

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Executive Office of the Mayor
Office of the Deputy Mayor for Planning and Economic Development



March 30, 2010

Re: Best and Final Offer for the Redevelopment of Phase 1 of Hill East

Dear Development Team,

Thank you for your previous submissions for the redevelopment and acquisition of Hill East. Given changes in market conditions, the District has decided to proceed with the redevelopment of Hill East on a phased basis. Your team has been selected to provide a revised Best and Final Offer for the development and potential acquisition of Parcels F1 and G1 only, the parcels that the District has determined will be the first phase of development for Hill East.

If the District selects your team for the development of Phase 1, and subject to the successful completion of Phase 1, your team will have the exclusive right to negotiate the redevelopment of Phase 2 of the Hill East project. The terms and conditions of the selected developer's rights to redevelop the subsequent phase will be negotiated during the negotiation of the terms and conditions of the redevelopment of Phase 1, but in all events the selected developer's rights to redevelop the remaining phase shall be contingent on the developer's successful completion of Phase I.

Please update your response based on these requirements attached to this request and submit it to my attention no later than April 12, 2010 at 5:00 PM.

If you have any questions regarding the BAFO Request, please contact me by phone at 202-340-7264 or at feras.qumseya@dc.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Feras Qumseya', with a long horizontal flourish extending to the right.

Feras Qumseya

cc: Valerie Santos, Deputy Mayor for Planning and Economic Development

ADRIAN M. FENTY, MAYOR • VALERIE-JOY SANTOS, DEPUTY MAYOR

BEST AND FINAL OFFER REQUEST

Hill East Development Site

Your Best and Final Offer (BAFO) must address the requirements, guidelines, and assumptions provided below. Where directed, please provide tabular and bulleted responses.

Your BAFO must comply with the baseline assumptions and requirements set forth in the “Statement of Minimum Terms” that your team provided with your previous submissions. The District reserves all of the rights to it under the Statement of Minimum Terms, including without limitation to, the right to cancel, withdraw or modify the request for the BAFO prior to or after the BAFO deadline.

REQUIREMENTS:

The requirements below seek to assess the specific program outlined, team qualifications, and development proposals for Phase 1. Your BAFO **MUST** include responses to **ALL** of the following requirements and, failure to do so, may result in your BAFO being deemed ‘non-responsive’ and lead to your team’s disqualification from further consideration.

Requirements are as follows:

- A. **Phase 1 Parcels:** Phase 1 must only include Parcels F1 and G1 (the “Phase 1 Parcels”).
- B. **Phase 1 Development Program.** Your BAFO must address the following requirements.
 - a. Propose a Phase 1 development program that conforms to the goals of the “Hill East Master Plan” to create a sense of place for a Village Square concept anchored by the Metro with medium density housing and neighborhood retail amenities.
 - b. Describe any revisions to your site plan and development program for the Phase 1 Parcels using the chart below, including total development square footage, construction type, parking ratio and parking structure, and maximum building height for the improvements to be constructed on Phase 1 properties. If you have changed your program and/or site plan since your last BAFO submission, you must submit revised drawings with your BAFO.
 - c. Identify the types of retail tenant (or example tenants), including local retailers, that your team intends to attract and target.
 - d. Identify the number of affordable housing units to be constructed within Phase 1. To extent allowed under the applicable laws, the District may allow your team to reduce the affordable housing units or mix within Phase 1 to assist in leveraging more private debt for Phase 1. If your team proposes reducing the affordable housing units within Phase 1 to a number less than amount required under “National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganizational Act of 2008,” D.C. Official Code § 2-1226.02 (i.e. 15% at 30% AMI, 15% at 60 AMI of the Phase 1 residential units), your proposal must include how your team would make up the reduction in subsequent phases.
- C. **Phase 1b Optional Development Program.** The Department of Health (DOH) is issuing a solicitation to find a health care provider to build and operate a health care facility on Parcel B1. As an option to Phase 1, DMPED may elect to add Parcel B1 into Phase 1 to facilitate the development of a larger health care facility required to be developed under the *Community Access*

to Health Care Amendment Act of 2006, D.C. Code § 7-1931 *et seq.*, and create replacement space for a portion of the other current uses at Hill East that are listed in Attachment D. Please propose how your team would respond to the DOH solicitation and provide a plan to relocate some of the existing tenants listed on Attachment D into the proposed office space to be developed within Phase 1 (assuming that Parcel B1 is added to Phase 1).

DEVELOPMENT PROGRAM - PARCEL F1
(To be completed and submitted with BAFO Response)

Use	GSF	Rentable SF
Residential		
Retail		
Parking		<i>Per SF and Per Space</i>
Totals		

DEVELOPMENT PROGRAM - PARCEL G1
(To be completed and submitted with BAFO Response)

Use	GSF	Rentable SF
Residential		
Retail		
Parking		<i>Per SF and Per Space</i>
Totals		

OPTIONAL DEVELOPMENT PROGRAM - PARCEL B1
(To be completed and submitted with BAFO Response)

Use	GSF	Rentable SF
DOH Medical Office		
Additional Medical/Office		
Retail		
Parking		<i>Per SF and Per Space</i>
Totals		

D. **Developer Scope.** It is anticipated that the successful Development Team will complete all entitlement, infrastructure, and vertical construction required for Phase 1 only. Upon the successful completion of Phase 1, subject to Statement of Minimum Terms, the Developer may be granted the exclusive right to negotiate for the planning and development of Phase 2 of Hill East Master Plan.

E. **Development Team.** Please identify the specific entity (ies) and/or team members within your proposed team that will execute each task within the proposed scope, including the role each entity and team member would play, and its relationship to other entities on the project team.

F. Financial Assumptions and Sources and Uses.

a. **Uses:** In the format provided below, list all your uses broken down by each component and complete description of the assumptions you make for each use. Provide a breakdown of your following assumptions:

- i. Assumptions with respect to the infrastructure required only for Phase 1 and associated costs for each line item for each use.
- ii. Assumptions for all hard costs for each construction line items.
- iii. Assumptions for all soft costs line items. This category must include assumptions of all financing costs for the predevelopment and construction periods and your development fee and contingencies.

USES:			
	Infrastructure Development Costs (Break down by use)		\$
	Hard Construction Costs		\$
	Soft Costs		\$
	Financing costs		\$
	Capitalized Interest Account		\$
	Reserve Accounts		\$
	Other (Please Specify)		\$

TOTAL SOURCES	\$
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- b. Sources:** In the form listed below, provide a list for all your sources broken down by component and a complete description of the assumptions your team has made for each source. Your assumptions must include:
- i. Gross Rent Revenue per SF for residential and retail uses
 - ii. Operating Expense per unit and per SF
 - iii. Operating Deficit and Replacement Reserves assumptions
 - iv. Debt Service Coverage Ratio
 - v. Construction Financing assumptions
 - vi. Permanent Financing assumptions
 - vii. Absorption rate and Stabilization assumptions
 - viii. Cost for Third Party Equity assumptions

SOURCES			
	Developer Equity		\$
	Third Party Equity		\$
	LIHTC Equity		\$
	Interest Earnings on Construction Accounts		\$
	Private Debt Financing		\$
	PILOT Financing		\$
	Others (NMTC, etc.)		\$
	Gap Financing		\$
TOTAL SOURCES			\$

- G. Residual Land Valuation.** Provide a complete a residual land valuation for each parcel based on the completed development program proposed for Phase 1. Your team must include your assumptions for capitalization rate and for developer profit returns.
- H. Land Transaction.** The District anticipates that it will advance the land to the development team upon receipt of all necessary approvals and execution of a development agreement. The selected developer shall be solely responsible for the completion of the development program. Upon the completion of the development program, the developer is expected to pay the District the amount that is equal to the residual land value with such residual value secured through payments under a long-term ground lease or some other security instrument recorded against the fee simple title. If you arrive at a negative residual land value based on your completed development program, please state what you believe to be the amount of the negative land value and the District will consider this amount as your subsidy request.
- I. Submission Requirements.** The Offeror must comply with all submission requirements. The Offeror **MUST** complete all Attachments (A, B, C, D, E, and F) to this BAFO and return with the BAFO submission. If the enclosed Attachments are not filled out and submitted, the Offeror may be deemed non-responsive, as determined in the District’s sole and absolute discretion.

ATTACHMENT A
Development Pro forma with Complete Assumptions
(Developer to provide fully functional excel sheet pro forma model)

ATTACHMENT B
Phase 1 Milestone Schedule and Deliverables (Page 1 of 2)

Description	Completion Date	Party Responsible
Award		DMPED
Exclusive Right to Negotiate Deposit given to the District		Developer
Execution of Development Agreement Term Sheet (including all Exhibits) approved by all parties		DMPED/Developer
Execution of Development Agreement (including all Exhibits) approved by all parties		DMPED/Developer
Concept Drawing Submission to DMPED		Developer
Geotech Analysis		Developer
Survey		Developer
Environmental Phase I		Developer
Execution of CBE Agreement		Developer
Submission of Operating/ Partnership Agreement to DMPED		Developer
Execution of First Source Hiring Agreement with DOES		Developer
Commencement of Community / Stakeholder Outreach		Developer
Environmental Phase II (if needed)		Developer
75% DD Submission to DMPED		Developer
PUD and Zoning Submission		Developer
Execution of GMP Contract		Developer
Receipt of Financing Commitment (certification issued to the District)		Developer
PUD Approval		Developer

Description	Completion Date	Party Responsible
Permit Drawing Submission to DCRA		Developer
Building Permit Issuance (120 days after submission of Permit Drawings)		Developer
Closing		Developer
Commencement and Completion of demolition		Developer
Key Construction Milestones		Developer
Issuance of Certificate of Occupancy		Developer

ATTACHMENT C
Development Team Project Members Chart

ATTACHMENT D
List of Existing Uses

<u>NAME OF AGENCY OR ORGANIZATION</u>	<u>BUILDING NUMBER</u>	<u>BUILDING Name</u>	<u>SQUARE FEET</u>
DC-PSD, Security Booth	1	Main Core Bldg.	990
DC-DDOE, Storage	1	Main Core Bldg.	3,350
DC-DOC, Holding Cell	1	Main Core Bldg.	2,053
DC-DOC, Uniform Distribution	1	Main Core Bldg.	1,165
DC-DOC, Training Center	1	Main Core Bldg.	2,965
DC-DHS, Familes Forward Shelter	2	Main Core Bldg.	66,350
DC-DOH, Unity Healthcare Pharmancy	2	Main Core Bldg.	4,246
DC-DHS,Familes Forward Shelter	3	Main Core Bldg.	22,218
DCRA, Inspectors Offices	3	Main Core Bldg.	7,442
DCRA, Inspectors Offices	4	Main Core Bldg.	6,810
DC-DRES, Mail Room - Vacant	4	Main Core Bldg.	518
DC-DRES -Vacant	5	Kitchen	35,481
DC-DRES, Warehouse	6	Warehouse	55,385
DC-DOH, Fin. Mgmt.& Records	6	Warehouse	910
DC-DRES, Steam Plant	7	Boiler Plant	7,125
DC-DOH, S.T.D. Clinic	8	S.T.D.	9,415
DC-OCME, Medical Examiner's Storage	9	OB/GYN	3,818
DC-DOH, W.I.C.	9	OB/GYN	2,850
DC-DHS, Harriet Tubman Womens's Shelter	9	OB/GYN	7,635
DC-DRES, Vacant Bldg.	10	Pediatrics	
DC-DRES, Vacant Bldg.	11	Laboratory	
DC-DHS, Familes Forward Shelter	12	Detox	23,889
DC-DHS, Women Services-Vacant	13	Women Services	10,120
DC-MHD, Emerg. Psych. Center	14	CPEP	11,948
DC-DOH, T.B. Clinic	15	Chest Clinic	8,898
DC-DRES - Vacant Bldg.	16	Archbold Hall	
CSOSA	17	Karrick Hall	60,024
C.C.A., Correctional Facility	20	C.T.F.	410,934
DC-DRES - Vacant Bldg.	25	Mental Health Medical	
DC-OCME, Morgue	27	Examiner's	27,530
DC-DOC, DC Jail	28	C.D.F.	449,295
DC-DOH, Unity Healthcare Medical Clinics	29	ACC Bldg	68,615
DC-PSD, Administrative Offices	29	ACC Bldg.	10,695
DC-PSD - Vacant	29	ACC Bldg.	6,035
DC-MPD, DSO Division	29	ACC Bldg.	9,120

ATTACHMENT E

Office of Attorney General for the District of Columbia Form Letter of Credit

ISSUER: _____ Date of Issue: _____, 2010
[Name of Bank]
[Bank Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [Insert Number]

Beneficiary

Applicant

District of Columbia, by and through
The Office of Deputy Mayor for
Planning and Economic Development
1350 Pennsylvania Avenue, NW. Ste 317
Washington D.C. 20007
Attention: Deputy Mayor for Planning
and Economic Development

[Name of Developer]
[Address]

AMOUNT: \$ _____

EXPIRY DATE: [Insert Date] subject to renewal provisions herein

Ladies and Gentlemen:

We hereby establish our Irrevocable Standby Letter of Credit [Insert Number] (“Letter of Credit”) in favor of Beneficiary for the account of Applicant up to an aggregate amount of _____ U.S DOLLARS (U.S. \$ _____) Available for payment when accompanied by the following three items:

1. A draft at sight drawn on [Name of Bank] duly endorsed on its reverse thereof by a duly authorized representative of the Beneficiary, specifically referencing this Letter of Credit Number [Insert Number];
2. The original of this Letter of Credit; and
3. A dated statement issued on the letterhead of Beneficiary, stating: “The amount of this drawing is \$ _____, drawn under Irrevocable Standby Letter of Credit No. [Insert Number] and represents funds due and owing to the District of Columbia.” Such statement shall be conclusive as to such matters and Issuer will accept such statement as binding and correct. Issuer shall have no right, duty, obligation or responsibility to evaluate the performance or nonperformance of any underlying agreement between Applicant and Beneficiary before performing under the terms of this Letter of Credit.

Continues on the next Page
[Insert Letter of Credit Number]

This Letter of Credit shall automatically renew for one year term upon the Anniversary of the expiry date set forth above (The “Anniversary Date”) until [insert date] unless (i) earlier released by Beneficiary in writing or (ii) Issuers delivers written notice to both Applicant and Beneficiary that this Letter of Credit will not be renewed on the Anniversary Date upon which this Letter of Credit will no longer be renewed. Notwithstanding any terms and/or conditions to the contrary, this Letter of Credit will expire no later than [Insert Date].

If a drawing made by Beneficiary under this Letter of Credit reaches the address provided on this Standby Letter of Credit via Courier (FEDEX or DHL) on or prior to 1:00 PM (Eastern Time) on a Business Day (Defined below) and, provided that such drawing and the statement presented in connection therewith conform to the terms and conditions hereof, payments shall be made to Beneficiary in the amount specified, in immediately available funds, on the same Business Day. If a drawing is made by Beneficiary under this Letter of Credit after 1:00 pm (Eastern Time) on a Business Day and, provided that such drawing and the statement presented in connection therewith conform to the terms and conditions hereof, payments shall be made to Beneficiary in the amount specified, in immediately available funds on the next Business Day. If requested by Beneficiary, payment under this Letter of Credit may be deposit of immediately available funds into an account designated by Beneficiary. As used herein, the term “Business Day” shall mean any day other than a Saturday, Sunday or a day on which banking institution in the District of Columbia are authorized or required by law to close.

Drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented by the Mayor, City Administrator, Deputy Mayor for Planning and Economic Development, or one of their duly authorized representatives, on or before the Expiry Date to Issuer’s office at the address of Issuer set forth above.

This undertaking is issued subject to the International Standby Practices 1998 (“ISP98”). As to matters not expressly governed by ISP98, this Letter of Credit is governed by and shall be construed in accordance with the laws of the District of Columbia.

This Letter of Credit set forth in full terms of our undertaking. This undertaking shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or other agreement, without the express written authorization of Issuer, Beneficiary and Applicant.

Should you have occasion to communicate with us regarding the Letter of Credit, kindly direct your communication to the attention of Letters of Credit Dept. to the address aforementioned stating as reference our Standby Letter of Credit Number [Insert Letter of Credit Number].

Truly Yours,

Authorized Signature

Authorized Signature

ATTACHMENT F
Acceptance of Statement of Minimum Terms

By its signature at the end of this document, your Development Team hereby acknowledges and agrees as follows.

Minimum Terms

The Development Team shall incorporate and take into account the following minimum terms into their BAFO.

Deposits

Exclusive Right to Negotiate Deposit:

In consideration for the right to exclusively negotiate with the District for ninety (90) days, the selected Offeror shall submit a \$50,000 deposit (“Exclusive Right to Negotiate Deposit”) in the form of an irrevocable letter of credit in the form attached hereto as Attachment E. Offeror agrees to negotiate in good faith the implementation of the Offeror’s BAFO response and this Statement of Minimum Terms to the mutual satisfaction of the District and the Offeror within 90 days of award. District shall have the right to retain the Exclusive Right to Negotiate Deposit if, in its sole discretion, it deems that the Offeror did not negotiate in good faith.

Ground Lease Agreement (GLA)/Land Disposition Agreement (LDA) Deposit:

At execution of the GLA or LDA, Offeror shall submit to the District a deposit in the form of an irrevocable letter of credit in the amount of \$100,000 (“Ground Lease/Land Disposition Deposit”). This deposit shall be in addition to the Exclusive Right to Negotiate Deposit. Both deposits will be held by the District through the Offeror’s successful completion of Phase 1 of the project, as determined by the District of Columbia.

The District will require additional deposits for the right to negotiate and develop future phase of Hill East.

Term Sheet

The Developer shall negotiate in good faith with the District and use its best, commercially reasonable efforts to enter into a term sheet with the District within thirty (60) days after selection of the Developer for the development of the Parcel.

Ground Lease and Development Agreement

Depending on the final financial structure of each development component, the District may retain its fee simple ownership interest in the District Parcel and allow the Offeror to lease, through a ground lease agreement (“GLA”) all or a portion of the Phase 1 Parcels over a 99-year term for the purposes set forth in the Development Agreement. Any ground lease will not be subordinated to any other interests in connection to the development of the Phase 1 Parcels. The terms of the form of ground lease of which will require an affordability covenant and shall be included as an exhibit to the Development Agreement.

Land Disposition Agreement

Alternatively, the Offeror and the District may pursue a fee simple disposition of all or a portion of the District Parcel pursuant to the terms and conditions of a Land Disposition Agreement (“LDA”), the form of which will require an affordability covenant and shall be included as an exhibit to the Development Agreement.

Payment of Pre-Development and Development Costs

The Development Team shall be responsible for all costs related to pre-development, site preparation and construction of infrastructure -- including design studies, engineering studies, market analyses, demolition of existing improvements, and other requisite due diligence studies such as traffic, geotechnical, storm water management.

Local Small Disadvantaged Business Enterprise Participation and Certified Business Enterprise Utilization

Prior to the execution of a Land Disposition Agreement or a Ground Lease with the District, the Development Team shall sign a Certified Business Enterprise Utilization and Participation Agreement (“CBE Agreement”) with the D.C. Department of Small and Local Business Development (“DSLBD”) in accordance with D.C. Official Code §§ 2-218.01 *et seq.* The CBE Agreement will outline the specific CBE contracting and procurement and equity and development participation requirements of the Development Team and the efforts the Development Team will make to meet these requirements. The terms of the CBE Agreement shall include, but not be limited to the following: (i) the Development Team shall contract and procure thirty-five (35) percent of the value of the Project with CBEs; (ii) businesses certified as LSDBEs shall receive no less than twenty (20) percent in equity participation and no less than twenty (20) percent in development participation in the Project; LSDBE development partners shall have the same opportunity to participate in all development, project management, construction management, or other related fees as the Development Team; (iii) LSDBE equity partners shall not be required to contribute more than twenty (20) percent of the sponsor equity contributed to the project; (iv) LSDBE equity partners shall receive a return on investment in the project that is *pari passu* with all other sources of sponsor equity; LSDBE partner(s)’ equity interests shall not be diluted over the course of the project, including for failure to contribute additional capital; (v) no LSDBE firm shall be expected to bear financial or execution requirements that are disproportionate with said LSDBE firm’s equity position in the Development Team and/or Project; (vi) LSDBE partner(s) shall have management control and approval rights in line with their equity position(s), and certain major decisions should require consent of one or more LSDBE partners or require a supermajority vote which must include one or more LSDBE partners; (vii) and LSDBE partners shall be involved and represented to third parties as active team members, including through joint naming, advertising, branding, negotiation of debt and institutional equity financing, selection of master planners and other critical vendors, etc.

First Source Hiring

The Development Team shall enter into a First Source Hiring Agreement with the District’s Department of Employment Services, which shall require that the Development Team shall hire District residents for at least fifty-one (51) percent of the new jobs created by the Project as required under D.C. Official Code §§ 2-219.01 *et seq.* and, if applicable, the local apprenticeship program under D.C. Official Code §§ 32-1401 *et seq.*

Green Buildings and Stormwater Management

The Development Team shall adhere to the requirements of the “Anacostia Waterfront Environmental Standards Act of 2006,” D.C. Official Code §§ 2-1226.31 *et seq.* (2008).

Parcel Ownership

Phase 1 Parcels (or portion thereof) shall be advanced, leased, or conveyed to the Development Team in “as-is” condition, without warranty by the District as to physical condition of the land or any existing structures, and subject to the ownership and use restrictions set forth in Section 2.4 of the RFEI.

Environmental Remediation

The Development Team submitting offers under the Master Developer scenario shall be responsible at its sole cost and liability for any environmental remediation that may be associated with removal or

disturbance of any environmental contamination during demolition of existing improvements on the Development Site or other site preparation, including the removal and remediation of certain known environmental conditions set forth in Section 2.6 of the RFEI.

Soil or Subsurface Conditions

The Development Team acknowledges that the District makes no representations regarding the character or extent of soil or subsurface conditions or the conditions and existence of utilities that may be encountered during the course of any site work, development, construction or occupancy.

Affordable Housing Requirements

The Development Team shall adhere to the affordable housing requirements under the “National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganizational Act of 2008,” D.C. Official Code § 2-1226.02, including the requirement that fifteen (15%) of the housing units shall be sold or leased to household earning up to thirty percent (30%) of the area median income (“AMI”) and fifteen percent (15%) of the housing units shall be sold or leased to household earning up to sixty percent (60%) of the AMI.

As-Is; Assumption of Responsibility

The Development Team will be expected to assume responsibility for: any environmental contamination on any vertical pad it is offering to develop, all development and construction costs associated with the development of the such vertical pad; and all requirements under all applicable laws, including, without limitation to, requirements under “National Capital Revitalization Corporation and Anacostia Waterfront Corporation Reorganizational Act of 2008,” D.C. Official Code § 2-1226.02.

Design and Review Approval

The District shall have the right to review and approve or disapprove all or any part of each of the design development plans for the project, and all modifications and changes thereto.

Development and Completion Guaranty

As further assurance to those items in a construction and use covenant to be recorded against the District parcel at closing, the Offeror shall cause a development and completion guaranty to be executed by guarantors to be selected by the District and the Offeror.

Schedule of Performance

This schedule of performance submitted by the Offeror with the BAFO will be attached to the executed Term Sheet and shall serve as the basis for performance in the GLDA or LDDA. Offeror shall commence pre-development activities for the project immediately following the District’s notification of its election to negotiate with Offeror to execute the GLDA. Offeror shall demonstrate its commencement of pre-development work through the execution of service contracts with consultants, designers, etc. The same service contracts must be submitted to the District for review and must identify specific deliverables that will be initiated immediately following the District’s notification of its election to negotiate with Offeror to execute the GLDA. If the Offeror does not meet the schedule of performance submitted to the District, then the District, in its sole and absolute discretion, may terminate the negotiations and keep all deposits submitted by the Offeror.

Other Applicable Laws

The Development Team shall take into account all other applicable District and federal laws in its BAFO, including, without limitation, the necessity to seek and receive all necessary zoning approvals and, if applicable, compliance with the Davis Bacon Act, 40 U.S.C.S. § 3141 *et seq.* (2008).

Conflicts of Interest Representations and Warranties

The Development Team represents and warrants the following to the District:

The compensation to be requested, offered, paid, or received in connection with this BAFO has been developed and provided independently and without consultation, communication, or other interaction with any other competitor for the purpose of restricting competition related to this solicitation or otherwise.

No person or entity employed by the District or otherwise involved in preparing this BAFO on behalf of the District: (i) has provided any information to the Development Team that was not also available to all entities responding to the BAFO; (ii) is affiliated with or employed by the Development Team or has any financial interest in the Development Team; (iii) has provided any assistance to the Development Team in responding to the BAFO; or (iv) will benefit financially if the Development Team is selected in response to the BAFO.

The Development Team has not offered or given to any District officer or employee any gratuity or anything of value intended to obtain favorable treatment under the BAFO or any other solicitation or other contract, and the Development Team has not taken any action to induce any District officer or employee to violate the rules of ethics governing the District and its employees. The Development Team has not and shall not offer, give or agree to give anything of value either to the District or any of its employees, agents, job shoppers, consultants, managers, or other person or firm representing the District, or to a member of the immediate family (that is, a spouse, child, parent, brother or sister) of any of the foregoing. Any such conduct shall be deemed a violation of this BAFO. As used herein, "anything of value" shall include but not be limited to any (a) favors, such as meals, entertainment, transportation (other than that contemplated by this solicitation, if any, or any other contract with the District), etc., which might tend to obligate a District employee to the Development Team, and (b) gift, gratuity, money, goods, equipment, services, lodging, discounts not available to the general public, offers or promises of employment, loans or the cancellation thereof, preferential treatment or business opportunity. Such term shall not include work or services rendered pursuant to any other valid District contract.

The Development Team shall not, with respect to District personnel who are personally and substantially involved in any aspect of this BAFO:

- (a) Make an offer of employment; or
- (b) Conduct any negotiations for employment; or
- (c) Employ or enter into contracts of any sort.

On-Going Reporting to District

The Development Team shall report to the District directly and without undue delay any information concerning conduct which may involve: (a) corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority; or (b) any solicitation of money, goods, requests for future employment or benefit of thing of value, by or on behalf of any government employee, officer or public official, any the Development Team's employee, officer, agent, subcontractor, labor official, or other person for any purpose which may be related to the procurement of the BAFO by the Development Team, or which may affect performance in response to the BAFO in any way.

District Reservation of Rights

The Development Team acknowledges and agrees that the District reserves the right, in its sole discretion and as it may deem necessary, appropriate, or beneficial to the District with respect to the BAFO, to:

- Cancel, withdraw or modify the request for the BAFO prior to or after the BAFO deadline;
- Modify or issue clarifications to the BAFO prior to the BAFO deadline;

- After review of one or more responses to the District’s request for multiple development teams to issue a BAFO, the District may request submission of additional information from some or all the development teams;
- Enter into negotiations with one or more other development teams based on offers submitted in response to their BAFO;
- Reject any BAFO it deems incomplete or unresponsive to the requirements set forth in the District’s request for a BAFO;
- Consider one or more proposals that are noncompliant with the BAFO requirements;
- Reject all proposals that are submitted under the BAFO;
- Modify the deadline for proposals or other actions;
- Reissue the original request for the BAFO, issue a new RFEI or modified the request for the BAFO, whether or not any proposals have been received in response to the this request for the BAFO; Subdivide the Property into multiple, separately bid, negotiated and contracted components.;
- All submissions under this BAFO shall become the property of the District. ; and
- The District may use and all ideas in any BAFO submitted to the District, whether the BAFO is selected or rejected.

Communications:

The District will lead any discussions with the media, government agencies (including CSOSA), Saint Coletta and/or the community regarding the development of the Development Site. The Development Team shall not initiate or pursue any discussions or communications with the media, government agencies (including CSOSA), Saint Coletta and/or community without first coordinating with and receiving the approval of the District.

District Limitations and Indemnifications:

By executing this BAFO, the Development Team acknowledge that the Mayor may not dispose of any interest in real property absent authorization of Council in accordance with D.C. Official Code § 10-801 (2006 supp.) or enter into any fee development contract absent all necessary Council approvals. The Development Team further acknowledge that the District may not make any final decisions concerning the scope or nature of the specific project for the Development Site prior to (i) the General Services Administration’s transfer of title of Hill East Waterfront to the District of Columbia pursuant to the Federal and District of Columbia Real Property Act of 2006, PL 109-396 (the “**Transfer Act**”); (ii) completion of required reviews, if any, under the National Environmental Policy Act and other applicable laws; and (iii) compliance with all other District and federal laws and regulations.

In addition, the Development Team acknowledges that the District cannot enter into any financial obligations under this BAFO without the lawful availability of funds and absent compliance with all other applicable District laws. The Development Team acknowledges and agrees that the obligation of the District to fulfill financial obligations of any kind pursuant to any and all provisions of this BAFO relating to any public funds, or any subsequent agreement entered into pursuant to this BAFO or referenced herein relating to any public funds are and will remain subject to the provisions of: (i) the Federal Anti-Deficiency Act, 31 U.S.C. §§1341,1342, 1349, 1351; (ii) D.C. Official Code § 47-105; (iii) the District of Columbia Anti-Deficiency Act, D.C. Official Code §§ 47-355.01 – 355.08, as the foregoing statutes may be amended from time to time; and (iv) §446 of the District of Columbia Home Rule Act. Any provision herein contained that violates the Anti-Deficiency Act shall render this BAFO void *ab initio*.

The Development Team acknowledge and agree that it will hold the District, its officers, employees, agents, representatives, and consultants harmless from all claims, liabilities, and costs related to all aspects of this BAFO.

Confidentiality:

The Development Team and District agree that the information contained in this letter and any information exchanged between the Development Team and the District in connection with the transaction contemplated in this letter is strictly confidential. The Development Team and the District agree not to disclose such information or any aspect to the transaction contemplated in this letter to any third party without the other party's prior written consent; provided that the Development Team and the District may disclose such information (i) to any confidential advisors; (ii) to prospective partner, investor, nominees, designee or lender, or any confidential advisor thereof; or (iii) as required by the provisions of the DC Freedom of Information Act, D.C. Law No. 1-96, as amended (D.C. Official Code §§ 2-531 *et seq.*), or as may be otherwise required by law.

Non-Binding:

If the Deputy Mayor for Planning and Economic Development (“**Deputy Mayor**”) elects to exclusively negotiate with the Development Team, the Deputy Mayor makes no commitment (nor is he authorized to make any commitment) to enter into any contract and does not intend to proceed with any proposed project unless and until (i) the District and applicable federal agencies have satisfied all requirements of the Transfer Act and applicable environmental laws; (ii) the District has received all required approvals of the Council of the District of Columbia; and (iii) the Deputy Mayor and the selected the Development Team have reach mutually acceptable agreements governing the development (and, if applicable, disposition) of the Development Site.

The Development Team(s) acknowledge and agree that it will hold the District, its officers, employees, agents, representatives, and consultants harmless from all claims, liabilities, and costs related to all aspects of this BAFO

Acknowledged and agreed to on behalf of the Development Team by the following person, who affirms that he/she is authorized to act on behalf of the Development Team in this capacity:

Name: _____
Company: _____
Title: _____
Date: _____