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CITY OF OAKLAND



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To: Members of the Community & Economic Development Committee
From: Councilmember Jane Brunner, Chair
Date: December 12th, 2006
Re: Item 8, MacArthur BART Letter of Intent

I have made a minor addition to the Term Sheet included as Attachment A in this report, and I have attached a complete Attachment A to this memo that includes my change.

I have amended (added language underlined) Section 5A of the term sheet to read:

- 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. The OPA will also specify penalties and remedies for the developer in the event that the developer fails to keep to the agreed upon development schedule.

Thank you for your consideration.

**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. The OPA will also specify penalties and remedies for the developer in the event that the developer fails to keep to the agreed upon development schedule.

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.