



REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND

RESOLUTION NO. 2004-63 C. M. S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO 1) NEGOTIATE AND EXECUTE A PERMIT TO ENTER, INCLUDING INDEMNIFICATION PROVISIONS, WITH BART TO ALLOW THE AGENCY TO COMPLETE HAZARDOUS MATERIALS TESTING ON BART-OWNED PROPERTY AT THE MACARTHUR BART STATION AS PART OF THE PREDEVELOPMENT WORK FOR THE MACARTHUR TRANSIT VILLAGE PROJECT, AND 2) PAY UP TO \$60,000 FOR NO MORE THAN ONE-THIRD OF THE COST OF AN INSURANCE POLICY, AND THE POLICY DEDUCTIBLE, TO COVER THIRD PARTY LIABILITY.

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

WHEREAS, in July 2000, the Redevelopment Agency formed the Broadway/MacArthur/San Pablo Redevelopment Project Area, which includes the proposed transit village site; and

WHEREAS, the Redevelopment Five Year Implementation Plan for the Broadway/MacArthur/San Pablo Redevelopment Project, adopted on July 25, 2000 (Ordinance No. 12269 C.M.S.), includes the MacArthur Transit Village project; and

WHEREAS, pursuant to a joint Request for Proposals, the Agency and BART reviewed five submissions and selected a development team that consists of a partnership between Aegis Equity Partners, Shea Properties, and Bridge Housing/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 for the development of a transit village project at the MacArthur BART Station; and

WHEREAS, under the terms of the ENA, the Agency must complete Phase II hazardous materials testing on the project site, which includes the BART property; and

WHEREAS, in February 2002, the Agency received a loan from the California

Pollution Control Finance Authority, deposited in a project account created for this loan (Fund 9213, Project P187430), to cover the costs of this analysis; and

WHEREAS, BART requires the execution of a Permit to Enter containing indemnification provisions to protect BART from unforeseen costs related to the results of any environmental site assessment prior to allowing access to their property; and

WHEREAS, the Agency has independently reviewed and considered this environmental determination, and the Agency finds and determines that this action complies with CEQA because this action on the part of the Agency is exempt from CEQA pursuant to Section 15306 (information collection), Section 15061(b) (3) (general rule) and Section 15330 (minor cleanup action) of the CEQA guidelines; and

WHEREAS, it is currently too speculative to determine that cleanup action will be required, and any future recommendation for remediation and funding for such action must be approved by the Agency after environmental review; now therefore be it

RESOLVED: That the Agency Administrator is authorized to negotiate and execute a Permit to Enter with BART for purposes of completing hazardous materials testing on the BART-owned property at the MacArthur BART Station for the MacArthur Transit Village project which includes but is not limited to, the following indemnification provisions:

- The Agency will be responsible for any damage to BART property, exacerbated contamination conditions, or lawsuits that occur as result of negligence on the part of the Agency or our consultants during the testing;
- The Agency will agree to cover the full cost of any immediate remediation action for the paved surface lot required by a regulatory agency based on the results of the Phase II assessment;
- The Agency, BART, and the Development team agree to share the cost of an insurance policy, and the policy deductible that will cover third-party liability against any future lawsuits that relate to the results of the Phase II assessment, for an amount up to \$60,000;

and be it further

RESOLVED: That the Permit to Enter shall be reviewed and approved as to form and legality by Agency Counsel prior to execution; and be it further

RESOLVED: That the Agency hereby authorizes expenditure of Agency funds for the purpose of sharing both the cost of purchasing an insurance policy for third party liability and the cost of the policy deductible from the Broadway/MacArthur/San Pablo Project Fund (Fund 9529, Project P187510), for up to \$60,000; and be it further

RESOLVED: That the Agency Administrator or her designee shall cause to be

filed with the County of Alameda a Notice of Exemption for this action; and be it further

RESOLVED: That the Agency Administrator will inform the Agency of any claims or lawsuits that require drawdown of the insurance deductible; and be it further

RESOLVED: That the Agency hereby authorizes the Agency Administrator, or her designee, to take all other actions necessary with respect to the Permit to Enter and the project consistent with this Resolution and its basic purposes.

IN AGENCY, OAKLAND, CALIFORNIA, NOV 16 2004, 2004

PASSED BY THE FOLLOWING VOTE:

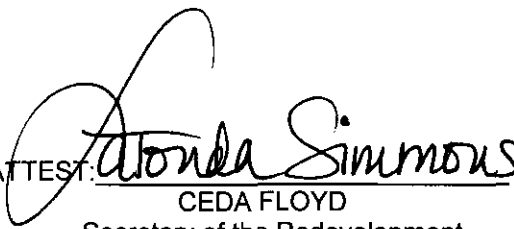
AYES- ~~BROOKS~~, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND
CHAIRPERSON DE LA FUENTE - 7

NOES- 0

ABSENT- 0

ABSTENTION- 0

Excused- Brooks-1

ATTEST: 
CEDA FLOYD
Secretary of the Redevelopment
Agency of the City of Oakland