DRAFT 6/11/09 FOR CONSIDERATION BY CED COMMITEE

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RECORDING REQUESTED BY:

Redevelopment Agency of the City of Oakland

WHEN RECORDED, MAIL TO:

City of Oakland
Community and Economic Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Attn: Kathy Kleinbaum

MACARTHUR TRANSIT VILLAGE

OWNER PARTICIPATION AGREEMENT

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Site Map 1

Site Legal Description 1

This Owner Participation Agreement (the "Agreement") is entered into this _____day of _____, 2009, by and between the Redevelopment Agency of the City of Oakland (the "Agency"), a community redevelopment agency organized and existing under the California Community Redevelopment Law, and MacArthur Transit Community Partners, LLC (the "Developer"), a California limited liability company, pursuant to Agency Resolution No. _____ C.M.S. adopted on _____, 2009. The date of adoption by the Agency shall be the "Effective Date".

RECITALS

A. The City of Oakland (the "City") created the Agency, pursuant to the provisions of the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000, et seq.) for the purpose of encouraging and facilitating redevelopment, removal of blight, reuse of blighted and unproductive property, and economic growth in the City.

B. Pursuant to authority granted under California law, the Agency has the responsibility to implement the Redevelopment Plan for the Broadway/MacArthur/San Pablo Redevelopment Project, adopted by Ordinance No 12269 of the City Council of the City of Oakland on July 25, 2000, and amended by Ordinance No. 12787 C.M.S. of the City Council of the City of Oakland on March 6, 2007. The Redevelopment Plan as described and as thereafter from time to time amended is referred to in this Agreement as the "Redevelopment Plan" and is incorporated into this Agreement by reference.

C. The Agency has determined that it desires to encourage development in the area surrounding the MacArthur BART Station, and in pursuit of this goal issued a joint Request for Proposals with BART in September 2003 for a development team for the BART Station parking lot and adjoining parcels, which resulted in the selection of a development team that consists of affiliates of McGrath Properties, Inc. and BUILD (BRIDGE Urban Infill Land Development, LLC), organized as MacArthur Transit Community Partners, LLC ("the Developer").

D. The Agency entered into a three-part Exclusive Negotiating Agreement with the Developer and BART in November 2004 pursuant to Agency Resolution No. 2004-26 C.M.S., adopted on June 1, 2004, to explore the feasibility of constructing a transit village (the "MacArthur Transit Village Project") consisting primarily of residential and neighborhood serving commercial uses located on the real property generally between West MacArthur Boulevard and 40th Street and between Telegraph Avenue and Highway 24 in the City of Oakland and more particularly described in Exhibit A attached hereto (the "Site").

E. The Site is located within the Broadway/MacArthur/San Pablo redevelopment area. The purposes of redevelopment are furthered by the construction of approximately 624 residential units, approximately 42,500 square feet of neighborhood serving retail and commercial space, including live-work space, 5,000 square feet of community space, and 510 replacement parking spaces for BART, including a parking garage with not less than 400 spaces (the "BART Garage") supplemented by up to 110 spaces consisting of additional spaces in the parking garage and/or shared parking in the residential buildings.

F. The Agency has found that the redevelopment of the Property pursuant to this Agreement is consistent with the General Plan of the City of Oakland, the applicable zoning requirements of the City of Oakland, and the Redevelopment Plan.

G. Redevelopment of the Site pursuant to this Agreement will serve Redevelopment Plan goals and objectives by alleviating the existing blight on the Site and is consistent with the Agency's Implementation Plan.

H. The Agency has the authority to provide financial assistance to redevelopment efforts in accordance with the best interests of the City and its residents and in accordance with state redevelopment law. The MacArthur Transit Village Project is not feasible to develop without Agency financial assistance. The Agency agrees to provide financial assistance to the MacArthur Transit Village Project in accordance with this Agreement in order to further the goals and objectives of the Redevelopment Plan. The Agency's financial assistance consists of approximately $17.2 million for the affordable residential units and, subject to certain increases if the issuance of bonds is delayed by the Agency, up to $18.3 million for the remaining elements of the Project, plus the assignment to the Developer of various grants received by the Agency from federal and state funding sources for the Project.

I. The City certified the MacArthur BART Transit Village Project Final Environmental Impact Report on July 1, 2008 (the "MacArthur BART EIR") per City Resolution No. 81422 C.M.S. Based on the provisions of Public Resources Code Section 21090, the MacArthur BART EIR has served as the Agency's environmental documentation pursuant to the California Environmental Quality Act ("CEQA") for consideration and approval of this Agreement and the physical development contemplated hereby. The physical development contemplated by this Agreement is within the scope of the program evaluated in the MacArthur BART EIR.

J. This Agreement sets forth the terms and conditions under which the Agency will provide financial assistance to the project in conformance with the Broadway/MacArthur/San Pablo Redevelopment Plan.

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants and mutual obligations contained in this Agreement, and in reliance on the representations and warranties set forth herein, the Agency and the Developer agree as follows:

1. DEFINITIONS

1.1. The following terms and their derivatives have the meanings set forth below wherever used in this Agreement, attached exhibits, or documents incorporated into this Agreement by reference:

1.1.1. Acquisition Costs. "Acquisition Costs" means the costs attributable to the acquisition by Developer or Developer's nominee of the Developer Parcels, as more particularly defined in Section 4.2.

1.1.2. Additional Bonds. "Additional Bonds" means the tax increment bonds to be issued by the Agency pursuant to Section 3.2.2.1.

1.1.3. Agency. The "Agency" means the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law (Health and Safety Code Sections 33000, et seq.). Any reference hereafter to "Agency" shall also be deemed to include any successors or assigns of the Redevelopment Agency of the City of Oakland. The principal office of the Agency is 250 Frank H. Ogawa Plaza, 5th Floor, Oakland, CA 94612

1.1.4. Affiliate. An "Affiliate" means, with respect to any entity, an entity that controls, is controlled by or is under common control with such entity.

1.1.5. Adoption Date. "Adoption Date" means the later of the date on which the City Council adopts an ordinance enacting the Development Agreement between the City and Developer with respect to the Project and the date on which the Agency Board passes a resolution approving this Agreement.

1.1.6. Building Permits. "Building Permits" means all building, demolition and similar permits for the Project required to be obtained from the City or from other governmental entities.

1.1.7. Certificate of Completion. The "Certificate of Completion" means the certificate of completion to be issued by the Agency to the Developer after completion of each phase of the Project in accordance with the provisions set forth in Section 7.10 of this Agreement.

1.1.8. City. The "City" means the City of Oakland, a charter city.

1.1.9. Construction Contracts. "Construction Contracts" means, collectively, all the contracts between the Developer and any general contractor(s) covering the construction of any phase of the Project.

1.1.10. Design Guidelines. "Design Guidelines" means the design guidelines for the MacArthur BART Transit Village Project, adopted by Resolution No. 81422 C.M.S. of the City Council of the City of Oakland on July 1, 2008, and applicable to the Site.

1.1.11. Developer or Horizontal Developer. The "Developer" or "Horizontal Developer" means MacArthur Transit Community Partners, LLC, a California limited liability company. Any reference hereafter to "Developer" shall also be deemed to include any approved or permitted successors to or assigns of MacArthur Transit Community Partners, LLC as set forth in Section 12.3, with respect to all or any portion of the Project, including without limitation MPI MacArthur LLC as the developer of the BART Garage.

1.1.12. Developer Parcels. The "Developer Parcels" means the properties more particularly described as Parcels One through Fifty-One in the attached Exhibit A-2 that are owned by private parties and that the Developer has

either optioned to purchase or, subject to the provisions of Section 5.3, has agreed to use good faith efforts to purchase.

1.1.13. Hazardous Materials. "Hazardous Materials" means any substance, material, or waste which is: (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant" or any other terms comparable to the foregoing terms under any provision of California law or federal law; (2) petroleum; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; or (6) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property. Without limiting the foregoing, Hazardous Materials means and includes any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, a hazardous, toxic or radioactive substance, or other similar term, by any Hazardous Materials Laws including any federal, state or local environmental statute, regulation, or ordinance presently in effect or that may be promulgated in the future, as such statutes, regulations and not ordinances may be amended from time to time.

The term "Hazardous Materials" shall not include: (i) construction materials, gardening materials, household products, office supply products or janitorial supply products customarily used in the construction, maintenance, rehabilitation, or management of commercial properties, buildings and grounds, or typically used in household activities, or (ii) certain substances which may contain chemicals listed by the State of California pursuant to California Health and Safety Code Section 25249.8 et seq., which substances are commonly used by a significant portion of the population living within the region of the Project, including, but not limited to, alcoholic beverages, aspirin, tobacco products, Nutrasweet and saccharine, so long as such materials and substances are stored, used and disposed of in compliance with all applicable Hazardous Materials Laws.

1.1.14. Hazardous Materials Laws. "Hazardous Materials Laws" means all federal, state, and local laws, ordinances, regulations, orders and directives pertaining to hazardous materials. Without limiting the foregoing, hazardous materials laws include each of the following: Federal Resource Conservation and Recovery Act of 1979, 42 U.S.C. Section 6901, et seq.; federal comprehensive environmental response, compensation, and liability act of 1980, 49 U.S.C. Section 1801, et seq.; Federal Clean Air Act, 42 U.S.C. Sections 7401 7626; Federal Water Pollution Control Act, Federal Clean Water Act of 1977, 33 U.S.C. Section 1251, et seq.; Federal Insecticide, Fungicide, and Rodenticide Act, Federal Pesticide Act of 1978, 7 U.S.C. Paragraph 13, et seq.; Federal Toxic Substances Control Act, 15 U.S.C. Section 2601, et seq.; Federal Safe Drinking Water Act, 42 U.S.C. Section 300(f) , et seq.; California Health & Safety Code Section 25100, et seq.; Hazardous Substance Account Act, California

Health & Safety Code Section 25300, et seq.; Hazardous Substance Cleanup Bond Act, California Health & Safety Code Section 25385, et seq.; Water Quality Control Act, California Health & Safety Code Section 13050, et seq.; California Environmental Quality Act, California Public Resources Code Section 21000, et seq.; California Radiation Control Law, California Health and Safety Code Section 25801, et seq.; Solid Waste Management and Resource Recovery Act, Government Code Section 66700, et seq.; Hazardous Waste Management Act of 1986, Health and Safety Code Section 25179.1, et seq.; Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.5, et seq.

1.1.15. Option Agreement. The "Option Agreement" means that certain Option Agreement to purchase portions of the Site from BART and to ground lease other portions of the Site from BART which is to be negotiated and entered into by Developer and BART on terms not inconsistent with the terms of this Agreement. By its terms, the Option Agreement shall be automatically assignable to the Agency if this Agreement is terminated for any reason other than an Agency default hereunder.

1.1.16. Phase. The term "Phase" means any of Phases I through V described in Section 2.6.

1.1.17. Phase I Completion Guaranties. "Phase I Completion Guaranties" shall mean the guaranties of completion of the BART Garage and of the Phase I infrastructure improvements (exclusive of the BART Garage), in the form of Exhibits N-1 and N-2, respectively.

1.1.18. Project. The "Project" means the construction of a mixed-use housing project with approximately 624 housing units, of which the number of below market rate units shall be equal to at least 20% of the market rate units, approximately 42,500 square feet of retail/commercial space, including live/work space, 5,000 square feet of community space, and 510 replacement parking spaces for BART, including a parking garage containing not less than 400 spaces supplemented by up to 110 spaces consisting of additional spaces in the parking garage and/or shared parking in the residential buildings. The Project is more particularly described in Exhibit G, attached hereto and incorporated herein by reference.

1.1.19. Project Costs. "Project Costs" means all hard and soft costs directly attributable to the development of the Project, including without limitation those pertaining to land acquisition, asset management of existing improvements on any of the Developer Parcels following acquisition by Developer and prior to demolition, relocation of existing occupants, demolition, remediation of Hazardous Materials, vacation of streets and easements, design, engineering, surveying, entitlement, permitting, financing, construction and marketing of the Project and including an

administrative fee to Developer and reimbursement pursuant to Section 4.1 of out-of-pocket costs paid by Developer for any of the foregoing out of Developer's own funds.

1.1.20. Project Manager. The Agency's "Project Manager" shall mean Kathy Kleinbaum or such other individual as shall be designated from time to time by the Agency as the project manager for the Project.

1.1.21. Site. The "Site" means the real property located in Oakland, California, on a portion of the block bounded by West MacArthur Boulevard, 40th Street, Telegraph Avenue, and Highway 24 in Oakland. The Site is approximately 7.76 acres and, as presently conceived, is comprised of 10 parcels including the BART parking lot and 7 privately-owned parcels more fully described in that map attached as Exhibit A-1 and the legal description attached as Exhibit A-2, which are both incorporated into this Agreement by this reference. The actual acreage and number of parcels included within the Site are subject to adjustment, as provided in Section 5.3 below.

1.1.22. Redevelopment Plan. The "Redevelopment Plan" means both the Broadway/MacArthur/San Pablo Redevelopment Plan adopted on July 25, 2000, as subsequently amended, as well as the Five Year Implementation Plan for the Broadway/MacArthur/San Pablo Redevelopment Project adopted on December 17, 2004, including any subsequent amendments to either document. The Redevelopment Plan is hereby incorporated by reference into this Agreement.

1.1.23. Schedule. The "Schedule" means that Project Schedule attached to this Agreement as Exhibit B, incorporated herein by this reference. The Schedule outlines Project tasks that the Developer must perform by the referenced due date. The Schedule may be modified or amended by mutual agreement of the parties in writing executed by a designee of the Agency Administrator and the Developer and is subject to automatic adjustment as provided in Section 6.9.

1.1.24. Term of Agreement. The Term of this Agreement shall be from the Effective Date of this Agreement until the recordation by the Agency of the last of the Certificates of Completion for the Project to be issued under Section 7.10, unless this Agreement is earlier terminated in accordance with its provisions.

1.1.25. Vertical Completion Guaranty. "Vertical Completion Guaranty" means the guaranty of completion of the applicable Phase in the form of Exhibit N-3 attached hereto to be delivered to the Agency prior to the commencement of construction of each of Phases III through V.

1.1.26. Vertical Developer. "Vertical Developer" means any permitted assignee of Developer's rights and obligations to construct the vertical improvements for one or more Phases of the Project.

2. PROJECT DESCRIPTION

2.1. Project Structure. The development of the Project shall be divided into two components, Horizontal and Vertical. The Horizontal component shall consist of the project infrastructure and the development of the BART Garage. The Vertical component shall consist of the development of market rate housing, below market rate housing, and the commercial space.

2.1.1. Horizontal Developer. MacArthur Transit Community Partners, LLC ("MTCP") is the approved Horizontal Developer for the Project. MTCP is comprised of MPI MacArthur LLC (an Affiliate of McGrath Properties, Inc.) ("MPI") and BUILD Equity Investments (MacArthur Transit Community) LLC (an Affiliate of Bridge Urban Infill Land Development, LLC) ("BUILD"). Notwithstanding the foregoing, MPI is the approved developer of the BART Garage, which also may be developed by any of MTCP or an Affiliate of MPI or BUILD or an Affiliate of MTCP.

2.1.2. Vertical Developer for Market Rate Housing. (A) MTCP or an entity comprised of the MTCP members or Affiliates of the MTCP members and (B) BUILD or an Affiliate of BUILD are each approved Vertical Developers for the market-rate housing and commercial portions of the Project.

2.1.3. Vertical Developer for Affordable Housing. BRIDGE Housing Corporation or an Affiliate of BRIDGE is the approved Vertical Developer for the below-market-rate housing portion of the Project.

2.1.4. Change in Vertical Developer. In the event that MTCP elects to proceed with a different Vertical Developer for any one or any combination of the Phases, the Developer must demonstrate to the reasonable satisfaction of the Agency Board that the prospective Vertical Developer meets the following criteria: (1) a nationally or regionally recognized real estate development company with a good business reputation, which has, within the preceding ten year period, on its own or through its assembled development team, successfully developed a major high quality urban mixed-use project similar to the Phase or Phases being transferred to such Vertical Developer, (2) either alone or in combination with its members (or their constituent members or partners) or guarantors has a demonstrated net worth of not less than Twenty Million Dollars ($20,000,000.00) in the event that the entire Project is to be transferred, or Ten Million Dollars ($10,000,000.00) per Phase in the event that any one Phase of the Project is to be transferred (these amounts shall be adjusted for inflation every five (5) years starting from the date of this Agreement,

using the change, if any, in the San Francisco Bay Area Construction Cost Index of the Engineering News Record); and (3) neither it nor any of its principals, members or partners has been convicted, found or admitted or assumed (including any plea of no contest) criminal or civil liability for any felony, fraud, misrepresentation or any act of moral turpitude (excluding only civil liability for construction defect claims of fraud or misrepresentation arising out of the sale, construction, warranty or repair of real property and improvements thereto) or has been a party adverse to the City or Agency in any lawsuits, claims or other actions within the preceding five (5) years and has disclosed in writing any lawsuits or other actions as to which the proposed Vertical Developer or any of its principals, members or partners has been adverse to the City or Agency during any prior period.

2.2. Minimum Residential Density. The minimum density for the Project shall be 106 units per net acre within the Site, calculated as an average across the acreage constituting Phases II through V (as defined in Section 2.6 below), but excluding the BART Plaza, the BART Garage, and the public roadways, sidewalks, curbs and gutters. The Agency is not specifying a maximum net density for the Project.

2.2.1. The number of below market rate units in the Project will be not less than 20% of the total number of market rate residential units in the Project, including both rental and ownership units and not including any live/work space as described in Section 2.3.

2.2.2. At least ninety (90) of the below market rate units shall be included in a separate Phase and shall be rental units targeted to income levels not to exceed 50% of Area Median Income (AMI).

2.2.3. The remaining below market rate units shall be scattered throughout the market rate portions of the Project and shall be rental units targeted to income levels not in excess of 80% of AMI and/or ownership units targeted to income levels between 80% and 120% of AMI, with an overall average not to exceed 100% of AMI.

2.2.4. The below-market-rate rental units shall remain affordable for a minimum of 55 years after at least 50% of the units, as defined in Exhibit I-1, are first occupied by eligible tenant households following the completion of the units. The below-market-rate ownership units shall remain affordable for a minimum of 45 years following the initial sale of each unit to an eligible individual homebuyer. The below market rate units described in Section 2.2.2 shall be subject to the affordability restrictions set forth in Section 2.2.2, which shall be incorporated in a regulatory agreement consistent with Exhibit I-1. The below market rate units described in Section 2.2.3 shall be subject to the affordability restrictions set forth in Section 2.2.3 which shall be incorporated in a regulatory agreement substantially in the form of Exhibit I-2 for rental units, and an affordability

agreement substantially in the form of Exhibit I-3 for ownership units. Each regulatory agreement and the exhibits thereto shall be recorded and shall run with the land for the period of the applicable affordability restrictions.

2.3. Commercial Space. The Project shall include approximately 42,500 square feet of retail/commercial space, which may include live/work space. Live/work space shall be allowed only along the 40th Street side of Block A, as shown on Exhibit D attached hereto. The preliminary guidelines and standards for the retail tenant mix are attached hereto as Exhibit J and incorporated herein by this reference and may be modified by agreement in writing by the parties. The Executive Director of the Agency shall have the authority to approve and execute any such modification on behalf of the Agency.

2.4. BART Replacement Parking. The Project is anticipated to include a minimum of 400 replacement parking spaces in the BART Garage and up to an additional 110 spaces comprised of a combination of (i) additional parking spaces in the BART Garage, (ii) shared spaces in the residential buildings of the Project and/or (iii) offsite satellite parking made available for the time period and as otherwise provided in the Transportation Demand Management Plan for the Project. The actual number of BART replacement spaces is subject to final BART approval of the Project.

2.5. Community Space. The Project shall include a 5,000 square foot space for community purposes. The use of the space will be determined by Developer in consultation with the Agency prior to approval by the City of the Final Development Plan for the applicable Phase of the Project, but is anticipated to be a 5,000 square foot child care facility. The operator of the community space shall be selected by Developer in consultation with the Agency.

2.6. Project Phasing. The Project will be constructed in five distinct phases (each, a "Phase") based on the block layout in Exhibit D as follows:

2.6.1. Phase I. Phase I of the Project will include the construction of the replacement BART Garage on Block E, site remediation, Internal Drive, the Frontage Road improvements, and the portion of Village Drive that extends from the Frontage Road to the interior of the Site. If the initial disbursement of the Prop 1C Funds to Developer is delayed beyond January 2011 or thereafter such disbursement is suspended or interrupted, the required dates set forth in the Schedule for submission of a Final Development Plan for Phase I and commencement of construction of Phase I shall be extended for the period of such delay and for the period of any delay caused by such suspension or interruption of disbursement. The required date for commencement of construction of Phase I shall be extended until Developer and BART have executed a ground lease for the Garage and Developer has obtained fee title or a right to enter that portion of the Site on which the site remediation and roadways included in Phase I

are to be constructed. Notwithstanding the foregoing, in no event shall the required date for commencement of construction for Phase I be extended beyond the date that is three (3) years after the Adoption Date for any reason other than Litigation Force Majeure. All required dates for performance for Phases II through V shall be extended by a period equal to the period of any extension of the required dates for performance with respect to Phase I under this Section 2.6.1.

2.6.2. Phase II. Phase II of the Project will include construction on Block D of a minimum of 90 below market rate rental units as described in Section 2.2.2. The required dates set forth on the Schedule for Developer's submittal of a Final Development Plan for Phase II and for commencement of construction of Phase II shall be extended until the earlier to occur of (i) execution by Developer and BART of a ground lease for Block D and receipt by Developer of subsidy funds sufficient to construct Phase II on terms satisfactory to Developer in good faith; or (ii) ten (10) years after the Adoption Date. In no event shall such ten (10) year deadline be extended for any reason including, without limitation, Force Majeure

2.6.3. Phase III. Phase III of the Project will include construction of approximately 213 residential units and 23,500 square feet of commercial space on Block A. All street improvements, including the completion of Village Drive and any new traffic signals required by the Project, will be completed in this Phase. This Phase will also include the completion of a public plaza directly across Frontage Road from the existing BART Plaza. The required dates for submittal of a Final Development Plan or commencement of construction for Phase III shall be extended for a period of one year upon request by Developer.

2.6.4. Phase IV. Phase IV of the Project will include the construction of approximately 132 residential units and 5,000 square feet of commercial space on Block B.

2.6.5. Phase V. Phase V of the Project will include the construction of approximately 189 residential units and 14,000 square feet of commercial space on Block C. This Phase will also include the construction of a child care facility or other approved community space on the ground floor of one of the Block C buildings.

2.6.6. The remaining below market rate units as described in Section 2.2.3 above, shall be included in any one or a combination of Blocks A, B and C, and shall be scattered among the market rate units.

2.6.7. Provided that Phases I and II are constructed in accordance with the phasing plan set forth in the Schedule provided in Exhibit B, the Developer shall have the discretion to change the order in which Blocks

A, B and C are developed or whether developed before or after Phase II, provided that the commencement dates for the development of the Blocks then designated as Phase III, IV and V shall be no later than the dates set forth in the Schedule, as adjusted for any Force Majeure event or any other express provision of this Agreement.

3. AGENCY FINANCING

3.1. Maximum Agency Contribution to Project. The Agency shall not guarantee MTCP's return on the Project, nor shall Agency be entitled to any reimbursement or reduction in the Agency's contribution if Developer's return on the Project exceeds its stated target return of an unleveraged 17% IRR on the Horizontal portion of the Project. Except as otherwise expressly provided in Section 3.2.2.2, the Agency's total financial contribution to the Project shall not exceed $18.3 million, excluding any current or future grant funds awarded to the Agency for this Project by an outside agency (including without limitation any Proposition 1C funds allocated to the Project) and the Agency's contribution to the affordable housing component of the Project.

3.2. Components of Agency Contribution to the Project. The Agency financial contributions to the Project shall be provided as follows:

3.2.1. Predevelopment Grant. The Agency has provided $1.5 million in predevelopment funding assistance in the form of a grant from the 2006 Broadway/MacArthur/San Pablo Tax Allocation Bond pursuant to the Predevelopment Grant Agreement executed on May 8, 2007 in accordance with Agency resolution 2006-91 C.M.S. adopted on December 19, 2006.

3.2.2. Development Funding. The Agency will provide $10.5 million of funding from the 2006 Broadway/MacArthur/San Pablo Tax Allocation Bond and, commencing July 1, 2011, will commit additional non-housing tax increment generated by the Broadway/MacArthur/San Pablo Redevelopment Area in the amounts and for the purposes set forth in Section 3.2.2.1 below. The 2006 bond proceeds may be used to pay any Project Costs which are eligible costs under the terms of the applicable bond issue.

3.2.2.1. The Agency shall issue additional tax increment bonds generating proceeds of $6.3 million (or such greater amount as is provided in Section 3.2.2.2 below) for the benefit of the Project (the "Additional Bonds") at such time as Developer shall request, provided that the issuance shall not be earlier than July 1, 2011 and provided further that Developer shall have given Agency not less than nine months' advance notice of the date upon which Developer desires to have the bond proceeds available to pay permitted Project Costs.

3.2.2.2. In the event the Agency determines that market conditions are not favorable for issuance of the bonds when requested by Developer, the Agency shall not be deemed to be in default hereunder so long as (i) the bonds are issued on or before July 1, 2014 (ii) the Agency makes available to Developer $700,000 in annual tax increment as a direct payment to Developer to be applied to pay Project Costs (iii) the maximum bond proceeds to be made available to pay Project Costs shall be increased by $250,000 for a delay of one year, $550,000 for a delay of two years and $900,000 for a delay of three years (or, in each case, a pro rata portion thereof if less than a full fiscal year) for each City fiscal year or portion thereof the bond issuance is delayed and (iv) the dates for commencement and completion of each Phase shall be extended as provided in Section 6.9 below. After issuance, the Agency shall not be required to refinance the Additional Bonds, but agrees to meet and confer with Developer, upon Developer's request, about whether such a refinancing would be feasible and beneficial to the parties. Additionally, Developer shall have the right, at its sole election by notice in writing to the Agency, to terminate this Agreement if the Agency elects to postpone issuance of the bonds beyond July 1, 2014 for any reason. Upon termination pursuant to this Section 3.2.2.2, Developer shall convey to Agency its interest in the Project and shall have no further obligations hereunder. Upon conveyance of Developer's interest in the Project to Agency, pursuant to this Section 3.2.2.2, each Completion Guaranty shall automatically terminate. All required times for performance set forth on the Schedule occurring on or after July 1, 2011 shall be extended for a period of time equal to the period from July 1, 2011 to the date upon which Agency issues the bonds referred to herein.

3.2.2.3. Developer shall be entitled to receive up to $2.5 million of the initial $10.5 million in funding in reimbursement for Project Costs paid by Developer to third parties out of Developer's own funds prior to the effective date of this Agreement.

3.2.2.4. All funds made available to Developer by the Agency pursuant to Section 3.2.2 above shall be disbursed in accordance with the provisions of Section 4 below. If Agency delays any disbursement of funds to Developer beyond the date required by this Agreement, all required times for performance set forth on the Schedule shall be extended for the period of such delay.

3.2.3. Affordable Housing Financing. The Agency will provide gap financing assistance for Phase II of the Project, structured as a standard affordable housing residual receipts loan, subject to the Agency's determination that Phase II of the Project is economically feasible. The Agency's gap financing assistance for Phase II shall not exceed $17.2 million. For purposes of this Agreement, Phase II of the Project shall be considered

economically feasible when, given (1) the projected cost of development (hard and soft costs) of Phase II of the Project, (2) the planned levels of affordability of Phase II of the Project, and (3) the Agency and City's guidelines and policies for providing development funding to affordable housing projects in accordance with the Notice of Funding Availability ("NOFA") then in effect, adequate private and public financing and subsidy sources (such as bond proceeds, low income housing tax credits, state funding, federal funding, and the Agency's Low and Moderate Income Housing Fund) are available to complete construction of and operate Phase II of the Project. The actual amount and timing of Agency gap financing assistance for Phase II of the Project shall be determined at the time that Developer is requesting such gap financing assistance for Phase II of the Project in compliance with the guidelines and requirements of the City's and Agency's NOFA. Of the total assistance amount, $0.8 million will come from land sales proceeds from 3860 Martin Luther King, Jr. Way and the balance from Agency or City affordable housing funds which shall be made available to Developer no later than the beginning of City fiscal year 2011-12. Any Agency gap financing assistance for Phase II of the Project will be disbursed in accordance with the terms and conditions of a separate residual receipts loan agreement between the Developer and the City and/or Agency.

3.3. Third-Party Grant Funding.

3.3.1. The parties acknowledge that the Project has received an allocation of Proposition 1C funds in an aggregate amount of approximately $37.3 million (the "Prop 1C Funds") for acquisition of land for and construction of the BART Garage, construction of the Phase II garage, transportation demand mitigation, the BART Plaza renovation, site work and on and off-site public infrastructure. The Agency agrees to cooperate with Developer to structure the disbursement of the Prop 1C Funds to Developer in a manner reasonably acceptable to Developer and in compliance with Prop 1C Funds agreement terms. In the event all or any portion of the Prop 1C Funds are not disbursed to Developer for any reason other than a default by Developer under the Prop 1C Funds agreement, Developer shall have the right to terminate this Agreement and the Completion Guaranties.

3.3.2. The parties further acknowledge that the Agency may be responsible to the State for repayment of some portion of the Prop 1C Funds in the event that building permits for less than 448 residential units have been issued by an outside date established by the State. In consideration for Agency's agreement to take that risk, Developer agrees to deliver to Agency the repayment guaranty described in Section 4.1 below and, prior to commencement of construction of the BART Garage, a guaranty of lien-free completion of the BART Garage by the Vertical Developer of the BART Garage in the form attached hereto as Exhibit N-1 and, prior to commencement of the remainder of the Phase I infrastructure, a separate

guaranty of lien-free completion of all other Phase I infrastructure to be constructed with Prop 1C Funds by BUILD and MPI in the form attached hereto as Exhibit N-2. Each of the guarantors shall be capitalized at all times during the term of the Phase I Completion Guaranties in an amount not less than $5 million, whether in the form of a demand note in such amount given by an Affiliate reasonably acceptable to the Agency and assigned to the Agency to secure the guaranteed obligations or by a net worth in such amount. The Phase I Completion Guaranties shall be of no further force and effect if (i) the Agency does not cause the tax increment bonds described in Section 3.2.2.1 to be issued on or before July 1, 2014, (ii) the State does not disburse or suspends or interrupts the disbursement of the Prop 1C Funds for any reason other than a default by Developer under the Prop 1C Funds agreement or (iii) the Agency fails to perform timely any other funding obligation or is otherwise in default under the terms of this Agreement.

3.3.3. BART has secured an additional $1.3 million in funding from state and federal transportation agencies for renovation of the BART Plaza, which will be disbursed to Developer, along with the applicable Prop 1C Funds, in reimbursement of Developer's costs of renovating the BART Plaza.

3.3.4. The Agency shall continue to work with Developer and BART to solicit additional grant funds to assist Developer in meeting its target unleveraged 17% Internal Rate of Return for the Horizontal component of the Project. The Developer shall be responsible for obtaining all other funding as necessary to develop the Project.

4. DISBURSEMENT OF AGENCY FUNDING

4.1. Reimbursement of Initial Costs. Following the execution of this Agreement, Agency shall disburse the development funding described in Section 3.2.2.3 to reimburse Developer for documented Project Costs paid for by Developer prior to the Effective Date from Developer's own funds. All reimbursable Project Costs shall be costs properly includable within one of the line items set forth in the preliminary budget approved by the Agency.

4.1.1. Letters of Credit. In the event the Option Agreement with BART for acquisition of the BART parking lot property shall not have been executed as of the date disbursement is to be made, Developer shall deliver to the Agency, as a condition to disbursement of such funds and in a form reasonably acceptable to the Agency, two unconditional irrevocable letters of credit, each in the amount of $1.25 million drawn on a FDIC-insured financial institution reasonably acceptable to Agency, naming the Agency as beneficiary and in a form reasonably acceptable to Agency. The Agency shall be entitled to draw on each letter of credit (i) in the event this Agreement is terminated prior to the full execution of the Option Agreement for any reason other than the failure of the Agency to provide

the Agency funding when and as described in Article 3 and this Article 4, or (ii) with respect to either letter of credit, in the event such letter of credit is not renewed or a substitute letter of credit delivered to Agency at least ten (10) days prior to expiration of the current letter of credit. Any draw on the letters of credit pursuant to (i) above shall be in equal amounts from each letter of credit. In the event either letter of credit is drawn pursuant to (ii) above, the Agency shall hold the funds drawn in cash, without any obligation for interest thereon, as security for delivery of the executed Option Agreement. Upon delivery to the Agency of the repayment guaranty and expiration of the 90 day period described in section 4.1.2 below or earlier delivery of the fully executed Option Agreement, the Agency shall release and return to Developer each of the letters of credit or any cash deposit then being held by the Agency. No additional Agency funds shall be disbursed to or for the benefit of Developer unless and until the Option Agreement is fully executed and in full force and effect.

4.1.2. Repayment Guaranty. Upon the earlier of execution and delivery of the Option Agreement or ninety (90) days after the Effective Date, Developer shall cause MPI and BUILD to deliver to the Agency, in replacement of the letters of credit described in Section 4.1.1 above, a repayment guaranty in the form of Exhibit N-4 attached hereto. The repayment guaranty shall remain in effect until the BART Garage Completion Guaranty is delivered to the Agency and shall guaranty repayment of the $2.5 million described in Section 3.2.2.3 in the event this Agreement is terminated as a result of an Event of Default by Developer (as defined in Section 13.4 hereof) or pursuant to Section 13.1.2. During the term of the repayment guaranty, MPI and BUILD shall each be capitalized in the amount of $1.25 million in the form of a demand note in such amount given by an Affiliate reasonably acceptable to the Agency and assigned to the Agency to secure the guaranteed obligations. The repayment guaranty shall be extinguished and of no further force and effect if this Agreement is terminated for any reason other than those set forth above in this Section 4.1.2

4.2. Land Acquisition Funds. The funds made available by Agency for land acquisition will be disbursed to the Developer or the seller through the escrows established by Developer for purchase of the Developer Parcels from the private owners. The funding will be disbursed to fund 100 percent of the Acquisition Costs on a property-by-property basis. "Acquisition Costs" shall include the purchase price payable to the seller, all closing costs which under the terms of the applicable purchase or option agreement are payable by the purchaser, brokerage commissions, relocation costs or goodwill payments, costs incurred pursuant to Sections 5.4.1 or 5.4.2 in quiet title, vacation or eminent domain proceedings or other out-of-pocket costs attributable to acquisition of any of the Developer Parcels. The Developer is responsible for all Acquisition Costs not paid from proceeds of the tax increment financings described in Section 3.2.2 above.

4.2.1. Requirement for Disbursement. Prior to the disbursement of the Agency funds for the purchase of any Developer Parcel, the Option Agreement must be in effect and the Agency must first receive a copy of the title report and an appraisal, and a copy of the executed purchase and sale agreement for the subject Developer Parcel, and the title company must have evidenced its willingness to issue an owner's policy of title insurance to Developer upon recordation of the deed and payment of its regularly scheduled premium.

4.2.2. Reversionary Grant Deed. As a further condition precedent to the disbursement of Agency funds for the purchase of any Developer Parcel, the Developer shall deposit into escrow a fully executed grant deed conveying fee title to the Developer Parcel from Developer to the Agency under the circumstances and on the terms provided in Section 13.10 and in the form attached hereto as Exhibit E (each, a "Reversionary Grant Deed").

4.3. Affordable Housing Financing. After approval by the Agency pursuant to the requirements of Section 3.2.3 and execution of a standard residual receipts loan agreement with Developer, the affordable housing funds will be disbursed when requested by Developer, but only after the Developer has secured all other necessary financing for construction of the Phase II below market rate units, as evidenced by the Agency's approval of the Financing Plan pursuant to Section 6.3 below. Developer anticipates that financing will be needed in 2011, and shall submit to the Agency a written request for gap financing assistance for Phase II of the Project at least 15 months prior to the date funds are required. The gap financing will be structured as a standard affordable housing residual receipts loan. A separate residual receipts loan agreement setting forth the Agency's standard conditions precedent to disbursement of the funds will be executed for the affordable housing gap financing after all other necessary financing is secured.

4.4. Tax Increment Bond Proceeds. Tax increment bond proceeds shall be disbursed to Developer, only up to the amount authorized under this Agreement in Section 3.2.2. Agency shall notify Developer after the Additional Bonds described in Sections 3.2.2.1 and 3.2.2.2 have been sold. Pursuant to Developer's written request to the Agency, the Agency will issue the Additional Bonds so that the proceeds will be available to Developer in 2011 or as otherwise provided in Section 3.2.2.2. The proceeds of the Additional Bond issue shall be disbursed to or as directed by Developer as follows: 25% upon issuance of the required building permits for the BART Garage; 50% upon one-half completion of the BART Garage, as certified in writing by the BART Garage architect; and 25% upon full completion of the BART Garage, as evidenced by a final sign-off by the City's building inspector. Bond proceeds will be provided to Developer pursuant to the provisions of Section 4.5 below for eligible purposes under the terms of the applicable bond issue.

4.5. Disbursement Procedures. Agency funds of up to $2.5 million, pursuant to Section 3.2.2.3, shall be disbursed to Developer in reimbursement for Project Costs incurred prior to the Effective Date no later than thirty (30) days following submission to the Agency of invoices or other documentation reasonably sufficient, in the Agency's determination, to support reimbursement and, if applicable, delivery of the letters of credit described in Section 4.1. The balance of the initial $10.5 million in Agency funds shall be disbursed, as directed by Developer, either (i) directly into escrows established for the acquisition of Developer Parcels in the amounts set forth on estimated closing statements for each such escrow (provided the conditions to disbursement set forth in Section 4.2 have been satisfied) or (ii) to Developer or, at Developer's request, to Project contractors or other third parties to pay or reimburse Developer for Project Costs evidenced by invoices or other documentation submitted to the Agency and reasonably sufficient, in the Agency's determination, to support payment or reimbursement. Such disbursements shall be made no later than thirty (30) days following receipt by the Agency of a written request for disbursement from Developer, accompanied by supporting documentation. The affordable housing financing shall be disbursed as provided in the residual receipts loan agreement; the proceeds of the Additional Bonds shall be disbursed in three separate installments, as provided in Section 4.4; and the Prop 1C Funds shall be disbursed as required by the Prop 1C funding agreement. Agency shall cooperate with Developer's reasonable requests concerning the method of structuring the disbursement of Agency and Prop 1C Funds, including without limitation disbursement as non-recourse, interest-free loans, disbursements to Developer's individual members for contribution to Developer or disbursement to a business improvement district formed and controlled by Developer, in all cases subject to any limitations on the use of tax-exempt bond proceeds, the requirements of the State or other funding agency and any other applicable governmental rules or regulations. Agency and the Developer shall enter into such additional loan agreements or other documentation as may be reasonably required to implement any acceptable structuring, provided that the Agency shall not be required to take on any additional liability or cost as a result of such restructuring.

5. ACQUISITION AND ASSEMBLY OF SITE

5.1. Site Ownership. The Site, as presently configured, is comprised of 10 parcels, including the 3 parcels presently owned by BART and 7 parcels that are owned by third parties, the latter herein referred to as "Developer Parcels". The parcels are fully described in the map attached hereto as Exhibit A-1 and the legal description attached hereto as Exhibit A-2.

5.2. Acquisition of BART Land. Developer intends to acquire from BART a leasehold interest in the BART land underlying the BART Garage and Phase II (the affordable rental housing) of the Project and fee title to those portions of Phases III, IV and V which are presently owned by BART. Developer shall not be required to pay more than the fair market rent for the land to be ground leased from BART (which may be a pre-paid lump sum amount) and the fair market

value for the land to be acquired in fee simple, taking into account in each case the value of the parking garage to be constructed by Developer on Phase I, the improvements to be made by Developer to other BART owned property, including the BART Plaza, and the transit benefit covenants to be recorded against the residential ownership units within the Project. The base purchase price to be paid by Developer to BART shall be an amount not to exceed the amount set forth in the term sheet between Developer and BART for the Project, which term sheet has been approved by the BART Board of Directors (the "BART Term Sheet") or such other amount as shall be approved by the Agency if any material terms of the BART Term Sheet shall have been amended.

5.3. Acquisition of Developer Parcels. It is expressly understood and agreed by the parties that as of the date of this Agreement, the Developer does not hold legal or equitable title to the entirety of the Site; however, Developer has secured options to purchase five (5) of the Developer Parcels (APN No. 012-0967-009-00, 012-0967-010-00, 012-0969-002, 012-0969-003-01 and 012-0969-053-02). Subject to the other applicable provisions hereof, the Developer shall make all commercially reasonable efforts to acquire fee simple title to all the Developer Parcels within six (6) months after the Prop 1C funding agreements have been executed, all conditions to funding have been satisfied and the funding is available for immediate disbursement.

5.3.1. The Developer may decide not to pursue acquisition of the Developer Parcels referred to as the Jackson parcel and the Surgery Center. In the event the Surgery Center is eliminated from the Site, the tax increment funding available pursuant to Section 3.2.2.1 shall be reduced by the difference, if any, between the estimated land acquisition budget of $13.8 million and the sum of (i) the actual Acquisition Costs for all Developer Parcels included in the final Site, (ii) all additional Project Costs, including without limitation redesign, added construction and remediation costs, attributable to reconfiguration of the Project included in the then current Project budget and (iii) the net present value as of the date of the calculation of the residential units eliminated as a direct consequence of the reconfiguration, assuming $35,000 for each unit eliminated, an assumed delivery date of 2017 and a discount rate of 17%.

5.3.2. Notwithstanding any provision of this Agreement to the contrary, Developer's obligation to acquire all of the Developer Parcels is expressly conditioned upon Developer's ability to obtain financing, including grants or other subsidies which could be used to acquire Developer Parcels, whether or not so used, in an amount equal to 100% of Developer's Acquisition Costs (as that term is defined in Section 4.2), and Developer shall not be obligated to take title to any Developer Parcel unless and until a nationally recognized title company is prepared to issue its standard ALTA owner's title policy insuring that Developer is the record owner of the applicable Developer Parcel(s), subject only to title exceptions which are reasonably acceptable to Developer and which will not impair

development of the Project. If Developer is unable to acquire all of the Developer Parcels and the Agency declines to acquire or to permit elimination of one or more of such Parcels (other than the Surgery Center or the Jackson parcels, which may be eliminated in Developer's sole discretion) from the Project, the Agency's only remedy shall be to terminate this Agreement with respect to the affected Phase and to exercise its rights under Section 13.10. In no event shall the Agency have the right to seek damages or to recover any other amounts from Developer as a result of Developer's inability to obtain funding to acquire all of the Developer Parcels or Developer's inability, for any other reason beyond the reasonable control of Developer, to acquire all of the Developer Parcels.

5.4. Acquisition Assistance by the Agency.

5.4.1. The Agency shall assist the Developer to take steps required to vacate all street rights-of-way and other public easements within the Site and, if necessary, to abandon utilities in the public streets adjacent to the Site which interfere with the development of the Project. Developer shall pay all out-of-pocket costs for quiet title actions or any other actions necessary to vacate easements and rights-of -way and to abandon utilities, which costs shall be payable from either the Agency funding pursuant to Section 3.2.2 or other funds available to Developer. The Agency may, but shall not be required to, take any steps to vacate any easements or rights of way or to cause the abandonment of any utility lines which are within the Site until such time as Developer shall have acquired fee or leasehold title to the entire Site.

5.4.2. If the Developer is not able to acquire fee simple title to some or all of the Developer Parcels included in the Site, then the Agency will use commercially reasonable efforts to acquire such Parcels with available Agency funding pursuant to Section 3.2.2, or such other funds as Developer is willing to advance for such purpose, by purchase, exchange, gift, eminent domain proceedings or any other method available to the Agency under state law; provided, however, that the institution of eminent domain proceedings shall be at the sole and absolute discretion of the Agency, with the Agency exercising its independent discretion whether to acquire any parcel by eminent domain, but only if requested by Developer. Notwithstanding anything to the contrary in this Agreement, the Agency shall have no obligation to acquire any parcel by eminent domain, nor shall the Agency be responsible to Developer for any damages or other remedies for failure to acquire any parcel by eminent domain or any other method, and such failure to acquire any parcel shall not constitute an Agency event of default under this Agreement. If the Agency elects to exercise its eminent domain powers, it shall commence the eminent domain process as soon as reasonably possible after obtaining Agency Board approval to do so.

5.5. Remediation of Hazardous Materials. The Site is also described herein as the "Remediation Area." The Parties acknowledge the presence of Hazardous Materials in the soils and in the buildings currently located on the Remediation Area, and in groundwater and groundwater-impacted soils (collectively, "groundwater") beneath the Remediation Area. Agency has provided Developer with environmental assessment reports pertaining to the Remediation Area, as more particularly listed in Exhibit F. Developer acknowledges that Agency's previous investigation was limited in scope and should not be considered conclusive. Developer shall conduct its own investigation and undertake its own evaluation of the Remediation Area and shall not rely primarily on the Agency's reports. Developer, if applicable, has provided the Agency with the environmental assessment reports commissioned by Developer pertaining to the Remediation Area, also as more particularly listed in Exhibit F.

5.6. Use of the Polanco Act. The Parties acknowledge that the Agency may utilize its authority under Section 33459 of the Health and Safety Code in connection with the presence and remediation of Hazardous Materials. Unless one or more parties responsible for the Hazardous Materials agrees to remediate such Hazardous Materials pursuant to a plan, schedule and agreement approved by the Agency pursuant to Health and Safety Code Section 33459, the Developer shall perform, any and all repair, cleanup, removal, remedial action and/or detoxification of Hazardous Materials on the Site that may be necessary or appropriate to complete the remediation required for the Project, under the terms of the site remediation plan approved by the appropriate regulatory agency with jurisdiction. The Developer shall be solely responsible for the completion of such work at the Site, but the Agency agrees to cooperate, as reasonably requested by Developer or BART, in obtaining environmental approvals for the Site from the regulatory agency or agencies. The Developer shall be solely responsible for the preparation and enforcement of any and all worker safety plans for remediation of the Site.

6. PRECONSTRUCTION SUBMITTAL REQUIREMENTS

6.1. Final Development Plan.

6.1.1. Submittal of Final Development Plan. Developer shall submit to Agency for review and approval its Application for Final Development Plan for each Phase no later than the dates set forth for this action in the Schedule, Exhibit B, as it may be adjusted pursuant to Section 6.9 hereof.

Subject to Developer's right to eliminate the Surgery Center and/or the Jackson parcels from the Project, the Final Development Plan Application shall be consistent with the preliminary development plan already approved by the Agency, which is attached to this Agreement as Exhibit C. Prior to submission of the Final Development Plan Application, Developer shall consult with the Agency's Project Manager on a regular basis concerning the development plans for each Phase.

6.1.2. Agency Review of Final Development Plan. The scope of the Agency's review of the Final Development Plan Application for the Project shall be limited to determining conformity with this Agreement, the land use approvals and the preliminary development plan. The Agency will review the Final Development Plan Application and inform the Developer in writing as to whether or not the Agency approves the submission in accordance with the procedures set forth in Section 6.8.

6.1.3. The parties further agree and understand that Developer is responsible for assuring that all items are submitted to Agency in approvable form by the dates required above such that Agency may have the time permitted by this Agreement to review and approve the Final Development Plan Application.

6.2. Construction Plans.

6.2.1. Professional Services Contracts. At least 30 days prior to execution of any architecture or engineering contract, or any other construction related professional services contract for predevelopment or development work on the Project, which contract exceeds Twenty-five Thousand Dollars ($25,000) (each, a "Professional Services Contract"), Developer must submit such Professional Services Contract to Agency for approval. Developer shall arrange a separate contracts review schedule directly with the City's Contracts Compliance Office, which shall review each contract solely for compliance with the provisions of Article 8 of this Agreement. Developer shall also submit for review any amendments to said contracts if such contracts or amendments to contracts exceed Twenty-five Thousand Dollars ($25,000). Agency shall have the right to review and approve any such contract or amendment prior to execution. As a precondition to approval, the architect, engineer or other professional services provider must execute a Consultant Contract Addendum, a form of which is attached to this Agreement as Exhibit L. Any professional service provider doing work on the Project must satisfy the City's Employment and Contracting Requirements set forth in Article 8 and have a current City of Oakland Business Tax Certificate. Agency may also require, as a condition of approval, that Developer assign the benefits of Professional Services Contract to Agency, which may require the professional services provider to perform its obligations thereunder directly for the benefit of Agency if an Event of Default has occurred under this Agreement and remains uncured. If Agency has not responded to a submission of a contract or amendment draft by Developer within 15 City business days of receipt by Agency, the contract or amendment shall be deemed approved by Agency. Agency approval, which shall be limited in scope to the matters addressed in this Section 6.2.1, does not constitute City Contract Compliance Office approval.

6.2.2. Construction Drawings Submittal. Developer shall submit construction drawings to the City's Building Department and to the Agency, as part of its application for building permits for each Phase. Such drawings shall be submitted no later than 8 months after the City Council has approved the Final Development Plan for the Phase ("Final Development Plan Approval").

6.2.3. Construction Contract Submittal. Developer shall submit to Agency a draft of its Construction Contract for each Phase within 10 months after Final Development Plan Approval. All contracts entered into for the Project development must be the result of either competitive or negotiated bids. For negotiated bids, the contractor shall be selected through a competitive request for qualification process or other process reasonably satisfactory to Agency.

6.2.3.1. Construction Contract. Developer shall enter into a contract or contracts for the construction of each Project Phase with a licensed and reputable general building contractor meeting the employment obligations and other requirements of Article 8 contained herein (the "Construction Contract"), and having the requisite experience, skills, financial capability and qualifications gained from constructing first-class construction projects in Northern California of similar magnitude as the Project. Each contractor and subcontractor doing work on the Project must have a current City of Oakland Business Tax Certificate. The Construction Contract shall provide for the Project Phase to be constructed for a fixed and specified guaranteed maximum amount pursuant to the approved Project Development Budget.

Developer shall submit to Agency a copy of all construction contracts for predevelopment or development work on the Project. The general contractor for the Project, as well as any other construction contractors or subcontractors, must execute a Construction Contract Addendum, a form of which is attached to this Agreement as Exhibit M.

6.2.3.2. Developer shall contact City's Contracts Compliance Office immediately after execution of this Agreement to arrange a meeting to establish procedures and a schedule for submittal, review and approval or deemed approval of contracts, subcontracts, and other documents, and documentation evidencing compliance with Article 8 of this Agreement which are required by the Contracts Compliance Office. Developer shall comply with all Contracts Compliance Office requirements.

6.2.4. Final Construction Plans Submittal. Developer shall submit to Agency its Final Construction Plans for each Phase within 11 months and 2 weeks after Final Development Plan Approval. The term "Final Construction Plans" means all construction documentation upon which Developer and

Developer's general building contractor will rely in constructing the Phase, which Final Construction Plans shall be consistent with Developer's obligations under Section 7.8 below and shall include, but not necessarily be limited to, final architectural drawings, building specifications, landscaping plans and specifications, final elevations and plans for street and sidewalk improvements, and additionally shall include the final construction contract. Developer shall submit to Agency the final Construction Loan Documents and building permits for each Phase not less than 5 City business days prior to commencement of construction for such Phase.

6.2.5. Construction Commencement. Subject to the extensions for commencement of Phases I and II set forth in Section 6.9 below, Developer shall commence construction of each Phase within 12 months after Final Development Plan Approval by the City for such Phase. Developer shall complete construction of each Phase (as "Construction Completion" is defined in Section 7.3) within 24 months after commencement.

6.2.6. Agency's Review of Final Construction Plans. The scope of the Agency's review of the Final Construction Plans for each Phase shall be limited to determining conformity with the approved draft construction drawings, draft Construction Contract, and draft Construction Loan Documents, and review of building permits. The Agency will review the Final Construction Plan and inform the Developer in writing as to whether or not the Agency approves the submission in accordance with the procedures set forth in Section 6.8.

The parties further agree and understand that, notwithstanding the time requirements set forth in Section 6.8 and Exhibit B for submissions to the Agency by Developer and review and approval of such items by the Agency, Developer is responsible for assuring that all items are submitted to the Agency in approvable form by the dates required above such that the Agency may have the time permitted by this Agreement to review and approve Final Construction Plans.

6.3. Financial Plan. Not later than 8 months after Final Development Plan Approval for each of Phase of the Project, the Developer shall submit to the Agency for its review and approval a draft of the following, which together will be referred to as the "Financial Plan"; provided, however, the Financial Plan for Phase I shall consist only of the items in Section 6.3.1 below:

6.3.1. A cost breakdown for construction of the applicable Project Phase (the "Project Development Budget"). The Project Development Budget shall be an itemized Project budget for the construction of the Project Phase, showing all construction-related and non-construction-related costs, including the funding sources of payment for each item.

6.3.2. A cash flow projection for the sale of Project units, if applicable.

6.3.3. A copy of letters of intent (subject to customary conditions and in a form reasonably satisfactory to the Agency) obtained by Developer, and certified by Developer as true and correct copies thereof, for construction financing from a reputable institutional lender, grant funding, equity contributions, and other financing from external sources (including proposed joint ventures and partnerships) as necessary to finance development of the applicable Phase. Developer shall submit to Agency a description of any joint ventures or partnerships Developer proposes to form to provide funds for construction of the Phase or acquisition of additional parcels required to complete the Phase.

6.3.4. A certified financial statement or other financial statement prepared by a certified public accountant or other financial professional, in such form reasonably satisfactory to the Agency evidencing other sources of capital, sufficient to demonstrate that Developer has adequate funds available and is committing such funds to cover the difference, if any, between Developer's costs of development and construction, as set forth in the Project Development Budget, and the amount available to Developer from external financing sources.

6.3.5. Any other evidence reasonably requested by the Agency demonstrating the economic and financial feasibility of the Project Phase.

Upon receipt by the Agency of the proposed Financial Plan, the Agency shall promptly review the Financial Plan and shall approve or disapprove it as provided in Section 6.8 below. The Agency's review of the Financial Plan shall be limited to determining if the contemplated financing will be reasonably available, if the financing contemplated in the Financial Plan would provide sufficient funds to cover the cost of development and construction of the Phase, as set forth in the Project Development Budget, and to cover initial operating losses for the applicable Phase (if any, are shown in the Project Development Budget) and determining if it is consistent with the terms of this Agreement.

6.4. Changes to the Financial Plan. Any material change to the approved Financial Plan made prior to the closing of Developer's initial construction financing for the Phase must be promptly submitted to the Agency and must be approved by Agency, based on the review standard set forth in Section 6.3 above. If such change is not approved, the last approved Financial Plan shall continue to control development of the Phase. For purposes of this paragraph a material change shall include but not be limited to a change in lenders or grantors, a refinancing of a loan, an increase in the budget for the Phase by 10% or more or any material change in a lender's or grantor's commitment letter or loan plan or a significant increase in the equity capital required for the Phase. The parties each understand and acknowledge that the elements of the Financial Plan for each Phase may change during the period of planning and development of the Phase, including without limitation Project costs, revenues and lender requirements.

6.5. Construction Loan Documents Submittals. Within 10 months after Final Development Plan Approval for each Phase, the Developer shall submit to the Agency for its review and approval a draft of the form of all loan documents to be used for financing construction of the Phase pursuant to the approved Financial Plan (the "Construction Loan Documents"). Not later than 5 City business days prior to commencement of construction for each Phase of the Project, Developer shall submit to the Agency for its review and approval the final Construction Loan Documents for such Phase. The Agency's review of the Construction Loan Documents shall be limited to determining conformity with this Agreement and the Financial Plan.

6.6. Performance and Payment Bonds. Prior to commencement of construction of the applicable Phase, the Developer shall deliver to the Agency copies of labor and material bonds and performance bonds issued by a reputable insurance company licensed to do business in California, each in a penal sum of not less than one hundred percent (100%) of the scheduled cost of construction for all improvements to be constructed by Developer as part of the Phase. All the bonds shall name the Agency as co-obligee.

6.7. Governmental Approvals. Developer is responsible for applying for and diligently pursuing the issuance of all building permits, land use approvals, and other required governmental regulatory approvals allowing construction and development of the Project to completion (the "Governmental Approvals"), as well as the incorporation of any mitigation measures specified in the Development Agreement or as conditions to any land use approvals into the plans for Project development and operations. Developer shall diligently take all reasonable steps necessary to obtain all required Governmental Approvals in time to commence construction of each Phase not later than the date specified in the Schedule. Copies of all Governmental Approvals shall be submitted to the Agency immediately upon receipt by Developer.

6.8. Review and Approval of Developer Submissions. The Final Development Plan Application and the Financial Plan, the Construction Loan Documents, the Construction Contract and Professional Services Contracts for each Phase of the Project (together referred to herein as the "Developer Submissions") shall be forwarded to the designated Project Manager in the Community and Economic Development Agency, Projects Division, for review and approval. If a Developer Submission as initially submitted by Developer is timely submitted and in its entirety is reasonably satisfactory to the Agency, the Agency shall approve in writing that Developer Submission, in the case of the Final Development Plan Application, affordable housing funding commitments, the draft Financial Plan, construction drawings, the draft Construction Contract and draft Construction Loan Documents for each Phase, within 15 City business days of receipt by the Agency's Project Manager and for the final Construction Loan Documents within 5 City business days of receipt by Agency's Project Manager, and no further filings by Developer or approval by the Agency thereof shall be required for that Developer Submission, except for any subsequent material change in the contents

of the Developer Submission. The Agency may approve those portions of a Developer Submission that are reasonably satisfactory and reject those portions that are not. The Agency may also approve all or a portion of a Developer Submission subject to conditions requiring further submissions for Agency review and approval. Any disapproval in whole or in part by Agency shall be in writing and shall state the specific reasons for the Agency's disapproval.

If a Developer Submission is rejected by the Agency in whole or in part or approved subject to conditions requiring further submissions, Developer shall submit a new or revised Developer Submission within 10 business days of written notification of the Agency's rejection or conditional approval. The Agency shall approve in writing the new or revised Developer Submission within 7 City business days of receipt by the Agency's Project Manager, and no further filings by Developer or approval by the Agency thereof shall be required for the Developer Submission, except for any subsequent material change in the contents of the Developer Submission. The Agency may approve those portions of the new or revised Developer Submission that are reasonably satisfactory and reject those portions that are not. The Agency may also approve all or a portion of the new or revised Developer Submission subject to conditions requiring further submissions for Agency review and approval. The Agency shall not disapprove or require changes in, or in a manner which is inconsistent with, matters it has approved previously, so long as Developer has made no modifications to such previously approved matters. The Agency's failure to approve or disapprove any new or revised Developer Submission within the specified period shall be deemed an approval.

If the new or revised Developer Submission is rejected by the Agency in whole or in part or approved subject to conditions requiring further submissions, Developer shall submit a second new or revised Developer Submission within 10 business days of written notification of the Agency's rejection or conditional approval. The Agency shall approve or disapprove the further revised Developer Submission within 7 City business days of receipt by the Agency's Project Manager. If the second new or revised Developer Submission is rejected by the Agency, the Agency and Developer shall meet and confer in good faith to resolve any dispute. If the parties are not able to resolve any such dispute within 15 business days following the Agency's second rejection, either party may submit the dispute to binding arbitration in accordance with the procedures set forth in Section 13.9.

Notwithstanding the timeframes above for Agency review of and response to Developer regarding submissions, Agency will endeavor to respond to Developer as expeditiously as possible. This paragraph shall not be construed to extend the timeframes set forth above for Agency's response.

This Section 6.9 relates to submissions to the Agency, but does not relate to any submissions which may be required to be made to the City's Contracts Compliance Office pursuant to Section 6.2.3.2.

6.9. Project Schedule Adjustments. Notwithstanding any provision of this Agreement or the Schedule to the contrary:

6.9.1. All required times for performance set forth on the Schedule for any Phase shall be delayed, on a day-for-day basis, by the period of delay in the issuance of any Agency, City or other governmental permits or approvals with respect to such Phase beyond customary processing time for a project of similar magnitude or complexity (provided the Developer timely sought such permits or approvals and diligently responded to any request for further information or submittals).

6.9.2. If disbursement of the Prop 1C Funds to Developer is delayed beyond January 3, 2011 or thereafter such disbursement is suspended or interrupted for any reason other than the fault of Developer, the required dates set forth in the Schedule for submission of a Final Development Plan application for Phase I and commencement of construction of Phase I shall be extended for the period of such delay or such suspension or interruption of disbursement.

6.9.3. The required date for commencement of construction of Phase I shall be extended until Developer and BART have executed a ground lease for the BART Garage and Developer has obtained fee title or a right to enter the portion of the Site on which the site remediation and roadways included in Phase I are to be constructed.

6.9.4. Notwithstanding anything to the contrary in this Agreement, in no event shall the required date for commencement of construction for Phase I be extended beyond the date that is three (3) years after the Approval Date for any reason other than Litigation Force Majeure.

6.9.5. All required dates for performance for Phases II through V shall be extended by a period equal to the period of any extension of the required dates for performance with respect to Phase I under this Section 6.9.

6.9.6. The required dates set forth on the Schedule for Developer's submittal of a Final Development Plan application for Phase II and for commencement of construction of Phase II shall be extended until the earlier to occur of (i) execution by Developer and BART of a ground lease for Block D and receipt by Developer of subsidy funds in the form of grants or loans from governmental entities, private foundations or similar sources sufficient to construct Phase II on terms satisfactory to Developer in good faith; or (ii) ten (10) years after the Approval Date. In no event shall such ten (10) year deadline be extended for any reason including, without limitation, Force Majeure.

6.9.7. The required dates for submittal of a Final Development Plan application and/or commencement of construction for Phase III shall be extended for a period of one year upon request by Developer.

6.9.8. All required times for performance set forth on the Schedule occurring on or after July 1, 2011 shall be extended for a period of time equal to the period from July 1, 2011 to the date upon which Agency issues the bonds referred to herein.

6.9.9. If Agency delays any disbursement of funds to Developer beyond the date required under this Agreement, all required times for performance set forth on the Schedule shall be extended for the period of such delay.

7. CONSTRUCTION OF THE PROJECT

7.1. Commencement of Construction. Subject to Section 6.9 above, the Developer shall commence construction work on each Phase of the Project no later than the date set forth in the Schedule. For purposes of this Agreement, construction shall be deemed commenced upon issuance by Developer of a notice to proceed to its general contractor for the Phase and the commencement of work under the building permits issued for the applicable Phase (excluding the grading and demolition permits).

7.2. Construction Obligations. Construction of each Phase shall be in accordance with the Final Development Plan and the Final Construction Plans, including any Material Change (as defined below) approved by the Agency and, to the extent required, the City. The Developer shall be solely responsible for all aspects of the Project, including, but not limited to, the quality and suitability of the construction plans, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers.

7.2.1. Material Changes. For purposes of this Agreement, the term "Material Change" shall mean any of the following changes to the applicable Phase:

Significant changes in exterior elevations, building bulk, site coverage, floor area ratio, number of floors;

Significant changes in color, type, or design or use of exterior finishing materials substantially affecting architectural appearance;

Significant changes affecting off-street parking facilities;

Significant changes in perimeter landscape planting and design or in size or quality of exterior pavements or exterior lighting;

Significant changes in unit mixes or unit types.

7.3. Completion of Project. The Developer shall diligently prosecute construction of each Phase, and shall complete the entire Project, as evidenced by issuance of building permit sign-off, temporary certificates of occupancy or certificates of occupancy by the appropriate officer of the City of Oakland for each Phase ("Construction Completion") no later than the date set forth in the Schedule. Developer shall use diligent efforts to obtain a Certification of Completion for each Phase from the Agency as promptly as reasonably possible after Construction Completion.

7.4. Disabled Access. The Developer shall develop the Project in compliance with all applicable federal, state, and local requirements for access for disabled persons.

7.5. Lead-based Paint. The Developer and its contractors and subcontractors shall not use lead-based paint in the construction of the Project or maintenance of Project units. The Developer shall insert this provision in all contracts and subcontracts for work performed on the Project which involve the application of paint.

7.6. Site Inspections. The Developer shall permit and facilitate observation and inspection of work at the Site by the Agency's authorized representatives during normal business hours.

7.7. Quality of Work. The Developer shall construct the Project in conformance with general industry standards, and shall employ building materials of a quality suitable for the requirements of the Project. The Developer shall develop the Project in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes.

7.8. Environmental Sustainability. Developer shall use good faith effort to develop, construct and operate the Project to be environmentally sustainable in conformance with the LEED Neighborhood Development Rating System. Principles of environmental sustainability, including substantial use of such green building techniques as energy-conserving design and appliances, water-conserving fixtures and landscape, recycled-content building materials and low waste construction techniques, shall be incorporated into the Design Guidelines for construction of the Project. The Project shall obtain certification at not less than the gold level under the LEED Neighborhood Development pilot program, and each building within the project shall obtain a certification of not less than 70 points under Buildit Green's Green Point Checklist.

7.9. Insurance. The Developer shall have or shall cause to have in full force and effect such policies of insurance as are required by the Agency pursuant to Exhibit I, which is attached hereto and incorporated herein by this reference. Developer shall submit evidence of insurance coverage at the time it submits the Construction Contract for each Phase for Agency review and approval.

7.10. Certificate of Completion. Promptly after completion of construction of each Phase of the Project in full accordance with the terms of this Agreement, and

upon the request of the Developer, if Developer is in compliance with all terms of this Agreement with respect to such Phase, the Agency shall furnish the Developer with a Certificate of Completion so certifying for the completed Phase. The Certificate of Completion shall be in a recordable form, and shall be a conclusive determination that the covenants in this Agreement with respect to Developer's obligations have been met for such Phase, and this Agreement shall terminate as to such Phase, except for the continuing obligations of Developer set forth in Sections 8.4, 10.3, 11.3 and 15.11.

7.11. Release of Agreement for Residential Sales. The restrictions of this Agreement shall be removed from title to each residential unit in the Project following issuance of a certificate of occupancy or temporary certificate of occupancy for such unit and the sale of such unit to an individual home buyer, provided that the grant deed conveying title to the home buyer or another document recorded against the unit contains the restrictions on use, nondiscrimination and compliance with the Redevelopment Plan set forth in Section 10 hereof. Upon request by Developer, if the Developer is in compliance with the terms of this Agreement pertaining to the unit to be released, the Agency shall execute and deliver such instruments as may be required by the title company to evidence the partial release or cause such release to occur. Nothing in this Section 7.11 shall relieve the Developer from any obligations which by their terms survive the termination of this Agreement.

8. AGENCY EMPLOYMENT AND CONTRACTING REQUIREMENTS

Developer shall be responsible for monitoring its contractors and enforcing its agreements, ensuring that those with whom it contracts for the construction of each Phase are in compliance with the Agency's employment and contracting requirements set forth below, and with the requirements of the Contracts Compliance Office, pursuant to Section 6.2.3.2, at all times during the term of this Agreement until a Certificate of Completion is issued by the Agency for such Phase.

8.1. Small Local Business Requirements. The Agency has established requirements for participation by local business enterprises and small local business enterprises in publicly-supported projects. The Developer shall abide by the provisions of Agency's Local and Small Local Business Enterprise Program, attached to this Agreement as Exhibit H and incorporated herein by reference. The Developer shall take all reasonable measures to assure that its contractors and subcontractors on the Project abide by said program.

8.2. Local Employment and Apprenticeship Requirements. The Agency has established requirements for the hiring of Oakland residents and the use of apprentices on publicly-supported projects. The Developer shall abide by the provisions of Agency's Local Employment Program, attached to this Agreement as Exhibit H and incorporated herein by reference. The Developer shall take all reasonable measures to assure that its contractors and subcontractors on the Project abide by said program.

8.3. Prevailing Wages. All workers performing construction work for the Project employed by Developer and by any of its contractors and subcontractors shall be compensated in an amount no less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code sections 1770, et seq. The Developer shall comply with, and shall ensure that its contractors and subcontractors comply with, all reporting and recordkeeping requirements of the applicable prevailing wage statutes and regulations. The Developer is aware of and shall comply with all provisions of the Agency's prevailing wage requirements contained in Resolution no. 87-4 C.M.S., passed on January 20, 1987. Developer shall indemnify, hold harmless and defend (with counsel reasonably acceptable to the Agency) the Agency and the City against any claim for damages, compensation fines, penalties or other amounts arising out of the failure or alleged failure of any person or entity (including Developer, its contractor and subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq. and implementing regulations in connection with construction of the Project or any other work of construction undertaken by or on behalf of Developer in connection with the Project.

8.4. Living Wage. The Developer is subject to the Living Wage Ordinance codified in Chapter 2.28 of the Oakland Municipal Code and its implementing regulations as a "City Financial Assistance Recipient" or "CFAR." The Agency has adopted the City of Oakland's Living Wage policy as Redevelopment Agency policy, see Agency Resolution No. 98-13 C.M.S. The Ordinance requires among other things that, unless specific exemptions apply or a waiver is granted, all covered CFARs shall pay a minimum level of compensation to their covered employees of at least $10.83 per hour if health benefits of at least $1.25 per hour are offered, or $12.45 per hour if no health benefits are offered. This wage rate shall be adjusted annually pursuant to the terms of the Ordinance. The Developer agrees to abide by the requirements of the Living Wage Ordinance to pay the specified minimum compensation to its covered employees, to offer the required compensated and uncompensated leave time to its covered employees, to provide the required notices to its covered employees, to submit the required documentation to the Agency, and to satisfy all other applicable requirements, for each Phase of the Project, for at least five years from the date construction of such Phase commences.

The Developer agrees to include language in any service contract that it enters into related to the Project during the period the Living Wage Ordinance applies to the Phase or Phases to which the service contract pertains, if the amount of the service contract exceeds $25,000, requiring that the service contractor comply with Living Wage requirements for its covered employees. The Developer shall submit a copy of such service contracts to the City's Office of Contract Compliance.

For purposes of this section, a "covered employee" shall mean any natural person who performs services for the employer and spends at least half of his or her time

on Project-related work or on the Site; but shall not include managerial, supervisory, or confidential employees, independent contractors, volunteers, or those construction employees who are entitled to be paid at prevailing wages.

Under the provisions of the Living Wage Ordinance, the Agency shall have the authority, under appropriate circumstances, to terminate this Agreement and seek other remedies as set forth therein for violations of the Ordinance.

8.5. First Source. Under the City of Oakland's First Source Employment Referral Program ("First Source"), the City obtains commitments from employers to allow the City to first refer Oakland residents to fill job vacancies in a company before advertising to the general public. During the term of this Agreement, the Developer shall: (a) use the referral resources of First Source for any job openings that arise for employment with Developer at the Site before making such openings available to the general public; (b) provide First Source staff with the job specifications for all such openings and all applications and forms for such employment; (c) meet with First Source staff to explain the job descriptions and its employment needs; and (d) provide placement information, comments, and evaluation of First Source services to staff as requested.

The Agency, through First Source staff, shall: (a) recruit Oakland applicants through its consortium of employment and job training providers to be referred for employment to the Developer; (b) assist in assessing all applicants prior to referral to ensure that applicants meet the minimum qualifications set forth in the job specifications; (c) prescreen job applications to ensure completeness; (d) provide facility accommodations to the Developer for recruitment and interviewing; and (e) provide all First Source services free of charge to the Developer.

8.6. Equal Benefits. The Developer must abide by the City of Oakland's Equal Benefits Ordinance codified in Chapter 2.32 of the Oakland Municipal Code. The Developer warrants and represents that it does not discriminate in the provision of those benefits enumerated in the Ordinance between its employees with domestic partners and its employees with spouses, or between the domestic partners and spouses of its employees. The Developer must post written notice to its employees of their potential rights under the Equal Benefits Ordinance. The Developer must promptly provide to the Agency documents and information verifying its compliance with the Equal Benefits Ordinance. The Developer understands that, in the event that it violates the Equal Benefits Ordinance, the Agency may suspend or terminate this Agreement, demand repayment of amounts disbursed under this Agreement, deem the Developer ineligible for future financial assistance, impose liquidated damages, seek attorneys' fees and enforcement costs, or pursue any other remedy permitted under the Ordinance.

8.7. Employment Nondiscrimination. The Developer, its successors, assigns, contractors and subcontractors shall not discriminate against any employee or applicant for employment in connection with the Project on the basis of race,

color, ancestry, national origin, religion, sex, sexual preference, marital status, AIDS or AIDS-related complex, or physical or mental disability. Each of the following activities shall be conducted in a nondiscriminatory manner: hiring; upgrading; demotion and transfers; recruitment and recruitment advertising; layoff and termination; rates of pay and other forms of compensation; and selection for training, including apprenticeship. The Developer and its contractors, employees and agents shall comply with all applicable federal and state laws, including all equal opportunity and fair employment laws and regulations applicable to the Site and Project due to the Agency financing certain aspects of the Project. Developer acknowledges that the City may impose additional nondiscrimination, local hiring, or construction labor requirements on the Project in connection with the Land Use Approvals, and that nothing in this Agreement shall be construed to relieve or exempt Developer from such City-imposed requirements.

8.8. Sales and Use Tax Allocations. The Developer shall require that its contractors and subcontractors exercise their option to obtain a Board of Equalization sub-permit for the Site and allocate all eligible use tax payments to the City. Prior to beginning the construction of each Phase of the Project, the Developer shall require that its contractor and subcontractors for such Phase provide the City with either a copy of the sub-permit or a statement that use tax does not apply to their portion of the job.

The Developer shall review the direct payment process established under California Revenue and Taxation Code 7051.3 and, if eligible, use the permit so that the local share of its use tax payments is allocated to the City. The Developer shall provide the City with either a copy of the direct payment permit or a statement certifying ineligibility to qualify for the permit. The Developer shall further work with the Agency to inform all commercial tenants and operators of facilities in the Project about the direct payment permit process and require their participation if qualified.

8.9. Reporting. The Developer shall submit information on forms supplied by the Agency concerning the workforce and ownership composition of the Developer, its contractors, subcontractors, suppliers, and professional service providers, as reasonably requested by the Agency.

9. PROJECT LABOR AGREEMENT

Prior to the disbursement by Agency of any funds pursuant to this Agreement, Developer shall execute a Project Labor Agreement substantially in the form attached hereto as Exhibit K.

10. POST-CONSTRUCTION REQUIREMENTS AND COVENANTS

10.1. Use Restrictions. Use of the affordable rental units in Phase II of the Project shall be restricted to rental housing for low income and very low income households at an affordable rent for at least 55 years after at least 50% of Assisted Units (as

defined in Exhibit I-1) are first occupied by tenant households, or for the term specified in the Regulatory Agreement, whichever term is greater. The income levels and rent levels for Project Units are set forth in Exhibit I-1, attached to this Agreement and incorporated herein by reference. If and when the Regulatory Agreement has been executed, the income levels and rent levels shall be as set forth in the executed Regulatory Agreement or any amendments thereto.

Use of the affordable units located in Phases III, IV and/or V the Project shall be restricted to owner-occupied housing affordable for a period of at least 45 years to households having an income of 80% to 120% of AMI, with an overall average of 100% of AMI, or rental units affordable for a period of at least 55 years to households having an income not in excess of 80% of AMI. The specific affordability period will be set forth in the regulatory or affordability agreement.

Either a regulatory agreement in the form set forth in Exhibit I-1 for Phase II or Exhibit I-2 for the market-rate phases or an affordability agreement and a declaration of resale restrictions in the form of Exhibit I-3 encumbering each of the affordable units shall be executed and recorded in the Official Records of Alameda County prior to the rental or sale of any units in the applicable Phase, if the Phase includes any affordable units.

Upon execution of a regulatory agreement or affordability agreement with respect to any Phase, such regulatory agreement or affordability agreement shall be controlling as to any income, rent or sales price limitations with respect to the rental or sales of residential units in such Phase, and shall replace and supersede all provisions of this Agreement with respect thereto.

10.2. Conformance with Redevelopment Plan. The Developer covenants for itself, its lessees, successors, assigns and every successor in interest to any portion of the Project that the Developer, its lessees, successors and assigns shall use the Project in full conformance with the Redevelopment Plan for so long as the Redevelopment Plan is in effect. The Developer shall ensure that language substantially similar to the above is incorporated as covenants running with the land, enforceable by the Agency, into all leases, rental agreements and grant deeds for the Project. Except to the extent applicable law precludes any restriction on the Agency's right to amend the Redevelopment Plan or applicable law requires the Agency to amend the Redevelopment Plan and provided that Developer is in material compliance with the terms of this Agreement, before the issuance of Certificates of Completion for all Phases of the Project, the Agency shall, to the extent legally permissible, exempt the Site from any Plan Amendments which would have a material adverse effect on the Project as described in, or the terms of, this Agreement.

10.3. Nondiscrimination. The Developer covenants for itself, its heirs, executors, administrators and assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, sex, sexual preference, marital

status, ancestry, national origin, AIDS or AIDS-related complex, or disability in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project nor shall Developer or any person claiming under or through Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenants shall run with the land. The Developer shall ensure that language substantially similar to the above is incorporated as covenants running with the land, enforceable by the Agency, into all contracts, leases, rental agreements and grant deeds for the Project.

11. HAZARDOUS MATERIALS

11.1. Developer Covenants.

11.1.1. No Hazardous Materials Activities. Developer hereby represents and warrants to the Agency that, at all times from and after Developer's acquisition of any portion of the Site, Developer shall not cause or permit such property or any improvements thereon to be used as a site for the use, generation, manufacture, storage, treatment, release, discharge, disposal, transportation or presence of any Hazardous Materials in violation of applicable law.

11.1.2. Hazardous Materials Laws. Developer hereby represents and warrants to the Agency that, at all times from and after Developer's acquisition of any portion of the Site, Developer shall comply and cause such property and any improvements thereon to comply with Hazardous Materials Laws, including without limitation, those relating to soil and groundwater conditions.

11.1.3. Notices. Developer hereby represents and warrants to the Agency that, at all times from and after Developer's acquisition of any portion of the Site, Developer shall immediately notify the Agency in writing of: (i) the discovery of any Hazardous Materials on or under such portion of the Site; (ii) any knowledge by Developer that such portion of the Site does not comply with any Hazardous Materials Laws; (iii) any claims or actions pending or threatened against the Developer, the Site or any improvements thereon by any governmental entity or agency or any other person or entity relating to Hazardous Materials or pursuant to any Hazardous Materials Laws (collectively "Hazardous Materials Claims"); and (iv) the discovery of any occurrence or condition on any real property adjoining or in the vicinity of the Site that could cause the Site or any part thereof to be designated as "border zone property" under the provisions of California Health and Safety Code Sections 25220 et seq., or under any regulation adopted in accordance therewith.

11.1.4. Remedial action. In response to the presence or any Hazardous Materials on, under or about any portion of the Site owned or leased by Developer, Developer shall immediately take, at Developer's expense, all remedial action required by any government environmental agency, Hazardous Materials Laws or any judgment, consent decree, settlement or compromise with respect to any Hazardous Materials Claims.

11.2. Agency Inspection Rights. Upon reasonable prior notice to Developer, Agency, its employees and agents, may from time to time enter and inspect the Site for the purpose of determining the existence, location, nature and magnitude of any past or present release or threatened release of any Hazardous Materials into, onto, beneath or from the Site.

11.3. Environmental Indemnity. Without limiting the generality of the indemnity set forth in Section 14.11, the Developer shall indemnify and hold harmless the Agency, the City and their respective board members, Council members, directors, officers, employees, agents, contractors, successors and assigns from and against any loss, damage, cost, penalties, fines, expense or liability they may incur directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, cleanup, or disposal by the Developer or its contractors, subcontractors, tenants, agents, employees, and licensees of Hazardous Materials on, under, or about the Site or the Project, including without limitation: (1) the costs of any required or necessary repair, cleanup or detoxification of the Site or the Project, and the preparation and implementation of any closure, remedial or other required plans; and (2) all reasonable costs and expenses incurred by the Agency in connection with clause (1), including but not limited to reasonable attorney's fees. This obligation to indemnify shall survive termination of this Agreement.

12. TRANSFERS AND CHANGES IN DEVELOPER

The qualifications, experience and expertise of the Developer and its members are of particular concern to the Agency. It is because of the qualifications, experience and expertise of these entities that the Agency has entered into this Agreement. No voluntary or involuntary successor in interest to the Developer shall acquire any rights or powers under this Agreement, except as provided in this Agreement.

12.1. Definition of Transfer. As used in this Agreement, the term "Transfer" shall mean:

12.1.1. Any total or partial sale, assignment or conveyance, or creation of any trust or power by deed of trust or otherwise, or any transfer in any other mode or form of or with respect to the Site or the Project or any interest therein, or any contract or agreement to do any of the same, provided, however, the lease or sale of an individual unit within the Project does not constitute a Transfer;

12.1.2. Any transfer of any ownership interest greater than a 50% interest in the Developer, other than a transfer of an ownership interest to a non-managing equity member of the Developer;

12.1.3. Any substitution, removal, withdrawal, or addition of a member of the Developer, other than a non-managing equity member of the Developer;

12.1.4. Any assignment by Developer of all or any part of this Agreement; or

12.1.5. Any merger, consolidation, sale or lease of all or substantially all of the assets of Developer.

12.2. Prohibited Transfers. Except as expressly permitted below, the Developer represents and agrees that it has not made, and will not make or permit, any Transfer prohibited by this Agreement, either voluntary or by operation of law. Any Transfer in contravention of this Section shall be void and shall be deemed to be a default under this Agreement whether or not Developer knew of or participated in such Transfer.

12.3. Permitted Transfers. The following Transfers shall be permitted without the prior approval of Agency:

12.3.1. Before completion of construction of the Project or any applicable Phase:

12.3.1.1. The granting of easements or permits to facilitate the development of the Project;

12.3.1.2. The granting of any security interest in the Project or in the ownership interests in Developer, if such security interest is granted to secure financing for the Project pursuant to the approved Financial Plan or otherwise approved by the Agency in writing;

12.3.1.3. The assignment to and assumption of this Agreement with respect to any Phase by an entity identified in Section 2.1; or by a limited liability company or partnership of which the Developer is the managing member or general partner, which limited liability company or partnership has sufficient financial capacity, as determined in accordance with Section 2.1.4(2), to competently complete the Project; provided that the entity to which such Transfer is made, by an instrument in writing reasonably satisfactory to the Agency and in recordable form, shall for itself and its successors and assigns, and especially for the benefit of the Agency, expressly assume all of the obligations of the Developer under this Agreement with respect to the applicable Phase and agree to be subject to all conditions and restrictions to which the Developer is subject;

12.3.1.4. The transfer of all or any portion of MPI's interest in MTCP to BUILD or an Affiliate of BUILD or the transfer of all or any portion of BUILD's interest in MTCP to MPI or an Affiliate of MPI;

12.3.1.5. The addition of any non-managing equity members or limited partners to the Developer or the transfer of a non-managing equity membership or partnership interest in Developer or any of Developer's members;

12.3.1.6. The sale of or agreement to sell any residential units in the Project to home buyers, including the leaseback of model units, or the lease of residential units to occupants;

12.3.1.7. The transfer of common area within any Phase to the owners association formed for such Phase;

12.3.1.8. The sale or lease of individual retail or community spaces within the Project.

12.3.2. Any transfer that results in a mere change in identity or form rather than in ownership, provided that Developer shall give the Agency not less than thirty (30) days prior notice of any such change.

12.3.3. After completion of construction and recording of the Certificate of Completion for any Phase of the Project and subject to the use restrictions herein, and other provisions that survive the issuance of the Certificate of Completion, any Transfer of such Phase or units therein shall be permitted, unless otherwise restricted under any regulatory agreement or affordability agreement recorded against such Phase or unit.

12.4. Agency Approval of Transfers to Vertical Developer. The Transfer of any Phase to a Vertical Developer other than a Permitted Transfer as defined above shall require the prior written approval of Agency pursuant to Section 2.1.4. Agency shall process Developer's request for such approval and respond thereto as expeditiously as possible.

12.5. Effect of Transfer; No Cross-Defaults. In the event of and upon transfer by Developer of its rights and obligations, including its obligation to cure defaults, with respect to one or more Phases to a Vertical Developer permitted hereunder or otherwise approved by the Agency, Developer shall be released from all obligations with respect to the transferred Phase, and all rights and obligations of "Developer" pertaining to the applicable Phase shall be the right and responsibility of the Vertical Developer and shall be exercised independently of the rights and obligations of Developer or any other Vertical Developer for the remaining Phases. Subsequent to transfer of Developer's rights and obligations with respect to a Phase, no default on the part of Developer with respect to any other Phase shall have any effect on any transferred Phase or the rights and obligations of the transferee thereof. No default with respect to an individual

Phase or the Vertical Developer for that Phase shall affect the rights or obligations of Developer hereunder or constitute a default with respect to any other Phase, and the Agency shall exercise its remedies hereunder only with respect to the Phase or Vertical Developer in default.

13. TERMINATION AND REMEDIES

13.1. No Fault Termination. Developer shall have the right to terminate this Agreement without liability by written notice to the Agency if:

13.1.1. Developer is unable, despite diligent efforts, to obtain the required land use entitlements for the Project;

13.1.2. Developer and BART are unable, despite good faith efforts, to reach agreement on the terms of an option to purchase and to lease various portions of the Site, the BART Board of Directors fails to approve the option agreement or Developer is unable to acquire the BART portion of the Site for any other reason beyond the reasonable control of Developer;

13.1.3. Developer is unable, despite diligent efforts, to obtain the necessary third party funding to acquire all of the Developer Parcels or Developer is unable, despite diligent efforts, to acquire any Developer Parcel the Developer considers essential to the Project;

13.1.4. Developer is unable despite diligent efforts, to obtain all required funding for either of Phases I or II of the Project;

13.1.5. The Agency elects to postpone issuance of new tax increment bonds for the benefit of the Project beyond July 1, 2014 and Developer makes its election to terminate as a result thereof.

In the event Developer elects to terminate this Agreement pursuant to this Section 13.1, Developer shall assign to Agency all of its rights under the Option Agreement and the Agency shall have the right to acquire the Developer Parcels previously transferred to Developer on the terms and pursuant to the procedures set forth in Section 13.10. Thereafter, except for any outstanding defaults, or any obligation hereunder which expressly provides that it survives termination of this Agreement, neither party shall have any rights or obligations under this Agreement.

13.2. Fault of the Agency. The occurrence of any of the following events shall be an "Event of Default" by the Agency under this Agreement:

13.2.1. The Agency fails to provide financing to the Developer in the amount, time period and manner set forth in Section 3.2, provided that the conditions precedent to such financing which are the responsibility of the Developer have been met; or

13.2.2. The Agency breaches any other material provisions of this Agreement.

13.3. Developer Remedies. If an Event of Default on the part of the Agency occurs, the Developer shall first notify the Agency in writing of the purported breach, in which event Agency shall cure such breach within 30 calendar days after delivery of such notice, or, if the breach is not reasonably susceptible of cure within such 30-day period, Agency shall commence cure within such 30-day period and diligently proceed to completion. If the Agency does not cure the breach within such 30-day period, or, if applicable, does not commence cure within such 30-day period and thereafter diligently proceed to completion, the Developer may pursue any of the following remedies: (i) terminating this Agreement; (ii) prosecuting an action for damages; (iii) seeking equitable relief from a court of competent jurisdiction, including but not limited to specific performance; or (iv) pursuing any other remedy at law or in equity.

13.4. Fault of the Developer. Subject to the Force Majeure provisions of Section 15.8, the occurrence of any of the following events shall be an "Event of Default" by the Developer under this Agreement or, following transfer of a Phase to the approved Vertical Developer for such Phase, an "Event of Default" with respect only to the applicable Phase and the Vertical Developer for such Phase:

13.4.1. Except as otherwise permitted under this Agreement, the Developer fails to exercise its option to purchase or lease or fails to purchase or lease any portion of the Site by the date for completion of land acquisition set forth in the Schedule.

13.4.2. Developer does not in good faith attempt to timely procure the building permits or land use approvals for any Phase of the Project or abandons any further attempts when there is reasonable likelihood that such permit or approval would otherwise be issued by the proper authority in a timely manner.

13.4.3. The Developer fails to make any Developer Submission by the date specified in Article 6 or the Schedule, except if such failure is caused by the failure of Agency to timely perform any of its obligations hereunder.

13.4.4. The Developer fails to commence or complete construction of any Phase in the manner or within the times set forth in this Agreement, or, after commencement of construction, the work of construction is abandoned or substantially ceases for more than 60 consecutive calendar days for any reason other than, with respect to Phase I, any suspension or interruption of the disbursement of Prop 1C Funds not attributable to a default by Developer under the Prop 1C funding agreement..

13.4.5. The Developer fails to perform or observe the post-construction requirements set forth in Section 10 or keep the post-construction covenants in the manner and within the times set forth in this Agreement.

13.4.6. The Developer voluntarily or involuntarily undertakes or attempts to undertake a Transfer in violation of this Agreement.

13.4.7. Any of the representations or warranties made by Developer or its members in this Agreement, were untrue in any material respect when made, or Developer or its members knowingly made any materially untrue statements in writing delivered to Agency or knowingly included any materially untrue statements in any certificates, documents or schedules supplied by Developer to Agency, or the Developer or its members knowingly concealed from or failed to disclose a material fact to the Agency.

13.4.8. The Developer, BUILD or the managing member of BUILD files for bankruptcy, dissolution, or reorganization, fails to obtain a full dismissal of any involuntary filing brought by another party under bankruptcy or similar laws before the earlier of final relief or 60 days after filing, makes a general assignment for the benefit of creditors, applies for the appointment of a receiver, trustee, custodian, or liquidator, or fails to obtain a full dismissal of any such involuntary application brought by another party before the earlier of final relief or 60 days after the filing, becomes insolvent, or fails to pay its debts as they become due.

13.4.9. The Developer breaches any other material provisions of this Agreement.

13.5. Notification in the Event of Default. If an Event of Default on the part of the Developer (which term shall apply to the Vertical Developer following the transfer of title to a Phase to the Vertical Developer and shall constitute an Event of Default only with respect to such Phase) occurs, the Agency shall notify the Developer in writing of its purported breach or failure, giving the Developer at least 30 calendar days from receipt of such notice to cure such breach or failure, or, if such breach cannot reasonably be cured within the 30-day period, the Developer shall not be in default if the Developer commences such cure within such 30-day period and diligently pursues such cure to completion. In the event the Developer does not cure within this time period or begin a cure within this time period and diligently pursue such cure to completion, subject to the provisions of Article 14, the Agency may pursue the remedies set forth below. In addition, if the Event of Default is not cured and this Agreement is terminated, the Developer shall deliver to the Agency all plans, specifications, drawings, studies, surveys, test results, reports, materials and any other documents concerning the Phase with respect to which the Event of Default occurred, which shall thereafter become the property of the Agency to the extent of Developer's interest therein.

13.6. Agency Remedies Prior to Transfer to Vertical Developer. If an Event of Default by the Developer occurs prior to the transfer of one or more Phases to the Vertical Developer for such Phase and is not cured as set forth above, the Agency may pursue any or all of the following remedies:

13.6.1. The Agency may terminate this Agreement as it pertains to any Phases which have not been transferred and, if then in effect, draw down the letters of credit described in Section 4.1.1 or exercise its rights under the repayment guaranty described in Section 4.1.2.

13.6.2. If the Event of Default is a "triggering event", as defined in Section 13.10, the Agency may, either in person, by agent, or by a receiver appointed by a court, claim title to and possession of parcels acquired or controlled by Developer, including the leasehold and fee parcels acquired from BART, pursuant to the procedures described in Section 13.10 below and if the BART parcels or any Developer Parcels included in any Phases not yet transferred have not yet been acquired, to all of Developer's rights under the terms of the Option Agreement and any agreements pertaining to the applicable Developer Parcels. Agency may assign its rights to take title to such parcels under this Section 13.6.2 to another developer selected by Agency.

13.6.3. If the Event of Default is a failure by Developer to complete construction of the BART Garage or the Phase I infrastructure after having commenced such construction, the Agency shall also be entitled to exercise all of its rights under the applicable Phase I Completion Guaranty.

13.6.4. The Agency may pursue all other remedies permitted by law or at equity, including but not limited to actual damages, provided that Developer shall not be liable for any consequential, incidental or punitive damages nor shall Developer be liable to Agency for the repayment of any grant funds, tax increment funds or any Prop 1C funds, except as provided in Section 4.1.

13.7. Agency Remedies During Construction. If an Event of Default by a Vertical Developer occurs following the transfer of any Phase to such Vertical Developer and prior to the completion of such Phase, as evidenced by Agency issuance of a Certificate of Completion, and the Event of Default is not cured as set forth above or in Article 14, the Agency may pursue any or all of the following remedies with respect to such Phase and the Vertical Developer of that Phase:

13.7.1. The Agency may terminate this Agreement as it pertains to the Phase as to which the Event of Default occurred.

13.7.2. The Agency may initiate an action for specific performance of the terms of this Agreement to the extent that such action is available with respect to the Event of Default.

13.7.3. If the Event of Default is a "triggering event", as defined in Section 13.10, the Agency may, either in person, by agent or by receiver appointed by court, claim title to and possession of the parcel(s) constituting the applicable Phase pursuant to the procedures described in Section 13.10

below and, if the applicable BART parcels or Developer Parcels have not yet been acquired, to all of Developer's rights to acquire such parcels under the terms of the Option Agreement or any other agreement to which Developer is a party, provided that this Section 13.7.3 shall not apply to Phase II. Agency may assign its rights to take title hereunder to another Vertical Developer.

13.7.4. If the Event of Default is a failure by the Vertical Developer to complete construction of the applicable Phase, the Agency shall also be entitled to exercise all of its rights under the applicable Vertical Completion Guaranty, provided that such rights shall be subordinate and subject to the rights of any Mortgage Holder under Section 14 of this Agreement.

13.7.5. The Agency may pursue all other remedies permitted by law or at equity, including but not limited to actual damages provided that the Vertical Developer shall not be liable for any consequential, incidental or punitive damages nor shall Vertical Developer be obligated to repay any grant funds, tax increment funds or Proposition 1C Funds.

13.8. Agency Remedies Following Construction Completion. If an Event of Default by the Vertical Developer of a Phase occurs with respect to any obligation or covenant remaining in effect following Construction Completion (as defined in Section 7.3) of that Phase, and the Event of Default is not cured as set forth above or in Article 14, the Agency may pursue any or all of the following remedies:

13.8.1. The Agency may institute an action for specific performance of the terms of this Agreement to the extent that such action is available with respect to the Event of Default.

13.8.2. The Agency may institute an action for damages to recover from the Developer all of the damages caused by the Event of Default, provided that the Agency shall not be entitled to consequential, incidental or punitive damages.

13.8.3. The Agency may pursue all other remedies permitted under any regulatory agreement applicable to the Phase or by law or at equity, except as limited by Section 13.8.2 above.

13.9. Dispute Resolution. Any dispute arising out or relating to the performance by either party of the terms of this Agreement or pertaining to the adequacy of any Developer Submission shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA") then obtaining, unless the parties mutually agree to the contrary. The agreement to arbitrate contained herein or in any other agreement to arbitrate subsequently entered into between the parties hereto shall be specifically enforceable under applicable law. The award rendered by the Arbitrator (as defined below) shall be final, and judgment may be entered upon it in accordance

with applicable law in any court having jurisdiction. Notice of the demand for arbitration shall be filed in writing with the other party to this Agreement and with the Arbitrator. The provisions of California Code of Civil Procedure § 1283.05, with the exception of subparagraph (e) thereof, shall be applicable to any arbitration conducted under this Section 13.9. Developer and Agency shall jointly appoint a mutually acceptable arbitrator ("Arbitrator") to be the sole Arbitrator under this Section 13.9. If Developer and the Agency are unable to agree upon an Arbitrator within 30 days after a request for arbitration by any party, then the Arbitrator shall be appointed by the Superior Court of the State of California for the City and County of San Francisco. Any decision made by the Arbitrator with respect to any matter subject to arbitration or decision by the Arbitrator under this Agreement shall be binding upon the parties hereto and shall not be subject to further arbitration by Developer or Agency or appeal by either of them. The Arbitrator shall have the power to award damages or grant remedies that would otherwise be available under law in a California state court having jurisdiction of the matter (including, without limitation, specific performance), but only as allowed by the terms of this Agreement, and the Arbitrator shall not have the power to award any consequential, special or punitive damages against any party (except to the extent this limitation is prohibited by law) or to vary the provisions of this Agreement. The Arbitrator shall determine which is the prevailing party and shall include in the award that party's reasonable attorneys fees and expenses and the costs and fees of arbitration, including the Arbitrator's fees. If for any reason the selected Arbitrator is unable or unwilling to perform the duties of the office, Developer and the Agency shall first meet and confer in order to select a replacement Arbitrator by mutual agreement. If a replacement Arbitrator is not selected within 30 days, an Arbitrator will be selected according to the Arbitration Rules contained in the AAA Construction Industry Dispute Resolution Procedures. In the event that the AAA is no longer in existence at the time that arbitration is requested, the dispute shall be submitted to arbitration in accordance with the rules and procedures of the successor to the AAA or, if there is no such successor, the matter shall be submitted to an organization that consists of members similar to the AAA.

NOTICE: BY SIGNING IN THE SPACE BELOW THE AGENCY AND DEVELOPER ARE AGREEING TO HAVE ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT THAT ARE SUBJECT TO ARBITRATION IN ACCORDANCE WITH THE TERMS HEREOF DECIDED BY MUTUAL ARBITRATION, AND THE AGENCY AND DEVELOPER ARE GIVING UP ANY RIGHTS THEY MIGHT POSSESS TO HAVE THE DISPUTES LITIGATED IN A COURT . BY INITIALING IN THE SPACE BELOW, THE AGENCY AND DEVELOPER ARE GIVING UP THEIR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. IF THE AGENCY OR DEVELOPER REFUSES TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, THE AGENCY OR DEVELOPER MAY BE COMPELLED TO ARBITRATE BY LAW. THE AGENCY'S AND DEVELOPER'S AGREEMENT TO THIS ARBITRATION PROVISION IS

VOLUNTARY. THE AGENCY AND DEVELOPER HAVE READ AND UNDERSTOOD THE ABOVE AND AGREE TO SUBMIT TO NEUTRAL ARBITRATION UNDER THIS SECTION. BY SIGNING BELOW, THE AGENCY AND DEVELOPER AGREE THAT THEY SHALL NOT RAISE ANY OBJECTION TO THE ENFORCEMENT OF SUCH ARBITRATION PROVISION OF THIS AGREEMENT, BASED UPON ANY PURPORTED LACK OF AUTHORITY TO ENTER INTO ANY SUCH AGREEMENT OR OTHERWISE.

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC

By: MPI MacArthur, LLC, Member

By: _____
Terrence M. McGrath,
Managing Member

By: BRIDGE Equity Investment (MacArthur Transit Community) LLC, Member

By: BRIDGE Urban Infill Land Development, LLC, Member

By: BRIDGE Infill Development, Inc., Manager

By: _____
Lydia Tan, Executive Vice President

REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND

By: _____
Name: _____
Title: Agency Administrator

APPROVED AS TO FORM:

By: _____
Agency Counsel

13.10. Reversionary Grant Deeds. Upon acquisition of any Developer Parcel or fee or leasehold title to any parcel acquired from BART, Developer shall place in an escrow established with a title company or other escrow agent mutually

acceptable to Developer and the Agency (the "Escrow Agent") a duly executed and acknowledged reversionary grant deed in favor of the Agency in the form attached as Exhibit G to this Agreement (each, a "Reversionary Grant Deed"). Upon transfer of any Phase to a Vertical Developer, the Vertical Developer shall deliver into escrow an executed and acknowledged Reversionary Grant Deed with respect to such Phase, which shall replace the Reversionary Grant Deed to such Phase previously deposited by Developer. Concurrently with the delivery of each Reversionary Grant Deed, Agency, Developer and Escrow Agent shall enter into an escrow agreement in a form reasonably acceptable to both parties and Escrow Agent consistent with the terms of this Agreement, as follows: If Agency elects to exercise its rights under Section 13.6.2 or Section 13.7.3, Agency shall deliver notice to Developer with a copy to Escrow Agent that a "triggering event" as defined below, with respect to the applicable Phase or Phases has occurred and that Agency has elected to take title to the parcels in question if the Event of Default constituting the "triggering event" is not cured within 30 days following the date such notice is delivered to Developer or, if not capable of cure within 30 days, cure is not commenced within such 30 day period and pursued diligently. If Developer does not cure the "triggering event" Event of Default within the prescribed period, the Agency shall have the right to direct the Escrow Agent to record the Reversionary Grant Deed immediately upon receipt of such instruction. The Escrow Agent shall be further instructed to return the Reversionary Grant Deed for any Phase to the Vertical Developer upon Construction Completion for that Phase. A "triggering event" for the purposes of this Section 13.10 shall mean an Event of Default in the obligation of Developer to commence construction, to diligently pursue completion of construction or to complete construction in accordance with the Schedule for such Phase, as extended pursuant to Section 6.9 (if applicable), unless Developer or the Vertical Developer has cured such Event of Default within the time periods set forth in Section 13.5, or has commenced construction, recommenced the diligent pursuit of construction, or completed construction, as applicable, prior to Agency's instruction to Escrow Holder to record the Reversionary Grant Deed. The Agency's rights pursuant to this Section 13.10 shall be subordinate and subject to the rights of any Mortgage Holder under Section 14 of this Agreement.

13.11. Right to Proceeds Upon Subsequent Sale of Reversionary Parcels. In the event the Agency acquires title to any portion of the Project pursuant to Section 13.10 above and subsequently transfers all or any interest in such parcel or parcels, or in the event Agency assigns its right to acquire any portion of the Project pursuant to Section 13.10 above, Developer or the applicable Vertical Developer shall be entitled to receive from the net proceeds of sale or assignment, after deduction of interest on all Agency funds disbursed to pay Project Costs at a rate equal to the rate payable from time to time on funds deposited in the Local Agency Investment Fund established pursuant to California Government Code Section 16429.1, any outstanding fines owed by Developer for failure to comply with the requirements of Section 8 of this Agreement, reasonable out-of-pocket closing costs, brokerage commissions paid by Agency (if any), and any other costs reasonably incurred by Agency in obtaining a new developer for the Project

or Phase, an amount equal to all out of pocket costs paid by Developer or Vertical Developer and not reimbursed from any public funding source in acquiring, entitling and developing the applicable parcel(s). Any remaining proceeds shall be the property of the Agency. For the purposes of this Section 13.11, all Horizontal Development costs (exclusive of the BART Garage) shall be allocated 34.1% to Parcel A, 21.2% to Parcel B, 30.3% to Parcel C and 14.4% to Parcel D.

14. RIGHTS OF MORTGAGE HOLDERS

14.1. Encumbrance for Development Purposes. The Developer may place, with the prior approval of the Agency, which approval shall not be unreasonably withheld and shall be deemed given if set forth with specificity in detail in the approved Financial Plan, mortgages, deeds of trust, or any other reasonable method of security upon any Phase or upon the entire Project before the Project or applicable Phase has been completed, for the sole purpose of securing loans of funds to be used for financing the development of the Project. Any such lien or encumbrance shall be subject to this Agreement.

Following completion of construction of any Phase of the Project and recording of the Certificate of Completion for such Phase, the Developer may place mortgages, deeds of trust, or other security upon the completed Phase without the need to obtain the Agency's consent. Any such lien or encumbrance shall be subject to and subordinate to any covenants in this Agreement which, by their terms, remain in effect following issuance of a Certificate of Completion for such Phase.

14.2. Holder not Obligated to Construct. The mortgagee of any mortgage, beneficiary of any deed of trust, or holder of any other recorded security interest authorized by this Agreement encumbering any part of the Project (a "Holder"), including without limitation any such Holder who obtains title in its own name or through a nominee as a result of foreclosure proceedings or an action in lieu of foreclosure, is not obligated to construct or complete any improvements or to guarantee such construction or completion unless such Holder or its nominee expressly assumes Developer's construction obligations by written notice to Agency. Whether or not a Holder elects to assume Developer's construction obligations, nothing in this Agreement shall be construed to permit such Holder to construct any improvements on the Site except in the compliance with the terms of this Agreement. If Holder elects to assume Developer's construction obligations hereunder, Holder shall not be bound by the dates set forth in the Schedule, provided that Holder shall commence construction (or recommence construction, if applicable), within 270 days after acquiring title and thereafter diligently proceed to completion in accordance with all of the terms and provisions of this Agreement other than the Schedule, subject to Force Majeure. Holder shall submit to Agency, at least fourteen (14) days prior to commencement or recommencement of construction, a proposed, revised Schedule. For purposes of this Agreement, a "nominee" of a Holder shall mean an entity which is owned by or an affiliate of the Holder.

14.3. Notice of Default and Right to Cure. Whenever the Agency, pursuant to its rights set forth in Section 13.4 of this Agreement, delivers any notice or demand to the Developer with respect to the commencement, completion, or cessation of the construction of any Phase of the Project, the Agency shall at the same time deliver to each Holder of an interest in such Phase a copy of such notice or demand. If an Event of Default on the part of the Developer remains uncured after the expiration of the period provided herein for Developer to remedy or cure such default, after providing notice to Agency of its intent to cure such default, any Holder shall have the right to remedy, or cause to be remedied, such default within 60 calendar days after the later to occur of (i) the expiration of the period provided herein for the Developer to remedy or cure such default or (ii) the date that Agency delivered notice of the default to Holder, or such longer period as reasonably necessary so long as Holder commences cure within such 60 day period and diligently proceeds to completion, and the Agency shall accept such performance by or at the insistence of the Holder as if the same had been timely made by the Developer. The Holder shall have the right to add the cost of the cure to its security. Any Holder properly completing any Phase of the Project pursuant to the provisions of this Agreement, other than the Schedule, shall be entitled, upon written request made to the Agency, to a Certificate of Completion as provided for in this Agreement.

14.4. Foreclosure. Notwithstanding anything to the contrary herein, upon the occurrence of an Event of Default on the part of Developer hereunder, other than any Event of Default reasonably susceptible of being cured by Holder prior to Holder obtaining possession of the applicable Phase, Agency shall take no action to exercise its remedies hereunder with respect to such Event of Default, if, within 60 days after notice of such Event of Default is given by Agency to Holder, Holder shall have (i) obtained possession of the Phase (including without limitation possession by a receiver if Holder deems it advisable) or (ii) notified Agency of its intention to institute foreclosure proceedings (or to commence an action to obtain possession of the Phase through appointment of a receiver or otherwise) or otherwise acquired Developer's interest in the Phase, and thereafter promptly commences and prosecutes such proceedings with diligence, subject to normal and customary postponements and compliance with any judicial orders relating to the timing or right to conduct such proceedings or Force Majeure. Nothing herein shall obligate any Holder to continue possession of the Phase or proceed with foreclosure, and Holder shall have the right at any time to notify Agency that it has relinquished possession of the Phase or that it will not institute a foreclosure, or, if such foreclosure has commenced, that it has discontinued it, and, in such event, Agency shall be entitled to enforce any remedies it may have against Developer as a consequence of Developer's default, unless such default has been cured. If Holder is prohibited by any process or injunction issued by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Developer from commencing or prosecuting foreclosure or any other proceedings in the nature thereof, the time specified above for commencing or prosecuting foreclosure proceedings shall be extended for the period of such prohibition. Transfer of the Phase through foreclosure or deed in lieu of foreclosure or transfer

of the Phase by Holder after foreclosure or deed in lieu of foreclosure shall be a "Permitted Transfer" for all purposes of this Agreement. If Holder transfers the Phase, such transfer shall be made subject to this Agreement and the transferee shall assume the obligations of Developer to construct the Phase, to commence construction within a commercially reasonable period of time after acquisition of title to the Phase and to thereafter diligently proceed to completion in accordance with the terms of this Agreement, other than the Schedule.

14.5. Agency's Purchase Option. In any case where, subsequent to default or breach by the Developer and the expiration of all cure periods in connection therewith, any Holder who has the option or right to commence or complete construction of any Phase of the Project pursuant to this Agreement or otherwise either (i) has not exercised its option, or (ii) has exercised its option but has not proceeded diligently with construction of the applicable Phase of the Project as required by Section 14.2, and such failure to proceed with construction has not been cured within 30 calendar days after written notice by the Agency, the Agency shall have the option (and every deed of trust or mortgage on the Site securing Project financing shall so provide for these options) of (a) paying to the Holder the Holder Purchase Price and securing an assignment of such debt and deed of trust or mortgage from the Holder or (b), in the event that the Holder holds title to any portion of the Site by way of foreclosure or deed in lieu thereof, purchasing fee title to such property from the Holder free and clear of any of the Holder interest therein, but expressly subject to the BART transit benefit covenants, if applicable, upon payment to the Holder of the Holder Purchase Price. Notwithstanding the foregoing, if Holder acquires title to the Phase through foreclosure or transfer in lieu of foreclosure, Holder shall have a period of nine months after Holder acquires title to the Phase to sell the Phase before Agency may exercise its repurchase rights. For purposes hereof, Holder shall be deemed to have sold the Phase if, within such nine month period, Holder has (i) transferred title to the Phase or (ii) Holder has entered into an agreement with a purchaser to sell the Phase, provided that if such sale is not consummated within four months after execution of such agreement or within nine months after Holder acquired title to the Phase, whichever is later, then Agency may exercise its purchase right hereunder. For purposes of this Agreement, the "Holder Purchase Price" shall mean an amount equal to the sum of (i) the outstanding debt to the Holder secured by such property at the time of the foreclosure or action in lieu thereof, (ii) the Holder's reasonable foreclosure expenses (to the extent such expenses are not otherwise included in the debt secured by such property), and (iii) the costs of any work on the Project performed by the Holder on such property and all other expenses incurred by Holder in connection the Property (to the extent such costs and expenses are not otherwise included in the debt secured by such property). Notwithstanding the above, the "Holder Purchase Price" shall not include additional default interest (i.e. the excess of interest at the applicable default rate over interest at the regular rate specified in the Holder loan documents), late charges or administrative or similar internal charges imposed by the Holder in connection with foreclosure, collection, and/or enforcement of Holder's loan. The Holder Purchase Price shall be reduced by any cash amounts actually received by

Holder from the Developer or a third party after foreclosure, but prior to Agency's acquisition, including without limitation any amounts received as payment on Holder's loan by the Developer, or by any guarantors, sureties or other third parties. At the time the Agency exercises its rights under this Section to acquire the Holder's debt, the Holder shall execute such assignments or other documents as are reasonably necessary and appropriate for the transfer of Holder's rights under its loan to the Agency, including without limitation any rights to guaranties, bonds, letters of credit, escrow funds, or other security for the loan, but without warranty or recourse other than warranty of title to the applicable loan documents and warranty as to the amount of disbursements made and payments received thereunder.

14.6. Conditions to Agency's Rights of Purchase. The Agency's rights to purchase Holder's interest in any Phase pursuant to Section 14.5 shall be subject to the following conditions with respect to each Holder:

14.6.1. Such Holder or its nominee (i) shall have failed to cure any default or other condition within the applicable cure periods granted to such Holder or its nominee pursuant to Section 14.2 and 14.3 hereof, or (ii) shall have given the Agency written notice that it will not cure any such default or condition or that it will otherwise not comply with the terms and conditions of this Agreement and (iii), if Holder has acquired title to the Phase, the time period for Holder to sell the Phase set forth in Section 14.5 has expired.

14.6.2. BART shall not have exercised any right to cure which it may have under the terms of the Option Agreement or shall have indicated to the Agency its intent not to exercise such rights.

14.6.3. The Agency, within 90 days after the occurrence of any events described in Sections 14.6.1(i) or (ii) or Section 14.6.2 or the expiration of the time period set forth in Section 14.6.1(iii) above, shall have commenced the exercise of its right to purchase Holder's interest pursuant to this Agreement by written notice to Holder or its nominee of Agency's interest, and intent to seek Agency Board authorization for purchase of Holder's interest and, prior to the close of escrow for such purchase, which closing shall occur within sixty (60) days following Holder's receipt of Agency Board's resolution and notice of exercise, but in no event later than one hundred twenty (120) days following Agency's written notice of intent to seek Agency Board authorization shall have paid to Holder or its nominee in escrow, in immediately available funds the Holder Purchase Price. Should the Agency withdraw its exercise of its option to purchase Holder's interest or fail to pay the Holder Purchase Price and close escrow within the time period set forth above the Agency's right to repurchase under this Agreement shall then terminate.

14.6.4. The conditions to the commencement of the exercise of the Agency's right to purchase Holder's interest as described above shall be applicable whether the purchase occurs (i) prior to foreclosure or deed in lieu of foreclosure by the Holder or its nominee under its mortgage or deed of trust or (ii) after Holder or its nominee acquires title to the Phase by foreclosure or deed in lieu of foreclosure under its mortgage or deed of trust, but only while Holder or its nominee holds such title.

14.7. Right of Agency to Satisfy Other Liens. Prior to the recordation of a Certificate of Completion with respect to a Phase, and after the Developer has had a reasonable time to challenge, cure or satisfy any nonvoluntary liens or encumbrances against such Phase, the Agency shall have the right to satisfy any such lien or encumbrance not satisfied by the Developer, provided, however, that nothing in this Agreement shall require the Developer to pay or make provision for payment of any tax, assessment, lien or charge so long as the Developer in good faith shall contest the validity or amount thereof and so long as the Developer shall provide reasonable security as may be required by the Agency to insure the payment of such tax, assessment, lien or charge to prevent any sale, foreclosure or forfeiture of the Phase by reason of such payment. Such security shall be not less than the amount of the contested tax, assessment, lien or charge, including all penalties, fines and interest which can be assessed thereon.

15. GENERAL PROVISIONS

15.1. Notices, Demands and Communications. Formal notices, demands and communications under this Agreement shall be given in writing by any commercially accepted means to the principal offices of a party as follows, or if any such office is relocated, to the new address specified by the relocated party:

DEVELOPER:

MacArthur Transit Community Partners, LLC
c/o BRIDGE Urban Infill Land Development, LLC
345 Spear Street, Suite 700
San Francisco, CA 94105
Att'n: President

And:

c/o MPI MacArthur, LLC
130 Webster Street
Oakland, CA 94607
Attn: Terrence M. McGrath

Copy to:

BRIDGE Housing Corporation
345 Spear Street, Suite 700

San Francisco, CA 94105
Attn: General Counsel

AGENCY: Redevelopment Agency of the City of Oakland
c/o City of Oakland, Community and Economic Development Agency,
250 Frank Ogawa Plaza, 5th Floor
Oakland, CA 94612
Attn: Kathy Kleinbaum

Copy to:

Agency Counsel
c/o City of Oakland, Office of the City Attorney
1 Frank Ogawa Plaza, 6th Floor
Oakland, CA 94612
Attn: Diane Lewis, Deputy City Attorney

If mailed, the written notice shall be deemed received and shall be effective three (3) business days after deposit in the United States mail in the State of California or upon actual receipt by the addressee if earlier.

15.2. Conflicts of Interest. The Developer warrants and represents, to the best of its present knowledge, that no public official of the Agency who has been involved in the making of this Agreement, or who is a member of an Agency or City of Oakland board or commission which has been involved in the making of this Agreement, has or will receive a direct or indirect financial interest in this Agreement or the Project in violation of the rules contained in California Government Code Section 1090, et seq., pertaining to conflicts of interest in public contracting. The Developer shall exercise due diligence to ensure that no such official will receive such an interest.

The Developer further warrants and represents, to the best of its present knowledge and excepting any written disclosures as to these matters already made by the Developer to the Agency, that (1) no public official of the Agency who has participated in decision-making concerning this Agreement or the Project or has used his or her official position to influence decisions regarding this Agreement or the Project, has an economic interest in the Developer or the Project, and (2) neither the Project nor this Agreement will have a direct or indirect financial effect on said official, the official's spouse or dependent children, or any of the official's economic interests. The Developer agrees to promptly disclose to the Agency in writing any information it may receive concerning any such potential conflict of interest. The Developer's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100, et seq.) and its implementing regulations (California Code of Regulations, Title 2, Section 18700, et seq.).

15.3. Nonliability. No member, official, employee, or agent of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Developer or successor under the terms of this Agreement. No member, director, officer, employee or agent of Developer or any of Developer's members shall be personally liable for any obligation under this Agreement.

15.4. Developer's Warranties. The Developer represents and warrants: (1) that it has access to professional advice and support to the extent necessary to enable the Developer to fully comply with the terms of this Agreement and otherwise carry out the Project; (2) that there are no pending or threatened actions or proceedings before any court or administrative agency which may substantially affect the financial condition or operation of the Developer, other than those already disclosed to the Agency; (3) that it is duly organized, validly existing and in good standing under the laws of the State of California; (4) that the organizational documents it has submitted to the Agency concerning it or its partners or members are true, correct, and complete as of the date of this Agreement; (5) that it has the full power and authority to undertake the Project; and (6) that the persons executing and delivering this Agreement are authorized to execute and deliver such document on behalf of the Developer.

15.5. Litigation. The Developer shall promptly give notice in writing to the Agency of any litigation pending or threatened against the Developer, any of Developer's partners or members, or the Developer's parent entity in which the amount claimed is five hundred thousand dollars ($500,000) or more.

15.6. Publicity. Any publicity generated by the Developer for the Project shall make reference to the contribution of the Agency in making the Project possible. The words "Redevelopment Agency of the City of Oakland" and "Community and Economic Development Agency" shall be prominently displayed in all pieces of publicity generated by the Developer, including flyers, press releases, posters, signs, brochures, and public service announcements. Agency staff will be available whenever possible at the request of the Developer to assist the Developer in generating publicity for the Project. The Developer agrees to cooperate with the Agency in any Agency-generated publicity or promotional activities with respect to the Project.

15.7. Waiver. Any waiver by the Agency of an obligation in this Agreement must be in writing and executed by an authorized agent of the Agency. No waiver will be implied from any delay or failure by the Agency to take action on any breach or Event of Default of the Developer or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to the Developer to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the Agency to any act or omission by the Developer shall not be construed to be a consent to any other act or omission or to waive the requirement for the Agency's written consent to future waivers.

15.8. Force Majeure and Litigation Delays. Subject to Sections 15.8.1 through 15.8.3 below, neither the Agency nor the Developer, nor any successor-in-interest to either (the "Delayed Party"), will be considered in breach or in default of any obligation or satisfaction of a condition to an obligation of another party which is provided for in this Agreement, including without limitation, compliance with the Schedule, but excluding any provision for the payment of money, if an event of Force Majeure has occurred with respect to such obligation or condition. Subject to the provisions of Sections 15.8.1 through 15.8.3 below, the time fixed for performance of any obligation under this Agreement shall be extended for the duration of an event of Force Majeure.

15.8.1. "Force Majeure" means events that cause enforced delays in the Delayed Party's performance of its obligations under this Agreement, or in the satisfaction of a condition to another party's performance under this Agreement (other than the obligations or conditions relating to the payment of money), due to causes beyond the Delayed Party's control, including, but not restricted to, acts of God or of a public enemy, fires, floods, title waves, epidemics, quarantine restrictions, freight embargoes, earthquakes, unusually severe weather, delay of contractors or subcontractors due to any of these causes, , archeological findings on the Site, discovery of the presence or habitat of a threatened, candidate or endangered species protected by the Federal Endangered Species Act or the California Endangered Species Act, strikes or substantial interruption of work because of labor disputes, inability to obtain materials or reasonably acceptable substitute materials (provided that Developer has ordered such materials on a timely basis and the acts or omissions of the Developer are not otherwise at fault for such inability to obtain materials), a closure of the MacArthur BART Station or the BART transbay tube for any material period of time, a BART bankruptcy which impairs or delays transfer of the BART land, or any Litigation Delays. In the event of any occurrence of any such enforced delay, the time or times for performance of the obligations of the Developer or the Agency will be extended for the period of the delay, provided that the Delayed Party shall have first notified the other party in writing of the cause or causes of such delay within 30 days after the beginning of such delay and claimed an extension for the reasonably estimated period of the enforced delay.

15.8.2. "Litigation Delays" means any action or proceeding before any court, tribunal, arbitration or other judicial, adjudicative or legislation-making body, including any administrative appeal, brought by a third party, who is not an Affiliate or related to Developer which (i) seeks to challenge the validity of any action taken by the City, the Agency or BART in connection with the Project, including the City's or Agency's approval, execution and delivery of this Agreement and its performance thereunder or BART's approval, execution and delivery of the Option Agreement and its performance thereunder, including any challenge under the California Environmental Quality Act, any exercise by Agency or City of its power

of eminent domain, the performance of any action required or permitted to be performed by the Agency or City hereunder or by BART under the Option Agreement, or any findings upon which any of the foregoing are predicated or (ii) seeks to challenge the validity of any other governmental approval required for the Project or (iii) challenges any contractual or other right of Developer to take title or possession to any portion of the Site and, in any case of clauses (i), (ii) or (iii), results in a delay in the performance by any party of its obligations or the satisfaction of conditions under this Agreement.

15.8.3. The parties shall proceed diligently and prosecute all matters within their respective control with diligence. Force Majeure shall be limited to an aggregate of 36 months. There shall be no time limit for Litigation Delays.

15.9. Inspection of Records. The Agency has the right at all reasonable times to inspect the books, records and all other documentation of the Developer pertaining to its obligations under this Agreement prior to receipt of a Certificate of Completion.

15.10. Governmental Approvals. Should the Developer require the approval of any governmental body or board, the Developer shall bear the sole cost and responsibility for obtaining the approval.

15.11. Indemnification. If through acts or neglect on the part of the Developer or its construction contractor(s), any other contractor or any subcontractor employed in connection with the construction or operation of the Project suffers loss or damage on the work, and such other contractor or subcontractor assesses any claim against the Agency on account of any damage alleged to have been sustained, the Agency shall notify the Developer and its construction contractor who shall defend at their own expense any suit based upon that claim, and the Developer shall pay all costs and expenses incurred by the Agency in connection with any judgment or claim.

Except as hereinafter specifically otherwise provided, Developer shall indemnify Agency, City and each of their Board members, agents, officers, employees, departments, subdivisions, agencies, City Council, Mayor, boards and commissions (and each individual member of the Agency Board, City Council or any other Agency or City board or commission) and all of the heirs, legal representatives, successors and assigns of any of the foregoing (collectively "Indemnitees"), as each Indemnitee is acting in his, her or its official capacity, from any Losses arising out of, related to, or in any way connected with (i) any Agency or City Approval or Subsequent Approval (including any litigation or other proceeding initiated by a third Person challenging any Agency or City Approval or Subsequent Approval) pertaining to the Project; (ii) development and construction of the Project (including any Losses associated with any alleged violations of the California labor code); (iii) any governmental agency approval (including any litigation or other proceeding initiated by a third Person

challenging any governmental agency approval) pertaining to the Project; (iv) any accident, injury, bodily injury, or death, or loss of or damage to property occurring on any portion of the Site owned or leased by Developer; (v) injury to persons or property or any other third party claims arising in connection with any use, possession, occupation, operation, maintenance, or management of the Project or the Project Site or any part thereof by Developer or any of its tenants, subtenants, agents, or invitees; (vi) injury to persons or property or any other third party claims arising from or in connection with any act or omission of Developer or any of its agents, architects, engineers, contractors, subcontractors or suppliers with respect to the development or use of the Project, or the Project Site; (vii) any latent design, construction or structural defect relating to the improvements constructed or caused to be constructed by Developer on the Site or otherwise within the control of Developer or its agents; (viii) the environmental condition of any portion of the Site owned or leased by Developer, including any hazardous materials or other contamination in, on, under or above the Project Site (including soils and groundwater conditions) but only with respect to hazardous materials or other contamination released on, in or under the Site or on the Site during the period of Developer's ownership or control or were on the Site prior to Developer's ownership or control but exacerbated by Developer, its employees, contractors or agents; (ix) a failure of any of the Developer's representations or warranties to be true and complete; (x) any default by Developer under the terms of this Agreement; and/or (xi) any civil rights actions or other legal actions or suits initiated by any user or occupant of the Project or the Site after acquisition by Developer of a fee or ground leasehold interest therein, arising from the acts or omissions of Developer. Notwithstanding the provisions of the immediately preceding sentence to the contrary: (a) to the extent that a Loss is caused by the gross negligence or willful misconduct of an Indemnitee, Developer's Indemnity obligation shall not extend to such Indemnitee's contributory share of the Loss caused by the gross negligence or willful misconduct; (b) Developer's Indemnity obligation under this Section 15.11 shall not apply to an Indemnitee to the extent Losses are caused by a claim filed by Agency to recover any decrease in or a loss of tax revenue by Agency or its Agents as a result of the invalidation of any Agency Approval or Subsequent Approval applicable to the Project or the failure of the Project to generate projected real property taxes or sales tax revenues; and (c) Developer's Indemnity obligation under this Agreement shall not apply to any Loss to the extent such Loss is caused by the breach of any applicable law or regulation by an Indemnitee. If Developer is required to Indemnify one or more Indemnitees hereunder, Developer shall pay within thirty (30) days after receipt from Agency of its demand (together with appropriate backup) any amount owing by Developer to an Indemnitee under this Section 15.11. Developer's Indemnity obligation under this Section 15.11 includes the duty to defend Indemnitees in any court action, administrative action or other proceeding brought by any third Person included within the Indemnitee obligations under this Section 15.11. In the event Developer is defending an Indemnitee with counsel designated by Developer, then such counsel shall be reasonably acceptable to Agency, except that, to the extent Losses subject to Developer's Indemnity hereunder are covered

by insurance carried by Developer, then counsel designated by the insurance company providing such insurance coverage shall defend Agency. Upon the reasonable advice of Agency Counsel, Agency shall retain the right to reject such insurance company designated counsel (on the basis of a conflict, incompetence or similar grounds) and to require Developer to retain counsel reasonably acceptable to Agency for Indemnitees' defense.

These indemnity and hold harmless provisions are severable from this Agreement, in that they shall survive termination or invalidation of this Agreement.

15.12. Real Estate Commissions. Neither party shall be responsible to the other for any real estate commissions or brokerage fees which may arise from this Agreement or otherwise be incurred by the other party.

15.13. Applicable Law. This Agreement shall be governed by the laws of the State of California, except for those provisions preempted by federal law.

15.14. Severability. If any term, provisions, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the parties have been materially altered or abridged by such invalidation, voiding or unenforceability.

15.15. Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement, or to collect damages as a result of any breach of this Agreement, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys fees and costs incurred in the action.

15.16. Time. Time is of the essence in the performance of this Agreement.

15.17. Binding upon Successors; Covenants to Run with the Land. The parties shall cause this Agreement to be recorded as covenants running with the land which shall expire, except as otherwise provided herein, with respect to each Phase, upon the issuance of a Certificate of Completion for that Phase. The Agency agrees to execute and deliver such additional documents as may be required to evidence as a matter of record the expiration of this Agreement with respect to any Phase, provided that Developer causes to be recorded as continuing covenants running with the land a regulatory agreement or affordability agreement with respect to all below market rate units.

15.18. Relationship of Parties. The relationship of the Developer and the Agency for this Project is and shall remain solely that of a Lender/Grantor and Borrower/Grantee, and shall not be construed as a joint venture, equity venture, partnership, or any other relationship. The Agency neither undertakes nor assumes any responsibility or duty to the Developer (except as provided for herein) or any third party with respect to the Project or the Site. Except as the Agency may specify in writing,

the Developer shall have no authority to act as an agent of the Agency or to bind the Agency to any obligation.

The Developer shall be solely responsible for all aspects of its conduct in connection with construction of the Project, including, but not limited to, the quality and suitability of the plans and specifications, the supervision of construction work, and the qualifications, financial conditions, and performance of all architects, engineers, contractors, subcontractors, suppliers, consultants, and property managers. Except as expressly provided in Section 6.6, the Agency is under no duty to review the construction plans or to inspect construction of the Project. Any review or inspection undertaken by the Agency for the Project is solely for the purpose of determining whether the Developer is properly discharging its contractual obligations to the Agency, and should not be relied upon by the Developer or by any third parties as a warranty or representation by the Agency as to the quality of the design or construction of the Project. Approval of the Final Construction Plans or other construction plans by the Agency under this Agreement shall not constitute a permit approval by the City or a representation or warranty as to compliance with state or City building codes, zoning or land use regulations, or design review standards.

15.19. Reasonable Approvals. The approval of a party of any documentation or submissions herein called for shall not be unreasonably withheld, delayed or conditioned.

15.20. Agency Approvals. Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Agency Administrator or her or his designee is authorized to act on behalf of the Agency, unless specifically provided otherwise.

15.21. Execution of Other Documentation. The Agency and the Developer agree to execute any further documentation that may be necessary to carry out the intent and obligations under this Agreement, provided said documentation does not conflict with this Agreement.

15.22. Amendments. Any amendment to this Agreement must be in writing and must be executed by both the Agency and the Developer.

15.23. Estoppel Certificates. Either party to this Agreement shall provide an estoppel certificate to the other as requested from time to time stating that this Agreement has not been modified, or, if modified, stating the nature of such modification, and certifying that this Agreement, as modified, is in full force and effect, and such other matters reasonably requested by any Project funder.

15.24. Integration. This Agreement constitutes the entire understanding and agreement of the parties with respect to the transaction contemplated by this Agreement.

15.25. Execution and Counterparts. This Agreement is executed in three duplicate originals, each of which is deemed to be an original. This Agreement may be signed in multiple counterparts, which, when signed by all parties, shall constitute a binding agreement.

15.26. Exhibits. The following Exhibits are attached to this Agreement and are hereby incorporated into this Agreement by reference:

Exhibit A-1:	Site map
Exhibit A-2:	Site legal description
Exhibit B:	Schedule
Exhibit C:	Preliminary Development Plan
Exhibit D:	Block Layout for Purposes of Phasing
Exhibit E	Form of Reversionary Grant Deed
Exhibit F	List of Environment Assessment Reports
Exhibit G:	Insurance requirements
Exhibit H	Local/Small Local Business Enterprise Program; Local Employment Program
Exhibit I-1:	Regulatory Agreement for Phase II Affordable Units
Exhibit I-2:	Regulatory Agreement for Market Rate Phase Below Market Rental Units
Exhibit I-3:	Affordability Agreement for Market Rate Phase Below Market Ownership Units
Exhibit J:	Retail Guidelines
Exhibit K:	Project Labor Agreement
Exhibit L:	Consultant Contract Addendum
Exhibit M:	Construction Contract Addendum
Exhibit N-1:	Form of BART Garage Completion Guaranty
Exhibit N-2:	Form of Infrastructure Completion Guaranty
Exhibit N-3	Form of Vertical Completion Guaranty
Exhibit N-4	Form of Repayment Guaranty

[SIGNATURE BLOCKS ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Owner Participation Agreement effective as of the date first above written.

"AGENCY"

THE REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND,
a community redevelopment agency organized and existing under the California Community Redevelopment Law

By: _____
Agency Administrator

Approved as to form and legality:

By: _____
Agency Counsel

"DEVELOPER"

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC
a California limited liability company

By: MPI MacArthur, LLC,
a California limited liability company, Member

By: _____
Terrence M. McGrath, Managing Member

By: BRIDGE Equity Investments (MacArthur Transit Community), LLC,
a Delaware limited liability company, Member

By: BRIDGE Urban Infill Land Development, LLC,
a Delaware limited liability company, Member

By: BRIDGE Infill Development, Inc.,
a California corporation, manager

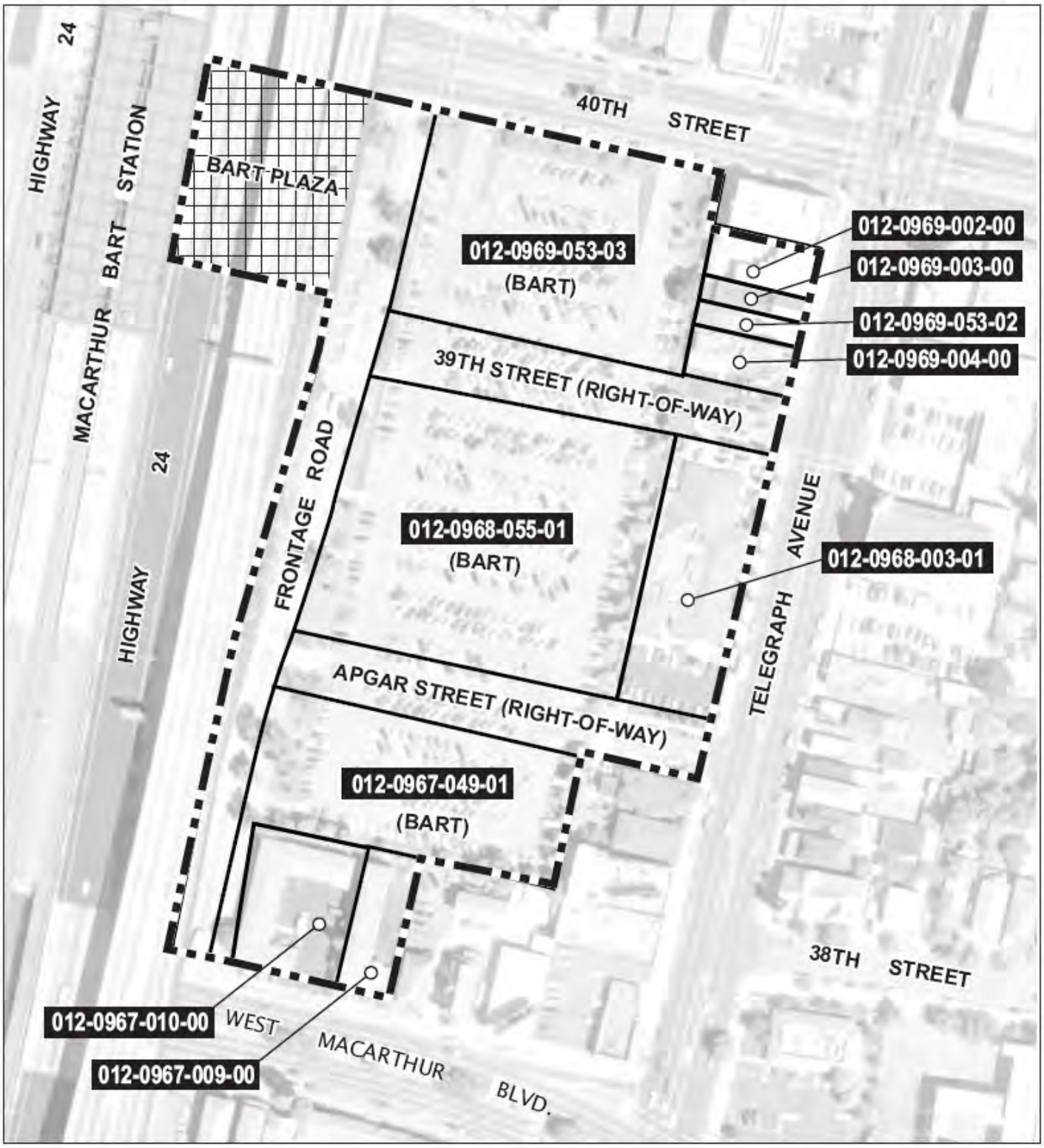
By: _____
Lydia Tan, President

EXHIBIT A-1
(MacArthur Transit Village)

Site Map

(*attached*)

EXHIBIT A-1



Legend

- Project site
- BART Plaza
- Parcel lines

N

0 75 150
feet

MacArthur Transit Village
Project Site

SOURCE: CITY OF OAKLAND, 2006.

EXHIBIT A-2
(MacArthur Transit Village)

Site Legal Description

(*attached*)

LEGAL DESCRIPTION

Real property in the City of Oakland, County of Alameda, State of California, described as follows:

PARCEL ONE:

A portion of Lot 9 as said lot is shown on the "Map of Montgomery Tract No. 1", filed April 2, 1875 in Book 1, Page 77 of Maps, Alameda County Records, described as follows:

Beginning at a point on the Southern line of 40th Street, formerly Evoy Avenue, distant thereon South 78°15' East 621.67 feet from the intersection thereof with the Eastern line of Grove Street, now known as Martin Luther King, Jr. Way, as said avenue and street are shown on the map; running thence along the said line of 40th Street, South 78°15' East 38.35 feet; thence South 11°15' West, parallel with the said line of Grove Street, 100 feet; thence North 78°15' West, parallel with the said line of 40th Street, 38.35 feet; thence North 11°15' East, parallel with the said line of Grove Street, 100 feet to the point of beginning.

PARCEL TWO

A portion of Lot 9 as said lot is shown on the "Map of Montgomery Tract No. 1", filed April 2, 1875 in Book 1, Page 77 of Maps, Alameda County Records, described as follows:

Beginning at a point on the Southern line of 40th Street, formerly Evoy Avenue, distant thereon South 78°15' East 660.02 feet from the intersection thereof with the Eastern line of Grove Street, now known as Martin Luther King, Jr. Way, as said avenue and street are shown on the map; running thence along the said line of 40th Street, South 78°15' East 34.98 feet; thence South 11°15' West, parallel with the said line of Grove Street, 100 feet; thence North 78°15' West, parallel with the said line of 40th Street, 34.98 feet; thence North 11°15' East, parallel with the said line of Grove Street, 100 feet to the point of beginning.

PARCEL THREE:

Lot Nos. 11 and 12, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL FOUR:

Lot Nos. 13 and 14, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL FIVE

Lot 15, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL SIX:

Beginning at a point on the Northern line of 39th Street, distant thereon 150 feet Westerly from

the point of intersection thereof with the Western line of Telegraph Avenue; and running thence Westerly along said line of 39th Street, 50 feet; thence at right angles Northerly 100 feet; thence at right angles Easterly 50 feet; thence at right angles Southerly 100 feet to the point of beginning.

Being Lot 6, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886, W.F. Boardman Surveyor", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL SEVEN:

Lot 16 and the Northeastern 25 feet of Lot 5, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36", etc., filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL EIGHT:

All that portion of that parcel of land described as Parcel 6 in the Final Order of Condemnation recorded September 21, 1966 as Series No. AY110478, Reel 1844, Image 645 of Official Records of Alameda County, lying Easterly of the following described line:

Commencing at a point on the Southerly line of said Parcel 6, distant thereon North 77°36'02" West 34.20 feet from the Southeasterly corner of said Parcel 6; thence North 10°57'12" East 100.03 feet to the Northwesterly corner of said Parcel 6.

PARCEL NINE:

Beginning at a point on the Northern line of 39th Street, distant thereon Easterly 658 feet, 4 inches from the intersection thereof with the Eastern line of Grove Street, now known as Martin Luther King, Jr. Way, as said streets are shown on the map hereinafter referred to; running thence Easterly along said line of 39th Street, 36 feet, 8 inches; thence Northerly and parallel with said line of Grove Street, 100 feet; thence Westerly and parallel with said line of 39th Street, 36 feet, 8 inches; thence Southerly and parallel with said line of Grove Street, 100 feet to the point of beginning.

Being the Eastern 36 feet, 8 inches of the Southern 100 feet of Lot 9, as said lot is shown on the "Map of Montgomery Tract No. 1", filed April 2, 1875 in Book 1, Page 77 of Maps, Alameda County Records.

PARCEL TEN:

A portion of Lots 9 and 10, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records, described as follows:

Beginning at a point on the Northern line of 39th Street, distant thereon Westerly 335-1/2 feet from the Western line of Telegraph Avenue; running thence Westerly along said line of 39th Street, 42-1/2 feet; thence at right angles Northerly 100 feet; thence at right angles Easterly 42-1/2 feet; thence at right angles Southerly 100 feet to the point of beginning.

PARCEL ELEVEN:

The Eastern 42 feet, 6 inches of Lot 9, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36", etc., filed August 12, 1886 in Book 11, Page 28 of

Maps, Alameda County Records.

PARCEL TWELVE:

Beginning at a point on the Northern line of 39th Street, distant thereon Westerly 250 feet from the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the map herein referred to; running thence Westerly along said line of 39th Street, 43 feet; thence Northerly, parallel with said line of Telegraph Avenue, 100 feet; thence Easterly, parallel with said line of 39th Street, 43 feet; thence Southerly, parallel with said line of Telegraph Avenue, 100 feet to the point of beginning.

Being Lot 8, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL THIRTEEN:

The Western 25 feet of Lot 7, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records, described as follows:

Beginning at a point on the Northern line of 39th Street, distant thereon Westerly 225 feet from the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the map herein referred to; running thence Westerly along said line of 39th Street, 25 feet; thence at right angles Northerly 100 feet; thence at right angles Easterly 25 feet; thence at right angles Southerly 100 feet to the point of beginning.

PARCEL FOURTEEN:

Beginning at a point on the Northern line of 39th Street, distant thereon Westerly 200 feet from the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the map herein referred to; running thence Westerly along said line of 39th Street, 25 feet; thence at right angles Northerly 100 feet; thence at right angles Easterly 25 feet; thence at right angles Southerly 100 feet to the point of beginning.

Being the Eastern ½ of Lot 7, in Block No. 2080, as said lots and block are shown on "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL FIFTEEN:

The Southwestern 75 feet of Lot 5, in Block No. 2080, as said lot and block are shown on "Map of the Estate of John Evoy in Plot 36", etc., filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

APN: 012-0969-053-03

PARCEL SIXTEEN:

All that portion of the parcels of land conveyed to the State of California by Deed No. 25238, recorded October 13, 1964 in Reel 1337, Image 245 of Official Records and Deed No. 25239, recorded October 27, 1964 in Reel 1348, Image 935 of Official Records and lying Easterly of the following described line:

Commencing at a point on the Southerly line of said parcel (Reel 1337 OR Image 245), distant thereon North 77°08'02" West 36.86 feet from the Southeasterly corner of last said parcel; thence North 10°57'12" East 261.16 feet to a point on the Northerly line of said parcel (Reel 1348 OR Image 925), distant thereon North 77°36'02" West 31.18 feet from the Northeasterly corner of last said parcel.

PARCEL SEVENTEEN:

Beginning at a point on the Southern line of 39th Street, distant thereon Westerly 381.82 feet from the intersection thereof with the Western line of Telegraph Avenue; and running thence Westerly along said line of 39th Street, 35.53 feet; thence at right angles Southerly 134 feet, 7 inches; thence at right angles Easterly 35.53 feet, more or less, to the intersection with a line drawn Southerly from the point of beginning, at right angles to 39th Street; and thence Northerly along said line so drawn, 134 feet, 7 inches, to the point of beginning.

PARCEL EIGHTEEN:

Beginning at a point on the Southern line of 39th, formerly Geary Street, distant thereon Westerly 336 feet from the intersection thereof with the Western line of Telegraph Avenue; running thence Westerly along said line of 39th Street, 45.28 feet; thence at right angles Southerly 110.32 feet; thence at right angles Easterly 4.32 feet to the Southern boundary line of Lot 9, in Block 2071, as said lot and block are shown on that certain map of "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886", etc., filed August 12, 1886 in the Office of the County Recorder of Alameda County; thence Easterly along said Southern boundary line of said Lot 9, 40.9 feet to the intersection thereof with a line drawn Southerly from the point of beginning at right angles to said line of 39th Street; and thence Northerly along said line so drawn, 112.53 feet to the point of beginning.

PARCEL NINETEEN:

Lot 8 in Block 2071, as said lot and block are shown on the "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886, W.F. Boardman, Surveyor", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL TWENTY:

Lot 7 and the Western 10 feet of Lot 6, in Block 2071, as said lots and block are shown on the "Map of the Estate of John Evoy in Plot 36", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL TWENTY-ONE:

Being the Western 5 feet of Lot 5 and the Eastern 40 feet of Lot 6 in Block 2071, as said lots and block are shown on the "Map of the Estate of John Evoy in Plot 36, Subdivided April 1886, W.F. Boardman", filed August 12, 1886 in Book 11, Page 28 of Maps, Alameda County Records.

PARCEL TWENTY-TWO:

All that portion of Lot 5, in Block 2071, which lies Easterly of a line drawn parallel with the Eastern line of said Lot 5, and distant 45 feet Westerly therefrom, measured along the Southern line of 39th, formerly Geary Street, as said lot, block and street are shown on the "Map of the Estate of John Evoy in Plot 36", filed August 12, 1886 in Book 11, Page 28 of Maps, alameda County Records.

PARCEL TWENTY-THREE:

Beginning at a point on the Southern line of 39th, formerly Geary Street, distant thereon Westerly 100 feet from the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the map herein referred to; running thence Westerly along said line of 39th Street, 50 feet; thence at right angles Southerly 122 feet, 6 inches to land now or formerly owned by Geary, being on the Southern boundary of Lot 4, according to said map; thence Easterly along said boundary line, 50 feet, 1 inch to the Eastern boundary line of said Lot 4; thence Northerly along said line, 125 feet, 5 inches to the point of beginning.

Being Lot 4 in Block 2071, as said lot and block are shown on the "Map of the Evoy Plot", attached to and made a part of the Referee's Report in the action for partition in the Third District Court of the County of Alameda, wherein Mary Ann Mulliken was plaintiff and Mary Jane Evoy, et al., were defendants, Case No. 3187, a certified copy of the Decree in Partition having been recorded in Book 103 of Deeds, Page 152, alameda County Records.

PARCEL TWENTY-FOUR:

Beginning at a point on the Northern line of Apgar Street, distant thereon North 78°13' West 353 feet from the intersection thereof with the Western line of Telegraph Avenue; running thence Westerly along the said Northern line of Apgar Street, 48.50 feet; thence North 11°47' East 100 feet; thence South 78°13' East 48.50 feet; thence South 11°47' West 100 feet to the point of beginning.

PARCEL TWENTY-FIVE:

Beginning at a point on the Northern line of Apgar Street, distant thereon Westerly 304.50 feet from the intersection thereof with the Western line of Telegraph Avenue; running thence Westerly along the said line of Apgar Street, 48.50 feet; thence North 11°47' East 100 feet; thence Easterly, parallel with Apgar Street, 48.50 feet; thence South 11°47' West 100 feet to the point of beginning.

PARCEL TWENTY-SIX:

Commencing at a point on the Northern line of Apgar Street, distant thereon 304.5 feet Westerly from the Western line of Telegraph Avenue; thence North 11°47' East 100 feet to the point of beginning of the property herein to be described; from said point of beginning, continuing North 11°47' East 48.43 feet; thence North 75°39'30" West 70.95 feet; thence South 11°17' West 24.26 feet; thence North 76°10' West 26.37 feet; thence South 11°47' West 28.27 feet; thence South 78°13' East 97 feet to the point of beginning.

PARCEL TWENTY-SEVEN

Beginning at a point on the northern line of Apgar Street, distant thereon Westerly 257 feet from the intersection thereof with the Western line of Telegraph Avenue; running thence North 11°47' East 146 feet, more or less, to the Southern line of property known as the estate of John Evoy; thence North 75°39'30" West, along the Southern line of property known as the estate of John Evoy, 47 feet, 6 inches; thence South 11°47' West 146 feet, more or less, to the Northern line of Apgar Street; thence Easterly along said line of Apgar Street, 47 feet, 6 inches to the point of beginning.

PARCEL TWENTY-EIGHT:

Beginning at a point on the Northern line of Apgar Street, distant thereon Westerly 213 feet from

the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the "Map of the Luning Tract No. 2, Oakland, California", filed February 19, 1907 in Book 22 of Maps, Page 37, in the Office of the County Recorder of Alameda County; running thence North 78°13' West, along said line of Apgar Street, 44 feet; thence North 11°47' East 146 feet, more or less, to the Southern line of property of the estate of John Evoy; thence South 75°39'30" East thereon, 44 feet, more or less, to the intersection thereof with a line drawn North 11°47' East from the point of beginning; thence South 11°47' West 144 feet, more or less, to the point of beginning.

PARCEL TWENTY-NINE:

Beginning at a point on the Northern line of Apgar Street, distant thereon Westerly 213 feet from the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the "Map of the Luning Tract No. 2, Oakland, California", filed February 19, 1907 in Book 22 of Maps, Page 37, in the Office of the County Recorder of Alameda County; running thence North 11°47' East 144 feet, more or less, to the Southern line of the property of the estate of John Evoy; thence along the last named line, South 75°39'30" East 3.50 feet, more or less, to the Western line of the parcel of land described in the deed by Max Baker and Sallie Baker, his wife, to A.G. Desky, dated August 1, 1927, recorded August 3, 1927 in Book 1684 of Official Records of Alameda County, Page 38; thence along the last named line, South 11°47' West 143 feet, more or less, to said line of Apgar Street; and thence along the last named line, North 78°13' West 3.50 feet, more or less, to the point of beginning.

PARCEL THIRTY:

Beginning at a point on the Northern line of Apgar Street, distant thereon Westerly 180 feet from the Western line of Telegraph Avenue; thence North 11°47' East 142.87 feet to the Southern line of the Estate of John Evoy; thence along the last named line, North 75°39'30" West 29.50 feet; thence South 11°47' West 143 feet, more or less, to said line of Apgar Street; thence along the last named line, Easterly 29.50 feet to the point of beginning.

PARCEL THIRTY-ONE:

Beginning at a point on the Northern line of Apgar Street, distant thereon Westerly 100 feet from the intersection thereof with the Western line of Telegraph Avenue, as said street and avenue are shown on the map herein referred to; running thence Westerly along said line of Apgar Street, 80 feet; thence Northerly along a line parallel with said Western line of Telegraph Avenue, 140 feet, more or less, to the Northern line of the parcel of land conveyed by Blanchard & Hill, Trustees, to Jesse Shenson, by deed recorded in Book 349 of Official Records of Alameda County, Page 176; thence Easterly along said Northern line of Shenson property, 80 feet, more or less, to the Southwestern corner of Lot 3, in Block 2071, as said lot and block are shown on the "Map of the Estate of John Evoy in Plot 36", filed August 12, 1886 in Book 11, Page 28 of Maps, alameda County Records; thence Southerly on a line parallel with said Western line of Telegraph Avenue, 139.85 feet, more or less, to the Northern line of Apgar Street, and the point of beginning.

Being a portion of the unnumbered portion shown on the "Map of the Luning Tract No. 2, Oakland, Calif.", filed February 19, 1907 in Book 22, Page 37 of Maps, Alameda County Records, shown thereon as lying West of Telegraph Avenue and North of Apgar Street.

APN: 012-0968-055-01

PARCEL THIRTY-TWO:

All that portion of Lot 10, as said lot is shown on the map entitled "Map of the Luning Tract,

Oakland, Calif.", filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records, lying Easterly of the following described line:

Commencing at a point on the Southerly line of said lot, distant thereon North 77°08'02" West 25.89 feet from the Southeasterly corner of said lot; thence North 12°52'58" East 134.12 feet to a point on the Northerly line of said lot, distant thereon North 77°08'02" West 25.85 feet from the Northeasterly corner of said lot.

PARCEL THIRTY-THREE::

Lot 9, as said lot is shown on the map entitled "Map of the Luning Tract, Oakland, California", filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records.

PARCEL THIRTY-FOUR:

Lot 8, as said lot is shown on the map entitled "Map of the Luning Tract, Oakland, Calif.", filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records.

PARCEL THIRTY-FIVE:

Lot 7, according to the "Map of the Luning Tract", filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records.

PARCEL THIRTY-SIX:

Lot 6 of the Luning Tract, according to the Map thereof filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records.

PARCEL THIRTY-SEVEN:

Lot 5, according to the "Map of the Luning Tract, Oakland, Calif.", filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records.

PARCEL THIRTY-EIGHT:

Commencing at a point on the Southern line of Apgar Street, distant 110 feet Westerly from the point of intersection thereof with the Western line of Telegraph Avenue; running thence Westerly along said line of Apgar Street, 50 feet; thence running at right angles Southerly 134.13 feet; thence at right angles Easterly 50 feet; thence at right angles Northerly 134.13 feet to the point of beginning.

Being Lot No. 4, as shown on the "Map of the Luning Tract, Oakland, Calif., October 1905", filed October 5, 1905 in Book 20, Page 76 of Maps, Alameda County Records.

PARCEL THIRTY-NINE:

A portion of Lot 12 of "Map of the Perrin Tract" according to the map thereof, filed June 2, 1877, in the Book 3 of Maps, at page 14, in the office of the County Recorders of Alameda County, described as follows:

Commencing at a point on the northern line of 38th Street, distant thereon 400 feet westerly from the point of intersection thereon with the western line of Telegraph Avenue, as said street and avenue are shown on the map herein referred to: running thence westerly along said northern line of 38th Street, 35 feet to a point 15 feet easterly from the intersection thereof with

the dividing Lots 12 and 13, as said lots are shown on the map herein referred to; Thence northerly on a line drawn parallel with said line dividing Lot 12 and 13 above referred to, and 15 feet easterly therefrom, 144 feet, 10-1/2 inches, more or less, to the northern boundary line of the Perrin Tract, as shown on the map herein referred to; thence easterly along said northern boundary line 35 feet to the eastern boundary line of Lot 12, as shown on the map herein referred to; thence southerly along said last mentioned boundary line 144 feet 10-3/4 inches to the point of commencement.

APN: 012-0967-049-01

PARCEL FORTY:

LOT 9 AND THE WESTERN 10 FEET OF LOT 8, "MAP OF THE PERRIN TRACT, BEING A PORTION OF PLOT # 11, ETC." FILED JUNE 2, 1877 IN BOOK 3 OF MAPS, PAGE 14, ALAMEDA COUNTY RECORDS, ALSO KNOWN AS 526 WEST MACARTHUR BLVD., OAKLAND, CALIFORNIA.

APN: 12-967-9

PARCEL FORTY-ONE:

LOTS 10 AND 11, AS SAID LOTS ARE SHOWN ON THE MAP OF THE PERRIN TRACT, ETC., FILED JUNE 2, 1877, IN BOOK 3 OF MAPS, PAGE 14, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 12-967-10-1

PARCEL FORTY-TWO:

PORTION OF BLOCK 2071, AS SAID BLOCK IS SHOWN ON THE "MAP OF THE EVOY PLOT, OAKLAND, TOWNSHIP", FILED APRIL 26, 1871, IN BOOK 3 OF MAPS, PAGE 12, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTHERN LINE OF 39TH, FORMERLY GEARY STREET, WITH THE WESTERN LINE OF TELEGRAPH AVENUE, AS SAID STREET AND AVENUE ARE SHOWN ON SAID MAP; RUNNING THENCE ALONG SAID LINE OF 39TH STREET WESTERLY, 100 FEET THENCE PARALLEL WITH SAID LINE OF TELEGRAPH AVENUE SOUTHERLY, 50 FEET; THENCE PARALLEL WITH SAID LINE OF 39TH STREET EASTERLY, 100 FEET TO SAID LINE OF TELEGRAPH AVENUE; THENCE ALONG SAID LINE OF TELEGRAPH AVENUE NORTHERLY, 50 FEET TO THE POINT OF BEGINNING.

PARCEL FORTY-THREE:

LOTS 2 AND 3 IN BLOCK 2071, AS SAID LOTS AND BLOCK ARE SHOWN ON THE "MAP OF THE ESTATE OF JOHN EVOY IN PLOT 36, SUBDIVIDED APRIL 1886", FILED AUGUST 12, 1886, IN BOOK 11 OF MAPS, PAGE 28, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

PARCEL FORTY-FOUR:

PARCEL FORTY-FOUR:

BEGINNING AT THE INTERSECTION OF THE WESTERN LINE OF TELEGRAPH AVENUE WITH THE NORTHERN LINE OF APGAR STREET, AS SAID AVENUE AND STREET ARE SHOWN ON THE "MAP OF THE LUNING TRACT NO. 2, OAKLAND, CALIF., FILED FEBRUARY 19, 1907, MAP BOOK 22,

PAGE 37, ALAMEDA COUNTY RECORDS; THENCE NORTHERLY ALONG SAID LINE OF TELEGRAPH AVENUE, 134.95 FEET TO THE SOUTHERN LINE OF LOT 3, BLOCK 2071, MAP OF THE ESTATE OF JOHN EVOY IN PLOT 36', FILED AUGUST 12, 1886, MAP BOOK 11, PAGE 26, ALAMEDA COUNTY RECORDS; THENCE WESTERLY ALONG THE LAST NAMED LINE, 100.15 FEET, MORE OR LESS, TO THE SOUTHWESTERN CORNER OF SAID LOT 3: THENCE SOUTHERLY PARALLEL WITH SAID LINE OF TELEGRAPH AVENUE, 139.05 FEET TO SAID NORTHERN LINE OF APGAR STREET: THENCE EASTERLY, ALONG THE LAST NAMED LINE, 100 FEET TO THE POINT OF BEGINNING.

APN: 012-0968-003-01

PARCEL FORTY-FIVE:

LOT 2 IN BLOCK 2080 AS SAID LOT AND BLOCK ARE SHOWN ON THE MAP ENTITLED "MAP OF THE ESTATE OF JOHN EVOY IN PLOT 38 SUBDIVIDED APRIL, 1886," FILED AUGUST 12, 1886 IN BOOK 11 OF MAPS, AT PAGE 28 IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

COMMON KNOWN AS 3917-3919-3921 TELEGRAPH AVENUE, OAKLAND, CALIFORNIA.

APN: 12-969-2

PARCEL FORTY-SIX:

THE NORTHEASTERN 25.00 FEET OF LOT 3 IN BLOCK 2080 AS SAID LOT AND BLOCK ARE SHOWN ON THE "MAP OF THE ESTATE OF JOHN EVOY IN PLOT 36", ETC., FILED AUGUST 12, 1886, IN BOOK 11, AT PAGE 28, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

COMMONLY KNOWN AS 3915 TELEGRAPH AVENUE, OAKLAND, CALIFORNIA.

APN: 12-969-3

PARCEL FORTY-SEVEN:

LOT 4 BLOCK 2080 "MAP OF THE ESTATE OF JOHN EVOY IN PLOT 36, SUBDIVIDED APRIL 1886, W.F. BOARDMAN SURVEYOR", FILED IN AUGUST 12, 1886 MAP BOOK 11; PAGE 28, ALAMEDA COUNTY RECORDS.

APN: 12-969-4

PARCEL FORTY-EIGHT:

THE SOUTHWESTERN 25 FEET, FRONT AND REAR MEASUREMENTS OF LOT 3, BLOCK 2080, AS SAID LOT AND BLOCK ARE SHOWN ON THE "MAP OF THE ESTATE OF JOHN EVOY IN PLOT 36" ETC., FILED AUGUST 12, 1886, IN BOOK 11 OF MAPS, PAGE 28, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY.

APN: 012-0969-053-2

PARCEL FORTY-NINE:

AN EASEMENT FOR INGRESS AND EGRESS AS CONTAINED IN THAT CERTAIN EASEMENT AGREEMENT DATED DECEMBER 5, 1989, AND RECORDED DECEMBER 14, 1989 AS INSTRUMENT NO. 89336642 WHICH WAS CLARIFIED AND CORRECTED IN THAT CERTAIN AMENDMENT TO

EASEMENT AGREEMENT DATED JULY 11, 2001 RECORDED CONCURRENTLY HEREWITH.

PARCEL FIFTY:

A PORTION OF APGAR STREET AS SHOWN UPON THE MAP OF THE LUNING TRACT, FILED FOR RECORD OCTOBER 5, 1905 IN BOOK 20 OF MAPS, PAGE 76, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE INTERSECTION OF THE MOST WESTERLY LINE OF TELEGRAPH AVENUE AND THE MOST NORTHERLY LINE OF APGAR STREET AS SHOWN UPON SAID MAP OF SAID LUNING TRACT; THENCE CONTINUING IN A WESTERLY DIRECTION ALONG SAID MOST NORTHERLY LINE OF APGAR STREET AS SHOWN ON SAID MAP TO A POINT ON THE MOST EASTERLY LINE OF THE GROVE SHAFTNER FREEWAY; THENCE, SOUTHERLY 60.03 FEET MORE OR LESS ALONG THE EASTERLY LINE OF SAID GROVE SHAFTNER FREEWAY TO A POINT ON THE MOST SOUTHERLY LINE OF SAID APGAR STREET, SAID POINT BEING ON THE NORTHERLY LINE OF LOT 10 OF SAID LUNING TRACT; THENCE ALONG SAID MOST SOUTHERLY LINE OF APGAR STREET, SAID LINE ALSO BEING THE NORTHERLY LINE OF LOTS 10,9,8,7,6,5,4 AND 3 OF SAID LUNING TRACT EASTERLY TO THE NORTHEAST CORNER OF SAID LOT 3 AS SHOWN UPON SAID LUNING TRACT; THENCE NORTHERLY ALONG THE WESTERLY LINE OF SAID TELEGRAPH AVENUE, 60 FEET TO THE POINT OF BEGINNING.

PARCEL FIFTY-ONE:

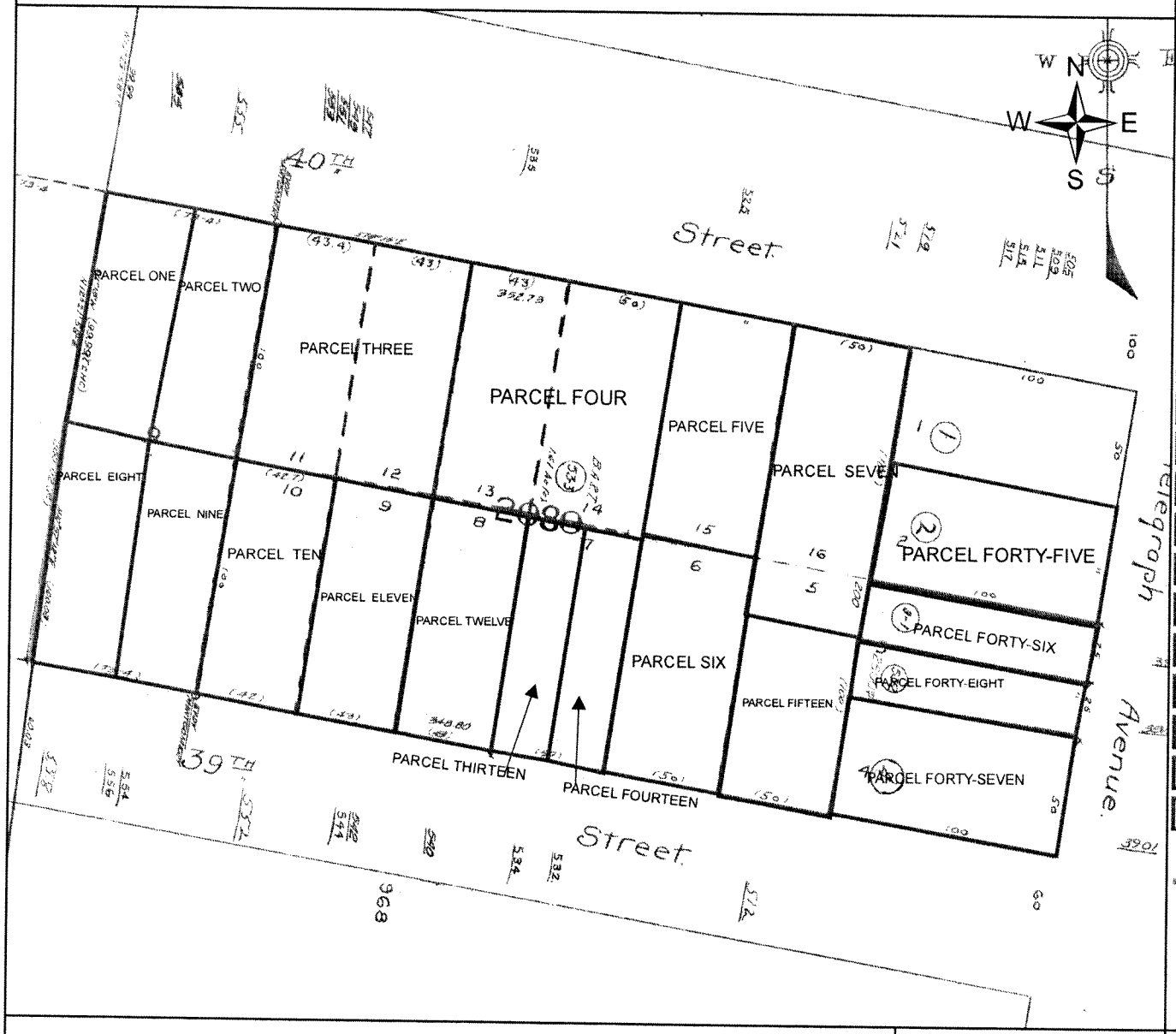
A PORTION OF 39TH STREET, ALSO KNOWN AS GEARY STREET, AS SHOWN UPON THE MAPS OF "THE ESTATE OF JOHN EVOY", FILED FOR RECORD AUGUST 12, 1886 IN BOOK 11 OF MAPS, PAGE 28, AND THE MONTGOMERY TRACT NO. 1 FILED FOR RECORD APRIL 2, 1875, IN BOOK 1 OF MAPS, PAGE 7, ALAMEDA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE MOST SOUTHEASTERLY CORNER OF LOT 4, IN BLOCK 2080, SAID POINT ALSO BEING THE INTERSECTION OF THE SOUTHERLY LINE OF 39TH STREET ALSO KNOWN AS GEARY STREET AND THE WESTERLY LINE OF TELEGRAPH AVENUE, AS SHOWN UPON SAID MAP OF THE "ESTATE OF JOHN EVOY", THENCE FROM SAID POINT OF BEGINNING WESTERLY ALONG THE NORTHERLY LINE OF 39TH STREET, ALSO KNOWN AS GEARY STREET, SAID LINE ALSO BEING THE MOST SOUTHERLY LINE OF SAID LOT 4 AND LOTS 5,6,7,8,9, AND 10 IN BLOCK 2080, OF SAID MAP OF THE ESTATE OF JOHN EVOY AND THE SOUTHERLY LINE OF LOT 9 OF SAID MONTGOMERY TRACT NO.1, TO A POINT ON THE EASTERLY LINE OF THE GROVE SHAFTNER FREEWAY, SAID POINT ALSO BEING THE SOUTHWESTERLY CORNER OF LOT 9, AS SHOWN UPON THE MAP OF SAID MONTGOMERY TRACT; THENCE, SOUTHERLY ALONG SAID EASTERLY LINE OF SAID GROVE SHAFTNER FREEWAY, 60 FEET MORE OR LESS, TO THE MOST SOUTHERLY LINE OF SAID 39TH STREET, ALSO KNOWN AS GEARY STREET; THENCE ALONG SAID SOUTHERLY LINE IN AN EASTERLY DIRECTION TO THE MOST NORTHWESTERLY CORNER OF LOT 9 IN BLOCK 2071, AS SHOWN UPON SAID MAP OF THE ESTATE OF JOHN EVOY; THENCE CONTINUING IN AN EASTERLY DIRECTION ALONG THE SOUTHERLY LINE OF 39TH STREET, ALSO KNOWN AS GEARY STREET, SAID LINE ALSO BEING THE NORTHERLY BOUNDARY LINES OF LOTS 9,8,7,6,5,4 AND 1 OF BLOCK 2071 OF SAID MAP OF THE ESTATE OF JOHN EVOY TO A POINT ON THE NORTHEASTERLY CORNER OF SAID LOT 1 IN BLOCK 2071, SAID POINT ALSO BEING THE INTERSECTION OF THE WESTERLY LINE OF TELEGRAPH AVENUE AND THE SOUTHERLY LINE OF 39TH STREET, ALSO KNOWN AS GEARY STREET; THENCE NORTHERLY 60 FEET ALONG THE WESTERLY LINE OF TELEGRAPH AVENUE MORE OR LESS TO THE POINT OF BEGINNING.

First American Title Company

Reference No.: 2827912

County: Alameda



Plotted Easements

Legend

- PARCEL ONE
- PARCEL TWO
- PARCEL THREE
- PARCEL FOUR
- PARCEL FIVE
- PARCEL SIX
- PARCEL SEVEN
- PARCEL EIGHT
- PARCEL NINE
- PARCEL TEN
- PARCEL ELEVEN
- PARCEL TWELVE
- PARCEL THIRTEEN
- PARCEL FOURTEEN
- PARCEL FIFTEEN
- PARCEL FORTY-FIVE
- PARCEL FORTY-SIX
- PARCEL FORTY-SEVEN
- PARCEL FORTY-EIGHT

04/04/1968 # BA36109 Bk2156 Pg152 (Abutter's Rights)

Tax ID: Please refer Prelim for the List of APNs

Short Legal: A Portion of County of Alameda

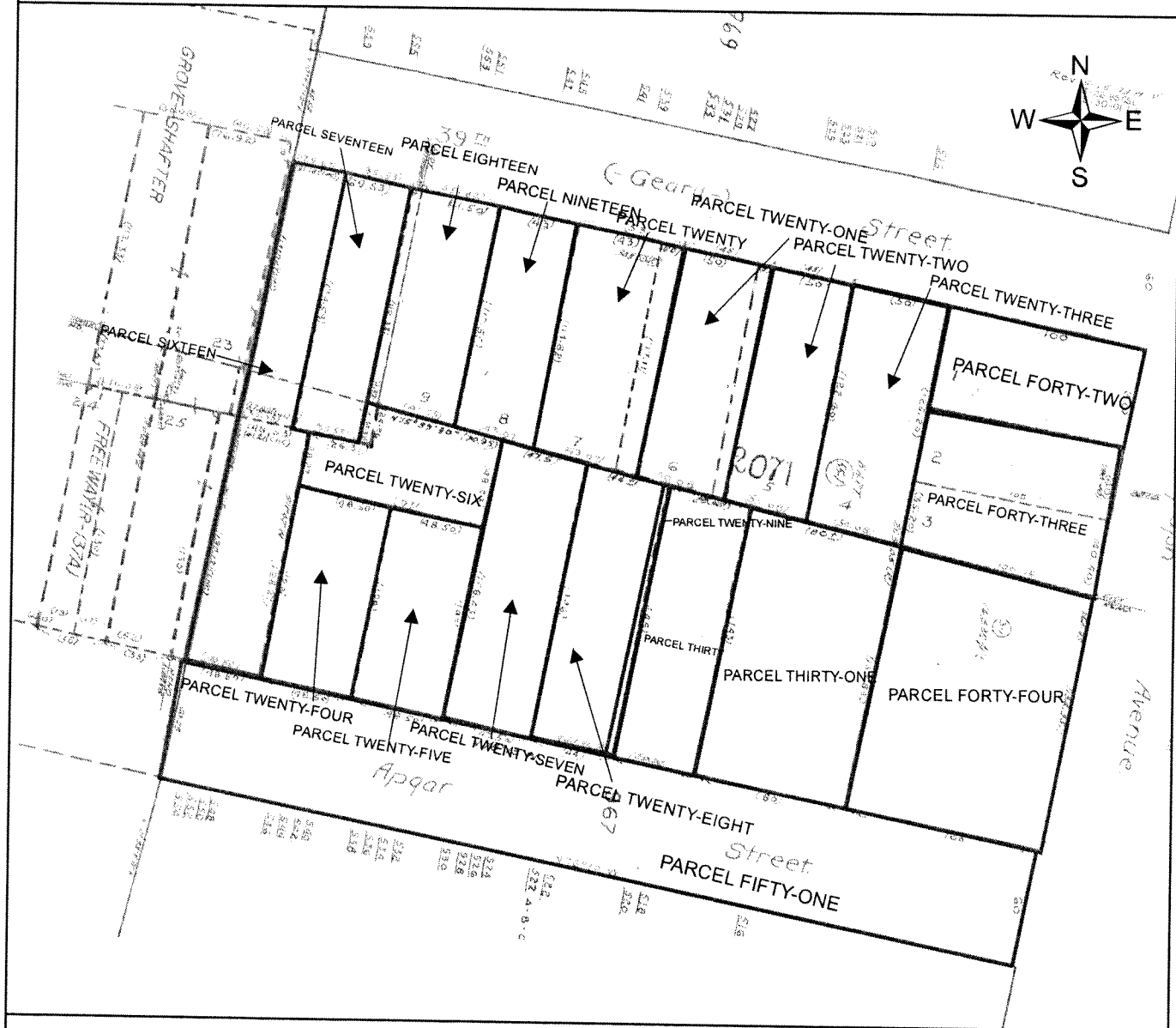
Map Not To Scale

This map may or may not be a survey of the land depicted hereon. You should not rely upon it for any purpose other than orientation to the general location of the parcel or parcels depicted. First American Title expressly disclaims any liability for alleged loss or damage which may result from reliance upon this map.

First American Title Company

Reference No.: 2827912

County: Alameda



Plotted Easements

Legend

- PARCEL SIXTEEN
- PARCEL SEVENTEEN
- PARCEL EIGHTEEN
- PARCEL NINETEEN
- PARCEL TWENTY
- PARCEL TWENTY-ONE
- PARCEL TWENTY-TWO
- PARCEL TWENTY-THREE
- PARCEL TWENTY-FOUR
- PARCEL TWENTY-FIVE
- PARCEL TWENTY SIX
- PARCEL TWENTY SEVEN
- PARCEL TWENTY EIGHT
- PARCEL TWENTY NINE
- PARCEL THIRTY
- PARCEL THIRTY ONE
- PARCEL FORTY-TWO
- PARCEL FORTY-THREE
- PARCEL FORTY-FOUR
- PARCEL FIFTY-ONE

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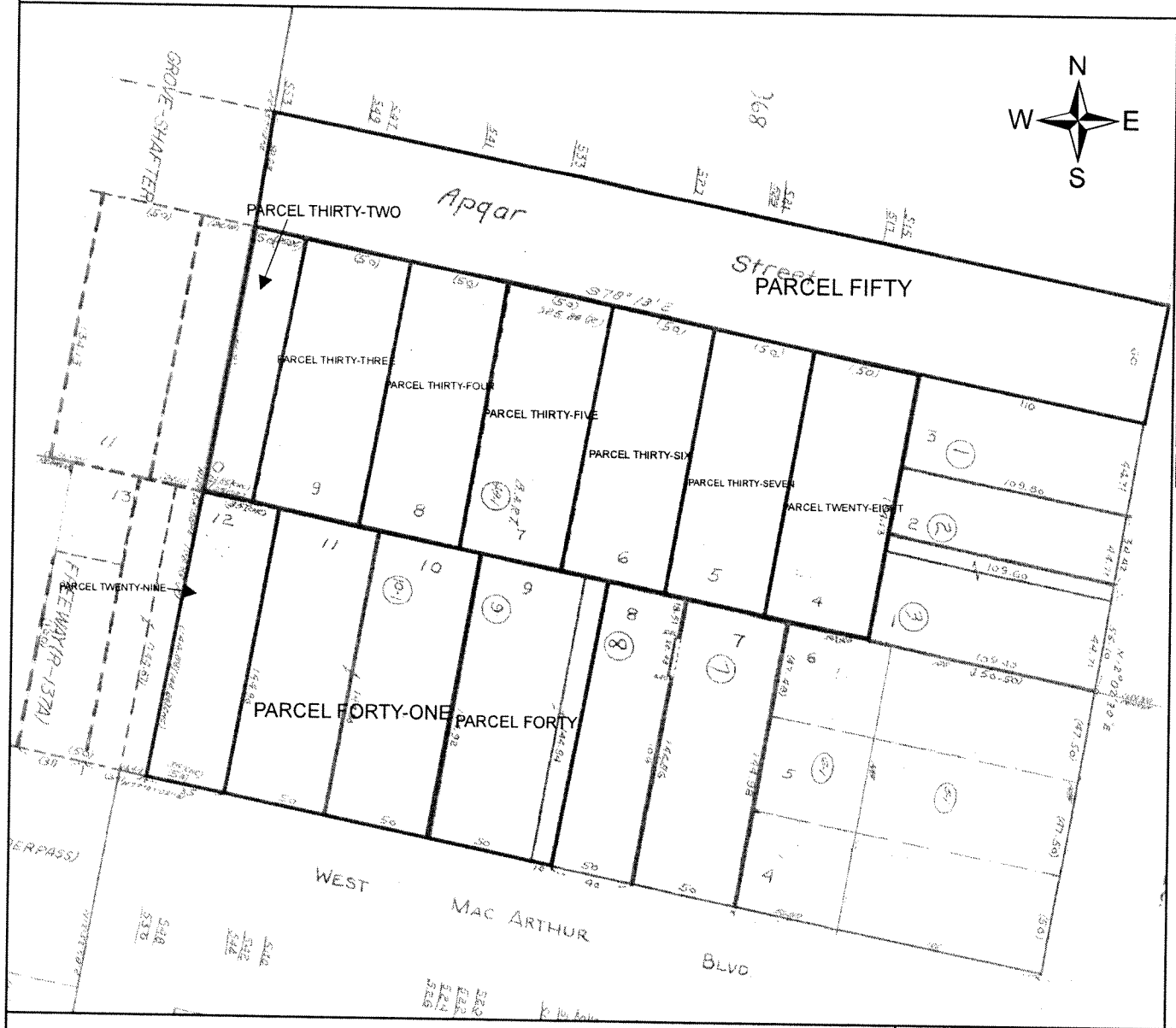

Plotted Easements

Legend

- PARCEL THIRTY-TWO
- PARCEL THIRTY-THREE
- PARCEL THIRTY-FOUR
- PARCEL THIRTY-FIVE
- PARCEL THIRTY-SIX
- PARCEL THIRTY-SEVEN
- PARCEL THIRTY-EIGHT
- PARCEL THIRTY-NINE
- PARCEL FORTY
- PARCEL FORTY-ONE
- PARCEL FIFTY

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EXHIBIT B
(MacArthur Transit Village)

Project Schedule

BACKGROUND DATES

A.	Discretionary Approvals for Entitlement	July 2008
B.	Development Agreement and OPA Executed and Approved by City/Agency	July 21, 2009 ("Adoption Date")

1. HORIZONTAL DEVELOPER

Phase 1

		REQUIRED TIME FOR PERFORMANCE *	ESTIMATED CALENDAR DATE **
i.	Submit application for final development plan approvals for Phase I	1 year after Adoption Date	July 2010
ii.	Anticipated Approval Date of FDP	1 year after submittal of Phase I FDP	July 2011
iii.	Commence construction of Phase I	1 year after FDP approval	July 2012
iv.	Complete construction of Phase I	2 years after commencement of construction	July 2014

2. BELOW MARKET RATE VERTICAL HOUSING DEVELOPER

PHASE 2

i.	Submit applications for final development plan for Phase II	3 years after Adoption Date	July 2012
ii.	Anticipated Approval Date of Phase II FDP	1 year after submittal of Phase II FDP	July 2013
iii.	Commence construction of Phase II	1 year after FDP Approval	July 2014
iv.	Complete construction of Phase II	2 years after commencement of construction	July 2016

3. MARKET RATE VERTICAL DEVELOPER

PHASE 3

i.	Submit application for final development plan approvals for Phase III	3 years after Adoption Date (subject to one year extension)	July 2012
ii.	Anticipated Approval Date of Phase III FDP	1 year after submittal of Phase III FDP	July 2013
iii.	Commence construction of Phase III	1 year after FDP Approval	July 2014
iv.	Complete construction of Phase III	2 years after commencement of construction	July 2016

PHASE 4

i.	Submit application for final development plan approvals for Phase IV	8 years after Adoption Date	July 2017
ii.	Anticipated Approval Date of Phase IV FDP	1 year after submittal of Phase IV FDP	July 2018
iii.	Commence construction of Phase IV	1 year after FDP Approval	July 2019
iv.	Complete construction of Phase IV	2 years after commencement of construction	July 2021

PHASE 5

i.	Submit application for final development plan approvals for Phase V	10 years after Adoption Date	July 2019
ii.	Anticipated Approval Date of Phase V FDP	1 year after submittal of Phase V FDP	July 2020
iii.	Commence construction of Phase V	1 year after FDP Approval	July 2021
iv.	Complete construction of Phase V	2 years after commencement of construction	July 2023

* The times for performance set forth in this Exhibit B are subject to adjustment as provided in Section 6.9 of the OPA. In the event of any conflict between this Exhibit and the text of the OPA, the text of the OPA shall be controlling.

** These estimated calendar dates are for purposes of illustration only and shall not be construed as deadlines or outside dates

EXHIBIT C
(MacArthur Transit Village)

Preliminary Project Plan

(*attached*)

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

Mac Arthur Transit Village

June 4, 2008

Preliminary Development Plan/ Planning Commission

Development Information

Description	Existing	New
Total Lot Area (acres)	7.76	7.76
Net Total Lot Area without Streets (sf)	NA	5.66
Net Total Lot Area with BART Plaza (sf)	NA	8.2
Total Building Footprint Area (sf)	32,500	220,800
Total Floor Area Living Space (sf)	NA	750,000
Total Floor Area Resid. Parking (sf)	NA	330,000
Total Floor Area BART Parking (sf)	NA	170,000
Building Height	25' (2 stories)	50'-85' (up to 6 stories)*
Number of Dwelling Units	NA	624
Number of Live-Work Units	NA	8
Density (units per gross acre)	NA	80
Density (units per net acre)	NA	110
Number of Parking Spaces	600	1024 **
Total Building Open Space (sf)	NA	54,000 (87sf /unit)
Total Site Open Space (sf)		72,978
Total Commercial/ Retail (sf)	NA	35,500
Total Live/Work Space (sf)	NA	7,000
Grading - Proposed Cut (cy)	NA	31,500
Grading - Proposed Fill (cy)	NA	11,170
Grading - Net Export (cy)	NA	20,330

* Height not to exceed 6 stories and not to exceed an average of 75' for the entire development. Where appropriate height to reach as high as 85'. ** including on-street parking 44 stalls

Development Detail

Building A	Unit Count	Area (sf)	Parking	Net Site Area***
Residential	213 units		213	
Live Work Units		3,000 (3 units)	3	
Retail		20,500	26	
TOTAL	213 units	23,500	242	1.79 ac.

Building B	Unit Count	Area (sf)	Parking	Net Site Area***
Residential	132 units		132	
Live Work Units		1,500 (2 units)	2	
Retail		3,500		
TOTAL	132 units	5,000	134	1.03 ac.

Building C	Unit Count	Area (sf)	Parking	Net Site Area***
Residential	189 units		189	
Community/Child Care		5,000		
Live/Work Space		2,500 (3 units)		
Retail		6,500		
TOTAL	189 units	14,000	189	1.35 ac.

Building D	Unit Count	Area (sf)	Parking	Net Site Area***
Residential	90 units	NA		
TOTAL	90 units		91	0.91 ac.

Building E	Unit Count	Area (sf)	Parking	Net Site Area***
BART Parking				
Commercial/Retail		5,000		
TOTAL		5,000	324	0.58 ac.

*** Area of building pad excluding streets

T-01 Title Page
T-02 Neighborhood Plan
T-03 Context Photographs
T-04 Site Photographs

C-00 Existing Conditions Plan
C-01 Preliminary Grading Plan
C-02 Preliminary Utility Plan

A-0.01 Pedestrian & Bike Circulation
A-0.02 Vehicular Circulation

A-1.01 Site Plan/ Street Level Plan
A-1.0A Garage Level Plan
A-1.02 Typical Upper Level Plan
A-1.0H Building Height Diagram

A-3.01a Site Sections
A-3.02b Site Sections

A-3.02 Edges: Telegraph Avenue
A-3.03 Edges: 40th Street
A-3.04 Edges: West MacArthur Boulevard
A-3.05 Edges: BART Plaza
A-3.06 Edges: Frontage Road/ Hwy 24

A-3.07a Internal Residential Street
A-3.07b Internal Residential Street
A-3.08a Village Drive
A-3.08b Village Drive

A-6.01 Perspective/ Village Drive
A-6.02 Perspective/ BART Plaza
A-6.03 Perspective/ Frontage Road
A-6.04 Perspective/ Internal Street

L-01 Landscape Master Plan
L-02 Concepts BART Plaza/ Village Dr.
L-03 Concepts Internal Street
L-04 Street Lighting Concept
L-05 Existing Tree Inventory
L-06 Planting/ Lighting Concept

Appendix: BART Plaza Concept

Developer:
MacArthur Transit Community Partners, LLC
Contact: Joe McCarthy, (510) 273-2009

Architect:
Mc Larand Vasquez Emsiek & Partners, Inc.
350 Frank Ogawa Plaza, Suite 100
Oakland, CA 94612
Contact: Chek F.Tang, (510) 267 3188

Architect for Affordable Component:
Van Meter Williams Pollack, LLP
18 De Boom Street
San Francisco, CA 94107
Contact: Fred Pollack, (415)974 5352

Landscape Architect:
PGA Design, Inc
444 17th Street
Oakland, CA 94612
Contact: Chris Kent, (510) 465 1284

Urban Landscape and Site Architecture
Hood Design
3016 Filbert Street, Studio 2
Oakland, CA 94608
Contact: Walter Hood, (510) 595-0688

Civil Engineer:
Sandis
1721 Broadway, Suite 201
Oakland, CA 94612
Contact: Michael A. Kuykendall, (510) 873-8866

Traffic Consultant:
Dowling Associates, Inc.
180 Grand Avenue, Suite 250
Oakland, CA 94612
Contact: Mark Bowman (510) 839-1742

T-01 Title Page

MVL & PARTNERS

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

T- 02
Neighborhood Plan

MacArthur Transit Community Partners, LLC

0 100 200 300 400

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

Frontage Rd. near MacArthur Blv.,looking North.

Northwest corner of BART Parking lot, with BART Plaza in background.

Frontage Rd. with Shuttle Stop.

Frontage Rd. near BART Plaza.

BART Plaza with Fare Gates

MacArthur Blv. near Frontage Rd., looking East.

Underpass of Hwy 24 on MacArthur Blv.

MacArthur Blv. looking South.

MacArthur Blv. near Frontage Rd. with Motel.

Telegraph Ave. corner with 40th St.

Telegraph Ave. looking North.

Apgar St. at Telegraph Ave.

Redwood trees on Telegraph Ave.

Beebe Memorial Cathedral on Telegraph Ave.

West Telegraph Ave. between Apgar St. and MacArthur Blv.

40th St. looking East.

40th St. crosswalk near BART Plaza, looking North.

40th St. looking West from Telegraph Ave.

40th St. underpass/BART Plaza.

40th St. looking West.

T -03
Photographs

MVL & PARTNERS

View A: Looking North

View B: Looking South-East

View C: Looking West

View D: Frontage Road and Highway 24 towards 40th St.

View D: Frontage Road and Highway 24 towards MacArthru Blv.

View F: Looking West

View G: Corner of Frontage Rd. and 40th St. by Highway 24 underpass.

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary
Development Plan/
Planning Commission

T -04
Site Photographs

MVL & PARTNERS

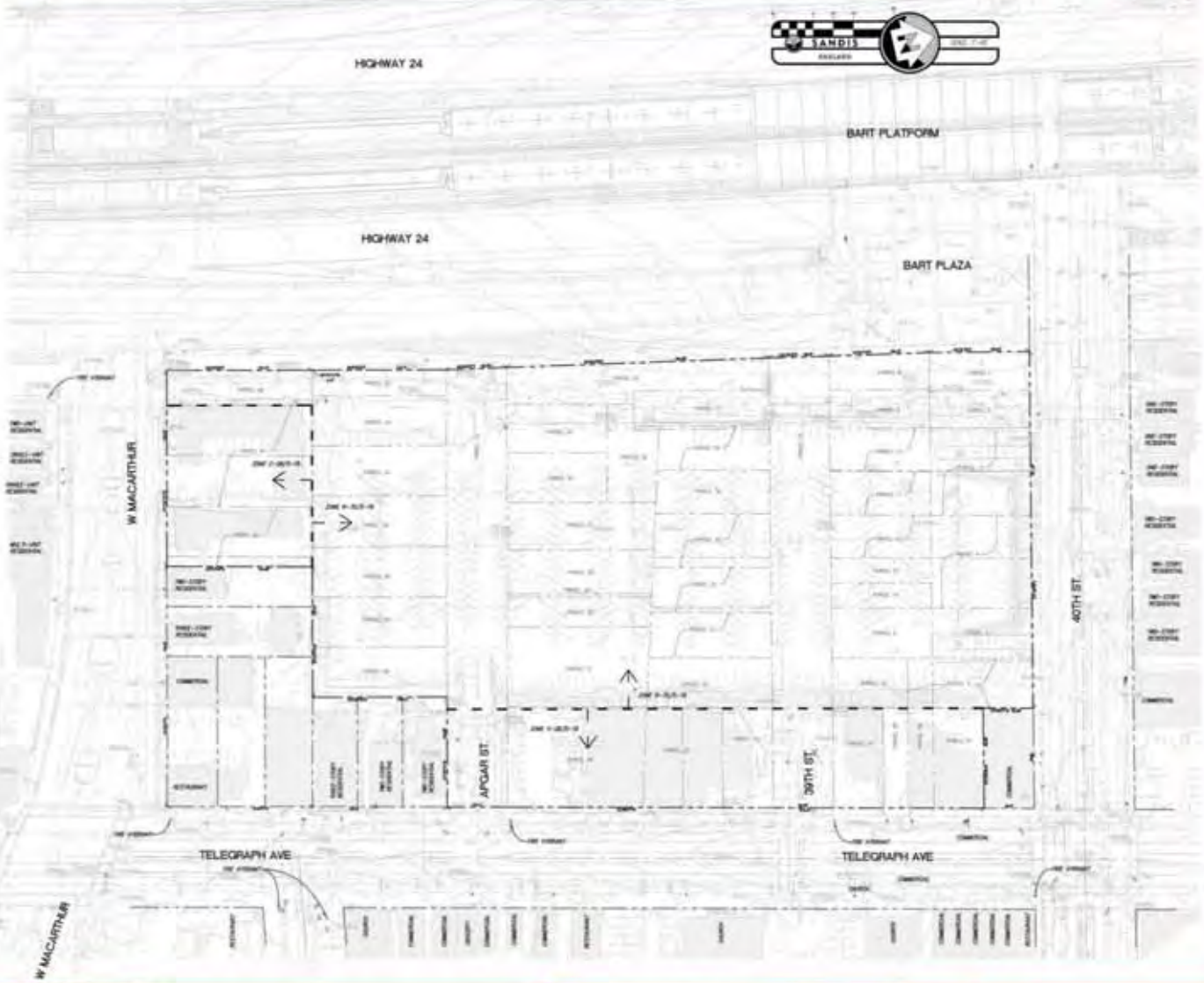
MacArthur BART Transit Village

OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

LEGEND



C-00 Existing Conditions Plan

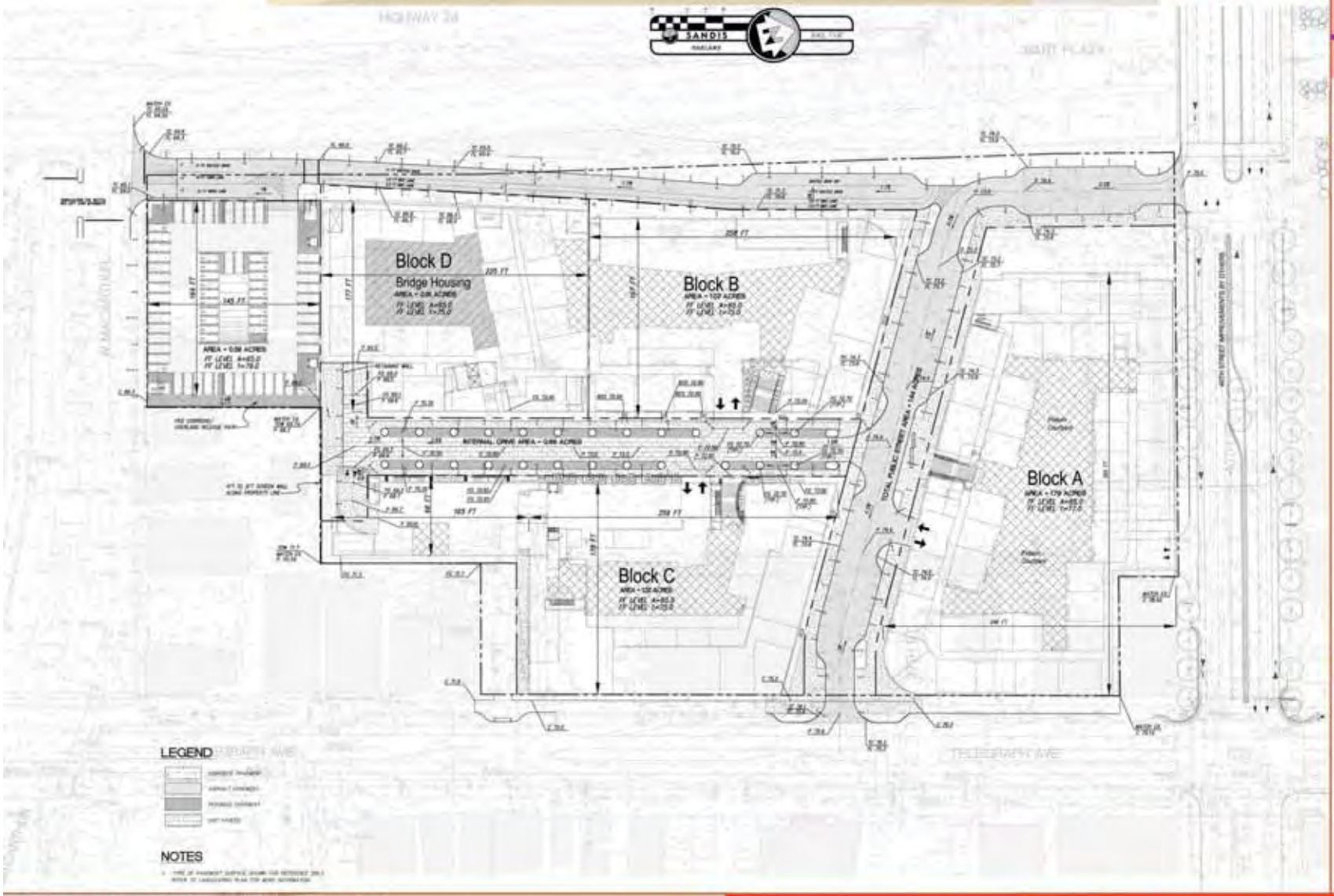
M&L PARTNERS

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission



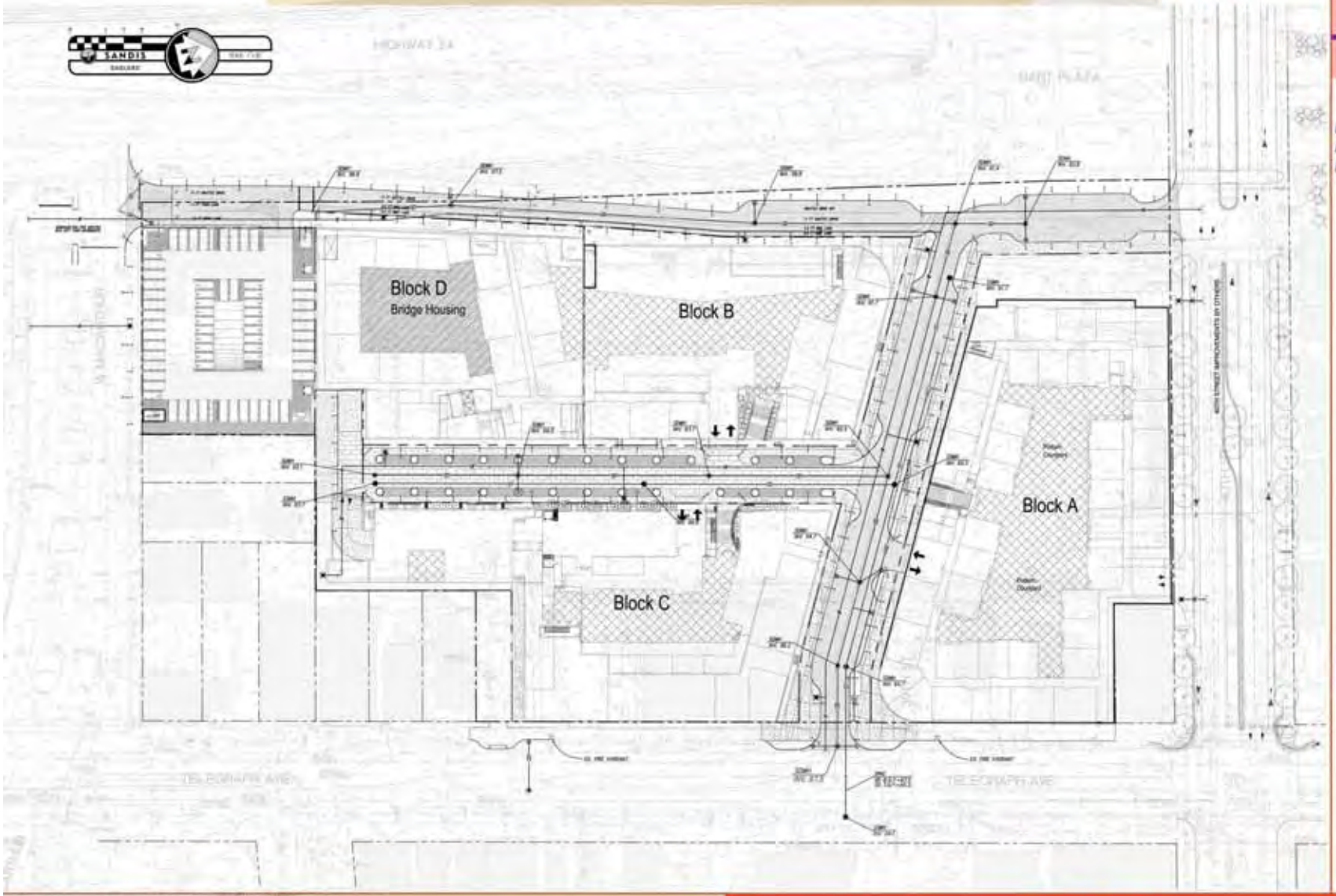
C-01 Preliminary Grading Plan

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission



C-02 Preliminary Utility Plan

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

A-0.01 Pedestrian & Bike Circulation

MVL & PARTNERS

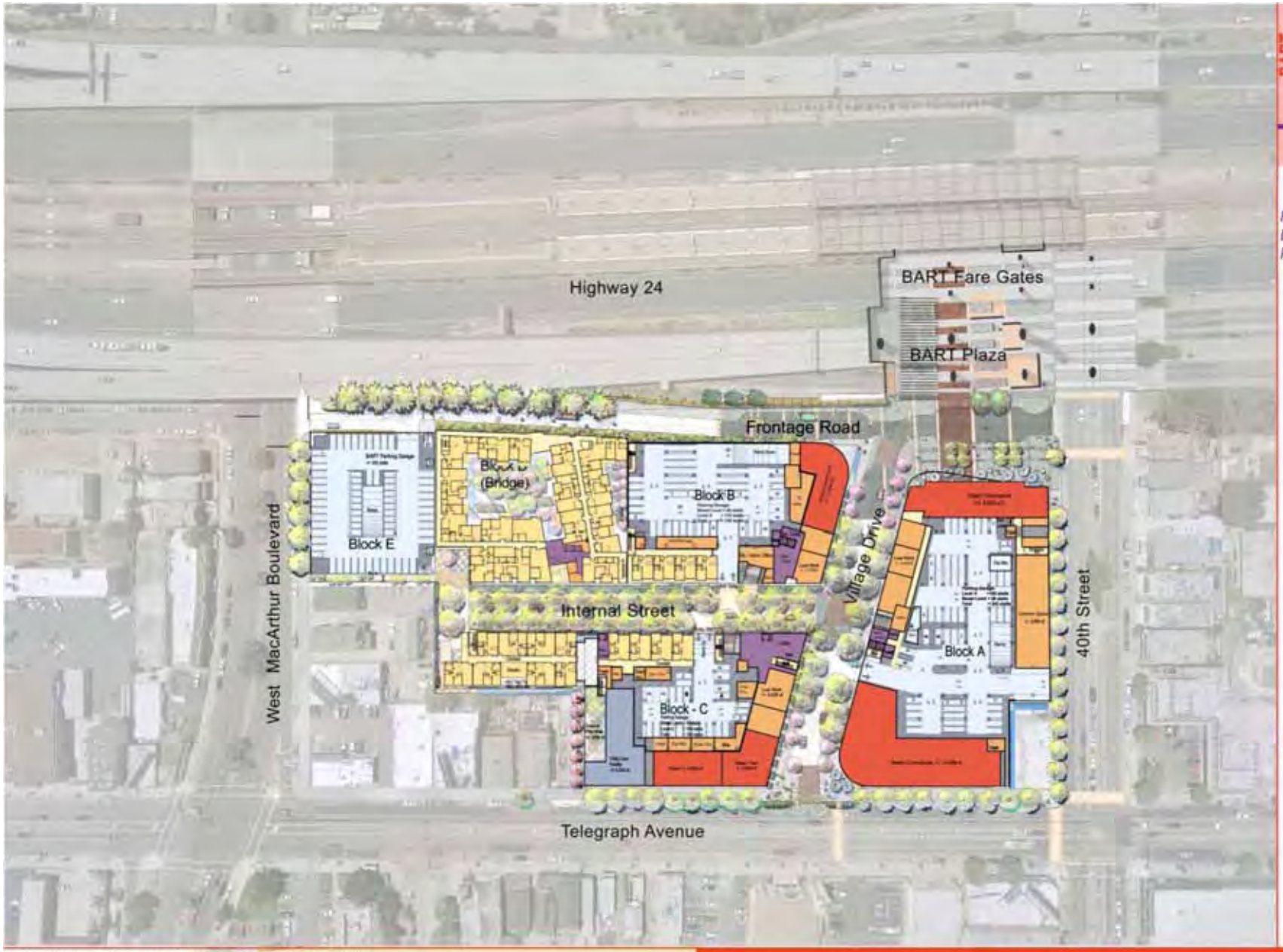
MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

A-0.02
Vehicular Circulation

MVL & PARTNERS



BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary
Development Plan/
Planning Commission

A-1.01
Street Level

MacArthur Transit Community Partners, LLC

0 40 80 120 160

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

A-1.0A Garage Level Plan

M&L PARTNERS

MacArthur Transit Community Partners, LLC

0 40 80 120 160

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

A-1.02 Typical Upper Level Plan

M&L PARTNERS

MacArthur Transit Community Partners, LLC

0 40 80 120 160

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

+/- 50'
60'
65'
70'
75'
80'
85'

A-1.0H Building Height Diagram

MVL & PARTNERS

Scale: 1"= 40'

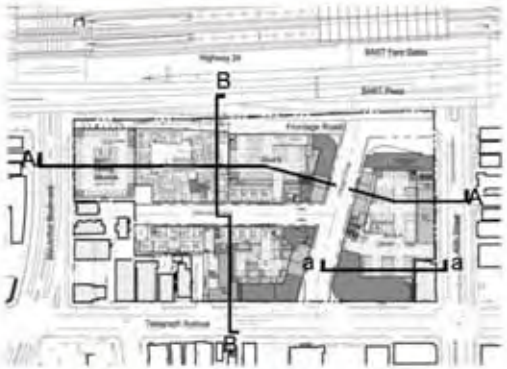
0 40 80 120 160

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary
Development Plan/
Planning Commission



Key Plan

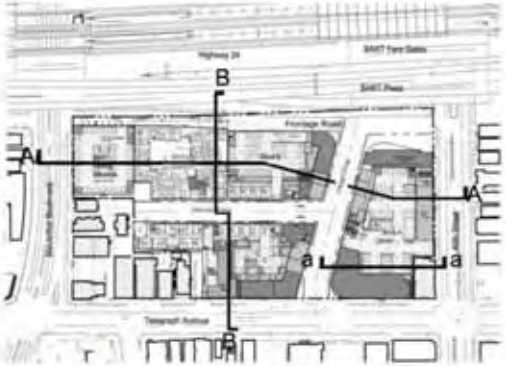
A-3.01a
Building Sections

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary
Development Plan/
Planning Commission



Key Plan

A-3.01b
Building Sections

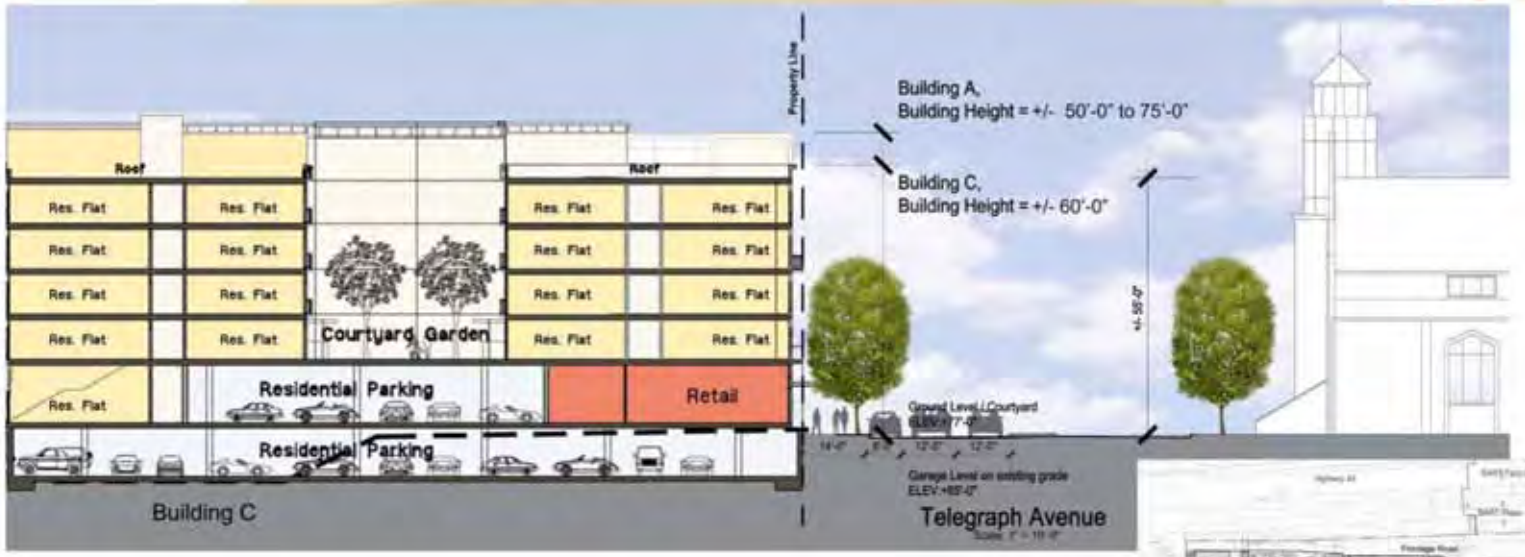
ML&P PARTNERS

0 30 60 90 120

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission



A-3.02
Edges: Telegraph Ave.

MVL & PARTNERS

0 20 40 80 120

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

Building A,
Building Height +/- 60'-0" to 75'-0"

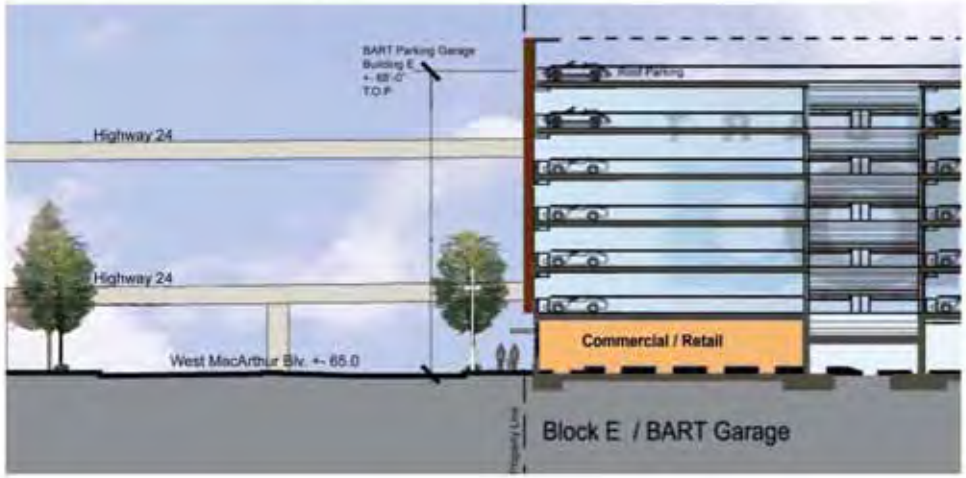
A-3.03
Edges: 40th St.

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission



A-3.04
Edges: West MacArthur Blvd

MVL & PARTNERS

MacArthur Transit Community Partners, LLC

0 20 40 80 120

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

A-3.05
Edges: BART Plaza

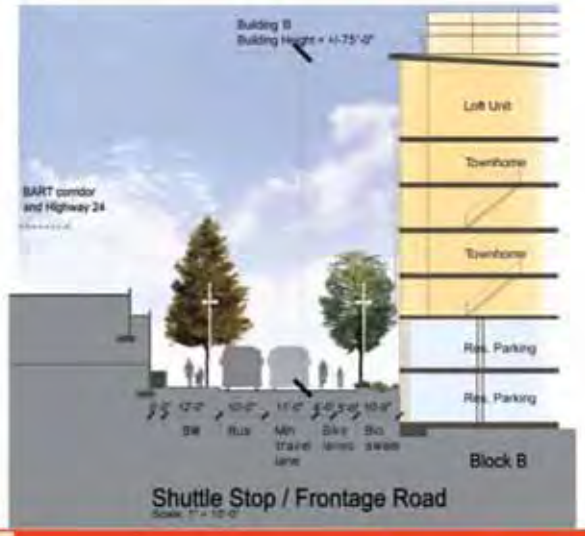
MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

Highway 24 Elevation

Frontage Road with BART Parking Garage Access seen from West MacArthur Boulevard



Shuttle Stop / Frontage Road

A-3.06
Edges: Frontage Road / Hwy 24

MVL & PARTNERS

MacArthur Transit Community Partners, LLC

0 20 40 80 120

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

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A-3.07a
Internal Street

MVL & PARTNERS

0 20 40 80 100

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary
Development Plan/
Planning Commission

Internal Residential Street Elevation

Internal Street Elevation

A-3.07b
Internal Street

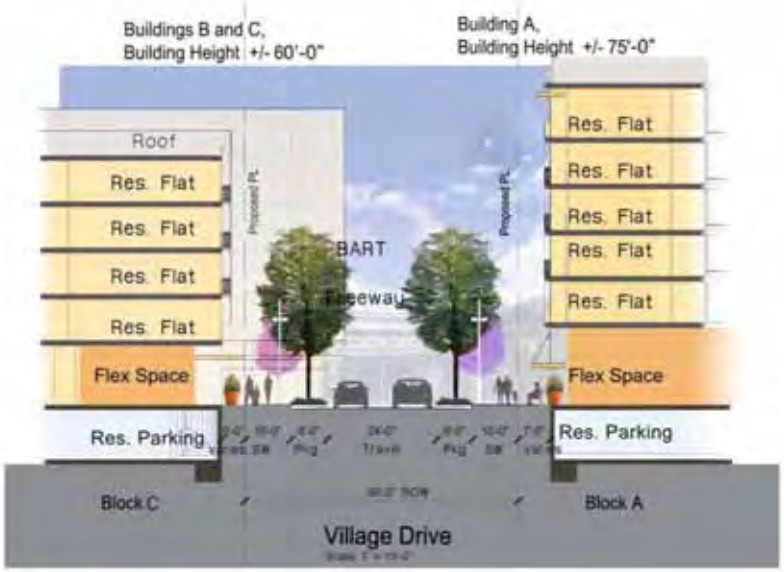
MVL & PARTNERS

0 20 40 80 100

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission



A-3.08a
Village Drive

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary
Development Plan/
Planning Commission

Village Drive Elevation

Village Drive Elevation

A-3.08b
Village Drive

MVL & PARTNERS

MacArthur Transit Community Partners, LLC

0 20 40 80 100

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

Village Drive viewed from Telegraph Avenue

A-6.01 Perspective/ Village Drive

MVL & PARTNERS

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission workshop

View of BART Plaza

A-6.02 Perspective/ BART Plaza

MVL & PARTNERS

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

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Preliminary Development Plan/ Planning Commission

A-6.03 Perspective/ Frontage Road

View of Frontage Road from MacArthur Boulevard

MVL & PARTNERS

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

View of Internal Street Looking North

A-6.04 Perspective/ Internal Street

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

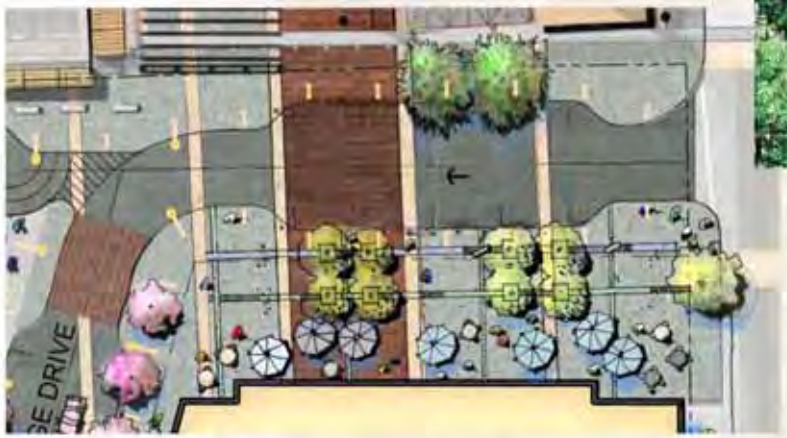
L-01 Landscape Master Plan

ML&P PARTNERS

0 40 80 120 160

PGA design

BART PLAZA FACING EAST



Transit Plaza
urban
welcoming
safe
inviting planting

Village Drive
urban
commercial
tree-line
pedestrian friendly
engaging

MacArthur

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

L-02 Landscape Concept BART Plaza/ Village Dr.

MVL & PARTNERS

PGA design

MacArthur Transit Community Partners, LLC

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

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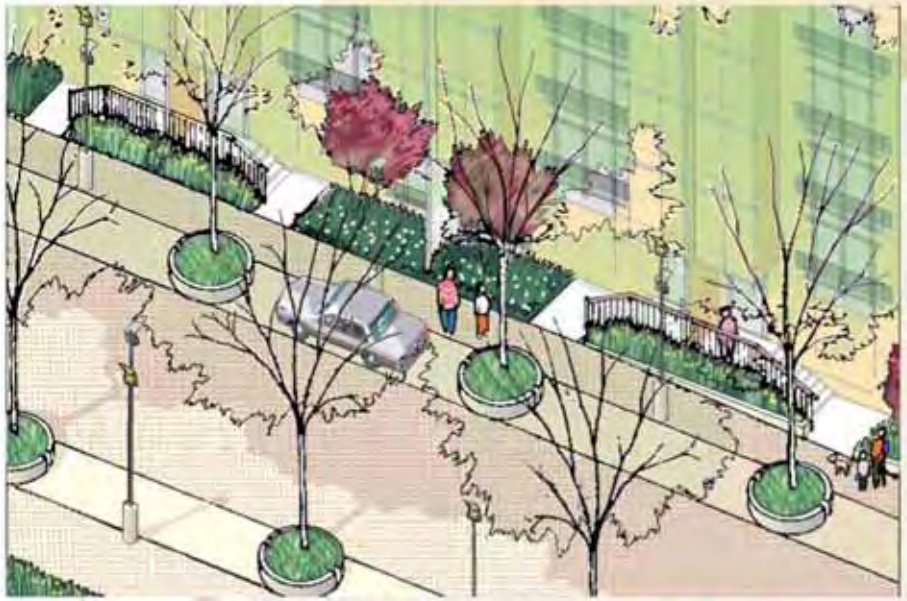


INTERNAL STREET
FACING EAST

Internal Street

pedestrian scale
friendly/ welcoming
warm, residential

INTERNAL STREET PLAN VIEW

INTERNAL STREET
FACING WEST

SCALE: 1" = 20'-0"

L-03
Landscape Concepts
Internal Street

MacArthur Transit Community Partners, LLC

MVE & PARTNERS

PGA design

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

L-04 Street Lighting Concept

ML&P PARTNERS

MacArthur Transit Community Partners, LLC

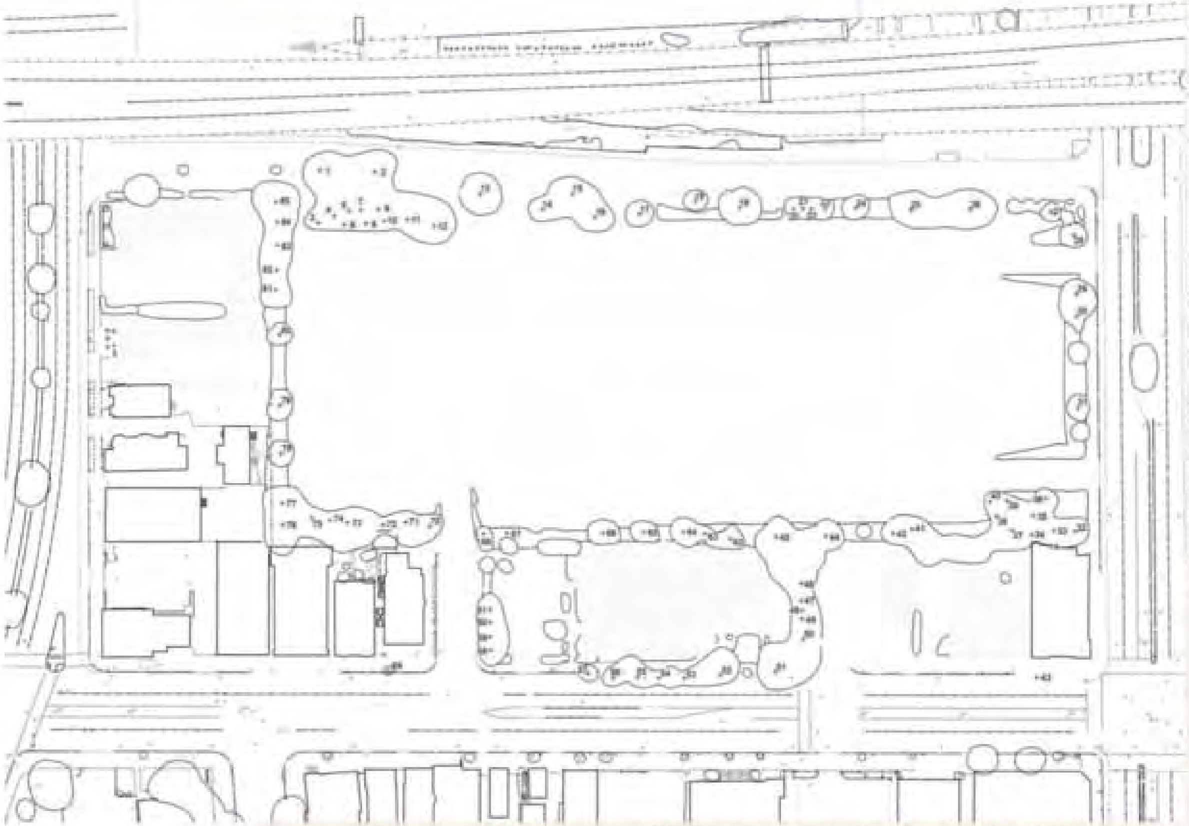
PGA design™

0 40 80 120 160

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission



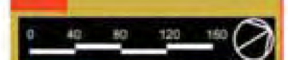
Tree Preservation Ordinance

*Tree inventory based upon field visit by PGAdesign on 9.27.07.

L-05 Existing Tree Inventory

M&E PARTNERS

PGA design



Preliminary Plant List

Latin Name	Common Name
PERENNIALS	
Agapanthus orientalis	Lily-of-the-Nile
Dietes vegeta	Fortnight Lily
Hemerocallis spp	Daylilies
Iris douglasiana	Douglas Iris
Limonium perezii	Sea Lavender
Liriope muscari	Lily Turf
GROUNDCOVER	
Cerastium tomentosum	Snow-in-Summer
Euonymus fortunei	Euonymus
Helianthemum nummularium	Sunrose
Polystichum munitum	Sword Fern
Teucrium chamaedrys	Germander
SHRUBS	
Berberis darwinii	Darwin Barberry
Buddleia davidii	Butterfly Bush
Ceanothus gloveus	Wild Lilac
Cistus salvifolius	Sageleaf Rockrose
Hebe 'Autumn Glory'	Hebe
Myrtus communis	True Myrtle
Phormium Tenax	New Zealand Flax
Pittosporum crassifolium 'Nana'	Pittosporum
Rosmar offic. 'Collingwood Ingram'	Rosemary
Salvia leucantha	Mexican Bush Sage
TREES	
Cercis occidentalis	Western Redud
Fraxinus oxycarpa 'Raywood'	Raywood Ash
Platanus racemosa	California Sycamore
Prunus cerasifera spp	Purpleleaf Plum
Pyrus calleryana 'Chanticleer'	Ornamental Pear
Sequoia sempervirens	Coast Redwood
Ulmus parvifolia	Chinese Elm
VINES	
Cissus antarctica	Kangaroo Ivy
Clytostoma callistegioides	Lavender Trumpet Vine
Jasminum polyanthum	Pink Jasmine
GRASS	
Miscanthus sinensis 'Purpurascens'	Flame Grass
Muhlenbergia rigens	Deer Grass
Pennisetum orientale	Fountain Grass

Lighting Goals

- Emphasize the pedestrian nature of the Transit Center through the use of lighting fixtures that are human-scaled, and of high quality.
- Ensure that there is adequate light levels to provide a safe environment for pedestrian, bicycle, and automobile traffic.
- Ensure a consistent streetscape character through the use of a unified family of light fixture elements.

Lighting Guidelines

- Place lighting standards near the street curb in order to provide pedestrians with a sense of security and comfort, as well as a physical barrier from cars.
- Arrange and locate light fixtures to ensure safe and consistent levels of illumination along pedestrian walkways. Provide extra lighting at intersections and transit stops.
- Use accent lighting to highlight specimen vegetation, fountains, public art, central gathering areas, and important building features.
- Shield or direct all lighting to minimize glare around residential areas.

Trees / Shrubs

Coast Redwood

California Sycamore

Wild Lilac

Ornamental / Groundcover

Deer Grass

Sword Fern

Douglas Iris

Type A lighting: Roadway Light and Secondary Pedestrian Light

Type B Lighting: Roadway Light and Secondary Pedestrian Lighting

MacArthur

BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

L-06 Planting and Lighting Concept

ML&P PARTNERS

PGA design

MacArthur BART Transit Village
OAKLAND, CALIFORNIA

June 4, 2008

Preliminary Development Plan/ Planning Commission

Site Plan
Scale: 1" = 64'

Elevation of BART Plaza
Scale: 1"=64'

Section through plaza
Scale: 1"=64'

Perspective along edge of BART Plaza

Perspective looking out of BART Plaza

Conceptual BART Plaza Design

HOOD DESIGN
URBAN LANDSCAPE AND SITE ARCHITECTURE

Conceptual BART Plaza Design is included for informational purpose only and not for City review.

MacArthur Transit Community Partners, LLC

EXHIBIT D
(MacArthur Transit Village)

Block Layout for Purposes of Phasing

EXHIBIT D

Block E
BART
Parking
Structure
Block D
Block B
Block A
Block C
SHUTTLE DRIVE
VILLAGE DRIVE
INTERNAL DRIVE
MACARTHUR BOULEVARD
40TH STREET
TELEGRAPH AVENUE

EXHIBIT E

Form of Reversionary Grant Deed

NO FEE DOCUMENT

RECORDING REQUESTED BY:

The Redevelopment Agency of the City of Oakland

WHEN RECORDED, MAIL TO:

The City of Oakland
Community and Economic Development Agency
250 Frank Ogawa Plaza, 5th Floor
Oakland, California 94612
Att'n.: MacArthur Transit Village Project Manager

The undersigned grantor(s) declare(s):
CITY TRANSFER TAX: Exempt
DOCUMENTARY TRANSFER TAX: Exempt
SURVEY MONUMENT FEE: Exempt

Computed on the consideration or value of property conveyed: OR
Computed on the consideration or value less liens or encumbrances remaining at time of sale.

MAIL TAX STATEMENTS TO:

N/A

APN:

REVERSIONARY GRANT DEED

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC hereby grants to the REDEVELOPMENT AGENCY OF THE CITY OF OAKLAND, a community redevelopment agency organized and existing under the California Community Redevelopment Law, herein called "Grantee", all of its right, title and interest in and to that real property situated in the City of Oakland, County of Alameda, State of California more particularly described in Exhibit "A" (attached hereto and incorporated by this reference), hereinafter referred to as the "Property."

This Reversionary Grant Deed is given pursuant to provisions of that Owner Participation Agreement between Grantor and Grantee, dated _____ 2009, and recorded as Series No. 2009- _____Alameda County Records, with the Alameda County Recorder, and subsequent amendments, hereinafter called the "OPA".

Dated: _____

"GRANTOR"

MACARTHUR TRANSIT COMMUNITY PARTNERS, LLC

By: _____

Its: _____

By: _____

Its: _____

(MacArthur Transit Village)

Block Layout for Purposes

EXHIBIT F

List of Environmental Assessment Reports

1) Limited Phase II Environmental Site Assessment, July 2005, Ninyo & Moore
(2) Report of Phase II Environmental Site Assessment at 3875 Telegraph Avenue, 2005, Gribi Associates
(3) Preliminary Site Assessment/Soil, Soil Gas & Groundwater Investigation Work Plan 3875 Telegraph Avenue, August 2007, West Environmental
(4) Contamination Investigation, East Bay Surgery Center, 2001, Terracon
(5) Preliminary Investigation and Evaluation Report, Former Regal Station #120, 2008, West Environmental
(6) Fourth Quarter 2004 monitoring Report, Former Shell Service Station, 2005, Cambria

EXHIBIT G
(MacArthur Transit Village)

Insurance Requirements

I. Insurance requirements during construction

The Developer shall ensure that the general contractor for the Project obtains the following insurance coverage, and maintain such coverage in full force and effect during Project construction. Before issuance of a notice to proceed for any phase of the Project, the Developer shall deliver to the Agency certificate(s) of insurance, or a binder followed within 30 days by a certificate of insurance, evidencing the required coverage.

- **COMPREHENSIVE GENERAL LIABILITY AND VEHICLE INSURANCE.**

- Minimum coverage: Bodily injury limits of $5,000,000 for each occurrence; property damage limits of $5,000,000 for each occurrence.

- Policies shall include, at a minimum, but need not be limited to, coverages for bodily injury, property damage, personal injury, broad form property damage, premises and operations, severability of interest, products and completed operations, contractual liability, independent contractors and XCU.

- **BROAD FORM PROPERTY DAMAGE (BUILDERS RISK INSURANCE).**

- Minimum coverage: 100% of replacement cost.

- Deductible: $250,000 maximum deductible per occurrence.

- Property covered: Structure and all insurable items within the Property (including landscaping and common areas).

- Perils covered: All risk, or fire and hazardous installation, vandalism and malicious mischief.

- Builders' risk installation floater for coverage of the contractor's labor, materials and equipment to be used for completion of work performed under the construction contract.

- **WORKERS' COMPENSATION.**

- Workers' Compensation as required by the California Labor Code for all persons employed in connection with this Project.

- Employer's Liability insurance with a limit of no less than $1,000,000 combined single limit per occurrence.

- **AUTOMOBILE INSURANCE (if not part of CGL).**

- Minimum coverage: Bodily injury limits of $1,000,000 for each person and $1,000,000 for each accident or occurrence; property damage liability limits of $500,000 for each accident or occurrence

II. Insurance requirements for professional services providers

The Developer shall ensure that any architect, design professional, engineer, consultant, and any other professional services provider that the Developer contracts with to perform work on the Project carries professional liability insurance for errors and omissions with a limit of no less than $1,000,000. The Agency may in its discretion waive this requirement on a case-by-case basis. Before any such professional begins work on the Project, the Developer shall deliver to the Agency certificate(s) of insurance, or a binder followed within 30 days by a certificate of insurance, evidencing the required coverage.

III. General requirements

The aforementioned insurance shall be endorsed and have all the following conditions:

- **Additional Insured:** The Developer shall ensure that the Redevelopment Agency of the City of Oakland, the City of Oakland, their respective Council members, directors, officers, agents and employees are named as additional insureds in its comprehensive commercial general liability, professional liability, and automobile liability policies. Developer shall submit to Agency the ACORD Insurance Certificate evidencing such insurance.

- **Loss Payee:** The Developer shall ensure that the Redevelopment Agency of the City of Oakland, the City of Oakland, their respective Council members, directors, officers, agents and employees are named as Loss Payee in the builders' risk insurance and property insurance. The Developer shall provide an insurance certificate as proof meeting this requirement.

- **Cancellation Notice:** 30-day prior written notice of cancellation, termination or material change in coverage.

- Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement.

- Insurer shall carry a Best Rating of B+ or greater.

In the case of the breach of any of the insurance provisions of this Agreement, the Agency may, at the Agency's option, take out and maintain at the expense of the Developer such insurance in the name of Developer as is required pursuant to this Agreement.

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office (ISO) as of the date of this Agreement.

The Developer or its general contractor shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein. The Agency reserves the right to perform an insurance audit during the course of the Project to verify compliance with requirements.

Any deductible or self-insured retentions greater than $250,000 must be declared to and approved by the Agency. At the option of the Agency, either the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the Agency, the City and their respective Council members, directors, officers, agents, employees and volunteers; or the Developer shall provide a financial guarantee satisfactory to the Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Developer may obtain all or any portion of the foregoing coverages under an OCIP or other Project policy or under any blanket coverage maintained by Developer or its contractors.

EXHIBIT H

Local/Small Local Business Enterprise Program; Local Employment Program

(*attached)*

Revised and Adopted by Oakland City Council
2003

- **Local & Small Local For Profit and Not For Profit Business Enterprise Program**
- **Certification Local & Small Local Business Enterprise (For Profit and Not For Profit)**
- **Local Employment Program**

CITY OF OAKLAND – OFFICE OF THE CITY ADMINISTRATOR
Contract Compliance & Employment Services Division
250 Frank Ogawa Plaza Suite 3341, Oakland, Ca. 94612
(510) 238-3970 – www.oaklandnet.com

11/2004

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Part I. Local and Small Local Business Enterprise Program (L/SLBE)

In order to provide economic opportunity for its residents and businesses, and stimulate economic development, the City of Oakland has developed and implemented various policies that directly impact how public funds are spent. These policies are aimed at using the power of the public purse to stimulate economic development through the support and empowerment of the local community, especially those aspects of it that have been placed at a disadvantage in the past. The City has demonstrated leadership through various cutting edge policies and is in the vanguard nationally in terms of harnessing local resources to achieve local benefits. The major programs that were created to serve these respective groups are the Local and Small Local Business Enterprise (L/SLBE) Program and the Local Employment Program (LEP). Supporting and/or complementing these programs are policies regarding living wage, local construction employment referral program, prevailing wage, disadvantaged business enterprises, certifications, apprenticeship, and equal benefits for domestic partners.

The L/SLBE program supports policies that established a twenty percent (20%) participation requirement and a minimum bid discount of two percent (2%) for meeting that requirement. In addition to bid discounts, the program provides for additional points in negotiated professional services contracts and increased points and discounts as the level of local and small local business participation increases. Specifics of the new policies are detailed under "Program Guidelines".

Intended Impacts of the L/SLBE Program

The intended impacts include:

- Increasing the number of Oakland certified businesses participating in City contracting and in development projects;
- Increase the circulation of city dollars within the Oakland community and thus stimulate a stronger economic base; and
- Promote the development of Oakland certified businesses through joint ventures, and mentor/protégé relationships.

The new policies provide economic opportunity to local residents and businesses by supporting local economic development while paying competitive prices for goods and services. At the same time, the program does not obstruct efforts to attract outside investments that are critical to the City's economic growth.

Definitions

1) **Availability** - The number of certified L/SLBE firms, by trade, ready and willing to compete for work with the City of Oakland.

2) **Business Suppliers/Prefabricators -** An individual or business entity that makes available a certain commodity for meeting demand or for purchase at a given price.

3) **City-** Reference to the City or City Council includes the Redevelopment Agency, and reference to the City Manager includes the Agency Administrator.

4) **City Financial Assistance Recipient (CFAR) -** A business or individual that receives a city subsidy for a public works project.

5) **Commercially useful function** - The business is directly responsible for providing the materials, equipment, supplies or services to the City as required by the solicitation or request for quotes, bids or proposals. LBEs and SLBEs that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a "commercially useful function" unless the brokerage, referral or temporary employment services are those required and sought by the City.

6) **Contractor/Consultant/Vendor** - The individual, partnership, corporation, joint venture or other legal entity entering into a contractual agreement with the City.

7) **Dealer** - A firm that owns, operates, or maintains a store, warehouse or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the product in question. A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers.

8) **Developer** - A person, entity, or business that prepares or develops real property for new development or redevelopment and receives a city subsidy.

9) **Emergency Work -** A public works contract awarded because of imminent danger (e.g. fires, floods, earthquakes) or immediate threat to health safety and welfare of Oakland residents and meeting the City's requirements for waiving normal bidding procedures

10) **Fixed office** – A fixed office is dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For small local business certifications, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided that all the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.

11) **Informal construction contracts** - For purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal construction contracts are valued under $100,000. For informally bid construction contracts, 75% of the work must be awarded to local firms.

12) **Informal professional services contracts** – For purposes of establishing a threshold for determining the application of the L/SLBE Program only, informal professional service contracts valued under $50,000. For informal professional services contracts, 75% of the work must be awarded to local firms.

13) **Local Business Enterprise (LBE) –** An Oakland business (a) with a substantial presence in the city of Oakland's geographic boundaries (b) fully operational for 12 consecutive months and(c) a valid business tax certificate.

14) **Local Certified Trucker** – A locally owned and operated business engaged in transporting goods on trucks to or from a specified location and holds a valid certification as a trucking contractor.

15) **Manufacturer** - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies purchased.

16) **Non-profit/Not for Profit Corporation** - A nonprofit corporation is a corporation formed for purposes other than generating a profit and in which no part of the organization's income is distributed to its directors or officers. Nonprofit corporations are formed pursuant to state law, often under the Revised Model Non-Profit Corporation Act (1986). A nonprofit corporation can be a church or church association, school, charity, medical provider, legal aid society, volunteer services organization, professional association, research institute, museum, or in some cases a sports association. Nonprofit corporations must apply for tax-exempt status at both the federal and state level.

17) **Public works contract -** Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part with public funds, or by a developer who receives any type of governmental subsidy.

18) **Size Standard** -One factor used to determine a small business. For the City of Oakland, a small business is one with three-year average gross receipts at or below thirty percent (30%) of the United States Small Business Administration's size standard.

19) **Small Local Business Enterprise (SLBE)** –A business with (a) a substantial presence in the city of Oakland's geographic boundaries (b) a full operation conducting business for 12 consecutive months and (c) a valid business tax certificate, and (d) is an independent business headquartered in Oakland.

20) **Subcontractor/Sub-consultant -** The individual, partnership, corporation or other legal entity that contracts to perform part of or all of the obligations of another's contract.

21) **Subsidiary/Affiliate** - Part of a larger company with national offices located in other cities outside Oakland, and controlled by a home office or headquarters outside Oakland.

22) **Subsidy -** A grant, loan, credit, tax rebate, or any other way that provides a measure of value to the developer from the City.

23) **Substantial Presence** – A fixed and established place where work is carried on of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify. Businesses with offices both within and outside of the City that seek certification as a local business must demonstrate the existence of a bona fide local office in accordance with the following criteria:

a) Independent Office Site: The local office can and does function as an independent office site. The local office is not merely a sham operation set up by a non-local business for the purpose of gaining L/SLBE certification;
b) Fixtures and Equipment: The local office contains all fixtures and/or equipment, including but not limited to, as appropriate, computer(s) software, copy machine(s), furniture, vehicle(s), tools, appliances and/or machinery necessary to operate the business for which the certification is sought;
c) Space: The local office contains all space necessary to operate the business for which certification is sought, including but not limited to, as appropriate, office space, warehouse space, parking, yard area and/or shop area;
d) Dedicated Personnel: The local office must be the main office for assigned personnel who conduct a full range of the business' activities out of the local office including but not limited to, as appropriate, professional, clerical and/or administrative staff assigned and dedicated to the local office as necessary to operate the business for which certification is sought;
e) Daily Function: The local office functions on a daily basis, or a regular basis as otherwise appropriate, providing all services to operate the business for which certification is sought.

24) **Tier** - The level of the relationship between the prime contractor and subcontractors, or between subcontractors.

25) **Waiver** - An intentional action by City Council, excusing a contractor or a department from (1) adhering to and/or complying with a City policy.

Program Requirements

There is a 20% minimum participation requirement for all construction contracts over $100,000 and all professional services contracts over $50,000. All construction contracts below $100,000 and all professional services contracts below $50,000 must include outreach to certified local firms such that a minimum of three local firms are included in the solicitation.

The 20% local business participation requirement must be met with a minimum participation of 10% for Local Business Enterprises (LBE)/Local Not For Profit Business Enterprise (L/NFPBE) and 10% for Small Local Business Enterprises (SLBE)/Small Local Not For Profit Business Enterprise (S/LNFPBE). SLBE and SLNFPB may meet the full 20% requirement. In the case of construction projects where trucking is warranted, 20% of the total trucking dollars must be allotted to certified (Oakland) Local Truckers

Based on the "Rule of Three", there must be at least three certified businesses listed in the industry, trade or profession that constitutes a major category of work. If at least three L/SLBEs are not certified, then the requirement is either waived, or the 20% requirement may be set from 19 % to 0%. The awarding authority shall request an availability analysis if there is reason to believe that the availability of certified firms will not satisfy the 20% requirement. And the request must be made in time for completion prior to issuing an invitation for bids, request for proposals or any other solicitation.

Contractors are required to submit a completed Subcontractor Listing (Schedule R) as attached. The Subcontractor Listing provides the buyer with a formal list of subcontractors, the trade or service area to be provided, bid amounts and certification status on for all profit and not-for profit businesses that will be used on the project.

Schedule R will be used to calculate the level of certified local business participation. Unless a requirement is waived due to limited availability, the determination of responsive and responsible will include meeting the 20% minimum requirement. Each prime or lead contractor is urged to obtain, from each certified subcontractor, a copy of either the certification letter or certificate issued by the City of Oakland, Office of the City Manager, Contract Compliance & Employment Services Division. The certification letter and certificate include the certification number and date of expiration.

Certifications must be current and valid prior to the submittal due date in order for the local participation to count toward meeting the 20% businesses participation requirement. Certification status is confirmed during the compliance evaluation process.

Program Incentives

Bid discounts are applied at a rate of one percent (1%) or one (1) preference point for every 10% of contract dollars attributable to certified firms. No more than five percent (5%) in bid discounts or five (5) preference points may be earned.

The three examples below demonstrate (#1) the 20% minimum requirement at a rate of 10% LBE and 10% SLBE; (#2) additional bid discounts and preference point values when participation is above and beyond the minimum 20% requirement; and (#3) the maximum allowable bid discount and preference points. The maximum allowable incentives are not designed to limit participation. To address participation above and beyond the 50% maximum, for profit and not for profit entities may bank the participation (up to 2%) for future use.

Example 1: 20% Minimum Requirement

	L/SLBE Participation			**Bid Discounts**	**Preference Points**
LBE Required	10%		Earn	1%	1
SLBE Required	10%		Earn	1%	1
Total	***20%**		Total	**2%**	**2**

*20% SLBE participation also satisfies the 20% requirement.

Participation over and above the 20% requirement earns additional bid discounts and points up to a maximum of a 5% bid discount and 5 preference points as long as the participation increases in equal increments between LBE and SLBE or additional participation is achieved with SLBEs.

Example 2: Additional bid discounts and preference points.

	L/SLBE Participation					Bid Discounts	Preference Points
	LBE	SLBE	*or*	*SLBE*			
Additional	5%	5%		10%	Earn	1%	1
Additional	5%	5%		10%	Earn	1%	1
Additional	5%	5%		10%	Earn	1%	1
Total	15%	15%		30%	Total	3%	3

Example 3: Maximum Allowable

Threshold	**Up To 50%** participation		**Earns**	**5%** Bid Discount	**5** Preference Points

Dollars and hours attributable to subcontracting with Oakland for profit and not-for profit businesses and the hiring of Oakland residents beyond 50% of the contract amount or beyond the 50% employment and new hire work hours threshold, may be banked and applied to projects within a 12 month period following completion of the project on which the extra credit was earned.

Maintaining Participation

Incentives are earned based on the level of participation proposed prior to the award of a contract. Once a project begins, it is important to achieve and maintain the participation for which incentives were earned. Prime Contractors and consultants must maintain the L/SLBE percentages indicated at the time of a contract award and throughout the term of the contract.

Should the prime contractor fail to maintain the L/SLBE participation listed at the time the contract is awarded, the City may impose a penalty equal to the amount that should have been awarded to L/SLBE, and/or may stop the work.

If the City modifies the original scope of work, the contractor must make reasonable efforts to maintain the L/SLBE participation for which incentives were earned. If change orders affect only one discipline, staff may use their discretion to allow adjustments to L/SLBE percentages for the change order portion of the work. Upon request, City staff will help firms to determine methods of maintaining percentages.

Should the prime contractor fail to maintain the L/SLBE participation listed at the time the contract is awarded, the City may impose a penalty equal to the amount that should have been awarded to L/SLBE, and/or may stop the work upon approval by the full City Council or a designee approved by at least three Council Members of which one must include the Council Member representing the district in which the work is being performed.

Substitution of Listed Subcontractors

Prime consultants or contractors who have entered into a contract agreement with the City cannot substitute a listed subcontractor or sub-consultant without prior approval of the City.

The City will grant substitution of a listed subcontractor or consultant on the following conditions:

1. A written statement from the listed sub consultant agreeing to the substitution,
2. When the listed sub consultant has been given a reasonable opportunity to execute a contract, yet fails to, or refuses to execute a written contract when such written contract is based upon the City's conditions and scope of work,
3. When a listed sub consultant becomes insolvent,
4. When the listed sub consultant fails or refuses to satisfy contractual agreements,
5. When the listed sub consultant fails to meet contract insurance requirements, or
6. When the City or the duly authorized officer determines that the work performed by the listed

Sub consultant is substantially unsatisfactory, or not in accordance with the contract agreement or that the sub consultant is substantially delaying or disrupting the progress of the work.

Prior to the approval of the prime consultant's request for substitution, the City shall give notice, in writing, to the listed sub consultant, of the prime consultant's request for substitution and/or the reason for such request. Such notice shall be served by certified or registered mail to the last known address of the sub consultant. The sub consultant who has been so notified shall have five (5) working days in which to submit to the City written objections to the substitution. Failure to file such written objection shall constitute the sub consultants consent to the substitution.

If written objections are filed, the City shall give written notice of a hearing date to the prime and sub consultant within five (5) working days. At the hearing, the prime and sub consultant will present their cases and the Hearing Officer will make a determination.

Emergency Contracts

Local businesses will be given first priority in the performance of emergency work as defined in Ordinance 7937 CMS, which formulates and establishes procedures for bidding, contracting, and purchasing goods and services.

The City established a goal wherein 75% of emergency contract dollars must be spent with local firms. Of that amount, at least two thirds must be spent with small local businesses. User agencies are required to solicit from certified local firms for all informally bid emergency work whenever feasible.

Compliance Monitoring and Penalties

To ensure compliance with the program, the contractor or consultant shall provide records upon request (within ten calendar days) and permit the City to review all pertinent records and documents of the contractor and subcontractors. The contractor or consultant shall provide a copy of all subcontractor agreements, purchase orders and/or other verification of the total amount to be paid to each subcontractor, supplier, etc., prior to commencement of work. A penalty of one percent (1%) of the contract amount or one thousand dollars ($1,000) per day (whichever is less) may be applied if records or documents are not provided within the specified time. The City shall deem such refusal a material breach of contract, in which case the City may terminate the contract and/or stop the work until compliance is met. In addition, the contractor or subcontractors may be debarred from participating in future City contracts for a period of six months to five years, and may lose certification.

The subcontractor’s progress payment report must be submitted with each progress payment in order for the progress payment to be processed. Also, prime contractors and/or prime consultants will provide the City and Redevelopment Agency with executed copies of its subcontractor/sub consultant agreements to verify dollar amounts stated for all L/ SLBEs. Contractors must also provide information with each progress payment indicating payments made to L/SLBEs in order to receive subsequent progress payments. An Exit Report and Affidavit form should be attached to the final progress payment application.

For construction contracts pursuant to Public Contracts Code Section 4107, et seq., no substitution of the listed L/SLBE subcontractors can be made without the approval of the City. Contractors are required to contact the Contract Compliance Office to request a substitution hearing.

Prevailing Wages

State prevailing wage rates apply to all public works contracts as set forth in Labor Code Sections 1720, 1720.2, 1720.3, 1720.4, and 1771. Workers employed on construction, alteration or demolition projects in California that use public funds are paid the prevailing wage, which is the basic hourly rate the majority of workers in a particular craft or classification earn. The prevailing wage also is based on the locality and nearest labor market. The California Department of Industrial Relations, (Divisions of Labor Statistics and Research) annually determines prevailing wages and may be reached at www.dir.ca.gov/DLSR/PWD.

The Contractor shall ensure that all workers performing construction work for the project are employed by the Contractor and shall include in its contracts with its contractors, requirements that its contractors' employees and their subcontractors' employees shall be compensated in an amount no less than the general prevailing wage rate of per diem wages pursuant to the California Labor Code Sections 1770, et seq.

The Contractor shall comply with, and shall include in its contracts with its contractors, requirements that its contractors and their subcontractors shall ensure that its contractors and subcontractors comply with all reporting and record keeping requirements of the applicable prevailing wage statutes and regulations. The Contractor is aware of and shall comply with the provisions of the City of Oakland and Redevelopment Agency's prevailing wage requirements contained in Resolution No. 87-4 CMS passed on January 20, 1987 or Resolution 57103 CMS, passed March 28, 1978. Copies are on file with the Division of Contract Compliance and Employment Services.

The prevailing wage requirement will be monitored and enforced by the City of Oakland and Redevelopment Agency. In addition to any other rights provided by California law to recover compensation, a worker that has been paid less than the prevailing wage rates shall have a right to commence an action or proceeding against the employer of the worker for the difference between the prevailing wage rates and the amount paid to such worker for each calendar day or portion thereof for which the worker was paid less than the compensation required to be paid under the provisions of this agreement.

Winning Compliance

Local Subcontracting Outreach

To ensure full disclosure of contracting and subcontracting opportunities available through the City of Oakland, each awarding City agency, department and division must post city funded contracting opportunities on the City's website.

The City of Oakland, Office of Contract Compliance & Employment Services, maintains a list of for profit and not-for profit businesses and organizations. The list is divided by trade or profession and includes contact information as and if the certification type is either Local Business Enterprise (LBE) or a Small Local Business Enterprise (SLBE). Each agency is required to solicit responses from certified firms appropriate to the nature and scope of the particular solicitation. Upon request, mailing lists of certified firms will be provided to using agencies and contractors/consultants.

Mentor Protégé Agreements

The City of Oakland strongly supports "Mentor-Protégé" relationships because they help to build capacity in underutilized service areas. Typically, prime contractors and consultants help develop the technical and business capabilities of local and small local as well as disadvantaged businesses (pursuant to DOT requirements). On a case-by-case basis, the City will allow a 5% preference for Mentor – Protégé teams on construction and professional services contracts.

If a prime contractor or prime consultant is able to develop a "Mentor-Protégé" relationship with a certified LBE or SLBE, the mentor will enjoy the benefit of credits against City goals particularly under circumstances where availability is zero, In order to earn credit for Mentor-Protégé relationships, the Mentor-Protégé Agreement must be submitted for approval to Contract Compliance and Employment Services prior to the project bid date for construction, and by proposal due date for professional services contracts.

A written mentor-protégé agreement must be completed by both parties and executed before a notary public. The agreement must delineate the rights and responsibilities of each mentor and protégé. The parties must agree to enter into the relationship for the life of the project.

During the duration of the contract both the mentor and protégé must each provide the Division of Contract Compliance and Employment Services with a monthly report of the kinds of mentor skills provided to the protégé, which shall include but not limited to:

- Number of hours expended in the fulfillment of the project by each partner;
- Managerial assistance provided (*e.g. bookkeeping services, personnel, payroll, etc*);
- Technological assistance provided *(e.g. computer hardware/software, training, etc.;*
- Bonding assistance provided;
- Number of private sector projects bid on by the mentor-protégé team;
- Number of private sector contracts awarded to the mentor-protégé team; and
- Financial assistance provided.

No officer, director, employee or member of the mentor-protégé team shall be allowed to bid or otherwise participate independently on a city contract where the mentor-protégé team is bidding or otherwise participating. Each party is prohibited from submitting multiple bids on city contracts.

The protégé must be able to demonstrate that it is an independent business operation prior to submittal of a mentor-protégé agreement and throughout the term of the agreement. Unless specifically defined as one of the benefits to the protégé and spelled out in the agreement, the mentor and protégé must maintain separate office spaces while the mentor-protégé agreement is in effect.

Joint Venture Agreements

A business that is bidding or competing for City contracts may associate with a certified LBE or SLBE business to compete for contracts as a joint venture. A joint venture should be between two entities with the same discipline or license as required by the awarding department. Joint ventures receive bid discounts depending upon the LBE or SLBE percentage of participation as set forth in the Ordinance. The parties must agree to enter into the relationship for at least the life of the project.

Basic Elements of the Joint Venture Agreement:
A Joint Venture must submit a Joint Venture Management Plan and/or a Joint Venture Agreement two weeks prior to the bid due date. Copies of the JV applications are available upon request to the Contract compliance & Employment Services Division (510) 238-3970. Each agreement or management plan must include, but not limited to the following:

1. Detailed explanation of the financial contribution of each partner;
2. List of the personnel and equipment used by each partner;
3. Detailed breakdown of the responsibilities of each partner;
4. Explanation of how the profits and losses will be distributed;
5. Description of the bonding capacity of each partner; and
6. Management or incentive fees available for any one of the partners (if any).

Commercially Useful Functions Performed by Joint Venture Partners:
Each JV partner must perform a “commercially use function” as that term is defined herein. A LBE or SLBE that relies on the resources and personnel of a non-LBE or SLBE firm will not be deemed to perform a "commercially useful function

Joint Venture License Requirements: Each joint venture partner must possess licenses appropriate for the discipline for which a proposal is being submitted. If a joint venture is bidding on a single trade project, at the time of bid submittal, each of the joint venture partners must hold a Joint Venture License and possess the requisite specialty license for that trade bid.

Delineation of Joint Venture Work:
The LBE or SLBE partner must clearly define the portion of the work to be performed during the project. This work must be of the similar type of work the LBE or SLBE partner performs in the normal course of its business. The Joint Venture Participation Form must specify the project bid items to be performed by each individual joint venture partner. Lump sum joint venture participation is not acceptable.

Responsibilities of the LBE or SLBE Joint Venture Partners:

1. The LBE or SLBE partner must share in the ownership, control, management responsibilities, risks, and profits of the joint venture in proportion with level of participation in the project;
2. The LBE/SLBE partner must perform work that is commensurate with its experience.
3. The LBE/SLBE partner must use its own employees and equipment to perform its portion of the project.
4. For construction contracts only, the joint venture as a whole, must perform bid item work that equals or exceeds twenty-five percent (25%) of the total value of the contract, excluding the cost of manufactured items, in order to be eligible for a joint venture discount.

Application of Bid Discounts For Joint Venture Agreements
To be eligible for a bid discount, at the time of bid submittal, each joint venture partner must hold a Joint Venture License and each must have the license that is appropriate for the project as required in the contract document of the contract award authority. Unless permission is granted by the City Manager or his designee for good cause shown, based on sudden and unexpected necessity, the following actions are not permitted: i) the non-LBE/SLBE partner

performing work for the LBE/SLBE partner; ii) leasing of equipment or property by the LBE/SLBE partner from the non-LBE/SLBE partner; and iii) the hiring of the non-LBE/SLBE partner's employees by the LBE/SLBE partner.

Other Joint Venture Conditions
The City Manager or designee must first approve the LBE/SLBE Joint Venture Agreement/Management Plan before the joint venture is eligible for bid discounts. Any changes must also receive the prior approval of the City Manager or designee. In addition to any other information required by conditions specified herein, each LBE/SLBE joint venture must provide upon request, cancelled checks and any other financial records to the City.

Earning Credits (Banking Dollars)

In order to increase the level of self-sufficiency of Oakland based firms, the City will allow contractors to accumulate credits for hiring local businesses and small local businesses on non-city funded projects, and to earn credits for the participation of local businesses beyond the fifty percent (50%) threshold on city funded projects. Prime contractors will be allowed to bank extra credit based on dollars paid to certified local firms on non-city funded projects prior to the notice to proceed and on city funded projects, when at project end, there is proof of participation exceeding the fifty percent (50%) threshold. A maximum of 2% banked credits will count toward achieving the requirement on a City contract.

In order to receive bid discounts above the two percent (2%) minimum requirement the bidder must allocate additional dollars at a 5% LBE and 5% SLBE split. The ability of firms to bank hours on non-City projects will not be retroactive. Firms will only have one year to credit these hours.

City –Assisted Private Developments
For City-assisted private developments (e.g. Disposition and Development Agreements, affordable housing projects, and loans for construction projects) prime contractors are required to seek competitive bids from subcontractors and comply with the program goals and objectives as set forth in this document. Prime contractors must give SLBE contractors a 5% bid discount and LBE contractors a 2% bid discount. Prime contractors are required to award to the lowest responsible bidder.

Incentives for Supporting Local Business Participation on City Contracts
Each year, the City Manager will award a certificate of achievement to the city agency that reaches the highest level of support to small local businesses.

Other
Prime contractors shall not impose any unreasonable additional criteria on subcontractors that are not required by the City. Any demand on the subcontractors that would change the way the subcontractor may do business will be deemed unreasonable. The prime contractor shall not selectively impose criteria upon local certified businesses that are not applied to other business in similar contractual relationships with the prime.

In addition to any other documents required by the bid specifications, the contractor shall submit the Compliance Commitment Agreement as attached.

All bids submitted shall be made available to the public upon bid opening as required by the Sunshine Ordinance, including all bids prepared by subcontractors.

Attached herein are construction forms identified as (Schedule R-Subcontractor /Supplier/Trucking Listing; Schedule U-Compliance Commitment Schedule W-Bid Confirmation (lowest bidder must submit this form 48 hours after bid opening.

END

Part II. Certification

Certification Criteria

The City of Oakland now certifies both for-profit and not-for-profits operations. Certification criteria apply to both for profit and not-for-profit organizations.

1. An established operation located and doing business or operating within the geographical boundaries of the City of Oakland.

2. Fully operational for at least twelve (12) consecutive months prior to applying for certification.

3. A valid City of Oakland Business Tax certificate issued no less than twelve (12) months prior to applying for certification. All payments must be current and the certificate must reflect the address of the local business.

4. A fixed office that reflects a substantial presence in the geographical boundaries of the City of Oakland. Post Office boxes, temporary locations, and moveable work sites will not establish status as a local business. In the case of trucking firms, the truck inventory must be located within the city limits. A fixed office is a dedicated office space, owned or leased by the local business, in an established, non-portable building where regular work pertinent to the contract is conducted. For SLBE certification, the fixed office shall be the primary business location of the business. A residence may qualify as a fixed office provided the following conditions are met: (a) the business conducted in the residence complies with Oakland Zoning Regulations relating to Home Occupations; and (b) the residence is the primary business location of the business and contributes not less than 51% of the gross receipts of business. A fixed distribution point is a non-portable warehouse or an outside shipping yard owned or leased by the local business, where shipping, receiving and the owner and employees regularly and exclusively conduct distribution of goods and commodities on behalf of the business.

5. The owner or employees (person hired and paid directly by the local business to conduct work solely on behalf of the business at its fixed office or distribution point) shall be available during normal operating hours.

6. A LBE/SLBE must comply with all applicable Federal, State and local regulations, including, but not limited to the City of Oakland Zoning Regulations.

7. All taxes, fees, permit fees, and fines shall be current.

8. Upon request by the City's certifying officer, a LBE/SLBE must possess and make available for inspection the following documentation citing the Oakland business street address:

    a. Executed (i.e. signed by all parties) copies of past/current contracts;
    b. Oakland Business Tax Certificate and federal tax identification number;
    c. Executed lease or other written agreement for occupancy of the Oakland office;

d. Business cards and Utility bills (including but not limited to telephone, gas, electric, or water bills)

9. A business requesting certification shall supply the City with all such additional information, as the City may deem relevant to make a determination on its eligibility for certification. The City may wish to review additional documents that may include, but may not be limited to:

    a. Commercial advertising
    b. On-site signage
    c. Letterhead
    d. Previous Lease Agreements
    e. Marketing materials
    f. Listing in the telephone book.

10. Small local businesses must present or make available copies of federal tax returns showing gross revenues for the three most recent fiscal years in order for the City to determine compliance with established business size standards.

Certification Eligibility Standards

Ownership And Control For Small Local Business Enterprise

The following standards shall be used by the City to determine if a firm is owned and controlled by one or more owners or businesses and eligible for certification as a Small Local Business Enterprise:

1. An eligible small local business shall be an independent business. The ownership and control of the SLBE shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The small local business owner shall enjoy the customary incidents of ownership and shall share in the risks and profits commensurate with their ownership interests, as demonstrated by an examination of the substance rather than form of arrangements. Recognition of the business as a separate entity for tax, corporate or local status purposes is not necessarily sufficient for recognition as an SLBE. In determining whether a potential SLBE is an independent business, the City shall consider all relevant factors, including the date the business started, the adequacy of its resources for the work of the contract, and the degree to which financial, equipment leasing and other relationships with non local firms.

2. The owner(s) of the small local business must also possess the power to direct or cause the direction of the management and policies of the firm. Also, the owner shall make the day-to-day, as well as major decisions on matters of management, policy and operations. The firm shall not be subject to any formal or informal restrictions, which limit the customary discretion of the owners. There shall be no restrictions that would prevent the local business owners, without the cooperation or vote of any non-local owners, from making a business decision of the firm. (i.e. bylaws provisions, partnership agreements or charter requirements for cumulative voting rights)

- Where the actual management of the firm is contracted out to individuals other than the owners, those persons who have the ultimate power to hire and fire the managers are, for the purposes of this part, considered controlling the business.

- The contribution of capital or expertise by the local owner(s) to acquire their interests in the firm shall be real and substantial.

- Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

- A previous and/or continuing employer-employee relationship between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.

- Any relationship between a SLBE and non- SLBE, which has an interest in the SLBE, is carefully reviewed to determine if the interest of the non-SLBE conflicts with the ownership and control requirements.

- SLBEs will be considered bona fide if the ownership interests are real and continuing, and not created solely to meet the City goals for SLBEs participation. The SLBEs included in the contract must perform commercially useful services and/or supplies and not merely act as a passive conduit. In the event the City has reason to question the ownership of SLBEs, the burden of proof is on the claimant and/or contractor to provide documentation to substantiate the SLBE business enterprise status.

Size Standards for Small Businesses

The City has established a size limit in order to set forth criteria and define small local businesses. In making the determination relative to size, the City will use thirty percent (30%) of the United States Small Business Administration's Small Business Size standards. Size is based on gross revenues realized by the firm for the three most recent fiscal years that the firm is doing business.

LBE/SLBE Certification Process

Step 1 – The Application: Down load Applications from the web site maintained by Contract Compliance & Employment Services (CC & ES). From Oaklandnet.com, select Contract Compliance on the "go to" link. Requests for certification applications can be made by phone, facsimile, electronic mail, in writing or in person. When submitting the application, remember to attach a copy of the most recent Business Tax Certificate and have the application notarized. If you are applying as a small business, attach the last three most recent business tax returns.

Step 2 – The Review Process: The City of Oakland employs a three-tier certification process as standard operating procedure. This process is used to determine the degree of difficulty and time necessary to complete the review.

- ✓ Tier I – The application, upon review by staff, is complete and accurate, and requires no further action. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days. Tier I applications are typically LBE re-certifications.

- ✓ Tier II – The application, upon review by staff, requires additional information (e.g. application information is incomplete or requires clarification, supporting documents missing, etc.) If the application is incomplete, additional documentation will be requested and must be submitted within 10 working days. Analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days.

- ✓ Tier III - The application, upon review by staff, necessitates a desk audit and site visit. The desk audit and site visit will be conducted within 15 working days. All parties are asked to cooperate fully with the investigation. Failure or refusal to furnish requested information or failure to cooperate voids the application. If the audit and review results in a satisfactory determination, analysis, recommendation and notification as to the status of the application to certify or deny certification will be conducted within 10 working days after the site visit.

During the process of certification, the City may review any documentation or information it deems necessary to determine whether the applicant meets the definition of a local business set forth in the section 2.01 of this document.

To ensure complete and accurate determination in a timely fashion, it is requested that all potential LBE/SLBE participants submit an application for certification a minimum of three (3) weeks prior to a bid opening or submittal of a proposal. In order to receive LBE or SLBE credit for listed subcontractors and suppliers certifications must be complete and existing at the date and time of bid opening or submittal due dates.

Certification with another agency does not constitute certification with the City of Oakland. The City reserves the right to approve LBE/SLBE status from other government or City agencies. Firms or individuals who knowingly submit false information concerning their LBE/SLBE business status are subject to action or actions for fraud under the State and Federal False Claims Act and will be debarred from bidding on future City work for a period of three (3) years.

Other Considerations

In addition to the above the City shall give special consideration to the following circumstances in determining eligibility:

- Newly formed firms and firms whose ownership and/or control has changed since the date of the advertisement of the contract are closely scrutinized to determine the reasons for the timing of the formation of or change in the firm.

- Previous and/or continuing employer-employee relationships between or among present owners are carefully reviewed to ensure that the employee-owner has management responsibilities and capabilities.

- Any relationship between an LBE/SLBE and a business that is not an LBE/SLBE, which has an interest in the LBE, is carefully reviewed to determine if the interest of the non-LBE conflicts with the ownership and control requirements.

- A joint venture is eligible for certification if the LBE/SLBE partner of the joint venture meets the standards for an eligible LBE. The LBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks and profits of the joint venture. The City Attorney's office must approve joint venture agreements.

- The mentor and protégé must be certified prior to the submittal of a mentor-protégé agreement for approval.

Re-Certification

A City of Oakland certification is valid for a period of two years, unless otherwise specified. At the end of the certification period (October and April) the business may apply for re-certification. Notwithstanding the above, the City may require re-submittal of current documentation and information in the event a LBE/SLBE certification is challenged.

Appeal

Any firm that believes that it has been wrongfully denied certification as an LBE/SLBE or joint venture may file an appeal in writing. The written appeal must be signed and dated.

The appeal shall be filed no later than 30 days after the date of denial. The City may extend the time for filing, or waive the time limit in the interest of justice. The City may specify in writing the reason for so doing.

Third parties, who have reason to believe that another firm has been wrongfully denied or granted certification as an LBE/SLBE or joint venture, may advise the City in writing. This information is not considered an appeal.

The City ensures a prompt investigation, and may at its discretion; decertify the LBE/SLBE or joint venture pending the outcome of the investigation.

Part III: Local Employment Program

Program Objective

The objective of the Local Employment Program for public works and subsidized construction projects is to cause the hiring of Oakland residents on as many Prevailing Wage jobs as possible, and to encourage businesses to hire local residents for non-City-funded work.

Definitions

1. **Apprentice** – An individual who is registered with an apprenticeship program approved by the Division of Apprenticeship Standards (DAS).
2. **Apprenticeship Coordinator** – An individual who supervises apprenticeship-training activities.
3. **Apprentice Work Hours** – The work hours apprentices are required to work on public works projects.
4. **Bay Area Construction Sector Intervention Collaborative** (BACSIC) – A coalition of community based organizations, union representatives and apprenticeship coordinators partnering to provide necessary support services to assist job seekers in obtaining employment in the construction industry.
5. **City** – The City of Oakland, including the Redevelopment Agency. Reference to the City Manager includes the Redevelopment Agency Administrator.
6. **City Financial Assistance Recipient** – An entity or individual that receives a City subsidy for a public works project.
7. **Community Based Organization** (CBO) – A non-government agency created to provide training or employment assistance to job seekers.
8. **Contract** – The written agreement to provide services established between the City (or developer) and the general contractor.
9. **Contractor** – An individual, partnership, corporation, joint venture or other legal entity entering into a contract (or a subcontract of whatever tier) for a public works project (as such projects are defined in this policy). The general contractor is the entity that enters into the contract directly with the City or Developer; a Subcontractor is an entity that enters into a Contract with the General Contractor or a Subcontractor of whatever tier.
10. **Core Employee** – An apprentice or journey level employee who: possesses any license required by state or federal law for the project work to be performed; has worked a total of at least 1000 hours in the construction craft during the prior three years; was on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award; and has the ability to perform safely the basic functions of the applicable trade.
11. **Craft-by-Craft** – Measuring the hours worked by an apprentice or journey person with regard to each craft, as defined in the Federal and State Wage Determination.
12. **Developer** – A person or entity that prepares or develops real property for development or redevelopment and receives a City subsidy.
13. **Division of Apprenticeship Standards** (DAS) – The agency responsible for apprenticeship in the state of California.

14. **Emergency Work** – A public works contract awarded because of imminent danger (i.e. fires, floods, earthquakes) or threat to the health, safety and welfare of Oakland residents and meeting the City's requirements for waiving normal bidding procedures.

15. **Local Construction Employment Referral Program (LCERP**) – The Employment Services Unit of the Office of the City Manager created to identify Oakland residents for employment on City of Oakland and Oakland Redevelopment Agency construction projects.

16. **Monitoring** – The system established to measure compliance with the Local Employment Program Policy and the 15% Apprenticeship Utilization Policy. This system includes tracking the employment status (as reported by certified payrolls) on all public works projects. Monitoring occurs for:
    a. Payment of prevailing wages
    b. Resident workforce hours
    c. Apprenticeship Hours
    d. New Hires

17. **New Hire** – Any employee of a contractor who is not listed on the contractor's quarterly tax statements for the tax period been hired prior to the commencement of work, unless the employee qualifies as a Core Employee.

18. **Owner Operator** – a contractor, who operates their own, leased or rented equipment and uses that equipment on the public works project, and hires no other employees.

19. **Post Award** – The meeting held between the City and contractors after the award of a public works project and before the issuance of a notice to proceed. Post award meetings occur at the request of either the using agency or contractor/consultant.

20. **Public works project** (project) – Any construction, alteration, demolition, or repair work done under contract and paid for in whole or in part out of public funds or by a developer who receives a City subsidy for the project.

21. **Resident** - Any person whose primary residence is in Oakland. An individual designated as a journey-level worker must have established residency at least two (2) weeks prior to commencement of work; and an individual designated as an apprentice must have established residency at least six (6) months prior to commencement of work.

22. **Subcontract** – A contract that exists between the general contractor and a subcontractor or between subcontractors of any tier.

23. **Subsidy** – A grant, loan, credit, tax rebate or any other instrument or means that provides a measure of value to the developer from the City.

24. **Tier** – The level of relationship to the prime contractor of a subcontractor who enters into a contract under a prime or another subcontractor to perform a portion of the work on a project.

Program Goals

For any construction contract or development agreement with the City this policy establishes a goal for Oakland-resident employment on public works projects (as such projects are defined in this policy). Specifically, for work performed at the construction site, this policy establishes a goal of 50% of the work hours, which must be performed by Oakland residents on a craft-by-craft basis. In addition, a minimum of 50% of all new hires on the project (on a craft-by-craft basis) must be Oakland residents, and the first new hire must be an Oakland resident. A contractor or developer must achieve the goals or secure an exemption from the City.

Apprenticeship is an essential pathway to a productive career in the construction trades. Therefore this policy recognizes that implementation of the 15% Oakland Apprenticeship Utilization policy on public works projects is important to achieve the goals of this policy. This policy will include additional incentives to both highlight and further encourage the use of Oakland apprentices. Utilization of Oakland Apprentices will count toward the 50% new hire goals and the 50% workforce hour goals.

General Provisions

The City shall require its developers and contractors to abide by the Local Employment Program. The City shall also require that the developers and contractors enforce the provisions of the Program on any and all parties with whom the developers and contractors intend to enter into a contract to perform any portion of said work.

The Local Employment Program required by the City will be incorporated in all contract specifications as well as Dispositions and Development Agreements (DDA) for subsidized projects and contract specifications. The developer or contractor shall cause this Program to be a part of all subcontracts, regardless of Tier or phase under the contract. The goals set forth must be maintained for the duration of the project.

The LEP applies when the project includes the purchase of construction services either by the City as buyer or by a City Financial Assistance Recipient (CFAR); and either the City is the buyer and the dollar amount of the project exceeds $50,000.00 dollars; or the project exceeds 30 days; or new hires are needed to perform the work on the project.

The LEP does not apply when the contract or subcontract is performed by an owner/operator; or the project requires less than 140 hours of work; or the project is performed as emergency work; or a job requires no more than two craft-persons to perform the duties of the entire project; or a contractor's core workforce includes 50% Oakland residents, and no additional employees will be hired.

Prior to receipt of the Notice to Proceed (NTP), the developer or contractor and Contract Compliance & Employment Services staff together will create a project-specific plan to comply with the LEP goals on a craft-by-craft basis for all work forces and for planned new hires. The project-specific plan will recognize the lawful hiring hall rules of the union hiring halls where applicable. The Anticipated Project Workforce Form may be used in the development of a project specific compliance plan.

Winning Compliance

The Developer or Contractor must meet or exceed the 50% work force and new hire requirements in order for the following program criteria to apply:

Exemptions

Hours of work performed by employees of a subcontractor on a LEP-covered project may not be assessed against the Contractor's LEP goals, if the subcontract will be:

1. Performed by an Owner Operator;
2. Performed in less than 40 hours;
3. The Subcontractor's core work force includes 50% Oakland employees, and no additional employees will be hired; or
4. No more than two craft persons are required to perform the work of the subcontract, the Subcontractor hires no new employee to perform the work and the Subcontractor is a Small Business within the meaning of City policies.

When the Contractor has taken the steps and an Oakland resident is not available the City shall issue an exemption.

Conditional Exemptions

The Developer or Contractor's project manager must submit a request for conditional exemption to the Contract Compliance & Employment Service staff. They must determine whether to grant the exemption prior to issuance of the contract. The request is reviewed based on conditions (cited by Developer or project manager) that make compliance unfeasible. Examples of such conditions include but are not limited to:

1. Permanent core workforce performs short-term (five days) work.
2. Intermittent service by one trade throughout the life of the project
3. Overall project time is under three months.
4. Owner Operator performs the work.

If circumstances arise subsequent to the issuance of the contract, the results of which the Contractor believes will prevent attaining the local-hire goals, the contractor will immediately notify Contract Compliance & Employment Services staff by requesting a conditional exemption. Staff shall meet with the applicant as necessary and issue a decision within five days, including a determination as to any retroactive liability for failure to achieve the goals for work undertaken prior to the application for such a conditional exemption.

Local Construction Employment Referral Program (LCERP) – The Local Construction Employment Referral Program is a one-stop employment service for Oakland residents. The on site Job Developer evaluates the skill levels of Oakland residents seeking work as skilled or un-skilled workers on construction projects. Names, contact information and skill levels are maintained in a LCERP Data Bank. In order to satisfy the fifty percent (50%) new hire goal when employment vacancies occur on a job site, each contractor must follow the steps outlined below.

Referrals and Dispatching Oakland Residents:

1. For Open Shop – in the absence of a collective bargaining agreement the Contractor shall:
   a. Contact Contract Compliance & Employment Services (CC&ES) to request a referral from the Local Construction Employment Referral data bank; and
   b. Submit a completed "Job Request & Referral Form" by fax or e-mail.
   c. The CC&ES will refer an Oakland resident (matching the qualifications identified by the contractor on the Job Request & Referral form) to the Contractor within three business days.

2. For Union Shop – contractors working under a collective bargaining agreement shall:
   a. Contact local union hall to request an Oakland resident; and
   b. If an Oakland resident is not available for dispatch, contact CC&ES to request a referral from the Local Construction Employment Referral data bank; and
   c. Submit a completed "Job Request & Referral Form" by fax or e-mail to CC&ES.
   d. The CC&ES will refer an Oakland resident (matching the qualifications defined by the contractor) to the local union hall and that resident will be dispatched within three business days in accordance with the lawful hiring hall rules of the Union.

Incentives and Penalties

Incentives (credit or banking of hours)

To encourage long-term retention and early hiring of Oakland residents as employees of contractors doing business in Oakland, the City will give a contractor credit towards the LEP goals when the contractor employs craft persons, superintendents, and foremen that are Oakland residents. Banked or credited hours may only be applied toward meeting 50% of the LEP requirement. Contractors may receive credit for hours performed by these Oakland-resident employees in the following circumstances:

1. When a contractor exceeds the LEP workforce hour goal on an existing project, those surplus hours will be banked for application on a subsequent City project.
2. When a contractor employs Oakland residents on non-City projects during the year prior to issuance of a notice to proceed on the City contract, those hours will apply toward the 50% workforce hour requirement.
3. When a Contractor employs Oakland residents on non-City projects during the six months following completion of a City Contract or Subcontract, those hours will be banked for application on a subsequent City project.
4. The general contractor may utilize the hours performed by its Oakland-resident employees that exceed LEP goals to meet the LEP goals of a Subcontractor that fails to achieve its own LEP goals. However, the City may designate a contractor as ineligible to receive excess-hours credit under this section for demonstrated prior non-compliance.

Contractors may fully avail themselves of other credits for local hire that may be available in other City programs and policies (such as tax credits) without regard to the credits that they may receive under the LEP policy for their use of Oakland-resident employees. The LEP is in no way designed to reduce or otherwise compromise those available incentives.

Penalties

Any penalty imposed under this policy for a Contractor's failure to achieve the LEP goals will be implemented under a system of progressive implementation. The City will assess factors such as the degree of failure; the efforts undertaken to achieve the goals and the presence or absence of repeated failure to achieve the goals in determining what level of penalty would be appropriate within the penalty range available in Article VI.

When a Contractor finishes its contract without meeting the LEP requirements, and a penalty is warranted, the City will withhold from final payment up to 150% of the wages for the deficient hours of the non-complying Contractor's contract. The Contractor will have one year to work off the hours owed by working Oakland residents on non-City projects. If at the end of this period all the deficient hours have not been eliminated, the Contractor will forfeit 150% of the wages for any remaining deficient hours to the City as a fine.

Repeated failure to comply with the LEP could lead to debarment under City contracting policies.

Outreach

The City may hold a post-award meeting to familiarize the contractors with the LEP requirements as well as with the requirements of the15% Apprenticeship Program. If requested by the contractor the City shall hold such a meeting within 10 business days. Post award meetings are most advantageous to contractors that wish to become more familiar with these programs and may also be held upon request

of the contractor throughout the life of the project. Attendance at a post-award meeting will contribute to the contractor's ability to comply with the LEP and apprentice utilization policies. To the extent allowable by law, the meeting will be open to stakeholders.

A post-award meeting will include instructions on when and how to prepare and submit the following forms:

- Certified payroll reports
- Anticipated Project Workforce
- Job Request and Referral
- Apprentice Utilization Plan
- Certified Trucking Roster
- Quarterly Wage & Withholding Reports (DE-6)
- Progress Payment

A post-award meeting should also provide, when possible, information to support the contractors' success, and may include:

- California Labor Code relating to Apprentices on public works projects
- Certification Application
- Work Opportunity and Welfare-to-Work Tax Credit
- Construction & Demolition (C&D) Debris Recycling
- Prevailing Wages
- Apprenticeship Program

The City Manager's Office, Contract Compliance & Employment Services Division will conduct at least three "Winning Compliance" Workshops per year. Contractors are encouraged to attend at least one such workshop. Forms and information listed above under post award meeting will be the major topics of discussion. Attendance at these workshops will assist the contractor in complying with the LEP and apprentice utilization policies.

Reporting

The developer or contractor must submit reports for compliance with the LEP as required by the City. These reports may include weekly certified payroll records for all crafts covered under these Program provisions within fifteen working days of the end of each payroll period. In addition to the weekly-certified payroll records, the City may require a weekly or monthly summary of the information that would be obtainable from the certified payroll regarding local-hire by craft. These reports must show the person-hours on a craft-by-craft basis and, in the case of certified payroll records, identify the address, Social Security number, new hire, ethnicity, gender and trade and status (journeyperson or apprentice) of all employees on the project. All reports must have an original signature and be signed by an authorized officer of the company under penalty of perjury. The City will make a copy of required forms available to Contractors. These forms will be available in hard copy or digitally.

Nothing in this Policy is intended to eliminate the requirement of a contractor to maintain certified payrolls, or of the subcontractors to provide certified payrolls to the prime Contractor, or for any contractor to provide certified payrolls to any party that requests them, as required in State law.

Monitoring

The City will monitor LEP and Apprentice-Utilization compliance, via means such as desk reviews or on-site monitoring. City employees conducting on-site monitoring are authorized to visit City-subsidized projects and are covered under the City of Oakland's insurance policy. Full-scale investigations of non-compliances or violations will be on an as-needed basis.

The City shall provide a general contractor with an audit of a subcontractor's LEP compliance within 45 days of the request, so long as the General Contractor provides the City with the information required by the City to make such an audit.

Audits of compliance may require the review of documents such as certified payrolls, Apprenticeship Utilization Form, Request & Referral Form, Certification of Compliance Hours Form, cancelled checks, progress payments, or Quarterly Wage and Withholding Reports (DE-6), among others.

A Developer or Contractor that fails to provide requested documents or misrepresents material facts in such documents shall be deemed to be non-compliant with the LEP.

Other Conditions

Developers or contractor will comply with the appropriate provisions of the California State Labor Code regarding the required ratio of apprentices to journeypersons to be employed on the job site.

Program Amendments

The City Manager may make changes as necessary to implement and achieve the goals of the Local Employment Program.

Conflicts

The provisions of this program may not be enforced to the extent that such enforcement results in a Developer or Contractor violating a consent decree or other judicial or administrative order or a statutory or regulatory provision.

Severability

In the event any provision of this Program is deemed illegal or invalid for any reason, said illegality or invalidity will not affect the remaining parts of the Program but the same shall be construed and enforced as if said illegal or invalid provision had never been inserted herein, and the Ordinance will be interpreted in a manner that best gives effect to its initial understanding.

End of Document

ATTACHMENTS

CONSTRUCTION FORMS

- Campaign Contributions
- Certification of Debarment & Suspension (For Federally Funded Projects)
- Combined Forms
  C-1=Americans With Disabilities Act (ADA);
  P=Nuclear Free Zone;
  U=Compliance Commitment Agreement;
  V=Affidavit of Non Disciplinary Action
- Exit Report and Affidavit
- Independent Contractors Questionnaire
- Insurance Requirements
- Ownership, Ethnicity and Gender Questionnaire
- Progress Payment Form
- Subcontractor, Supplier, Trucking Listing

CITY OF OAKLAND

CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS FOR CONSTRUCTION, PROFESSIONAL SERVICE & PROCUREMENT CONTRACTS

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an ___ Original ___ Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name _____ Phone ____-____-_____

Street Address _____ City _____, State _____ Zip _____

Type of Submission (check one) ___ Bid ___Proposal ___ Qualification ___ Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name _____ Phone ____-____-_____

Street Address _____ City _____, State _____ Zip _____

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I /we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

_____ ___/___/___
Signature Date

_____ _____
Print Name of Signer Position

To be Completed by City of Oakland after completion of the form

Date Received by City: ___/___/___ By _____

Date Entered on Contractor Database: ___/___/___ By _____

Revised 3/2/2009
Formerly Schedule O

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Growing for Over 150 Years

DECLARATION OF COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

The Contractor certifies that it will comply with the Americans with Disabilities Act by:

A. Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;

B. Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;

C. Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;

D. Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;

E. Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities; and

F. If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.

NUCLEAR FREE ZONE DISCLOSURE

I certify that: A) Neither this Business Entity nor any of its subsidiaries, affiliates or agents engages in nuclear weapons work or anticipates entering into such work for the duration of its contract(s) with the City of Oakland; B) The appropriate individuals of authority are cognizant of their responsibility to notify the Office of Finance of the City of Oakland if the Business Entity or any of its subsidiaries, affiliates or agents subsequently engages in nuclear weapons work.

COMPLIANCE COMMITMENT AGREEMENT
(For Construction Contractors Only)

I certifify have read the City of Oakland and Redevelopment Agency Local/Small Local Business Enterprise Program (L/SLBE) and that for the pertinent project, **I have achieved the requirement of 20% L/SLBE participation, of which at minimum 10% has been allotted to Local Business Enterprises (LBE), and 10% has been allotted to Small Local Business Enterprises (SLBE); and that 20% of the total trucking dollars have been allotted to certified Oakland Local Truckers.** In the event that these requirements have not been achieved, I understand that my bid will be deemed non responsive.

As prime contractor for this project, I agree to use the City of Oakland's electronic payroll system to input ALL certified payrolls reports (including all tiers of subcontractors) for this project.

As prime, I agree to submit with the final payment request a completed "Exit Report and Affidavit form". The Exit Report and Affidavit form may be located on the City's website at www.oaklandnet.com.

AFFIDAVIT OF NON-DISCIPLINARY OR INVESTIGATORY ACTION

I certify that the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP) has not taken disciplinary or investigatory action against the Firm. If such action has been taken, attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date	Signature of Authorized Representative
Company Name	Type or Print Name
Address	Type or Print Title
City / State / Zip	Email Address

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OAKLAND
Growing for Over 150 Years

EQUAL BENEFITS DECLARATION OF NONDISCRIMINATION

For use by all city agencies and departments for procurement, professional services (including CFARs) and construction contracts.
To be completed by the prime contractor/consultant.

Section A. Vendor/Contractor/Consultant/*CFAR Information

1 Name of Company _____

2 Name of Company Contact _____

3 Phone Number _____ Fax Number _____

4 Vendor Number (If Known) _____ Federal ID or Social Security # _____

5 Approximate Number of Employees in the U.S. _____

6 Are any of your employees covered by a collective bargaining agreement or union trust fund ? Yes ☐ ☐

7 Union Name(s) _____

Section B Compliance Questions

1 Does your company provide or offer access to benefits for employees and their spouses.

Yes ☐ *or* No ☐ (please check one)

2 Does your company provide or offer access to benefits for employees and their domestic partners.

Yes ☐ *or* No ☐ (please check one)

Questions B1 & B2 should be answered YES, even if your employees must pay some or all of the cost of spousal or domestic partner benefits.

Section C Compliance Questions

3 Please check each benefit that applies to answers 1 & 2 above and list as "other" any additional benefits not listed below. Some benefits (i.e. bereavement leave) are provided to employees because they have a spouse or domestic partner. Other benefits (i.e. medical insurance) are provided directly to the spouse or domestic partner.

	Benefit	Yes, this benefit is offered to Employees only	Yes, this benefit is offered to Employees and their Spouses	Yes, this benefit is offered to Employees and their Domestic Partners	No this benefit is not offered at all	Yes, documents were submitted for this benefit.
a	Health	☐	☐	☐	☐	☐
b	Dental	☐	☐	☐	☐	☐
c	Vision	☐	☐	☐	☐	☐
d	Retirement (Pension, 401(k), etc)	☐	☐	☐	☐	☐
e	Bereavement	☐	☐	☐	☐	☐
f	Family Leave	☐	☐	☐	☐	☐
g	Parental Leave	☐	☐	☐	☐	☐
h	Employee Assistance Program	☐	☐	☐	☐	☐
I	Relocation & Travel	☐	☐	☐	☐	☐
j	Company Discount, Facilities & Events	☐	☐	☐	☐	☐
k	Credit Union	☐	☐	☐	☐	☐
l	Child Care	☐	☐	☐	☐	☐
m	Other	☐	☐	☐	☐	☐

* CFAR is a City Financial Assistance Recipient

** The term "Domestic Partner" is defined as same-or opposite-sex couples registered with a state or local government domestic partnership registry.

Revised 3/2/2009
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Section D. Submitting Documents to Support Compliance Determinations

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EQUAL BENEFITS DECLARATION OF NONDISCRIMINATION

For use by all city agencies and departments for procurement, professional services (including CFARs) and construction contracts. 1
To be completed by the prime contractor/consultant.

Please remember: Copies of documents must be submitted to justify each benefit marked under Section B-3 above. Your company can not be certified as complying with the City's Equal benefits Ordinance without proper documentation. For example, to document medical insurance, submit a statement from your insurance provider or a copy of the eligibility section from your plan document. To document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information please call the designated agency contract administrator or project manager.

Section E. Winning Compliance Through Reasonable Measures

Business owner, please note: If you can not offer a benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form with all necessary attachments, and have your application approved by the City. For more information, the contract administrator or project manager holds the appropriate Reasonable Measures Application Form.
***Effective January 1, 2002, Assembly Bill 25, Domestic Partner Coverage requires carriers to offer domestic partner (DP) coverage to employer groups under the same terms and conditions as coverage provided to dependents of the employee.**

Section F. Substantial Compliance

A temporary compliance status is available for contractors that have indicated a willingness to comply but have requested additional time within which to fulfill all compliance requirements. Under this scenario, the contractor may enter into contracts with the City before the compliance process is completed. Substantial compliance status may be awarded to a contractor at the discretion of the City staff, within certain parameters.

Section G. Declaration of Non-Discrimination

① **Declaration:**
I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

② **Date & Address** _____ / _____ / _____
Month Date Year

_____
Address

_____ / _____
(City) (State)

③ **Signature** _____

④ **Name of Signatory (please print)** _____

Did you submit supporting documentation for each benefit offered? Yes ☐ No ☐ _____ (please check one)

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CITY OF OAKLAND
LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE
EXIT REPORT AND AFFIDAVIT

The Prime Contractor/Consultant must complete this form for, and have it executed by, each LBE/SLBE subcontractor/Subconsultant (incl. lower tier LBE/SLBE subcontractors/subconsultants), suppliers and truckers. This form must be submitted to the City Manager's Office of Contract Compliance & Employment Services with the final progress payment application. (Please complete an L/SLBE Exit Report for each listed L/SLBE subcontractor/Subconsultant).

TRANSMITTAL To: Contract Compliance Officer: _____

From: Contractor_____Date Transmitted: _____

SECTION I. Reporting Date: _____ Project Name: _____

Name of L/SLBE: Portion of Work (Trade) _____

Original L/SLBE Contract Amount: _____Change Orders, Amendments, Modifications:_____

Final L/SLBE Contract Amount: _____Amount of Progress Payments Paid to Date: _____

Amount Owing including all Change Orders, Amendments and Modifications: _____

Please include a detailed written explanation on Page 2 of this form if the final contract amount for this LBE/SLBE is less than the original contract amount.

Execution by LBE/SLBE:
I agree with the information on this form. **Note:** If LBE/SLBE is in disagreement, it should be not signed below but instead return this form with an explanation of, and reasons for, the disagreement in the space provided on Page 2 of this form:

_____
Signature of Owner/Authorized Representative of LBE/SLBE:

_____ _____
(Name and title: please print) Phone Date

SECTION II.
I/We declare, under penalty of perjury under the laws of the State of California, that the information on this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within a reasonable time after the date of the City's final payment under the Contract.
Prime Contractor, including each joint venture partner, must sign this form (use additional sheets if necessary)

_____	_____
Owner/Authorized Representative (Signature)	Owner/Authorized Representative (Signature)
_____	_____
Name (please print/type)	Name (please print/type)
_____ _____	_____ _____
Title (please print/type) Date	Title (please print/type) Date
_____	_____
Firm Name	Firm Name
( ) _____ ( ) _____	( ) _____ ( ) _____
Telephone Fax	Telephone Fax

Revised 3/2/2009
Formerly Schedule F

Explanation by contractor if the final contract amount for this L/SLBE is less than the original contract amount.

Explanation by L/SLBE if it is in disagreement with the above explanation, or with the information on the first page of this form:

Comments on the above by the awarding department:

CONSTRUCTION CONTRACTOR INSURANCE REQUIREMENTS

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to The City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

i. Commercial General Liability insurance, including but not limited to, Bodily Injury, Broad Form Property Damage, Contractual Liability, Operations, Products and Completed Operations, Owners and Contractors Protective Liability, and/or XCU coverage, when applicable. The policy shall contain a severability of interest clause or cross liability clause or the equivalent thereof.

A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance/self-insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).

B. Limits of liability, on an occurrence, basis shall include the following:

Bodily/Personal Injury - $1,000,000
Property Damage - $1,000,000
Or, Combined Single Limit (C.S.L) for Bodily Injury and Property Damage - $2,000,000

ii. Automobile Liability insurance, including all owned, leased, hired or borrowed by or on behalf of the Contractor or its agents in the performance of this Agreement shall have the following minimum limits for Bodily Injury and Property Damage - $1,000,000 Combined Single Limit.

iii. Worker's Compensation insurance as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than $1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the

California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

iv. Professional Liability/errors and omissions insurance in the amount of $1,000,000.00.

v. Builders' Risk/Course of Construction Insurance covering all risks of loss in an amount equal to the completed value of the project with no coinsurance penalty provisions. The City shall be named as loss payee under this policy. The insurer shall waive all rights of subrogation against the City.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

i. Additional Insured: Contractor shall name the City of Oakland, its Councilmembers, directors, officers, agents, employees and volunteers as additional insureds in its Comprehensive Commercial General Liability and Automobile Liability policies. If Contractor submits the ACORD Insurance Certificate, the additional insured endorsement must be set forth on a CG20 10 11 85 form and/or CA 20 48 - Designated Insured Form (for business auto insurance). A STATEMENT OF ADDITIONAL INSURED ENDORSEMENT ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF THE ADDITIONAL INSURED REQUIREMENT; and

ii. Cancellation Notice: 30-day prior written notice of cancellation, termination or material change in coverage; and

iii. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

iv. Insurer shall carry a Best Rating of A VII or greater.

c. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

e. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

f. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

g. Subcontractors

Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all the requirements stated herein.

OWNERSHIP, ETHNICITY AND GENDER QUESTIONNAIRE

For use by all city agencies and departments for construction. procurement, and professional services contracts (including CFARs)

To be completed by the prime and subconsultants (including CFARs)

Part I: OWNERSHIP& ETHNICITY of PRIME:

Firm Name_____ Contact Person Phone (____)_____

Street Address _____ City _____ State _____ Zip _____ Federal ID #_____

City of Oakland Business License Number _____

(Please check one and explain below)

Self Employed, Name of Owner _____ Corporation, State of Incorporation _____

Partnership, General or Limited _____ Names of Partners_____

Joint Venture, Names of Participants _____ _____ _____

Ownership Interests
All owners must be listed in this information

Ethnicity	African American	American Indian/ Alaskan Native	Asian or Pacific Islander	Caucasian	Filipino	Hispanic	Other
Number of Owners							
% Of Total Ownership							
Women							
Joint Venture Ownership							

Part II: CERTIFICATIONS

Please attach a copy of the certification letter or provide the certification number and expiration date.

Minority-owned Business Enterprise (MBE)? Cert #_____ Expiration Date: _____

Woman-Owned Business Enterprise (WBE) Cert #_____ Expiration Date _____

Disadvantaged Business Enterprise (DBE) Cert #_____ Expiration Date _____

Oakland Certified Local Business Enterprise Cert #_____ Expiration Date _____

Other _____ Cert #_____ Expiration Date _____

Part III: Ethnicity and Gender of Employees

			Male						Female					
Employment Category	Total Employees	Oakland Residents	African American	American Indian/Alaskan Native	Asian/ Pacific Islander	Caucasian	Hispanic	Other	African American	American Indian/ Alaskan Native	Asian/ Pacific Islander	Caucasian	Hispanic	Other
Project Management														
Professional														
Technical														
Clerical														
Trades														

AFFIRMATIVE ACTION INFORMATION I certify that I/we shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, sexual orientation, national origin, age, disability, Acquired Immune Deficiency Syndrome (AIDS) AIDS related complex, or any other arbitrary basis and shall insure compliance with all provisions of Executive Order No. 11246 (as amended by Executive Order No. 11375). I certify that I/we shall not discriminate against any employee or applicant for employment because they are disabled veteran of the Viet Nam era and shall insure compliance with all provisions of 41CFR60-250.4 where applicable.

I declare under penalty of perjury that the foregoing is true and correct. Signature _____

Title _____ **Date** _____

Please be advised that the ethnicity and gender information contained in this Schedule D will be used for reporting and tracking purposes ONLY.

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PROGRESS PAYMENT FORM FOR PRIME CONTRACTORS/CONSULTANTS

For use by all city agencies and departments for construction and professional services contracts.

To be completed by the prime contractor/consultant and be submitted each time a payment is requested

Project Name	Name of Prime Contractor/Consultant
Project Number	Address Phone

Subcontractors/Sub-consultants & Suppliers/Services	Original Contract Amount	Change Order $ Amounts	Total Contract Amount	Total Payment to date	Payment for this period	Balance Remaining in Project

Under penalty of perjury the undersigned agrees that the forgoing information is true and correct.

Name and Title _____ Date _____

Revision date 7/2007

SUBCONTRACTOR. SUPPLIER. AND TRUCKING LISTING

Date

Company Name:

Signed:

Note:
The contractor herewith must list all subcontractors and suppliers with values greater than one half of one percent **and all trucking regardless of tier** and dollar amoutn to be used on the project. The contractor agrees that no changes will be made in this list wihout the approval of the City of Oakland. Provide the address, type if work, dollar amount and check all boxes that apply. Bidders that do not lit all subcontractors and suppliers with values greater than one half of one percent and allt ruckers regardless of tier and dollar amount shall be deemed non-responsive.

Type of Work	Company Name	Address and City	Phone Number	Dollar Amount	Subcontractor	Supplier	Trucking	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary.

Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.

*** (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)**

**** (M = Male) (F = Female)**

Side B

Revised 3/2/2009

ATTACHMENTS

PROFESSIONAL SERVICES FORMS

- Campaign Contribution

- Combined Forms
  C-1=Americans With Disabilities Act (ADA);
  P=Nuclear Free Zone;
  U=Compliance Commitment Agreement;
  V=Affidavit of Non Disciplinary Action
- Certification of Debarment & Suspension (For Federally Funded Projects)

- Declaration of Compliance – Living Wage Ordinance

- Equal Benefits Declaration of Compliance of Nondiscrimination

- Exit Report & Affidavit

- Independent Contractor Questionnaire

- Insurance Requirements for Professional & Procurement Contracts

- Project Consultant Team Listing

CITY OF OAKLAND

CONTRACTOR ACKNOWLEDGEMENT OF CITY OF OAKLAND CAMPAIGN CONTRIBUTION LIMITS FOR CONSTRUCTION, PROFESSIONAL SERVICE & PROCUREMENT CONTRACTS

To be completed by City Representative prior to distribution to Contractor

City Representative _____ Phone _____ Project Spec No. _____

Department _____ Contract/Proposal Name _____

This is an ___ Original ___ Revised form (check one). If Original, complete all that applies. If Revised, complete Contractor name and any changed data.

Contractor Name _____ Phone ____-____-_____

Street Address _____ City _____, State _____ Zip _____

Type of Submission (check one) ___ Bid ___Proposal ___ Qualification ___ Amendment

Majority Owner (if any). A majority owner is a person or entity who owns more than 50% of the contracting firm or entity.

Individual or Business Name _____ Phone ____-____-_____

Street Address _____ City _____, State _____ Zip _____

The undersigned Contractor's Representative acknowledges by his or her signature the following:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland and the Oakland Redevelopment Agency during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act and certify that I/we have not knowingly, nor will I /we make contributions during the period specified in the Act.

I understand that the contribution restrictions also apply to entities/persons affiliated with the contractor as indicated in the Oakland Municipal Code Chapter 3.12.080.

If there are any changes to the information on this form during the contribution-restricted time period, I will file an amended form with the City of Oakland.

_____ ___/___/___
Signature Date

_____ _____
Print Name of Signer Position

To be Completed by City of Oakland after completion of the form

Date Received by City: ___/___/___ By _____

Date Entered on Contractor Database: ___/___/___ By _____

Revised 3/2/2009
Formerly Schedule O

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DECLARATION OF COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

The Americans with Disabilities Act (ADA) requires that private organizations serving the public make their goods, services and facilities accessible to people with disabilities. Furthermore, the City of Oakland requires that all of its Contractors comply with their ADA obligations and verify such compliance by signing this Declaration of Compliance.

The Contractor certifies that it will comply with the Americans with Disabilities Act by:

A. Adopting policies, practices and procedures that ensure non-discrimination and equal access to Contractor's goods, services and facilities for people with disabilities;

B. Providing goods, services and facilities to individuals with disabilities in an integrated setting, except when separate programs are required to ensure equal access;

C. Making reasonable modifications in programs, activities and services when necessary to ensure equal access to individuals with disabilities, unless fundamental alteration in the nature of the Contractor's program would result;

D. Removing architectural barriers in existing facilities or providing alternative means of delivering goods and services when removal of barriers is cost-prohibitive;

E. Furnishing auxiliary aids to ensure equally effective communication with persons with disabilities; and

F. If contractor provides transportation to the public, by providing equivalent accessible transportation to people with disabilities.

NUCLEAR FREE ZONE DISCLOSURE

I certify that: A) Neither this Business Entity nor any of its subsidiaries, affiliates or agents engages in nuclear weapons work or anticipates entering into such work for the duration of its contract(s) with the City of Oakland; B) The appropriate individuals of authority are cognizant of their responsibility to notify the Office of Finance of the City of Oakland if the Business Entity or any of its subsidiaries, affiliates or agents subsequently engages in nuclear weapons work.

AFFIDAVIT OF NON-DISCIPLINARY OR INVESTIGATORY ACTION

I certify that the Equal Employment Opportunity Commission (EEOC), Department of Fair Employment & Housing (DFEH) or the Office of Federal Contract Compliance Programs (OFCCP) has not taken disciplinary or investigatory action against the Firm. If such action has been taken, attached hereto is a detailed explanation of the reason for such action, the party instituting such action and the status or outcome of such action.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date	Signature of Authorized Representative
Company Name	Type or Print Name
Address	Type or Print Title

City State Zip Email Address

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Certification of Debarment and Suspension

(For Federally Funded Projects Only)

Under the requirements of OMB Circular A-133 Supplement, part 3, Section 1, the City is required to obtain certifications that contractors and sub-grantees receiving awards exceeding $25,000 have not been suspended or debarred from participating in federally funded procurement activities.

1. The prospective primary participant certifies to the best of its knowledge and belief that its principals:

   a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal debarment or agency.

   b) Have not within a 3 year period preceding this proposal, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State, or local) transaction under a public transaction or contract.

   c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal State or local) with commission of the offenses enumerated in paragraph (1)(b) of this certification; and

   d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

By signing and submitting this form the prospective lower tier participant's authorized representative hereby obligates the proposer(s) to the above stated conditions.

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Area Code / Phone / Date	Type or Print Title

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction

(For Federally Funded Projects Only)

Under the requirements of OMB Circular A-133 Supplement, part 3, Section 1, the City is required to obtain certifications that contractors and sub-grantees receiving awards exceeding $25,000 have not been suspended or debarred from participating in federally funded procurement activities.

The prospective primary participant certifies to the best of its knowledge and belief that its principals:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participants shall attach an explanation to this proposal.

By signing and submitting this form the prospective lower tier participant's authorized representative hereby obligates the proposer(s) to the above stated conditions.

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Area Code / Phone / Date	Type or Print Title

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DECLARATION OF COMPLIANCE – LIVING WAGE ORDINANCE

(For use by all city agencies and departments for procurement, and professional services contracts)
To be completed by the prime and subconsultants (including CFARs)

The Oakland Living Wage Ordinance (the "Ordinance"). Codified as Oakland Municipal Code provides that certain employers under contracts for the furnishing of services to or for the City that involve an expenditure equal to or greater than $25,000 and certain recipients of City financial assistance that involve receipt of financial assistance equal to or greater than $100,000 shall pay a prescribed minimum level of compensation to their employees for the time their employees work on City of Oakland contracts. The Redevelopment Agency of the City of Oakland adopted the City's Living Wage policy as its own policy Agency Resolution No. 98-13 C.M.S.

The contractor or city financial assistance recipient (CFAR) further agrees:

To pay employees a wage no less than the minimum initial compensation of $10.83 per hour with health benefits, as described in Section 3-C "Health Benefits" of the Ordinance, or otherwise $12.45 per hour, and to provide for the annual increase pursuant to Section 3-A 'Wages" of the Ordinance.

(a) To provide at least twelve compensated days off per year for sick leave, vacation or personal necessity at the employees request, and, at least ten additional days per year of uncompensated time off pursuant to Section 3- B "Compensated Days Off" of the Ordinance.

(b) Health benefits –Said full-time and part-time employees paid at the lower living wage rate shall be provided health benefits of at least $1.62 per hour. Contractor shall provide proof that health benefits are in effect for those employees no later than 30 days after execution of the contract or receipt of City financial assistance.

(b) To inform employees that he or she may be eligible for Earned Income Credit (EIC) and shall provide forms to apply for advance EIC payments to eligible employees. There are several websites and other sources available to assist you. Web sites include but are not limited to: (1) http://www.irs.gov. for current guidelines as prescribed by the Internal Revenue Service and (2) the 2008 Earned Income Tax Outreach Kit http://www.cbpp.org/eic2008/

(d) To permit access to work sites for authorized City representatives to review the operation, payroll and related documents, and to provide certified copies of the relevant records upon request by the City; and

(e) Not to retaliate against any employee claiming non-compliance with the provisions of this Ordinance and to comply with federal law prohibiting retaliation for union organizing.

The undersigned authorized representative hereby obligates the proposer to the above stated conditions under penalty of perjury.

Company Name	Signature of Authorized Representative
Address	Type or Print Name
Area Code / Phone / Date	Type or Print Title

Employment Questionnaire

Please provide responses to the following questions:

Item No.	DESCRIPTION	RESPONSE	COMMENTS
1.	*How many permanent employees are employed with your company. (If less than 5 employees stop here)		
2.	How many of your permanent employees are paid above the Living Wage rate.		
	How many of your permanent employees are paid below the Living Wage rate.		
3.	Number of compensated days off per employee (Refer to item "a"" on the other side of the form for the correct number of compensated days off.		
4	Number of trainees in your company?		
5.	Number of employees who are under 21 years of age, employed by a nonprofit corporation for after school or summer employment for a period not longer than 90 days.		

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EQUAL BENEFITS DECLARATION OF NONDISCRIMINATION

For use by all city agencies and departments for procurement, professional services (including CFARs) and construction contracts. 1
To be completed by the prime contractor/consultant.

Section A. Vendor/Contractor/Consultant/*CFAR Information

1 Name of Company _____

2 Name of Company Contact _____

3 Phone Number _____ Fax Number _____

4 Vendor Number (If Known) _____ Federal ID or Social Security # _____

5 Approximate Number of Employees in the U.S. _____

6 Are any of your employees covered by a collective bargaining agreement or union trust fund ? Yes ☐ ☐

7 Union Name(s) _____

Section B Compliance Questions

1 Does your company provide or offer access to benefits for employees and their spouses.

Yes ☐ *or* No ☐ (please check one)

2 Does your company provide or offer access to benefits for employees and their domestic partners.

Yes ☐ *or* No ☐ (please check one)

Questions B1 & B2 should be answered YES, even if your employees must pay some or all of the cost of spousal or domestic partner benefits.

Section C Compliance Questions

3 Please check each benefit that applies to answers 1 & 2 above and list as "other" any additional benefits not listed below. Some benefits (i.e. bereavement leave) are provided to employees because they have a spouse or domestic partner. Other benefits (i.e. medical insurance) are provided directly to the spouse or domestic partner.

	Benefit	Yes, this benefit is offered to Employees only	Yes, this benefit is offered to Employees and their Spouses	Yes, this benefit is offered to Employees and their Domestic Partners	No this benefit is not offered at all	Yes, documents were submitted for this benefit.
a	Health	☐	☐	☐	☐	☐
b	Dental	☐	☐	☐	☐	☐
c	Vision	☐	☐	☐	☐	☐
d	Retirement (Pension, 401(k), etc)	☐	☐	☐	☐	☐
e	Bereavement	☐	☐	☐	☐	☐
f	Family Leave	☐	☐	☐	☐	☐
g	Parental Leave	☐	☐	☐	☐	☐
h	Employee Assistance Program	☐	☐	☐	☐	☐
I	Relocation & Travel	☐	☐	☐	☐	☐
j	Company Discount, Facilities & Events	☐	☐	☐	☐	☐
k	Credit Union	☐	☐	☐	☐	☐
l	Child Care	☐	☐	☐	☐	☐
m	Other	☐	☐	☐	☐	☐

* CFAR is a City Financial Assistance Recipient

** The term "Domestic Partner" is defined as same-or opposite-sex couples registered with a state or local government domestic partnership registry.

Revised 3/2/2009
Formerly Scheudle N-1
EBO 1

Section D. Submitting Documents to Support Compliance Determinations

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EQUAL BENEFITS DECLARATION OF NONDISCRIMINATION

For use by all city agencies and departments for procurement, professional services (including CFARs) and construction contracts. T
To be completed by the prime contractor/consultant.

Please remember: Copies of documents must be submitted to justify each benefit marked under Section B-3 above. Your company can not be certified as complying with the City's Equal benefits Ordinance without proper documentation. For example, to document medical insurance, submit a statement from your insurance provider or a copy of the eligibility section from your plan document. To document leave programs, submit a copy of your company's employee handbook. If documentation of a particular benefit does not exist, attach an explanation. For more information please call the designated agency contract administrator or project manager.

Section E. Winning Compliance Through Reasonable Measures

Business owner, please note: If you can not offer a benefit in a nondiscriminatory manner because of reasons outside your control, (e.g., there are no insurance providers in your area willing to offer domestic partner coverage) you may be eligible for Reasonable Measures compliance. To comply on this basis, you must agree to pay a cash equivalent, submit a completed Reasonable Measures Application Form with all necessary attachments, and have your application approved by the City. For more information, the contract administrator or project manager holds the appropriate Reasonable Measures Application Form.
***Effective January 1, 2002, Assembly Bill 25, Domestic Partner Coverage requires carriers to offer domestic partner (DP) coverage to employer groups under the same terms and conditions as coverage provided to dependents of the employee.**

Section F. Substantial Compliance

A temporary compliance status is available for contractors that have indicated a willingness to comply but have requested additional time within which to fulfill all compliance requirements. Under this scenario, the contractor may enter into contracts with the City before the compliance process is completed. Substantial compliance status may be awarded to a contractor at the discretion of the City staff, within certain parameters.

Section G. Declaration of Non-Discrimination

① **Declaration:**

I hereby declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

② **Date & Address** _____ / _____ / _____
Month Date Year

_____
Address

_____ / _____
(City) (State)

③ **Signature** _____

④ **Name of Signatory (please print)** _____

Did you submit supporting documentation for each benefit offered? Yes ☐ No ☐ _____ (please check one)

Revised 3/2/2009
Formerly Scheudle N-1
EBO 1

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CITY OF OAKLAND
LOCAL AND SMALL LOCAL BUSINESS ENTERPRISE
EXIT REPORT AND AFFIDAVIT

The Prime Contractor/Consultant must complete this form for, and have it executed by, each LBE/SLBE subcontractor/Subconsultant (incl. lower tier LBE/SLBE subcontractors/subconsultants), suppliers and truckers. This form must be submitted to the City Manager's Office of Contract Compliance & Employment Services with the final progress payment application. (Please complete an L/SLBE Exit Report for each listed L/SLBE subcontractor/Subconsultant).

TRANSMITTAL To: Contract Compliance Officer: _____

From: Contractor_____Date Transmitted: _____

SECTION I. Reporting Date: _____ Project Name: _____

Name of L/SLBE: Portion of Work (Trade) _____

Original L/SLBE Contract Amount: _____Change Orders, Amendments, Modifications:_____

Final L/SLBE Contract Amount: _____Amount of Progress Payments Paid to Date: _____

Amount Owing including all Change Orders, Amendments and Modifications: _____

Please include a detailed written explanation on Page 2 of this form if the final contract amount for this LBE/SLBE is less than the original contract amount.

Execution by LBE/SLBE:
I agree with the information on this form. **Note:** If LBE/SLBE is in disagreement, it should be not signed below but instead return this form with an explanation of, and reasons for, the disagreement in the space provided on Page 2 of this form:

_____
Signature of Owner/Authorized Representative of LBE/SLBE:

_____ _____
(Name and title: please print) Phone Date

SECTION II.
I/We declare, under penalty of perjury under the laws of the State of California, that the information on this form is complete, that the tabulated amounts paid to date are accurate and correct, and that the tabulated amounts owing will be paid within a reasonable time after the date of the City's final payment under the Contract.
Prime Contractor, including each joint venture partner, must sign this form (use additional sheets if necessary)

_____ _____
Owner/Authorized Representative (Signature) Owner/Authorized Representative (Signature)

_____ _____
Name (please print/type) Name (please print/type)

_____ _____ _____ _____
Title (please print/type) Date Title (please print/type) Date

_____ _____
Firm Name Firm Name

( ) _____ ( ) _____ ( ) _____ ( ) _____
Telephone Fax Telephone Fax

Explanation by contractor if the final contract amount for this L/SLBE is less than the original contract amount.

Explanation by L/SLBE if it is in disagreement with the above explanation, or with the information on the first page of this form:

Comments on the above by the awarding department:

INDEPENDENT CONTRACTOR QUESTIONNAIRE
(TO BE COMPLETED BY PROFESSIONAL SERVICES CONSULTANTS AND NON-PROFIT ORGANIZATIONS)

FOR CITY USE ONLY

Based upon a review of this questionnaire and any other factors I have cited below, I have determined that this person (is) (is not) an independent contractor.

_____

_____

_____

Date_____ _____

City Attorney/Assistant City Attorney/
Deputy City Attorney

PART A: INDEPENDENT CONTRACTOR QUESTIONNAIRE TO BE COMPLETED BY PROPOSED CONTRACTOR

Name of Contractor _____

SSN or Corporate Taxpayer ID No. of Contractor _____

Please answer questions "yes" or "no" whenever possible. When a more extensive explanation is required and there is no space on this form, please attach a separate sheet.

The word contract refers to the agreement the City is contemplating entering into with you.

NOTE: CORPORATIONS MUST PROVIDE THE CORPORATE FEDERAL TAXPAYER NUMBER IN THE SPACE ABOVE AND ATTACH A CALIFORNIA SECRETARY OF STATE BUSINESS REGISTRATION RECORD (FROM WEBSITE) SHOWING "ACTIVE" STATUS. CORPORATIONS ARE NOT REQUIRED TO COMPLETE THE REMAINDER OF THIS FORM, BUT A CORPORATE REPRESENTATIVE MUST SIGN.

	Yes	No
1. Have you performed services for the City in any year(s) prior to 200__? If yes, please indicate which years.		
2. Have you received any training, guidance, or direction from the City as to how the City expects the job (for which your services are contemplated) to be done. If yes, please describe what you are expecting (or have received) in the way of training or direction. _____		
3. Will your services under the contract be performed on City property? If no, please describe where the services are to be performed. _____ _____		
4. Do you expect to devote any full days (6 or more hours) or full weeks (30 or more hours) towards performing the services under the contract? If yes, please indicate approximately how many full days and/or full weeks you expect to devote during the life of the contract _____		
5. Are there any set or fixed hours or days of the week during which the City is expecting you to perform services under the contract? If yes, please indicate the days and hours during which you will be performing services. _____		

INDEPENDENT CONTRACTOR QUESTIONNAIRE
(TO BE COMPLETED BY PROFESSIONAL SERVICES CONSULTANTS AND NON-PROFIT ORGANIZATIONS)

	Yes	No
6. Please provide the date on which you expect to complete your services under the contract (dd/mm/yy).		
7. In order to perform services under the contract, do you intend to provide your own supplies or equipment? If yes, briefly describe the equipment/supplies. _____		
8. If your response to No. 7 is yes, has the City promised to or will you be expecting the City to reimburse you in any way for the cost of the supplies or equipment?		
9. Other than the above-referenced supplies and equipment, do you anticipate incurring any unreimbursable out-of-pocket expenses in the performance of the contract with the City? If yes. please describe. _____		
10. Do you have federal and state employer identification numbers? If so, please provide these numbers. _____		
11. Within the past two years have you performed the same type services (as called for in the contract) for any client or customer other than the City? If yes, please identify the client or customer and briefly describe the services performed. _____		
12. Do you currently have clients or customers other than the City for whom you are or will perform services during the duration of the contract? If yes, please identify client or customer by name and briefly describe the nature of services performed. _____		
13. In the past two years have you notified any insurance company in conjunction with obtaining a business-related insurance policy that you are self-employed? If yes, please indicate the insurance company and the nature of the business-related policy. _____ _____		
14. Do you have your own employees to help you perform the services called for by your contract? (Do not refer to independent contractors you may use to assist you.) _____		
15. Within the past two years have you been the employee of any employer (received a W-2)? If yes, state the employer(s), the date(s) of employment, and the nature of the services performed. _____ _____		
16. Do you have an office or business address other than your own home address, a City of Oakland office or your employer's business address? If yes, please state the address. _____ _____		
17. With regard to the following, please indicate whether you have:		
a. an existing business letterhead? (please attach)		

INDEPENDENT CONTRACTOR QUESTIONNAIRE
(TO BE COMPLETED BY PROFESSIONAL SERVICES CONSULTANTS AND NON-PROFIT ORGANIZATIONS)

	Yes	No
b. an existing business phone number other than your home number? (please indicate # along with area code)		
c. filed for a fictitious business name? If yes, please attach a certified copy of the County issued certificate and an affidavit of publication.		
d. done public advertising for your business? If yes, please attach the ad copy or briefly describe your advertising efforts.		
18. If you have answered parts or all of No. 17 with "Yes," are the services represented in your answers the same type of services you will be performing for the City?		
19. Do you have a license from any governmental agency to perform the services under the contract? If yes, please state the type of license and name of the licensing agency. _____		
20. Please describe the extent of any personal financial investment you have made in order to be self-employed. You may either choose to indicate the actual dollar amount of investment or, without disclosing any dollar amount, briefly describe any purchases, leases or other types of financial commitments made by you for self employment purposes. _____ _____ _____ _____		

I VERIFY THAT THE RESPONSES ABOVE ARE TRUE AND CORRECT.

_____

Date _____ Contractor

PLEASE INDICATE WHETHER YOU OBJECT IF THE CITY DECIDES TO TREAT YOU AS A SHORT-TIME CONTRACT EMPLOYEE RATHER THAN AN INDEPENDENT CONTRACTOR AND THE REASON FOR YOUR OBJECTION. _____

_____

_____

_____

_____

_____

_____

_____

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INSURANCE REQUIREMENTS
(For Professional Services & Procurement Contracts)

a. General Liability, Automobile, Worker's Compensation and Professional Liability

Contractor shall procure, prior to commencement of service, and keep in force for the term of this contract, at Contractor's own cost and expense, the following policies of insurance or certificates or binders as necessary to represent that coverage as specified below is in place with companies doing business in California and acceptable to the City. If requested, Contractor shall provide the City with copies of all insurance policies. The insurance shall at a minimum include:

i. **Commercial General Liability insurance**, shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, Bodily Injury, Broad Form Property Damage, and liability assumed under an insured contract [(including the tort liability of another assumed in a business contract)]. If such CGL insurance contains a general aggregate limit, it shall apply separately to this agreement.

A. Coverage afforded on behalf of the City shall be primary insurance and any other insurance available to the City under any other policies shall be excess insurance (over the insurance required by this Agreement).

B. Limits of liability: Contractor shall maintain commercial general liability (CGL) and, if necessary, commercial umbrella insurance with a limit of not less than $2,000,000 each occurrence. If such CGL insurance contains a general aggregate limit, it shall apply separately to this location [project].

C. If the policy is a "claim made" type policy, the following should be included as endorsements:

1) The retroactive date shall be the effective date of this Agreement or a prior date.
2) The extended reporting or discovery period shall not be less than thirty-six (36) months.

ii. **Automobile Liability Insurance.** Contractor shall maintain automobile liability insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos). Coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage equivalent to that provided in the 1990 and later editions of CA 00 01. In the event the Contractor does not own vehicles, but utilized non-owned and hired vehicles, evidence of such coverage is acceptable with a signed statement from Contractor stating that only non-owned and hired vehicles are used in the course of the contract.

iii. **Worker's Compensation insurance** as required by the laws of the State of California. Statutory coverage may include Employers Liability coverage with limits not less than $1,000,000. The Contractor certifies that he/she is aware of the provisions of section 3700 of the California Labor Code, which requires every employer to provide Workers' Compensation coverage, or to undertake self-insurance in accordance with the provisions of that Code. The Contractor shall comply with the provisions of section 3700 of the California Labor Code before commencing performance of the work under this Agreement and thereafter as required by that code.

iv. **Professional Liability/errors and omissions insurance** in the amount of _____.

b. Terms Conditions and Endorsements

The aforementioned insurance shall be endorsed and have all the following conditions:

i. Insured Status (Additional Insured): Contractor shall provide insured status using ISO endorsement CG 20 10 or its equivalent naming the City of Oakland, its Councilmembers, directors, officers, agents and employees as insureds in its Comprehensive Commercial General Liability policy. If Contractor submits the ACORD Insurance Certificate, the insured status endorsement must be set forth on a CG 20 10 (or equivalent). A STATEMENT OF ADDITIONAL INSURED STATUS ON THE ACORD INSURANCE CERTIFICATE FORM IS INSUFFICIENT AND WILL BE REJECTED AS PROOF OF MEETING THIS REQUIREMENT; and

ii. Cancellation Notice: 30-day prior written notice of termination or material change in coverage and 10-day prior written notice of cancellation for non-payment;

iii. Cross-liability coverage as provided under standard ISO forms' separation of insureds clause; and

iv. Certificate holder is to be the same person and address as indicated in the "Notices" section of this Agreement; and

v. Insurer shall carry a insurance from an admitted company with a Best Rating of A VII or better.

c. Replacement of Coverage

In the case of the breach of any of the insurance provisions of this Agreement, the City may, at the City's option, take out and maintain at the expense of Contractor, such insurance in the name of Contractor as is required pursuant to this Agreement, and may deduct the cost of taking out and maintaining such insurance from any sums which may be found or become due to Contractor under this Agreement.

d. Insurance Interpretation

All endorsements, certificates, forms, coverage and limits of liability referred to herein shall have the meaning given such terms by the Insurance Services Office as of the date of this Agreement.

e. Proof of Insurance

Contractor will be required to provide proof of all insurance required for the work prior to execution of the contract, including copies of Contractor's insurance policies if and when requested. Failure to provide the insurance proof requested or failure to do so in a timely manner shall constitute ground for rescission of the contract award.

f. Subcontractors

Should the Contractor subcontract out the work required under this agreement, they shall include all subcontractors as insureds under its policies or shall maintain separate certificates and endorsements for each subcontractor. As an alternative, the Contractor may require all subcontractors to provide at their own expense evidence of all the required coverages listed in this Schedule. If this option is exercised, both the City of Oakland and the Contractor shall be named as additional insured under the subcontractor's General Liability policy. All coverages for subcontractors shall be subject to all the requirements stated herein. The City reserves the right to perform an insurance audit during the course of the project to verify compliance with requirements.

g. Deductibles and Self-Insured Retentions

Any deductible or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductible or self-insured retentions as respects the City, its Councilmembers, directors, officers, agents, employees and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

h. Waiver of Subrogation

Contractor waives all rights against the City of Oakland and its Councilmembers, officers, directors and employees for recovery of damages to the extent these damages are covered by the forms of insurance coverage required above.

i. Evaluation of Adequacy of Coverage

The City of Oakland maintains the right to modify, delete, alter or change these requirements, with reasonable notice, upon not less than ninety (90) days prior written notice.

PROJECT CONSULTANT TEAM LISTING

For Professional Services Contracts Only - To be completed by prime consultants only.

Note:
The consultant herewith must list all subconsultants regardless of tier and their respective percentages of the project work. No other subconsultants, other than those listed below shall be used without prior written approval by the City of Oakland. Provide all information listed and check the appropriate boxes. Firms must be certified with he City of Oakland in order to receive Local/Small Local Business Enterprise credits.

Date _____

Company Name: _____

Signed: _____

Type of Work	Company Name	Address and City	Phone Number	% of Project Work	Dollar Amount	Subcontractor	Local (LBE)	Small Local (SLBE)	* Ethnicity	** Gender

Attach additional page(s) if necessary.
Contractors are required to identify the ethnicity and gender of all listed firms majority owner. This information will be used for tracking purposes only.
*** (AA=African American) (AI=Asian Indian) (AP=Asian Pacific) (C=Caucasian) (H=Hispanic) (NA=Native American) (O=Other) (NL=Not Listed)**
**** (M = Male) (F = Female)**

ATTACHMENTS

CERTIFICATION FORMS

- East Bay Interagency Alliance (EBIA) Common Application for Local Certification
- North American Industry Classification System – Code Listing

East Bay Interagency Alliance (EBIA)

COMMON APPLICATION for LOCAL CERTIFICATION

Alameda County – Alameda County Transportation Improvement Authority – City of Oakland – Port of Oakland

Check Certifying Agency: Submittal Date: _____

- ☐ Alameda County – Complete Supplemental **A**
- ☐ Alameda County Transportation Improvement Authority – Complete Supplemental **B**
- ☐ City of Oakland – Complete Supplemental **C**
- ☐ Port of Oakland – Complete Supplemental **D**
- ☐ All the above – Complete all Supplementals

The Common Application is a sharing of information between agencies and NOT a reciprocal certification.

1) Contact Information

Legal Name of Entity		Contact Person (Name & Title)	
Street Address of Entity (No P.O. Box)			
City	State	Zip Code	County
Telephone ( )	Fax # ( )	Cell# ( )	
Email Address		Web Site	

2) Company Profile

Primary Service undertaken/offered:		Specialty Service undertaken/offered:	
Date Entity was established (mm/dd/yr)	Does the entity have one or more additional offices outside the city of Oakland, CA? ☐ Y ☐ N If yes, list other location(s)	Date Oakland office was established (mm/dd/yr)	
Method of Acquisition	☐ New ☐ Merger or consolidation	☐ Purchased existing ☐ Inherited	☐ Secured concession ☐ Other (explain)	Federal ID Number:
Has this entity operated under a different name during the past five years? ☐				

Type of Firm ☐ Sole Proprietorship ☐ Joint Venture ☐ Partnership ☐ Corporation ☐ Limited Liability Partnership ☐ Limited Liability Corporation ☐ Publicly traded entity ☐ Non-Profit or Church ☐ Other _____	Ethnicity Group of owners(s) that own greater than 50% of the business. (for tracking purposes only) ☐ African American ☐ Hispanic ☐ Asian ☐ Native American ☐ Asian Pacific /Hawaiian ☐ Multi ethnic ownership ☐ Asian Indian ☐ Multi ethnic minority ownership ☐ Caucasian ☐ Other _____ ☐ Filipino Gender (for tracking purposes only) ☐ Male ☐ Female

Gross Receipts for the last three recent fiscal years: Please attach copies of appropriate tax returns: (e.g. Form 990, Form 1040, Form 1120, etc)	Year Ended_____ Year Ended_____ Year Ended_____	Total Receipts $_____ Total Receipts $_____ Total Receipts $_____

2) Company Profile: (Continue)

Number of Employees at the local office Permanent Full time ____ Permanent Part time ____	Temporary Full Time ____ Temporary Part Time ____	Seasonal Full Time ____ Seasonal Part Time ____
TOTAL Number of Employees at all locations. Permanent Full time ____ Permanent Part time ____	Temporary Full Time ____ Temporary Part Time ____	Seasonal Full Time ____ Seasonal Part Time ____

3) Certifications:

Name of Issuing Authority	Type	Number	Expiration Date
City / County Business Tax Certificate			
Internal Revenue Service (required) – If your firm is a Non-Profit, submit the Letter of Determination of Not For Profit Status.			
State of CA /CUCP Certification for DBE/ACDBE firm			
State of CA /SBA Certification for Small firm			
Other Certification			
Other Certification			
Other Certification			

4) Professional Licenses, Permits and/or Certificates (e.g. contractor, architect, engineer, etc. – list all that apply - attach copies. List on a separate page if additional space is needed)

Name of Issuing Authority	Type	Number	Expiration Date
State of CA Contractor's License Board – Contractor's License:			
State of CA Professional Service License or Permit:			
State of CA Service Provider License or Permit:			
Other:			
Other:			

5) NAICS Codes:

Please review the NAICS[1] listing of work codes and indicate below your areas of expertise ranked in order of importance (begin with primary and specialty areas as indicated in the Company Profile section) NAICS Codes can be found at: http://www.naics.com/search.htm & http://www.census.gov/epcd/naics02/. Add separate sheet for additional NAICS codes if needed.

NAICS Code	Description of Work

6) Additional Information:

Are you a Trucking Firm? ☐ Yes ☐ No Are you a Truck Broker? ☐ Yes ☐ No Both? ☐ Yes ☐ No

A supplier? ☐ Yes ☐ No

7) When submitting this application to any of the checked Certification Taskforce members, I consent to the sharing of information contained herein: ☐ Yes ☐ No

Signature_____ Date:_____

[1] North American Industry Classification System – www.naics.com

A

Supplemental

Supplemental Questionnaire for Certification

A1) **Complete the application.**

Small Business: *Federal Small Business Administration (SBA) gross receipts limit by North American Industry Classification System (NAICS) or Standard Industry Classification (SIC) Codes.*

Emerging Business: *One half of the SBA gross receipt limit by NAICS OR SIC codes and in business less than 5 years.*

The following items must be attached to your Application:

- Copies of Signed Federal Tax Returns showing Gross Business Receipts for the last 3 years
- Copies of Business Licenses
- Copy of Current Identification (i.e. Driver's License, Identification Card)
- Copy of Deed, Rental or Lease Agreement showing Business Address
- Copies of Last 3 completed Contracts and Proposals including name of Contact Person
- Personal Net Worth Statement (if the business has never filed taxes)
- Notarized Affidavit

If you own less than 51% interest in your business, please indicate other owner(s) name(s), title(s) and percentage of ownership. List all current business and professional licenses. If you have been in business for less than three years, please provide your actual gross receipts received for the period that you have been in business. If you have not been in business for a complete tax year, please provide actual gross receipts to date.

The Affidavit must be complete, notarized and attached to the Application. If any item is not applicable, please put "N/A" in the designated area. If additional space is needed, please attach additional sheet(s).

A2) Please mail Application and Supporting Documents to:

Alameda County General Services Agency
Business Outreach Compliance Office/SLEB
1401 Lakeside Drive, 10th Floor
Oakland, CA 94612
Attention: Linda Moore, Business Outreach Officer

If you have questions regarding your certification, please contact:

Linda Moore
(510) 208-9717 or Linda.moore@acgov.org

Thank you for your interest in doing business with Alameda County.

A

AFFIDAVIT

""The undersigned swears, under penalty of perjury, that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____

(Name of Firm)

as well as the ownership thereof.

The undersigned also states that he/she is properly authorized by _____

(Name of Firm)

to execute the affidavit. Further, the undersigned agrees to provide the County Of Alameda, current, complete and accurate information regarding: actual work performed on the project, any payment(s) made or received, any proposed changes to the activities of the above-referenced firm that affect the firm's eligibility under this program, and to permit the audit and examination of books, records, and files of the named firm. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating appropriate legal action. The undersigned agrees that information provided may be shared with other governmental agencies."

Printed Name _____ Signature _____

Title _____ Date _____

NOTARY

SEAL

The foregoing affidavit was subscribed and sworn to before me on this _____ day of _____, 20_____

Notary Public

Commission Expires

Mail completed Application and Affidavit to:

County Of Alameda
1401 Lakeside Drive, Suite 907
Oakland, CA 94612
Attn: Linda Moore

B

Supplemental

ACTIA

Supplemental Questionnaire for Local Certification

B1) In addition to the Certification Application, submit the following documents in support of application:

A. Business license

B. Lease or proof of ownership of real property for business location

C. Current business tax certificate

D. A signed equipment rental/purchase agreement, or a contract to provide goods or services

E. Management service agreements

F. Applicable licenses and/or permits

G. Proof of Business income in the form of the following for the previous three years:

Sole Proprietorship
- Federal Tax Form 1040, including Schedule C

Partnership
- Federal Tax Form 1065, including Schedule K

Corporations
- Financial statement for corporation
- Federal Tax Form 1120S, including Schedule E
- Federal Tax Form 4562

B2) Small Local Business Certification Standards

☐ a. The business must be located at a fixed commercial or residential address which constitutes a business location and where administrative, clerical, professional or productive work is being performed, relative to its contracts, and not a temporary or movable office, a post office box or a telephone answering service;

☐ b. A business which has an office outside of Alameda County as well as an office within Alameda County must be staffed on a full time permanent basis with someone in the employ of the business;

☐ c. The location of the business must have been within Alameda County for at least one (1) year prior to the award date;

☐ d. The business must have a valid business license or tax certificate from its respective city or Alameda County dated at least one (1) year prior to the award date;

☐ e. The business must have proof of one or more past contracts citing the business address (such as contracts to perform work, to rent space or equipment, or for other business services);

☐ f. The business shall be considered *bona fide* if the business' ownership interests are real and continuing and not created merely for the purpose of meeting the objectives of the Authority's LBE/SLBE Program; and

☐ g. The business may not act as a passive conduit without contributing an added value or actual portion of the work awarded.

☐ h. The dollar level threshold to qualify as a Small Business is based on state law. Currently state law defines a "small business" as one that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years and no more than 100 employees; or is a "manufacturer" with 100 or fewer employees.

B

ACTIA

AFFIDAVIT

I, the undersigned, upon oath do hereby declare that I have read this application and all the information submitted, including information separately attached, is true, correct and complete to the best of my knowledge and belief. I am an owner of:

Name of Business _____

for which this application is made. I authorize the Alameda County Transportation Authority to investigate records of this business as necessary for making a determination as to whether certification should be granted. I understand that failure to provide information requested or to cooperate in an investigation of this business may result in denial of certification. I AGREE TO PROMPTLY NOTIFY THE ALAMEDA COUNTY TRANSPORTATION AUTHORITY OF ALL CHANGES AFFECTING THE INFORMATION SUBMITTED ON OR WITH THIS APPLICATION. I understand that submission of untruthful or misleading answers or failure to notify the Authority promptly of changes in location of this business are grounds for denial of certification, or may result in de-certification.

To be signed by an owner and officer of the business:

Signature Title

Printed Name Date Signed

NOTARY ACKNOWLEDGEMENT

On this day of , 19 , before me appeared (name) to me personally known or who has demonstrated adequate evidence of identification, who being duly sworn, did execute the foregoing affidavit, and did state that he/she was properly authorized by (name of business) to execute the affidavit and did so as his/her free act and deed.

Seal

_____

Notary Public

C
Supplemental

CITY OF OAKLAND

Supplemental Questionnaire for Certification

C1) If your firm is applying for certification as a Local Business please submit the following:

a. A completed and signed EBIA Common Application for certification
b. City of Oakland Business Tax license,
c. Copy of your firm's current lease for the business address
d. Contractor/Professional Service/Service Provider license, certificate or permit
e. If this is a non-profit organization, submit a copy of the IRS Letter of Determination

If your firm is applying for certification as a small local business enterprise, in addition to the above, please submit Items i-vi: (Remember in order to certified as a small local business your firm's primary office must be located in the City of Oakland).

f. Signed Federal Tax Returns – submit the most recent 3 years
    i. Sole Proprietor – Form 1040 w/Schedule C
    ii. Partnership – Form 1065 for all owners
    iii. Corporation – Form 1120
    iv. Limited Liability Partnership – Form 1065 for all owners
    v. Limited Liability Corporation – Form 1120
    vi. Non-Profits – Form 990
g. Copy of a past contract citing the Oakland address.

C2) Please be advised that the City of Oakland does reserve the right to request additional information as the City may deem relevant to make a determination on its eligibility for certification. The City may wish to review additional documents that may include, but may not be limited to the following:

a. Commercial advertising
b. On-site signage
c. Letterhead
d. Previous lease agreements
e. Marketing materials
f. Listing in the telephone book

For additional information regarding the criteria for certification please refer to the City of Oakland's Local/Small Local Business Enterprise Program, Part II, Certification, located on Page 15.

C

CITY OF OAKLAND

AFFIDAVIT OF CERTIFICATION

"The undersigned swears, under penalty of perjury, that the foregoing statements are true and correct and include all material information necessary to identify and explain the operations of _____(Name of Firm) as well as the ownership thereof. The undersigned also states that he/she is properly authorized by _____(Name of Firm) to execute the affidavit and does so as him/her free act and deed. Further, the undersigned agrees to provide through the prime contractor or if no prime, directly to the Certification Unit, current, complete and accurate information regarding actual work performed on the project, the payment therefore and any proposed changes, of the foregoing arrangements and to permit the audit and examination of books, records and files of the named firm. Also, the firm has the experience, ability and required licenses to perform the work as stated in Business Profile, Primary Nature of Business and all category codes that support this application. As a bona fide LBE or SLBE, the ownership interests of the firm is real and continuing, and was not created solely to meet the City goals for LBE/SLBE participation. The ownership and control of the LBE or SLBE shall be real, substantial and continuing and shall go beyond the pro forma ownership of the firm as reflected in its ownership documents. The owner(s) of the local business possesses the power to direct or cause the direction of the management and policies of the firm.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal and state laws concerning false statements."

_____ _____
Printed name of owner, officer or partner Date*(mm/dd/yy)*

_____ _____
Signature of owner, officer or partner Date*(mm/dd/yy)*

_____
Title

NOTARY CERTIFICATION

STATE OF_____ SS:

COUNTY OF_____

Subscribed and sworn to before me this _____day of _____, 20___

Signature of Notary Public_____

Printed/typed name of Notary Public_____

County of residence_____ Date commission expires _____

D

Supplemental

PORT OF OAKLAND

Supplemental Questionnaire for Local Certification

D1) Submit the following required documents:

1. Completed and signed EBIA Common Application for Local Certification
2. A current City or County Business Tax license, certificate or permit
3. Copy of current lease/rental agreement for the business address (**must cover the past 12 months**)
4. Contractor/Professional Service/Service Provider license, certificate or permit
5. If this is a non-profit organization, submit a copy of the IRS Letter of Determination

If you are also applying for the Port's Small or Very Small certification status, in addition to the above Items 1 – 5, submit the following: (Your firm must be located in Alameda, Emeryville, Oakland or San Leandro to qualify).

6. Signed Federal Tax Returns – submit the most recent 3 years
   - i. Sole Proprietor – Form 1040 w/Schedule C
   - ii. Partnership – Form 1065 for all owners
   - iii. Corporation – Form 1120
   - iv. Limited Liability Partnership – Form 1065 for all owners
   - v. Limited Liability Corporation – Form 1120
   - vi. Non-Profits – Form 990

To qualify for the Port's Additional Preference Points program, submit either one or combination of the following documents that cover the last five year period: City or County Business Tax License/ Certificate/Permit or Office Lease agreement. These are in addition to the above Items 1 – 6.

If firm is a Truck and or Truck Broker, submit all of the above items AND complete the Truck/Truck Broker Section 8 and submit the additional documents that are called for in Section 8.

D2) To be completed by trucking firms

Please check all that apply:

☐ Trucking Broker (Prime Trucker) ☐ Sub-Hauler ☐ Puller Only ☐ Owner-Operator

☐ Other _____

(Note: brokers must own/lease a complete operating unit)

SUBMIT COPIES OF THE FOLLOWING:

1. Current DMV Motor Carrier Permit
2. Current DOT-FHWA Random Drug & Alcohol Testing Certificate
3. Most recent CHP 343 Safety Report or CHP 342 Admin report or CHP 407-F Level I Inspection Form
4. Proof of current liability insurance
5. Current vehicle registrations (include up to 10 and list all below)

Number of staff **(including owners)** licensed to drive trucks for public works:

Are you enrolled in the Driver Pull Notice Program? ☐ Yes ☐ No

Is your firm (**not sub-haulers**) licensed to haul hazardous waste materials? ☐ Yes ☐ No
If yes, please list the class(s) of waste your firm is licensed to haul:

What types of materials do you haul for public works contractors?

D

Supplement

PORT OF OAKLAND

D2) To be completed by trucking firms (Continued)

Please list each type of equipment used in hauling of public works project:
(use additional paper if necessary)

Equipment *(e.g. 10 wheeler, 2-axle tractor, 3-axle tractor, semi end dump, semi bottom dump, double bottom, transfer, high-sider, flat bed, etc.)*	Vehicle registration license plate number	Active or Inactive?
1.		
2.		
3.		
4.		
5.		

DECLARATION OF CERTIFICATION

*The undersigned declares under penalty of perjury that the statements made in the EBIA Common Application for Local Certification and the Port of Oakland Supplement D Section(s) are **true** and **correct** and include all material information necessary to identify, describe and explain the operations and locations of this firm as well as the ownership thereof. I understand that the Port relies on the statements and representations contained in this Certification Application and Supplement Questionnaire. I further understand that **any** false statements or material misrepresentations will be grounds for termination of any contract which may be awarded, grounds for further penalties including debarment from participation in future Port contracts, grounds for De-Certification and grounds for possible prosecution under Federal or State laws concerning false or fraudulent representations.*

_____
Company Name

_____
Name (Print)

_____
Title

_____
Authorized Signature

_____
Date

Small Business Size Standards
matched to
North American Industry Classification System

The NAICS codes in this table include modifications made to NAICS by the Office of Management and Budget effective January 1, 2002. (Referred to as NAICS 2002)

SBA Small Business Administration

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
Subsector236 – Construction of Buildings				
236115	New Single-Family Housing Construction (except Operative Builders)	$28.50		$8.55
236116	New Multifamily Housing Construction (except Operative Builders)	$28.50		$8.55
236117	New Housing Operative Builders	$28.50		$8.55
236118	Residential Remodelers	$28.50		$8.55
236210	Industrial Building Construction	$28.50		$8.55
236220	Commercial and Institutional Building Construction	$28.50		$8.55
Subsector 237 – Heavy and Civil Engineering Construction				
237110	Water and Sewer Line and Related Structures Construction	$28.50		$8.55
237120	Oil and Gas Pipeline and Related Structures Construction	$28.50		$8.55
237130	Power and Communication Line and Related Structures Construction	$28.50		$8.55
237210	Land Subdivision	$6.00		$1.80
237310	Highway, Street, and Bridge Construction	$28.50		$8.55
237990	Other Heavy and Civil Engineering Construction	$28.50		$8.55
Except,	Dredging and Surface Cleanup Activities2	$17.02		$5.11
Subsector 238 – Specialty Trade Contractors				
238110	Poured Concrete Foundation and Structure Contractors	$12.00		$3.60
238120	Structural Steel and Precast Concrete Contractors	$12.00		$3.60
238130	Framing Contractors	$12.00		$3.60
238140	Masonry Contractors	$12.00		$3.60
238150	Glass and Glazing Contractors	$12.00		$3.60
238160	Roofing Contractors	$12.00		$3.60
238170	Siding Contractors	$12.00		$3.60
238190	Other Foundation, Structure, and Building Exterior Contractors	$12.00		$3.60
238210	Electrical Contractors	$12.00		$3.60
238220	Plumbing, Heating, and Air-Conditioning Contractors	$12.00		$3.60
238290	Other Building Equipment Contractors	$12.00		$3.60
238310	Drywall and Insulation Contractors	$12.00		$3.60

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
238320	Painting and Wall Covering Contractors	$12.00		$3.60
238330	Flooring Contractors	$12.00		$3.60
238340	Tile and Terrazzo Contractors	$12.00		$3.60
238350	Finish Carpentry Contractors	$12.00		$3.60
238390	Other Building Finishing Contractors	$12.00		$3.60
238910	Site Preparation Contractors	$12.00		$3.60
238990	All Other Specialty Trade Contractors	$12.00		$3.60
Except,	Base Housing Maintenance13	$12.01		$3.60
Subsector 441 - Motor Vehicle and Parts Dealers				
441110	New Car Dealers	$24.50		$7.35
441120	Used Car Dealers	$19.50		$5.85
441210	Recreational Vehicle Dealers	$6.00		$1.80
441221	Motorcycle Dealers	$6.00		$1.80
441222	Boat Dealers	$6.00		$1.80
441229	All Other Motor Vehicle Dealers	$6.00		$1.80
Except,	Aircraft Dealers, Retail	$8.50		$2.55
441310	Automotive Parts and Accessories Stores	$6.00		$1.80
441320	Tire Dealers	$6.00		$1.80
Subsector 442 - Furniture and Home Furnishings Stores				
442110	Furniture Stores	$6.00		$1.80
442210	Floor Covering Stores	$6.00		$1.80
442291	Window Treatment Stores	$6.00		$1.80
442299	All Other Home Furnishings Stores	$6.00		$1.80
Subsector 443 - Electronics and Appliance Stores				
443111	Household Appliance Stores	$7.50		$2.25
443112	Radio, Television and Other Electronics Stores	$7.50		$2.25
443120	Computer and Software Stores	$7.50		$2.25
443130	Camera and Photographic Supplies Stores	$6.00		$1.80
Subsector 444 - Building Material and Garden Equipment and Supplies Dealers				
444110	Home Centers	$6.00		$1.80
444120	Paint and Wallpaper Stores	$6.00		$1.80
444130	Hardware Stores	$6.00		$1.80
444190	Other Building Material Dealers	$6.00		$1.80
444210	Outdoor Power Equipment Stores	$6.00		$1.80
444220	Nursery and Garden Centers	$6.00		$1.80
Subsector 445 - Food and Beverage Stores				
445110	Supermarkets and Other Grocery (except Convenience) Stores	$23.00		$6.90
445120	Convenience Stores	$23.00		$6.90
445210	Meat Markets	$6.00		$1.80
445220	Fish and Seafood Markets	$6.00		$1.80
445230	Fruit and Vegetable Markets	$6.00		$1.80
445291	Baked Goods Stores	$6.00		$1.80
445292	Confectionery and Nut Stores	$6.00		$1.80
445299	All Other Specialty Food Stores	$6.00		$1.80
445310	Beer, Wine and Liquor Stores	$6.00		$1.80
Subsector 446 - Health and Personal Care Stores				
446110	Pharmacies and Drug Stores	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
446120	Cosmetics, Beauty Supplies and Perfume Stores	$6.00		$1.80
446130	Optical Goods Stores	$6.00		$1.80
446191	Food (Health)Supplement Stores	$6.00		$1.80
446199	All Other Health and Personal Care Stores	$6.00		$1.80
Subsector 447 - Gasoline Stations				
447110	Gasoline Stations with Convenience Stores	$23.00		$6.90
447190	Other Gasoline Stations	$7.50		$2.25
Subsector 448 - Clothing and Clothing Accessories Stores				
448110	Men's Clothing Stores	$7.50		$2.25
448120	Women's Clothing Stores	$7.50		$2.25
448130	Children's and Infants' Clothing Stores	$6.00		$1.80
448140	Family Clothing Stores	$7.50		$2.25
448150	Clothing Accessories Stores	$6.00		$1.80
448190	Other Clothing Stores	$6.00		$1.80
448210	Shoe Stores	$7.50		$2.25
448310	Jewelry Stores	$6.00		$1.80
448320	Luggage and Leatherwoods Stores	$6.00		$1.80
Subsector 451 - Sporting Good, Hobby, Book and Music Stores				
451110	Sporting Goods Stores	$6.00		$1.80
451120	Hobby, Toy and Game Stores	$6.00		$1.80
451130	Sewing, Needlework and Piece Goods Stores	$6.00		$1.80
451140	Musical Instrument and Supplies Stores	$6.00		$1.80
451211	Book Stores	$6.00		$1.80
451212	News Dealers and Newsstands	$6.00		$1.80
451220	Prerecorded Tape, Compact Disc and Record Stores	$6.00		$1.80
Subsector 452 - General Merchandise Store				
452111	Department Stores (except Discount Department Stores)	$23.00		$6.90
452112	Discount Department Stores	$23.00		$6.90
452910	Warehouse Clubs and Superstores	$23.00		$6.90
452990	All Other General Merchandise Stores	$9.50		$2.85
Subsector 453 - Miscellaneous Store Retailers				
453110	Florists	$6.00		$1.80
453210	Office Supplies and Stationery Stores	$6.00		$1.80
453220	Gift, Novelty and Souvenir Stores	$6.00		$1.80
453310	Used Merchandise Stores	$6.00		$1.80
453910	Pet and Pet Supplies Stores	$6.00		$1.80
453920	Art Dealers	$6.00		$1.80
453930	Manufactured(Mobile) Home Dealers	$11.00		$3.30
453991	Tobacco Stores	$6.00		$1.80
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores)	$6.00		$1.80
Subsector 454 - Nonstore Retailers				
454111	Electronic Shopping	$21.00		$6.30
454112	Electronic Auctions	$21.00		$6.30
454113	Mail-Order Houses	$21.00		$6.30
454210	Vending Machine Operators	$6.00		$1.80
454311	Heating Oil Dealers	$10.50		$3.15
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers	$6.00		$1.80
454319	Other Fuel Dealers	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
454390	Other Direct Selling Establishments	$6.00		$1.80
	Sectors 48-49 - Transportation			
Subsector 481 - Air Transportation				
481111	Scheduled Passenger Air Transportation		1,500	$0.00
481112	Scheduled Freight Air Transportation		1,500	$0.00
481211	Nonscheduled Chartered Passenger Air Transportation		1,500	$0.00
Except,	Offshore Marine Air Transportation Services	$23.50		$7.05
481212	Nonscheduled Chartered Freight Air Transportation		1,500	$0.00
Except,	Offshore Marine Air Transportation Services	$23.50		$7.05
481219	Other Nonscheduled Air Transportation	$6.00		$1.80
Subsector 482 - Rail Transportation				
482111	Line-Haul Railroads		1,500	$0.00
482112	Short Line Railroads		500	$0.00
Subsector 483 - Water Transportation15				
483111	Deep Sea Freight Transportation		500	$0.00
483112	Deep Sea Passenger Transportation		500	$0.00
483113	Coastal and Great Lakes Freight Transportation		500	$0.00
483114	Coastal and Great Lakes Passenger Transportation		500	$0.00
483211	Inland Water Freight Transportation		500	$0.00
483212	Inland Water Passenger Transportation		500	$0.00
Subsector 484 - Truck Transportation				
484110	General Freight Trucking, Local	$21.50		$6.45
484121	General Freight Trucking, Long-Distance, Truckload	$21.50		$6.45
484122	General Freight Trucking, Long-Distance, Less Than Truckload	$21.50		$6.45
484210	Used Household and Office Goods Moving	$21.50		$6.45
484220	Specialized Freight (except Used Goods) Trucking, Local	$21.50		$6.45
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance	$21.50		$6.45
Subsector 485 - Transit and Ground Passenger Transportation				
485111	Mixed Mode Transit Systems	$6.00		$1.80
485112	Commuter Rail Systems	$6.00		$1.80
485113	Bus and Motor Vehicle Transit Systems	$6.00		$1.80
485119	Other Urban Transit Systems	$6.00		$1.80
485210	Interurban and Rural Bus Transportation	$6.00		$1.80
485310	Taxi Service	$6.00		$1.80
485320	Limousine Service	$6.00		$1.80
485410	School and Employee Bus Transportation	$6.00		$1.80
485510	Charter Bus Industry	$6.00		$1.80
485991	Special Needs Transportation	$6.00		$1.80
485999	All Other Transit and Ground Passenger Transportation	$6.00		$1.80
Subsector 486 - Pipeline Transportation				
486110	Pipeline Transportation of Crude Oil		1,500	$0.00
486210	Pipeline Transportation of Natural Gas	$6.00		$1.80
486910	Pipeline Transportation of Refined Petroleum Products		1,500	$0.00
486990	All Other Pipeline Transportation	$29.00		$8.70
Subsector 487 - Scenic and Sightseeing Transportation				
487110	Scenic and Sightseeing Transportation, Land	$6.00		$1.80
487210	Scenic and Sightseeing Transportation, Water	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
487990	Scenic and Sightseeing Transportation, Other	$6.00		$1.80
Subsector 488 - Support Activities for Transportation				
488111	Air Traffic Control	$6.00		$1.80
488119	Other Airport Operations	$6.00		$1.80
488190	Other Support Activities for Air Transportation	$6.00		$1.80
488210	Support Activities for Rail Transportation	$6.00		$1.80
488310	Port and Harbor Operations	$21.50		$6.45
488320	Marine Cargo Handling	$21.50		$6.45
488330	Navigational Services to Shipping	$6.00		$1.80
488390	Other Support Activities for Water Transportation	$6.00		$1.80
488410	Motor Vehicle Towing	$6.00		$1.80
488490	Other Support Activities for Road Transportation	$6.00		$1.80
488510	Freight Transportation Arrangement10	$6.01		$1.80
Except,	Non-Vessel Owning Common Carriers and Household Goods Forwarders	$21.50		$6.45
488991	Packing and Crating	$21.50		$6.45
488999	All Other Support Activities for Transportation	$6.00		$1.80
Subsector 491 - Postal Service				
491110	Postal Service	$6.00		$1.80
Subsector 492 - Couriers and Messengers				
492110	Couriers		1,500	$0.00
492210	Local Messengers and Local Delivery	$21.50		$6.45
Subsector 493 - Warehousing and Storage				
493110	General Warehousing and Storage	$21.50		$6.45
493120	Refrigerated Warehousing and Storage	$21.50		$6.45
493130	Farm Product Warehousing and Storage	$21.50		$6.45
493190	Other Warehousing and Storage	$21.50		$6.45
Sector 51 - Information				
Subsector 511 – Publishing Industries (except Internet)				
511210	Software Publishers	$21.00		$6.30
Subsector 512 – Motion Picture and Sound Recording Industries				
512110	Motion Picture and Video Production	$25.00		$7.50
512120	Motion Picture and Video Distribution	$25.00		$7.50
512131	Motion Picture Theaters (except Drive-Ins)	$6.00		$1.80
512132	Drive-In Motion Picture Theaters	$6.00		$1.80
512191	Teleproduction and Other Postproduction Services	$25.00		$7.50
512199	Other Motion Picture and Video Industries	$6.00		$1.80
512210	Record Production	$6.00		$1.80
512220	Integrated Record Production/Distribution		750	$0.00
512230	Music Publishers		500	$0.00
512240	Sound Recording Studios	$6.00		$1.80
512290	Other Sound Recording Industries	$6.00		$1.80
Subsector 515 – Broadcasting (except Internet)				
515111	Radio Networks	$6.00		$1.80
515112	Radio Stations	$6.00		$1.80
515120	Television Broadcasting	$12.00		$3.60
515210	Cable and Other Subscription Programming	$12.50		$3.75

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
Subsector 516 – Internet Publishing and Broadcasting				
516110	Internet Publishing and Broadcasting		500	$0.00
Subsector 517 – Telecommunications				$0.00
517110	Wired Telecommunications Carriers		1,500	$0.00
517211	Paging		1,500	$0.00
517212	Cellular and Other Wireless Telecommunications		1,500	$0.00
517310	Telecommunications Resellers		1,500	$0.00
517410	Satellite Telecommunications	$12.50		$3.75
517510	Cable and Other Program Distribution	$12.50		$3.75
517910	Other Telecommunications	$12.50		$3.75
Subsector 518 – Internet Service Providers, Web Search Portals, and Data Processing				
518111	Internet Service Providers	$21.00		$6.30
518112	Web Search Portals	$6.00		$1.80
518210	Data Processing, Hosting, and Related Services	$21.00		$6.30
Subsector 519 – Other Information Services				$0.00
519110	News Syndicates	$6.00		$1.80
519120	Libraries and Archives	$6.00		$1.80
519190	All Other Information Services	$6.00		$1.80
Sector 52 - Finance and Insurance				
Subsector 522 - Credit Intermediation and Related Activities				
522220	Sales Financing	$6.00		$1.80
522291	Consumer Lending	$6.00		$1.80
522292	Real Estate Credit	$6.00		$1.80
522294	Secondary Market Financing	$6.00		$1.80
522298	All Other Non-Depository Credit Intermediation	$6.00		$1.80
522310	Mortgage and Nonmortgage Loan Brokers	$6.00		$1.80
522320	Financial Transactions Processing, Reserve, and Clearing House Activities	$6.00		$1.80
522390	Other Activities Related to Credit Intermediation	$6.00		$1.80
Subsector 523 - Financial Investments and Related Activities				
523110	Investment Banking and Securities Dealing	$6.00		$1.80
523120	Securities Brokerage	$6.00		$1.80
523130	Commodity Contracts Dealing	$6.00		$1.80
523140	Commodity Contracts Brokerage	$6.00		$1.80
523210	Securities and Commodity Exchanges	$6.00		$1.80
523910	Miscellaneous Intermediation	$6.00		$1.80
523920	Portfolio Management	$6.00		$1.80
523930	Investment Advice	$6.00		$1.80
523991	Trust, Fiduciary and Custody Activities	$6.00		$1.80
523999	Miscellaneous Financial Investment Activities	$6.00		$1.80
Subsector 524 - Insurance Carriers and Related Activities				
524113	Direct Life Insurance Carriers	$6.00		$1.80
524114	Direct Health and Medical Insurance Carriers	$6.00		$1.80
524126	Direct Property and Casualty Insurance Carriers		1,500	$0.00
524127	Direct Title Insurance Carriers	$6.00		$1.80
524128	Other Direct Insurance (except Life, Health and Medical) Carriers	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
524130	Reinsurance Carriers	$6.00		$1.80
524210	Insurance Agencies and Brokerages	$6.00		$1.80
524291	Claims Adjusting	$6.00		$1.80
524292	Third Party Administration of Insurance and Pension Funds	$6.00		$1.80
524298	All Other Insurance Related Activities	$6.00		$1.80
Subsector 525 - Funds, Trusts and Other Financial Vehicles				
525110	Pension Funds	$6.00		$1.80
525120	Health and Welfare Funds	$6.00		$1.80
525190	Other Insurance Funds	$6.00		$1.80
525910	Open-End Investment Funds	$6.00		$1.80
525920	Trusts, Estates, and Agency Accounts	$6.00		$1.80
525930	Real Estate Investment Trusts	$6.00		$1.80
525990	Other Financial Vehicles	$6.00		$1.80
Sector 53 - Real Estate and Rental and Leasing				
Subsector 531 - Real Estate				
531110	Lessors of Residential Buildings and Dwellings	$6.00		$1.80
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)	$6.00		$1.80
531130	Lessors of Miniwarehouses and Self Storage Units	$21.50		$6.45
531190	Lessors of Other Real Estate Property	$6.00		$1.80
Except,	Leasing of Building Space to Federal Government by Owners9	$17.59		$5.28
531210	Offices of Real Estate Agents and Brokers10	$1.51		$0.45
531311	Residential Property Managers	$1.50		$0.45
531312	Nonresidential Property Managers	$1.50		$0.45
531320	Offices of Real Estate Appraisers	$1.50		$0.45
531390	Other Activities Related to Real Estate	$1.50		$0.45
Subsector 532 - Rental and Leasing Services				
532111	Passenger Car Rental	$21.50		$6.45
532112	Passenger Car Leasing	$21.50		$6.45
532120	Truck, Utility Trailer, and RV (RV) Rental and Leasing	$21.50		$6.45
532210	Consumer Electronics and Appliances Rental	$6.00		$1.80
532220	Formal Wear and Costume Rental	$6.00		$1.80
532230	Video Tape and Disc Rental	$6.00		$1.80
532291	Home Health Equipment Rental	$6.00		$1.80
532292	Recreational Goods Rental	$6.00		$1.80
532299	All Other Consumer Goods Rental	$6.00		$1.80
532310	General Rental Centers	$6.00		$1.80
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing	$6.00		$1.80
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing	$6.00		$1.80
532420	Office Machinery and Equipment Rental and Leasing	$21.00		$6.30
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	$6.00		$1.80
Subsector 533 - Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)				
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)	$6.00		$1.80
Sector 54 – Professional, Scientific and Technical Services				
Subsector 541 - Professional, Scientific and Technical Services				
541110	Offices of Lawyers	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
541191	Title Abstract and Settlement Offices	$6.00		$1.80
541199	All Other Legal Services	$6.00		$1.80
541211	Offices of Certified Public Accountants	$7.00		$2.10
541213	Tax Preparation Services	$6.00		$1.80
541214	Payroll Services	$7.00		$2.10
541219	Other Accounting Services	$7.00		$2.10
541310	Architectural Services	$4.00		$1.20
541320	Landscape Architectural Services	$6.00		$1.80
541330	Engineering Services	$4.00		$1.20
Except,	Military & Aerospace Equipment & Military Weapons	$23.00		$6.90
Except,	Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992	$23.00		$6.90
Except,	Marine Engineering and Naval Architecture	$15.50		$4.65
541340	Drafting Services	$6.00		$1.80
Except,	Map Drafting	$4.00		$1.20
541350	Building Inspection Services	$6.00		$1.80
541360	Geophysical Surveying and Mapping Services	$4.00		$1.20
541370	Surveying and Mapping (except Geophysical) Services	$4.00		$1.20
541380	Testing Laboratories	$6.00		$1.80
541410	Interior Design Services	$6.00		$1.80
541420	Industrial Design Services	$6.00		$1.80
541430	Graphic Design Services	$6.00		$1.80
541490	Other Specialized Design Services	$6.00		$1.80
541511	Custom Computer Programming Services	$21.00		$6.30
541512	Computer Systems Design Services	$21.00		$6.30
541513	Computer Facilities Management Services	$21.00		$6.30
541519	Other Computer Related Services	$21.00		$6.30
541611	Administrative Management and General Management Consulting Services	$6.00		$1.80
541612	Human Resources and Executive Search Consulting Services	$6.00		$1.80
541613	Marketing Consulting Services	$6.00		$1.80
541614	Process, Physical Distribution and Logistics Consulting Services	$6.00		$1.80
541618	Other Management Consulting Services	$6.00		$1.80
541620	Environmental Consulting Services	$6.00		$1.80
541690	Other Scientific and Technical Consulting Services	$6.00		$1.80
541710	Research and Development in the Physical, Engineering, and Life Sciences11		50011	$0.00
Except,	Aircraft		1,500	$0.00
Except,	Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts		1,000	$0.00
Except,	Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts		1,000	$0.00
541720	Research and Development in the Social Sciences and Humanities	$6.00		$1.80
541810	Advertising Agencies10	$6.01		$1.80
541820	Public Relations Agencies	$6.00		$1.80
541830	Media Buying Agencies	$6.00		$1.80
541840	Media Representatives	$6.00		$1.80
541850	Display Advertising	$6.00		$1.80
541860	Direct Mail Advertising	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
541870	Advertising Material Distribution Services	$6.00		$1.80
541890	Other Services Related to Advertising	$6.00		$1.80
541910	Marketing Research and Public Opinion Polling	$6.00		$1.80
541921	Photography Studios, Portrait	$6.00		$1.80
541922	Commercial Photography	$6.00		$1.80
541930	Translation and Interpretation Services	$6.00		$1.80
541940	Veterinary Services	$6.00		$1.80
541990	All Other Professional, Scientific and Technical Services	$6.00		$1.80
	Sector 55 – Management of Companies and Enterprises			
Subsector 551 – Management of Companies and Enterprises				
551111	Offices of Bank Holding Companies	$6.00		$1.80
551112	Offices of Other Holding Companies	$6.00		$1.80
	Sector 56 – Administrative and Support,			$0.00
Waste Management and Remediation Services				$0.00
Subsector 561 – Administrative and Support Services				
561110	Office Administrative Services	$6.00		$1.80
561210	Facilities Support Services12	$6.01		$1.80
Except,	Base Maintenance13	$23.01		$6.90
561310	Employment Placement Agencies	$6.00		$1.80
561320	Temporary Help Services	$11.50		$3.45
561330	Employee Leasing Services	$11.50		$3.45
561410	Document Preparation Services	$6.00		$1.80
561421	Telephone Answering Services	$6.00		$1.80
561422	Telemarketing Bureaus	$6.00		$1.80
561431	Private Mail Centers	$6.00		$1.80
561439	Other Business Service Centers (including Copy Shops)	$6.00		$1.80
561440	Collection Agencies	$6.00		$1.80
561450	Credit Bureaus	$6.00		$1.80
561491	Repossession Services	$6.00		$1.80
561492	Court Reporting and Stenotype Services	$6.00		$1.80
561499	All Other Business Support Services	$6.00		$1.80
561510	Travel Agencies10	$3.01		$0.90
561520	Tour Operators	$6.00		$1.80
561591	Convention and Visitors Bureaus	$6.00		$1.80
561599	All Other Travel Arrangement and Reservation Services	$6.00		$1.80
561611	Investigation Services	$10.50		$3.15
561612	Security Guards and Patrol Services	$10.50		$3.15
561613	Armored Car Services	$10.50		$3.15
561621	Security Systems Services (except Locksmiths)	$10.50		$3.15
561622	Locksmiths	$6.00		$1.80
561710	Exterminating and Pest Control Services	$6.00		$1.80
561720	Janitorial Services	$14.00		$4.20
561730	Landscaping Services	$6.00		$1.80
561740	Carpet and Upholstery Cleaning Services	$4.00		$1.20
561790	Other Services to Buildings and Dwellings	$6.00		$1.80
561910	Packaging and Labeling Services	$6.00		$1.80
561920	Convention and Trade Show Organizers10	$6.01		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
561990	All Other Support Services	$6.00		$1.80
Subsector 562 - Waste Management and Remediation Services				
562111	Solid Waste Collection	$10.50		$3.15
562112	Hazardous Waste Collection	$10.50		$3.15
562119	Other Waste Collection	$10.50		$3.15
562211	Hazardous Waste Treatment and Disposal	$10.50		$3.15
562212	Solid Waste Landfill	$10.50		$3.15
562213	Solid Waste Combustors and Incinerators	$10.50		$3.15
562219	Other Nonhazardous Waste Treatment and Disposal	$10.50		$3.15
562910	Remediation Services	$12.00		$3.60
Except,	Environmental Remediation Services14		50014	$0.00
562920	Materials Recovery Facilities	$10.50		$3.15
562991	Septic Tank and Related Services	$6.00		$1.80
562998	All Other Miscellaneous Waste Management Services	$6.00		$1.80
Sector 61 - Educational Services				$0.00
Subsector 611 - Educational Services				
611110	Elementary and Secondary Schools	$6.00		$1.80
611210	Junior Colleges	$6.00		$1.80
611310	Colleges, Universities and Professional Schools	$6.00		$1.80
611410	Business and Secretarial Schools	$6.00		$1.80
611420	Computer Training	$6.00		$1.80
611430	Professional and Management Development Training	$6.00		$1.80
611511	Cosmetology and Barber Schools	$6.00		$1.80
611512	Flight Training	$21.50		$6.45
611513	Apprenticeship Training	$6.00		$1.80
611519	Other Technical and Trade Schools	$6.00		$1.80
611610	Fine Arts Schools	$6.00		$1.80
611620	Sports and Recreation Instruction	$6.00		$1.80
611630	Language Schools	$6.00		$1.80
611691	Exam Preparation and Tutoring	$6.00		$1.80
611692	Automobile Driving Schools	$6.00		$1.80
611699	All Other Miscellaneous Schools and Instruction	$6.00		$1.80
611710	Educational Support Services	$6.00		$1.80
Sector 62 - Health Care and Social Assistance				
Subsector 621 - Ambulatory Health Care Services				
621111	Offices of Physicians (except Mental Health Specialists)	$8.50		$2.55
621112	Offices of Physicians, Mental Health Specialists	$8.50		$2.55
621210	Offices of Dentists	$6.00		$1.80
621310	Offices of Chiropractors	$6.00		$1.80
621320	Offices of Optometrists	$6.00		$1.80
621330	Offices of Mental Health Practitioners (except Physicians)	$6.00		$1.80
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists	$6.00		$1.80
621391	Offices of Podiatrists	$6.00		$1.80
621399	Offices of All Other Miscellaneous Health Practitioners	$6.00		$1.80
621410	Family Planning Centers	$8.50		$2.55
621420	Outpatient Mental Health and Substance Abuse Centers	$8.50		$2.55
621491	HMO Medical Centers	$8.50		$2.55
621492	Kidney Dialysis Centers	$29.00		$8.70
621493	Freestanding Ambulatory Surgical and Emergency Centers	$8.50		$2.55
621498	All Other Outpatient Care Centers	$8.50		$2.55

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
621511	Medical Laboratories	$11.50		$3.45
621512	Diagnostic Imaging Centers	$11.50		$3.45
621610	Home Health Care Services	$11.50		$3.45
621910	Ambulance Services	$6.00		$1.80
621991	Blood and Organ Banks	$8.50		$2.55
621999	All Other Miscellaneous Ambulatory Health Care Services–	$8.50		$2.55
Subsector 622 – Hospitals				
622110	General Medical and Surgical Hospitals	$29.00		$8.70
622210	Psychiatric and Substance Abuse Hospitals	$29.00		$8.70
622310	Specialty(except Psychiatric and Substance Abuse) Hospitals	$29.00		$8.70
Subsector 623 - Nursing and Residential Care Facilities				
623110	Nursing Care Facilities	$11.50		$3.45
623210	Residential Mental Retardation Facilities	$8.50		$2.55
623220	Residential Mental Health and Substance Abuse Facilities	$6.00		$1.80
623311	Continuing Care Retirement Communities	$11.50		$3.45
623312	Homes for the Elderly	$6.00		$1.80
623990	Other Residential Care Facilities	$6.00		$1.80
Subsector 624 - Social Assistance				
624110	Child and Youth Services	$6.00		$1.80
624120	Services for the Elderly and Persons with Disabilities	$6.00		$1.80
624190	Other Individual and Family Services	$6.00		$1.80
624210	Community Food Services	$6.00		$1.80
624221	Temporary Shelters	$6.00		$1.80
624229	Other Community Housing Services	$6.00		$1.80
624230	Emergency and Other Relief Services	$6.00		$1.80
624310	Vocational Rehabilitation Services	$6.00		$1.80
624410	Child Day Care Services	$6.00		$1.80
Sector 71 - Arts, Entertainment and Recreation				
Subsector 711 - Performing Arts, Spectator Sports and Related Industries				
711110	Theater Companies and Dinner Theaters	$6.00		$1.80
711120	Dance Companies	$6.00		$1.80
711130	Musical Groups and Artists	$6.00		$1.80
711190	Other Performing Arts Companies	$6.00		$1.80
711211	Sports Teams and Clubs	$6.00		$1.80
711212	Race Tracks	$6.00		$1.80
711219	Other Spectator Sports	$6.00		$1.80
711310	Promoters of Performing Arts, Sports and Similar Events with Facilities	$6.00		$1.80
711320	Promoters of Performing Arts, Sports and Similar Events without Facilities	$6.00		$1.80
711410	Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures	$6.00		$1.80
711510	Independent Artists, Writers, and Performers	$6.00		$1.80
Subsector 712 - Museums, Historical Sites and Similar Institutions				
712110	Museums	$6.00		$1.80
712120	Historical Sites	$6.00		$1.80
712130	Zoos and Botanical Gardens	$6.00		$1.80
712190	Nature Parks and Other Similar Institutions	$6.00		$1.80
Subsector 713 - Amusement, Gambling and Recreation Industries				

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
713110	Amusement and Theme Parks	$6.00		$1.80
713120	Amusement Arcades	$6.00		$1.80
713210	Casinos (except Casino Hotels)	$6.00		$1.80
713290	Other Gambling Industries	$6.00		$1.80
713910	Golf Courses and Country Clubs	$6.00		$1.80
713920	Skiing Facilities	$6.00		$1.80
713930	Marinas	$6.00		$1.80
713940	Fitness and Recreational Sports Centers	$6.00		$1.80
713950	Bowling Centers	$6.00		$1.80
713990	All Other Amusement and Recreation Industries	$6.00		$1.80
	Sector 72 - Accommodation and Food Services			
Subsector 721 - Accommodation				
721110	Hotels(except Casino Hotels) and Motels	$6.00		$1.80
721120	Casino Hotels	$6.00		$1.80
721191	Bed and Breakfast Inns	$6.00		$1.80
721199	All Other Traveler Accommodation	$6.00		$1.80
721211	RV(Recreational Vehicle) Parks and Campgrounds	$6.00		$1.80
721214	Recreational and Vacation Camps (except Campgrounds)	$6.00		$1.80
721310	Rooming and Boarding Houses	$6.00		$1.80
Subsector 722 - Food Services and Drinking Places				
722110	Full-Service Restaurants	$6.00		$1.80
722211	Limited-Service Restaurants	$6.00		$1.80
722212	Cafeterias	$6.00		$1.80
722213	Snack and Nonalcoholic Beverage Bars	$6.00		$1.80
722310	Food Service Contractors	$17.50		$5.25
722320	Caterers	$6.00		$1.80
722330	Mobile Food Services	$6.00		$1.80
722410	Drinking Places (Alcoholic Beverages)	$6.00		$1.80
	Sector 81 - Other Services			
Subsector 811 - Repair and Maintenance				
811111	General Automotive Repair	$6.00		$1.80
811112	Automotive Exhaust System Repair	$6.00		$1.80
811113	Automotive Transmission Repair	$6.00		$1.80
811118	Other Automotive Mechanical and Electrical Repair and Maintenance	$6.00		$1.80
811121	Automotive Body, Paint and Interior Repair and Maintenance	$6.00		$1.80
811122	Automotive Glass Replacement Shops	$6.00		$1.80
811191	Automotive Oil Change and Lubrication Shops	$6.00		$1.80
811192	Car Washes	$6.00		$1.80
811198	All Other Automotive Repair and Maintenance	$6.00		$1.80
811211	Consumer Electronics Repair and Maintenance	$6.00		$1.80
811212	Computer and Office Machine Repair and Maintenance	$21.00		$6.30
811213	Communication Equipment Repair and Maintenance	$6.00		$1.80
811219	Other Electronic and Precision Equipment Repair and Maintenance	$6.00		$1.80
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic)Repair and Maintenance	$6.00		$1.80
811411	Home and Garden Equipment Repair and Maintenance	$6.00		$1.80
811412	Appliance Repair and Maintenance	$6.00		$1.80

NAICS codes	NAICS U.S. industry title	Size standards in millions of dollars	Size standards in number of employees	City of Oakland in millions 30%
811420	Reupholstery and Furniture Repair	$6.00		$1.80
811430	Footwear and Leather Goods Repair	$6.00		$1.80
811490	Other Personal and Household Goods Repair and Maintenance	$6.00		$1.80
Subsector 812 - Personal and Laundry Services				
812111	Barber Shops	$6.00		$1.80
812112	Beauty Salons	$6.00		$1.80
812113	Nail Salons	$6.00		$1.80
812191	Diet and Weight Reducing Centers	$6.00		$1.80
812199	Other Personal Care Services	$6.00		$1.80
812210	Funeral Homes and Funeral Services	$6.00		$1.80
812220	Cemeteries and Crematories	$6.00		$1.80
812310	Coin-Operated Laundries and Drycleaners	$6.00		$1.80
812320	Drycleaning and Laundry Services (except Coin-Operated)	$4.00		$1.20
812331	Linen Supply	$12.00		$3.60
812332	Industrial Launderers	$12.00		$3.60
812910	Pet Care(except Veterinary) Services	$6.00		$1.80
812921	Photo Finishing Laboratories (except One-Hour)	$6.00		$1.80
812922	One-Hour Photo Finishing	$6.00		$1.80
812930	Parking Lots and Garages	$6.00		$1.80
812990	All Other Personal Services	$6.00		$1.80
Subsector 813 - Religious, Grantmaking, Civic, Professional and Similar Organizations				
813110	Religious Organizations	$6.00		$1.80
813211	Grantmaking Foundations	$6.00		$1.80
813212	Voluntary Health Organizations	$6.00		$1.80
813219	Other Grantmaking and Giving Services	$6.00		$1.80
813311	Human Rights Organizations	$6.00		$1.80
813312	Environment, Conservation and Wildlife Organizations	$6.00		$1.80
813319	Other Social Advocacy Organizations	$6.00		$1.80
813410	Civic and Social Organizations	$6.00		$1.80
813910	Business Associations	$6.00		$1.80
813920	Professional Organizations	$6.00		$1.80
813930	Labor Unions and Similar Labor Organizations	$6.00		$1.80
813940	Political Organizations	$6.00		$1.80
813990	Other Similar Organizations (except Business, Professional, Labor, and Political Organizations)	$6.00		$1.80

ATTACHMENTS

LOCAL EMPLOYMENT & APPRENTICESHIP PROGRAMS

- Anticipated Workforce Projection Form & Core Employee
- Sample DE6
- LCP Tracker Payroll Summary Report
- Local Employment Program Flow Chart
- Public Works Contract Award Information (Apprenticeship)
- Training Fund Contribution
- Local Employment Job Request & Referral Form
- Certification of Compliance Hours
- Anticipated Project Workforce & Core Employee Utilization Report
- City of Oakland Local Employment Program Job Request & referral Form
- Certification of Compliance Hours
-

CITY OF
OAKLAND

FORMS

Local Employment and Apprenticeship Programs

Department of
Contracting and Purchasing

Contract Compliance
Social Equity Division

250 Frank H. Ogawa Plaza, Suite 3341
Oakland, CA 94612

CITY OF OAKLAND

City of Oakland Local Employment Program

Anticipated Project Workforce and Core Employee Utilization Report

PROJECT NAME: _____ PROJECT #: _____

PRIME CONTRACTOR: _____ ADDRESS: _____

SUBCONTRACTOR: _____ TELEPHONE #: _____

CONTACT PERSON: _____ E-MAIL: _____

PRIME / SUBCONTRACTOR	Total Hours	Total Oakland Hours	Minority		Female		Apprentice Hours	Oakland Apprentice Hours	Number of Employees	Number of new Hires
			Hours	%	Hours	%				
Anticipated Totals										
Core Employee Totals										

ANTICIPATED BY CRAFT	#	Identify Classification		CORE EMPLOYEE NAME	CRAFT	Identify Classification		For LEP Use Only
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
		Journey	Apprentice			Journey	Apprentice	
Total						Journey	Apprentice	

Under penalty of perjury the undersigned agrees that the foregoing is true and correct.

_____ Name & Title

_____ Date

Employment Development Department
State of California

QUARTERLY WAGE AND WITHHOLDING REPORT

PLEASE TYPE THIS FORM PER INSTRUCTIONS ON REVERSE
You must FILE this report even if you had no payroll. If you had no payroll, complete Items C or D and P.

00060198

Page number _____ of _____

QUARTER ENDED

DUE

DELINQUENT IF NOT POSTMARKED OR RECEIVED BY

YR QTR

EMPLOYER ACCOUNT NO.

DO NOT ALTER THIS AREA

P1 C T S W A

EFFECTIVE DATE
Mo. Day Yr. WIC

A. **EMPLOYEES** full-time and part-time who worked during or received pay subject to UI for the payroll period which includes the 12th of the month.

1st Mo. 2nd Mo. 3rd Mo.

B. ☐ Check this box if you are reporting ONLY Voluntary Plan DI wages on this page. Report PIT Wages and PIT Withheld, if appropriate. (See instructions for Item B.)

C. ☐ NO PAYROLL

D. ☐ OUT OF BUSINESS/FINAL REPORT

Date _____

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

E. SOCIAL SECURITY NUMBER | F. EMPLOYEE NAME (FIRST NAME) | (M.I.) (LAST NAME)

G. TOTAL SUBJECT WAGES | H. PIT WAGES | I. PIT WITHHELD

J. TOTAL SUBJECT WAGES THIS PAGE 0.00 | K. TOTAL PIT WAGES THIS PAGE 0.00 | L. TOTAL PIT WITHHELD THIS PAGE 0.00

M. GRAND TOTAL SUBJECT WAGES | N. GRAND TOTAL PIT WAGES | O. GRAND TOTAL PIT WITHHELD

P. I declare that the information herein is true and correct to the best of my knowledge and belief.

Preparer's Signature _____ Title _____ (Owner, Accountant, Preparer, etc.) Phone ( ) _____ Date _____

DE 6 Rev. 4 (2-04) **(INTERNET)** MAIL TO: State of California / Employment Development Department / P.O. Box 826288 / Sacramento, CA 94230-6288

CU

LCPTracker Certified Payroll Submission Summary Report
Core Employee Utilization*

Project Name:
Contract No.:

Contractor or Subcontractor Name:_____
Week Ending:_____

Total Hours:_____

Total Core Employee Hours:_____

Total Oakland Resident Hours:_____

Total Oakland Apprentice Hours:_____

Total Oakland Hours on non-city funded projects:_____

* Core employee utilization report is to be submitted weekly with certified payrolls.

Project Name:

Local Employment Requirements for Project: Oakland, California

Goals: 50% total craft hours performed by Oakland Residents
50% of new hires by craft are Oakland Residents (the first new hire must by an Oakland resident)
15% Oakland apprentice requirements (utilization will count toward 50% total workforce hour goals and 50% of hew hire goals

Documents Required:
1) A copy of your last quarter's DE 6
2) Weekly Certified Payroll Reports

Exemptions:

Is your work exempt for this project?

1) Performed only by Owner Operator	☐ Yes, work is exempt	☐ No, proceed to next question
2) Performed in less than 140 hours	☐ Yes, work is exempt	☐ No, proceed to next question
3) Core workforce includes 50% Oakland employees and no additional employees will be hired; or	☐ Yes, work is exempt	☐ No, proceed to next question
4) No more than two craft persons are required to perform the work and the Subcontractor is a Small Business within the meaning of City policies	☐ Yes, work is exempt	☐ No, proceed to next question

Have you received or been granted a Conditional Exemption for this Project? ☐ Yes, work is exempt ☐ No, proceed to next section

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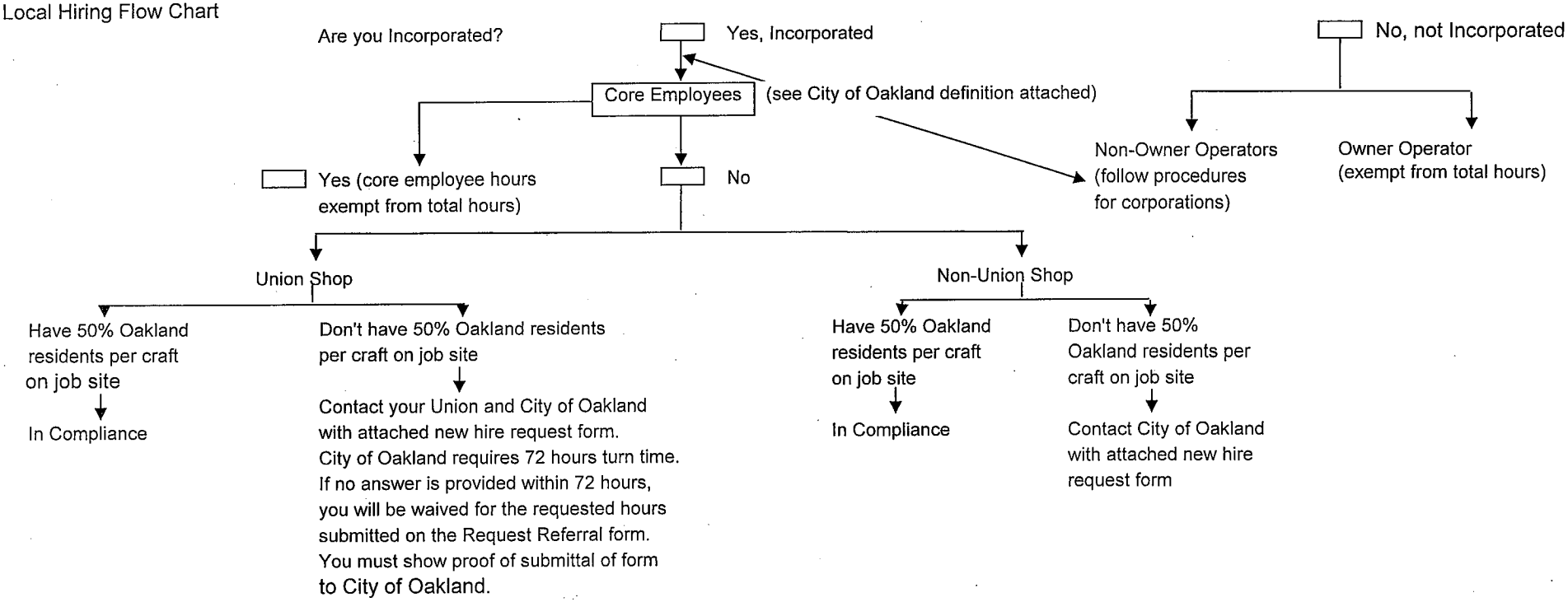
Local Hiring Flow Chart



PUBLIC WORKS CONTRACT AWARD INFORMATION

Contract award information must be sent to your Apprenticeship Committee if you are approved to train. If you are not approved to train, you must send the information (which may be this form) to ALL applicable Apprenticeship Committees in your craft or trade in the area of the site of the public work. Go to: http://www.dir.ca.gov/das/PublicWorksForms.htm for information about programs in your area and trade. You may also consult your local Division of Apprenticeship Standards (DAS) office whose telephone number may be found in your local directory under California, State of, Industrial Relations, Division of Apprenticeship Standards.

Do not send this form to the Division of Apprenticeship Standards.

NAME OF YOUR COMPANY	CONTRACTOR'S STATE LICENSE NO
MAILING ADDRESS- NUMBER & STREET, CITY, ZIP CODE	AREA CODE & TELEPHONE NO.
NAME & ADDRESS OF PUBLIC WORKS PROJECT	DATE YOUR CONTRACT EXECUTED
	DATE OF EXPECTED OR ACTUAL START OF PROJECT
NAME & ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	ESTIMATED NUMBER OF JOURNEYMEN HOURS
	OCCUPATION OF APPRENTICE
THIS FORM IS BEING SENT TO: (NAME & ADDRESS OF APPRENTICESHIP PROGRAM(S))	ESTIMATED NUMBER OF APPRENTICE HOURS
	APPROXIMATE DATES TO BE EMPLOYED

This is not a request for dispatch of apprentices.

Contractors must make a separate request for actual dispatch, in accordance with Section 230.1(a) California Code of Regulations

Check One Of The Boxes Below

1. ☐ We are already approved to train apprentices by the _____ Apprenticeship Committee. We will employ and train under their Standards. Enter name of the Committee

2. ☐ We will comply with the standards of _____ Apprenticeship Committee for the duration of this job only. Enter name of the Committee

3. ☐ We will employ and train apprentices in accordance with the California Apprenticeship Council regulations, including § 230.1 (c) which requires that apprentices employed on public projects can only be assigned to perform work of the craft or trade to which the apprentice is registered and that the apprentices must at all times work with or under the direct supervision of journeyman/men.

Signature _____ *Date* _____

Typed Name _____

Title _____

State of California - Department of Industrial Relations DIVISION OF APPRENTICESHIP STANDARDS

State of California
Department of Industrial Relations
California Apprenticeship Council
P.O. Box 420603
San Francisco, CA 94142

TRAINING FUND CONTRIBUTIONS

Please use a separate ***form*** for each jobsite, listing the occupations for the jobsite. One ***check*** payable to the California Apprenticeship Council may be submitted for all jobsites and/or occupations. Training fund contributions are ***not accepted*** by the California Apprenticeship Council for federal public works projects, or for non-apprenticeable occupations such as utility technicians, teamsters, etc

California Apprenticeship Council

NAME AND ADDRESS OF CONTRACTOR/SUB CONTRACTOR MAKING CONTRIBUTION	CONTRACTOR'S LICENSE NUMBER
	CONTRACT OR PROJECT NUMBER
NAME AND ADDRESS OF PUBLIC AGENCY AWARDING CONTRACT	JOBSITE LOCATION (INCLUDE COUNTY) IF APPLICABLE - GIVE NAME OF SCHOOL, HOSPITAL, BUILDING, etc.
	PERIOD COVERED BY CONTRIBUTION (FROM - TO)

CLASSIFICATIONS OF WORKERS (CARPENTER, PLUMBER, ELECTRICIAN, ETC).	COUNTY WORK PERFORMED IN	HOURS	CONTRIBUTION RATE PER HOUR	AMOUNT
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
			Total	$0.00

SIGNATURE PLEASE TYPE OR PRINT YOUR NAME	DATE
TITLE	AREA CODE & TELEPHONE NUMBER

City of Oakland

City of Oakland Local Employment Program Job Request & Referral Form

Dear Successful Contractor/Subcontractor:
The "Job Request & Referral" Form helps contractors and subcontractors hire Oakland residents and achieve compliance with the Local Employment Program (LEP) goals. It also serves to document requests, referrals and track placements of Oakland residents. An added feature is the documentation of waivers where availability of Oakland residents for a particular trade may be zero. This form guides compliance determinations at project end. PLEASE NOTE: The Job Request & Referral form must be either FAXED, E-Mailed or Hand Delivered and date stamped by LEP staff only. Third party requests by phone and/or informally on job sites will not count as a documented request. Please complete the form as indicated below, date, sign and forward as appropriate. (Please verify receipt of referral form.)

To be Completed by PRIME / SUBCONTRACTOR

(a) **Project Name / Code #** (b) Date of Request: _____

(c) **Work Start Date:** **End Date:** (d) Estimated # of Work Hours: _____

(e) Job Requests By Classification, Skill Level and Experience :

CLASSIFICATION:	SKILL LEVEL:		SKILL LEVEL:	
1. Trade: _____	# Journey:	# Hrs:	# Apprentice:	# Hrs:
2. Trade: _____	# Journey:	# Hrs:	# Apprentice:	# Hrs:
3. Trade: _____	# Journey:	# Hrs:	# Apprentice:	# Hrs:

Experience Required For Classifications Listed Above:

1. Trade: _____
2. Trade: _____
3. Trade: _____

(f) Client Selection Criteria: (please check one or more as needed)

Military Service:		Union:		Male:		Driver's Lic:	
Oakland Resident:		Non-Union:		Female:		CDL Class:	

CONTRACTOR / SUBCONTRACTOR SIGNATURE:

Date: Phone:

Fax: Email:

A waiver applies for _____ hours provided SECTION C SIDE 2 IS COMPLETED and returned to the Local Employment Program (LEP). Please complete and return form to Renée Abraham. Fax: 510-238-3363 or Email: rabraham@oaklandnet.com.

To be Completed by CITY OF OAKLAND

☐ A. The LCERP IS FORMALLY REFERRING THE FOLLOWING INDIVIDUALS:

Date/Name: _____
Address: _____
Phone: _____ Last 4 SS#
Skill Trade and Level: _____

Date/Name: _____
Address: _____
Phone: _____ Last 4 SS#
Skill Trade and Level: _____

Date/Name: _____
Address: _____
Phone: _____ Last 4 SS#
_____
Skill Trade and Level: _____

Date/Name: _____
Address: _____
Phone: _____ Last 4 SS#
Skill Trade and Level:

☐ B. Referrals **ARE NOT** available at this time. Date:_____

STAFF SIGNATURE _____ TITLE_____

September 2008 rev

City of Oakland

Certification of Compliance Hours

Local Employment & Apprenticeship Programs

THIS WAIVER APPLIES TO: _____

PROJECT / CODE # _____ PRIME: _____

CRAFT/S: _____

NUMBER OF HOURS: _____

DATES WAIVER APPLIES: From _____ To _____

_____
Jonothan Dumas, Supervisor LCERP/LEP

_____
Renée Abraham, Job Developer Date

SECTION C TO BE COMPLETED BY CONTRACTOR/SUBCONTRACTOR: -- PLEASE NOTE -- WAIVERS ARE NOT VALID UNLESS THIS PORTION IS COMPLETED AND RETURNED TO THE CITY OF OAKLAND. APPRENTICES MUST BE REGISTERED WITH THE STATE OF CALIFORNIA.*

NAME	ADDRESS	TELEPHONE	LAST 4 SS #

***Waivers issued for apprentices from the City of Oakland only satisfy the City of Oakland requirements. Contractors still need to satisfy the Sate of California requirements for apprentices.**

TO:

Renée Abraham, Local Employment Program, 250 Frank Ogawa Plaza, Suite 3341, Oakland, CA 94607, Phone: 510-238-7313; rabraham@oaklandnet.com
Prime Contractor, please call to confirm receipt of referral form.

EXHIBIT I-1

Regulatory Agreement for Phase II Affordable Units

EXHIBIT I-2

Regulatory Agreement for Market Rate Phase
Below Market Rental Units

EXHIBIT I-3

Affordability Agreement for Market Rate Phase Below Market Ownership Units

EXHIBIT J

Retail Space Guidelines

Retail tenants at the MacArthur Transit Village includes 42,500 sf of retail and other commercial uses located on the ground floor in the BART garage and in three mixed-use buildings. Such uses shall be neighborhood serving, pedestrian oriented retail businesses, similar in quality and mix to the type tenants currently located in Rockridge, Piedmont Avenue, Lakeshore and other similar local neighborhood districts.

Retail and other commercial uses are to include local, neighborhood or visitor serving retail such as restaurants uses, specialty shops, boutiques, cafes, bars, grocery stores, specialty food or market uses, pharmacies, department stores, entertainment uses, service retail, such as dry cleaners, shoe repair, hair salons, fitness center, banks, ATM's, and mail and copying services, bookstores, office, general apparel, home furnishings and limited live-work space (allowed on 40th Street only). Uses that are especially desired include a grocery store/produce market, bookstore, café, restaurants, clothing and gift boutiques.

Tenants consistent with zoning are allowed except as provided below, provided that the following restrictions shall apply to all commercial space in the Project. For purposes of the restrictions set forth in paragraphs 1 through 5 below, "total commercial floor area" shall mean all 42,500 square feet of commercial space in the Project.

1. Any single tenant proposed to occupy more than 50% of the total commercial floor area must be approved by the Agency Board unless such use is a grocery store, supermarket, or specialty food market, except as listed in #3.

2. No off-price tenants (e.g. closeout, "dollar", warehouse, wholesale, liquidations, canned goods only etc.,), tenants that primarily sell used goods, or Convenience Markets (see Section 17.10 of the Planning Code for the definition of a Convenience Market) will be permitted without prior approval by the Agency Board.

3. No more than 30% of the total commercial floor area may be occupied by General Personal Service or Convenience Sales and Service activities as defined by Chapter 17.10 of the zoning ordinance, including, but not limited to:

- Hair salons
- Nail salons
- Tanning parlors
- Massage/spa services

4. No more than 30% of the total commercial floor area may be occupied by Health Care Civic or Medical Service commercial activities as defined by Chapter 17.10 of the zoning ordinance including, but not limited to:

- Medical offices
- Dental offices
- Chiropractic offices
- Acupuncture offices

Such 30% limit shall not include any commercial floor area which may be occupied by the Surgery Center of Alta Bates Summit Medical Center or any successor of Surgery Center of Alta Bates Summit Medical Center. Any space occupied by the Surgery Center in the project will be in addition to the 42,500 square feet currently proposed and will not result in a reduction of commercial space for other uses.

5. No more than 50% of total commercial floor area may be cumulatively occupied by the activities described in items 2 – 4.

6. The following uses are not permitted:

- Government offices excluding fire or police stations and post offices
- Automotive Sales, Rental, and Delivery Commercial Activities, Automotive Servicing Commercial Activities, and Automotive Repair and Cleaning Commercial Activities as defined by Chapter 17.10 of the Planning Code. The restriction on Automotive Servicing Activities will not apply to the retail space in the BART Garage.
- Adult entertainment activities as defined by Chapter 17.09 of the Planning Code. This restriction includes, but is not limited to, establishments such as escort services, and X-rated bakeries, pornographic bookstores/newsstands/novelties".
- This restriction does not include therapeutic massage activities that have received a special activity permit through the City Administrator's office.
- Drug paraphernalia shops
- Pawnbroking activity as defined by Chapter 17.09 of the Planning Code
- Tattoo parlors

7. Retail uses may include, but are not limited to, regional or national chain retail stores, provided that the following establishments shall not be permitted without the prior approval of the Agency Board:

- Regional or national chain pharmacies with more than 5 stores in the Oakland, Berkeley and Emeryville market; and
- Regional or national chain retail fast food establishments which have more than

5 stores in the Oakland, Berkeley and Emeryville Market and whose primary merchandise is hamburgers, hot dogs, sub sandwiches or fried chicken as the "main course" food item.

EXHIBIT K

DRAFT 8/14/2008 to be replaced with final form of agreement.

PROJECT LABOR AGREEMENT

Preamble

This Project Labor Agreement ("Agreement") is entered into the __ day of June, 2009, between MacArthur Transit Community Partners, LLC ("Developer") for itself and all subsequent Developers (referred to herein as "Subsequent Developers") and General Contractors and subcontractors who become bound hereto (collectively referred to herein as "Contractors") and those Building Trade Unions signatory hereto and the Building and Construction Trades Council of Alameda County, AFL-CIO ("BTC"), (collectively referred hereto as "Unions").

This Agreement uses the following terms as defined below:

The term ***"Construction Work"*** means, and is limited to: On-site preparation and new on-site construction work (under the recognized and accepted customary State of California definition as defined by the State of California, Department of Industrial Relations, and by the State of California Division of Labor Statistics and Research).

The term ***"Contractor" (or "Contractors")*** means all general contractors and subcontractors of whatever tier that are signatory hereto or sign the assent form attached hereto as Exhibit "A" and incorporated by this reference (the Assent").

The term ***"Subsequent Developer"*** means any other developer to whom any portion of the project is transferred by the Developer. It is understood that the intent of the Developer is to convey in segments various portions of the Project (each such portion of the Project being referred to herein as a "Phase") upon completion of the infrastructure and the individual building pads on which such Subsequent Developers will perform Construction Work for and on their own account with respect to the Phase so acquired. If and when a Subsequent Developer becomes signatory to this Agreement, the term "Developer" shall be understood to apply to the Subsequent Developer wherever the context of this Agreement so requires.

The term ***"Subcontractor"*** means any person or entity performing Construction Work on the Project under contract with the General Contractor or any of the General Contractor's Subcontractors.

The term ***"General Contractor"*** means any person or entity performing Construction Work on the Project under direct contract with the Owner.

The term ***"Project"*** means the MacArthur BART Station Development Project to be located on

the property generally between West MacArthur Boulevard and 40th Street and between Telegraph Avenue and Highway 24 in the City of Oakland, California, as shown on the diagram attached hereto as Exhibit A, which property is approximately 7.76 acres, and is the situs of work funded in part by the Redevelopment Agency of the City of Oakland. The parties recognize that the Developer is assembling various parcels of land on which the Project, or portions thereof, will be built. Therefore, this Agreement will become effective if and when the Developer acquires title to land on which the Project will be built, and will apply only to those parcels which are acquired by the Developer.

The Unions, Developer and all Subsequent Developers and Contractors agree or will agree to abide by the terms and conditions contained in this Agreement, including the referenced Schedule "A" agreements, as applicable, for each particular type of Construction Work performed on the Project, except to the extent excluded herein. In the event that the Department of Industrial Relations of the State of California issues or has issued prevailing wage rates for any craft applicable to residential construction or other types of construction than general construction in Alameda County, which construction form is being or will be used on the Project, said rates will be applicable upon their effective date to all residential or other type of Construction Work of such craft performed on the Project, and the Schedule "A" agreements for said craft(s) shall be deemed modified so as to include such rates for all residential or other type of Construction Work on the Project from and after the effective date of such prevailing wage rates, where such work is also utilized and addressed specifically in an Agreement of the· effected Craft for the City of Oakland and for that specific type of work. Taken together this Agreement and the Schedule "A" agreements constitute the complete understanding of the Parties.

It is agreed that all Contractors who perform Construction Work on the Project (as those terms are defined above) must be bound to, or agree to be bound to the applicable Schedule "A" agreements (attached hereto).

The General Contractor will require all Contractors and Subcontractors who have collective bargaining relationships with a Union and who are awarded or are performing Construction Work on the Project, to become signatories to this Agreement and will not allow any such Contractors or Subcontractors to perform Construction Work with a contract or subcontract amount greater than $100,000, as increased in accordance with the provisions of this paragraph below ("excluded work") unless such Contractors or Subcontractors become signatory to this Agreement or sign a Letter of Assent. The figure of $100,000 will be adjusted effective January 1 of each year of this Agreement by the percentage increase in the Construction Cost Index ("CCI-SF") for the City of San Francisco, as reported and published by the Engineering News Record ("ENR"), based on the cost for the month of December immediately preceding such January 1 as compared to the previous December. Any increase in the CCI-SF as so reported will apply to the excluded work under this paragraph and any tenant improvement work not yet begun. In the event the CCI-SF for any December is subsequently adjusted by ENR, the adjustment will be applied to the applicable adjustment for work not yet begun. In the event ENR discontinues reporting of the CCI-SF the parties will meet to determine an alternative

measurement for increased costs of construction. The sum total of all such "excluded work" for the any Phase of the Project shall not exceed 10% of the cost of the final contract awards for the Construction Work for such Phase.

Contractors or subcontractors with "excluded work" shall not be subject to the terms of this Agreement. This exclusion shall be used only when there are fewer than three signatory contractors who are qualified and willing to provide a bid for the scope of work, and who are registered with the City of Oakland as "Small Local Business Enterprises" ("SLBE") under the City of Oakland Local and Small Local for Profit and Not for Profit Business Enterprise Program. This exclusion is separate and apart from the three bidder minimum requirements of Article IV, Section (h) and that three bidder minimum procedure may not be used to determine whether this exclusion is available. The Developer or Subsequent Developer and the Contractors shall not engage in bid-splitting (issuing multiple contracts to the same Contractor for the same work) in order to evade the other requirements of this PLA. No more than twenty (20) percent of the overall exclusion may be used to impact any single craft. Affiliated Unions of the District Council of Painters and Allied Trades, #16 shall be viewed as a single craft for purposes of this twenty (20) percent exclusion. The General Contractor shall give notice of bid solicitations to the Building Trades Council, 8400 Enterprise Way, #205, Oakland, CA 94621, at or about the time they are sent to contractors or at least two weeks prior to the deadline for receipts of bids. At the time the General Contractor uses this exclusion, the General Contractor must give written notice to the BTC within three (3) working days of awarding the contract that the exclusion is being used, which notice must include the identity of the Contractor, the amount of the contract and the Craft affected by the contract.

The 10% percent limit referred to above is to allow the General Contractor to comply with the City of Oakland's requirement that the General Contractor subcontract not less than 10% of the dollar amount of the contract to Small Local Business Enterprises on the Project. The General Contractor will make good faith efforts to utilize only Small Local Business Enterprises ("SLBEs") who are signatory to the appropriate Schedule A collective bargaining agreement. However, if there are not a sufficient number of qualified SLBE's, who are signatory to a Schedule A collective bargaining agreement, available to meet the minimum SLBE subcontract requirements of the City of Oakland, the General Contractor shall give the BTC at least seven (7) calendar days written notice of the lack of available qualified signatory SLBE's. For purposes of this Article the term "qualified" shall refer to a licensed, financially qualified SLBE with experience in the type of work required, capable of meeting the job schedule who has submitted a commercially reasonable bid.

ARTICLE I – Purpose

The parties to this Agreement acknowledge that the construction of the Project as defined herein is important to the development of MacArthur BART Station Development Project (the "Property"). The parties recognize the need for the timely completion of the Project without interruption or delay. This Agreement is intended to enhance this cooperative effort through the

establishment of a framework for labor-management cooperation and stability.

The Contractors and the Unions agree that the timely construction of this Project will require substantial numbers of employees from construction and supporting crafts possessing skills and qualifications that are vital to its completion. They will work together to furnish skilled, efficient craftworkers for the construction of the Project.

Therefore, in recognition of the special needs of this Project and to maintain a spirit of harmony, labor-management peace, and stability during the term of this Agreement, the parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances that may arise. Further, the Contractors agree not to engage in any lockout, and the Unions agree not to engage in any strike, slowdown, or interruption or other disruption of or interference with the work covered by this Agreement.

This Agreement shall become and be effective as to the Construction Work on the Project upon the final approval of the City of Oakland of the Owner Participation Agreement between the Redevelopment Agency of the City of Oakland and the Developer ("OPA").

ARTICLE II – Successorship

Section 1. This Agreement is and shall be binding and legally effective upon any successor-in-interest to the Developer, whether by merger or acquisition, and upon any Subsequent Developer which acquires title to the Project or portion thereof whether by sale, lease (other than tenant occupancy leases), or other transfer, or contribution to partnership, joint venture or other entity; provided, however, that this Agreement shall not be binding upon any successor transferee who takes title to the site of any portion of the Project (a) by reason of the default of Developer or Subsequent Developer pursuant to any loan or pursuant to any deed in lieu process, (b) because of the bankruptcy or insolvency of Developer or Subsequent Developer, (c) upon which all Construction Work has been completed or (d) if any successor agreement expires or is otherwise terminated prior to the commencement of construction on the Project (collectively, "Omitted Successors"). Any agreement for a sale, lease or other transfer, or contribution of the Project or an agreement for a merger or acquisition including ownership or control of Developer or Subsequent Developer, other than a transfer to an Omitted Successor, shall include an express assumption of the obligations and undertakings of Developer or Subsequent Developer in this Agreement, including this successorship provision. Developer or Subsequent Developer shall provide the BTC with notice in writing at the close of any sale, acquisition, merger, lease, other transfer or contribution, other than a transfer to an Omitted Successor, and an original executed assumption of this Agreement by the successor. A sham transaction by Developer or Subsequent Developer shall not release Developer or Subsequent Developer from any of its obligations or undertakings under this Agreement.

Section 2. The parties hereto agree that in the event the Developer or Subsequent Developer breaches Section 1 of Article II above, that the actual damages to the Unions or their members would be unreasonably difficult, costly, inconvenient or impracticable to calculate.

Accordingly, the parties agree to liquidated damages which bear a reasonable relationship to the actual harm suffered. In the event of a breach of Section 1 of Article II above, Developer or Subsequent Developer shall pay the recognized State of California Prevailing Wage Rate for the appropriate craft for each hour that Construction Work was performed by employees of contractors or subcontractors not pursuant to the terms of this Agreement. The liquidated damages shall be paid as follows: fifty percent (50%) per hour of the State of California Prevailing Wage Rate of the appropriate craft to the qualified pension plan, and fifty percent (50%) per hour of the State of California Prevailing Wage Rate of the appropriate craft to the qualified health and welfare plan, of the Union(s) having jurisdiction over the Construction Work performed by the contractor(s) or subcontractor(s) not pursuant to the terms of this Agreement. This shall be the sole remedy against Developer or Subsequent Developer for a breach of Section 1 of Article II hereof.

Section 3. The Developer or Subsequent Developer shall be released from all subsequent obligations and undertakings of this Agreement, including liability for the payment of liquidated damages under Section 2, with respect to all or any portion of the Project transferred to a successor, provided the Developer or Subsequent Developer satisfies one of the following conditions:

A. The transfer of property to an Omitted Successor of Developer, or Subsequent Developer as provided in Section 1 of Article II.

B. Receipt of written acknowledgments from BTC that they agree that Developer or Subsequent Developer shall be released from the foregoing obligations, undertakings and liability with respect to the portion of the Project transferred to a successor. Such acknowledgment shall not be withheld if, under all the circumstances the BTC, in the exercise of its reasonable judgment, determines that the successor is financially capable of completing the transferred portion of the Project and complying with its obligations and undertakings under this Agreement; or

C. The transfer of the Project or any Phase or other portion of the Project to any Subsequent Developer approved by the Redevelopment Agency of the City of Oakland pursuant to the OPA.

ARTICLE III – Effect of Other Agreements

Section 1. The provisions of this Agreement, including the applicable listed Schedule "A" agreements shall apply to the Contractors and Unions on the Project, notwithstanding the provisions of local and/or national union agreements which may conflict or differ with the terms of this Agreement. Where a subject covered by the provisions of this Agreement is also covered by a Schedule "A" agreement, the provisions of this Agreement shall prevail. Where a subject is

covered by the provisions of a Schedule "A" agreement and not covered by this Agreement, the provisions of the Schedule "A" agreement shall prevail as to Construction Work performed by Contractor and Subcontractors under that Schedule "A" agreement. The provisions and requirements of the City of Oakland's *"Local & Small Local for Profit and Not for Profit Business Enterprise Program"*are incorporated herein, as specifically modified by the Preamble of this Agreement. The provisions and requirements of the City of Oakland's *"Local Employment Program"* and the City of Oakland's, *"Oakland Apprenticeship Workforce Development Partnership System"* are also incorporated herein. Collectively these three programs shall be referenced as, "Programs".

Section 2. More particularly, the Developer and the Unions agree that the Project must meet the requirements of the Programs and that the timely construction of the Project will require substantial numbers of employees from construction crafts possessing skills and qualifications that are vital to its completion. The Developer and Unions further agree that the need for apprentices from long-standing, proven apprenticeship programs is critical to the quality construction of this Project. The parties agree that the Project workforce must conform to the requirements of the Oakland Apprenticeship Workforce Development Partnership System (OAWDPS) and the Local Employment Program. To achieve this goal, the Developer will. require all Contractors working on the Project to meet those requirements. The Unions and the Developer will undertake all actions necessary to assure that Developer and the Contractors meet these requirements.

Section 3. With regard to any employer that is independently signed to any Schedule A Master Labor Agreement ("MLA"), this Project Labor Agreement shall in no way supersede or prevent the enforcement of any subcontracting clause contained in such MLA, except as specifically set forth in subsection (b) of this section. Any such subcontracting clause in an MLA shall remain and be fully enforceable between each craft union and its signatory employers, and no provision of this Project Labor Agreement shall be interpreted and/or applied in any manner that would give this Project Labor Agreement precedence over subcontracting obligations and restrictions that exist between craft unions and their respective signatory employers under an MLA, except as specifically set forth in Section 4 of this Article III.

Section 4. If a craft union (hereafter "aggrieved union") believes that an assignment of work on this Project has been made improperly by a contractor or subcontractor, even if that assignment was as a result of another craft union's successful enforcement of the subcontracting clause in its MLA, as permitted by subsection (a) of this section, the aggrieved union may submit a claim under the jurisdictional resolution process contained in Article XV of this PLA, and the decision rendered as part of that process shall be enforceable to require the contractor or subcontractor that made the work assignment to assign that work prospectively to the aggrieved union. An award made to a craft union under the subcontracting clause of its MLA, as permitted pursuant to Section 3 of this Article, shall be valid and fully enforceable by that craft union unless it conflicts with a jurisdictional award made pursuant to this PLA. If the award made under the MLA conflicts with the jurisdictional award, the award of any damages under the former shall be null and void *ab initio.*

ARTICLE IV – Scope of Agreement

Section 1. Except as set forth elsewhere in this Agreement, this Agreement shall apply and is limited to Construction Work performed on the Project by those Contractors of whatever tier that are awarded contracts for such work. Inspectors and Testers traditionally represented by the Unions signatory to this Agreement and as to which classification a prevailing wage determination has been duly published shall be hired in accordance with the applicable Schedule "A" agreement. The delivery of ready-mix, asphalt, aggregate, sand or other fill material which are directly incorporated from the delivery vehicle into the construction work, as well as the off-hauling of excess debris (excluding debris boxes), fill material and/or soils shall be covered by the terms and conditions of this Agreement. Other than the items mentioned as being included in this Agreement above, there shall be no interference with vendor or supplier deliveries of equipment, apparatus, machinery, and construction materials to the Project site because such deliveries shall not fall under this Agreement.

Section 2. Items specifically excluded from the scope of this Agreement and the definition of "Construction Work" include the following, and neither this Agreement, nor a Schedule "A" agreement, nor any other Addendum, Attachment or Exhibit of any kind shall apply in any manner to the following excluded work:

(a) Work of non-manual employees, including but not limited to superintendents, supervisors above the level of General Foreman (unless covered by the applicable Schedule "A" Agreement), staff engineers, project engineers, quality assurance personnel (other than those covered under Section 1 of Article IV), guard services, security guards, night watchpersons, timekeepers, mail carriers, clerks, office workers including messengers, safety personnel, architects, emergency medical and first aid technicians, and other professional, engineering, administrative, community relations, public affairs, supervisory and management employees, and any other type of employee excluded from coverage of the applicable craft agreement.

(b) Except as provided in subparagraph (f) below, all work performed after the issuance of a Certificate of Occupancy or the equivalent for any structure.

(c) Any work performed on or near or leading to or onto the site of work covered by this Agreement and undertaken by state, county, city or other governmental bodies or their respective contractors; or by public utilities or their contractors; and/or by Developer and/or Subsequent Developers (for work which is not part of the Construction Work as defined in this Agreement).

(d) Non-construction support services contracted by the Developer or Subsequent Developer, the General Contractor(s), the owner of the Project or any Contractor in connection with this Project.

(e) All off-site maintenance of leased equipment and on-site supervision of on-site repairs or maintenance.

(f) All tenant improvement work performed more than one (1) year following the issuance of the certificate of completion of the building core and shell, or if no such certificates are issued, then after, on the entire shell building, a temporary certificate of completion, a temporary certificate of occupancy, or a similar form of government acceptance.

(h) Minimum Bids

(l) Any Covered Work where the contractor or subcontractor awarding that work does not receive bids on the work from at least three (3) bona fide unrelated qualified persons, firms or corporations that are signatory to a Schedule "A" Agreement with the Union having jurisdiction over the work, in accordance with the provisions of this Section (h). This provision shall only be applicable if the Union(s) having craft jurisdiction over the "work being bid is given notice that there may be fewer than three (3) bona fide unrelated and qualified bidders sent at least eight (8) working days prior to the close of bid date and fully describing the scope of work to be bid. If, upon opening the bids, the Contractor rejects them all and rebids the work, the Union will have the opportunity to assist in finding a sufficient minimum number of unrelated and qualified bidders within eight (8) working days of receipt of notice that all bids were rejected and the work will be rebid. The Union may direct signatory contractors to the Contractor bidding the work, and the Developer or Subsequent Developer or Contractor shall take reasonable steps to ensure that plans and specifications for the second solicitation of bids shall be made available on an expedited basis to any Union signatory contractor indicating an interest in submitting a bid during the second solicitation period. Contractors bidding under these conditions shall have a minimum of seven (7) working days to submit a bid.

(2) The parties further agree that a "qualified contractor" must demonstrate that it/he carries appropriate Workers' Compensation insurance, or participates in a State recognized Workers' Compensation ADR Program. A qualified contractor must also be able to demonstrate that it/he is licensed, bondable and insurable. Union signatory contractors' bids will not be rejected based on arbitrary and capricious manipulation of insurance requirements. Insurance adjustments for the purpose of meeting SLBE requirements shall not be deemed arbitrary and capricious. A contractor is not "qualified" if it is unable to provide a performance and payment bond from a surety on the Federal Register list of approved sureties.

(i) All work performed by residential tenants within their own dwelling units.

(j) All work by employees of a manufacturer or vendor necessary to maintain its warranty or guarantee if the Unions are unable to furnish qualified individuals certified in good faith, if required, to be capable of performing the specialized work and capable of meeting the manufacturer's requirements for providing a warranty.

(k) All laboratory work for specialty testing or inspections that is not covered by a Schedule "A" agreement.

(l) All non-construction support services contracted by any Contractor or Subcontractor or

the owner of the project in connection with the Construction Work, including, but not limited to landscape maintenance, general and final janitorial work (not to be interpreted as Construction Clean-Up or Final Construction Clean-Up), for example, work in preparation for showing units to potential renters.

(m) Work related to or arising out of anything other than the Project.

When work listed in this Section 2 of Article IV is performed, the Unions shall continue to be bound by all the provisions of this Agreement.

Section 3. There shall be no limitation or restriction upon the choice of materials or upon the full use and installation of equipment; machinery; package units; factory pre-cast; prefabricated, or preassembled materials; tools; or other labor-saving devices. Lawful off-site fabrication provisions of the appropriate national or local agreements shall be applicable to any Contractor or Subcontractor signatory thereto.

Section 4. This Agreement shall be binding only on the signatory Contractors, and it shall not apply to their parents, affiliates or subsidiaries. This Agreement shall be binding only with respect to Construction Work on the Project.

Section 5. It is understood that the liability of any Developer, Subsequent Developer, Contractor and/or Subcontractor and the liability of the separate Unions under this Agreement shall be several from and not joint with the liability of any other Developer, Subsequent Developer, Contractor, Subcontractor and/or Unions, unless specifically provided for otherwise in Article II, above. The Unions agree that this Agreement does not have the effect of creating any joint employer relationship between or among the Developer or Subsequent Developer, and/or any Contractor or Subcontractor. The Developer and/or Subsequent Developer signatory to this Agreement shall make reasonable efforts insure that its General Contractor(s) and their Subcontractors comply with the requirements of the applicable Schedule “A” agreements, but shall incur no liability for the failure of such General Contractors or Subcontractors to comply with said Agreements, except as any General Contractor may be liable under the terms of any of its pre-PLA Schedule “A” Agreements. The preceding sentence shall not be interpreted to limit the General Contractor's obligations that may exist to insure that its Subcontractors make the proper contributions to the Union trust funds, but the General Contractor(s) shall not be liable for any sanctions or penalties (including fees, liquidated damages or fines) assessed against any Contractor or Subcontractor by any such trust funds, except as General Contractor(s) may be liable under the terms of any of its pre-PLA Schedule “A” Agreements.

ARTICLE V - Labor Management Meeting

The parties to this Agreement recognize the necessity for cooperation and communication between Labor and Management, and for the elimination of disputes and misunderstandings between the parties. To this end, representatives of the respective General Contractor(s) will

meet monthly with the representatives of the signatory Building Trades Unions to promote harmonious and stable labor/management relations on this Project, and to insure effective and constructive communications between the labor and management parties. The date and time of these meetings will be determined by the General Contractor(s).and the Building Trades Council and will be open to all representatives of Contractors and Unions signatory to this agreement. The meetings will be held at the offices of the Alameda County Building & Construction Trades Council, or at the General Contractor's option, at the jobsite.

ARTICLE VI - No Strike--No Lockout

Section 1. During the life of this Agreement, the Unions, their agents, their representatives and their employees agree that they shall not incite, encourage, condone or participate in any strike, walkout, slowdown, sit-down, stay in, boycott, sympathy strike, picketing or other work stoppage for any cause whatsoever with respect to this Project; and it is expressly agreed that any such action is in violation of this Agreement, except, as to any Contractor, with respect to non-payment of wages as provided for in a Schedule “A” Agreement to which the Contractor is bound. In the event of the threat or occurrence of any such activity the Unions shall undertake all reasonable means to prevent or to terminate any such activity. There shall be no lockout by any Contractor. In the event of a violation of this provision, any Contractor or Union, as the case may be, shall be entitled to seek relief in court, specifically including injunctive relief, to restrain any such action on the part of the Union(s) or the Contractor, and/or any of their agents, representatives or employees. It is agreed, however, that the Contractors may layoff employees for lack of work, or in the event that a strike, picketing or other work stoppage impedes the work of the Project.

Section 2. No picket lines will be established at the Project by any of the Unions. The Unions agree that they will not sanction or support in any way any picket line and will affirmatively take all measures necessary to effectively induce their members to report for work as scheduled and that responsible representatives of the Unions who are employed on the Project will also do so themselves.

Section 3. No employee shall engage in activities which violate this Article. Any employee who participates in or encourages any activities that interfere with the normal operation of the Project shall be subject to disciplinary action, up to and including discharge.

Section 4. Payments to Health and Welfare, Pension and to Other Established Fringe Benefit Funds and Payment of Weekly Payroll. Notwithstanding the provisions of this Agreement, it is agreed that the particular Union involved retains the right to withhold the services of its members (but not a right to picket) from a particular Contractor who:

(a) Fails to make timely payments to the Union Health & Welfare, Pension, Vacation and Holiday, Annuity or other tax-deferred fund, Apprentice and Training, or Industry Funds (collectively, “Trust Funds”) in accordance with the provisions of that particular Contractor’s

current labor agreement with the particular Union; or (b) Fails to timely pay its weekly payroll.

However, prior to withholding its members' services on account of a failure to make timely payments to any Trust Fund pursuant to subparagraph (a) above, the Union involved will give at least five (5) working days (unless a lesser period is provided within the applicable craft union agreement, but in no event less than forty-eight (48) hours') written notice by facsimile and registered or certified mail, return receipt requested, to the Developer or Subsequent Developer, each involved Contractor and to the General Contractor of such failure to pay. Representatives of the parties to the dispute will meet within the ten (10) day period to attempt to resolve the dispute, and there shall be no withholding of services pending the outcome of said meeting. In the event the Union or any of its members withholds services from such Contractor or Subcontractor, the Developer or Subsequent Developer, General Contractor or other Contractor shall have the right to rebid the Construction Work of such Contractor or Subcontractor (in which case the provisions of Article IV, Section 2(t) of this Agreement shall be applicable to such rebid) or replace such Contractor or Subcontractor with any other Contractor or Subcontractor who executes an Assent.

Should a Contractor performing work on this Project be delinquent in the payment of Trust Fund contributions required under this Agreement with respect to employees represented by the Union, the Union may request, that the General Contractor issue joint checks payable to the Contractor and the appropriate employee benefit Trust Fund(s) until such delinquencies are satisfied. Any Trust Fund claiming that a Contractor is delinquent in its fringe benefit contributions to the fund, will provide written notice of the alleged delinquency to the affected Contractor, with copies to the General Contractor, the Developer or Subsequent Developer and the owner/lessor of the Project. The notice will indicate the amount of delinquency asserted and the period that the delinquency covers. It is agreed, however, with respect to Contractors delinquent in trust fund contribution payments, that nothing in this Agreement shall affect normal contract remedies available under the local collective bargaining agreements. If the General Contractor is delinquent in the payment of Trust Fund(s) contributions for Construction Work performed on this Project, the General Contractor agrees that the affected Trust Fund(s) may place the Developer or Subsequent Developer and owner/lessor of the Project on notice of such delinquencies and the General Contractor further agrees that the Developer or Subsequent Developer and/or owner/lessor of the Project may issue joint checks to the General Contractor and the Trust Fund(s) until the delinquency is satisfied.

Section 5. Expiration of Local and Other Applicable Agreements. In the event that any applicable Schedule "A" labor agreement expires and the parties to that agreement fail to reach agreement on a new contract by the date of expiration, a Union shall continue to provide employees to the Contractors working on the Project under all the terms of the expired agreement until a new agreement is negotiated, at which time all terms and conditions of that new agreement shall be applied to Construction Work at the Project, except to the extent they conflict with any provision of this Agreement. In addition, if the new labor agreement provides for wage or benefit increases, then any Contractor shall pay to its employees who performed Construction Work at the Project during the hiatus between the effective dates of such labor

agreements, an amount equal to any such wage and benefit increases established by and in accordance with the new Schedule "A" labor agreement for such work performed. All parties agree that such affected Contractor shall be solely responsible for any retroactive payments to its employees and trust funds and that the General Contractor shall not have any obligations, responsibility or liability whatsoever for any such retroactive payments or collection of any such retroactive payments from any other Contractor. Nothing herein will prevent the Union(s) and Contractor(s) upon mutual agreement from deciding to use an interim agreement pending the final negotiations for a new collective bargaining agreement.

Section 6. It is agreed that except as otherwise provided in Article III of this Agreement and Section 7 below, the Unions shall be the sole source of all craft employees for Construction Work for the Project. As to the Construction Work, the Contractors agree to observe the hiring practices of the respective Union and to utilize its registration facilities and referral systems, provided that in the event the referral facilities maintained by the applicable Union does not refer the employees as requested by the Contractor within a seventy-two (72) hour period after such requisition is made by the Contractor (Saturdays, Sundays and recognized holidays excepted), the Contractor may employ applicants from any source.

ARTICLE VII - Work Week and Holidays

The normal work week shall be governed by the applicable Schedule "A" agreements. The only recognized holidays are those listed in the applicable Schedule "A" agreements.

ARTICLE VIII - Wage Scales and Fringe Benefits

Wages, hours, fringe benefits and all Trust Fund contributions shall be determined by the applicable Schedule "A" agreements.

ARTICLE IX-Safety

Section 1.

(a) Safety. It shall be the responsibility of each Contractor to ensure safe working conditions and employee compliance with any safety rules contained herein or established by the Contractor as they respect that particular Contractor's work. It is understood that the employees have an individual obligation to use diligent care to perform their work in a safe manner and to protect themselves and the property of the Contractor. The parties hereby agree that the General Contractor or any Contractor may delegate its obligations under this Article IX Section 1 to a sub-tiered Contractor who actually performs the applicable work. Nothing in this Section 1 or elsewhere in this Agreement shall be deemed to make the Developer or Subsequent Developer, General Contractor or any other Contractor responsible for the safety violations of any other Contractor or Subcontractor, either expressly or implicitly, nor shall the Unions be liable for safety violations of the Contractors or their subcontractors.

(b) Rules. Employees shall be bound by the safety, security and visitor rules and environmental compliance requirements established by the Contractor. These rules will be published and posted in conspicuous places throughout the work site. An employee's failure to satisfy his/her obligations under this Section may subject the employee to discipline, including discharge.

(c) Smoking. The parties acknowledge that the environmental and safety restrictions governing conduct at the Project site may prohibit smoking at any time in any location or facility.

Section 2. Water and Sanitary Facilities. The Contractor(s) shall provide adequate supplies of drinking water and sanitary facilities for all employees. Proper notification of this requirement shall be provided to the Contractor(s) at the pre-bid and pre-job conference mark-up to insure compliance with this Section.

ARTICLE X -Working Conditions

Section 1. There will be no organized coffee breaks or other non-working time established during working hours, unless established by law, regulation or the applicable Schedule "A" Agreement, provided, however, when working conditions permit, workers will be permitted to have personal containers of non-alcoholic beverages, the contents of which may be consumed during working hours at their assigned work locations. Rest periods shall be provided in accordance with Wage Order 16 of the Industrial Wage Commission.

Section 2. There shall be no limit on production by workers, nor restrictions on the full use of tools or equipment. Slowdowns and featherbedding practices will not be tolerated. The lawful manning provisions of the applicable Schedule "A" agreements shall govern.

Section 3. Contractors shall establish such reasonable Project rules as the Contractors deem appropriate and not inconsistent with this Agreement, which rules shall be subject to the grievance procedure should the Union(s) disagree with the reasonableness of the rule(s). In any dispute over the application of a rule, the grieving party may contest the reasonableness of the rule, the facts of the alleged violation, and the appropriateness of any discipline imposed. These rules will be explained at the pre-job conference and posted at the Project site by the applicable Contractor and may be amended thereafter as necessary. Failure to observe these rules and regulations by any employee may be grounds for discipline, including discharge.

ARTICLE XI - Union Representation

Authorized representatives of the Union shall have access to the Project, provided that such representatives fully comply with posted visitor, security and safety rules and the environmental compliance requirements of the Project. Each Contractor recognizes the right of access set forth in this Section and such access will not be unreasonably withheld from an authorized representative of the Union.

ARTICLE XII -Management's Rights

Section 1. Each Contractor retains the full and exclusive authority for the management of its operations. Except as expressly limited by other provisions of this Agreement, each Contractor retains the right to direct the workforce, including the hiring, promotion, transfer, layoff, discipline or discharge of its employees in accordance with the Schedule "A" agreements; the selection of foremen; the assignment and schedule of work; the promulgation of reasonable work rules; and, the necessity of overtime work, the determination of when it will be worked and the number of employees engaged in such work. No rules, customs, or practices that limit or restrict productivity, efficiency or the individual and/or joint working efforts of employees shall be permitted or observed. Each Contractor may utilize any methods or techniques of construction.

Section 2. There shall be no limitation or restriction by a signatory Union upon a Contractor's choice of materials, design or manufacture, nor, upon the full use and utilization of equipment, machinery, tools, or other labor saving devices. The Union agrees that it will not in any way restrict the implementation of such new devices or work methods. If there is any disagreement between a Contractor and a Union concerning the manner or implementation of such device or method of work, the implementation shall proceed as directed by the Contractor, and the Union shall have the right to grieve and/or arbitrate the dispute as set forth in this Agreement. The on-site installation or application of all items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that installation of specialty items which may be furnished by the owner of the Project or a Contractor shall be performed by employees employed under this Agreement who may be directed by other personnel in a supervisory role; provided, however, in limited circumstances requiring special knowledge of the particular item(s), may be performed by employees of the vendor or other companies where necessary to protect a manufacturer's warranty. In such instances all provisions of this Agreement shall apply. The issue of whether it was necessary to use employees of the vendor or other companies to protect the manufacturer's warranty shall be subject to the grievance and arbitration clause of this Agreement.

Section 3. Upon notification to the Unions, the General Contractor can require Contractors working on the Project to utilize the various substance abuse provisions contained within the Schedule "A" agreements.

Section 4. Neither this Agreement nor any of the Schedule "A" agreements shall in any way be interpreted to limit the General Contractor's rights to subcontract out any or all portions of the work so long as the subcontractor signs a Letter of Assent to be bound to this Agreement and is signatory to the appropriate Union's Schedule "A" Agreement for Construction Work on the Project.

ARTICLE XIll - Non-Discrimination

The Unions and Contractor(s) shall not discriminate against any employee or applicant for employment because of race, color, sex, national origin, age, religion, or any other basis prohibited by law. Both the Unions and the Contractor(s) are committed to the recruitment of local applicants into the construction industry. The Unions and the Contractor(s) are committed to working directly with community groups, the City of Oakland, the Oakland Redevelopment Agency and those other partners that have successfully built an alliance for the purpose of effectively recruiting and retaining local applicants into the various Local Union Apprenticeship Programs and employment on the Project.

ARTICLE XIV - Equal Employment Opportunity

The Unions and the Contractor(s) support the concept of equal employment opportunity and shall make every reasonable effort to ensure that minority and women-owned businesses are given the opportunity to competitively bid for work at the project.

ARTICLE XV - Jurisdictional Dispute Resolution

Section 1. Work shall be assigned by the Contractors in accordance with their ordinary and usual practices under their respective Schedule "A" agreements. Such assignments will be disclosed by the Contractors at a pre-job conference called by the Contractors and held in accordance with industry practice, which pre-job conference will include a representative of the BTC. The meetings will be held at the offices of the Building Trades Council.

Section 2. (a) The Contractor shall assign work on the basis of traditional craft jurisdictional lines. It is agreed that the craft assignment of work to a respective craft shall be the determining factor for proper wage payment as required under this Agreement.

(b) There shall be no strikes, picketing, sympathy strikes, leafleting or work disruption or stoppages of any kind because of jurisdictional disputes.

(c) When conflicting claims for work on the Project are submitted to a Contractor, the dispute shall be resolved pursuant to agreed upon Jurisdictional Dispute Procedures, as adopted by the National Building & Construction Trades Department, or by the Mechanical Allied Crafts (MAC) (Appendix A), or by the National Construction Alliance (NCA) (Appendix B), incorporated herein respectively. It is understood by the parties that these Procedures might be amended from time to time. In the event a jurisdictional dispute arises between two or more Unions affiliated with the National Building & Construction Trades Department, such dispute shall be resolved by the procedures set forth in the Plan for the Settlement of Jurisdiction Disputes in the Construction Industry. In the event a jurisdictional dispute arises between two or more Unions affiliated with the MAC, such dispute may be

resolved under the MAC Procedure. In the event a jurisdictional dispute arises between two or more Unions affiliated with the NCA, such dispute shall be resolved under the NCA Procedure. In the event a jurisdictional dispute arises between two or more Unions that are not affiliated with the same International group and are not stipulated to the same jurisdictional dispute resolution procedure, the dispute shall be handled in accordance with and resolved as described in Appendix C hereto.

ARTICLE XVI -Expedited Arbitration Procedure

Section 1. Upon written notice by hand-delivery or facsimile of a violation of the no-strike provisions of this Agreement to the BTC and the Union, the Union(s) and their officers shall take immediate action and shall use their best efforts to prevent, end, or avert any such activity or the threat thereof by any of its officers, members, representatives, or employees, including, but not limited to, publicly disavowing any such action and ordering all such officers, representatives, employees or members who participate in such unauthorized activity to cease and desist from same immediately and to return to work and comply with this Agreement. Nothing in this Agreement shall be construed to limit or restrict the right of any of the parties to this Agreement to pursue fully any and all other remedies available under law in the event of a violation of this Agreement.

Section 2. In consideration of the foregoing, the Contractor(s) shall not incite, encourage, or participate in any lockout or cause to be locked out any employee covered under the provisions of this Agreement.

Section 3. Any employee or employees inciting, encouraging, or participating in any strike, slowdown, picketing, sympathy strike or other activity in violation of this Agreement is subject to immediate discharge and access to the grievance and arbitration procedures of this Agreement.

Section 4. Any party to this Agreement may institute the following binding arbitration procedure when such a breach of the no strike-no lock out provisions of this Agreement is alleged. In the event a party institutes this procedure, arbitration shall be mandatory. Should the Arbitrator determine that notice of the hearing has been properly given, the arbitration shall proceed in to a default award should a party fail or refuse to participate in the Arbitration proceedings.

Section 5. The party invoking this procedure shall immediately notify by telephone and/or facsimile Gerald McKay, who the parties agree shall be the permanent Arbitrator under this procedure. In the event that the permanent Arbitrator is unavailable at any time, notice shall be immediately given in the same manner to the alternative Arbitrator, Barry Winograd. If neither is available Gerald McKay shall select another arbitrator. If Gerald McKay is unavailable to select another arbitrator, then Barry Winograd shall select another arbitrator.

Section 6. Upon receipt of said notice, the Arbitrator or the alternate Arbitrator, as the case may be, shall designate a place for, schedule and hold a hearing within twenty-four (24) hours.

Section 7. The Arbitrator shall notify the parties by facsimile, telephone or similar means of the place and time chosen for the session. A failure of any party or parties to attend said hearing shall not delay the hearing of evidence or issuance of an award by the Arbitrator.

Section 8. The sole issue at the hearing shall be whether or not a violation of the no strike-no lock out provisions of this Agreement has in fact occurred, and the Arbitrator shall have no authority to consider any matter in justification, explanation, or mitigation of such violation or to award damages, which issue is reserved for court or other arbitration proceedings, if any. The award shall be issued in writing within three (3) hours after the close of the hearing and may be issued without a written opinion. If any party desires a written opinion, one shall be issued within fifteen (15) days, but its issuance shall not delay compliance with, or enforcement of, the award. The Arbitrator's award shall be served on all parties by hand or registered mail upon Issuance.

Section 9. The award shall be final, binding and non-reviewable as to the merits. Such Award shall be final and binding on all parties and may be enforced by any court of competent jurisdiction upon the filing of this Project Labor Agreement and all other relevant documents referred to hereinabove in the following manner. Written notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's Award, all parties waive the right to a hearing and agree that such proceedings may be *ex parte.* Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order or orders enforcing the arbitrator's Award shall be served on all parties by hand or by delivery to their last known address by registered mail.

Section 10. The costs of arbitration, including the fee and expenses of the Arbitrator, shall be borne by the losing Party.

Section 11. The procedure contained in this Article shall be applicable only to alleged violations of the no strike-no lockout provisions of this Agreement. Discharge or discipline of employees for violations of this Article shall be subject to the grievance and arbitration procedures of this Agreement.

Section 12. Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.

ARTICLE XVII - Grievance and Arbitration Procedure

Section 1. Where a subject covered by the provisions of this Agreement is also covered by a Schedule "A" Agreement, the grievance provisions of this Agreement shall be used to resolve

the grievance. Where a subject is covered by the provisions of a Schedule "A" Agreement and not covered by this Agreement, the grievance procedure of the Schedule "A" Agreement shall be used to resolve the grievance. If a grievance, properly covered the grievance provisions of this Agreement is agreed by all involved parties to be covered by the Schedule "A" Grievance Procedure then the grievance procedures of the Schedule "A" may be used. Disputes subject to resolution under the terms of this Agreement shall be governed by the following grievance and arbitration procedures.

Section 2. A grievance shall be considered null and void if not brought to the attention of the Contractor(s) within five (5) working days after the grievance is alleged to have occurred or within five (5) working days after the Union's first knowledge of the grievance. Similarly, a grievance shall be considered null and void if not brought to the attention of the Union(s) within five (5) working days after the grievance is alleged to have occurred or within five (5) working days after the Contractor(s)' first knowledge of the grievance.

Section 3. Grievances shall be settled according to the following Steps:

Step 1: The steward or business representative and the grievant shall attempt to resolve the grievance with the craft supervisor.

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Step 2: In the event the matter remains unresolved in Step 1 above, within five (5) working days, the grievance shall be reduced to writing and may then be referred by the Union to the Contractor(s) for discussion and resolution.

Step 3: In the event the matter remains unresolved in Step 2 above, either Party may request, within five (5) working days, that the dispute be submitted to arbitration. The time limits set out in this procedure may, upon mutual agreement, be extended. Any request for arbitration, request for extension of time limits, and agreement to extend such time limits shall be in writing.

Step 4: The Parties agree that the Arbitrator who will hear the grievance shall be selected from a list of arbitrators obtained from the American Arbitration Association and shall be selected by the alternate striking method. The arbitration procedure contained herein, once invoked, shall be mandatory. Should a Party to the procedure fail or refuse to participate in the hearing, if the Arbitrator determines that proper notice of the hearing has been given, said hearing shall proceed to a default award. The Arbitrator's award shall be final and binding on all Parties to the arbitration. The costs of the arbitration, including the arbitrator's fee and expenses, shall be borne equally by the Parties. The Arbitrator's decision shall be submitted in writing and shall be final and binding on all parties signatory to this Agreement.

The Arbitrator's decision shall be confined to the question(s) posed by the grievance and the Arbitrator shall not have authority to modify, amend, alter, add to, or subtract from, any provisions of this Agreement. The Arbitrator shall have the authority to utilize any appropriate and lawful equitable or legal remedy to prevent and/or cure any breach or threatened breach of this Agreement.

Section 4. The Contractor(s), as well as the Unions, may bring forth grievances under this Article. Either party to a grievance may invite the General Contractor to participate in resolution of a grievance. The General Contractor may, at its own initiative, participate in Steps 1 through 3 of this procedure.

ARTICLE XVIII -General Savings Clause

It is not the intent of any party to this Agreement to violate any Federal, State or local laws governing the subject matter contained herein. If any provisions contained herein are finally held or determined to be in conflict with, invalid, inoperative, unenforceable, illegal or void by any competent authority of the federal, state or local government or a court of competent jurisdiction, the operation of such sections or provisions shall be suspended and the parties will promptly enter into negotiations concerning the clauses affected by such a legal decision for the purpose of achieving conformity with the requirement of any applicable law so violated and the intent of the provision(s) in questions. If any governmental agency requires that work on the Project be performed pursuant to a Project specific plan or program the parties shall meet for the purpose of negotiating any changes to this Agreement which may be necessary to comply with such plan or program. Any negotiations which occur as a result of this Article shall be limited to the subject of negotiating changes to the Agreement to comply with such plan or program. The provisions of Article VI shall remain in effect notwithstanding any reopening of this Agreement.

ARTICLE XIX -Term of Agreement

This Agreement shall become effective in accordance with its terms and shall continue in full force and effect until the Construction Work has been completed.

In witness whereof, the parties have executed this Agreement as of the Effective Date with the exception of the Contractors who will become parties to this Agreement by signing the Letter of Assent (Attachment A).

Executed this 00 day of August, 2008 at Oakland, California.

BRlDGE Housing Corporation: _____

MacArthur Transit Village OPA

By: _____ Its:_____

Signatures continue on following page.

BTC:Alameda Building and Construction Trades Council, AFL-CIO

By: _____ Barry Luboviski

Asbestos Workers, Local #16

By: _____ Steve Steele

Boilermakers, Local #549

By: _____ Frank Secreet

Bricklayers & Allied Craftsmen, Local #3

By: _____ Tom Spear

Northern California Regional Council of Carpenters (on behalf of, Carpenters, Local 713, Lathers, Local #68L, Millwrights, Local #102, Pile Drivers, Local #34)

By: _____ Robert Alvarado

District Council of Plasterers and Cement Masons of Northern California

By: _____ Steve Scott

Cement Masons, Local #549 By: Steve Scott

By: _____ Steve Scott

Plasterers, Local 66

By: _____ Chester Murphy

MacArthur Transit Village OPA

Electrical Workers, Local #595

By: _____ Victor Uno

Elevator Constructors, Local #8

By: _____ Pat McGarvey

Laborers District Council (on behalf of, Hod Carriers, Local # 166, Laborers, Local #67, Laborers, Local #304)

By: _____ Jose Moreno

Hod Caniers, Local #166

By: _____ Sam Robinson

Laborers, Local #67

By: _____ Victor Parra

Laborers, Local 304

By: _____ Jose Zapien

Operating Engineers, Local #3

By: _____ Russ Burns

MacArthur Transit Village OPA

District Council Ironworkers of the State of California and Vicinity

By: _____ Joe Standley

Waterproofers, Local #81Ironworkers, Local #378

By: _____ Emilio Rivera

District Council # 16, Painters & Allied Trades (on behalf of Auto & Marine Painters, Local #1176, Carpet & Linoleum Layers, Local #12, Glaziers, Architectural Metal & Glassworkers, Local #169, Painters & Tapers, Local #3)

By: _____ Gene Massey

Roofers and Waterproofers, Local #81

By: _____ Doug Zeigler

Sheet Metal Workers, Local #104

By: _____ Bruce Word

Sign Display and Allied Crafts, Local #510

By: _____ Mike Hardeman

Sprinkler Fitters, Local #483

By: _____ Stan Smith

Teamsters, Local #853

By: _____ Rome Aloice

United Association of Steamfitters, Pipefitters, Plumbers & Gasfitters, Local #342

MacArthur Transit Village OPA

By: _____ Jay Williams

"Attachment A"

LETTER OF ASSENT

The undersigned, as a Contractor or Subcontractor ("Employer") on the _____ Project (hereinafter "Project") for and in consideration of the award to it of a contract to perform work on said Project and in further consideration of the mutual promises made in the Project Labor Agreement for the Project (hereinafter "Agreement"), a copy of which was received and is acknowledged, hereby:

Accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all amendments and supplements now existing or which are later made to said Agreement.

Certifies that is has no commitments or agreements which would prelude its full and complete compliance with the terms and conditions of said Agreement.

Agrees to secure from any Contractor (as defined in said Agreement) that is or becomes a subcontractor at any tier to it, and from any successors, a duly executed Agreement to be Bound in form identical to this document.

Agrees that it shall be bound by all applicable trust agreements and plans for the provision of such fringe benefits as accrue to the benefit of the employees including, but not limited to, Health and Welfare, Pension, Training, Vacation, Apprenticeship and Training, and/or other benefits provided pursuant to the appropriate craft agreement contained in "Schedule A" of the Project Agreement.

Dated: (Print Name of Company)

By:_____
(Title)
Contractor's State License # _____
Address _____
_____

Phone Number_____
Fax Number_____

_____
(Name of Prime Contractor or Higher

Level Subcontractor)

Side Letter on Mutual Cooperation

The Developer or Subsequent Developer, General Contractor(s), Alameda Building and Construction Trades Council and its constituent Local Unions all recognize the value of the Project to the City of Oakland and the community in which the Project is located. Accordingly, the parties to the Project Labor Agreement mutually assure each other of their fullest cooperation with each other and their intention to use every lawful means at their disposal to make this Project not merely a success, but a significant demonstration of the ability of the parties to work together to deliver an outstanding product for and to the City and the community at large. In keeping with their intentions, the BTC is committed to inducing and encouraging qualified workers resident within the Oakland area to work on the Project with and through the Local Unions. The BTC will respond in timely fashion to requests from the Developer or Subsequent Developer or Contractors for workers from the Oakland area and encourage community organizations within the area to do likewise.

Side Letter on Mutual Cooperation

The Developer or Subsequent Developer, General Contractor(s), Alameda Building and Construction Trades Council and its constituent Local Unions all recognize the value of the Project to the City of Oakland and the community in which the Project is located. Accordingly, the parties to the Project Labor Agreement mutually assure each other of their fullest cooperation with each other and their intention to use every lawful means at their disposal to make this Project not merely a success, but a significant demonstration of the ability of the parties to work together to deliver an outstanding product for and to the City and the community at large. In keeping with their intentions, the BTC is committed to inducing and encouraging qualified workers resident within Oakland area to work on the Project with and through the Local Unions. The BTC will respond in timely fashion to requests from the Developer or Subsequent Developer or Contractors for workers from Oakland and encourage community organizations within the area to do likewise.

EXHIBIT L

CONSULTANT CONTRACT ADDENDUM
(MacArthur Transit Village)

This Consultant Contract Addendum is made this _____ day of _____, _____ , by and between **MacArthur Transit Community Partners**, a California limited liability company ("Developer"), and _____, ("Consultant").

RECITALS

A. Developer and Consultant have entered into an agreement dated under which Consultant has agreed to undertake certain specified services with respect to the above-captioned project (the "Contract").

B. Developer has entered into an Owner Participation Agreement (the "OPA") with the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), pursuant to which the Agency will provide a portion of the funding for land acquisition and infrastructure development for the transit village project to be developed adjacent to the MacArthur BART Station in Oakland, California (the "Project"). Under the terms of the OPA, Developer is obligated to require each contractor, design professional or other consultant for any portion of the Project to comply with certain employment and contracting requirements.

C. Developer and Consultant wish to modify and add to the terms of the Contract as set forth in this Addendum, and Consultant agrees to be bound by the following provisions in the performance of its duties with respect to the Project.

NOW, THEREFORE, Developer and Consultant hereby agree as follows:

1. DEVELOPER'S OBLIGATIONS. Developer agrees that any obligation imposed on Consultant by this Addendum does not waive, diminish, or alter any of Developer's obligations to Agency under the OPA, and that the obligations of Consultant to Agency contained herein are in addition to those obligations of Developer to Agency contained in the OPA. Developer shall be solely responsible for satisfying its obligations to Consultant under the Contract.

2. CONSENT TO ASSIGNMENT OF DEVELOPMENT RIGHTS. Consultant consents to the assignment of its Contract with Developer to Agency and consents to the assignment of Developer's rights to any plans, specifications, reports, data, drawings, and/or studies Consultant has prepared or will prepare for the Project on all the terms and subject to the conditions set forth in this Addendum and the OPA. Consultant agrees that if Agency takes title to the Project, or to any Phase to which the Contract applies, pursuant to Sections 13.6, 13.7 and 13.10 of the OPA, Agency may elect to enforce the assignment and take over the Contract. Consultant agrees to continue to perform its obligations under the Contract and this Addendum for the benefit and account of Agency in the same manner as if performed for the benefit and account of Developer in the absence of the assignment at no additional cost to Agency, as long as Consultant continues to receive the compensation called for under

the Contract. Consultant agrees that Agency shall not have any obligation under the Contract until Agency notifies it in writing of Agency's election to accept the assignment. All rights granted to Agency pursuant to this Section 2 are and shall be subject and subordinate to any rights granted to any Mortgage Holder pursuant to Article 14 of the OPA or any document executed pursuant thereto.

3. CONTRACT WORK. Consultant warrants and represents that it is licensed or otherwise authorized to perform the work specified in the Contract in the State of California. All Contract work must be performed by persons or entities licensed or otherwise authorized to perform the applicable work in the State of California. Consultant represents that it holds a valid City of Oakland Business Tax Certificate, if required, for the work that is being performed under the Contract. Consultant shall insert similar provisions in all of its subcontracts for work for the Project.

4. AUDITS. Consultant must make available for examination at reasonable intervals and during normal business hours to Agency's representatives all books, accounts, reports, files, and other papers or property for the purpose of confirming compliance with the terms of this Addendum, and shall permit these representatives to audit, examine, and make copies, excerpts or transcripts from such records.

5. NONDISCRIMINATION. Consultant may not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual preference, national origin, AIDS or AIDS-related conditions, or disability in any phase of employment during the work under this Contract. Consultant agrees to post in conspicuous places available to all employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

6. REPORTING. Consultant must submit information on forms supplied by Agency concerning the workforce and ownership composition of Consultant and its subconsultants, as reasonably requested by Agency.

7. NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS. No member, official, employee, or agent of Agency shall be personally liable to Consultant for any obligation created under the terms of the Contract or this Addendum except in the case of actual fraud or willful misconduct by such person.

8. INDEMNITY. Consultant hereby indemnifies and holds Agency, its members, officials, employees, and agents harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which Agency may incur as a result of Consultant's failure to perform any obligations as and when required by the Contract or this Addendum, any act or omission by Consultant or its subcontractors with respect to the Project or the Site, or any failure of any of Consultant's representations or warranties herein to be true and complete, except to the extent that such losses are caused by the negligence or willful misconduct of Agency. Consultant shall pay immediately upon Agency's demand any amounts owing under this indemnity. The duty of Consultant to indemnify shall include the duty to defend Agency in any court action, administrative action, or other proceeding brought by any third party arising in connection with the matters indemnified against. Consultant's duty to indemnify Agency shall survive the term of the Contract.

9. NOTICE OF DEFAULT TO AGENCY. Consultant must give Agency prior or concurrent written notice of any default or breach claimed by Consultant against Developer or any other party under the Contract. The notice shall describe the default and give Agency the option to cure said default within 30 calendar days. No termination of the Contract by Consultant shall be binding unless Agency has been given the required notice and has not cured the default within 30 calendar days.

10. REMEDIES. The parties hereto agree that Agency, while not a party to the Contract, is an intended third party beneficiary of the obligations imposed on Consultant in this Addendum. In the event of any breach or violation of an obligation of Consultant under this Addendum, Agency may proceed with any of the following remedies:

10.1. Bring an action in equitable relief seeking specific performance by Consultant of the terms and conditions of this Addendum, and/or enjoining, abating, or preventing any violation of such terms and conditions;

10.2. Suspend disbursement of any Agency funds which Developer has requested be disbursed to pay Consultant for work under the terms of the Contract until the breach or violation is corrected; or

10.3. Pursue any other remedy allowed at law or in equity.

11. GOVERNING LAW. This Addendum shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

12. DEFINITIONS. Capitalized terms not defined in this Addendum shall have the same meaning as defined in the OPA.

13. ATTORNEYS' FEES AND COSTS. In the event any legal action is commenced to interpret or enforce the terms of this Addendum, the prevailing party shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

14. TIME. Time is of the essence in the performance of this Addendum.

15. CONSENTS AND APPROVALS. Any consent or approval required under this Addendum shall not be unreasonably withheld, delayed, or conditioned.

16. BINDING UPON SUCCESSORS. All provisions of this Addendum shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties.

17. RELATIONSHIP OF CONSULTANT AND AGENCY. Consultant understands that Agency neither undertakes nor assumes any responsibility or duty to Consultant or any third party with respect to the Project. The relationship of Consultant and Agency for this Project shall not be construed as a joint venture, equity venture, or partnership. Agency is an intended third party beneficiary of the obligations in this Addendum, and Agency shall have no obligation to any party under the Contract. Except as Agency may specify in writing, Consultant shall have no authority to act as an agent of Agency or to bind Agency to any obligation.

18. ASSIGNMENT. Consultant shall give Agency ten City business days' prior written notice of any assignment of its rights and obligations under the Contract. Any assignment in violation of the terms of the Contract shall be void.

19. AMENDMENTS AND MODIFICATIONS. Any amendments or modifications to this Addendum must be in writing, and shall be made only if executed by Developer and Consultant and consented to in writing by Agency.

20. SEVERABILITY. Every provision of this Addendum is intended to be severable. If any provision of this Addendum is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

21. ADDENDUM CONTROLS. In the event that any provisions of this Addendum and the Contract conflict, the terms of this Addendum shall control.

[SIGNATURE BLOCKS ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Consultant Contract Addendum as of the date first written above.

"CONSULTANT"

By: _____

Title: _____

"DEVELOPER"

MacArthur Transit Community Partners, a California limited liability company

By: _____

Title: _____

EXHIBIT M

CONSTRUCTION CONTRACT ADDENDUM
(MacArthur Transit Village)

This Construction Contract Addendum is made this _____ day of _____, _____, by and between **MacArthur Transit Community Partners**, a California limited liability company ("Developer"), and _____, ("Contractor").

RECITALS

A. Developer and Contractor have entered into a construction agreement dated under which Contractor has agreed to undertake construction work on the above-captioned project (the "Contract").

B. Developer has entered into an Owner Participation Agreement (the "OPA") with the Redevelopment Agency of the City of Oakland, a community redevelopment agency organized and existing under the California Community Redevelopment Law ("Agency"), pursuant to which the Agency will provide a portion of the funding for land acquisition and infrastructure development for the transit village project to be developed adjacent to the MacArthur BART Station in Oakland, California (the "Project"). Under the terms of the OPA, Developer is obligated to require each contractor for any portion of the Project to comply with certain employment and contracting requirements.

C. Developer and Contractor wish to modify and add to the terms of the Contract as set forth in this Addendum, and Contractor agrees to be bound by the following provisions in connection with all work undertaken under the terms of the Contract.

NOW, THEREFORE, Developer and Contractor hereby agree as follows:

1. **DEVELOPER'S OBLIGATIONS.** Developer agrees that any obligation imposed on Contractor by this Addendum does not waive, diminish, or alter any of Developer's obligations to Agency under the OPA, and that the obligations of Contractor to Agency contained herein are in addition to those obligations of Developer to Agency contained in the OPA. Developer shall be solely responsible for satisfying its obligations to Contractor under the Contract.

2. **CONSENT TO ASSIGNMENT OF DEVELOPMENT RIGHTS.** Contractor consents to the assignment of its Contract with Developer to Agency on the terms and subject to the conditions set forth in this Addendum and the OPA. Contractor agrees that if Agency takes title to the Project, or to any Phase to which the Contract applies, pursuant to Sections 13.6, 13.7 and 13.10 of the OPA, Agency may elect to enforce the assignment and take over the Contract. Contractor agrees to continue to perform its obligations under the Contract and this Addendum for the benefit and account of Agency in the same manner as if performed for the benefit and account of Developer in the absence of the assignment at no additional cost to Agency, as long as Contractor continues to receive the compensation called for under the Contract. Contractor

agrees that Agency shall not have any obligation under the Contract until Agency notifies it in writing of Agency's election to accept the assignment. All rights granted to Agency hereunder are and shall be subject and subordinate to any rights granted to any Mortgage Holder pursuant to Article 14 of the OPA or any document executed pursuant thereto.

3. **CONSTRUCTION BONDS.** To the extent not provided by Developer pursuant to Section 6.6 of the OPA, Contractor shall obtain a labor and material (payment) bond and a performance bond, or a dual bond which covers both payment and performance obligations, with respect to the work of construction covered by the Contract in a penal sum each of not less than one hundred percent (100%) of the scheduled cost of construction. Such bonds should be issued by a company which is authorized to transact surety insurance in California and which has assets exceeding its liabilities in an amount equal to or in excess of the bond amount. The bonds shall name Agency as a co-obligee. In lieu of said bonds, a letter of credit in the sole name and possession of Agency in the penal amount and in a form acceptable to Agency may be substituted.

4. **CONTRACT WORK.** Contractor warrants and represents that it is licensed or otherwise authorized to perform the construction work specified in the Contract in the State of California. Contractor warrants and represents that it holds a current City of Oakland Business Tax Certificate. All construction work shall be performed by persons or entities licensed or otherwise authorized to perform the applicable construction work in the State of California. Contractor shall insert similar provisions in all subcontracts for work within the scope of the Contract.

5. **QUALITY OF WORK.** Contractor shall complete all work under the Contract in conformance with the Plans and Specifications and any modifications thereto approved by Agency. Contractor shall construct the Project according to general industry standards and shall employ building materials of a quality suitable for the requirements of the Project and conforming to general industry standards. Contractor shall complete all work under the Contract in full conformance with applicable local, state, and federal statutes, regulations, and building and housing codes.

6. The parties acknowledge that Agency is under no duty to review the Plans and Specifications or to inspect construction of the Project. Any review or inspection undertaken by Agency is solely for the purpose of determining whether Developer and Contractor are properly discharging their obligations to Agency, and should not be relied upon by Developer, Contractor, or any third parties as a warranty or representation by Agency as to the quality of the design or construction of the Project.

7. **ADDITIONS OR CHANGES IN WORK.** Agency and Developer must be notified in a timely manner of any changes in the work required to be performed under the Contract or this Addendum, including any substantial additions, changes, or deletions to the approved Plans and Specifications. A written change order authorized by Agency must be obtained before any change which constitutes a "material change", as defined in Section 7.2.1 of the OPA, may be performed. Consent to any additions, changes, or deletions to the work shall not release Contractor from any other obligations herein, or release Contractor or its surety from any surety bond.

8. **SITE INSPECTIONS.** Contractor shall permit and facilitate observation and inspection of work at the job site by Agency and its agents and by other public authorities during reasonable business hours.

9. **AUDITS.** Contractor shall make available for examination at reasonable intervals and during normal business hours to Agency's representatives all books, accounts, reports, files, and other papers or property for the purpose of confirming compliance with the terms of this Addendum, and shall permit these representatives to audit, examine, and make copies, excerpts or transcripts from such records.

10. **LEAD-BASED PAINT.** Contractor and its subcontractors shall not use lead-based paint in the construction or maintenance of the Project. Contractor shall insert such a provision in all subcontracts for work performed on the Project which involve the application of paint.

11. **NONDISCRIMINATION.** Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, religion, sex, sexual preference, national origin, AIDS or AIDS-related conditions, or disability in any phase of employment during construction. Contractor agrees to post in conspicuous places available to all employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

12. **AGENCY LOCAL EMPLOYMENT REQUIREMENTS.** Agency has established a goal that 50% of the work hours at the construction site be furnished by Oakland residents on a craft-by-craft basis, and that 50% of all new construction hires be Oakland residents. Contractor shall abide by the provisions of Agency's Local Employment Program, attached to this Addendum as Exhibit A-1 and incorporated herein by reference, and shall achieve the goals therein for the Project or document a good faith effort to meet such goals. Contractor shall take reasonable measures to assure that its subcontractors on the Project abide by said program. Contractor understands that these requirements apply to the entire work of Project construction whether or not Agency is funding a particular construction contract or work item.

13. **AGENCY SMALL LOCAL BUSINESS REQUIREMENTS.** Agency has established a goal that 50% of construction contract amounts shall go to local business enterprises, that 35% of construction contract amounts shall go to small local business enterprises, and that 50% of total trucking dollars on a project be performed by local truckers. Contractor shall abide by the provisions of Agency's Local and Small Local Business Enterprise Program, attached to this Addendum as Exhibit A-2 and incorporated herein by reference, and shall aggressively make every effort to obtain small local business enterprise participation in Project construction. Contractor shall take reasonable measures to assure that its subcontractors on the Project abide by said program. Contractor understands that these requirements apply to the entire work of Project construction whether or not Agency is funding a particular construction contract or work item.

14. **REPORTING.** Contractor shall submit information on forms supplied by Agency concerning the workforce and ownership composition of Contractor, its subcontractors and suppliers, as reasonably requested by Agency.

15. **ENFORCEMENT OF AGENCY'S EMPLOYMENT AND CONTRACTING REQUIREMENTS.** Agency's programs described in the attached Exhibits are together referred to herein as the "Employment and Contracting Programs." In the event of any noncompliance by Contractor or any of its subcontractors for the Project with respect to the Employment and Contracting Programs, including failure to provide required documentation, Agency, in addition to other rights and remedies afforded by this Addendum, may: (1) demand that the noncomplying entity comply with these requirements; (2) suspend disbursement of any Agency funds which Developer has requested be disbursed to pay Contractor until the breach or violation is corrected; (3) impose liquidated damages on the noncomplying entity if and in an amount provided for in the particular Employment and Contracting Program; and/or (4) pursue any lawful administrative or court remedy to enforce these requirements. Any noncomplying entity shall comply with a demand to correct noncompliance within ten working days of receipt of a notice of noncompliance.

Contractor shall include the requirement to abide by the Employment and Contracting Programs in all subcontracts for work on this Project, and shall specify that Agency is an intended third party beneficiary of such provisions. Contractor shall take reasonable measures to monitor and enforce the requirements of the Employment and Contracting Programs imposed on its subcontractors for the Project, including withholding payments to those subcontractors who do not comply with these requirements. In the event that Contractor fails to take the above measures, Agency may impose liquidated damages on Contractor in the amounts specified in the applicable Employment and Contracting Program and may otherwise take action directly against the noncomplying Contractor or subcontractor.

Contractor agrees that it would be impracticable or extremely difficult to fix the actual damages Agency would suffer from noncompliance with the Employment and Contracting Programs, and that the sums and formulas designated in each Program as liquidated damages represent a reasonable approximation of the damages Agency is likely to suffer from noncompliance with these terms. Contractor agrees to pay in full any accrued liquidated damages to Agency within ten business days of a written demand by Agency for such payment.

16. **PREVAILING WAGES.** All workers performing construction work for the Project employed by Contractor and by any of its subcontractors shall be compensated in an amount no less than the general prevailing rate of per diem wages as determined by the California Department of Industrial Relations under California Labor Code Sections 1770, et seq., and implementing rules and regulations. Contractor shall comply with, and shall ensure that its subcontractors comply with, all reporting and recordkeeping requirements of the applicable prevailing wage statutes and regulations.

In the event of underpayment of wages by Contractor or by any subcontractor employed on the Project, Agency, in addition to other rights and remedies afforded by this Addendum, may: (1) demand that any underpaying employer comply with these requirements; (2) demand that the underpaying employer pay the difference between the prevailing wage rate

and the amount actually paid to workers; (3) suspend disbursement of any Agency funds which Developer has requested be disbursed to pay Contractor until the violation is corrected; (4) pay directly to the under-compensated workers from Agency funds otherwise payable to Contractor the difference between the full wages due and the amounts paid such workers; (5) in the case of failure to pay state prevailing wages, impose liquidated damages in an amount up to fifty dollars ($50) per working day on any underpaying employer for each worker paid less than the prevailing wage, the amount of such liquidated damages to be determined solely by Agency according to the standards contained in California Labor Code Section 1775; and/or (6) pursue any lawful administrative or court remedy to enforce these requirements against the underpaying employer. Any underpaying employer shall comply with a demand to pay any amounts due under this section within ten calendar days of the demand.

Contractor shall include the prevailing wage requirement in all subcontracts for work on this Project, and shall specify that Agency is an intended third party beneficiary of such provisions. Contractor shall take reasonable measures to monitor and enforce the prevailing wage requirements imposed on its subcontractors, including withholding payments to those subcontractors who violate these requirements. In the event that Contractor fails to take the above measures, Contractor shall be liable for the full amount of any underpayment of wages, plus costs and attorneys' fees, as if Contractor was the actual employer.

Contractor agrees that it would be impracticable or extremely difficult to fix the actual damages Agency would suffer from violations of the prevailing wage provisions, and that the sums and formulas designated herein as liquidated damages represent a reasonable approximation of the damages Agency is likely to suffer from violations of these terms. Contractor agrees to pay in full any accrued liquidated damages to Agency within ten business days of a written demand by Agency for such payment.

17. **INSURANCE COVERAGE.** Contractor, if Contractor is the general contractor for the Project, shall have in full force and effect during the construction of the Project the insurance coverage required under the OPA.

18. **WORKERS' COMPENSATION.** Contractor shall carry or cause to be carried Workers' Compensation and Employers' Liability Insurance as required by the California Labor Code for all persons employed in connection with this Project.

19. **NON-LIABILITY OF OFFICIALS, EMPLOYEES AND AGENTS.** No member, official, employee, or agent of Agency shall be personally liable to Contractor for any obligation created under the terms of the Contract or this Addendum except in the case of actual fraud or willful misconduct by such person.

19. **INDEMNITY.** Notwithstanding the insurance requirements herein, Contractor shall indemnify and hold Agency, its members, officers, officials, employees, and agents harmless against any losses, damages, liabilities, claims, demands, judgments, actions, court costs, and legal or other expenses (including attorneys' fees) which Agency may incur as a consequence of Contractor's failure to perform any obligations as and when required by the Contract or this Addendum, any act or omission by Contractor or its subcontractors with respect to the Project, or any failure of any of Contractor's representations or warranties to be true and

complete, except to the extent such losses are caused by the negligence or willful misconduct of Agency. Contractor shall pay immediately upon Agnecy's demand any amounts owing under this indemnity. The duty of Contractor to indemnify shall include the duty to defend Agency in any court action, administrative action, or other proceeding brought by any third party arising in connection with any matter indemnified against. Contractor's duty to indemnify Agency shall survive the term of the Contract.

20. **HAZARDOUS MATERIALS**. Neither Contractor nor any of its subcontractors shall use the Project site for the generation, manufacture, storage, disposal or release of Hazardous Materials in violation of any Hazardous Materials Laws. Contractor shall immediately notify Agency and Developer in writing of (a) the discovery of any concentration or amount of Hazardous Materials on or under the Site requiring notice to be given to any governmental agency under Hazardous Materials Laws; (b) any knowledge by Contractor that the Site does not comply with any Hazardous Materials Laws; (c) the receipt by Contractor of written notice of any Hazardous Materials claims; and (d) the discovery by Contractor of any occurrence or condition on the Site or on any real property located within 2,000 feet of the Site that could cause the Site to be designated as a "hazardous waste property" or as a "border zone property" under California Health and Safety Code Sections 25220, et seq., or regulations adopted therewith.

21. **NOTICE OF DEFAULT TO AGENCY.** Contractor shall give Agency prior or concurrent written notice of any default or breach claimed by Contractor against Developer or any other party under the Contract. The notice shall describe the default and give Agency the option to cure said default within 30 City business days. No termination of the Contract by Contractor shall be binding unless Agency has been given the required notice and has not cured the default within 30 City business days.

22. **REMEDIES.** The parties hereto agree that Agency, while not a party to the Contract, is an intended third party beneficiary of the obligations imposed on Contractor in this Addendum. In the event of any breach or violation of any agreement or obligation of Contractor under this Addendum, Agency may proceed with any of the following remedies:

Bring an action in equitable relief seeking the specific performance by Contractor of the terms and conditions of this Addendum, and/or enjoining, abating, or preventing any violation of said terms and conditions;

Suspend disbursement of any Agency funds which Developer has requested be disbursed to pay Contractor for work under the terms of the Contract until the breach or violation is corrected; or

Pursue any other remedy allowed at law or in equity.

23. **GOVERNING LAW.** This Addendum shall be interpreted under and be governed by the laws of the State of California, except for those provisions relating to choice of law and those provisions preempted by federal law.

24. **DEFINITIONS.** Capitalized terms not defined in this Addendum shall have the same meaning as defined in the OPA.

25. **ATTORNEYS' FEES AND COSTS.** In the event any legal action is commenced to interpret or to enforce the terms of this Addendum, the prevailing party in any such action shall be entitled to recover all reasonable attorneys' fees and costs incurred in such action.

26. **TIME.** Time is of the essence in the performance of this Addendum by Contractor.

27. **CONSENTS AND APPROVALS.** Any consent or approval required under this Addendum shall not be unreasonably withheld.

28. **BINDING UPON SUCCESSORS.** All provisions of this Addendum shall be binding upon and inure to the benefit of the heirs, administrators, executors, successors-in-interest, transferees, and assigns of each of the parties.

29. **RELATIONSHIP OF CONTRACTOR AND AGENCY.** Contractor understands that Agency neither undertakes nor assumes any responsibility or duty to Contractor or to any third party. The relationship of Contractor and Agency for this Project shall not be construed as a joint venture, equity venture, or partnership. Agency shall have no obligation to any party under the Contract, but is an intended third party beneficiary of the obligations under this Addendum. Contractor shall have no authority to act as an agent of Agency or to bind Agency to any obligation.

30. **ASSIGNMENT**. Contractor shall give Agency ten City business days' prior written notice of any assignment of its rights and obligations under the Contract. Any assignment in violation of the terms of the Contract shall be void.

31. **WAIVER.** Any waiver by Agency of any obligation in this Addendum must be in writing. No waiver will be implied from any delay or failure by Agency to take action on any breach or default of Contractor or to pursue any remedy allowed under this Addendum, or applicable law. Any extension of time granted to Contractor to perform any obligation under the Addendum shall not operate as a waiver or release from any of its obligations under said documents. Consent by Agency to any act or omission by Contractor shall not be construed to be a consent to any other or subsequent act or omission or to waive the requirement for Agency's written consent to future waivers.

32. **AMENDMENTS AND MODIFICATIONS.** Any amendments or modifications to this Addendum must be in writing, and shall be made only if executed by Developer and Contractor, and consented to in writing by Agency.

33. **SEVERABILITY.** Every provision of this Addendum is intended to be severable. If any provision of this Addendum is held invalid, illegal, or unenforceable by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions shall not be affected or impaired.

34. **ADDENDUM CONTROLS.** In the event that any provisions of this Addendum and the Contract conflict, the terms of this Addendum shall control.

[SIGNATURE BLOCKS ON NEXT PAGE]

IN WITNESS WHEREOF, the undersigned parties have executed this Construction Contract Addendum as of the date first written above.

"CONTRACTOR"

By: _____

Title: _____

"DEVELOPER"

MacArthur Transit Community Partners, a
California limited liability company

By: _____

Title: _____

ATTACHMENTS:

Exhibit A-1: City of Oakland/Redevelopment Agency Local Employment Program
Exhibit A-2: City of Oakland/Redevelopment Agency Local and Small Local Business Enterprise Program

EXHIBIT N-1

Form of BART Garage Completion Guaranty

EXHIBIT N-2

Form of Infrastructure Completion Guaranty

EXHIBIT N-3

Form of Vertical Completion Guaranty

EXHIBIT N-4

Form of Repayment Guaranty