Session 1: Joint Development and Turnkey Finance - A Contrast of Paradigms
Part 1: United States Experience

Session Chair:

Dennis J. Newjahr
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Session Highlights:

- Explored alternative definitions of joint development with definitions ranging from those which focus on public sector receipt of revenues or reductions in cost to those with an emphasis on private sector contributions to community integration.
- Discussed benefits of development highlighting ridership and revenue increases, local tax generation and implementation of local and regional land use plans and policies.
- Identified obstacles to implementation of joint development efforts noting the presence of conflicting objectives, strengths and weaknesses of negotiating parties, difficulties associated with integrating the needs of multiple governing jurisdictions, institutional barriers within transit agencies and other public institutions, and a lack of financial flexibility.
- To overcome these challenges, the presenters noted the importance of careful initial planning, clear identification of goals and objectives, careful understanding of the real estate development market, clear definition of the authority of public agencies, and flexible financial approaches ranging from a governmental willingness to purchase additional right of way and make baseline infrastructure investments to governments use of turnkey techniques to facilitate initial private sector investment in site preparation.
- Explored the financial opportunities and challenges posed by turnkey procurements and real estate development.

Speakers noted the difficulties associated with vendor financing in the United States, highlighting the financial benefits associated with government issuance of tax exempt debt, state and federal procurement restrictions, and transit's traditional inability to generate revenues sufficient to cover capital and operating costs while also generating a sufficient level of return.

- Presenters noted the ability of turnkey to shorten time frames and thus reduce inflation risk, debt service requirements, and management costs.
- When taking the form of a concession agreement the private sector has an interest in investing in revenue generating opportunities if sufficient time is provided to amortize associated capital investments.
- Speakers discussed individual projects and associated financial arrangements, though it was noted that legal restrictions prevent the United States from availing itself of the full spectrum of ownership and investment options that are available elsewhere.

Dennis J. Newjahr
Director, Strategic Business Planning
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Mr. Newjahr noted that public/private partnerships have been a proven means of advancing technology for hundreds of years. Though the concept is not new, the process has become more complicated through time.

A working definition of joint development was offered to help structure the discussion. The suggested definition included new telecommunications technologies as well as traditional land development. It was grounded in the concepts of cost sharing and revenue sharing in which the private sector reimburses transit agencies for the value created by the location of a transit facility. Reimbursement can be either a direct payment or through the sharing of costs.

Andrew C. Cotugno
Transportation Director
Portland Metro
Portland, Oregon

Mr. Cutugno suggested that the definition of joint development be broadened to consider the public and private sectors working together in integrated efforts to achieve and maintain livable communities in which transit contributes an important role. The importance of the relationship between metropolitan growth management and transportation planning was highlighted using the Portland, Oregon experience to demonstrate the connection.

In outlining the land use and planning context in Portland, Mr. Cutugno noted that growth management and transit have been important tools in accommodating a 40 percent growth in population while sustaining the livability of the community. The administrative framework for this planning effort lies in the creation of the Portland Metro, a regional planning organization incorporating 24 municipal governments and three counties. Metro is a separate level of government, governed by an elected council with statutory authorized taxing, growth management and transportation planning powers, and operational responsibilities. Acting consistent with an authorizing charter, Metro developed a Framework Plan and has authority to ensure that municipalities act consistently with this plan.

The goal of this plan is to ensure compact urban area within defined urban growth boundaries. The plan provides for very strict limits on what can occur outside of these boundaries. Land use requirements established within the Framework Plan are to be incorporated in municipal ordinances and zoning regulations.

The goal of this effort is to sustain a livable community by maintaining compact growth within the urban region. The emphasis is in facilitating infill development within approved areas. Transit corridors have been used as tools to achieve this vision, driving density, and providing for the targeting of public and private investment. The fights in Portland, therefore, are about the drawing of these boundaries. Activities within these boundaries, if consistent with the Regional Plan, are much less controversial with building permits issued within 120 days.

In profiling Portland's light rail transit corridors, Mr. Cotugno noted their location within the defined urban growth areas. He also noted the accompanying targeting of development adjacent to these corridors. In discussing the Gresham and Lloyd district projects, he highlighted the increased development densities around transit stations and the different levels and types of government support necessary to leverage this investment. He also noted the state policy decision to locate state offices and government services in downtown areas adjacent to transit.

Leveraging investment adjacent to stations requires that the transit agency know its market. The agency must understand area demographics, real estate values and lease rates sufficient to calibrate what it will take to encourage development. Market conditions directly influence the public sector's ability to capture any value created. Where the market is soft, benefit assessments are likely to chase developers away to alternate sites.

The goal of livability was further emphasized, with Mr. Cutugno noting that density helps to generate transit riders and to keep the agency in business. The result is that agencies should be willing to invest small amounts to leverage activity and generate the required development densities. This investment can take the form of up front capital contributions or the delivery of turnkey improvements through which the developer makes the up-front investment with subsequent governmental contributions. To achieve this, Mr. Cotugno also recommended that government be willing to purchase additional right-of-way to control outcomes and to generate revenues for reinvestment elsewhere.

Alvin McNeal
Joint Development Manager
Washington Metropolitan Area Transit Authority
Washington, D.C.

Mr. McNeal profiled WMATA's joint development program. Like Mr. Cotugno, Mr. McNeal noted the need for cooperation among numerous jurisdictions. In the case of WMATA, he noted the differing political and development cultures of the States of Maryland and Virginia, the District of Columbia, and the unique role of the Federal government in the process.

Mr. McNeal discussed joint development and noted the synergy required to generate ridership and decrease the costs of operating and maintaining a transit system. He profiled WMATA's joint development efforts noting the traditional emphasis given to ground lease transactions. FTA's tradition reimbursement requirement associated with the sale of lands purchased with federal moneys was discussed. This has impacted the feasibility of land sales, though WMATA is pursuing such opportunities along with those involving investor equity and land swaps.

In defining WMATA's development goals, Mr. McNeal noted that implementing local land use policies was just one goal. Others include generating ridership and fare revenues for the agency, and development related tax revenues.

WMATA has implemented two types of development projects: mixed use projects on air rights (ground leases) and, free standing projects connected to transit stations by passageways or easements (connection agreements). WMATA has eleven air rights and eleven easement projects which have generated $50 million in rental income to date. It also has received $15 million associated with the sale of its land. These projects are estimated to generate 15,000 daily riders, 5,000 jobs, and $20 million in local tax revenues.

Mr. McNeal noted the challenges faced in the implementation of a joint development program. These included:

- conflicting objectives between the transit agency, the developer, lenders and local community groups;
- the absence of supporting land use policies by the municipalities within which stations are located;
- institutional barriers within transit organizations;
- poor market support and;
- a lack of financial flexibility associated with the

limited ability of transit agencies to dispose of lands purchased with public funds.

In discussing how to tackle these challenges, Mr. McNeal stressed the need to:

- pay careful attention to the financial details of a deal;
- understand and think through the internal agency review process. Limit the number of steps;
- understand allowable uses at the site, document zoning and assess the impacts of proposed uses;
- be clear on what you are offering, understanding site encumbrances;
- be clear on what the transit agency can offer -- focus on the powers of the agency and the tools and strengths that the public and private actors each bring to the table and;
- pay careful attention to public sentiment around station areas and do not underestimate the need for leadership and a project champion.

Dennis J. Newjahr
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Mr. Newjahr's discussion focused on the Union Station Gateway Transit Center and LACMTA's Headquarters facility in Los Angeles, California. He discussed aspects of the project and the working relationship between the LACMTA and Catellus Development Corporation (Catellus).

The Gateway Center consist of an intermodal transit center and a 26 story, 628,000 gross square foot administrative headquarters building for the LACMTA. The Gateway Center is strategically located behind the old Union Station, within a 68 acre Los Angeles area known as the "Alameda District," approximately one mile from the center of downtown Los Angeles. The location of the Gateway Center makes it a convenient and attractive downtown activity center.

Joint development activities will also help to defray the capital construction and on-going maintenance and operation of the Gateway Center. Future development projects planned for the parcels surrounding the Gateway Center will pay a fair share allocation of site amenities that will provide benefits to building owners and occupants. Revenue generation from uses such as retail areas and parking operations will contribute to the capital and operating expenses associated with the planned development.

The Gateway Center was designed and constructed pursuant to a Development Agreement executed by and between the LACMTA and Catellus, under the joint development authority granted to the LACMTA by the state. The total cost of the Gateway Center project was $295,000,000. It was funded over a five-year period under a complex arrangement of federal, state, and local resources. Construction of the Gateway Center began in February 1993 and it was completed in October 1995.

Following selection of Catellus as LACMTA's joint development partner, the LACMTA began to investigate traditional private development approaches for delivery of the intermodal transit center and the LACMTA's administrative headquarters facility. Negotiations were conducted with Catellus to consider a design-build turnkey approach. They created an entity that would act as the Design-Builder. This entity is known as Union Station Gateway, Inc.

USG is a non-profit public benefit corporation formed under California law. USG is made up of two members, the LACMTA and Catellus, each of which appoints three Directors to the six-member Board of Directors.

Although USG includes officers and board members drawn from the public and private sector, a strict, legally binding contract requires that the day-to-day construction management be carried out by Catellus. The contract requires the construction of the Gateway Project by the selected builder—Charles Pankow, Inc. The LACMTA employees and Directors act as owner representatives. Three contractual agreements govern the relationship between the owner, design-builder and the members of USG. Additional contracts govern the relationships between USG and the contractors, architects, and consultants who round out the project team.

- The "Design and Construction Agreement" executed by the LACMTA and USG sets forth the relationship between the LACMTA as owner and USG as design-builder.
- The "Project Control Agreement" executed by USG and the LACMTA, established the LACMTA as USG's independent consultant for the purpose of carrying out various tasks that were assigned to USG under the Design and Construction Agreement, primarily relating to project oversight.
- The "Construction Management Agreement" executed by USG and Catellus, required that Catellus manage all aspects of the design and construction of the project. Exceptions are those limited aspects retained by the LACMTA as owner pursuant to the Design and Construction Agreement or transferred to the LACMTA pursuant to the Project Control Agreement.

The Design-Builder/General Contractor Contract Agreement passed on USG's obligation to obtain performance and payment bonds to the construction entity. However, it permits the constructor to acquire the bonds separately (and consecutively) for each element, reducing the risk and cost of bonding to a manageable level for the contractor.

Although USG will dissolve upon completion of construction, private sector property management of the Gateway Center will continue. To integrate the public parking facilities of the Gateway Center with private parking, a reciprocal easement agreement requiring common maintenance and use of a single management entity across the site was negotiated.

Initially, Catellus will be retained as property manager for the facilities and common areas. The LACMTA retains significant rights with respect to management, including the right to retain separate management for the LACMTA headquarters.

The net effect of the USG structure was to allow USG to function as a private developer. The private participants (i.e., Catellus, the constructor and the architects and consultants) undertook the day-to-day construction, management and design responsibilities required to keep the project and cost on schedule and in conformity with the construction documents.

The public participants (i.e., LACMTA staff acting on behalf of the LACMTA, and public sector officers of USG) undertook the control and oversight roles, ensuring that the LACMTA's particular specifications were met on a general level, but without duplicating or interfering in the functions performed by the private sector. USG involvement permitted the LACMTA a streamlined involvement in the day-to-day issues affecting the project so that the LACMTA as owner could be responsible without being obstructionist.

By providing multiple fixed-price contracts, the segmented turnkey approach shifts the risk of performance and cost overruns away from the public sector, but did not overload private sector participants. The involvement of the LACMTA as a participant in USG allowed the LACMTA to impose all development duties, including cost control, schedule and design requirements on the design-builder. What made it work was the LACMTA's ability to act as a funnel breaking the risks and duties into pieces considered manageable by the private sector participants.

In closing, Mr. Newjahr noted the essential elements of creativity in all complicated real estate investments. He discussed the need for agreements to serve as clear road maps giving subsequent users a clear understanding of the roles and responsibilities of the parties.