Planning, Program Development and Real Estate Committee

Item V-A

April 11, 2013

Suggested Changes to Joint Development Policies
TITLE:
Suggested Changes to Joint Development Policies

PRESENTATION SUMMARY:
This presentation summarizes proposed changes to the Joint Development Policies and Guidelines, focusing specifically on issues the Board asked staff to address, along with other key changes.

PURPOSE:
The goal is to outline for the Board's information, staff's suggested changes to Metro's Joint Development Policies and Guidelines which were last updated in 2008.

DESCRIPTION:

Key Highlights:
The proposed changes to the guidelines address the eight issues (above, in Description) requested by the Board and reflect the input from Metro real estate staff and the development community. The Board requested staff to provide recommended revisions to the Joint Development Guidelines, with a specific focus on the following areas:

1. Language related to the transfer of development agreements
2. Goals of the Joint Development Guidelines
3. Policies that are noted and required, but do not exist (i.e. Affordable Housing)
4. A requirement to provide a listing of all participants in developer teams for the purpose of conflict determination
5. Ensure process is not overly burdensome for developers
6. Discuss sunshine policies / open discussions as relates to joint development
7. Refer to Board Code of Ethics and bylaws
8. Review jurisdictional coordination

Background and History:
The Joint Development Policies and Guidelines were last updated in 2008. Since that time, the Board has launched work on a new strategic plan, Board has adopted new ethics guidelines, and economic conditions are generating greater joint development activity and interest in WMATA properties. As we contemplate issuing new solicitations, we want to ensure that we implement those projects in a manner consistent with the new proposed policies.
Discussion:

The proposed changes to guidelines will ensure that Joint Development Policies and Guidelines are aligned with strategic plan, create stronger linkage to Board ethics guidelines, and provide greater transparency to potential developers regarding the joint development process.

In response to those areas of focus requested by the Board, the proposed revisions to the Joint Development Policies include the following changes:

1. Language related to the transfer of development agreements:
A new section has been added to the Policies and Guidelines describing general requirements for notification of changes development team members or transfers of ownership. This section also describes the requirements for any such new team members to meet the certification requirements of the Policies and Guidelines, and also to provide an updated identification of current principals/participants on the development team.

2. Goals of the Joint Development Guidelines:
References to the Momentum strategic plan have been added to the "Goals" section, highlighting the two strategic plan goals that are directly supported by the Joint Development program.

3. Policies that are noted and required, but do not exist:
The 2008 update to the Policies and Guidelines referenced an affordable housing policy to be adopted by the Board, however in the years since that time no such policy has been established. The proposed revisions to the Policies and Guidelines now includes an affordable housing policy that requires developers to comply with the minimum requirements of the local jurisdiction. The policy also encourages developers to seek alternative sources of financing to minimize impact to proceeds received by WMATA resulting from the provision of affordable housing.

4. A requirement to provide a listing of all participants in developer teams for the purpose of conflict determination:
New guidance and a new reporting form have been added to the Policies and Guidelines requiring developers to identify those individuals who are partners or participants in the development team. This information will be required to be updated and resubmitted to WMATA at each stage in the joint development process involving a Board decision.

5. Ensure process is not overly burdensome for developers:
Metro has conducted initial outreach to some of our existing development partners to collect input on those areas of the Joint Development Program they feel need the greatest improvement. The feedback has largely been focused on the areas of partnering and aligning interests, organizational structure and leadership, flexibility, engineering standards/processes, replacement of parking, and innovation. Most of these areas deal with how the Policies and Guidelines are implemented, rather than the specific requirements of the Policies and Guidelines. In the last six months, staff have sought to shift our approach to engaging development partners and other stakeholders toward addressing the issues and will continue to do so going forward.
6. Discuss sunshine policies / open discussions as relates to joint development:
   Metro has reviewed the policies of the Compact jurisdictions. The Board's approach
to discussion of term sheet and joint development agreement negotiations is
consistent with the approach undertaken by the jurisdictions, which typically utilize
closed meetings for discussion of real estate matters and/or sensitive contractual
issues that might be compromise the public agencies negotiating position if
discussed in an open meeting.

7. Refer to Board Code of Ethics and bylaws:
   A reference to the "Code of Ethics for Members of the WMATA Board of Directors"
has been added to the Policies and Guidelines.

8. Review jurisdictional coordination:
   Revisions to this section have been made to clarify terminology as relates to
"constituent
jurisdictions" vs. "local jurisdictions" and the coordination, roles, and
responsibilities associated with each definition.

**FUNDING IMPACT:**
Define current or potential funding impact, including source of reimbursable funds.

<table>
<thead>
<tr>
<th>Project Manager:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Department/Office:</td>
<td></td>
</tr>
</tbody>
</table>

**TIMELINE:**

<table>
<thead>
<tr>
<th>Previous Action</th>
<th>2008 – Board adopted the current Joint Development Policies and Guidelines</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anticipated actions after presentation</td>
<td>April/May 2013 – Staff will receive comments from the board and the public on the proposed changes to the guidelines, and make any necessary revisions.</td>
</tr>
<tr>
<td></td>
<td>June 2013 – Staff will present final guidelines to the Board for approval</td>
</tr>
</tbody>
</table>

**RECOMMENDATION:**
None - Information Item
Joint Development Policies
Proposed Revisions

Planning, Program Development and Real Estate Committee

April 11, 2013
Purpose

- Review proposed revisions to the Joint Development Policies and Guidelines

Ballston - 1974

Ballston - 2012
Background

• Joint Development Policies and Guidelines were last updated in 2008

• Since that time:
  – Board has launched work on a new strategic plan
  – Board has adopted new ethics guidelines
  – Economic conditions generating greater joint development activity
The Board has requested that staff focus on revisions in the following areas:

- Provide guidelines on transfer of development agreements
- Review/update goals of the policies
- Provide policies that are noted and required, but do not exist (Affordable Housing)
- Require identification of individual development team partners/participants
- Identify elements of the policies that may be overly burdensome for developers
- Include a reference to Board’s Code of Ethics
Proposed Revisions

• Incorporated an affordable housing policy

• Added a requirement for identification of all members of development entities to identify potential conflicts of interest

• Added a requirement for notification of any changes in members of development entities
Proposed Revisions

• Identified, through outreach to development community, opportunities to reduce burdensome aspects of joint development process

• Incorporated a reference to the Board’s Code of Ethics

• Updated numerous other items (i.e. “media, including electronic media” vs. “newspapers”)

Benefits

- Aligns Joint Development Policies and Guidelines with strategic plan
- Creates stronger linkage to ethics guidelines
- Provides greater transparency to potential developers regarding the joint development process
Next Steps

• Receive comments from Board and the public

• Update guidelines to reflect feedback

• Present policies and present to Board for approval in June
**JOINT DEVELOPMENT POLICIES AND GUIDELINES**

**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>2.0</td>
<td>PURPOSE</td>
<td>3</td>
</tr>
<tr>
<td>3.0</td>
<td>SCOPE OF POLICIES AND GUIDELINES</td>
<td>4</td>
</tr>
<tr>
<td>4.0</td>
<td>POLICIES OF LOCAL JURISDICTIONS AFFECTING JOINT DEVELOPMENT</td>
<td>4</td>
</tr>
<tr>
<td>5.0</td>
<td>MAJOR ROLES AND RESPONSIBILITIES IN THE JOINT DEVELOPMENT PROGRAM</td>
<td>4</td>
</tr>
<tr>
<td>6.0</td>
<td>OBJECTIVES AND PROCEDURES</td>
<td>10</td>
</tr>
<tr>
<td>7.0</td>
<td>COMPETITIVE SELECTION PROPOSAL (&quot;RFP&quot;) PROCESS</td>
<td>14</td>
</tr>
<tr>
<td>8.0</td>
<td>COMPETITIVE SELECTION QUALIFICATION (&quot;RFQ&quot;) PROCESS</td>
<td>19</td>
</tr>
<tr>
<td>9.0</td>
<td>WMATA TRANSIT ACCESS FACILITY REPLACEMENT</td>
<td>23</td>
</tr>
<tr>
<td>10.0</td>
<td>SALE OF PROPERTY TO COMPACT JURISDICTIONS</td>
<td>23</td>
</tr>
<tr>
<td>11.0</td>
<td>ADVOCACY FOR JOINT DEVELOPMENT AND TRANSIT-ORIENTED DEVELOPMENT IN LOCAL PLANNING PROCESS</td>
<td>24</td>
</tr>
<tr>
<td>12.0</td>
<td>AFFORDABLE HOUSING</td>
<td>24</td>
</tr>
<tr>
<td>13.0</td>
<td>RESOLUTION OF CONFLICTS WITHIN THE AUTHORITY</td>
<td>25</td>
</tr>
<tr>
<td>14.0</td>
<td>FTA REQUIREMENTS</td>
<td>25</td>
</tr>
<tr>
<td>15.0</td>
<td>TRANSFER OF DEVELOPMENT AGREEMENTS</td>
<td>25</td>
</tr>
<tr>
<td>16.0</td>
<td>UNSOLICITED PROPOSALS</td>
<td>26</td>
</tr>
</tbody>
</table>

**EXHIBITS:**
- Exhibit 1 – Self-Certification for Prospective Developers
- Exhibit 2 – Identification of Participants/Principals in Development Team
1.0 INTRODUCTION

WMATA has been involved in the joint development of real estate since the early 1970s. These Joint Development Policies and Guidelines ("Guidelines") set forth the general practices of the joint development program of the Washington Metropolitan Area Transit Authority ("WMATA").

WMATA defines joint development as a creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing transit-oriented development projects. Projects are encouraged that:

1. integrate WMATA's transit facilities
2. reduce automobile dependency
3. increase pedestrian/bicycle originated transit trips
4. foster safe station areas
5. enhance surrounding area connections to transit stations
6. provide mixed-use including housing and the opportunity to obtain goods and services near transit stations
7. offer active public spaces
8. promote and enhance ridership
9. generate long-term revenues for WMATA
10. encourage revitalization and sound growth in the communities that WMATA serves

WMATA's joint development opportunities consist of property interests owned or controlled by WMATA and approved by the WMATA Board of Directors for inclusion in the joint development work program.

1.1 Goals and Standards

1.1.1 Goals

Metro’s Strategic Plan – Momentum: The Next Generation of Metro – has been created to guide Metro's decisions over the next 10 years and ensure the system continues to support the region's competitiveness for decades to come. WMATA's joint development program directly supports two of the four goals of the strategic plan: (1) Improve Regional Mobility and Connect Communities and (2) Ensure Financial Stability and Invest in our People and Assets.
Toward those two strategic plan goals, the objectives of WMATA's joint development program are to:

1. Promote Transit-Oriented Development (TOD) by giving priority to joint development proposals that contain the following smart growth development principles: reduce automobile dependency; increase pedestrian/bicycle originated transit trips; foster safe station areas; enhance surrounding area connections to transit stations, including bus access; follow good land use principles; provide mixed-use development, including housing in compliance with local laws and requirements; and the opportunity to obtain goods and services near transit stations and offer active public spaces.

2. Attract new riders to the transit system—particularly riders who will use underutilized transit capacity in outbound directions and in off-peak time periods—by fostering commercial and residential development projects on WMATA-owned or controlled land and on private properties adjacent to Metro stations.

3. Where appropriate to station setting, market dynamics, and local policy, support the establishment of employment centers consistent with TOO design principles and transit system operating and investment needs.

4. Implement station access improvements that support pedestrian, bicycle, bus, ADA (Americans with Disabilities Act), and automobile access consistent with each station area's particular station access needs as determined by WMATA's station access planning program.

5. Support other transit agency goals as they may arise, including affordable housing. Implementation of this goal is described in Section 12.0 of these Policies and Guidelines.

6. Create a source of revenue for WMATA to operate and maintain the transit system by negotiating joint development agreements between WMATA and public or private development entities.

7. Assist the WMATA local jurisdictions to recapture a portion of their past financial contributions and to continue making subsidy payments by expanding the local property tax base and adding value to available local revenue.

1.1.2 Standards

Station access planning should be done according to the WMATA standards for replacement facilities. Should conflicts arise between standards and project goals, the conflicts should be identified and solutions proposed to be resolved as stated in these Guidelines. WMATA will seek to resolve such conflicts in advance of solicitation to minimize risk and uncertainty for potential developers.
1.2 **Definitions**

1.2.1 **Joint Development**

A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing transit-oriented development projects.

1.2.2 **Joint Development Solicitation or "JDS"**

The joint development solicitation or "JDS" refers to any solicitation document that WMATA may use to offer and market joint development opportunities.

1.2.3 **WMATA Board of Directors or "WMATA Board" or "the Board"**

The policy and governing body for WMATA, as created by Article III section 5 of the WMATA Compact.

2.0 **PURPOSE**

The purpose of these Joint Development Policies and Guidelines is to:

1. Disseminate information about WMATA's joint development program to developers, local jurisdictions, the local community and the general public.
2. Identify the roles and responsibilities of the WMATA Board of Directors, the General Manager, local jurisdictions, developers and the community in the joint development process.
3. Establish procedures for the marketing of joint development sites and the selection of private and public sector joint development participants.
4. Define a policy for the replacement of on-site WMATA facilities.
5. Define terms under which WMATA will sell joint development properties to Compact jurisdictions.
6. Define WMATA's community involvement process in the joint development program.
7. Define processes for evaluating and estimating joint development project benefits, including cash value, the development of new transit facilities, fiscally positive operating impacts, provision of housing to support staff recruitment, and other benefits.
8. Define processes for dealing with unsolicited proposals and special situations involving adjacent property owners.
3.0 SCOPE OF POLICIES AND GUIDELINES

These Joint Development Policies and Guidelines apply to joint development projects to which WMATA is a party. They do not apply to:

1. System interface projects: Projects that have direct connections between WMATA's facilities and adjacent development owned by others. These projects are managed under separate procedures established by the Board.
2. Adjacent construction projects.
3. Interim leasing of WMATA-owned land.
4. Excess property dispositions: Properties that are no longer needed by WMATA with no ongoing WMATA interest.

4.0 POLICIES OF LOCAL JURISDICTIONS AFFECTING JOINT DEVELOPMENT

WMATA coordinates closely with local jurisdictions to implement its joint development program. Additionally, WMATA requires its selected developers to work with local jurisdictions throughout the joint development process. The policies that influence joint development activity in local jurisdictions are generally contained in planning, land use and related documents, such as comprehensive plans, sector or station area plans, zoning ordinances and maps, adequate public facilities ordinances and capital improvement programs. These policies may also be reflected in regulations or laws related to the replacement of transit access facilities and/or the availability of funding for transit access investments, such as pedestrian and bicycle paths, sidewalks/parking spaces, pedestrian bridges and tunnels, etc. Interested parties may obtain these documents and plans by contacting the jurisdiction involved. In addition, developers are required to seek the views of the local jurisdiction prior to submitting a proposal to WMATA.

WMATA welcomes the participation of jurisdictional representatives in all phases of its developer selection process, however, only WMATA staff may participate in assigning ratings to each proposal received.

5.0 MAJOR ROLES AND RESPONSIBILITIES IN THE JOINT DEVELOPMENT PROGRAM

The WMATA joint development program is implemented through the combined efforts of the Board, the General Manager, WMATA staff, local jurisdictions, developers and the community. Their major roles and responsibilities are outlined below:
5.1 The WMATA Board of Directors

The WMATA Board of Directors establishes joint development policies, exercises specific approvals within the joint development process, and maintains oversight of the joint development program. The Board has specific responsibilities to authorize joint development solicitations, approve developer selection and a non-binding term sheet based on a staff recommendation, and approve terms of a lease or sales agreement (the final contract) with the designated developer.

The Board’s responsibilities include:

1. Authorization of joint development solicitations.
2. Approval of developer selection and a non-binding term sheet based on a staff recommendation.
3. Approval of terms of a lease or sales agreement (the final contract) with the designated developer.
4. Approval of amendments to Joint Development Agreements having one of the following: (a) a value over $500,000, (b) an assignment or a change in ownership or development team composition, or (c) any material amendment to that reduces compensation to WMATA, extends the Term or changes proposed uses or elements.
5. Additionally, the WMATA Board authorizes Authorization of a public hearing, prior to final site plan approval by the local jurisdiction, when such hearing is required because of a substantial change to WMATA facilities on site or a change to the site access.

In fulfilling these roles in the Joint Development program, the Board must comply with the Code of Ethics for Members of the WMATA Board of Directors.

5.2 General Manager and WMATA Staff

The General Manager is responsible for the overall management, administration and conduct of joint development activities on behalf of WMATA. Included among these responsibilities are:

1. Establishment of development goals and station access needs through planning.
2. Establishment of a process leading to internal and external decisions on use of WMATA property.
3. Prioritization of projects and establishing overall program pace to achieve highest quality project outcomes.
4. Establishment of annual work programs that broadly emphasize enhancement of land development potential and, ultimately, development of land, and more specifically, include: station access planning; participation in, and advocacy for,
station area TOD planning; marketing of development opportunities; selection of development partners; and negotiation of final agreements.

5. Minimization of time required to reach agreement with development partners.

6. Presentation of development projects to communities along with local jurisdictions and developers.

7. Collaboration with developers to obtain zoning and development approvals (with the level of WMATA involvement dependent on project specifics).

8. Use of mechanisms that maximize developer interest and competitive pricing of joint development projects.

As used in these Policies and Guidelines, "staff" means the General Manager or staff designated by the General Manager.

5.3 Local Jurisdictions

Jurisdictions with joint development policy interests in the WMATA Transit Zone include: the District of Columbia, Arlington, Fairfax, Montgomery and Prince George's counties, and the cities of Alexandria, Falls Church, Fairfax and Rockville. While not strictly a "local jurisdiction", the Commonwealth of Virginia and State of Maryland as transit operators and funders of WMATA operations and capital projects have a clear policy interest in WMATA's joint development program, and are treated as a local jurisdictions for the purposes of these Guidelines.

Reflecting the fact that different agencies of each local jurisdiction bring to bear different information and diverse policy perspectives, WMATA understands that the term "local jurisdiction" does not suggest that any single agency or elected representative of a local jurisdiction completely represents local jurisdictional policies. The term "local jurisdiction" as used here implies a broad range of agencies and jurisdictional representatives taken together, including planning, transportation, housing, economic development, parks and recreation, etc. As used herein, "consultation," "coordination," and "collaboration" with local jurisdictions (excepting the State of Maryland) means coordinated efforts with: designated representatives of the executive branch; an appropriate or designated representative of the legislative branch; and - where it may be an independent agency - appropriate representatives of the local land use planning authority. Should a particular station or transit facility be located within both a "local jurisdiction" and a local municipality that is a political subdivision of the local jurisdiction, "consultation," "coordination," and "collaboration" will be similarly understood to include representatives of executive, legislative, and - if separate - planning authorities.
The District of Columbia, Arlington, Fairfax, Montgomery and Prince George's counties, the cities of Alexandria, Falls Church, Fairfax and the State of Maryland may be referred to herein as “Constituent Jurisdictions”.

Each local jurisdiction plays an important role in the planning and implementation of WMATA joint development projects.

A. WMATA and local jurisdictions maintain ongoing, informal communications regarding planning and zoning changes at and around WMATA sites; developer interest in such sites; and jurisdictional TOD planning and initiatives.

B. Local jurisdictions participate with WMATA and consultants in identifying sites to be assessed for joint development potential, analyzed in terms of their station access needs, and/or offered as joint development projects.

Local jurisdictions, at their discretion, are encouraged to directly sponsor joint development projects within their boundaries. Provided that these projects are consistent with WMATA transit planning goals and TOD principles, WMATA will collaborate with local jurisdictions to advance these projects and to establish, through coordinated planning, the maximum transit-oriented development benefits possible.

1. Local jurisdictions participate in the review and evaluation of non-economic aspects of developer proposals. WMATA recognizes that certain local jurisdiction policy positions may depend on economic values offered to WMATA by joint development project proposals. WMATA will share project economic information with local jurisdiction representatives to the extent possible without compromising proposer confidentiality requirements and without unduly weakening WMATA’s ability in negotiations with proposers to achieve the greatest transit and/or economic return possible.

2. WMATA’s joint development solicitations encourage developers to contact local jurisdictions to obtain land use and zoning information about a site prior to submitting joint development proposals to WMATA. In addition, developers are required to meet with community organizations that have been identified by the local jurisdictions as those that would be interested in the development of a site within their area.

3. Local jurisdictions are asked to designate a person or office as the liaison to WMATA for joint development activities.

4. Local jurisdictional representatives receive a briefing from WMATA staff when proposals are received.
5. Local jurisdictional representatives are invited to participate in any oral presentations by the developer to WMATA's technical evaluation committee. Developers are required to organize their presentations into two segments:
   a) land use proposals, zoning actions required, construction schedules; and
   b) financial offer to WMATA. (Local jurisdictional representatives do not participate in the discussion of the second segment.)

6. If desired, the local jurisdictions participate with the developer in informational meetings with the community organizations that have been identified by the affected jurisdiction.

7. Local jurisdictions are invited to submit formal comments during the evaluation of development proposals submitted in response to a formal solicitation or unsolicited proposal.

8. After selection of a developer by the Board, local jurisdictions continue their involvement.

9. Local jurisdictional staff are provided periodic updates and status reports by WMATA staff.

10. Developers' site plans are reviewed by WMATA with input from local jurisdictional staffs.

11. Local jurisdictions may sponsor community forums and invite WMATA staff and developers to participate.

12. WMATA works cooperatively with local jurisdictions on any required zoning and other actions by the local jurisdictions.

13. Local jurisdictions review and approve (or disapprove) the developers' site and project plans through local policies, land use plans, zoning and development-related capital improvements.

14. Following approval of the development by the local jurisdiction, but prior to final site plan approval, when such is required due to a major change to transit facilities such as customer parking or access to the site, a WMATA Compact public hearing is required. The affected local jurisdiction will be invited to be a participant in that public hearing process.

5.4 Developers

Public and private development entities, land owners or their agents may participate in planning as well as in implementation phases of the joint development program. Examples of such participation and implementation are as follows:

1. Developers or other interested parties may initiate unsolicited proposals for a WMATA property at any time. Such proposals are processed in accordance with the procedures provided in Section 14 (unsolicited Proposals).
2. Potential developer(s) are required to meet with the local jurisdiction and interested community organization(s) to share information about a pending proposal submission to WMATA and to seek their views prior to submitting the proposal to WMATA. At these meetings, the developer is expected to share as much detailed information as possible about his/her proposed project. As part of the submission to WMATA, the developer will provide information about the meetings held with the local jurisdiction and interested community organizations, including an identification of issues raised at the meetings and how his/her proposal addresses them. The developer will also include in the submission how the proposed project meets the goal of achieving transit-oriented development.

3. Proposals will be processed as set forth in Sections 6.0, 7.0 and 8.0 herein.

4. A selected developer will, with WMATA’s assistance, obtain all necessary plan approvals, zoning and permits from the local jurisdiction.

5. In coordination with WMATA, a selected developer will plan and construct, typically at their cost and expense, any and all required replacement facilities at the joint development site. The plans for replacement facilities will be subject to WMATA approval.

6. A selected developer will plan, construct and operate a joint development project in accordance with pertinent joint development agreements and jurisdictional laws and requirements.

7. WMATA encourages developers to include Disadvantaged Business Enterprises in their joint development projects, and will assist developers in identifying such firms.

5.5 Community

WMATA staff is required to meet with local jurisdictions and potentially affected communities prior to the solicitation of development proposals. If WMATA staff has participated in a recent jurisdictional planning process at which future development of the site is discussed, that may satisfy the requirement of this section. Potential developer partners will also be required to meet with the local jurisdiction and interested community organizations to share information about pending proposal submissions to WMATA and to seek local and community views prior to submitting proposals to WMATA. At these meetings, developers are expected to share as much detailed information as possible about proposed projects. As part of submissions to WMATA, developers will provide information about the meetings held with local jurisdictions and interested community organizations, including identification of issues raised at the meetings and how proposals address them.
Sections 6.0, 7.0 and 8.0 describe the procedures followed for joint development. The stages are illustrative; they are not mandatory; and they may not be necessary for each joint development project. A separate set of procedures applies to the processing of unsolicited proposals.

6.1 Joint Development Objectives

The program objectives listed below have been developed to address issues that are critical to achieving high-quality joint development outcomes quickly and with broad support.

1. Before soliciting price-competitive proposals, create as much development certainty as possible via planning in conjunction with stakeholders as to land use and station access.
2. Streamline the proposal process as much as possible.
3. Have flexibility to match developer selection processes to transit needs and site specifics.
4. Use the station access planning process—whether prior to an RFP or broker-managed process, or simultaneously with an RFQ process—to build value into transit development projects through such techniques as shared parking, pre-development provision of replacement parking, developer or local jurisdiction provided and operated parking, etc.
5. Have the flexibility to incorporate fiscal impacts and benefits into the overall assessment of project economic benefits.
   A. Use all available approaches to maximize development industry interest, including use of private partners, agents, and/or brokers where appropriate to maximize awareness and interest.

6.2 Procedures

6.2.1 Introduction

Joint Development employs a competitive selection process to which the provisions of the WMATA Procurement Procedures Manual do not apply.

6.2.2 Outline of Steps in Competitive Selection Process (as further detailed in subsequent Sections):
A. Staff creates a list of sites which potentially could be offered for joint development
B. Station access planning to include
   (i) consultation with relevant WMATA offices,
   (ii) consultation with local jurisdictions, and
   (iii) community input
C. Assessment of zoning and market readiness
D. Board approves solicitation for a particular site and method of solicitation

6.2.3 The Staff List of Joint Development Sites

The list of sites to be studied for possible joint development will be derived from requests from local jurisdictions, general market readiness as determined by staff but which may be based on advice or rankings provided by an outside consultant(s), and staff resources.

6.2.4 Station Access Planning

"Station access planning" as used herein includes, where appropriate, planning for joint development projects at non-station WMATA facilities such as bus garages or air rights over right of way, in addition to planning at Metrorail stations.

Before soliciting interest in any given joint development project, WMATA will complete a station access planning study—in coordination with any affected local jurisdiction and with relevant WMATA offices, and with any affected community—to establish the station access needs at a station or other property experiencing joint development. This study will be conducted in coordination with any affected local jurisdiction and with relevant WMATA offices, and with any affected community.

It will be a goal of WMATA’s joint development program - to the extent that staff and funding resources permit, and that local planning priorities coincide with WMATA station access planning and joint development program priorities - to undertake station access planning in concert with local sector plan or other relevant planning exercises so that, at the conclusion of local planning studies, WMATA’s station access plan needs are well understood and can be reflected in local sector plan documents.

WMATA station access planning studies will typically have two key components: (1) a functional needs assessment that is not design or location specific; and (2) concept designs that identify potentially feasible transit facility locations. Certain station access designs - such as those for second new entrances - may be more independent of station area development planning needs than others and in these cases a range of potential design
schemes will likely be identified. Certain other station access facilities - such as parking - may be more difficult to assign locations and designs in the absence of a development partner with which development schemes can be negotiated. For these facilities, station access plans will give greater attention to functional needs and "performance standards" compared to specific designs.

In general, though, WMATA station access plans will address both the amount of each specific type of transit access facility that is needed, and at a concept level subject to the considerations described above will also identify where, optimally, such facilities might be located on or around the station site, and will evaluate operational impacts. (This is not intended to foreclose new ideas that may be submitted through the solicitation process.) The study will make use of existing studies, such as the WMATA Regional Bus Study.

The amount, kind, and location of planned transit access facilities will be complementary to the station area development environment as it has developed, is developing, or is expected to develop compared to the prevailing or expected station area development environment at the time the station was originally built, and consistent with the most current station area planning documents.

Station access planning studies will also consider the role that station bus facilities play in the structure of bus services that serve the station. Subject to the design considerations described above, the study may also include the location of new or relocated WMATA facilities on the site.

The local jurisdiction and the WMATA Board members from that jurisdiction will be asked to provide WMATA with a list of community organizations, including municipalities, community groups, civic associations and ANCs, that could be interested in participating in the station access planning process. (Note: The list of interested organizations will be included in the joint development solicitation, if available. Otherwise, the list will be provided to potential developers upon request.) As described above, it will be the goal of the joint development and station access planning programs to coordinate station access and joint development studies as closely as possible with local planning studies and exercises.

In certain cases, it may be desirable to create a Memorandum of Understanding ("MOU") with the local jurisdiction and possibly other stakeholders to specify outreach and procedures, including potential developer proposal evaluation factors, developer selection and negotiation timetables, or other joint development project elements that may be of interest to local jurisdiction and other stakeholders. If this is done, the MOU shall be subject to WMATA Board approval. WMATA staff will have the sole responsibility for preparing materials related to this section for Board approval.
6.2.5 **Assessment of Zoning and further Market Readiness**

Once the Station Access Plan is complete, staff will assess whether the current zoning and/or jurisdictional comprehensive plan align with the Station Access Plan. If changes are needed, staff will consult with jurisdictional representatives as to the local process and whether a possible solicitation should move forward or whether it should wait for changes to the current zoning and/or jurisdictional comprehensive plan. WMATA will also assess the general readiness of the site for development based on market conditions.

6.2.6 **Board Authorization**

The General Manager will request that the Board authorize the issuance of a solicitation document for a specific site. The request shall specify which of the solicitation processes given in the Guidelines will be employed, and the reasons for selecting that process. Upon Board approval, the solicitation will be issued.

6.2.7 **Development and Issuance of Solicitation Document**

The solicitation document will reflect the Board approved method according to the process given in the following sections. Normally, a solicitation will include the following competitive selection procedures:

1. Advertisement of the availability of the solicitation in a manner that uses print and/or electronic media to reach potentially interested parties and notify the general public. local and national newspapers.
2. A pre-proposal conference, if needed, to respond to questions from prospective respondents.
3. A proposal due date and a schedule for WMATA to evaluate proposals and make a selection.
4. Review and evaluation of proposals as set forth in Sections 7.0 or 8.0.

6.2.8 **Alternate Processes**

Sections 7.0 and 8.0 below outline alternate processes that may be used to conduct a solicitation. These alternates are intended to provide flexibility to design a solicitation document best suited to the particular situation of a given property. Some may be in areas with established land use patterns and recent, local zoning and/or comprehensive plan reviews; others may have unique site conditions or be in areas about to go through a thorough review and updating of land use and transportation access options. In either process, WMATA will dispose of property via long-term lease, sale, combination lease/sale,
or other arrangements. (WMATA prefers transactions other than the sale of its property, but will consider a sale, if it is determined to be consistent with WMATA1S interest, necessary to pursue an effective project, or necessary to meet important transit needs.)

WMATA encourages developers to include Disadvantaged Business Enterprises in their joint development projects, and will assist developers in identifying such firms. [This statement has been relocated to Section 5.5]

7.0 COMPETITIVE SELECTION PROPOSAL (“RFP”) PROCESS

7.1 Outline of the Process

A. Internal WMATA screening
B. Consultation with local jurisdiction
C. Station access plan
D. Alternate Step-Request for Prior Experience (“RFPE”) 
E. Advertise solicitation, by staff or (subject to advice of Counsel) third party advisor; obtain WMATA Board approval, including step "B" above if utilized
F. Order appraisal
G. Initial evaluation
H. Community forum
I. Final evaluation
J. Select developer, negotiate Term Sheet, establish negotiation and closing milestone schedule, and obtain WMATA Board Approval
K. Negotiate Joint Development Agreement and related documents; obtain WMATA Board approval
L. Compact Public Hearing; obtain WMATA Board approval
M. Federal Transit Administration (“FTA") approval, if required

7.2 Station Access Planning

Conduct station access planning process as outlined in Section 6.2.4.

7.3 Alternate Step—RFPE

An optional first step in the solicitation process is to seek Requests for Prior Experience from developers in order to create a "short list" of qualified developers. This step might be used when there are doubts about the marketability of a site, and to elicit developer interest without requiring the time and expense of a response to a formal solicitation.
The step might also be used when numerous responses are anticipated in order to pre-qualify respondents. The criteria for selecting such developers shall include prior experience in developing projects of the type and size contemplated, financial capacity to complete the project, prior experience in dealing with communities, members of the project team, and the specific personnel to be assigned to the project. Prior experience in public/private transactions may also be considered.

7.4 Advertise Solicitation

To promote fair and open competition, WMATA will publicize its joint development opportunities in print and/or electronic media with wide circulation and on WMATA's web site, and as necessary, through public events. WMATA may conduct the solicitation itself or may employ a third party such as a real estate advisor to conduct the solicitation. If the latter, staff will provide an explanation of why the use of a third party is desirable in the particular case, and the use of such third party must be approved by the WMATA Board. The solicitation shall contain a description of the station access needs resulting from the station access planning process including those that are requirements of the solicitation, a summary of desired/undesired uses based on consultations with the local jurisdiction, information on pre-proposal conferences and response due dates, a requirement that developers meet or otherwise communicate with community groups, and any other relevant requirements of the solicitation.

7.5 Appraisal

Based on the terms of the solicitation, WMATA staff will order an appraisal of the property typically from a third party appraiser, but according to the policies in effect at the time.

7.6 Initial Evaluation

In evaluating proposals, WMATA will use commercially reasonable business practices, consistent with FTA's requirements, which include the following:

**Technical**

1. Degree to which the project reflects transit-oriented development principles
2. Market/financial viability of the joint development project
3. Development team experience and prior performance
4. Innovation and creativity
5. Compatibility of development with local requirements and transit area
6. Effects on WMATA facilities
Economic

1. Enhanced Metrorail and Metrobus ridership
2. Financial benefits accruing to WMATA and the local jurisdiction
3. Joint development project completion time-line

Integrity, Business Ethics, and Conflicts of Interest

As a condition of award, each offeror shall self-certify as to its integrity and business ethics using a form required by WMATA (Exhibit 1 to these Policies and Guidelines). An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award. The offeror shall provide immediate written notice to WMATA if at any time it learns that its certificate was erroneous when submitted or has become erroneous by reason of changed circumstances.

Additionally, the offeror shall identify all individual team members, their organizations, and their titles within their organizations (See Exhibit 2 to these Policies and Guidelines). Individuals listed shall include partners, principals, project leaders, as well as any other person who will have an active role in project management and decision making. This information shall be submitted as part of offeror’s initial response to a solicitation and updated and resubmitted at every stage in the process where Board action is required.

Other Non-Direct Benefits

WMATA may also consider non-direct compensation benefits such as the provision of affordable housing for WMATA employees or special enhancements to transit system ridership over and above those normally provided by joint development.

7.6.1 Material Change

If, after receipt of proposals, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted proposals and they shall be afforded an opportunity to amend their proposals accordingly.

7.6.2 Unresponsive Proposals

WMATA will review the proposals, and identify those proposals reasonably susceptible of being selected for award screening against the selection criteria established above, including developer competency and financial capacity, and satisfaction of the requirements
set out in the marketing or solicitation document, including the community contact requirement. Any proposals which do not meet published requirements and guidelines, and any proposals not reasonably susceptible for selection, may be rejected by WMATA staff as unresponsive.

7.6.3 Evaluation Meetings

WMATA may, but is not required to, meet with each developer who submitted a proposal to receive a developer presentation and conduct specific discussions about the proposal. The discussions will include identifying areas of the proposal that require clarification, improvement, or do not comply with the marketing document. Developers may be requested to submit revised proposals based on the discussions. (Local jurisdictional representatives will be invited to participate in evaluating a proposer's development concept and provide questions/comments to WMATA for discussion with the developer.)

7.7 Community Forum

After the initial evaluation, WMATA staff may organize, in cooperation with the local jurisdiction, a community forum to explain proposed changes to WMATA facilities, and to obtain community input as to the technical (non-financial) aspects of the proposals.

7.8 Final Evaluation

Staff may request best and final offers from developers and then will rate each responsive proposal and rank the proposals in accordance with Section 7.6. Staff will then make a tentative developer selection and commence negotiation of a non-binding term sheet that outlines the major business terms of the project. If negotiations are unsuccessful, Staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, staff may enter into competitive negotiations with two or more ranked developers. In the situation in which WMATA receives competitive proposals but only one proposal meets or exceeds the appraised value of the WMATA site, and there are no other special or transit benefits to WMATA, the proposals do not have to be scored and ranked. Rather, the one proposal which meets or exceeds the appraised value of the joint development site will be considered using the criteria in accordance with Section 7.6 above.

7.9 Developer Selection

Once the principal terms of a potential developer's project have been reduced to a term sheet, staff will forward the developer selection recommendation and the term sheet to the
WMATA Board for approval. Staff will also identify the expected timeline and major milestones for completion of negotiations and project closing. A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Board has approved the final negotiated contract.

7.10 Joint Development Agreement

If the Term Sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer that incorporates the terms of the term sheet. A summary of the completed Joint Development Agreement, highlighting significant new terms as well as material changes from the term sheet, will then be forwarded to the WMATA Board for approval.

7.11 Compact Public Hearing

If a WMATA Compact Public Hearing is required due to a major change to transit facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing.

7.12 FTA Approval

If required, the station changes and terms of the Joint Development Agreement will be submitted to the Federal Transit Administration for approval under FTA's requirements, including those stated in Section 13 of these Policies and Guidelines.

7.13 Unsolicited Proposals

Proposals received for development of a site owned by WMATA that were not in response to a specific marketing effort (Unsolicited Proposals) will be evaluated as provided in Section 14.

7.14 Adjacent Property Owner

WMATA may negotiate a joint development agreement with an adjacent property owner without competition and without advertising the availability of the WMATA site provided that there is only one adjacent property owner or only one interested adjacent property owner, who WMATA has determined can take advantage of the joint development opportunity due to site constraints or other limiting factors. (One example would be the situation in which the WMATA parcel is small and one party owns all of the surrounding property.) Such a negotiation must be conducted consistent with principles given in
Sections 6.2.4 and 6.2.5, and Sections 7.5 through 7.12 (modified to reflect a non-competitive selection process).

7.15 Confidentiality of Financial Proposals

WMATA will hold in confidence the financial benefits accruing to WMATA of all proposals until a Joint Development Agreement is approved and executed. Upon approval by the Board of Directors, WMATA staff will maintain all information received for joint development projects, including any confidential business information, in accordance with WMATA's Privacy and Public Access to Records Policies (PARP). All other aspects of the proposals may be reviewed and publicized at public hearings, town meetings, and similar public forums, or as otherwise provided in these Guidelines.

7.16 Subsequent Process

The selected developer will then go through any land use, zoning, permitting or entitlement processes required by the local jurisdiction, including any public hearings.

8.0 COMPETITIVE SELECTION QUALIFICATION (“RFQ”) PROCESS

8.1 Outline of the Process

A. Internal WMATA screening
B. Consultation with local jurisdiction
C. Obtain WMATA Board approval to advertise for developers based on qualifications
D. Select developer; obtain WMATA Board approval
E. Jointly with developer, enter into planning process with jurisdiction, community and other local stakeholders. Establish plan for station access needs and land use
F. Order appraisal
G. Negotiate price and term sheet; obtain WMATA Board approval
H. Negotiate Joint Development Agreement; obtain Board approval; negotiate related documents
I. Compact Public Hearing (Could be after C), obtain Board approval
J. FTA approval, if required

8.2 Introduction

This process is intended to be used when there are special site conditions, when the jurisdiction is about to begin a master plan revision or rezoning, or other situations for which it would be desirable to have a developer in place to provide input as to the effect of
options on potential development, and to participate in the process. This process may also be used in cases where there are large sites with multiple phases and therefore when special development qualifications are needed.

8.3 Advertise for Developers Based on Qualifications

To promote fair and open competition, WMATA will publicize its developer selection opportunities in print and/or electronic media with wide circulation and, as necessary, through public events. The solicitation shall contain a description of the developer qualifications sought, the subject station and processes in which the developer would be asked to participate (such as comprehensive plan amendment), the requirements of the solicitation, information on pre-submission conferences and response due dates, information on the WMATA process leading to price determination and Board approvals, and any other relevant requirements of the solicitation.

8.4 Developer Selection and WMATA Board Approval

8.4.1 Criteria

The criteria for selecting such developers shall include prior experience in developing projects of the type and size contemplated, financial capacity to complete the project, prior experience in dealing with communities, qualifications and experience of members of the project team, and the specific personnel assigned to the project. Prior experience in public/private transactions may also be considered. As a condition to becoming the selected developer, each proposer shall self-certify as to its integrity and business ethics using a form required by WMATA (Attachment One to these Policies and Guidelines). An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award. The offeror shall provide immediate written notice to WMATA if at any time it learns that its certificate was erroneous when submitted or has become erroneous by reason of changed circumstances. A submittal from a proposer in response to these criteria shall be collectively referred to herein as the proposer's "Qualifications." Where local stakeholders desire to participate in the process, evaluation criteria for reviewing developer Qualifications should be established in collaboration with local jurisdiction stakeholders. Evaluation criteria may include evaluation factors or mutual WMATA and local jurisdiction interest including, for example, demonstrated experience in hiring local contractors, DBE contractors, etc. It is clearly understood, however, that WMATA staff will be solely responsible for making recommendations to the Board regarding the criteria that will be used for evaluation of Qualifications under the RFQ process.
8.4.2 Material Change

If, after receipt of Qualifications, material change occurs with respect to matters published in the marketing document or the joint development site, notice of such change shall be provided only to developers who submitted Qualifications and they shall be afforded an opportunity to amend their Qualifications accordingly.

8.4.3 Threshold Evaluation

WMATA will review the Qualifications, and identify those Qualifications reasonably susceptible of being selected for award screening against the selection criteria established above, including developer competency and financial capacity, and satisfaction of the requirements set out in the marketing or solicitation document. Any Qualifications which do not meet published requirements and guidelines, and any Qualifications not reasonably susceptible for selection, may be rejected by WMATA staff.

8.4.4 Developer Meetings

WMATA may, but is not required to, meet with each developer who submitted Qualifications to receive a developer presentation and conduct specific discussions about the Qualifications. The discussions will include identifying areas of the Qualifications that require clarification, improvement, or do not comply with the marketing document. The proposers may be requested to submit revised Qualifications based on the discussions.

8.4.5 Selection

Staff will rate responsive Qualifications and rank the Qualifications based upon the selection criteria. Where a local jurisdiction and other stakeholders express interest in participating in the Qualifications evaluation process, WMATA staff will accommodate that interest by sharing Qualifications information and by including stakeholders in evaluation discussions. In the event that local jurisdiction and other stakeholders desire to participate in Qualifications evaluation in this manner, they will be invited to participate in a developer selection advisory committee and to participate in all developer interviews and all Qualifications information submitted to WMATA will be made available to stakeholders participating in the advisory evaluation process. All evaluations prepared by stakeholders will remain strictly advisory. WMATA staff will be solely responsible for conducting evaluations and making selection recommendations for submission to the WMATA Board. Staff will then make a tentative developer selection and commence negotiations on a Memorandum of Understanding which outlines the terms of how the parties will proceed with the project, and the responsibilities of each. If negotiations are
unsuccessful, staff may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, staff may enter into competitive negotiations with two or more ranked developers.

8.4.6  Memorandum of Understanding

The Memorandum of Understanding sets out agreement on a process, but does not contain a price for development rights and other terms of a development agreement. Once the Memorandum of Understanding has been agreed upon by WMATA and the developer, staff will forward the developer selection recommendation and the Memorandum of Understanding to the WMATA Board for approval. There is no binding agreement for a development project between WMATA and the selected developer, and any Developer investment is at risk, until the Board has approved a final negotiated Joint Development Agreement.

8.5 Establish Plan for Station Access and Land Use

WMATA and the selected developer will enter into the process to develop the access needs of the station and land use parameters around the station, pursuant to the terms of the approved Memorandum of Understanding.

8.6 Appraisal

Based on the results of the station access and land use process, WMATA staff will order an appraisal of the property development rights typically from a third party fee appraiser, but according to the policies in effect at the time. The appraisal should reflect the station access needs, which are intended to become the cost of the developer in subsequent development of the station site.

8.7 Price Financial Terms and Term Sheet

Staff will commence negotiations on a term sheet that outlines the major business terms of the project, including price to be paid financial terms of payment for the development rights. If negotiations are unsuccessful, Staff may terminate negotiations and re-advertise the station development rights pursuant to section 7.0 (excluding 7.13 and 7.14) herein. As soon as the principal terms of a term sheet have been agreed upon, staff will forward the recommended selected developer and the term sheet to the WMATA Board for approval. A term sheet entered into with a developer is non-binding and does not constitute a contract; there is therefore no binding agreement between WMATA and the selected developer until the Joint Development Agreement is signed by both parties.
8.8 Joint Development Agreement

If the Term Sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer that incorporates the terms of the term sheet. A summary of the completed Joint Development Agreement, highlighting significant new terms as well as material changes from the term sheet, will then be forwarded to the WMATA Board for approval.

8.9 Compact Public Hearing

If a WMATA Compact public hearing is required due to a major change to transit facilities such as customer parking or access to the site, the selected developer will be required to participate in the public hearing process and fund the costs of the public hearing.

8.10 FTA Approval

If required, the station changes and terms of the Joint Development Agreement will be submitted to the Federal Transit Administration for approval under FTA's requirements, including those stated in section 13 of these Policies and Guidelines.

9.0 WMATA Transit Access Facility Replacement

WMATA will work with the local jurisdiction to determine the appropriate transit access facility replacement for each joint development project at a Metrorail station. It is WMATA's policy that transit facilities displaced by joint development be replaced to ensure that the same number of transit riders is accommodated and the balance of transit access facilities at a given station can be altered to reflect the transformation of the station and the area around it to a pedestrian-friendly, transit-oriented community. In this process of transformation, underutilized facilities may be reduced (e.g., parking) and new facilities provided (e.g., bike stations) based on station access needs. An analysis of the costs and benefits of alternative transit facility replacement scenarios will be conducted and will be shared with the local jurisdiction as well as public agency staff and community members in public meetings. Part of such an analysis must include maintaining appropriate access via bicycle, bus (including local jurisdictional systems), and pedestrian (including ADA). The documentation of this analysis will be incorporated into concise and comprehensible public presentation materials. If not incorporated into a prior Board presentation for its review and approval, the materials will be included in any final compact hearing staff report materials presented to the Board for review and decision.

10.0 Sale of Property to Compact Jurisdictions
10.1 Policy for Sale of Property to Compact Jurisdictions

When WMATA offers a property for sale, and one of its Compact jurisdictions wishes to purchase the property, WMATA will sell it to the jurisdiction provided: 1) WMATA receives a price equal to at least the appraised market value; 2) the jurisdiction agrees to the station upgrades, changes, and/or reservations contained in the offer, and agrees to bear the cost thereof; and 3) the jurisdiction agrees that if the value of the property is increased due to approval of a higher density allowance or other similar zoning action, or if the property is sold by the jurisdiction at a sale price in excess of the price paid to WMATA, then WMATA will shall receive one hundred percent (100%) of the additional value so created or obtained. If required, the transaction will be subject to FTA approval.

In the case where the Compact jurisdiction initiates a proposed sale, the same standards as above will apply with the following modifications: (a) WMATA shall screen the property internally and may refuse to sell if WMATA has an intended use for the property; (b) WMATA may require certain station upgrades or changes to be made by the jurisdiction; (c) there will be no adverse impact on WMATA operations or facilities; and (d) in the situation where the sale is for a non-transit purpose, the appraised fair market value will take into consideration loss of potential development revenue in situations where there are impacts beyond the property being purchased.

11.0 Advocacy for Joint Development and Transit-Oriented Development in Local Planning Processes

Provided that adequate staff resources are available, and there are meaningful opportunities for WMATA staff input, WMATA staff will participate cooperatively in local planning processes to advocate for conditions that will facilitate joint development projects that will create TOD, value for WMATA, and will create improvements in WMATA's transit facilities, and improvements in access to transit.

12.0 Affordable Housing

WMATA recognizes the importance of providing affordable housing consistent with the policies of the local jurisdiction in which a project is located. Toward achieving this objective, WMATA’s affordable housing policy shall be as follows:

- All developers proposing residential projects on WMATA-owned property shall comply with the minimum affordable housing requirements of the jurisdiction where the property is located.
To maximize value to WMATA, developers are encouraged to seek creative sources of financing (low-income housing tax credits, grants, other Federal and local funding programs) toward achieving any local jurisdiction affordability requirements.

13.0 RESOLUTION OF CONFLICTS WITHIN THE AUTHORITY

The Chief of Staff (or the person occupying any successor position) will be designated to quickly resolve conflicts within the Authority in evaluating plans for joint development.

14.0 FTA REQUIREMENTS

If required, WMATA joint development projects must meet the following FTA-mandated requirements: projects must (1) enhance economic development or incorporate private investment; (2)(a) enhance the effectiveness of a public transportation project and relate physically or functionally to that public transportation project, or (b) establish new or enhanced coordination between public transportation and other transportation; and (3) provide a fair share of revenue for public transportation that will be used for public transportation. Private investment need not be monetary; it may take the form of cash, real property, or other benefit to be generated initially or over the life of the joint development improvements.

WMATA will submit to FTA a Joint Development Checklist and Certificate of Compliance, or whatever successor documents as may be required by future amendments to the FTA regulations. WMATA should substantiate compliance with all of the statutory elements discussed in the FTA Joint Development Guidelines. Reference FTA's joint development authority (49 U.S.C. 5302 (A)(1)(G) and section (1)(a) of FTA Guidance on the Eligibility of Joint Development Improvements under Federal Transit Law (72 Fed. Reg. 5788, 5790 (February 7, 2007 and any successor Guidance issued by the FTA), and any successor Guidance issued by the FTA); also 49 CFR 18.31and 49 U.S.C. 5334(h).

In approving a joint development project, the Board shall determine, following reasonable investigation, that the terms and conditions of the joint development improvement (including without limitation, the share of revenues for public transportation that shall be provided as part of the project) are commercially reasonable and fair to WMATA, and that such revenue shall be used for public transportation.

15.0 TRANSFER OF DEVELOPMENT AGREEMENTS

Given the long-term nature of ground leases associated with Joint Development projects, it is expected that developer and/or development team composition may change over time.
Any subsequent project owner or development team member is subject to all requirements in these Policies and Guidelines, including the certifications outlined in Exhibit 1.

Prior to the completion of the construction phase of the Joint Development project, Developer must notify and obtain WMATA’s prior written approval of any proposed assignment or change in ownership or development team composition. Subsequent to the completion of the construction phase of the Joint Development project, Developer must notify WMATA of any proposed assignment or change in ownership or development team composition. When such changes occur, the developer must provide an updated listing of development participants/principals using the form provided in Exhibit 2 of these guidelines.

Note that for each project, the project-specific Joint Development Agreements will identify any additional specific requirements, limitations, and WMATA approvals relating to the subsequent transfer of development agreements.

16.0 UNSOLICITED PROPOSALS

16.1 General

Proposals received for development of a site owned by WMATA that were not in response to a specific marketing effort (Unsolicited Proposals) will be evaluated as follows:

16.2 Screening

The proposal will be screened with internal WMATA departments. If such screening reveals an operational use of the property, the unsolicited proposal will be rejected. (Unlike screening of excess properties, this is intended to apply to, for example, bus garages for which no replacement site has been identified, or a joint development site for which WMATA is planning a new WMATA facility, such as the Ft. Totten police station.)

16.3 Threshold Criteria

The local jurisdiction will be notified in a timely manner in the event that WMATA receives an unsolicited proposal for a property in that jurisdiction. If no station access planning analysis of the site has been conducted - and if, after consultation with the local jurisdiction, joint development project planning is either not supported by local development policy or there are obstacles to conducting station access planning contemporaneously with private project planning and development - then WMATA will not have any obligation to further evaluate the unsolicited proposal, and may reject it.
16.4 Advertising a Proposal

If not rejected pursuant to Sections 14.2 or 14.3, notice of receipt of the unsolicited proposal will be published in the print and/or electronic media along with WMATA’s procedure for processing unsolicited proposals, as provided for in this Section. WMATA staff may decide if the solicitation will be offered as an RFP or an RFQ, as best fits the particular situation. Any proposal or site specific requirements will be included in the notice. Such notice shall contain a reasonable time period for competing proposals to be submitted. When the stated time period expires, no further proposals will be entertained for that site.

16.5 Evaluation - Unsolicited Proposal Only

WMATA will begin evaluating the unsolicited proposal in accordance with Section 7.6 to determine if the proposal merits selection for award of a contract. WMATA may hold a Community Forum as described in Section 7.7. If the proposal does merit selection, staff will negotiate a non-binding term sheet and Joint Development Agreement and forward each to the WMATA Board for approval. Sections 7.11, 7.12, 7.15, and 7.16 will also apply.

16.6 Evaluation - Unsolicited and Competing Proposals

If WMATA receives additional proposals during the time period provided in Section 14.4, any new proposals, including the unsolicited proposal, will be evaluated in accordance with Section 7 (if competed as a RFP) or Section 8 (if competed as a RFQ). Sections 7.6 through 7.12, 7.15, and 7.16.
The offeror hereby certifies to the best of its knowledge and belief that it, any principal of the offeror, any member of the offeror (including a principal of any member that is an entity):

1. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from award of contracts by any governmental entity
2. has not within the past ten years been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a contract or subcontract with a governmental entity; violation of antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating criminal tax laws, or receiving stolen property;
3. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity with commission of any of the offenses enumerated in the previous paragraph;
4. is not in arrears or in default of payment of any money or obligation of a value greater than $3,000 due a governmental entity;
5. has no adjudicated violations nor has paid penalties during the past ten years relating to the housing and building laws, regulations, codes and ordinances of any governmental entity.
6. during the past ten years has not had a license revoked that was issued in accordance with the housing, building or professional licensing laws, regulations, codes and ordinances of any governmental entity.

Principal means an officer, director, owner, partner or other person with management or supervisory responsibilities or otherwise in a position to control or significantly influence the offeror’s activities or finances.

An offeror that is unable to certify o the statements in this certification shall attach an explanation to this proposal. An offeror that fails to execute this certification or fails to provide adequate information for WMATA to evaluate its inability to certify to the statements in this certification may be ineligible for award.

The certification is a material representation of fact upon which reliance will be placed when making award. If it is later determined that the offeror knowingly rendered an erroneous certification, in addition to other remedies available to WMATA, WMATA may in its discretion terminate the contract resulting from this solicitation for default. The offeror shall provide immediate written notice to WMATA if at any time it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Signature: __________________________________________
Title: ______________________________________________
Date: ______________________________________________
EXHIBIT 2: Identification of Participants/Principals in Development Team

Using the table below, the offeror shall identify all individual team members, their organizations, and their titles within their organizations. Individuals listed shall include partners, principals, project leaders, as well as any other person who will have an active role in project management and decision making. This information shall be submitted as part of offeror’s initial response to a solicitation and updated and resubmitted at every stage in the process where Board action is required.

<table>
<thead>
<tr>
<th>Name of Individual</th>
<th>Organization</th>
<th>Title</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signature: ____________________________

Title: ________________________________

Date: ________________________________