

MEMORANDUM OF UNDERSTANDING

Frederick Downtown Conference Center

This Memorandum of Understanding (“MOU”) between The City of Frederick, Maryland (“CITY”), Frederick County, Maryland (“COUNTY”), the Maryland Stadium Authority (“MSA”), the Maryland Economic Development Corporation (“MEDCO”), and Plamondon Hospitality Partners, LLC (“DEVELOPER”), collectively the “PARTIES”, for the development of the Frederick Downtown Conference Center (“PROJECT”) executed this _____ day of _____, 2016.

BACKGROUND

1. The CITY and COUNTY seek to facilitate the development of the PROJECT generally described as a full-service Marriott flagship hotel and conference center with on-site public parking in historic downtown Frederick, to serve the needs of the residents and businesses of the city and county, induce tourism and conferences, overnight stays, visitor spending, generate jobs and revenue, and be an anchor for continued downtown revitalization.
2. The CITY selected the DEVELOPER through a competitive Request for Proposals process (RFP 14-J) meeting all CITY procurement requirements, and unanimously awarded the PROJECT to the DEVELOPER through a Memorandum of Understanding between the CITY and DEVELOPER dated December 23, 2015. The PROJECT as originally proposed in the DEVELOPER’S RFP response, generally consists of the following elements:

Private Full-Service Hotel and amenities (“HOTEL”)

- 207 (+/-) rentable guest rooms
- Restoration of the historic Frederick Trolley Building
- Two lounges (including one rooftop) and two restaurants
- Environmentally sensitive design – meets LEED equivalent minimum standards

Public Conference Center (“PUBLIC IMPROVEMENTS”)

- 23,500 (+/-) gross square feet of meeting space including pre-function and support space (“CONFERENCE CENTER”)
- On-Site parking containing a minimum of 104 spaces (“ON-SITE PARKING”)
- Related off-site road and streetscape work
- PROJECT site land acquisition
- PROJECT utility infrastructure

3. The DEVELOPER has agreed to provide private equity and bank financing to design and construct the HOTEL and its amenities, to create a single purpose entity to own and operate the HOTEL and its amenities (HOTEL OWNER), and to operate the CONFERENCE CENTER meeting space under a management agreement and assume all ongoing risk and cost associated with the operations, maintenance and life cycle capital cost including but not limited to scheduled facilities updates and refreshment, of the same, holding the CITY, COUNTY, MSA, and MEDCO harmless for any such costs even in the event of a shortfall if any.

4. The CITY, COUNTY, and Frederick County State Legislative Delegation to the Maryland General Assembly executed a joint Memorandum of Understanding on February 16, 2012 regarding “mutual support” for the PROJECT.
5. The CITY and COUNTY executed a Joint Resolution dated September 25, 2014, “To support a public-private partnership for the development of a Downtown Frederick Hotel and Conference Center and to indicate an agreement in concept to the use of future incremental real property tax revenues derived from the development of the project using Tax Increment Financing (TIF) or a similar financing mechanism for the public infrastructure associated with the project including but not limited to parking, streetscape, utilities, and conference center.”
6. Pursuant to a June 15, 2004 Memorandum of Understanding between the COUNTY and the Tourism Council of Frederick County concerning the Tourism Council’s use of Frederick County Hotel Rental Tax (“HRT”) revenues as amended on June 27, 2016, the Tourism Council may expend up to 85% of the HRT revenues collected from a “full service hotel and conference center” which meets the eligibility criteria set forth therein, to support debt service for capital expenditures for public infrastructure related to the development of such project including parking, road work, and public meeting facilities for a period of up to 25 years. It is estimated that this funding program will support approximately \$3.5 million in public infrastructure bond debt on this PROJECT.
7. The CITY has requested and received financial assistance for the public infrastructure components of the PROJECT from the Maryland General Assembly and from the Maryland Department of Housing and Community Development (DHCD). The CITY has also requested and received technical assistance from MSA.
8. The Legislature of the State of Maryland with approval of its FY17 Capital Budget Bill (SB 191) provided “a grant of \$1,000,000 to the Mayor and Board of Aldermen of the City of Frederick for the acquisition, planning, design, construction, repair, renovation, and reconstruction of the Downtown Frederick Hotel and Conference Center, located in Frederick County, provided that no funds may be expended until a Memorandum of Understanding (MOU) between the Maryland Stadium Authority, the County Executive and County Council of Frederick County, the Mayor and Board of Aldermen of the City of Frederick, and the private developer is executed and submitted to the budget committees that sets forth the terms and conditions for the development and financing of the Downtown Frederick Hotel and Conference Center that maximizes contributions by Frederick County and the City of Frederick and minimizes any State contribution to the Conference Center and other public components of the project including land acquisition.” The City and County are maximizing local financial support for the project through TIF, parking fund contribution, parking revenue bonds, and Tourism Council funding (HRT) while reducing the State contribution from \$19.8 million requested during the 2016 legislative session to the pre-authorized \$15,000,000 in construction funding for the PROJECT (\$7.5 million in FY18 and \$7.5 million in FY19).
9. DHCD has awarded \$850,000 in grants to the CITY for PROJECT land acquisition from the Strategic Demolition and Smart Growth Impact Fund (SDSGIF). The CITY has applied for additional DHCD program grant funds for the same purpose in FY17 in the amount of \$1.0 million. DHCD also previously provided Technical Assistance Grant (“TAG”) funds to

assist with the cost of the 2012 MSA Crossroads Market Study. DHCD has also offered support from its Local Government Infrastructure Financing Program.

10. MSA at the request of the CITY for this local initiative, and at the expense of the CITY and its partners, and with the approval of the MSA Board of Directors and review and comment by the Budget Committees of the Maryland Legislature, conducted a Market Study Update for the PROJECT (2012 Crossroads Study) which indicates positive market opportunities and strong economic impact as follows:

- 280 jobs (110 direct, 170 indirect and induced)
- \$25.8 million in Economic Impact - direct, indirect, and induced spending
- \$1.5 million in new incremental revenue to the State from taxes and fees which can support up to \$19.0 million in state investment.

MSA also at the request and expense of the CITY and its partners, and with approval of the MSA Board of Directors and review and comment by the Budget Committees of the Maryland Legislature, conducted a PROJECT Construction Cost Estimate (2016 Forella Estimate) which adjusted the PROJECT cost as follows:

- \$53 million - Private - HOTEL (excluding approximately \$4.9 million for development of commercial retail space)
- \$31 million - Public - CONFERENCE CENTER
- \$84 million Total

11. The CITY has formally requested assistance from MEDCO to support this local initiative by issuing both the TIF and Parking Revenue Bonds for the CITY and COUNTY, to hold ownership and oversee the operations of the CONFERENCE CENTER, ON-SITE PARKING and related facilities on behalf of the public partners interests in the PROJECT.

12. The Parties desire to work cooperatively using a “team” approach, with respect to the development of Project Planning, Design, Cost Estimates, Construction Services, and Commissioning of the Project.

AGREEMENT

NOW THEREFORE, in consideration of the above premises, the PARTIES hereby set forth the following terms which are intended to provide the basic structure for and responsibilities of each of the entities in the development of the PROJECT. As subsequent binding legal agreement(s) detailing the exact terms of funding, construction, leases, operations, and other related items must be negotiated and entered into between the PARTIES prior to final financing and construction of the PROJECT, this MOU is expressly conditioned upon and subject to these binding agreements being finalized. The PARTIES hereby covenant and agree that they will work in good faith to negotiate mutually acceptable terms of such agreement(s) which agreement(s) will require public approval by each of the governing boards of the PARTIES. Accordingly, this MOU shall not be binding upon the PARTIES hereto in any way except to the extent it reflects their intent as to how they intend to proceed with the PROJECT:

- A. Term – This MOU shall expire upon the execution of a definitive PROJECT Development Agreement between the PARTIES or upon termination of the PROJECT.
- B. Termination – The PARTIES shall each seek mutually acceptable solutions to any administrative, engineering, operating, real estate, construction and/or legal problems arising from this MOU. As this is a non-binding MOU, any Party may terminate this MOU at any time and for any reason whatsoever. MSA’s obligations under this MOU will terminate if the entirety of its obligations are transferred to MEDCO.
- C. Amendments – The PARTIES agree that amendments to the terms of this MOU can be made in writing by mutual agreement of the PARTIES.
- D. Land and Public Improvements – The PARTIES agree that predevelopment and project planning activities, land acquisition, design, engineering, financing, site-work, and construction of ON-SITE PARKING, CONFERENCE CENTER, utilities, and related off-site improvements such as streetscape and roadway improvements together shall be referred to as the PUBLIC IMPROVEMENTS.
- E. Design and Construction Cost – The PARTIES agree to use the February 11, 2016 MSA/Forella PROJECT Cost Estimate as amended by MSA and City by mutual agreement and summarized in the table below, for preliminary PROJECT financing activities but recognize that such cost estimates will change as the PROJECT is fully designed, land acquired, and development approvals obtained. The PARTIES will in good faith collaborate to develop new estimates as the PROJECT design matures, resulting in a Final Budget.

Category	Private Costs HOTEL (in millions \$)	Public Cost PUBLIC IMPROVEMENTS (in millions \$)	Cost Totals (in millions \$)
Hard Construction Cost	45.6	21.4	67.0
Soft Cost (design, legal, fees, predevelopment, project planning, etc.)	*7.4	6.2	13.6

Land**		3.4	3.4
Totals	\$53.0	\$31.0	\$84.0

*Estimate by DEVELOPER

**Additional land may be acquired with approval of the PARTIES

PUBLIC IMPROVEMENTS: Estimated Cost Component	~COST (in millions)
Land (1.86 Acres) – Additional land may be acquired with approval of the PARTIES	\$3.40
On-Site Parking (~200-300 spaces)	\$9.60
Meeting Space (24,000 GSF/14,000 NSF)	\$16.25
Related Off Site Improvements	\$1.10
Total	\$30.35

- F. Design and Construction Funding and Services. The PARTIES, exclusive of MSA, agree to each provide a certain amount of funding (“Capital Funds”) and services estimated in the table below. The actual final amount of such Capital Funds shall be negotiated and ultimately determined by each entity prior to the execution of future agreements. If during the negotiation process, PROJECT costs exceed PROJECT funding sources, the PARTIES will in good faith and within the limitations of public financing policies collaborate to reduce scope and cost.

MEDCO and the DEVELOPER shall enter into a future development agreement regarding the structure, review and awarding of construction contract(s) for both the HOTEL and PUBLIC IMPROVEMENTS.

The PARTIES acknowledge that the PROJECT must meet the State of Maryland Minority Business Enterprise (“MBE”) goals and Prevailing Wage Rules as applicable.

PUBLIC INFRASTRUCTURE: Capital Funds (in millions)	Estimated Funding
CITY TIF Bonds or similar financial mechanism	\$2.20
CITY Parking Fund – Cash	\$1.00
CITY Parking Fund – Parking Revenue Bonds	\$2.50
CITY Capital Improvement Program (CIP)	\$0.25
COUNTY TIF Bonds or similar financial mechanism	\$2.80
Tourism Council of Frederick Maryland HRT	\$3.50
Maryland Project Planning Bond Bill (FY12 – reauthorized FY17)	\$0.25
Maryland Project Planning Capital Grant (SB 191 - FY17)	\$1.00
Maryland Capital Construction Grant (pre-authorized FY18/19)	\$15.00
Maryland DHCD (\$0.85 approved (FY14/FY16)/\$1.00 requested FY17)	\$1.85
Total	\$30.35

1. DEVELOPER –The DEVELOPER shall have sole responsibility for all costs of design and construction of the HOTEL and shall be expected to post payment and performance bonds for the same. In addition, the DEVELOPER shall have sole financial responsibility to fund any design or construction shortfalls from the Final

Budget for the PUBLIC IMPROVEMENTS not caused by change orders issued by the CITY, COUNTY, or MEDCO.

2. CITY – Subject to approval by the Mayor and Board of Aldermen, the CITY intends to provide a portion of the future incremental property tax and parking revenue from the PROJECT toward debt service of TIF and Parking Revenue Bonds or similar financial mechanism issued by MEDCO or DHCD. The exact amount shall be determined by a future financial analysis by the PARTIES exclusive of MSA, or by DHCD, but is currently estimated to be able to support approximately \$2.2 million TIF Bonds and \$2.5 million in Parking Revenue Bonds respectively. Such funding is intended to be used solely for PUBLIC IMPROVEMENTS.

The CITY intends to provide a limited amount of funding not to exceed \$1,000,000 from the City Parking Fund in the form of a cash contribution toward development of the ON-SITE PARKING and associated land.

The CITY has utilized its \$250,000 CIP contribution for predevelopment and project planning activities related to the PUBLIC IMPROVEMENTS.

The CITY agrees to utilize the FY17 \$1,000,000 Maryland Capital Grant and FY12 \$250,000 Maryland Bond Bill (reauthorized in FY17) for project planning and design of the PUBLIC IMPROVEMENTS.

The CITY agrees to utilize the previously awarded \$850,000 (FY14/FY16) in DHCD SD-SGIF Grant funding and the recently requested FY17 \$1.0 million DHCD SD-SGIF Grant if awarded toward acquisition of the land for the PROJECT.

The CITY agrees to utilize the \$15.0 million Maryland Capital Grants preauthorized in the amounts of \$7.5 million in FY18 and \$7.5 million in FY19 toward construction of the PUBLIC INFRASTRUCTURE components of the PROJECT.

The CITY agrees to provide any future grant funds awarded for the PUBLIC INFRASTRUCTURE components of this PROJECT.

In addition, the CITY agrees that any of the above listed funds may be used to fund the following:

- MSA, DHCD and MEDCO for any eligible PUBLIC INFRASTRUCTURE PROJECT costs; and
- DEVELOPER for its eligible proportionate share of pre-development costs for land acquisition and PUBLIC IMPROVEMENTS in accordance with the MOU between the CITY and DEVELOPER dated December 23, 2015; and
- CITY for any of its eligible pre-development and project planning costs in excess of the CITY CIP contribution of \$250,000.

The CITY shall serve as the public spokesman on behalf of the PROJECT with input from the COUNTY, MSA, DHCD and MEDCO.

3. COUNTY – In accordance with COUNTY TIF Policies and subject to approval by the County Executive and County Council, the COUNTY intends to provide a portion

of the incremental property tax revenue from the PROJECT to be used to support debt service on TIF Bonds issued to pay for PUBLIC INFRASTRUCTURE for this PROJECT. The COUNTY would also consider the use of a similar financial mechanism if applicable. The exact amount of incremental property tax revenue involved shall be determined by a future financial analysis by the PARTIES, exclusive of MSA, or by DHCD, but is estimated to be able to support approximately \$2.8 million in TIF Bonds. Funding will be used solely for PUBLIC IMPROVEMENTS.

4. MSA – Subject to approval of the MSA Board of Directors and full reimbursement of its costs from Capital Funds provided by the CITY, COUNTY, or MEDCO, the MSA agrees to act as an Owners Representative to provide the following services to the PROJECT on behalf of the CITY, COUNTY, and MEDCO including but not limited to construction administration/management and public financial oversight of the expenses for the Conference Center, On-Site Parking and related work (“OWNERS REPRESENTATIVE”). MSA is granted authority under its statute to design and construct facilities for state agencies and local governments provided that notice is sent to the Maryland General Assembly’s Budget Committees for a 30-day review and comment period.

MSA shall provide no funds to the PROJECT.

MSA shall be publicly recognized for its role in the management of the PROJECT design and construction in a form approved by MSA.

MSA or Maryland Legislature may request that MEDCO assume some or all of MSA’s responsibilities. The PARTIES agree that it is beneficial to the PROJECT to avoid duplicative service fees and use services from the most cost effective providers during the development process and furthermore agree to jointly determine and utilize the most cost effective solutions for the PROJECT.

MSA shall also:

- Designate a Project Manager
- Review design and construction contract(s) and provide comments
- Provide status reports for the PROJECT
- Review and approve payments to the PROJECT
- Review and provide comments on the schedule

5. MEDCO – Subject to approval of the MEDCO Board of Directors and full reimbursement of its cost from Capital Funds provided by the CITY and State, from TIF revenues pledged by the CITY and COUNTY, and parking revenue from the ON-SITE PARKING, MEDCO agrees to provide services to the PROJECT by issuing Sustainable Community TIF Bonds and Parking Revenue Bonds to support financing the PUBLIC INFRASTRUCTURE portions of the PROJECT.

MEDCO agrees to participate in the financing of the PROJECT in the form of acceptance of capital grants from the State of Maryland or through bond issuance if such services are warranted and/or requested by the Governor or Maryland General Assembly.

MEDCO also agrees to provide the Owners Representative services identified above for MSA if requested by MSA, Maryland Legislature, and the other PARTIES.

G. Facility Ownership and Leases. The individual facilities which comprise the PROJECT shall be owned, managed, and leased as follows:

1. Land. Subject to the terms of the MOU dated December 23, 2015 between the CITY and DEVELOPER, the CITY intends to own the land which comprises the PROJECT site, presently consisting of an approximately 1.86 acre piece of property known as 200/212 East Patrick Street, Frederick, Maryland and which the DEVELOPER has the right to acquire via a fully executed Purchase and Sale Agreement with East Patrick Street, LLC. The DEVELOPER has agreed to assign the Purchase and Sale Agreement to the CITY prior to closing and upon reimbursement of related costs incurred by the DEVELOPER.

The CITY agrees to lease a portion of the site to the DEVELOPER for the HOTEL in accordance with the MOU dated December 23, 2015 between the CITY and DEVELOPER. The CITY shall also lease land to MEDCO for the Conference Center facility at favorable terms to be determined.

Subject to funding availability and approvals, the PARTIES acknowledge that additional land may be acquired for the benefit of the PROJECT. The PARTIES are aware that the DEVELOPER is negotiating the purchase of lots adjoining the current PROJECT site. It is anticipated that these lots will be used by the PROJECT for expanded on-site public parking and improved site layout. The DEVELOPER has agreed in principle to assign the Purchase and Sale Agreements of these lots to the CITY prior to closing and upon reimbursement of related costs incurred by the DEVELOPER.

2. Hotel. The DEVELOPER shall create a single purpose entity to own the HOTEL ("HOTEL OWNER"). The HOTEL OWNER shall own the HOTEL through a condominium or similar ownership arrangement. The HOTEL OWNER shall lease a portion of the land from the CITY in accordance with the MOU dated December 23, 2015 between the CITY and DEVELOPER.
3. Conference Center. MEDCO shall own the CONFERENCE CENTER through a condominium or similar ownership arrangement for a period of time not less than the life of the public bonds plus ten years. The DEVELOPER shall be provided a purchase option with terms to be determined as part of future agreement(s).
4. On-Site Parking. The CITY shall own the ON-SITE PARKING through a condominium or similar ownership arrangement or at its discretion may choose to have MEDCO own such facilities.

H. Facility Operations. The individual facilities which comprise the PROJECT shall be operated as follows:

1. Hotel. The HOTEL OWNER shall be solely responsible for all operational costs of the HOTEL and HOTEL amenities. All revenue and residual net cash flow from the Hotel and its amenities shall flow to the HOTEL OWNER.

2. Conference Center. MEDCO intends to enter into a future Conference Center Facility Use Agreement or Lease with the HOTEL OWNER under which the HOTEL OWNER shall assume sole responsibility for all Conference Center operations including pre-opening costs, ongoing operational costs, life cycle costs including but not limited to scheduled facilities updates and refreshment, maintenance, repairs, capital reserve, and capital improvement costs of the facilities. The HOTEL OWNER moreover acknowledges that neither the CITY, the COUNTY, MSA, nor MEDCO shall have any ongoing operational financial obligations for the Conference Center and that the HOTEL OWNER shall alone assume the burden of all operational deficits, if any such deficits exist. Accordingly, 100% of the revenue from the Conference Center rental and its related food, beverage, and other sales shall flow to the HOTEL OWNER and the Net Cash Flow shall be split between the HOTEL OWNER and CITY as specified in the December 23, 2015 MOU between the CITY and DEVELOPER. In the event that the HOTEL OWNER sells its interest and receives gains over a certain threshold to be determined in a future agreement, there shall be established a profit sharing formula agreeable to the PARTIES, exclusive of MSA.
 3. On-Site Parking. The CITY at its sole discretion may choose to operate and maintain the on-site parking or contract that responsibility to the HOTEL OWNER, or in the case of MEDCO ownership of the ON-SITE PARKING request that MEDCO contract the responsibility to operated and maintain the ON-SITE PARKING to the HOTEL OWNER. The City shall require that the ON-SITE PARKING be open to the general public. If the City chooses to have the HOTEL OWNER operate and maintain the ON-SITE PARKING, a future Parking Facility Management Agreement will be needed, the terms of which remain to be developed.
- I. Rights of Entry. Until it assigns the Land Purchase and Sale Agreement(s) to the CITY, the DEVELOPER hereby grants the CITY, COUNTY, MSA, and MEDCO, and their agents, employees, architects, and contractors the right to enter the PROJECT site to perform any and all tests, studies, surveys, and other customary preconstruction activities subject to reasonable notice, insurance, and indemnity requirements.
 - J. Surveys. The CITY shall provide surveys in order to establish or confirm the boundary lines of the PROJECT site. The CITY shall cause to be prepared any plats required in connection with the Design and Construction of the PROJECT as a part of the Project Budget costs.
 - K. Schedule. The PARTIES agree to the following projected schedule subject to funding availability and will work collaboratively to address schedule changes as the PROJECT progresses:
 - Approval of this joint MOU by November 1, 2016
 - MD General Assembly Budget Committees 45 Day Review - Nov. 15 - Dec 31, 2016
 - FY17 Capital Budget Grant available for design work to begin
 - Maryland Historical Trust Agreement by December 1, 2016

- City Entitlements and Design Process to December 1, 2016 – December 1, 2017 :
 - Historic Preservation Commission Review- Phase I
 - Planning Commission/Site Plan Review
 - Historic Preservation Commission Review - Phase II
 - Engineering and Construction Documents
- Draft Master Development and Funding Agreement by January 31, 2017
- MD Capital Appropriation #1 (pre-authorized) - \$7.5 million - July 1, 2017
- Execution of Master Development and Funding Agreement by December 1, 2017
- Execution of Transaction Documents such as but not limited to TIF and Revenue Bonds, Easements, Ground Lease, Management Agreements etc.) by Dec. 1, 2017
- Land Closing by December 1, 2017
- Building Permit by May 31, 2018
- MD Capital Appropriation #2 (pre-authorized) - \$7.5 million – July 1, 2018
- Construction –approximately 20 Months from July 15, 2018

L. Notice All notices under this MOU should be directed to:

Maryland Stadium Authority

The Warehouse at Camden Yards
333 West Camden Street, Suite 500, Baltimore, Maryland 21201
Attention: Chairman
cc: Executive Director/General Counsel

Maryland Economic Development Corporation

300 E. Lombard Street, Suite 1000, Baltimore, MD 21202
Attention: Executive Director

The City of Frederick

101 North Court Street, Frederick, Maryland 21701
Attention: Mayor
cc: Director of Economic Development

Frederick County Government

Office of the County Executive
12 East Church Street, Frederick, Maryland 21701
Attention: County Executive

Office of the County Council President
12 East Church Street, Frederick, Maryland 21701
Attention: County Council President

Plamondon Hospitality Partners, LLC
4991 New Design Road, Suite 109
Frederick, Maryland 21703
Attention: Peter H. Plamondon, Jr.
cc: The Law Offices of David J. Weymer
15 Franklin Street
Annapolis, Maryland 21401

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IN WITNESS WHEREOF, the PARTIES have caused this Memorandum of Understanding to be executed by their respective authorized representatives, as shown below.

WITNESS:

AGREED

The City of Frederick

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

WITNESS:

AGREED

Frederick County Executive

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

WITNESS:

AGREED

Frederick County Council President

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

WITNESS:

AGREED

Maryland Stadium Authority

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

WITNESS:

AGREED

Maryland Economic Development Corp

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

WITNESS:

AGREED

Plamondon Hospitality Partners, LLC

BY: _____

By: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____