

CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2017 MAR -2 PM 5: 58

AGENDA REPORT

TO: Sabrina B. Landreth
City/Successor Agency Administrator

FROM: Mark Sawicki
Director, EWD

SUBJECT: MacArthur BART Transit Village –
Amend Terms of Project Agreements

DATE: March 2, 2017

City Administrator Approval

Date:

3/2/17

RECOMMENDATION

Staff recommends that the City Council adopt

A Resolution Amending Resolution No. 86266 C.M.S. Which Authorized Consent To The Assignment Of MacArthur Transit Community Partners, LLC's (MTCP) Right To Acquire Parcels B-1 And B-2 From BART And The Partial Assignment Of A Development Agreement Between The City Of Oakland And MTCP To A Joint Venture Between McGrath Properties, Inc., Or Related Entity, And Boston Properties LP, Or Related Entity ("BP"), And Instead Authorize The Consent To The Assignment Of MTCP's Right To Acquire Parcels B-1 And B-2 From BART And Partial Assignment Of The Development Agreement To BP, Pursuant To A Long-Term Ground Lease With An Option To Purchase Between MPI MacArthur, LLC, Or Related Entity, And BP For The Development Of Parcels B-1 And B-2 Of The MacArthur Station Project (Formerly Known As The MacArthur Transit Village)

Staff further recommends that the Oakland Redevelopment Successor Agency adopt

A Resolution: 1) Amending Resolution No. 2016-005 C.M.S., Which Authorized Consent To The Assignment Of Macarthur Transit Community Partners, LLC's ("MTCP") Right To Acquire Parcels B-1 And B-2 From BART And The Partial Assignment Of An Owner Participation Agreement (OPA) Between ORSA And MTCP To A Joint Venture Between McGrath Properties, Inc., Or Related Entity, And Boston Properties LP, Or Related Entity, And Instead Authorize The Consent To The Assignment Of MTCP's Right To Acquire Parcels B-1 And B-2 From BART And Partial Assignment Of The OPA To Boston Properties LP, Or A Related Entity ("BP") Pursuant To A Long Term Ground Lease With An Option To Purchase Between MPI MacArthur, LLC, Or A Related Entity, And BP For The Development Of Parcels B-1 And B-2 Of The MacArthur Station Project ("Project"), 2) Authorizing A Third Amendment To The OPA To (A) Waive A Performance And Payment Bond Requirement For Development Of The Project In Exchange For An Additional Payment Of Up To \$500,000 For Community Benefits; (B) Extend OPA Performance Deadlines; (C) Increase The Net Worth Requirement For The Entity That Will Provide The Completion Guaranty For The Project; And (D) Amend Section 2.2.3 To Limit Placement Of The Below Market Rate Units For The Parcel B Project To Floors Five Through Nine; And (3) Relying On The 2008 Macarthur Station Project Environmental Impact Report And

Item: _____
CED Committee
March 14, 2017

Addenda, And Other Documents, Finding That No Additional Environmental Review Is Needed Pursuant To California Environmental Quality Act Guidelines Sections 15162-15164, 15168, 15180, 15183, 15183.3 And 15061, And Adopting Related CEQA Findings

EXECUTIVE SUMMARY

On July 5, 2016, the Oakland City Council approved Resolution No. 86266 C.M.S. consenting to the assignment of a Development Agreement (DA) between the City of Oakland ("City") and MacArthur Transit Community Partners (MTCP) to a joint venture between McGrath Properties Inc. ("MacGrath"), or a related entity, and Boston Properties LP (BP), or a related entity, for development of Parcels B-1 and B-2 (collectively "Parcel B" or the "Project") of the MacArthur Station Project.

During the same meeting, the Oakland Redevelopment Successor Agency (ORSA) approved Resolution No. 2016-005 C.M.S., consenting to an assignment of an OPA between ORSA and MTCP to a joint venture between McGrath, or related entity, and BP, or a related entity, for development of Parcel B.

Subsequent to the City and ORSA's approvals of the assignment of the DA and OPA to a joint venture between McGrath and BP, the parties determined that rather than creating a joint venture, an affiliate of McGrath, MPI MacArthur, LLC, or a related entity, will own Parcel B and enter into a long-term ground lease with BP. Hence, the DA and the OPA would be assigned to MPI MacArthur, LLC, or a related entity, subject to execution of a long-term ground lease from MPI MacArthur, LLC, or a related entity, as fee owner and lessor of Parcel B, to BP, as ground lessee.

Although the legal structure of the development team is somewhat different from that approved by City Council and ORSA in July of 2016, the roles and responsibilities of each party will essentially remain the same as presented in the June 28, 2016 staff report recommending assignment of the DA and OPA. MPI MacArthur, LLC will provide the land pursuant to a long-term ground lease to BP, and BP will act as the project developer and provide the equity required to complete the project under the terms of the DA and OPA. BP has the requisite development experience and financial capacity to meet the qualifications required for a transferee as delineated in the OPA and DA.

The existing terms of the OPA require the developer to obtain labor and materials and performance bonds equal to one hundred percent (100%) of the estimated construction cost of the project and to provide a completion guaranty to ORSA. The developer will also require that its general contractor carry subguard insurance on all its subcontractors. The developer asserts that the bonding requirement is redundant to the protection provided by the completion guaranty given to ORSA and the subguard insurance requirement, and, if waived, would result in project cost savings. If the City agrees to waive the bond requirement, the developer has offered to commit a payment of up to \$345,000 for community benefits of the City's choosing. The City has requested up to \$500,000 in community benefits and negotiations are continuing. Staff also proposes that if the bonding requirement is waived, that the net worth of the completion guarantor be increased from the current OPA requirement of \$10 million to at least twenty-five

Item: _____
CED Committee
March 14, 2017

percent (25%) of project costs, which would require a substantially greater net worth. Boston Properties, Inc. and its subsidiary BP are able to meet the revised net worth condition.

Exhibit B of the OPA outlines the schedule for each phase of the MacArthur Station Project, and pegs Project construction start dates to one year after gaining approval of a Final Development Plan (FDP). The FDP for Parcel B is scheduled for approval by the City Council on March 21, 2017. If the Council approves the FDP for Parcel B, then BP would have to start construction by March 21, 2018. The developer is asking for additional time to start construction. Staff is recommending an extension of up to 12 months or from March 2018 to March 2019 to start work on the project.

Lastly, the OPA requires that affordable housing units be scattered among market-rate units throughout each market rate development of the MacArthur Station Project, including Parcel B. The new residential tower design will offer luxury rental units on the upper 15 floors that will be priced at a premium. The developer has requested that the affordable units be distributed only among the market rate units that are located on 5th to 9th floors of the new building as these do not carry the same rents as the luxury units. Staff recommends that the below market-rate units be distributed evenly throughout floors five to nine of the residential tower because this will ensure that the affordable units will not be impacted by the higher rents of the luxury rental units above the 9th floor if they are occupied by a tenant that earns more than the eligible income limit for these units.

BACKGROUND / LEGISLATIVE HISTORY

On July 21, 2009, the City and MTCP entered into a DA, which vested City planning approvals and fees in place for a 15-year period pursuant to Ordinance No.12959 C.M.S., dated July 21, 2009. As such, any new City regulations and fees enacted after the execution and delivery of the DA do not apply to the Project, except for new health and safety and new building and construction code regulations.

On February 24, 2010, the Oakland Redevelopment Agency ("Agency") entered into an OPA with MTCP for the development of MacArthur BART Transit Village pursuant to Resolution No. 2009-0073 C.M.S. dated July 7, 2009. After dissolution of the Agency, the OPA became an enforceable obligation of ORSA.

On July 29, 2010, MTCP and San Francisco Bay Area Rapid Transit (BART) entered into a Purchase and Lease Option Agreement to purchase or ground lease certain parcels at the Project site from BART.

Pursuant to the terms of the OPA and DA, MTCP is required to secure ORSA's and the City Council's consent to 1) the partial assignment and assumption of the OPA, 2) a conveyance of MTCP's option to purchase Parcel B from BART, and 3) the partial assumption of the DA related to Parcel B and assignment of MTCP's development rights under the DA for Parcel B to a qualified non-affiliated third-party developer.

On July 5, 2016, ORSA and the City consented to allow MTCP to partially assign the OPA, convey its option to purchase Parcel B and its development rights under the DA to a joint venture between BP, or a related entity, and McGrath, or a related entity pursuant to Resolution No. 2016-005 C.M.S. and Resolution No. 86266 C.M.S., respectively.

On February 1, 2017 the Oakland Planning Commission approved and recommended to the City Council revisions to the DA, among other planning documents, to allow increased density and height on Parcel B for the construction of a 24-story residential tower with up to 402 dwelling units (of which 45 units will be affordable to households earning up to 80 percent of the area median income), up to 13,000 square feet of ground-floor commercial uses and up to 262 parking spaces (the "Project"). This matter will be considered by City Council at its regular meeting of March 14, 2017. Staff from the Bureau of Planning and Building will recommend payment of one million dollars (\$1,000,000) for certain community benefits in exchange for the increased height allowance.

ANALYSIS AND POLICY ALTERNATIVES

Development Entity Structure

Subsequent to securing Council approval of the assignment to a joint venture between BP and McGrath, the two entities decided not to establish a joint venture as the legal structure for the project development entity. Instead, MPI MacArthur, LLC, an affiliate of McGrath, will enter into a long-term ground lease with BP. MPI MacArthur, LLC will be the lessor and BP will be the lessee. The proposed transaction was adjusted in this manner so that BP can dedicate 100 percent of the Project budget toward building the Project by delaying a purchase of the land until the project is complete and occupancy stabilized. Upon such stabilization, BP has the right to acquire MPI MacArthur LLC's ownership interest in Parcel B. BP has been approved as developer by MTCP, the City staff and BART. Under the terms of the OPA and the ground lease, and upon delivery of a "Vertical Completion Guaranty" to the ORSA, BP will construct, own and operate the Project and thereby fulfill all of the obligations of the developer pursuant to the terms of the DA and OPA.

Based on a previous third-party consultant's review of the firm and project team's experience, BP has demonstrated that it has the financial capacity and in-house capabilities and qualifications to successfully entitle, design and develop an institutional quality urban mixed-use project.

Community Benefits and Bond Requirements

The OPA requires the developer of each phase of the MacArthur Station Project to provide a number of levels of insurance to ORSA to ensure completion of the project, and continuity of work in the event the developer or general contractor or its subcontractors can no longer perform according to the terms of their contracts.

The Completion Guaranty (Section 3.3.4 of the OPA) is a guaranty by a third party to complete the Project according to the terms of the OPA if the developer is unable to meet its obligations.

Item: _____
CED Committee
March 14, 2017

The Guarantor, often a developer's parent company, must have significant assets, and the financial wherewithal to complete the Project in its entirety. The OPA currently requires that the entity that will provide the completion guaranty has a net worth of at least \$10 million.

Labor and Material Bonds and Performance Bonds (Section 6.6 of the OPA) are purchased by the developer to ensure that all subcontractors and suppliers on the job get paid, and the job is completed in the event the general contractor cannot meet its contractual obligation. The combination of the completion guaranty and the performance and payment bonds offers a double layer of security assuring a means to complete the Project if the developer or contractor fails.

In exchange for waiving the payment and performance bonds, staff recommends that the net worth of the completion guarantor be increased from the current OPA requirement of \$10 million to at least twenty-five percent (25%) of estimated project costs, which is approximately 6 times greater than the existing requirement. Boston Properties, Inc., BP's parent company, meets the revised net worth condition.

The developer will also require that its general contractor carry subguard insurance on all its subcontractors. Subguard insurance typically covers the following:

- Completion costs for unfulfilled subcontractor or supplier obligations — including costs related to contractor replacement, job acceleration and extended overhead
- Correction costs for defective and/or nonconforming work product
- Legal costs resulting from a default
- Coverage for disadvantaged or small business enterprises that may have difficulty qualifying for standard performance and payment bonds
- Coverage for local and other business enterprises that may have difficulty qualifying for standard performance and payment bonds

In the past, the City has modified the bonding provision in certain other development projects on a case-by-case basis, by only asking for performance and payment bonds if required by the construction lender for the Project.

Staff and the developer acknowledge that waiving the bond requirement will result in significant savings for the developer. The developer has offered to commit a payment of up to \$345,000 for community benefits of the City's choosing. The City has requested up to \$500,000 in additional community benefits. The Councilmember for the Broadway MacArthur district (District 1) proposed a distribution of the funds as shown below:

Community Benefit	Contribution Amount
Mosswood Park improvements	\$200,000
Tree Planting in the immediate neighborhood consistent with development agreement	\$5,000
West MacArthur improvements consistent with requirements in the development agreement	\$50,000
Traffic Calming/Pedestrian Safety improvements in conjunction with Safe Routes to Schools priorities within ½ mile of MacArthur BART Station	\$200,000
Greenhouse Gas Emissions offsets (if applicant chooses not to construct all-electric building) in Bay Area	\$45,000
Total Contribution	\$500,000

Negotiations between the City and the Developer regarding the size of the community benefit package are ongoing.

Legal Issue regarding Bonds Waiver

The City Attorney's office's comments on the requested bond waiver follows:

Requiring developers to provide payment and performance bonds help ensure that the developer successfully completes the project, especially when coupled with a guaranty from a financially strong entity. The Council's practice has been to evaluate each project on a case-by-case basis to determine whether it will require or waive bonds.

In this case, staff is recommending a bond waiver in exchange for community benefits and other developer assurances including that it will require Subguard insurance and provide a project guaranty with an increased net worth requirement.

While providing important coverage, Subguard insurance does not provide the same level of protection as does customary payment and performance bonds. On the other hand, increasing the guaranty net worth requirement increases the likelihood that the Project will be completed.

Council must determine, based on the facts of this particular project, if it agrees with staff's recommendation to waive bonds.

Time Extension

Exhibit B of the OPA outlines general performance measures and dates for the various phases of the Transit Station Project. For each phase, construction is required to commence within one year of securing FDP approval, within illustrative outside dates included in the exhibit.

McGrath MPI, LLC, has an option to purchase Parcel B that must be exercised by April 25, 2017. As a condition of the purchase option, the FDP must be approved by the City. Final Council approval of the FDP is scheduled for March 21, 2017. Therefore, pursuant to the

Item: _____
CED Committee
March 14, 2017

current terms of the OPA, if the City Council approves the FDP by the scheduled date, then the Parcel B developer would be required to begin construction by March 21, 2018. The developer has requested an extension to the start-of-construction deadline of up to 4 years or March of 2021.

However, staff recommends a 12-month extension to the construction commencement date from March 21, 2018 to March 21, 2019, subject to approval by the State of California's Department of Housing and Community Development (HCD). ORSA, HCD and MTCP executed two grant agreements for funding under the State's Infill Infrastructure Grant (IIG) and Transit-Oriented Development (TOD) Housing Grant Programs. These agreements require that project construction on Parcel B commence by June 2018. The IIG and TOD agreements further require that the MacArthur Station Project provide at least 448 units of which 15 percent must be affordable by June of 2021. But this requirement can be met by the planned residential development of 383 units on Parcels A and C-1, which, in combination with the 90 affordable units at the Mural Apartments that was developed by MTCP on Parcel D, will satisfy the housing unit obligation with HCD. Construction on Parcel A and C-1 is expected to begin in the spring of 2017. Staff of HCD has indicated that they will release Parcel B from all obligations under the respective IIG and TOD grant agreements once they are sufficiently assured that the 383 units on Parcels A and C-1 will be met. Staff is able to grant an extension of up to three months, or from March 2018 to June 2018 without HCD approval.

Therefore, staff recommends an extension to the start-of-construction deadline of up to 12 months, or from March 21, 2018 to March 21, 2019, subject to a release of Parcel B from all obligations under the IIG and TOD grant agreements.

Below Market-Rate Housing Distribution

The OPA requires that affordable housing units be scattered among market-rate units throughout a project. Lastly, the OPA requires that affordable housing units be scattered among market-rate units throughout each market rate development of the MacArthur Station Project, including Parcel B. The new residential tower design will offer luxury rental units on the upper 15 floors that will be priced at a premium. In light of this the developer has requested that under the OPA, the affordable units be distributed only among the market rate units that are located on the 5th to 9th floors of the new building as these do not carry the same rents as the luxury units. This change has also been added to the recommended amendments.

FISCAL IMPACT

Approval of a resolution amending City Resolution No. 86266 C.M.S. to consent to the assignment of the DA to Boston Properties LP will not have a fiscal impact on the City. But development of a larger project will increase the City's receipt of property tax, business tax and sales tax.

Approval of a resolution amending ORSA Resolution No. 2016-005 C.M.S. to consent to assignment of the OPA to BP, and amending the OPA to increase the net worth of the completion guarantor from the current OPA requirement of \$10 million to at least 25 percent of

Item: _____
CED Committee
March 14, 2017

estimated project costs, and the extension of performance deadlines will not have any fiscal impacts. However, the City will receive up to \$500,000 for community benefits in exchange for waiving the payment and performance bond requirement. Said funds will be deposited into the Miscellaneous Grant Fund (2999), CIP Broadway/MacArthur/San Pablo (94869), in a Project to be determined.

PUBLIC OUTREACH / INTEREST

No outreach was deemed necessary for the proposed policy action beyond the standard City Council agenda noticing procedures. Input from members of the community will be sought as community benefits investments are negotiated.

COORDINATION

The following City departments were consulted during the preparation of this report:

- Office of the City Attorney;
- Planning and Building Department;
- City Controller's Bureau;
- Office of Public Works, Transportation Division; and
- Parks and Recreation Department

SUSTAINABLE OPPORTUNITIES

Economic: The combination of the proposed actions will result in a mixed-use development that will provide further stimulus to the local economy. The Project's mix of residences and ground floor retail opportunities, and location next to MacArthur BART station will promote visits, shopping by businesses and residents alike, and ultimately foster future economic development activities in the neighborhood.

Environmental: The proposed development next to a major regional transportation hub will reduce automobile reliance, and thus decrease the use of fossil fuels and resulting greenhouse gas (GHG) emissions. Additionally, actions to maximize water conservation will be reflected in the project's landscaping practices. The proposed mix of uses would bring residents closer to needed services, while the adjacent BART Station's transit nodes would expand options for non-auto commuting. The developer will ensure that the project will comply with the City's Green Building Ordinance and endeavor to receive Leadership in Energy and Environmental Design ("LEED") certification.

Social Equity: The affordable housing component with 45 units of the proposed project will result in housing accessible to low and moderate income households. The location of the project adjacent to a regional transit station and multiple transit nodes will allow for a wide range of access to employment, and also accommodate diverse commuters, including those for whom extended auto commuting is unaffordable.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The City conducted a detailed evaluation of the proposed Project pursuant to CEQA, which concludes that the Parcel B Project qualifies for an addendum, as well as an exemption from additional environmental review, in accordance with Public Resources Code Sections 21083.3, 21094.5, and 21166; and CEQA Guidelines Sections 15162, 15164, 15183, 15183.3, 15168 and 15180. The Project would comply with the underlying zoning regulations (including the Planned Unit Development Regulations) and is consistent with the development density and land use characteristics established by the City of Oakland General Plan, and any potential environmental impacts associated with its development were adequately analyzed and covered by the analysis in the 2008 Project EIR, its three previous addenda, in the applicable Program EIRs: the 1998 LUTE EIR, the Broadway/MacArthur/San Pablo Redevelopment Plan EIR, and for the housing components of the proposed project, the 2010 General Plan Housing Element Update EIR and 2014 Addendum, as documented in the current CEQA Analysis (MacArthur Transit Village Project EIR Addendum #4: MacArthur Station – Modified 2016 Project CEQA Analysis). Each of the above provides a separate and independent basis for CEQA compliance.

Separately and independently, the City and ORSA find and determine, after independent review and consideration, that the conveyance of Parcel B is not a project under CEQA.

The 2008 EIR, previous addenda, and current Addendum #4, as well as the Program EIRs (LUTE EIR, Housing Update Element EIR, and Broadway/MacArthur/San Pablo Redevelopment Project EIR) have been distributed to the Planning Commission, and are available for review at 250 Frank Ogawa Plaza, Suite 3315, Oakland, CA 94612 during normal business hours and can also be found on the City's website at:

<http://www2.oaklandnet.com/Government/o/PBN/OurServices/Application/DOWD009157> (see #50 for MacArthur Transit Village EIR and Addenda)

<http://www2.oaklandnet.com/government/o/PBN/OurServices/Application/DOWD009158> (Housing Element and Redevelopment Plan EIRs are located here)

ACTION REQUESTED OF THE CITY COUNCIL

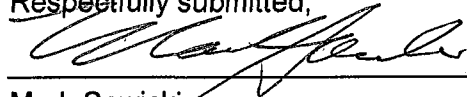
Staff requests that the City Council adopts a resolution amending Resolution No. 86266 C.M.S. which authorized the assignment of a Development Agreement between the City of Oakland and MacArthur Transit Community Partners, LLC to a joint venture between McGrath Properties, Inc., or related entity, and Boston Properties LP, or related entity, and instead authorize the consent to the assignment of MTCP's right to acquire the parcels from BART and a partial assignment of the Development Agreement to Boston Properties LP, or a related entity, pursuant to a long-term ground lease with a right to acquire between MPI MacArthur, LLC, or related entity and Boston Properties LP, or a related entity for the development of Parcels B-1 And B-2 of the MacArthur Station Project.

Item: _____
CED Committee
March 14, 2017

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

For questions regarding this report, please contact Janice Lang, Office of Economic and Workforce Development at (510) 238-6430.

Respectfully submitted,



Mark Sawicki
Director, Office of Economic and
Workforce Development

Reviewed by:
Jens Hillmer, Urban Economic Coordinator
Office of Economic and Workforce
Development

Prepared by:
Janice Lang, Project Manager
Project Implementation Department

Item: _____
CED Committee
March 14, 2017

2017 MAR -2 PM 5:58

Diana M. Allen
Deputy City Attorney

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

A RESOLUTION AMENDING RESOLUTION NO. 86266 C.M.S. WHICH AUTHORIZED CONSENT TO THE ASSIGNMENT OF MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC'S (MTCP) RIGHT TO ACQUIRE PARCELS B-1 AND B-2 FROM BART AND THE PARTIAL ASSIGNMENT OF A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF OAKLAND AND MTCP TO A JOINT VENTURE BETWEEN MCGRATH PROPERTIES, INC., OR RELATED ENTITY, AND BOSTON PROPERTIES LP, OR RELATED ENTITY ("BP"), AND INSTEAD AUTHORIZE THE CONSENT TO THE ASSIGNMENT OF MTCP'S RIGHT TO ACQUIRE PARCELS B-1 AND B-2 FROM BART AND PARTIAL ASSIGNMENT OF THE DEVELOPMENT AGREEMENT TO BP, PURSUANT TO A LONG-TERM GROUND LEASE WITH AN OPTION TO PURCHASE BETWEEN MPI MACARTHUR, LLC, OR RELATED ENTITY, AND BP FOR THE DEVELOPMENT OF PARCELS B-1 AND B-2 OF THE MACARTHUR STATION PROJECT (FORMERLY KNOWN AS THE MACARTHUR TRANSIT VILLAGE)

WHEREAS, on June 4, 2008, the City of Oakland Planning Commission (the "Commission") certified the MacArthur Transit Village Environmental Impact Report ("EIR") and recommended approval of the MacArthur Transit Village Planned Unit Development ("PUD"); and

WHEREAS, on July 1, 2008, pursuant to Resolution No. 81422 C.M.S., the Oakland City Council ("City Council") approved the MacArthur Transit Village PUD; and

WHEREAS, pursuant to Ordinance No. 12959 C.M.S., dated July 21, 2009, the City Council adopted the "Development Agreement ("DA") by and between City of Oakland ("City") and MacArthur Transit Community Partners, LLC ("MTCP") Regarding the Property and Project Known as "MacArthur Transit Village"; and

WHEREAS, the DA and Oakland Planning Code require City Council consent to the transfer of development rights to "Non-Exempt Transferees," as defined in the DA; and

WHEREAS, in March 2016, MTCP submitted a request to transfer interest in MacArthur Transit Village Parcels B-1 and B-2 (hereinafter referred to as "Parcel B", since the two

parcels will be combined to create one Parcel B for development) to a different developer; and

WHEREAS, MTCP identified a joint venture between Boston Properties LP (BP), or related entity, and McGrath Properties, Inc. (McGrath), or related entity, as the proposed new developer, and

WHEREAS, MTCP desired to assign certain of its rights, interests and obligations relating to Parcel B under the DA, to the proposed new developer; and

WHEREAS, on July 6, 2016, the City adopted Resolution No. 86266 C.M.S. consenting to and approving of such assignment; and

WHEREAS, McGrath and BP have determined to structure their relationship for the purpose of this project as Lessor-Lessee, respectively, through a ground lease for Parcel B with an option to purchase the property; and

WHEREAS, MTCP has consented to the ground lease with option to purchase structure with MPI MacArthur, LLC (a McGrath entity) or related entity as fee title owner and Ground Lessor and BP or related entity as Ground Lessee; and

WHEREAS, the roles and responsibilities of each party to the ground lease will be unchanged, with MPI MacArthur, LLC or related entity providing the land, and BP or related entity providing all equity and acting as the vertical developer pursuant to the terms of the DA; and

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

WHEREAS, The City Council finds and determines that this action complies with the California Environmental Quality Act (CEQA), adopts the CEQA findings contained in the Planning Commission Report dated February 1, 2017 and City Council Report (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; now therefore be it

RESOLVED: That, pursuant to the DA, the City amends Resolution No. 86266 C.M.S to consent to the partial assignment and assumption of the DA relating to Parcel B and the transfer and assignment of development rights under the DA for Parcel B to BP, or related entity, subject to execution of a ground lease with an option to purchase with MPI MacArthur, LLC, or related entity; and be it further

RESOLVED: That, pursuant to the DA, the City Administrator or designee is hereby authorized to execute a written consent to the partial assignment and assumption of the DA relating to Parcel B and the transfer and assignment of development rights under the DA for Parcel B to BP, or related entity, subject to execution of a ground lease with option to purchase with MPI MacArthur, LLC or related entity; 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 dated February 1, 2017 regarding the Project and the City Council Report (hereby incorporated by reference as if fully set forth herein), and directs that the City Administrator or designee shall cause to be filed with the appropriate entities a Notice of Determination and/or Exemption for this action; and be it further

RESOLVED: That the City Administrator is further authorized to take whatever action is necessary with respect to the consent to the transfer and assignment of development rights under the DA consistent with this Resolution and its basic purposes; and be it further

RESOLVED: That all documents necessary to effect the consent to the partial assignment and assumption of the DA related to Parcel B and the assignment and transfer of the development rights under the DA with regard to Parcel B pursuant to this Resolution shall be reviewed and approved by the City Attorney, and copies shall be placed on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN AND PRESIDENT REID

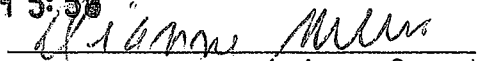
NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California

2017 MAR -2 PM 5:58


Agency Counsel

OAKLAND REDEVELOPMENT SUCCESSOR AGENCY

Resolution No. 2017-_____

A RESOLUTION: 1) AMENDING RESOLUTION NO. 2016-005 C.M.S., WHICH AUTHORIZED CONSENT TO THE ASSIGNMENT OF MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC'S ("MTCP") RIGHT TO ACQUIRE PARCELS B-1 AND B-2 FROM BART AND THE PARTIAL ASSIGNMENT OF AN OWNER PARTICIPATION AGREEMENT (OPA) BETWEEN ORSA AND MTCP TO A JOINT VENTURE BETWEEN MCGRATH PROPERTIES, INC., OR RELATED ENTITY, AND BOSTON PROPERTIES LP, OR RELATED ENTITY, AND INSTEAD AUTHORIZE THE CONSENT TO THE ASSIGNMENT OF MTCP'S RIGHT TO ACQUIRE PARCELS B-1 AND B-2 FROM BART AND PARTIAL ASSIGNMENT OF THE OPA TO BOSTON PROPERTIES LP, OR A RELATED ENTITY ("BP") PURSUANT TO A LONG TERM GROUND LEASE WITH AN OPTION TO PURCHASE BETWEEN MPI MACARTHUR, LLC, OR A RELATED ENTITY, AND BP FOR THE DEVELOPMENT OF PARCELS B-1 AND B-2 OF THE MACARTHUR STATION PROJECT ("PROJECT"), 2) AUTHORIZING A THIRD AMENDMENT TO THE OPA TO (A) WAIVE A PERFORMANCE AND PAYMENT BOND REQUIREMENT FOR DEVELOPMENT OF THE PROJECT IN EXCHANGE FOR AN ADDITIONAL PAYMENT OF UP TO \$500,000 FOR COMMUNITY BENEFITS; (B) EXTEND OPA PERFORMANCE DEADLINES; (C) INCREASE THE NET WORTH REQUIREMENT FOR THE ENTITY THAT WILL PROVIDE THE COMPLETION GUARANTY FOR THE PROJECT; AND (D) AMEND SECTION 2.2.3 TO LIMIT PLACEMENT OF THE BELOW MARKET RATE UNITS FOR THE PARCEL B PROJECT TO FLOORS FIVE THROUGH NINE; AND (3) 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, 15183.3 AND 15061, AND ADOPTING RELATED CEQA FINDINGS

WHEREAS, the Oakland Redevelopment Successor Agency's (ORSA), predecessor in interest to the Oakland Redevelopment Agency, entered into that certain Owner

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

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

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

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

WHEREAS, MTCP identified a joint venture between Boston Properties LP (BP), or related entity, and McGrath Properties, Inc. (McGrath), or related entity, as the new developer; and

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

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

WHEREAS, MTCP has consented to the ground lease structure with MPI MacArthur, LLC (a McGrath-related entity), or related entity, as lessor and BP, or related entity, as lessee; and

WHEREAS, the roles and responsibilities of each party to the ground lease will be unchanged, with MPI MacArthur, LLC, or related entity, providing the land, and BP, or related entity, providing the financing and acting as the vertical developer pursuant to the terms of the OPA; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

WHEREAS, the requirements of the California Environmental Quality Act (CEQA), the CEQA guidelines as prescribed by the California Secretary of Resources and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied; now therefore be it

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

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

RESOLVED: That ORSA finds and determines that this action complies with CEQA, adopts the CEQA findings contained in the Planning Commission Report dated February 1, 2017 on the Project and City Council Report (hereby incorporated by reference as if fully

set forth herein), and directs the Successor Agency Administrator or designee to file with the County of Alameda a Notice of Determination and/or Exemption for this action; and be it further

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

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

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

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

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

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

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

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

B Project to floors five through nine; consistent with this Resolution and its basic purpose; and be it further

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

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2017

PASSED BY THE FOLLOWING VOTE:

AYES- BROOKS, CAMPBELL WASHINGTON, GALLO, GIBSON McELHANEY, GUILLEN, KALB, KAPLAN, AND PRESIDENT REID

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California