



FILED
OFFICE OF THE CITY CLERK
OAKLAND

SUPPLEMENTAL AGENDA REPORT

TO: Sabrina B. Landreth
City Administrator

FROM: Darin Ranelletti,
Interim Director, PBD

SUBJECT: MacArthur BART Parcel B Revision
to Planned Unit Development and
Amendment to Development
Agreement

DATE: March 3, 2017

City Administrator Approval

Date:

3/2/17

RECOMMENDATION

Staff Recommends That The City Council Conduct A Public Hearing And Upon Conclusion, Adopt the Following:

A Resolution, As Recommended By The City Planning Commission, (A) Revising The MacArthur BART Planned Unit Development; (B) Adopting A Final Development Permit, Vesting Tentative Parcel Map 10561, And Design Review, And (C) Relying On The 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, And 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, Ca (Assessor Parcel Numbers 012 102501100 And 012 102501200)

An Ordinance, As Recommended By the City Planning Commission, (A) Amending The Development Agreement By and Between City of Oakland and Macarthur Transit Community Partners, LLC Regarding The Property Known As "MacArthur Transit Village" To Allow For Increased Height On Parcel B, And (B) Relying On The 2008 MacArthur Station Project Environmental Impact Report and Addenda, Finding That No Additional Environmental Review Is Needed Pursuant To California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183, and 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, CA (Assessor Parcel Numbers 012 102501100 AND 012 102501200)

REASON FOR SUPPLEMENTAL REPORT

The purpose of this report is to provide clarification regarding information included in the February 28, 2017 Community and Economic Development Committee (CEDC) report, and to provide revisions, as recommended by the CEDC at that hearing.

Item: _____
City Council
March 7, 2017

Clarifications Regarding CEQA Analysis

Wind

The City of Oakland received a comment letter from Lozeau Drury LLP (included as an attachment to the February 28, 2017 CEDC report) which stated that the wind analysis contained in the MacArthur Transit Station – Modified 2016 Project CEQA Analysis disclosed significant and unavoidable impacts. The following discussion provides further, clarifying responses to the comment (see also the February 1, 2017 UPP memorandum included as Attachment A to the February 27, 2017 CEDC Report and March 2017 CPP Report, included here as **Attachment 1**).

First, the City of Oakland California Environmental Quality Act (CEQA) significance threshold for wind only applies to projects with a height of 100 feet or more, **and** that are either (1) adjacent to a substantial body of water or (2) located in Downtown (the northern border of which is West Grand Avenue). The threshold does not apply to the MacArthur Transit Station Project because the project site is not located adjacent to a substantial body of water nor is located Downtown. The reason the threshold is specific to wind impacts near bodies of water is because open bodies of water can generate high wind speeds. The importance of recognizing wind impacts in Downtown is that wind speeds tend to be greater and a wind tunnel effect (similar to cumulative impacts) can result due to the large number of tall buildings in close proximity to one another in the Central Business District. Although the wind significance threshold does not apply at the proposed project, the City has nevertheless conducted a wind study for informational purposes.

Second, regarding the wind analysis itself, the City has received comments regarding the identification of excessive wind speeds. The initial pedestrian wind tests were performed without landscaping in place. Subsequent pedestrian wind tests were performed with a landscape option similar to the proposed project landscaping plan. When tested with this landscaping plan, no exceedance of the hazard criterion in the public plaza along 39th Street occurred. The only point of exceedance under this scenario was onsite, at a location in the project driveway (point 7 in the report). Due to the intended use of the driveway for vehicular access to the project's parking garage, the lack of any sidewalk or pedestrian path in the driveway area, and the availability of other more convenient pedestrian paths of access between Walter Miles Way and Turquoise Street, no significant use of the driveway by pedestrians is expected. Therefore, this single point of exceedance is not expected to have a significant impact on the public. Therefore, the general public would not be exposed to the potentially hazardous conditions at this location.

Biology (Bird Collision)

The City of Oakland received a comment letter from Lozeau Drury LLP (included as an attachment to the February 28, 2017 CEDC report) regarding the potential for bird mortality due to collisions with the proposed building.

The February 1, 2017 UPP memorandum explained that the City already has imposed, as a Standard Condition of Approval (SCA BIO-3) on the Project, bird-strike reduction measures similar to those contained in the Lozeau Drury letter.

In addition, the applicant had Huffman-Broadway Group, Inc., environmental regulatory consultants, prepare analysis of this issue (see **Attachment 2**). The clarifying analysis concludes that the City of Oakland standard condition of approval, "SCA 18. Bird Collision Reduction Measures", will be a requirement of the proposed project, is incorporated into the CEQA review for the project, is similar to the measures recommended in the comment letter, and would substantially reduce the potential for bird collisions with the proposed building and consequent bird mortality. In summary, incorporation of the standard SCA, as is already proposed for this project, ensures that bird mortality from collisions of birds with the proposed building would not be significant project impact.

Project Conditions of Approval

The following conditions of approval are revised (based on clarifying analysis and/or recommendation by the CEDC) with additions shown in underscore and deletions shown in ~~strike-out~~:

- Remove *Condition 30: Wind*: Based on the clarifying analysis of wind conditions (see Attachment 1), staff recommends removal of proposed Condition of Approval 30 related to landscaping for wind comfort, as the project landscape design eliminates the need for the condition of approval. Moreover, the conditions of approval already include a requirement that the project, including the project landscape plan, must be implemented in accordance with the approved plans. Consequently, no additional condition related to wind is necessary and it should be deleted.as follows:

~~30: Wind..~~

~~*Prior to issuance of certificate of occupancy*~~

~~Landscape plan shall indicate trees located on north and east sides of the building in a staggered arrangement, consistent with "Option 2" and COA WIND-4 in the CEQA Addendum Attachment H.~~

- Revise *Mitigation Trans-4*: Based on the CEDC recommendation, revise existing Mitigation Trans-4 to require a community meeting prior to submittal of any changes to the approved Transportation Demand Management Plan (TDM) to the City of Oakland, as follows:

SCA-TRANS-4: Requirement: The project applicant shall submit a Transportation Demand Management Plan for review and approval by the City. ~~The Developer and their consultant are required to present any significant changes to the TDM Plan to the community at a neighborhood meeting to be coordinated through the City Council member's office prior to submittal to the City of Oakland....~~

- *Revise Condition 13: Construction Management Plan:* Based on the CEDC recommendation, revise the existing condition to require a community meeting prior to submittal of the Construction Management Plan to the City of Oakland, as follows:

13. Construction Management Plan: ... The CMP shall provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, and litter/debris clean-up plan) that specify how potential construction impacts will be minimized and how each construction-related requirements will be satisfied throughout construction of the project. The Developer and Contractor are required to present the CMP to the community at a neighborhood meeting to be coordinated through the City Council member's office prior to submittal to the City of Oakland.

Amendment to Development Agreement Community Benefits

Regarding the proposed amendment to the Development Agreement, the CEDC considered the options for community benefits at their regularly scheduled meeting on February 28, 2017. At that time, the CEDC moved to forward the community benefits proposal put forward by Councilmember Kalb in his supplemental report to the committee (see **Attachment 3**), **except** for the last two items (placement of affordable units in floors 5-19 and Climate-friendly construction). The detailed, actual language is reflected in the Development Agreement amendment attached to this report (see **Attachment 4**).¹

Draft Legislation

Staff is providing revised draft legislation (resolution and ordinance) to reflect the CEDC reports and motion of February 28, 2017 (both clean and redlined versions).

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That the City Council Conduct a Public Hearing and Upon Conclusion, Adopt the Following:

- A Resolution, As Recommended By The City Planning Commission, (A) Revising The MacArthur BART Planned Unit Development; (B) Adopting A Final Development Permit, Vesting Tentative Parcel Map 10561, And Design Review, And (C) Relying On The 2008 MacArthur Station Project Environmental Impact Report And Addenda, And Other Documents, Finding That No Additional Environmental Review Is Needed Pursuant to CEQA Guidelines Sections 15162-15164, 15168, 15180, 15183, And 15183.3 And

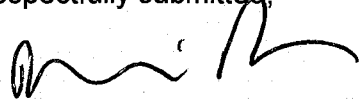
¹ In addition, the recommendation from the Planning Commission relating to expending transportation impact fees in the neighborhood has been dropped since there are no transportation impact fees and monies have already been earmarked.

Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, Ca (Assessor Parcel Numbers 012 102501100 And 012 102501200)

- An Ordinance, As Recommended By the City Planning Commission, (A) Amending The Development Agreement By and Between City of Oakland and Macarthur Transit Community Partners, LLC Regarding The Property Known As "MacArthur Transit Village" To Allow For Increased Height On Parcel B, And (B) Relying On The 2008 MacArthur Station Project Environmental Impact Report and Addenda, Finding That No Additional Environmental Review Is Needed Pursuant To California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183, and 15183.3 And Adopting Related CEQA Findings, For Parcel B, Located at 532-39th Street, Oakland, CA (Assessor Parcel Numbers 012 102501100 AND 012 102501200)

For questions regarding this report, please contact Catherine Payne, Planner IV, at (510) 238-6168 or cpayne@oaklandnet.com.

Respectfully submitted,



Darin Ranelletti, Interim Director
Planning and Building Department

Reviewed by:

Robert Merkamp, Development Manager

Prepared by:

Catherine Payne, Planner IV

Attachments (4):

1. CPP letter report, dated March 1, 2017: Pedestrian Wind Conditions around the MacArthur BART Transit Village
2. Huffman-Broadway Group, Inc. letter report dated February 15, 2017: bird-strikes
3. Councilmember Dan Kalb's February 23, 2017 Supplemental Report to CEDC
4. Proposed Development Agreement Amendment

Introduced by Councilmember _____

FILED
OFFICE OF THE CITY CLERK
OAKLAND

REVISED @ CEDC
Approved as to Form and Legality
Mark P. Wald
Office of the City Attorney

2017 MAR -2 PM 4:21

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) REVISING THE MACARTHUR BART PLANNED UNIT DEVELOPMENT; (B) ADOPTING A FINAL DEVELOPMENT PERMIT, VESTING TENTATIVE PARCEL MAP 10561, AND DESIGN REVIEW; AND (C) RELYING ON THE 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, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: A Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review (Project); and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits, which will be adopted via a separate ordinance; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding the Project to the full Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project, with further and revised conditions of approval and Development Agreement community benefits; and

WHEREAS, the Project was considered at a regular, duly noticed, public hearing of the City Council on March 7, 2017; 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, and the March 7, 2017 Supplemental City Council Agenda Report (City Council Reports), 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 Reports, 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 and City Council Reports (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council hereby adopts all of the Project's planning-related permits and approvals and conditions of approval, based in part on the Findings and conditions of approval identified in the Planning Commission Report, as revised by the City Council Reports (hereby incorporated by reference as if fully set forth herein); 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

FURTHER RESOLVED: This Resolution shall only be effective if the Development Agreement Amendment Ordinance is adopted, and, if such Ordinance is adopted, this Resolution shall become effective upon the effective date of the Development Agreement Amendment Ordinance; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

LEGAL NOTICE: THIS DECISION OF THE CITY COUNCIL IS FINAL AND IS NOT ADMINISTRATIVELY APPEALABLE. HOWEVER, THE DECISION WILL ONLY BE EFFECTIVE IF THE DEVELOPMENT AGREEMENT AMENDMENT ORDINANCE IS ADOPTED, AND, IF SUCH ORDINANCE IS ADOPTED, THIS RESOLUTION SHALL BECOME EFFECTIVE UPON THE ADOPTION DATE OF THE DEVELOPMENT AGREEMENT AMENDMENT ORDINANCE. ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.

Introduced by Councilmember _____

Office of the City Attorney

OAKLAND CITY COUNCIL

RESOLUTION NO. _____ C.M.S.

A RESOLUTION, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) REVISING THE MACARTHUR BART PLANNED UNIT DEVELOPMENT; (B) ADOPTING A FINAL DEVELOPMENT PERMIT, VESTING TENTATIVE PARCEL MAP 10561, AND DESIGN REVIEW; AND (C) RELYING ON THE 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, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: A Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review (Project); and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits, which will be adopted via a separate ordinance; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding the Project to the full Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project, with further and revised conditions of approval and Development Agreement community benefits; and

WHEREAS, the Project was considered at a regular, duly noticed, public hearing of the City Council on March 7, 2017; 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), ~~and~~ the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments, and the March 7, 2017 Supplemental City Council Agenda Report (City Council Reports), 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 Reports, 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 and City Council Reports (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies; and be it

FURTHER RESOLVED: That the City Council hereby adopts all of the Project's planning-related permits and approvals and conditions of approval, based in part on the Findings and conditions of approval identified in the Planning Commission Report, as revised by ~~and~~ the City Council Reports (hereby incorporated by reference as if fully set forth herein); 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

FURTHER RESOLVED: This Resolution shall only be effective if the Development Agreement Amendment Ordinance is adopted, and, if such Ordinance is adopted, this Resolution shall become effective upon the effective date of the Development Agreement Amendment Ordinance; and be it

FURTHER RESOLVED: That the recitals contained in this Resolution are true and correct and are an integral part of the City Council's decision.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

LEGAL NOTICE:

THIS DECISION OF THE CITY COUNCIL IS FINAL AND IS NOT ADMINISTRATIVELY APPEALABLE. HOWEVER, THE DECISION WILL ONLY BE EFFECTIVE IF THE DEVELOPMENT AGREEMENT AMENDMENT ORDINANCE IS ADOPTED, AND, IF SUCH ORDINANCE IS ADOPTED, THIS RESOLUTION SHALL BECOME EFFECTIVE UPON THE ADOPTION DATE OF THE DEVELOPMENT AGREEMENT AMENDMENT ORDINANCE. ANY PARTY SEEKING TO CHALLENGE THIS DECISION IN COURT MUST DO SO WITHIN NINETY (90) DAYS OF THE EFFECTIVE DATE OF THIS DECISION, UNLESS A DIFFERENT DATE APPLIES.

2017 MAR -2 PM 4:22

Mark R. Wall

Deputy City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC REGARDING THE PROPERTY AND PROJECT KNOWN AS "MACARTHUR TRANSIT VILLAGE" TO ALLOW FOR INCREASED HEIGHT ON PARCEL B, AND (B) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168 and 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, the Oakland City Council approved the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) on July 21, 2009; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: a Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review; and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits. The development application submittal and Development Agreement application submittal, as revised, constitute the Project; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable

units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10, 2016 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding of the Project to the Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164, 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project, with further and revised conditions of approval and Development Agreement community benefits; and

WHEREAS, the Project was considered at regular, duly noticed, public hearing of the City Council on March 7, 2017, wherein the public hearing was closed, a related Resolution approving the development applications was adopted, and this ordinance was introduced for first reading; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: 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, and the March 7, 2017 Supplemental City Council Agenda Report and Attachments (City Council Reports), 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 Reports, hereby incorporated by reference as if fully set forth herein,

Section 2: The City Council finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report and City Council Reports (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies.

Section 3: The City Administrator or her designee is hereby authorized to execute, in form and content substantially in conformance with the Development Agreement Amendment and its Exhibits/Attachments, as set forth in March 7, 2017 Supplemental

City Council Agenda Report, as may be further revised by the City Council; and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate implementation of the Project in order to consummate the transaction authorized under the Development Agreement Amendment in accordance with this Ordinance and City Council direction, and to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement as amended contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138;

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments;

c) The Development Agreement as amended is desirable in order to facilitate the successful Project implementation;

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs, provision of rental housing (including affordable housing), provision of commercial development 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 businesses and use of public transit;

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement as amended.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as amended.

Section 7. 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 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement Amendment that this Ordinance approves or application of the Development Agreement Amendment 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 Amendment or the application of the Development Agreement Amendment to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of the Development Agreement Amendment 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 Amendment shall work in good faith and fully cooperate with each other to amend the Development Agreement Amendment to carry out its intent.

Section 9. 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, 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.

Section 10. 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.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. 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 13. All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

DATE OF ATTESTATION: _____

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC REGARDING THE PROPERTY AND PROJECT KNOWN AS "MACARTHUR TRANSIT VILLAGE" TO ALLOW FOR INCREASED HEIGHT ON PARCEL B, AND (B) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168 and 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

NOTICE AND DIGEST

This Ordinance amends the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) to allow increased building height on Parcel B and to memorialize community benefits to be provided by the site developer at the time of issuance of the first construction-related permit for the Parcel B project. This ordinance adopts various findings, including findings under the California Environmental Quality Act.

APPROVED AS TO FORM AND LEGALITY

 Deputy City Attorney

OAKLAND CITY COUNCIL

ORDINANCE No. _____ C.M.S.

AN ORDINANCE, AS RECOMMENDED BY THE CITY PLANNING COMMISSION, (A) AMENDING THE DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF OAKLAND AND MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC REGARDING THE PROPERTY AND PROJECT KNOWN AS "MACARTHUR TRANSIT VILLAGE" TO ALLOW FOR INCREASED HEIGHT ON PARCEL B, AND (B) RELYING ON THE 2008 MACARTHUR STATION PROJECT ENVIRONMENTAL IMPACT REPORT AND ADDENDA, FINDING THAT NO ADDITIONAL ENVIRONMENTAL REVIEW IS NEEDED PURSUANT TO CALIFORNIA ENVIRONMENTAL QUALITY ACT GUIDELINES SECTIONS 15162-15164, 15168 and 15180, 15183, and 15183.3 AND ADOPTING RELATED CEQA FINDINGS, FOR PARCEL B, LOCATED AT 532-39TH STREET, OAKLAND, CA (ASSESSOR PARCEL NUMBERS 012 102501100 AND 012 102501200)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission certified the MacArthur Transit Village Environmental Impact Report (EIR), adopted California Environmental Quality Act (CEQA) findings and recommended approval of the MacArthur Transit Village Planned Unit Development (PUD) to the City Council; and

WHEREAS, the Oakland City Council affirmed and adopted the Planning Commission's certification of the EIR, the CEQA-related findings, and approval of the MacArthur Transit Village PUD on July 1, 2008; and

WHEREAS, the Oakland City Council approved the Development Agreement by and between City of Oakland and MacArthur Transit Community Partners, LLC Regarding the Property and Project Known as "MacArthur Transit Village" (DA) on July 21, 2009; and

WHEREAS, Boston Properties in July 2016, submitted development applications relating to Parcel B/Phase 5 for: a Final Development Plan (FDP), a revision to the preliminary PUD, Vesting Tentative Tract Map (VTTM 10561), and Design Review; and

WHEREAS, Boston Properties in December 2016, submitted a related application to amend the Development Agreement to allow for increased height on Parcel B up to 260 feet and providing for community benefits. The development application submittal and Development Agreement application submittal, as revised, constitute the Project; and

WHEREAS, the Project includes a total of 402 residential units (45 affordable

units); up to 13,000 square feet of ground-floor commercial space; and 262 on-site parking spaces, in a single, 24-story, 260-foot tall building; and

WHEREAS, on August 10, 2016 and October 19, 2016, the City of Oakland Planning Commission's Design Review Committee held duly noticed meetings and recommended forwarding of the Project to the Planning Commission; and

WHEREAS, on February 1, 2017, the Planning Commission, after conducting and closing a duly noticed public hearing, recommended that the City Council: (a) affirm the Environmental Determination that no additional environmental review is needed pursuant to CEQA Guidelines Sections 15162-15164, 15168 and 15180, 15183, and 15183.3; and (2) approve the Project based, in part, upon the Project Findings and Conditions of Approval contained in the February 1, 2017 City Planning Commission Report and attachments; and

WHEREAS, the Project was considered at a regular, duly noticed meeting of the City Council's Community and Economic Development Committee on February 28, 2017, which recommended approval of the Project, with further and revised conditions of approval and Development Agreement community benefits; and

WHEREAS, the Project was considered at regular, duly noticed, public hearing of the City Council on March 7, 2017, wherein the public hearing was closed, a related Resolution approving the development applications was adopted, and this ordinance was introduced for first reading; now, therefore

THE COUNCIL OF THE CITY OF OAKLAND DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: 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), ~~and the February 28, 2017 Community and Economic Development Committee Agenda Report and Attachments, and the March 7, 2017 Supplemental City Council Agenda Report and Attachments~~ (City Council Reports), 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 Reports, hereby incorporated by reference as if fully set forth herein,

Section 2: The City Council finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report and City Council Reports (hereby incorporated by reference as if fully set forth herein), and directs the Environmental Review Officer to cause to be filed a Notice of Determination and Notice of Exemption with the appropriate agencies.

Section 3: The City Administrator or her designee is hereby authorized to execute, in form and content substantially in conformance with the Development Agreement Amendment and its Exhibits/Attachments, as set forth in ~~the City Planning Commission~~

City Council Agenda Report, as may be further revised by the City Council; and such other documents as necessary or appropriate, in consultation with the City Attorney's Office, to facilitate implementation of the Project in order to consummate the transaction authorized under the Development Agreement Amendment in accordance with this Ordinance and City Council direction, and to otherwise effectuate the purpose and intent of this Ordinance and its basic purpose.

Section 4. The recitals set forth above are true and correct and are an integral part of this Ordinance.

Section 5. The City Council finds and determines the following:

a) The Development Agreement as amended contains all information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138;

b) The Project is consistent with the General Plan and all applicable planning and zoning enactments;

c) The Development Agreement as amended is desirable in order to facilitate the successful Project implementation;

d) The Project will have substantial economic and community benefits to the City, including generating permanent and construction jobs, provision of rental housing (including affordable housing), provision of commercial development 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 businesses and use of public transit;

e) The public safety, health, convenience, comfort, prosperity and general welfare will be furthered by the Development Agreement as amended.

Section 6. Except as specifically set forth herein, this Ordinance suspends and supersedes all resolutions, ordinances, plans, codes, laws and regulations conflicting with this Ordinance and/or implementation of the Development Agreement as approved or as amended.

Section 7. 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 8. If any phrase, clause, section, subsection, paragraph, subdivision, sentence, term or provision of the Development Agreement Amendment that this Ordinance approves or application of the Development Agreement Amendment 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 Amendment or the application of the Development Agreement Amendment to other situations shall remain in full force and effect. Notwithstanding the foregoing, if any material term or provision of the Development Agreement Amendment 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 Amendment shall work in good faith and fully cooperate with each other to amend the Development Agreement Amendment to carry out its intent.

Section 9. 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, 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.

Section 10. 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.

Section 11. This Ordinance shall not be codified in the Oakland Municipal Code.

Section 12. 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 13. All documents related to this transaction shall be reviewed and approved by the City Attorney's Office prior to execution, and copies will be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

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

DATE OF ATTESTATION: _____

1 March 2017

Urban Planning Partners, Inc.
388 17th Street, Suite 230
Oakland, CA 94612

Ref: CPP Project 9570, Pedestrian Wind Conditions around the MacArthur BART Transit Village

Dear Ms. Cox:

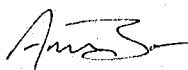
Further to your recent inquiry we are pleased to provide additional clarification on the pedestrian wind testing results described in the CPP9570 MacArthur BART Transit Village Report dated 06 December 2016. Initial pedestrian wind tests were performed without landscaping in place. This is a common procedure for pedestrian wind studies that will be used in an EIR, as it gives conservative estimates of wind speeds and assists in the development of any landscaping and/or mitigation measures that might be beneficial in improving pedestrian wind conditions.

Subsequent pedestrian wind tests were performed with two different landscaping wind-reduction options for both the existing-plus-proposed and the cumulative-plus-proposed configurations. The second landscape option (option two) was not significantly different from the project's proposed landscaping plan, which as stated above, was not considered in the initial wind tests (see option two configuration and project landscape plan, attached). With option two in place, no exceedances of the hazard criterion occurred in the public plaza in either configuration. Therefore, within the parameters of the study, the project as proposed, inclusive of the proposed landscaping plan, is not expected to cause exceedances of the hazard criterion at the public plaza. Accordingly, the option two landscaping is not specifically required, nor necessary.

With landscape option two in place, a single point of exceedance of the hazard criterion occurred at the southern vehicle driveway (point 7 in the report). Wind speeds at this location are expected to exceed the hazard criterion by around 13 and 23 hours per year (equivalent to 0.26% of the time) in the existing-plus-proposed and cumulative-plus-proposed configurations, respectively. The same is expected to be true with the project's proposed landscaping plan. However, due to the intended use of the driveway for vehicular access to the project's parking garage, the lack of any sidewalk or pedestrian path in the driveway area, and the availability of other more convenient pedestrian paths of access between Walter Miles Way and Turquoise Street, no significant use of the driveway by pedestrians is expected. Therefore, this single point of exceedance is not expected to have a significant impact on the public.

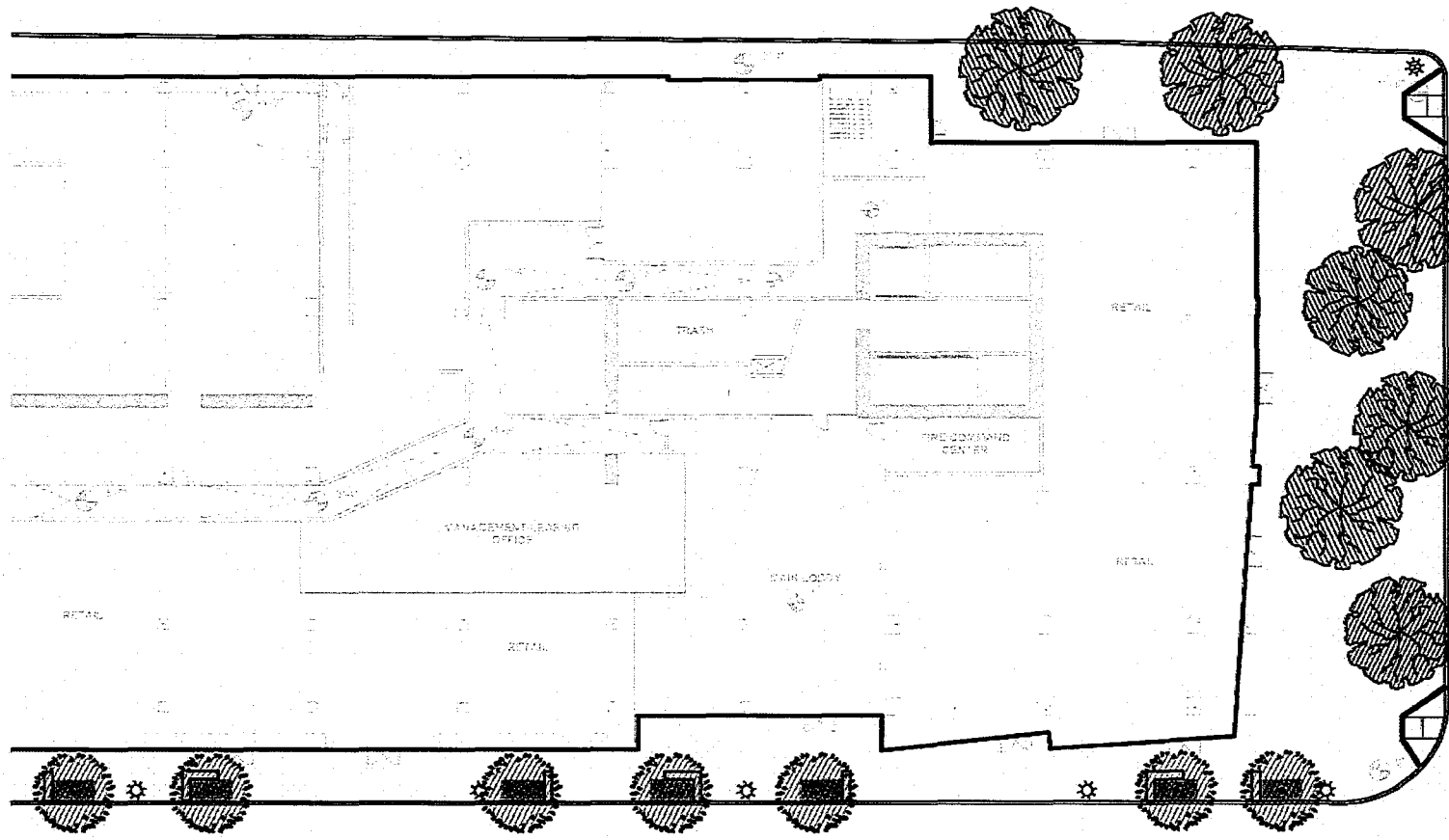
Should you have any queries about the above, please do not hesitate to contact the undersigned.

Sincerely,



Anthony Bova, Senior Lead Engineer
abova@cppwind.com

WALTER MILES WAY



(N) 7 London Plane Trees,
appx. 30-50' tall with
30-40' spread at maturity

30TH STREET

TURQUOISE STREET

Parcel B – Pedestrian Level Wind Report – Landscape Option Two

General Notes

1. The Contractor shall make a full review of all existing conditions of the site and shall report discrepancies to the Landscape Architect and Owner before bidding. The Contractor shall assume responsibility for actual conditions.
2. The Contractor shall familiarize himself/herself with all utilities above grade, at grade, and underground, including utility pipes and structures. Prior to the start of construction, the Contractor shall verify the locations of all utilities with the respective Utility Companies. The Contractor shall take sole responsibility for the cost incurred due to damage and replacement of all utilities damaged on the site.
3. The Contractor shall familiarize himself/herself with all architecture within project limits prior to work.
4. The term "Contractor" within these Notes shall mean the Site Contractor(s) performing the site work.

Planting Notes

1. The Contractor shall locate and verify all existing and new utility line locations prior to planting, and shall report any utility conflicts to the Construction Manager.
2. Contractor shall receive approval from Landscape Architect of plant layout prior to installation.
3. The trunk flare (at the base of the tree) shall be properly exposed for all plantings.
4. Keep root balls intact prior to and during planting operations. Plants with broken or damaged root balls shall be rejected and immediately removed from the site. Keep root balls damp and protected from damage due to sun and wind. Do not shave root balls.
5. Temporary irrigation shall be provided for plant establishment and maintenance period.
6. 1 year landscape maintenance and warranty period.
7. See L-2.00 Planting Schedule for all plant sizing and species.

Irrigation Notes

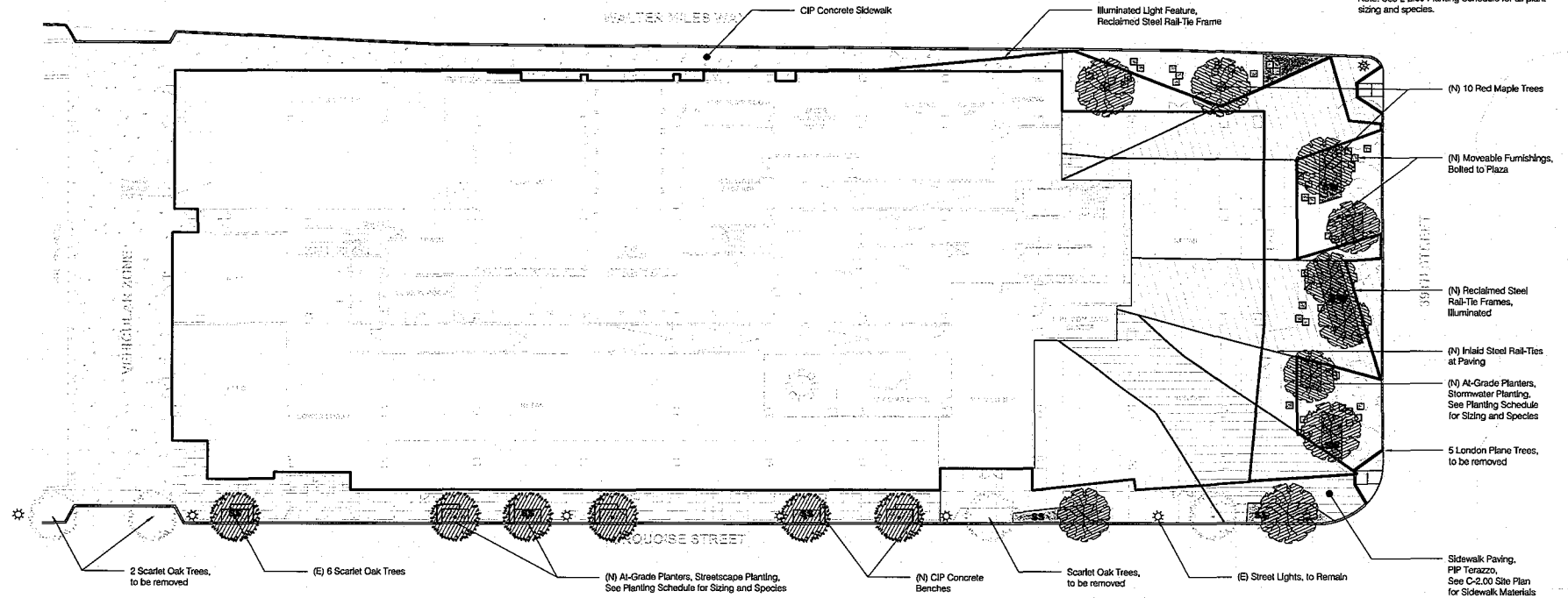
1. The irrigation system will be designed to distribute a minimum amount of water in order to promote active and healthy growth of all proposed plantings.
2. The irrigation system shall be designed and installed in conformance with all applicable state and local codes and ordinances. By licensed contractors and experienced workmen.
3. The irrigation controller shall have an automatic timer with battery backup and rain shutoff.
4. All valves shall have separate pressure regulators filters and shut off as necessary.
5. The system shall have a shut-off and reduced pressure backflow assembly.
6. The irrigation system shall be comprised of all drip or bubblers.

Landscape Architectural Material Notes

1. The Contractor shall refer any questions on materials, finishes, labor and/or products not specified herein to the Landscape Architect prior to ordering materials or starting work.
2. All lines and dimensions are parallel or perpendicular to the lines from which they are measured unless otherwise shown.
3. Contractor shall take accurate field measurements before preparation of shop drawings and fabrication. Do not delay job progress.
4. Expansion and control joints locations shall be verified in field by Landscape Architect.
5. The Landscape Architect may make reasonable adjustments to the layout without incurring additional costs to the project. The Contractor shall stake out proposed tree locations to aid in the review of the final layout of site elements.
6. Locations of all site furnishings and wayfinding signage shall be verified in the field by landscape architect prior to installation.

Landscape Architecture Materials and Planting Legend

Stone Pavers on Pedestal Type A : 24"x24" Black Basalt, Honed Finish Type B : 24"x24" Black Basalt, Flamed Finish	Wood Decking, Reclaimed Teak, Smooth Finish, Sealed Alternate: Synthetic Wood Deck, Elmwood or equivalent	Synthetic Lawn, Forever Lawn "K9Grass," or equivalent	Bocce Court 1'-2" Crushed Oyster Shell Bocce Surface	Sidewalk Paving, PIP Terazzo at 39th Street Plaza Color TBD Match Existing Brick at Turquoise	Decorative Gravel, 1-2", Color TBD	Streetscape Planting Mix	Planted Mounds
<i>Acer rubrum</i> Red Maple	<i>Quercus coccinea</i> Scarlet Oak	<i>Aesculus californica</i> California Buckeye	<i>Arbutus 'Marina'</i> Strawberry Tree	Stormwater Planting Mix	Intensive Green Roof	Note: See L-2.00 Planting Schedule for all plant sizing and species.	



Huffman-Broadway Group, Inc.

ENVIRONMENTAL REGULATORY CONSULTANTS

828 MISSION AVENUE, SAN RAFAEL, CA 94901 • 415.925.2000 • WWW.H-BGROUP.COM

February 15, 2017

Mr. Aaron Fenton
Senior Project Manager
Boston Properties
Four Embarcadero Center
San Francisco, CA

Subject: MacArthur Station Modified 2016 Project, Oakland, California- Response to Comments Regarding Bird Collisions from Lozeau Drury LLP,

Dear Mr. Fenton:

You have requested that a wildlife biologist from Huffman-Broadway Group, Inc. (HBG) review the environmental documentation related to the impacts of Boston Properties proposed project in Oakland (MacArthur Station Modified 2016 Project, "Project"), and, in particular, provide an independent review of comments made as part of the environmental review pursuant to the California Environmental Quality Act (CEQA) related to impacts of bird collisions with the building and consequent bird mortality. HBG has reviewed the letter from Lozeau Drury LLP dated January 31, 2017, and in particular, the letter attached to the Lozeau Drury letter dated January 23, 2017 from Shawn Smallwood, Ph.D., a wildlife biologist from U.C. Davis. These letters comment that the 2008 Environmental Impact Report (EIR) for a similar, though smaller, project did not address the issue of bird collisions, and that a recent Addendum to the prior EIR did not address this issue. We have also reviewed the February 1, 2017 memorandum from Urban Planning Partners, Inc., UPP (the City of Oakland's environmental consultant assisting the City with review of the project pursuant to CEQA), and we have reviewed the City of Oakland's Standard Conditions of Approval (SCAs) assigned to high-rise projects to prevent bird mortality from bird collisions with buildings.

In his January 23, 2017 letter, Dr. Smallwood has provided a detailed summary of data that support the finding that bird mortality from collisions with high-rise buildings is a potentially serious threat to bird populations. He has also provided information detailing the factors that contribute to bird mortality from collisions with high-rise buildings and an excellent summary of potential solutions to address this issue. HBG is in agreement that this issue should be addressed for this Project. We note that the CEQA Guidelines section 15183 allow the use of uniformly applied development standards, such as the City's SCAs, to address impacts such as the potential for bird strikes.

From our review of the environmental record for the Project, the impacts of potential bird mortality from bird collisions with the proposed high-rise building is sufficiently addressed

through incorporation of SCAs in the form of Bird Collision Reduction Measures and the memorandum from UPP that specifically acknowledges that these Conditions are requirements for the Project.

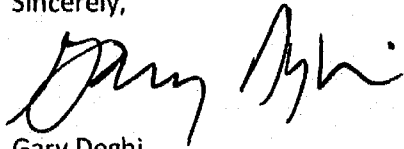
The City of Oakland's SCAs, under the category of Bird Collision Reduction Measures, include many of the specific items that are included in the summary of solutions provided by Dr. Smallwood in his letter. The City of Oakland SCAs related to Bird Collision Reduction Measures are included in Attachment 1. The required SCAs are substantial and require the applicant to submit a Bird Collision Reduction Plan for review and approval by the City of Oakland. The Plan is required to include mandatory measures to reduce bird strike impacts such as minimizing and co-locating rooftop antennas and rooftop structures; not allowing guy wires on monopole structures; avoiding the use of mirrors in design; avoidance of bird-friendly attractants such as landscaped areas, vegetated roofs and water features; avoiding use of reflective glass in design; use of patterns applied to glass surfaces; means to reduce light pollution; production and dispersal of bird-friendly educational materials for building employees; and many other conditions. These are precisely the types of solutions that Dr. Smallwood suggests on pages 7 and 8 of his January 23 letter that should be employed to address the bird mortality issue. In the same letter, Dr. Smallwood provides information from research studies suggesting that incorporation of these types of solutions (solutions that he recommends and that the City requires) would substantially mitigate this impact. In one of these studies Dr. Smallwood quotes a study as saying that "one of these buildings produced 61 of the 81 fatalities, and another building with collision-deterrent glass caused only 2 of the fatalities." This level of bird fatality reduction that would result with implementation of the suggested measures potentially reduces the level of impact (bird mortality) resulting from bird collisions associated with the proposed structure to a level that would not be considered significant from the standpoint of CEQA.

The February 1, 2017 letter from UPP provides an official response to the Lozeau Drury communication and Dr. Smallwood's attached letter that is intended to be incorporated into the EIR Addendum. UPP's response indicates that The City's SCAs related to Bird Collision Reduction Measures will be a requirement for the applicant's project, are incorporated into the CEQA review for the project, are similar to the solutions recommended by Dr. Smallwood in his comment letter, and would substantially mitigate the project's impact related to bird collisions with buildings and bird mortality. HBG agrees with the finding that incorporation of the City's SCAs will mitigate the bird mortality caused by bird collisions to a level that would not be considered significant under the CEQA guidelines.

It is the professional opinion of HBG that with the incorporation of the City of Oakland's Bird Collision Reduction Measures included in the SCA, the potential for bird mortality from collisions of birds with buildings would not be a significant impact of the Project.

If you have any questions regarding our comments related to impacts of bird mortality associated with your Project , please contact me (gdeghi@h-bgroup.com) or Terry Huffman (thuffman@h-bgroup.com) or call us at 415-925-2000.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary Deghi". The signature is fluid and cursive, with the first name "Gary" being larger and more prominent than the last name "Deghi".

Gary Deghi

Vice President/Senior Environmental Scientist

ATTACHMENT 1

Standard Conditions of Approval – General Administrative Conditions

18. Bird Collision Reduction Measures

Requirement: The project applicant shall submit a Bird Collision Reduction Plan for City review and approval to reduce potential bird collisions to the maximum feasible extent. The Plan shall include all of the following mandatory measures, as well as applicable and specific project Best Management Practice (BMP) strategies to reduce bird strike impacts to the maximum feasible extent. The project applicant shall implement the approved Plan. Mandatory measures include all of the following:

- i. For large buildings subject to federal aviation safety regulations, install minimum intensity white strobe lighting with three second flash instead of solid red or rotating lights.
- ii. Minimize the number of and co-locate rooftop-antennas and other rooftop structures.
- iii. Monopole structures or antennas shall not include guy wires.
- iv. Avoid the use of mirrors in landscape design.
- v. Avoid placement of bird-friendly attractants (i.e., landscaped areas, vegetated roofs, water features) near glass unless shielded by architectural features taller than the attractant that incorporate bird friendly treatments no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule), as explained below.
- vi. Apply bird-friendly glazing treatments to no less than 90 percent of all windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape. Examples of bird-friendly glazing treatments include the following:
 - Use opaque glass in window panes instead of reflective glass.
 - Uniformly cover the interior or exterior of clear glass surface with patterns (e.g., dots, stripes, decals, images, abstract patterns). Patterns can be etched, fritted, or on films and shall have a density of no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).
 - Install paned glass with fenestration patterns with vertical and horizontal mullions no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).
 - Install external screens over non-reflective glass (as close to the glass as possible) for birds to perceive windows as solid objects.
 - Install UV-pattern reflective glass, laminated glass with a patterned UV-reflective coating, or UV-absorbing and UV-reflecting film on the glass since most birds can see ultraviolet light, which is invisible to humans.
 - Install decorative grilles, screens, netting, or louvers, with openings no more than two inches horizontally, four inches vertically, or both (the “two-by-four” rule).
 - Install awnings, overhangs, sunshades, or light shelves directly adjacent to clear glass which is recessed on all sides.

- Install opaque window film or window film with a pattern/design which also adheres to the “two-by-four” rule for coverage.
- i. Reduce light pollution. Examples include the following:
- Extinguish night-time architectural illumination treatments during bird migration season (February 15 to May 15 and August 15 to November 30).
 - Install time switch control devices or occupancy sensors on non-emergency interior lights that can be programmed to turn off during non-work hours and between 11:00 p.m. and sunrise.
 - Reduce perimeter lighting whenever possible.
 - Install full cut-off, shielded, or directional lighting to minimize light spillage, glare, or light trespass.
 - Do not use beams of lights during the spring (February 15 to May 15) or fall (August 15 to November 30) migration.
- ii. Develop and implement a building operation and management manual that promotes bird safety. Example measures in the manual include the following:
- Donation of discovered dead bird specimens to an authorized bird conservation organization or museums (e.g., UC Berkeley Museum of Vertebrate Zoology) to aid in species identification and to benefit scientific study, as per all federal, state and local laws.
 - Distribution of educational materials on bird-safe practices for the building occupants. Contact Golden Gate Audubon Society or American Bird Conservancy for materials.
 - Asking employees to turn off task lighting at their work stations and draw office blinds, shades, curtains, or other window coverings at end of work day.
 - Install interior blinds, shades, or other window coverings in windows above the ground floor visible from the exterior as part of the construction contract, lease agreement, or CC&Rs.
 - Schedule nightly maintenance during the day or to conclude before 11 p.m., if possible.

When Required: Prior to approval of construction-related permit

Initial Approval: Bureau of Planning

Monitoring/Inspection: Bureau of Building



Date: February 23, 2017

To: Members of the City Council Community & Economic Development (CED) Committee

From: District 1 City Councilmember Dan Kalb *Dan Kalb*

RE: **MacArthur BART Transit Village Parcel B Community Benefits Package and Amendments to Development Agreement**

Required Community Benefits

Under the 2008 Approvals, the Applicant is Required to Incorporate the Following:

- ✓ Affordable (BMR) Units (at 80% AMI) - Total of 45 (41+4)
- ✓ Project-Labor Agreement (PLA)
 - Includes 50% Local Hire requirement

Planning Commission and Staff Proposal for Amended Community Benefits (2/1/17)

Planning Staff has recommended additional community benefits and conditions including over \$1,000,000 in monetary benefits.

[See Feb. 1st Planning staff report, pages 11-12 or Agenda staff report, page 6]

Apply tenant and service contractor local-hire requirements, which include: a 'Fair Chance' policy, by which employers cannot screen for applicants' criminal histories until after a provisional job offer is made (known as 'Ban-the-Box'); 'wall-to-wall' living wage policies to ensure that every employee working on-site receives a living wage consistent with the wages established by the City of Oakland's Living Wage Ordinance; and a commitment to work with the T-T Business Improvement District to maximize local hiring throughout the life of the project.

Temescal-Telegraph BID Pedestrian Lighting (\$95,000): Pedestrian Scale Lighting program (near the BART station) managed by T-T BID (*This has already been negotiated and agreed to by the applicant and shall be memorialized as Condition of Approval #32*).

The Planning Commission added Condition of Approval #33 (*new*) relating to: 'Exterior Design Refinement' to allow for continuing design review up until issuance of certificate of occupancy. *See language on pages 12-13 of staff Agenda report Attachment A.* Councilmember Kalb fully supports this added requirement.

The Planning Commission, in their motion on February 1, 2017, voted to recommend approval of staff proposal and recommended that the City Council include the following additional and complementary items in the community benefits package:

1. Require that any transportation and infrastructure impact fee exactions be expended for projects in the neighborhoods immediately surrounding the project;
2. Applicant shall actively seek a grocery store for the ground-floor retail space, if feasible;
3. Applicant shall *consider* leasing a ground-floor commercial space to a below market rate tenant; and
4. The applicant shall meet with nearby residents and neighborhood groups to share information and explain options for the type of retail that the market can support and following that obtain and consider feedback from the community about what type of ground-floor retail they are interested in having. [Councilmember Kalb had already asked for this and supports its inclusion as a community benefit]

Current Proposal from Councilmember Kalb

Councilmember Kalb agrees with and supports the above conditions and community benefits proposed by Staff and those added by the Planning Commission and also has proposed additional Conditions of Approval and community benefits as follows:

Conditions of Approval

Proposed additions to the Conditions of Approval from Councilmember Kalb:

1. **TDM Plan revisions:** Any significant modification to the Transportation Demand Management plan shall require a community meeting prior to submitting revised plan to City staff.
2. **Construction Management:** Project Construction Management Plan shall require a community meeting prior to submitting to City staff.
3. **Temescal-Telegraph BID Pedestrian Lighting (\$95,000):** Pedestrian Scale Lighting program (near the BART station) managed by T-T BID (*This has already been negotiated and agreed to by the applicant and shall be memorialized as Condition of Approval #32*).

Community Benefits (Development Agreement)

Councilmember Kalb proposes the following community benefits package in lieu of staff's monetary community benefits proposal:

Mosswood Park (\$250,000): Contribution to a new Recreation Center (and/or other capital improvements) at Mosswood Park

Pedestrian/Bicyclist Safety to/from Mosswood Park (\$105,000): Additional contribution to creating safer walking and biking connections between the BART Transit Village and Mosswood Park consistent with the City's adopted Pedestrian Master Plan, Bicycle Master Plan, and Telegraph Avenue Complete Streets Plan.

West MacArthur Improvements/Beautification (\$350,000):

Improvements/Beautification to West MacArthur Blvd. between the BART parking garage and MLK jr. Way - This could include streetscape improvements (including lighting) and a mural along the 24 underpass - Specific improvements to be determined by the City incorporating a neighborhood engagement process.

Tree Planting (\$15,000): Planting of 15-20 city-approved trees along portions of West MacArthur (between Telegraph and MLK) and MLK (between 37th and 40th streets) and provide/pay for maintenance for first two years.

RPP program (\$25,000): Additional funds into the Residential Parking Permit (RPP) program for residents within 1/4 mile of BART/Village consistent with City Resolution No. 81422 C.M.S. (7/11/08).

Transit Passes for BMR Unit Residents (\$110,000): Apply to Parcel B the Transit Pass Requirement from the existing Transportation Demand Management (TDM) plan already applicable to the residents in the Mural apartments. As an alternative implementation to this, the Parcel B applicant shall subsidize residents in the BMR units 90% of the cost of EasyPass transit passes (or the equivalent) for residents (up to 2 per unit) in all BMR units for first 10 years of occupancy.

Donation to Oakland NGO (\$50,000): One-time contribution to Oakland-based NGO working with youth and violence prevention in North and West Oakland (e.g. Youth Alive).

*****Total \$\$ of Community Benefits (inclusive of \$95,000 for T-T BID lighting) = \$1,000,000**
IF *additional* monetary benefits are added beyond the \$1,000,000, the first \$200,000 would be added to the contribution toward capital improvements at Mosswood Park.

Placement of Affordable Units: *Require* placement of Below Market Rate (BMR) units throughout *no less than* the lower *half* of the residential floors (floors 5-14) of the building (*not* merely lower quarter (floors 5-9) as proposed by applicant). After initial occupancy, BMR units shall be identified on a 'floating unit' basis to ensure timely ongoing compliance. Applicant and Building Manager shall cooperate with City's Housing Department on monitoring and verification of compliance.

Climate-Friendly construction (no additional cost): Inclusion of All-Electric Cooking Appliances for all Units. All-electric cooking could *reduce* total construction costs by hundreds of thousands of dollars.

###

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Oakland
Planning and Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612
Attention: Director of City Planning

THIS SPACE ABOVE FOR RECORDER'S USE

**SECOND AMENDMENT TO THE MACARTHUR TRANSIT VILLAGE PROJECT
DEVELOPMENT AGREEMENT**

This Second Amendment to the MacArthur Transit Village Development Agreement (the "Amendment") is entered into as of March _____, 2017 by and between MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, a California limited liability company ("MTCP") and the CITY OF OAKLAND, a municipal corporation, organized and existing under the Oakland City Charter and laws of the State of California ("City").

RECITALS

A. On July 21, 2009, City and MTCP entered into that certain MacArthur Transit Village Development Agreement, which was recorded on _____ as instrument number _____ in the Official Records of Alameda County (the "Agreement"). This Second Amendment amends the Agreement.

B. The Agreement was amended by letter dated May 3, 2016 to extend (1) the deadline to start construction of Parcels A and C1 from May 19, 2016 to May 19, 2017; and (2) the allowed construction period for Parcels A and C1 from 24 to 30 months ("First Amendment"). Any further reference to the Agreement shall also include the First Amendment.

C. Boston Properties, LP and MPI MacArthur, LLC (collectively, the "Parcel B Developers") filed applications with the City for the development of Parcel B, Assessor Parcel Numbers 012-102501100 and 012-102501200 ("Parcel B") within the MacArthur Transit Village Project (also known as MacArthur Station) as more particularly described in Exhibit A hereto, including the following: (1) revisions to the MacArthur Transit Village Planned Unit Development Permit including the Preliminary Development Plan; (2) a Final Development Plan; (3) Tree Removal Permits; (4) Environmental Review; (5) and Tentative Parcel Map revisions (the "Applications").

D. Section 11.1 of the Agreement provides that the Agreement may be amended by the written consent of the Parties and pursuant to the requirements of Section 17.138.80 of the Development Agreement Ordinance.

E. On February 1, 2017, the City's Planning Commission held a duly noticed public hearing on the Applications and recommended their approval to the City Council. At the same hearing, the Planning Commission held a duly noticed public hearing on this Amendment, pursuant to the Development Agreement Ordinance and other relevant provisions of the Planning Code. After due review of and report on this Amendment by City staff, consideration of all evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement amendment, the Planning Commission, in relevant part: (1) considered and relied on the certified EIR for the MacArthur Transit Village Project and the MacArthur Station Modified 2016 Project CEQA Analysis prepared in connection with the Parcel B Applications ("2016 CEQA Analysis") and determined that consideration of this Amendment complies with CEQA based on the EIR and the 2016 CEQA Analysis, and that this Amendment is consistent with the applicable goals, objectives, policies, land uses and programs specified in the General Plan, the Broadway/MacArthur/San Pablo Redevelopment Plan, and the other Existing City Regulations pertaining thereto; and (2) recommended that the City Council approve this Amendment based on the foregoing findings.

F. On March 7, 2017, the City Council held a duly noticed public hearing on the Applications and approved the Applications by enacting City Council Resolution No. ____, C.M.S., (the "Revised Parcel B Approvals"). At the same hearing, the City Council held a duly noticed public hearing on this Amendment pursuant to the Development Agreement Ordinance and other relevant provisions of the Planning Code. After due review of and report on this Amendment by City staff, consideration of the Planning Commission's recommendations thereon, all other evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement amendment and other relevant provisions of the Planning Code, the City Council: (1) considered and relied on the certified EIR for the MacArthur Transit Village Project and the 2016 CEQA Analysis, and determined that consideration of this Amendment complies with CEQA based on the EIR and the 2016 CEQA Analysis; (2) introduced Enacting Ordinance No. _____ C.M.S. approving this Amendment, finding and determining in connection therewith that this Amendment is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the MacArthur/Broadway/San Pablo Redevelopment Plan, and the other Existing City Regulations pertaining thereto.

G. At a duly noticed meeting on March 21, 2017, the City Council adopted Enacting Ordinance No. _____ C.M.S. enacting this Amendment.

H. The Parties desire to amend the Agreement to modify certain requirements for the development of Parcel B.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and for other good and valuable consideration, the Parties hereby agree to amend the Agreement as follows:

1. Incorporation into Agreement. This Amendment, including all Exhibits and Amendments, is hereby incorporated into the Agreement such that the references to the

Agreement or the Development Agreement in the Agreement's text shall hereafter also include this Amendment. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

2. Article I, Definitions. The definition of "City Approvals" is hereby amended and restated in full as follows with the text of the amendment in italics:

City Approvals: Permits or approvals required under Applicable City Regulations to develop, use and operate the Project and granted on or before the Adoption Date of this Agreement as identified in Recital I of this Agreement and described in Exhibit B and the Revised Parcel B Approvals referred to in the Second Amendment to the MacArthur Transit Village Project Development Agreement dated _____, 2017. (See also "Subsequent Approval," defined below.)

3. Parcel B Height Limit: The allowable height for Parcel B shall be up to 260 feet per the Parcel B Final Development Plan.

4. Parcel B Community Benefits. Parcel B Developers shall provide community benefits related to Parcel B (the "Parcel B Community Benefits"), as follows.

4.2.1 Parcel B Only. The Parcel B Developers shall be the only development entities responsible for the Parcel B Community Benefits based on this Amendment. These Parcel B Community Benefits do not apply to or bind MTCP through this Amendment (except to the extent that MTCP participates in development of Parcel B). The Parcel B Community Benefits solely apply to and concern Parcel B, and do not by terms of this Amendment apply to any other parcel or portion of the MacArthur Transit Village Project.

4.2.2 Financial Contributions. Parcel B Developers shall make an \$890,000 financial contribution to the City, 50% to be paid prior to issuance of the first construction-related permit for the Parcel B project, and 50% to be paid prior to issuance of the temporary certificate of occupancy, or permanent certificate of occupancy, whichever occurs first, for the Parcel B project. This financial contribution is to be used as follows:

4.2.2.1 Installation and/or improvement of pedestrian streetlighting (through the Temescal Telegraph Business Improvement District): \$95,000 (which is also memorialized as condition of approval #32 and not in addition to condition of approval #32).

4.2.2.2. Mosswood Park capital improvements: \$250,000.

4.2.2.3. Pedestrian/Bicyclist Safety to/from Mosswood Park: \$105,000.

4.2.2.4. West MacArthur Improvements/Beautification: \$350,000. The City shall be responsible for developing and implementing a community engagement process to solicit input on the specific improvements/beautifications.

4.2.2.5. Tree Planting: \$15,000.

4.2.2.6. Residential Permit Parking program for residents within ¼ mile of the Project, consistent with City Council Resolution No. 81422 C.M.S.: \$25,000.

4.2.2.7. Donation to Oakland non-profit working with youth and violence prevention in North and West Oakland: \$50,000.

4.2.3. Transit Passes for Below Market Rental (affordable) Unit Residents: \$110,000. The Parcel B Developer shall directly purchase transit passes to be distributed evenly amongst all residents of the 45 Below Market Rental Units. Parcel B Developers shall not be obligated to expend more than \$110,000, regardless of how long it takes for the \$110,000 to be expended.

4.2.4. Jobs Policy. The Operations Jobs Policy for Parcel B is attached as Exhibit B to this Amendment and incorporated herein. Parcel B Developers shall ensure that any contract under which an On-Site Job (as defined in the Operations Jobs Policy) may be performed (for example, a lease or a service contract) includes the Operations Jobs Policy as a material term of the contract in question, and shall themselves comply with the Operations Jobs Policy.

4.2.5. Placement of Affordable Units. The Project's 45 below market rate dwelling units shall be evenly distributed throughout the lower 1/4 of the building (floors 5-9). The below market rate dwelling units shall be regulated by the provisions of the MacArthur BART Transit Village Owner Participation Agreement, as may be amended, including the "floating unit" policy, but such "floating unit" policy shall only apply to floors 5-9.

4.2.6. Leasing of Retail Space. The Parcel B Developers shall comply with the following conditions with regard to the Project's retail space:

4.2.6.1. Actively seek a grocery store, if feasible;

4.2.6.2. Consider leasing a ground floor commercial space to a below market rate tenant;

4.2.6.3. Meet with nearby residents and neighborhood groups to share information and explain options for the type of retail that the market can support and following that obtain and consider feedback from the community about what type of ground floor retail they are interested in having

5. Effect of Failure to Pursue FDP. If the development of Parcel B consistent with the Revised Parcel B Approvals is not pursued by the Parcel B Developers or the applicable time limits, including any authorized extensions, for the Parcel B Developers to obtain a building permit expire, this Amendment shall be null and void and shall not apply to any future development of Parcel B, unless MTCP elects, at its sole discretion, to assume the Revised Parcel B approvals and the Parcel B Community Benefits obligation.

6. Other Terms and Conditions. All other terms and condition of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to the Agreement. The signatories to this Amendment represent that they are duly authorized to execute this amendment and to bind the Parties hereto.

MACARTHUR TRANSIT COMMUNITY
PARTNERS, LLC

CITY OF OAKLAND

By: _____

By: _____

Title: Authorized Representative

City Administrator

Approved As To Form and Legality:

Office of the Oakland City Attorney

Approved by Oakland City Council Ordinance No. _____ C.M.S.

Attest: _____

City Clerk

EXHIBIT A

The land referred to is situated in the County of Alameda, City of , State of California, and is described as follows:

PARCEL ONE:

Parcels B1 and B2 , as shown on the map of Tract 8232, filed July 17, 2015, Map Book 333, Page 30 through 32, inclusive, Alameda County records.

PARCEL TWO:

A non-exclusive easement as an appurtenance to Parcel One above, for ingress, egress and utility purposes and incidental rights appurtenant thereto, over, under and across Parcel F, as shown on the map of Tract 8047, filed March 23, 2012, Map Book 321, Page 42 through 46, inclusive, Alameda County records.

APN's 012-1025-011 & 012-1025-012

EXHIBIT B

Operations Jobs Policy

MacArthur Transit Village

Parcel B

I. Purpose. This Operations Jobs Policy sets forth certain requirements regarding hiring and employment in operation of the development on Parcel B of the MacArthur Transit Village Project, as described in that certain Development Agreement between the City of Oakland and MacArthur Transit Community Partners, LLC, of July 21, 2009 (“Development Agreement”), as amended by letter dated May 3, 2016, and as subsequently amended per the agreement to which this Operations Jobs Policy is attached (“Amendment”). Employers in the Project Site agree to comply with terms of this Operations Jobs Policy as a condition of entry into any agreement to which this Operations Jobs Policy is attached. This Policy does not apply to construction hiring or employment.

II. Definitions. As used in this Policy, the following capitalized terms shall have the following meanings. All definitions include both the singular and plural form.

“**Amendment**” has the meaning set forth in Section I, above.

“**City**” means the City of Oakland.

“**Developer**” means the Parcel B Developers as defined in the Amendment, and their successors, assigns and transferees.

“**Development Agreement**” has the meaning set forth in Section I, above.

“**Employer**” means any entity employing at least two full time equivalent individuals to perform On-Site Jobs. For example, this threshold would be satisfied by employment of either two full-time workers or four half-time workers to perform On-Site Jobs. This may include Tenants, subtenants, service contractors, subcontractors, and other entities.

“**Jobs Center**” means the West Oakland Job Resource Center, or other referral center designated by the City as such for purposes of implementation of this Policy.

“**Local Resident**” means an individual domiciled in the City for at least six months prior to the date that such individual is hired or assigned to perform the applicable work, with “domiciled” as defined by Section 349(b) of the California Election Code.

“**On-Site Job**” means any non-construction job for which at least fifty percent of the work hours during any calendar year are performed on the Project Site.

“**Policy**” means this Operations Jobs Policy.

“**Project**” means the redevelopment activities occurring on the Project Site.

“**Project Site**” means Parcel B, as defined in the Development agreement.

“**Tenant**” means any entity leasing space in the Project Site.

III. Local Hiring.

A. Hiring Process.

1. Long-Range Planning. As soon as the information is available following an Employer’s execution of a contract under which it will operate at the Project Site, and within thirty days of each January 1 thereafter, the Employer shall provide to the City and the Jobs Center information regarding such Employer’s good faith projection of the number and type of On-Site Jobs that such Employer reasonably believes it will need to fill during the applicable calendar year and the basic qualifications anticipated to be necessary for such On-Site Jobs.

2. Initial Hiring Process.

a. Notification of Job Opportunities. At least four weeks prior to the date that an Employer is anticipated to commence operations in the Project Site, or if such Employer executes a contract under which it will operate at the Project Site less than four weeks prior to such anticipated date, then within two business days following the execution of such contract and prior to commencing operations (any such period, the “Initial Notice Period”), such Employer shall notify the Jobs Center of openings for non-management On-Site Jobs and provide a clear and complete description of job responsibilities and qualifications therefor, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers’ license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

b. Hiring. After notification as described in Section III.A.2.a, above, the Employer shall use normal hiring practices, including interviews, to consider all Local Residents referred by the Jobs Center and meeting the qualifications described in the referral request during the Initial Notice Period, or until all non-management On-Site Jobs are filled, whichever is sooner. The Employer shall make best efforts to fill all openings for non-management On-Site Jobs with Local Residents referred by the Jobs Center. If at the conclusion of the Initial Notice Period the Employer has been unable to fill all available non-management On-Site Jobs with Local Residents referred by the Jobs

Center, the Employer may use other recruitment methods to fill the positions(s), although the Employer shall continue to make best efforts to hire Local Residents later referred by the Jobs Center for non-management On-Site Jobs.

c. Pre-opening Transfer by Employers. Provisions of Section III.A.2.a and b. are not applicable to workers transferred from another facility to its location within the Project. Upon commencing operation in the new facility, such an Employer is covered by Section III.A.3, below. Provisions of Section III.A.2.a. and b. are applicable to hiring for positions in facilities with the intention of transferring such hires to a new facility at the Project Site upon commencement of operations within the Project Site. All such hiring shall be made under the provisions of this Section III.A.2.a. and b.

3. Ongoing Hiring Process.

a. Notification of Job Opportunities. After an Employer has commenced operations at the Project Site, it shall continue to use the Jobs Center in accordance with this Section III.A.3 as a resource to fill On-Site Jobs. When an Employer has an opening for an On-Site Job available, the Employer shall notify the Jobs Center of such job openings and provide a clear and complete description of job responsibilities and qualifications, including expectations, salary, minimum qualifications, work schedule, duration of employment, required standard of appearance, and any special requirements (*e.g.* language skills, drivers' license, required background check, etc.). Job qualifications shall be limited to qualifications directly related to performance of job duties.

b. Hiring. After notification pursuant to Section III.A.3.a., above, an Employer shall use normal hiring practices, including interviews, to consider all Local Residents referred by the Jobs Center and meeting the qualifications described in the referral request during a five-day period after initial notification to the Jobs Center, or until all open On-Site Jobs are filled, whichever is sooner. The Employer shall make best efforts to fill all available On-Site Jobs with Local Residents referred through the Jobs Center. If at the conclusion of the five-day period the Employer has been unable to fill all available positions with Local Residents referred by the Jobs Center, the Employer may use other recruitment methods, although the Employer shall continue to make best efforts to hire Local Residents later referred by the Jobs Center for non-management On-Site Jobs.

4. Nondiscrimination. Employers shall not discriminate against Local Residents on the basis of their Local Resident status, or on any prohibited basis in any terms and conditions of employment, including retention, promotions, job duties, shift assignments, and training opportunities.

B. Monitoring and Enforcement.

1. Safe Harbor Provision. Any Employer for whom at least 50% of workers hired for On-Site Jobs during a particular year were Local Residents shall be

deemed to be in compliance with Sections III.A.2 and III.A.3 of this Policy, for all hiring during that year.

2. Credit for Hiring at Other Locations. Employers shall receive credit toward achievement of the Safe Harbor percentages set forth in Section III.B.1 for any hires of Local Residents to perform jobs at other locations, so long as such Local Residents are compensated in an amount equal to or in excess of that set forth in the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*). For example, if an Employer hires ten workers for On-Site Jobs in a year, and six are Local Residents, and such Employer also hires one Local Resident to perform a job at another location with such compensation, then, for purposes of Section III.B.1, seven of such ten workers will be deemed to be Local Residents.

3. Retention Incentive. For every 2,000 hours that any one Local Resident who performs an On-Site Job works for an Employer, that Employer shall be entitled to a "bonus" hiring credit of one individual/position for the applicable category towards achievement of the Safe Harbor percentages set forth in Section III.B.1, above. For example, if an Employer hires ten workers for On-Site Jobs in a year, and six are Local Residents, and a Local Resident works his or her 2000th hour for such Employer, then, for purposes of Section III.B.1, seven of such ten workers will be deemed to be Local Residents. For any employee that does not work on an hourly basis, hours shall be counted towards this threshold on the basis of 40 hours per week of full-time employment, so long as that employee actually works or is otherwise paid for at least forty hours in all weeks in question.

IV. Background Checks.

A. Policy. Employers shall engage in background checks for job applicants' involvement with the criminal justice process only in conformance with this Section IV. An Employer shall neither request nor independently research prospective workers' credit histories.

B. Reasons for Background Checks. Employers may perform a background check on applicants only in either of the following circumstances:

1. The Employer has made a good faith determination that the position is of such sensitivity that individuals with particular Directly-Related Convictions are ineligible ("Directly-Related Conviction" meaning a conviction for which the associated illegal acts in question have a direct and specific relationship on that person's ability to perform the duties or responsibilities necessarily related to the employment position).

2. A law or regulation either requires the Employer to perform a background check for the position in question, or requires that individuals with particular kinds of criminal convictions not be employed in the position in question.

C. Permissible Background Checks. For criminal background checks pursuant to a good faith determination under category B.1. above, only criminal histories related to job requirements and responsibilities or related to violent acts may be considered.

D. Process for Background Checks. Where a criminal background check is being implemented pursuant to this section, the Employer shall undertake the background check only after the initial interview (or, if no interview is undertaken, after a candidate has received a conditional offer of employment for the position in question). For background checks pursuant to a good faith determination under category B.1 above, the Employer shall take into account the age of the individual at the time of the offense, the time that has passed since the offense, the nature and seriousness of the offense, and any evidence of the individual's rehabilitation. If a criminal background check yields information that is of concern to the Employer, the applicant will be given an opportunity to review the findings and discuss the report with the Employer, including an opportunity for the applicant to present information rebutting the accuracy or relevance of the report.

V. Living Wages. Each Employer shall provide compensation required of covered employers under, and shall otherwise comply with, the Oakland Living Wage Ordinance (Oakland Municipal Code Section 2.28.010 *et seq.*).

VI. Miscellaneous.

A. Contact Person. Within thirty days of having entered into any contract (including any assignment of all or any portion of a lease) related to operation on the Project Site, each Employer will designate a contact person for all matters related to implementation of this Policy. The Employer shall forward the name, address and phone number of the designated individual to the City.

B. Assignments, Subleases and Contracts. Developer and each Tenant shall include compliance with this Policy as a material term of any assignment or sublease of all or a portion of its interest in any portion of the Project Site. Developer and each Employer shall include compliance with this Policy as a material term of any contract or other agreement under which any On-Site Jobs may be performed. If a Developer complies with this Section VI.B in leasing space to a Tenant, such Developer shall not be liable for any breach of this Policy by that Tenant or other employers operating pursuant to the lease in question. If the Developer, an Employer, or a Tenant enters into a contract in violation of this Section VI.B., then upon request from the City, it shall either amend that contract to include all requirements of this Policy, or terminate that contract.

C. Assurance Regarding Preexisting Contracts. Each entity that agrees to comply with this Policy warrants and represents that as of the date that a contract incorporating this Policy became effective, it has executed no contract pertaining to the Project or the Project Site that would have violated this Policy had it been executed after that date, or would interfere with fulfillment of or conflict with terms of this Policy. If,

despite this assurance, an entity that has agreed to comply with this Policy has entered into a contract in violation of this Section VI.C, then upon request from the City it shall either amend that contract to include the provisions required by this Policy, or terminate that contract.

D. Third Party Beneficiaries. The City is an intended third-party beneficiary of any contract that incorporates this Policy, but only for the purposes of enforcing the terms of this Policy. There shall be no other third party beneficiaries of this Policy. The City shall not delegate any of its responsibilities to any other third party, require the consent of any third party, or act solely upon the direction of any third party in performing its obligations or exercising its rights under this Policy.

E. Compliance Records. Each Employer shall make available to the City on an annual basis (as of January 1 each year), and each Employer shall make available upon written request by the City, written records sufficient to determine compliance with this Policy.

F. Additional Enforcement Mechanisms. The City shall be entitled to all remedies at law or in equity for any failure to comply with this Policy. Further, Employers that repeatedly violate this Policy may be debarred from City contracts.

G. Out-of-State Workers. The requirements of Section III.A.2 and III.A.3 of this Policy shall not apply to positions filled by residents of states other than the State of California, and such positions shall not be considered for purposes related to the percentage requirement of Section III.B.1.

H. Retaliation Prohibited. An Employer shall not discharge, reduce the compensation of, or otherwise discriminate against any person for making a complaint to the City or participating in any proceedings related to enforcement of this Policy against the Employer.

I. Material Term. This Policy is a material term of any contract into which it is incorporated.

J. Severability. If any of the provisions of this Policy are held by a court of competent jurisdiction to be invalid, void, illegal, or unenforceable, that holding shall in no way affect, impair, or invalidate any of the other provisions of this Policy. If this Policy's six-month requirement for qualification as a Local Resident is deemed invalid by final decision of a court of competent jurisdiction, then "Local Resident" shall mean an individual domiciled in the City prior to the date that such individual is hired or assigned to perform the applicable work, with "domiciled" as defined by Section 349(b) of the California Election Code.

K. Applicable Law and Compliance with Law. This Policy shall be governed by and construed in accordance with the laws of the State of California and the United States and shall be enforced only to the extent that it is consistent with those laws.

Parties who have agreed to comply with this Policy agree: (i) that their understanding is that all terms of this Policy are consistent with federal, state, and local law; and (ii) that this Policy shall be reasonably interpreted so as to comply with any conflicting law.

L. Successors and Assigns. This Policy shall be binding upon and inure to the benefit of successors and assigns of any party to a contract incorporating this Policy. References in this Policy to any entity shall be deemed to apply to any successor of that entity.

M. Warranties and Representation. Each party to a contract incorporating this Policy agrees not to either affirmatively or by way of defense seek to invalidate or otherwise avoid application of the terms of this Policy in any judicial action or arbitration proceeding, has had the opportunity to be consult counsel regarding terms of this Policy, and has agreed to such terms voluntarily as a condition of entering into a contract that incorporates this Policy. This Policy shall not be strictly construed against any entity, and any rule of construction that any ambiguities be resolved against the drafting party shall not apply to this Policy.

N. Hiring Discretion. Nothing in this Policy shall require that any Employer hire any particular individual; each Employer shall have the sole discretion to hire any individual referred by the Jobs Center or any other person or entity.

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City of Oakland
~~Community Planning and Economic Development~~
~~Agency~~
Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612
Attention: Director of City Planning

THIS SPACE ABOVE FOR RECORDER'S USE

**SECOND AMENDMENT TO THE MACARTHUR TRANSIT VILLAGE PROJECT
DEVELOPMENT AGREEMENT**

This Second Amendment to the MacArthur Transit Village Development Agreement (the "Amendment") is entered into as of March _____, 2017 by and between MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC, a California limited liability company ("MTCP") and the CITY OF OAKLAND, a municipal corporation, organized and existing under the Oakland City Charter and laws of the State of California ("City").

RECITALS

A. On July 21, 2009, City and MTCP entered into that certain MacArthur Transit Village Development Agreement, which was recorded on _____ as instrument number _____ in the Official Records of Alameda County (the "Agreement"). This Second Amendment amends the Agreement.

B. The Agreement was amended by letter dated May 3, 2016 to extend (1) the deadline to start construction of Parcels A and C1 from May 19, 2016 to May 19, 2017; and (2) the allowed construction period for Parcels A and C1 from 24 to 30 months ("First Amendment"). Any further reference to the Agreement shall also include the First Amendment.

C. Boston Properties, LP and MPI MacArthur, LLC (collectively, the "Parcel B Developers") filed applications with the City for the development of Parcel B, Assessor Parcel Numbers 012-102501100 and 012-102501200 ("Parcel B") within the MacArthur Transit Village Project (also known as MacArthur Station) as more particularly described in Exhibit A hereto, including the following: (1) revisions to the MacArthur Transit Village Planned Unit Development Permit including the Preliminary Development Plan; (2) a Final Development Plan; (3) Tree Removal Permits; (4) Environmental Review; (5) and Tentative Parcel Map revisions (the "Applications").

D. Section 11.1 of the Agreement provides that the Agreement may be amended by the written consent of the Parties and pursuant to the requirements of Section 17.138.80 of the Development Agreement Ordinance.

E. On February 1, 2017, the City's Planning Commission held a duly noticed public hearing on the Applications and recommended their approval to the City Council. At the same hearing, the Planning Commission held a duly noticed public hearing on this Amendment, pursuant to the Development Agreement Ordinance and other relevant provisions of the Planning Code. After due review of and report on this Amendment by City staff, consideration of all evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement amendment, the Planning Commission, in relevant part: (1) considered and relied on the certified EIR for the MacArthur Transit Village Project and the MacArthur Station Modified 2016 Project CEQA Analysis prepared in connection with the Parcel B Applications ("2016 CEQA Analysis") and determined that consideration of this Amendment complies with CEQA based on the EIR and the 2016 CEQA Analysis, and that this Amendment is consistent with the applicable goals, objectives, policies, land uses and programs specified in the General Plan, the Broadway/MacArthur/San Pablo Redevelopment Plan, and the other Existing City Regulations pertaining thereto; and (2) recommended that the City Council approve this Amendment based on the foregoing findings.

F. On March 7, 2017, the City Council held a duly noticed public hearing on the Applications and approved the Applications by enacting City Council Resolution No. , dated 2017, C.M.S., (the "Revised Parcel B Approvals"). At the same hearing, the City Council held a duly noticed public hearing on this Amendment pursuant to the Development Agreement Ordinance and other relevant provisions of the Planning Code. After due review of and report on this Amendment by City staff, consideration of the Planning Commission's recommendations thereon, all other evidence heard and submitted at such public hearing and the matters to be considered pursuant to Section 17.138.060 of the Development Agreement Ordinance in enacting a development agreement amendment and other relevant provisions of the Planning Code, the City Council: (1) considered and relied on the certified EIR for the MacArthur Transit Village Project and the 2016 CEQA Analysis, and determined that consideration of this Amendment complies with CEQA based on the EIR and the 2016 CEQA Analysis; (2) introduced Enacting Ordinance No. C.M.S. approving this Amendment, finding and determining in connection therewith that this Amendment is consistent with the goals, objectives, policies, land uses and programs specified in the General Plan, the MacArthur/Broadway/San Pablo Redevelopment Plan, and the other Existing City Regulations pertaining thereto.

G. At a duly noticed meeting on March 21, 2017, the City Council adopted Enacting Ordinance No. C.M.S. enacting this Amendment.

H. The Parties desire to amend the Agreement to modify certain requirements for the development of Parcel B.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained and for other good and valuable consideration, the Parties hereby agree to amend the Agreement as follows:

1. Incorporation into Agreement. This Amendment, including all Exhibits and Amendments, is hereby incorporated into the Agreement such that the references to the Agreement or the Development Agreement in the Agreement's text shall hereafter also include this Amendment. All capitalized terms not otherwise defined herein shall have the meaning set forth in the Agreement.

2. Article I, Definitions. The definition of "City Approvals" is hereby amended and restated in full as follows with the text of the amendment in italics:

City Approvals: Permits or approvals required under Applicable City Regulations to develop, use and operate the Project and granted on or before the Adoption Date of this Agreement as identified in Recital I of this Agreement and described in Exhibit B *and the Revised Parcel B Approvals referred to in the First/Second Amendment to the MacArthur Transit Village Project Development Agreement dated _____, 2017.* (See also "Subsequent Approval," defined below.)

3. Parcel B Height Limit: The allowable height for Parcel B shall be up to 260 feet per the Parcel B Final Development Plan.

4. Parcel B Community Benefits: The following section is hereby added to the Agreement. Parcel B Developers shall provide community benefits related to Parcel B (the "Parcel B Community Benefits"), as follows.

4.2.1 Parcel B Community Benefits Only. The Parcel B Developers shall be solely and exclusively the only development entities responsible for community benefits associated with the Revised Parcel B Approvals (the "Parcel B Community Benefits"), which Parcel B Community Benefits shall be negotiated between the City and Parcel B Developers, based on this Amendment. These Parcel B Community Benefits shall be required solely and exclusively in connection with the Parcel B development pursuant to the Revised Parcel B Approvals and shall be the sole and exclusive obligation of the Parcel B Developers. These Parcel B Community Benefits shall do not apply to or be imposed on bind MTCP (unless through this Amendment (except to the extent that MTCP develops Parcel B consistent with the Revised Parcel B Approvals) or on any aspect of the approvals for, or in any way or manner affect or impede the right participates in development of Parcel B). The Parcel B Community Benefits solely apply to develop, use or operate, and concern Parcel B, and do not by terms of this Amendment apply to any other parcel within or portion of the MacArthur Transit Village Project and shall not be a present or future obligation of the developers of any other parcel within the MacArthur Transit Village Project.

{THE FOLLOWING COMMUNITY BENEFITS PACKAGE IS STILL BEING NEGOTIATED; WHAT FOLLOWS ARE STAFF'S PROPOSALS, WHICH HAVE NOT YET BEEN AGREED TO BY THE DEVELOPERS}

4.2.2 Community Benefits Package. The specific community benefits package to be delivered by the Parcel B developers, Financial Contributions. Parcel B Developers shall make an \$890,000 financial contribution to the City, 50% to be paid prior to issuance of the first construction-related permit for the Parcel B project, shall include:

Community Benefits Package

Community Benefit	Value (where measurable)
-Contribution to Pedestrian Streetlighting (TTBID)	\$95,000
Pay Impact Fee (less affordable housing line item)	\$509,500 (357 du)
Contribution to Mosswood Park	\$500,000
Apply tenant and service contractor local hire req's*	

*This shall include the following: Require local hire for jobs with tenants and service contractors; "Ban the box" in employer hiring; "Wall and 50% to wall" living wages; Tenant assistance, including provision be paid prior to issuance of the temporary certificate of generous TI package for small local businesses and nonprofits, as well as setting attractive lease rates for same occupancy, or permanent certificate of occupancy, whichever occurs first, for the Parcel B project. This financial contribution is to be used as follows:

4.2.2.1. Installation and/or improvement of pedestrian streetlighting (through the Temescal Telegraph Business Improvement District): \$95,000 (which is also memorialized as condition of approval #32 and not in addition to condition of approval #32).

4.2.2.2. Mosswood Park capital improvements: \$250,000.

4.2.2.3. Pedestrian/Bicyclist Safety to/from Mosswood Park: \$105,000.

4.2.2.4. West MacArthur Improvements/Beautification: \$350,000. The City shall be responsible for developing and implementing a community engagement process to solicit input on the specific improvements/beautifications.

4.2.2.5. Tree Planting: \$15,000.

4.2.2.6. Residential Permit Parking program for residents within ¼ mile of the Project, consistent with City Council Resolution No. 81422 C.M.S.: \$25,000.

4.2.2.7. Donation to Oakland non-profit working with youth and violence prevention in North and West Oakland: \$50,000.

4.2.3. Transit Passes for Below Market Rental (affordable) Unit Residents: \$110,000. The Parcel B Developer shall directly purchase transit passes to be distributed evenly amongst all residents of the 45 Below Market Rental Units. Parcel B Developers shall not be obligated to expend more than \$110,000, regardless of how long it takes for the \$110,000 to be expended.

4.2.4. Jobs Policy. The Operations Jobs Policy for Parcel B is attached as Exhibit B to this Amendment and incorporated herein. Parcel B Developers shall ensure that any contract under which an On-Site Job (as defined in the Operations Jobs Policy) may be performed (for example, a lease or a service contract) includes the Operations Jobs Policy as a material term of the contract in question, and shall themselves comply with the Operations Jobs Policy.

4.2.5. Placement of Affordable Units. The Project's 45 below market rate dwelling units shall be evenly distributed throughout the lower 1/4 of the building (floors 5-9). The below market rate dwelling units shall be regulated by the provisions of the MacArthur BART Transit Village Owner Participation Agreement, as may be amended, including the "floating unit" policy, but such "floating unit" policy shall only apply to floors 5-9.

4.2.6. Leasing of Retail Space. The Parcel B Developers shall comply with the following conditions with regard to the Project's retail space:

4.2.6.1. Actively seek a grocery store, if feasible;

4.2.6.2. Consider leasing a ground floor commercial space to a below market rate tenant;

4.2.6.3. Meet with nearby residents and neighborhood groups to share information and explain options for the type of retail that the market can support and following that obtain and consider feedback from the community about what type of ground floor retail they are interested in having

5. Effect of Failure to Pursue FDP. If the development of Parcel B consistent with the Revised Parcel B Approvals is not pursued by the Parcel B Developers or the applicable time limits, including any authorized extensions, for the Parcel B Developers to obtain a building permit expire, this Amendment shall be null and void and shall not apply to any future development of Parcel B, unless MTCP elects, at its sole discretion, to assume the Revised Parcel B approvals and the Parcel B Community Benefits obligation.

6. Other Terms and Conditions. All other terms and condition of the Agreement shall remain unchanged.

IN WITNESS WHEREOF, the undersigned have executed this Amendment to the Agreement. The signatories to this Amendment represent that they are duly authorized to execute this amendment and to bind the Parties hereto.

MACARTHUR TRANSIT COMMUNITY
PARTNERS, LLC

CITY OF OAKLAND

By: _____

By: _____

Title: Authorized Representative

City Administrator

Approved As To Form and Legality:

Office of the Oakland City Attorney

Approved by Oakland City Council Ordinance No. _____ C.M.S.

Attest: _____
City Clerk

DRAFT