



EXECUTIVE DECISION DOCUMENT

GENERAL MANAGER APPROVAL: <i>Phil M. Penn</i> 14 Aug 2019		GENERAL MANAGER ACTION REQ'D:		
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Originator/Prepared by: Kimberly Koempel Dept: Systems Development <i>[Signature]</i> Signature/Date: 8/13/2019	General Counsel <i>[Signature]</i> 8/14/19 []	Controller/Treasurer <i>[Signature]</i> 8/14/19 []	District Secretary []	BARC <i>[Signature]</i> 8/13/2019 []

Amend the Transit-Oriented Development Policy to address Unsolicited Proposals, Adopt a Resolution creating a fee for Unsolicited Proposal Review, and Authorizing the General Manager to enter into reimbursement agreements for Unsolicited Proposals

PURPOSE:

To request that the Board of Directors

- 1) Amend the Transit-Oriented Development Policy to address Unsolicited Proposals for property development.
- 2) Adopt a resolution creating a new fee for Unsolicited Proposals for property development.
- 3) Authorize the General Manager or his designee to enter into agreements with parties who submit an Unsolicited Proposal in order to reimburse the District for costs associated with the review.

DISCUSSION:

Transit-Oriented Development Policy Amendment

Ordinarily BART will identify sites as priority opportunities for transit-oriented development, and then issue a Request for Qualifications (RFQ) or a Request for Proposals (RFP), which allows the District to identify a developer to work with to develop that property. BART occasionally receives unsolicited proposals from potential partners who are interested in

developing BART-owned property that is not the subject of an RFQ or RFP and, in some cases, has not been identified as a priority development opportunity ("Unsolicited Proposals"). In the past, each Unsolicited Proposal has been reviewed and processed on a case by case basis. Staff proposes to amend BART's Transit Oriented Development Policy, adopted by the Board on June 9, 2016, in order to provide all interested parties with a clear, structured process for the consideration of Unsolicited Proposals.

There are benefits to reviewing Unsolicited Proposals. An Unsolicited Proposal can indicate that the market is ready to support development at that site and that it could be in BART's interest to act expeditiously. An Unsolicited Proposal could also represent a unique development opportunity that is not typically received during a traditional RFQ/RFP process. However, there is a cost to BART when reviewing Unsolicited Proposals because resources are redirected from other already identified priorities.

It should be noted that this proposed amendment is specific to BART's Transit-Oriented Development program, in which BART has land that could potentially be developed with private sector resources. The policy amendment is not intended to apply more broadly to BART's procurement processes, which need to follow BART's policies, and any applicable state- and/or federal-procurement guidance.

To ensure that Unsolicited Proposals are reviewed consistently, and that the review process and criteria are transparent to the development community and the public, a review procedure document has been developed and is included for information purposes (Attachment 3). The review procedure would establish a two-step review process. Step 1 is designed to be a short, technical review that evaluates certain minimum threshold criteria for Unsolicited Proposals and ensures that the Unsolicited Proposal offers something that is not readily available through BART's traditional RFQ/RFP process. At the end of Step 1, BART staff would determine if the criteria have been met to continue with the next step in the review process. Step 2 is a more in-depth review that is consistent with what staff would consider when evaluating RFQs or RFPs. At the end of Step 2, staff would prepare a recommendation to the Board of Directors, and the Board would be requested to act on the Unsolicited Proposal. The three likely outcomes of the Step 2 process are as follows:

1. The Unsolicited Proposal is determined to not meet the review criteria and is rejected.
2. The Unsolicited Proposal is found to have merit, but BART decides to conduct a competitive procurement for the development opportunity.
3. The Unsolicited Proposal meets the review criteria and BART decides it is in the District's best interest to enter into an Exclusive Negotiation Agreement (ENA) with the party that submitted the Unsolicited Proposal.

BART's Transit-Oriented Development (TOD) Policy does not specifically address Unsolicited Proposals for property development. It is recommended that the policy be amended to direct staff to develop a review procedure for Unsolicited Proposals that

outlines the review process and criteria. In addition, the Policy would state that BART does not encourage Unsolicited Proposals but recognizes the potential benefits they may bring and therefore wants to provide a process for their evaluation.

Review Fee for Unsolicited Proposals for property development

Unsolicited Proposals for property development, by their very nature, are proposed by a third party at its own discretion. It is recommended that any staff time and any outside consultant time required to review an Unsolicited Proposal be reimbursed by the proposer. In order to recover staff costs, an hourly review fee of \$149 has been calculated based on the current fiscal year (FY20) salary and benefit information for the employee classifications that are typically involved in reviewing TOD projects. Using a weighted average to account for some employee classifications spending more time on the review than others, the average hourly base and fringe labor cost was determined to be \$112 per hour. Specifically, the following employee classifications and assumed percentage of review hours were used to determine the average base labor cost per hour:

Employee Classifications	Percentage of Review Time
Principal Development Officer	50%
Department Manager, Property Development	5%
Access Manager	5%
Senior Planner	15%
Senior Engineer	5%
Principal Engineer	10%
Group Manager, Engineering	10%

In addition, BART utilizes a 33% Cost Allocation Plan (CAP) rate to account for BART overhead costs which brings the fee up to the recommended \$149 per hour. The fee will be updated annually at the beginning of each fiscal year using the average hourly base and fringe labor cost rates then in effect.

As a point of comparison, BART utilizes a review fee schedule to recover costs related to the review of Permits to Enter, Easements, and Plan Reviews. The current fee schedule was approved by the Board of Directors in 2006 and is updated annually. Currently the review fees included in the existing fee schedule are \$146 per hour.

A party who submits a Unsolicited Proposal to the District will be required to sign an agreement that requires all staff and consultant costs to be reimbursed.

FISCAL IMPACT:

There is no fiscal impact from the proposed amendment to the Transit-Oriented Development Policy. The new review fee for Unsolicited Proposals will allow BART to recover from developers, all staff costs required to review the proposals. Because BART cannot determine the amount or quality of Unsolicited Proposals it may receive, it is unknown what the fiscal impact will be for any given fiscal year. The fiscal impact will depend on the number of proposals received, project complexity, and how many steps the proposal makes it through. However, based on staff estimates, the following revenue estimates can be anticipated for each proposal review step:

Unsolicited Proposal Review Step	Estimated Staff hours	Estimated Review Fee Revenue
Step 1	40	\$5,960
Step 2	160	\$23,840

ALTERNATIVES:

1. Do not amend the TOD Policy as presented. Continue to operate under the existing 2016 TOD Policy.
2. Do not adopt the new Unsolicited Proposal Review Fee. This would result in costs associated with the review of Unsolicited Proposals becoming part of BART operating costs.

RECOMMENDATION:

It is recommended that the following motions be adopted.

MOTIONS:

1. The BART Board of Directors hereby amends the Transit-Oriented Development Policy by adding the following new Section 4 under Strategy A:

Develop a procedure that will allow BART to respond to unsolicited proposals for property development on BART-owned land. Although BART does not encourage unsolicited proposals, they can be a valuable means for BART to partner with local communities and/or the development community to produce innovative or unique developments that deliver benefits in excess of what is typically provided by the market.

2. The BART Board of Directors hereby adopts the attached resolution regarding a new

review fee for Unsolicited Proposals for property development.

3. The BART Board of Directors hereby authorizes the General Manger or his designee to enter into agreements with parties that submit Unsolicited Proposals requiring that they reimburse the District for all expenses, including staff and consultant costs, associated with the review of those Unsolicited Proposals.

Attachments:

1. Unsolicited Proposal Review Fee Resolution
2. Red line of 2016 TOD Policy showing proposed amendment
3. Unsolicited Proposal Review Procedure (For Information Only)

BEFORE THE BOARD OF DIRECTORS OF THE
SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT

In the matter of adopting a new fee for the review
of unsolicited proposals for property development

Resolution No. _____

WHEREAS, from time to time the District receives proposals for potential development of BART-owned property that are not submitted in response to a request for qualifications, request for proposals, or other solicitation from the District regarding the development of the property in question ("Unsolicited Proposals"); and

WHEREAS, the District incurs costs, in the form of staff time expended to review Unsolicited Proposals; and

WHEREAS, the best interests of the District will be served by adopting a new fee to recover the costs associated with reviewing Unsolicited Proposals; and

WHEREAS, the best interests of the District will be served further by the imposition of a deposit requirement and associated reimbursement agreement in connection with the submittal of an Unsolicited Proposal; and

WHEREAS, the fee will be calculated annually, at the beginning of each fiscal year, based on the current fiscal year Salary and Fringe Rates (weighted as outlined in Exhibit A) and a 33% Cost Allocation Plan ("CAP") Rate to ensure the District is able to recover costs incurred in reviewing Unsolicited Proposals; and

WHEREAS, notice of the District's intent to institute the new fee was publicly advertised in accordance with statutory requirements; and

WHEREAS, a public hearing on the new fee was held on August 22, 2019.

NOW, THEREFORE, BE IT RESOLVED, the following policy is adopted;

Effective August 23, 2019, BART will institute an Unsolicited Proposal Fee of \$149 per hour of time spent by BART staff in conjunction with the review of Unsolicited Proposals. Thereafter, the fee will be amended on a fiscal year basis based on the calculation described in Exhibit A to this Resolution.

EXHIBIT A

Unsolicited Proposal Fee Calculation

Unsolicited Proposal Fee Employee Base and Fringe Rate Classifications and Weighted Average

The Unsolicited Proposal Fee is determined by identifying the average base and fringe salary information for the BART employee classifications listed in the table below, and then calculating a weighted average of that salary information based on each position's corresponding "Percentage of Review Time." That weighted average is then multiplied by 1.33, BART's "Cost Allocation Plan Rate," to account for BART's overhead costs associated with the listed employee classifications, and then rounding the resulting number to the nearest dollar.

Employee Classifications	Percentage of Review Time
Principal Development Officer	50%
Department Manager, Property Development	5%
Access Manager	5%
Senior Planner	15%
Senior Engineer	5%
Principal Engineer	10%
Group Manager, Engineering	10%

An updated Unsolicited Proposal Fee shall be calculated annually on a fiscal year basis.

Transit-Oriented Development Policy

Adopted June 9, 2016

VISION

The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large scale public investment. This includes real estate assets essential to BART's transit operations, and real estate assets that can be used to catalyze transit-oriented development in furtherance of BART's purpose and goals. BART leverages these opportunities by working in partnership with the communities it serves in order to implement the regional land use vision and achieve local and regional economic development goals. Strengthening the connections between people, places, and services enhances BART's value as a regional resource.

GOALS

- A. Complete Communities.** Partner to ensure BART contributes to neighborhood/district vitality, creating places offering a mix of uses and incomes.
- B. Sustainable Communities Strategy.** Lead in the delivery of the region's land use and transportation vision to achieve quality of life, economic, and greenhouse gas reduction goals.
- C. Ridership.** Increase BART ridership, particularly in locations and times when the system has capacity to grow.
- D. Value Creation and Value Capture.** Enhance the stability of BART's financial base by capturing the value of transit, and reinvesting in the program to maximize TOD goals.
- E. Transportation Choice.** Leverage land use and urban design to encourage non-auto transportation choices both on and off BART property, through enhanced walkability and bikeability, and seamless transit connectivity.
- F. Affordability.** Serve households of all income levels by linking housing affordability with access to opportunity.

STRATEGIES

A. Manage Resources Strategically to Support Transit-Oriented Development

1. Develop a 4-Year Work Plan to assess how staff and financial activities toward TOD will be most fruitful. Identify BART staffing priorities and assignments to promote TOD on and around District property, including contributions to efforts such as planning and development, community engagement, funding and financing strategies.
2. Favor long-term ground leases of no more than 66 years, rather than sale of property, as the standard disposition strategy for joint development projects, except in cases where alternative approaches are required to achieve specific development objectives or where other strategies would generate greater financial return to the District.
3. Solicit proposals for transit-oriented development in localities that have an adopted plan allowing for transit-supportive land uses as defined in the TOD Guidelines. Utilize a competitive selection process but ensure the solicitation process considers property assembly with adjacent land owners for optimal TOD.

Transit-Oriented Development Policy

Adopted June 9, 2016

3.4. Develop a procedure that will allow BART to respond to unsolicited proposals for property development on BART-owned land. Although BART does not encourage unsolicited proposals, they can be a valuable means for BART to partner with local communities and/or the development community to produce innovative or unique developments that deliver benefits in excess of what is typically provided by the market.

4.5. Revisit the Transit-Oriented Development Policy every 10 years.

B. Support Transit-Oriented Districts

1. Proactively support local jurisdictions in creating station area plans and land use policies that: a) encourage transit-supportive, mixed-use development on and around station properties, b) enhance the value of BART land, and c) enhance the performance of the BART system as a whole.
2. Form partnerships with public agencies, developers and landowners, community development organizations, finance entities, and consider strategic land acquisition to help build TOD both on and off BART property.
3. For BART system expansion, ensure that transit-oriented development and value capture opportunities are explicitly accounted for in major investments such as the location of new station sites, design and construction of station facilities, and acquisition of new properties.

C. Increase Sustainable Transportation Choices using Best Practices in Land Use and Urban Design

1. Utilize BART's TOD Guidelines to ensure future development and investments seamlessly connect BART stations with surrounding communities.
2. Ensure that combined TOD/parking/access improvements on and around each BART station encourage net new BART ridership, utilizing corridor-level, shared, and off-site approaches to parking replacement as appropriate. Following the aspirational Station Access Policy place types, use the following guidelines to replace current BART parking as follows when developing BART property with TOD: strive for no or limited parking replacement at "Urban with Parking" Stations; and use the access model to maximize revenue to BART from development and ridership when determining a parking replacement strategy at all station types.
3. Utilize strategies including mixed-use development, transportation demand management, and pedestrian-friendly urban design to encourage reverse-commute, off-peak, and non-work trips on BART and other modes of non-auto transportation, thereby reducing greenhouse gas emissions.

D. Enhance Benefits of TOD through Investment in the Program

1. Evaluate the financial performance of proposed projects based on sound financial parameters and the ability to generate transit ridership, fare revenue, lease payments, parking revenues, grant resources, other financial participation, and/or cost savings. Consider the opportunity cost to the District of delaying or accelerating development opportunities.
2. Use a variety of financing and governance mechanisms, including joint powers authorities, assessment districts, improvement districts, and lease credits to achieve station area TOD objectives.
3. As appropriate, and in consideration of District-wide financial needs, reinvest revenues from the sale and lease of BART land into the TOD Program, informed by the priorities identified in the 4-Year Work Plan.

E. Invest Equitably

1. Increase scale of development at and near BART stations through catalytic investments in TOD, to help address the regional shortfall in meeting housing and other sustainable growth needs.

Transit-Oriented Development Policy

Adopted June 9, 2016

2. Implement BART's adopted Affordable Housing Policy and aim for a District-wide target of 30 percent of all units to be affordable, with a priority to very low (<50% AMI), low (51-80% AMI) and/or transit-dependent populations.
3. Ensure the 4-Year Work Plan addresses how BART will achieve its affordable housing goals.

BART Property Development Unsolicited Proposal Procedure

Article I. Introduction

Section 1.01 The San Francisco Bay Area Rapid Transit District (BART) is a steward of a large-scale public investment. This includes real estate assets essential to BART's transit operations, and real estate assets that can be used to catalyze transit-oriented development in furtherance of BART's purpose and goals. Unsolicited proposals can be a valuable means for BART to partner with local communities and/or the development community to produce innovative or unique developments that deliver community benefits in excess of what is typically provided by the market. An unsolicited proposal is a written proposal that is submitted to BART on the initiative of a prospective offeror (organizations or individuals) for the purpose of developing or improving property owned by BART and is not in response to a formal or informal request issued by BART.

Section 1.02 As a public entity, BART has an obligation to act as a good steward of public funds. Laws and regulations require BART to seek full and open competition for most procurement opportunities, including land development. This procedure is intended to facilitate the proper receipt and evaluation of unsolicited proposals while preserving the integrity of the procurement process and conforming to applicable laws and regulations.

Section 1.03 BART is under no obligation to accept an unsolicited proposal, or to enter into any agreements arising from an unsolicited proposal.

Article II. Definition of Unsolicited Proposal

Section 2.01 An unsolicited proposal is a proposal that is:

- (a) Innovative, unique, feasible
- (b) Independently originated and developed by the proposer.
- (c) Meets BART TOD Guidelines
- (d) Sufficiently detailed that its benefits in support of BART's goals and responsibilities are apparent
- (e) Not an advance proposal for property that BART plans/intends to acquire/develop through traditional competitive methods in the next 12 months
- (f) Not an offer responding to a currently or previously advertised (within the last 12 months) BART Request for Qualifications or Proposals.
- (g) Submitted by a well-capitalized development team with experience delivering on projects with similar scale and uses to those proposed

Section 2.02 Unsolicited Proposals for Development Rights Review Process

Section 2.03 This process would be used for those who wish to ultimately enter into an Exclusive Negotiation Agreement with BART in order to procure development rights to a parcel of land owned by BART in accordance with BART's TOD policy and guidelines.

Article III. Step 1: Technical Review

Section 3.01 Proposer will submit a written inquiry to BART's Real Estate Manager that will include the following information:

- (a) Written description of proposed project that includes uses, approximate density, planned improvements, and analysis of how the proposal meets BART's TOD guidelines, TOD performance targets, TOD workplan criteria, and current zoning.
- (b) Description of any partnerships, including any letters of support
- (c) Description of how proposal meets at least 4 of the Step 1 review criteria
- (d) Ridership projections, including ridership that would be considered "off-peak" or "reverse"
- (e) Concept plans and renderings if available
- (f) Description of current uses
- (g) Explanation of unique and/or innovative aspects of proposal
- (h) Anticipated impacts and benefits to BART
- (i) Map that includes subject property location, distance to nearest BART station, adjacent land ownership, current zoning
- (j) Development Team Description
 - (i) *Team members/roles and responsibilities*
 - (ii) *Relevant experience*
 - (iii) *Financial Capability*
- (k) Reimbursement Agreement and deposit (\$25,000)
 - (i) *All staff review time will charged towards the deposit.*
 - (ii) *All review costs, including any consultant costs, will be reimbursed by proposer regardless of outcome of Step 1 review*
 - (iii) *Step 1 review is estimated to be 30 to 40 hours of staff time but can vary depending on complexity of proposal*
 - (iv) *When the balance falls to \$5,000 or below, the proposer will be asked to deposit additional funds based on the current estimate needed to complete review.*
 - (v) *If funds remain after Step 1 review, they will either be returned to the proposer or the proposer can choose to have them apply to Step 2 review, if applicable.*

Section 3.02 Review Criteria:

- (a) Meets unsolicited proposal definition
- (b) Staff capacity exists to continue evaluation
 - (i) *Applicant must address how proposal meets BART work plan priority criteria*
- (c) Determination made that there is not a transit operation need that precludes development of the site or would need to be incorporated into the project for it to be feasible
- (d) Proposal furthers BART's Performance Targets
- (e) Comparison of how proposal compares to planned uses and densities (including under AB2923 if applicable) by the following elements:
 - (i) *Number of housing units*
 - (ii) *Number of affordable housing units*
 - (iii) *Number of jobs*
 - (iv) *Ridership*

(f) Meets four or more of the following:

- (i) *Offers benefit that has not been previously identified or had been identified but not budgeted for*
- (ii) *Provides a unique or significant active transportation access opportunity*
- (iii) *Significant partnership with City and/or other public or non-profit organization.*
- (iv) *Includes significant community benefit (as identified by previous plans)*
- (v) *Includes unique or innovative methods of development, approaches, or financing*
- (vi) *Existing zoning supports BART density guidelines*
- (vii) *Catalytic project as defined by BART's TOD policy*
- (viii) *Proposes a use that is desired by BART and difficult for the market to deliver (i.e integrated affordable housing in excess of 20%)*
- (ix) *Delivers a concentration of jobs with identified end user.*
- (x) *Delivers a regional use with substantial economic impact and ridership*
- (xi) *Adjacent land is integrated creating a more impactful project*
- (xii) *Demonstrates deep understanding of the community and city approval process*

Section 3.03 Review Process

- (i) *BART Board notified that a proposal has been received*
- (ii) *Technical review may include a meeting between proposer and BART*
- (iii) *Technical review shall include soliciting input from applicable BART departments*
- (iv) *Technical review may also include soliciting input from the City where the project is located, or another public agency potentially impacted by the project*

Section 3.04 Step 1 review results:

- (i) *BART Real Estate Manager determines proposal does not meet review criteria and will no longer be evaluated*
- (ii) *BART Real Estate Manager determines proposal meets technical review and can proceed to Step 2*
 - 1) *BART Board Informed of Staff decision*
 - 2) *BART will provide developer any design criteria determined from Step 1 review*

Article IV. Step 2: Substantive Review

Section 4.01 Proposer will submit the following information:

- (a) **Concept Plan**
 - (i) *Location and layout of proposed development*
 - (ii) *Building type, footprints, and planned use*
 - (iii) *Proposed lot lines, lot widths, and setbacks*
 - (iv) *Proposed parking (public and private identified)*
 - (v) *Building heights and stories*
 - (vi) *Proposed public spaces (if any)*
 - (vii) *Proposed access, including those required for ADA*
 - (viii) *Proposed EVA routes*
 - (ix) *Proposed BART maintenance and operations access/parking*
 - (x) *Proposed multimodal infrastructure*
 - (xi) *Existing station entrances and roads*
 - (xii) *Available architectural renderings or sketches*
- (b) **Written Narrative**

- (i) *Highlights of proposal including innovative and unique aspects of proposal*
- (ii) *Description of potential BART impacts and benefits*
- (iii) *Ridership analysis that includes anticipated non-peak hours or direction trips*
- (iv) *If applicable, affordable housing percentage of residential units, number of units, income level.*
- (v) *Community benefits*
- (vi) *BART TOD policy and guidelines analysis*
- (vii) *Anticipated entitlement process*
- (viii) *Proposed TDM and/or multimodal transportation improvements*
- (ix) *Response to any operational impacts identified during the technical review process*
- (x) *Community engagement process*
- (xi) *Implementation/phasing plan*
- (xii) *Addresses Step 2 review criteria*
- (xiii) *Development Team description*
 - 1) Team members and relevant experience
- (c) **Financial Plan**
 - (i) *Preliminary Pro Forma*
 - (ii) *Development Financing Plan*
 - (iii) *Market conditions summary*
 - (iv) *BART Financial Offer*
- (d) **Reimbursement Agreement and deposit (\$25,000)**
 - (i) *Proposer will be responsible for all BART costs related to proposal review including consultant/outside attorney costs.*
 - (ii) *All review costs will be reimbursed by proposer regardless of outcome of Step 2 review*
 - (iii) *When the balance falls to \$5,000 or below, the proposer will be asked to deposit additional funds based on the current estimate needed to complete review*
 - (iv) *Any remaining funds after Step 2 review will be reimbursed to proposer*
- (e) *Any other information determined by BART to be required during Step 1 review*

Section 4.02 Review Process

- (a) *Step 2 review will be conducted within 120 days of the proposal being deemed complete unless developer and BART agree to a longer timeline to accommodate required studies that may be necessary for BART's review*
- (b) *BART staff time is estimated at 150-250 hours but will depend on project complexity*
- (c) *BART may utilize outside consultants for other studies as appropriate including ridership analysis*
- (d) *Evaluation Committee will evaluate proposal and will consist of representatives from BART, including representation from various departments.*
- (e) *Evaluation Committee will make a recommendation on next step to the BART board.*

Section 4.03 Review Criteria

- (a) Provides an opportunity that is not readily available through the open market including the incorporation of adjacent parcels
- (b) Includes unique or innovative methods of development, approaches, or financing
- (c) Integration with transit facilities
- (d) Transit benefits
- (e) Community benefits
- (f) Depth and breadth of Community Engagement Plan
- (g) Significance of partnerships
- (h) Significance of active transportation infrastructure (as determined by need, cost, or amount)
- (i) Economic and regulatory feasibility/certainty
- (j) Qualifications of development team and Proposer
- (k) Quality of design
- (l) Small business participation
- (m) Financial return to BART Financial return to BART
- (n) Feasibility and timeliness of implementation/phasing plan
- (o) Significant ridership increase
- (p) Any other factors deemed appropriate for the proposal

Section 4.04 Results of Step 2 review (Board action required)

- (a) No further action, proposal is rejected
- (b) Competitive RFP/RFQ process initiated
- (c) Determination made that proposal qualifies for sole source
 - (i) *Refer to section 5.07*

Article V. Competitive RFP/RFQ process

Section 5.01 Purpose: Ascertain whether other parties may desire and be able to offer a project within a similar scope to that contemplated within the original Unsolicited Proposal or could provide transit and/or community benefits of a similar magnitude.

Section 5.02 Notification of BART's interest in development on site of received unsolicited proposal:

- (a) BART will open a competitive process that will include the following:
 - (i) *Basic elements of the original Unsolicited Proposal*
 - (ii) *Include specific development goals/criteria by which proposals would be evaluated*
 - (iii) *Include submittal requirements*
 - (iv) *Give adequate opportunity to compete (30 – 90 days depending on complexity of project)*

Section 5.03 Process:

- (a) Evaluation Committee formed in anticipation of multiple proposals
- (b) Proposer of original unsolicited proposal may choose to submit a new proposal or additional information
- (c) If no additional proposals are received:
 - (i) *BART board can approve the developer selection resulting from the original Unsolicited Proposal evaluation and a non-binding term sheet allowing sufficient time for the developer and BART staff to complete due diligence and negotiate final terms (typically, the exclusive negotiating agreement) based on a staff recommendation*
- (d) If additional proposals are received:
 - (i) *Evaluation Committee engaged*
 - (ii) *Written proposals are evaluated*
 - (iii) *Interviews conducted with teams of the top-ranking proposals*

Section 5.04 Review Criteria:

- (a) BART TOD guidelines
- (b) All review criteria used to evaluate original Unsolicited Proposal
- (c) Any additional criteria/goals included in the competitive solicitation

Section 5.05 Results:

- (i) *Reject all proposals*
- (ii) *BART board to approve the developer selection resulting from the Competitive RFP evaluation and a non-binding term sheet allowing sufficient time for the developer and BART staff to complete due diligence and negotiate final terms (typically, the exclusive negotiating agreement) based on a staff recommendation*

Section 5.06 Possible exceptions to Competitive RFP Process

- (a) There are conditions by which BART may choose not to publicly notice an unsolicited proposal and move forward with a sole source negotiation.
 - (i) *If it is impossible to describe the property or services offered without revealing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought, as determined by BART*
 - (ii) *If the offeror is the City in which the property is located, or offeror has partnered with the City in a significant way.*
 - (iii) *If the offeror is an adjacent landowner and the combination of the parcels results in the entire project maximizing allowed densities.*
 - (iv) *BART Board of Directors finds that the proposal has unique and beneficial attributes that have not been provided in previous competitive Request for Qualifications or Proposal processes.*
- (b) If development of the land is subject to FTA then an exception to the competitive RFP process may not be possible.