Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

Metro

Board Report

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**PLANNING AND PROGRAMMING COMMITTEE
NOVEMBER 18, 2015**

SUBJECT: VERMONT / SANTA MONICA JOINT DEVELOPMENT AND CESAR CHAVEZ / FICKETT EXCESS PROPERTY SITES

ACTION: APPROVE RECOMMENDATIONS REGARDING TWO UNSOLICITED JOINT DEVELOPMENT PROPOSALS

RECOMMENDATION

A. RESCINDING prior authority to enter into an **Exclusive Negotiations and Planning Agreement with McCormack Baron Salazar for the Metro-owned property at Cesar Chavez and Fickett** and;

~~B. AUTHORIZING staff to move forward with the **federally defined unsolicited proposals process for an unsolicited proposal received from a development team led by McGregor Brown for the Metro-owned property at the red line Vermont/Santa Monica station**~~.

ISSUE

In 2004 the Joint Development (JD) staff received unsolicited proposals for two Metro-owned sites: the Vermont / Santa Monica Station on the Red Line and the excess property at Cesar Chavez/ Fickett in Boyle Heights. While both proposals were evaluated in different ways, the Metro Board ultimately approved ENAs for each of the sites. In the past year, the Federal Transit Administration (FTA) provided direction suggesting that the JD staff evaluate the procurement processes for its active negotiations on properties purchased with federal funding. The JD team worked with County Counsel to thoroughly review federal solicitation requirements and vet three projects generated from unsolicited proposals against the federal guidelines and policies. Two of the three projects reviewed require actions to ensure compliance with FTA regulations, and the actions in this Board report will clear the path for Metro to proceed with the sites in accordance with FTA regulations. Based on this research and review, the JD staff will bring a new Joint Development Unsolicited Proposals Policy to the Board for consideration in January 2016.

DISCUSSION

Cesar Chavez/Fickett Site

In 2004, Metro received two unsolicited proposals for the development of three Metro-owned sites in

Boyle Heights, including the Cesar Chavez/Fickett site. Metro JD staff evaluated the proposals against the current JD Policy and recommended to move forward with one developer for all 3 sites. It should be noted that the Cesar Chavez/Fickett site is not considered a joint development site by federal policy, it is considered an excess property (not to be confused with surplus property, a state definition). Metro can follow the Joint Development process for this excess property, but it will go through a slightly different federal process for implementation and final approval of the ultimate development and the disposition of proceeds will in part be credited to the federal government.

Between 2004 and 2013, the original developer changed the proposal for the Cesar Chavez/Fickett site from market rate to affordable housing, and brought in MBS to develop the affordable housing component. The original developer subsequently decided to abandon their interest in all 3 sites, leaving MBS as the developer for the Cesar Chavez/Fickett site. Based on feedback from the local Council Office and community stakeholders, MBS then changed the scope of development from affordable housing to a standalone supermarket (it was determined that the site was not large enough to accommodate both housing and a market). In January 2013, the Board authorized staff to enter into an Exclusive Negotiations Agreement and Planning Document (ENA) with MBS for the Cesar Chavez/Fickett site, for the development of a standalone supermarket (without undertaking a competitive process). The authorized ENA was never executed.

Based on the recent review of the solicitation process and both Federal sole source and unsolicited proposals policies, staff recommends that the prior ENA authorization be rescinded for the following reasons:

- After a thorough review of federal procurement policies, there is no justification for a sole source development agreement, which would be the only way to approve MBS as the developer for this site;
- Based on recent outreach efforts in the Boyle Heights community, where the subject site is located, Staff believes that development on these Metro-owned sites should be procured by a community-driven and competitive process;
- While the current proposal includes a supermarket, much needed in the community, the Cesar Chavez/Fickett proposal does not include additional land controlled by a third party proposer or any other unique betterments that would make an unsolicited proposal superior to another proposal.

Staff recommends re-starting the joint development process from the beginning for the Cesar Chavez /Fickett site which would mean engaging the community to create Development Guidelines, bringing these Guidelines to the Board for approval, and issuing an RFP for the development of the site. If the subject recommendation is approved by the Board, this process would begin in early 2016.

<u>Vermont/Santa Monica Site</u>

Metro first received an unsolicited proposal for the Vermont/Santa Monica Station site in May 2004. The proposal from a development team led by McGregor Brown included adjacent properties controlled by the proposing developer and would be combined with the Metro properties to make a superior development site than would be possible with only the Metro-owned parcels. The JD team evaluated the proposal according to the Joint Development Policies and Procedures current at the time, and the Board authorized an ENA with the Developer in January 2005. Following the economic recession, the Developer withdrew from the ENA. The Developer re-assessed the project scope and submitted a new proposal, and the Board authorized a new ENA in January 2013. After a review of the federal unsolicited proposals policies, staff determined that the procedures followed were not consistent with FTA unsolicited proposal policies as Metro did not advertise its receipt of the proposal and offer others the opportunity to submit. The resulting ENA expired under its terms earlier this month and the Developer was notified of Metro's intent to allow the ENA to expire.

The same development team then submitted a new unsolicited proposal for the site. The new unsolicited proposal is similar to the most recent proposal, and includes 114 rental apartments with approximately 26,000 square feet of ground floor retail and 191 parking spaces at grade and on one subterranean level. The proposal includes a letter of intent from Walgreens for a portion of the ground floor retail and continues to include two neighboring properties. In this updated proposal, the development team has committed to adhering to Metro's guidelines regarding affordable housing. Attachment A is a site map showing the Metro-owned and adjacent privately-owned properties. In response to this proposal, Staff recommends moving forward with the unsolicited proposal process outlined in Federal Circular 4220.1F, Chapter VI (see Attachment B), for the following reasons:

- The development team brings additional properties that allow for more meaningful development around the Vermont Santa Monica Station
- The development team has committed to exploring inclusion of affordable units in the proposed development.

The basic steps for the unsolicited proposals process include:

- Publicize the receipt of and an adequate description of the property or services offered;
- Publicize Metro's interest in acquiring the property or services described in the proposal;
- Provide an adequate opportunity for interested parties to comment or submit competing proposals;
- Publicize the intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

Prior to this Board action, the JD Team met with the Offices of Los Angeles City Councilmember O'Farrell and Director Kuehl, the East Hollywood Neighborhood Council, the East Hollywood Business Improvement District Board of Governors, the East Hollywood Chamber of Commerce and the Los Angeles Promise Zone Neighborhoods Working Group to inform them of the receipt of the unsolicited proposal and staff's intention, pending Board authorization, to utilize the federal unsolicited proposals process. These local stakeholder groups will be informed once Metro releases the unsolicited proposal for public competition, along with a broader publication through larger media outlets. Staff expects to allow 45 days for submission of response to the unsolicited proposal.

Any recommendation for award of an Exclusive Negotiations Agreement (ENA), with any proposer, will be brought to the Metro Board for consideration. Any ENA will require that the selected developer provide a Community Outreach plan to engage stakeholders in the further conceptualization and programming of the proposed project.

DETERMINATION OF SAFETY IMPACT

Approval of this item will have no impact on safety. Any future development resulting from these items will be carefully reviewed by Metro Operations and Safety.

FINANCIAL IMPACT

Funding for joint development activities related to both sites and any subsequent, related development activity, including the RFP process, is included in the FY16 budget in Cost Center 2210 (New Business Development) under Project 610011 (Economic Development).

Since development of the properties is a multi-year process, the project manager will be accountable for budgeting any costs associated with such development in future years.

Impact to Budget

The source of funds for joint development activities is local right-of-way lease revenues, which are eligible for bus/rail operating and capital expenses. Adoption of the Development Guidelines will not impact ongoing bus and rail operating and capital costs, the Proposition A and C and TDA administration budget or the Measure R administration budget.

ALTERNATIVES CONSIDERED

The Board could choose not to authorize these actions. That is not recommended because (1) for Cesar Chavez/Fickett, it would leave the property in an indeterminate state, with an authorized but not executed ENA and a procurement process not in alignment with federal policies and (2) for Vermont/Santa Monica, it would delay action on an unsolicited proposal that includes adjacent properties and a commitment to affordable housing.

NEXT STEPS

Upon approval of the actions in this report, staff will (1) at Cesar Chavez/Fickett, re-start the Joint Development process, as detailed in the Joint Development Policy and (2) follow the federal unsolicited proposals process for the Vermont/Santa Monica station site and report back to the Board with recommendations. In addition, Staff will bring a Joint Development Unsolicited Proposals Policy to the Board for consideration at the January 2016 meeting.

ATTACHMENTS

Attachment A - Vermont/Santa Monica Station Unsolicited Proposal - Metro-owned and adjacent properties
Attachment B - FTA Guidance on Unsolicited Proposals - Excerpt from Circular 4220.1F

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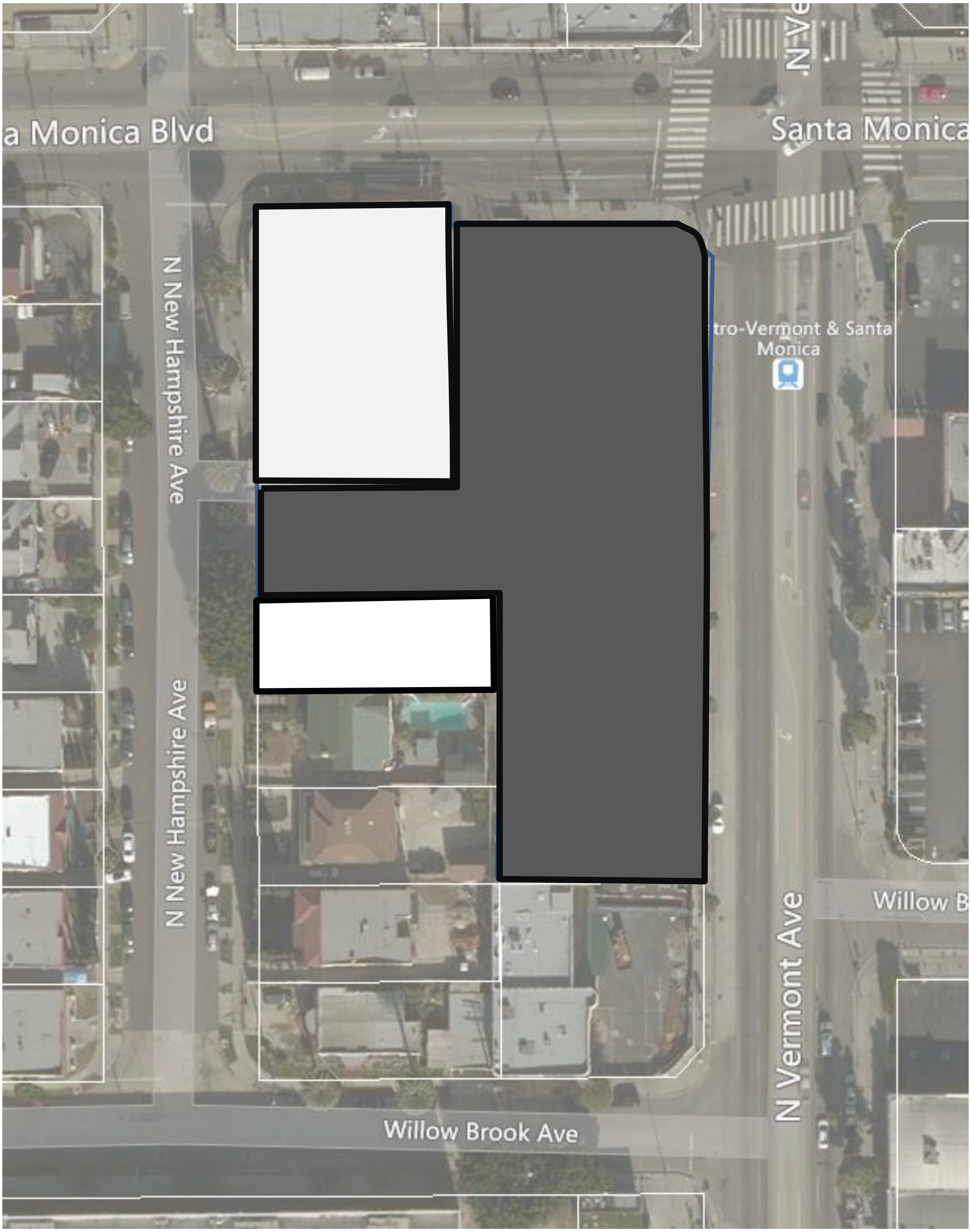
ATTACHMENT A

Vermont / Santa Monica – Unsolicited Proposal – Metro-Owned and Adjacent Properties



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11/01/2008
Rev. 1, 04/14/2009
Rev. 2, 07/01/2010
Rev. 3, 02/15/2011
Rev. 4, 03/18/2013

CHAPTER VI

PROCEDURAL GUIDANCE FOR OPEN MARKET PROCUREMENTS

1. COMPETITION REQUIRED. Except as permitted by Federal law or regulations, the Common Grant Rules require a recipient of Federal assistance to use third party procurement procedures that provide full and open competition. The Federal Transit Administration's (FTA) enabling legislation at 49 U.S.C. Section 5325(a), also requires an FTA recipient to conduct all third party procurements financed under 49 U.S.C. Chapter 53 in a manner that provides full and open competition as determined by FTA. The recipient may make third party contract awards on the basis of:

   a. Solicitation by the Recipient. Compliance with the solicitation procedures described in this Chapter will fulfill FTA requirements for "full and open competition."

   b. Unsolicited Proposals. A recipient may also enter into a third party contract based on an unsolicited proposal, as defined in Chapter I of this circular, when authorized by applicable State or local law or regulation. Receipt of an unsolicited proposal does not, by itself, justify contract award without providing for full and open competition. Unless the unsolicited proposal offers a proprietary concept that is essential to contract performance, FTA expects the recipient to seek competition. To satisfy the requirement for full and open competition, FTA expects the recipient to take the following actions before entering into a contract resulting from an unsolicited proposal:

      (1) Receipt. Publicize its receipt of the unsolicited proposal,

      (2) Adequate Description. Publicize an adequate description of the property or services offered without improperly disclosing proprietary information or disclosing the originality of thought or innovativeness of the property or services sought,

      (3) Interest in the Property or Services. Publicize its interest in acquiring the property or services described in the proposal,

      (4) Adequate Opportunity to Compete. Provide an adequate opportunity for interested parties to comment or submit competing proposals, and

(5) Contract Award Based on Proposals Received. Publicize its intention to award a contract based on the unsolicited proposal or another proposal submitted in response to the publication.

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, the recipient may make a sole source award to the offeror. A sole source award may not be based solely on the unique capability of the offer or to provide the specific property or services proposed.