

Office of the City Manager

REVISED AGENDA MATERIAL for Supplemental Packet 1

Meeting Date: September 16, 2024

Item Number: 01

Item Description: Ashby BART Transit Oriented Development (TOD)

Submitted by: Jordan Klein, Director, Planning and Development Department

This communication includes the following supplemental and revised materials:

- Revises the staff report (page 6) and term sheet (Appendix E: Infrastructure Matrix; see page 36) to clarify that connectivity between the West Lot development and Adeline Street at Ashby Avenue is a high priority depending on project feasibility, rather than a project requirement.
- Adds Appendix G: Capacity Study, which was not available at time of original term sheet publication. See page 42-44.



Office of the City Manager

ACTION CALENDAR
September 16, 2024

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

RECOMMENDATION

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

SUMMARY

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

FISCAL IMPACTS OF RECOMMENDATION

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

CURRENT SITUATION AND ITS EFFECTS

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

A. Ashby BART Station Site

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

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

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

B. Framework for Community Benefits

The framework for community benefits, and other project requirements defined in the term sheet, reflect the Memorandum of Agreement (MOA) and the Joint Vision and Priorities for Transit-Oriented Development at the Ashby and North Berkeley BART Station Areas (JVP) adopted by City Council and the BART Board of Directors in June 2022 (**Attachment 2**) the Adeline Corridor Specific Plan¹, and input from "Equitable Black Berkeley" (EBB). EBB is an initiative spearheaded by the Mayor's Office, in

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

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

C. Key Elements of the Term Sheet

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

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

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

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

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

Elements of the term sheet are summarized below.

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

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

2. Project Requirements and Community Benefits.

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

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

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

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

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

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

⁴ 4/27/21 City Council Item #31: City Affordable Housing Funds: Ashby and North Berkeley BART Station Areas and Future Housing Funding Notices of Funding Availability (NOFA), Attachment 2, p.36 regarding estimate of City subsidy needed to exceed 35% affordable housing:

<https://berkeleyca.gov/sites/default/files/documents/2021-04-27%20Item%2031%20City%20Affordable%20Housing%20Funds%20%20Ashby%20and%20North%20Berkeley%20BART%20Station%20Areas%20and%20Future%20Housing%20Funding%20Notices%20of%20Funding%20Availabilit....pdf>

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

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

3. Public Infrastructure

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

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

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

4. Other Parameters

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

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

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

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

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

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

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

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

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

Next Steps

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

BACKGROUND

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

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

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

Ashby Station Infrastructure and Operations and Future Development

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

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

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

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

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

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

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

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

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

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

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

ALTERNATIVE ACTIONS CONSIDERED

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

CONTACT PERSON

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

Attachments:

1: Resolution

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

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

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

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

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

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

ASHBY BART TRANSIT-ORIENTED DEVELOPMENT (TOD)

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

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

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

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

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

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

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

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

Exhibit

A: Term Sheet for Ashby BART Transit-Oriented Development

TERM SHEET FOR ASHBY BART TRANSIT-ORIENTED DEVELOPMENT

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

RECITALS

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

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

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

PROPOSED TERMS AND CONDITIONS

I. Framework for Development at Ashby BART Station

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

B. Background and Scope of Term Sheet.

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

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

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

D. Real Estate Transaction Structure

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

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

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

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

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

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

F. City Funding

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

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

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

G. Developer Solicitation Process

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

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

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

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

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

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

II. Public Benefits and Project Requirements

A. Affordable & Market Rate Housing

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

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

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

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

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

B. Developer Contribution for Affordable Housing

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

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

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

C. Public Infrastructure

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Special Funding Mechanisms for Public Infrastructure

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

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

E. Other Design and Development Considerations

1. West Lot Civic Commercial Uses & Amenities.

- i. The West Lot development shall be required to include a minimum of 5,000 net rentable square feet of ground floor interior space for community-based organizations, non-profits, and/or small and minority-owned businesses, including the Berkeley Flea Market, with triple net lease rents less than or equal to 50% of fair market (triple net) rent during the term of the ground lease. Tenants for this space, other than the Berkeley Flea Market may be recommended by the City but are subject to the West Lot Developer's sole discretion.
- ii. The West Lot development may incorporate the public artwork by Mildred Howard that was recently commissioned by the City.

2. The Berkeley Flea Market. Following the completion of the Adeline Plaza Improvements (1B, 2A, and 3A), the South Plaza Extension (11), and the BART Terrace Improvements (9A and 9B), those areas shall be made available (consistent with Sections II.C.8.ii and II.C.9.i) as vending space for the Berkeley Flea Market on terms comparable to its current arrangement with BART, as adjusted for inflation, and potentially for other public markets and microenterprise businesses. The City may allow some portion of adjacent right-of-way to also be utilized to support the Berkeley Flea Market (and other public programming), such as for vendor parking at the curb on weekends. BART will not terminate its current arrangement with the Berkeley Flea Market nor increase its rent until the West Lot Developer requires possession of the West Lot for purposes of commencing construction. If, at that time, the Adeline Main Plaza (1B) is not yet completed, the City will assist the Berkeley Flea Market in identifying and securing a suitable alternate location.

3. Community Benefits Fund. The City intends to require that a portion of net project profit from the East Lot mixed income or market rate development parcels shall be allocated to create a reparative community benefits fund for South Berkeley residents,

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

F. Objective Design Standards

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

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

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

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

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

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

III. Other

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

(Signatures on following page)

CITY OF BERKELEY

PAUL BUDDENHAGEN
CITY MANAGER

JESSE ARREGUÍN
MAYOR

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

ROBERT M. POWERS
GENERAL MANAGER

LIST OF EXHIBITS

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

APPENDIX A: ASHBY PROJECT AERIAL



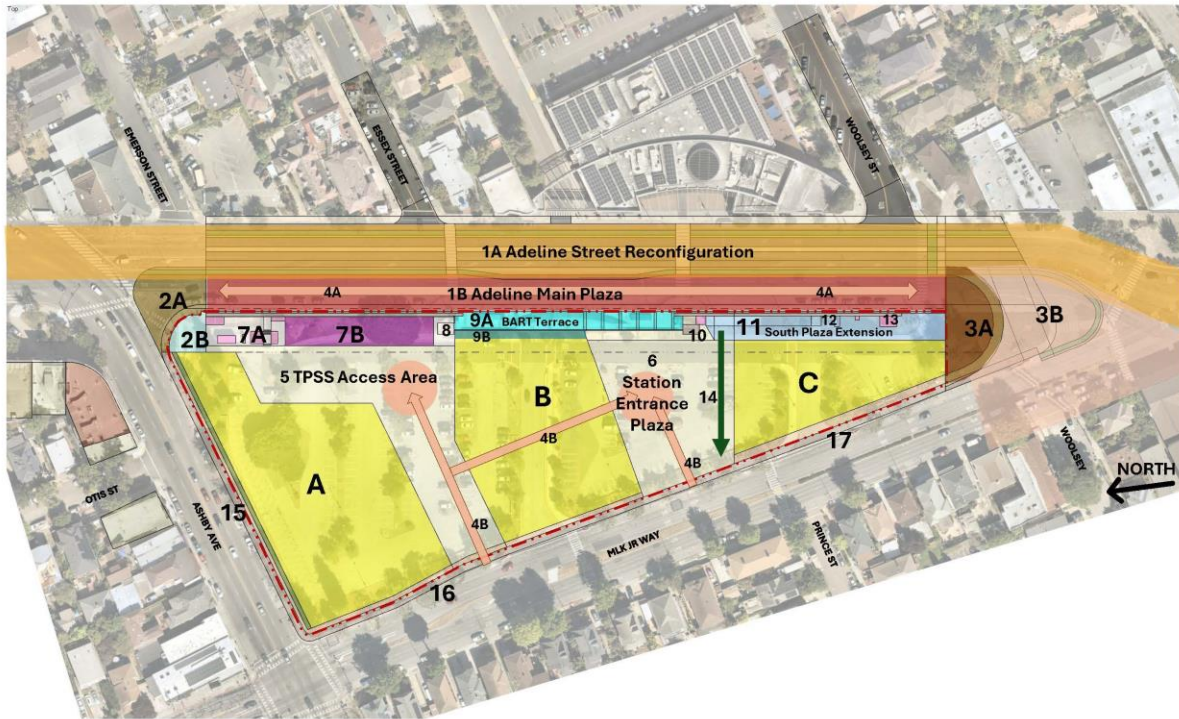
APPENDIX B: SCHEDULE

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

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

APPENDIX C: INFRASTRUCTURE MAP

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



Public Areas

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

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

Other Elements

- North Platform Egress Stair & BART Vents and TPSS Equipment
- TPSS Replacement Area
- North Plaza Stair (to be rebuilt)
- South Plaza Stair (to be rebuilt)
- ADA Pedestrian/Bike Connection/Ramp (new)**
- South Platform Egress Stair & BART
- Storage (access to be reconfigured)
- BART Vents (to be extended to/above plaza)
- Estimated BART Property Line
- Estimated Zone of Influence
- Development Areas**
- Required Emergency Access **, ****

- 7A
- 7B
- 8
- 10
- 14
- 12
- 13
- (A, B, C)
- 4B
- 4A

*Potential extension, not required, building could be built up to Existing BART Terrace

** Location and geometry flexible if all performance requirements are met

*** Funding for Adeline St Reconfiguration subject to identification of City financial resources to fund improvements; City has identified these improvements as a top priority for funding.

**** 4A refers only to that segment of 4 within the City's ROW; 4B refers only to that segment of 4 within BART's parcel.

APPENDIX D: ODS REQUIREMENTS

Requirements for Objective Design Standards on West Lot

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

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

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

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

Net Developable Area

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

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

ODS Capacity

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

APPENDIX E: INFRASTRUCTURE MATRIX

Map ID	Infrastructure Cost Category	Priority	Funding Sources	Responsibility in the Event of Funding Shortfall	Maintenance Responsibility
PUBLIC AREAS					
1A	Adeline Street Reconfiguration ***	Essential	Bond Funds/Alameda County/OBAG 4/Grants & Subsidies	City	City
1B, 4A	Adeline Main Plaza ***	Essential	Grants & Subsidies/IIG/AHSC/EIFD	City	City (CFD-funded)
2A	Ashby/Adeline Corner Plaza **, ***	Essential	Grants & Subsidies/IIG/AHSC	City	City (CFD-funded)
2B	Ashby/Adeline Corner Plaza Extension **	Essential -High	Developer Contribution/Grants & Subsidies/IIG/AHSC	Developer	City (CFD-funded)
9A	Existing BART Terrace	High	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	BART	BART
9B	BART Terrace Extension *	High	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	Developer	Developer
11	South Plaza Extension **	Essential	Developer Contribution/Grants & Subsidies/IIG/AHSC/EIFD	Developer	City (CFD-funded)
3A	MLK/Adeline/Woolsey Plaza **, ***	Medium	Grants & Subsidies/IIG/AHSC	City	City (CFD-funded)
3B	MLK/Adeline/Woolsey Intersection Redesign **, ***	High	Bond Funds/Alameda County/OBAG 4/Grants & Subsidies/IIG/AHSC/City's General Fund	City	City
15	Ashby Sidewalk Widening	Medium	Developer Contribution	Developer	City
16	MLK Sidewalk Widening (north)	Medium	Developer Contribution	Developer	City
17	MLK Sidewalk/Bikeway Widening (south)	Medium	Developer Contribution	Developer	City
5	TP55 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 & TP55 Equipment	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
7B	TP55 Replacement Area	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	BART
8	North Plaza Stair (to be rebuilt)	High	BART or Developer Contribution/Grants/Subsidies	Developer	BART
10	South Plaza Stair (to be rebuilt)	Essential	Developer Contribution/Grants/Subsidies	Developer	BART
14	ADA and Bike Ramps (new) **	Essential	Developer Contribution/Grants/Subsidies	Developer	Developer
12	South Platform Egress Stair + BART Storage (access to be reconfigured)	High	Developer Contribution/Grants/Subsidies	Developer	BART
13	BART Vents (to be extended above plazas)	High	Developer Contribution/Grants/Subsidies	Developer	BART
4B	Required Emergency Access + Turn Around **, ****	Essential	BART or Developer Contribution/Grants/Subsidies	BART/Developer	Developer
Notes:					
* Potential extension, not required if building is built up to Existing BART Terrace.					
** Location and geometry flexible if all performance requirements are met.					
*** Funding for Adeline St Reconfiguration subject to identification of City financial resources to fund improvements. City has identified these improvements as a top priority for funding.					
**** 4A refers only to that segment of 4 within the City's ROW; 4B refers only to that segment of 4 within BART's parcel.					

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

1. Air Quality - Diesel Particulate Matter Controls during Construction. All off-road construction equipment used for projects with construction lasting more than 2 months shall comply with one of the following measures:
 - A. The project applicant shall prepare a health risk assessment that demonstrates the project's on-site emissions of diesel particulate matter during construction will not exceed health risk screening criteria after a screening-level health risk assessment is conducted in accordance with current guidance from BAAQMD and OEHHA. The health risk assessment shall be submitted to the Land Use Planning Division for review and approval prior to the issuance of building permits; or
 - B. All construction equipment shall be equipped with Tier 2 or higher engines and the most effective Verified Diesel Emission Control Strategies (VDECS) available for the engine type (Tier 4 engines automatically meet this requirement) as certified by the California Air Resources Board (CARB). The equipment shall be properly maintained and tuned in accordance with manufacturer specifications.
 - C. In addition, a Construction Emissions Minimization Plan (Emissions Plan) shall be prepared that includes the following:
 - i. An equipment inventory summarizing the type of off-road equipment required for each phase of construction, including the equipment manufacturer, equipment identification number, engine model year, engine certification (tier rating), horsepower, and engine serial number. For all VDECS, the equipment inventory shall also include the technology type, serial number, make, model, manufacturer, CARB verification number level, and installation date.
 - ii. A Certification Statement that the Contractor agrees to comply fully with the Emissions Plan and acknowledges that a significant violation of the Emissions Plan shall constitute a material breach of contract. The Emissions Plan shall be submitted to the Public Works Department for review and approval prior to the issuance of building permits.
2. Archaeological Resources (Ongoing throughout demolition, grading, and/or construction). Pursuant to CEQA Guidelines section 15064.5(f), "provisions for historical or unique archaeological resources accidentally discovered during construction" should be instituted. Therefore:
 - A. In the event that any prehistoric or historic subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the project applicant and/or lead agency shall consult with a qualified archaeologist, historian or paleontologist to assess the significance of the find.

- B.** If any find is determined to be significant, representatives of the project proponent and/or lead agency and the qualified professional would meet to determine the appropriate avoidance measures or other appropriate measure, with the ultimate determination to be made by the City of Berkeley. All significant cultural materials recovered shall be subject to scientific analysis, professional museum curation, and/or a report prepared by the qualified professional according to current professional standards.
 - C.** In considering any suggested measure proposed by the qualified professional, the project applicant shall determine whether avoidance is necessary or feasible in light of factors such as the uniqueness of the find, project design, costs, and other considerations.
 - D.** If avoidance is unnecessary or infeasible, other appropriate measures (e.g., data recovery) shall be instituted. Work may proceed on other parts of the project site while mitigation measures for cultural resources is carried out.
 - E.** If significant materials are recovered, the qualified professional shall prepare a report on the findings for submittal to the Northwest Information Center.
3. Human Remains (Ongoing throughout demolition, grading, and/or construction). In the event that human skeletal remains are uncovered at the project site during ground-disturbing activities, all work shall immediately halt and the Alameda County Coroner shall be contacted to evaluate the remains, and following the procedures and protocols pursuant to Section 15064.5 (e)(1) of the CEQA Guidelines. If the County Coroner determines that the remains are Native American, the City shall contact the California Native American Heritage Commission (NAHC), pursuant to subdivision (c) of Section 7050.5 of the Health and Safety Code, and all excavation and site preparation activities shall cease within a 50-foot radius of the find until appropriate arrangements are made. If the agencies determine that avoidance is not feasible, then an alternative plan shall be prepared with specific steps and timeframe required to resume construction activities. Monitoring, data recovery, determination of significance and avoidance measures (if applicable) shall be completed expeditiously.
 4. Halt Work/Unanticipated Discovery of Tribal Cultural Resources. In the event that cultural resources of Native American origin are identified during construction, all work within 50 feet of the discovery shall be redirected. The project applicant and project construction contractor shall notify the City Planning Department within 24 hours. The City will again contact any tribes who have requested consultation under AB 52, as well as contact a qualified archaeologist, to evaluate the resources and situation and provide recommendations. If it is determined that the resource is a tribal cultural resource and thus significant under CEQA, a mitigation plan shall be prepared and implemented in accordance with State guidelines and in consultation with Native American groups. If the resource cannot be avoided, additional measures to avoid or reduce impacts to the resource and to address tribal concerns may be required.

5. **Construction Hours.** Construction activity shall be limited to between the hours of 8:00 AM and 6:00 PM on Monday through Friday, and between 9:00 AM and Noon on Saturday. No construction-related activity shall occur on Sunday or any Federal Holiday.
6. **Construction Noise Reduction Program.** The applicant shall develop a site-specific noise reduction program prepared by a qualified acoustical consultant to reduce construction noise impacts to the maximum extent feasible, subject to review and approval of the Zoning Officer. The noise reduction program shall include the time limits for construction listed above, as measures needed to ensure that construction complies with BMC Section 13.40.070, Prohibited Acts. The noise reduction program should include, but shall not be limited to, the following available controls to reduce construction noise levels as low as practical:
 - A. Construction equipment should be well maintained and used judiciously to be as quiet as practical.
 - B. Equip all internal combustion engine-driven equipment with mufflers, which are in good condition and appropriate for the equipment.
 - C. Utilize “quiet” models of air compressors and other stationary noise sources where technology exists. Select hydraulically or electrically powered equipment and avoid pneumatically powered equipment where feasible.
 - D. Locate stationary noise-generating equipment as far as possible from sensitive receptors when adjoining construction sites. Construct temporary noise barriers or partial enclosures to acoustically shield such equipment where feasible.
 - E. Prohibit unnecessary idling of internal combustion engines.
 - F. If impact pile driving is required, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
 - G. Construct solid plywood fences around construction sites adjacent to operational business, residences or other noise-sensitive land uses where the noise control plan analysis determines that a barrier would be effective at reducing noise.
 - H. Erect temporary noise control blanket barriers, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
 - I. Route construction related traffic along major roadways and away from sensitive receptors where feasible.

7. Construction Noise Management. Public Notice Required. At least two weeks prior to initiating any construction activities at the site, the applicant shall provide notice to businesses and residents within 500 feet of the project site. This notice shall at a minimum provide the following: (1) project description, (2) description of construction activities during extended work hours and reason for extended hours, (3) daily construction schedule (i.e., time of day) and expected duration (number of months), (4) the name and phone number of the Project Liaison for the project that is responsible for responding to any local complaints, and (5) that construction work is about to commence. The liaison would determine the cause of all construction-related complaints (e.g., starting too early, bad muffler, worker parking, etc.) and institute reasonable measures to correct the problem. A copy of such notice and methodology for distributing the notice shall be provided in advance to the City for review and approval.
8. Damage Due to Construction Vibration. The project applicant shall submit screening level analysis prior to, or concurrent with demolition building permit. If a screening level analysis shows that the project has the potential to result in damage to structures, a structural engineer or other appropriate professional shall be retained to prepare a vibration impact assessment (assessment). The assessment shall consider project specific information such as the composition of the structures, location of the various types of equipment used during each phase of the project, as well as the soil characteristics in the project area, in order to determine whether project construction may cause damage to any of the structures identified as potentially impacted in the screening level analysis. If the assessment finds that the project may cause damage to nearby structures, the structural engineer or other appropriate professional shall recommend design means and methods of construction that to avoid the potential damage, if feasible. The assessment and its recommendations shall be reviewed and approved by the Building and Safety Division and the Zoning Officer. If there are no feasible design means or methods to eliminate the potential for damage, the structural engineer or other appropriate professional shall undertake study of existing conditions (study) of any structures (or, in case of large buildings, of the portions of the structures) that may experience damage.

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

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

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

APPENDIX G: CAPACITY STUDY

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 transit-oriented 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 Appendix D. ODS meeting the provisions of Appendix D 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

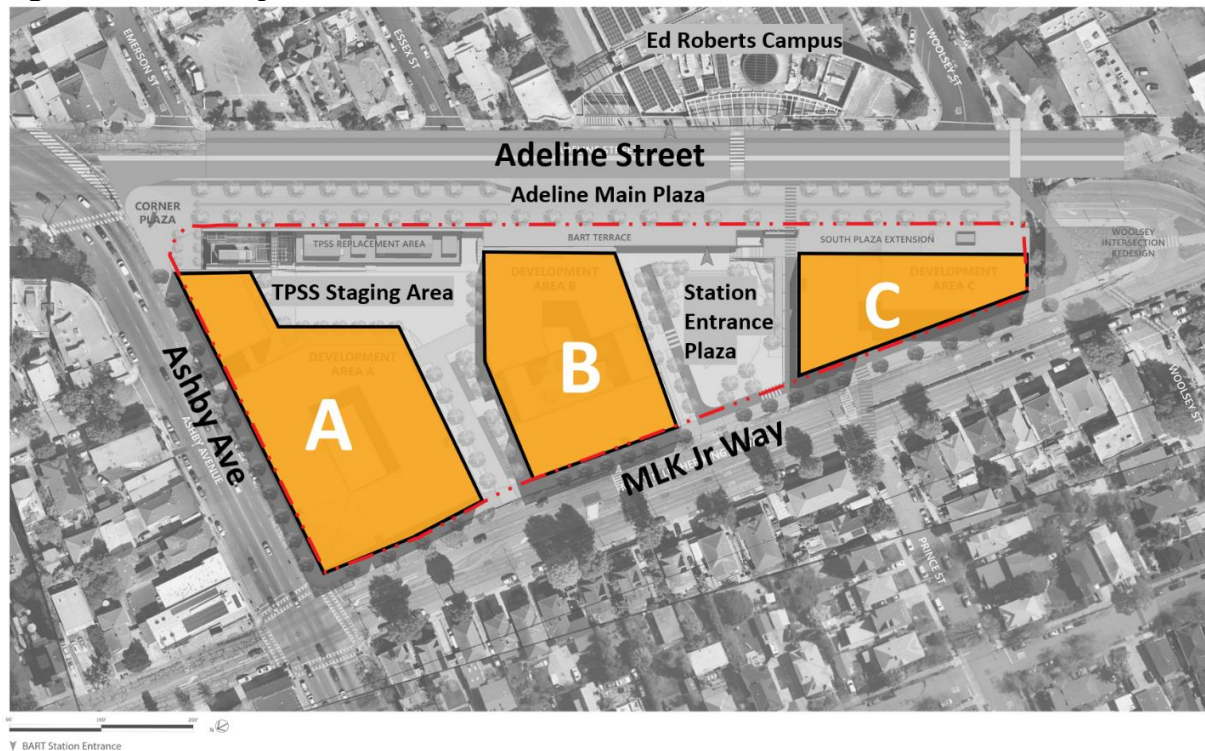


Table 1. Net Developable Area

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 Finding” 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 objective design standards, 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 setback 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 Appendix D, 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.

Table 2. Estimated Development Capacity

	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