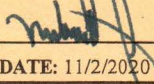
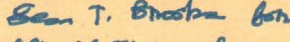
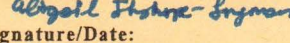
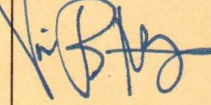
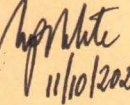
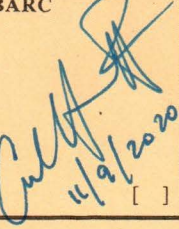




EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL:  11/10/2020		GENERAL MANAGER ACTION REQ'D:		
DATE: 11/2/2020		BOARD INITIATED ITEM: Yes		
Originator/Prepared by: Abigail Thorne-Lyman Dept: Systems Development   Signature/Date: 11/09/2020	General Counsel  11/10/20 []	Controller/Treasurer  11/10/2020 []	District Secretary []	BARC  11/9/2020 []

Authorization for an Extension of Exclusive Negotiating Agreement with LMTOD, LLC and East Bay Asian Local Development Corporation (EBALDC) for Lake Merritt BART Station Transit-Oriented Development

PURPOSE:

To authorize the General Manager or his designee to execute an extension to the Exclusive Negotiating Agreement (ENA) with LMTOD, LLC and East Bay Asian Local Development Corporation (EBALDC) (together "Development Team") for Transit-Oriented Development (TOD) at the Lake Merritt BART Station.

DISCUSSION:

On September 13, 2018 the BART Board of Directors authorized BART staff to enter into an Exclusive Negotiating Agreement (ENA) with the Development Team of Strada Investment Group and EBALDC to develop two BART owned properties: the Lake Merritt BART parking lot between Oak and Fallon Streets, and the Metro Center building site at 101 8th Street.

The proposal for the parking lot (Phase I) is for a high-rise mixed-income residential building of approximately 360 units and an affordable Senior housing building of approximately 97 units. The proposal for the Metro Center site (Phase II) includes a high-rise office building of approximately 500,000 square feet and an affordable residential building of approximately 100 units. Altogether, roughly 40% of the units proposed would be affordable to moderate-, low-, very low-, and extremely low-income households, and roughly 20% of the commercial space would be available at below market rents. The Phase I development would also

include a paseo connecting Oak Street to Fallon Streets, supporting eventual creation of a three-block linear greenway linking the Buddhist Church of Oakland to the BART Station and Laney College.

Following Board authorization, BART entered into an ENA with EBALDC and Strada on January 25, 2019, for a period of 24 months. In October 2019 Strada partnered with the California State Teachers' Retirement System (CalSTRS) to form a Delaware Limited Liability Company known as LMTOD, LLC, which is owned solely by Strada and CalSTRS and managed by Strada. The ENA rights and obligations were assigned to this new company. The Board was notified of the assignment in a February 4, 2020 memorandum. For the last 22 months, the developer team has worked diligently to advance its development concept. Staff has determined that LMTOD, LLC has substantially met the terms of the ENA within the ENA period, as evidenced by the following achievements:

- **Site Due Diligence:**
 - Scan of tunnel infrastructure –September 2019
 - Completed Phase I, Phase II, Geotechnical Investigations– April 2020
- **Design Review:**
 - Submittal of initial drawings to BART for review – September 2019
 - BART approval of initial proposal – February 2020
- **Entitlements:**
 - Initial Submittal of Preliminary Development Plan (PDP) to City of Oakland – February 2020
 - Submittal of Revised PDP to City with additional requests – October 2020
 - Submittal of Tentative Tract Map & Revision– May 2020 / October 2020
- **Environmental:**
 - CEQA Kick-Off – September 2019
 - Entered into Remedial Action Agreement with Alameda County Dept of Environmental Health – July 2020
- **Planning:**
 - Community Workshops, Stakeholder Meetings – January 2020, June 2020 & October 2020
 - Completed Access Study - November 2020

Upon submitting its initial set of drawings to BART in August 2019, the Development Team underwent a 6-month design review process with BART, which was warranted given the complexity, safety, and operational concerns of proposing buildings in close proximity to the underground BART tracks. The Development Team submitted its first Preliminary Development Plan (PDP) application to the City of Oakland in February and has responded to additional requests for information from the City over the past 8 months. This intensive coordination with BART and the City reflects a good faith effort by the Development Team to advance the project.

Because the Development Team will not be ready to return to the Board with the project and ground lease option at the end of the ENA period in January 2021, staff is recommending an extension of the ENA with EBALDC and LMTOD, LLC, for a period of one (1) year, with an option for a six (6) month extension if needed. This extension to the ENA will include payment of an additional fee of \$37,500 to BART for one year, as well as full compensation for BART's legal and consultant fees, and all BART staff costs associated with design review. The following are the milestones the Development Team proposes to meet during the extension period, as calendar year quarter estimates:

- Preliminary Entitlements & CEQA Approval: Q1 2021
- Submit Housing and Infrastructure Grant Applications: Q4 2020 – Q3, 2021
- Lease Option for Board Approval: Q3 2021
- NEPA Kickoff: Q3 2021
- Execute Lease Option Agreement: Q4 2021 – Q1 2022

Since the City of Oakland has not yet accepted the Development Team's application, the milestone timing is dependent on external factors associated with the City's entitlement process.

FISCAL IMPACT:

Per the terms of the current ENA, EBALDC and LMTOD, LLC are responsible for all external legal and consultant fees that BART incurs in reviewing agreements and materials. Additionally, EBALDC and LMTOD, LLC will compensate BART for all design review costs incurred by BART Operations staff, and the ENA fee covers a portion of expenses associated with coordination by the Real Estate and Property Development department. Additional BART staff work is part of BART's current work plan, thus this action will not have any impact on unprogrammed District reserves.

The initial, non-binding proposal includes ground lease revenue and ridership increases that are favorable to BART. The ground lease terms are yet to be negotiated, but staff will ensure that the combination of the ground lease and off- or reverse-commute ridership revenues result in a net positive fiscal impact to BART. The BART Board will review the terms of the deal at key milestones to monitor its fiscal impact and will ultimately approve the deal terms with the project and lease option.

ALTERNATIVES:

Do not authorize staff to proceed with an extension to the Exclusive Negotiating Agreement. Staff will not pursue the Lake Merritt TOD further without direction from the Board.

RECOMMENDATION:

Adopt the following Motion.

MOTION:

Authorize the General Manager or his designee to extend BART's current Exclusive Negotiating Agreement (ENA) with EBALDC and LMTOD, LLC for a term of 12 months, with an additional 6-month extension option.