

Observations on Negotiating  
a  
Joint Development Agreement

# General Observations

- Establish a cooperative negotiating atmosphere
- Remember your responsibilities as project sponsor and educate your partners

# Maximum Flexibility

- Structuring the deal – “maximum flexibility”
  - within the law

# Continuing control of the transportation improvements

Establishing the project sponsor's satisfactory continuing control

- Direct ownership of the joint development improvement
- Other ownership mechanisms - condominium
- Long term lease
- Deed restriction
- Easement for the benefit of the transit authority use

# Return to Transit

Fair share of revenue from the project returned to the project sponsor

- No monetary threshold for a share of revenue
- Financial benefits in exchange for the project sponsor's financial contribution to the project
- Rent-free occupancy for the Transit Authority
- Additional return upon sale

# Share of costs of the facility

Tenants to pay a reasonable share of the costs of the facility

- Tenant contribution to its area build-out
- Rental payments
- Contribution to common area maintenance charges

# Project Sponsor Controls

- JDA acknowledges public funding and Federal requirements
- Participation in the Developer's designer selection process
- Conduct of the designer selection process
- Design Review Committee – voting structure for approval of transit-related aspects of the project

# Project Sponsor Controls

- Approval of change orders involving publicly-funded portions of the project
- Developer's financial, contract and accounting records clearly identify eligible and non-eligible costs
- Availability of documentation evidencing compliance with FTA/State grant, FTA Joint Development Guidance and other legal requirements



# Be Prepared for the Unexpected

- “Expect the unexpected”
- Unforeseen conditions resulting in additional costs beyond the project budget
  - Keep channels of communication open
  - Work cooperatively to explore additional sources of funding
  - Take the time to find a solution

# Keep the Project Going

- Establish regular project meetings for negotiation of the JDA and thereafter for exchange of status reports on project progress
- Identify possible problems early and work together to resolve them
- Don't be afraid to seek clarification or guidance from FTA