

Consent Item (C) 10-27-2022

Washington Metropolitan Area Transit Authority

Board Action/Information Summary

☒ Action ☐ Information

MEAD Number:
203398

Resolution:
☐ Yes ☒ No

TITLE:

Joint Development Guidelines Clarification

PRESENTATION SUMMARY:

To seek Board approval of proposed changes to the Joint Development Policies, clarifying staff procedures and board approval regarding unsolicited offers.

PURPOSE:

Approve proposed amendments to the Joint Development Policies that (1) staff will inform the Board of any unsolicited offers it intends to pursue and (2) proposed Joint Development Agreements arising from those unsolicited offers must be brought to the Board for approval. Approve proposed amendments to the Joint Development Policies that (1) staff will inform the Board of any unsolicited offers it intends to pursue and (2) proposed Joint Development Agreements arising from those unsolicited offers must be brought to the Board for approval.

DESCRIPTION:

The Joint Development Policies adopted via Resolution 2018-13, guide WMATA's Joint Development program. Proposed changes will formally require staff to continue its practice of notifying and seeking Board approval for unsolicited proposals.

Key Highlights:

- WMATA's Joint Development Policies, which guides the joint development program, was adopted by the Board via Resolution 2018-13
- The Joint Development policies do not expressly require Board notification of receipt of unsolicited proposals staff plans to pursue nor is the Board required to approve proposed Joint Development Agreements arising from unsolicited proposals
- Despite the absence of these requirements, staff's current practice is to notify the Board of and seek approval for unsolicited proposals.
- The changes to the Joint Development Policies codifies staff's procedures and the Board's approval regarding unsolicited proposals.

Background and History:

The Board of Directors approved Resolution 2018-13 and adopted WMATA's Joint Development Policies which guides WMATA's joint development program. These policies, in conjunction with the Joint Development Program Guidelines and Station Area Planning Guide provide objectives, policies and processes that govern WMATA's joint development. Joint Development is a process by which underutilized WMATA-owned land can be used for real estate development projects.

Discussion:

As currently written, Section 3.2, of the Joint Development Policies, establishes a general rule that joint developments should "utilize a competitive selection process," which requires Board authorization; however, section 3.3 identifies certain situations where WMATA can consider an unsolicited offer, outside the competitive selection process. While Board notification upon receipt of unsolicited proposals is not expressly written, staff has typically informed the Board, via memorandum, of unsolicited proposals it intends to pursue.

Section 2.3(c) requires Board approval of Joint Development Agreements arising from the "developer solicitation process." Again, the document is silent on the need for Board approval of Joint Development Agreements arising from unsolicited offers; however, staff's current practice has been to bring these agreements to the Board for approval.

Staff proposes updating the Joint Development Policies to formally incorporate the requirements that (1) staff will inform the Board of any unsolicited offers it intends to pursue and (2) proposed Joint Development Agreements arising from those unsolicited offers must be brought to the Board for approval.

FUNDING IMPACT:

This clarifies a Board-adopted policy. There is no impact on funding.	
Project Manager:	Steven A. Teitelbaum
Project Department/Office:	CFO/LAND

TIMELINE:

Previous Actions	April 26, 2018 – The Board adopts the Joint Development Policies.
Anticipated actions after presentation	Joint Development Policies will be updated with the proposed changes that (1) staff will inform the Board of any unsolicited offers it intends to pursue and (2) proposed Joint Development Agreements arising from those unsolicited offers must be brought to the Board for approval.

RECOMMENDATION:

Approve proposed amendments to the Joint Development Policies that (1) staff will inform the Board of any unsolicited offers it intends to pursue and (2) proposed Joint Development Agreements arising from those unsolicited offers must be brought to the Board for approval.

SUBJECT: CLARIFYING THE BOARD OF DIRECTORS' JOINT DEVELOPMENT POLICIES

RESOLUTION
OF THE
BOARD OF DIRECTORS
OF THE
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, In Resolution 2018-13, the Board of Directors adopted WMATA's Joint Development Policies as set forth in Attachment A to the resolution; and

WHEREAS, Section 2.3 of the Joint Development Policies sets forth the circumstances when Board approval is required; and

WHEREAS, Section 3.3 of the Joint Development Policies authorizes staff to consider and negotiate a joint development agreement for certain unsolicited offers without open competition; and

WHEREAS, The Board and staff believe that further clarification and guidance on (1) the requirement for Board approval to execute a joint development agreement in connection with an unsolicited offer, and (2) providing information at the right time to the Board on unsolicited offers will assist the Board in making sound decisions for the Authority;

NOW, THEREFORE, be it

RESOLVED, That the Joint Development Policies adopted by the Board of Directors in Attachment A to Resolution 2018-13 is amended as follows:

By adding a new sentence at the end of Section 2.3 C) to read: "For unsolicited offers, staff shall present the merits of the proposed project to the Board, and the Board may authorize staff to execute a Joint Development agreement."; and

By adding a new subsection in Section 3.0 to read, "**3.4 Providing Information on Unsolicited Offers.** For any unsolicited offers described in Section 3.3, staff shall keep the Board informed via memorandum about any such unsolicited offers that it intends to pursue."; and be it finally

RESOLVED, That in order for this clarifying amendment to be effective for a pending unsolicited offer this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,

/S/
Patricia Y. Lee
General Counsel

WMATA File Structure Nos.:
21.9.4 Joint Development Agreements