



Date: _____ April 5, 2007

Committee Meeting Date: _____ April 19, 2007

Board Meeting Date: _____ May 3, 2007

BOARD MEMORANDUMACTION X DISCUSSION _____ INFO _____

TO: Administration and Finance Committee
 Santa Clara Valley Transportation Authority
 Board of Directors

THROUGH: Michael Burns
 General Manager

FROM: Carolyn M. Gonot
 Chief Development Officer

SUBJECT: Joint Development Policy Amendments

RECOMMENDATION:

Adopt the revised the Joint Development Policy and Request for Proposal (RFP) Developer Selection Criteria (Attachment A).

BACKGROUND:

The Joint Development Policy (JDP) and Developer Selection Process were approved by the Board of Directors at its January 2005 meeting. The policy and process were developed to provide prospective partners with a uniform, predictable and reliable process for working with VTA on transit-oriented joint development projects. In addition, VTA receives numerous unsolicited inquiries regarding the sale or lease of VTA real property assets and the JDP provides a consistent and equitable framework for evaluating and responding to these inquiries.

At its January 23, 2007 workshop on Joint Development, the Board of Directors affirmed its support for VTA's Joint Development Program. In addition, Board members discussed how the developer selection process functioned with these first projects and possible changes to the Request for Proposal (RFP) Developer Selection Criteria. This memorandum summarizes the salient points discussed at the workshop and presents staff recommendations for modifications to the policy. The revised Joint Development Policy is provided in Attachment A.

DISCUSSION:

Board workshop comments are arranged in the following categories:

- Preference for local development teams
- Green / Sustainable development practices
- Community participation / City and VTA roles in the approval [entitlement] process
- Use of Joint Development Funds

The following provides discussion and staff recommendations for each of the categories.

Local firm preference

The Joint Development Policy is designed to attract the most qualified firms and the highest quality Transit-Oriented-Development (TOD) project proposals. While some Board members expressed a desire to encourage as much participation as possible from local firms, there was a general consensus at the workshop that the Board did not want to create disincentives for out-of-area developers or discourage out-of-area firms from competing for VTA Joint Development Projects. In addition, experience with local projects, and experience with the types of high-quality transit-oriented projects was considered more important than the location of their main office. Moreover, experience has shown that most firms bidding for large capital projects in Santa Clara County will open a local office if awarded a contract; this is simply good business practice. Lastly, it was acknowledged that most or all of the construction labor and management would be provided by local companies, thereby keeping much of the development investment within the local area.

Staff recommendation:

- Add a criterion to Proposal Evaluation Criteria providing up to 5 points for firms that have or will have their main project office in the County of Santa Clara. The definition for local firm would be aligned with VTA's standard contracting practice that defines a local firm as "those firms who currently have their main office or a branch office with meaningful production capability located within Santa Clara County, or those firms who, upon award of the contract by VTA, will establish such a local office."
- Add to the Request for Qualifications (RFQ) criteria a requirement to demonstrate experience with local projects.

Green / Sustainable construction practices

Simply put, the overall goal of Green – or Sustainable – building practices is to produce buildings that take less from the earth and give more to people. While it was acknowledged by the Board and staff that these building practices are desirable, the definitions and interpretations of what constitutes Green development vary widely, making the development of specific criteria for our policy challenging. In addition, Green building practices are relatively new to the building industry, and to city/county approval policies; some cities have incorporated specific third-party criteria/standards, some have created their own criteria, some are developing criteria, and most have none.

The U.S. Green Build Council (USGBC) and its Leadership in Energy and Environmental Design (LEED) certifications, is emerging as an industry standard in the area of sustainable development, and many cities, designers and developers are looking to them for guidance. The current, most applicable criteria for VTA is the LEED New Construction (NC) Criteria; however, this rating system applies only to commercial, institutional and governmental buildings. USGBC does not currently have criteria for residential development, but is in the process of developing a LEED Neighborhood Design Rating System (NDRS). This system is intended to provide verification that the development's location and design meet generally accepted standards for environmentally responsible, sustainable development. The draft criteria place emphasis on design and construction elements that bring buildings together in a neighborhood and relate the neighborhood to its larger landscape.

It appears that the NDRS could be most applicable to transit-oriented developments since it considers the value of compact development, proximity to transit, mixed-use and mixed housing types, infill sites, and development and pedestrian and bicycle-friendly design. Since this system appears to offer the most applicable measures for VTA Joint Development Projects, it is recommended that LEED checklists and certifications in general function as VTA's measure for sustainable development practices.

Staff recommendations

- Request for Proposals (RFP) will conform to the Green / Sustainable development policies of the jurisdiction in which the project(s) are located.
- RFPs will include a requirement that all proposals include Green / Sustainable building practices to the extent practicable.
- Include the LEED Neighborhood Design Rating System in the RFP and proposal evaluation criteria when it is adopted by the USGBC.
- Include the appropriate LEED checklist - as they become available – in the RFP.
- Add a project evaluation criterion in the Request for Proposals (RFP) to award up to 5 points for proposals that demonstrate an effort to incorporate Green/Sustainable building practices in their project. Projects may demonstrate this effort by obtaining LEED Certifications or achieving other sustainable development measures as appropriate to, or required by, the respective city and or county policies.

Community Involvement / Clarifying the Approval Process

No aspect of the Joint Development Policy (JDP) or the developer selection process pre-empts or in any way diminishes the local city building permitting and approval processes, including all aspects of community involvement and environmental clearance. VTA's process is competitive and selects a developer based on their response to a vision for what may be possible based on particular aspects of the site including the character of the surrounding development, zoning, community issues, and other plans. Therefore, the projects must essentially undergo pre-screening by VTA staff, city staff, respective elected officials, and the VTA Board of Directors before beginning with the formal city approval process. While this practice was followed with the two sites - Capital LRT and West San Carlos - that have gone through the RFQ and RFP process, it is not explicitly stated in the JDP.

Recommendations:

- Add text to the JDP stating that all Joint Development projects will conform to, and not in any way diminish, the development review and approval procedures of the jurisdiction within which the project is located.
- Add text to the JDP stating VTA's current and continued practice of involving the respective planning staff and elected officials early in the process.
- Add text to the JDP clarifying the role of VTA and the role of cities in approving projects on VTA-owned land, and with regard to the respective roles of VTA and local jurisdictions in the project planning, permitting and entitlement processes.

Use of Joint Development Funds

Proceeds generated from the Joint Development Program may be one-time - or lump-sum – payments or on-going revenues generated from long or short term leases or interest-bearing accounts. All actions regarding the use of funds from this account will be subject to Board direction.

Recommendations:

- Place proceeds resulting from the Joint Development Program in a special account for the purposes of funding the following activities in priority order: 1) the continued operation of the Joint Development Program; 2) the acquisition, leasing or management of real property, and; 3) assist with VTA transit operations and maintenance on a case-by-case basis subject to Board direction.

ALTERNATIVES:

The Board may reject or alter the staff recommendations.

FISCAL IMPACT:

There is no fiscal impact on the VTA enterprise account to the approval of the revised policy. A budget for the Joint Development process will be developed for each transit site for the VTA Board's approval. Continued development and operation of the Joint Development Program could generate significant on-going revenues for VTA.

Attachments: Joint Development Policy

Exhibit A: Developer Selection Process

Exhibit B: Exclusive Negotiating Agreement and Disposition and Development Agreement

Prepared by: Chris Augenstein, Transportation Planning Manager

Attachment A

Preamble to the VTA Joint Development Policy

VTA's Joint Development Policy (JDP) provides a framework for creating and pursuing the highest and best opportunities for development around station areas and transit along corridors. The policy is intended to establish guidelines and procedures for identifying such opportunities to optimize return on investment to VTA. The JDP provides guidance to developers by clearly outlining performance standards and design criteria required for successful transit-oriented development. The policy framework establishes a proactive position for VTA and a clear statement of objectives for the development community.

The Policy focuses on creating long-term revenue for VTA at a rate of return that is competitive in the market. It also emphasizes planning for the highest and best land uses at transit stations and along rail corridors, and increased ridership. The Policy also reflects support for the Community Design and Transportation Manual as a handbook for successful transit-oriented development. Implicit within the Policy is the vision of the Community Design and Transportation Manual "...to integrate VTA's transportation system planning into the planning decisions of cities and the County as a catalyst to create new development patterns to achieve our long range goals of developing more dynamic, livable and lasting communities".

Key to the success of VTA sponsored development of transit station sites is the opportunity for "place-making" communities that serve as origins and destinations and as assets that enhance existing neighborhoods. There are few locations in the urban setting that are as public as a transit station, and the opportunity to improve the urban environment for thousands of people and to provide for a pleasant transit experience should be maximized. Transit stations should function as attractive centers of activity where both commuter and resident needs for dining, retail goods and services can be met in a pedestrian-friendly environment. The successful application of the Joint Development Policy to transit area projects will result in the highest quality urban development at transit stations and the greatest revenues to the VTA. Attention to aesthetics and urban design standards will encourage community and neighborhood support of projects.

The Policy emphasizes that making stations more attractive, safe and convenient for passengers is a key ingredient to increasing transit system ridership; and a commitment to locate higher residential densities in close proximity to transit stations is fundamental to achieving increased ridership. The Policy underscores the need to coordinate land planning and project design with city planning officials and with neighborhood representatives, and the need to address the issues of safe and efficient traffic movement and adequate parking at transit station developments. The Policy directs attention to the contribution of joint development toward enhancing the transportation system operations and infrastructure, and with public transit, street and highway system improvements at transit stations and along corridors.

Policy title: Joint Development	Policy #	
	Document Number:	
	Version Number:	

VTA JOINT DEVELOPMENT POLICY

I. POLICY STATEMENT

It is the policy of VTA to secure the most appropriate private and public sector development of VTA-owned property at and adjacent to transit stations and corridors. VTA shall strive to ensure that its station areas and transit corridors are vibrant, prosperous, community assets that create a strong sense-of-place for transit, pedestrians, and the surrounding community, and are destinations in their own right. VTA shall coordinate with local jurisdictions in station area land-use planning to establish development patterns that enhance transit use.

II. GOALS OF THE VTA JOINT DEVELOPMENT PROGRAM

The goals of the VTA Joint Development Program are to:

1. Comprehensively plan and develop the highest and best housing, office and retail uses around station sites and along transit corridors.
2. Increase transportation system capacity by increasing transit use.
3. Generate a long-term source of revenue for VTA and allow VTA to participate in the increase in the value of its real property assets over time.

III. REQUIREMENTS FOR JOINT DEVELOPMENT PROJECTS

Joint development projects shall:

1. Create a long-term source of revenue for VTA at a rate of return competitive in the market, and allow VTA to participate in the increase in value of its assets over time.
2. Encourage increased transit utilization and ridership.
3. Exhibit high urban design standards and quality.
4. Be consistent with local jurisdiction land use goals and shall be developed with a public participation process that respects neighborhood concerns.
5. Provide for efficient and safe vehicular and pedestrian circulation and shall provide adequate parking to serve both private and public demand, while maximizing shared parking opportunities.

6. Implement the concepts, principles, practices outlined in VTA's Community Design and Transportation (CDT) Program and shall include the elements of transit-oriented design (TOD).
7. Enhance and maintain existing or future transportation systems, operations, and infrastructure.
8. Address community needs in joint development consistent with VTA policy encouraging revenue generation and implementing TOD design principles.
9. Comply with all review and approval policies and procedures of the local jurisdiction in which a project resides.

IV. ROLES AND RESPONSIBILITIES OF THE PROJECT REVIEW AND APPROVAL PROCESS

No aspect of the Policy or the developer selection process shall pre-empt or in any way diminish the authority of the respective local jurisdiction, or the local city building permitting and approval processes, including all aspects of community involvement. The respective roles of VTA and local jurisdictions in the review and approval processes shall be as follows:

1. VTA shall ensure that proposed projects meet the criteria and standards of the Policy, and as specifically described in the Developer Selection Process provided in Exhibit A, and the Exclusive Negotiating Agreement (ENA) and Disposition and Development Agreement (DDA) provided in Exhibit B. In addition, VTA shall engage the respective planning staff and elected officials early in and throughout the process.
2. VTA shall ensure that joint development projects comply with the land use and zoning regulations of the city, county, or city and county in which the project is located, including the appropriate environmental review and certification, community involvement, and the issuance of entitlements and building permits.

V. USE OF REVENUES GENERATED FROM THE JOINT DEVELOPMENT PROGRAM

Proceeds resulting from the Joint Development Program shall be placed in a special account for the purpose of funding the continued operation of the Joint Development Program including staff and professional services, and the acquisition, leasing and management of real property. Remaining funds, if any, may be used for transit operations and maintenance, if approved by the VTA Board of Directors.

VI. UNSOLICITED PROPOSALS

VTA shall consider unsolicited proposals only when a property has unique characteristics that render the unsolicited proposal the most likely to achieve VTA Joint Development Policy objectives. Unsolicited proposals shall be considered only if:

1. The property is not located near a light rail, Caltrain or BART station;
2. The property does not offer significant potential for joint development; and
3. The property is very small, and the Board makes a finding that it is more cost effective to accept a reasonable unsolicited offer than to go through an expensive request for proposals RFP process that would likely yield less financial return.

<i>Prepared by</i>	<i>Reviewed by</i>	<i>Approved by</i>

Exhibit A

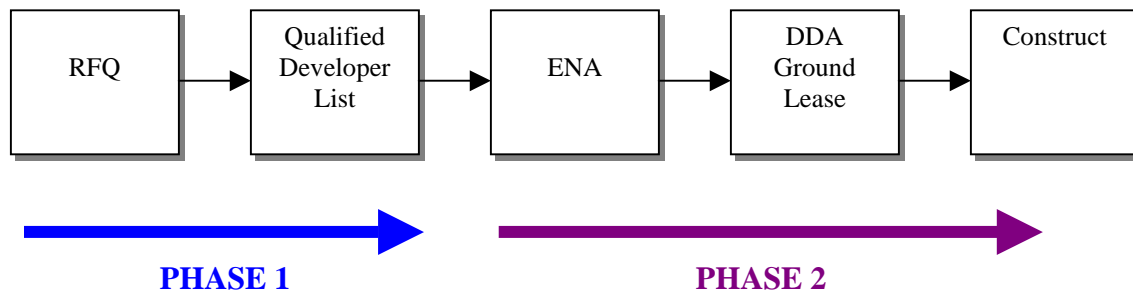
DEVELOPER SELECTION PROCEDURE

I. INTRODUCTION

VTA shall employ a two-phased process to select developers for potential joint development sites. This process shall be designed to minimize the time and complication required to solicit highly qualified developer and establish a current developer list for sites under consideration for two to three years following selection.

VTA shall, from time to time solicit comments on this process from developers interested in joint development sites to ensure that the process is adequate and complete enough to gather necessary information about potential developers, yet streamlined enough to encourage developer participation.

Developer Selection Procedure: Two-Phases



- (1) RFQ = Request For Qualifications
- (2) ENA = Exclusive Negotiating Agreement
- (3) DDA = Disposition and Development Agreement

Note: This process may be applied to one or more sites at the recommendation of staff and/or the VTA Board of Directors.

II. THE PHASE I PROCESS

A. Establish List of Developers

The first step is to establish a list of six to eight qualified developers through a request for qualifications (RFQ) process. Once the list of qualified developers has been established VTA can select a developer from the list with which to enter into negotiations to develop a specific site.

As a site becomes an imminent development priority, VTA shall initiate the developer selection process. Developers on the list of qualified developers will be required to update financial and staff information annually. VTA shall refresh the list by soliciting RFQs every 2-3 years.

B. Request for Qualifications (RFQ)

1. Advertise

VTA shall advertise at the national, state or local level, using targeted publications, such as the Urban Land Institute monthly magazine, Wall Street Journal or International Council of Shopping Centers monthly magazine, (national audience); California Real Estate Journal weekly publication and similar publications (statewide audience); and appropriate local publications.

2. Invitation to Submit Statements of Qualifications

Developers shall be invited to submit their qualifications (as outlined below) to VTA for evaluation. Top ranked developers shall be placed on VTA's preferred developer short list from which development teams will be selected to build projects. Staff shall evaluate each project for consistency with the adopted VTA Joint Development Policy. Recommendations to the Board from shall clearly explain the ranking of development teams and proposals for consistency with the Policy.

C. Developer RFQ Criteria:

1. Successful experience in developing transit-oriented developments.
2. Financial capacity to fund the scale of projects contemplated for VTA properties.
3. Strength of the design and consulting team as demonstrated in designing attractive, award-winning projects, including design elements incorporated in the Joint Development Policies and Community Design and Transportation Manual.
4. Ability to demonstrate experience in developing projects with strong revenue generation for public agencies as joint partners.
5. Experience with Ground Leases involving public agencies.
6. Ability to maintain a schedule and budget control for design and construction of a real estate project on the scale of the projects anticipated for the VTA sites.
7. Experience in successful property management and successful profit and loss management of real estate development projects over time.
8. Successful experience in sales and leasing of residential units, retail space, and office space as appropriate to the land use mix contemplated for the project sites under consideration.
9. Experience with local projects. Experience may apply to the entire team, or individual partner firms or team members.

Qualifications shall be rated using the above criteria as excellent, good, or unsatisfactory.

RFQ Evaluation Matrix

Criterion	Not Applicable	Unsatisfactory	Good	Excellent
1. TOD Experience				
2. Financial Capacity				
3. Urban Design Experience/Team Qualifications				
4. Revenue Generation with Public Agencies				
5. Ground Lease Experience				
6. Schedule and Budget Control				
7. Property Management Success				
8. Sales and Leasing Success				
9. Experience with local projects				

D. Required Documentation.

Development teams shall be required to provide the following information to support their Statements of Qualification:

1. Audited financial reports.
2. Descriptions of all team members (e.g., financial partners, banking relationships, project management team, architect and other consultants, contractors and others that are proposed to perform on the team).
3. Examples of completed TOD projects, including a description of uses and timing of the development from application of entitlements through construction completion, and graphics showing the site plans, building elevations and vignette drawings.
4. Examples of successful ground leases.
5. Evidence of lease up and product sales schedules.
6. References of public agencies who partnered with the developer in a joint development project.
7. Team member experience with local projects.

E. Evaluation and Selection

An RFQ evaluation panel consisting of key VTA staff and two to three representatives from the Technical Advisory Committee (TAC) at the planning director level shall review developer qualifications. Those firms which demonstrate clear evidence of success with these criteria and through background screening proved to be the most qualified, shall be invited to an interview by a panel consisting of key VTA staff involved in the development process and two to three representatives from the Technical Advisory Committee (TAC) at the planning director level, including representatives from cities in which projects are located. The top 6-8 firms shall be notified that they have been qualified to participate in negotiations for exclusive development rights on a VTA site.

III. THE PHASE 2 PROCESS.

In the second step in the developer selection process, qualified developers shall be interviewed, in order to match the most qualified developer to each individual site based upon interest, product type (e.g., rental housing, retail, office, ownership housing), success developing similar sites, neighborhood issues and other site-specific concerns. Once a developer is matched up with a site VTA shall enter into an *Exclusive Negotiating Agreement* (ENA) with the developer to negotiate a *Disposition and Development Agreement* (DDA) or Ground Lease Agreement.

During this process the detailed site plan, architecture and landscape plans shall be developed and processed through the jurisdiction in which the project is located. If more than one development team desires to develop a site, a competition, using the Development Proposal Evaluation Criteria presented below, shall be conducted to select the superior project.

A. The Project Evaluation Process

1. Submission of Proposals

From the list of qualified developers VTA staff together with two to three representatives from the city where the site is located shall match development teams up with project sites based upon the level of interest the team has in a particular site, the product desired on the site and the experience of the developer in providing that product, community planning and neighborhood issues and the developer's successful experience in community involvement and other criteria specific to each development site.

The developer shall be invited enter into an Exclusive Negotiating Agreement (ENA) with VTA and to submit a proposal for developing the site, which shall include a site and landscape plans, architectural building elevations and renderings, a schedule for development, terms for a ground lease, a list of debt and equity partners and their financial contributions to the project, a list of project management, design consultants, special consultants and contractors proposed to be involved in the project, and other pertinent submittal information. A narrative describing the design, entitlement, construction, ground lease, and property management particulars shall accompany the proposal. The developer shall be required to meet extensively with VTA and applicable City staff through project inception and design.

2. Proposal Evaluation

The project proposal shall be evaluated for success in meeting VTA's objectives and the Policy using the following matrix of nine major criteria and weighted as shown in the evaluation matrix:

a). Development Proposal Criteria:

1. What are the short and long term revenue projections to VTA from the proposal?
2. To what extent does the proposal encourage increased transit ridership?

3. What is the urban design quality of the proposal?
4. How does the land use mix support the goals and policies of that City’s General Plan, any adopted Specific or Area Plan, and VTA’s Joint Development Policy; and neighborhood concerns?
5. How well does the site plan design, traffic circulation and parking support the goals and policies of the Joint Development Policy?
6. How are the principles of successful Transit-Oriented Development (TOD) met in the project proposal? Does the project successfully implement the Community Design and Transportation Program concepts, principles, practices and actions?
7. How does the project enhance existing or future transportation systems, operations, and infrastructure?
8. Does the project incorporate the Green / Sustainable building practices of the respective jurisdiction, or if none, achieve a LEED Certification?
9. Does the firm currently have their main office or a branch office with meaningful production capability located within Santa Clara County, or will it upon selection of the firm by VTA, establish such a local office?

Development Proposal Evaluation Matrix

Criterion	Score (1-5)	Weight	Final Score
1. Long and Short Term Revenue to VTA		3	
2. Increase Transit Ridership		2	
3. Urban Design Quality		2	
4. Land Use/Goals/Neighborhood Concerns		1	
5. Site Plan Traffic Circulation/Parking vs. JDP Goals		1	
6. TOD Principles Met/CDT Program Implemented		1	
7. Transport. System: Future/Operations/Infrastructure		1	
8. Sustainable development / LEED certification		1	
9. Local firm		1	

NOTE: The score for criteria #1, #2, and #6 must meet a minimum total of 25 to qualify for developer selection. Possible maximum score is 110 points.

The criteria shall be ranked 1 through 5 with 5 being the highest score. Criteria shall be weighted to reflect the priorities of VTA with increased ridership, urban design quality and long and short-term revenue weighted the highest. A minimum score of 25 shall be required from these three criteria.

VTA staff, in collaboration with the city in which the station is located, shall use a more detailed checklist of factors to measure the extent to which the above criteria or met, to arrive at the scoring for each criterion.

b). Proposal Refinement and Next Steps

Once a project has been ranked, further VTA shall negotiate with the developer to improve the project, as necessary, according to these criteria. If a developer fails to meet the criteria and can not modify the project or economic conditions of the ground lease fail to meet the VTA

requirements, VTA may reject the developer's proposal, terminate the ENA, and select another developer on the list to begin new project negotiations.

Once a successful project design has been identified, and acceptable land disposition terms have been reached, the developer and VTA shall finalize the Development Agreement and Ground Lease.

Exhibit B

EXCLUSIVE NEGOTIATING AGREEMENT & DISPOSITION AND DEVELOPMENT AGREEMENT (ENA & DDA)

I. EXCLUSIVE NEGOTIATING AGREEMENT

Once the Board has selected the preferred project, staff shall prepare an Exclusive Negotiating Agreement (ENA) between VTA and the development entity.

A. Purpose of ENA

The ENA shall provide the developer with a specific schedule to:

1. Finalize the project design,
2. Finalize the mix of uses and physical design of the project,
3. Enable the developer to complete due diligence investigations of the property,
4. Negotiate the terms of a Disposition and Development Agreement and Ground lease (if applicable) and
5. Submit a formal application to the local governmental jurisdiction for planning approvals.

B. Terms of ENA

1. Term

The term of the ENA shall generally be from 90 to 120 days.

2. Deposit

Prior to or concurrently with execution of the ENA, the developer shall deposit with VTA funds, in the amount specified in the RFP, to be used to reimburse VTA for time and materials used to evaluate the proposal and to demonstrate the developer's seriousness about completing the project. The deposit shall be nonrefundable.

3. Requirement for Deliverables by Developer

The ENA shall require, at a minimum, that the developer:

- a. Obtain review and acceptance of the title report;
- b. Prepare a proforma for the project in sufficient detail to permit financial analysis by VTA; and

- c. Provide prompt written notice to VTA of any intent to withdraw from negotiations or to make an offer to change the terms of the original proposal;
- d. Physically inspect the property and conduct an environmental analysis to test for soils toxicity and geologic conditions;
- e. Produce a Preliminary Site Plan showing building layout and dimensions, parking, landscaping, access and building elevations in detail sufficient to depict the site plan including pedestrian areas, vehicular ingress and egress, landscape and hardscape areas, street furniture and plazas, and connections to transit facilities; and for building design: textures, materials, colors, building heights and major architectural features.

C. VTA Responsibilities in connection with ENA

1. VTA shall provide to developer all existing reports relating to the physical and environmental conditions of the property, and require that developer treat all such reports in confidence according to VTA guidelines.
2. VTA shall grant developer the right to enter the property to perform physical inspections, subject to reasonable conditions designed to minimize interference with existing facilities and uses on the property and to minimize liability to VTA associated with the inspections.
3. Developer shall not be authorized to share any information obtained during the ENA negotiations with any other party without VTA consent.
4. VTA shall entertain no other development proposals for the land subject to the ENA during the term of the ENA.
5. VTA shall place the “good faith” deposit in an interest bearing account and may draw down from the account payment for reasonable expenses incurred by VTA to complete its analysis of the proposal, for example, internal administrative costs and necessary consultant services.
6. If an ENA is not executed for failure of the parties to reach agreement, VTA shall return any remaining balance of the good faith deposit, and any plans or other specifications originally labeled by the developer as work product. Developer shall return all documents and information provided by VTA.
7. If an ENA is reached, the amount of the deposit, including interest, shall be subtracted from the cost of land, lease or other development rights to be conveyed to the developer by VTA.
8. The Board of Directors shall authorize the General Manager to execute the ENA

II. DISPOSITION AND DEVELOPMENT AGREEMENT

The Disposition and Development Agreement (DDA) shall set forth the obligations of the developer and VTA, shall establish specific performance measures for VTA and developer, shall be approved as to form by VTA General Counsel, and shall be approved by the VTA Board of Directors.

A. Environmental Review

VTA is the responsible agency under CEQA for the DDA approval as a project and as such, shall commission an environmental assessment and certify either a Mitigated Negative Declaration or an Environmental Impact Report along with the required mitigation monitoring plan for the DDA prior to its approval. VTA shall coordinate preparation of the environmental document with the other agencies (city or county) as appropriate.

B. Topics to be covered in DDA:

The DDA shall cover at least the following topics:

1. Identification of the parties to the agreement including prohibition against change, transfer or assignment of ownership, management or control of developer during the term of the Agreement without VTA's consent.
2. Description of the site including a map. If the subject property agreement is an air space development, placement of supports shall be included on the map.
3. Requirement for developer to secure from appropriate local agencies all necessary permits and approvals and covenant that VTA will cooperate with developer in obtaining permits and approvals.
4. Requirement, that developer obtain, within a period of time agreed by developer and VTA :
 - Evidence of firm financing, including construction financing, long-term financing and other financing necessary to operate the project, such as firm commitments of necessary financing from either a financial institution or any acceptable party providing developing capital; and
 - Evidence of firm commitments or letters of intent from parties, including tenants, who are part of the project.
 - Certification of compliance with the California Environmental Quality Act of 1970, and or NEPA as amended.
5. Financial terms and conditions:
 - Compensation and payment schedule for property rights to be conveyed;
 - Payment schedule for property rights to be conveyed;
 - Payment of taxes and insurance;
 - Condition of site at time of beginning and end of agreement;
 - Financial statement of developer, including financial requirements and standards;
 - Hold harmless and indemnity clauses
 - Permitted and prohibited uses;
6. Allocation of liability and responsibility as to the remediation of environmental contamination.
7. Development of a site plan including a schedule for submission of concept, schematic design, construction, grading and landscaping plans and drawings, and a tentative subdivision map.

8. Specification of VTA approval rights, such as reasonable right of approval as to:

- Effects on railway and parking operations;
- Energy considerations;
- Parking requirements and design;
- Streetscape and landscaping;
- Vehicular entrance and exit;
- Design of site and improvements;
- Schedule of Performance;
- Insurance requirements;
- Adherence to applicable local, state and federal laws;
- Failure of either party to perform including defaults, remedies and termination by either party;
- Relocation obligations of the developer (where applicable);
- Ownership of improvements construction upon the property upon the expiration or termination of the agreement;
- Requirements to restore property to original condition upon expiration or termination of term of agreement;
- Possible performance bond requirements; and
- Any other general or special provisions considered necessary by the VTA Board.