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OFFICE OF THE CITY CLERK
OAKLAND

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APPROVED AS TO FORM AND LEGALITY

Mark P. Wald

City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. 12959 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, JUL 21 2009, 2009


PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND CHAIRPERSON BRUNNER - 8

NOES- 0

ABSENT- 0

ABSTENTION- 0

ATTEST: 
LATONDA SIMMONS
Clerk
of the City of Oakland

Introduction Date: JUL 7 2009 DATE OF ATTESTATION: 7/22/09

MPW

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.