



Washington Metropolitan Area Transit Authority

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# **JOINT DEVELOPMENT PROGRAM GUIDELINES**

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**Office of Real Estate and Parking**

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## 1.0 INTRODUCTION

These Joint Development Program Guidelines (“**Guidelines**”) of the Washington Metropolitan Area Transit Authority (“**WMATA**”) are designed to help participants navigate WMATA’s Joint Development program. Together with (1) the *WMATA Joint Development Policies* (“**Joint Development Policies**”) (see [Exhibit 1](#), also available on WMATA’s website), and (2) *WMATA’s Station Area Planning Guide* both posted on [www.wmata.com/realestate](http://www.wmata.com/realestate), provide the objectives, policies and processes that govern the Joint Development program.

WMATA owns and/or controls more properties and facilities than those contained in its Joint Development portfolio. WMATA’s Use Regulations generally govern the use of WMATA property by others. However, Joint Development is excluded from the Use Regulations and is instead governed by these Guidelines.

Please visit [www.wmata.com/realestate](http://www.wmata.com/realestate) for more information on WMATA’s Joint Development program, managed by WMATA’s Office of Real Estate & Parking, which can be contacted by email at [realestate@wmata.com](mailto:realestate@wmata.com).

## 2.0 DISTINCTION BETWEEN JOINT DEVELOPMENT AND TRANSIT-ORIENTED DEVELOPMENT

Joint Development is a subset of “transit-oriented development” (“**TOD**”) and explicitly occurs on property owned by a transit authority. Joint Development is defined in and must comply with the Federal Transit Administration’s (“**FTA**”) *Guidance on Joint Development* (“**FTA Guidance**”)¹ and requires the coordinated development of public transportation facilities with non-transit development such as multifamily housing, office, retail and hotels.

TOD includes real estate development located near and around Metrorail stations (defined as within a half-mile walk of a transit station) and Metrobus corridors (defined as within a quarter-mile walk of a major bus corridor) but is not necessarily located on WMATA-owned property. TOD around Metrorail stations and along Metrobus corridors is important in maximizing transit utilization and ridership growth. WMATA encourages high-density, mixed-use, and pedestrian- and bicycle-connected development at, near and around its transit stations, whether it owns developable property at that station or not.

WMATA’s Board of Directors (the “**Board**”) adopted a TOD policy (see [Exhibit 2](#)), which identifies the primary drivers of TOD-related ridership and actions that can be taken by local jurisdictions and landowners/developers to maximize TOD potential.

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¹ *FTA Circular 7050.1A*, “*Joint Development Guidance*,” dated December 2016 as of this publication and posted online at: <https://www.transit.dot.gov/JointDevelopment>.

### 3.0 SCOPE OF GUIDELINES

These Guidelines apply to Joint Development projects only. They do not apply to the transactions noted below. Requirements for these are contained in the documents listed.

Desired Transaction Type	Transaction requirements are contained in:
Sale of excess property	FTA Circular 5010.E1 <sup>2</sup>
Leasing or interim uses of WMATA property	WMATA's Use Regulations <sup>3</sup> and FTA Circular 5010.E1
Direct connections to WMATA facilities (i.e. connection agreements)	Board Resolution #2011-31
Adjacent construction or other projects occurring within WMATA's "zone of influence"	WMATA's Adjacent Construction Project Manual <sup>4</sup>

### 4.0 WMATA'S JOINT DEVELOPMENT OBJECTIVES

WMATA has one of the most active Joint Development programs in the United States and, although more than 30 Joint Development projects have been completed since the mid-1970s, more than 20 sites remain available for Joint Development.

The objectives for Joint Development are:

- Adhering to the TOD objectives adopted by the Board (see [Exhibit 2](#))
- Maintaining or enhancing transit operations, transit facilities, and/or transit access
- Maximizing revenue from real estate holdings
- Minimizing risk to WMATA
- Maximizing transit ridership
- Increasing reverse commuting, i.e. morning ridership from the core to, and evening ridership to the core from, suburban stations of the system
- Encouraging high-quality design that connects to the surrounding neighborhoods and communities
- Supporting and maintaining consistency with the local jurisdictions' economic development goals

<sup>2</sup> FTA Circular 5010.E1, "Award Management Requirements Circular," dated July 2018 as of this publication and posted online at: [www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e](http://www.transit.dot.gov/regulations-and-guidance/fta-circulars/award-management-requirements-circular-50101e).

<sup>3</sup> "Regulations Concerning the Use of WMATA Property," dated November 2018 as of this publication and posted online at: [www.wmata.com/business/real-estate/policies-forms.cfm](http://www.wmata.com/business/real-estate/policies-forms.cfm).

<sup>4</sup> Posted online at: [www.wmata.com/business/adjacent-construction](http://www.wmata.com/business/adjacent-construction).

## 5.0 JOINT DEVELOPMENT SOLICITATION PROCESS

### 5.1 Developer Selection Process

**Joint Development Solicitation** means a request for qualifications, request for proposals, invitation for bids, or other forms of solicitation for developers and/or investors to develop WMATA's Joint Development property. Generally, the Joint Development Solicitation and developer selection process is as follows:

- WMATA staff seeks Board approval to issue a Joint Development Solicitation.
- Upon receipt of Board approval, staff issues the Joint Development Solicitation, evaluates proposals and selects a qualified developer
- Staff negotiates a development agreement ("**Joint Development Agreement**") with the selected developer, which is not effective until approved by the Board and concurred with by the FTA
- WMATA staff seeks Board approval of the Joint Development Agreement
- Upon receipt of Board approval, staff seeks FTA concurrence of the Joint Development

If, as a result of the Joint Development, there is a sufficiently significant (as determined by WMATA) proposed permanent reduction in or removal of WMATA's transit facilities and/or transit services (as defined in the Mass Transit Plan), WMATA is required to conduct a public hearing (a "**Compact Public Hearing**") to obtain public input (see [Section 9.0](#)). The Board is responsible for reviewing and approving the Compact Public Hearing Staff Report and the proposal to amend the Mass Transit Plan.

### 5.2 Pre-Solicitation Planning and Approvals

Except for the exceptions under [Section 5.6](#), if WMATA desires to offer a property for Joint Development, Board approval is required prior to issuing a Joint Development Solicitation. If the Board approves the issuance of a Joint Development Solicitation, based on the specific project conditions, staff will craft the Joint Development Solicitation (and related developer selection criteria) to best define the Joint Development opportunity.

Typically, in advance of offering a property for Joint Development, although it is not required, WMATA will work with the local jurisdictions' offices of planning and/or economic development, and others, to identify local objectives. These partnerships are essential to improving the pedestrian and bicycle infrastructure within a ½-mile radius connecting to the Metrorail stations (and ¼-mile radius on either side of major Metrobus routes); encourage developer, investor and employer interest in the Joint Development Solicitation; and identify funding options for public and transit infrastructure and/or other amenities.

WMATA will conduct its own analyses of transit needs, market readiness and financial feasibility of a Joint Development prior to seeking Board approval. For example, this could include evaluation of a site's potential development plan (i.e. site plans or "test fits") to ensure it

accommodates WMATA's transit and operational requirements as well as private development. *WMATA's Station Area Planning Guide* lays out planning and access criteria for all modes of transportation used in reaching a Metrorail station and should be used to inform developers about WMATA's proposed organization of its transit facilities. The test fits are illustrative only and are not pre-determined site plans; once engaged, the selected developer will improve and optimize the site plan.

### **5.3 Open Competition Requirement**

Except as noted in Section 5.6, WMATA is required to conduct an open competition for its Joint Development Solicitations. To satisfy this requirement, the Joint Development Solicitation will be advertised publicly (i.e. in a newspaper or other widely-distributed print media, electronic media posting and/or posting on WMATA's website at [www.wmata.com/realestate](http://www.wmata.com/realestate)). A real estate broker may be engaged to offer a property, in which case the public advertisement and/or WMATA website will identify how prospective offerors can contact the real estate broker. A pre-proposal conference to explain the solicitation's objectives and answer questions from prospective offerors may be held.

Once a Joint Development Solicitation is issued, WMATA may not discuss it with external parties, except as specifically provided in the Joint Development Solicitation. All questions about a Joint Development Solicitation must be sent to [realestate@wmata.com](mailto:realestate@wmata.com), and all correspondence directed to this email address will be responded to in writing and shared with all offerors. This rule is very strict and developers should be aware of likely disqualification if found trying to seek to influence WMATA staff or the Board during the solicitation process.

### **5.4 Proposals and Subsequent Negotiations**

Proposals received by the deadline will be evaluated by staff. WMATA first reviews the proposals for responsiveness to the Joint Development Solicitation's requirements and instructions. Any proposals that do not meet the Joint Development Solicitation's requirements and instructions may be rejected as unresponsive.

Proposals are typically evaluated on "best value" criteria, which consider multiple factors affecting a given project. These factors will be defined in each Joint Development Solicitation. WMATA will establish an evaluation committee that will take the pertinent evaluation factors into consideration.

WMATA may, but is not required to, seek a meeting (i.e. interview, presentation, etc.) with one or more developers that submitted a proposal. The discussions may include areas of the proposal that require clarification or improvement, or do not comply with the Joint Development Solicitation in a minor technical, but correctable, manner.

Best and final offers may or may not be requested from developers. Staff will rate each responsive proposal (including best and final offers, if any) and rank the proposals in accordance with the criteria in Section 2.2 of the Joint Development Policies (see Exhibit 1) and other criteria defined in the Joint Development Solicitation. This process will result in one or more developer finalists and commencement of negotiations of a Joint Development Agreement. If negotiations are unsuccessful, WMATA may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter. Alternatively, WMATA may enter competitive negotiations with two or more ranked developers.

The requirements of a typical Joint Development Agreement are noted in Section 6.0. Upon successfully negotiating the terms of a Joint Development Agreement, WMATA staff will present a recommendation to enter into a Joint Development Agreement to the Board for approval. The Joint Development Agreement is deemed effective only upon receipt of Board approval and FTA concurrence (see Section 10.0).

In addition, if a selected developer proposes to reduce or remove transit facilities and/or transit services, such a change would not be approved until a Compact Public Hearing (see Section 9.0) is held and the Board approves the Public Hearing Staff Report and amendment to the Mass Transit Plan recommending such a change. The need and timing for a Compact Public Hearing will be determined project by project.

## 5.5 Privacy and Public Access to Records Policy

The financial information provided in all proposals is confidential until a Joint Development Agreement is executed. Thereafter, staff will maintain all information received for that Joint Development project, including any confidential business information, in accordance with WMATA's Privacy and Public Access to Records Policies (“**PARP**”). PARP is available on WMATA's website, [www.wmata.com/about/records](http://www.wmata.com/about/records).

## 5.6 Exceptions to Open Competition

Generally, WMATA will use an open competition to solicit proposals for development on its Joint Development sites. There are three exceptions to the open competition requirement:

1. Proposed extensions of existing ground leases or fee conveyances to existing ground lessees of the subject land
2. Proposed land assemblages with an adjacent property owner(s) when such adjacent property owner(s) is the only entity(ies) that could feasibly develop the site. For example: the site is too small to develop as a stand-alone development; or the site is not serviced by a public road.
3. Offers from one of the signatories to WMATA's organizational document (the “**WMATA Compact**”) or one of the local governments located in the WMATA Transit Zone for a public facility or space to be used and/or operated by the jurisdiction.

If a party believes it falls under one of these exceptions, a letter of interest should be submitted to WMATA providing its explanation of why it qualifies under an exception, a description of the desired project, the timeline under which it is seeking to complete a Joint Development Agreement and/or other transaction documents, and any other information that will improve WMATA's understanding of the opportunity. At its sole and absolute discretion, WMATA may accept or deny the opportunity to exclusively negotiate with the requesting party.

If an exception has been met and WMATA desires to enter into a Joint Development Agreement, WMATA will not issue a Joint Development Solicitation but will, instead, proceed to negotiate a Joint Development Agreement. While such a project may be exempt from the open competition requirement, a Joint Development Agreement with a party exempt from open competition is still subject to Board approval and FTA concurrence.

### **5.7 Other Unsolicited Proposals**

WMATA will not negotiate exclusively with a third-party who submits an unsolicited proposal unless that third-party meets the criteria for one of the exceptions to open competition set forth in Section 5.6.

If a developer/investor that does not fall under one of the exceptions to open competition set forth in Section 5.6 submits an unsolicited proposal, WMATA is not obligated to pursue the opportunity. However, if WMATA decides to pursue a Joint Development opportunity in response to an unsolicited proposal that is not exempt from open competition, a Joint Development Solicitation (as set forth in Sections 5.1 through 5.5) would need to be issued.

To submit an unsolicited proposal, parties (developers/investors and/or jurisdictions) should provide considerable detail on the proposed project, such as, but not limited to, the proposed development, the identity and background of the offeror and its principals, the proposed compensation to WMATA, the schedule for the offer and for the project generally, the existing and proposed zoning and land use controls on the property, and any equity or debt already in place or anticipated.

## **6.0 JOINT DEVELOPMENT AGREEMENTS**

In preparing and negotiating proposals, developers should consider the information in the following sections:

### **6.1 Ground Leases Versus Sales**

WMATA has a strong preference for ground leasing rather than selling land for Joint Development. The primary reason is that compensation over time creates an ongoing source of operating revenue for the agency, and additionally ensures "satisfactory continuing control" as required by the *FTA Guidance*. WMATA will seek to structure payments that keep pace with increases in value over time, whether from density increases, general increases in land value, or



both. This can be accomplished using various compensation structures that achieve financeable ground leases.

As an example of the limited circumstances in which a sale of land would be considered rather than a ground lease, is that residential condominiums that may require, either as a legal matter or as a practical matter, fee ownership of the land.

WMATA seeks “fair market value” in its transactions and relies on open competition, third-party appraisals, and/or valuations provided by real estate advisors to establish value. WMATA staff will not share with potential developers or interested parties other than the FTA appraisals or other valuations it has completed.

Discounts to land value may be permitted in order to fund approved changes in WMATA facilities (i.e. cost of replacement transit facilities) and for which no alternative source of funding is available.

## 6.2 Building WMATA Facilities

A developer may be required to modify existing WMATA facilities (including, but not limited to, bus bays, bus loops, internal private roads, parking, station entrance improvements, stormwater management facilities, power facilities) or build new facilities as part of its overall project. If a Joint Development project involves moving, adding, changing or eliminating transit infrastructure, the Joint Development Solicitation may address an approach for funding such site and transit infrastructure, such as whether WMATA will fund or compensate the developer for the infrastructure or whether the developer is expected to secure funding and finance the infrastructure.

WMATA must approve the design, construction and delivery of its facilities. WMATA’s offices of Joint Development and Adjacent Construction (“**JDAC**”) and Real Estate & Parking conduct this effort.

WMATA often has design and construction standards that differ from those used in the private sector. These standards account for the wear and tear of public transit use and the desire for long life expectancy. Developers are expected to adhere to WMATA’s design standards unless they can present a compelling alternative, which will require approval from JDAC and others.

Modification to or replacement of WMATA facilities is an opportunity to improve, enhance and right-size these transit facilities to address future transit operations and service. The size, quantity and/or location of proposed facilities should result from consideration of the following, as applicable:

- Historic number of transit riders served at that facility
- Estimated new riders from the Joint Development
- Other TOD projects within ½-mile of the affected facility

- Life-cycle costs of facilities
- Long-term asset management plans

If WMATA or a developer proposes permanent changes to WMATA facilities or transit services related to a Joint Development, a Compact Public Hearing is required, as described in [Section 9.0](#) below. The Compact Public Hearing may be held at any time, such as before issuing a Joint Development Solicitation or subsequent to signing a Joint Development Agreement when there is more precise information available about the proposed changes.

### 6.3 WMATA Reviews and Approvals

Even if no transit facilities are to be modified or built as part of the project, WMATA will review a developer's plans to assess whether the proposed development represents high-quality TOD design and does not interfere with existing facilities or transit operations. *WMATA's Station Area Planning Guide* is a comprehensive summary of WMATA's design guidance as it relates to bicycle, bus, parking, pedestrian and other access facilities, and is available on [www.wmata.com/realestate](http://www.wmata.com/realestate).

If WMATA makes the determination that there is potential interference, the developer must modify its plans. Transit operations take priority over real estate development in WMATA's hierarchy. WMATA's *Adjacent Construction Project Manual* provides detailed information about WMATA's engineering and construction management standards and program.

Parts of a Joint Development project that have no impact on WMATA facilities and operations (for example, interior building structure and mechanical equipment and tenant build-out) need not be reviewed by WMATA. WMATA makes the determination of no impact on a project-by-project basis.

Unless WMATA agrees otherwise, JDAC requires developers to post a deposit before undertaking reviews of their projects. JDAC will estimate the amount of the deposit depending on the nature of the work. JDAC draws on the deposit as it does its work. If the deposit is depleted, funds must be added. Upon completion, any unused balance of the deposit will be refunded.

JDAC will also charge fees for escort services when developers must enter restricted WMATA property (e.g., track areas, electrical and machine rooms and the like), and other fees may apply when additional manpower needs are imposed on JDAC.

All third-party employees entering onto WMATA property to do any work of any type must be screened, approved and badged in advance by WMATA as eligible to do work on its property. This process is coordinated through JDAC.

In addition, no developer or other third party is allowed to do work on WMATA's property without written permission. In the case of invasive work, such as soil borings, test pits, Phase II

environmental analyses, noise and vibration studies, or core drilling, the work will require a WMATA Real Estate Permit. The Real Estate Permit and Application can be found on WMATA's website, [www.wmata.com/business/real-estate/policies-forms.cfm#main-content](http://www.wmata.com/business/real-estate/policies-forms.cfm#main-content). In the case of non-invasive work, such as a boundary survey, WMATA may use a simpler document. In each case, the person or entity permitted to do the work must provide the required insurance before starting work.

#### **6.4 Transfer or Assignment of Development Agreements**

Given the long-term nature of ground leases associated with Joint Development projects, WMATA understands 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 Guidelines.

Prior to the completion of the construction phase of the Joint Development project, the developer must notify and obtain WMATA's prior written approval of any proposed assignment or change in ownership or development team composition; developers should anticipate that such approval may be withheld in WMATA's sole and absolute discretion. Subsequent to the completion of the construction phase of the Joint Development project, the 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.

#### **6.5 Developer Coordination with Other Governmental Authorities and Community Outreach**

When used for Joint Development, WMATA property is subject to local land use, planning, zoning, subdivision, site planning, and other entitlement processes and approvals. Therefore, developers should expect their Joint Development projects to undergo customary local entitlement approvals.

Developers are responsible for working with local governmental authorities, local communities, and WMATA to maximize the opportunities, mix of uses, and densities that promote transit ridership, as well as increase pedestrian and bicycle connections to and within the Joint Development site. Developers must also do their own community outreach and will be required to create a proactive community engagement plan. WMATA will cooperate with the developer in seeking entitlement approvals, but the obligation and responsibility for obtaining public approvals remain with the developer.

#### **6.6 Affordable Housing**

Housing located in proximity to transit is demonstrated to achieve greater overall cost of living savings for an individual or family than affordable housing or transit achieves alone. Toward this end, WMATA supports the Washington region's housing and affordable housing production goals, noting that WMATA does not have an independent affordable housing policy for Joint

Development. Instead, Joint Development projects must abide by the local jurisdiction's affordable housing laws and policies and developers should work closely with the local jurisdiction to achieve the local government's affordable housing goals for the project.

### **6.7 Sustainability**

Joint Developments must also meet the green building or sustainability standard of the jurisdiction(s) within which the Joint Development property is located or, in the absence of a local standard, at a minimum meet a nationally-recognized standard such as the U.S. Green Building Council's LEED-Silver certification for neighborhood development and/or for individual buildings.

### **6.8 Transportation Demand Management**

WMATA requires all Joint Development projects to implement Transportation Demand Management (TDM) strategies to further WMATA's goals of increasing transit ridership and reducing motorized vehicle miles traveled within the Washington region. TDM strategies include, but are not limited to, subsidizing a transit benefits program, improving bike and pedestrian access to transit, and providing signage for wayfinding and real-time transit information. Parking capacity also contributes to a project's TDM and will be addressed more specifically in solicitations with consideration of each property's future parking requirements.

Developers will typically, at a minimum, be required to meet the TDM requirements of the local jurisdiction in which the Joint Development project is located. If a local jurisdiction does not have a TDM requirement, WMATA will work with its Joint Development partners to develop a TDM plan.

## **7.0 ROLE OF WMATA BOARD OF DIRECTORS**

The role of the Board of Directors in Joint Development is to:

- Establish WMATA's Joint Development policies
- Review and approve Joint Development projects
- Authorize Compact Public Hearings
- Approve modifications to WMATA's Mass Transit Plan

### **7.1 Board Approvals**

Specific Board approvals may be frequently required for:

- Issuing a Joint Development Solicitation
- Executing a Joint Development Agreement
- Amending a Joint Development Agreement, lease or other similar agreement that reduce compensation to WMATA or otherwise substantially change any material term previously considered by the Board in granting transaction approval

- Authorizing a Compact Public Hearing, if needed
- Approving the Compact Public Hearing staff report and related amendment to the Mass Transit Plan, if applicable

WMATA staff manages the process and preparation for Board approvals. The developer is not required to participate unless requested.

The Board approval process for Joint Development projects first involves a presentation to the Board committee overseeing WMATA's real estate matters and then, if recommended by the committee, referred to the Board for approval. The process may take up to two months to complete from the time the item is initiated by WMATA staff.

## **7.2 Board Approval Criteria**

The Board uses the criteria set forth in Section 2.2 of the Joint Development Policies (see Exhibit 1) in evaluating whether to offer sites for Joint Development and to approve or amend a Joint Development Agreement or other material agreement. The Board may also consider any other relevant information provided by staff.

## **7.3 Integrity and Ethics**

WMATA has strict rules on integrity and ethics as such developers must sign an ethics/integrity certification as part of its proposal. Additionally, at closing, a developer must sign or update a certification regarding ethics and integrity. Exhibit 3 provides a sample certification of ethics and integrity for developers.

## **8.0 ROLE OF WMATA GENERAL MANAGER/CEO AND STAFF**

The General Manager/Chief Executive Officer is responsible for the overall management, administration and conduct of WMATA's Joint Development activities. As of the date of these Guidelines, WMATA's Office of Real Estate & Parking is delegated primary responsibility for implementing all aspects of the Joint Development program, subject to Board approval as required. The Office of Real Estate & Parking recommends Joint Development Solicitations to the General Manager/CEO, and the Board, prepares sites to offer for Joint Development, drafts and issues the Joint Development Solicitations, negotiates agreements with developers, recommends Joint Development Agreements to the General Manager/CEO and Board for approval, manages the process for obtaining FTA concurrence (see Section 10.0), assists in reviewing and approval of project plans, collects revenue, and oversees internal coordination regarding WMATA real property.

JDAC, the Office of General Counsel and other WMATA departments such as Bus Planning, Sustainability, Design and Engineering, and Architecture, also assist in the Joint Development process.

The nomenclature and composition of the various offices within WMATA is subject to change from time to time. Any such changes shall automatically be deemed incorporated into these Guidelines without need for formal amendment.

## **9.0 WMATA COMPACT PUBLIC HEARING**

The WMATA Compact requires a public hearing be conducted whenever a change is made to the Mass Transit Plan for the Metro system. The purpose of the Compact Public Hearing is to obtain public input about proposed changes to WMATA's Mass Transit Plan. This public input is brought to the Board for its consideration.

The scope of a public hearing is different from the scope of the entitlements and permit processes employed by local governments that govern land use and construction. Absent unusual circumstances, hearings held by other governmental bodies will not substitute for the Compact Public Hearing, and *vice versa*.

Once authorized by the Board, the Compact Public Hearing process is managed by the Board Corporate Secretary's Office to include public notice of the Compact Public Hearing and public outreach to encourage participation. WMATA staff will prepare a report of the record established during the public hearing for presentation together with the staff's recommendations to provide to the Board. That report is also published on WMATA's website. A developer should anticipate six (6)-months to complete this process.

In addition, the developer pays the cost of this process to WMATA in advance, up to \$50,000. Any unused portion of this amount is refunded.

## **10.0 FTA CONCURRENCE**

The FTA is both a regulatory and funding agency for American transit authorities. Because the FTA's funds are widely used to fund transit systems, the FTA has significant authority to determine the use and non-use of real estate owned by transit agencies. A vast majority of (if not all) Joint Development projects undertaken by WMATA will be in accordance with the FTA's rules and requirements.

Joint Development projects must be submitted to the FTA for its concurrence and the proposed developer plays little or no role in this process except to provide background information that may be necessary to obtain the FTA's concurrence. WMATA coordinates with the FTA. The FTA's review takes approximately three or four months from the time of submittal but may vary depending on project complexity.

In its review, the FTA will ascertain whether WMATA maintains "satisfactory continuing control" of the Joint Development site for transit purposes and that the property is used for TOD. Fundamentally, the Joint Development project must not compromise WMATA's transit mission or

operations. This requirement for “satisfactory continuing control” distinguishes Joint Development from dispositions of excess/surplus property.

WMATA accomplishes “satisfactory continuing control” through a variety of easements and covenants customized to the particular site. For example, WMATA will retain rights for station entrances, rail right-of-way, bus loops, Kiss & Ride areas, public access, maintenance access, and the like. Agreements will require a covenant that the property be developed in accordance with the FTA’s requirements for TOD and WMATA-approved development plans. as well as require the developer not interfere with WMATA operations, and to indemnify WMATA against interference, etc.

The easements and covenants will be recorded in jurisdictional land records and are intended to have priority over all other documents relating to that transaction, including deeds, ground leases and mortgages.

## **EXHIBIT 3: Ethics and Integrity Certification**

### **OFFEROR'S CERTIFICATIONS**

The undersigned hereby certifies to the best of its knowledge and belief to the Washington Metropolitan Area Transit Authority (“**WMATA**”) that the undersigned and any of its principals:

1. Is/are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from an award of contracts by any governmental entity.

2. Has/have not within the past ten (10) 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 any 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/are 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/are not in arrears or default of payment of any money or obligation of a value greater than Three Thousand Dollars (\$3,000) to a governmental entity.

5. Has/have no adjudicated violations nor has paid penalties during the past ten (10) years relating to the housing and building laws, regulations, codes and ordinances of any governmental entity.

6. During the past ten (10) years has/have 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.

7. During the past ten (10) years has not filed any claim against WMATA or been engaged with any litigation, arbitration, mediation or other dispute resolution process with WMATA arising out of or relating to any actual or proposed procurement or contract.

“Principal” means a partner, member, shareholder, officer, director, manager or other Person with management or supervisory responsibilities or who is otherwise in a position to control or significantly influence the undersigned’s activities or finances.



The undersigned further certifies:

a. It has not employed or retained any company or persons (other than a full-time, bona fide employee working solely for it) to solicit or secure a ground lease or fee conveyance from WMATA; and

b. It has not paid or agreed to pay, and shall not pay or give, any company or person (other than a full-time, bona fide employee working solely for it) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of a ground lease or fee conveyance from WMATA; and

c. No person or entity currently employed by or under contract with WMATA, or employed by or under contract with WMATA within the past twelve (12) months, or with material input into the matters covered by the proposed ground lease or fee conveyance and employed by or under contract WMATA at any time in the past: has provided any information to it that was not also available to all other persons who responded to the Joint Development Solicitation that led to the proposed ground lease or fee conveyance; is affiliated with or employed by it or has any financial interest in it; provided any assistance to it or its parent, subsidiary or affiliates in responding to the Joint Development Solicitation regarding the site now proposed to be ground leased or acquired in fee; or will benefit financially from the development contemplated by the ground lease or fee conveyance; and

d. Neither the undersigned nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of WMATA with the view toward securing favorable treatment in the designation of a Selected Developer (as defined in the Joint Development Solicitation) or in any determination made with respect to developer selection, or in the negotiation, amendment or performance of the Joint Development Agreement (as defined below); and

e. It agrees to furnish information relating to the above as requested by WMATA.

If the undersigned is unable to certify to the foregoing in whole or in part, the undersigned has attached an explanation to this certification.

The undersigned further certifies that:

i. It is aware of and accepts all of the terms of the Joint Development Agreement dated \_\_\_\_\_, 20\_\_ between WMATA and \_\_\_\_\_ (as it may have been amended to date, the “**Joint Development Agreement**”); and

ii. It has the power and authority to enter into the proposed ground lease or fee conveyance and all final documentation as required by WMATA without the consent or joinder of any other party or authority (except as envisioned by the Joint Development Agreement).

These certifications are a material representation of fact upon which reliance will be placed by WMATA. The undersigned shall provide immediate written notice to WMATA if at any time it learns that its certification was erroneous when submitted or has become erroneous since that time. If it is later determined that the undersigned knowingly rendered an erroneous certification or failed to notify WMATA if and when the undersigned gained knowledge that its certification was erroneous when submitted or has become erroneous since that time, then, in addition to any other remedies available to WMATA, WMATA may in its sole and absolute discretion terminate the Joint Development Agreement with respect to this particular ground lease or fee conveyance.

**[NAME OF OFFEROR]**

By: \_\_\_\_\_

Name:

Title:

Date: \_\_\_\_\_, 20\_\_