

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
WASHINGTON AREA TRANSIT AUTHORITY
AND
ANACOSTIA WATERFRONT CORPORATION REGARDING DEVELOPMENT
OF CERTAIN WMATA PROPERTY IN THE BALLPARK DISTRICT**

EXECUTIVE SUMMARY

- The MOU designates the Anacostia Waterfront Corporation (AWC) as the exclusive party through which WMATA will market the Navy Yard Station Property for a period of one year.
- The MOU between WMATA and the AWC outlines the mechanism by which WMATA would sell the air rights over the Western entrance to the Navy Yard Station Property and the adjoining parking lot to the Selected Developer chosen through a competition conducted by AWC.
- The Selected Developer would receive the federal funds or alternative non-WMATA funds if federal funds are not appropriated, and would be responsible to construct scheduled improvements to the Navy Yard Station in conjunction with its adjoining private development.
- WMATA would receive no less than fair market value for the property and the station improvements. WMATA would also receive the interim or permanent replacement of the 60 space employee parking lot on the Navy Yard Station Property.
- WMATA has the right to review and approve or disapprove all plans and contracts related to use and development of the property.
- The MOU does not obligate WMATA to sell any property or pay for any costs associated with the station improvements.



(Board Copy)
Washington Metropolitan Area Transit Authority
**METRO ELECTRONIC ACTION
DOCUMENT**

IDENTIFICATION			
MEAD ID:	99576	ACTION:	N/A
AWARD VALUE:	(Not yet awarded)	CONTRACT: (Proposed)	
FUND SOURCES: (View)		CONTRACTOR:	
LAST MODIFIED:	06/02/2006		

DESCRIPTION	
SUBJECT:	Approval of MOU to provide framework for transfer of 2 properties to Anacostia Waterfront Corp.
PURPOSE:	The purpose is to approve a framework for potential sale of 2 properties to the Anacostia Waterfront Corporation or its designee and to secure improvements to the Navy Yard Station. The MOU also sets out requirements for relocation of WMATA's facilities on the property. WMATA would receive no less than fair market value for any properties sold. The MOU does not obligate the Board to sell any properties. It contemplates a subsequent contract for that purpose which would be subject to Board approval.

ORIGINATION					
INITIATOR			DEPARTMENTAL APPROVAL		
GARY MALASKY on 06/01/2006			Not Approved Yet		
PHONE:	202-962-1504	OFFICE:	LAND	DEPT:	Secretary and Chief of St

COORDINATION (ROUTING)		
OFFICE	NAME	ACTION/DATE
PRMT (7410)	JACKSON, LUCY	Not Reviewed Yet
LAND (7310)	MALASKY, GARY	Not Reviewed Yet
(1120)	Moneme, Emeka	Not Reviewed Yet
COOB (3211)	REQUA, JOHN	Not Reviewed Yet

FINAL APPROVALS	
OFFICE	NAME/ACTION
BEMR	Emeka Moneme (Not Yet Approved)
BEMR	Emeka Moneme (Not Yet Approved)
GM	GMGR CEO (Not Yet Approved)
BOARD	BOARD WMATA (Not Yet Approved)



Washington Metropolitan Area Transit Authority
**METRO ELECTRONIC ACTION
 DOCUMENT**

NARRATIVE

In March 2005 WMATA issued a solicitation of offers for land it owns in Southeast Washington, the Southeastern Bus Garage and the Navy Yard Station air rights. At the request of Mayor Williams, the solicitation was withdrawn because the city desired to purchase most of the properties. The Mayor designated Anacostia Waterfront Corporation, "AWC" to represent the city for this purpose.

AWC conducted a competition to name a "Selected Developer" to redevelop the WMATA properties, based on the AWC plan for a retail oriented district around the station.

There is also a possible federal earmark of \$20m in the Conference Committee to fund an expansion of capacity at the "Navy Yard Station Property". The MOU outlines the mechanism by which WMATA would sell the air rights over the Western entrance to the Navy Yard Station and the adjoining parking lot to the Selected Developer, and contemplates that the Selected Developer would receive all or part of the federal funds, and have full responsibility for construction of the station improvements in conjunction with its adjoining private development. WMATA would receive fair market value for the Navy Yard Station Property, and would own the completed station improvements, as well as have the use of a replacement parking lot so that the bus garage could continue in operation. The actual transfer would occur pursuant to a contract to be negotiated which would be subject to the approval of the WMATA Board. The MOU does not obligate WMATA to sell any property or pay for the costs of any station improvements. If the federal funds are not available, the parties would work cooperatively to identify other non-WMATA funds.

The Southeastern Bus Garage and an additional lot ("the Bus Garage Property") would be the subject of a separate MOU to be negotiated in the near future.

More specifically, the MOU designates AWC as the exclusive party through which WMATA will market the Property for a period of 1 year. It also sets forth the conditions under which conveyance of the property through AWC to a third party could take place, including:

- cannot be conveyed for less than fair market value;
- must meet FTA mandated covenants that the property be used for transit-oriented development;
- construction of the facilities may be subject to Davis-Bacon Act;
- WMATA has right to review, approve, and inspect (including "stop work" rights) to ensure construction is consistent with standard WMATA construction criteria for similar projects;
- the Navy Yard Station cannot be conveyed without FTA approval, which WMATA will seek in a timely fashion;
- interim or permanent replacement of 60 employee parking spaces provided before WMATA relinquishes possession of existing parking lot area of the Navy Yard Station Property;
- design and development of Navy Yard Station Property must include a cover over the existing street escalator that protects the escalator, provides an attractive, conspicuous entryway to the Navy Yard Station and a direct connection between the station and the new improvements, all at no out-of-pocket expense to WMATA;
- improvements constructed on the Navy Yard Station Property shall implement AWC's and the District's goals for the neighborhood providing WMATA still receives fair market value for the property;
- conveyance documents shall be tri-party agreements (AWC/WMATA/Purchaser

The MOU also allows standard access to the property for prospective purchasers and for AWC's activities related to marketing the property, and agrees that WMATA will support legislation necessary in connection with the development of the Ballpark District including inclusion of the Navy Yard Station Property in a TIF, PILOT or a business improvement district provided that WMATA does not incur financial liability as a result, and that WMATA's tax exempt status and sovereign immunity are not affected.

Nothing in the MOU obliges WMATA to convey any part or all of the Navy Yard Station Property; nor does it relinquish WMATA's right to review and approve or disapprove plans, contract conveyance or other rights related to the use or sale of this property.

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WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
AND
ANACOSTIA WATERFRONT CORPORATION REGARDING DEVELOPMENT
OF CERTAIN WMATA PROPERTY IN THE BALLPARK DISTRICT**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into this ____ day of _____, 2006 (“**Effective Date**”), by and between the Washington Metropolitan Area Transit Authority, an interstate compact agency (“**WMATA**”), and the Anacostia Waterfront Corporation, an independent instrumentality of the District of Columbia (“**AWC**”).

WHEREAS, WMATA is the owner of certain real property located in southeast Washington, D.C. which is comprised of Lots 107-118 and Lot 162, all in Square 701 as shown on Exhibit A hereto (the “**Navy Yard Station Property**”); and

WHEREAS, AWC desires to facilitate and implement the vision of the District of Columbia (“**District**”) for development of large scale mixed use, retail, sports-related and waterfront development in the area surrounding the new Washington Nationals baseball stadium and bounded generally by M Street S.E., South Capitol Street, the Anacostia River and New Jersey Avenue S.E. (the “**Ballpark District**”) and, as part of that larger plan, wishes to facilitate and promote development of the Navy Yard Station Property; and

WHEREAS, WMATA wishes to cooperate with AWC to allow development of the Navy Yard Station Property.

NOW THEREFORE, the parties agree as follows:

1) WMATA agrees to cooperate with AWC to facilitate the transfer and development of the Navy Yard Station Property pursuant to the terms and conditions of this Memorandum of Understanding.

2) The term of this Memorandum of Understanding shall be one (1) year starting on the Effective Date and ending on the first anniversary of the Effective Date (the “Term”).

3) During the Term, WMATA agrees that AWC shall act as the exclusive party through which WMATA shall market the Navy Yard Station Property. During the Term, WMATA shall not solicit offers for the Navy Yard Station Property, nor shall it negotiate with any person or entity, nor shall it grant any interest in the Navy Yard Station Property, except with the prior written approval of AWC. WMATA shall fully cooperate with AWC’s efforts to market and develop the Navy Yard Station Property.

4) Intentionally Omitted.

5) AWC and WMATA acknowledge and agree that any conveyance by WMATA of the Navy Yard Station Property to a third party (“Purchaser”) shall be subject to the following conditions:

- a) As provided in FTA Circular 5010.1C—Appendix, WMATA cannot convey the Navy Yard Station Property for less than its “appraised market value as represented either by highest and best use of the property or by highest and best transit use of the property, taking into account in either valuation the local transportation, land use and economic development plans.”

- b) Any instrument of conveyance by WMATA must include FTA-mandated covenants, which, at a minimum, will require the property be used for transit-oriented development and that any developer comply with certain federal anti-discrimination and procurement laws and regulations and may, in the event any portion of the project is “federally assisted,” require the Purchaser to comply with additional requirements, all as more particularly described in FTA Circular 5010.1C—Appendix.
- c) Any work involving construction of facilities for WMATA may be subject to the Davis-Bacon Act.
- d) Because the Navy Yard Station Property includes surface and underground WMATA facilities, any instrument of conveyance for the parcel must provide WMATA with review, approval and inspection rights (including “stop work” rights), with approvals not to be unreasonably withheld, conditioned or delayed with respect to any construction on, or over, the Navy Yard Station Property. Notwithstanding the foregoing, such construction shall be consistent with standard WMATA construction criteria for similar projects.
- e) The Navy Yard Station Property cannot be conveyed unless WMATA first obtains approval of its Board of Directors and of the Federal Transit Administration (“FTA”). WMATA will make good faith efforts timely to obtain FTA Approval.

- f) The Navy Yard Station Property is the current location for an employee parking lot (“Parking Lot”) with approximately 60 fenced parking spaces for WMATA, and WMATA shall not be required to relinquish possession of the Parking Lot until WMATA has been provided interim or permanent replacement parking reasonably satisfactory to WMATA.
- g) The design of any improvements constructed on the Navy Yard Station Property shall provide (i) cover over the existing street escalator to both protect that escalator from the elements and an attractive, conspicuous entryway to the Navy Yard station and (ii) a direct connection between the station and the new improvements (using, where practical, existing “knock out” panels), all at no out-of-pocket expense to WMATA.
- h) Subject to Section 5(a) hereof, the conveyance documents shall provide that any improvements constructed on the Navy Yard Station Property shall be responsive to and implement AWC’s and the District’s goal to create a vibrant mixed-use neighborhood with an active street environment, and shall be subject to AWC’s approval of the mix of uses including the percentage of residential, office, hospitality, open space, retail and entertainment uses; gross floor area to be constructed; building height and massing; the amount, location and design of parking facilities; the amount, location and design of open space (including plazas); the amount

and location of public realm amenities including, for example, parks and streetscapes; the infrastructure plan including the phasing thereof; phasing of construction; the plan for addressing any historic preservation issues; and the strategy for addressing any Zoning Approvals.

- i) The conveyance documents shall be tri-party agreements to which AWC shall be a party as well as the WMATA and the Purchaser and which AWC shall have the right to enforce.

6) The Navy Yard station is scheduled for expansion improvements (“Station Work”) to increase capacity. WMATA anticipates that schematic design drawings for Station Work will be completed in June, 2006. The parties further anticipate that the United States Congress may appropriate approximately \$20 million (“Appropriation”) towards the cost of such work, and that part of such amounts could be transferred to a third party who would build the improvements. WMATA agrees to cooperate with AWC to facilitate the same. If Purchaser or a third party designs and constructs the Station Work, such design and construction shall be subject to WMATA’s right to review, inspect, and approve the Station Work, which approval shall not be unreasonably withheld, delayed or conditioned provided the design and construction shall be consistent with standard WMATA construction criteria for similar projects, and to receipt of the Appropriation or other funds. WMATA agrees to work with AWC and the applicable third party to insure that the Appropriations are made available to Purchaser for the hard and soft costs of the Station Work or, if such funds are not made available, to find alternative (non-WMATA) funds for such costs. Whomever becomes responsible for the

Station Work may cause the design documents for the Station Work to be completed by a different firm than the firm preparing the schematic drawings, subject to WMATA's reasonable approval. Nothing herein is intended to obligate WMATA or AWC to pay for the costs of the Station Work.

7) AWC may designate an individual developer or team of developers to purchase and develop the Navy Yard Station Property (the "Selected Developer"). Upon such designation, WMATA shall enter into good faith negotiations for the sale of the Navy Yard Station Property with the Selected Developer for such period of time (within the Term) as AWC may direct. AWC may participate in such negotiations. WMATA shall include in the documents providing for the conveyance of the Navy Yard Station Property that: (1) the Selected Developer shall be required to design, develop and operate the Navy Yard Station Property and all other property owned or controlled by the Selected Developer or its affiliates as of the date of the conveyance agreements or thereafter in the Baseball District in accordance with certain requirements for the Baseball District developed by or on behalf of AWC ("District Requirements") and (2) prior to recordation of the deed or other document conveying an interest in the Navy Yard Station Property, WMATA shall record against the Navy Yard Station Property covenants incorporating the District Requirements. Nothing in this Section 7 is intended to modify the requirements of Section 5(a).

8) During the negotiations with the Selected Developer, and in all events subject to applicable laws and WMATA's Policy on Public Access to Records, the parties will maintain the confidentiality of the terms of any negotiations, except to the extent disclosure to the parties' lenders, prospective lenders, agents, attorneys, accountants,

consultants, partners, employees, directors, contractors, and engineers and to public officials is reasonably necessary. Upon execution of any definitive agreement of conveyance, WMATA may disclose the terms of such fully-negotiated, and executed, definitive agreement of conveyance.

9) During the Term, AWC and the Selected Developer shall have the right to enter upon the Navy Yard Station Property and conduct due diligence studies. As a condition to such entry, the party requesting entry shall provide evidence of insurance and indemnification (where the party seeking entry is not a governmental entity) reasonably satisfactory to WMATA. The Selected Developer shall be required to indemnify WMATA for all loss, costs, damages and liabilities arising from or in connection with its entry or the entry of its agents or any of its consultants onto the Navy Yard Station Property to conduct due diligence studies. AWC or the Selected Developer, as applicable, shall provide WMATA with not less than 48 hours advance notice of proposed entry into any public area of the Navy Yard Station Property to perform non-invasive due diligence, such as surveying. Invasive testing may not be done without WMATA's prior written consent, which shall not be unreasonably withheld, conditioned or delayed. In addition, neither AWC nor the Selected Developer may enter secure areas of the Navy Yard Station Property, including subway tunnels and mechanical rooms, without WMATA's prior written consent and, where generally required of others, successful completion of appropriate safety courses and escort by WMATA personnel.

10) During the Term, WMATA will cooperate with AWC and the Selected Developer in executing applications, as owner of the Navy Yard Station Property, for rezoning, alley closings, subdivision or other approvals reasonably necessary for the

development of the Navy Yard Station Property or the surrounding Ballpark District, provided that WMATA shall not be required to incur any third party costs or liability as a result thereof.

11) WMATA shall support any legislation AWC or the Selected Developer deems necessary or appropriate in connection with the development of the Ballpark District, including legislation relating to the inclusion of the Navy Yard Station Property in a TIF area, a PILOT area or a business improvement district, provided that WMATA shall incur no financial liability as a result of such support and shall not be required to waive, in whole or part, directly or indirectly, its tax exempt status or sovereign immunities.

12) Nothing in this Memorandum of Understanding shall oblige WMATA to convey to the Selected Developer (or anyone else) the Navy Yard Station Property. WMATA shall have no obligation to convey that property unless, and until, it agrees to do so by separate written instrument signed by WMATA. No party shall have the right to seek money damages arising out of alleged breach of this Memorandum of Understanding. There are no intended third party beneficiaries of this Memorandum of Understanding.

13) WMATA reserves to its Board of Directors free and unfettered discretion to review and approve (or disapprove) any contract of conveyance for the Navy Yard Station Property. This Memorandum of Understanding (and any amendment hereto) remains subject to the review of WMATA's Board of Directors, and WMATA shall make good faith efforts to obtain WMATA's approval or disapproval of this Memorandum of Understanding no later than sixty (60) days after the Effective Date.

WMATA staff shall provide positive support for this Memorandum of Understanding when presented to WMATA's Board of Directors.

14) This Memorandum of Understanding may be executed in multiple counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, this Memorandum of Understanding has been executed by the parties on the Effective Date first written above.

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY

WITNESS

By:

ANACOSTIA WATERFRONT CORPORATION

WITNESS

By:

EXHIBITS:

Exhibit A Description of Navy Yard Station Property