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2009 JUL -2 PM 7:07

**REDEVELOPMENT AGENCY
AND THE CITY OF OAKLAND**
SUPPLEMENTAL AGENDA REPORT

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: July 7, 2009

RE: Supplemental Report on An Agency Resolution Authorizing the Agency Administrator to Negotiate and Execute an Owner Participation Agreement Between the Redevelopment Agency of the City of Oakland and MacArthur Transit Community Partners, LLC Which Provides for Funding in the Amount of \$17.6 Million from the Broadway/MacArthur/San Pablo Redevelopment Project Area and \$16.4 million from the Low and Moderate Income Housing Funds for the MacArthur Transit Village Project

A Public Hearing, Report and City Ordinance, as Recommended by the City Planning Commission, Authorizing the City Administrator to Negotiate and Execute a Development Agreement Between the City of Oakland and MacArthur Transit Community Partners, LLC for the MacArthur Transit Village Project

SUMMARY

At the June 23, 2009 CED meeting, specific edits to the Owner Participation Agreement (OPA) for the MacArthur Transit Village project were requested by the Committee requiring the addition of a Construction Completion Guaranty for Phase II. In addition, staff has been further negotiating several provisions of the OPA and the Development Agreement (DA) with the development team and has several recommended changes which are described in this report.

KEY ISSUES AND IMPACTS

The following changes are recommended to the Draft OPA and DA. Draft copies of the OPA (Dated June 11, 2009) and DA (dated June 3, 2009) were provided to members of the Council and have been available for public review at the City Clerk's Office at 1 Frank Ogawa Plaza, 1st Floor and at the Community and Economic Development Agency, Redevelopment Division at 250 Frank Ogawa Plaza, 5th Floor or can be downloaded from the internet at the following link: <http://www.oaklandnet.com/government/ceda/revised/planningzoning/MajorProjectsSection/macarthur.html>

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BRIDGE Guaranty for Phase II

The CED Committee passed a motion that would require BRIDGE Housing to provide a completion guaranty for the Phase II Affordable housing project. This guaranty will be subject to BRIDGE Housing being able to obtain the required public financing for the project, including the federal tax credits and the Agency's ability to provide the promised Low and Moderate Income Housing funds, and will also be subject to other provisions of the OPA.

Suspension of Proposition 1C Funds

Section 3.3.2 of the Draft OPA allows for a suspension of the construction guaranty for Phase I if Proposition 1C funds are suspended but did not define a minimum period of time that the suspension would need to be in effect. Staff has proposed that the period of time be defined as 6 months or longer.

Acquisition of Developer Parcels

Section 5.3.1 of the Draft OPA allows the Developer to decide, at its sole discretion, not to pursue acquisition of 2 of the 7 private parcels that are proposed for inclusion in the project. Staff recommends limiting the Developer's discretion not to acquire solely to the Surgery Center parcel.

Force Majeure

Section 15.8.3 of the OPA limits the allowed period that a Force Majeure can be in effect for all phases to 36 months. Staff recommends limiting the maximum allowed period of Force Majeure for Phases II through V to 24 months.

Defined Amendments to Development Agreement

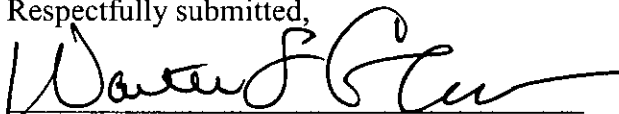
Section 11.2 of the DA refers to which actions constitute modifications to the agreement that require City Council approval. Staff recommends adding the underlined language as follows (to page 71):

"For purposes hereof, "minor modification" shall mean a modification to this Agreement which does not relate to the Term, the Project (as defined herein), the location, siting, height, envelope, massing, or size of improvements within the Project, Master Development Plan contained in Exhibit C, provisions for dedications, major design components to be specified in the FDP approval, or any conditions, terms, restrictions and requirements relating to obligations of City or Developer under Article IV."

ACTION REQUESTED OF THE CITY COUNCIL AND REDEVELOPMENT AGENCY

Staff recommends that the Agency Board approve the revisions to the attached resolution authorizing the Agency Administrator to negotiate and execute an Owner Participation Agreement between the Agency and MTCP. In addition, staff recommends that the City Council and Agency Board approve the proposed edits to the Owner Participation Agreement and the Development Agreement.

Respectfully submitted,

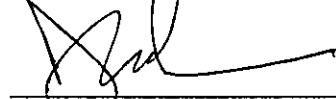


Walter S. Cohen, Director
Community and Economic Development Agency

Reviewed by:
Gregory D. Hunter, Deputy Director
Economic Development & Redevelopment
Community and Economic Development Agency

Prepared by:
Kathy Kleinbaum,
Urban Economic Analyst IV

APPROVED AND FORWARDED TO
THE CITY COUNCIL:



Office of the City/Agency Administrator

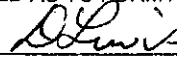
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REVISED

APPROVED AS TO FORM AND LEGALITY:



AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO NEGOTIATE AND EXECUTE AN OWNER PARTICIPATION AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC WHICH PROVIDES FOR FUNDING IN THE AMOUNT OF \$17.6 MILLION FROM THE BROADWAY/MACARTHUR/SAN PABLO REDEVELOPMENT PROJECT AREA AND \$16.4 MILLION FROM THE LOW AND MODERATE INCOME HOUSING FUNDS FOR THE MACARTHUR TRANSIT VILLAGE PROJECT

WHEREAS, the Redevelopment Agency of the City of Oakland is working to redevelop the MacArthur BART Station and the surrounding properties into a transit village; and

WHEREAS, the MacArthur Transit Village project is located within the Broadway/ MacArthur/San Pablo Redevelopment Project Area; and

WHEREAS, the Five Year Implementation Plan for the Broadway/MacArthur/San Pablo Redevelopment Project, adopted on December 7, 2004 (Resolution No. 2004-66 C.M.S.), includes the MacArthur Transit Village project as a key catalyst project for the Redevelopment Project Area; and

WHEREAS, pursuant to a joint Request for Proposals in 2004, the Agency and BART reviewed five submissions and selected a development team that consists of a partnership between McGrath Properties (formerly Aegis Equity Partners) and BUILD (BRIDGE Urban Infill Land Development, LLC), organized as MacArthur Transit Community Partners, LLC ("MTCP"); and

WHEREAS, the Agency approved the execution of a three-party Exclusive Negotiating Agreement ("ENA") between the Agency, BART and MTCP on June 1, 2004

(Resolution No. 2004-26 C.M.S.) and an ENA extension on July 1, 2008 (Resolution No. 2008-58 C.M.S.) for the development of a transit village project at the MacArthur BART Station; and

WHEREAS, MTCP desires to construct the following improvements as the MacArthur Transit Village project:

- 624 residential rental and ownership units (516 market rate units and 108 below market rate units);
- 42,500 square feet of commercial/neighborhood serving retail space;
- 5,000 square feet of community space;
- 400 replacement parking spaces for BART in a new parking structure and a commitment to park an additional 110 BART patrons through either an expanded parking garage, shared parking, satellite lots, and/or attended parking in the garage;
- Two new public roads through the BART parking lot and the reconfiguration of the existing BART Frontage Road;
- Renovation of the existing BART plaza, including a covered waiting area for shuttle patrons;
- A new public plaza located across from the existing BART plaza; and

WHEREAS, the MacArthur Transit Village Project requires a significant investment in public infrastructure and the potential revenues from the market rate housing and commercial space in the project are not sufficient to cover the cost of the infrastructure improvements and the provision of below market rate housing units; and

WHEREAS, on March 4, 2008 the Agency authorized (per Resolution Nos. 2008-28 and 2008-29) the submittal of a joint application by the Agency and MTCP to the State's Proposition 1C Infill Housing and Transit Oriented Development grant programs and was awarded \$37.3 million in funding for the project; and

WHEREAS, as part of the Proposition 1C applications, the Agency and MTCP committed to provide a minimum of 90 below market rate rental units in the project; and

WHEREAS, the grant funds are not sufficient to bridge the gap in the development budget; and

WHEREAS, staff has negotiated and proposes entering into an Owner Participation Agreement ("OPA") with MTCP which sets forth the terms and conditions of the provision of Agency gap financing for the MacArthur Transit Village project and governs the development of the Project; and

WHEREAS, the negotiated OPA will commit the Redevelopment Agency to

provide financing for the development of the project, in the amount of \$17.6 million from the Broadway/MacArthur/San Pablo Redevelopment Project Area and \$16.4 million from the Low and Moderate Income Housing Fund to MacArthur Transit Community Partners, LLC; and

WHEREAS, the OPA will also include the following negotiated terms:

- The funding from the Low and Moderate Income Fund 9580 is to be committed outside of the competitive NOFA process, however, the project will be required to comply with all provisions of the NOFA as they stand when the project funding is provided;
- MTCP may be reimbursed for predevelopment expenses expended prior to the adoption of the OPA;
- MTCP must provide a completion guaranty from its member's parent corporations or other entities acceptable to the Agency for the completion of Phase I;
- BRIDGE Housing must provide a completion guaranty for Phase II;
- Agency may need to provide assistance to complete site acquisition;
- Agency funds are secured by reversionary grant deeds against all property included in the project;
- In the situation of a default, the Agency may assume MTCP's position in the BART Option Agreement; and

WHEREAS, no other reasonable means of private or commercial financing of the Project at the same level of affordability and quantity are reasonably available to the Developer other than the redevelopment funds identified above; and

WHEREAS, the City of Oakland is the Lead Agency for this Project, and the Agency is a Responsible Agency, for the purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA") and on June 4, 2008, at a duly noticed public hearing, the City of Oakland Planning Commission certified the Final Environmental Impact Report ("EIR") for this project, adopted appropriate CEQA related findings, and approved Preliminary Development Plan project entitlements; and

WHEREAS, on July 1, 2008, at a duly noticed public hearing, the City Council affirmed the Planning Commission's CEQA-related certification and approvals per City Council Resolution No. 81422 C.M.S.; and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary of Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now, therefore, be it

RESOLVED: That the Agency hereby finds and determines: (1) that it has independently reviewed and considered the information contained in the previously certified EIR and the EIR complies with CEQA and the CEQA Guidelines' requirements for analysis of the Project's environmental effects and mitigation measures; (2) that none of the changes to the Project, or circumstances under which it will be undertaken, or new information require preparation of a subsequent or supplemental EIR; and (3) that the Mitigation Monitoring and Reporting Program for the Project is hereby (re) adopted; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee is authorized to provide the following financial subsidy to MacArthur Transit Community Partners LLC, or to an affiliated entity approved by the Agency Administrator or his designee, or by the Agency Board, as provided in the OPA for the development of the project:

- \$10 million in Taxable Bond proceeds from Broadway/MacArthur/San Pablo Tax Allocation Bonds Series 2006C-T Fund 9538, MacArthur Transit Village Land Acquisition Project P187490;
- \$500,000 in Tax Exempt bond proceeds from Broadway/MacArthur/San Pablo Tax Allocation Bonds Series 2006C-TE Fund 9537, MacArthur Transit Village Land Acquisition Project P187480;
- \$820,000 of land sales proceeds from Broadway/MacArthur/San Pablo Capital Fund 9530, 3860 MLK Project P187460 plus any accrued interest to this fund;
- \$6.3 million from a future bond to be issued by the Broadway/ MacArthur/San Pablo Redevelopment Project Area in July 2011 pledging tax increment revenues from Fund 9529, if the Redevelopment Agency is unable to bond at that date, the Agency will provide \$700,000 in annual tax increment revenues to the project and increase the size of the bond as follows: \$250,000 for a one year delay, \$550,000 for a two year delay, and \$900,000 for a three year delay;
- Up to \$16.4 million in City Low and Moderate Income Housing Fund 9580 in October 2011; and be it

FURTHER RESOLVED: That funding from the Low and Moderate Income Housing Fund is contingent on the availability of sufficient funds in the Fund to cover the financing; and be it

FURTHER RESOLVED: That as a condition of the Low and Moderate Income Housing Fund financing, the Agency will require that appropriate restrictions on occupancy, rents and operations of rental units, and on the sale and resale of ownership units be recorded against Project improvements; and be it

FURTHER RESOLVED: That Agency financing for property acquisition and for construction of infrastructure and improvements shall be secured by deeds of trust on Project land and/or improvements, completion guarantees and other appropriate means; and be it

FURTHER RESOLVED: That the Agency hereby authorizes the Agency Administrator or his designee, in his or her discretion, to subordinate priority of an Agency deed of trust to a lien or encumbrance of another private or governmental entity providing financial assistance to the Project, if the Agency Administrator or his designee determines that (1) an economically feasible alternative method of financing the Project on substantially comparable terms and conditions, but without subordination, is not reasonably available, (2) the Agency's investment in the Project in the event of default is reasonably protected, and (3) subordination is in the best interests of the Agency; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee is authorized to negotiate and execute an OPA, in a form in substantial conformity with that presented to the Agency Board, as it may be revised by the Agency Board, to negotiate and execute all other necessary documents and amendments thereto, and to take any other action with respect thereto consistent with this Resolution and its basic purpose; provided, however, that any and all documents necessary to effectuate the intent of this Resolution shall be reviewed and approved as to form by Agency Counsel prior to execution by the Agency Administrator or his designee; and be it

FURTHER RESOLVED: That the Agency finds and determines, based on the analysis included in the staff report accompanying this Resolution, that the use of bond proceeds, land sale proceeds and the Low and Moderate Income Housing Fund is necessary because the Developer has made a good faith attempt, but has been unable to obtain commercial or private means of financing the Project, including the affordable housing, at the same level of affordability and quantity; and be it

FURTHER RESOLVED: The recitals set forth above are true and correct and are an integral part of this Resolution; and be it

FURTHER RESOLVED: If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Resolution or its application to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of this Resolution or the application of this Resolution to other situations shall remain in full force and effect; and be it

FURTHER RESOLVED: If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the OPA that this Resolution approves or application of the OPA to any person or circumstances is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then notwithstanding such

determination, such term or provision shall remain in force and effect to the extent allowed by such ruling and all other terms and provisions of the Development Agreement or the application of the Development Agreement to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of the Development Agreement or the application of such material term or condition to a particular situation is finally found to be void, invalid, illegal or unenforceable by a court of competent jurisdiction, then the Parties to the Development Agreement shall work in good faith and fully cooperate with each other to amend the Development Agreement to carry out its intent; and be it

FURTHER RESOLVED: That the record before this Agency relating to this Resolution includes, without limitation, the following:

1. the draft Owner Participation Agreement, including all accompanying maps and papers;
2. all relevant plans and maps;
3. all final staff reports, decision letters and other documentation and information produced by or on behalf of the City;
4. all oral and written evidence received by the City staff, Planning Commission and City Council/Agency before and during the public hearings on the project; and
5. all matters of common knowledge and all official enactments and acts of the City, such as (a) the General Plan and the General Plan Conformity Guidelines; (b) the Oakland Municipal Code, including, without limitation, the Oakland real estate regulations, Oakland Fire Code; (c) Oakland Planning Code; (d) other applicable City policies and regulations; and (e) all applicable state and federal laws, rules and regulations.

FURTHER RESOLVED: That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the Agency's decision is based are respectively: (a) the Community and Economic Development Agency, Redevelopment Division, 250 Frank H. Ogawa Plaza, 5th Floor, Oakland; (b) the Community and Economic Development Agency, Planning Division, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (c) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it

FURTHER RESOLVED: That the Agency Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Determination and an Environmental Declaration (California Fish and Games Code Section 711.4) for this action.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID, AND
CHAIRPERSON BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____

LaTonda Simmons
Secretary, Redevelopment Agency
of the City of Oakland, California