Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

File #: 2021-0271, **File Type:** Agreement **Agenda Number:** 13.

PLANNING AND PROGRAMMING COMMITTEE
JUNE 16, 2021

SUBJECT: 1ST & LORENA JOINT DEVELOPMENT

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

AUTHORIZE the Chief Executive Officer (CEO) to execute an amendment to the Joint Development Agreement (JDA) with A Community of Friends (Developer) and fund $1,460,037 into an escrow account to be repaid by the Developer at construction closing in order to facilitate the reabandonment of an oil well on Metro-owned property at the northeast corner of 1st and Lorena Streets in Boyle Heights (Site).

ISSUE

In April 2021, the Developer learned that it cannot secure a building permit for its affordable housing project from the City of Los Angeles until the oil well on the Site is reabandoned to current regulatory standards, which was originally contemplated to occur during the ground lease term. Both obtaining the building permit and securing all funding to construct the affordable housing project are conditions to the closing of the ground lease under which the Developer will construct its project. Since Metro has not granted the Developer the right to access and develop the Site, the Developer is unable to secure financing to cover the estimated $1,460,037 cost to reabandon the well.

Staff is seeking authorization to amend the Joint Development Agreement (JDA) so that Metro can advance the $1,460,037 into an escrow account that the Developer will draw from to pay for the cost of the oil well reabandonment. The JDA amendment will require the Developer to repay Metro for any use of the $1,460,037 when the ground lease closing occurs. The JDA amendment will be accompanied by a license agreement granting site access to perform the reabandonment. Without the requested Board action, the Developer will be at an impasse in its affordable housing development.

BACKGROUND

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 and is not part of the Site. In March 2021, Metro and the Developer entered into a JDA 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 the Site. The JDA included a $1,460,037 discount to the ground-lease payment to accommodate the required reabandonment of the oil well.

Oil Well Reabandonment
The oil well on the Site 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 reabandoned to current regulatory standards as required and established by the California Geologic Energy Management Division (CalGEM) and the Los Angeles Office of Petroleum and Natural Gas Administration and Safety. This well reabandonment action is required by Public Resources Code (PRC) §3208.1 "when a well could be potentially impacted by planned property development or construction activities resulting in significant and potentially dangerous issues associated with development near oil, gas, and geothermal wells". This action is also consistent in LA Metro's policy *GEN 49: Environmental Liabilities Assessment and Reporting* to reduce environmental liabilities.

The cost to reabandon the oil well is 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. Metro and the Developer previously contemplated that the Developer would perform the reabandonment during the first several months of the ground lease term.

DISCUSSION

In April 2021, the Developer learned that the Los Angeles Fire Department would not sign off on the Project's Building Clearance Summary Sheet-a necessary condition for awarding a building permit through the City of Los Angeles-until the oil well is reabandoned and all regulatory agencies have signed off on the work. The Project is anticipated to receive an allocation of tax credits in June 2021, after which the Developer will need to secure a building permit for the Project by December 2021. The Developer must start the oil well reabandonment in July 2021 in order to obtain a building permit by December 2021. If the Developer does not meet this deadline, it will lose its tax credit financing, resulting in a $22 million financing gap and an a minimum one-year delay in Project delivery.

As a non-profit affordable housing developer, the Developer has exhausted other potentially viable financing alternatives for the oil well reabandonment. Unsecured financing would force the Developer to guarantee loans and provide investments into Metro-owned property without secured long-term development rights to construct and operate the Project. The Developer explored applying its awarded Infill Infrastructure Grant funds from the California Department of Housing and Community Development (HCD), however HCD deemed this option infeasible because it requires the Developer to have full site control via a ground lease prior to disbursing funds. The Developer also explored several grant options from the Department of Toxic Substances Control (DTSC) but found the DTSC programs require the applicant sites be either a Brownfield Site or an Underutilized Property as defined by California Health and Safety Code Section 25395.20. The Site does not qualify under either definition.

JDA Amendment and License Agreement
The JDA amendment will allow the Developer to perform the well reabandonment prior to the

Project's construction period. It will require the Developer to refund any use of the escrow funds upon construction closing, which is anticipated to occur in December 2021. All other terms of the existing JDA will remain unchanged.

Upon Board approval of the JDA amendment, Metro will also execute a license agreement with the Developer to grant them access to the Site to perform the re-abandonment. The license agreement will include the terms in which the Developer may request disbursement from the escrow account. The license will require a performance bond and include a cross-default provision so that default under the license agreement would be a default under the JDA. Oil well reabandonment costs in excess of $1,460,037 will be the Developer's responsibility. Metro will retain ownership and, in the event of a default, the value of any work completed on the Site would be recouped through increased value of the land as a result of mitigating the environmental condition.

EQUITY PLATFORM

Consistent with the Equity Platform, the eventual development of the Project provides an opportunity to "focus and deliver" by adding much needed transit-accessible, affordable housing to an Equity Focus Community.

DETERMINATION OF SAFETY IMPACT

Approval of this item will improve safety as it facilitates reabandonment of the oil well. CalGEM's requirements for reabandonment, as indicated in Public Resources Code § 3106, "prevent as far as possible, damage to life, health, property, and natural resources; damage to underground oil, gas and geothermal deposits; and damage to underground and surface waters suitable for irrigation or domestic purposes."

Reabandonment of the oil well will reduce the environmental issues at the property as well as potential Metro environmental liability.

Under the license agreement, the Developer is also required to submit both a health and safety plan and work plan for Metro's review and approval before commencing the reabandonment work.

FINANCIAL IMPACT

The funding source is general fund and is eligible for bus and rail operations and capital projects.

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 approving this recommendation and advancing the Project, Metro will specifically implement Initiative 3.2, which states the agency "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 amendment. 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 and commercial space to the Boyle Heights community. The Developer's longstanding commitment to the Project, including its financial investment to date, provides further reason not to choose this alternative. This recommended action also mitigates the existing environmental issue on this Metro-owned property.

NEXT STEPS

Upon approval of the recommended action, Metro and the Developer will execute the JDA amendment and license agreement and initiate reabandonment of the oil well. The reabandonment is expected to be completed by December 2021.

Once the reabandonment is complete, the Developer will secure its building permit from City of Los Angeles. Metro and the Developer 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 approved by the Board in February 2021. Construction of the Project is expected to commence promptly thereafter and should be completed in two years.

ATTACHMENTS

None.

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Next stop: vibrant communities.

1st & Lorena Joint Development

Planning & Programming Committee

June 16, 2021

Legistar File: 2021-0271

Metro

Recommendation

CONSIDER:

AUTHORIZING the Chief Executive Officer (CEO) to execute an amendment to the Joint Development Agreement (JDA) with A Community of Friends (Developer) and fund $1,460,037 into an escrow account to be repaid by the Developer at construction closing in order to facilitate the re-abandonment of an oil well on Metro-owned property at the northeast corner of 1st and Lorena Streets in Boyle Heights (Site).

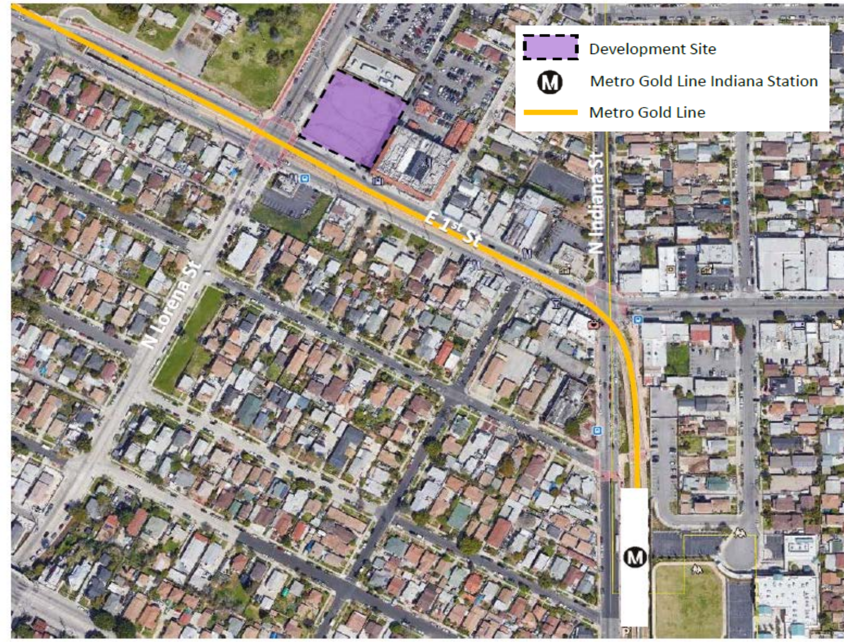
Background

- Proposed Project:
    - 49 apartments
    - Up to 7,500 sq. ft. of commercial space

- June 2013: Exclusive Negotiation Agreement and Planning Document (ENA) executed.

- March 2021: Joint Development Agreement (JDA) executed.

- April 2021: Developer learned that oil well must be re-abandoned prior to receiving building permit from the City of LA (originally planned to occur during ground lease).



Metro

Issue

- Developer must start the oil-well re-abandonment in July 2021 in order to obtain a building permit by December 2021.
- If the Developer does not meet this deadline, it will lose its tax credit financing, resulting in a $22 million financing gap and an at least one-year delay in Project delivery.
- Estimated cost to re-abandon well is $1,460,037. Developer is unable to secure financing for re-abandonment.

JDA Amendment and License Agreement

- JDA amendment will allow the Developer to perform the well re-abandonment prior to the Project's construction period.
- It will require the Developer to refund any use of the escrow funds upon construction closing, which is anticipated to occur in December 2021.
- Metro will also execute a license agreement with a cross-default to the JDA
- Metro retains ownership and the value of any work completed on the Site

Next Steps

- JDA amendment and license agreement executed and re-abandonment initiated.
- Once the re-abandonment is complete, the Developer will secure its building permit from City of Los Angeles.
- Late 2021: Ground Lease executed.
- Early 2022: Construction begins and is estimated to take two years to complete.

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