

2017 MAR -9 PM 3:09

APPROVED AS TO FORM AND LEGALITY:


Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AMENDING RESOLUTION NO. 86266 C.M.S. WHICH AUTHORIZED CONSENT TO THE ASSIGNMENT OF MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC'S (MTCP) RIGHT TO ACQUIRE PARCELS B-1 AND B-2 FROM BART AND THE PARTIAL ASSIGNMENT OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND MTCP TO A JOINT VENTURE BETWEEN MCGRATH PROPERTIES, INC., OR RELATED ENTITY, AND BOSTON PROPERTIES LP, OR RELATED ENTITY ("BP"), AND INSTEAD AUTHORIZE THE CONSENT TO THE ASSIGNMENT OF MTCP'S RIGHT TO ACQUIRE PARCELS B-1 AND B-2 FROM BART AND PARTIAL ASSIGNMENT OF THE DEVELOPMENT AGREEMENT TO BP, PURSUANT TO A LONG-TERM GROUND LEASE WITH AN OPTION TO PURCHASE BETWEEN MPI MACARTHUR, LLC, OR RELATED ENTITY, AND BP FOR THE DEVELOPMENT OF PARCELS B-1 AND B-2 OF THE MACARTHUR STATION PROJECT (FORMERLY KNOWN AS THE MACARTHUR TRANSIT VILLAGE), RELYING ON THE 2008 MACARTHUR TRANSIT VILLAGE PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, AND OTHER DOCUMENTS, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168, 15180, 15183, 15183.3 AND 15061, AND ADOPTING RELATED CEQA FINDINGS

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission (the "Commission") certified the MacArthur Transit Village Environmental Impact Report ("EIR") and recommended approval of the MacArthur Transit Village Planned Unit Development ("PUD"); and

WHEREAS, on July 1, 2008, pursuant to Resolution No. 81422 C.M.S., the Oakland City Council ("City Council") approved the MacArthur Transit Village PUD; and

WHEREAS, pursuant to Ordinance No. 12959 C.M.S., dated July 21, 2009, the City Council adopted the "Development Agreement ("DA") by and between City of Oakland ("City") and MacArthur Transit Community Partners, LLC ("MTCP") Regarding the Property and Project Known as "MacArthur Transit Village"; and

WHEREAS, the DA and Oakland Planning Code require City Council consent to the transfer of development rights to "Non-Exempt Transferees," as defined in the DA; and

WHEREAS, in March 2016, MTCP submitted a request to transfer interest in MacArthur Transit Village Parcels B-1 and B-2 (hereinafter referred to as "Parcel B", since the two parcels will be combined to create one Parcel B for development) to a different developer; and

WHEREAS, MTCP identified a joint venture between Boston Properties LP (BP), or related entity, and McGrath Properties, Inc. (McGrath), or related entity, as the proposed new developer, and

WHEREAS, MTCP desired to assign certain of its rights, interests and obligations relating to Parcel B under the DA, to the proposed new developer; and

WHEREAS, on July 6, 2016, the City adopted Resolution No. 86266 C.M.S. consenting to and approving of such assignment; and

WHEREAS, McGrath and BP have determined to structure their relationship for the purpose of this project as Lessor-Lessee, respectively, through a ground lease for Parcel B with an option to purchase the property; and

WHEREAS, MTCP has consented to the ground lease with option to purchase structure with MPI MacArthur, LLC (a McGrath entity) or related entity as fee title owner and Ground Lessor and BP or related entity as Ground Lessee; and

WHEREAS, the roles and responsibilities of each party to the ground lease will be unchanged, with MPI MacArthur, LLC or related entity providing the land, and BP or related entity providing all equity and acting as the vertical developer pursuant to the terms of the DA; and

WHEREAS, staff previously determined that BP has the financial capacity and development experience to deliver the proposed development on Parcel B;

Now therefore be it

RESOLVED: The City Council, based upon its own independent review, consideration, and exercise of its independent judgment, hereby finds and determines, on the basis of substantial evidence in the entire record before the City, that none of the circumstances necessitating further CEQA review are present for the reasons stated in the February 1, 2017 Planning Commission Report and Attachments (Planning Commission Report), the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments (City Council Report), and the March 14, 2017 Community and Economic Development Committee Agenda Report, all hereby incorporated by reference as if fully set forth herein. The City Council also adopts the Standard Conditions of Approval/Mitigation Monitoring and Reporting Program contained in the

Planning Commission Report and City Council Report, hereby incorporated by reference as if fully set forth herein; and be it further

RESOLVED: That the City Council finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report, the City Council Report and the March 14, 2017 Community and Economic Development Committee Agenda Report (all hereby incorporated by reference as if fully set forth herein), and directs that the City Administrator or designee shall cause to be filed with the appropriate entities a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That, pursuant to the DA, the City amends Resolution No. 86266 C.M.S to consent to the partial assignment and assumption of the DA relating to Parcel B and the transfer and assignment of development rights under the DA for Parcel B to BP, or related entity, subject to execution of a ground lease with an option to purchase with MPI MacArthur, LLC, or related entity; and be it further

RESOLVED: That, pursuant to the DA, the City Administrator or designee is hereby authorized to execute a written consent to the partial assignment and assumption of the DA relating to Parcel B and the transfer and assignment of development rights under the DA for Parcel B to BP, or related entity, subject to execution of a ground lease with option to purchase with MPI MacArthur, LLC or related entity; and be it further

RESOLVED: That the City Administrator is further authorized to take whatever action is necessary with respect to the consent to the transfer and assignment of development rights under the DA consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the consent to the partial assignment and assumption of the DA related to Parcel B and the assignment and transfer of the development rights under the DA with regard to Parcel B pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk; and be it further

RESOLVED: That the record before this Council relating to this Resolution 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, including all CEQA-related materials;
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; and be it further

RESOLVED: 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 Planning and Building Department, Planning Bureau, 250 Frank H. Ogawa Plaza, 3rd Floor, Oakland; and (b) the Office of the City Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California