

OFFICE OF THE CITY ADMINISTRATOR
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**REDEVELOPMENT AGENCY
OF THE CITY OF OAKLAND**

Agenda Report

TO: Office of the City Administrator/Agency Administrator
ATTN: Deborah Edgerly
FROM: Community and Economic Development Agency
DATE: December 12, 2006

SUBJECT: An Agency Resolution Authorizing the Agency Administrator to Execute a Non-Binding Letter of Intent with MacArthur Transit Community Partners, LLC, towards an Owner Participation Agreement for the MacArthur Transit Village Project at the MacArthur BART Station, and Authorizing a Predevelopment Grant for this Project for an Amount Not to Exceed \$1.5 Million

SUMMARY

This item is a request for Redevelopment Agency approval of a resolution authorizing the Agency Administrator to sign a non-binding Letter of Intent with MacArthur Transit Community Partners, LLC ("MTCP"), an entity which consists of a partnership between McGrath Properties (formerly known as Aegis Equity Partners), Shea Properties, and BUILD (BRIDGE Urban Infill Land Development, LLC), addressing deal terms related to Agency participation in the MacArthur Transit Village Project. These deal terms will be incorporated into an Owner Participation Agreement ("OPA") for the project which will be brought before the City Council for approval following certification of the Environmental Impact Report ("EIR") for the project, which is estimated to be in January 2008.

In addition, this item requests Redevelopment Agency approval for predevelopment assistance funding, in the form of a grant, for up to \$1.5 million to assist with the predevelopment costs for the MacArthur Transit Village Project, including the environmental impact report, site assessments, and project engineering and design work. The predevelopment funding assistance will cover approximately 50% of the development team's expenses for the remainder of the required predevelopment work for the project starting from September 1, 2006. The Agency will pay for the predevelopment assistance with proceeds from the 2006 Broadway/MacArthur/San Pablo Tax Allocation Bonds.

FISCAL IMPACTS

The attached resolution approves a predevelopment funding assistance grant to MTCP for the MacArthur Transit Village Project, which will be capped at \$1.5 million. The remainder of the proposed Agency contribution to the MacArthur Transit Village project, as outlined in this report

and in the term sheet (Exhibit A), is non-binding. With the exception of the predevelopment funding assistance grant, staff will return to the Agency for approval to appropriate funding for this project at the time of the execution of the OPA.

The predevelopment funding assistance grant will be provided on a reimbursement basis for funds expended by MTCP from September 1, 2006 to the completion of the entitlements process. The Agency proposes to allocate a total of \$1.5 million from the Broadway/MacArthur/San Pablo Tax Allocation Bonds, Series 2006C-TE Fund (to be established) in a project to be determined. The Finance and Management Agency received approval to issue the bonds at the September 19, 2006 City Council meeting (Resolution 2006-0070 C.M.S.).

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. After the previous project developer, Creative Housing Associates, failed to perform under their Exclusive Negotiating Agreement (“ENA”) with the Agency in 2003, the Agency and BART selected a new 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), Shea Properties, 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 on the key project deal points and working to refine the project proposal. The development team started the environmental review process in February 2006. A Notice of Preparation for the Environmental Impact Report was released on February 15, 2006 and a scoping session was held at the Planning Commission on March 15, 2006. However, since that date the development team has changed their project proposal from a concept that included high-rise towers to a low-rise concept, in response to changing market conditions. The development team presented their revised proposal to the community at a CPC meeting on October 5, 2006. The City plans to release a second Notice of Preparation in January to inform the community about the changes to the project description.

The current project proposal consists of 540 units of housing, of which 450 are market rate condominiums and 90 are affordable rental units, 20,000 to 35,000 square feet of neighborhood serving retail and office space, and a community space for childcare or other purposes. In addition, the project proposal includes a replacement BART parking structure with 300 parking spaces, which represents 50% replacement of the existing parking spaces, a new public plaza, and renovation of the existing BART plaza and inter-modal facilities at the BART station.

KEY ISSUES AND IMPACTS

Term Sheet

Agency staff and the development team jointly decided to bring the key deal terms for an OPA for the MacArthur Transit Village before the Agency Board for review prior to the completion of the predevelopment phase to obtain feedback on the direction of the negotiations. The draft term sheet negotiated by Agency staff with MTCP is attached to this staff report as Exhibit A. If approved by the Agency Board, the Agency Administrator will execute a non-binding Letter of Intent with MTCP which will include the deal terms outlined in the term sheet. The following sections present a detailed explanation of some of the key terms that Agency staff has negotiated with MTCP.

Project Structure

The development of the project will occur in two phases: Horizontal and Vertical. The Horizontal phase development consists of the construction of the project infrastructure and the BART replacement parking structure. The Vertical Phase consists of the construction of the for-sale housing, below market rate housing, and the commercial space.

The Horizontal phase will be developed by MTCP. Following the completion of the Horizontal phase, MTCP will sell development parcels to the Vertical developers at market value for the construction of the housing and commercial uses. Shea Homes is the Vertical developer for the market-rate housing and commercial portions of the project. BRIDGE Housing is the Vertical developer for the below market rate housing portion of the project.

Determination of Agency Subsidy

The Agency is not guaranteeing MTCP's return on the project. The Agency's financial contribution to the project (other than the predevelopment funding) will be determined at the time of the execution of the OPA, but in no event will exceed a total cap of \$32.5 million, not including grant funds previously awarded to the Agency for this project. After the execution of the OPA, the Agency will not be required to provide any additional Agency funding to the project if the economic conditions change and MTCP can no longer achieve their target return. Conversely, after execution of the OPA, the Agency will not reduce the amount of Agency funding provided to the project if MTCP is poised to receive a return that exceeds their target. If the maximum Agency subsidy is not sufficient to meet MTCP's target return at the time of the execution of the OPA, the Agency will assist MTCP in soliciting additional grant sources to fill the project gap but will not contribute any additional Agency funds.

The Agency subsidy for this project shall not exceed \$32.5 million and will consist of funding from the following sources:

1. \$1.5 million grant for predevelopment funding assistance grant from the 2006 Broadway/MacArthur/San Pablo Tax Allocation Bonds.

2. Up to \$10.5 million loan for land acquisition from 2006 Broadway/MacArthur/San Pablo Tax Allocation Bonds.
3. Up to \$5 million from Agency or City affordable housing funds and up to \$0.8 million of land sales proceeds from 3860 Martin Luther King, Jr. Way to assist with the below market rate housing.
4. Proceeds from a future bond issue based on the tax increment generated from this project. The potential bond proceeds are currently estimated to be \$8.9 million in non-housing funds and \$5.8 million in housing set-aside funds. The Agency's commitment of the bond proceeds generated by the project will be further limited to the amount of net bond proceeds actually received by the Agency.

Developer's Target Returns

In order to determine the amount of Agency subsidy required to make the project economically feasible, the Agency and MTCP negotiated a target return for each phase of the project. As described in the section above, the Agency is not guaranteeing the developer's returns for this project.

Agency staff determined that the development team's target returns of a 17% un-leveraged Internal Rate of Return (IRR) for the Horizontal phase and a 16% Net Profit for the for-sale market rate housing in the Vertical phase of the project are competitive returns. An un-leveraged internal rate of return measures the time value of the cash flow for this project during the development time frame, including both equity and debt. Net Profit is calculated as the developer profit (defined as the sales revenue less the development costs) divided by the sales revenue.

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. This finding was further supported by the recent "Inclusionary Housing Program San Francisco Sensitivity Analysis" report completed by Keyser Marston Associates for the City of San Francisco which also addressed required developer returns for different types of housing construction.

Determination of the Fair Market Value for Property

The Agency is requiring the Horizontal developer to sell the Vertical development parcels to the for-profit Vertical developer at fair market value. The for-sale market rate housing portion of the project will be self-sufficient and will not be subsidized by the Agency. The price paid to the Horizontal developer by the Vertical developer is a critical component of the financial return to the Horizontal phase of development. As a result, it is a key input in determining the amount of Agency subsidy necessary for MTCP to meet its target of a 17% un-leveraged IRR return for the Horizontal phase of the project.

The Agency and MTCP will calculate the fair market value of the Vertical development parcels prior to the execution of the OPA for the purpose of determining the Agency subsidy to the Horizontal phase. The fair market value will be determined through a residual land value analysis method based on reasonable assumptions of unit sale prices, vertical project costs, and a 16% Net Profit target return for the Vertical developer. The fair market price assumptions will be verified prior to the execution of the OPA by a third party economic consultant selected by both MTCP and the Agency.

The calculation of the market value at the time of the OPA execution is only for the purpose of determining the required Agency subsidy to the project and will not predetermine the actual sales price of the Vertical development parcels, which will occur several years after the execution of the OPA. As stated earlier, the Agency subsidy provided to the project will not exceed the maximum Agency subsidy as described in this report.

Grant Funding

The maximum Agency funding available may not be sufficient to assist MTCP with meeting their target return for the Horizontal phase. The Agency plans to continue to work with MTCP and BART to solicit additional grant funds to assist MTCP in meeting their target return. If the Agency is able to procure grant funds in excess of what is required to meet the MTCP's target return, the Agency and MTCP will consider these funds as a credit towards the Agency's committed provision of funding for the project. Alternatively, the Agency may instead decide to use some of these grant funds to make changes to the provision of public improvements to the project.

Site Acquisition

The proposed project site includes 6 privately owned parcels along Telegraph Avenue and West MacArthur Boulevard. The Agency will provide MTCP with an acquisition loan of \$10.5 million to acquire the private properties for the project. This acquisition loan will be secured against the properties by performance deeds of trust. MTCP will use its best efforts to negotiate the acquisition of the private properties needed for the project. If MTCP is unsuccessful, they will seek the assistance of the Agency. Following completion of the construction of the project, the acquisition loan will be forgiven by the Agency.

Project Schedule

The construction schedule for the MacArthur Transit Village project represents a 10 year build out of the project from the date at which MTCP has fee title to all of the parcels for the project. Following the completion of the EIR and the project entitlements, the development team will start the acquisition process. Land acquisition is estimated to take between 6 months to a year if the properties can be purchased on a willing-seller basis.

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. The following is an abbreviated summary of the key milestones for the development of the project starting from the completion of entitlements and the date for which the developer has fee title for all required parcels:

The Horizontal Developer shall:

- 1) Submit applications for final development plan approvals for the public infrastructure within 9 months;
- 2) Submit construction drawings for the public infrastructure within 24 months;
- 3) Commence construction of the public infrastructure within 32 months;
- 4) Complete construction of the public infrastructure within 48 months

The Vertical Market Rate Housing Developer shall:

- 1) Start construction of the Phase I housing construction within 42 months;
- 2) Start construction of the Phase II housing construction within 68 months;
- 3) Start construction of the Phase III housing construction within 94 months;
- 4) Complete construction of Phase III within 120 months.

The Vertical Below Market Rate Housing Developer shall:

- 1) Secure affordable housing financing within 18 months;
- 2) Start construction within 42 months;
- 3) Complete construction within 66 months.

Negotiations with BART

The Agency's negotiated deal terms with MTCP are conditioned upon the agreement between MTCP and BART governing the ability of MTCP to get fee-title for BART property (at fair market value) and to provide BART replacement parking at 50% of the existing spaces. If MTCP is not able to reach agreement with BART on the above issues, the Agency and MTCP will have to renegotiate the term sheet.

Predevelopment Funding Assistance

The Agency has determined that predevelopment funding assistance, in the form of a grant, is warranted for this project due to the longer predevelopment period that is necessitated by the extensive public infrastructure improvements and the three-way public-private partnership on this project between BART, the Agency, and MTCP. The development team has stated that they need this predevelopment assistance to move ahead given the current uncertainty and changing conditions in the housing market.

The predevelopment funding assistance will cover approximately 50% of the development team's expenses for the remainder of the required predevelopment work for the MacArthur Transit Village project. To date, MTCP has expended \$800,000 of their own funds on predevelopment work. MTCP has estimated that the remaining predevelopment expenses will cost an additional \$3 million, resulting in a total predevelopment cost of \$3.8 million, and has

prepared a budget outlining these costs for staff's review. The Agency predevelopment assistance will be provided on a reimbursement basis for approved outlays by the development team starting from September 1, 2006 based on the predevelopment budget and will not exceed \$1.5 million.

The Agency has stipulated to the development team that the predevelopment funding assistance may only be used for work products that may be of value to the Agency to implement this project. These work products include the environmental impact report, environmental risk assessment, market feasibility analysis, architectural designs, and geotechnical studies and project engineering. The Agency funds will not be used to cover legal expenses, staff time, or marketing expenses. Those expenses will comprise the development team's required 50% match.

If at the end of the predevelopment period, the development team decides that they cannot go forward with the project, the grant will be forgiven and the Agency will retain ownership of all work products funded by the grant. If the project is able to move forward, the predevelopment funds will be counted towards the total Agency subsidy to the project.

SUSTAINABLE OPPORTUNITIES

Economic

Potential benefits if the transit village project goes forward include increased housing stock, new permanent jobs from net new commercial development, and increased tax revenue to the City and Agency.

Environmental

Potential benefits if the transit village project goes forward include redevelopment of transit-node located land at a higher density, creating a more sustainable urban land use pattern and increased transit ridership. The use of sustainable design features will be addressed in the Owner Participation Agreement if the project goes forward.

Social Equity

The Agency is requiring that the development team provide affordable housing units as part of the housing that is included in the development proposal. Consequently, potential benefits if the Transit Village project goes forward include the development of affordable housing.

DISABILITY AND SENIOR CITIZEN ACCESS

The authorization of the letter of intent and the predevelopment loan will have no impact on 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 ADA Accessibility Guidelines, the Fair Housing Act and the State of California's Title 24 Accessibility regulations.

RECOMMENDATIONS AND RATIONALE

Staff recommends approval to enter into a non-binding Letter of Intent with the development team based on the negotiated deal terms in the attached term sheet. Staff also recommends approval for the Agency to provide a predevelopment funding assistance grant for up to \$1.5 million to MTCP which will cover approximately 50% of their projected expenses starting from September 1, 2006 to the completion of the project entitlements. Staff believes the predevelopment assistance is warranted given the current downturn in the housing market and the uncertainty and complexity involved in completing a project of this type with two public agencies.

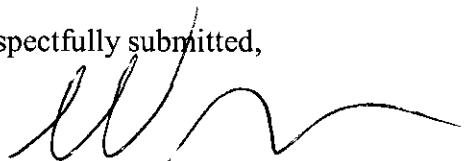
The proposed MacArthur Transit Village project meets the following goals and objectives of the Broadway/MacArthur/San Pablo Redevelopment Plan and its Five Year Implementation Plan:

- The MacArthur Transit Village Project will increase the stock of ownership housing and will provide affordable 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 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.

ACTION REQUESTED OF THE COUNCIL

Staff recommends that the Redevelopment Agency approve the attached resolution which authorizes the Agency Administrator to enter into a non-binding Letter of Intent with MTCP based on the negotiated term sheet and authorizes the Agency Administrator to execute a predevelopment funding assistance grant for up to \$1.5 million with MTCP for the MacArthur Transit Village Project.

Respectfully submitted,



Dan Vanderpriem, Director of Redevelopment,
Economic Development, and Housing and
Community Development

Prepared by:
Kathy Kleinbaum, Urban Economic Analyst IV

APPROVED FOR FORWARDING TO
THE COMMUNITY AND ECONOMIC
DEVELOPMENT COMMITTEE


OFFICE OF THE AGENCY ADMINISTRATOR

LIST OF REPORT ATTACHMENTS:

- EXHIBIT A: DRAFT TERM SHEET

EXHIBIT A:
Draft Term Sheet
City of Oakland Redevelopment Agency and
MacArthur Transit Community Partners, LLC (MTCP)
November 30, 2006

1) Project Description:

- A. Project Structure: The development of the project is divided into two phases, Horizontal and Vertical. The Horizontal phase development consists of the project infrastructure and the development of the BART replacement parking structure. The Vertical Phase consists of the development of the for-sale housing, below market rate housing, and the commercial space.
1. MacArthur Transit Community Partners, LLC (MTCP) is the approved Horizontal developer for the project. MTCP is comprised of McGrath Properties (formerly Aegis Equity Partners), Shea Properties, and BUILD (Bridge Urban Infill Land Development, LLC).
 2. Shea Homes is the approved Vertical developer for the market-rate housing and commercial portions of the project.
 3. Bridge Housing is the approved Vertical developer for the below market rate housing portion of the project.
- B. Project Site: The proposed project site includes the BART property and 6 privately owned parcels along Telegraph Avenue and West MacArthur Boulevard.
- C. Residential Units: The proposed project includes a minimum of 540 Residential Units (Type V Construction):
1. 450 units will be market rate for-sale condominiums
 2. 90 units will be below market rate rentals.
 - i. The minimum number of below market rate units in the project will be equal to 20% of the number of market rate units in the project.
 - ii. The below market rate units will be targeted to income levels not to exceed 50% of Area Median Income (AMI)
 - iii. The below market rate units shall remain affordable for a minimum of 55-years following the completion of the units.
- D. Commercial Space: The proposed project includes 20,000 to 35,000 square feet of retail and office space.
1. The Agency and MTCP shall negotiate preliminary guidelines and standards for the retail tenant mix by December 8, 2006. The retail guidelines will be finalized prior to the execution of the Owner Participation Agreement (OPA) and will be in substantial conformance to the negotiated preliminary retail guidelines.
- E. BART Replacement Parking: The proposed project includes 300 replacement parking spaces for BART, which is equivalent to 50% replacement parking.

1. The number of BART replacement spaces is conditioned upon BART approval of the project
 2. MTCP will study shared parking opportunities to increase the number of parking spaces available to BART riders during peak commute hours.
- F. Community Space: The proposed project will include space for a community purpose. The use of this space will be determined prior to the execution of the OPA. A potential option includes a childcare facility.

2) Financial Terms:

- A. Maximum Agency Contribution to Project: The Agency is not guaranteeing MTCP's return on the project. The Agency financial contribution to the project (other than predevelopment funding) will be determined at the time of the execution of the OPA, but in no event shall exceed a total cap of \$32.5 million, not including grant funds previously awarded to the Agency for this project. After the execution of the OPA, the Agency will not be required to provide any additional Agency funding to the project if the economic conditions change and MTCP can no longer achieve their target return. Conversely, after execution of the OPA, the Agency will not reduce the amount of Agency funding provided to the project if MTCP is poised to receive a return that exceeds their target return.
- B. Components of Agency Contribution to the Project: The Agency financial contributions to the project will be provided in the form of:
1. \$1.5 million in predevelopment funding assistance in the form of a grant from the 2006 Broadway/MacArthur/San Pablo Tax Allocation Bond.
 - i. Predevelopment funding assistance will cover 50% of the total projected predevelopment expenses (per Section 2B1ii) from September 1, 2006 through the end of the entitlements period incurred by the development team based on their predevelopment budget, up to a maximum grant of \$1.5 million.
 - ii. Expenditures of the Agency grant funds are subject to preauthorization by the Agency
 - iii. The Agency will reimburse MTCP up to \$1.5 million for invoices for work completed after September 1, 2006 on pre-approved items such as: CEQA/NEPA document preparation, geotechnical studies, environmental risk assessment, economic analysis, architectural design work necessary for environmental review, and civil engineering.
 - iv. If MTCP does not proceed with the project after completing the predevelopment work, the Agency will take ownership of all work completed on the project and will solicit a new developer for the project and MTCP will have no obligation to repay the predevelopment funding assistance.
 - v. By accepting the predevelopment funding assistance, MTCP agrees to follow the negotiated predevelopment schedule. If MTCP decides to halt work on the project after any portion of the grant has been disbursed, the Agency will terminate negotiations with MTCP, take ownership of all work completed to

date on the project, and will solicit a new developer for the project and MTCP will have no obligation to repay the predevelopment funding assistance it has received.

- vi. Unused funds from the predevelopment funding assistance may be applied to the land acquisition loan, as described below.
 - vii. Predevelopment funding will be provided prior to execution of the OPA and will count toward the cap on total Agency funding set forth above.
2. Up to \$10.5 million for land acquisition from 2006 Broadway/MacArthur/San Pablo Tax Allocation Bond. The acquisition loan will be secured by a performance deed(s) of trust on the properties acquired with these funds, which deed(s) of trust shall be subordinate to any construction financing. The performance deeds of trust will be reconveyed from each property upon issuance of a temporary certificate of occupancy for the building developed on that property.
 3. Up to \$5 million from Agency or City affordable housing funds and up to \$0.8 million from land sales proceeds from 3860 Martin Luther King, Jr. Way to assist with the below market rate housing. Assistance will be structured as a standard affordable housing residual receipts loan.
 4. Proceeds from a future bond issue based on the net tax increment generated from this project (including housing set-aside proceeds).
 - i. The potential bond proceeds are currently estimated to be \$8.9 million in non-housing funds and \$5.8 million in housing set-aside funds. If the bond proceeds, together with other sources of Agency financial assistance, exceed \$32.5 million, they can be used by the Agency for other projects in the Redevelopment Project Area.
 - ii. The housing set-aside portion of the funds will be used towards the subsidy for the below market rate units in the project.
 - iii. The Agency reserves the right to pre-fund any or all of this amount if the Agency has the capacity to produce any of these funds at an earlier date or from other sources. To take into account the time value of the money provided, the amount of credit towards the provision of these funds will be determined based on a negotiated discount rate equal to London Interbank Offered Rates (LIBOR) plus 250 basis points.
 5. Grant funds previously awarded to the Agency for this project, totaling approximately \$1.6 million, including both predevelopment and capital grant awards.
- C. Determination of Agency Subsidy to Project: The amount of the Agency land acquisition loan, affordable housing funding, and contribution of bond proceeds generated from this project shall be determined prior to execution of the OPA, based on the amount of funding required to meet MTCP's targeted return for the Horizontal phase of the project (which includes the site infrastructure and replacement parking) of a 17% un-leveraged Internal Rate of Return (IRR), and using the assumptions set forth below in Section 2E. Notwithstanding the above:

1. The amount of the Agency land acquisition loan, affordable housing funding, and contribution of bond proceeds, along with the predevelopment grant, shall be subject to the \$32.5 million total cap, and
 2. The commitment of the Agency to contribute bond proceeds in the OPA shall be further limited to the amount of net bond proceeds actually received by the Agency.
- D. Grant Funding: The Agency shall continue to work with MTCP and BART to solicit additional grant funds to assist MTCP in meeting their target return.
1. To the extent that grant funds are available, in excess of what is required to meet the MTCP's targeted return that will be decided at the time of the execution of the OPA, the Agency and MTCP will consider these funds as a credit towards the Agency's committed provision of funding for the project. The amount of credit will be determined based on a negotiated discount rate equal to LIBOR plus 250 basis points.
 2. The Agency may instead decide to use some of these grant funds to make changes to the provision of public improvements to the project.
- E. Assumption of the Fair Market Value of the Vertical Parcels for the Purpose of Agency Subsidy Calculations:
1. The market-rate Vertical developer shall pay the fair market value to the Horizontal developer, MTCP, for the completed vertical building pad portion of the Horizontal improvements.
 2. The fair market value will be determined through a residual land value analysis method based on reasonable assumptions of unit sale prices, less the vertical development costs and allowing for a 16% net profit for the Vertical developer in accordance with the residual land value analysis.
 3. The fair market value shall be based upon an assumption that the Vertical market rate development site is purchased by the market rate residential developer based on a phased takedown schedule generally as outlined in the pro forma dated October 25, 2006.
 4. The unit sales price assumptions will be verified prior to the execution of the OPA by a third party residential marketing consultant selected from the following three consultants: 1) Hanley Wood Marketing Intelligence; 2) The Ryness Company; or 3) S.L. State & Associates. The other inputs of the pro forma will be verified by a development consultant selected from the following three consultants: 1) Keyser Marston; 2) CBRE Consulting Sedway Group; 3) Economic Planning Systems.
 5. A calculation of fair market value will be made 30 days prior to the execution of the OPA for the purpose of determining the amount of Agency subsidy necessary for MTCP to meet its target 17% un-leveraged IRR return for the Horizontal phase of the project. In no event will the Agency subsidy be more than the \$32.5 million cap set forth in this term sheet.

3) Project Entitlements and Schedule:

- A. Project Schedule: The Development Schedule shall be tied to the later of the date when:
 (1) the OPA is executed; (2) all Discretionary Approvals for the Entitlements (as defined in

Section 3B of the Term Sheet) are complete, including all applicable appeals periods and litigation/referendum periods associated with such appeals have concluded; and (3) the subject properties have been secured in fee title. This date shall be referred to as “Date of Fee Title”. The dates listed below will be reviewed prior to the execution of the OPA. City Staff will continue to negotiate with MTCP to develop the project sooner.

1. From the Date of Fee Title, the Horizontal Developer shall:
 - i. Submit applications for final development plan approvals for the public infrastructure within nine (9) months;
 - ii. Submit construction drawings for the public infrastructure within twenty-four (24) months;
 - iii. Commence the construction bid process for the public infrastructure within twenty-eight (28) months;
 - iv. Commence construction of the public infrastructure within thirty-two (32) months;
 - v. Complete construction of phase 1 of the public infrastructure within forty-eight (48) months.
2. From the Date of Fee Title, the Market Rate Housing Developer shall:
 - i. Submit applications for final development plan approvals within nine (9) months;
 - ii. Submit completed construction drawings within thirty-three (33) months;
 - iii. Commence the construction bid process within thirty-six (36) months;
 - iv. Complete final design and construction drawings and pull a building permit for Phase I within forty-two (42) months;
 - v. Complete construction of Phase I within sixty-eight (68) months;
 - vi. Complete final design and construction drawings and pull a building permit for Phase II within sixty-eight (68) months;
 - vii. Complete construction of Phase II within ninety-four (94) months;
 - viii. Complete final design and construction drawings and pull a building permit for Phase III within ninety-four (94) months;
 - ix. Complete construction of Phase III within one hundred twenty (120) months.
3. From the Date of Fee Title, the Below Market Rate Housing Developer shall:
 - i. Submit applications for final development plan approval within nine (9) months;
 - ii. Secure affordable housing funding commitments within eighteen (18) months;
 - iii. Submit completed construction drawings within fifteen (15) months of securing all affordable housing funding commitments;

- iv. Commence the construction bid process within eighteen (18) months of securing all affordable housing funding commitments;
- v. Complete final design and construction drawings and pull a building permit within twenty-four (24) months of securing all affordable housing funding commitments;
- vi. Complete construction within forty-eight (48) months of securing all affordable housing funding commitments.

B. Entitlements: The Agency will assist MTCP in working with the City to receive the following project entitlements:

- 1. Development Agreement
- 2. EIR and CEQA related approvals, Rezoning per land use/development plan, General Plan amendments (if necessary), Preliminary Development Plan & Vesting Tentative Map approval. Preliminary Development Plan approval to include Design Review approvals for all buildings developed in the vertical phase. These Design Review approvals shall be appealable to the City Council.
- 3. Final Development Plan Approvals, Improvement Plans and Final Subdivision maps all of which, may be phased (including air rights subdivision and recordation of the final maps and reciprocal easement agreement).

C. Vertical Phase Developer: The Agency has approved Shea Homes and BRIDGE Housing as the Developers for the vertical phase of the project.

- 1. In the event that MTCP elects to proceed with a different Vertical Developer, the Developer must demonstrate to the reasonable satisfaction of the Agency Board that the prospective Vertical Developer has development experience with similar quality urban infill projects, the financial capacity to proceed with the project, and has not been involved with any recent lawsuits against the City or Agency. These standards will be further refined in the OPA/DDA.

4) Site Control

- A. Title Actions: The Agency will work with the City to commence quiet title actions to ensure the street right-of-ways or other easements are vacated in the project area and to abandon, if necessary, utilities in the street that will impact the development project.
- B. Acquisition of Private Properties: MTCP will use its best efforts to negotiate the acquisition of the private properties needed for the project. If MTCP is unsuccessful, they will seek the assistance of the Agency.
 - 1. Per Section 2B2, the Agency will provide MTCP with an acquisition loan of \$10.5 million to acquire private properties for the project. This acquisition loan will be secured against the properties by performance deeds of trust and will be subordinate to the construction loan.

5) Agency Remedies

- A. The OPA will contain mechanisms, in the event of a failure to construct the project, for the Agency to assume ownership of the parcels acquired through the land acquisition loan as described in Section 2B2.

6) Negotiations with BART

- A. Agreement with BART: This term sheet is conditioned upon an agreement between MTCP and BART. If MTCP is not able to reach agreement with BART on the terms listed below, this Term Sheet must be renegotiated.
 1. MTCP will have fee title to 4.8 acres of the BART property.
 2. BART Replacement Parking will be 300 spaces, approximately 50% of the existing spaces.
 3. BART will provide ground lease for 75 years, or the maximum permitted by law, for the portion of their property where the below market rate units are located.
- B. Value of BART Property: MTCP shall not pay BART more than fair market value for the land that is purchased from BART. The Agency, MTCP, and BART shall mutually negotiate a method to determine this value. A credit will be provided to the fair market value of the land for the value of the replacement parking garage and improvements to BART-owned property.

7) Community Benefits

- A. The proposed project will include the following community benefits:
 1. MTCP will comply with the Agency's required Small/Local Business Enterprise, Local Employment, Apprenticeship, Prevailing Wage, First Source Hiring, and Living Wage Programs.
 2. MTCP shall execute a Project Labor Agreement
 3. The project will contain a minimum number of below market rate units which shall be calculated as 20% of the total number of Market Rate units.
 4. MTCP will pay for Residential Permit Parking within ¼ mile of the BART Station.

8) Environmental Issues

- A. The Agency agrees to consider the use of the Polanco Act, or another liability limiting device, where appropriate.
- B. The Agency agrees to participate and cooperate with BART and MTCP in seeking environmental approvals for the site, related to any potential contamination issues, with the appropriate regulatory agency.

OFFICE OF THE CITY CLERK
CITY OF OAKLAND

2004 NOV 30 PM 6:51

APPROVED AS TO FORM AND LEGALITY:

Daniel Lewis

AGENCY COUNSEL

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

RESOLUTION No. _____ C.M.S.

RESOLUTION AUTHORIZING THE AGENCY ADMINISTRATOR TO EXECUTE A NON-BINDING LETTER OF INTENT WITH MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, TOWARDS AN OWNER PARTICIPATION AGREEMENT FOR THE MACARTHUR TRANSIT VILLAGE PROJECT AT THE MACARTHUR BART STATION, AND AUTHORIZING A PREDEVELOPMENT GRANT FOR THIS PROJECT FOR AN AMOUNT NOT TO EXCEED \$1.5 MILLION

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 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 McGrath Properties (formerly Aegis Equity Partners), Shea Properties, 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, for the development of a transit village project at the MacArthur BART Station; and

WHEREAS, staff has negotiated and proposed entering into a non-binding Letter of Intent with MTCP that outlines the terms towards an Owner Participation Agreement ("OPA") for the MacArthur Transit Village project; and

WHEREAS, the negotiated terms in the Letter of Intent include a provision for predevelopment funding assistance from the Agency in the form of a grant not to exceed \$1.5 million to assist MTCP with the entitlements for the project; and

WHEREAS, the predevelopment funding assistance will be restricted to no more than 50% of MTCP's total predevelopment budget from September 1, 2006, to the end of the entitlements period and will only be applied to work products which the Agency has determined could be of value to the Agency, including but not limited to preparation of the environmental impact report, project design and engineering work, environmental and geotechnical studies, and market analysis of the project; and

WHEREAS, the predevelopment grant will be provided on a reimbursement basis for approved expenditures by MTCP; and

WHEREAS, the predevelopment grant will be funded by tax-exempt proceeds from the Broadway/MacArthur/San Pablo Tax Allocation Bonds, Series 2006C-TE; and

WHEREAS, the requirements of the California Environmental Quality Act ("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 Administrator or her designee is hereby authorized to execute a non-binding Letter of Intent with MTCP towards an OPA for the MacArthur BART Transit Village Project, including the deal terms negotiated by staff and attached to the staff report for this Resolution; and be it

FURTHER RESOLVED: That the Agency Administrator or her designee is hereby authorized to provide a predevelopment grant in an amount not to exceed \$1.5 million to MTCP to be used for this project; and be it

FURTHER RESOLVED: That the funding for the predevelopment grant will be allocated from the Broadway/MacArthur/San Pablo Tax Allocation Bonds, Series 2006C-TE Fund (to be established) under a project number to be determined for this grant; and be it

FURTHER RESOLVED: That 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 15262 (feasibility and planning studies), Section 15306 (information collection) and Section 15061(b)(3) (general rule) of the CEQA guidelines; 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 or her designee is hereby authorized take whatever action is necessary with respect to the Letter of Intent and the predevelopment grant consistent with this Resolution and its basic purpose; and be it

FURTHER RESOLVED: That the predevelopment grant agreement shall be reviewed and approved by Agency Counsel for form and legality prior to execution, and a copy shall be placed on file with the Agency Secretary.

IN AGENCY, OAKLAND, CALIFORNIA, _____, 2006

PASSED BY THE FOLLOWING VOTE:

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

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____

LATONDA SIMMONS
Secretary, Redevelopment Agency
of the City of Oakland