

# DRAFT – FOR DISCUSSION PURPOSES

\_\_\_\_\_, 2022

Maryland-National Capital Park and Planning Commission, Montgomery Parks  
Town of Chevy Chase  
Bernstein Companies/EYA, LLC d.b.a Wisconsin Columbia Ventures, LCC

RE: Bethesda Market Public Improvements Framework

Dear Project Partners:

The purpose of this document is to begin to chart the path for the redevelopment of County Parking Lots 10 and 24, which are adjacent to the Farm Women’s Market. It is envisioned that parking lot 24 will be redeveloped with a combination of private residential development, a below grade parking garage, and a public park, and Lot 10 will be redeveloped as a park, all largely as represented in approved Sketch Plan #320190030 known as “Bethesda Market”. Completion of this project will require financial contributions and technical cooperation among multiple public and private entities. Additional work is needed to fully define project roles, responsibilities, and financial obligations of participants in the project. Each proposed party’s signature to this letter indicates a commitment to work together to come up with the funding and complete the structure of the project.

Each proposed party’s signature is not contractual in nature, rather, it demonstrates a willingness and a good faith commitment to engage with the other proposed parties to establish a financial and implementation structure for the project. Each Party agrees to use best efforts to complete appropriate development agreements setting forth each Party’s obligations by the end of calendar year 2022. All Parties recognize that the design and associated cost estimates are preliminary in nature and are likely to change as the project is further developed.

The project is being developed through the cooperation of the four entities as outlined below, referred to in this letter collectively as the “Parties” and each individually as a “Party”. The roles described are specific to the development of this project and do not in any way limit the authority of the public entities listed below as established government agencies with regulatory and statutory responsibilities:

- Montgomery County Government (“Montgomery County” or the “County”), generally and through the Bethesda Parking Lot District (the “PLD”). Montgomery County will be primarily responsible for oversight of the parking garage design and acceptance of the public parking unit of the garage and park land resulting from the project, will execute the necessary property agreements; and is a financial participant in the project contributing county funds.
- Montgomery County Parks Department (“Montgomery Parks” or “Parks”), a unit of the Maryland-National Capital Park and Planning Commission. Montgomery Parks will be primarily responsible for the oversight of the park design and construction, including conducting design charettes to solicit input from the Town of Chevy Chase and other surrounding communities;

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will manage the parks on behalf of the County at project completion; and is a financial participant in the project contributing both agency funds and state aid earmarked for the development of the parks..

- The Town of Chevy Chase (the “Town”). The Town is a financial participant in the project contributing both municipal funds and state aid earmarked for the development of the parks. The Town will also be actively engaged in the design of the parks through the design charrettes to be conducted by Montgomery Parks; will have the support of all Parties to minimize disturbance to Town residents during project construction; and will collaborate with Parks in the programming of the parks after completion in accordance with a partnership agreement that will be entered into by Parks and the Town.
- Wisconsin Columbia Venture, LLC (the “Developer”), an entity created jointly by the Bernstein Companies and EYA, LLC. The Developer is comprehensively responsible for the design and construction of the private and public improvements for the components of the project on Lot 24 and its own land holdings and is responsible for the design and construction of the park planned for Lot 10 (the “Lot 10 Park”), in each case subject to the oversight and approval of Montgomery County and Montgomery Parks as described above, and inclusive of public input into the design of the parks, including by the Town. The Developer is a financial participant in the project either through direct financial contributions or through capital cost reductions to the public participants in the project.

The four partners are enthusiastic in their support for the creation of these two new parks and the other development proposed for Lot 24 and recognize the great value that this additional urban green space will have for downtown Bethesda and the surrounding neighborhoods and communities. The Parties also recognize the important role this project has in implementing the open space goals of the Bethesda Downtown Sector Plan. Each Party appreciates the financial support being brought to the project by the other Parties and recognizes the vital contributions that each is making to ensure a successful project.

The following is the expected project structure, timeline, and identification of some of the issues requiring resolution. The proposed funding sources and uses table is attached to this letter as Attachment 1. Final agreements must be reached regarding the timing and conditions under which the Parties will contribute funding to the project inclusive of state aid, and project elements such as the funding for the undergrounding of utilities and funding to complete park improvements. Each Party agrees to make its contributions as required to ensure that no loan is needed for the financing of the project. The Parties also agree that the final agreements will address the means to provide for cost overruns, if any, incurred during the design and construction of the project.

### **DEVELOPMENT/DESIGN PHASE – PRECONSTRUCTION – (18-24 months)**

The Parties enter into a development agreement that reflects and builds on the contents of this letter.

County and Developer enter into one or more agreements for (a) the development of Lot 24, requiring the construction of an underground condominium parking unit with at least 200 spaces, to be owned

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and managed as part of the PLD, and a park on the areas of Lot 24 not occupied by buildings (the “Lot 24 Park”); and (b) the development of the Lot 10 Park. The Lot 24 Park will be contiguous with privately maintained public open space on the adjacent “Farm Women’s Market” site to be improved and operated by the Developer. Potential transfer of the land interest in the “Farm Women’s Market” site to the County may be considered as part of the general development agreement.

Under a written request from the County, Parks (as manager of County-owned parkland under a 1972 agreement between the County and Parks) and Developer enter into an agreement concerning the design and construction of the Lot 24 Park and the Lot 10 Park. The charette process and design work for both the Lot 24 Park and the Lot 10 Park will be done concurrently and in a coordinated manner so that the layout and amenities for both parks are selected on a holistic basis, with ample opportunity for input by the Town and other interested local residents and communities. Construction of the Lot 24 Park will take place as part of the overall redevelopment of Lot 24. Construction of the Lot 10 park will begin upon substantial completion of the redevelopment of Lot 24, including completion of the public parking portion of the garage.

The Developer is to provide regular status reports to all Parties during the development and design phase of the project.

The Parties will make financial contributions during the Development/Design Phase in accordance with Attachment 1.

### **CONSTRUCTION ON LOT 24– (36 months)**

Just prior to the start of construction, the County transfers fee simple title to Lot 24 to the Developer for fair market value, reserving to the County any density not required by the Developer for its project on Lot 24. In lieu of cash from the Developer, the County provides a take-back deed of trust with a first lien priority on Lot 24.

The Developer will formulate a construction plan, which, among other items, will identify equipment staging areas and a site access plan, with the goal of minimizing disruption to streets adjacent to the project site. The Town will review and approve this plan prior to the commencement of any work. To the extent that the Developer proposes to use any land area owned by the Town for equipment staging, appropriate permits will be obtained from the Town.

Parking needs fulfilled by Lot 24 parking will be mitigated through the retention of parking on Lot 10 while construction is underway on Lot 24 and displacement of demand to Garage 31. Lot 10 will continue to be used for surface parking throughout construction on Lot 24.

The Developer and County will provide regular status reports to all Parties during construction on Lot 24.

Permits for the construction of the Lot 10 Park will be sought while the redevelopment of Lot 24 is under construction so that construction of the Lot 10 Park can start as soon as the public portion of the garage on Lot 24 is complete.

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### **TRANSACTIONS REQUIRED UPON SUBSTANTIAL COMPLETION OF LOT 24 (1 to 2 months)**

Developer deeds the public parking condo unit, the surface unit designated as public park, and the residual of Lot 24 development density to the County in exchange for the amount by which the lien amount on the County's deed of trust exceeds the sum of (i) the cost of constructing the parking condo unit and (ii) the value of the portion of Lot 24 used for the Lot 24 Park. (The value of the park portion of Lot 24 will be inserted into the development agreement between the County and the Developer). Upon this exchange the County records a release of the deed of trust.

The PLD receives fair market value for Lot 10 (full funding source to be determined) and assigns its interest in Lot 10 to the County (generally) to be used as parkland. The County records a covenant against Lot 10 and the "park portion" of Lot 24 requiring that the land be used as parkland in perpetuity and naming the Town as a beneficiary of the covenant. Under the 1972 agreement, the County assigns to Parks the maintenance of the Lot 24 and Lot 10 parks.

### **CONSTRUCTION OF LOT 10 PARK (12 -18 months) *[TIMEFRAME TO BE ADJUSTED TO REFLECT CONSTRUCTION ONLY]***

The parking needs served by Lot 10 parking will be mitigated by the availability of a new underground parking condo unit owned by the PLD on former Lot 24 and continued use of Garage 31 to meet area needs. The Developer will provide regular status reports to all Parties during construction on Lot 10.

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The Parties will make financial contributions during Lot 10 construction in accordance with Attachment 1. The Developer and Parks will provide regular status reports to all Parties during construction on Lot 10.

### **PARKS SPECIFIC PROVISIONS**

The County will retain fee simple ownership of the parkland on Lots 24 and 10 and Parks will manage the parkland under the 1972 agreement consistent with its practices for urban parks generally, maintaining the Parks to a high standard. A covenant will be recorded on the parkland requiring that the land be used as parks in perpetuity and naming the Town as a beneficiary.

Parks agrees to undertake a design charette process with the Town and other neighboring communities for both parks, with the intent of agreeing on amenities in the parks that have broad local community support. Also, Parks and the Town will enter into a partnership agreement that will provide for collaboration regarding programming of the parks. Parks also agrees that if and when further development or amenities for the Parks are under consideration, Parks will hold a design charette process including the Town and other neighboring communities.

Parks agrees to provide the funding in the approximate amount shown on Attachment 1, including the State grants earmarked for the parkland.

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## **TOWN SPECIFIC PROVISIONS**

The Town agrees to provide the funding in the approximate amount shown on the attached funding schedule, including the State grants earmarked for the parkland. The Town's financial contribution will be allocated as set out in Attachment 1. The Town will review and comment on the covenants proposed to be recorded against the parkland to ensure, among other things, that the land continues to be used as parkland in perpetuity and that the Town has standing to enforce the covenants in the future if needed.

The Town plans to consider during July, 2022 a potential revision to its funding resolution from November 2021 to reflect the referenced amount in Attachment 1.

## **COUNTY SPECIFIC PROVISIONS**

Under Chapter 60 of the County Code, the PLD must be paid the fair market value of both Lots 24 and 10. Under the County's disposition requirements (Chapter 11B-45 and attendant regulations), the appraisal for the fair market value of property cannot be more than one year old when the disposition is brought to the Council for consideration. It is likely that an escalator for the fair market value will be required to ensure the PLD receives fair market value at the time it transfers its interests to the Developer and assigns the remainder to the County for parkland. The Parties will determine the nature of such an escalator and its funding source during their joint work on completing the financing and structure of the project.

In addition to development costs carried by the Developer, the County is budgeting for County-borne planning, design and supervision expenses associated with its obligations for the project.

## **DEVELOPER SPECIFIC PROVISIONS**

The Parties acknowledge that the project cannot proceed as envisioned unless the private development components of the project are commercially viable. The Developer will advance the project and will propose changes needed, if necessary and appropriate, to ensure a viable project. Any significant changes to the project costs may require the parties to revisit the project framework described in this letter.

The Developer will work on behalf of the public-agency Parties to design and construct the public elements of the project including the Parks, all as finalized in the site plan, as a steward of the public interest, and will make reasonable efforts to keep actual project costs at a level that corresponds with the cost estimates for these public elements. All Parties recognize that open-book accounting of all elements of this project, public and private, will be required to ensure that the public interest is served given the very substantial public financial participation envisioned to realize this project.

The Parties acknowledge and agree that the information above is an outline of a proposed course of development and is subject to change to meet development requirements and proposed Party

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requirements. By signing below, each proposed Party agrees to continue good faith negotiations for the development of the project using this letter as a starting point for those negotiations.

The County is excited about this project and looks forward to working with all of you.

Best regards,

Christopher Conklin, Director  
Montgomery County Department of Transportation

In Cooperation,

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Michael Riley, Director  
Montgomery County Parks Department

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Chuck Hathway?  
Wisconsin Columbia Ventures, LLC

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Barney Rush, Mayor  
Town of Chevy Chase

Attachment 1 – proposed funding sources