

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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

TO: Office of the City/Agency Administrator
ATTN: Dan Lindheim
FROM: Community and Economic Development Agency
DATE: June 23, 2009

RE: 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

This item is a request for Redevelopment Agency approval of a resolution authorizing an Owner Participation Agreement (OPA) between the Agency and the MacArthur Transit Community Partners, LLC (MTCP) pertaining to the terms of the Agency financial participation for the development of the MacArthur Transit Village project. The OPA includes the commitment of \$17.6 million from the Broadway/MacArthur/San Pablo Redevelopment Area and \$16.4 million from the Low and Moderate Income Housing Funds.

In addition, this item requests City Council approval of an ordinance authorizing a Development Agreement (DA) between the City and MTCP pertaining to the terms of vesting the entitlements of the MacArthur Transit Village project for an extended period of time totaling 15 years to allow for the phased development of the project. Approval of this item was recommended by the City Planning Commission on June 3, 2009.

FISCAL IMPACT

The approval of the Development Agreement will not result in any direct immediate fiscal impacts to the City of Oakland. Staff costs related to the review of future planning entitlements for the project, are cost covered. These entitlements are subject to the applicable fees established in the Master Fee Schedule.

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The approval of the Owner Participation Agreement commits the Redevelopment Agency to providing the following financial subsidy to 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 fund balance from Broadway/MacArthur/San Pablo Capital Fund 9530, 3860 MLK Project P187460, which represents land sales proceeds, plus any additional interest accrued 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 to cover carrying costs.
- \$16.4 million in City Low and Moderate Income Housing Fund 9580 in October 2011, of which \$5 million is anticipated to come from the existing income stream for this fund and \$11.4 million is anticipated to come from a future bond issue in 2011. The debt service requirement for these bonds will reduce the annual Notice of Funding Availability (“NOFA”) funds by \$1.2 to \$1.5 million a year on an on-going basis.

In addition to the commitment of Redevelopment Agency and City Low and Moderate Income Housing funds, mixed-use in-fill developments, such as the proposed project, have fiscal impacts to the City’s budget that are difficult to quantify with precision. The project would increase demand for City services (e.g., fire and police protection services, park and recreation services, libraries). The cost of City services is off-set by the project’s generation of new revenue for the City through property taxes, parking taxes from the garage, retail sales taxes, sales and use taxes, motor vehicle in-lieu fees, utility consumption taxes, real estate transfer taxes, fines and penalties. The project will also likely create positive off-site indirect economic impacts, including the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing retail establishments.

As discussed in prior staff reports on this project, the fiscal analysis completed for this project showed a negative fiscal impact, but did not include realistic assumptions relating to increases in police and fire resources and also did not include off-site indirect fiscal impacts. Therefore, there probably will be positive fiscal impacts resulting from the Project if more realistic assumptions are used.

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BACKGROUND

Since 1993, the City has been working with BART and the MacArthur BART Citizens Planning Committee (“CPC”), comprised of community residents and representatives of neighborhood organizations, in a planning process for the development of the MacArthur Transit Village. The Agency selected a development team for this project in April 2004 through a competitive Request for Proposals process. The development team, MacArthur Transit Community Partners, LLC (MTCP), is a limited liability company that consists of a partnership between McGrath Properties (formerly known as Aegis Equity Partners) and BUILD (BRIDGE Urban Infill Land Development, LLC).

On June 1, 2004, the Agency Board authorized the Agency Administrator to negotiate a three-party ENA between the Agency, BART, and MTCP. Since that date, the Agency has been actively negotiating with the development team and BART and working to refine the project proposal. The Agency and MTCP executed a term sheet that was reviewed and approved by City Council on December 19, 2006. The term sheet outlined key deal points for the prospective OPA that were included in a Letter of Intent for the project.

In February 2006, MTCP submitted a development application to construct a mixed-use transit village including residential and commercial development with the majority of residential units located on the MacArthur BART surface parking lot and a few surrounding parcels (see map on page 2). MTCP worked closely with the Redevelopment Agency, Planning staff and the community to refine the proposal to address concerns raised through review of the application submittal. MTCP submitted a revised development application on October 6, 2007.

The Planning Commission reviewed and provided a favorable recommendation to the City Council for the first round of development permits for MacArthur Transit Village on June 4, 2008. This first round of approvals included certification of the MacArthur Transit Village Final EIR and approval of Rezoning, a text amendment to the S-15 Zone, a Planned Unit Development (PUD) Permit, a Major Conditional Use Permit, and Design Review.

On July 1, 2008, the City Council certified the Final EIR and approved the Rezoning, a text amendment to the S-15 Zone, a Planned Unit Development (PUD) Permit, a Major Conditional Use Permit, and Design Review per City Council Ordinance No.12883 C.M.S. and Resolution No. 81422 C.M.S.

The MacArthur Transit Village is an example of the City’s strong support for development for mixed-use, housing/transit-oriented development at the City’s BART stations. In addition to MacArthur BART, the City has multiple existing BART station development projects underway including: 1) West Oakland - units built and planned in the S-15 Transit District; 2) Lake Merritt - Specific Plan process currently underway; 3) Fruitvale - Phase I complete, Phase II EIR being prepared; and 4) Coliseum - Coliseum Garden Phases built, final phases approved and under construction.

Project Site

The project site is located in North Oakland, within the area bounded by 40th Street, Telegraph Avenue, West MacArthur Boulevard, and State Route 24. The project site includes the BART parking lot, the BART plaza, Frontage Road between West MacArthur Boulevard and 40th Street, and seven privately owned parcels. The project area includes the majority of the area within the stated boundaries; however, several parcels within this block are not included within the project site. *Attachment A*: Site Map shows the parcels within the project site.

Project Description

The MacArthur Transit Village project includes demolition of the existing BART surface parking lots and all existing buildings within the project site to allow for the construction of a new mixed-use, transit village development project. Below is a brief description of the overall project and the public infrastructure components that were approved by the City Council in July 2008:

- 624 residential 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 (most likely to be used as a childcare center)
- 400 replacement parking spaces for BART in a new parking structure and a commitment to park an addition 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
- \$150,000 in funding for the implementation of a Residential Permit Parking program within a ¼ mile radius of the station
- Commitment to work with BART to locate a high-capacity bike storage facility for BART patrons to be located either in the BART Plaza, the BART garage, or in the commercial space of the project.

Increased and enhanced access to the BART station is a key component of the proposed project. Village Drive, the main pedestrian and vehicular access to the project, is envisioned as a lively pedestrian street with neighborhood serving retail uses. The project also includes a new public plaza immediately east of the BART plaza and fare gates. The transit village plaza would include outdoor seating, landscaping, and other activity to provide a sense of arrival to the project, especially for BART patrons, as they enter and exit the station. Internal Street, which provides access to a majority of the residential units, is envisioned as a neighborhood street. Residential units would front onto Internal Street with stoops and front porches.

KEY ISSUES AND IMPACTS

Copies of the draft Development Agreement and Owner Participation Agreement have been provided to the members of the City Council/Agency Board and are 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>

Summary of Key Development Agreement Terms

Term of Development Agreement

The DA would vest the right to develop the property for a 15 year term. The 15 year-term was established as a reasonable estimate of the time required to carry out the project, develop the project, and obtain the public benefits of the project. The DA also includes provisions for extension of the term should a development moratorium prevent, prohibit or delay the construction of the project or a lawsuit involving any such development approvals or permits is pending. The Term is also subject to a number of other extensions, including without limitation the Developer and BART's ability to execute a ground lease for the BART garage, the disbursement of State Proposition 1C grant funds, and delay in performance caused by war, flood, earthquake or other acts of God.

Vesting City Regulations & Fees

The DA vests the current City regulations and fees in place at the time of the adoption of the DA. New City regulations and fees enacted after the adoption of the DA shall not apply to the project, except for new health & safety regulations and new building & construction code regulations. The project shall be subject to increases in existing fees, but not new fees enacted after the adoption of the DA.

Phasing

The DA commits the developer to the phasing plan shown in Table 1 on page 10 of this report. The Phasing Plan is subject to a number of extensions, including without limitation the Developer and BART's ability to execute a ground lease for the BART garage, the disbursement of State Proposition 1C grant funds, and delay in performance caused by war, flood, earthquake or other acts of God.

Community Benefits

The following community benefits are committed to in the DA:

- ***West MacArthur Boulevard Underpass and Greenscape Improvements.*** Developer will fund \$1.45 million toward design and implementation of improvements to include lighting, street furniture and improved sidewalks to increase safety and improve connection to Martin Luther King Jr. Way and west side of station and greenscape improvements along West MacArthur to the corner of Telegraph Avenue. Developer

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shall submit a plan showing said public improvements to City and Agency for review and approval prior to commencing construction.

- **Public Open Space Improvements.** Developer to provide \$25,000 for improvements to Mosswood Park or Grove Shafter Park or for improvements to the “path of travel” between the project and either park prior to issuance of building permits for Phase 3. Use of the funds for these improvements shall be subject to the discretion of the Redevelopment Agency.
- **LEED Certification.** Developer shall obtain certification under the LEED-ND pilot program to at least a gold level and building certification under Buildit Green’s Green Point Checklist to a minimum of 70 points. Should the LEED-ND pilot program not become a certified LEED program, the project shall still be required to incorporate the relevant energy and environmental design measures from the LEED-ND pilot program.
- **Remnant Residential Permit Parking (“RPP”) Funds.** Should any of the \$150,000 required to fund an RPP program for the neighborhood (per Condition of Approval 21) not be utilized, all remaining fees shall be used to supplement the Community Benefits listed above.

Summary of Key Owner Participation Agreement Terms

Project Structure

The development of the project will occur in two phases: Horizontal and Vertical. The Horizontal phase consists of the construction of the project infrastructure, including the internal streets, Frontage Road improvements, BART plaza renovation, and the BART replacement parking structure, and the creation of four development parcels. The Vertical Phase consists of the construction of the for-sale housing, below market rate housing, and the commercial space on the four development parcels.

The Horizontal phase will be developed by MTCP. Following the completion of the Horizontal phase, the Vertical developers will be responsible for completing the housing construction on the four development parcels. MTCP and BUILD are approved as Vertical developers for the market-rate housing and commercial parcels. BRIDGE is the approved Vertical developer for the below-market rate housing parcel. Any transfer of any of the vertical development parcels to another development entity other than BUILD, MTCP, or BRIDGE will require review and approval of the Agency/City Council. The development of the first market rate parcel is scheduled to occur concurrently with the development of the below market rate parcel.

Provision of Below Market Rate Housing

The Agency is requiring that the MacArthur Transit Village project contain a minimum number of below market rate units, equal to 20% of the number of market rate units in the project. As a result, the 624 unit project will include 108 below market rate units. Ninety (90) units will be included in a separate building as rental units targeting rents to income levels not to exceed 50% of Area Median Income (AMI) and shall remain affordable for a minimum of 55 years following

the completion of the units. The remaining 18 units will be included throughout the market rate buildings as either ownership or rental units depending on whether the building is developed as condominiums or as a rental project. As ownership units, the remaining 18 units will target income levels at an average of 100% of AMI. As rental units, the remaining 18 units shall target income levels of no more than 80% of AMI. The units shall remain affordable for at least 45 years if ownership and for at least 55 years if rental.

Financial Subsidy

The MacArthur Transit Village Project requires a significant investment in public infrastructure in order to create developable parcels for housing. The public infrastructure required includes the replacement of 510 of the 600 BART parking spaces, the creation of two new public streets, the renovation and reconfiguration of the existing BART Plaza and Frontage Road, environmental site remediation, and new sewer and utility connections to the site.

The potential revenues from the market rate housing and commercial space proposed in the project are not sufficient to cover the cost of the infrastructure improvements and the provision of below market rate housing units. The cost of these items combined is estimated to be approximately \$106 million. Consequently, the project is dependent on the inclusion of public funds in order to be constructed. The MacArthur Transit Village project was successful in obtaining grant awards of \$37.3 million from the State Proposition 1C housing programs in 2008. In addition, the project has received approximately \$1.3 million in federal grant funds for the BART Plaza renovation. While these funds will go a long way in terms of assisting with the public infrastructure portion of the project, additional funds are required to bridge the gap in the development budget.

As part of the term sheet for this project that the Agency and MTCP negotiated in 2006, the Agency approved the following target returns for MTCP: a 17% internal rate of return for the Horizontal phase and a 16% net profit return on the market rate housing development in the Vertical portion of the project. At the time of the negotiations, two third-party market consultants, PFM Consulting and CBRE Consulting Sedway Group, did an analysis of required developer returns for the Agency and determined that the requested returns for these projects are on the low-end of the range typically required by area developers.

The following Agency subsidy is required in order for the project to be financially feasible, given the negotiated project returns:

- \$1.5 million for a predevelopment grant from the 2006 Broadway/MacArthur/San Pablo redevelopment bond issue. These funds were approved for this use in December 2006 per Agency Resolution No. 2006-91 C.M.S. and have already been expended.
- \$10.5 million from the 2006 Broadway/MacArthur/San Pablo redevelopment bond issue to cover additional predevelopment costs, land acquisition, and environmental remediation of the site. This funding will be used in part to reimburse MTCP for \$2.5 million in predevelopment expenses already incurred that were not covered by the predevelopment grant.

- \$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 to cover carrying costs. Based on current tax increment projections, staff believes sufficient bond proceeds can be generated in 2011 to cover the \$6.3 million Agency contribution to the Transit Village and to fund other capital improvements in the Redevelopment Project Area.
- \$820,000, plus any additional interest accrued, from Broadway/MacArthur/ San Pablo land sale proceeds from the sale of 3860 Martin Luther King, Jr. Way to go towards funding the 90 units of below market rate rental units.
- \$16.4 million in City Low and Moderate Income Housing Fund 9580 in October 2011 for the 90 unit below market rental subcomponent of the project. Of this total, \$5 million is anticipated to come from the existing tax increment income stream for this fund and \$11.4 million is anticipated to come from a future bond issue in 2011.

The required Agency subsidy is based on the most current development pro forma from April 2009. Financial consultant Keyser Marston Associates, Inc. reviewed the pro forma and verified that the cost and revenue assumptions in the pro forma were in line with current market conditions.

The Broadway/MacArthur/San Pablo Project Area Committee ("PAC") was updated about staff's recommended financial contribution to this project at their May 7, 2009 meeting. The PAC unanimously passed a motion supporting this recommendation.

Commitment of Low and Moderate Income Housing Set-Aside Funds Outside of the NOFA Process

Staff is recommending that \$5 million in affordable housing funds for this project be committed from Low and Moderate Income Housing Funds that would otherwise be budgeted for the annual competitive NOFA process. This will result in a one-time reduction in funds available for the NOFA. In addition, staff recommends that within the next two years the Agency issue bonds backed by future Low and Moderate Income Housing Fund tax increment revenues, similar to the housing bonds issued in 2000 and 2006. To raise the additional \$11.2 million required for the affordable housing, it is estimated that \$1.2 to \$1.5 million will need to be allocated on an annual basis to service the debt on the housing bonds. This will result in an ongoing reduction in funds available for the NOFA, which may be offset in future years to the extent that there is a sufficient increase in tax increment revenues. The future bond issue will generate additional funds on a one-time basis for the NOFA and/or other affordable housing projects and programs.

The project will still be required to comply with all provisions of the Affordable Rental Housing Development Program that apply to NOFA-funded projects. The provision of these funds will be structured as a standard below market rate housing residual receipts loan.

Staff believes the commitment of below market rate housing funds to this project outside of the NOFA is justified for the following reasons:

- This project is the key catalyst project in this redevelopment area and the below market rate housing is a critical component of the overall project.
- In March 2008, the City Council passed two resolutions approving the City and developer to jointly apply to the State Proposition 1C Transit Oriented Development (“TOD”) and Infill Housing Grant programs which require below market rate housing (Agency Resolutions No. 2008-28 C.M.S. and No. 2009-29 C.M.S.). This project was subsequently awarded \$37.3 million from those programs. Accepting these funds committed the City to providing below market rate housing units at this site.
- The Broadway/MacArthur/San Pablo redevelopment project area has been contributing to the pooled affordable housing funds that fund the annual NOFA since the area was established in July 2000, but to date has not had a single project funded from that source. Staff did an analysis of the past and projected tax increment revenue that this redevelopment project area contributes to the Low and Moderate Income Housing Fund, net of operations and staffing costs. Past contributions from FY 2000-01 through FY 2008-09 are roughly equivalent to the \$5 million that is requested to be committed from the existing tax increment revenues. The tax increment revenue projected to be available from this project area in 2011 and later years is expected to be sufficient to cover the debt service required for an additional \$11.4 million in bond financing that will be required for this project.
- Under California Redevelopment Law, 15% of the total units developed within a redevelopment project area must be below market rate. As a result of prior market rate development completed without Agency assistance, the Broadway/MacArthur/San Pablo redevelopment project area currently has a deficit of over 50 below market rate units. The MacArthur Transit Village project will provide enough affordable units to cover its own requirement and will also provide an additional 30 units to partially offset this pre-existing deficit.
- The Broadway/MacArthur/San Pablo PAC reviewed staff’s recommendation that the funding be committed outside of the NOFA at their May 7, 2009 meeting and unanimously passed a motion supporting this recommendation.

Site Acquisition

The proposed project site includes 3 BART-owned parcels and 7 privately owned parcels along Telegraph Avenue and West MacArthur Boulevard. The BART Board has given approval for the execution of an Option Agreement for their parcels. At the time this report was prepared, MTCP had executed option agreements for 5 of the 7 privately-owned parcels and was currently negotiating the acquisition of the remaining two private properties needed for the project. If MTCP is unsuccessful, they may seek the assistance of the Agency to complete site acquisition or may reconfigure the project to exclude these parcels. In addition, if MTCP’s expenditures are significantly reduced as a result of the exclusion of any parcel, the OPA contains a provision by which the required Agency contribution will also be adjusted accordingly.

Project Schedule

The project will need to be constructed over several phases. First, before any of the housing can be constructed, the development team needs to build the replacement BART parking structure so that BART patrons have continuous access to the station. The second and third phases, which include the below market parcel and the first market rate parcel are scheduled to be built simultaneously. The timelines for the remaining two phases of the ownership housing development are projected to be further out to allow the initial phases time to be completed, marketed, and sold.

Below is the Developer's proposed timeline for starting construction for each phase. The layout of the buildings referenced in the phasing plan can be found in **Attachment B: Block Layout for Purposes of Phasing**.

Table 1: Proposed Timeline to Commence Construction

Project Phase	Description	Commence Construction On or Before	Complete Construction On or Before
1	Construction of Building E, the replacement BART parking garage with 5,000 square feet of commercial space, site remediation, Internal Drive, the Frontage Road improvements, and the portion of Village Drive that extends from the Frontage Road to the Internal Drive.	2012	2014
2	Construction of Building D, consisting of a minimum of 90 below market rate rental units.	2014	2016
3	Construction of Building A, consisting of up to 213 predominately market rate residential units and 23,500 square feet of commercial space. All street improvements, including the completion of Village Drive and any new traffic signals required by the project, will be completed in this phase. This phase will also include the completion of a public plaza directly across Frontage Road from the existing BART Plaza.	2014	2016
4	Construction of Building B, consisting of up to 132 predominately market rate residential units and 5,000 square feet of commercial space.	2019	2021
5	Construction of Building C, consisting of up to 189 predominately market rate residential units and 14,000 square feet of commercial space. This phase will also include the construction of a community center use on the ground floor of Building C.	2021	2023

The schedule for the MacArthur Transit Village project represents a 14 year build-out of the project from the date of execution of the Owner Participation Agreement and Development Agreement. The construction schedule is intended to be outside dates following which the Horizontal or the Vertical developers could be declared in default. If market conditions are

favorable, the development team will construct the project on a more accelerated schedule. If it is not feasible to construct Phase III due to market conditions, the OPA and DA allows for a one-year extension to commence construction of this phase. As previously discussed, the Phasing Plan is also subject to a number of extensions, including without limitation the Developer and BART's ability to execute a ground lease for the BART garage, the disbursement of State Proposition 1C grant funds, and delay in performance caused by war, flood, earthquake or other acts of God.

Security for Agency Funds

The Redevelopment Agency's financial contribution to this project will be secured by reversionary grant deeds to all of the property included in the project, including both the privately owned parcels and the BART-owned property. Prior to the development of the Horizontal phase, the Agency can gain ownership of all of the private properties purchased for this project and can assume MTCP's position in the BART option agreement. After the completion of the Horizontal Phase, the security of the Agency funds will be transferred to the four development parcels. The security will be released on a pro rata basis as each phase of the housing is completed.

Security of Proposition 1C funds

As the co-applicant to the Proposition 1C program grant funds, the Agency is liable to the State for repayment of the Proposition 1C funds if a minimum of 448 housing units are not completed. The State has yet to prepare the grant agreements for these programs so the exact terms are not yet known but it is likely that the repayment requirement would be proportional to the number of units completed. As a form of security, the Agency is requiring that MTCP provide a construction completion guaranty for the Horizontal phase of the project. Once this phase is complete, if MTCP, BUILD and/or BRIDGE are no longer capable of completing the Vertical phase, the Agency will have ownership of ready-to-go development parcels that it can sell to other housing developers to fulfill the obligations under the Proposition 1C grant programs. If market conditions are not favorable for the construction of housing at that time, staff believes that the State will offer time extensions for the completion of the housing units. The construction completion guaranty will prevent the circumstance where the Agency is left with only partially built infrastructure which would make the transfer to another developer challenging.

BART Option Agreement

The BART Option Agreement contains the terms of the transfer of BART property to MTCP. It is anticipated that BART will enter into a 99-year ground lease for the portion of the property that the BART replacement parking garage and the 90-unit below market rate rental housing project will be developed upon. The remainder of the BART property will be transferred fee-simple to MTCP. BART will receive fair market value for their property. In addition, BART is requiring the creation of a Transit Benefit Covenant fee for the market rate ownership units, paid to BART at the time of transfer of the units for the first and all subsequent sales. It is anticipated that a portion of the revenue from the Transit Benefit Covenant will be used to fund access improvements at the MacArthur BART Station.

The value of the public improvements provided to BART, including the replacement BART parking structure, Frontage Road, remediation, and BART plaza improvements, will be credited against MTCP's required payment of the fair market value and the Transit Benefit Covenant on the first sale of the units. The cost of these items exceeds the revenue owed to BART. As a result, MTCP will not be making a direct cash payment to BART in exchange for title to their property.

Community and Other Project Benefits

The following community benefits, including Agency employment and contracting requirements, are committed to in the OPA:

- Small/Local Business Requirements – a 20% minimum participation requirement by certified local and small local businesses for all construction contracts over \$100,000 and all professional services contracts over \$50,000.
- Local Employment and Apprenticeship Requirements -- for work performed at the construction site, this policy establishes a goal that 50% of the work hours must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents.
- Prevailing Wages – payment of prevailing wages for all construction work.
- Living Wage—payment of living wages for any employee of MTCP or any employee of a service contractor used by MTCP, if the amount of the contract exceeds \$25,000.
- First Source – allowing the City to refer Oakland residents to fill job vacancies before advertising to the general public.
- Equal Benefits – requiring the provision of equal benefits for employees with domestic partners and employees with spouses.
- Project Labor Agreement –requiring that the construction contracts be awarded exclusively to unionized firms.

SUSTAINABLE OPPORTUNITIES

Economic:

The project would encourage economic revitalization of nearby commercial and residential districts in North Oakland by increasing the residential and commercial population in the immediate area thereby expanding the home ownership and consumer base for neighborhood businesses. The project would also create new permanent employment opportunities, as well as, temporary construction-related work in the short-term which would create both immediate and secondary benefits for the local economy and workforce since the project is required to comply with the City's Small/Local Business and Local Employment and Apprenticeship requirements.

Environmental:

The project is a compact, infill development in an already urbanized area will thereby reduce the need for development in environmentally sensitive areas located at the edge of the city. The developer has committed to sustainable development practices and will be required to achieve at

minimum Gold level certification under the LEED Neighborhood Development Pilot Program for the project site configuration and 70 points under the Buildit Green's Green Point Checklist for the building construction. In addition, the project involves the remediation of on-site soil contaminants.

Social Equity:

The Agency is requiring that the development team provides below market rate housing units as part of the housing that is included in the development proposal. The project proposal includes 108 below market rate units. The total number of below market rate units in the project will be equal to 20% of the number of market rate units in the project.

DISABILITY AND SENIOR CITIZEN ACCESS

The MacArthur Transit Village project, when constructed, will be required to comply with state and federal accessibility requirements, including Federal Americans with Disability Act Accessibility Guidelines, the Fair Housing Act and the State of California's Title 24 Accessibility regulations.

RECOMMENDATIONS AND RATIONALE

Staff recommends authorization of an Owner Participation Agreement between the Agency and MTCP for the MacArthur Transit Village project that commits a financial subsidy of approximately \$17.6 million from the Broadway/MacArthur/San Pablo redevelopment area and \$16.4 million from the Low and Moderate Income Housing fund, to be awarded outside of the NOFA process.

The proposed MacArthur Transit Village project meets the following goals and objectives of the Broadway/MacArthur/San Pablo Redevelopment Plan and its Five Year Implementation Plan:

- The MacArthur Transit Village project will increase the housing stock and will provide below market rate rental housing units in the Broadway/MacArthur/San Pablo Redevelopment Project Area;
- Development on the BART surface parking lot at the MacArthur BART Station will contribute to the Agency's goals to concentrate infill development on underutilized properties within the Broadway/MacArthur/San Pablo Redevelopment Project Area;
- The public improvements that will be included as part of the MacArthur Transit Village project will improve access and circulation to BART and to the other public transportation providers that serve the BART station from the surrounding community; and
- The MacArthur Transit Village project, once developed, will enhance residential and commercial property values adjacent to the MacArthur BART Station, and will encourage efforts to alleviate economic and physical blight conditions in the area, including high business vacancy rates, vacant lots, and abandoned buildings, by enhancing the development potential and overall economic viability of neighboring properties.

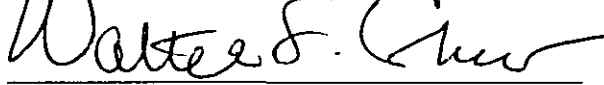
In addition, staff recommends that the City Council approve a Development Agreement between the City and MTCP for the project for the following reasons:

- A. Advancing Goals of Oakland General Plan. The project advances and conforms with the Oakland General Plan's goals, policies, and objectives. The proposed project furthers the goals of the Land Use and Transportation Element and Housing Element by facilitating new housing and commercial construction on a Transit-Oriented Development infill site. The project would result in the creation of 624 new residential units including 108 below market rate units thereby increasing home ownership in the city for a range of incomes as encouraged by the General Plan.
- B. Remediation and Redevelopment of Underutilized Parcel. The project would redevelop an underutilized and partially contaminated site with a development that is well-designed and attractive.
- C. Neighborhood Improvement. The project would improve the quality of life of the residents of the existing residential neighborhood located around the site by replacing the existing surface parking lot and other unattractive uses on the site with residential and neighborhood serving commercial uses that will be more consistent with the surrounding neighborhood than the existing uses on the site. All potential impacts of the proposed project, with the exception of two traffic impacts, will be adequately reduced through the application of the City's standard conditions of approval and mitigation measures, and through the design of the project. The project would also provide new residents and commercial activity in the area that would enhance safety in the neighborhood by providing additional supervision of public spaces.
- D. Economic Benefits. The project would encourage economic revitalization of nearby commercial and residential districts in North Oakland by increasing the residential and commercial population in the immediate area thereby expanding the home ownership and consumer base for neighborhood businesses. The project would also create new permanent employment opportunities, as well as, temporary construction-related work in the short-term which would create both immediate and secondary benefits for the local economy and workforce.
- E. Advancing State and Regional Policy of Providing In-fill Housing. Pursuant to California Government Code Section 65589.5(c), this development is consistent with the State Legislature's policy of discouraging the premature and unnecessary conversion of prime agricultural lands to urban uses and by in-filling existing urban areas with residential development. The proposed infill development is located within an urbanized area of Oakland where existing public utilities, public transit, and other necessary services are available to meet the needs of the project. Thus, this project fulfills State, regional, and City goals of reducing urban sprawl and promoting clean air policies by approving residential projects which are located near public transit.

ACTION REQUESTED OF THE REDEVELOPMENT AGENCY

Staff recommends that the City Council and Agency Board approve the attached resolution authorizing the Agency Administrator to negotiate and execute an Owner Participation Agreement between the Agency and MTCP and the attached ordinance authorizing the City Administrator to negotiate and execute a Development Agreement between the City and MTCP for the MacArthur Transit Village project, in substantial conformity with the OPA and DA presented to the Agency Board and City Council.

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

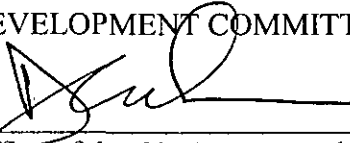
Gary Patton
Deputy Director of Planning and Zoning

Prepared by:

Kathy Kleinbaum,
Urban Economic Analyst IV

Charity Wagner
Contract Planner, Planning & Zoning Division

APPROVED AND FORWARDED TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE:



Office of the City/Agency Administrator

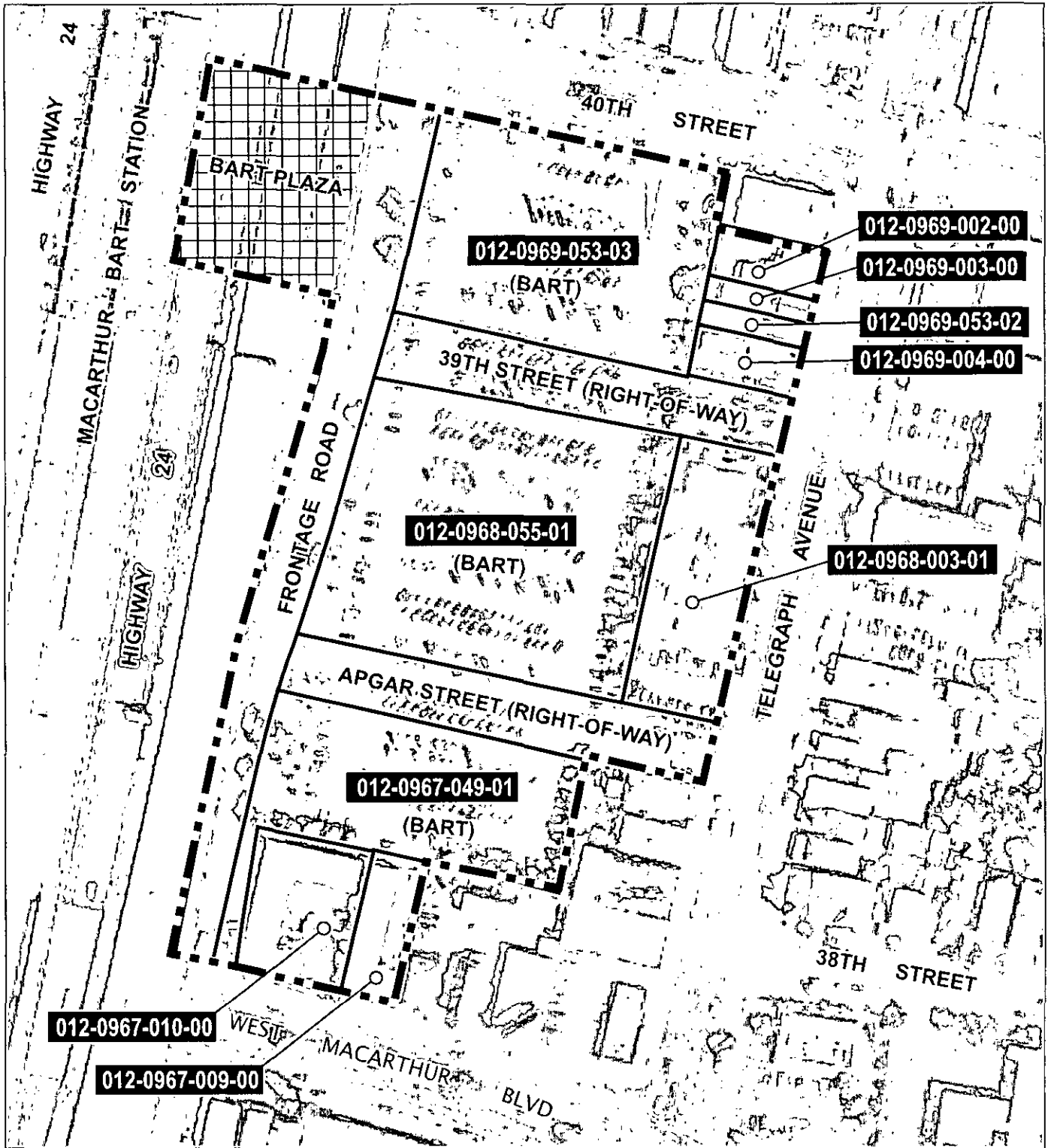
ATTACHMENTS

- A. Site Map
- B. Block Layout for Purposes of Phasing

** Copies of the draft Development Agreement and Owner Participation Agreement have been provided to the members of the City Council/Agency Board and are 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/revise/planningzoning/MajorProjectsSection/macarthur.html>

Item: _____
CED Committee
June 23, 2009



Attachment A

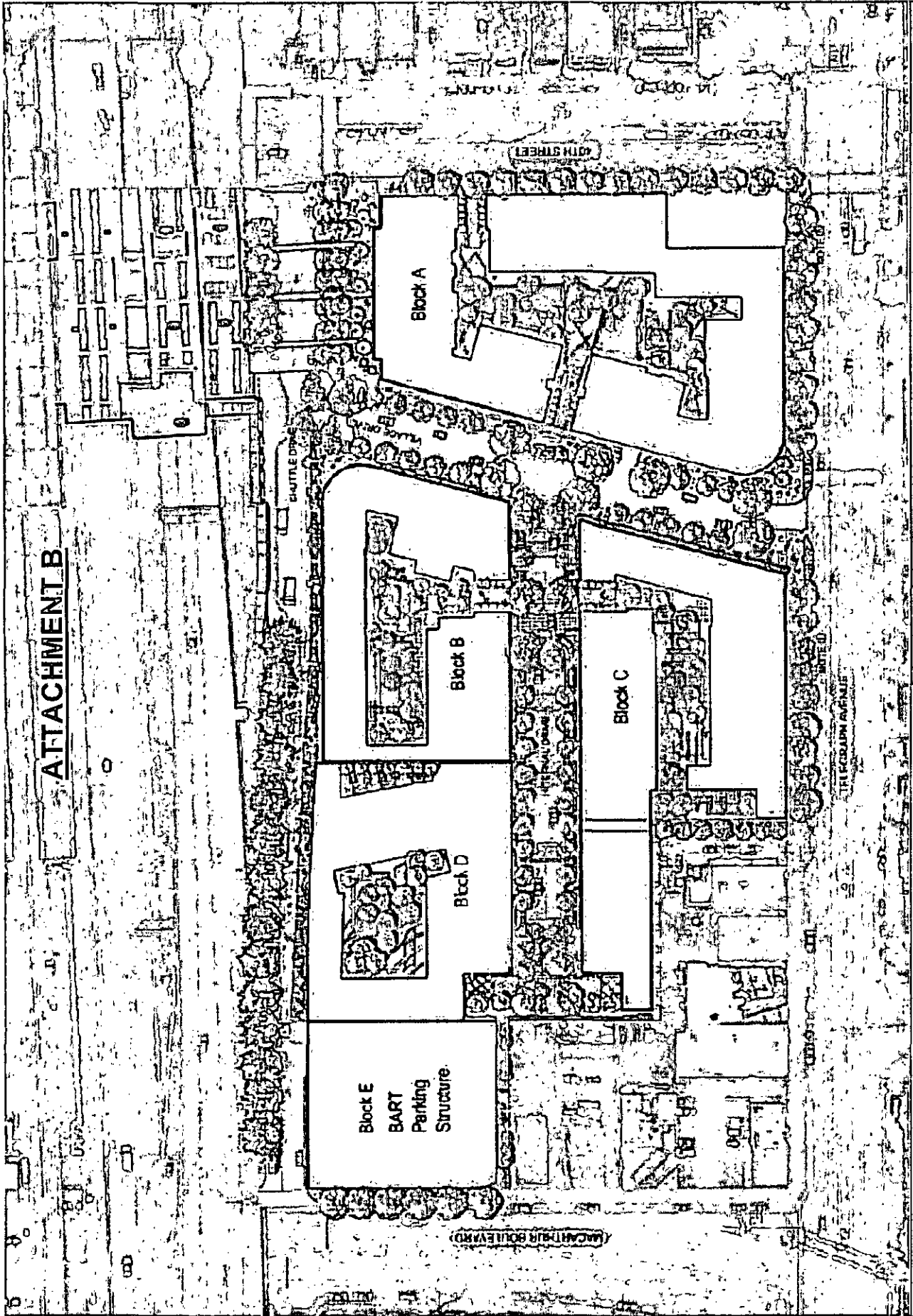
Legend

-  Project site
-  BART Plaza
-  Parcel lines

MacArthur Transit Village
Project Site



ATTACHMENT B



FILED
OFFICE OF THE CITY CLERK
OAKLAND

2009 JUN 11 PM 8:03

APPROVED AS TO FORM AND LEGALITY:

D. Lewis

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;
- 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 AGENCY, OAKLAND, CALIFORNIA, _____, 2009

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

FILED
OFFICE OF THE CITY CLERK
OAKLAND
2009 JUN 11 PM 8:04

APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

An 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 Regarding the Property and Project known as "The MacArthur Transit Village Project"

WHEREAS, the Redevelopment Agency of the City of Oakland ("Agency") is working to redevelop the MacArthur BART Station and the surrounding properties into a transit village; 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, on June 4, 2008, at a duly noticed public hearing, the City Planning Commission (a) certified the Final Environmental Impact Report ("EIR") for the Project and adopted appropriate CEQA related findings; and (b) approved an application for rezoning, planned unit development permit, design review, and conditional use permit ("Development Approvals") to demolish the existing BART surface parking lots and all existing buildings within the project site to allow for the construction of a new mixed-use, transit village development project (624 residential units, 42,500 square feet of neighborhood-serving retail and commercial uses (including 7,000 square feet of live/work units) a 5,000 square feet community center use and 400-space parking garage for BART patrons) ("Project"); and

WHEREAS, on July 1, 2008, at a duly noticed public hearing., the City Council affirmed the City Planning Commission's Development Approvals of the Project, and affirmed the Planning Commission's CEQA-related actions, via Resolution No. 81422 C.M.S.; and

WHEREAS, MTCP now seeks to "vest" its rights into the Planning Approvals of the Project for a term of fifteen (15) years through a Development Agreement with the City; and

WHEREAS, the City is the Lead Agency for the purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA") and 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; and

WHEREAS, the City Planning Commission held a duly noticed public hearing on the proposed Development Agreement on June 3, 2009, and at the close of the hearing recommended approval of the Development Agreement; and

WHEREAS, the Community and Economic Development Committee held a meeting on June 23, 2009 to consider the Development Agreement and recommended approval of such to the City Council; and

WHEREAS, the City Council held a duly noticed public hearing on the Development Agreement on July 7, 2009. Now, therefore,

THE CITY COUNCIL OF THE CITY OF OAKLAND ORDAINS AS FOLLOWS:

Section 1. That the City 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

Section 2. That the City Administrator or his designee is authorized to negotiate and execute the Development Agreement, in a form in substantial conformity with that presented to the City Council, as it may be revised by the City Council, and to take any other action with respect thereto consistent with this Ordinance and its basic purpose; provided, however, that any and all documents necessary to effectuate the intent of this Ordinance shall be reviewed and approved as to form by the City Attorney prior to execution by the City Administrator or his designee.

Section 3. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 4. *The City Council finds and determines the following:*

a) The Development Agreement contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138; and

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments; and

c) The Development Agreement is desirable in order to facilitate the successful Project implementation; and

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs and the catalytic effect the project will have on revitalizing the surrounding neighborhood, which will result in increased property values in the surrounding area and an increase in the viability of existing retail establishment; and

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement.

Section 5. Except as specifically set forth herein, this Ordinance suspends and supersedes all conflicting resolutions, ordinances, plans, codes, laws and regulations.

Section 6. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of this Ordinance 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 Ordinance or the application of this Ordinance to other situations shall remain in full force and effect.

Section 7. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement that this Ordinance approves or application of the Development Agreement 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.

Section 8. That the record before this Council relating to this Ordinance includes, without limitation, the following:

1. the application, 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 before and during the public hearings on the application; 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.

Section 9. That the custodians and locations of the documents or other materials which constitute the record of proceedings upon which the City'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.

Section 10. This Ordinance shall **not** be codified in the Oakland Municipal Code.

Section 11. Pursuant to section 216 of the City Charter, this Ordinance is effective as of the date it is adopted if passed by an affirmative vote of at least six council members; otherwise, it is effective seven days after final adoption.

Section 12. That the City Administrator or his designee shall cause to be filed with the County of Alameda a Notice of Determination for this action.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2009

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
 LATONDA SIMMONS
 Clerk
 of the City of Oakland

DATE OF ATTESTATION: _____

AMPW

NOTICE AND DIGEST

AN 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 REGARDING THE PROPERTY AND PROJECT KNOWN AS "THE MACARTHUR TRANSIT VILLAGE PROJECT"

This ordinance would authorize the City Administrator to negotiate and execute a Development Agreement between the City of Oakland and MacArthur Transit Village LLC. in order to facilitate development of the MacArthur Transit Village Project.