

March 9, 2018 City Draft

City's Proposed Term Sheet and Comments
71st Street Town Center Development

A. The Project

1. The City currently owns the five parcels outlined in red on Exhibit "A" which contain 83 surface parking spaces.

2. North Beach Town Center Development, LLC ("Developer") owns the parcels outlined in yellow on Exhibit "A."

3. The portion of the project between Abbott and Byron would consist of two separate structures, consisting of 121,693 SF of retail in four stories and a 484-space parking garage.¹ 384 of the parking spaces would be gated public parking spaces in a separate City-owned parking structure (the "Town Center Garage")², and 100 of the parking spaces would be for the sole use of the ground floor retail tenant on the Developer's property, which is projected to be a grocery store.³ The Town Center Garage property would also include approximately 4,362 sq. ft. ground floor restaurant/retail space.

4. The portion of the project between Abbott and Harding would consist of existing office buildings at 42,456 SF, and new a 134-unit residential building with 42,538 SF of ground floor retail uses and a 275-space parking garage, to serve the residential building and office tenants. City's participation in the project between Abbott and Harding would be limited to City's conveyance of the City-owned property located therein.

5. The City would convey its five parcels to Developer, and Developer would convey its parcels outlined in blue on Exhibit "A" to the City, for use for the 384 space Town Center Garage.

6. Developer will be responsible for designing, developing, permitting and constructing the 384-space City-owned Town Center Garage, with the City to reimburse Developer as provided in Section B.2 below.

7. Once the Developer completes the construction of the Town Center Garage, the City will condominiumize the City-owned parcels (outlined in blue in Exhibit "A"), with the City to own the 384 space Town Center Garage, and the Developer to own the 4,362 sq. ft. ground floor retail space.

¹ **Note re the two separate building structures:** As the two structures are separate, City needs to better understand how City's garage spaces and Developer's 100 spaces are connected, as it appears there is a zero lot line between the City and Developer buildings. Parties need to address allocation of costs for overall maintenance, structural repairs.

² **Note re: proposed number of spaces:** Per the City Commission direction provided at the February 28, 2018 Retreat, the Administration is evaluating the feasibility of 384 spaces, in conjunction with the anticipated parking for the 72nd Street garage.

³ **Note re: access to Developer's 100 spaces:** City uses gate/ticket control system for parking garages (not meters). It is unclear how Developer proposes for the City's gate control system to work, to distinguish between the customers of the City's Town Center Garage, and the first floor grocery customers using the Developer's 100 spaces. Need to ensure that Developer's 100 spaces are operationally kept separate from the City's garage, i.e. all operations, maintenance, etc., including ensuring that grocery carts are maintained within the Developer's 100 spaces only.

B. Financial Terms

1. **Developer's Payments to the City.** In consideration for the various benefits the Developer will receive as part of the transaction, the Developer will pay the City a total purchase price of **\$2,374,680**, consisting of the following:

a. \$800,000, consisting of the difference in the appraisal values between the City's parcels and the parcels the Developer will convey to the City (City's properties are appraised at \$800,000 higher than Developer's parcels).

b. \$351,240, in payment for Developer's easement rights to portions of the Town Center Garage, in perpetuity, generally consisting of 5 loading spaces and 2 trash compactors located within City's garage (the "Easement Area"). (The loading and trash area is 2,927 SF, which valued at \$120/SF, is \$351,240).

c. \$523,440, at the [appraised] value of \$120/SF, for Developer's purchase of the 4,362 square foot retail/restaurant space on the ground floor of the Town Center Garage. **[City is currently confirming with its appraiser]**

d. \$700,000, for the City to provide, **for a period of two years only**, two-hour free parking rights at the Town Center Garage, through a ticket validation system, for the benefit of Developer's retail tenants in the Developer's adjacent property between Abbott and Byron only (the "Retail Tenants").⁴ Developer to pay for the costs associated with procuring and implementing the validation system for the Developer's Retail Tenants.

e. Developer to pay the City 1.5% of construction costs for the Town Center Garage (approximately \$222,000), as required by the Art in Public Places Ordinance, set forth in Section 82-587 of the City Code.

f. Once the Town Center Garage is in operation and open to the general public, the Developer shall pay the City of the operating losses, if any, at the Town Center Garage, for the two year period where the two hour free parking is provided for the Developer's Retail Tenants.⁵

g. In addition to covering the expenses in Section B.1.f above, Developer to pay all common area maintenance ("CAM") costs for the Easement Area (5 loading spaces and 2 trash compactor spaces) through an Easement Agreement. Developer to also pay for all CAM charges associated with Developer's ownership of the ground floor retail condominium unit.

⁴ In response to the Finance Committee's concern regarding free parking rights for Developer's tenants in perpetuity, Developer's updated draft agreement continues to propose free two hour parking for Developer's tenants, in perpetuity; and now also includes free 2 hour parking for the general public (and not just tenants) for the first three years, with the Developer paying for operating losses (subject to certain limitations and unspecified exceptions).

⁵ **Note re operating losses to be covered by Developer:** City to provide a pro forma identifying City's line items relating to the operation of the Town Center Garage, in order to avoid any dispute as to what will be included in City's operating costs. Developer's proposal is only "to the extent such losses are [directly due] . . . to the two hour free parking, and not to City mismanagement or other [unspecified] factors." Based on Developer's open-ended language, and the caveat for unspecified factors, the City could reasonably anticipate disputes regarding payment of operating losses.

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h. Developer to pay all of City's outside attorneys' fees and transaction costs, as referenced more fully in Section E.5 below.

i. Developer to provide an additional public benefit (monetary contribution) to the City. Developer to propose additional public benefit for the City Commission's consideration.

2. City's Payments to the Developer.

a. The City will pay Developer for the design, permitting and construction of the Town Center Garage, with a construction cost cap in the not-to-exceed amount of \$34,000 per space.⁶ Net of the payments due from the Developer under Section B.1 above (which amount to \$6,184 per space), **City to pay the Developer the not-to-exceed amount of \$10,681,000** (or \$27,816 per space) to design, permit and construct the Town Center Garage (the "City Costs").

b. The City will reimburse Developer for the City Costs, based on the progress of construction work completed for the Town Center Garage. The City shall not be responsible for the disbursement of any sums in excess of the City Costs, except for City-requested change orders, or if not requested, change orders approved by the City Commission. Should the Developer's actual total construction costs be less than the \$34,000 per space charge to the City (excluding the payments due from the Developer), the City Costs shall be reduced proportionately, and City shall only pay for the actual costs for construction.

c. Developer to separately identify the schedule of values and the costs incurred for the Town Center Garage, and shall track all City Costs separately from the schedule of values or costs incurred for other portions of the Developer's project. The City Costs shall not include the costs to design, permit and construct the ground floor retail/restaurant unit (such costs shall be the sole responsibility of the Developer).

C. Design and Construction of the Town Center Garage.

1. The Developer and the City will work cooperatively to seek approval of the design and development of the Town Center Garage. The Developer will be responsible for submitting any required applications for development approvals, and for securing any and all final, non-appealable development approvals and permits.

2. The City shall have review over, and final approval of, the design and construction plans and specifications for the Town Center Garage to ensure that the Improvements are designed to meet the City's needs and standards. The City shall require a copy of all actual cost estimates, plans, and construction related contracts prior to and during construction.

3. The Town Center Garage will be designed in a way that the garage can be converted to other uses if parking demand declines in the future. Developer's \$40,000 per parking space charges include the costs associated with the City's design criteria for accomplishing a potential future conversion.⁷

⁶ **The Developer has proposed that the City pay \$40,000 per space, not including the costs of design, to be paid for separately by the City.** The Administration proposes a design and construction cost of \$34,000 per space, in line with the City's most recent design and construction costs for the Collins Park Garage. The City would then use the proceeds from the sale (\$6,187 per space) to offset the \$34,000 per space parking costs.

⁷ If City Commission agrees to any free parking in perpetuity, City needs a mechanism to release the covenant regarding free parking that is more flexible than the Developer's proposal, which locks the City in to the free parking covenant for a minimum period of 40 years. In addition, as Developer's proposal requires the City to, in

4. The Developer shall deliver, for the City's review and approval, an estimated budget for the total cost (i.e. hard and soft costs) of the Town Center Garage, which budget shall be based upon the City-approved design and construction plans and specifications. In no event shall the City be responsible for costs in excess of the City Costs, nor shall the City have any obligation to pay any amounts in excess of the City Costs. At its sole option and discretion, the City may retain a consultant (i.e. such as a professional cost estimator) to verify the Developer's total estimated cost, with the cost of the consultant to be paid for by the Developer. Developer shall provide copies of all actual costs and invoices.

5. The Developer shall enter into a separate, stand-alone fixed sum or Guaranteed Maximum Price agreement with an architect and a contractor (General Contractor or Design/Builder) to construct the Town Center Garage. The Developer shall select the General Contractor pursuant to a competitive procurement process which will be developed, initiated, and overseen by the Developer; provided, however, that the City shall have the right to approve the recommended General Contractor, which approval shall not be unreasonably withheld, conditioned, or delayed. The City shall also have the right to review and approve the contract with the selected General Contractor prior to such Contract being executed between the Developer and General Contractor.

6. The Developer shall provide, and shall cause its General Contractor to also provide, warranties, indemnities, and insurance in favor of the City. Prior to commencement of construction, the Developer shall cause the General Contractor to furnish City with a performance bond and payment bond, in a form acceptable to the City Attorney, and naming the City and the Developer as co-obligees. Developer and construction contractor shall ensure no liens are filed on City's property. The construction contract must be assignable to the City (i.e., in the event the Developer defaults), and City shall be a third party beneficiary to the construction contract.

7. The Developer shall develop a plan for construction staging in order to minimize disruptions to the area in the vicinity of the Town Center Garage. Such plan shall be subject to the City's prior approval, which shall not be unreasonably withheld, conditioned or delayed.

D. The Operation of the Town Center Garage.

1. The City will operate the Town Center Garage as a municipal parking garage. City to have a validation system for customers of retail tenants on Developer's property for two-hour free parking for the first 2 years. Developer to pay for the costs of implementing the validation system for the benefit of its tenants.

2. The City will make available to North Beach residents monthly parking permits for the Town Center Garage, in the same manner as provided for residents in other City parking garages.

3. The Developer will also provide 100 parking spaces on its own property between Abbott and Byron, at its own expense, for the tenant on the first floor, and such spaces will not be included as part of the City's Town Center Garage. City shall have no responsibility for the costs of operating, maintaining, insuring, or making repairs to any of the Developer's 100 parking spaces located on Developer-owned property.⁸

perpetuity, separately provide access to the Developer's 100 parking spaces through the Town Center Garage, City's ability to repurpose will be inherently limited under the Developer's current proposal.

⁸ As noted above, need to understand how parking validation system will work for Developer's grocer customers, if these will not be customers of the City's Town Center Garage. Need to ensure structures are separate and that City will not incur any operational/maintenance costs for the 100 spaces.

4. The Developer's Easement Agreement (for the 5 loading spaces and 2 dumpsters) will allow for (i) cost allocation, (ii) cross access for grocery store-related vehicles to utilize the Town Center Garage parking garage ramp and second floor drive aisles of the Town Center Garage, in order to access the 100-space parking garage on the Developer's property, (iii) cross access for Developer's retail tenants to utilize the loading spaces and trash compactors located in the Town Center Garage, among other things.⁹

E. Other Terms.

1. The Closing for the exchange of properties shall take place within 60 days following the satisfaction of the following conditions: (i) the City Commission's adoption of all necessary amendments to the City's Comp Plan and Land Development Regulations required for the Project; (ii) the City Commission's appropriation for the City Costs to be paid to the Developer; (iii) issuance of all final, non-appealable development approvals for the Developer's Project; (iv) evidence of Developer equity and financing commitments sufficient to complete the Developer's overall project; and (v) an opinion of the City's Parking Bond rate consultant, as required by the bond covenants in the City's Parking Bond Resolution, that the transaction will not have a material adverse effect on the net revenues of the Parking System.

2. At Closing, Developer to pay the City (i) the \$800,000 for the difference in the appraised value of the land, as set forth in Section B.1 above, (ii) the contribution for Art in Public Places, as required by the City Code; and (iii) the additional public benefit/monetary contribution referenced in Section B.1.i above. The payments from Developer in subsections (b) through (d) will be applied as credits against the amounts the City is otherwise obligated to pay the Developer for the design and construction of the Town Center Garage, as set forth more fully below in Section 2.

3. The Development Agreement shall include permitted uses/prohibited uses for the Developer project, along with provisions regarding a quality tenant mix.

4. Prior to the completion of the Project, any transfer of the property by the Developer (except a transfer to a related company) shall require approval by the City Commission.

5. Developer reaffirms its commitment, pursuant to the Reimbursement Agreement dated on or about February 18, 2018, to pay for the City's transaction costs, including outside counsel, for the Project.

6. The Developer shall obtain the full building permit for the Town Center Garage within ___ months following the execution of the Development Agreement. Final completion of the Town Center Garage shall occur within ___ months following execution of the Development Agreement. **To date, the Developer has not proposed any time periods for completion.**

⁹ **Planning has identified concerns regarding the Developer's proposed loading, and the requirement to internalize loading. Internal pathways/throughways may not be workable and may be contrary to Planning Board criteria.** In addition, as City's property will be governed by a Declaration of Condominium, and Developer will own the ground floor retail, the parties should address whether, in lieu of an Easement Agreement for the loading spaces/trash compactors, this Easement Area should be a separately owned condominium unit, to ensure City is not subsidizing the operations of the Developer's adjacent retail tenants.

Exhibit A

