



Washington Metropolitan Area Transit Authority



Joint Development Solicitation



August 2006

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August 31, 2006

Dear Developer:

The Washington Metropolitan Area Transit Authority (WMATA) is pleased to provide you with its 2006 Joint Development Solicitation (JDS) offering four highly desirable sites at Metro or commuter rail stations.

WMATA is looking for innovative plans at these sites that will yield quality developments for the local communities, increase transit ridership, enhance the local tax base and provide a stream of revenue to WMATA for capital needs. Proposals should adhere to principles of Transit-Oriented Development, providing safe, walkable, mixed-use communities that emphasize transit connections and reduce auto dependency.

WMATA is offering its sites for long-term lease, which it strongly favors over a sale except in the case of Capitol Heights, where a sale is preferred for residentially zoned land. For leases, WMATA prefers 60 years. WMATA's Board of Directors has approved projects with commercial land leased and condominium land sold. Whether to sell or lease residentially zoned land, other than Capitol Heights, will be decided on a case by case basis.

The WMATA Board will make a Developer selection for each site in conjunction with a negotiated term sheet outlining major business terms. The Board will, at a later time, act upon a contract once that document has been agreed to by WMATA staff and the Selected Developer.

You are encouraged to review the JDS and to attend WMATA's Pre-Proposal Conference which will be held on Monday, September 18, 2006 at 2 p.m. in the lobby level meeting room at WMATA headquarters, 600 Fifth Street, NW, Washington, D.C. The Pre-Proposal Conference will give interested developers the opportunity to ask questions about the JDS. Though attendance is not mandatory, it is desirable.

The Closing Date for submitting Proposals will be November 17, 2006. If you have any general questions regarding this JDS, please contact Kathleen Mitchell by e-mail at kmitchell2@wmata.com, or by phone at 202-962-1240 (202-236-0868 cell).

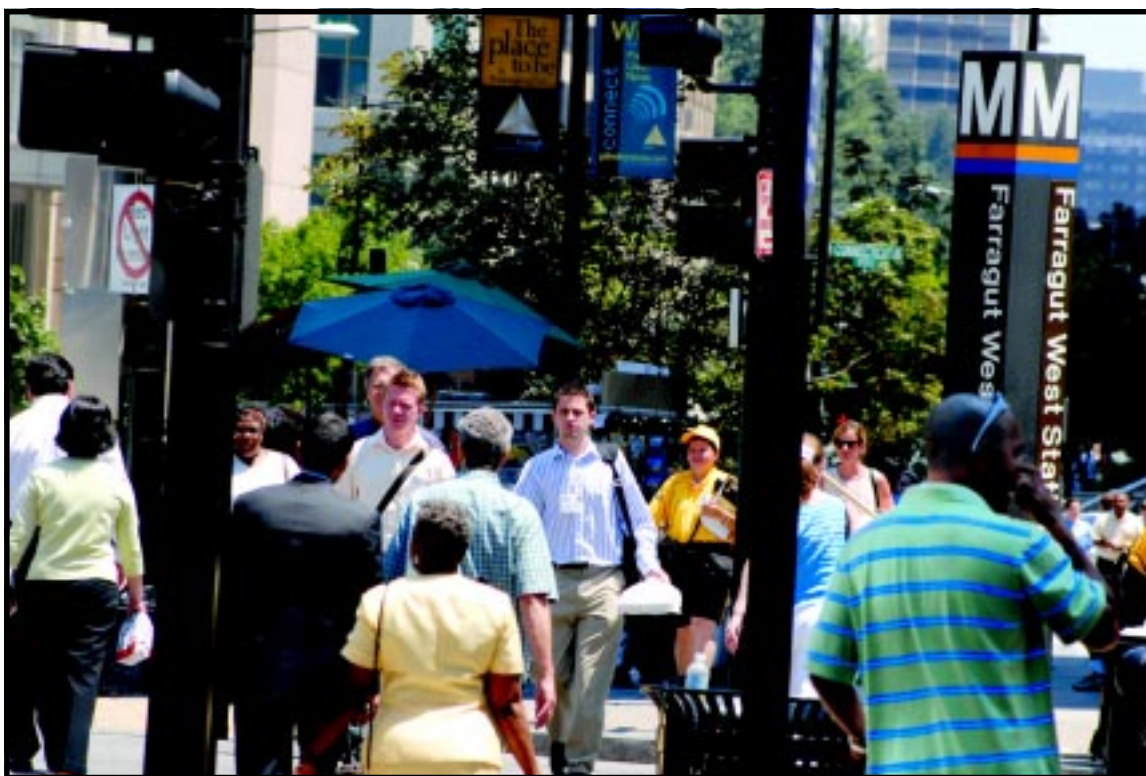
Thank you for your interest in WMATA's Joint Development Program. WMATA has had a long and successful Joint Development Program with over 35 major sites developed or under contract. We hope you will agree that there are attractive opportunities in this JDS, and we look forward to working with you.

Sincerely,

A handwritten signature in cursive script that reads "Gary Malasky".

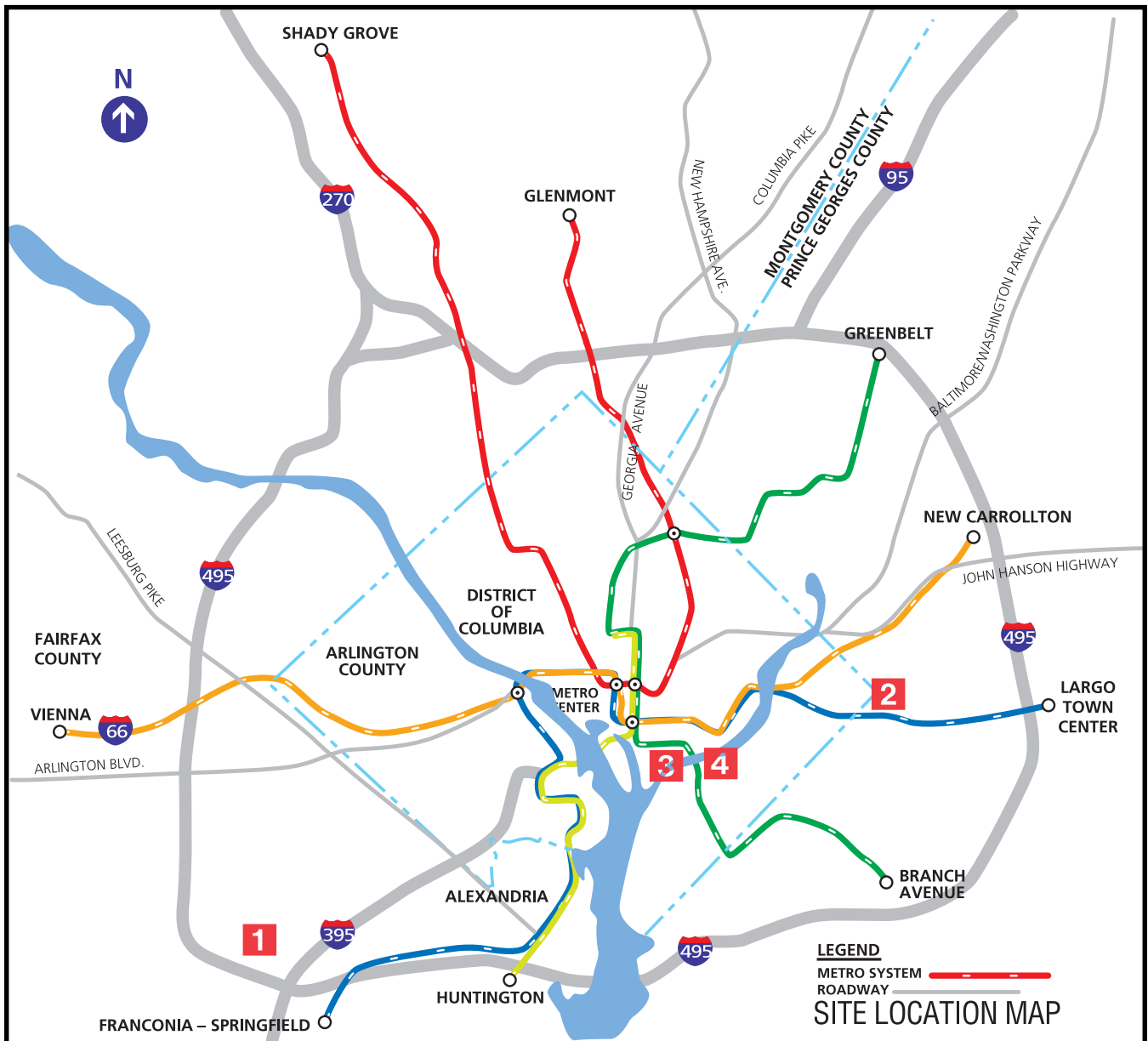
Gary Malasky
Managing Director
Office of Property Development and Management

Part One. Joint Development Sites



WMATA invites proposals for the four Joint Development sites described in this part of the solicitation. The sites are:

- 1 Backlick Road Virginia Railway Express station (Fairfax County, Virginia)
- 2 Capitol Heights Metro station (Prince George’s County, Maryland)
- 3 Navy Yard Chiller site (Half and L Streets SE in Washington, D.C.)
- 4 Navy Yard Metro station (New Jersey Avenue and M Street SE in Washington, D.C.)



BACKLICK ROAD VIRGINIA RAILWAY EXPRESS STATION

JDS 06-1

Site profile

This property is located in Fairfax County, Virginia, in the Springfield subdivision. It consists of 8.2 acres (357,192 s.f.) and includes the Backlick Road Virginia Railway Express (VRE) commuter rail station that provides a direct connection to downtown Washington, D.C. The site is bordered by Backlick Road to the west, Hechinger Drive to the south and the railroad tracks of CSX Transportation, Inc. to the north. The property is within the Capital Beltway (I-495).

In 1991, WMATA and Fairfax County entered into a sales agreement for the property. Under terms of the agreement, the County purchased the property to construct and operate a VRE station with a 220-space parking lot. WMATA leased back the development rights to the property for 99 years, ending on February 28, 2091, subject to two conditions:

- 1 that any future development be in accordance with the Fairfax County Zoning Ordinance, and

- 2 that the County continue to have parking available for the operation of its commuter rail station parking facility. WMATA may assign or sublease its rights. The lease permits the relocation of the parking lot, for example, into a parking structure provided that the County approves the relocation and incurs no cost.

Part of the parcel is within a Chesapeake Bay Resource Protection Area along Backlick Run, a stream which affects the northeastern portion of the site. The Hechinger Drive right-of-way occupies part of the parcel's southern boundary. Consequently, the developable area of the parcel is estimated to be under six acres.

All utilities are available.

Improvements on the site include the previously mentioned rail station and parking lot.



SURROUNDING AREA AT A GLANCE

Description	1 Mile Radius	2 Mile Radius
Population	12,603	44,193
Households (HH)	3,991	15,307
Average persons per HH	3.15	2.87
Average HH income	\$85,566	\$91,369
Median HH income	\$73,912	\$78,142
# of business establishments	524	2,463
Daytime employment	8,437	34,314

Area and amenities

There are an 85,500 square foot local shopping center and an office building complex adjacent to the site. The shopping center contains about 14 shops providing restaurant, grocery and other convenience services. Recently rezoned to commercial from an industrial category, this center is anchored by a new 50,000 square foot El Grande supermarket.

Good transportation access, combined with excellent proximity to local and regional work centers, makes this property highly suitable for redevelopment. As shown above, the average household income within one mile of the site is \$73,900.

The VRE's Backlick Road station provides convenient rail service to the District of Columbia and other points to the north as well as to Manassas, Virginia and other locations to the west. The VRE system connects to the WMATA Metrorail system at the Crystal City station in Virginia; Union Station, a major intermodal transportation service facility in the District of Columbia and L'Enfant Plaza station, also in the District of Columbia. Though the site is not served by the Metrorail system, it does have Fairfax Connector bus service (Routes 321, 322 and 401) and Metrobus service (Route 18E at rush hours between the Pentagon and Springfield).

Location advantages

The property may be entered from Hechinger Drive. It is proximate to I-95 and I-395. I-395 provides access to I-495 (Capital Beltway), the circumferential route around the Washington metropolitan area. I-395 is approximately two miles away, and I-95 is approximately 1.5 miles away by automobile. The site is 20 minutes from downtown Washington by automobile.

Zoning

The bulk of the parcel is currently zoned I-5, a General Industrial District designated for uses that provide services to industrial companies, wholesale operations and those that are associated with warehousing/logistics operations. I-5 zoning allows uses at an FAR (Floor Area Ratio) of 0.5. Under the Fairfax County Zoning Ordinance, the FAR may be increased to 1.0 if certain standard zoning criteria are met. Building heights are capped at 75 feet. The western edge of the property is zoned I-2, Industrial Research, with a maximum FAR of .25.

Fairfax County is presently considering an amendment to its Comprehensive Plan that would encourage more intensive mixed-use (residential and commercial) development of the site and an opportunity for rezoning for other than uses allowed under the current industrial zoning designation, as described more fully below.

Special considerations

Fairfax County's proposed changes to the Comprehensive Plan, scheduled for a vote by the County Board of Supervisors in September 2006, will provide for a .45 FAR for office and retail mixed-use developments, as well as an option for mixed use with residential if it can be demonstrated that there is a similar or lesser peak hour traffic impact

than the .45 FAR build-out for the office and retail option. There is no density per se specified for residential development. WMATA's economic consultant, Bolan Smart Associates, estimates that more than 500,000 square feet of mixed-use development could be built on the site at an FAR of 1.4.

Other criteria under the Plan text amendment include:

- The proposed mixed-use development must be designed in a manner that does not interfere with the operation of the commuter rail facility.
- A Transportation Demand Management (TDM) plan should be provided to facilitate increases in multi-occupant vehicle trips.
- Residential uses should be designed to provide a "viable" living environment including recreation and other amenities.

- Attenuation measures should be provided to mitigate rail and I-495 traffic noise on residential uses.

VRE parking facilities displaced by development must be replaced on-site. For example, the surface parking spaces may be replaced in a structure convenient to the station.

Jurisdictional contacts and incentives

To learn more about the Fairfax County Comprehensive Plan's requirements for this site and the potential Plan amendment, contact the Fairfax County Department of Planning and Zoning at 703-324-1380.

For information about economic development incentives, contact the Fairfax County Economic Development Authority at 703-790-0600. Links to these agencies are <http://www.fairfaxcounty.gov/dpz> and <http://www.fairfaxcountyleda.org>.

CAPITOL HEIGHTS METRORAIL STATION

JDS 06-2

Site profile

The site is located in Prince George's County, Maryland, on the District of Columbia border and contains three parcels totaling 7.2 acres (313,632 sf).

The largest parcel, bounded by Southern Avenue on the west, Maryland Route 214 on the north, and Davey Street on the south and east, comprises 6.1 acres and contains a Metrorail station with elevators and escalator; a combined chiller plant and traction power substation; four bus bays and a bus turnaround area; 372 park-and-ride commuter surface parking spaces; a Kiss & Ride lot with 14 metered spaces, five nonmetered spaces and two handicapped spaces; and five taxi stand spaces and three motorcycle spaces. The Metro tunnel and platform are beneath the northern edge of the site, parallel to East Capitol Street.

The property slopes gently (less than three percent) and is buffered from busy East Capitol Street

by being on a higher grade. The two smaller parcels located across Davey Street are .4 acres (west side) and .7 acres (east side).

All utilities are available.

Area and amenities

Capitol Heights is an incorporated town with a population of over 3,000. Within a mile of the site, average household income is an estimated \$47,300, and there are approximately 8,400 households providing a base for further retail activity.

Development to the north, south and east of the site is residential including garden apartments and single family detached units. To the west and southwest are additional single family detached houses, several retail establishments, a mid-rise apartment complex and vacant land.

The site is located in a corridor that is experiencing development activity. Nearby projects completed



SURROUNDING AREA AT A GLANCE

Description	1 Mile Radius	2 Mile Radius
Population	23,053	79,195
Households (HH)	8,385	29,954
Average persons per HH	2.72	2.62
Average HH income	\$47,294	\$50,081
Median HH income	\$37,115	\$41,183
# of business establishments	421	1,556
Daytime employment	3,839	21,572

or underway include a cooperative housing project, Southern Homes and Gardens, and a HOPE (Housing Opportunities for People Everywhere) VI redevelopment of East Capitol dwellings, a large public housing complex directly west of Southern Avenue in Washington, D.C. HOPE VI is a public/private partnership development initiative sponsored by the U.S. Department of Housing and Urban Development to replace distressed public housing with mixed-income, well designed communities. The Capital Gateway plan calls for a mixed income community with 1,200 single family detached homes, town houses and apartment units, day care and community facilities, and a new neighborhood shopping center with 125,000 square feet of space including a supermarket.

Coupled with the similar Addison Road Shopping Center immediately east of the area, the Capital Gateway offerings will mean that the site is well served by neighboring retail amenities. Less than four miles to the east, the thriving recently completed Boulevard regional shopping area at Largo Town Center provides even greater retail choice and entertainment opportunities reachable by Metro.

Location advantages

The Capitol Heights station is served by Metro's Blue Line. The station is approximately 20 minutes from downtown Washington and 10 minutes from Largo Town Center.

Average weekday Metrorail ridership at this station is 4,071. On-site Metrobuses include Routes 96, 97, A12 (Sundays), F14, U8 and The Bus Routes 24 and 25, which provide service to close-in Prince George's County and the District of Columbia.

There is direct vehicular access via Davey Street to East Capitol Street/Central Avenue (Maryland Route 214) and Southern Avenue, District of Columbia and Prince George's County arterials. The Capital Beltway (I-495) is 3.5 miles from the site via Central Avenue. Downtown Washington by way of East Capitol Street is about six miles. East Capitol Street is a busy arterial, carrying on average 24,000 vehicles per day.

Zoning

The bulk of the site, including the largest parcel, is zoned C-O permitting business offices and professional, clerical or administrative services, along with supporting retail. Building height and bulk in a C-O zone are controlled by setbacks from the property line which typically range from 20 to 50 feet. Parking requirements vary depending on the size of the building; however, reductions in required parking may be obtained due to proximity to the Metrorail station. Some 2.8 acres on the east end of the large parcel and the .7-acre eastern parcel are zoned R-55 (single-family residential), and the .4-acre western parcel is zoned C-S-C (Commercial Shopping Center).

The Maryland-National Capital Park and Planning Commission (M-NCPPC) has prepared a draft Transit Development Overlay Zone for the site to be presented at a public hearing in September 2006. This zone will allow for a greater density on the site.

Special considerations

Consultants to M-NCPPC have prepared a final draft Capitol Heights Metro station charrette report, which will contain a detailed TOD concept for the station area presented to the local community earlier in 2006. The report will recommend medium- to high-density mixed-use development at the Metrorail station, the transformation of Old Central Avenue into a new "Main Street" with retail/office uses, and a proposed new civic center for the Town of Capitol Heights. M-NCPPC staff have begun preparing an initial draft Capitol Heights Preliminary Transit District Development Plan (TDDP). They will incorporate the recommendations of the charrette report in the draft; the TDDP will be completed by mid-2007.

The Capitol Heights TDDP is one of three components of the Central Avenue Corridor Planning Project. Capitol Heights is the western anchor of the corridor. With the assistance of WMATA consultants and M-NCPPC staff, this project has produced not only a new draft TDDP for the Capitol Heights Metrorail station area but also an overall development strategy for the Central Avenue Corridor study area which includes the Capitol Heights, Addison Road-Seat Pleasant and Morgan Boulevard Metrorail stations. A public facilities implementation plan for the Greater Central Avenue Study Area will be completed shortly.

Metro facilities displaced by development must be replaced on-site. Surface parking may be replaced, for example, in a structure convenient to the station. WMATA Facilities should be replaced in conformance with WMATA Design Criteria (Release 7) dated March 2006. If the chiller plant/

power substation is to be displaced, service must continue until the replacement is activated. Any construction next to the train tunnel and station would need to be coordinated with WMATA requirements for adjacent construction in order to ensure the integrity of WMATA Facilities.

The four bus bays are at 66 percent capacity and need to be maintained in order to allow for added service to the burgeoning development in the area. The location of the bus bays and Kiss & Ride area may be realigned; however, any realignments that affect the access from the adjacent roads must be closely coordinated with local and state transportation agencies and WMATA.

Jurisdictional contacts and incentives

The property is located within a State of Maryland designated Enterprise Zone which entitles businesses locating in the area to property tax credits, income tax credits, access to a state venture capital loan guarantee fund, and special provisions for industrial loans and incentives by Prince George's County. Further information may be obtained from the Prince George's County Economic Development Corporation at 301-429-3044, the Town of Capitol Heights at 301-336-0626 and the Prince George's County Planning Board of the Maryland-National Capital Park and Planning Commission at 301-952-3595. Useful links are <http://www.mncppc.org/pgco> and <http://www.goprincegeorgescounty.com/governmentagencyindex/ecodevelopment/>.

NAVY YARD CHILLER SITE (HALF AND L STREETS SE)

JDS 06-3

NAVY YARD METRORAIL STATION (NEW JERSEY AVENUE AND M STREET SE)

JDS 06-4

NOTE: Offers will be accepted on one or both sites.

Site profile

The two Navy Yard Metrorail station area parcels being offered are located north of M Street in Southeast Washington, D.C. An approximately 4,400 square foot parcel containing WMATA's eastern Navy Yard Metrorail station entrance is at the northwest corner of New Jersey Avenue and M Street. An approximately 14,100 square foot parcel containing a WMATA chiller plant that serves the Navy Yard station is located at the southwest corner of Half and L streets.

The sites are connected via South Capitol Street to the metropolitan area's major Interstates: 295, 395, 495 and 95. The Navy Yard Metrorail station is on WMATA's Green Line which terminates at

Branch Avenue in Maryland to the south and Greenbelt in Maryland to the north.

Existing WMATA improvements include the station entrance, with escalators and an elevator, at New Jersey Avenue and M Street. The chiller plant occupies a great part of the larger site at Half and L streets.

All utilities are available.

Area and amenities

Nearby Southeast Washington is poised for dramatic redevelopment, and the Navy Yard parcels are well positioned to benefit from the substantial public investment and planning that is leading the revitalization of the surrounding area. Located about ten blocks from the U.S. Capitol to the north and a few blocks from the Anacostia River to the south, the Navy Yard station environs had been





long characterized by light industrial use with some small scale residential and retail activity. However, the renaissance of this area, now in full swing, began earlier in the decade with the transfer of some 5,000 federal jobs into the Washington Navy Yard located at Eighth and M streets. At the same time, the U.S. General Service Administration developed a mixed-use plan for the 44-acre Southeast Federal Center, along the Anacostia River several blocks east of the Navy Yard site. This development is being undertaken by private development firms. The Federal Center site includes the new U.S. Department of Transportation headquarters, whose construction is nearly complete, and will also have residential, retail and office development. The Southeast area will also benefit from a Hope VI project underway that is rebuilding the Arthur Capper/Carrollsborg Dwellings public housing project, north of M Street between Third and Fifth streets, as a mixed-income housing community.

Of most recent significance, the Council of the District of Columbia has passed legislation enabling the financing and construction of a new major league baseball stadium scheduled to open

in April 2008. The approximately 40,000-person stadium will be located in an area bounded by N, First and South Capitol streets and Potomac Avenue. Site clearance for the stadium is well underway. The Anacostia Waterfront Corporation, also created through District of Columbia legislation, is responsible for the planning and redevelopment of the Ballpark District surrounding the stadium through public-private partnerships. The Corporation envisions up to 3,000 dwelling units, 800,000 square feet of retail-entertainment use and up to 1.6 million square feet of office space in the Ballpark District.

As a result of these initiatives, recent private sector focus on the area has spurred construction of a number of office buildings and a hotel/residential complex. Other projects are in planning stages or under construction in what has become one of the hottest development areas in metropolitan Washington.

Location advantages

Green Line Metrorail service allows riders to reach downtown Washington in approximately 15 minutes. Weekday Metrorail ridership at this

station averaged 6,406 passengers in May 2006. The parcels are also served by Metrobus routes A42, A46, A48, P1, P2, N22, V7, V8 and V9, which connect the site to downtown Washington and neighborhoods east of the Anacostia River.

Both sites are next to South Capitol Street which provides connections to Interstates 95, 295, 395 and 495 providing access to points throughout the Washington D.C. region. South Capitol Street and New Jersey Avenue also provide quick connections to downtown Washington and Capitol Hill only a few minutes away. The South Capitol Bridge is slated for replacement in the near future.

Zoning

The chiller plant parcel is zoned C-3-C. The eastern Navy Yard Metrorail entrance is zoned CG/C-3-C. CG represents the Capitol Gateway overlay zone, enacted in a December 2004 order by the District of Columbia Zoning Commission. Within the CG zone along M Street SE, there is mandatory development review for mix of uses, architectural design and the quality of the landscaping and sidewalk treatment. The underlying C-3-C zone allows mixed use development, with a Floor Area Ratio (FAR) of 6.5 for commercial and residential use, up to 100 percent lot occupancy and a maximum matter-of-right, standard height of 90 feet. However, each parcel is also in a receiving zone for TDR’s (Transfer of Development Rights) and can achieve bonus FAR’s of up to 10 (New Jersey Avenue and M Street) and up to 9 (Half and L streets). Also, the 90 foot height limit can be exceeded at the New Jersey Avenue site and reach 130 feet owing to the wide, 160-foot right-of-way of New Jersey Avenue.

SURROUNDING AREA AT A GLANCE		
Description	1 Mile Radius	2 Mile Radius
Population	21,983	87,917
Households (HH)	12,194	39,800
Average persons per HH	1.75	2.07
Average HH income	\$71,176	\$65,958
Median HH income	\$49,687	\$44,834
# of business establishments	2,113	9,003
Daytime employment	43,795	233,409

More information about the zoning districts, bonus densities and Zoning Commission Order No. 971, which created the CG overlay and rezoned the WMATA parcels south of M Street to CR, may be found at www.dcoz.dc.gov.

Special considerations

WMATA welcomes separate Proposals for its parcel at New Jersey Avenue and M street (eastern entrance to the Navy Yard station) and for its parcel at Half and L streets (chiller plant site). If you submit proposals for both sites, please be clear as to whether the proposals are separate or combined.

The chiller plant must be replaced onsite or at a location serving the Navy Yard station that is acceptable to WMATA.

Expansion of WMATA’s western Navy Yard station entrance at M and Half streets is planned in order to accommodate increased passenger volumes from new federal employees at the Navy Yard and Department of Transportation and from baseball patrons. WMATA staff may need to use the chiller plant site for construction field offices during the station expansion.

The Anacostia Waterfront Corporation has indicated a preference for the ground floor area

around WMATA's eastern entrance to be an attractive public plaza, complimenting the new development in the area. In this case, development on the parcel would largely occur above the street level.

Financial incentives and opportunities

The District of Columbia Office of Planning and the Anacostia Waterfront Corporation are working together on plans for the area surrounding the

proposed baseball stadium. The Office of Planning may be contacted at 202-442-7600. The Anacostia Waterfront Corporation may be reached at 202-406-4040. To learn about economic development programs which may be applicable to this area, contact the Deputy Mayor for Planning and Economic Development at 202-727-6365. Links for these organizations are www.dc.gov and www.anacostiawaterfront.net.

Part Two. Proposal Submission Requirements



SECTION 1: ADMINISTRATIVE AND CONTRACTUAL INFORMATION

1.1. Issuing Information

This JDS is issued in accordance with WMATA's Joint Development Policies and Guidelines, Revised July 21, 2005 and as may be further amended, which are available at MetroOpensDoors.com (click "About Metro," then click "Business opportunities" and "Joint development opportunities"). The sites in this solicitation are available primarily under a long-term lease, as WMATA's preference is to lease, rather than sell its property. If a sale is proposed, the Proposal must clearly demonstrate that a sale is more advantageous to WMATA than a long-term lease.

1.2. Purpose and Scope

This JDS is intended to provide interested Developers with sufficient summary information about WMATA's requirements to facilitate Proposal preparation. It contains instructions on Proposal content and format, but does not attempt to define all of WMATA's Joint Development contract requirements in detail. Certain contract requirements are not negotiable.

1.3. Amendments and Supplements to JDS

WMATA reserves the right to issue Amendments and/or Supplements to this JDS. If, after the Closing Date for submission of Proposals, WMATA issues an Amendment and/or Supplement, it will only be sent to Developers who submitted responsive Proposals for the specific Joint Development Site for which the Amendment and/or Supplement is being issued. Developers will be required to acknowledge in writing the receipt of an Amendment and/or Supplement.

1.4. Acceptance/Rejection of Proposals

This JDS does not commit WMATA to designate a Selected Developer or to enter into a Development Agreement. WMATA reserves the right to accept or reject any or all Proposals.

1.5. Acceptance of Terms and Conditions

By submitting a Proposal, a Developer is deemed to have agreed to and accepted all terms and conditions set forth in this JDS. Notwithstanding the foregoing, WMATA reserves the right to amend or modify any of the terms and conditions.

1.6. Selected Developer Status

A designation as Selected Developer for a Joint Development Site does not mean WMATA accepts the Proposal without further negotiation. Rather, the Developer's Proposal is the foundation for further negotiation and WMATA reserves the right to negotiate a Development Agreement with a Selected Developer containing benefits to WMATA that exceed those set forth in the Proposal.

1.7. Binding Agreement

An executed Development Agreement, approved by the WMATA Board of Directors, is the only binding commitment of and by WMATA with respect to a Joint Development Site. Designation of a Selected Developer, WMATA's agreement to a Term Sheet or any conduct or oral representations by WMATA shall not in any way constitute a binding obligation or commitment by WMATA. In submitting a Proposal, the Developer acknowledges it will have no legal or equitable right to, or interest in, any Joint Development Site except as set forth in an executed Development Agreement.

1.8. Schedule of Activities

Item	Date
JDS Issue Date	AUG 31, 2006
Pre-Proposal Conference	SEPT 18, 2006
Closing Date for Receipt of Written Inquiries	OCT 13, 2006
Closing Date for Proposal Submission	NOV 17, 2006
Meetings with Developers (if required)	FEB/MAR 2007
Final Proposals Due (if required)	MAR/APR 2007

1.9. Costs

WMATA shall not be liable for any costs incurred by a Developer and/or Development Team responding to this JDS or any costs incurred with respect to the negotiation of the Development Agreement and related final documentation.

1.10. Approvals

The designation of Selected Developer and the terms of a Development Agreement negotiated pursuant to this JDS are subject to the approval of the WMATA Board of Directors and the Federal Transit Administration of the U.S. Department of Transportation (FTA).

1.11. Pre-Proposal Conference

A Pre-Proposal Conference will be held on Monday, September 18, 2006 at 2 p.m. at WMATA Headquarters, 600 Fifth Street NW, Washington, D.C. in the lobby level meeting room. The Pre-Proposal Conference is intended to give Developers the opportunity to ask questions about the JDS and to request clarifications. Interested Developers are encouraged to attend the Pre-Proposal Conference, but attendance is not mandatory.

1.12. Inspections

Inspections of Joint Development Sites may be arranged by contacting 202-962-2395 to be directed to WMATA's Joint Development Coordinator.

1.13. Inquiries

Inquiries concerning this JDS are to be submitted in writing to:

Mr. Gary Malasky
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

The closing date for receipt of written inquiries is 3 p.m. on Friday, October 13, 2006. Any response to an inquiry will be in writing from WMATA's Contracting Officer. Oral explanations or responses are not binding.

1.14. Closing Date for Proposal Submission

One original and 15 copies of the Proposal must be received in a sealed package not later than 3 p.m. on Friday, November 17, 2006 (Closing Date) addressed as provided in Section 2.7.

1.15. Late Proposals

Any Proposal received by WMATA after the Closing Date shall be considered a Late Proposal. A Late Proposal may be accepted and evaluated by WMATA at the sole discretion of WMATA's Contracting Officer.

1.16. Jurisdictional and Community Participation Requirements

Prior to submitting a Proposal, Developers are required to meet with jurisdictional representatives (including designated staff of the State of Maryland) and interested community organizations to share information about a pending Proposal submission to WMATA and to seek their views. Failure to comply with this requirement may result in a Proposal's being rejected. A list of the jurisdictional representatives, locally elected officials and community organizations associated with each Joint Development Site may be found at MetroOpensDoors.com (click "About Metro," then click "Business opportunities" and "Joint development opportunities").

1.17. WMATA Facilities

WMATA Facilities are critical to the efficient operation of the transit system and must be accommodated in the site plan and are typically provided or replaced at the Selected Developer's expense. However, WMATA may elect to receive the cash value of WMATA Replacement Facilities and replace them itself. Further, if WMATA agrees to discount the value of the land to reflect the cost of replacing WMATA Facilities and the Developer is able to obtain another source of public subsidy for replacing the WMATA Facilities, then WMATA shall be entitled to receive 80 percent of the subsidy. This provision shall survive execution of the Development Agreement.

Under certain conditions, on a site-specific basis and where compatible with WMATA's revenue bond obligations, WMATA may consider an increase or reduction in the number of WMATA parking spaces. Any change in WMATA's policy of replacing each existing parking space requires the specific approval of the WMATA Board of Directors and the FTA.

SECTION 2: PROPOSAL PREPARATION/ FORMAT/CONTENT/SUBMISSION

2.1. General

To be considered, a Developer must submit a complete response to this JDS. WMATA encourages creative and innovative Proposals which promote Transit-Oriented Development consistent with local land use policies. Proposals should be straightforward and contain a concise delineation of the Developer's capability to satisfy the requirements of this JDS. Failure to respond with the requisite information may result in a Developer's being eliminated from consideration.

2.2. Proposal Submission Structure

Proposals must be submitted in two separate, 8.5" x 11" bound volumes with Volume 1 containing Technical Information and Volume 2 containing Economic Information.

The contents of each volume must comply with Section 2.3 and Section 2.4 of this JDS. Proposals should include the identical titles and numbering for each subsection as set forth in this JDS.

NOTE: No financial information is to be included or referenced in Volume 1.

2.3. Proposal Contents: Volume 1– Technical Information

A. Transmittal Letter—a letter signed by an officer authorized to make a binding commitment for the Developer which states that the Proposal is valid for a minimum of 180 days from the date of submission and that if

selected, the Developer will negotiate in good faith with WMATA.

- B. Completed Proposal Form (3 pages)—See ATTACHMENT A.
- C. Table of Contents.
- D. Executive Summary excluding all financial information (5 pages maximum).
- E. Development Team Information
 1. A description of the Developer and the proposed Development Team and the role of each principal member.
 2. A statement that the Developer has the power and authority to enter into a Development Agreement and all final documentation as required by WMATA without the consent or joinder of any other party or authority.
- F. Development Entity
 1. A description of the Developer's business entity and, if a different entity will be formed, details of the structure of this other entity.
 2. A detailed description of how the Project's ownership and management will be structured.
- G. A proposed site plan and a description of land uses, including an explanation of how the Project complies with Transit-Oriented Development principles. Site plans must show:
 1. Pedestrian ways highlighted in yellow.
 2. Building height by number of stories.
 3. Approximate dimensions for WMATA Replacement Facilities.
 4. Approximate curb-to-curb width of all internal streets.

Additionally, one jpeg on a disk and one full color visual of the site plan at least 2' by 3' in size, must accompany the Proposal. The visual may be rolled up or mounted on poster board.

- H. An explanation of the anticipated impact that the Project will have, if any, on WMATA Facilities. If a reconfiguration or relocation of WMATA Facilities is being proposed, the Proposal must detail the location and general layout and, as appropriate, the pedestrian, bus, taxi, bicycle and private vehicular access to the reconfigured or relocated WMATA Facilities.

Additionally, Proposals must ensure the uninterrupted and unimpeded operation of WMATA Facilities throughout the construction period and after Project completion, and site plans should show this clearly. Plans for interim WMATA Replacement Facilities during the construction period must be detailed. All costs associated with a reconfiguration or relocation of WMATA Facilities will be borne solely by the Developer. WMATA's construction requirements are further described in Section 4.2.C.

NOTE: A reconfiguration or relocation of WMATA Facilities (including parking) may trigger public hearing requirements under the WMATA Compact.

- I. The proposed Project schedule, starting in April 2007, in Microsoft Project or similar format, which at a minimum includes the following tasks and milestones, if applicable:
1. Term Sheet negotiations (assume 150 calendar days from the Proposal submission);
 2. Approval of Selected Developer and Term Sheet by WMATA's Board of Directors (assume 30 calendar days from conclusion of Term Sheet negotiations);
 3. Development Agreement and final documentation negotiations and execution (assume 150 calendar days from Selected Developer and Term Sheet approval);
 4. Approval of Development Agreement and final documentation by WMATA's

Board of Directors (assume 30 calendar days from conclusion of Development Agreement negotiations);

5. Agreement(s) for the acquisition of parcels to be assembled with the Joint Development Site, if applicable;
 6. Concept plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);
 7. WMATA Compact public hearing, if applicable (allow 180 calendar days);
 8. Development plan preparation and approval, including interim WMATA Replacement Facilities plan (allow 30 calendar days for WMATA approval);
 9. Local and other governmental approvals and actions (zoning, site plan, alley closings, grants, etc., as applicable);
 10. Project financing approval;
 11. Schematic design and construction document preparation and approval (allow 25 business days for WMATA approval of 35 percent construction documents, 20 business days for WMATA approval of 65 percent construction documents, and 15 business days for WMATA approval of 100 percent construction documents);
- NOTE: If documents are not approved, WMATA comments must be addressed and resubmitted for approval.
12. Local permitting process;
 13. Construction of interim WMATA Replacement Facilities;
 14. Project construction period (per phase, if applicable);
 15. Initial occupancy; and
 16. Stabilization period.

- J. Zoning
1. The existing zoning classification and, if a change will be sought, the proposed zoning category.
 2. The permitted FAR (floor area ratio) or other density measure, and the proposed FAR or other density measure, as applicable.
- K. The proposed business relationship with WMATA and the proposed terms (lease, sale, etc.) including, but not limited to, the following:
- Lease** (WMATA preference is 60 years)
1. Identification of the portion of the Joint Development Site to be leased by location and approximate land area. (NOTE: The leased premises will exclude all WMATA Reserved Areas and Interests.)
- Sale**
1. Identification of the portion of the Joint Development Site proposed to be purchased in fee simple by location and approximate land area. (NOTE: The sale will exclude all WMATA Reserved Areas and Interests.)
 2. An explanation of why the Project should not be developed under a lease and why a sale is more advantageous to WMATA than a long term lease.
- L. A market analysis and marketing strategy for the proposed uses of the WMATA joint development site.
- M. A summary (specific financial analysis required in Economic Section) of the Project's impact on the tax base of the local jurisdiction as follows:
1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.
 2. Identification of the value of public facilities to be derived from the Project.
 3. The number of temporary jobs created during construction and the number of new permanent jobs created by the Project.
 4. Any other quantifiable economic benefits to the local jurisdiction to be derived from the Project.
- N. A statement identifying each of the community organizations that the Developer has met with and the meeting dates; the specific information that the Developer shared; the reaction of each community organization to the proposed development concept; the issues raised by each community organization; and how the Proposal addresses these issues. See Section 1.16.
- O. A statement describing the Developer's contact with local jurisdiction staff, (representatives' names and meeting dates) and the views and expectations of the local jurisdiction regarding the Project, including any existing or anticipated jurisdictional issues or concerns. See Section 1.16.
- P. A statement on whether the Project's feasibility is contingent on any local, state or federal government action or financial support (including a change in regulations; street or alley closing; funding, including guarantees and issuance of tax-exempt bonds; financing and credit enhancements; leasing of space; granting of access to the Joint Development Site; and the justification and process for obtaining government support).
- Q. Statements that:
1. The Project is compatible with local land use requirements.
 2. The Project will conform to all applicable federal, state and local laws, regulations and ordinances including all federal and relevant local environmental regulations.
- R. A quantitative analysis of the Project's beneficial effect on WMATA's total daily transit ridership. The analysis must be conducted in accordance with the study entitled *2005 Development Related Ridership Survey Final Report* which may be found at

MetroOpensDoors.com (click "About Metro," then click "Business opportunities" and "Joint development opportunities").

Developers should use Tables 4 and 7 as well as Figure 14 in preparing transit usage estimates for the office building components of their Proposals. However, Developers should note that the sample size for Table 4 "Suburban-Outside the Beltway" is very small and that the mode splits for sites of this type should take into account surrounding land uses, i.e., mixed-use and adjacent higher density uses generate more transit ridership.

Tables 10 and 11 and Figure 15 should be used in preparing transit usage estimates for residential components. Transit usage estimates for retail, hotel and entertainment components should be based on Table 15. Developers should note that the sample sizes for these uses were small and that the mode splits for site of this type should take into account surrounding land uses, i.e., mixed-use and adjacent higher density uses generate more transit ridership.

The analysis must include the number of incremental transit trips in both peak and off-peak periods generated by the Project. (Peak periods are generally defined as 6 to 9 a.m. and 4 to 7 p.m., Monday through Friday.) In addition to the Tables and Figures cited in the previous paragraphs, Developers will find Appendices C.1.1. (Table C-11), C.1.2. (Table C-18), C.1.3 (Tables C-23 and C-27) useful in generating peak and off-peak period estimates.

Additional information regarding the *2005 Development-Related Ridership Survey Final Report* may be obtained from Ms. Kristin Haldeman at 202-962-1848.

- S. A statement identifying the past, current or anticipated contractual or financial relationship of any member of the Development Team (including but not limited to the Developer, partners or co-venturers) with WMATA or any of its staff or Board Members. The Develop-

ment Team also must disclose any contractual or financial relationship which may give the appearance of a conflict of interest.

- T. The following information about Developer's previous projects:
 - 1. Illustrative materials on three recent successful projects of similar or comparable scope for which substantial financing was obtained.
 - 2. The sources and amounts of debt and equity capital that were raised in previous projects.
- U. A list of any projects on which the Developer, its parent company or any member of the Development Team has defaulted or declared bankruptcy and an explanation of each default or bankruptcy.
- V. Detailed information regarding any criminal indictments and felony or fraud convictions of the Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team.
- W. A statement indicating whether the Developer is willing to include Disadvantaged Business Enterprises (DBEs), as defined in Section 6, in its Project. WMATA encourages Developers to include DBEs and will assist Developers in identifying such firms.
- X. If the proposed Project consists of an assemblage of the WMATA Joint Development Site with adjacent property, a statement identifying the adjacent property ownership, and if the property owner and the Developer are not the same, an executed agreement between the property owner and the Developer defining the property owner's participation, if any, in the Project.
- Y. Any other information to assist WMATA in its evaluation of the Proposal, including a statement of why WMATA should select the Developer and its Development Team.

2.4. Proposal Contents: Volume 2— Economic Information

- A. Table of Contents
- B. Executive Summary of economic information only.
- C. The Developer's estimated fair market value of WMATA's land or interest, how the value was derived and the assumptions underlying the value.
- D. If the proposed business relationship with WMATA is a Lease (the term must be specified and preferably will be 60 years):
 1. A statement that the Developer will pay WMATA a nonrefundable option fee of \$100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the other payments, deposits and fees which WMATA requires.
 2. The amount and timing of pre-development rent to be paid to WMATA during the interval period after the Development Agreement is executed but before the Project produces income (include the estimated length of this period).
 3. The guaranteed base rent to be paid to WMATA throughout the term of the lease, including escalations. The description of escalations must include the method used to calculate escalations, their timing, and the projected amount of each escalation.
 4. The method of adjusting the base rent if it does not commence by the date projected and/or the final approved density is greater than that proposed.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

5. How any environmental remediation costs will be handled.
6. WMATA's participating share of gross income from the Project.
7. WMATA's share of proceeds from a capital event such as an assignment of the leasehold interest, transfer of interest in the Developer's business entity, refinancing or sale of the Project, or any other capital event after construction.
8. Identification of any additional payments to WMATA based upon factors chosen by the Developer.
9. Provision for increasing rent once WMATA Replacement Facilities have been amortized.
- E. If the proposed business relationship with WMATA is a Sale:
 1. A statement that the Developer will pay WMATA a nonrefundable option fee of \$100,000 for the right to negotiate a Development Agreement upon designation as Selected Developer and approval of the Term Sheet. This fee is separate and distinct from the purchase price and the other payments, deposits and fees WMATA requires.
 2. The amount and timing of pre-development fees to be paid to WMATA during the interval period after the Development Agreement is executed but before WMATA realizes income from the sale (include the estimated length of this period).
 3. The proposed purchase price for each portion of the Joint Development Site including:
 - a. The schedule of purchase price escalations if the sale is not completed by the date projected.

WMATA expects that the present value of its financial return will not be diminished by delays in the development process.

b. The method of adjusting the purchase price if the final approved density is greater than that proposed.

4. How any environmental remediation costs will be handled.

5. Proposed business arrangement under which WMATA will retain an interest in any development rights in excess of those used by the development constructed pursuant to the Proposal. Under such an arrangement, WMATA will receive payments over and above the purchase price if, upon subsequent redevelopment of the Joint Development Site within 25 years of closing, the redeveloped density is greater than the original density.

6. Identification of any additional payments to WMATA based upon factors chosen by the Developer.

F. A summary table of the sources (including debt, equity and other financing) and uses of funds to design and construct the Project.

G. A 15 year pre-development, construction and operating period cash flow statement which starts in April 2007. It should include each separate phase of development and land use type by phase and contain at a minimum:

1. The following assumptions:

Financing

Construction loan rate, term and amount

Permanent loan rate, term and amount

Loan-to-value ratio

Equity as a percentage of total construction costs

Revenues

Office rent (\$/GSF and #GSF)

Retail rent (\$/GSF and #GSF)

Residential (\$/DU and #DU)

Parking

Other revenues

Construction Costs

Total hard costs

Total soft costs (also as a percentage of total hard costs)

Cost of improvements on a unit basis (\$/FAR SF for office and retail, \$/DU, \$/TH)

Cost per structured parking space

Cost per surface parking space

Cost of any WMATA garage or other WMATA Replacement Facility (broken out separately)

Land value per SF

Land value per FAR SF

Ground rent to WMATA

Operating Costs

Operating Expenses (in \$, \$/GSF and as a percentage of revenues)

2. The following line items presented as a pro forma on an annual basis:

Sources

Equity

Construction Financing

Permanent Financing

Other Financing

Total Financing

Revenues

Office

Residential

Retail

Parking

Other Revenues

Total Gross Revenues

Total Net Revenues (less vacancy)

Uses

WMATA Rent or Sales Price (as applicable)

Construction Costs

Soft—by line item

Hard—by line item

Total

Operating Expenses (all non-debt

Operating Costs, e.g.: direct costs,

G&A, taxes, legal, marketing, commissions, etc.)
 Net Operating Income
 Debt Service (including any fees or expenses associated with loans)
 Net Cash Flow (defined as revenue less operating expenses, debt service and ground rent to WMATA if applicable)
 Percentage Rent to WMATA
 Distributions to Investors
 Free Cash Flow

Returns

Developer’s Internal Rate of Return
 Return on Investment
 Return on Equity

NOTE: The pro forma (and any budgets in other parts of the Proposal) should clearly show all of the fees and income that the Developer, its partners and affiliates receive from the Project. Those line items should be taken from the pro forma and shown together on the spreadsheet as individual line items in a separate report. Annual replacement reserves (total, \$/GSF and \$/DU) should also be broken out and shown.

- 3. The analysis must be presented in current dollars with an annual escalation rate of three percent.
- 4. All financial models must be submitted to WMATA on disk as well as hard copy. All financial information must be linked in a single spreadsheet, and all files must be in Microsoft Excel and retain all cell relationships.
- H. A detailed financial analysis, with assumptions given, of the Project’s impact on the tax base of the local jurisdiction as follows:
 - 1. Identification of the property taxes, sales taxes, amount of fees and contributions and other local public income.
 - 2. Identification of the value of public facilities to be derived from the Project.

- 3. The number of temporary jobs created during construction and the number of new permanent jobs created by the Project.
- 4. Any other quantifiable economic benefits to the local jurisdiction to be derived from the Project.

- I. Copies of Developer’s balance sheets, income statements and sources and uses of funds statements for the past three fiscal years.
- J. Statements regarding the Developer’s financial creditworthiness and past development experience which can be verified, including the following:

The names and addresses of at least three commercial or institutional credit references and a letter authorizing each credit reference to respond to inquiries from WMATA. At least two of the references should be lending institutions.

2.5. Proposal Security

Each Proposal must be accompanied by Proposal Security in the amount of \$100,000. (Alternative Proposals for the same Joint Development Site require only one Proposal Security.) Acceptable forms of Proposal Security include a proposal bond in the form set forth in ATTACHMENT B, a bank letter of credit in the form set forth in ATTACHMENT C, a cashier’s check, certified check or money order. All Proposal Security must be drawn on a U.S.-based national bank and contain the following:

At the top of Proposal Security document, insert the JDS Number _____ and the Joint Development Site _____.

WMATA will hold all funds that can be deposited into a financial institution in an interest-bearing account, and interest will be paid on such funds. No later than 15 business days after the WMATA Board of Directors identifies and approves the Selected Developer for a specific Joint Development Site, the Proposal Security will be returned to

all Developers other than the designated Selected Developer. WMATA shall retain the designated Selected Developer's Proposal Security until a Development Agreement is executed and provisions are made with respect to the disposition of the Proposal Security in the Development Agreement.

2.6. Multiple or Alternative Proposals

A Developer may submit multiple Proposals. Each Proposal must be separately identified and submitted in accordance with the terms of this JDS and must include the requisite Proposal Security. If a Developer submits alternative Proposals for the same Joint Development Site, only one Proposal Security is required.

2.7. Submission of Proposal

A complete Proposal shall include the items set forth in Section 2.3. and Section 2.4. and the requisite Proposal Security. On or before the Closing Date, one original and 15 copies of the Proposal (marked Proposal in response to JDS Number____) must be submitted in a sealed package, addressed and mailed or delivered in person to:

Mr. Gary Malasky
Contracting Officer
Office of Property Development
and Management
Washington Metropolitan Area
Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

SECTION 3. PROPOSAL REVIEW, EVALUATION, DEVELOPER SELECTION AND POST DEVELOPER SELECTION PROCESS

3.1. Proposal Review Process

WMATA will review and evaluate Proposals as follows:

- A. The Contracting Officer receives and processes all Proposals. Proposals that in WMATA's sole and non-reviewable discretion are deemed nonresponsive or not reasonably susceptible of being selected for award will be rejected and returned to the Developer with a written explanation. Please note that any Proposal that does not satisfy the requirements for jurisdictional officials and community organization participation may be rejected as technically unacceptable and returned to the Developer. WMATA reserves the right to accept or reject any Proposal without negotiation or discussion.
- B. The Contracting Officer designates an Evaluation Team composed of WMATA's Joint Development staff assisted by other WMATA staff, jurisdictional representative(s) and consultants, as appropriate. An analysis and evaluation of each Proposal deemed to be reasonably susceptible of being selected for award is conducted.
- C. The Evaluation Team may meet with all or select Developers for both an oral presentation and specific discussions about a Proposal. If such meetings are held, details on the oral presentation will be provided as part of the scheduling process. Such discussions will include identifying areas of the Proposal that require clarification or improvement including architectural and engineering designs and drawings, or do not comply with the JDS.
- D. If requested by WMATA, Developers submit Final Proposals. The Final Proposal may be significantly changed from the Initial Proposal submitted. WMATA reserves the right to waive the Final Proposal submission requirement, to request further clarification of a Final Proposal or to request a Revised Final Proposal.
- E. The Evaluation Team will, in coordination with the Contracting Officer, rate each responsive Proposal and rank it based upon the Proposal Evaluation Factors in Section 3.2. The Evaluation Team will then forward its ranking to the Contracting Officer, who will decide to tentatively designate a Selected Developer. The Joint Development project manager will commence negotiation of a Term Sheet. If

negotiations are unsuccessful, the Joint Development staff, in coordination with the Contracting Officer, may terminate negotiations and commence negotiations with the second ranked Developer and those ranked thereafter, in order of ranking. Alternatively, the Joint Development staff may, in coordination with the Contracting Officer, decide upon competitive negotiations with two or more ranked Developers.

- F. As soon as the principal business terms for the tentatively Selected Developer's Project have been reduced to a Term Sheet, the Contracting Officer submits a recommendation regarding the designation of a Selected Developer and approval of the Term Sheet to WMATA's Real Estate Committee and to the WMATA Board of Directors.
- G. Designation of a Selected Developer must be approved by the WMATA Board of Directors.

3.2. Proposal Evaluation Factors

Each Proposal will be evaluated using FTA's requirements for "Highest and Best Use" or "Highest and Best Transit Use" (see www.fta.dot.gov/library/policy/9300.1A/appenB.htm) and the following criteria:

- A. Technical Criteria
 - 1. Degree to which the Project reflects Transit-Oriented Development principles;
 - 2. The market viability of the Project;
 - 3. The experience and prior performance of the Developer and Development Team;
 - 4. The innovation and creativity of the Project;
 - 5. The compatibility of the Project with local Transit-Oriented Development plans and land use policies; and
 - 6. Benefits accruing to the local jurisdiction.

- B. Economic Criteria
 - 1. Financial benefits accruing to WMATA;
 - 2. Financial viability of the Project; and
 - 3. Enhanced ridership.

3.3. Post Developer Selection Process

- A. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to send a letter to each of the community organizations with which its representatives met to inform them as to how the Proposal presented to WMATA addresses their issues or concerns. A copy of this letter must also be submitted to WMATA.
- B. A Developer designated by the WMATA Board of Directors as a Selected Developer will be required to pay WMATA, in immediately available funds, a nonrefundable option fee for WMATA's granting to the Selected Developer the exclusive right to negotiate a Development Agreement. The amount and timing of the nonrefundable option fee shall be as set forth in the Proposal (or Final Proposal, as the case may be), in accordance with Section 2.4.
- C. After WMATA's Board of Directors has designated a Selected Developer and approved the Term Sheet, WMATA staff, in coordination with the Contracting Officer, will negotiate with the Selected Developer a Development Agreement (and other necessary final documentation) that incorporates the provisions of the Term Sheet. Such Development Agreement shall be completed within 150 days following the WMATA Board's designation of the Selected Developer and approval of the Term Sheet.

In the event that this schedule is not met, the Selected Developer designation expires, the Proposal is no longer viable and

WMATA may retain the Proposal Security (in addition to the nonrefundable option fee) in accordance with Section 5.2. WMATA may choose to reestablish the Selected Developer designation and provide a specific time frame to the Selected Developer for the completion of negotiations or to re-advertise the Joint Development Site.

- D. As soon as the Development Agreement (and related final documentation) is completed and executed by the Developer, the Contracting Officer submits a recommendation and summary of the final Development Agreement to WMATA's Real Estate Committee and to the WMATA Board of Directors for approval. There is no binding agreement between the Selected Developer and WMATA until such time as the WMATA Board of Directors has approved the final Development Agreement and the Development Agreement has been executed by both parties.

3.4. Disclosure and Use of Data

WMATA is required to brief its Board of Directors on all aspects of a Proposal. The proposed business terms of a Proposal will be held in confidence only until the Development Agreement and all final documentation have been approved and executed. WMATA reserves the right to review the zoning and land use aspects of any Proposal with local zoning, land use planning, transportation and environmental officials (and in the State of Maryland, with state officials). Additionally, at the sole discretion of the WMATA Board of Directors, such review may include conducting public hearings, town meetings and similar public forums.

NOTE: WMATA's "Public Access to Records Policy" is available at MetroOpensDoors.com (click "About Metro," then click "Public access to records policy").

SECTION 4. WMATA'S NON-NEGOTIABLE REQUIREMENTS AND CONDITIONS

The following requirements and conditions are nonnegotiable and the concepts will be included

in the Development Agreement and final documentation executed by the Selected Developer and WMATA. By submitting a Proposal in response to this JDS, a Developer is agreeing to accept and comply with these nonnegotiable requirements and conditions.

4.1. WMATA's Reserved Areas and Interests

The location of WMATA's Reserved Areas and Interests shall be determined by WMATA in its sole and absolute discretion. Additionally, the conveyance or lease of any WMATA property shall be subject to a reservation by WMATA of a permanent, exclusive and irrevocable easement for vertical and horizontal support and as otherwise necessary for the operation and maintenance of present and future WMATA Facilities, WMATA Improvements and WMATA Reserved Areas and Interests.

4.2. WMATA's Approval Rights and Adjacent Construction Requirements

The following rights and requirements apply to all Projects:

A. Approval Rights

WMATA shall have the right to approve in its sole and absolute discretion:

1. Matters that affect the integrity, functionality, efficiency, safety, operation, maintenance, legal compliance, cost or profitability of WMATA's business, customers, operations or activities;
2. Matters that affect WMATA Facilities, WMATA Replacement Facilities, WMATA Reserved Areas and Interests, ingress/egress to WMATA Facilities, etc.;
3. Matters that affect any of WMATA's adjacent property;
4. The design and construction of interim and permanent WMATA Replacement Facilities; and
5. Matters that affect the Selected Developer's obligations as they relate to timing (changes in Project schedule) and

performance (changes in what will be constructed, i.e., the product mix).

B. WMATA's Comment Rights

WMATA shall have the right to comment on the development plan/site plan and on other matters concerning the Project which do not affect the integrity, functionality, efficiency, safety, operation or maintenance of WMATA Facilities, WMATA Improvements or WMATA Reserved Areas and Interests. The Selected Developer shall be obligated to consider WMATA's comments and to respond reasonably.

C. WMATA's Construction Requirements

In order to avoid adverse impact on WMATA Facilities, Projects must be built in compliance with WMATA's adjacent construction criteria as contained in WMATA's Adjacent Construction Design Manual, Revision I and as further revised, and WMATA's Manual of Design Criteria (Release 7), which are available by calling 202-962-2395 to be directed to the Joint Development Coordinator. Additionally, Developers must comply with WMATA's requirements for the relocation and maintenance of operations during construction which include the uninterrupted and unimpeded operation of WMATA Facilities. WMATA will review and approve Developer plans in accordance with established WMATA procedures.

4.3. Relocation or Replacement of WMATA Facilities

If a Project requires the relocation or replacement of any WMATA Facility, on a permanent or interim basis, the cost shall be borne solely by the Selected Developer. No WMATA Facility may be taken out of service unless a permanent or interim replacement facility is already available, such that there will be no disruption to WMATA operations. Any exception to this requirement is subject to the specific approval of the WMATA Board of Directors. WMATA shall own and operate any perma-

nent relocated or replaced WMATA Facility. Additionally, the configuration of the relocated or replaced WMATA Facility must be agreed to by WMATA in writing.

4.4. Selected Developer's Funding of WMATA Compact Public Hearing

A change in WMATA Facilities (including parking) may trigger a public hearing requirement under the Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended (WMATA Compact). The Selected Developer will be required to contribute \$50,000 towards the cost of the WMATA Compact public hearing, payable 60 calendar days prior to the date of the public hearing. If WMATA's actual public hearing costs are less than the aforesaid amount, WMATA will credit the remaining funds to the outstanding amount that it is owed by the Selected Developer.

4.5. No Subordination of WMATA's Fee Interest

WMATA will not subordinate its fee interest in its property. In a lease situation, WMATA will permit lenders to have a leasehold security interest in the Project, which security interest would be subordinate to WMATA's right to terminate the lease upon a default by the Selected Developer (subject to the lender's right to cure).

4.6. Federal Transit Administration (FTA) Requirements

WMATA is subject to the requirements of the Federal Transit Administration (FTA). The terms of the Development Agreement negotiated with the Selected Developer, as it pertains to WMATA property, are subject to FTA approval. While FTA may impose additional requirements which cannot be known until FTA reviews a specific Project, FTA requires that the Selected Developer comply with certain laws and regulations barring discrimination on the basis of race, color, national origin or disabilities; and further requires compliance with FTA requirements regarding conflicts of interest and debarment.

FTA also requires, as a covenant running with the land, that the entire Joint Development Project constitute a Transit-Oriented Development as defined in the latest applicable FTA Regulations. See FTA Circular 9300.1A, Appendix B, The Relationship Between Joint Development and Livable Communities on the FTA web site at www.fta.dot.gov/library/policy/IFT/iftb.html.

4.7. Americans With Disabilities Act (ADA)

All Projects shall be constructed in compliance with Titles II and III of the Americans with Disabilities Act, 42 USCA Section 12101, et seq., as amended, and any regulations promulgated thereunder. Proposals must include a plan indicating how access from the Project to the Metro station will be provided for persons with disabilities. Additionally, if a Project or any subsequent addition, modification or alteration triggers ADA-related improvements to the Metro station, the Selected Developer shall be responsible for the costs of such improvements. The only exceptions are when the ADA-related improvements predate the date of completion of the Project and are required to be made regardless of the Project, or constitute ADA-related improvements that WMATA is implementing at Metro stations in general as part of its systemwide improvements or alterations.

4.8. Direct Connections

If a direct connection to a Metro station is part of the overall Project, then in accordance with Section 4.6, FTA may determine that the National Environmental Policy Act, 42 USCA 4321, et seq., as amended, is applicable to the Project. Additionally, the following laws and their implementing regulations are also applicable to a direct connection:

- A. Rehabilitation Act of 1973, 29 USCA Section 794;
- B. Architectural Barriers Act, 42 USCA Section 4151, et seq.; and
- C. Planning and Design for the Elderly and Handicapped, 49 USCA Section 5301, et seq.

4.9. Davis-Bacon Act/Fair Labor Standards Act

The construction of any WMATA Replacement Facility or WMATA Improvement must be built in compliance with the Davis-Bacon Act, 40 USC Section 276a, et seq., and overtime compensation must be paid in compliance with Section 64 of the WMATA Compact, and the Fair Labor Standards Act, 29 USCA Section 201, et seq. (1978), as amended.

4.10. Other Laws, Regulations and Requirements

Developers are responsible for being fully informed of and complying with the requirements of applicable federal, State of Maryland, District of Columbia, Commonwealth of Virginia, and local jurisdictional laws and regulations. Additionally, the Selected Developer shall be responsible for obtaining, at its own cost and expense, all requisite approvals, licenses and permits.

4.11. WMATA's Indemnification Policy

The terms of any Development Agreement and final documentation will require that the Selected Developer and its contractors and subcontractors (and subtenants, where applicable) indemnify WMATA against all claims, liabilities and costs of whatsoever kind and nature including environmental claims which may be imposed upon, or incurred by, or asserted against WMATA in connection with the Selected Developer's performance under the Development Agreement or related agreements.

WMATA will accept financial responsibility for environmental damage to the site caused by WMATA prior to the transfer of the site to the Selected Developer.

4.12. WMATA's Insurance Requirements

The terms of any Development Agreement and final documentation will require that the Selected Developer, its contractors and subcontractors procure and maintain insurance coverage in amounts determined by WMATA, which may

include, but is not limited to General Liability, All Risk Property, Builder's Risk, Worker's Compensation, Automobile Liability, Contractors' Pollution Legal Liability, Railroad Protective Liability, Rental Value Insurance, Professional Errors and Omissions Liability and Boiler and Machinery (during operations only).

4.13. Payment, Performance and Completion Bonds

WMATA requires that the Selected Developer secure and file with WMATA a payment bond equal to 100 percent of the value of each phase of the Project from a federally approved surety company, with sufficient assets. The payment bond must name WMATA for the benefit of laborers, subcontractors, material suppliers and others that have or may have claims or liens against the Project or the realty.

WMATA also requires the Selected Developer to secure and file with WMATA a performance bond equal to 100 percent of the value of each construction phase of the Project from a federally approved surety company with sufficient assets and which bond names WMATA for the completion of the planned construction in that phase.

Additionally, if there are WMATA Replacement Facilities being constructed, WMATA requires the Selected Developer to secure and file with WMATA a completion bond equal to 100 percent of the value of the WMATA Replacement Facilities from a federally approved surety company, with sufficient assets, and which bond names WMATA as the sole obligee for the completion of the WMATA Replacement Facilities.

All bonds must be in a form acceptable to WMATA and countersigned by a Commonwealth of Virginia, State of Maryland or District of Columbia resident agent of the surety, with a copy of the agent's license, as issued by the appropriate Insurance Commissioner.

4.14. WMATA's Disclaimer of Liability

WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides.

4.15. Inspection of Accounting Records

The Selected Developer will be required to permit WMATA, or any of its duly authorized representatives, at reasonable times and places, access to any books, documents, papers and records, including certified financial statements, which are directly pertinent to the Development Agreement. WMATA shall be permitted to audit, inspect, examine, copy and transcribe such books, documents, papers and records. The Selected Developer shall retain all records for three years after submission of any statement required for determining any variable payment obligations under the Development Agreement or related agreements.

4.16. WMATA's Tax Exempt Status

WMATA is tax exempt pursuant to the WMATA Compact. Any taxes, assessments or impositions on the Project or the real estate shall be assumed by the Selected Developer. In no event shall the Selected Developer assert or attempt to assert for its own benefit, an exemption or immunity available to WMATA under the WMATA Compact.

4.17. Financing Requirement

The Selected Developer shall be obligated to obtain the requisite financing to consummate the lease/sale of the WMATA Joint Development Site, and the development, construction and final completion of the Project by a reasonable date certain, or WMATA may terminate the Development Agreement.

SECTION 5. ADDITIONAL JOINT DEVELOPMENT REQUIREMENTS AND PROCEDURES

5.1. Assignment of Proposal, Change in Developer or Withdrawal of Developer

WMATA considers the designation of Selected Developer to be in the nature of a personal services contract. The Selected Developer will be designated because of its skills, experience, knowledge and financial standing.

A Developer who submits a Proposal in response to this JDS may withdraw, assign its Proposal or change the composition of its Development Team only as follows:

A. Withdrawal of Proposal

At any time prior to designation of the Selected Developer, a Developer may elect to withdraw its Proposal. Under such circumstances, WMATA shall return the Proposal Security without interest.

B. Assignment of Proposal

At any time prior to designation of the Selected Developer, a Developer may request WMATA's approval to assign its Proposal to another development entity. No purported assignment is valid unless WMATA has given its prior written approval. The Developer and its proposed assignee shall submit all documents required by WMATA before the request will be considered. WMATA is under no obligation to approve the request. If WMATA refuses to grant approval, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest. An assignment may be subject to the requirement of a Guaranty pursuant to Section 5.7.

C. Change in Composition of Developer or Development Team

1. Prior to designation of the Selected Developer, a Developer may change its composition or the composition of its Development

Team only with WMATA's prior written approval. If WMATA does not approve the change, and the Developer does not want to proceed in accordance with its Proposal, WMATA will return the Proposal Security without interest.

2. After designation as the Selected Developer, the Selected Developer must request WMATA's written approval to change its composition or the composition of its Development Team. If WMATA does not approve the change and the Selected Developer does not want to proceed in accordance with its Proposal, WMATA may terminate the Selected Developer designation and retain the Proposal Security.

D. Other Situations

An assignment or change in the composition of the Development Team which is not addressed above is at the sole discretion of WMATA's Contracting Officer. For any such assignment or change to be valid, WMATA's prior written approval is required. Any purported assignment occurring without WMATA's prior written approval shall be void.

5.2. Termination of Selected Developer Designation

WMATA may terminate the Selected Developer designation for any of the following reasons and retain the Proposal Security and any other deposit held by WMATA (except as stated otherwise in subsections I and J):

A. The Selected Developer fails to negotiate and execute the Development Agreement within 150 days following the designation of the Selected Developer and approval of the Term Sheet by the WMATA Board of Directors.

In the event that the foregoing schedule is not met, WMATA may terminate the designation of the Selected Developer and retain the Proposal Security without any liability or further obligation to the Selected Developer.

The foregoing deadlines can only be extended by action of the WMATA Board of Directors in its sole and non-reviewable discretion.

- B. The Selected Developer or any individual or entity holding ownership in or comprising the Development Team declares bankruptcy.
- C. The ownership structure of the Selected Developer changes without WMATA's prior written approval. Structural changes include changes in percentages of ownership interests or changes in ownership of any entity holding an ownership interest in the Selected Developer.
- D. The Selected Developer assigns its designation or transfers its rights in a WMATA Joint Development Site without WMATA's prior written approval.
- E. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is indicted for, or convicted of, a fraud or a felony.
- F. The Selected Developer or any principal, officer, director, partner, member, manager or equivalent of any person or entity constituting a member of the Development Team is found not to have a satisfactory record of integrity and business ethics, in WMATA's sole and non-reviewable discretion.
- G. The Selected Developer provided materially incorrect or incomplete information in any of its submissions to WMATA, as determined in WMATA's sole and non-reviewable discretion.
- H. The Selected Developer does not comply with this JDS, its Proposal or the terms of the Development Agreement as negotiated by the parties.
- I. In accordance with Section 5.5, the Selected Developer conducts environmental due diligence and consequently modifies its Proposal in a manner which is unacceptable to WMATA. Under such circumstances, WMATA shall return

the Proposal Security with any interest that may have accrued, except for site restoration costs actually incurred by WMATA.

- J. WMATA determines (in its sole and non-reviewable discretion) that termination is in its best interest. Under such circumstances, WMATA shall return the Proposal Security with any interest that may have accrued.

5.3. Metro Station Access Roads and Interior Maintenance Roads

WMATA's Metro station access roads and interior maintenance roads are owned, maintained and improved by WMATA. Any anticipated use of such roads by a Project must be addressed in the Proposal. WMATA reserves the right to reject shared use of its roads if detrimental to its operations.

5.4. Developer's Research Obligations

A Developer is expected to know all information reasonably ascertainable concerning the site size, and character, quality and quantity of surface and subsurface materials or obstacles on the Joint Development Site as well as the existing utilities on the Joint Development Site. Some of this information is available from a visual inspection of the Joint Development Site and may be available from technical drawings and specifications (as built drawings) which WMATA will make available upon request, utility companies serving the area and local land records. WMATA disclaims all responsibility and liability for the completeness or accuracy of any information that it provides. All Joint Development Sites are subject to existing physical and legal conditions, whether of record or not. Additionally, a Developer is expected to know the conditions affecting construction on the Joint Development Site, which include but are not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads, the topography and conditions of the ground, and the character of equipment and facilities needed before and during prosecution of the work.

5.5. Environmental Matters

WMATA has undertaken no comprehensive environmental investigations of the presence or absence of contaminated material or other environmental conditions that may affect development except as specifically identified in PART ONE. Interested Developers may request permission to perform a due diligence environmental site assessment prior to Proposal submission, after Proposal submission or after designation as the Selected Developer.

Such due diligence site assessment and all associated costs shall be the sole responsibility of the Developer. Permission will be granted by WMATA subject to the execution of a Right of Entry Agreement with standard insurance and indemnity provisions. A sample Right of Entry Agreement is available by calling 202-962-2395 to be directed to the Joint Development Coordinator.

WMATA shall be provided, in a timely manner, a copy of each test result and report addressing the environmental site investigation. If environmental contamination is found that requires a cleanup or remediation of the Joint Development Site under a governmental regulatory agency's review, the Developer may withdraw its Proposal (including its Final Proposal) but is responsible for site restoration costs. In the event that the due diligence environmental site assessment is performed after the designation of the Selected Developer, but prior to the execution of the Development Agreement, the Selected Developer and WMATA may negotiate the transaction based upon the levels of contaminated materials or other environmental conditions encountered which would substantially delay development or substantially increase the costs of excavation, removal or disposal of soil/materials or the treatment of groundwater. If the parties cannot agree upon the resolution of these issues, the Selected Developer may withdraw its Proposal but the Developer is responsible for site restoration costs, and WMATA has the corresponding right to terminate the Selected Developer designation in accordance with Section 5.2.1.

5.6. Protest Policy

The policy and procedure for the administrative resolution of protests involving the designation of a Selected Developer arising pursuant to this JDS are as follows:

- A. Only an Interested Party may submit a protest. An Interested Party is defined as a Developer who submitted a Proposal pursuant to this JDS.
- B. Protests must be submitted no later than 30 calendar days after WMATA's designation of the Selected Developer. Any protest submitted subsequent to this time may be deemed by WMATA's Contracting Officer to be untimely and denied on that basis unless the Contracting Officer concludes that the issue(s) raised by the protest involves fraud, gross abuse of the selection process, or otherwise indicates substantial prejudice to the integrity of the selection process.
- C. The Interested Party wishing to file a protest shall submit a written document to WMATA's Contracting Officer which contains the following:
 1. The name and address of the Interested Party;
 2. Description of the nature of the protest;
 3. Identification of the provision(s) of this JDS, applicable Joint Development Policies and Guidelines or laws upon which the protest is based;
 4. A statement of the specific relief requested; and
 5. Any documents relevant to the protest.
- D. WMATA's Contracting Officer shall carefully review the protest in consultation with WMATA staff. At the discretion of the Contracting Officer, a conference may be held with the Interested Party. The Contracting Officer shall have 30 calendar days to render a written decision on the merits of the protest. A determination by the Contracting Officer that a protest is meritorious may result in a change

in the terms, conditions or format of this JDS in the form of an Amendment; the rejection of a Proposal; the cancellation of this JDS; or the termination of the designated Selected Developer.

- E. This Protest Policy is not applicable to actions taken by WMATA in response to legal proceedings filed in the courts, or actions taken by WMATA in its sole and non-reviewable discretion.

5.7. Guaranty

WMATA may require a third party to guarantee some or all of the obligations of the Selected Developer, including but not limited to construction obligations.

SECTION 6: DEFINITIONS

Contracting Officer

WMATA's Managing Director of the Office of Property Development and Management or, if such position is vacant at the time in question, the person designated to act in such capacity at such time.

Developer(s)

The entity submitting or contemplating the submission of a Proposal in response to this Joint Development Solicitation (JDS). The Developer may be any qualified individual or entity with real estate development-related experience and access to financing sufficient to undertake the proposed Project including real estate brokers, nonprofit organizations, public agencies, etc. Real estate brokers are invited to participate as the Developer or as a member of the Development Team as opposed to participating in a purely marketing role. WMATA will not pay any broker's commissions.

Development Agreement

The legal document (lease, sales contract, combination lease/sale, master development agreement or other agreement) that constitutes the contract between WMATA and the Selected Developer.

Development Team

The Developer and the principal persons and/or entities (including officers, directors, partners, members, managers or the equivalent of such persons and/or entities) identified by the Developer as the participants in the Project.

Disadvantaged Business Enterprise (DBE)

For the purpose of Joint Development Projects, a DBE is a for-profit, small business concern that is owned and controlled (at least 51 percent) by one or more socially and economically disadvantaged persons. Socially and economically disadvantaged persons are persons who are citizens of the United States (or lawfully admitted permanent residents) and who are either:

- A. Black Americans (meaning persons having origin in any of the Black racial groups of Africa);
- B. Hispanic Americans (meaning persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin regardless of race);
- C. Native Americans (meaning persons who are American Indians, Eskimos, Aleuts or Native Hawaiians);
- D. Asian-Pacific Americans (meaning persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia or Hong Kong);
- E. Subcontinent Asian American (meaning persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka); or
- F. Women.

Evaluation Team

WMATA staff assigned by the Contracting Officer to analyze the Proposals and make recommendations.

Federal Transit Administration (FTA)

The federal agency within the U.S. Department of Transportation which administers the federal rules and regulations governing joint development programs and oversees other aspects of real property purchased with federal funds for transit purposes.

Final Proposal

If requested by WMATA, the final document or compilation of documents submitted by the Developer for analysis before the Evaluation Team makes its recommendation. See definition of Proposal.

Initial Proposal

The initial document or compilation of documents submitted by the Developer in response to this JDS. See definition of Proposal.

Joint Development

A creative program through which property interests owned and/or controlled by WMATA are marketed to office, retail/commercial, recreational/entertainment and residential developers with the objective of developing Transit-Oriented Development projects. See definition of Transit-Oriented Development.

Joint Development Policies and Guidelines

The procedures approved by the WMATA Board of Directors which govern the Joint Development Program and are available at MetroOpensDoors.com (click About Metro, then click Business opportunities and Joint development opportunities).

Joint Development Project

The development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer.

Joint Development Site(s)

The property areas and interests identified in Part I.

Joint Development Work Program

A document prepared annually of Joint Development opportunities associated with WMATA-owned properties. The Joint Development Work Program is drafted in coordination with the local jurisdictions and approved by the WMATA Board of Directors.

Project

The joint development ideas, concepts and plans that a Developer presents in its Proposal. Also refers to the development plans of the Selected Developer. Project is synonymous with Joint Development Project.

Proposal(s)

The development-related documents submitted in response to this Joint Development Solicitation (JDS). The term Proposal can include both the Initial Proposal and, if requested by WMATA, the Final Proposal.

Selected Developer

The Developer with the exclusive right to negotiate a Development Agreement with WMATA. WMATA's designation of the Selected Developer shall not become final and binding until a Development Agreement has been negotiated and executed by the parties.

Term Sheet

The nonbinding document which summarizes the development concept, financial structure and other major business terms of the Project.

Transit-Oriented Development

Those projects that integrate WMATA's transit facilities, reduce automobile dependency, increase pedestrian/bicycle originated transit trips, foster safe station areas, enhance surrounding area connections to transit stations, provide mixed use including housing and the opportunity to obtain

goods and services near transit stations, offer active public spaces and promote and enhance ridership and sound growth in the communities which WMATA serves. See also FTA's definition at www.fta.dot.gov/library/policy/IFT/iftb.html.

WMATA Compact

Washington Metropolitan Area Transit Authority Compact, Public Law 89-774, 80 Stat. 1324, as may be amended.

WMATA Facility

Any improvements, structures, infrastructure components, tangible property and/or areas required, in the judgment of WMATA, for the use, operation, access, maintenance, repair, servicing, replacement or removal of structures and supports, any and all access, parking, operation and service facilities and areas relating to WMATA's operations or activities, including without limitation, the Metro station, tunnels, rails, tracks, bus stations, bus transfer areas, supervision kiosks, employee bathrooms, electric substations, conduits and lines, communications equipment and structures, pedestrian ways, waiting and shelter areas, facilities serving people with disabilities, cooling towers, chiller plants, vent and fan shafts, bicycle rack and locker areas, storm water management facilities, landscaping, lighting and all other associated facilities.

WMATA Improvement(s)

Those improvements, whether an interim replacement facility or a new facility, which will be designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA. Upon final acceptance by WMATA, a WMATA Improvement will become a WMATA Facility.

WMATA Replacement Facility

A WMATA Improvement designed and/or constructed by the Selected Developer for WMATA in a configuration acceptable to WMATA that

replaces any displaced or disrupted WMATA Facility and which will be turned over to WMATA.

WMATA Reserved Areas and Interests

Includes (a) all areas of, within or adjacent to the Joint Development Site containing any WMATA Facility; (b) all areas of, within or adjacent to the Joint Development Site relating to the use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility; and (c) any and all easements and other reserved rights required by WMATA in connection with its use, operation, access, maintenance, repair, servicing, replacement or removal of any WMATA Facility or WMATA operations and business generally, whether expressly provided for or reasonably contemplated. Such easements and other reserved rights shall include, without limitation, easements and reserved rights (whether at, above or below ground level) for (i) the construction, operation, maintenance, repair, replacement, removal or relocation of any and all existing tunnels and related facility, (ii) all WMATA Facilities (including, without limitation, any replacement facilities) which have piling or other structural support within or adjacent to the Joint Development Site, (iii) any and all service facilities serving such tunnels or any WMATA Facilities, (iv) all underground power lines and other utilities, (v) horizontal and vertical support for all WMATA Facilities in, on and about the WMATA Joint Development Site including without limitation, structures, equipment or installations such as foundations, beams, columns, bracing and similar structural features which maintain vertical and horizontal support and are necessary for the maintenance, operation and protection of any WMATA Facility and (vi) protections and approval rights satisfactory to WMATA in its sole and unreviewable discretion with respect to limits on loads and pressures which may affect any WMATA Facility, whether vertical or lateral.

Part Three. Attachments



Washington Metropolitan Area Transit Authority

PROPOSAL FORM JOINT DEVELOPMENT SITES

Please use a separate Proposal Form for each Joint Development Site.

JOINT DEVELOPMENT SOLICITATION (JDS) DATED:

PROPOSAL SUBMITTED FOR THE FOLLOWING JOINT DEVELOPMENT SITE:

_____ JDS Number: _____

DEVELOPER:

Name (must be existing entity)

Name of Authorized Representative

Signature of Authorized Representative

Title

Address including Zip Code

Telephone Number

Fax Number

E-Mail Address

Name of Entity to be Formed (if applicable)

ATTACHMENT A

Page 2 of 3

REPRESENTATIONS AND CERTIFICATIONS

REPRESENTATIONS

1. Developer's existing operation is: (check or complete all applicable boxes)

an individual

a partnership

general

limited

Formed under the laws of _____

a nonprofit organization

a corporation, incorporated under the laws of _____

a limited liability company (LLC) formed under the laws of _____

other, _____

2. Developer's proposed operation as set forth in its proposal will be: (check or complete all applicable boxes)

an individual

a partnership

general

limited

To be formed under the laws of _____

a nonprofit organization

a corporation to be incorporated under the laws of _____

a limited liability company (LLC), to be formed under the laws of _____

other, _____

CERTIFICATIONS (check applicable box)

1. Debarred or Ineligible Contractors:

Developer certifies that its existing operation [] is [] is not included in the "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" maintained by the U.S. General Services Administration.

2. Contingent Fee:

a. Developer [] has [] has not employed or retained any company or persons (other than a full-time, bona fide employee working solely for the Developer) to solicit or secure a Development Agreement; and

b. Developer [] has [] has not paid or agreed to pay any company or person (other than a full-time, bona fide employee working solely for the Developer) any fee, commission, percentage or brokerage fee contingent upon or resulting from the award of a Development Agreement; and

c. Developer agrees to furnish information relating to the above as requested by WMATA's Contracting Officer.

3. Covenant Against Gratuities:

Neither Developer nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of WMATA with the view toward securing favorable treatment in the designation of a Selected Developer or in any determination made with respect to Developer selection, or in the negotiation, amendment or performance of the Development Agreement.

The undersigned Developer certifies that the foregoing is true.

Date

Developer

Authorized Representative

Washington Metropolitan Area Transit Authority

PROPOSAL BOND

JDS Date: _____

Penal Sum of Bond: \$100,000

JDS Number: _____

Date Bond Executed: _____

Joint Development Site: _____

KNOW ALL PERSONS BY THESE PRESENTS, that we, the Principal and Surety(ies) hereto, are firmly bound to the Washington Metropolitan Area Transit Authority (WMATA) in the above penal sum for the payment of which we bind ourselves, our heirs, executors, administrators, and successors, jointly and severally; Provided, that, where the Sureties are corporations acting as co-sureties, we the Sureties, bind ourselves in such sum "jointly and severally" as well as "severally" only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sum only as set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sum.

THE CONDITION OF THIS OBLIGATION IS SUCH, that whereas the Principal has submitted a Proposal in response to the JDS identified above, this Bond shall be valid for 360 days from the JDS Date written above.

If WMATA designates the Principal as the Selected Developer based upon the Proposal it submitted under the JDS Number written above, and WMATA terminates the Principal's designation as the Selected Developer in accordance with Section 5.2 of the aforesaid JDS, the Principal and the Surety(ies) named herein shall be liable to WMATA as aforesaid for the Penal Sum of this Bond.

Each Surety executing this instrument hereby agrees that its obligation shall not be impaired by any extension(s) of the time for WMATA's designation of the Selected Developer or the negotiation of a Development Agreement, notice of which extension(s) to the Surety(ies) being hereby waived, provided that such waiver shall apply only with respect to extensions aggregating not more than 120 calendar days in addition to the period originally allowed as stated above.

ATTACHMENT B

Page 2 of 3

Principal(s)

1. Developer: _____

Address: _____

Signature of Authorized Representative:

Corporate Seal:

Name and Title:

State of Incorporation:

2. Developer: _____

Address: _____

Signature of Authorized Representative:

Corporate Seal:

Name and Title:

State of Incorporation:

3. Developer: _____

Address: _____

Signature of Authorized Representative:

Corporate Seal:

Name and Title:

State of Incorporation:

Corporate Sureties

A. Surety Name: _____ Liability Limit (Seal)
\$ _____

Address: _____

Signature: _____

Name and Title: _____

State of Incorporation: _____

B. Surety Name: _____ Liability Limit (Seal)
\$ _____

Address: _____

Signature: _____

Name and Title: _____

State of Incorporation: _____

C. Surety Name: _____ Liability Limit (Seal)
\$ _____

Address: _____

Signature: _____

Name and Title: _____

State of Incorporation: _____

Attach additional pages as needed.

Instructions

1. This form is authorized for use in providing Proposal Security. It must be completed legibly. The name of each person signing this Proposal Bond should be typed in the space provided. WMATA may request documentation confirming the authorization of a person signing in a representative capacity.
2. Sureties executing the Proposal Bond must be among those appearing on the U.S. Treasury Department's list of approved sureties and must be acting within the limitations set forth therein.

[If issuing bank is located outside of Washington, D.C., Maryland or Virginia, then a confirming bank in one of those jurisdictions is required; both banks must be members of the Federal Reserve System.]

[Issuing Bank L/C Letterhead]

IRREVOCABLE STANDBY LETTER OF CREDIT

Letter of Credit No. _____

Issue Date: _____, 2006

APPLICANT:

Name: _____

Address: _____

Re: Issued in connection with JDS Number: _____

Joint Development Site: _____

Joint Development Solicitation (JDS) Dated: _____

BENEFICIARY:

Washington Metropolitan Area Transit Authority
600 Fifth Street, NW
Washington, D.C. 20001

Ladies and Gentlemen:

- 1. We hereby open in your favor, at the request and for the account of the above-identified Applicant, our Irrevocable Standby Letter of Credit No. _____ in an aggregate amount of One Hundred Thousand and 00/100's US Dollars (USD 100,000.00), to be available for payment of your drafts drawn at sight on us, and accompanied, in the case of each draft, by your written certification to us signed by any person purporting to act on your behalf, stating:

Applicant as the Selected Developer for the above-referenced Joint Development Site pursuant to that certain Joint Development Solicitation (JDS) dated _____, and issued by Beneficiary, has been terminated as the Selected Developer in accordance with Section 5.2 of the JDS, and Beneficiary hereby certifies that the Sight Draft presented herewith constitutes an amount owed to Beneficiary under the JDS.

ATTACHMENT C

Page 2 of 2

2. Drafts drawn under this letter of credit (as same may have been or may be amended from time to time) shall be completely sufficient if in the form attached hereto as Exhibit A, and need not be endorsed on the letter of credit. We will accept any and all statements delivered pursuant to this credit as conclusive, binding and correct, without having to investigate or being responsible for the accuracy, truthfulness, correctness or validity thereof and notwithstanding the claim of any person to the contrary.
3. This credit shall expire, unless extended as provided herein, at 5 p.m.. local time in Washington, D.C., on _____, 2007. If such date is a Saturday, Sunday, legal holiday or day on which we are not open for business on account of any other reason, the expiration date set forth above shall automatically be extended to our next regular business day. It is a condition of this credit that it will be automatically extended without amendment for an additional period of 12 months from the present and each future expiration date, unless, not less than 60 days prior to the then-relevant expiration date, we notify you by Registered Mail that we elect not to extend this credit for any additional period. Upon your receipt of such a notification, you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which need be accompanied only by your signed written statement that you received notification of our election not to extend.
4. All drafts drawn under this letter of credit must refer to the number and issue date of this credit, and must be marked "Drawn under [Issuer's Name] Irrevocable Standby Letter of Credit No. _____."
5. We agree to honor each draft drawn under and in compliance with the terms of this credit, if duly presented at our offices at [must be the address of an office of the issuing bank in Washington, D.C., Virginia, or Maryland], [or, if a confirming bank is being used, at the offices of such confirming bank at a specified address in Washington, D.C., Virginia, or Maryland] at or before 5 p.m. local time in Washington, D.C. We agree to deliver payment in full of each such draft without any processing, check, or other fees whatsoever, to your offices as set forth hereinabove, Attn: General Counsel, not later than 36 hours after the time of presentment (not including Saturdays, Sundays, legal holidays, or any day on which we are not open for business on account of any other reason) by our Cashier's or Teller's check payable solely to the order of the "Washington Metropolitan Area Transit Authority."
6. The original and/or any amendment of the credit under which drafts are presented by you need not be presented with any draft drawn thereunder in order to constitute a valid presentment, unless such draft is a full and/or final draft under this credit.
7. Partial drawings under this letter of credit are permitted.
8. This credit shall be governed by the Uniform Customs and Practices for Documentary Credits, UCP 500 (1993 Rev.), published by the International Chamber of Commerce, and to the extent not so governed in accordance with the statute and case law of the District of Columbia.

Very truly yours,

[name of issuing or confirming bank]

By: _____

Authorized Officer

Print name: _____

Print title: _____

SIGHT DRAFT

Date: _____

AT SIGHT, pay to the order of Washington Metropolitan Area Transit Authority, the sum of _____ Dollars (USD _____).

For Value Received, and charge to the account of [name of Applicant].

Drawn under [name of issuing bank] Irrevocable Standby Letter of Credit No. _____, dated _____ [as amended by _____].

Washington Metropolitan Area Transit Authority, as Beneficiary under said Irrevocable Standby Letter of Credit No. __, dated _____ [as amended by _____], hereby certifies to you that:

[insert certification language]

TO: [name of issuing bank]
Address: _____

Attn: Letter of Credit Department

Washington Metropolitan Area Transit Authority
By: _____
Print Name: _____
Title: _____
600 Fifth Street, NW
Washington, D.C. 20001





Washington Metropolitan Area Transit Authority