

CITY OF TEMPE

**REQUEST
FOR
PROPOSALS**

For the development of City of Tempe (City)/Federal Transit Administration (FTA)-owned and funded properties located at 1389 and 1395 E. Apache Boulevard, consisting of two (2) parcels containing approximately 29,306 Gross s.f. (0.67 acres)

ISSUE DATE: July, 16, 2008

DUE DATE: August 15, 2008

ISSUED BY: City of Tempe Community Development

Request for Proposals

City of Tempe Community Development Department • PO Box 5002 • 21 East 6th Street Ste. 208 • Tempe, AZ 85280 • (480) 350-8028 • www.tempe.gov

Procurement Description:

Submittal of Proposals for the development of City/FTA owned and funded properties located at 1389 and 1395 E. Apache Boulevard consisting of two (2) properties containing approximately 29,306 s.f. (0.67 acres).

Proposal Due Date:

August 15, 2008 @ 3:00 P.M. MST
Late Proposals will not be considered

Street Address:

**21 East Sixth Street, Suite 208
Tempe, AZ 85281**

**Mailing
Address:**

**PO Box 5002
Tempe, AZ 85280**

The City of Tempe Community Development Department will receive sealed proposals until the time and date stated above, for the development of City/FTA owned and funded properties located at 1389 and 1395 E. Apache Boulevard, consisting of two (2) parcels containing approximately 29,306 square feet (0.67 acres). Proposals received by the correct time and date will be opened and the name of each Offeror will be publicly read.

Sealed proposals must be in the actual possession of the Community Development Office on or prior to the exact time and date indicated above. **Late proposals will not be considered.** The City of Tempe reserves the right to accept or reject any and all submittals and waive informalities.

Proposals must be submitted in a sealed envelope (box) with the Request for Proposals number and the offeror's name and address clearly indicated on the envelope (box). All proposals must be completed in ink or typewritten and a complete Request for Proposal, and release form, must be returned along with the offer by the time and date cited above. Original offer and release must be signed in ink. Proposals submitted by telegraphic, mailgram, facsimile or electronic transmission will not be considered. Offerors are strongly encouraged to carefully read the entire Request for Proposals.

Note: Offeror must submit fifteen (15) copies of proposal, one (1) unbound reproducible original of a signed and completed proposal offer and related materials, and one (1) CD of offer and all related materials in .pdf format.

An unsigned or late Proposal Offer will be considered non-responsive and rejected.

July 16, 2008

Proposal Issue Date

Cynthia McCoy
Assistant City Attorney (Reviewed as to form)

Primary City Contact Person

Heidi Graham

Phone: (480) 350-8528

Proposal Offer

It is **MANDATORY** that Proposal Offeror **COMPLETE, SIGN** and **SUBMIT** the original of this form to the Community Development Department with the (your) proposal offer. An unsigned "Proposal Offer" and/or late submittal will be considered non-responsive and rejected.

This Proposal is offered by: _____
Company Name (typed)

To the City of Tempe:

By signing this Request for Proposal Submittal, Offeror acknowledges acceptance of all conditions contained herein. Offeror certifies that the proposal offered was independently developed without consultation with any of the other offerors or potential offerors.

For clarification of this Proposal Offer, contact:

Proposal Offeror Contact Title (_____) _____
Phone

Name of Company

Company Address (or PO Box) City State Zip

This Proposal is offered by:

Authorized Proposal Offeror Title (_____) _____
Phone

Signature of Authorized Offer Required

Date of Proposal Offer

1389 and 1395 E. Apache Boulevard Request for Proposals

Release Form

For and in consideration of the City of Tempe's acceptance of receipt, consideration and evaluation of the materials, narratives, photographs, financial statements and specifications, etc. submitted by the undersigned respondent, in response to the foregoing Request for Proposals for the development of City/FTA-owned and funded properties located at 1389 and 1395 E. Apache Boulevard, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and intending to be legally bound, Respondent, for and on behalf of itself, and on behalf of each of its parents, subsidiaries, affiliates, partners, officers, directors, employees, agents, predecessors, successors and assigns, and any others who may claim by, through, under or on behalf of any of them, does hereby agree to defend, remise, release and forever discharge the City of Tempe, the City of Tempe Council and the Federal Transit Administration each of their respective officials, directors, employees, supervisors, members, commissioners and agents (collectively "Releasees") of and from any and all claims and liability relating to, arising out of or in connection with the Request for Proposals or any actions or decisions taken or made by any Releasee in connection with this offering regarding the development of 1389 and 1395 E. Apache Boulevard properties as described in the Request for Proposals.

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned has caused this Release to be executed this _____ day of _____, 2008.

Respondent

WITNESSETH:

Witness

Witness

Request for Proposals

REQUEST FOR PROPOSALS FOR THE DEVELOPMENT OF CITY/FTA-OWNED AND FUNDED PROPERTIES LOCATED AT 1389 AND 1395 E. APACHE BOULEVARD CONSISTING OF TWO (2) PARCELS CONTAINING APPROXIMATELY 29,306 S.F. (0.67 ACRES) AS REFLECTED ON EXHIBIT "A".

The City, FTA and Valley Metro Rail (Metro) herein invite proposals for the development of approximately 0.67 acres of property. The proposals are to include the construction of a mixed use development including residential housing.

While not a prerequisite for selection, the City will give preference to respondents who own or control adjacent properties and propose to incorporate the property into a larger project and who have substantial experience in developing, operating and managing similar projects.

The successful respondent to this RFP will be expected to plan and design the mixed-use development to be compatible in character and concept with the surrounding neighborhood.

To accomplish the above project, it is the intent of this RFP to enter into a joint development agreement or sale with a developer for the development of the property. The City, FTA and Metro will not provide any funding, incentives, acquisition or construction of infrastructure or any other amenities/elements or provide for any portion of the ongoing maintenance associated with the property or any proposed project. The price per square foot offered will be for the entirety of the square footage

Title insurance reports for the parcels from Fidelity National Title Insurance Company are available upon request, as are the Phase One Site Assessment reports for the parcels. It is the respondent's sole responsibility to review and analyze the impacts of any encumbrances (legal and/or environmental) and address them to their satisfaction.

DESCRIPTION OF SITE

See Attached Graphics for a Site Plan

The property is located at the Southwest corner of E. Apache Boulevard and South Cedar Street. (See Exhibit "A").

The property is located on East Apache Boulevard across from a Light Rail Station, which is projected to be operating in December 2008.

The property consists of Maricopa County Assessor parcel numbers 133-08-067 and 133-08-066. It will be the successful respondent's responsibility to replat the property prior to the transfer of title.

The property is estimated to contain approximately 29,306 s.f. (0.67 acres). The actual size of the property will be determined by survey to be prepared at the expense of the successful respondent, which will be reviewed and if found acceptable, approved by the City.

Information on the location of City utilities is available upon request from Public Works Department/Engineering.

The properties are zoned CSS and within the Transportation Overlay District. For zoning information go to <http://www.tempe.gov/zoning/>

The property will need to be rezoned to the appropriate zoning category.

DEVELOPMENT CRITERIA

1. The proposal must consider the development of on-site parking in a sufficient quantity to provide 100% of the actual parking needs of the proposed use in conformance with the Transportation Overlay District. The Transportation Overlay District does allow for a reduction of parking for specific uses adjacent to light rail stations.
2. The project must be designed as a mixed-use development in conformance with the Transportation Overlay District.
3. The project should relate to, and integrate with, adjacent existing and proposed development including the adjacent street grid, and the light rail station.
4. Each respondent to this Request for Proposals must describe and demonstrate that their group has the capacity to execute their proposal and develop the property in a timely manner.
5. Each respondent is to comply with all Federal Regulations and other requirements, including, but not limited to those attached as Exhibits, "B", "C" and "D" for joint development.

CRITERIA FOR DEVELOPMENT TEAM SELECTION

The respondent shall respond particularly to the following items that generally reflect the criteria to be used in the selection process.

The following criteria are stated as indicators to respondents, to give general guidance for the proposals, but are not exclusive of other considerations which may be deemed by the City as appropriate, given the content of proposals:

1. **Experience developing similar projects.** Provide information relative to the number of projects, their size, location, date started and completed, quality of design, comparability to this property, operational success of the project, etc. Principals, key staff and other professionals who will comprise the project team must outline their direct experience with previous projects and what roles they played in the project's development, as well as their roles and responsibilities under this proposal. Additionally, respondents must demonstrate their experience and successes in working with neighbors and stakeholders surrounding their project(s). (10 points)
2. **Organizational Capacity.** This should include a description of the qualifications of the principals, key staff and other professionals who will comprise the project team. Provide information on the formation of any partnerships and collaborations associated with this

proposal including the status (i.e. contemplated, pending or finalized) of such relationships. (10 points)

3. Description of the respondent's **Financial Capacity and Strategy** for the development of their proposed project and the capacity to undertake this project at this time. Further, respondents must demonstrate how the proposed project is economically feasible. Include at least two financial or development references including contact name and phone number. Respondents must also provide the source of funding for the acquisition (i.e. cash, bank financing, etc.). (10 points)
4. **Project Design and Programming.** The respondent, at a minimum, is to submit a description of the proposed project including a schematic site development plan and elevations. (10 points)
6. **Readiness to Proceed.** The respondent must provide a timely development schedule. (10 points)
7. **Joint Development/Sale Response.** Responses will be evaluated and points awarded based on compliance and financial benefit.(40 points)
8. **Preference for Adjacent Property Ownership.** The respondent will need to submit evidence of adjacent property ownership or control. (10 points)

The City reserves the right to request additional information or revisions of material submitted by the respondents during the selection process.

METHOD OF SELECTION

The City of Tempe and the FTA are interested in selecting an entity that demonstrates the best qualifications for producing a successful development compatible with the surrounding area. An internal city team will review the proposals and make a recommendation to the City Council and the FTA. Selection of a proposal may be made at any regular meeting of the City Council within thirty (30) days after receipt of said proposal or within such longer period of time as may be deemed reasonable by City Staff and the City Council. The selection of a proposal shall be subject to FTA requirements and approvals.

The City reserves the right to enter negotiations with one or more respondents, and may seek to work with elements of a given proposal versus the entirety.

Each respondent will be notified whether its submittal is to be considered for final selection.

The City Council and the FTA reserve the right to reject any or all proposals or any part thereof.

NEIGHBORHOOD INVOLVEMENT

The surrounding neighborhood will be kept informed as to the RFP process and timeline. The successful respondent to this RFP will be expected to partner with the surrounding neighborhood on the final planning and design of the site.

FINAL AGREEMENT

After City Council and FTA selection and approval of a proposal, the City and the selected respondent must enter into an agreement, satisfactory to the City within one-hundred and twenty (120) days or the offering shall be withdrawn. If the City and the selected respondent fail to reach agreement within the one-hundred and twenty (120) day negotiation period, the City shall have the exclusive right, without obligation, to extend the time frame, cancel further negotiations, or begin negotiations with other developers.

PRICE, CONDITIONS, AND METHOD OF CONVEYANCE

The conveyance of the property will be by a Disposition and Development Agreement and/or Joint Development Agreement between the City and the selected entity.

PROPOSAL SUBMISSION

Submit fifteen (15) individually sealed copies of the proposal and related materials, one (1) unbound sealed reproducible original and related materials, and one CD of proposal and related materials in .pdf format. **All financial information, including references and proforma should be in a single, separately sealed package to ensure confidentiality, subject to public information requests and/or court order.**

For any additional information about this Request for Proposals, please contact the Heidi Graham at (480) 350-8528.



S. Dorsey Ln.

Dorsey LRT Station

E. Apache Blvd.

Subject Site

S. Cedar St.



APACHE + CEDAR PROPERTY



EXHIBIT "A"

EXHIBIT "B"

METRO JOINT DEVELOPMENT GUIDELINES

The following are the METRO requirements for joint development of the property along the light-rail alignment. Included is a summary of the federal and general requirements and design elements METRO seeks to incorporate into the development of any property along the light rail transit line.

Federal Requirements

- METRO will be responsible to work closely with FTA for approval of joint development proposals, when FTA has an investment in land and facilities. Therefore, close coordination between METRO and the municipality will be important.
- In a joint development project, FTA must determine whether, and to what degree, various Federal rules apply to the privately funded, non-transit portion of the project. The applicability of Federal requirements (such as those of the National Environmental Policy Act (NEPA), the Davis-Bacon Act, third party procurement requirements, and Buy America) will be resolved on a case-by-case basis for joint development projects involving the transfer of real property. FTA will work with METRO to determine whether, and the extent to which, such Federal requirements apply, particularly to any private development, and the most appropriate procedures for satisfying the requirements. Proposals should be submitted as early as possible in the joint development process. This will allow FTA staff to help METRO structure an approvable proposal in the least time possible and determine which crosscutting requirements must be applied to the particular project. Nevertheless, applicable crosscutting requirements likely to apply in the indicated circumstances include, but might not be limited to the following:
 - If the joint development involves a ground lease or transfer of federally assisted real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:
 - Language found at 49 C.F.R. 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
 - Language found at 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) and 49 C.F.R. Part 37 binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed;

- Language contained in the FTA's Master Agreement, updated annually in October, particularly relating to conflicts of interest and debarment and suspension.
- If the construction of improvements is also federally assisted, then in addition to the requirements above, at least the following criteria also apply and must be incorporated into the lease or the conveyance instrument:
 - Buy America - language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States.
 - Planning and Environmental Analysis - language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of the FHWA/FTA metropolitan and statewide planning regulations, the National Environmental Policy Act of 1969 ("NEPA"); *Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," ETA statutory requirements on environmental matters, FHWA/FTA regulations, "Environmental Impact and Related Procedures," Section 106 of the National Historic Preservation Act "Protection of Historic and Cultural Properties," and restrictions on the use of certain publicly owned lands.
 - Cargo Preference - language making it clear that items imported from abroad and used in the joint development were shipped predominantly on US.-flag ships and that the project complies with 46 C.F.R. Part 381, to the extent these regulations apply to the joint development.
 - Seismic Safety - language certifying that a structure conforms to seismic safety standards.
 - Energy Assessments - Transferee(s) or joint developer agrees to perform a mandatory, energy assessment for any buildings constructed, reconstructed or modified with FTA assistance. The assessment shall be incorporated into the Environmental Impact Statement or Environmental Assessment (EA), if the project has one; otherwise the assessment shall be provided with the application for EA assistance.
 - Labor Protection - Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon - 49 U.S.C. § 5333(a) and 40 U.S.C. § 3141 et seq., and 29 C.F.R. Part 5; Copeland "Anti-Kickback Act as amended, 18 U.S.C. 874 and 29 C.F.R. Part 3; and Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701 et, se?, and 29 C.F.R. Part 5 and at 40 U.S.C. §3704; as well as 49 U.S.C. 5333(b) concerning protection of transit employees.

- Civil Rights Requirements - 49 U.S.C. Q 5332 and DOT implementing regulations at 49 C.F.R. Part 21 (effecting Title VI of the Civil Rights Act of 1964), 49 C.F.R. Part 26 (participation by Disadvantaged Business Enterprises in DOT financial assistance programs) and 49 C.F.R. Parts 27 and 37 (respectively, nondiscrimination on the basis of disability in programs or activities receiving Federal financial assistance and transportation services for individuals with disabilities).
 - Program Fraud - grantees agree to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 et seq. and 49 C.F.R. Part 31. Penalties may apply for noncompliance.
 - Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project.
 - Uniform Relocation - If the federally assisted site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 et seq. and the regulations at 49 C.F.R. Part 24.
 - In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA will issue a Categorical Exclusion. Joint development activities that portend significant environmental impacts, however, will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement.
- **The FTA 'Transit Joint Development Checklist' is attached for your reference.**

Transit Joint Development Checklist

I. PROJECT DESCRIPTION		
Sponsoring Agency	Date Submitted	FTA Project Number (if known)
Project Title		
Project Location (Include City and Street Address)		
Project Contact: Name	Phone	E-mail Address (if available)

II. MATERIALS SUBMITTED
<input type="checkbox"/> Joint Development agreement
<input type="checkbox"/> Market and financial assessment of the project with sources & uses of funds and cash flow proformas
<input type="checkbox"/> Initial cash flow statement
<input type="checkbox"/> stabilized occupancy cash flow statement
<input type="checkbox"/> 10 year projection cash flow statement
<input type="checkbox"/> Statement of the outcome of planning and coordination between the private parties and Transit Agency
<input type="checkbox"/> Documentation of project's benefit to transit and impact on transit
<input type="checkbox"/> Appraisal / Review Appraisal (if selling property)
As developed Appraisal (if Transit Agency is the Lessor)

III. APPLICATION OF POLICY CRITERIA	
FTA Joint Development Policy Requirements	Description
Capitol Project Definition (53 USC 5302(a)(1)(G))	
<input type="checkbox"/> Project includes only eligible transit expenses	
Economic Link	
<input type="checkbox"/> Enhances urban economic development,	
Or,	
<input type="checkbox"/> Incorporates private development;	
Transportation Benefit	
<input type="checkbox"/> Enhances transit project effectiveness, and is	
<input type="checkbox"/> Physically or functionally related to public transportation.	
Financial Benefit.	<i>Note property value, method for determining highest and best transit use, and cumulative impact on TOD portfolio</i>
<input type="checkbox"/> Generates in excess of the property's current market value / appraised value, except for intercity bus or rail terminals, taking into account "highest and best transit use", a	
<input type="checkbox"/> revenue stream, or	
<input type="checkbox"/> one-time payment;	
<input type="checkbox"/> Pays its fair share of facility Operating Costs	
Continuing Control Legal Agreements	
<input type="checkbox"/> Ensure unimpeded access between the development and the transit facility;	
<input type="checkbox"/> Ensures protected classes against discrimination	
<input type="checkbox"/> Improvements constructed will meet ADA standards	
<input type="checkbox"/> Includes conflicts of interest and suspension and debarment clauses	
Crosscutting Requirements	
<input type="checkbox"/> Complies with other Federal requirements including:	
<input type="checkbox"/> NEPA and other environmental requirements	
<input type="checkbox"/> Uniform Relocation	
<input type="checkbox"/> Davis-Bacon and other Labor Protections	
<input type="checkbox"/> Buy America	
<input type="checkbox"/> §4f (Parkland...), 106 (Historic Prop.), 404 (Wetlands)	
<input type="checkbox"/> Seismic Safety	

- Energy Assessment of Federally funded construction
- Endangered Species Act
- State and Local Requirements;

Local Supportive Actions (Optional)

- Builds on local policies and strategies promoting:
 - Mixed use / higher density development
 - Urban design enhancements
- Transportation management actions.

EXHIBIT "C"

**CERTIFICATION OF DEVELOPER REGARDING DEBARMENT, SUSPENSION
AND OTHER RESPONSIBILITY MATTERS**

(Developer) _____ certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not, within a five (5) year period preceding this bid proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or Local Government) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local Government) with commission of any offenses enumerated in Paragraph 2 of this Certification; and
4. Have not, within a five (5) year period preceding this bid proposal had one or more public transactions (Federal, State or Local Government) terminated for cause or default.

If the Developer is unable to certify to any of the statements in this Certification, the Developer shall attach a concise explanation to this certification.

(Developer) _____ certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this Certification and understands that the provisions of 31 U.S.C., Sections 3801, et seq. are applicable thereto.

Signature _____

Printed Name: _____

Date: _____

EXHIBIT "D"

Revised Extract from Circulator 9030.1C

g. Joint Development Projects. Urbanized Area Formula Program funds may be used to support joint development of facilities or portions of facilities that enhance the effectiveness of public transportation and that are physically and functionally related to public transportation. FTA will allow the limited use of grant funds for a transportation project that simultaneously aid in economic development or that generates private investment in commercial and/or residential development. Guidelines attendant to joint development projects are provided in FTA Circular 9300.1A, "Capital Program: Grant Application Instructions," in Appendix B.

1. INTRODUCTION. This appendix contains guidelines for undertaking joint development projects. It also contains a set of question most frequently asked about the concept of joint development and provides responses to those questions, with examples. This appendix supersedes the joint development policy announced in the Federal Register on March 14, 1997, and all previous versions of Appendices on Joint Development to all FTA Circulars.
2. JOINT DEVELOPMENT DEFINED. Joint development is typically a construction project undertaken jointly by an FTA grantee with another party besides FTA. The construction project occurs in, on or in functional relation to a transit facility, and the project uses real estate in which FTA has an interest. More broadly, it is any income-producing activity with a transit nexus related to a real estate asset in which FTA has an interest or obtains one as a result of granting funds (the "Assisted Real Estate Asset"). Joint development projects must meet three tests: statutory definition of a capital project (at 49 USC 5302(a)(1)(G)), financial return, and highest and best transit use. These tests are discussed in the paragraphs below.
3. TEST ONE: THE STATUTORY DEFINITION OF A CAPITAL PROJECT. A joint development transportation project must be compatible with the statutory definition of a capital project.

a. The Statutory Definition. The definition applicable to joint development is found at (at 49 USC 5302(a)(1)(G):

(G) a mass transportation improvement that enhances economic development or incorporates private investment, including commercial and residential development, pedestrian and bicycle access to a mass transportation facility, construction, renovation and improvement of intercity bus stations and terminals, and the renovation and improvement of historic transportation facilities, because the improvement enhances the effectiveness of a mass transportation project and is related physically or

functionally to that mass transportation project, or establishes new or enhanced coordination between mass transportation and other transportation, and provides a fair share of revenue for mass transportation that will be used for mass transportation

(i) including property acquisition, demolition of existing structures, site preparation, utilities, building foundations, walkways, open space, safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications), facilities that incorporate community services such as daycare or health care, and a capital project for, and improving, equipment or a facility for an intermodal transfer facility or transportation mall, except that a person making an agreement to occupy space in a facility under this subparagraph shall pay a reasonable share of the costs of the facility through rental payments and other means; and

(ii) excluding construction of a commercial revenue-producing facility (other than an intercity bus station or terminal) or a part of a public facility not related to mass transportation;"

b.

Other Definitions Related to the Statutory Definition.

Physically or Functionally Related. A project is physically related to a capital project if it provides a direct physical connection with transit services or facilities. This includes projects using air rights over transit stations or projects built within or adjacent to transit facilities.

A project is functionally related to a capital project if it is related by activity and use to transit facilities. Also a project is functionally related to a capital project if it provides a beneficial service to the public (or community service) and enhances use of, connectivity with or access to transit. The provision of health care and day care by public and non-profit providers is specifically included in the statutory definition as such a beneficial service.

Each project must establish the link between transit and the proposed joint development project. This includes intermodal projects that comprise historic transportation facilities or intercity bus or rail terminals. Each of these joint development activities presupposes a substantial transit presence which will be enhanced by the addition of the intercity bus or rail terminal or joint development activity. Issues to be addressed should include travel time between the joint development and the transit facility, reasonable access between the development and the transit facility, trip generation rates of the proposed development, and the transit system's share of those trips.

1. Proximity. Functional relationships do not extend beyond the distance most people reasonably can be expected to walk to use a transit service. This will vary depending on the local market area. As a benchmark, a joint development project should be at least within a radius of approximately 1,500 feet from the center of a transit facility. The eligible project area and what is a sufficiently proximate location will be identified by the grantee in consultation with FTA's Regional Office on a case-by-case basis.
2. Community Service. These services are provided by a public entity or a non-profit entity and serve the public generally. A preference for transit riders may be expressed in the provision of services.

4. TEST TWO: REQUIRED FINANCIAL RETURN

- a. Each grantee must negotiate a fair and equitable return of and on the total transit investment in the form of cash and other benefits to be generated initially and over the life of the joint development project. In the case of intercity bus or rail terminals, the grantee may negotiate a payment in the form of rent or other means, up to but not exceeding the market rate for similar property in similar use in its service area.
- b. All projects except for intercity bus or rail terminals must generate a one-time payment or ongoing revenue stream for transit use, the present value of which equals or exceeds the fair market value of the property as discussed below at paragraph 5, Highest and Best Transit Use.

- c. Program income includes current and/or future returns generated from, but not limited to, transfer or lease of property, mortgage proceeds, or returns stemming from participation in distribution of project revenues.
 - d. Within reason, the grantee may also postpone development of some properties along the corridor, to enhance their final development value. This should be declared in the joint development proposal.
 - e. When the joint development project is one of several being undertaken in a program of joint development projects, the combined revenue streams from all of the projects may be balanced against the cumulative appraised value of the combined real estate on a portfolio basis. In such an approach, one project could be carried forward at a nominal loss, provided other projects in the same portfolio produced a proportionally greater revenue for the transit system, resulting in a net present value benefit equal to the appraised value of the property used, taking highest and best transit use into account.
5. TEST THREE: HIGHEST AND BEST TRANSIT USE.
- a. The calculation of equitable return required in paragraph 4 must be based on the appraised market value as represented either by highest and best use of the property or by highest and best transit use of the property, taking into account in either valuation the local transportation, land use, and economic development plans. Most frequently, the highest and best use as identified by the appraiser will also be the use that will generate the highest potential transit usage. And this will be use for which the transit operator will propose a joint development project.

However, if it is not the use that will generate the greatest benefit, including highest potential ridership, and there is a market for another use that will generate greater benefits, then the latter, referred to here as the highest and best transit use should be explored. Highest and best transit use is that combination of residential, commercial, retail, and public use and/or amenities to be included in the joint development, which is calculated to produce the greatest level of social, economic, and financial benefit, including ridership, to the transit system and the community that it serves.
 - b. If the grantee structures a joint development project to include the transfer of an Assisted Real Estate Asset, then the final transfer value must be based on competition to the extent practicable, and FTA concurrence in the final transfer value is required.
 - c. If the grantee structures a joint development project to include a ground lease or lease of space in a building or of air rights, the leasehold value must be based upon a fair market valuation and the opportunity to lease the site must be based on competition to the extent practicable. FTA may approve joint development proposals for community service facilities, which include rents at less than fair market value when such services are beneficial to transit and transit patrons and where such services are provided by public and non-profit entities. (Note that both subparagraphs b

and c require the transit operator to compete the opportunity to become a participant with the transit operator in a joint development project.)

6. ELIGIBLE COSTS FOR JOINT DEVELOPMENT PROJECTS

All eligible costs are pursuant to a budget contained in an approved grant, which constrains overall costs unless the grantee has its own resources outside of the grant (like a dedicated revenue, e.g., a sales tax) that it can use to defray such costs. FTA will not approve a grant containing joint development costs prior to the submission of and approval by the Regional Administrator of the joint development proposal. (See Paragraph 10.) Alternatively, the Regional Administrator will condition the drawing of funds related to the joint development line items upon his/her approval of the joint development proposal. Eligible project costs for joint development projects include, but are not limited to, the following:

- a. Design, engineering, and environmental analyses, as appropriate. (Formula program funds are more appropriate for planning and feasibility analysis.)
- b. Real estate packaging for a specific joint development project including preliminary design and engineering; estimates of operating income and expenses and capital costs; and negotiations to secure financing, developers, and prime tenants.
- c. Land acquisition, relocation, demolition of existing improvements, and site preparation.
- d. Foundations and substructure improvements for buildings within the footprint of the transit facilities, including intercity bus and rail terminals.
- e. Open space, and bicycle lanes and pedestrian connections and access links between transit services and the related development.
- f. Public transportation malls and intermodal transfer facilities, including intercity bus and rail facilities that are related to a transit project.
- g. Utility relocation and construction. The eligibility of costs of utility work associated with private investment will be considered on a case-by-case basis. FTA grant funds will pay for costs of utility work that are attributable to non- FTA project purposes only when
 1. The utility services a joint private and transit use; or
 2. The utility lines will be located under a co-located street or sidewalk or within other common elements so that it would benefit the project to provide adequate capacity at the outset of the project.
 3. The utility work conforms to the Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended, and DOT's regulations implementing the Act, found at 49 CFR Part 24.
- h. Safety and security equipment and facilities (including lighting, surveillance and related intelligent transportation system applications).
- i. Community services such as daycare or health care.
- j. Parking elements. All FTA participation in financing parking improvements must have a public transit justification and use. Parking elements of joint

development projects that meet this general rule, will be considered on a case-by-case basis. Projects that include significantly more parking than is required for transit use - such as for shops, public non-transit facilities, or other private facilities - may only be supported in proportion to the transit parking component.

- k. Professional Services Contracting Costs. Grantees may incur reasonable and necessary costs for consultants to prepare or perform items a through j above, or to assist the grantee in reviewing the same.
- l. Eligible costs do not include construction of residential or commercial revenue producing facilities (other than an intercity bus or train station or terminal) or construction of any general use governmental building or public parking not related to public transportation.

7. FUNDS THAT MAY BE SUED IN JOINT DEVELOPMENT PROJECTS.

No dedicated funding has been established for joint development projects. Joint development activities are eligible for funding under all Title 49 capital programs, including the Capital Program (Section 5309), the Urbanized Area Formula Program (Section 5307), the Non-urbanized Area Formula Program (Section 5311), and the Elderly and Persons with Disabilities Program (Section 5310). CMAQ and STP and TCSP (Transportation and Community and Systems Preservation Pilot Program) funds transferred from the Federal Highway Administration to be administered by FTA may also be used to support joint development projects. (See Chapter III, paragraph 2a for a discussion of flexible funds.)

8. APPLICATION OF OTHER FEDERAL REQUIREMENTS TO PRIVATE SECTOR PROJECTS.

In a joint development project, FTA must determine whether, and to what degree, various Federal rules apply to the privately funded, non-transit portion of the project. The applicability of Federal requirements (such as those of the National Environmental Policy Act (NEPA), the Davis-Bacon Act, third party procurement requirements, and Buy America) will be resolved on a case-by-case basis for joint development projects involving the transfer of real property. FTA will work with the grant applicant to determine whether, and the extent to which, such Federal requirements apply, particularly to any private development, and the most appropriate procedures for satisfying the requirements. Proposals should be submitted as early as possible in the joint development process. This will allow FTA staff to help the grantee structure an approvable proposal in the least time possible and determine which crosscutting requirements must be applied to the particular project. Nevertheless, applicable crosscutting requirements likely to apply in the indicated circumstances include, but might not be limited to the following:

- a. If the joint development involves a ground lease or transfer of federally assisted real estate and there is no Federal assistance for new improvements, then the following requirements apply to the lessee or transferee and must be incorporated into the lease or the conveyance instrument:
 1. language found at 49 C.F.R. 26.7 binding the lessee or transferee not to discriminate based on race, color, national origin, or sex;
 2. language found at 49 C.F.R. 27.7 and 49 C.F.R. 27.9(b) and 49 C.F.R. Part 37 binding the lessee or transferee not to discriminate based on disability and binding the same to compliance with the Americans with Disabilities Act with regard to any improvements constructed;
 3. language contained in the FTA's Master Agreement, updated annually in October, particularly relating to conflicts of interest and debarment and suspension.

- b. If the construction of improvements is also federally assisted, then in addition to paragraph 8a above, at least the following requirements also will apply and must be incorporated into the lease or the conveyance instrument:
 1. Buy America - language making it clear that the steel, iron, and manufactured goods used in the joint development project are produced in the United States, as described in 49 U.S.C. § 53230) and 49 C.F.R. Part 661. The reader is referred to Chapter VI, paragraph 15 of this circular for further information about Buy America requirements.
 2. Planning and Environmental Analysis - language making it clear that the grantee must comply with, and the joint development project is subject to the requirements of:
 - *the FHWA/FTA metropolitan and statewide planning regulations at 23 C.F.R. Part 450;
 - *the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq. ("NEPA");
 - *Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629, Feb. 16, 1994;
 - *FTA statutory requirements on environmental matters at 49 U.S.C. 5324(b); Council on Environmental Quality regulations on compliance with the NEPA, 40 C.F.R. 1500 et seq.;
 - *FHWA/FTA regulations, "Environmental Impact and Related Procedures," 23 C.F.R. Part 771;
 - *Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, involving historic and archaeological preservation; Advisory Council on Historic Preservation regulations on compliance with Sec. 106. "Protction" of Historic and Cultural Properties," C.F.R. 800;
 - *and restrictions on the use of certain publicly owned lands unless the FTA makes the specific findings required by 49 U.S.C. 303.
 3. Cargo Preference - language making it clear that items imported from abroad and used in the joint development were shipped

predominantly on U.S.-flag ships and that the project complies with 46 C.F.R. Part 381, to the extent these regulations apply to the joint development.

4. Seismic Safety - language certifying that a structure conforms to seismic safety standards, as contained in 49 C.F.R. Part 41.
5. Energy Assessments - Transferee(s) or joint developer agrees to perform a mandatory, energy assessment as prescribed by 23 CFR Part 771 and 42 USC 8373(b)(1) for any buildings constructed, reconstructed or modified with FTA assistance. The assessment shall be incorporated into the Environmental Impact Statement or Environmental Assessment, if the project has one; otherwise the assessment shall be provided with the application for FTA assistance.
6. Lobbying - 49 C.F.R. Part 20.

7. Labor Protection-Language making it clear that the transferee or joint developer will adhere to labor protection requirements applying to Federal projects, such as Davis-Bacon - 49 U.S.C. § 5333(a) and 40 U.S.C. § 3141 *et seq.*, and 29 C.F.R. Part 5; Copeland "Anti-Kickback " Act as amended, 18 U.S.C. 874 and 29 C.F.R. Part 3; and Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3701 *et seq.*, and 29 C.F.R. Part 5 and at 40 U.S.C. §3704; as well as 49 U.S.C. 5333(b) concerning protection of transit employees.
 8. Civil Rights Requirements - 49 U.S.C. § 5332 and DOT implementing regulations at 49 C.F.R. Part 21 (effecting Title VI of the Civil Rights Act of 1964), 49 C.F.R. Part 26 (participation by Disadvantaged Business Enterprises in DOT financial assistance programs) and 49 C.F.R. Parts 27 and 37 (respectively, nondiscrimination on the basis of disability in programs or activities receiving Federal financial assistance and transportation services for individuals with disabilities).
 9. Program Fraud - grantees agree to comply with Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. 3801 *et seq.* and 49 C.F.R. Part 31. Penalties may apply for noncompliance.
 10. Language making it clear that the level of Federal participation in the joint development provides no U.S. Government obligation to third parties in the project.
 11. Uniform Relocation - If the federally assisted site to be improved is occupied by other than the grantee and the occupant is displaced, the transferee(s) or joint developer must comply with 42 U.S.C. 4601 *et seq.* and the regulations at 49 C.F.R. Part 24.
- c. In any instance in which FTA determines that NEPA applies to the joint development, the level of environmental analysis will depend upon the complexity of the project and its likely impacts. In some instances, minimal review will be necessary, in which case FTA will issue a Categorical Exclusion. Joint development activities that portend significant environmental impacts, however, will necessitate the preparation of an Environmental Assessment or an Environmental Impact Statement. See generally the FTA Environmental Impact and Related Procedures at 23 C.F.R. Part 771.

9. PROCESS FOR SUBMITTING A JOINT DEVELOPMENT PROPOSAL.

Before undertaking a new joint development, a grant applicant is encouraged to turn to Chapter X, "Regional Offices," select the FTA Regional Office responsible for the grant applicant's locality, and telephone that office to discuss the kind of project planned. Such a dialogue, early in the project planning process, will ensure that the joint development proposal will be reviewed on a timely basis.

a. What should the joint development proposal contain? Please see the joint development proposal checklist attached hereto as Exhibit 1. The joint development proposal should contain the Joint Development agreement; a

market and financial assessment of the Joint Development including a sources and uses of funds statement, and a pro forma cash-flow statement for the initial year of operations, the year of stabilized operations, and as projected forward at least for ten years; an assessment of the project's impact on, and benefits for, the transit system; and a statement of the outcome of planning and coordination between the private parties and the transit operator; an appraisal, as necessary and depending on the joint development use. The agreement should document effective continuing control, and agreements which transfer title or rights in land or facilities acquired as part of the FTA project must contain provisions which:

1. Extend the requirements, as appropriate, of the FTA Grant Agreement; (see paragraph S) and,

Ensure that the grantee retains continuing control of the assets as long as they are needed for mass transit. This continuing control may be demonstrated by an easement, by a reversionary interest, by a covenant running with the land, by terms in the joint development agreement, or more commonly, by some combination of these assuring the transit agency that the joint development project will maintain its physical or functional relationship to transit, will continue to enhance coordination between modes, or will in fact result in increased mass transportation usage, and will provide the necessary return.

2. Ensure that a person making an agreement to occupy space under this subparagraph shall pay a reasonable share of the costs of developing and operating the facility through rental payments and other means.
3. Acknowledge that FTA must approve the agreement itself prior to execution.
4. Who may submit a joint development proposal to the FTA Regional Office? Only an FTA grantee may submit a joint development project to an FTA Regional Office. Before undertaking a new joint development, grantees are encouraged to turn to Chapter X, "Regional Offices," select the FTA Regional office responsible for the grantee's locality and telephone that office to discuss the kind of project

b. Who may submit a joint development proposal to the FTA Regional Office? Only an FTA grantee may submit a joint development project to an FTA Regional Office. Before undertaking a new joint development, grantees are encouraged to turn to Chapter X, "Regional Offices," select the FTA Regional office responsible for the grantee's locality and telephone that office to discuss the kind of project planned. This can save time and money.

c. What approvals must be obtained from FTA to undertake a joint development project? Like any project, a joint development project that uses Federal funds must be in a financially constrained TIP and STIP. Like any project, it must conform to applicable crosscutting requirements, including an FTA NEPA finding, if required. In addition, the FTA Regional Office must approve the Joint Development Proposal, including the agreements between the parties whether this is the development agreement, any mortgage, deed restriction, lease, license agreement, easement or any other encumbrance of the real estate. This is required by the common grant rule; see 49 CFR 18.31(b). Finally, the FTA Regional Office must approve the grant, which will fund the joint development improvements themselves.

d. When may a grantee apply for joint development project? Proposals that meet the criteria described herein may be submitted at any time. Note, however, that when the grantee acquired the property to be developed or redeveloped matters.

1. After October 1, 1996, all FTA Master Agreements allow the use of real property for appropriate project purposes "including joint development purposes that generate program income to support transit purposes," this is the Federal agency authorization required by 49 C.F.R.18.25(g)(2) by which the revenues are brought within the definition of program income and can be used for transit capital, planning, and operating purposes. While a grant is still open, the transit agency must apply all revenues from any sale of real property (which does not qualify as a joint development transfer) to the grant purposes, or must return the proportionate part of the revenues granted by FTA, or must obtain FTA approval to use the revenue to reduce gross project costs in another capital project. If the transit agency transfers an Assisted Real Estate Asset from an open grant and maintains continuing control and otherwise meets the three joint development program tests, the transit agency may retain as program income all the revenues that accrue.
2. For open grants predating October 1, 1996, all the terms of the current Master Agreement apply, so subparagraph c1 above controls.
3. Closed grants made in 1983 or thereafter may be reopened to allow for the use of Assisted Real Estate Assets in joint development projects. However, for those closed grants made between 1983 and October 1, 1996, the grant purpose and terms, as necessary, must be amended to allow for joint development. Aside from the requirement that the income be used for transit capital, planning, or operating expenses, FTA generally sets no further conditions on income from a closed grant.

4. Real estate assets associated with closed grants made before 1983 are not eligible for use in joint development projects. However, the principles of joint development can sometimes be applied indirectly. Please contact your Regional Office for specific guidance and see Q&A 15.
10. NOTES TO THE READER. The statements included in this appendix reflect typical project situations. Except for references to definition of a capital project and other statutes or regulations, instructions given and policy statements appearing in the circular are not intended as inflexible FTA mandates. They are instead set forth as guidelines which FTA generally applies to typical projects. Early dialogue with the FTA Regional Office will clarify the degree to which a new joint development project conforms to, or differs from, previous FTA experience.
11. FREQUENTLY ASKED QUESTIONS AND SOME PRACTICAL EXAMPLES. The following questions and examples apply to joint development projects that arise in any of three grant conditions: A grant for a new project, where the joint development is being planned with a new transit facility; a new joint development opportunity in connection with an existing facility for which the grant is still open; and (the most frequent circumstance) a joint development project proposed for an existing facility on which the original grant is closed. The procedure that must be followed, regardless of the use of any new grant funds, will be determined by the terms and conditions of the original grant (see Section 9(d) of this Appendix).

Q.1. What is joint development?

A.1. Typically, it is a construction project undertaken jointly by an FTA grantee with another party besides FTA, and it occurs in, on or adjoining a transit facility and land in which FTA has an interest. More broadly, it is an income-producing activity involving a third party (that is not the grantee and not FTA), taking place on or with an Assisted Real Estate Asset (described in paragraph 2 above). The third party is the source of the income and other benefits to the grantee; the third party is the party to whom the property is transferred or the lessee who leases the space or ground or air rights. Joint development activities may be associated with fixed guideway transit systems that are new, being modernized or being extended; with new or existing intermodal transfer facilities (facilities that allow for easy transfer between bus and rail, or intra-and inter-city bus, or between bus or rail and bicycles or taxis, or between ferry and bus or rail or some combination thereof) and bus transfer facilities. While additional Federal funds may be used for such a project, the use of Federal funds does not determine a joint development.

Q.2. May grant funds be used for joint development?

A.2. Yes, grant funds may be used to the extent allowable under the definition of a transit capital project, 49 U.S.C. §5302. Specifically, grant funds

may be used to prepare a site for a specific joint development, including demolition of an existing structure, new, relocated or enhanced utilities, foundations, etc. All of these activities are in relation to an existing or new transit facility or an historic transportation facility. If there is no transit nexus, grant funds may not be used. That is, FTA will not consider an historic transportation facility, or similar joint development as eligible for grant funds unless there is an underlying transit purpose to the project to begin with.

For example, on a former parking lot surrounding an existing intermodal center, the transit agency may use grant funds to prepare the property for development. It may mitigate soil contamination, move or enhance utilities to accommodate the new development, and it may build footers or a foundation to facilitate the new development. However, on a similar property one half-mile away from the center, a property without significant transit service (a simple bus stop would not be sufficient), grant funds would not be usable.

Q.3. What is the limitation on new improvements for joint development?

A.3. The purpose of the Joint Development Policy is to facilitate the use of an Assisted Real Estate Asset for a transportation purpose that simultaneously aids in economic development of the land used or generates private investment in the land used, like commercial or residential development. The policy recognizes the impact of transit development on land use development and the interplay between the two. Thus, FTA will allow the use of grant funds for the construction of a transit facility including an intercity bus or rail terminal. And FTA will allow certain costs otherwise born by the private developer of a project, which is physically or functionally connected to the transit project, to be paid out of FTA grant proceeds. However, FTA is unlikely to allow FTA grant funds to support a free-standing facility (even an otherwise eligible facility such as a daycare or senior care facility or an intercity bus or rail terminal that is not related to a transit facility. See the definition of a capital project at Section 3 and the discussion of eligible costs at Section 6.

However, while FTA will allow grant funds to support a facility including an intercity bus or rail terminal or a day care center, as part of a transit project, FTA will not allow Federal funds to be used for furniture, fixtures, or equipment unique to the non-transit facility. That is, basic utilities, wiring, and structural items are eligible, but medical equipment, classroom equipment, or lunch counter equipment such as might be used in health care, day care, or intercity bus terminals would not be eligible.

Q.4. Does joint development require a private or nonprofit developer?

A.4. Not really. The third party's role need not be that of developer; it may be that of a lessee. For example, the transit agency can lease out its excess space to a senior care or day care provider, in which case the transit agency is the "developer" under FTA's policy. If, however, the project is to build an office/retail complex in the air space above a transit station, only a very large transit agency with its own dedicated revenue source (like a local tax) will have

the means to borrow the sums necessary to build and finance the structure. (FTA funds could only be used for the space that has a public transportation use and for uses that are included in the definition of a capital project.) It will be much easier (though not absolutely necessary) for the grantee to have a private partner who builds and manages the development.

For example, one transit authority has created a private entity (limited partnership) to be eligible to receive and syndicate historic preservation tax credits and thus assist it in developing portions of an historic central train station. This project created seven floors of multifamily rental housing above the floors used for transportation purposes but still within the "shell" of the historic station. The project was financed with a combination of historic preservation tax credits (syndicated to the private sector), and mortgage revenue bonds issued by the city, the proceeds of which were used to make a loan for the project. The transit operator is also a partner in the joint development. The transit operator receives a share of the project revenues for the life of the limited partnership.

This was eligible on two bases: the rehabilitation of an historic train station as part of the overall transit project was an eligible capital project under Section 5302, and the seven floors of rental housing were paid for out of private funds raised by bond proceeds and the syndication of the tax credits. The transit agency receives revenues in excess of its limited partnership's costs of maintaining and operating the facility.

Q.5. What is highest and best transit use?

A.5. A property's highest and best use is the use--from among reasonably probable and legal alternative uses that are physically possible, appropriately supported, and financially feasible in the current marketplace--that results in the highest anticipated selling price. The way highest and best transit use differs from highest and best use is through recognition that value to the transit system is not in the selling price alone.

Highest and best transit use is that combination of financial return and other transit benefits, such as increasing ridership, reducing trip durations or improving connections between trips that maximize the value of the asset to transit. The concept of highest and best transit use applies only when there are proposed competing uses.

For example, a transit agency identified several properties adjoining existing or planned transit stations that it wished to use for joint development. One particular property was oddly shaped, but with substantial road frontage. A request for development proposals resulted in offers to build 8 or 10 townhouses with garages. This option would produce the highest immediate cash proceeds to the transit system. However, the transit agency sought and was granted revised zoning on the property, allowing up to 160 moderate-

income apartments to be offered for rent. The moderate-income rental use will take a long time to produce cash flow and proceeds to the grantee, but in the interim, the moderate-income rental use is projected to increase transit ridership by (conservatively) 32,000 trips per year, which are estimated to be worth between \$18,000 and \$24,000 per year in additional farebox revenues. It is anticipated that these residents will also provide economic support for new retail space in the surrounding community. FTA regards this decision as satisfying the "highest and best transit use" criterion. No additional grant funds were used to support this project. The grantee was allowed to transfer the property for joint development on the basis of its highest and best transit use. In this case, a Net Present Value for the condominiums was \$580,000, as compared with only \$245,000 for the rental apartments. However, the present value of the added farebox revenue was at least an additional \$245,000 over the initial 10 years.

Q.6. How much land may be purchased by a grantee?

A.6. How much land may be purchased by a grantee is a function of how far people will walk to transit in a given location and the limited grant dollars available to any grantee. It is also a function of the grant application itself, which must include property acquisition for joint development within its purpose. Finally, the Regional Administrator will explicitly approve a joint development proposal identifying what land is to be purchased before allowing a draw of grant funds for that purpose. To make this more concrete, we provide the following example:

A town is currently planning improvements to its bus transit system, including a downtown transfer center. The center is being planned as a multi-use facility, which will include a tourist information center, small retail businesses, and possibly a bank. To make this eventual development a reality may require that the transit agency acquire a larger amount of land than is necessary for the transit center alone. FTA will assist the transit operator's land acquisition activities with grant funds, as described in paragraphs 6a through 6i of this appendix.

Q.7. How can existing space be used for a joint development?

A.7. The transit agency may wish to encourage local economic activity and community services at its existing facilities. Under the Joint Development policy, the transit agency may identify under-utilized space within its existing structure. It may rehabilitate an existing transit owned facility resulting in excess space, which may be leased for non-transit purposes. It may identify air rights that can be put to greater use without interfering with the transit use below. In these instances, it is important to distinguish between joint development and other types of uses, including:

- *incidental use (see Q&A 16 j below);
- *leasing or sale under Section 5334(g)(4) (see Q&As 14 and 17, below); and,
- *development of a shared use facility (see Q&A 15 below).

A neighborhood Travel and Jobs Center involved just such a joint development. There, the local transit authority was allowed to convert an existing, underutilized office building into a \$3 million Neighborhood Travel Center. The center serves as a terminal for bus lines to industrial jobs and it provides the focus for a downtown redevelopment "campus" including jobs training, child care facilities, and a privately-financed development bank. The tenant finishes for each of these ancillary activities were paid for with non-grant funds, though grant funds were used to rehabilitate the building itself. The tenants will pay market rare rent to the transit authority. FTA grant funds were used to rehabilitate the outside shell and structural members of the building, including necessary repairs to floors, bearing walls, utilities, and surrounding space to accommodate transit buses. The site had to be redesigned to provide a direct pedestrian connection to the nearby light rail stop, while promoting safe passage of the transit buses. This was eligible use of grant funds because it involved activities specifically authorized under Section 5302. Ineligible activities (tenant finishes) were paid for out of private or local funds not otherwise used to match the Federal funds.

Q.8. Is there a limitation of the ultimate size of a joint development that can be assisted with grant funds?

A.8. Generally, there should be a market and financial assessment of the combined transit facility and joint development. These assessments should demonstrate some probability of project success, taking into account the scale of the transit system, the size of the transit facility, and the joint development.

A transit agency recently proposed to construct a 5 story parking structure in its downtown across the street from the local University. The land on which the parking structure will be constructed is currently owned by the University and used as a University parking lot for 250 patrons. The University will donate the land to the project for use as local match to the FTA grant. The first floor of the parking structure will include a bus transfer facility, the transit agency's paratransit headquarters and *possibly* other multimodal connections. As a condition of allowing the use of University owned land, the grantee must allow 250 parking spaces in the structure to be used by University of Indiana patrons exclusively. The remaining spaces (approximately 350) will be available for transit customers and possibly others visiting the downtown. All revenue generated by the parking facility will be used for mass transportation. In this case it is important to note that the City has a population of approx 60,000 and has a weekday ridership of about 600.

In this case, there is a problem of scale as well as exclusivity. The FTA grant funds can be used for the first floor of the facility, as well as some portion of additional parking reasonable needed for the transit service. However, FTA funds cannot be used for the exclusively University parking. Also, FTA funds cannot be committed to "possible" multimodal connections. There must be an actual commitment by the grantee and the other users (intercity bus service or taxi company) to use the multimodal facility. Finally, using grant funds to build

350 downtown parking spaces (for 600 total daily riders) is likely to have the opposite effect from that intended by the joint development authority.

It is likely to increase driving into downtown, rather than using the transit system. Joint development is intended to improve the function of transit. It would be more appropriate for the transit agency to perform a market study to determine the intermodal center's transit parking needs. The project could then be designed so that grant funds would build a ground floor and necessary transit parking, which could then be added to by the University for its own parking requirements.

Q.9. What is the difference between a sale and a joint development transfer?

A.9. A sale does not involve continuing control of the real property by the grantee and fails to establish a nexus between the Assisted Real Estate Asset and an ongoing transit purpose as outlined in paragraph 3 of this appendix. Proceeds from such a sale are not program income and must be returned to FTA pursuant to 49 CFR 18.31(c)(2).

In contrast, a joint development transfer establishes the grantee's continuing control over the transferred real estates and meets the tests outlined in paragraph 3, 4, and 5 of this appendix; and the definition of a capital project, the financial return and highest and best use tests. The proceeds from a joint development transfer are considered program income, which may be retained by the grantee. (See paragraph 5c.)

Here is an example of a joint development transfer: a rapid rail station includes 6.3 acres for a "park and ride" area part of which is underutilized. A developer has been approved to build 160 residential units and 17,000 square feet of service retail space on a portion of this area. The transit operator transfers 3.4 acres to the developer for use in the joint development. The development will generate more transit trips and more non-fare revenue than the displaced parking spaces provided. The transit agency will retain the income generated from this land transfer as program income and will be assured of satisfactory continuing control through covenants running with the land. Should the developer re-sell the land in the future, the covenants bind the next owner to a transit-oriented use of the land.

Q.10. How is the value of a joint development transfer assessed?

A.10. For property originally purchased with FTA funds, or contributed as local match for Federal funds, an up-to-date appraisal must be made prior to its transfer for any reason, including joint development. This is a necessary pre-condition to allow the grantee to meet the Common Grant Rule requirements as well as the fair return requirements of the joint development authority.

In one example, the grantee proposed to sell a portion of its grant assisted park-and-ride to a developer for a condominium development. The new development would include a shared parking structure sufficient to replace the prior park-and-ride spaces. However, the grantee did not want to provide a current appraisal for the land. Without the appraisal, the grantee would be

unable to demonstrate that it was receiving a "fair share of cost" on its property through rents or other means. In-kind reimbursement has a value, and this must be matched to the actual value of the property that is to be transferred.

Q.11. How can FTA's joint development policy assist in providing housing to low- and moderate-income households?

A.11. While FTA's grant funds cannot be used directly to build housing for low-low and moderate-income households, developers wishing to provide such housing can benefit from the joint development policy by working closely with transit operators to identify excess or underutilized real estate or opportunities adjacent to proposed new, fixed-guideways and bus facilities. In each instance, real estate can be leased through a ground lease or air rights lease or transferred through a joint development transfer so as to facilitate housing development. Furthermore, the developer could benefit from the transit agency's acquisition (consolidation) of the parcels, especially if the transit operator has eminent domain authority, and because of the time and effort to clear title, especially in urban redevelopment areas. The developer can also benefit from the transit agency's capacity to: clear the site, relocate utilities, provide pedestrian connection, and lighting and landscaping of the same. The cost savings to the developer associated with these and other allowable activities can help make possible mixed-income development opportunities that otherwise might not be financially feasible. In addition, affordable housing is consistent with FTA's "highest and best transit use" property assessment criterion (See Question 5 for Highest and Best Transit Use) because households with moderate to low incomes, including seniors and people with disabilities, are less likely to own or be able to operate private automobiles and are more likely to take advantage of public transportation. Moreover, if these individuals can spend less of their income on housing, they can expand their budget for transit. For its part, the transit agency should be able to quantify additional ridership as well as the fair return on its investments over time.

Q.12. Will NEPA and other Federal crosscutting requirements discourage private participation?

A.12. It is the will of the Congress that the Federal crosscutting requirements govern grantees' use of FTA's financial assistance. To the extent that a grantee joins with a private or nonprofit developer to undertake joint development using FTA grant funds in whole or in part for the improvements to the site, it is that grantee's role to obtain the grant funds necessary to make the joint development financially feasible and to supply its expertise in meeting the applicable Federal requirements. For example, if the proposed land use is known from the outset, a grantee can reduce the risk to the private or nonprofit developer by using transit resources to perform the necessary environmental studies before choosing a partner. Alternatively, a project may be structured so that the grantee selects a development partner, the grantee and the partner jointly determine the highest and best transit use, and the grantee then performs the necessary environmental

studies before its private or nonprofit partner becomes responsible for any costs. Such incentives can attract new participants to transit joint development.

Q.13. May FTA funds be used to pay for parking for community service facilities?

A.13. Yes. In 2004, the grantee proposed the use of FTA funds for construction of a Day Care Center on property owned by the local university. The Day Care center was to be adjacent to an existing park and ride facility located on the university's land. Use of the park and ride facility was restricted to university employees only. This proposal was not eligible for FTA funding. The grantee redesigned its proposal to create a transit project, including construction of a transit center with rental space sufficient to accommodate a day care center and a park and ride facility that is to be open to the transit riding public.

The underlying principles in this case are: that community service facilities must be contained within the transit project, the parking for the day care may be supported with FTA funds, and that all other transit facilities supported with FTA funds must be open to the general transit riding public. They cannot be restricted to particular patrons who are not transit riders.

Q.14. What is the difference between joint development and use of the provision at 49 USC 5334(8)(4) that allows a grantee to sell or lease FTA funded assets and keep the proceeds for use on another capital project?

A.14.

Joint Development

Proceeds can be used for Capital, Planning and Operating costs.

Proceeds do not have to be used on another FTA-assisted project, just on transit.

Property currently in transit use may still be transferred for joint development.

Principles of Joint Development Policy can be applied even if a project is not technically a joint development project:

- Transit-Oriented Development (TOD)
- Assisted assets from grants

Section 5334(g)(4)

Proceeds can only be used for Capital costs

Proceeds must be used on another FTA-assisted grant project. Proceeds reduce the Total Capital Cost of the next project, to which the federal/local share ratio is then applied to determine the new federal grant amount.

This section may only be applied if the property is no longer needed for transit use.

made prior to 1983

True joint development projects must meet technical requirements including:

- Written proposal to the Regional office
- 3 tests: Statutory purpose/definition of a capital project; highest and best transit use; and financial return.
- Grantee must establish continuing control
- Some Federal crosscutting requirements apply (application is fact-specific).

Section has a few technical requirements:

- Written request to Regional office outlining proposed disposition and how proposed disposition and how proceeds will be used.

Section is an additional disposition rule, providing grantees increased flexibility and another option in addition to those outlined in the Common Grant Rule and Circular 5010.2.

Q.15. What is the difference between a joint development project and a shared use facility?

A.15.

Joint Development

Proceeds can be used for Capital, Planning and Operating costs.

Prior to development the facility is identified as a joint development project

Property currently in transit use may still be transferred for joint development.

Principles of Joint Development Policy can be applied even if a project is not technically a joint development project:

- Transit-Oriented Development (TOD)
- Assisted assets from grants made prior to 1983

True joint development projects must meet technical requirements including:

- Written proposal to the

Shared Use Facility

Proceeds, if any, can only be used for another capital project

Prior to development the facility is defined as a joint use facility, and FTA pays only for the portion of that facility that will be in transit use. Other grant or local sources pay for the public or nonprofit use.

Policy may be applied to assets currently in transit use only if the asset(s) or a definable part is no longer needed for transit purposes.

Fund accounting for operating expenses is required; costs reallocated on some rational basis: for example, square footage of the space.

Grantee will use and have control of its portion of the space. Grantee will not use the space designed for use by others.

- Regional office
- 3 tests: Statutory purpose/definition of a capital project; highest and best transit use; and financial return.
 - Grantee must establish continuing control
 - Some Federal crosscutting requirements apply (application is fact-specific).

FTA approves the joint use facility and development cost allocation as part of a grant if for development of a facility. FTA approves the declaration of excess property, joint use and cost allocation and the new capital grant to which leasehold or disposition proceeds will be applied.

NOTE: The construction of a joint transit/ municipal fueling facility (as for Natural Gas or other specialized fuel) is an eligible shared use. All costs related to constructing the non-transit portion of the facility and fueling non-transit vehicles must be paid from non-Federal funds and cannot be used as local match for Federal funds.

Q.16. Are all incidental uses joint development?

A.16. No, not all incidental uses are joint development. (FTA permits the incidental use of transit equipment and property for purposes other than provision of transit service, provided the use is compatible with the approved transportation purposes of the project and does not interfere with intended public transportation uses of project assets.) Allowing nearby theaters and restaurants to use transit parking spaces during the transit system's off-hours is an incidental use. So is temporary use of transit property as a staging area for nearby construction. These uses, however, are not joint development. In contrast, the acquisition of land or the redesign of space to allow for additional parking to be used by local theaters and restaurants could be considered as a joint development project to the extent the acquisition or redesign is justified by a transit use and should be discussed with the Regional Office.

Q.17. What is the difference between "joint development" and "transit-oriented development?"

A.17. The term joint development is a subset of transit-oriented development. While all joint development is transit-oriented development, not all transit-oriented development meets the three tests of statutory definition of a capital project (transit nexus), financial return, and highest and best transit use. Some transit-oriented development that is undertaken by private parties benefits from its proximity to transit without the use of an Assisted Real Estate Asset and/or without the use of FTA funds for new improvements. Such totally private projects are simply not governed by this circular and are transit-oriented development.

Q.18. What is the difference between joint development and application of Section 5334(g)(4) to real estate?

A.18. The primary difference, as indicated in 14 above, is that under joint development transfer the transit agency must assure itself of the continual use

of the property for transit purposes, even after the property is transferred to a new owner. Under 5334(g)(4) the grantee has identified the property as excess and thus no longer needed for any transit purpose.

Q.19. Can building a transit facility adjoined to and sharing party walls with an existing building justify using Federal funds to refurbish the entire building?

A.19. Generally, the use of grant funds would be limited to the transit facility itself as justified by a feasibility study and the shared part wall and any necessary connections between the transit facility and the rest of the existing building. The connection does not make the existing structure eligible for transit funding absent a public transportation use. The only specific exceptions to this limitation are those of an historic transportation facility or an intercity bus or rail terminal, which by definition are transit capital projects under §5302. However, the acquisition of an otherwise appropriate building for a transit purpose, and its repair or rehabilitation for that purpose, would be an eligible activity under Section 5302. Additional space within such a building, usable for joint development such as public health or day care, could be eligible as well. This should be discussed before hand with the FTA Regional Office.

Q.20. Are intercity bus and rail stations built as transit capital projects required to return the reasonable cost of their construction to transit?

A.20. No, they are not required to return the cost of their construction to transit. FTA has interpreted the intercity bus and rail exception from the prohibition on building a "commercial revenue-producing facility" as indicating that the intent of the Statute was to exempt such facilities from the "reasonable cost" requirements of other joint development projects. Transit agencies are allowed to charge a nominal rent (i.e., \$1 per year) or to negotiate a rent that is up to but not exceeding the market rate for similar space in similar use in the transit agency's service area.