3) at the project site prior to onsite construction.					
HAZ-2: Soil Management Plan for Impacted Soils					
 If impacted soils or other impacted wastes are present at the project site, the project applicant will retain a qualified environmental consultant (PG or PE), to prepare a Soil Management Plan (SMP) prior to construction. The SMP, or equivalent document, will be prepared to address onsite handling and management of impacted soils or other impacted wastes, and reduce hazards to construction workers and offsite receptors during construction. The plan must establish remedial measures and/or soil management practices to ensure construction worker safety, the health of future workers and visitors, and the off-site migration of contaminants from the site. These measures and practices may include, but are not limited to: Stockpile management including stormwater pollution prevention and the installation of BMPs Proper disposal procedures of contaminated materials Monitoring and reporting A health and safety plan for contractors working at the site that addresses the safety and health hazards of each phase of site construction activities with the requirements and procedures for employee protection The health and safety plan will also outline proper soil handling procedures and health and safety requirements 	Project applicants shall retain a qualified consultant to prepare a SMP. Project applicants shall obtain review and approval of the report from the City of Berkeley.	Review and approve updated SGMP and review all demolition, grading, and building permits to ensure compliance	Prior to issuance of building or engineering permits	City of Berkeley Department of Planning and Development	

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to minimize worker and public exposure to hazardous materials during construction. The City of Berkeley will review and approve the development site Soil Management Plan for Impacted Soils prior to issuance of a grading permit.					
HAZ-3: Remediation					
If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil (California Code of Regulations [CCR] Title 22, Section 66261.24), the project applicant will retain a qualified environmental consultant (PG or PE), to conduct additional analytical testing and recommend soil disposal recommendations, or consider other remedial engineering controls, as necessary. The qualified environmental consultant will utilize the development site analytical results for waste characterization purposes prior to offsite transportation or disposal of potentially impacted soils or other impacted wastes. The qualified environmental consultant will provide disposal recommendations and arrange for proper disposal of the waste soils or other impacted wastes (as necessary), and/or provide recommendations for remedial engineering controls, if appropriate. The project applicant will review and approve the disposal recommendations prior to transportation of waste soils offsite, and review and approve remedial engineering controls, prior to construction. Remediation of impacted soils and/or implementation of remedial engineering controls, prior to construction.	If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil, project applicant shall retain a qualified environmental consultant (PG or PE), conduct additional analytical testing, and implement soil disposal recommendations and other remedial engineering controls, as necessary. Project applicant shall obtain review and approval of the controls from the City of Berkeley.	If soil present within the construction envelope at the development site contains chemicals at concentrations exceeding hazardous waste screening thresholds for contaminants in soil, verify a qualified environmental consultant (PG or PE) has conducted additional analytical testing and recommend soil disposal recommendations, or consider other remedial engineering controls, as necessary.	Prior to issuance of grading permit	City of Berkeley Department of Planning and Development	

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transportation of waste soils offsite and review and approve remedial engineering controls, prior to issuance of a grading permit.					
Noise					
N-1: Foundation Pile Noise and Vibration Reduction Measurement	ures				
 The City shall require the construction contractor at individual future developments on the project sites to implement one of the following measures to minimize noise and vibration from the installation of pile foundations: Use of an impact or sonic pile driver shall not occur; or Use of drilled piles only with temporary noise barriers and/or blankets with a minimum height of 10 feet shall be constructed along the southern project site boundary. The temporary noise barriers and/or blankets may be constructed of material with a minimum weight of two pounds per square foot with no gaps or perforations. Temporary noise barriers and/or blankets may be constructed of, but not limited to, 5/8-inch plywood, 5/8-inch oriented strand board, and hay bales; or If an alternative method for foundation piles is proposed other than drilled piles (e.g., micro piles), the method shall be reviewed by a qualified acoustician to ensure that noise and vibration levels do not exceed the City's noise standards and applicable Caltrans vibration criteria for human annoyance. The analysis shall be performed prior to project approval from the City. 	Project applicants shall implement one of two options to minimize noise and vibration from the installation of pile foundations. Project applicant shall obtain review and approval from the City of Berkeley.	Verify that construction contractor is implementing one of two options to minimize noise and vibration from the installation of pile foundations.	Prior to issuance of grading permit, periodically during construction	City of Berkeley Department of Planning and Development.	

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N-2: HVAC Noise Reduction Measures					
Prior to the issuance of building permits, applicants for development projects on the project sites shall retain a qualified acoustical consultant to review the type, location, and design of heating, ventilation, and cooling (HVAC) equipment. The acoustical consultant shall determine specific noise reduction measures as necessary to comply with the City's daytime and nighttime exterior noise standards in Section 13.40.050 of the Berkeley Municipal Code at properties in the R-1, R-2, and C-SA zones. Noise reduction measures could include, but are not limited to, selecting HVAC equipment that emits low noise levels, locating HVAC equipment as far from off-site sensitive receptors as possible, and installing equipment enclosures. The City's Planning and Development Department shall review the type, location, and design of HVAC equipment in site plans to verify that the project has incorporated recommended noise reduction measures.	Project applicants shall retain a qualified acoustical consultant to review the HVAC equipment. Project applicants shall implement measures recommended by consultant. Project applicants shall obtain review and approval from the City of Berkeley.	Verify a qualified acoustical consultant has reviewed the type, location, and design of HVAC equipment and that noise reduction measures have been implemented.	Prior to issuance of building permits.	City of Berkeley Department of Planning and Development.	
N-3: Trash Hauling Noise Reduction Measures					
Prior to the issuance of building permits, applicants for development projects on the project sites shall retain a qualified acoustical consultant to review the location and design of proposed loading areas. The acoustical consultant shall recommend measures as necessary to ensure that trash hauling noise at loading areas does not exceed the City's exterior noise standards in Section 13.40.050 of the Berkeley Municipal Code at neighboring properties. This includes compliance with noise standards that may not be exceeded for any period of time and for more than one minute in a given hour. Noise reduction measures could include, but are not limited to, locating loading areas as far as possible from off-site sensitive receptors, shielding loading areas to block the line of sight to sensitive receptors, and installing a damping treatment on dumpsters. The City's Planning and Development Department shall review the	Project applicants shall retain a qualified acoustical consultant to review the loading areas. Project applicants shall implement measures recommended by consultant. Project applicants shall obtain review and approval from the City of Berkeley	Verify the qualified acoustical consultant has reviewed the location and design of proposed loading areas measures to reduce trash hauling noise have been implemented.	Prior to issuance of building permits.	City of Berkeley Department of Planning and Development.	

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layout and design of loading areas in site plans to verify that the project has incorporated recommended noise reduction measures.					