



Public Works Department

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November 21, 2017

Val Menotti
Chief Planning and Development Officer
San Francisco Bay Area Rapid Transit District
300 Lakeside Drive, P.O. Box 12688
Oakland, CA 94604-2688

Subject: BART/City of Fremont Letter of Intent Regarding Development of the Irvington BART Station

Dear Mr. Menotti,

The purpose of this Letter of Intent is to memorialize certain mutual understandings between representatives of the City of Fremont (“City”) and the San Francisco Bay Area Rapid Transit District (“BART”) (collectively, the “Parties”) relating to the development of the Irvington BART Station in Fremont (the “Irvington Station” or “Station”) and more specifically, the administration of the Planning Phase that includes updates to the Station Site Plan, creation of a Station Area Plan, and California Environmental Quality Act (CEQA) compliance (“Planning Phase”).

The Irvington Station was fully evaluated in the Warm Springs BART Extension (WSX) Supplemental Environmental Impact Report (“SEIR”) and was part of the WSX Project as adopted by the BART Board of Directors (“BART Board”) in 2003. However, in the certified WSX SEIR and adopted WSX Project, the Irvington Station was identified as an optional station due to lack of funding to construct the Station at the same time as the rest of the WSX Project. Since that time, construction of the WSX Project has been completed and the WSX went into service on March 25, 2017. Funding for the Irvington Station was included in the Expenditure Plan for the successful 2014 Alameda County Transportation Sales Tax Measure (Measure BB). The Expenditure Plan includes \$120 million for the Irvington BART Station.

To date, \$100,000 of the \$120 million has been allocated to complete a Scoping Report for the Project and an additional \$2.66 million has been allocated for completion of the Planning Phase. The City sponsored the scoping process and cooperated with BART to complete the scoping effort. As part of the scoping process, the Parties identified an immediate need to evaluate the Irvington Station Project to consider possible design updates, account for numerous regulatory and other changes that have occurred since the SEIR, including current policies since adopted by the BART Board, and to confirm the property required for the Irvington Station.

The Parties also agreed that BART’s System Expansion Policy applies to the Irvington Station; however, the policy directives and elements are largely addressed by Fremont’s adopted General Plan (2011) and current zoning. The City intends to prepare a Station Area Plan for the Irvington



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Station area to facilitate implementation of the General Plan. The purpose of the Station Area Plan is to develop a framework for future development to implement the City's vision of transforming the area around the future Irvington Station into a vibrant, pedestrian-friendly, transit-oriented neighborhood and ensure integration and connectivity between the Station, new development, and the existing neighborhood.

City, with BART's support, approached the Alameda County Transportation Commission ("ACTC") with a request for \$2.66 million of Measure BB funds to pay for any updates to the Station Site Plan to create a Station Area Plan, and to conduct any necessary CEQA review. On March 24, 2016, ACTC approved \$2.66 million of fiscal year 2016/2017 Measure BB funds for the Planning Phase, which includes the aforementioned activities.

With funding now available for the Planning Phase, the Parties wish to use this Letter of Intent to outline their respective intentions with respect to the Planning Phase and possible future phases of the Irvington Station Project. It is understood that this Letter of Intent is not a binding agreement and does not commit either BART or City to implement the Irvington Station Project or Station Area Plan. This Letter of Intent is a statement of the parties' intent and mutual understandings with respect to administration of the Planning Phase. In the event that the BART Board makes a discretionary decision to proceed with the Irvington Station Project following the CEQA review, this Letter of Intent is also intended to act as a guide and to direct the parties in connection with future actions and agreements, that could be subject to approval by the BART Board and Fremont Council, regarding the administration of the future Project phases of design, construction, operation, and maintenance of the Irvington Station. The parties shall work cooperatively, diligently, and in good faith to give effect to the understandings regarding the Planning Phase, and if the BART Board makes the decision to proceed with the Irvington Station Project, also regarding the future Project phases, all as set forth below.

1. BART will design, construct, own, maintain, and operate the Irvington BART Station per the then-current BART station design standards, policies and procedures. To comply with ACTC requirements, the City will remain the Project Sponsor through all phases of development of the Irvington Station and as such will be the lead, with BART support, on all Project funding matters with ACTC.
2. City, the Project's Sponsoring Agency, with assistance from BART, the Project's Implementing Agency, will be responsible for securing funding for the planning, property acquisition, design and construction of the Irvington Station; including all ACTC-eligible BART costs.
3. Should it become necessary to secure funding for Station construction in excess of what may be provided by ACTC, City will take the lead, with cooperation and assistance from BART, in identifying and attempting to secure the additional funding.

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4. City will seek, and BART will support, the City's immediate request for Measure BB funding from ACTC for property acquisition, preliminary engineering and design in order to have funds available to advance the Project design and acquire needed properties for the Station.
5. Should it be agreed by the Parties that state or federal funding should be sought for the Station, and/or should any further federal environmental review become necessary in connection with the design, construction and/or operation of the Irvington Station, BART will be responsible for performing all such work with the Federal Transit Administration ("FTA"), with assistance from the City, and City and BART will be responsible for identifying the funding for all such work. BART will be the applicant and recipient of any state or federal funding.
6. BART, and if necessary City, will execute all Project funding agreements after the Planning Phase with ACTC.
7. In close coordination with BART, City will lead the Planning Phase and related community outreach efforts to ensure the Station Site Plan and the Station Area Plan are developed in a manner that best integrates the Station Site Plan and Station Area Plan with the community. All BART station standards, policies, criteria and guidelines will be followed. It is expected that the City will formally approve the Station Area Plan and any necessary CEQA documentation, and BART will approve any needed Station design updates and any necessary CEQA documentation.
8. City has hired, with BART and ACTC input in selection, a consultant team that will complete the following elements of the Planning Phase: proposed Station Site Plan updates, Station Area Plan, and any necessary environmental review. For this Planning Phase, the City is acting as the overall Project sponsor and implementing agency in close coordination with BART.
9. The Station Site Plan and the Station Area Plan are separate Projects for purposes of CEQA. BART will be the lead agency for the Station CEQA review and City will be the lead agency for the Station Area Plan CEQA review.
10. The Parties desire to complete the Planning Phase as quickly as possible. The consultant team began the Project in April 2017 and provided a schedule that shows the updates to the Station Site Plan and the Station Area Plan will be completed in approximately one year with any necessary CEQA documentation completed by fall 2018.
11. As the Sponsoring Agency, City agrees that it will administer the consultant contract and pay all consultant invoices for the Planning Phase. BART will have the opportunity to review and comment on the consultant invoices. City will submit reimbursement requests to ACTC including allowable City and BART staff costs. BART will provide

City with the billing information required by ACTC for its costs and City and BART acknowledge ACTC's limitations on reimbursement of agency overhead costs. No other reimbursement will be provided by City to BART or BART to City.

12. The City will ensure BART's participation in and notification of all Planning Phase activities, including correspondence with consultants.
13. BART will review draft consultant deliverables for the Planning Phase, and will timely submit consolidated comments to the consultant and City for review.
14. After the Planning Phase, BART will be the Implementing Agency on future phases of the Irvington Station and as such will be the lead, with support from the City, on administering and implementing those future phases of the Project. As the Implementing Agency, BART will administer future Project contracts in compliance with ACTC requirements and be responsible for paying invoices and seeking reimbursement directly from the ACTC.
15. BART will lead and be responsible, with assistance from the City, for acquiring all property required to implement the Station.
16. Upon approval from its Council, City will convey the former All-Aboard Mini Storage property for the Station's west parking lot to BART, either in fee or perpetual easement at a mutually agreed upon timeframe. Upon approval by its Board, BART will convey to the City the Gallegos Winery site in fee and the Ford House to the City in a mutually agreed instrument at a mutually agreed upon timeframe.
17. BART will utilize a design/bid/build process for the Station design and construction. During the Station Design Phase, BART will provide City with 30%, 60%, 90% and 100% design documents and updated construction/Project cost estimates for review and comment. City will provide comments in a timely manner. BART shall endeavor to incorporate all City comments or explain why they cannot be included.
18. BART will use its best efforts to expeditiously complete the design and construction of the Station as quickly as is reasonable.
19. During the Station Design and Construction phases, BART will take the lead on community outreach efforts with assistance from City.
20. BART will own, operate and maintain the Irvington Station at BART's cost with the exception of the Gallegos Winery ruins which, subject to Council approval, the City will own, manage and maintain site safety, and the Ford House which, subject to Council approval, the City will manage and maintain site safety in a manner consistent with best

practices and the WSX Mitigation Monitoring and Reporting Plan (“MMRP”), Mitigation Measures CR-5, CR-6 and A-7(b).

21. BART agrees that the Irvington Station design and construction will include as part of the Project rehabilitation of the Ford House for adaptive reuse in a manner consistent with MMRP Mitigation Measure CR-6 and improvements to the Gallegos Winery site, including stabilizing the Winery wall, consistent with MMRP Mitigation Measures CR-5 and A-7(b). Rehabilitation of the Ford House and improvements to the Gallegos Winery site will be based upon plans agreed to by BART and City and costs will be Project costs.
22. City will study funding options, including establishment of an endowment fund, to pay for the future maintenance of the Gallegos Winery Site and Ford House, and BART will assist.
23. BART will cooperate with City in attempting to secure Measure BB and other ACTC (non-Irvington Station) funding for the elements of the East Bay Greenway Bicycle/Pedestrian Class 1 Trail that is expected to run through the Station Site, including a potential bicycle/pedestrian bridge over the Union Pacific Railroad and BART tracks. Assuming the funding is secured and the Trail Project is approved by the City Council, City staff will recommend that the City Council approve a future implementing agreement containing terms and conditions which provide for the following: BART must reserve any portions of the East Bay Greenway Bicycle/Pedestrian Class 1 Trail that might run through the Station site for future use for mass transit corridor purposes. While the East Bay Greenway Trail that may be located on BART property will be used for a bicycle and pedestrian pathway, BART must have access to its Station, and, for purposes of Section 4(f) of the Department of Transportation Act, codified at 49 U.S.C. § 303(c) (“DOT Act Section 4(f)”), the pathway must be designated by the City as not significant for recreational purposes, but instead as an integral part of the local transportation system. The City will not use or consent to the use of any grant funds pursuant to Section 6(f)(3) of the Land and Water Conservation Fund Act, codified at 54 U.S.C. §200305(f) (the “LWCF Act”), for any development or improvements on to East Bay Greenway Trail that might be located on BART property. In the event that the City undertakes any use, development or improvements for park purposes, and/or uses or consents to the use of any grant funds pursuant to the LWCF Act, on the East Bay Greenway Trail that might be located on BART property or on property adjacent to, the City assumes responsibility, and its sole cost, for compliance with the requirements of DOT Act Section 4(f), the LWCF Act, and the Public Park Preservation Act of 1971 (Cal. Pub. Res. Code § 5401 et seq.). Prior to execution of such an implementing agreement, nothing herein commits BART to allowing a portion of the East Bay Greenway Bicycle/Pedestrian Class 1 Trail to be located on BART property.

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24. The Parties agree that any disputes arising between the Parties as a result of this undertaking will be resolved at the Assistant City Manager/Deputy General Manager level or their designees.
25. Notwithstanding the foregoing, the City acknowledges that any Station design updates or other modifications proposed by the City to the Irvington Station Project as approved by the BART Board in 2003, and any related CEQA documentation, are subject to discretionary review and approval by the BART Board, and that the BART Board retains full discretion to reject any such design updates or modifications and CEQA documentation.

Finally, the Parties agree that they will negotiate any agreement(s) necessary in order to design, construct, operate and maintain the Irvington Station in good faith and consistent with the principles expressed in this Letter of Intent.

Sincerely,



Hans Larsen
Public Works Director
City of Fremont

APPROVED AS TO FORM:


Nellie Ancel
Senior Deputy City Attorney

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

APPROVED AS TO FORM:

ACCEPTED BY:



Val Menotti
Chief Planning and Development Officer

Date:

12.6.17



Mary E. Wilke
Office of General Counsel

cc: Robert Powers, BART

Paul Medved BART

Susan Poliwka, BART

Jim Pierson, City of Fremont