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APPROVED AS TO FORM AND LEGALITY:



Agency Counsel

**OAKLAND REDEVELOPMENT
SUCCESSOR AGENCY**

Resolution No. 2017-_____

A RESOLUTION: 1) AMENDING RESOLUTION NO. 2016-005 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 AN OWNER PARTICIPATION AGREEMENT (OPA) BETWEEN ORSA AND MTCP TO A JOINT VENTURE BETWEEN MCGRATH PROPERTIES, INC., OR RELATED ENTITY, AND BOSTON PROPERTIES LP, OR RELATED ENTITY, 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 OPA TO BOSTON PROPERTIES LP, OR A RELATED ENTITY ("BP") PURSUANT TO A LONG TERM GROUND LEASE WITH AN OPTION TO PURCHASE BETWEEN MPI MACARTHUR, LLC, OR A RELATED ENTITY, AND BP FOR THE DEVELOPMENT OF PARCELS B-1 AND B-2 OF THE MACARTHUR STATION PROJECT ("PROJECT"), 2) AUTHORIZING A THIRD AMENDMENT TO THE OPA TO (A) WAIVE A PERFORMANCE AND PAYMENT BOND REQUIREMENT FOR DEVELOPMENT OF THE PROJECT IN EXCHANGE FOR AN ADDITIONAL PAYMENT OF UP TO \$500,000 FOR COMMUNITY BENEFITS; (B) EXTEND OPA PERFORMANCE DEADLINES; (C) INCREASE THE NET WORTH REQUIREMENT FOR THE ENTITY THAT WILL PROVIDE THE COMPLETION GUARANTY FOR THE PROJECT; AND (D) AMEND SECTION 2.2.3 TO LIMIT PLACEMENT OF THE BELOW MARKET RATE UNITS FORTHE PARCEL B PROJECT TO FLOORS FIVE THROUGH NINE; AND (3) RELYING ONTHE 2008 MACARTHUR STATION 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, the Oakland Redevelopment Successor Agency's (ORSA), predecessor in interest to the Oakland Redevelopment Agency, entered into that certain Owner

Participation Agreement (OPA) with MacArthur Transit Community Partners (MTCP) dated February 24, 2010, as amended by A First Amendment to the OPA dated March 2, 2011, and amended again by a Second Amendment to the OPA dated December 1, 2016 for the phased development of the MacArthur Station Project; and

WHEREAS, on July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit District ("BART") entered into a Purchase and Lease Option Agreement for the sale or lease of BART-owned Property, including Parcels B-1 and B-2 (hereinafter collectively referred to as "Parcel B" since the two parcels will be combined to create one parcel for development) located on Frontage Road, for the development of a residential project (the "Project"); and

WHEREAS, the OPA requires ORSA's consent to the transfer of any property interest to non-affiliates of MTCP, subject to certain criteria defined in the OPA, which include, among other things, development experience and adequate financial capacity; and

WHEREAS, MTCP, in March 2016, submitted a request to convey its option to purchase Parcel B of the MacArthur Transit Village from BART 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 new developer; and

WHEREAS, on July 6, 2016, ORSA adopted Resolution No. 2016-005 C.M.S. consenting to and approving of such assignment; and

WHEREAS, McGrath and BP subsequently decided to structure their relationship as lessor-lessee, respectively, through a ground lease for Parcel B with a right to acquire the land, instead of a joint venture partnership; and

WHEREAS, MTCP has consented to the ground lease structure with MPI MacArthur, LLC (a McGrath-related entity), or related entity, as lessor and BP, or related entity, as 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 the financing and acting as the vertical developer pursuant to the terms of the OPA; and

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

WHEREAS, the OPA requires the developer of any given phase of the MacArthur Station Project to provide labor and material bonds and performance bonds naming ORSA as co-obligee, each in a sum of not less than one hundred percent (100%) of the scheduled construction cost of the respective phase of the MacArthur Station Project; and

WHEREAS, BP has requested that ORSA waive the bonding requirement in the OPA for the development of Parcel B in exchange for a payment of up to five hundred thousand dollars (\$500,000) for community benefits to the City of Oakland ("City"); and

~~**WHEREAS**, pursuant to the OPA, any vertical developer of any phase of the MacArthur Station Project must deliver a completion guaranty guarantying completion of each phase of the MacArthur Station Project from a guarantor that has a net worth of at least \$10 million; and~~

WHEREAS, ORSA desires to waive the labor and materials bonds and performance bonds requirement of the OPA for the development of Parcel B by BP in exchange for increasing the net worth requirement for the guarantor guarantying completion of Parcel B from \$10 million to 25 percent of the total Project costs for developing Parcel B; and

WHEREAS, MPI MacArthur, LLC must exercise its option to purchase Parcel B no later than April 25, 2017; and

WHEREAS, a Final Development Plan (FDP) must be approved as a condition of MPI MacArthur, LLC, or a related entity's ability to exercise its option to purchase the Parcel B site from BART; and

WHEREAS, the terms of the OPA require BP to commence construction within one year of approval of the FDP; and

WHEREAS, the FDP is expected to be approved on March 21, 2017, which would necessitate a construction start date on March 21, 2018; and

WHEREAS, MacGrath and BP requested that the performance deadlines be extended; and

WHEREAS, ORSA, the California State Department of Housing and Community Development (HCD) and MTCP executed two grant agreements for funding under the State's Infill Infrastructure Grant (IIG) and Transit-Oriented Development (TOD) Housing Grant Programs; and

WHEREAS, these grant agreements require that project construction on Parcel B commence by June 2018; and

WHEREAS, the IIG and TOD grant agreements further require that the MacArthur Station Project provide at least 448 units, of which 15 percent must be affordable to low and moderate income households, by June of 2021; and

WHEREAS, this requirement can be satisfied by the planned residential development of 383 units on Parcels A and C-1, which, in combination with the 90 affordable units at the

Mural Apartments that was developed by MTCP on Parcel D, will satisfy the housing unit obligation with HCD; and

WHEREAS, construction on Parcel A and C-1 is expected to begin in the spring of 2017; and

WHEREAS, staff of HCD has indicated that they will release Parcel B from all obligations under the respective IIG and TOD grant agreements once they are sufficiently assured that the 383 units on Parcels A and C-1 are underway; and

WHEREAS, ORSA is able to grant an extension to the start of construction deadline of up to three months, or from March 21, 2018 to June 21, 2018 without HCD approval; and

WHEREAS, ORSA desires to grant BP an extension of up to 12 months subject to HCD's release of Parcel B's obligations under the under the respective IIG and TOD grant agreements; and

WHEREAS, MacGrath and BP have requested that the below-market-rate rental units in the Project not be scattered throughout the market rate portion of the Project, but instead be distributed among the market rate units throughout floors five through nine of the Project; and

WHEREAS, ORSA desires to grant MacGrath and BP's request to restrict the distribution of the below-market-rate rental units in the Project to floors nine through five; and

Now therefore be it

RESOLVED: That, pursuant to the OPA, ORSA consents to the partial assignment to and assumption of the OPA to BP, or related entity and assignment of MTCP's right to acquire title to Parcel B to MPI MacArthur, LLC, or related entity, subject to execution of a ground lease with right to purchase between MPI MacArthur, LLC, or related entity and BP or a related entity; and be it further

RESOLVED: That the Agency Administrator or designee is hereby authorized to execute a written consent to the partial assignment to and assumption of the OPA and the assignment of MTCP's right to acquire Parcel B from BART to MPI MacArthur, LLC, or related entity, subject to execution of a ground lease with BP or a related entity; and be it further

RESOLVED: That ORSA, 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 ORSA, 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. ORSA 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 ORSA 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 Agency 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 Section 6.6 "Performance and Payment Bonds" of the OPA is hereby deleted in its entirety for the Project on Parcel; and be it further

RESOLVED: That the BP shall require its general contractor to carry subguard insurance on all of its sub-contractors; and be it further

RESOLVED: That Section 2.1.4 "Change in Vertical Developer" of the OPA be amended to change the performance guarantor's net worth requirement from ten million dollars (\$10,000,000), adjusted for inflation every five (5) years, to an amount equal to twenty-five percent (25%) of the total development cost of Parcel B; and be it further

RESOLVED: That BP will make a payment of up to five hundred thousand dollars (\$500,000) to the City of Oakland for community benefits yet to be determined in exchange for a waiver of Section 6.6 of the OPA; and be it further

RESOLVED: That any payment of up to \$500,000 by BP for community benefits be deposited to the Miscellaneous Grant Fund (2999), CIP Broadway/MacArthur/San Pablo (94869), in a Project to be determined; and be it further

RESOLVED: That the OPA be amended to extend performance deadlines related to the development of Parcel B by twelve months or from March 21, 2018 to March 21, 2019, of which the extension of the 9-month period between June 21, 2018 to March 21, 2019, is subject to HCD's release of Parcel B from all obligations under the respective IIG and TOD grant agreements; and be it further

RESOLVED: That Section 2.2.3 of the OPA be amended to state that the below-market-rate rental units in the Parcel B Project not be scattered throughout the market rate portion of the Project, but instead be distributed among the market rate units throughout floors five through nine of the Parcel B Project; and be it further

RESOLVED: That the Successor Agency Administrator or designee is further authorized to take whatever action is necessary with respect to 1) the consent to the partial assignment to and assumption of the OPA and the consent to the assignment of MTCP's right to acquire Parcel B to MPI MacArthur, LLC, or related entity, subject to execution of a ground lease between MPI MacArthur, LLC or related entity and BP, or a related entity, and 2) authorization of a third amendment to the OPA to (A) waive the performance and payment bond requirement for Development of Parcel B In exchange for an additional payment of up to \$500,000 for community benefits; (B) extend performance deadlines in the OPA; (C) change the net worth requirement for the entity that will provide the completion guaranty for the Project on Parcel B, and (D) amending section 2.2.3 of the OPA to limit placement of the below-market-rate units for the Parcel B Project to floors five through nine; consistent with this Resolution and its basic purpose; and be it further

RESOLVED: That the record before ORSA 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 ORSA before and during the public hearings on the application; and
5. all matters of common knowledge and all official enactments and acts of ORSA, 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 ORSA'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 ORSA Clerk, 1 Frank H. Ogawa Plaza, 1st Floor, Oakland; and be it further

RESOLVED: That all documents necessary to effect the partial assignment to and assumption of the OPA and the consent to the assignment of MTCP's right to acquire Parcel B, and the OPA amendments made pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the ORSA Clerk.

ORSA, 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
Agency Clerk and Clerk of the Council
of the City of Oakland, California