



Board Report

File #: 2023-0751, File Type: Contract

Agenda Number: 15.

**REVISED**  
**PLANNING AND PROGRAMMING COMMITTEE**  
**MARCH 20, 2024**

**SUBJECT: JOINT DEVELOPMENT BENCH AND EXCLUSIVE NEGOTIATION AGREEMENT**

**ACTION: APPROVE RECOMMENDATION**

**RECOMMENDATION**

CONSIDER:

- A. APPROVING the creation of a bench of qualified developers eligible to respond to Requests for Proposals (RFP) for the joint development of the “10K Sites” to be in effect for three years, with the option to extend for two additional one-year periods for up to five years total (Attachment A);
- B. APPROVING the Summary of Key Terms and Conditions (Attachment B) for 10K Sites' Exclusive Negotiation Agreements (ENAs); and
- C. DELEGATING authority to the Chief Executive Officer, or their designee, to execute the ENAs following a competitive RFP process for the joint development of the 10K Sites.

**DUPONT-WALKER AMENDMENT:** Report back on the ENA template to clearly communicate participation with community-based organizations (CBOs), allowing for community development-based organizations (CDBOs) to work directly with Metro as the prime or sub-prime contractor. This would allow for CBO/CDBO participation, not exclusive of the Joint Development Bench. Include engagement with general contractors and subcontractors for the inclusion of Small Business Enterprise, Disadvantaged Business Enterprise, Disabled Veterans Business Enterprise, and Minority Women Business Enterprise.

**DUTRA AMENDMENT:** Directed the CEO to improve the contract language for RFPs and to work with the cities to help streamline the entitlement process and work with the developers to streamline the capital stack.

**ISSUE**

In April 2023, the Board adopted 27 strategies to accelerate the creation of 10,000 new housing units on 20 Metro-owned sites located throughout Los Angeles County (10K Sites) by 2031. Those

strategies included accelerating the developer selection process by creating a Developer Bench and standardizing and expediting the negotiations process with the Board-approved ENA Summary of Key Terms and Conditions (ENA Key Terms).

The longest phase of the Joint Development (JD) process has typically been the exclusive negotiations phase, during which the developer initiates developer-led outreach, refines the project design, secures entitlements, negotiates Joint Development Agreement (JDA) and Ground Lease terms with Metro, and identifies financing sources to construct the project. Recent changes in state and local laws and policies designed to accelerate the delivery of affordable housing near transit have significantly shortened the time required to secure project entitlements. These changes have created an opportunity to accelerate the remaining tasks to be completed during the ENA phase to accelerate housing production and minimize challenges and uncertainty for Metro's development partners. Along with the Developer Bench recommendations, staff is seeking Board approval of the ENA Key Terms that would be included in the standard ENA that Metro would enter into with Qualified Developers from the Developer Bench to develop 10K Sites.

## **BACKGROUND**

In response to the countywide housing affordability crisis, in 2021 the Board adopted an updated JD Policy and established a ten-year goal of completing 10,000 housing units, at least 5,000 of which will be income-restricted by 2031. In July 2021, staff obtained a \$1,600,000 grant from the Southern California Association of Governments (SCAG) to complete an in-depth analysis of Metro's JD process and potential development sites. The analysis formed the basis of acceleration strategies designed to overcome existing hurdles to project delivery without sacrificing community input and quality projects. In April 2023, the Board adopted the acceleration strategies along with a list of sites suitable for development and available in the timeframe required to meet the 2031 deadline. The strategies, together with the proposed adoption of the Developer Bench and ENA Key Terms, are anticipated to reduce the timeline for JD projects from an average of 10 years to an average of five years.

## **DISCUSSION**

### *Request for Qualifications - Developer Bench*

Historically, a developer for each joint development site has been procured separately, which lengthened the time needed to produce housing and required extensive staff time. To minimize the time and expenditure of resources required of both Metro staff and developers, JD staff released an RFQ in August 2023 to establish a bench of developers eligible to propose on future 10K Sites, as depicted in Attachment C. The RFQ was structured to reduce barriers to participation in the joint development of the 10K Sites. Applicants were required to submit their experience and credentials but were not required to prepare site-specific visioning or analysis. The Developer Bench will be in effect for three (3) years, with the option to extend for two (2) additional one (1) year periods for up to five (5) years total.

On July 13, 2023, Metro's JD Department hosted a Developers Industry Forum to build interest

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amongst non-profit and for-profit real estate development firms in the RFQ. The forum was held at the historic Union Station Ticketing Concourse and had over 160 attendees. The RFQ was advertised through several professional planning and housing-focused organizations and posted on the JD website. Availability of the RFQ was also announced via email to Developer Industry Forum registrants and attendees, the State of California's Housing and Community Development interested developers list, and the JD developer opportunities interest list, representing over 6,700 email addresses.

Qualified Developers must sustain and abide by the obligations, terms, and conditions incumbent upon Qualified Developers under the RFQ to remain on the Developer Bench. Furthermore, no Qualified Developer is guaranteed to be awarded an ENA to develop a 10K Site, as the awarding of an ENA will be determined pursuant to the subsequent RFP process for developing a 10K Site. Qualified Developers will be required to execute an agreement (Bench Agreement) confirming their understanding of the foregoing, following Board approval of the Developer Bench. Through the RFP process, Qualified Developers will be encouraged to form teams that include local Community Based Organizations and provide opportunities for Metro-certified Small Business Enterprises (SBE), Disadvantaged Business Enterprises (DBE), Disabled Veterans Business Enterprises (DVBE), and Minority and Women Business Enterprises for the delivery of professional or construction services.

#### *Community-Based Development Organizations (CBDOs)*

Metro strongly encouraged community-based development organizations (CBDOs) rooted in the communities in which the 10K Sites are located to respond to the RFQ. Staff conducted targeted outreach to CBDOs to promote the Industry Forum. Harnessing the local expertise of CBDOs will help Metro effectuate meaningful community engagement and develop JD projects that include elements that benefit, enhance, and respond to the needs of surrounding communities. Following input from local community organizations and developers, Metro defined a CBDO as "a nonprofit, tax-exempt, housing developer with a commitment to a geographic community and a stated intention of generating community scale outcomes including building wealth, increasing economic stability, improving health, or advancing equity through its projects and programs or partnerships with other organizations." CBDOs were asked to complete a self-certification form and awarded additional points in the RFQ application evaluation if they met the established CBDO definition. Twenty-five applicants who responded to the RFQ met Metro's definition of a CBDO, all of whom are being recommended to be added to the Developer Bench. Qualified Developers who are not CBDOs will be encouraged to partner with CBDOs at the RFP phase. Teams that include CBDOs will be awarded additional points in the RFP scoring process.

#### *Standardizing and Streamlining Exclusive Negotiation Agreements (ENAs)*

The ENA Key Terms will be critical to successful partnerships between Metro and Qualified Developers. In October 2023, Metro invited all applicants who responded to the RFQ to comment on a template ENA. A draft of the template ENA and comment form were provided. The provision of this opportunity to comment on the draft template ENA did not obligate Metro to incorporate any comments or suggested edits from developers into the template ENA. In December 2023, five applicants submitted approximately 22 comments on the template ENA. Most of the comments were

general questions related to Metro’s JD process. Staff will address these questions in future site-specific RFPs. Staff and County Counsel have revised the template ENA and ENA Key Terms to address relevant comments such as clarification of liquidated damages, the ENA Schedule of Performance deliverables, and the ENA Administration fee. Comments on the draft template ENA were not considered in the RFQ evaluation and will not be considered in the RFP evaluation processes.

Although historically the Board has approved the ENA for each joint development site, there is no requirement for Board approval as an ENA does not convey any property rights or obligate Metro to make any payments. The Board approved the 10K Sites (April 2023), and with this action, it would approve the Developer Bench and the ENA Key Terms. Staff will conduct a competitive process within the Developer Bench and execute an ENA consistent with the Board-approved ENA Key Terms with the selected Qualified Developer. Updates on developer selection, project proposals, and other significant milestones will be reported to the Board and public through a dashboard. Board approval will still be required to enter into a JDA and Ground Lease (as those do convey long-term property rights).

### **DETERMINATION OF SAFETY IMPACT**

The approval of the Developer Bench will not impact the safety of our customers and employees.

### **FINANCIAL IMPACT**

Approval of these recommendations will not impact the existing FY24 budget for Cost Center 2210 (Joint Development), Project#401300 “Joint Dev. 10K Homes”. JD staff have requested FY25 funding to support the release of the site-specific RFPs to the Developer Bench. Future ENAs will require developers to pay a \$50,000 to \$150,000 (depending on the complexity of the JD site) ENA administration fee to cover certain Metro project-related expenses. In the unlikely event of a default under an ENA (in 20 years Metro has never defaulted under a joint development ENA), Metro’s exposure would be limited by liquidated damages not to exceed \$250,000.

### **EQUITY PLATFORM**

The goal of the Developer Bench is to expedite the JD developer procurement process. This will enable Metro staff and development partners to create more housing as quickly as possible for Los Angeles County residents, particularly low-income households facing systemic inequities that make achieving better health, economic, and educational outcomes harder than higher-income households.

Points were awarded in RFQ application evaluations to applicants who met Metro’s CBDO definition and/or demonstrated experience successfully creating opportunities for community-based organizations (CBOs), Metro-certified Small/Disadvantaged Business Enterprises (SBE/DBE), Disabled Veterans Business Enterprises (DVBE), and/or local businesses. In future site-specific RFPs, proposals will be awarded additional points in evaluations if a CBDO is the lead developer or if a non-CBDO has committed to a partnership with a CBDO. The intent is to build relationships with these community organizations, strengthen their capacity, and integrate public benefits into the

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developments that provide value to the surrounding community beyond just housing. In future RFPs, Metro will also strongly encourage Qualified Developers to leverage 10K Sites to create opportunities for CBOs, such as leveraging Metro's new CBO Database, Metro-certified SBE/DBE/DVBE firms, and/or local businesses through subleasing or as providers of community, professional, and/or construction services.

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

By approving these recommendations to support the acceleration of JD projects, Metro will advance Vision 2028 Strategic Plan Goal #3, "to enhance communities and lives through mobility and access to opportunity," by activating several transit-oriented communities with catalytic development projects that will bring housing, jobs, and services to neighborhoods across the Metro system and Los Angeles County at large.

### **ALTERNATIVES CONSIDERED**

The Board could defer or deny approval of the recommendations. This is not recommended as it would be unlikely Metro could meet the 10,000-unit mandate by 2031, and it would constrain Metro from contributing to urgently-needed solutions to the regional housing shortage.

### **NEXT STEPS**

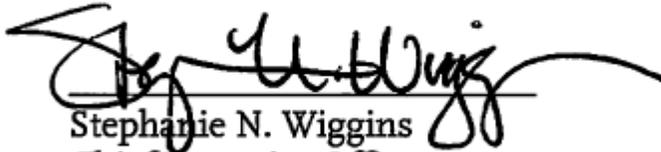
Upon Board approval, staff will execute Bench Agreements with each Qualified Developer. Staff will develop and execute a community outreach plan in which the 10K Sites are situated to gather community input, which will then inform RFP evaluation criteria. Staff will then invite the Developer Bench to respond to site-specific RFPs for 10K Sites. After RFP evaluations are completed and a Qualified Developer is selected, staff will execute an ENA consistent with the Board-approved ENA Key Terms. The Board will be notified of developer selection, project proposals, and other significant project milestones. Once the project entitlements are in place, staff will return to the Board for approval of JDA and Ground Lease terms.

### **ATTACHMENTS**

Attachment A - Procurement Summary  
Attachment B - Summary of Key ENA Terms  
Attachment C - 10K Sites

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