



(Board Copy)  
Washington Metropolitan Area Transit Authority  
**METRO ELECTRONIC ACTION DOCUMENT**

IDENTIFICATION			
MEAD ID:	96585	ACTION:	N/A
AWARD VALUE:	(Not yet awarded)	CONTRACT: (Proposed)	
FUND SOURCES: (View)		CONTRACTOR:	
LAST MODIFIED:	07/01/2005		

DESCRIPTION	
SUBJECT:	To obtain Board approval to amend Joint Development Policies and Guidelines
PURPOSE:	Amend the Joint Development Policies and Guidelines to provide that the Board will approve the selection of a developer and term sheet, followed by approval of the fully negotiated contract.

ORIGINATION					
INITIATOR			DEPARTMENTAL APPROVAL		
HEIDI ACKERMAN on 06/16/2005			Approved by SALPEAS , PANAGIOTIS 07/01/2005		
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OFFICE	NAME	ACTION/DATE
SCOS (7100)	BARTLETT, HAROLD	Approved 06/21/2005
LAND (7310)	MALASKY, GARY	Approved 06/21/2005
COUN (1410)	O'KEEFFE, CAROL	Approved w/ Comments 07/01/2005

FINAL APPROVALS	
OFFICE	NAME/ACTION
BEMR	Approved for SCOS by HAROLD BARTLETT on 06/21/2005
PLN DEV CMTE	Approved for AGMM by PANAGIOTIS SALPEAS on 07/01/2005
BEMR	HAROLD BARTLETT (Not Yet Approved)
GM	GMGR CEO <i>P. Salpeas</i> 7/1/05
BOARD	BOARD WMATA (Not Yet Approved)



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**NARRATIVE**

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Discussion

The Board approved the current *Joint Development Policies and Guidelines* ("JDP&G") in February, 2002. Under the current JDP&G, staff evaluates the proposals and recommends to the Board a developer to be selected for a specific site. Within 90 days after the Board's designation of a selected developer, staff negotiates a non-binding term sheet which outlines the financial structure and other business terms of the transaction. The Board is asked to approve this term sheet, and authorize staff to negotiate and execute a contract (which is generally consistent with the approved term sheet) without further Board review.

The 2002 change to the JDP&G was intended to expedite the joint development process. Two problems have arisen that the proposed amendment intends to correct:

(1) WMATA was sued by a developer alleging that a term sheet constituted a contract. While WMATA won the lawsuit, substantial time and resources were spent defending it. The proposed amendment will make it clear that there is no binding contract until the "final contract" is ratified by the Board.

(2) It has become obvious that developers feel they have a certain status once selected. Staff believes it will be in a stronger position in negotiating terms if developer selection is predicated on agreement to a term sheet.

Under the proposed amendment to the JDP&G, staff will evaluate the proposals, make a tentative developer selection and proceed to negotiate a term sheet stating major business terms. If staff's negotiations with the tentatively selected developer are not productive, staff will begin negotiations with its second choice developer, or alternatively, enter into competitive negotiations. (This process can continue with lower ranked developers.) The developer offering the most favorable terms to WMATA, both technical and financial, will be presented to the Board for approval, together with the negotiated term sheet. After Board approval of the selected developer and the term sheet, staff will negotiate a contract. A summary of the negotiated contract (highlighting any new or significantly different terms) will be presented to the Board for approval. The JDP&G will be revised to clearly state that there is no binding agreement until the Board has approved the "final contract."

Therefore, the proposed amendment to the JDP&G provides that the Board will approve joint development projects in two steps: (1) approval of developer selection and the term sheet; and (2) approval of the contract. Additionally, the JDP&G will clearly state that there is no binding agreement until the Board has approved the "final contract."

If approved, the amended procedures will be applied to joint development projects brought to the Board after the July, 2005 meeting.

Alternative

Not approve the amendment to the JDP&G and leave the joint development approval process as it currently exists.

Recommendation

That the Board amend the JDP&G to provide that the Board will approve selection of the developer and term sheet, followed by approval of the fully negotiated contract.

## **AMENDMENT TO THE JOINT DEVELOPMENT POLICIES AND GUIDELINES**

### **BACKGROUND**

- Under the current Joint Development Policies and Guidelines (JDP&G), approved by the Board in 2002, staff evaluates proposals and recommends to the Board a developer to be selected for a specific site.
- Within 90 days of the Board's designation of a selected developer, staff negotiates a non-binding term sheet. The Board is asked to approve the term sheet and authorize staff to negotiate a contract without further Board review. This change in 2002 was intended to expedite the joint development process.
- Since 2002, two problems have arisen:
  1. A developer filed a lawsuit alleging that a term sheet constituted a contract. (WMATA won the lawsuit.)
  2. It has become obvious that developers feel that they have a certain status once selected. Staff felt that it would be in a stronger position in negotiating terms if developer selection were predicated on agreement to a term sheet.
- An amendment to the JDP&G is necessary to address these problems.

### **SUMMARY OF AMENDMENT**

- Staff will evaluate the proposals, make a tentative developer selection and proceed to negotiate a term sheet, stating major business terms.
- If staff's negotiations with the tentatively selected developer are not productive, staff will begin negotiations with its second choice developer or, alternatively, enter into competitive negotiations.
- The developer offering the most favorable terms to WMATA, both technical and financial, will be presented to the Board for approval, together with the negotiated term sheet.
- After Board approval, staff will negotiate a contract, a summary of which will be presented to the Board for approval.
- The JDP&G will clearly state that there is no binding agreement until the Board has approved the contract.

**DRAFT: June 22, 2005**

**WMATA  
JOINT DEVELOPMENT  
POLICIES AND GUIDELINES**

**Washington Metropolitan Area Transit Authority  
Office of Property Development & Management  
600 Fifth Street, NW  
Washington, DC 20001**

**Revised: February 21, 2002**

**Further Revised: July , 2005**

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## APPENDIX

## 1.0 INTRODUCTION

The Washington Metropolitan Area Transit Authority (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 integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain goods and services near transit stations, offer active public spaces, promote and enhance ridership, generate long-term revenues for WMATA, and encourage revitalization and sound growth in the communities which 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. WMATA has been involved in the joint development of real estate since the early 1970s. ~~During that time, WMATA has approved 38 joint development projects.~~

The goals of WMATA's joint development program are:

- Promote Transit Oriented Development (TOD) by giving priority to Joint Development proposals which 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; provide mixed use development, including housing in compliance with local ~~regulations~~ laws and requirements; and the opportunity to obtain goods and services near transit stations and offer active public spaces;
- Attract new riders to the transit system by fostering commercial and residential development projects on WMATA owned or controlled land and on private properties adjacent to Metro stations;
- Create a source of revenue for the Authority to operate and maintain the transit system by expeditiously negotiating joint development agreements between WMATA and public or private development entities; and
- 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.

## 2.0 PURPOSE

The purpose of these policies and guidelines is:

- To disseminate information about WMATA's Joint Development program to developers, local jurisdictions, the local community and the general public;
- To identify the roles and responsibilities of the WMATA Board of Directors, the General Manager/Chief Executive Officer, local jurisdictions, developers and the community in the joint development process;
- To establish procedures for the marketing of joint development sites and the selection of private and public sector joint development participants through a competitive proposal process (except in instances of joint development agreements entered into with adjacent property owners at WMATA's discretion);
- To define a replacement policy for on-site WMATA facilities, including surface parking, where the cost of facility replacement makes joint development infeasible;
- To define WMATA's community involvement process in the joint development program; and
- To identify a procedure for addressing special joint development sites.

## 3.0 SCOPE OF POLICIES AND GUIDELINES

These policies and guidelines apply to joint development projects to which WMATA is a party. They do not apply to:

- "System interface" projects: Projects which have direct connections between WMATA's facilities and adjacent development owned by others. These projects are managed by WMATA's Office of Property Development and Management (LAND) under separate procedures established by the Board.
- "Adjacent construction" projects: Projects which are administered by WMATA's ~~Office of Chief Engineer (CENG)~~ Office of Joint Development and Adjacent Construction.
- "Interim leasing" of WMATA-owned land. These leases are managed by LAND.
- "Sale of excess property" - This program is administered by LAND, Asset Management Branch.

#### 4.0 POLICIES OF LOCAL JURISDICTIONS AFFECTING JOINT DEVELOPMENT

WMATA coordinates closely with local jurisdictions, and the State of Maryland, to implement its joint development program. Additionally, WMATA requires its selected developers to work with local jurisdictions throughout the joint development process. The policies which 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. 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.

#### 5.0 MAJOR ROLES AND RESPONSIBILITIES IN THE JOINT DEVELOPMENT PROGRAM

The WMATA joint development program is implemented by the combined efforts of the Board, the General Manager/Chief Executive Officer and WMATA staff, local jurisdictions, developers and the community. Their major responsibilities are outlined below:

##### 5.1 The WMATA Board of Directors

The WMATA Board of Directors establishes policies on behalf of WMATA for joint development, exercises specific approvals within the joint development process, and maintains oversight of the joint development program. The Board has specific responsibilities to approve the Joint Development Annual Work Program, ~~select a~~ approve developer selection and a non-binding term sheet based on a staff recommendation, ~~approve a term sheet with the selected developer~~, authorize staff to negotiate a lease or sales agreement (the final contract) with the designated developer, and approve the terms of such final contract. Additionally, the WMATA Board conducts a public hearing, prior to final site plan approval by the local jurisdiction, when such is required due to a change in transit access or parking to the site.

##### 5.2 General Manager/Chief Executive Officer

The General Manager/Chief Executive Officer is responsible for the overall management, administration and conduct of the joint development activities on behalf of WMATA.



### 5.3 Local Jurisdictions

Jurisdictions 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. In addition, WMATA will work with the State of Maryland. Each contributes to the planning and implementation of joint development projects.

- WMATA and local jurisdictions maintain an ongoing, informal dialogue regarding planning and zoning changes at or around WMATA sites, developers interest in such sites and any jurisdictional initiatives for planning for TODs.
- Local jurisdictions participate with WMATA and consultants in conducting the real estate portfolio analysis which is used to help identify sites to be included in the Annual Joint Development Work Program and other joint development studies.
- Local jurisdictions participate in development of the Annual Joint Development Work Program.
- Based on the ongoing dialogue with the local jurisdictions, WMATA provides a draft of the Annual Work Program to local jurisdictions by the end of March each year.
- When the Joint Development Work Program is sent out to local jurisdictions for comments on the suitability of including specific sites as joint development opportunities in a future solicitation, the local jurisdiction and the WMATA Board member from that jurisdiction are asked to provide WMATA with a list of community organizations, including municipalities, community groups, civic associations and ANCs, that could be interested in the development of the property. (Note: The list of interested organizations will be retained by WMATA and provided to all potential developers upon request.)
- Discussions are held with local jurisdictions to resolve any issues in May of each year; and
- A draft Work Program, incorporating comments from the local jurisdictions, is provided to the Joint Development Subcommittee Real Estate Committee and Board for their consideration.

- Local jurisdictions, at their discretion, are encouraged to directly sponsor joint development projects within their boundaries. Local jurisdictions are encouraged to mobilize their own resources and those of private developers to jointly propose a joint development project on an available site.
- Local jurisdictions participate in the review and evaluation of developer proposals.
- WMATA's solicitations encourage developers to contact local jurisdictions to obtain land use and zoning information about a site prior to submitting joint development proposals to the 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.
- Local jurisdictions are asked to designate a person or office as the liaison to WMATA for joint development activities.
- Local jurisdictional representatives receive a briefing from WMATA staff when proposals are received.
- Local jurisdictional representatives are invited to participate in the oral presentation by the developer to WMATA's technical evaluation committee. Developers are required to organize their presentations into two segments:
  - 1) land use proposals, zoning actions required, construction schedules; and
  - 2) financial offer to WMATA. (Local jurisdictional representatives do not participate in the discussion of the second segment.)
- Local jurisdictional representatives are invited to participate in the technical evaluation committee discussion(s) of the proposal and to provide formal comments to the committee.
- If desired, the local jurisdictions participate with the developer in informational meetings with the community organizations which have been identified by the affected jurisdiction.
- Local jurisdictions are invited to submit formal comments during the evaluation of development proposals submitted in response to a formal solicitation or unsolicited proposal.

- After selection of a developer by the Board, local jurisdiction continue their involvement.
- Local staff are provided periodic updates and status reports by WMATA staff.
- Developers' site plans are reviewed by WMATA and local jurisdictional staffs.
- Local jurisdictions may sponsor community forums and invite WMATA staff and developer to participate.
- WMATA monitors any required zoning and other actions by the local jurisdictions; WMATA staff participation is on an "as directed by Board members" basis.
- 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.
- 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.

- Developers may propose introduction of a site into the draft Annual Joint Development Work Program through coordination with local jurisdictions and WMATA.
- 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 the Unsolicited Proposal section.
- 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.

- Upon receipt of proposals, WMATA staff will evaluate the proposals for the developer's technical capacity, competency, satisfaction of the community meeting requirement and recommend may rejection of any that do not meet technical and business standards.
- ~~The WMATA staff will make a recommendation to the Joint Development Subcommittee and the WMATA Board on the proposal(s). The recommendation includes details on the informational meetings with the local jurisdiction and interested community organizations. The recommendation to the Committee and the Board will include a summary of information and issues pertaining to the project. Following the Board's decision, the selected developer will be required to send a letter to the interested community organizations that he/she initially met with to inform them as to how the proposal approved by WMATA addresses their issues or concerns. Proposals will be processed as set forth in Sections 6.0 and 7.0.~~
- ~~A developer selected to build a joint development project will negotiate a term sheet and a lease or sales agreement with WMATA based on the accepted developer's proposal.~~
- A selected developer will be required to participate in a WMATA Compact public hearing process after approval of the developer's proposal by the local jurisdiction, but, prior to final site plan approval, if the proposal necessitates a major change in transit facilities such as customer parking or access to the site.
- A selected developer will, with WMATA's assistance, obtain all necessary plan approvals, zoning and permits from the local jurisdiction.
- A selected developer will plan, construct and operate a joint development project in accordance with pertinent joint development agreements and jurisdictional laws and regulations requirements.

## 5.5 Community

- When the WMATA Joint Development Work Program (the “Work Program”) is sent out to local jurisdictions for comments on the suitability of including specific sites as joint development opportunities in a future solicitation, the local jurisdiction and the WMATA Board member 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 the development of the property. (Note: The list of interested organizations will be retained by WMATA and provided to all potential developers upon request.)
- Potential developer(s) will be 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.
- Upon receipt of proposals, WMATA staff will evaluate the proposals for the developer’s technical capacity, competency, satisfaction of the community meeting requirement and ~~recommend~~ may rejection of any that do not meet technical and business standards.
- ~~The WMATA staff will make a recommendation to the Committee and the WMATA Board on the proposal(s). The recommendation includes details on the informational meetings with the local jurisdiction and interested community organizations. The recommendation to the Committee and the Board will include a summary of information and issues pertaining to the project.~~ Proposals will be processed in accordance with Sections 6.0 and 7.0.
- Following the Board’s decision approval of the negotiated final contract, the selected developer will be required to send a letter to the interested community organizations that he/she initially met with to inform them as to how the ~~proposal~~ project approved by WMATA addresses their issues or concerns.

- ~~Negotiations of a term sheet and contract finalization will follow the current model.~~
- The selected developer will then go through any land use, zoning, permitting or entitlement processes required by the local jurisdiction, including any public hearings.

## **6.0 JOINT DEVELOPMENT PROCEDURES**

This section describes the procedures followed for joint development. The stages are illustrative; they are not mandatory; and may not be necessary for each joint development project. A separate set of procedures applies to the processing of unsolicited proposals.

### **6.1 Preparation of the Annual Joint Development Work Program**

The Annual Joint Development Work Program is prepared yearly in coordination with local jurisdictions. The Work Program includes a list of sites by jurisdiction that WMATA believes are suitable for development. Beginning in 2002, the sites included in the draft Work Program will have been evaluated through an outside, professional independent portfolio analysis. The draft Work Program is prepared by the General Manager/Chief Executive Officer and submitted to the local jurisdictions for comment. A modified Work Program, incorporating any comments by local jurisdictions is then prepared for submission to the WMATA Board. The Work Program will include only those sites which have been approved for marketing by the local jurisdiction in which the site is located. As part of their review, local jurisdictions can recommend special sites for inclusion in the work program for the Board's consideration. The Annual Joint Development Work Program is generally approved by the WMATA Board of Directors so that it is distributed by June 30th of each year. A given year's work program is developed as follows:

- LAND prepares and issues a draft Joint Development Work Program to each jurisdiction in March of each year.
- Jurisdictions review the draft Work Program and transmit to LAND their comments and list of affected community organizations for each site.
- LAND discusses the submitted comments with the jurisdiction, if needed, to resolve any issues which may exist. All discussions are generally concluded by mid May of each year.

- During each fiscal year, the General Manager/Chief Executive Officer submits a draft Work Program, comprised of sites approved for marketing by each jurisdiction to the WMATA Board for its consideration by June.

6.2 Board Approval of Joint Development Work Program and Authorization of the General Manager/Chief Executive Officer to Initiate a Joint Development Competitive Developer Selection Process.

In June of each year, the General Manager/Chief Executive Officer submits to the Board WMATA's recommended Annual Joint Development Work Program, including all jurisdictional comments. A request for authorization to initiate a joint development Competitive Developer Selection process is normally included in the work program package to the Board. Further, the General Manager/Chief Executive Officer recommends fiscal year funding authority to the Board for the inclusion of joint development activities as required.

6.3 Development and Issuance of Solicitation Document

LAND drafts a Solicitation Document to solicit joint development proposals from developers on a competitive basis for sites contained *in* the Board approved Annual Joint Development Work Program. Concurrently, WMATA offices and the affected jurisdictions are consulted for comments. The local jurisdiction advises WMATA as to planning, urban design and other guidelines which will apply to the proposed development site. WMATA then issues a Solicitation Document following its established joint development competitive selection procedures. Normally these include:

- Advertisement of the availability of the solicitation in local and national newspapers;
- A pre-proposal conference, if needed, to respond to questions from prospective respondents;
- A proposal due date, generally 30 to 60 days from the date of issuance of the Solicitation Document;
- Review and evaluation of proposals as set forth in Section 7.0.

~~6.4 Term Sheet and Contract Negotiations and Execution~~

~~Term Sheet negotiations shall be conducted with the selected developer or developers by WMATA's Director of Property Development and Management (LAND) and/or his/her representatives. Other WMATA offices will be consulted as required. The WMATA Board members from the affected~~

~~jurisdiction shall be advised of the status of the negotiations as required. Upon conclusion of negotiation of critical terms, WMATA's Director of LAND will submit the term sheet to the WMATA Board for its consideration.~~

~~Upon ratification and authorization by the Board, WMATA's Director of LAND executes the term sheet as negotiated. Term Sheet provisions are incorporated into a lease or sales agreement with the developer. After agreement is reached with the selected developer, WMATA requires the developer to take any and all actions necessary to comply with all local land use and development requirements.~~

~~After approval of the development by the local jurisdiction, but prior to final site plan approval, if, due to a change in transit customer parking or access to the site, a WMATA public hearing is required, the affected local jurisdiction will be invited to be a participant in the public hearing process.~~

~~After execution of the joint development lease or sales agreement, the developer is required to submit the proposed joint development project site plan for review and approval by GENG which will coordinate the internal reviews by relevant WMATA offices, prior to submission to the local jurisdiction, to ensure compatibility with Authority facilities and operations. All site plans and required subdivision actions will be subject to approvals by the local jurisdiction in accordance with local ordinances and regulations.~~

~~GENG will develop and administer a program of inspection in accordance with the terms of the executed agreement. To the maximum extent possible, all inspection and enforcement activity will be coordinated with local jurisdiction inspections of those private improvements which may incorporate WMATA facilities.~~

## **7.0 JOINT DEVELOPMENT COMPETITIVE SELECTION REGULATIONS PROCESS**

### **7.1 Introduction**

Joint Development employs a competitive selection process to which the provisions of the WMATA Procurement Procedure Manual do not apply. Joint Development is the development or disposition of property interests, at or adjacent to Metrorail stations, owned and/or controlled by WMATA, with the objective of developing transit oriented public and private projects which enhance the ridership and revenue of WMATA and Local Jurisdictions.

### **7.2 Guidelines and Evaluation Criteria**

In order to promote the objectives of the Joint Development Program and to provide fair and open competition and full and fair consideration of all proposals for each joint development opportunity, the guidelines set forth



below will be followed for Joint Development solicitations.

- In order to ensure fair and open competition, WMATA will periodically publicize its joint development opportunities in print media with wide circulation and, as necessary, through solicitation documents and public events. The preferred process will be an annual solicitation including several potential development sites.
- WMATA will entertain proposals for 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 in WMATA's best interest.)
- WMATA encourages developers to include Disadvantaged Business Enterprises in their joint development projects, and will assist developers in identifying such firms.
- In evaluating proposals, the criteria used by WMATA will include, consistent with FTA's "Highest and Best Use" or "Highest and Best Transit Use" requirements, the following:

Technical

Degree to which the project reflects transit oriented development principles;  
Market/financial viability of the joint development project;  
Development team experience and prior performance;  
Innovation and creativity; and  
Compatibility of development with local requirements and transit area.

Economic

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

7.3 Processing of Proposals

Proposals will be processed as follows:

- 7.3.1 WMATA will select the developer for each joint development opportunity using commercially reasonable business practices and screening against the established criteria, including FTA's "Highest and Best Use" or "Highest and Best Transit Use" requirements.
- 7.3.2 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.

- 7.3.3 WMATA will review the proposals, and identify those proposals reasonably susceptible of being selected for award screening against the selection criteria established in ~~s~~Section 7.2 above and satisfaction of the ~~community meeting requirements as~~ set out in ~~Section 5.5:~~ *in the marketing or solicitation document*. Any proposals which do not meet published requirements and guidelines, and any proposals not reasonably susceptible for selection, will *may* be rejected by the *Managing* Director, Office of Property Development and Management.
- 7.3.4 WMATA will conduct a preliminary analysis and evaluation of each proposal.
- 7.3.5 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. The proposers 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.)
- 7.3.6 ~~A final analysis and evaluation of proposals will be conducted and a report and recommendation as follows will be submitted to the Director:~~

~~All proposals not considered competitive will be rejected by the Director; and~~

~~A primary candidate will be recommended for each offered site. Other offerors deemed as potential selectees may be recommended as alternates, ranked in order of preference.~~

~~Or~~

~~Two or more candidates may be recommended for the same site for simultaneous negotiations:~~

~~*LAND staff, in coordination with the LAND's Managing Director, will rate each responsive proposal and rank the proposals based upon*~~

confidential criteria in accordance with Section 7.2. Staff, in coordination with LAND's Managing Director, will then make a tentative developer selection and commence negotiations of a non-binding term sheet which outlines the major business terms of the project. If negotiations are unsuccessful, LAND staff, in coordination with LAND's Managing Director, may terminate negotiations and commence negotiations with the second ranked developer, and those ranked thereafter, in order of ranking. Alternatively, LAND staff, in coordination with LAND's Managing Director, may enter into competitive negotiations with two or more ranked developers.

- 7.3.7 ~~Upon authorization from the Director, the recommendation for selection will be submitted to the Joint Development Subcommittee for review and the WMATA Board of Directors for approval to proceed with negotiations.~~

As soon the principal terms of a potential developer's project have been reduced to a term sheet, the Managing Director will submit the recommended selected developer and the term sheet to the Board for approval.

- 7.3.8 ~~Upon authorization from the Joint Development Subcommittee and the Board of Directors to proceed with negotiations, WMATA will negotiate final terms (term sheet) with a developer within applicable guidelines and conditions established by the WMATA Board of Directors:~~

~~If a primary candidate and alternates are designated, the Director or his/her designees will conduct negotiations with the primary candidate to develop a term sheet agreement which is in the best interests of WMATA and meets the objectives and criteria set out in Section 7.2 above. If an agreement satisfactory to WMATA cannot be reached with the primary candidate, the Director will break off or suspend negotiations with the primary candidate, and negotiate with each of the alternates in turn in order of their ranking until a satisfactory agreement is reached. The Director may reopen negotiations, at his/her discretion, with any higher ranking candidate if he/she deems it in the best interests of WMATA.~~

~~If two or more primary candidates are selected for simultaneous negotiations, the Director or his/her designees will negotiate simultaneously with all selected candidates, and select a final developer based on the results of the negotiations.~~

After receipt of Board approval, LAND's staff, in coordination with LAND's Managing Director, will negotiate a contract with the selected developer that incorporates the terms of the term sheet. A summary of the completed contract, highlighting significant new terms as well as material changes from the term sheet, will be presented to the Board for approval.

- 7.3.9 ~~A recommendation for the terms of the agreement will be submitted to the Joint Development Subcommittee for review and, if approved by the Subcommittee, then to the WMATA Board of Directors for final 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 Board has approved the final negotiated contract.

- 7.3.10 ~~Staff will negotiate a final contract which reflects and conforms to the approved term sheet.~~

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. The WMATA Compact public hearing shall be held after approval of the developer's proposal by the local jurisdiction, but, prior to final site plan approval.

#### 7.4 Unsolicited Proposals

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

- 7.4.1 Notice of receipt of the unsolicited proposal will be published in the print media along with WMATA's procedure for processing unsolicited proposals, as provided for in this Section.
- 7.4.2 WMATA will begin processing the unsolicited proposal in accordance with Section 7.3 to determine if the proposal merits selection for award of a contract.
- 7.4.3 If WMATA receives additional proposals before developer selection is completed on the initial unsolicited proposal, any new proposals, including the unsolicited proposal, will be competed and processed in

accordance with Section 7.2.

7.4.4 When a developer is selected for award of a contract for the site under either 7.4.2 or 7.4.3 above, no further proposals will be entertained for that site.

7.5 Adjacent Property Owner

WMATA may negotiate a joint development agreement with an adjacent property owner without competition and without advertising the availability of WMATA site provided that there is only one adjacent property owner or only one interested adjacent property owner, and WMATA has determined that only a specific adjacent property owner can take advantage of the joint development opportunity due to site constraints or other limiting factors.

7.6 Confidentiality of Proposals

WMATA will hold the financial contents of all proposals in confidence until a final agreement is approved and executed; provided however, that WMATA may review the zoning and land use aspects of any proposal(s) with state and local zoning, land use planning, transportation, and environmental officials, and at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings, and similar public forums. Upon approval by the Board of Directors, WMATA staff may release project scope information to the public.

7.7 Approval of Federal Transit Administration

The execution of any agreement negotiated between WMATA and the selected developer is contingent upon the approval of WMATA's Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA) under either the "Highest and Best Use" or "Highest and Best Transit Use" concept.

**8.0 SPECIAL SITES**

8.1 Definition

The annual work program for Joint Development may include one or two special sites that will become a focus of staff efforts to move the properties from a non-marketable status to a viable joint Development site. Special sites may be included in the work program, based on a staff recommendation, and based on a recommendation from the local jurisdiction with the Board's concurrence. In making their recommendations, the local jurisdictions may consider the potential of assembling the WMATA-owned property with other private or publically-owned parcels. Additionally, the local jurisdictions may

consider the use of brokers or special consultants to evaluate the development steps required at these special locations.

## **9.0 WMATA PARKING AND FACILITY REPLACEMENT**

### **9.1 Policy for Parking and Facility Replacement**

It is WMATA's policy that parking displaced by a joint development will be replaced on a 1-for-1 basis at the developer's cost. Upon review of a site to be included in the joint development program, the Board of Directors may determine that:

- A. Parking at the site may be replaced at a reduced specified amount at the cost of the developer, consistent with the requirements of FTA and WMATA's Bond Resolution.
- B. Parking at the site will be replaced at an increased specified amount at the cost of the developer.

The Board may also determine that, where the analysis indicates that its parking replacement policy makes development of a site infeasible, an inducement may be required to support development of the site. That inducement shall be specified and may be in the form of a funding mechanism (such as Transit Infrastructure Investment Fund (TIIF) funds allocated to the local jurisdiction) to pay for the partial or entire cost of parking. The Board may also consider alternative parking locations and fee structures.