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**FEBRUARY 18, 2016**

**TO:** BOARD OF DIRECTORS

**THROUGH:** PHILLIP A. WASHINGTON *PAW*  
CHIEF EXECUTIVE OFFICER

**FROM:** CALVIN E. HOLLIS *CH*  
INTERIM CHIEF PLANNING OFFICER

**SUBJECT:** UPDATE TO JOINT DEVELOPMENT PROGRAM: POLICIES  
AND PROCESS

### **ISSUE**

The Board approved an update of the *Joint Development Program Policies and Process* ("JD Policy") in July 2015. Since that time, the Joint Development (JD) team has identified the need to create a clear process for responding to unsolicited proposals that is in line with the agency-wide *Unsolicited Proposals & Public/Private Sector Engagement Policy* (UP Policy) released on February 11, 2016, as well as Federal requirements. In the process of researching relevant federal policies, JD staff has also clarified the difference between "excess" and "surplus" properties in the JD Policy document. In addition, staff has worked with Procurement and the Diversity and Economic Opportunity Department (DEOD) to develop policy language regarding the role of Community Based Organizations (CBOs), Small/Disadvantaged Business Enterprises (SBE/DBE) and Disabled Veteran Business Enterprises (DVBE). The amended and updated JD Policy (Attachment A) reflects all of these changes and includes a new Joint Development Unsolicited Proposals Policy and Process (The JD UP Policy). The JD UP Policy is also part of the agencywide UP Policy.

### **DISCUSSION**

The JD UP Policy was developed based on federal guidance, the new agency-wide UP Policy, and the general principles of Metro's Transit Oriented Communities (TOC) Demonstration Program. The draft policy was reviewed internally by County Counsel, the Office of Extraordinary Innovation, and Procurement. It was also reviewed by the FTA. The JD UP Policy is an attachment to the JD Policy as updated and is also part of the agency-wide UP Policy. Key components of the JD Unsolicited Proposals policy include:

- *Definition of unsolicited proposals:* defines an unsolicited proposal, using the

Federal definition.

- *Process and evaluation:* outlines a 2-step evaluation process to determine if an unsolicited proposal will be accepted and an Exclusive Negotiation Agreement recommended to the Metro Board.
- *Content of unsolicited proposals:* provides guidance on the information expected in an unsolicited proposal, both at the Conceptual and Detailed proposal phases.
- *Submission instructions:* indicates where an unsolicited proposal can be addressed/submitted.
- *Use of information:* provides clarity that information submitted through an unsolicited proposal is subject to the Public Records Act.

While the JD UP Policy provides a clear and detailed process for submitting unsolicited proposals, both the JD Policy and the JD UP Policy stress that Metro's preferred method for developer selection is a full competitive Request for Proposal process. An Unsolicited Proposal is most likely to be considered for further action if the 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 developer with site control of adjacent properties) that make the Metro site feasible for development or better able to achieve Metro's TOC objectives.

During the course of researching and writing the JD UP Policy, and in ongoing work to create clearer processes for the Joint Development program, staff found two other items needing to be updated in the JD Policy document:

- Support and encouragement for the inclusion of CBOs, SBE/DBEs and DVBEs on team's that solicit or are awarded Joint Development projects;
- A clarification of "Excess" properties, which are Metro-owned properties in which there is a federal interest but no current transit infrastructure, and "Joint Development" properties, which are Metro-owned properties with transit infrastructure. The critical differential for the Joint Development program is the FTA guidance on how these properties are disposed of and the allocation of disposition proceeds between Metro and the Federal government. Development on both kinds of properties will be managed according to the Joint Development policies and process unless directed by the Board otherwise, on a case by case basis.

The updated JD Policy contains provisions for each of these items. The version of the JD Policy attached to this Board Box shows additions to the policy in underline. Attachment A to the JD Policy is the new JD UP Policy, and it is completely new.

## **NEXT STEPS**

Staff will post the updated JD Policy on the TOC/Joint Development webpage, and will send an eblast notification to JD stakeholders regarding the policy update.

## **ATTACHMENTS**

A. Metro Joint Development Program: Policies and Process, Updated February 2016

**METRO JOINT DEVELOPMENT PROGRAM:**  
**POLICIES AND PROCESS**

Updated February 2016 (*updates underlined*)

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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 objectives, policies and process that will guide the Metro Joint Development Program as it develops Metro-owned properties. It serves 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. OBJECTIVES / GOALS

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The Joint Development Program is centered on three main goals:

### A. Transit Prioritization:

1. Preserve Properties for Transit Use. Metro will preserve the ability to safely operate and maintain transportation facilities on its properties.
2. Increase Transit Ridership. The Joint Development Program aims to reduce greenhouse gas emissions and increase transit ridership by attracting new riders and increasing the number of transit trips generated from joint development projects.

### B. Community Integration, Engagement, Affordable Housing and Design:

Metro's Joint Development Program will seek projects that engage stakeholders and create vibrant, transit-oriented communities that offer a range of housing types, job opportunities, and services centered around public transit facilities.

1. Community Integration. Metro will seek to create projects that are compatible with the surrounding community and reflect the needs and desires of the neighborhood in which they are situated. Like any private development, joint developments are subject to the land use policies and approval processes of the host jurisdiction.
2. Community Engagement. Metro will ensure that the Joint Development Process actively engages community members at every development stage.
3. Affordable Housing. Metro's Joint Development Program seeks to facilitate construction of affordable housing units, such that 35% of the total housing units in the Metro joint development portfolio are affordable for residents earning 60% or less of the Area Median Income (AMI). The joint development portfolio includes properties for which Metro maintains long term ownership. It does not include surplus land that is sold in fee. Affordable housing is defined as housing that is covenant-controlled, provided on an income-restricted basis to qualifying residents earning 60% or less than AMI as defined by the CA Tax Credit Allocation Committee, and often subsidized by public or non-profit funding sources.
4. Design and Placemaking. Metro's Joint Development Program will pursue high quality design that enhances the surrounding community and creates inviting spaces and places around Metro transit facilities.

**C. Fiscal Responsibility:**

1. Maximize Revenue. Joint development projects are expected to generate value to Metro based on maximizing ground rent revenues received, or equivalent benefits negotiated, for the use of Metro property.
2. Minimize Risk. Projects should minimize financial risk to Metro.
3. Feasibility. Projects should be viable, now and in the future.



### III. POLICIES

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To achieve its goals, the Joint Development Program shall conform to the following policies:

#### A. Transit Prioritization and Integration:

1. Preservation of Transit Facilities. Metro shall retain authority over its transit facilities and services, and no development shall negatively impact existing or future public transportation facilities, nor shall any development obligate Metro to any particular operational level of service.
2. Density and Program. Metro will prioritize dense, trip generating uses on joint development sites.
3. Transit Connections. Metro will maximize connections to transit facilities from and through joint developments, where appropriate. Projects are encouraged which provide for increased station access using buses, active transportation, and other alternative modes of travel.

#### B. Community Outreach:

1. Community Engagement. Metro will pro-actively engage with the communities where the joint development projects occur through a variety of methods, which may include charrettes, focus groups, workshops, email updates, and social media communications. Developers selected for joint development projects shall be required to create a community engagement plan.
2. Local Collaboration. Metro will consult and work cooperatively with local jurisdictions and developers to encourage transit-supportive, high-quality development at stations and surrounding properties. All private developments (including joint development projects) must follow the local laws and policies, including the applicable land use policies, of the jurisdiction in which they reside.
3. Design Rigor. Projects shall demonstrate a high quality of design that is both sensitive to community context and enhances the surrounding community.

#### C. Financial Policies:

1. Risk Minimization. Projects should not require commitment of Metro financial resources, should minimize any investment risk to Metro, and should maximize asset security for Metro.
2. Collaborative Contribution. Projects are encouraged which obtain capital or in-lieu contributions from other public agencies to create greater community economic benefit to Metro-sponsored joint development projects.

3. Ground Lease Preference. Use of a long term ground lease is generally preferred to fee disposition.

#### **D. Federal Policies:**

Many joint development properties were purchased with some funding from the federal government. The federal agency for transit funding, the Federal Transit Administration (FTA) therefore must review and approve joint developments on land that was acquired with any federal funds. Additional details on this process are outlined in the Legal Framework section V.B. Federal Regulations.

#### **E. Affordable Housing Policies:**

A large portion of Metro riders are low-income and transit dependent. Meanwhile, Metro transportation investments have the potential to raise the value of property near Metro transit investments. Thus, it is in Metro's and the community's interest to maintain and grow ridership by promoting the development of affordable housing on appropriate Metro joint development sites. In addition, State and Federal guidance encourages coordination of investments and policies to accommodate affordable housing near transit. Metro will define affordable housing as housing for residents earning 60% or less than AMI, and will prioritize units with even deeper affordability levels for very low income and extremely low income residents. Metro will use the following policies to promote affordable housing on joint development sites:

1. Range of Types. Joint development projects with a residential component are encouraged to provide a range of housing types to meet the needs of a diversity of household incomes, sizes, and ages.
2. Land Discounting. Where appropriate, and subject to FTA approval (if applicable), Metro may discount joint development ground leases below the fair market value in order to accommodate affordable housing. Such a land discount may not be greater than 30% of the fair market value.
3. Proportional Land Discounting for Affordable Housing. The proportional discount of the ground lease may not be greater than the proportion of affordable units to the total number of housing units in the project, with a maximum discount of 30%. For example, land value for a project that has 20% affordable units could be discounted up to 20%. Land value for a project with 100% affordable housing could be discounted up to 30%. In the case of mixed use projects, the discount will be to the land value attributable to the housing portion of the project.

## **F. Development Solicitation Policies:**

1. Competitive Solicitation. Metro's preferred method for selection of developers for its joint development projects is conducted through a competitive selection process that is further detailed in the following Process Section. The competitive process is managed through the Vendor/Contract Management Department and will be consistent with Procurement Policies.
2. Unsolicited Proposals. Metro does not encourage unsolicited proposals. Metro may consider unsolicited proposals in limited cases, as set forth in Metro's Unsolicited Proposals & Public/Private Sector Engagement Policy (Metro UP Policy). Metro's UP Policy includes a separate section on the process for submission and consideration of Unsolicited Proposals for Joint Development, called The Joint Development Unsolicited Proposals Policy and Process (JD UP Policy). The JD UP Policy is included as Attachment A.
3. Community Based Organizations (CBO)/ Small/Disadvantaged Business Enterprise (SBE/DBE) /Disabled Veterans Business Enterprise (DVBE).

Metro strongly encourages partnerships with local Community Based Organizations that provide affordable housing and other community serving programs and uses to its joint development sites, as part of the development team.

Metro also encourages development teams to create opportunities to include Metro-certified SBE/DBE and DVBE firms in their projects, through the delivery of professional or construction services. To identify eligible certified SBE/DBE and DVBE firms, use the following link: [http://smallbusinessquery.metro.net/pages/naics\\_lookup.aspx](http://smallbusinessquery.metro.net/pages/naics_lookup.aspx). Those firms not Metro-certified as SBE/DBE or DVBE but interested in seeking certification can find the process here: <http://business.metro.net/VendorPortal/>

## **G. Acquisition Policies:**

1. To encourage opportunities for joint developments surrounding transit investments, when appropriate, Metro will consider joint development opportunities in the acquisition of required property, location of new station sites, and construction of station facilities.
2. In the initial planning of a transit corridor project (e.g., during the environmental and preliminary engineering phases), Metro may conduct site analysis, include a preliminary layout of each passenger station site, develop conceptual urban design strategies integrating station sites with adjacent communities, and evaluate proposed station sites for their joint development potential.

## IV. 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.

## V. 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.

EXHIBIT A: JOINT DEVELOPMENT PROCESS CHART

| Metro Joint Development Process                |  |  |  |  |                   |
|--|--|--|--|--|-------------------|
| STAGE  | Initial Community Outreach   | Developer Solicitation/ Selection**  | Project Refinement, Joint Development Agreement (JDA) and Ground Lease (GL) Negotiations   | Permitting and Construction  |                   |
| ACTIONS  | <br>>Community Meetings<br>>Creation of Development Guidelines* | <br>>Issue Request for Information and Qualifications (RFIQ) and/or Request for Proposals (RFP)<br>>Evaluate Proposals<br>>Community update | <br>>Developers progress architectural design<br>>Community outreach and input - several iterations<br>>Entitlements and CEQA process***<br>>Negotiation of financial terms | <br>>City engineering<br>>Construction documents<br>>City building permits<br>>Seek Concurrence from FTA (for properties with federal interest)<br>>City-related approvals<br>>On-site construction<br>>Occupancy |                   |
|  | RESULT   | Board approves Development Guidelines  | Metro Board authorizes Exclusive Negotiation Agreement (ENA) with recommended developer(s)   | Metro Board approves JDA and GL  | 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.



**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO)  
JOINT DEVELOPMENT (JD) UNSOLICITED PROPOSALS POLICY AND PROCESS**

**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 4 of this 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 Section 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 2 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 I – 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 proposer); 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 the 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: Set and notify the proposer 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: Schedule a meeting with the proposer, if JD determines that a meeting would be helpful to more fully understand the proposal;
- f. JD: Facilitate the evaluation process as needed;
- g. JD: Conduct outreach to impacted stakeholders as needed; and
- h. JD: Notify the Office of the CEO and then the proposer of Metro's decision. The possible outcomes may be to discontinue the process, proceed to Phase Two, or pursue a competitive procurement. JD 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 team. 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 tells the proposer to proceed to Phase Two. This request will include expected timelines for submission and evaluation.

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

- a. It is available to the MTA 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 the MTA 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 and the active transportation environment within the community.
- c. **Development Team.** 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 a design concept and site plan consistent with the project description and development program. The concept should be accompanied by a brief descriptive narrative that will help Metro understand the Offeror's vision for the proposed development.
- 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 development proforma outlining the total project costs. Provide a financing plan that clearly indicates anticipated funding sources, both debt and equity.
- g. **Developer'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.
- i. **Contract Requirements.** In most cases, Joint Development projects work under a long- term Ground Lease. State the type of contract preferred and anticipated form of financial offer to Metro, e.g. annual ground lease payment vs. capitalized ground lease payment, any proposed cost sharing and revenue participation, etc.
- j. **Proprietary Data.** Identify any proprietary data which the Offeror intends to be used by the agency only for evaluation purposes (see Section 5 below).

2) *Evaluation Criteria – Detailed Proposal*

Before initiating a comprehensive evaluation, the Metro V/CM staff in coordination with JD, 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 to 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 proposed team leader or key personnel who are critical to achieving the proposal objective;
- 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.

Upon completion of the Phase Two evaluation, the 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 proposer 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 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**. 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 3(C) 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. 6



The publication shall not disclose proprietary information as defined in Section 5.

Any proposals received, including the original Unsolicited Proposal, shall be evaluated based on the criteria listed in Section 2(B)(2) above, as well as the Joint Development 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 evaluating all proposals received, Metro staff will negotiate and make recommendations based on one of four scenarios:

- 1) *Metro receives no additional proposals and decides to pursue the 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 proposers, be it the original Offeror or one of the new proposals received as a result of the publication.* In this case, Metro may conduct a secondary review of the selected proposal and reserves the right to request additional material that will assist Metro in determining that the proposer 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.
- 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 proposers (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 proposers 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 three (3) copies of the Proposal. 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 proposer 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 proposer will be recognized.

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

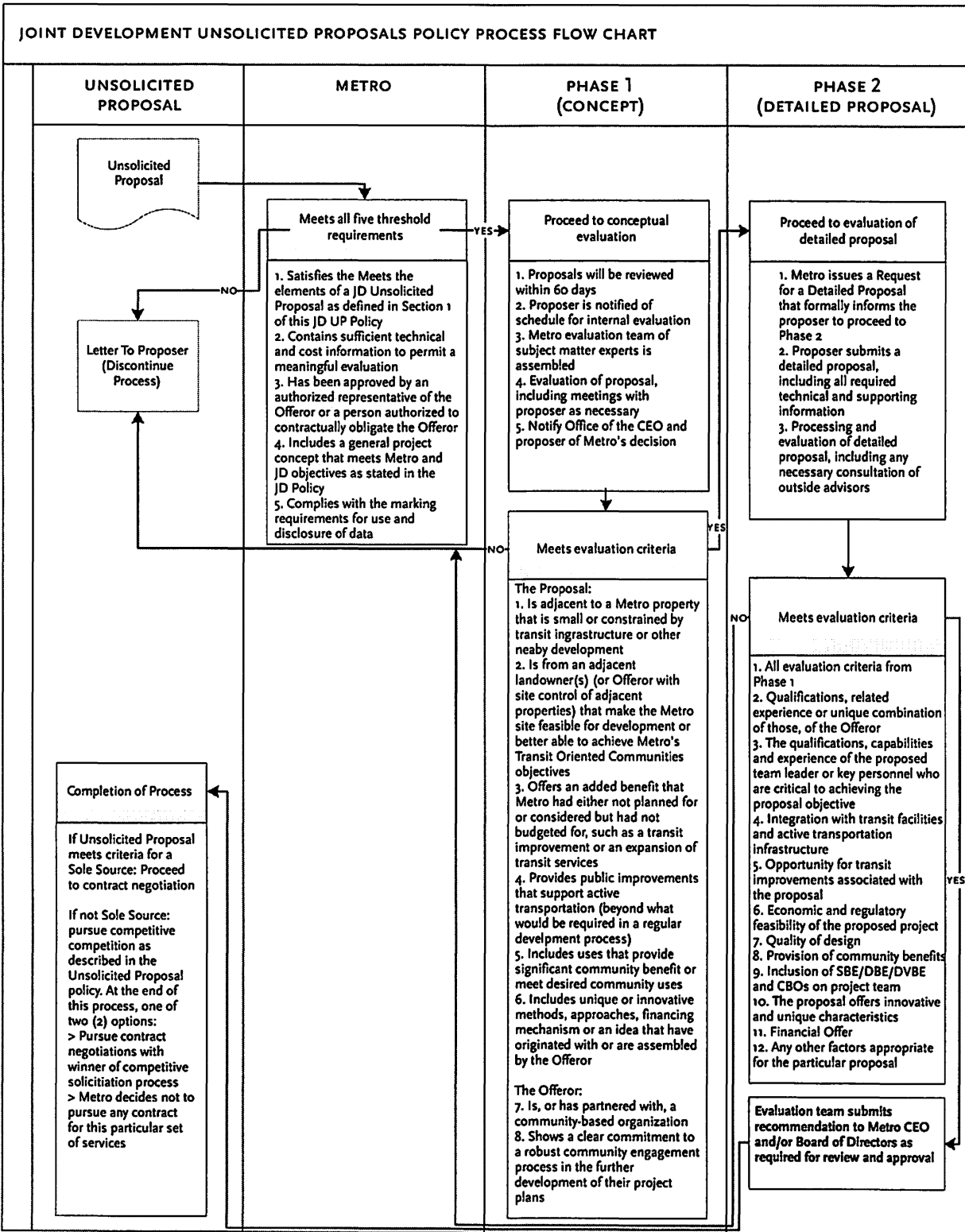
##### **B. Public Records Act**

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 proposer to Metro marked "Trade Secret," "Confidential" or "Proprietary," or any financial records provided by the proposer to Metro, shall be clearly marked with the proposer's name. Metro will use its best efforts to inform the proposer of any request for any financial records or documents marked "Trade Secret," "Confidential" or "Proprietary" provided by proposers 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 proposer, 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 2.A.4 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 proposer 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 proposer 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 Proposer.*