



## Board Report

File #: 2020-0767, File Type: Agreement

Agenda Number: 13.

**PLANNING AND PROGRAMMING COMMITTEE  
FEBRUARY 17, 2021**

**SUBJECT: 1<sup>ST</sup> & SOTO JOINT DEVELOPMENT**

**ACTION: APPROVE RECOMMENDATIONS**

**RECOMMENDATION**

CONSIDER:

- A. AUTHORIZING the Chief Executive Officer (“CEO”) to execute a Joint Development Agreement (“JDA”), ground lease and other development-related documents (collectively, the “Development Documents”) with a joint venture between Bridge Housing Corporation - Southern California and East LA Community Corporation (collectively, the “Developer”) or an affiliate of the Developer, for the construction and operation of a mixed-use affordable housing project (the “Project”) on a portion of the Metro-owned property at and adjacent to the Metro L Line (Gold) Soto station in Boyle Heights (the “Site”), all in accordance with the Summary of Key Terms and Conditions (“Term Sheet”) attached hereto as Attachment A;
- B. AUTHORIZING an exception to the Joint Development Policy, to allow for a \$3,117,000 (approximately 72%) discount to the \$4,317,000 fair market capitalized rent for the Site under the ground lease, which is above the current policy limit of 30%;
- C. CONSIDERING, pursuant to Public Resources Code Section 21155.2, the environmental effects of the Project as shown in the Sustainable Communities Environmental Assessment prepared for the Project (City of Los Angeles, Department of City Planning, Case No. ENV-2019-2314-SCEA) attached hereto as Attachment B;
- D. ADOPTING the additional measures regarding archaeological and paleontological resources set forth on Attachment C;
- E. FINDING that the Project is a transit-priority project that meets all the requirements of Public Resources Code Section 21155.1(a), (b) and (c)(1) and is declared to be a sustainable communities project that is exempt from the California Environmental Quality Act (“CEQA”); and
- F. AUTHORIZING Metro staff to file with the County Clerk and the State Clearinghouse a Notice of Exemption for the Project consistent with Recommendation E.

## **ISSUE**

Metro and the Developer are parties to an Exclusive Negotiation Agreement and Planning Document (the “ENA”) for (a) the development of the Project on the Site and (b) the restoration of a Victorian home on Metro-owned property situated across from the Site on Soto Street. In December 2020, the Board authorized the execution of an amendment to the ENA to extend its term through December 30, 2021. The ENA has allowed staff and the Developer to explore the feasibility of the Project, conduct Developer-led community outreach, obtain Project entitlements and CEQA clearance from the City of Los Angeles, and negotiate the key terms and conditions of the Project’s JDA and ground lease.

The Project is now poised to move to the next steps of the development process: (1) execution of the JDA; and (2) execution of the ground lease (and other Development Documents, such as Project-related dedications and entitlement and funding-related covenants) after conditions for execution have been met to the Developer’s and staff’s satisfaction. Staff is seeking authorization to execute these documents in accordance with the Term Sheet (Attachment A).

## **DISCUSSION**

### *Site and Project Overview*

The Site is an approximately 0.67-acre portion of the approximately 1.08 acres of Metro-owned property situated on the southwest corner of 1<sup>st</sup> and Soto Streets. The Site lies just south of the Metro L Line (Gold) Soto station and includes a portion of the existing station plaza and landscaping.

The Project will frame the station plaza to the south, forming its southerly edge, and will include 61 to 63 affordable apartments (final unit count will depend on the ultimate cost of and funding for the Project), one unrestricted manager’s apartment, approximately 2,440 square feet of ground floor commercial space, a community room that opens onto the station plaza, and related parking. The Developer will target community serving uses and/or local small businesses for the Project’s commercial space. Project entitlements and CEQA clearance were obtained from the City of Los Angeles in June 2020 and the design of the Project is approximately 75% complete. Project renderings and a site plan are included in Attachment D.

Much of the Project’s needed funding and financial support has been secured, including a \$10 million award of State Transit-Oriented Development (“TOD”) Housing Program funds that was received in December 2020. However, an allocation of 9% low income housing tax credits and an award of Section 8 Project Based Vouchers to support the operation of the Project’s twenty permanent supportive housing units is still needed. The Developer plans to apply for tax credits in the State’s first funding round in 2021. The application deadline is anticipated in March and the application requires submittal of an executed JDA. As such, approval of the recommended actions is time sensitive. The Project is included in the City of Los Angeles Housing and Community Investment Department’s Affordable Housing Managed Pipeline. Inclusion in the pipeline typically ensures a tax credit award, which is anticipated in the second quarter of 2021. Project Based Vouchers will also be applied for in early 2021 and are anticipated in the third quarter of 2021. The Developer has applied for one additional funding source from the Los Angeles County Development Authority and

anticipates a determination regarding an award in the first quarter of 2021.

### *Affordable Housing*

Metro's Joint Development Policy seeks to facilitate construction of affordable housing units on Metro-owned property such that 35% of the total housing units in the Metro Joint Development portfolio are affordable for residents earning 60% or less of Area Median Income ("AMI"). The Project will support this goal as all but one of its apartments (the unrestricted manager's unit) will be restricted to households with earnings at or below this threshold during the initial 57-year term of the ground lease. Specifically, twenty of the Project's apartments (the "PSH Apartments") will be restricted as permanent supportive housing for occupancy by formerly homeless households earning up to 30% of AMI and the remaining 41 to 43 affordable apartments will be restricted for occupancy by households earning between 30% and 60% of AMI. The Project's income restrictions were recently expanded to serve a greater range of households and support Project viability. Notwithstanding the forgoing, the ground lease will provide the Developer with the option to lease any of the Project's twenty PSH Apartments to non-permanent supportive housing households earning up to 60% of AMI if, during the ground lease's 57-year initial term, the Project's proposed Project Based Voucher funding (or a similar operating subsidy) is reduced or lost and during the time of such reduction or loss a PSH Apartment becomes available for lease.

The ground lease will provide the Developer with an option to extend the term an additional 42-years during which all affordable apartments in the Project will be restricted to households earning no more than 80% of AMI. The option period length and increased income restriction limits were reviewed by Metro's financial consultant and were deemed reasonable and are needed for the Developer to secure a tax credit investor and obtain tax credit equity for the Project.

### *Developer*

The Project's Developer is a joint venture between Bridge Housing Corporation - Southern California ("BRIDGE") and East LA Community Corporation ("ELACC"). Each of these entities is a mission-driven, non-profit affordable housing developer with considerable experience developing, financing, constructing and operating mixed-use affordable housing developments such as the Project. BRIDGE was founded in 1983 and since that time has participated in the development of over 18,000 affordable housing units throughout the west coast. BRIDGE currently owns and manages 12,300 affordable apartments at 106 properties. ELACC was established in 1995 and has developed or rehabilitated over 600 units of affordable housing in Los Angeles County, which it now manages. In addition, ELACC is an active leader and advocate for community-driven economic development, financial empowerment and social justice for individuals and families with low and moderate incomes in the communities of Boyle Heights and East Los Angeles.

### *Restoration of the Victorian Home*

The recommended actions do not affect the proposed restoration of the Victorian home currently stored on Metro-owned property located across from the Site on Soto Street. The exploration of this restoration for community-serving uses will continue as a second phase of development under the existing ENA.

### *Outreach*

The Developer has engaged with the community to inform the scope and design of the Project. They conducted a robust outreach effort that has included eight community meetings/workshops, five separate focus group meetings (including meetings with tenants, property owners and small businesses) and meetings with over ten community organizations. In addition, the Developer has engaged with the Boyle Heights Neighborhood Council (“BHNC”) three times and their Planning and Land Use Committee (“BHNC PLUC”) four times. Staff and the Developer have also engaged with the Metro-established Boyle Heights Joint Development Design Review Advisory Committee (“DRAC”) where additional Project-related input was collected. The most recent community engagement occurred in December 2020, when Project updates were provided to the DRAC and the BHNC PLUC.

### *Key JDA and Ground Lease Provisions*

The Term Sheet (Attachment A) provides the summary of key terms and conditions for the JDA and ground lease. The terms of the JDA are focused on the Developer bringing the Project through full financing and construction readiness. The JDA will:

- Provide Metro with a Holding Rent of \$2,500/month during the JDA term, which will be applied to the capitalized rent due under the ground lease, once the ground lease is executed;
- Provide Metro with certain design review and approval rights as the Project progresses to completion;
- Recover certain Metro transaction-related and other support costs, including the cost of in-house staff time (except for Transit Oriented Communities department staff time) and fees/costs related to consultants and other third parties (except for in-house and outside legal counsel fees/costs with respect to negotiation and preparation of the JDA, ground lease and other Development Documents); and
- Set forth certain conditions for execution of the ground lease and other Development Documents.

The ground lease will be executed once the conditions for ground lease execution have been met to the Developer’s and staff’s satisfaction. Key terms of the ground lease are as set forth in the Term Sheet and include:

- An initial term of 57 years, with an option to extend the term an additional 42 years;
- Metro’s receipt of a one-time capitalized rent payment of \$1,200,000 for the initial 57-year term, to be paid at execution of the ground lease;
- Metro’s receipt of additional rent for the 42-year option period in an amount to be agreed upon by the parties at the time, which amount shall be based on an appraisal of the Site’s then-current value, as improved, after considering the impact of the ground lease’s income and rent restrictions for the Project’s affordable apartments during the option period;
- Metro’s receipt of 33% of all gross rent paid or credited to the Developer for use of the Project’s 2,440 square feet of commercial space;

- Metro's receipt of 33% of all net proceeds received by the Developer for the sale or refinancing of the Project, subject to a necessary and reasonable cap on net sale proceeds to avoid income tax-related issues for the Project; and
- Metro's receipt of a pro-rata share of Developer construction cost savings following the construction of the Project based on the amount that Metro's \$3,117,000 capitalized rent discount bears to the sum of all public subsidies provided to the Project, subject to a necessary and reasonable cap to avoid income tax-related issues for the Project.

### *Proposed Ground Lease Rent Discount*

The Metro Joint Development Policy adopted in 2016 allows Metro to discount joint development ground lease rent up to 30% below the fair market rent in order to accommodate affordable housing for households earning up to 60% of AMI.

The proposed \$1,200,000 in capitalized rent represents a discount of \$3,117,000 (approximately 72%) from the Site's \$4,317,000 fair market value, as determined by a recent appraisal. The requested discount exceeds the Joint Development Policy's 30% maximum but is necessary for the Project's financial feasibility. It was arrived at after an analysis of the Project's finances with the support of a financial consultant and an exploration of funding alternatives with the Developer.

The proposed higher discount results from the following factors:

- a. A relatively high market value for the Site;
- b. Current reduced tax credit valuations resulting in less equity for the Project;
- c. Restricted affordable rents for the Project's apartments that cannot be adjusted to absorb the relatively high land cost, increasing construction costs in Los Angeles County and the cost associated with the additional Metro measures regarding archaeological and paleontological resources; and
- d. Limited or restricted public subsidies available to support the Project.

Staff worked with the Developer to identify reasonable additional subsidies for the Project but found that (a) the Project was unlikely to obtain an award under some subsidy programs; (b) the Project did not qualify for other subsidy programs, or (c) the subsidy program had not provided clear or reasonable timelines when funding would be available. Metro's financial consultant has verified that the Developer has pursued all reasonable subsidies for the Project and has also indicated that the Project's cost is reasonable. These determinations have led the consultant to conclude that the discounted ground lease rent is justified and needed to make the Project financially viable.

Notwithstanding the forgoing, the Term Sheet (Attachment A) provides for potential additional compensation to Metro as noted in the *Key JDA and Ground Lease Provisions* section above. This additional compensation, plus the \$1,200,000 in capitalized rent, is deemed reasonable compensation in the current market for the proposed ground lease given the nature of the Project.

### *CEQA Actions*

The City of Los Angeles, as the lead agency under CEQA, adopted, pursuant to Public Resources

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Code Section 21155.2, the Sustainable Communities Environmental Assessment (“SCEA”) prepared for the Project and known as City of Los Angeles Department of City Planning Case No. ENV-2019-2314-SCEA. After conducting its own independent analysis, staff is recommending that Metro, as a potentially responsible agency, also consider the environmental effects of the Project as shown in the SCEA (Attachment B) and find that the Project is exempt from CEQA as a sustainable communities project (i.e.; a transit priority project meeting the requirements of Public Resources Code Section 21155.1(a), (b) and (c)(1)). Staff is also recommending that the Board adopt the additional measures regarding archaeological and paleontological resources. These additional measures, which are set forth in Attachment C, address the proper identification and handling of any archaeological and paleontological resources found on the Site during construction. Upon Board approval of the recommended actions, staff will file a Notice of Exemption for the Project with the County Clerk and the State Clearinghouse, which will be consistent with the Project’s CEQA exemption and the Board’s CEQA-related actions.

### **EQUITY PLATFORM**

Consistent with the Equity Platform pillar “listen and learn,” the Project has undergone a robust community engagement process as noted above. In addition, the Project provides an opportunity to “focus and deliver” by adding much needed transit-accessible, affordable housing stock to the community.

### **DETERMINATION OF SAFETY IMPACT**

Approval of this item will have no impact on safety as it merely authorizes the execution of a JDA, ground lease and other Development Documents for the Project. Once the ground lease is executed and construction of the Project commences, staff will oversee construction activities to ensure that they do not adversely impact Metro property, transit operations or the continued safety of staff, contractors and the public.

### **FINANCIAL IMPACT**

Funding for Project-related joint development activities is included in the adopted FY21 budget under Cost Center 2210, Project 401019. Metro costs related to the Project that are not reimbursed by the Developer will be funded from General Funds, which are eligible for bus and rail operating and capital expenses.

#### **Impact to Budget**

There is no impact to the adopted FY21 budget, which includes costs associated with negotiation of the JDA, ground lease and other Development Documents, the review of the Project’s design and the support of outreach efforts. No new capital investment or operating expenses are anticipated to implement the Project, and revenues from a Developer deposit offset certain staff and Project-related professional service costs.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

The recommended action supports the Strategic Plan Goal to “enhance communities and lives through mobility and access to opportunity.” By advancing the Project, which includes delivery of commercial space and critical transit-accessible, affordable housing to the Boyle Heights community, the recommended action will specifically implement Initiative 3.2, which states “Metro will leverage its transit investments to catalyze transit-oriented communities and help stabilize neighborhoods where these investments are made.”

### **ALTERNATIVES CONSIDERED**

The Board could choose not to authorize execution of the JDA and ground lease. Staff does not recommend this alternative since proceeding with the Project is the quickest and surest way to bring much needed transit-accessible, affordable housing to the community, which is in alignment with Metro’s Strategic Plan and Equity Platform. The Developer’s longstanding commitment to the Project, including their financial investment to date, provides further reason not to choose this alternative.

### **NEXT STEPS**

Upon approval of the recommended actions, Metro and the Developer will execute the JDA in accordance with the terms and conditions set forth in the Term Sheet (Attachment A). Upon execution of the JDA, staff and the Developer will work to (a) meet the conditions necessary to execute the ground lease to each party’s satisfaction, and (b) complete predevelopment activities for the Project, including securing all financing for the Project, satisfying City of Los Angeles entitlement-related contingencies for building permit issuance, and obtaining a building permit. In addition, design refinements will be finalized, concluding in a Metro-approved set of construction drawings. Developer-led community engagement will continue, with Project updates to the BHNC in the first quarter of 2021 and thereafter to the BHNC, BHNC PLUC and the DRAC, as needed due to substantial Project changes, and prior to Project lease-up to ensure that qualified Boyle Heights residents are ready to apply for this important affordable housing opportunity. Ultimately, the parties anticipate execution of a ground lease in the fourth quarter of 2021 in accordance with the terms and conditions set forth in the Term Sheet (Attachment A). Construction of the Project is expected to commence promptly thereafter and should be completed two years hence.

Staff will also continue to work with the Developer under the ENA to advance the restoration of the Victorian home currently stored on Metro-owned property located across from the Site on Soto Street. This work will include Developer-led engagement with the community, identification of project funding, obtaining project entitlements and CEQA clearance (if needed), and negotiation of key JDA and ground lease terms and conditions.

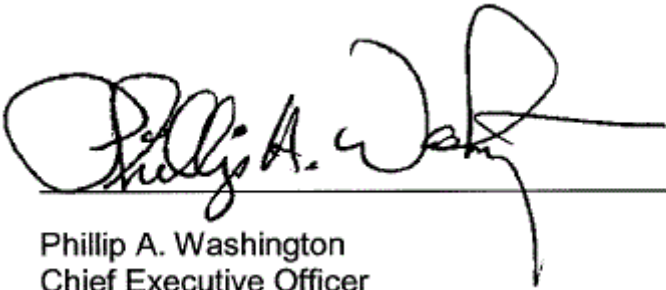
### **ATTACHMENTS**

- Attachment A - Summary of Key Terms and Conditions
- Attachment B - Sustainable Communities Environmental Assessment
- Attachment C - Additional Measures Regarding Archaeological and Paleontological Resources
- Attachment D - Site Plan and Renderings

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Prepared by: Greg Angelo, Senior Director, Countywide Planning & Development, (213) 922-3815  
Nick Saponara, Executive Officer, Transit Oriented Communities, (213) 922-4313  
Holly Rockwell, SEO, Real Estate, Transit Oriented Communities, Transportation  
Demand Management (213) 922-5585

Reviewed by: Jim de la Loza, Chief Planning Officer, (213) 922-2920



Phillip A. Washington  
Chief Executive Officer