

**WMATA
JOINT DEVELOPMENT
POLICIES AND GUIDELINES**

**Washington Metropolitan Area Transit Authority
Office of Property Development & Management
600 Fifth Street, NW
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JOINT DEVELOPMENT POLICIES AND GUIDELINES

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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").

Joint development is 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 development 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 program.

1.1 Goals and Standards

1.1.1 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, including establishing higher density near transit; provide mixed-use development, including housing in compliance with local laws and requirements; and promote 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 reverse commutes 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 TOD 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, as described in Section 12.0 of these 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.

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 resolved as stated in these Guidelines.

1.2 Definitions

1.2.1 Joint Development

A public transportation project that is integrally related to and often co-located with commercial, residential, or mixed-use development. Joint development may include partnerships for public, private, and/or non-profit development associated with fixed-guideway (rail) or bus transit systems that are being improved through new construction, renovation, or extension. Joint development may also include bus and intermodal facilities, intercity bus and rail facilities, transit malls, and historic transportation facilities.

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 Local Jurisdictions or "Local Jurisdiction"

Each Signatory to the WMATA Compact, each jurisdiction encompassed in the WMATA Transit Zone and each jurisdiction or agency referenced in §15 of the WMATA Compact.

1.2.4 Signatories or "Signatory"

The State of Maryland, the Commonwealth of Virginia and the District of Columbia.

1.2.5 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. As a procedural matter, the Board expects that matters will be vetted before the appropriate Board Committee before referral to the full Board for appropriate action.

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 Jurisdiction, the local community and the general public.
2. Identify the roles and responsibilities of the WMATA Board of Directors, the General Manager, WMATA staff, 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. Assure the replacement of on-site WMATA facilities.
5. Define terms under which WMATA will sell joint development properties to Local Jurisdictions and Signatories.
6. Define WMATA's community outreach ~~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.

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. 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*.

The Board's responsibilities include:

1. Authorization of joint development solicitations.
2. Approval of preliminary developer selection and a non-binding term sheet based on a staff recommendation.
3. Approval of terms of a binding Joint Development 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 that reduces compensation to WMATA, extends the Term or changes proposed uses or elements.
5. 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 (including the addition of new facilities) or a change to the site access.

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.
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 Guidelines, "staff" means the General Manager or staff designated by the General Manager.

5.3 Local Jurisdictions and Signatories

Each Local Jurisdiction has a clear policy interest in WMATA's joint development program, and plays an important role in the planning and implementation of WMATA joint development projects.

1. 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.
2. 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 to negotiate 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. A WMATA Compact Public Hearing is required when the proposed development includes a major change to WMATA facilities, such as a reduction of customer

parking, the addition or removal of WMATA facilities or modification of access to the site. The Public Hearing will take place after approval of the development by the Local Jurisdiction, but prior to final WMATA site plan approval. The affected Local Jurisdiction will be invited to be a participant in that public hearing process.

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.

5.4 Developers

Public and private development entities, landowners, and/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 16 (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 the 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 the 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, under the pertinent Joint Development Agreements and jurisdictional laws and requirements.

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 as described in Section 5.4, above.

Input on any topic is appreciated, but particular feedback on open space and community amenity needs; pedestrian and bicycle route concerns/conflicts; land use needs; and building height and massing concerns is especially helpful.

6.0 OBJECTIVES AND PROCEDURES

Sections 6.0, 7.0 and 8.0 describe the procedures followed for joint development. The stages are descriptive; 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, as described in Section 16.

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 by collaborating with stakeholders as to plan land use and station access.
2. Streamline the proposal process as much as possible.
3. 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, etc.
5. Incorporate fiscal impacts and benefits into the overall assessment of project economic benefits.
6. Maximize development industry interest, including use of private partners, agents, and/or brokers where appropriate to maximize awareness and interest.
7. Promote innovative transit-oriented land development practices.

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 potential joint development is derived from requests from Local Jurisdictions, and general market readiness, as determined by staff but which may be based on advice or rankings provided by an outside consultant(s).

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 to establish the station access needs for the property. This study will be coordinated with the applicable Local Jurisdiction and with relevant WMATA offices, and with the local 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 potential transit facility locations. Certain station access designs - such as those for 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, WMATA station access plans will address the amount of each specific type of transit access facility that is needed, identify where—such facilities might be located on or around the station site, at a concept level subject to the considerations described above; and 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.

In comparison to the prevailing or expected station area development environment at the time the station was originally built, the amount, kind, and location of proposed transit access facilities will be complementary to the local station area context as it has developed, is developing, or is expected to develop under 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 may 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.

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. If this is done, the MOU is 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 about rezoning and/or amendment (or other jurisdiction-specific process) that would allow the possible solicitation to ~~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 which Board-approved method will be followed. In either case, a solicitation will include the following competitive selection procedures:

1. Advertisement of the availability of the solicitation using print and/or electronic media to reach potentially interested parties and notify the general public.
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 draft a solicitation document best suited to the particular situation of a given property. Some may be in areas with established land use patterns, local zoning, and/or comprehensive plans; others may be in areas with recent development activity, zoning changes, or new comprehensive plans; and still 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 WMATA's 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.

7.0 COMPETITIVE SELECTION PROPOSAL ("RFP") PROCESS

7.1 Outline of the Process

1. Internal WMATA screening of potential joint development site(s)
2. Consultation with Local Jurisdiction
3. Station access plan
4. Alternate Step-Request for Prior Experience ("RFPE")
5. Advertise solicitation, by staff or (subject to advice of Counsel) third party advisor; obtain WMATA Board approval, including step "4" above if utilized
6. Order appraisal
7. Initial evaluation
8. Community forum
9. Final evaluation
10. Select developer, negotiate Term Sheet, establish negotiation and closing milestone schedule, and obtain WMATA Board Approval
11. Negotiate Joint Development Agreement and related documents; obtain WMATA Board approval
12. Hold Compact Public Hearing; draft and finalize Staff Report; obtain WMATA Board approval
13. Obtain Federal Transit Administration ("FTA") approval, if required

7.2 Internal WMATA Screening

The proposal will be screened with internal WMATA departments to determine impacts to any operational uses of the property. If – after analysis and consultation with impacted WMATA operational groups – it is determined the impacts cannot be mitigated during the course of development, the development site will be removed from further consideration.

7.3 Consultation with Local Jurisdiction

See Section 5.3.

7.4 Station Access Planning

Conduct station access planning process as outlined in Section 6.2.4.

7.5 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 or to elicit developer interest without requiring the time and expense of a response to a formal solicitation.

This 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 with outreach to 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.

7.6 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 land 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.

7.7 Appraisal

Based on the terms of the solicitation, WMATA staff will order an appraisal of the property, typically from a third party appraiser.

7.8 Initial Evaluation

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

1. Technical Evaluation

- a. Degree to which the project reflects transit-oriented development principles
- b. Market/financial viability of the joint development project
- c. Development team experience and prior performance
- d. Innovation and creativity
- e. Compatibility of development with local requirements and transit area
- f. Effects on WMATA facilities

2. Economic Evaluation

- a. Enhanced Metrorail and Metrobus ridership
- b. Financial benefits accruing to WMATA and the Local Jurisdiction
- c. Joint development project completion time-line

3. 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 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 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. Additionally, the offeror shall identify and describe the interest of each WMATA Board Member, household member or business associate who has any interest, including a direct or indirect financial interest, in the offeror's firm, in a financial transaction with WMATA to the offeror's firm is a party or prospective party, or in an actual or prospective business relationship with WMATA to which the offeror's firm is a party. (See Exhibit 3 to these Guidelines). 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.

4. Other Non-Direct Benefits

WMATA may also consider non-direct compensation benefits or special enhancements to transit system ridership over and above those normally provided by joint development.

7.8.1 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.

7.8.2 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.

7.8.3 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 the evaluation meeting and provide questions/comments to WMATA for discussion with the developer.)

7.9 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 on the technical (non-financial) aspects of the proposals.

7.10 Final Evaluation

Staff may or may not request best and final offers from developers. Staff will rate each responsive proposal (including best and final offers, if any) and rank the proposals in accordance with Section 7.8 resulting in a tentative developer selection and commencement of negotiations 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. If 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 7.8 above.

7.11 Developer Selection

Once the principal terms of a potential developer's proposal have been reduced to a term sheet, ~~staff~~ the General Manager 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 Joint Development Agreement.

7.12 Joint Development Agreement

If the term sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer ~~that~~ incorporating the approved terms. 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.

7.13 Compact Public Hearing

If a WMATA Compact Public Hearing is required due to a major change to WMATA facilities such as a reduction of customer parking, the addition or removal of WMATA facilities or modification of 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.

7.14 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 14 of these Guidelines.

7.15 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 under Section 16.

7.16 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.

7.17 Subsequent Process

The selected developer must follow any land use, zoning, permitting or other entitlement processes required by the Local Jurisdiction, including any public hearings.

8.0 COMPETITIVE SELECTION QUALIFICATION ("RFQ") PROCESS

8.1 Outline of the Process

1. Internal WMATA screening of potential joint development site(s)
2. Consultation with Local Jurisdiction
3. Obtain WMATA Board approval to advertise for developers based on qualifications

4. Select developer; obtain WMATA Board approval
5. Enter into planning process with developer, jurisdiction, community and other local stakeholders. Establish plan for station access needs and land use
6. Order appraisal
7. Negotiate price and term sheet; obtain WMATA Board approval
8. Negotiate Joint Development Agreement; obtain Board approval; negotiate related documents
9. Compact Public Hearing (Could be after step 3, above), obtain Board approval
10. FTA approval, if required

8.2 Introduction

This process used when there are special site conditions, when the jurisdiction is about to begin a master plan revision or rezoning, or under other situations when it would be desirable to have a developer in place to provide input on options for potential development, and to participate early 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 Internal WMATA Screening

See Section 7.2.

8.4 Consultation with Local Jurisdiction

See Section 5.3.

8.5 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.

8.6 Developer Selection and WMATA Board Approval

8.6.1 Criteria

The criteria for selecting developers under this process includes prior experience in developing projects of the type and size contemplated, financial capacity to complete the project, prior experience with outreach to 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.

In addition to the criteria listed above, each proposer shall self-certify as to its integrity and business ethics using a form required by WMATA (Attachment One to these 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 those stakeholders. Evaluation criteria may include evaluation factors or mutual WMATA and Local Jurisdiction interests, such as demonstrated experience in hiring local or DBE contractors. 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.

8.6.2 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.

8.6.3 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.

8.6.4 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.

8.6.5 Selection

Staff will rate responsive Qualifications and rank the Qualifications based on 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 a Local Jurisdiction or other stakeholders desire to participate in Qualifications evaluation, they will be invited to participate in a developer selection advisory committee and all developer interviews. Further, 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.

After rating Qualifications, staff will then make a tentative developer selection and commence negotiations on a Memorandum of Understanding that outlines the terms for proceeding with the project and the responsibilities of each party. 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.

8.6.6 Memorandum of Understanding

The Memorandum of Understanding establishes an 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, the General Manager 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.

8.7 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.

8.8 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. 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.

8.9 Price and Term Sheet

Staff will commence negotiations on a term sheet that outlines the major business terms of the project, including 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 7.15 and 7.16) herein. As soon as the principal terms of a term sheet have been agreed upon, the General Manager 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.

8.10 Joint Development Agreement

If the term sheet is approved, staff will negotiate a Joint Development Agreement with the selected developer incorporating the approved terms. 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.

8.11 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.

8.12 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 14 of these 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 at least the same number of transit riders is accommodated and the new transit access facilities reflect 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 for bicycles, buses (including Local Jurisdictional systems), and pedestrians (including ADA). The documentation of this analysis will be incorporated into 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 Public Hearing staff report materials presented to the Board for review and decision.

10.0 SALE OF PROPERTY TO LOCAL JURISDICTIONS AND SIGNATORIES

10.1 Policy for Sale of Property to Local Jurisdictions and Signatories

When WMATA offers a property for sale, and one of its Local Jurisdictions or Signatories 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, with the costs of those station facilities to be deducted from the purchase price; 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 intended to be sold by the jurisdiction at a sale price in excess of the price paid to WMATA, then WMATA will shall receive a distribution of one hundred percent (100%) of the additional value so created or obtained unless WMATA and the jurisdiction have negotiated a different arrangement in advance, and that has been approved by the Board. If required, the transaction will be subject to FTA approval.

In the case where the Local Jurisdiction or Signatory 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 improvements in WMATA's transit facilities.

12.0 AFFORDABLE HOUSING

WMATA recognizes the importance of providing affordable housing at its Metrorail stations. Toward achieving this objective, WMATA's affordable housing policy shall be as follows:

1. 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.
2. To maximize value to WMATA, developers are encouraged to seek creative sources of financing (low-income housing tax credits, grants, and other Federal and local funding programs) to achieve 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 (1) FTA funds are used for a capital project related to a proposed joint development project; or (2) joint development takes place on real property that was, or will be, purchased with funds administered by FTA, WMATA joint development projects must meet the following FTA 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; (3) provide a fair share of revenue for public transportation that will be used for public transportation; and (4) provide WMATA with satisfactory continuing control of the site. 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 any applicable 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); also 49 CFR 18.31 and 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 Guidelines, including the certifications outlined in Exhibit 1.

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. 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 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

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

16.1 Notification

Within 10 business days of receipt of the unsolicited proposal WMATA will respond to the proposer, with a copy to the Local Jurisdiction and the WMATA Board of Directors. This response will acknowledge receipt and will provide information about the process which will be followed by WMATA.

16.2 Screening

See Section 7.2, above

16.3 Threshold Criteria

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 16.2 or 16.3, 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. Additionally, staff will not conduct a detail financial or economic evaluation of the unsolicited proposal until this time period for receiving competitive proposals has expired.

16.5 Evaluation - Unsolicited Proposal Only

If no additional proposals are received during the time period provided in Section 16.4, WMATA will begin evaluating the unsolicited proposal under Section 7.8 to determine if the proposal merits selection for award of a contract. WMATA may hold a Community Forum as described in Section 7.9. 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 7.13, 7.14, 7.17, and 7.18 will also apply.

16.6 Evaluation - Unsolicited and Competing Proposals

If WMATA receives additional proposals during the time period provided in Section 16.4, any new proposals, including the unsolicited proposal, will be evaluated in accordance with Sections 7 (if competed as an RFP) or Section 8 (if competed as an RFQ).

17.0 ADJACENT PROPERTY OWNERS

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. (For example, if WMATA owns a small parcel 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 7.2 through 7.17 (modified to reflect a non- competitive selection process).

EXHIBIT 1: Self-Certification for Prospective Developers

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 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 to 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 3: Disclosure of Interests of with WMATA

Using the table below, the offeror shall identify each WMATA **Board Member, Household Member** or **Business Associate** who to the best of your knowledge, information or belief has any interest, including a **Direct or Indirect Financial Interest**, in the your firm, in a **Financial Transaction** with WMATA to which the your firm is a **Party** or prospective **Party**, or in an **Actual or Prospective Business Relationship with WMATA** to which the your firm is a **Party**. 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.*

Name of Individual	Nature of Interest

Signature: _____
Title: _____
Firm: _____
Date: _____

*Terms in bold text are defined in the Code of Ethics for Members of the WMATA Board of Directors, which is available at http://www.wmata.com/about_metro/board_of_directors/.