



Metro

Board Report

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

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

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

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

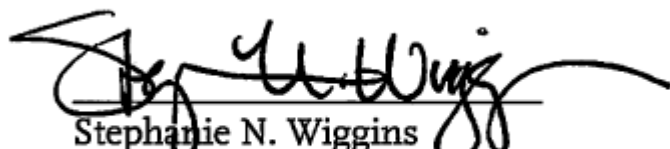
Upon Board approval, staff will execute Bench Agreements with each Qualified Developer. Staff will develop and execute a community outreach plan in which the 10K Sites are situated to gather community input, which will then inform RFP evaluation criteria. Staff will then invite the Developer Bench to 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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Stephanie N. Wiggins
Chief Executive Officer

PROCUREMENT SUMMARY

JOINT DEVELOPMENT REQUEST FOR QUALIFICATIONS #1 – DEVELOPERS

1.	Contract Number: Joint Development Request for Qualifications – Developers #1	
2.	Recommended Vendor: See Section B. below.	
3.	Type of Procurement (check one): <input type="checkbox"/> IFB <input type="checkbox"/> RFP <input type="checkbox"/> RFP–A&E <input type="checkbox"/> Non-Competitive <input type="checkbox"/> Modification <input type="checkbox"/> Task Order <input checked="" type="checkbox"/> Joint Development	
4.	Procurement Dates:	
	A. Issued: August 30, 2023	
	B. Advertised/Publicized: August 31, 2023 – October 11, 2023	
	C. Pre-Submittal Conference: September 18, 2023	
	D. Applications Due: October 11, 2023	
	E. Pre-Qualification Completed: N/A	
	F. Conflict of Interest Form Submitted to Ethics: October 12, 2023	
	G. Protest Period End Date: March 25, 2024	
5.	Solicitations Picked up/Downloaded: N/A. The RFQ and application were made available on the Joint Development website. Staff encouraged potential applicants to submit an Interest Form. 194 Interest Forms were received.	Proposals Received: 89 (5 non-responsive)
6.	Contract Administrator: Nicole V. Avitia	Telephone Number: 213-314-8060
7.	Project Manager: Nicole V. Avitia	Telephone Number: 213-314-8060

A. Procurement Background

This Board Action is to approve adding the qualified developers listed in Section B to the Joint Development (JD) Developer Bench. Board approval of the Developer Bench is subject to resolution of any properly submitted protest.

In order to expedite the completion of JD projects, staff released a Request for Qualifications (RFQ) on August 30, 2023 to identify potential developers based on general qualifications, community development experience, financial capacity and experience, and demonstrated experience as a Community-Based Development Organization (CBDO). In concert with the joint development acceleration strategies adopted by the Metro Board of Directors in April 2023 and with the support of the Chief Executive Officer (CEO), JD staff led this RFQ using specific and well-defined protocols consistent with Metro's Acquisition Policy (AQ-1 and ACQ-2).

If the Board approves creating the Developer Bench, staff will execute a Bench Agreement with the Qualified Developers and issue site-specific Request for Proposals (RFPs) for the joint development of 10K Sites. Only Qualified Developers on the Developer Bench may respond to those site-specific RFPs. The RFPs will require applicants to submit a development plan for each site along with a financial proposal, project team composition, and phasing schedule.

One amendment was issued during the solicitation phase of this RFP:

- Amendment No. 1, issued on October 4, 2023, clarified deadlines, who would be invited to comment on the template Exclusive Negotiations Agreement (ENA), and provided a revised RFQ Application Form with corrected formatting inconsistencies.

A pre-submittal conference for the RFQ was conducted virtually on September 18, 2023 and was attended by 258 people representing 176 firms. Over 130 questions were submitted by potential applicants and on October 4, 2023, staff issued a Frequently Asked Questions document via email to 6,700 recipients including the Joint Development Developer Opportunities and RFQ interest lists.

89 applications were received on October 11, 2023. Five of those applications were submitted after the deadline and/or were incomplete and therefore considered non-responsive. Metro's staff received one written response on October 25, 2023, to challenge Metro's rejection of their application. Through our review, it was determined that the applicant submitted a late and incomplete application that did not meet our initial threshold review. In accordance with Metro's Protest procedures, the rejection of an application or proposal does not qualify as an action that can be protested. Therefore, the correspondence received did not constitute a formal protest. A written response was emailed to the applicant on December 14, 2023 to explain our findings.

B. Evaluation of Applications

A Proposal Evaluation Team (PET) consisting of staff from Metro Joint Development, Development Review, Program Management, Community Relations, and Office of Equity and Race was convened and conducted an evaluation of the 84 applications received.

The proposals were evaluated based on the following evaluation criteria and weights:

- | | |
|--|------------|
| • Applicant/Principal's Qualifications, Skills, and Experience | 45 percent |
| • Community Development Experience | 30 percent |
| • Financial Capacity/Experience and Compliance | 20 percent |
| • Community-Based Development Organization | 5 percent |

The evaluation criteria were appropriate and consistent with criteria developed for other, similar Joint Development procurements. Several factors were considered when developing these weights, giving the greatest importance to experience in housing/mixed-use projects, design, transit integration, experience working with public agencies, and community development expertise.

A PET meeting was held on December 14, 2023. JD staff provided an overview of the RFQ including the evaluation criteria and instructions. Given the volume of applications, staff summarized submittal information into one spreadsheet. This spreadsheet along with the evaluation form was provided to the PET on December 19, 2023. The PET submitted their initial scores on January 8, 2024. The PET met on January 18, 2024 and decided that of the 84 applications evaluated, 80 were determined to “meet expectations.” The intent of this RFQ is to identify firms that meet a critical threshold of expertise and experience in order to expedite the evaluation of proposals to be submitted in the RFQ phase. Thus, for most of the criteria, the PET scored only whether the firm’s response: a) did not meet expectations; b) met expectations; or c) exceeded expectations. Firms that met expectations were deemed to be qualified to respond to a future RFP. The 80 firms within the competitive range are listed below in alphabetical order:

1. A Community of Friends*
2. Abode Communities*
3. Affirmed Housing Group LLC
4. Akin Co.
5. Alliant Strategic Development
6. American Family Housing*
7. Azure Community Development*
8. Baker Tilly US, LLP — Jeff Oviedo & Associates Inc.
9. BRIDGE Housing Corporation
10. Brilliant Corners*
11. California Landmark Group
12. Camden Securities Company
13. Century Affordable Development*
14. Cesar Chavez Foundation*
15. Cityview
16. Civic Enterprise
17. Clifford Beers Housing (Holos Communities)*
18. Coalition for Responsible Community Development*
19. Community Corporation of Santa Monica*
20. Community Development Partners
21. Community HousingWorks
22. Cowley Real Estate Partners
23. CTY Housing
24. Cypress Equity Investments
25. Decro Corporation*
26. Decro-RMG*
27. Develop With Skill
28. DignityMoves*
29. EAH Housing
30. Eden Housing
31. Ethos Project Holdings LP
32. GHK Properties, LLC

33. Hollywood Community Housing Corporation*
34. Innovative Housing Opportunities
35. Jamboree*
36. JPI
37. LA Family Housing*
38. Laing Companies LLC
39. Lendlease Development Inc.
40. Linc Housing Corp*
41. Lincoln Property Company
42. Lowe
43. MacFarlane Partners
44. McCormack Baron Salazar
45. Menorah Housing Foundation*
46. Mercy Housing
47. MSquared
48. National Community Renaissance of California*
49. New Economics for Women*
50. Orion Capital
51. PATH Ventures
52. Praxis Development Group
53. Primestor Development
54. Republic Metropolitan
55. Self-Help Ventures Fund
56. SoLa Impact
57. SRM Development
58. SuperLA
59. The Kelsey
60. The Max Collaborative
61. The Michaels Development Company
62. The Olson Company
63. The People Concern*
64. The Pinyon Group
65. The Related Companies of California
66. The Roberts Group
67. The Urban Coalition
68. The Urban House
69. Thomas Safran & Associates Development
70. Trammell Crow Company
71. Treehouse
72. Ulysses Development Group
73. USA Properties Fund
74. Venice Community Housing*
75. Wakeland Housing
76. Waterford Property Company
77. Weingart Center Association*
78. West Hollywood Community Housing Corporation*

- 79. Women Organizing Resources, Knowledge and Services (WORKS)*
- 80. WPH Holdings

* Denotes applicant is a CBDO. As described in the Board Report, applicants who believed they met the established CBDO definition were asked to complete a self-certification form and awarded additional points in RFQ application evaluations if they met the established CBDO definition.

The PET determined that four of the applicants did “not meet expectations” and are not included in staff’s recommendation to be added to the Developer Bench. Some of these firms’ application narratives failed to demonstrate experience incorporating transit-oriented features into developments, developing adjacent to transit infrastructure, public/private partnerships, and/or implementing comprehensive community engagement strategies. Most of these narratives failed to provide adequate details or specific examples required to be considered in the competitive range. The four firms determined to be outside the competitive range are listed below in alphabetical order:

1. [oo-d-a] studio, inc
2. 1010 Development
3. Center for Pacific Urbanism
4. Keyvan Moradian

Qualifications Summary of Firms within the Competitive Range:

The 80 firms determined to be within the competitive range were chosen based on their experience expeditiously constructing and/or operating housing/mixed-use projects, high-quality project design, transit integration, experience working with public agencies, and/or community development expertise. These firms provided detailed narratives highlighting engagement strategies with significant stakeholder outreach for development projects in Los Angeles County or other diverse communities. Firms also demonstrated financial capacity through experience securing financing for multiple phases of real estate development, including innovative financing strategies.

D. DEOD Summary

Metro strongly encouraged CBDOs that are rooted in the communities in which the 10K Sites are located to respond to the RFQ and conducted targeted outreach to CBDOs to promote the July 2023 Developers Industry Forum discussed in the Board Report. By harnessing the local expertise of CBDOs, Metro can effectuate meaningful community engagement and develop JD projects that include elements that benefit and enhance the surrounding communities. 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)

firms and/or local businesses were awarded additional points in the RFQ application evaluations. 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. Metro will also encourage Qualified Developers to create opportunities to include Metro-certified SBE/DBE/DVBE firms and/or local businesses in their projects, through professional or construction services.

Attachment B

SUMMARY OF KEY ENA TERMS

Below is a summary of key terms and conditions for a template Exclusive Negotiation Agreement (ENA). Any ENA that deviates from or is inconsistent with this summary will require Board approval for execution. For purposes of this document, “Developer” means the Developer selected from the Developer Bench following the issuance of an RFP for the joint development of a 10K Site. “Project” means the housing project proposed by the Developer; and “Project Site” refers to the 10K Site, provided that on some projects, the Project Site may also include adjacent property owned or controlled by the Developer. Metro and Developer may be referred to individually as “Party” or collectively as “Parties” in this summary.

1. **Term.** The initial term of the ENA is twelve (12) months (Term). The Term may be extended by Metro staff in twelve (12) month increments if Developer is making substantial progress toward completing the transaction, not to exceed a total of sixty (60) months.
2. **Right to Terminate.** The ENA may be terminated early by either Party in limited circumstances, including: (i) the transaction is not reasonably likely to be completed; (ii) the Project is infeasible or cannot be financed; (iii) the Project is not likely to be constructed in a reasonable timeframe; (iv) the non-terminating party is in default under the ENA; or (v) certain title issues are present. Additionally, Metro may terminate without cost or penalty if Metro staff determines that the process followed to enter into the ENA or Developer’s proposed Project does not comply with the Surplus Land Act.
3. **ENA Administration Fee.** Developer must pay a nonrefundable fee to Metro prior to the ENA’s effective date to cover Metro’s costs during the Term and to compensate Metro for exclusively negotiating with the Developer. The nonrefundable fee will be \$50,000 or more, depending on project size and complexity.
4. **Agreement to Negotiate Exclusively in Good Faith; No Metro Commitment to Any Project or Funding.**
 - The Parties will exclusively negotiate in good faith during the Term. The ENA itself does not establish the terms of a future ground lease, joint development agreement (JDA) or any other Project-related agreements (Project Agreements) necessary to convey and develop the Project Site with the Project.
 - The ENA does not commit Metro to approving the Project, approving other proposed improvements to the Project Site or to entering into any of the Project Agreements. Metro retains absolute sole discretion to request modifications to the Project, to impose mitigation measures, to evaluate Project alternatives (including the no project alternative), and to reject the Project as may be necessary to comply with CEQA.
 - The ENA also does not commit Metro to funding, subsidizing, or otherwise financially contributing to the Project. Metro will retain its full discretion as to approval of the Project contemplated by the ENA.

5. Documents to be Negotiated; Metro Retained Rights.

- The Parties will negotiate key terms for a JDA and form of ground lease (Term Sheet) for consideration by Metro's Board of Directors (Board). The Term Sheet will include the key terms and conditions that will be incorporated into the Project Agreements. Metro must receive Board authorization to execute the Project Agreements and such authorization will not be requested until all of the following have occurred: (i) the Term Sheet and the form of the JDA are agreed upon by the Parties; (ii) Metro staff has determined that all necessary CEQA-related documents have been prepared; and (iii) Metro staff has secured any required approval or concurrence of the Project (or the execution of the Project Agreements) by all applicable governmental or other funding entities.
- Each Party may decline to enter into any subsequent agreement (including any of the Project Agreements) if the Parties fail to agree upon mutually satisfactory terms. Except as provided in the ENA, neither Party has any duty, obligation, or liability under the ENA if the Parties fail to timely agree upon and execute the Project Agreements.
- If the Parties proceed with the transaction and the Project Agreements, Metro will retain certain rights with respect to the property to be ground leased (subject to limitations) throughout the life of the Project, as may be required by Federal Transit Administration funding. Those rights include, but are not limited to: (i) the right to install, operate and maintain public transit facilities; (ii) the right to install and maintain informational signage; (iii) the right to utilize sidewalks and common areas for pedestrian access and operations related to transit activities; (iv) inspection rights; and (v) all other rights not expressly granted to Developer in the ground lease.

6. Schedule of Performance. The ENA's Schedule of Performance contains key milestones for moving the Project forward. The milestones include, but are not limited to, public outreach requirements, title work, submittal of designs, CEQA compliance, entitlement submittal and Project proforma/financing plan submittal. Subject to a Valid Unavoidable Delay (discussed in Section 17 below), time is of the essence with respect to each Party's obligations under the Schedule of Performance. Failure of a Party to meet the milestones set forth in the Schedule of Performance shall constitute a breach under the ENA.

7. Environmental Review. Developer is responsible for all costs associated with CEQA compliance. Developer is responsible for preparing and submitting all Project-related CEQA documents (CEQA Documents) to the governmental agency with legal authority to issue entitlements for the Project (Entitling Authority), subject to Metro staff's advance review and approval. Metro will exercise its independent judgment and analysis in connection with any Project-related environmental reviews and will make its own determination as to what is required for Metro to satisfy the requirements of CEQA. Accordingly, Metro may require Developer to complete alternative CEQA studies and/or an alternative method to comply with CEQA than the Entitling Agency. These costs shall also be borne entirely by Developer.

8. Project Entitlements. Developer must prepare and submit all Project-related entitlement applications (Entitlement Applications) to the Entitling Authority, subject to Metro staff's advance review and approval. Developer is responsible for all costs associated with the Entitlement Applications. If Developer abandons an Entitlement Application for any reason, Metro may take over such application and Developer will cooperate with Metro to complete the entitlement process started by Developer. If the Project is not built, Developer will cooperate with Metro to remove any Project-related entitlements and/or encumbrances affecting Metro's property.

9. **Provision of Development Documents.** In addition to the CEQA Documents and the Entitlement Applications, Developer shall prepare at its sole cost and expense, but subject to Metro staff's independent review and judgment, all plans (including schematic design drawings) and other reports, investigations, studies, and related documents with respect to the Project Site, the Project, and Developer's intended use of the Project Site (collectively, Development Documents). In addition to the foregoing, Developer shall include in its contractors' and consultants' contracts, the right of Developer to assign the Development Documents to Metro.
10. **Ethics.** Developer (and Developer team members, as required by Metro Ethics) must remain in full compliance with: (i) Titles 4 (Procurement) and 5 (Ethics) of the Metro Administrative Code (Admin Code); (ii) all applicable provisions of Government Code sections 1090 and 87100 et seq.; and (iii) regulations governing campaign contributions to Board members imposed by Public Utilities Code section 130051.20, Government Code section 84300 et seq., and the Admin Code. Developer must also submit updated ethics declarations as required by Metro.
11. **Coordination.** Developer shall notify Metro regarding substantive meetings with governmental authorities concerning the Project, and Metro may participate in such meetings, at its discretion. The Parties will coordinate with each other and hold progress meetings to ensure compliance with the ENA.
12. **Community Outreach Plan.** Developer will perform community outreach in accordance with a Metro-approved community outreach plan attached to the ENA.
13. **Inspections.** Developer may conduct such due diligence inspections as the Parties deem necessary during the course of the Term to determine the condition of the Project Site and/or the Project's feasibility. Developer's entry onto the Project Site for such inspections will be in accordance with the terms and conditions of a right of entry agreement executed between the Parties. If the Project Site includes Developer-controlled property, Developer will similarly grant Metro with access to such property to conduct inspections.
14. **Title & Survey Review.** The Parties will conduct survey and title review for the Project Site. Specified title issues may be grounds for the ENA's early termination.
15. **Design Review.**
- The design of the Project shall be at Developer's sole cost and expense.
 - Developer shall prepare and submit to Metro staff the initial set of schematic design drawings for the Project, which represents a Logical Evolution of Developer's conceptual plan. Within this context, "Logical Evolution" means the further development, refinement, or amplification of the conceptual plan that flows logically, naturally, and foreseeably from the conceptual plan, and reflects (among other things) good architectural and engineering design, and complies with the terms of the ENA and all legal requirements. The schematic design drawings must be prepared by a qualified and licensed architect and/or engineer, as applicable.
 - Metro staff shall have the right to review and approve, disapprove, or request changes to the schematic design drawings, Project development schedules, and proposed methods of construction for all Project improvements. During this process, any Metro staff determination regarding possible impacts on Metro's Development Related Concerns (as defined) shall be made in Metro's sole and absolute discretion. Among other things, Metro's Development Related Concerns include: (i) Metro's operations, including its ability to install, inspect, operate, maintain, repair, and replace public transit facilities; (ii) Metro's exercise of rights

retained under the ENA; (iii) public health and safety; and (iv) access to and from Metro's property.

16. Indemnity & Insurance.

- Except for claims arising solely from Metro's gross negligence or willful misconduct, Developer will indemnify, defend (with counsel approved by Metro) and hold harmless Metro and the Metro Parties (as defined) from specified Project-related liability, claims, losses, costs, expenses or damages arising from or caused by Developer and the Developer Parties (as defined).
- Developer must obtain for itself, and the Developer Parties, insurance in accordance with Metro's requirements.

17. Breach & Default.

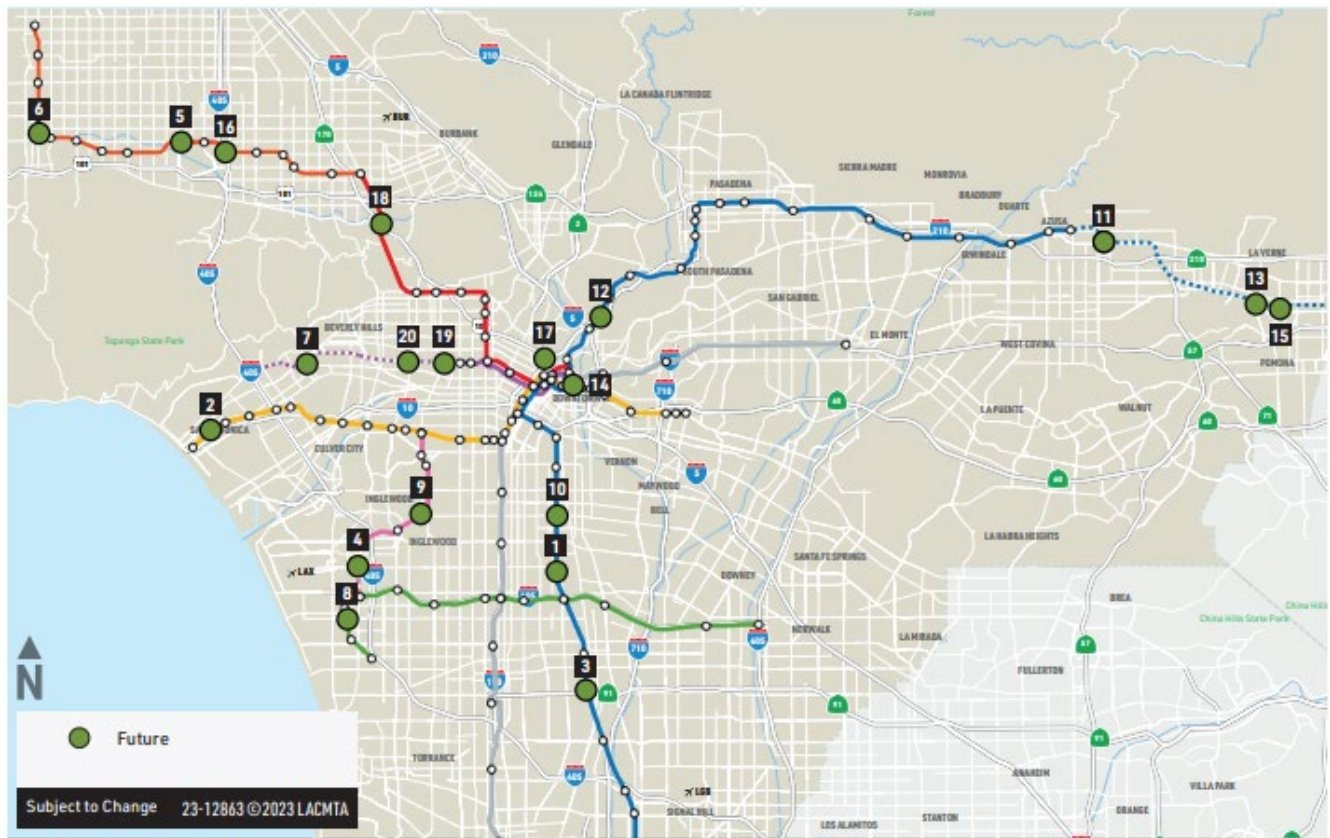
- A Party is in breach under the ENA if it fails to: (i) perform any obligation, or to comply with any covenant, restriction, term or condition in the ENA; or (ii) meet the milestones set forth in the Schedule of Performance.
- Subject to limited exceptions, a breach will become a default if the aggrieved Party provides written notice to the Party committing the breach and the breaching Party thereafter fails to cure within a specified time period. The breaching Party can extend its time to cure if there is a "Valid Unavoidable Delay," which is a delay agreed upon by both Parties as being valid and unavoidable, in accordance with a process provided under the ENA (e.g., this may include a force majeure event). Notwithstanding, the deadline to cure a breach may not be extended due to a Valid Unavoidable Delay by more than sixty (60) days; nor may the Term be extended due to a Valid Unavoidable Delay.

18. Upon Termination of ENA; Limitation on Metro Damages & Remedies.

- If the ENA expires or terminates and the Parties have not executed a JDA, then: (i) any rights or interest Developer may have under the ENA shall cease without notice; (ii) any Development Documents will become Metro's personal property; and (iii) Metro may use, develop (alone or with another entity) or dispose of the Project Site as it determines appropriate in its sole discretion.
- If Metro defaults under the ENA (i.e., fails to perform an obligation as described in Section 17), Metro will pay Developer liquidated damages in an amount equal to not to exceed two hundred and fifty thousand (\$250,000.00) (Liquidated Damages Amount). The Liquidated Damages Amount will be Developer's sole and exclusive remedy (inclusive of any attorneys' fees and costs) arising from Metro's default. Upon such a default and Metro's payment of the Liquidated Damages Amount, the ENA will terminate.

19. Assignment. Except as otherwise agreed to by Metro staff, Developer may not assign its rights or duties under the ENA to any other person or entity. Notwithstanding, Developer's shareholders, partners, members or other equity holders may transfer, sell, exchange, assign, or divest themselves of any interest they have in Developer so long as a change of Control (as defined) of Developer does not occur.

10K SITES



Future Sites

- | | | |
|----------------------------------|-----------------------------|--|
| 1. 103rd St/Watts Towers Station | 8. El Segundo Station | 15. Pomona |
| 2. 17th St/SMC Station | 9. Fairview Heights | 16. Sepulveda Station |
| 3. Artesia Station | 10. Florence Station | 17. Temple/Beaudry Bus Layover |
| 4. Aviation/Century Station | 11. Glendora | 18. Universal City/Studio City Station |
| 5. Balboa/Victory Station | 12. Heritage Square Station | 19. Wilshire/Crenshaw Station |
| 6. Canoga Park Station | 13. La Verne | 20. Wilshire/La Brea Station |
| 7. Century City | 14. Pickle Works | |



We're supporting thriving communities.
Planning and Programming Committee
Legistar File #2023-0751
March 20, 2024



Metro

Bench Request for Qualifications (RFQ)



Developer
Pre-Qualification



Metro Board Review



- RFQ aimed to **reduce barriers** to participation in the joint development of the 10K Sites.
- **Selected developers** will be eligible to compete for any of the “10K Sites” via the streamlined Request for Proposals (RFP) process.
- Bench developers may **partner** with one another and respond to RFPs.

Developer Bench RFQ

- **July 2023:** Joint Development Industry Forum with over 160 attendees.
- **August 2023:** RFQ advertised to more than 6,700 interested parties.
- **October 2023:** 84 responsive applications received.
- **Proposal Evaluation Team (PET):** Metro Planning, Program Management, Community Relations, and Office of Equity and Race representatives.
- **PET recommends 80** of the 84 applicants to be on the **Developer Bench**.
- 25 applicants who met established definition of a **community-based development organization (CBDO)** were awarded additional points in RFQ evaluations.

ENA Summary of Key Terms

- Non-binding, limited-term agreement to review proposed design, explore project feasibility, seek project entitlements, conduct community engagement, and negotiate terms.
- Initial 12-month term with extensions in 12-month increments. Not to exceed 60 months.
- \$50,000+ ENA fee
- Limits Metro's liability to liquidated damages of no more than \$250,000.
- Opportunity to comment on Template ENA provided to all Bench RFQ respondents.
- Future ENAs for 10K Sites must be consistent with the provisions and requirements included in Attachment B - Summary of Key ENA Terms.

Next Steps

- Execute bench agreements with the Qualified Developers.
- Conduct outreach to the 10K communities, which will then inform RFP evaluation criteria for each 10K Site.
- Invite the Developer Bench to respond to site-specific RFPs for 10K Sites beginning mid-to-late 2024.
- Complete RFP evaluations and enter into an ENAs with the selected developers.
- Updates on developer selection, project proposals, and other significant milestones will be reported to the Board and public through a dashboard.
- Return to Board after entitlements are in place for approval of terms for Joint Development Agreements (JDAs) and ground leases.