REVISED 26

OPERATIONS COMMITTEE
SEPTEMBER 18, 2003

Los Angeles County
Metropolitan
Transportation
Authority

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SUBJECT: METRO BUS OPERATING DIVISION 6 LAND EXCHANGE

ACTION: APPROVE DEVELOPMENT AND EXCHANGE AGREEMENTS WITH RAD JEFFERSON, LLC FOR A LAND EXCHANGE OF MTA'S DIVISION 6 SITE IN VENICE, CALIFORNIA

RECOMMENDATION

Authorize the Chief Executive Officer to enter into an Exchange Agreement with RAD Jefferson, LLC (the Developer), and all other agreements required to implement the exchange of MTA's Venice facility for acquisition and development of the larger replacement facility in the City of Los Angeles.

ISSUE

On June 6, 2003 the MTA entered into a 90-day Exclusive Negotiation Agreement (ENA) with the Developer to negotiate for the exchange of MTA's Venice facility (Division 6) for a larger replacement facility to be developed to MTA specifications and located on the west side of Los Angeles.

Staff has reached agreement with the Developer on the terms of the Exchange Agreement and a Development Agreement, which will govern the exchange of the two properties and the development of the replacement facility. The proposed terms and conditions of the agreements were arrived at after considerable negotiation, and are summarized in Attachment A.

The Exchange Agreement includes:

- Terms of the land exchange
- Transition plans
- Payment arrangements
- Escrow instructions
- Rights and responsibilities
- Other terms and conditions

The Development Agreement includes:

- Construction agreements
- MTA specifications and operational design criteria
- Design milestones
- Change processes

- Environmental requirements
- Construction schedules
- Rights and responsibilities
- Allocation of developer costs
- Other terms and conditions

Negotiations and other activities during the ENA period have included but not been limited to drafting of the Exchange and Development Agreements, facility design, cost estimating, preliminary environmental studies and investigations, and community outreach, as summarized in Attachment B.

POLICY IMPLICATIONS

The recommended action is consistent with the Joint Development Policies and Procedures approved by the Board at its April 2002 meeting. While this is not a joint development project, as defined in the policy, it is a private/public partnership encouraged by that policy. The goals of the MTA's joint development program are to promote and enhance transit ridership, enhance and protect the transportation corridor and its environs, enhance the land use and economic development goals of surrounding communities and conform to local and regional development plans, and generate value to the MTA based on a fair market return on public investment.

The recommended action is also consistent with MTA goals to improve bus service, increase agency accessibility and responsiveness, improve operating efficiency, and operate a clean fuel fleet. <u>MTA has structured this transaction to include installation of the compressed natural gas (CNG) system by the Developer. This structure minimizes risk to the MTA by holding all payments to the Developer until the facility is accepted by MTA, eliminates construction coordination between the MTA and Developer thereby avoiding potential schedule delays caused by MTA, and ensures a complete operating division with CNG is turned over to MTA at closing.</u>

OPTIONS

The Board of Directors may choose not to enter into Development and Exchange Agreements with the Developer at this time and consider the following four alternatives. These alternatives are not recommended for the reasons stated below.

1. <u>Sell the Venice property outright and absorb the service at existing operating facilities.</u> The two other operating divisions within the Westside/Central Sector (West Hollywood Division 7 and Gateway Division 10) are both over capacity and also need to find ways to increase their capacity in order to meet consent decree and other service demands. Locating to another division outside the sector would produce many of the same inefficiencies in deadhead costs that are already experienced at the current location.

2. <u>Sell the property, find and build a new operating division.</u> It has been extremely difficult to find available or suitable land in the Westside area of Los Angeles. Staff efforts over the last

20 years have been unsuccessful in locating suitable replacement sites. Per Board direction at the March 2003 meeting, staff has re-evaluated all past property relocation efforts, and has assessed new property availability information as it arises. No other adequate replacement sites were located from these efforts. Even if another site could be found or the Jefferson & La Cienega property were acquired and developed by MTA, it would likely be more expensive, more disruptive to service, and take longer for the MTA to complete this project on its own than it would with the proposed transaction. Under this scenario, MTA would not be able to keep Venice Division 6 operational while a replacement facility is constructed.

3. Issue an RFP and look for other development partners. The key element to this transaction is the acquisition of a new property, which suits the MTA's operational needs. Therefore, it does not readily lend itself to a competitive process. While developers have approached MTA about purchasing the current Division 6 location, to date no other developers have been willing or able to locate a replacement site due to the limited number of available sites in the Westside/Central area that meet MTA criteria.

4. Remain at Division 6 for the foreseeable future. By remaining at the current Venice location, MTA will continue to experience significant operating inefficiencies and challenges to meeting service demands. Further, Division 6 has no opportunities for future installation of CNG fueling due to the absence of adequate natural gas service in the area. Upon MTA's forecasted conversion to an all-CNG fleet in approximately 2010, the Division 6 facility would be obsolete.

FINANCIAL IMPACT

Funding is available for this project beginning in FY06. The cost center manager and the Deputy Chief Executive Officer will be responsible for budgeting the future funds required.

NEXT STEPS

Upon approval of the recommended actions, the Chief Executive Officer will execute the Exchange Agreement, the Development Agreement, and all other documents necessary to effect the exchange and development agreements as applicable. Staff will then manage and coordinate the exchange and development process in accordance with the terms and conditions of the agreements.

The proposed transaction is contingent upon the developer's successful compliance with all requirements of the California Environmental Quality Act (CEQA). The formal CEQA process would begin following execution of the agreements.

ATTACHMENTS

A. Terms and Conditions of the Proposed Transaction
B. Summary of Facility Design, Environmental, and Community Outreach Activities

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ATTACHMENT A

TERMS AND CONDITIONS OF PROPOSED TRANSACTION FOR THE EXCHANGE OF MTA'S VENICE SITE AND THE DEVELOPMENT AND ACQUISITION OF THE REPLACEMENT FACILITY

1. Developer will acquire a 4.66-acre site in West Los Angeles and design and construct a bus maintenance and operating facility to accommodate a maximum of 157 buses. The Developer will construct the replacement facility to MTA's specifications. Other than MTA-~~**authorized**~~ **directed** change orders **and costs associated with the compressed natural gas (CNG) system as described below in Section 5,** MTA's only financial contribution is $8 million, **all of** which will be provided at the end of the transaction. MTA has review rights during the design and construction of the replacement facility.

2. After the facility is complete and accepted by the MTA, the parties will exchange the new site and replacement facility for the MTA's 3.13-acre Venice Division 6 site and a one-time **capped** payment of $8 million **plus CNG and MTA-directed change orders.** The $8 million is an agreed to amount, which represents the difference between the Venice Site and the new site and replacement facility. The value of MTA's Venice property is $12,900,000, based on the results of two independent appraisals of the Venice property that have confirmed its value.

3. The MTA has no obligation to transfer the Venice site or pay Developer anything unless and until the following conditions have been satisfied:
   a. MTA's due diligence on title and inspection of the new site are satisfied;
   b. All requirements under the California Environmental Quality Act (CEQA) have been satisfied;
   c. All entitlement has been obtained;
   d. The replacement facility is complete and has been accepted by the MTA;
   e. The punchlist and associated holdback amount has been agreed to;
   f. The Title Company is in a position to issue a title report acceptable to MTA for the new site;
   g. The parties have agreed to a transition plan, which will allow for a smooth transition from the Venice site to the new site. **The transition plan will include a payment to Developer of $3,500 a day, which represents Developer's holding costs, for each day MTA remains on the Venice site after closing**; and
   h. The parties have agreed to an environmental remediation agreement for clean up of the Venice site.

4. MTA may request change orders during construction. Developer must have MTA's agreement in writing prior to incurring any additional costs that MTA must pay for. **By approving this action, the Board authorizes the Chief Executive Officer to enter into change order agreements in an aggregate amount not to exceed 10% of the equalizing payment, or $800,000.**

5. The compressed natural gas (CNG) fueling system will be installed prior to closing of this transaction. ~~CNG facilities will either be included by the Developer and added to the $8 million equalizing payment, or MTA will contract directly with the CNG installer and coordinate with the Developer during construction~~. **The CNG system will be provided by the Developer through a direct purchase of the CNG equipment with a two (2) year follow-on service agreement to be assigned to MTA after closing. Based on past experience with CNG contracts, Staff estimates the cost for the capital purchase should not exceed 6,450,000 for capital equipment and $1,860,000 for the 2-year service contract. The capital costs include a 10% contingency and a 5% fee to cover the Developers costs. As with the equalizing payment, no payment on the CNG system will be made until closing.**

6. The risk of differing site conditions, environmental mitigations and unforeseen construction overages will be borne by the Developer, and the MTA's contribution amount is "capped". However, if the environmental mitigations exceed $540,000 or the community mitigations exceed $460,000, the Developer has the right to terminate the agreement. At this point, MTA would also have the option to add additional funds to pay for required mitigations not covered in the Developers capped amount.

7. In regards to hazardous materials, the properties will be exchanged on a "clean for clean" basis, meaning that the Developer will be responsible for cleaning the hazardous materials on the new site and MTA will be responsible for ~~cleaning~~ **the cost to** clean the hazardous materials on the Venice site pursuant to an environmental remediation agreement. **MTA will conduct a Phase II environmental site assessment at the Venice property to ascertain the costs for the Developer to remediate the Venice site to levels adequate for closure from regulatory agencies. The estimated costs for remediation will be credited to the Developer at Closing. If costs exceed the estimate, MTA will pay Developer the excess and if costs are less than the estimate, Developer will return the funds to MTA. If the estimated remediation costs exceed $1.5 million, MTA will have the right to terminate the agreements. If the remediation work prevents Developer from constructing his new project, MTA will pay Developer $3,500 a day for each day Developer cannot work on his new project up to an amount not to exceed $50,000, excepting delays directly attributed to the Developer or his remediation contractor.** These MTA costs **for remediation** would be funded through a separate Capital Program designated specifically for environmental remediation.

8. If the Developer has not completed the construction of the replacement facility by ~~December 31~~ **June 30**, 2006, the MTA has the right to terminate this agreement. Further, there will be other specified interim dates the developer must meet and failure to meet those dates will be events of defaults under the agreement.

9. MTA has completed two independent cost estimates to ascertain an estimated cost if the MTA were to build the replacement facility itself. The independent estimates were prepared by the MTA Estimating Department and Richard Chong & Associates, an architectural design and consulting firm with expertise in design and construction of bus

operating facilities. Both estimates confirm that MTA is receiving fair value for the MTA site and its payment.

ATTACHMENT B

SUMMARY OF FACILITY DESIGN, ENVIRONMENTAL, AND COMMUNITY OUTREACH ACTIVITIES

Facility Design - Upon execution of the ENA, Staff prepared design criteria for the new operating facility and transmitted the criteria to the Developer. Based on the design criteria, and input from Staff during four design review meetings, the Developer and the project architect prepared a conceptual design for the new proposed facility. The conceptual facility design was then submitted for internal review by MTA's design team, consisting of Facilities Engineering, Metro Operations, and Service Sector staff. The conceptual facility design is now complete, and has been accepted by the MTA design team.

The current facility design includes a two-story combined Transportation and Maintenance building with 15 maintenance bays and rooftop employee parking. The facility design includes all required bus maintenance equipment (such as bus washing, vaulting, hoists, inspection pits, etc.), underground storage tanks, emergency generator, fuel islands, and a compressed natural gas (CNG) fueling facility. The facility has been designed as a 100% CNG fueling facility with no diesel fueling capabilities. Ingress and egress is located at Jefferson Boulevard.

The capacity of the division is designed for 157 standard 40-foot coaches; however, all facility functions will be designed to accommodate articulated 60-foot coaches. If the new division were completely occupied by 60-foot articulated buses, the design capacity of the facility would be approximately 100 buses.

Environmental Studies – A full environmental analysis of the new site will be conducted in accordance with the California Environmental Quality Act (CEQA), commencing upon execution of the Development and Exchange Agreements. In preparation for this, the Developer has completed Phase I and Phase II Environmental Site Assessments as part of due diligence requirements for the replacement property. The Phase I report has been reviewed and accepted by MTA, and the Phase II report has yet to be submitted for MTA review. Geotechnical investigations at the replacement property are underway.

The Developer has also retained an environmental consultant to perform preliminary noise, traffic, and air quality studies in the vicinity of the proposed replacement site. The effects of noise and traffic related to the new proposed facility were evaluated with respect to surrounding arterial streets (i.e. Jefferson , La Cienega) and surrounding residential neighborhoods. The preliminary results of these studies indicate that noise levels, air quality impacts, and traffic impacts during the construction period and long-term facility operation will be less than significant.

The results of the completed noise, air quality, and traffic studies, as well as descriptions of any required mitigations to offset potential impacts, will be included in the Environmental Impact Report (EIR) required for compliance with CEQA. The Developer will conduct and prepare the

EIR, while the MTA will be the lead agency for the environmental review for certification of the EIR process.

Community Outreach - MTA staff has continued outreach efforts to communicate with residents and businesses surrounding the proposed replacement site. One-on-one meetings have been held with the leaders of the Blair Hills Homeowners Association and the Baldwin Hills Gardens Association. Staff also presented the project to the Boards of the Cameo Woods Association, Blair Hills Association, and Baldwin Hills Coalition. Staff has also met with numerous businesses in the area including See's Candy, Target and business associations.

Residents and businesses have expressed their appreciation of MTA's outreach efforts at such an early stage, even prior to an EIR. They have asked questions about traffic and noise impacts from the new facility and have shown interest in working on these issues with the MTA and Developer during the environmental process. While questions remain, they have generally responded positively to characteristics of the proposed facility including:

- Traffic will enter and exit the facility from Jefferson avoiding La Cienega;
- The facility will generate less traffic during peak periods than another type of activity since most buses leave the facility well before rush hour to be in service and return after the peak period ends;
- The facility will fuel 100% CNG buses;
- The facility will provide an economic boost to the area as MTA employees will patronize retail establishments; and
- Since MTA is a public agency, they feel they will have more input into this project than they would another development.