

# **METRO JOINT DEVELOPMENT PROGRAM: PROCESS**

**Updated January 2017**

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## I. INTRODUCTION / PURPOSE

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The Metro Joint Development Program is a real estate development program for properties owned by the Los Angeles County Metropolitan Transportation Authority (Metro). It is a real property asset development and management program designed to secure the most appropriate private and/or public sector developments for Metro-owned properties.

This document outlines the processes and legal framework that guide the Metro Joint Development Program as it develops Metro-owned properties. Together with the Board-adopted Joint Development Program Policy, these documents serve to inform communities in which joint developments take place, developers who build them, and the general public, about the objectives, policies, and processes that govern the Joint Development Program.

In addition, this document explains how local and federal policies guide Metro joint development, where applicable.

## II. PROCESS

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### A. Inventory and Site Selection:

1. Inventory. Metro maintains an inventory of properties that are potential sites for future joint development. Metro staff will monitor market conditions and communicate with local jurisdictions and stakeholders about development potential.
2. Site Selection. The determination to select sites for joint development is dependent on several factors including, but not limited to: market conditions, community input, local jurisdictions, and Metro resources. These factors may provide the basis for establishing project priorities, project implementation strategies, and ultimately the creation of Development Guidelines, to ensure maximum attainment of Metro's Joint Development Objectives.
3. Determination of Financing Requirements. Upon the selection of a site for a joint development project, Metro staff will determine the funding sources that were involved in the acquisition of the selected site. Depending upon the financing that was used, the project may be subject to review by the FTA, the California Department of Transportation (Caltrans), and/or review pertaining to the presence of tax-exempt bonds.
4. Joint Development versus Excess Property. Metro-owned properties for which there is a federal interest and considered for the Joint Development Process may be considered "Joint Development" sites or "Excess Properties" under applicable Federal rules and regulations. Joint Development sites contain transit infrastructure, which can range from a rail or bus station to a power substation or other infrastructure. Excess Properties contain no transit infrastructure. Metro will handle both Joint Development sites and Excess Properties according to the policies and processes set forth in this document. .

### B. Community Outreach and Scoping

1. Community Engagement. Once a site has been selected for a potential joint development, Metro will consult with local jurisdictions and conduct outreach to solicit input from the community surrounding the site. The Joint Development Program staff, working closely with Metro Community Relations, will work with the community stakeholders and local jurisdiction to determine a vision for the potential project.
2. Development Guidelines. Upon determination of a unified vision that is desirable to the community and economically feasible, Metro will prepare Development Guidelines specific to the site. The Development Guidelines will articulate the intensity and type of land uses that Metro and the community desire for that site, as well as any desired transit and urban design features. The

Development Guidelines will be presented to the Metro Board for approval. Within Metro, the Development Guidelines shall be informed by:

- a. Existing or planned transit stations or stops
- b. Metro Rail Design Criteria
- c. Input from the appropriate Metro Departments, including, without limitation Operations, Engineering, and Safety
- d. The First/Last Mile Strategic Plan
- e. The Complete Streets Policy
- f. The Sustainability Policy
- g. The Supportive Transit Parking Plan (once completed and adopted)
- h. The Public Restroom Policy
- i. Other policies and departments as applicable

### **C. Competitive Solicitation Process:**

1. Solicitation. After Board approval of the Development Guidelines, Metro will solicit proposals for joint development of the site through a Request for Information and Qualifications (RFIQ) and/or a Request for Proposals (RFP). The standard RFIQ/RFP procedure will be managed through the Vendor/Contract Management Department and will be consistent with Procurement Policies and, if the subject site was purchased with FTA assistance, will conform to FTA circular 7050.1, which governs joint development.
2. Evaluation. Joint development proposals shall be evaluated based on their support of the Joint Development Objectives and conformance with the site-specific Development Guidelines. Staff will assemble an evaluation panel generally consisting of key Metro personnel and a representative of the governing jurisdiction. Additionally, an urban design or development consultant, financial services consultant and/or local jurisdiction technical staff may be used to provide support and advisory services in the evaluation of proposals. The evaluation panel shall evaluate joint development proposals and advise the Metro Chief Executive Officer (CEO) on a developer to be recommended to the Board. The CEO may recommend a developer to the Board or defer joint development if none of the proposals maximize Joint Development Objectives.
3. Unsolicited Proposals. See Appendix A for the Joint Development Unsolicited Proposals Policy and Process.

### **D. Development Phase:**

1. Exclusive Negotiation Agreement and Planning Document. Before the CEO recommends the selected developer's proposal to the Metro Board, developer shall negotiate and sign an Exclusive Negotiation Agreement and Planning Document ("ENA"). The ENA shall not be effective until both parties have

signed.) The ENA will include a project concept, terms and conditions regarding community engagement, general planning and development goals, deposit and fees, design review and a predevelopment schedule agreed to by the proposed developer and Metro staff. Upon approval of a recommended developer and authorization by the Metro Board, the CEO or designee shall execute the ENA with the developer.

*Developer Responsibilities under the ENA include but are not limited to:*

- Negotiate in good faith, including such project design and project financing information as necessary for Metro staff to negotiate a transaction.
- In consideration for entering into the ENA, the developer shall provide Metro a non-refundable fee in an amount determined by the CEO or designee but in no event less than fifty thousand dollars \$50,000 or such other consideration as determined by the CEO or designee.
- In addition to the fee, the developer shall also provide Metro with a deposit in an initial amount determined by the CEO or designee to pay Metro's actual costs to negotiate and evaluate the proposal, including certain Metro in-house and third party costs.
- Create a robust community engagement plan that will carry throughout the design, entitlement and construction process for the project.

*Metro Responsibilities under the ENA:*

- During the negotiation period, provided that the developer is not in default of its obligations under the ENA, Metro shall negotiate exclusively and in good faith with the developer a Joint Development Agreement ("JDA") and Ground Lease to be entered into between Metro and the developer, and shall not solicit or entertain offers or proposals from other parties concerning the site.

*Term of the ENA:*

- The term of the ENA shall generally be eighteen (18) months; provided, the term and any extensions shall not exceed thirty (30) months. In considering an extension, the CEO or designee shall determine whether substantial progress has been made towards fulfillment of the requirements of the ENA and may require payment of additional fee and/or deposit amounts.

2. Joint Development Agreement.

- Before the Metro Board can authorize execution of a JDA for a project, the project must be environmentally cleared through the California Environmental Quality Act (CEQA). Metro is not the lead CEQA agency for joint development projects; the agency with local regulatory land use authority generally serves that function.
  - Upon satisfactory fulfillment of the development requirements in the ENA, negotiation of acceptable terms, and adoption of CEQA findings by the lead agency, Metro staff will recommend to the Metro Board to (a) adopt the CEQA findings as a responsible party and (b) enter a Joint Development Agreement (JDA) for the implementation of a project. The JDA shall describe the rights and responsibilities of both parties and may include the terms for a Ground Lease.
3. FTA Concurrence. Before LACMTA may enter into a ground lease, the project must seek and obtain concurrence from the FTA Regional office via a letter. Details on FTA requirements for concurrence are included in the Legal Framework section V.B Federal Guidelines.
4. Ground Lease. Upon satisfactory fulfillment of the closing conditions required in the JDA, and receipt of FTA concurrence, Metro shall enter into a Ground Lease for the lease of the site. The Ground Lease shall describe the rights and responsibilities of both parties with respect to the site. The Metro CEO or designee may also enter into such other documents and agreements to implement and administer the project as described in the JDA and Ground Lease.
5. Environmental Compliance. As noted above, Metro shall not approve or be committed to a project until the Metro Board - as a responsible agency under CEQA and/or NEPA - considers and analyzes the environmental impacts of the project. The project must be cleared through CEQA before a JDA or a Ground Lease can be approved by the Board.

## EXHIBIT A: JOINT DEVELOPMENT PROCESS CHART

Metro Joint Development Process					
STAGE	Initial Community Outreach	Developer Solicitation/ Selection**	Project Refinement, Joint Development Agreement Ground Lease Negotiations	Permitting and Construction	
ACTIONS					
	<ul style="list-style-type: none"> <li>&gt;Community meetings</li> <li>&gt;Creation of Development Guidelines*</li> </ul>	<ul style="list-style-type: none"> <li>&gt;Issue Request for Information and Qualifications (RFIQ) and/or Request for Proposals (RFP)</li> <li>&gt;Evaluate proposals</li> <li>&gt;Community update</li> </ul>	<ul style="list-style-type: none"> <li>&gt;Developers progress architectural design</li> <li>&gt;Community outreach and input - several iterations</li> <li>&gt;Entitlements and CEQA process***</li> <li>&gt;Negotiation of financial terms</li> </ul>	<ul style="list-style-type: none"> <li>&gt;City engineering</li> <li>&gt;Construction documents</li> <li>&gt;City building permits</li> <li>&gt;Seek concurrence from FTA (for properties with federal interest)</li> <li>&gt;City-related approvals</li> <li>&gt;On-site construction</li> <li>&gt;Occupancy</li> </ul>	
	Metro Board approves Development Guidelines	Metro Board authorizes Exclusive Negotiation Agreement (ENA) with recommended developer(s)	Metro Board approves Joint Development Agreement and Ground Lease Agreement	Completed project	
approximate overall time frame: 48 - 70 months					
	6 - 8 months	6 - 8 months	18 - 30 months	18 - 24 months	

\*Staff may undertake preliminary market analysis or related studies prior to the drafting of Development Guidelines.

\*\*Once the RFIQ/RFP is released, Metro is in a "blackout" period. During this period, Metro cannot discuss the specific content of proposals until staff releases their recommendations for a developer. Metro can do general outreach to keep stakeholders apprised of the process and key dates.

\*\*\*Proposed use requires local jurisdiction approval and may include environmental, zoning, and local plan consistency review and public hearings.



### III. LEGAL FRAMEWORK

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#### A. Statutory Basis:

The Metro Joint Development Program maintains statutory basis as obtained by a predecessor agency, the Southern California Rapid Transit District. Under California Public Utilities Code, Section 30600: “the district may take by grant, purchase, gift, devise, or lease, or by condemnation, or otherwise acquire, and hold and enjoy, real and personal property of every kind within or without the district necessary or incidental to the full or convenient exercise of its powers. That property includes, but is not limited to, property necessary for, incidental to, or convenient for joint development and property physically or functionally related to rapid transit service or facilities. The Board may lease, sell, jointly develop, or otherwise dispose of any real or personal property within or without the district when, in its judgment, it is for the best interests of the district to do so.”

#### B. FTA Regulations:

Metro joint development sites which were acquired with assistance from the FTA are subject to FTA joint development policies. Current guidance in FTA Circular 7050.1 on FTA-funded real property for joint development, stipulates that joint developments follow four criteria:

1. Economic Benefit – project must enhance economic benefit or incorporate private investment.
2. Public Transportation Benefit – project must provide physical transit improvement or enhanced connection between modes.
3. Revenue – generally, project must generate a fair share of revenue (at least equal to the amount of original federal investment) and be used for public transportation purposes.
4. Tenant Contributions – tenants pay a fair share of the costs through rental payments or other means.

Metro joint development sites which were acquired with FTA funds are subject to and will follow FTA guidance as it is updated from time to time. Joint development projects will be reviewed individually by the FTA to ensure compliance.

In addition, Metro is responsible to ensure that joint development projects comply with FTA Title VI Civil Rights and Environmental Justice requirements. Compliance with Title VI will be required of developer’s selected for joint development projects.

**C. Local Jurisdictions:**

Metro joint developments are subject to local land use policies and procedures in the host jurisdiction, similar to any private development. The selected developer for any joint development site must follow the land use, zoning, permitting, and entitlement process for the local jurisdiction of that site.

## **1. Definition of Unsolicited Proposal for Joint Development**

An unsolicited proposal (“Unsolicited Proposal” or “Proposal”) is a written proposal that is submitted to Metro on the initiative of a prospective offeror (organizations or individuals) (“Offeror”) for the purpose of developing a partnership that is not in response to a formal or informal request issued by Metro. For the purposes of the Unsolicited Proposals & Public/Private Sector Engagement Policy (“UP Policy”), as well as the Metro Joint Development Program: Policies and Process document (“JD Policy”), a Joint Development (“JD”) Unsolicited Proposal would seek the right to develop or improve property owned by Metro.

A valid Unsolicited Proposal must:

- a. Be innovative and unique, offering a development proposal with unique characteristics or benefits;
- b. Be independently originated and developed by the Offeror;
- c. Be prepared without Metro’s supervision, endorsement, direction, or direct involvement;
- d. Be sufficiently detailed that its benefits in support of Metro’s mission and responsibilities are apparent;
- e. Not be an advance proposal for property development that Metro could acquire through competitive methods;
- f. Not be an offer responding to Metro’s previously published expression of need or request for Joint Development proposals.

The Unsolicited Proposal is submitted by the Offeror with the objective of obtaining an Exclusive Negotiation Agreement and Planning Document (ENA) with Metro. (See Section 2 of this JD UP Policy for expected contents of Unsolicited Proposals).

Note that Unsolicited Proposals for all other Metro services, programs or efforts should follow the guidance in Metro’s Unsolicited Proposals & Public/Private Sector Engagement Policy (as opposed to this JD UP Policy).

## **2. Submission Process and Evaluation**

Similar to the UP Policy, all JD Unsolicited Proposals shall be submitted to the Metro Vendor / Contract Management (V/CM) office, which will log the Proposal and within three business days, officially transfer it to the Joint Development Team for evaluation of technical and/or financial merit.

Metro receives and evaluates Unsolicited Proposals using a two-phased approach, followed by any publication requirements as described below. Phase One includes a basic threshold review and evaluation of Conceptual Proposals. Conceptual Proposals will be reviewed within 60 days of receipt, at which time a determination will be made as to whether to request additional and detailed information in Phase Two. If a Proposer is requested to submit information for Phase Two and the project proceeds beyond Phase Two, Metro’s procurement policies and procedures will apply. This process is described further below. Metro may, at any time, choose not to proceed further with any Unsolicited Proposal.

### *A. Phase One – Conceptual Proposal*

The purpose of Phase One is for Metro to receive written, concept-level proposals and to screen those proposals to determine whether to request additional and detailed information in Phase Two.

1) *Threshold Review*

Upon receipt of a Conceptual Proposal, Metro V/CM staff will take the following steps:

- a. Promptly acknowledge receipt of the Proposal (letter to Offeror); and
- b. Determine whether the Proposal meets the threshold requirements of a JD Unsolicited Proposal.

Before initiating a Phase One evaluation, the Metro JD Team, in cooperation with V/CM staff, will determine if the Conceptual Proposal meets the following threshold requirements:

- a. Satisfies and meets the elements of a JD Unsolicited Proposal as defined in Section 1 of this JD UP Policy;
- b. Contains sufficient technical and cost information to permit a meaningful evaluation (see Conceptual Proposal Requirements below);
- c. Has been approved by an authorized representative of the Offeror or a person authorized to contractually obligate the Offeror;
- d. Includes a general project concept that meets Metro and JD objectives as stated in the JD Policy; and
- e. Complies with the marking requirements for use and disclosure of data.

If the JD Conceptual Proposal does not meet the preliminary requirements above, the Offeror may be given the opportunity to provide the required data and/or may be advised that Metro is not interested in pursuing further action with respect to the Proposal.

If the Proposal meets the threshold requirements, Metro V/CM and JD staff will take the following steps:

- a. V/CM: Log the Proposal and assign it a number;
- b. V/CM: Officially transfer the Proposal to JD staff;
- c. JD and V/CM: Set and notify the Offeror of the schedule for internal evaluation;
- d. JD: Assemble an evaluation team that includes a V/CM staff member, as well as technical and financial subject-matter experts related to the JD Unsolicited Proposal;
- e. JD: Facilitate the evaluation process as needed;
- f. V/CM: If the evaluation team deems necessary, V/CM will issue a written request for clarification to the Offeror;
- g. JD: Conduct outreach to impacted stakeholders as needed; and
- h. JD and V/CM: Notify the Office of the CEO and then the Offeror of Metro's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a competitive procurement. JD staff will provide a general explanation of the reasons for the decision.

2) *Content – Conceptual Proposal*

Conceptual Proposals should include the information identified in the Conceptual Proposal Form (Exhibit 2 to this JD UP Policy).

3) *Evaluation – Conceptual Proposal*

Once it is determined that the JD Conceptual Proposal is complete and is determined to be a project of interest to Metro, the Proposal will be evaluated promptly in accordance with the criteria set out in this section.

4) *Consideration of an Unsolicited Conceptual Proposal* – An Unsolicited Proposal is more likely to be considered for further action if the Unsolicited Proposal is (1) adjacent to a Metro property that is small or constrained by transit infrastructure or other nearby development; and/or (2) from an adjacent landowner(s) (or Offeror with site control of adjacent properties) that make the Metro site feasible for development or better able to achieve Metro's Transit Oriented Communities objectives. Other criteria for consideration of the Proposal will include but is not limited to:

- a. It offers an added benefit, beyond the proposed development, that Metro had either not planned for or had considered but had not budgeted for, such as a transit improvement or an expansion of transit services;
- b. It provides public improvements that support active transportation (beyond what would be required in a regular development process);
- c. The Offeror is, or has partnered with, a community-based organization with a track record of community engagement, investment and provision of services within the community where the proposed project is located;
- d. It includes uses that provide significant community benefit or meet desired community uses. The proposed benefit or uses should be documented by a recent (within five years) plan – a land use plan, vision plan, or other study or report that cites the need for the proposed use;
- e. The Offeror (and/or Offeror's development team) shows a clear commitment to a robust community engagement process in the further development of their project plans; and
- f. It includes unique or innovative methods, approaches, financing mechanism or an idea that have originated with or are assembled by the Offeror.

During this Phase One evaluation, the process may include review of the technical proposal by a financial consultant, as well as an urban design/architectural consultant. During the evaluation process, the Offeror(s) will have no interaction with the evaluation team. If Metro desires to proceed to Phase Two, Metro V/CM will issue a Request for a Detailed Proposal that formally invites the Offeror to submit a Phase Two proposal. This request will include expected timelines for submission and evaluation, and offer the opportunity to request a meeting with Metro staff. A copy of Metro's standard Exclusive Negotiation Agreement and Planning Document (ENA) will also be provided.

5) *Rejection of an Unsolicited Conceptual Proposal* – Metro shall return an Unsolicited Proposal to an Offeror, citing reasons, when its substance meets any of the following criteria:

- a. It is available to Metro without restriction from another source;
- b. It closely resembles a pending competitive requirement; or
- c. It does not demonstrate an innovative and unique method, approach, or concept, or if it does, another method, approach, or concept may be available to Metro on the basis of competitive proposals.

If it is determined that the Proposal is unacceptable, the Proposal shall be returned to the Offeror together with the reasons for the return.

*B. Phase Two – Detailed Proposal*

The purpose of Phase Two is for Metro to receive more detailed technical and financial information to fully understand and evaluate the Proposal. At the conclusion of this phase, Metro will decide whether to forego the Proposal, to proceed to a sole source agreement, or to pursue a competitive solicitation.

*1) Content – Detailed Proposal*

Phase Two of the JD Unsolicited Proposal should contain the following information in order to permit consideration in an objective and timely manner.

- a. **Basic Information.** Identify the legal entity that would serve as the principal in the proposed development and indicate the type of entity (e.g. for-profit, non-profit, LLC, etc.); provide names, telephone numbers and email addresses of the Offeror’s technical and business personnel whom Metro may contact for evaluation or negotiation purposes; indicate the date of submission and the period of time for which the Proposal is valid (a minimum of six months is suggested); ensure the Proposal is signed by a responsible official or representative of the Offeror, or a person authorized to contractually obligate the Offeror.
- b. **Project Description and Development Program.** This includes a concise title and description of the proposed project (approximately 200 words); a clear description of the proposed development program (square footage for each use, including open space and parking); description of community benefits associated with the project, such as affordable housing, open space or plazas, new community-serving amenities, etc.; description of how the proposed project interfaces with the transit facility (if applicable) and the active transportation environment within the community.
- c. **Development Team.** Include a list of key team members and their particular role in the project. Provide a brief history of the experience of key team members, focused only on related project work.
- d. **Preliminary Design Concept.** Include site plans, site sections, circulation/public realm plan, program/use diagrams, and renderings consistent with the project description and development program.
- e. **Community Engagement.** Describe the proposed community engagement process for the project, and any community engagement that may have occurred leading up to the Unsolicited Proposal.
- f. **Development Proforma.** Provide a predevelopment budget, development budget, 15-year operating proforma, and capital structure. Provide a financing plan that clearly indicates anticipated funding sources, both debt and equity. Describe proposed funding of transit improvements as may be contemplated in the Offeror’s plans.

- g. Offeror's Financing Capacity. Submit information that fully demonstrates the team's financial capacity and readiness to develop the proposed project. This includes a demonstrated track record in structuring public/private partnerships (if this model is applicable to the Proposal), relationships with financial institutions and access to predevelopment funding. To demonstrate this capacity, provide three examples of transactions the team has completed in the last 10 years that are similar/relevant to the proposed project. For these examples: (1) Indicate the sources and uses of both debt and equity financing for each component of the project; (2) Describe experience with public financing sources (if applicable to the proposed project) such as the Economic Development Administration, New Markets Tax Credits, US Department of Housing and Urban Development Financing, etc; and (3) Provide any other relevant information that demonstrates capacity to structure and finance the proposed project.
- h. Development Timeline. Provide a timeline for the entitlement and completion of development, noting community engagement efforts. If applicable, note how access to transit facilities would be maintained during construction.
- i. Financial Offer to Metro. It is in the best interest of Offerors to submit their best financial offer. Describe areas to be ground-leased and associated square footages; include length of lease, base and percentage rents and the basis of periodic escalations and adjustments. Regardless of the proposed ground lease structure, Metro expects to receive a fair market value (FMV) rent for the Project Site. To the extent that a discounted FMV is being requested, pursuant to the JD Policy's allowance for affordable housing, the discount must be to reduce a justified financial "gap" in the overall project pro forma. State any offer of participation in a percentage rent of gross revenue from all income-producing land uses. Metro requires a \$50,000 ENA Fee. Annual holding rent as a percent of annual base rent for each development phase according to a predetermined schedule, until the start of construction is also required. Metro requires an annual construction rent as a percent of annual base rent for the period of time that the project is under construction until such time as the permanent base rent commences. State any offer of participation in sale or refinancing proceeds.
- j. ENA. If the Offeror desires any modifications to the standard ENA, this request should be included in the Phase Two submission.
- k. Proprietary Data. Identify any proprietary data which the Offeror intends to be used by Metro only for evaluation purposes (see Section 5 below).

2) *Evaluation Criteria – Detailed Proposal*

Before initiating a comprehensive evaluation, Metro V/CM staff in coordination with JD staff, will determine if the Detailed Proposal continues to meet the threshold requirements set out in Phase One and the requirements specifically set out in the Request for Detailed Proposal. In addition the following minimum factors will be considered:

- a. Qualifications, related experience or unique combination of those, of the Offeror;
- b. The qualifications, capabilities and experience of the Proposal team leader or key personnel who are critical to achieving the Proposal objectives;
- c. Integration with transit facilities and active transportation infrastructure;
- d. Opportunity for transit improvements associated with the Proposal;

- e. Economic and regulatory feasibility of the proposed project;
- f. Quality of design;
- g. Provision of community benefits;
- h. Inclusion of SBE/DBE/DVBE and CBOs on project team;
- i. The Proposal offers innovative and unique characteristics;
- j. Financial Offer; and
- k. Any other factors appropriate for the particular Proposal.

3) *Evaluation Process – Detailed Proposal*

Detailed Proposals will be evaluated promptly, at a minimum in accordance with the criteria set out in this section, as well as any other evaluation criteria identified in the Request for Detailed Proposal. Outside advisors will be consulted if the Metro evaluation team deems it necessary and beneficial. The evaluation team may also request clarification, which V/CM will submit in writing to the Offeror.

Upon completion of the Phase Two evaluation, JD staff will keep and share with V/CM, a record of the persons on the evaluation team and record the final recommendation for the Proposal. If the evaluation team determines that the Phase Two Proposal is unacceptable, the Proposal shall be returned to the Offeror together with the reasons for the return. If Metro determines that the Phase Two proposal should continue in the process, JD staff will prepare a memo to the CEO summarizing the evaluation results and recommending the appropriate further action. Section 3 below describes the next steps.

### **3. Full and Open Competition / Stakeholder Outreach / Final Recommendations**

A. *Full and Open Competition*

Metro’s receipt of an Unsolicited Proposal does not, by itself, justify a contract award without full and open competition. If the Unsolicited Proposal offers a proprietary concept that is essential to contract performance, it will be deemed a Sole Source (see section below). If not, Metro will respond to the Unsolicited Proposal by following federal procurement guidelines for competitive procurement. In addition, Metro is committed to engaging stakeholders in the JD Process. For JD Unsolicited Proposals that have been recommended to move beyond Phase Two, Metro will take the following steps.

- 1) *Unsolicited Proposal – Sole Source Award*: If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, as determined by Metro, Metro may make a sole source award, as provided in Metro’s Sole Source Award Policy. A sole source award may not be based solely on the unique capability of the Offeror to provide the specific property or services proposed.
- 2) *Unsolicited Proposal – Competitive Solicitation Process*: If the Unsolicited Proposal is not determined to be a sole source, Metro staff will notify the Board of Directors and the Offeror before publishing the Unsolicited Proposal in accordance with guidance from FTA Circular 4220.1.F, as it may be amended from time to time:
  - a. Publicize the Unsolicited Proposal. The publication shall follow Metro’s standard procurement practices (as established by Metro Vendor/Contract Management

Department) and shall clearly state that Metro received the Unsolicited Proposal, and provide an adequate description of the Proposal, without improperly disclosing proprietary information or disclosing the originality of thought or innovation of the Proposal.

- b. Interest in the Property or Services. The publication shall make clear Metro's interest in the specifics of the proposed project.
- c. Adequate Opportunity to Compete and/or Submit Comments. Provide an adequate opportunity for interested parties to comment or submit competing proposals. In most instances, the Unsolicited Proposal will be posted for 30 days.
- d. Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the Unsolicited Proposal or another proposal submitted in response to the publication (provided that Metro reserves its right to take any of the actions set forth in Section 3C below).

The purpose of this publication process is to ascertain whether other parties may desire and be able to offer a project within a scope that is similar to that contemplated within the original Unsolicited Proposal. Metro's publication will give notice of the basic business elements of the original Unsolicited Proposal and inform interested parties that they may provide comment on the Proposal or submit competing proposals within the comment/submission dates provided. The publication shall not disclose proprietary information as defined in Section 3A. The publication will instruct parties to follow the Phase One submission instructions and requirements.

Any proposals received, including the original Unsolicited Proposal, shall be evaluated based on the criteria listed in Section 2B above, as well as the objectives listed in the JD Policy. Metro will make clear the evaluation criteria prior to publicizing the Unsolicited Proposal.

There are four potential outcomes for this publication. These are described below in Section 3C.

#### B. Stakeholder Outreach

If Metro intends to move forward with the Unsolicited Proposal after the Phase Two evaluation, JD staff will conduct preliminary outreach to targeted stakeholders, including local elected officials, staff of municipalities where the subject property is located, and key community and business stakeholder groups. This outreach will be focused on informing stakeholders of the Unsolicited Proposal received and Metro's intended next steps – whether it is a Sole Source or the Competitive Procurement process.

#### C. Final Review and Recommendation

After posting ends, Metro staff will negotiate and make recommendations based on one of four scenarios:

- 1) *Metro receives no additional proposals and decides to pursue the original Unsolicited Proposal.* In this case, Metro may conduct a secondary review of the original Unsolicited Proposal and reserves the right to request additional material that will assist Metro in determining that the Offeror has the technical capability and financial resources to perform the contract and meet Metro's requirements for negotiating and executing an ENA. Once all evaluation is complete and ENA terms are negotiated, Metro staff may bring a recommendation forward to the Board of Directors to authorize execution of the ENA.
- 2) *Metro receives additional proposals and desires to further evaluate and negotiate with one of the Offerors, be it the original Offeror or one of the new proposals received as a result of the publication.*

New proposals will be evaluated in accordance with the Phase One evaluation process described in Section 2A. If a new Offeror is invited to submit a Phase Two Proposal, they shall be granted the same period of time given to the original Offeror to submit a Phase Two Proposal. The new Offeror shall be provided with the same information if any, as the original Offeror. Metro may also conduct a secondary review of the original Proposal and reserves the right to request additional material that will assist Metro in determining that the Offeror has the technical capability and financial resources to perform the contract and meet Metro's requirements for negotiating and executing an ENA. Once all evaluation is complete Metro staff may proceed with negotiations with one of the new Offerors or the original Offeror and bring a recommendation forward to the Board of Directors to authorize execution of the ENA. Offerors will be notified of such decision and proposal materials returned.

- 3) *Metro receives additional proposals and, based on this evidence of interest, determines that it is in Metro's best interest to conduct a full competitive procurement.* In this case, all proposals received under this policy would be rejected and returned to the submitting parties and Metro shall inform all Offerors (including the original Offeror) of its intentions regarding a subsequent competitive solicitation process. The new solicitation process shall be conducted in accordance with the process set forth in the JD Policy.
- 4) *Regardless of the number of proposals received, Metro may determine that it is in its best interests not to move forward with any proposal.* All Offerors will be notified of such decision and proposal materials returned.

#### **4. Submission Instructions and Time for Submission**

JD Unsolicited Proposals shall be submitted to:  
Vendor/Contract Management  
Los Angeles County Metropolitan Transportation Authority  
One Gateway Plaza, 99-9-55  
Los Angeles, CA 90012

Offeror shall submit four (4) hard copies of the Proposal, along with an unalterable electronic version on CD or flash drive. Phase One proposals shall not exceed 15 pages. There are no page requirements on Phase Two submissions, but proposals should be reasonable in length to allow for a meaningful evaluation. Vendor / Contract Management shall log in receipt of the Unsolicited Proposal and provide written confirmation of receipt to the Offeror.

JD Unsolicited Proposals should be submitted well in advance of the Offeror's desired commencement of the proposed effort or activity in order to allow Metro sufficient time to evaluate the Proposal, publicize it, and negotiate a contract if the Proposal is accepted. Anticipate at least six months before any negotiation could begin.

#### **5. General Requirements**

##### **A. Prohibition of Use of Confidential Information**

If Metro's decision is to pursue a competitive procurement, Metro personnel shall not use any data, or any confidential patented, trademarked, or copyrighted part of an Unsolicited Proposal or confidential technical or financial proprietary information as the basis, or part of the basis, for a solicitation or in negotiations with any other firm, unless the Offeror is notified of and agrees to the intended use.

Concepts or ideas are not considered proprietary by Metro but specific implementing methodologies that are unique to the Offeror will be recognized.

V/CM staff shall place a cover sheet (attached as Exhibit 2) on the Proposal, unless the Offeror clearly states in writing that no restrictions are imposed on the disclosure or use of the data contained in the Proposal.

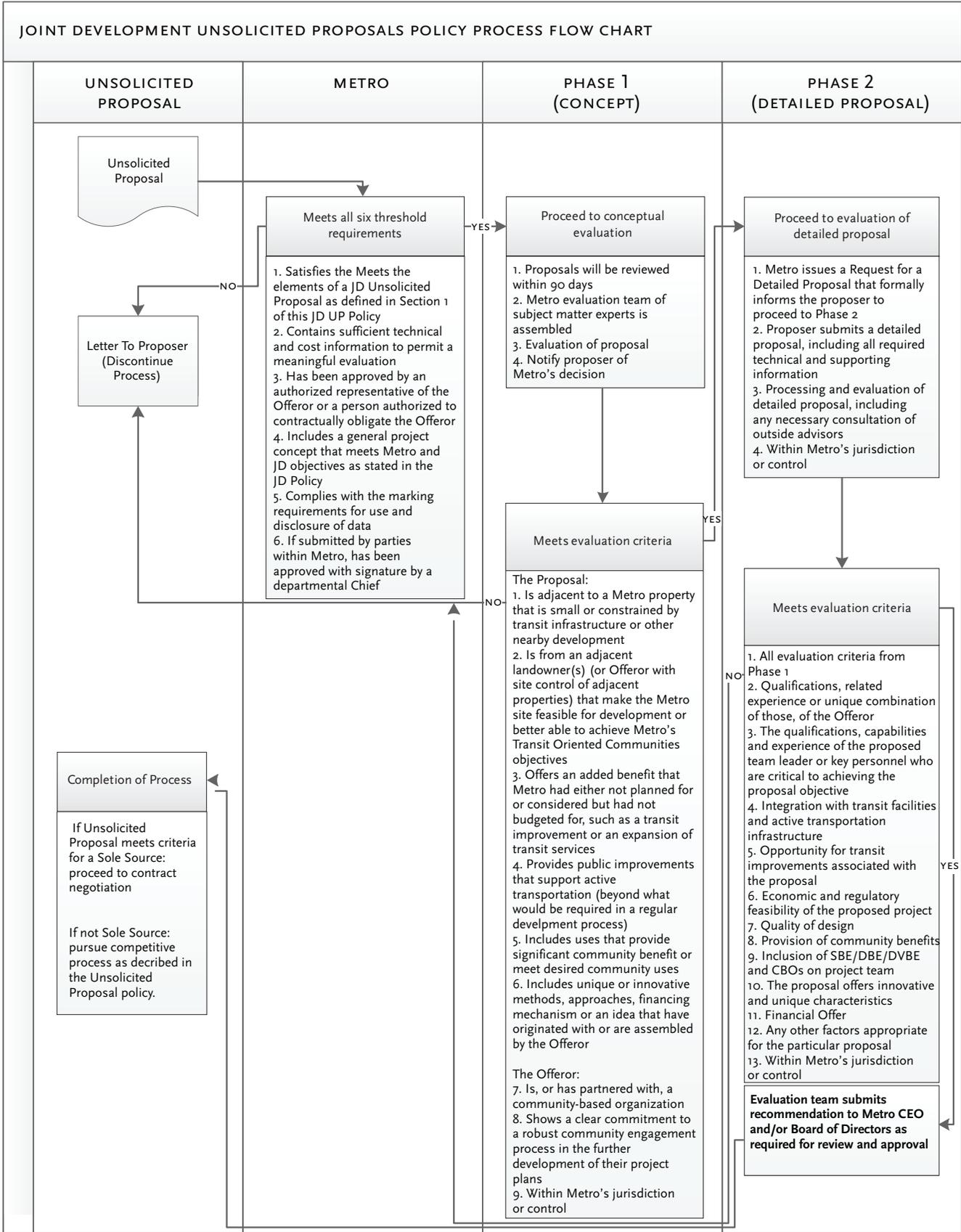
**B. Public Records Act**

Unsolicited Proposals are subject to the provisions of the California Public Records Act (California Code Government Code §6250 et seq.).

Public Contract Code Section 22164 provides that: information that is not otherwise a public record pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title I of the Government Code) shall not be open to public inspection. Any documents provided by the Offeror to Metro marked "Trade Secret," "Confidential" or "Proprietary," or any financial records provided by the Offeror to Metro, shall be clearly marked with the Offeror name. Metro will use its best efforts to inform the Offeror of any request for any financial records or documents marked "Trade Secret," "Confidential" or "Proprietary" provided by Offeror to Metro. Metro will not advise as to the nature or content of documents entitled to protection from disclosure under the California Public Records Act.

In the event of litigation concerning the disclosure of any records, Metro's sole involvement will be as a stakeholder, retaining the records until otherwise ordered by a court. The Offeror, at its sole expense and risk, shall be fully responsible for any and all fees for prosecuting or defending any action concerning the records and shall indemnify and hold Metro harmless from all costs and expenses including attorney's fees in connection with any such action.

# Exhibit 1



# Exhibit 2

## JOINT DEVELOPMENT UNSOLICITED PROPOSALS SUBMITTED TO METRO PHASE ONE: CONCEPTUAL PROPOSAL FORM

Phase One of Metro’s JD Unsolicited Proposal process involves submitting this form. Submit only the information required by this form. If Metro determines that the Proposal should proceed to Phase Two, Metro will issue a Request for Detailed Proposal.

### PART 1: BASIC INFORMATION

Proposer Information:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Type of organization: \_\_\_\_\_

Primary contact for the Proposal: \_\_\_\_\_

Names of additional firms/partners in the Proposal:

\_\_\_\_\_

Technical personnel names & contact information for each firm involved\*:

\_\_\_\_\_

\* These individuals should be responsible for answering Metro’s technical or business questions concerning the Proposal or any subsequent agreement concerning the Proposal.

### PART 2: TECHNICAL INFORMATION

Title of the Proposal: \_\_\_\_\_

Abstract of the Proposal is attached

To move forward in the Unsolicited Proposal process, the Abstract must include a brief – but complete – discussion of the following:

1. Proposal summary, including:
  - a. Vision for the project
  - b. Program for proposed project and proposed uses of Metro-owned property
2. Brief summary of the experience of the Proposal Team with similar/relevant projects
3. A justification for the Unsolicited Proposal Approach (see Section 2A of the JD UP Policy)
4. Manner in which the work will help support accomplishment of Metro’s TOC mission.
5. Specific Access/Property Rights the Offeror needs from Metro (ie Long Term Ground Lease, sale of property, etc). Note if there are several options.

### PART 3: FINANCIAL INFORMATION

Proposed price or total estimated cost, in the form of a Sources and Uses table: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Public funding anticipated for the project, if any: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Description of financing capacity – briefly describe current relationships with debt and equity providers that demonstrate the team’s capacity to finance the proposed project: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Be concise but provide sufficient detail for Metro to meaningfully evaluate the proposal.*

**PART 4: PROCEDURAL INFORMATION**

Period of time for which the Proposal is valid: \_\_\_\_\_  
\_\_\_\_\_

- Proprietary data has been submitted with this Proposal and is deemed confidential by the Offeror in the event of a request submitted to Metro under the California Open Records Act. Any proprietary data must be clearly designated.
- Other government entities or private parties have received this Proposal.  
Please explain: \_\_\_\_\_
- There are patents, copyrights and/or trademarks applicable to the project or services proposed.  
Please explain: \_\_\_\_\_
- There is additional information not requested in this form that would allow Metro to evaluate this Proposal at this conceptual phase.  
Describe: \_\_\_\_\_  
\_\_\_\_\_

**PART 5: SIGNATURE**

Name: \_\_\_\_\_  
Date: \_\_\_\_\_  
Title: \_\_\_\_\_

*The individual who signs this form must be authorized to represent and contractually obligate the Offeror.*