

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND

2011 JUL 14 PM 6:51

## CITY OF OAKLAND

### Agenda Report

TO: Office of the City Administrator  
ATTN: P. Lamont Ewell, Interim City Administrator  
FROM: Community and Economic Development Agency  
DATE: July 19, 2011  
RE: A Supplemental Report Providing Executed Copies Of A Final Map (Phase 1) For Tract No. 8047 and A Resolution Approving The Final Map And Subdivision Improvement Agreement For Development Of MacArthur Transit Village Project

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#### SUMMARY

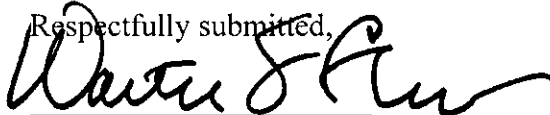
At the time the agenda report was submitted for printing, BART and MacArthur Transit Community Partners LLC had not yet signed the Final Map nor submitted the bonds and insurance required by the Subdivision Improvement Agreement for constructing public infrastructure improvements. The City Engineer has now received all required documents.

Moreover, a number of technical corrections to the map and resolution have been made clarifying (a) that BART is responsible for maintaining the BART access Road (Lot G); (b) that the Developer and future homeowner's association are responsible for maintaining the Internal Road and easements in abandoned Apgar Street; (c) various private cross-easements on abandoned Apgar Street, so that the neighboring property owners have mutual access to their parcels from a common private driveway and that the Developer is the maintainer of these easements; and (d) the ownership of the properties adjoining abandoned Apgar Street.

#### ACTION REQUESTED OF THE CITY COUNCIL

Staff recommends that the Council adopt the proposed resolution approving the Final Map and the Subdivision Improvement Agreement

Respectfully submitted,

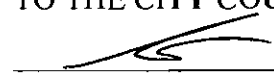


Walter S. Cohen, Director  
Community and Economic Development Agency

Prepared by:

Raymond M. Derania  
City Engineer  
Building Services Division

APPROVED AND FORWARDED  
TO THE CITY COUNCIL

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Office of the City Administrator

Item No. \_\_\_\_\_  
City Council  
July 19, 2011

**OAKLAND CITY COUNCIL**

**Resolution No. \_\_\_\_\_ C.M.S.**

**RESOLUTION CONDITIONALLY APPROVING A FINAL MAP (PHASE 1) FOR TRACT No. 8047, THE VACATION (ABANDONMENT) OF APGAR STREET, THE DEDICATIONS OF PUBLIC EASEMENTS AND RIGHT OF WAY, AND A SUBDIVISION IMPROVEMENT AGREEMENT WITH MACARTHUR TRANSIT COMMUNITY PARTNERS FOR DEFERRED CONSTRUCTION OF PUBLIC INFRASTRUCTURE IMPROVEMENTS, ALL ASSOCIATED WITH DEVELOPMENT OF THE MACARTHUR TRANSIT VILLAGE PROJECT TO CONSTRUCT A PARKING GARAGE FOR THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART) AND AN AFFORDABLE HOUSING MULTIPLE FAMILY BUILDING**

**WHEREAS**, the San Francisco Bay Area Rapid Transit District (BART), a regional transit district established pursuant to California Public Utilities Code section 28500 et seq., is the owner and subdivider of five (5) contiguous parcels identified by the Alameda County Clerk-Recorder as Tract No. 8047, and by the Alameda County Assessor and the City of Oakland as follows:

012-0967-009-00 - 526 West MacArthur Blvd	012-0968-055-01 - 516 Apgar Street
012-0967-010-01 - 544 West MacArthur Blvd	012-0967-049-01 - 515 Apgar Street
012-0969-053-03 - 532 39th Street	

which comprise, with additional adjoining parcels, the MacArthur Transit Village residential housing project and site; and

**WHEREAS**, BART has previously entered into an agreement with MacArthur Transit Community Partners, LLC (MTCP), a California limited liability company (no. 200419810042), to develop said parcels for a new BART parking garage, multiple family housing, and associated publicly and privately maintained infrastructure; and

**WHEREAS**, BART and MTCP have previously applied to the City of Oakland for a vesting tentative map (TTM 8047) to voluntarily merge said parcels and subdivide the platted land into two (2) developable lots and two (2) additional lots for access roads maintained by BART and by MTCP and a future MacArthur Transit Village Homeowners Association and the owners of future development phases; and

**WHEREAS**, the Council of the City of Oakland adopted the "Development Agreement By And Between City of Oakland And MacArthur Transit Community Partners, LLC Regarding The Property And Project Known As "MacArthur Transit Village" on July 21, 2009; and

**WHEREAS**, the City Planning Commission previously certified the MacArthur Transit Village EIR (ER 06004), adopted an addendum to said EIR determining that no further environmental review was required and also approved said vesting tentative map, upon which the Phase I Final Map for Tract No. 8047 is based and the Stage I Final Development Plan (PUDF 10097), which includes construction of the BART parking garage on March 16, 2011; and

**WHEREAS**, the City Planning Commission adopted an addendum and also approved the Final Development Plan (PUDF 10304), which includes construction of an affordable housing multiple family building, on April 6, 2011; and

**WHEREAS**, pursuant to Resolution No. 83292 C.M.S., the City Council approved the Stage I Final Development Plan (PUDF 10097) and the Phase I Final Map for Tract No. 8047, which includes construction of the BART parking garage, and affirmed the Planning Commission's CEQA determination that no further environmental review was required on April 5, 2011; and

**WHEREAS**, pursuant to Resolution No. 83365 C.M.S., the City Council approved the Stage II Final Development Plan (PUDF 10304), which includes construction of an affordable housing multiple family building, and affirmed the Planning Commission's CEQA determination that no further environmental review was required on May 17, 2011; and

**WHEREAS**, said Final Map proposes:

- the establishment of
  - one (1) lot, designated thereon as Lot D, for construction of an affordable housing multiple family building;
  - one (1) lot, designated thereon as Lot E, for construction of a parking garage for BART patrons and transit village residents;
  - one (1) lot, designated thereon as Lot F, for construction of an internal access road which will be maintained by MTCP and a future MacArthur Transit Village homeowners association and the owners of future development phases;
  - one (1) lot, designated thereon as Lot G, for an existing BART access road;
- the irrevocable dedication to the City without valuable consideration of
  - public utility, public access, and emergency vehicle easements which will be maintained by MTCP and a future MacArthur Transit Village homeowners association and the owners of future development phases;
  - real property owned by BART to extend 39th Street to its intersection with 40th Street;
- the vacation without valuable consideration of
  - equal parts of a portion of the Apgar Street public right-of-way to the abutting property owners of Assessor parcel no. 012-0968-003-01 (3869 Telegraph Avenue) and Assessor parcel no. 012-0697-001-00 (3847 Telegraph Avenue);

- o remaining remnant portions of the Apgar Street and 39th Street public rights-of-way within the MacArthur Transit Village project site to BART; and

**WHEREAS**, the City Engineer of the City of Oakland has determined that

- the Phase 1 Final Map for Tract No. 8047, attached hereto as *Exhibit A*, is substantially the same as said vesting tentative map approved by the Planning Commission, upon which said Final Map is based; and
- the Phase 1 Final Map for Tract No. 8047 complies in all manners with the provisions of the California Government Code (Section 66400, et seq. - Subdivision Map Act), and the City of Oakland's local ordinance (Municipal Code Title 16 - Subdivisions); and

**WHEREAS**, the City Engineer has further determined that the Phase 1 Final Map for Tract No. 8047 is technically correct and accurately delineates the proposed metes and bounds of the property boundaries separating said four (4) subdivided lots and the on-site public service easements and public right-of-way, the limits of which have been established by field survey and can be re-established from the monuments, property corners, radii, bearings, and distances shown on said Final Map; and

**WHEREAS**, MTCP has employed a competent and qualified design professional, who is licensed by the State of California to practice civil engineering, to prepare plans and specifications for the construction of required surface and subsurface public infrastructure improvements within the on-site public right-of-way and easements and the adjoining rights-of-way along West MacArthur Boulevard, Telegraph Avenue, 39th Street, 40th Street, and Apgar Street; and

**WHEREAS**, the City Engineer has approved infrastructure permit no. PX1100070 and the associated plans and specifications for construction of said required public infrastructure improvements, included by reference with *Exhibit B*, attached hereto; and

**WHEREAS**, pursuant to Government Code section 66462 and Municipal Code section 16.20.100, as a condition precedent to approval of the Phase 1 Final Map for Tract No. 8047, MTCP has executed a Subdivision Improvement Agreement (SIA), attached hereto as *Exhibit C*, assuring the timely construction, unconditional warranty, and prescribed maintenance of all required public infrastructure improvements; and

**WHEREAS**, pursuant to Government Code section 66499 et seq. and Municipal Code section 16.20.100, MTCP has deposited surety bonds, included by reference with *Exhibit C*, and in sufficient amounts, as estimated by the City Engineer, to secure its performance under *Exhibit B*; and

**WHEREAS**, the City of Oakland has reviewed and considered documentation relevant to the proposed subdivision and the EIR and hereby finds and determines that there are no changes to the project considered in the EIR, or circumstances under which it will be undertaken, or new information of substantial importance that requires preparation of a subsequent or supplemental

EIR, as specified in CEQA and the State EIR Guidelines, including without limitation, Public Resources Code Section 2116 and State EIR Guidelines Section 15162 and 15163; and the requirements of the CEQA and the CEQA Guidelines have been satisfied; now, therefore, be it

**RESOLVED:** That this Resolution complies with CEQA; and be it

**FURTHER RESOLVED:** That the Phase 1 Final Map for Tract No. 8047 is hereby conditionally approved; and be it

**FURTHER RESOLVED:** That the vacation without valuable consideration of equal parts of a portion of Apgar Street to the abutting property owners and the reservation of public service easements thereon, as delineated on said Final Map, is hereby conditionally approved; and be it

**FURTHER RESOLVED:** That the dedication of public service easements to the City of Oakland on said Lots D, E, F, and G, as delineated on said Final Map, is hereby conditionally accepted; and be it

**FURTHER RESOLVED:** That the dedication without valuable consideration to the City of Oakland of real property owned by BART for use as public right-of-way to extend 39th Street to its intersection with 40th Street, as delineated on said Final Map, is hereby conditionally accepted; and be it

**FURTHER RESOLVED:** That the approval of the vacations of said rights-of-way and the acceptance of the dedications of said right-of way and easements, and the reservations of said easements are conditioned upon completion to the satisfaction of the City Engineer of said public infrastructure improvements, as set forth in said SIA; and be it

**FURTHER RESOLVED:** That failure by MTCP to comply in all aspects with said SIA shall void the approval of the Phase 1 Final Map of Tract No. 8047 and void the approval of said vacations and void the acceptance of said dedications and void the set-aside of said reservations and shall revert said five (5) originally platted parcels comprising Tract No. 8047 to acreage; and be it

**FURTHER RESOLVED:** That MTCP and a future MacArthur Transit Village homeowners association s and the owners of future development phases shall be responsible in perpetuity for the installation, maintenance, repair, and removal of all infrastructure improvements within said public service easements as delineated on the Phase 1 Final Map for Tract No. 8047, including but not limited to roadway pavement, sidewalks, curbs, gutters, trees and landscaping, irrigation, electrical lighting, sanitary sewer piping, storm water piping, and potable water piping, but excepting from said responsibility infrastructure improvements that are otherwise regulated by California Public Utilities Commission or customarily maintained by the City of Oakland; and be it

**FURTHER RESOLVED:** That by the acceptance of said vacated sections of the public rights-of-way of Apgar Street and 39th Street, MTCP and the property owners of Assessor parcel no. 012-0968-003-01 (3869 Telegraph Avenue) and Assessor parcel no. 012-0697-001-00 (3847

Telegraph Avenue), collectively referred to as the Parties, acknowledge each of and agree to all of the following:

- a. the Parties, jointly and severally, shall defend, hold harmless, and indemnify the City of Oakland and its officials, officers, employees, agents, representatives, and volunteers from any claim, demand, lawsuit and judgment for damages of any kind and nature arising out of said vacation and regardless of responsibility for negligence;
- b. the City of Oakland makes no representations or warranties as to the conditions beneath said vacated sections of the public right-of-way; and that by accepting these vacations, the Parties agree that they will use the vacated area at their own risk;
- c. the City of Oakland is unaware of the existence of any hazardous substances beneath said vacated area, and the Parties hereby waive and fully release and forever discharge the City of Oakland and its officers, officials, representatives, employees, agents, and volunteers from any and all claims, demands, liabilities, damages, actions, causes of action, penalties, fines, liens, judgments, costs, or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise out of or in any way connected with the physical condition, or required remediation of the excavation area or any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), the Clean Water Act (33 U.S.C. Section 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Waste Control Law (California Health and Safety Code Sections 25100 et seq.), the Porter-Cologne Water Quality Control Act (California Health and Safety Code Section 13000 et seq.), the Hazardous Substance Account Act (California Health and Safety Code Section 25300 et seq.), and the Safe Drinking Water and Toxic Enforcement Act (California Health and Safety Code Section 25249.5 et seq.);
- d. the Parties understand and agree that it hereby expressly waives all rights and benefits which it now has or in the future may have, under and by virtue of the terms of California Civil Code Section 1542, which reads as follows: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR";
- e. the Parties recognize by waiving the provisions of Civil Code Section 1542 they will not be able to make any claims for damages that may exist, and to which, if known, would materially affect their decisions to accept the vacation of said section of the public right-of-way, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause; and be it

**FURTHER RESOLVED:** That the hereinabove conditions shall be binding upon MTCP and its representatives, heirs, successors, and assigns and the successive owners of said lots as delineated

on the Phase 1 Final Map for Tract 8047 and upon the property owners of Assessor parcel no. 012-0968-003-01 (3869 Telegraph Avenue) and Assessor parcel no. 012-0697-001-00 (3847 Telegraph Avenue) and their representatives, heirs, successors, and assigns and the successive owners of their properties identified herein above; and be it

**FURTHER RESOLVED:** That the City Engineer and the City Clerk of the City of Oakland are hereby authorized to endorse the Phase 1 Final Map for Tract No. 8047; and be it

**FURTHER RESOLVED:** That upon said executions by the City Engineer and the City Clerk, the City Engineer is directed to file the fully endorsed Final Map and the Subdivision Improvement Agreement concurrently with the Alameda County Clerk-Recorder for simultaneous recordation; and be it

**FURTHER RESOLVED:** That this Resolution shall become effective upon the recordation of the Phase 1 Final Map for Tract No. 8047 by the Alameda County Clerk-Recorder; and be it

**FURTHER RESOLVED:** That the Subdivision Improvement Agreement with MTCP for said Phase 1 Final Map for Tract No. 8047 is hereby approved; and be it

**FURTHER RESOLVED:** That the City Attorney's approval of said Agreement and the instruments securing the MTCP's performance under said Agreement shall be obtained prior to execution of said Agreement by the City Engineer on behalf of the City of Oakland; and be it

**FURTHER RESOLVED:** That the City Engineer is hereby directed to file said executed Subdivision Improvement Agreement concurrently with said fully endorsed Final Map for Tract No. 8047 for simultaneous recordation by the Alameda County Clerk-Recorder; and be it

**FURTHER RESOLVED:** That the City Engineer is further authorized, without returning to the City Council, to extend the time period designated in the Subdivision Improvement Agreement for completion of the public infrastructure improvements upon demonstration of good cause, as determined by the City Engineer.

**IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2011**

**PASSED BY THE FOLLOWING VOTE:**

**AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL,  
SCHAAF, and PRESIDENT REID**

**NOES -**

**ABSENT -**

**ABSTENTION -**

**ATTEST: \_\_\_\_\_**

**LATONDA SIMMONS  
City Clerk and Clerk of the Council  
of the City of Oakland, California**

**OWNERS' STATEMENT**

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE OR INTEREST IN AND TO THE REAL PROPERTY INCORPORATED WITHIN THE SUBDIVISION SHOWN UPON THIS MAP AND THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS CLEAR TITLE TO SAID PROPERTY AND, WE HEREBY CONSENT TO THE MAKING AND RECORDING OF SAID MAP AND THE PHASED APPROVED SUBDIVISION AS SHOWN WITHIN THE DISTINCTIVE BORDER LINE.

THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE CITY OF OAKLAND, THOSE PORTIONS OF SAID STREET, AND THE UNIMPAVED STREET DESIGNATED AS "PUBLIC RIGHT OF WAY", ON THE HEREBY ENCLOSED MAP FOR THE PURPOSES OF PUBLIC RIGHT OF WAY.

PUBLIC ACCESS EASEMENT (P.A.E.) OVER PARCEL J & D, THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION TO THE CITY OF OAKLAND AND FOREVER, THE PUBLIC PEDESTRIAN ACCESS EASEMENT WITH THE PUBLIC RIGHT OF PEDESTRIAN ACCESS AND EGRESS UPON AND OVER THAT PORTION OF PARCEL D, AND THAT PORTION OF APGAR STREET TO BE VACATED FROM BUILDINGS AND STRUCTURES OF THIS AND ADJACENT SAID AREAS AND STRIPS OF LAND TO BE KEPT OPEN AND FREE FROM OBSTRUCTIONS, AND APPURTENANCES, AND LAWN FENCES, AND IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWN FENCES, AND THE MAINTENANCE OF SAID PUBLIC PEDESTRIAN ACCESS EASEMENT SHALL BE THE RESPONSIBILITY OF THE OWNERS OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP.

PRIVATE ROAD ACCESS EASEMENT (P.R.A.E.) THE AREA DESIGNATED AS PRIVATE ROAD ACCESS EASEMENT OVER PARCEL D IS AN ACCESS EASEMENT TO BE KEPT OPEN AND FREE FROM OBSTRUCTIONS, AND APPURTENANCES, AND LAWN FENCES, AND IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWN FENCES, AND THE MAINTENANCE OF SAID PRIVATE ROAD ACCESS EASEMENT SHALL BE THE RESPONSIBILITY OF THE OWNERS OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP.

PUBLIC UTILITY EASEMENT (P.U.E.) THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION PUBLIC UTILITY EASEMENTS FOR THE CONVEYANCE OF WATER, SEWER, GAS, AND ALL UTILITIES AND PUBLIC UTILITIES, CONDUITS, GAS UTILITIES, UNDER, UPON, OR OVER THOSE CERTAIN STRIPS OF LAND DESIGNATED AS "P.A.E." (PUBLIC UTILITY EASEMENT), ABOVE MENTIONED PUBLIC UTILITY EASEMENTS SHALL BE KEPT OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND AND EXCEPT PUBLIC UTILITY STRUCTURES, IRRIGATION SYSTEMS AND APPURTENANCES, THERE TO LAWN, FENCES AND ALL LAWN UNIMPAVED ROOF OVERHANGS, THE UNDERSIGNED HEREBY OFFERS THE RIGHT TO CONSTRUCT AND MAINTAIN PRIVATE UTILITY EASEMENTS OVER PARCEL D AND THE UNDERSIGNED HEREBY OFFERS AS PUBLIC UTILITY EASEMENT, IT IS UNDERSTOOD THAT THE CITY OF OAKLAND AND ITS SUCCESSORS, OR ASSIGNEES, SHALL NOT ASSUME ANY RESPONSIBILITY FOR THE EASEMENT OR ANY IMPROVEMENTS THEREON OR THEREIN EXCEPTING CITY OWNED UTILITIES AND REGULATED UTILITIES.

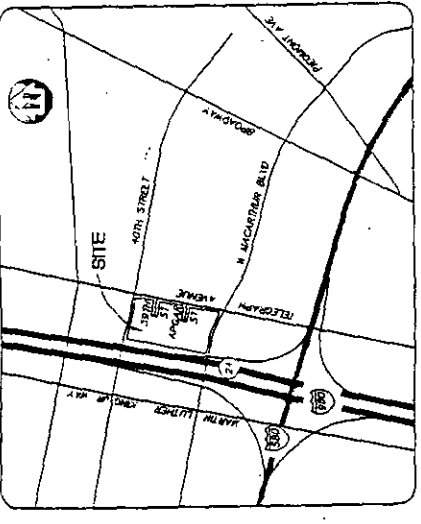
EMERGENCY VEHICLE ACCESS EASEMENT (E.V.A.E.) THE UNDERSIGNED (BART) HEREBY IRREVOCABLY OFFERS FOR DEDICATION THE RIGHT OF OAKLAND TO CONVEY EMERGENCY VEHICLE ACCESS EASEMENTS WITH THE PUBLIC RIGHT OF INGRESS AND EGRESS UPON AND OVER THAT PORTION OF PARCEL D, AND THAT PORTION OF APGAR STREET TO BE VACATED ON THIS MAP, AND THAT SAID AREAS OR STRIPS OF LAND SHALL BE KEPT OPEN AND FREE FROM OBSTRUCTIONS, AND APPURTENANCES, AND LAWN FENCES, AND IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWN FENCES.

LANDSCAPE EASEMENT (L.E.) THE AREA DESIGNATED AS LANDSCAPE EASEMENT IS HEREBY RESERVED AS AN AREA TO BE MAINTAINED FOR LANDSCAPING, LIGHTING, IRRIGATION, BENCHES AND OTHER PUBLIC APPURTENANCES AS REQUIRED SAID FOUNDATIONS, AND ASSIGNED SHALL BE KEPT OPEN AND FREE FROM OBSTRUCTIONS, AND APPURTENANCES, AND LAWN FENCES, AND IRRIGATION SYSTEMS AND APPURTENANCES, AND LAWN FENCES, AND THE MAINTENANCE OF SAID LANDSCAPE EASEMENT SHALL BE MAINTAINED BY THE OWNERS OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP.

RECIPROCAL ACCESS EASEMENT NO. 1 (R.A.E.) THE VESION RESERVED FOR THE PURPOSE OF INGRESS AND EGRESS OVER THAT PORTION OF APGAR STREET TO BE VACATED ON THIS MAP, FOR THE BENEFIT OF THE PUBLIC RIGHT OF PARCEL D AND THE WESTERN RIGHT OF WAY LINE OF TELEGRAPH AVENUE, SAID EASEMENT SHALL BE MAINTAINED BY THE OWNERS OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP.

RECIPROCAL ACCESS EASEMENT NO. 2 (R.A.E.) IS HEREBY RESERVED FOR THE PURPOSE OF INGRESS AND EGRESS OVER THAT PORTION OF APGAR STREET TO BE VACATED ON THIS MAP, FOR THE BENEFIT OF THE PUBLIC RIGHT OF PARCEL D AND THE WESTERN RIGHT OF WAY LINE OF TELEGRAPH AVENUE, SAID EASEMENT SHALL BE MAINTAINED BY THE OWNERS OR LESSEE OF PARCEL D AND THE OWNERS OF FUTURE DEVELOPMENT PHASES OF THE APPROVED PHASED TENTATIVE MAP.

AS OWNERS:  
SUNNYVALE BAY AREA RAPID TRANSIT DISTRICT  
BY: Bob Zank DATE: 7/8/11  
PRINTED NAME: Bob Franklyn  
TITLE: BART Board President  
BY: Kenneth A. Aurn DATE: 07/08/2011  
PRINTED NAME: KENNETH A. AURN  
TITLE: DISTRICT SECRETARY



VICINITY MAP

**OWNERS' STATEMENT - CONTINUED**

AS OWNERS:  
MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY

BY: Gail A. Parker DATE: July 8, 2011  
PRINTED NAME: Gail A. Parker  
TITLE: President, CEO

**OWNERS' ACKNOWLEDGMENT**

STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
ON July 8, 2011, BEFORE ME, Angela Tsang  
A NOTARY PUBLIC, PERSONALLY APPEARED Bob Franklyn  
WHO PROVED TO BE ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE  
PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND  
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FREELY AND VOLUNTARILY  
ON THE DATE UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE  
INSTRUMENT.  
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF  
CALIFORNIA THAT THE FOREGOING PARAGRAPHS IS TRUE AND CORRECT.  
WITNESS MY HAND  
NOTARY PUBLIC AND STATE  
MY COMMISSION EXPIRES 06/21/2013  
COMMISSION NUMBER OF NOTARY: 13774

**RECORDER'S STATEMENT**

FILE NO. \_\_\_\_\_ DATE: \_\_\_\_\_ PM  
FILED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2011, AT \_\_\_\_\_  
IN BOOK \_\_\_\_\_ OF MAPS AT PAGES \_\_\_\_\_  
ALABOLA CEMETERY RECORDS, AT THE REQUEST OF THE SAI TRANSIST DISTRICT  
PAULINE J. GOWRIKI  
CLERK - RECORDER  
BY: \_\_\_\_\_

**OWNERS' ACKNOWLEDGMENT**

STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
ON July 8th, 2011, BEFORE ME, Angela Tsang  
A NOTARY PUBLIC, PERSONALLY APPEARED Angela Tsang  
WHO PROVED TO BE ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE  
PERSONS WHOSE NAMES ARE SUBSCRIBED TO THE WITHIN INSTRUMENT AND  
ACKNOWLEDGED TO ME THAT THEY EXECUTED THE SAME FREELY AND VOLUNTARILY  
ON THE DATE UPON BEHALF OF WHICH THE PERSONS ACTED, EXECUTED THE  
INSTRUMENT.  
I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE  
FOREGOING PARAGRAPHS IS TRUE AND CORRECT.  
WITNESS MY HAND  
NOTARY PUBLIC AND STATE  
MY COMMISSION EXPIRES 06/21/2013  
COMMISSION NUMBER OF NOTARY: 13774

SIGNATURE: Angela Tsang  
PRINTED NAME: Angela Tsang  
PRINCIPLE PLACE OF BUSINESS (COUNTY): San Francisco  
EXPIRATION OF COMMISSION: February 24, 2011  
COMMISSION NO: 1789612

**EXHIBIT A**

OWNERS / SUBDIVIDERS  
SUNNYVALE BAY AREA RAPID TRANSIT DISTRICT  
300 LAWRENCE DRIVE  
OAKLAND, CALIFORNIA 94612  
MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC  
C/O BIRDO COMMUNITY DEVELOPMENT  
370 BIRDO STREET, SUITE 200  
SAN FRANCISCO, CALIFORNIA 94103

**SHEET INDEX**

- SHEET 1 - FINAL MAP CERTIFICATES
- SHEET 2 - FINAL MAP CERTIFICATES
- SHEET 3 - EXISTING PROPERTY BOUNDARY
- SHEET 4 - PARCEL RECONFIGURATION
- SHEET 5 - PUBLIC RIGHT OF WAY DEDICATION & ABANDONMENT

**TRACT NO. 8047**

PHASE I OF VESTING TENTATIVE MAP 8047  
LANDS OF THE SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA  
COUNTY OF ALAMEDA

JUNE, 2011

**SANDIS** CIVIL ENGINEERS

200 S. Duane Avenue | Berkeley, CA 94702 | P: 415.848.8888 | www.sandis.com  
SUNNYVALE OAKLAND ROSEVILLE



**CITY CLERK'S STATEMENT**

I HEREBY STATE THAT THIS MAP, DESIGNATED AS TRACT NO. 8047, CONSISTING OF FIVE (5) SHEETS, WAS APPROVED BY THE CITY COUNCIL OF THE CITY OF OAKLAND AT A MEETING OF SAID COUNCIL, HELD ON THE DAY OF \_\_\_\_\_, 2011, AND THAT SAID COUNCIL ACCEPTED, SUBJECT TO APPROVAL BY THE BOARD OF SUPERVISORS OF THE STATE OF CALIFORNIA, THE VESTING TENTATIVE MAP, IN CONFORMANCE WITH THE TERMS OF THE DESIGNATION.

THAT PORTION OF 39TH STREET AND THE UNNAMED STREET DESIGNATED AS "PUBLIC RIGHT-OF-WAY" ON SHEET 5 OF THIS MAP, IS HEREBY ACCEPTED, SUBJECT TO COMPLETION OF IMPROVEMENTS, ON BEHALF OF THE PUBLIC. THOSE PORTIONS OF 39TH STREET, SHOWN ON THE MAP OF THE ESTATE OF JOHN EVOY IN PLOT 3, FILED IN MAP BOOK 11, PAGE 30, ALAMANDA COUNTY RECORDS, AND ALSO SHOWN ON THE MAP OF THE ESTATE OF JOHN EVOY IN PLOT 3, FILED IN MAP BOOK 11, PAGE 30, ALAMANDA COUNTY RECORDS, AND ALSO SHOWN ON SHEETS 4 AND 5 HEREIN AS TO BE "PUBLIC RIGHT-OF-WAY" ARE HEREBY ACCEPTED, SUBJECT TO COMPLETION OF IMPROVEMENTS PURSUANT TO SECTION 66414(g) OF THE SUBDIVISION MAP ACT, UPON THE FILING OF THIS MAP.

THOSE PORTIONS OF 46TH STREET, SHOWN ON THE MAP OF THE LUNING TRACT, FILED IN MAP BOOK 20, PAGE 36, ALAMANDA COUNTY RECORDS, DESIGNATED AS "PUBLIC RIGHT-OF-WAY" AND 48TH STREET, ARE HEREBY ABANDONED WITHOUT RESERVATION OF PUBLIC EASEMENT PURSUANT TO SECTION 66414(g) OF THE SUBDIVISION MAP ACT, UPON THE FILING OF THIS MAP.

COUNCIL RESOLUTION NO. \_\_\_\_\_, C.M.S.

LA TOWNA SANDIUS \_\_\_\_\_ DATE \_\_\_\_\_  
CITY CLERK OF THE CITY OF OAKLAND

**CITY PLANNING COMMISSION'S STATEMENT**

I HEREBY STATE THAT THE PLANNING COMMISSION OF THE CITY OF OAKLAND APPROVED ON \_\_\_\_\_, 2011, THE VESTING TENTATIVE TRACT MAP 8047, UPON WHICH THIS FINAL MAP IS BASED.

SCOTT MILLER \_\_\_\_\_ DATE \_\_\_\_\_  
SECRETARY TO OAKLAND PLANNING COMMISSION

**OWNERS / SUBDIVIDERS**

SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (BART)  
300 CALIFORNIA STREET  
OAKLAND, CALIFORNIA 94612  
MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC  
C/O BRIDGE HOUSING CORPORATION  
345 SPAN STREET, SUITE 700  
SAN FRANCISCO, CALIFORNIA 94105

**CLERK OF THE BOARD OF SUPERVISORS STATEMENT**

I, CRYSTAL K. URBIDA GRANT, CLERK OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMANDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT CERTAIN DEPOSITS HAVE BEEN FILED AND DEPOSITS HAVE BEEN MADE IN CONFORMANCE WITH THE REQUIREMENTS OF SECTIONS 66492 AND 66493 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA.

DATE: \_\_\_\_\_  
CRYSTAL K. URBIDA GRANT, CLERK OF THE BOARD OF SUPERVISORS,  
COUNTY OF ALAMANDA, STATE OF CALIFORNIA.

BY: \_\_\_\_\_ FEE: \_\_\_\_\_  
DEPUTY CLERK

**SEISMIC HAZARD NOTE**

THIS REAL PROPERTY COMPRISING THIS PHASED FINAL MAP LIES WITHIN THE FOLLOWING HAZARDOUS AREA: A SEISMIC HAZARD ZONE - Liquefaction Zone Pursuant to Section 2699 of the Public Resources Code. THESE HAZARDS MAY LIMIT YOUR ABILITY TO DEVELOP THE REAL PROPERTY, TO OBTAIN INSURANCE, OR TO OBTAIN ASSURANCE AFTER A SEISMIC EVENT. YOU SHOULD CONSULT WITH A PROFESSIONAL ENGINEER TO DETERMINE IF HAZARDS EXIST. THEY ARE NOT DEFINITIVE INDICATORS OF WHETHER OR NOT A PROPERTY WILL BE AFFECTED BY A NATURAL DISASTER. TRANSFERREES(S) AND TRANSFEROR(S) MAY WISH TO OBTAIN PROFESSIONAL ADVICE REGARDING HAZARDS AND OTHER HAZARDOUS THAT MAY AFFECT THE PROPERTY.

**PUBLIC ADVISORY**

THIS MAP IS BASED ON PRIVATE SURVEYS PERFORMED BY LICENSED PROFESSIONALS AND WILL NOT BE REVISED OR CORRECTED BY THE CITY OF OAKLAND AFTER ITS FILING. NO WARRANTY, EITHER EXPRESSED OR IMPLIED, IS MADE BY THE CITY OF OAKLAND THAT THIS MAP AND THE SURVEY INFORMATION ON WHICH IT IS BASED IS CORRECT, ACCURATE, AND CURRENT, NOR THAT THE CITY WILL RETAIN FOR PUBLIC USE ANY INFORMATION FROM WHICH THIS MAP MAY BE SUBSEQUENTLY DERIVED. THIS CITY INCLUDES ALLEYS OR ACTUAL DISTRICTS, MAPS, PARCELS, DISTRICTS, AND ERRORS.

**MAP REFERENCES**

1. CITY OF OAKLAND MONUMENT MAPS AND RECORDS
2. RECORDED MAPS OF RIGHT OF WAY, BAY AREA RAPID TRANSIT DISTRICT, ALAMANDA COUNTY, BOOK 6A OF MAPS, PAGES 123-230
3. PARCEL MAP - JOINT USE & EASEMENT PARCELS TO BARTO, FILED OCTOBER 14, 1997, IN THE OFFICE OF THE ALAMANDA COUNTY RECORDER, STATE HIGHWAY MAP BOOK, SERIAL NO. 61-18865
4. ESTATE OF JOHN EVOY, BOOK 11 OF MAPS, PAGE 28
5. WOLFSCREY TRACT NO. 1, BOOK 1, PAGE 77
6. MAP OF THE PERRIN TRACT, BOOK 3, PAGE 14
7. MAP OF THE LUNING TRACT, BOOK 20, PAGE 18
8. MAP OF THE LUNING TRACT NO. 2, BOOK 22, PAGE 37
9. MAP OF THE RANCHO OF VALENTE & DOMINGO FERRELLA, BOOK 17, PAGE 12

**CITY ENGINEER'S STATEMENT**

I, RAYMOND M. BERNAMA, CITY ENGINEER, HAVING BEEN AUTHORIZED TO PERFORM THE FUNCTIONS OF THE CITY ENGINEER OF THE CITY OF OAKLAND, COUNTY OF ALAMANDA, STATE OF CALIFORNIA, DO HEREBY STATE THAT I HAVE EXAMINED THIS PHASE I FINAL MAP FOR TRACT NO. 8047 AS SHOWN AND AS DESCRIBED HEREIN, AND AS THE SAME IS BEING RETURNED TO THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMANDA, STATE OF CALIFORNIA, AND THE PROFESSIONALS OF THE SUBDIVISION MAP ACT OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA, AND ALL LOCAL ORDINANCES APPLICABLE AT THE TIME OF APPROVAL OF SAID VESTING TENTATIVE MAP, HAVE BEEN COMPLIED WITH, AND THAT SAID TRACT MAP IS TECHNICALLY CORRECT.

RAYMOND M. BERNAMA, R.C.E. NO. 77815  
CITY ENGINEER  
CITY OF OAKLAND, ALAMANDA COUNTY  
STATE OF CALIFORNIA  
REGISTRATION EXPIRES 03-31-2012

DATE \_\_\_\_\_

**SURVEYOR'S STATEMENT**

THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCES. I, THE SURVEYOR, HEREBY STATE THAT THE MONUMENTS ARE OF THE CHARACTER AND OCCUPY THE POSITIONS INDICATED AND THAT THE MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RE-TRACED, AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE CONDITIONALLY APPROVED VESTING TENTATIVE MAP.



DAVID W. BETHAM  
F.L.S. NO. 7047, EXPIRES 12-31-12

DATE 2-7-11

**TRACT NO. 8047**

PHASE I OF VESTING TENTATIVE MAP 8047  
LANDS OF THE SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA  
COUNTY OF ALAMANDA

JUNE, 2011



SANDIS  
300 E. CHINA AVENUE | Sunnyvale, CA 95033 | P: 408.298.0000 | F: 408.298.0001 | www.sandis.com

SUNNYVALE | ROSEVILLE | OAKLAND

**EXISTING PROPERTY BOUNDARY**

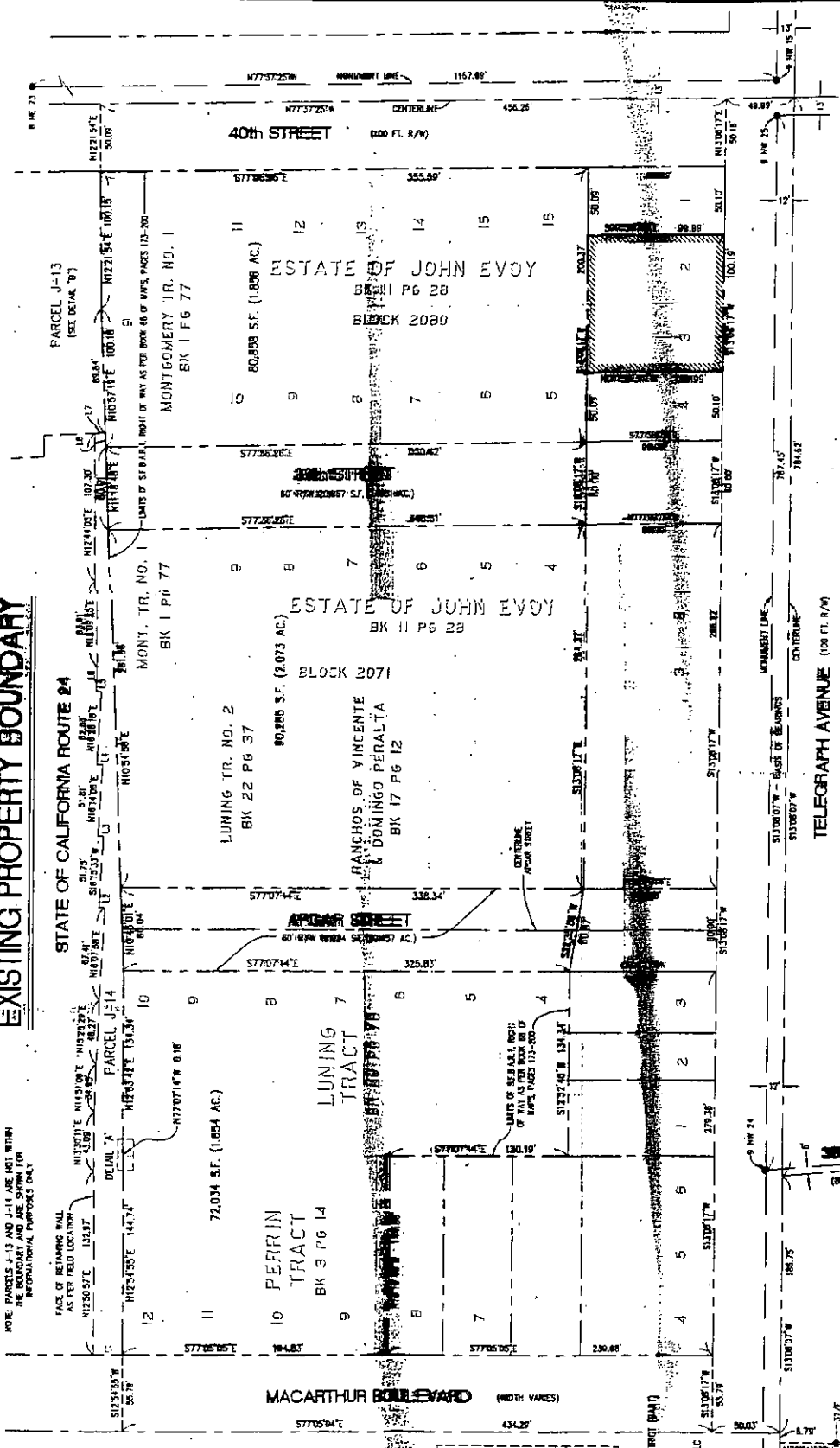
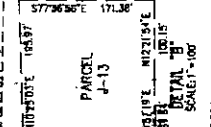


DETAIL 'A'

0.15	N172014°W
100.00	

LINE TABLE

LINE NO.	BEARING	DISTANCE
1	N172014°W	144.74'
2	N172014°W	144.74'
3	N172014°W	144.74'
4	N172014°W	144.74'
5	N172014°W	144.74'
6	N172014°W	144.74'
7	N172014°W	144.74'
8	N172014°W	144.74'
9	N172014°W	144.74'
10	N172014°W	144.74'
11	N172014°W	144.74'
12	N172014°W	144.74'



**TRACT NO. 8047**

PHASE I OF TESTING TENTATIVE MAP 8047  
LANDS OF THE SAN FRANCISCO BAY AREA  
RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA  
CITY OF OAKLAND  
COUNTY OF ALAMEDA

JUNE 2011  
**SANDIS**  
CIVIL ENGINEERS  
10000 UNIVERSITY AVENUE, SUITE 100  
ROSEVILLE, CA 95747  
PHONE: (916) 484-8888  
WWW.SANDIS.COM

- NOTES**
- 1) ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
  - 2) ALL DISTANCES SHOWN ARE BASED ON FIELD MEASUREMENTS OR CALCULATED, UNLESS OTHERWISE DENIED BY RECORD REFERENCE.
  - 3) AREA OF LANDS OWNED OR CONTROLLED BY SFB A.R.T.D. AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC IS 284,086 SQUARE FEET (6.521 ACRES).
  - 4) PARCELS L-13 AND L-14 ARE JOINT USE EASEMENT PARCELS AS DEFINED IN THE JOINT USE AGREEMENT BETWEEN SFB A.R.T.D. AND THE STATE OF CALIFORNIA, DEPT. OF TRANSPORTATION, RECORDED JULY 26, 1999 AS DOC. NO. 90233309.

**BASIS OF BEARINGS**  
THE BEARINGS OF SUBTRACT 8047, AS CALCULATED BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, WAS TAKEN AS THE BASIS OF BEARINGS FOR THIS MAP.

**SCALE FACTOR**  
BEARINGS AND DISTANCES ARE RELATED TO THE CALIFORNIA GEODESIC SYSTEM ZONE 14, NAD 1983, AS ESTABLISHED BY CITY OF OAKLAND MEASUREMENTS AND RECORD DATA SHOWN ON RIGHT-OF-WAY MAPS FOR HIGHWAY 24 AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT. FOR GROUND DISTANCES, MULTIPLY DISTANCES SHOWN BY 1.000748.

- LEGEND/ABBREVIATION**
- INDICATES BOUNDARY OF LANDS OWNED OR CONTROLLED BY SFB A.R.T.D.
  - INDICATES BOUNDARY OF LANDS OWNED BY MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
  - INDICATES EXISTING PROPERTY LINE
  - INDICATES INTERNAL LOT LINE
  - INDICATES JOINT USE PARCEL
  - INDICATES ROAD CENTERLINE
  - INDICATES MONUMENT LINE
  - FOURS CITY OF OAKLAND TFM MONUMENT WITH NUMBER, UNLESS NOTED OTHERWISE
  - RECORD DATA PER REFERENCE MAP
  - PUBLIC RIGHT-OF-WAY

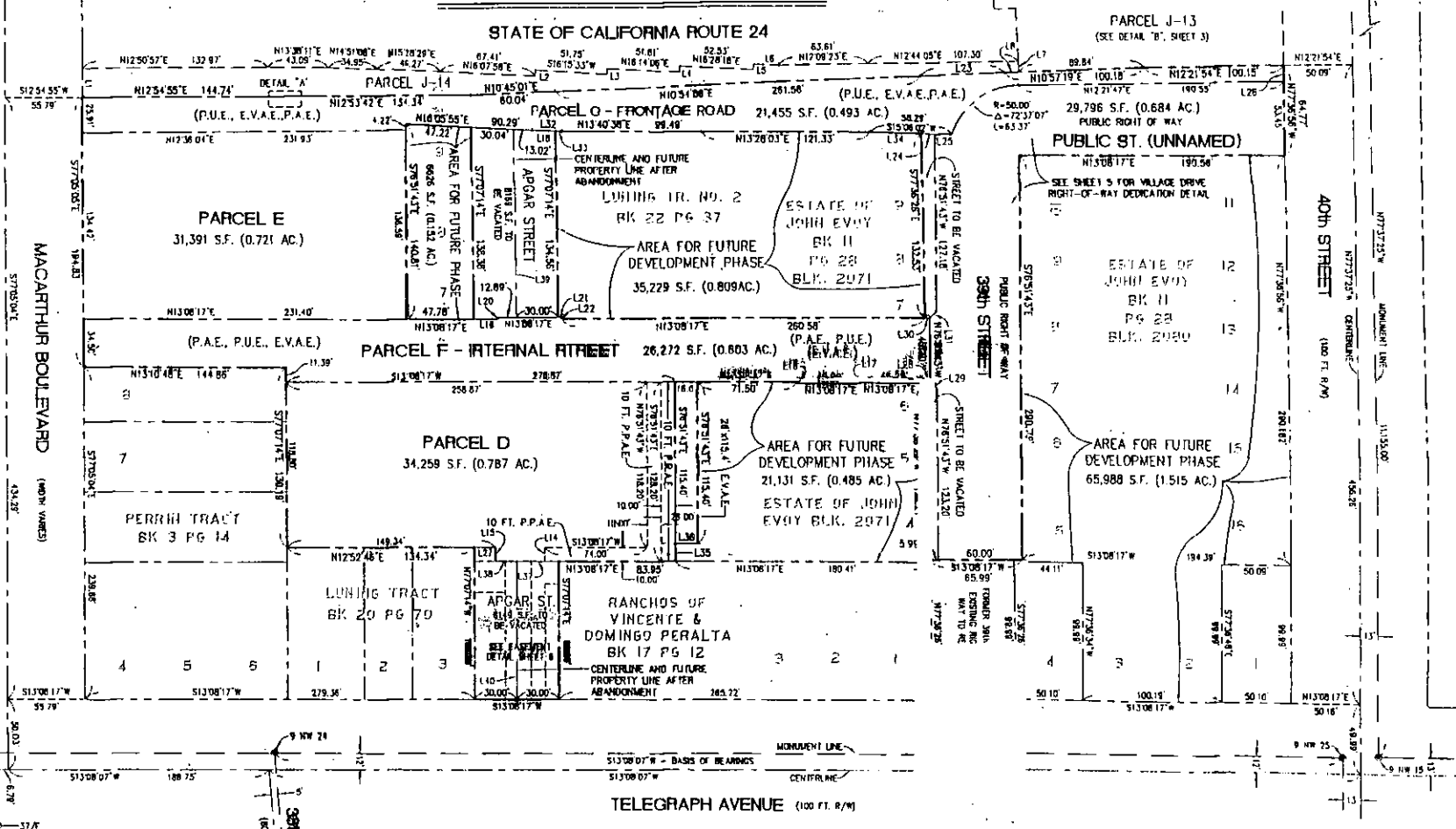


SCALE: 1"=50'

LINE TABLE

1	N77°02'09"W	21.63
2	N74°13'59"W	4.12
3	N33°00'13"W	3.95
4	N43°27'18"W	10.34
5	N83°48'19"W	4.00
6	N14°50'57"W	17.81
7	S78°41'02"E	7.41
8	N73°17'18"W	10.34
9	S29°39'13"E	37.20
10	N10°18'56"W	15.44
11	S79°43'04"E	63.78
12	N72°17'18"W	10.34
13	S78°41'02"E	43.23
14	S77°07'14"E	10.00
15	S77°08'58"E	10.07
16	N78°51'43"E	1.00
17	N73°17'18"W	10.34
18	N13°07'52"E	17.01
19	N13°08'17"E	17.30
20	N78°51'43"E	1.00
21	N73°17'18"W	10.34
22	N13°07'52"E	17.01
23	N13°08'17"E	17.30
24	S78°41'02"E	11.31
25	N15°24'28"W	15.00
26	N13°08'17"E	2.63
27	S68°08'17"E	7.67
28	N13°08'17"E	7.67
29	N13°08'17"E	18.00
30	N13°08'17"E	21.78
31	N13°08'17"E	4.77
32	N13°08'17"E	28.12
33	N16°51'43"E	12.80
34	N13°08'17"E	18.00
35	N13°08'17"E	30.00
36	N13°08'17"E	18.00
37	S77°07'14"E	10.00
38	S77°07'14"E	89.59

PARCEL RECONFIGURATION



**OWNER / SUBDIVIDER**  
 SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT  
 300 LAKEVIEW DRIVE  
 OAKLAND, CALIFORNIA 94612

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC  
 C/O BRIDGE HOUSING CORPORATION  
 315 SPENCER STREET, SUITE 700  
 SAN FRANCISCO, CALIFORNIA 94105

- LEGEND**
- INDICATES BOUNDARY OF TRACT MAP NO. 8047
  - - - INDICATES INTERNAL PROPERTY LINE TO BE CREATED ON THIS MAP
  - INDICATES EASEMENT LINE
  - - - INDICATES EXISTING PROPERTY LINE
  - - - INDICATES INTERNAL LOT LINE
  - - - INDICATES JOINT USE PARCEL
  - - - INDICATES ROAD CENTERLINE
  - - - INDICATES MONUMENT LINE
  - FOUND CITY OF OAKLAND PIN MONUMENT WITH NUMBER, UNLESS NOTED OTHERWISE
  - ( ) RECORD DATA PER REFERENCE MAP

**NOTES**

- 1) ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.
- 2) ALL DISTANCES SHOWN ARE BASED ON FIELD MEASUREMENTS OR CALCULATED, UNLESS OTHERWISE NOTED.
- 3) JOINT USE PARCELS J-13 & J-14 ARE NOT INTENDED TO BE INCLUDED WITHIN THE BOUNDARY OF THIS MAP.
- 4) ALL EXISTING LOT LINES WITHIN THE BOUNDARY ARE TO BE REMOVED UPON THE RECORD.

**SCALE FACTOR**

BEARINGS AND DISTANCES ARE RELATED TO THE CALIFORNIA COORDINATE SYSTEM ZONE 10, N.A.D. 1927, AS ESTABLISHED BY CITY OF OAKLAND MONUMENTS AND RECORD DATA SHOWN ON RIGHT-OF-WAY MAPS FOR STATE ROUTE 24 AND THE SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT. FOR CHORD DISTANCES, MULTIPLY DISTANCES SHOWN BY 1.000748

- EASEMENT LEGEND**
- P.A.E. PUBLIC ACCESS EASEMENT
  - P.P.A.E. PUBLIC PEDESTRIAN ACCESS EASEMENT
  - P.R.A.E. PRIVATE ROAD ACCESS EASEMENT
  - P.U.E. PUBLIC UTILITY EASEMENT
  - E.V.A.E. EMERGENCY VEHICLE ACCESS EASEMENT
  - L.O.E. LANDSCAPE EASEMENT

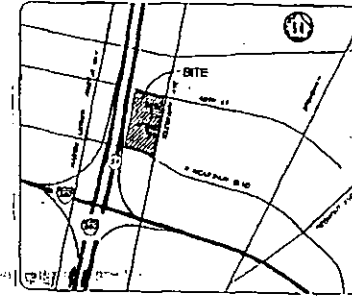
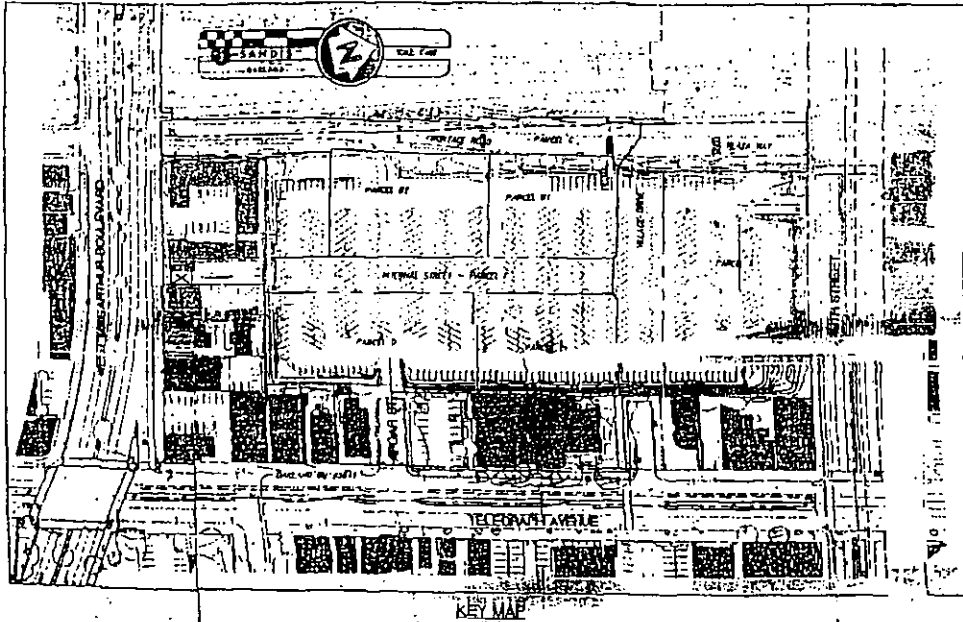
**TRACT NO. 8047**  
 PHASE 1 OF VESTING TENTATIVE MAP 8047  
 LANDS OF THE SAN FRANCISCO BAY AREA  
 RAPID TRANSIT DISTRICT - MACARTHUR STATION AREA  
 CITY OF OAKLAND  
 COUNTY OF ALAMEDA  
 JUNF, 2011

**SANDIS** CIVIL ENGINEERS  
 530 E. Duane Avenue | Sunnyvale, CA 94085 | P: 408.938.0800 | F: 408.938.0899 | www.sandis.net

SUNNYVALE      ROSEVILLE      OAKLAND



# MACARTHUR TRANSIT VILLAGE



VICINITY MAP

### SHEET INDEX

NO.	DESCRIPTION
1	COVER SHEET
2	GENERAL NOTES
3	PROPOSED LAYOUT
4	PROPOSED LAYOUT
5	PROPOSED LAYOUT
6	PROPOSED LAYOUT
7	PROPOSED LAYOUT
8	PROPOSED LAYOUT
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99	PROPOSED LAYOUT
100	PROPOSED LAYOUT

EXHIBIT B

### CONSULTANTS

- CONSULTANTS**
- CIVIL ENGINEER**
- 228 W. ...
- ...
- LANDSCAPE ARCHITECT**
- ...
- JOINT TRINITY CONSULTANTS**
- ...
- ISLAND CONSULTANT**
- ...

### PROJECT'S GENERAL DESCRIPTION

The project is a proposed multi-phase development of approximately 100 units, including residential, commercial, and public space. The project is located in the MacArthur Transit Village area, bounded by ...

### PROPERTY ADDRESS

...

### DEVELOPERS

...

recording requested by:

CITY OF OAKLAND

when recorded mail to:

City of Oakland  
CEDA - Building Services  
Dalziel Administration Building  
250 Ogawa Plaza - 2nd Floor  
Oakland, CA 94612  
Attn: City Engineer

EXHIBIT C

-----  
space above for Recorder's use only  
-----

APPROVED FOR FORM AND LEGALITY

-----  
CITY ATTORNEY  
-----

## SUBDIVISION IMPROVEMENT AGREEMENT

Deferred Construction of Public Infrastructure Improvements

### MacArthur Transit Village

### Phase 1 Final Map - Tract No. 8047

This Agreement is between the San Francisco Bay Area Rapid Transit District (BART), a rapid transit district established pursuant to California public utilities code Section 28500 et seq., MacArthur Transit Community Partners LLC, a California limited liability company (DEVELOPER) and its successors or assigns, affiliated companies or corporations, parent companies or corporations, or partners, and the City of Oakland (CITY), a California municipal corporation, herein after referred to as the Parties.

#### RECITALS

BART is the owner in fee title of five (5) of the ten (10) parcels comprising the approved Vesting Tentative Map (VTM 8047) for the MacArthur Transit Village project (Project) located within the corporate limits of Oakland, which are identified by the Alameda County Assessor with the following parcel numbers and by the CITY with the corresponding addresses:

012-0967-009-00 - 526 West MacArthur Blvd	012-0967-049-01 - 515 Apgar Street
012-0967-010-01 - 544 West MacArthur Blvd	012-0968-055-01 - 516 Apgar Street
012-0969-053-03 - 532 39th Street	

The DEVELOPER and BART have presented a phased Final Map, which is identified by the Alameda County Clerk-Recorder as Tract No. 8047, to the CITY that proposes a voluntary merger of the existing parcels identified above and their re-subdivision in Phase 1 into two (2) developable lots, identified as Lots D and E, two privately maintained roadways, identified as Lots F and G, one (1) access easement, formerly Apgar Street, and one (1) public street extension of 39th Street with a connection to 40<sup>th</sup> Street.

The DEVELOPER is the developer of the Project for all purposes of this Agreement. As the owner of the existing parcels comprising the Project, BART has consented to the recordation of the Phase 1 Final Map for Tract No. 8047 and to the vacation and dedication of public rights-of-way and the dedication of public easements set forth therein and to the recordation of this Agreement.

As a condition precedent to the approval of the Phase 1 Final Map for Tract No. 8047, the CITY requires the irrevocable dedication of public right-of-way and public service easements shown on the map. In addition, the CITY requires the construction of public infrastructure improvements off-site in the CITY right-of-way and on-site in dedicated right-of-way and easements that customarily includes grading, paving, striping and lettering, curbs, gutters and sidewalks, trees, landscaping and irrigation, retaining walls, storm drains and sanitary sewers, street name and public transportation signs, survey monuments, electricity, water, communication, and natural gas utility mains and branch piping and wiring, fire hydrants, street light electroliers, traffic control and curb parking signs, signals and meters, and all appurtenances thereto pursuant to this Agreement..

The DEVELOPER and BART have asked the CITY and local public utility companies to accept the permanent maintenance of the required public infrastructure improvements shown on the construction plans accompanying the public infrastructure permit and the grading permit, included herein by reference. Construction of the required public infrastructure improvements, however, has not commenced nor been accepted by the CITY. Consequently and in consideration of the approval of the Phase 1 Final Map for Tract No. 8047 and acceptance of the irrevocable offers of dedication of public right-of-way and public service easements, vacations of public right-of-way, and acceptance of the permanent maintenance of the required public infrastructure improvements, the Parties desire to establish an Agreement binding the DEVELOPER to complete the required on-site and off-site public infrastructure improvements within the time duration set forth in Section 4 below.

**THEREFORE**, it is agreed by and between the Parties as follows:

1. Approval of the Phase 1 Final Map for Tract No. 8047

Approval by the CITY of the Phase 1 Final Map for Tract No. 8047 shall be conditioned upon recordation of this Agreement by the Alameda County Clerk-Recorder, as well as the DEVELOPER's satisfactory performance of its obligations specified in this Agreement, as determined by the CITY.

2. Construction of Public Infrastructure Improvements

The DEVELOPER shall construct all required on-site and off-site public infrastructure improvements in strict accordance with all permits, specifications, plans and applicable CITY standards and performance criteria as specified in the public infrastructure permit and set forth below in Section 3.

3. Special Conditions

The DEVELOPER shall comply with the special conditions as follows:

- A. Public infrastructure improvements shall conform with the performance criteria specified in Oakland Municipal Code Chapter 16.16 - Design Standards and in Standard Details for Public Works Construction and Standard Specifications for Public Works Construction, current editions.
- B. The time duration for the completion of required public infrastructure improvements, as set forth in Section 4 below, shall include allowance for construction workday delays attributable to consecutive and intermittent inclement weather, as has been recorded by the United States Weather Bureau for the CITY and surrounding area and seasonally averaged for the previous ten (10) years.
- C. Hours, days, and months of operation and control of public nuisance conditions for the construction of required public infrastructure improvements shall conform with the requirements of all CITY Conditions of Approval for the project and the Oakland Municipal Code, including section 15.04.660 (Grading, Excavations, and Fills).

- D. Performance standards for the construction of required public infrastructure improvements shall comply with the requirements of Oakland Municipal Code chapter 17.120 and with regional, state, and federal regulations for "Best Management Practices" for erosion and sedimentation control, including a California Construction General Permit with a Storm Water Pollution Prevention Plan (SWPPP - "C6") provided by a Qualified SWPPP Developer (QSD) and monitored by a Qualified SWPPP Practitioner (QSP).
- E. In order to safeguard life, public and private property, and to ensure that the work will be carried out in an orderly manner in conformance with all regulations and without creating a public nuisance, the City Engineer may add to, remove, or change these Special Conditions from time to time during the duration of the permit as he or she deems reasonably necessary.

**4. Completion of Public Infrastructure Improvements**

- A. All construction of required public infrastructure improvements shall be completed by the DEVELOPER within one (1) year of the date of recordation of this Agreement, except those required improvements for which another completion date is stated in the public infrastructure permit or set forth above in Section 3 above. Construction shall not be deemed complete until the public infrastructure permit has been finalized and an unconditional Certificate of Completion has been issued by the City Engineer.
- B. The City Engineer may approve an extension the time for completion of the required public infrastructure improvements upon demonstration of good cause. Such approval shall not be unreasonably withheld.
- C. An extension may be granted without notice to the Surety, and extensions so granted shall not relieve the Surety's liability on any of the bonds required by this Agreement.

**5. Acceptance of Dedications and Ownership of Public Infrastructure Improvements**

Upon final approval of the public infrastructure improvement permit and grading permit and unconditional issuance of a Certificate of Completion, all irrevocable offers of dedication of public rights-of-way and public easements will be accepted by the CITY, and all improvements required by this Agreement shall become the sole property of the CITY. The CITY will subsequently accept the permanent maintenance of these improvements as set forth below in Section 7 - Maintenance and Section 8 - Guarantee and Warranty.

**6. Responsibility for Dedications and Public Infrastructure Improvements**

Until the Certificate of Completion is unconditionally issued, the DEVELOPER shall give good and adequate warning to the public of each and every defective or dangerous condition existing or arising within all public right-of-way and public easements offered for dedication and shall adequately protect the public from said unsafe conditions. Warning to and protection of the public shall remain the sole responsibility and expense of the DEVELOPER until such time as the Certificate of Completion is unconditionally issued.

**7. Maintenance of Public Infrastructure Improvements**

Until one (1) year has elapsed following unconditional issuance of the Certificate of Completion, the DEVELOPER shall maintain the construction of the required public infrastructure improvements and shall immediately perform or cause to be performed at its sole expense all necessary repairs, replacements, additions, or other corrective actions.



8. Guarantee of Workmanship and Warranty of Equipment, Materials, and Expertise

Until one (1) year has elapsed following the unconditional issuance of the Certificate of Completion, the DEVELOPER warrants that the required public infrastructure improvements, including the equipment and materials provided for the required improvements, are and will be free from defects and guarantees that the construction of the required improvements is and will be free from deficiencies and that the required improvements will perform satisfactorily in accordance with the specifications, plans and applicable CITY standards and performance criteria as specified in the public infrastructure permit and set forth in Section 3 above. The DEVELOPER further warrants that its design professionals are competent, that their analyses are adequate, and that their designs will meet or exceed the applicable CITY standards and performance criteria as specified in the public infrastructure permit and set forth in Section 3 above.

If at any time before the expiration of the guarantee and warranty period specified herein said designs prove to be inadequate in any respect, as determined by the City Engineer, the DEVELOPER shall make changes at its sole expense necessary to assure conformance with said standards and criteria.

9. Inspection of Construction

Inspection of the construction and equipment and materials, or approval of the construction and equipment and materials inspected, or statement by any officer, agent, or employee of the CITY indicating the construction and equipment and materials, or any part thereof, comply with the requirements and conditions of this Agreement, or acceptance of the whole or any part of the construction and materials, or payments thereof, or any combinations, or any combination, or all of these acts shall not relieve the DEVELOPER of its obligation to fulfill this Agreement as prescribed herein; nor shall the CITY be thereby estopped from bringing any action for damages arising from the failure of the DEVELOPER to comply with any of the requirements and conditions of this Agreement.

10. Payment of Fees and Penalties and Accrued Interest

Prior to issuance of the Certificate of Completion and prior to acceptance by the CITY of the on-site and off-site required public infrastructure improvements for permanent maintenance, all fees and penalties and accrued interest shall be paid to the CITY and other Public Agencies that remain unpaid. Interest on amounts owed to the CITY shall accrue at the rates set forth in its Master Fee Schedule and from date that the fees and penalties are assessed and shall continue until full payment is received, whether or not any conditions of this Agreement are extended or modified.

11. Reversion to Acreage

If the DEVELOPER fails to perform its obligations under this Agreement, BART, as the subdivider, consents to the reversion to acreage of the land which is the subject to this Agreement pursuant to Government Code section 66499.16 and DEVELOPER to bear all applicable costs.

12. Security

Surety bonds shall be presented to the CITY, in a form satisfactory to the City Attorney, issued by a corporate surety authorized to issue said security in the State of California as follows:

A. Before execution of this Agreement, the following securities shall be presented:

1. Faithful Performance Bond in a face amount not less than **\$3,591,000.00**, which is the full amount (one-hundred percent) of the City Engineer's total estimated cost for constructing the

required on-site and off-site public infrastructure improvements, to secure faithful performance of this Agreement; and

2. Labor and Materials Bond in a face amount not less **\$1,795,500.00**, which is one-half (fifty percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site public infrastructure improvements, to secure payment to the contractor, subcontractors, laborers and materialmen furnishing supervision, labor, materials and equipment engaged in the construction pursuant to this Agreement, and further to secure payment as required by the Unemployment Insurance Act.

The Faithful Performance Bond and the Labor and Material Bond shall not be limited in duration nor stipulate a date of expiration and shall remain in effect until the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements

- B. Before final approval of the public infrastructure permit, a Maintenance Bond shall be presented in a face amount not less than **\$897,750.00**, which is one-quarter (twenty-five percent) of the full amount of the City Engineer's total estimated cost for constructing the required on-site and off-site required public infrastructure improvements, to secure faithful performance of Section 7 - Maintenance and Section 8 - Guarantee and Warranty above. This Maintenance Bond shall remain in effect for not less than one year (1) after the date of the unconditional issuance of the Certificate of Completion of the required public infrastructure improvements.
- C. Pursuant to Government Code section 66499.4, the obligation guaranteed by each bond shall include costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, incurred by the CITY in successfully enforcing said obligations and shall be in addition to the face amount of each bond.
- D. All such bonds and/or other surety are subject to review and approval by the City Attorney for legal sufficiency, and if no bonds or other surety acceptable to the City Attorney are provided this Agreement shall be void.

### 13. Alternative Security

In lieu of the bonds required above in Section 12, alternative securities may be substituted in a form provided by Government Code Section 66499.3 and subject to review and approval by the City Attorney.

### 14. Hold Harmless

- A. The DEVELOPER agrees and promises to defend (with counsel acceptable to the CITY), hold harmless, and indemnify the CITY, the Oakland City Council, and its respective officials, officers, employees, agents, representatives, and volunteers from any and all liability, claims, demands, lawsuits, actions, causes of action proceeding and judgments for injury and/or damages of any kind and nature whatsoever (including legal costs, attorneys' fees, expert witness or consultant fees, City Attorney or staff time, expenses or costs) (collectively called "Action") arising out of, related to or caused by performance of this Agreement, including without limitation the design, construction and/or maintenance (for a period of one year following unconditional issuance of the Certificate of Completion) of the on-site and off-site required public infrastructure improvements and regardless of responsibility for negligence. The CITY may elect, in its sole and absolute discretion, to participate in the defense of said Action, and the DEVELOPER shall reimburse the CITY for its reasonable legal costs and attorneys' fees. This indemnification shall survive the termination of this Agreement.

- B. Within ten (10) calendar days of the filing of any Action as specified in subsection A above, the DEVELOPER shall execute a Joint Defense Letter Agreement with the CITY, acceptable to the City Attorney, which memorializes the above obligations. These obligations and the Joint Defense Letter of Agreement shall survive termination, extinguishment or invalidation of this Agreement. Failure to timely execute the Letter Agreement does not relieve the DEVELOPER of any of the obligations contained in this condition or other requirements or conditions of approval that may be imposed by the CITY.

**15. Insurance Required**

Sufficient insurance shall be procured and maintained for the duration of the Agreement against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the DEVELOPER and its agents, representatives, employees or subcontractors.

**A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto."
3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

**B. Minimum Limits of Insurance**

1. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable, with limits not less than **\$2,000,000.00** combined single limit per occurrence for bodily damage, personal injury and property damage. The limits of insurance shall apply separately to this project or location. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof
2. Automobile Liability with limits not less than **\$2,000,000.00** combined single limit per accident for bodily injury and property damage.
3. Worker's Compensation insurance as required by the laws of the State of California with limits not less than **\$1,000,000.00**. Statutory coverage may include Employers Liability coverage. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.
4. Professional Liability/ Errors/ Omissions insurance with limits not less than **\$1,000,000.00**.
5. Builders' Risk/ Course of Construction insurance covering all risks of loss with limits not less than the completed value of the project with no coinsurance penalty provisions. The

CITY shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the CITY.

C. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the CITY. At the option of the CITY, either

1. the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the CITY and its officers, officials, employees, agents and volunteers, or
2. a bond shall be procured guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. Other Insurance Provisions

The general and automobile liability policies required by this Section 15 shall contain, or be endorsed to contain, the following provisions:

1. The CITY and its officers, officials, employees, representatives, agents and volunteers are to be covered as additional insured as respects:
  - (a) liability arising out of activities performed by or on behalf of the DEVELOPER and its agents, representatives, employees or subcontractors;
  - (b) products and completed operations of the DEVELOPER and its agents, representatives, employees or subcontractors;
  - (c) premises owned, occupied or used by the DEVELOPER and its agents, representatives, employees or subcontractors, or
  - (d) automobiles owned, leased, hired or borrowed by the DEVELOPER and its agents, representatives, employees or subcontractors.

The coverage shall contain no special limitations on the scope of protection afforded to the CITY and its officers, officials, employees, representatives, agents, and volunteers.

2. Insurance coverage required by this Section 15 shall be primary insurance as respects the CITY and its officers, officials, representatives, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY and its officers, officials, employees, representatives, agents, or volunteers shall be excess of insurance for the DEVELOPER and its agents, representatives, employees or subcontractors and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies required by this Section 15, including breaches of warranties, shall not affect coverage provided to the CITY and its officers, officials, employees, representatives, agents, and volunteers.
4. Insurance required by this Section 15 shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. The insurer shall agree to waive all rights of subrogation against the CITY and its officers, officials, employees, representatives, agents, and volunteers for losses arising from work performed by the DEVELOPER for the CITY.
6. Each insurance policy required by this Section 15 shall be endorsed to state that coverage shall not be canceled, except for non-payment of premium, by either party, except after thirty (30) days prior written notice by certified mail, return receipt required, has been given to the CITY.

In the event the policy is canceled for non-payment of premium, ten (10) days prior written notice, as stated above, will be given.

**E. Acceptability of Insurers**

If the insurance company providing coverage required by this Section 15 is licensed to do business in the State of California, the company shall have an A.M. Best rating of not less than A:VII. However, if the insurance company is not licensed to do business in California, the A.M. Best rating shall not be less than A+:X. The maximum A.M. Best rating is A++:XV.

**F. Verification of Coverage**

Certificates of insurance shall be furnished with original endorsements effecting coverage required by this Section 15. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. The Commercial General Liability endorsement shall be a form CG 2010 (or proprietary equivalent), attached to this form. The Commercial Automobile Liability endorsement shall be a form CA 20 48, attached to this document. All certificates and endorsements shall be received and approved by the CITY before work commences. The CITY reserves the right to require complete, certified copies of all required insurance policies, at any time. *A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT.*

**G. Subcontractors**

All subcontractors shall be included as insured under the policies required by this Section 15 or separate certificates and endorsements shall be furnished for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

**16. Actions to Enforce**

If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to costs and reasonable expenses and fees, including reasonable attorney fees and expert witness fees, in addition to any other relief to which they may be entitled.

**17. Beneficiaries, Heirs, Assigns, and Successors In Interest**

This Agreement pertains to and runs with the real property included within the Phase I Final Map for Tract No. 8047, which land is expressly agreed to benefit from the privileges granted under this Agreement, and binds the beneficiaries, heirs, assigns, and successors in interest in the properties of BART. Notwithstanding anything to the contrary herein, BART shall not be obligated to perform, and shall have no liability for Developer's failure to perform the obligations of Developer set forth in this Agreement.

**18. Attachments**

The following documents are incorporated into this Agreement by reference:

CITY permits: Public Infrastructure PX 1100070	Planning PUDF 10097, ER 060004, DA 10204
Building n.a.	Grading GR _____, Tree Removal 1100016
Encroachment n.a.	Est. Cost of Improvements \$ 3,591,000.00
Final Map: Phase 1 - Tract No. 8047	Resolution No. _____ C.M.S.
Insurer: _____	Surety: _____

19. Constructive Notice

This Agreement shall be filed with the Alameda County Clerk-Recorder for recordation.

20. Effective Date

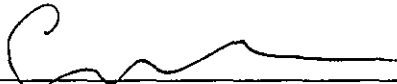
This Agreement shall be effective on the date of its execution by the CITY.

IN WITNESS WHEREOF, BART and the DEVELOPER each has caused its name to be subscribed hereto, and the CITY has caused its name to be affixed hereto on the dates indicated on the attached notarized acknowledgements.

\* DEVELOPER:

MacArthur Transit Community Partners, LLC  
a California limited liability company

by: BRIDGE Economic Development Corporation,  
a California nonprofit public benefit corporation,  
its managing member

by:   
Cynthia A. Parker  
President

\* BART:

San Francisco Bay Area Rapid Transit District  
a rapid transit district established pursuant to  
Calif. public utilities code Section 28500 et seq.

by:

  
signature

Laura Girard  
name

Real Estate Department Manager  
title

\* CITY:

City of Oakland  
a California municipal corporation

\* notarized acknowledgment required

by: \_\_\_\_\_  
signature

RAYMOND M. DERANIA  
City Engineer



**SUBDIVISION IMPROVEMENT  
BOND LABOR AND MATERIAL  
(CALIFORNIA)**

Bond 0540832

Premium \$ Included in Performance Bond

KNOW ALL BY THESE PRESENTS, That MacArthur Transit Community Partners, LLC

International Fidelity Insurance Company as Principal, and the  
International Fidelity Insurance Company, a Corporation organized and existing  
under the laws of the State of New Jersey and authorized to transact surety business in the State  
of California, as Surety, are held and firmly bound unto City of Oakland

for the use and benefit of any and all persons entitled to file claim under Title 15 (commencing with Section 3082) of Part 4 of Division  
3 of the Civil Code of the State of California, in the sum of One Million Seven Hundred Ninety Five Thousand Five Hundred and 00/100  
(\$ 1,795,500.00),

for the payment whereof, well and truly to be made, said Principal and Surety bind themselves, their heirs, administrators, successors  
and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That WHEREAS, the Principal entered into a certain Agreement or Contract  
with the Oblige, dated the \_\_\_\_\_ day of \_\_\_\_\_, wherein the Principal has  
agreed to complete the following improvements: MacArthur Transit Village - Phase 1 Final Map - Tract No. 8047  
as more fully set forth in said agreement.

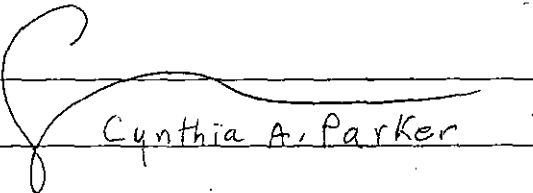
NOW THEREFORE, if the Principal shall pay all contractors, subcontractors, laborers, materialmen and other persons employed in the  
performance of the Agreement, for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment  
Insurance Act with respect to such work or labor, then this obligation shall be null and void; otherwise, to remain in full force and effect.  
Provided, however:

- (1) That said Surety will pay the same in an amount not exceeding the amount hereinafter set forth, and also in case suit is  
brought upon this bond, will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including  
attorney's fees, incurred by County (or City) in successfully enforcing such obligation, to be awarded and fixed by the court,  
and to be taxed as costs and to be included in the judgment therein rendered;
- (2) That the Surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said  
Agreement or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does  
hereby waive notice of any such change, extension, alteration or addition.
- (3) That the time for filing suit on this bond shall be limited to six (6) months from date of completion of said improvements as  
"completion" is defined under applicable sections of the Civil Code of The State of California.

Signed and sealed this 6th day of July, 2011


MacArthur Transit Community Partners, LLC

Principal

  
Cynthia A. Parker

International Fidelity Insurance Company

Surety

By   
Betty L. Tolentino Attorney-in-Fact

2229 Oak Road, Suite 820, Walnut Creek, CA 94597

Address