



Board Report

File #: 2020-0834, File Type: Agreement

Agenda Number: 14.

PLANNING AND PROGRAMMING COMMITTEE FEBRUARY 17, 2021

SUBJECT: 1ST & LORENA 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 Community of Friends (the “Developer”) or an affiliate of the Developer, for the construction and operation of a 49-unit affordable housing project with up to 7,500 square feet of ground floor commercial space (the “Project”) on a portion of Metro-owned property at the northeast corner of 1st and Lorena Streets 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 \$711,963 (approximately 57%) discount to the \$1,254,963 adjusted fair market capitalized rent for the Site under the ground lease, which is above the current policy limit of 30%;
- C. CONSIDERING the environmental effects of the Project as shown in the Mitigated Negative Declaration prepared for the Project by the City of Los Angeles (City of Los Angeles, Department of City Planning No. ENV-2014-2392-MND) that was originally adopted by the Director of Planning on March 2, 2016 (attached hereto as Attachment B), and was subsequently amended by the City Council on March 6, 2018 to include the “Substitute Environmental Mitigation Measures” set forth in the revised Exhibit A to the Department of City Planning’s Letter of Determination for the Project attached hereto as Attachment C;
- D. ADOPTING the additional measures regarding archaeological and paleontological resources set forth on Attachment D; and
- E. AUTHORIZING Metro staff to file with the County Clerk and the State Clearinghouse a Notice of Determination for the Project consistent with Recommendations C and D.

ISSUE

Metro and the Developer are parties to an Exclusive Negotiation Agreement and Planning Document (the “ENA”) for the development of the Project on the Site. 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 0.8-acre portion of the approximately 1.3 acres of Metro-owned property situated on the northeast corner of 1st and Lorena Streets, just north of the Metro L Line (Gold). The remaining Metro-owned property is occupied by a traction power substation for the operation of the Metro L Line (Gold) in 1st Street and is not part of the Site.

The Project will include 48 affordable apartments, one unrestricted manager’s apartment, up to 7,500 square feet of ground floor commercial space and related parking. The Developer will target community-serving uses and/or local businesses for the commercial space. Project entitlements and CEQA clearance have been obtained from the City of Los Angeles and the design of the Project is approximately 75% complete. Project renderings and a site plan are included in Attachment E.

The Developer has secured certain key funding sources for the Project (\$2.9 million in Measure HHH funding, \$3.1 million in State HCD Infill Infrastructure Grant Program funding, \$1.2 million in Los Angeles County Department of Mental Health Special Needs Housing Program funding, and Section 8 Project Based Vouchers from the Housing Authority of the City of Los Angeles supporting the operation of the Project’s 32 permanent supportive housing units), but other funding sources are still needed. Three potential sources the Developer is currently pursuing are: (a) Los Angeles County Affordable Housing Trust Fund and No Place Like Home funding, which the Developer applied for in November 2020 with an expected award in February 2021, (b) Federal Home Loan Bank Affordable Housing Program funds, which the Developer plans to apply for in March 2021, with an expected award in June 2021, and (c) an allocation of 4% low income housing tax credits, which the Developer plans to apply for in the first or second quarter of 2021, with an expected award shortly thereafter.

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 the Area Median Income (“AMI”). The Project will support this goal because all but one of its 49 apartments (the unrestricted manager’s unit) will be

restricted to households earning less than the 60% of AMI threshold throughout the entire 75-year term of the proposed ground lease. Specifically, 32 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 16 of the apartments will be restricted for occupancy by households earning up to 50% of AMI. Notwithstanding the forgoing, the ground lease will provide the Developer with the option to lease any of the Project's 32 PSH Apartments to non-permanent supportive housing households earning up to 60% of AMI if the Project's 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.

Developer

The Developer 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. They were founded in 1988 with a mission to end homelessness through the provision of quality permanent supportive housing for people with mental illness. The Developer has developed and rehabilitated over 2,000 affordable housing units in 50 multifamily developments throughout Southern California, 48 of which contain permanent supportive housing. The Developer currently owns and manages 1,729 affordable housing units in 41 buildings, providing homes for almost 2,700 adults and children.

Outreach

Since 2011, the Developer has engaged with the community to inform the scope and design of the Project. They and their consultant have conducted a robust outreach effort that has included general community meetings/workshops in 2014 and 2015, several meetings with community stakeholders (including meetings with community organizations, tenants, property owners and small businesses), two community open houses at one of the Developer's completed supportive housing developments in Lincoln Heights, and door-to-door direct engagement with residents in the several block area surrounding the Site. They have also engaged multiple times over the years with the Boyle Heights Neighborhood Council ("BHNC"), their Planning and Land Use Committee ("BHNC PLUC") and the Metro-established Boyle Heights Joint Development Design Review Advisory Committee ("DRAC") where additional Project-related input was collected. The most recent dialogue with the DRAC occurred in December 2020. The Developer intends to update the BHNC and the BHNC PLUC in the first quarter of 2021.

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 \$1,131/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 set forth in the Term Sheet and include:

- A term of 75 years;
- Metro's receipt of a one-time capitalized rent payment of \$543,000, to be paid at execution of the ground lease;
- Metro's receipt of 25% of all gross rent paid or credited to the Developer for use of the Project's commercial space;
- Metro's receipt of 20% 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 \$711,963 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.

Oil Well Re-Abandonment/Reduced Land Value

An abandoned oil well is present on the Site. This well was used for exploratory purposes only and was abandoned in 1949, a week after it was drilled. To develop the Project, this well must be re-abandoned to current regulatory standards as required and established by the California Geologic Energy Management Division and the Los Angeles Office of Petroleum and Natural Gas Administration and Safety. The ground lease will require the Developer to complete the re-abandonment, which is anticipated to cost up to \$1,460,037, based on bids obtained by the Developer and reviewed by Metro's Environmental Compliance and Sustainability department and environmental consultant. Costs in excess of the anticipated amount will be Developer's responsibility.

Since the development of the Site requires the re-abandonment of the oil well, re-abandonment costs should be considered in the Site's valuation. A recent appraisal valued the Site at \$2,715,000. This appraisal assumes that the Site is free of environmental contamination, including the oil well. Deducting the \$1,460,037 estimated cost of the oil well re-abandonment adjusts the fair market value of the Site to \$1,254,963.

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 \$543,000 in capitalized rent represents a discount of \$711,963 (approximately 57%) from the Site's \$1,254,963 adjusted fair market value. 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. Costs associated with the Project's CEQA litigation, which included approximately \$182,000 in litigation-related costs (not counting \$300,000 in pro bono work), an approximate \$8 million increase in construction costs resulting from litigation-related delay, and additional staff, design and consultant costs.
- b. The associated negative effects of the extra costs associated with the Project's litigation on the Project's competitiveness for public funding;
- c. Current reduced tax credit valuations resulting in less equity for the Project;
- d. Restricted affordable rents for the Project's apartments that cannot be adjusted to absorb increasing construction costs in Los Angeles County, the costs associated with the Project's CEQA litigation and the additional Metro measures regarding archaeological and paleontological resources; and
- e. 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 or is pursuing 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 \$543,000 in capitalized rent, is deemed reasonable compensation in the current market for the proposed ground lease given the nature of the Site and the Project.

CEQA Actions

In March 2016, the City of Los Angeles, acting as the lead agency under CEQA through its Department of City Planning, adopted a Mitigated Negative Declaration (City of Los Angeles, Department of City Planning, No. ENV-2014-2392-MND) for the Project (the "MND"). The MND is attached hereto as Attachment B. Subsequent to this adoption, an adjoining property owner filed an

administrative appeal with the City of Los Angeles challenging the City's CEQA review, which was ultimately dismissed by the City Council in March 2018. As part of the dismissal action, the City Council amended the MND (the "Amended MND") to include certain "Substitute Environmental Mitigation Measures," which are attached hereto as Attachment C. After the City Council's action, the adjoining property owner filed a lawsuit regarding the City's environmental review. In June 2019, the Superior Court upheld the adequacy of the City's environmental review and the Amended MND and entered a judgment in favor of the City and the Developer. The adjoining property owner appealed the decision but ultimately settled the lawsuit in January 2020 without any further changes to the Amended MND.

After conducting its own independent analysis, staff is recommending that Metro, as a potentially responsible agency, consider the environmental effects of the Project as shown in the Amended MND, and adopt the additional measures regarding archaeological and paleontological resources set forth on Attachment D. The additional Metro measures address 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 Determination for the Project with the County Clerk and the State Clearinghouse which will be consistent with 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 401020. 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, as well as commercial space, each of 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 updates to the BHNC, BHNC PLUC and DRAC as needed due to substantial Project changes, and prior to Project lease-up to ensure that qualified Boyle Heights residents are aware of 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.

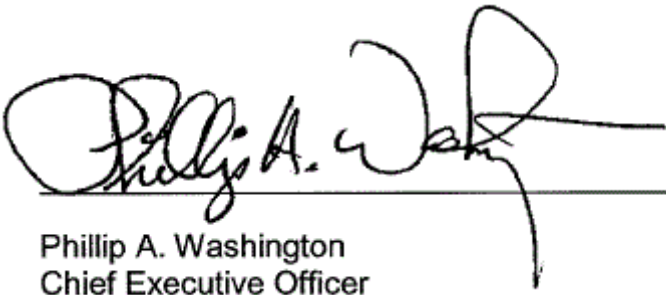
ATTACHMENTS

- Attachment A - Summary of Key Terms and Conditions
- Attachment B - Mitigated Negative Declaration
- Attachment C - Substitute Environmental Mitigation Measures
- Attachment D - Additional Measures Regarding Archaeological and Paleontological Resources
- Attachment E - Site Plan and Renderings

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