

## Overview of New Hillman Garage Concession Agreement and City Dock Resiliency Project

### Transaction Structure:

- In exchange for a long-term concession agreement to operate the Hillman Garage and certain designated surface parking areas in downtown, Annapolis Mobility & Resilience Partners (AMRP) will i) Design, Build, Finance, Operate, and Maintain (“**DBFOM**”) a new Hillman Garage, ii) operate certain downtown parking areas.
- Consistent with the structure presented by AMRP in its original proposal, a non-profit entity will be the counterparty (“**Concessionaire**”) under the concession agreement. This enables tax exempt debt to be issued to fund the construction of a new Hillman Garage and provide a substantial portion of the funds needed to complete the resiliency project of City Dock.
- The Concessionaire will contract with members of the AMRP to design and construct the new Hillman Garage, and operate the new Hillman Garage and certain downtown parking areas.
- AMRP will, through the Predevelopment Agreement with the City continue to develop, and ultimately construct the City Dock Resiliency Project (a substantial portion of the funds required being provided through the Concession Agreement as described below).
- The total cost to replace the Hillman Garage is approximately \$28M.
- Of the approximately \$35M needed to complete the City Dock Resiliency Project, the Concession Agreement will provide approximately \$20-\$25M of funding (depending on Capital Market conditions at the time of Financial Close). The remaining \$10M is anticipated to come from State and Federal grants or City financing.
- Any residual balance from parking revenues after debt service and operating expenses from parking operations will flow to the City in the form of a “Waterfall” payment.
- Waterfall payments (estimated to be approximately \$1.06 million per year and growing over the term) will be used to subsidize City transit operations and are anticipated to be paid not less than quarterly.
- The Concessionaire is responsible for all financing, cost and risk associated with the Project other than specific risk outlined in the Concession Agreement to remain with the City.
- All parking revenue upside is retained by the City under the Concession Agreement.

### Hillman Parking Garage

- Today: 425 spaces
- New: 588 spaces.

### Estimated time of Construction (Hillman Garage):

- Demolition start: Late Q1 or early Q2 2022
- Estimated Construction Completion: Q2 2023

**A. NEW HILLMAN GARAGE AND ADJACENT PARKING CONCESSION**

**1. Parties** The City of Annapolis, Maryland (the "**City**") and a non-profit company ("**Concessionaire**")<sup>1</sup>. The use of a non-profit counterparty was selected in order to reduce the financing costs of the project through the issuance of tax-exempt senior debt, and is consistent with the structure presented by AMRP as part of its original proposal.

**Developer**

The Concessionaire entity will contract for many of the services described herein with members of Annapolis Mobility & Resiliency Partners ("AMRP") consisting of:

- Amber Infrastructure (Developer)
- Whiting Turner (General Contractor)
- Walker Parking (Lead Designer)
- Premium Parking (Parking Operator)

**2. Concession Grant** The City shall grant to Concessionaire the exclusive right and obligation to finance, design and construct, and operate and maintain the New Hillman Garage and certain Adjacent Parking Assets (collectively the "**Parking System**") for the term of the Concession Agreement ("**CA**"). The grant to Concessionaire in the CA shall be contractual and not a lease or other conveyance of real property interest. The Concessionaire will contract with Annapolis Mobility and Resilience Partners LLC ("**Developer**")<sup>2</sup> to perform many of its obligations under the Concession Agreement.

**3. Term** 30 years from completion of the design and construction of the New Hillman Garage.

**B. FINANCING RESPONSIBILITY**

**1. Responsibility** Concessionaire shall be responsible for financing (through senior debt and a subordinate loan) (i) the cost of the work to complete the design and construction of the Project, (ii) the concession payment to be made to the City at Financial Close (iii) reimbursement of costs incurred under the Pre-Development Agreement ("**PDA**") between the City and AMRP, budgeted cost in the PDA for the development of the City Dock project and payment, and (iv) associated financing and development cost. Any such debt financing shall be an obligation of Concessionaire and non-recourse to the City.

**2. Financial Close** The CA shall contemplate that the City shall provide customary assistance to Concessionaire in achieving "Financial Close" (satisfying lenders' conditions to disbursement of the Project's financing), such as providing disclosure regarding the City and entering into a consent and agreement with an agent of the lenders acknowledging the assignment as collateral of Concessionaire's interest in the CA and the lenders' right to cure any default of Concessionaire under the CA.

<sup>1</sup> AMRP is working with MEDCO for the issuance of the bonds

<sup>2</sup> Entity that will function as Developer/ Manager subject to change – but will be a wholly-owned subsidiary of Amber Infrastructure

- 3. Concession Payment at Financial Close** Upon Financial Close, with the proceeds of the initial disbursement of the Project's financing, Concessionaire shall pay to the City the concession payment of approximately \$20-\$25 million depending on capital market conditions at time of Financial Close.

**C. DESIGN AND CONSTRUCTION WORK**

- 1. General** Concessionaire shall be responsible for performing all design and construction (“D&C”) work required to complete the Project.
- 2. D&C Requirements** The design and construction scope and technical requirements will be set forth in an annex to the CA, and will be based on design work performed pursuant to the Pre-Development Agreement.  
  
Any D&C work change orders initiated by either Party after execution of the CA will be subject to (i) compensation available to fund performance of the change and any resulting increases to O&M costs and (ii) limitations on scope changes that could impact revenues available to service financing on a timely basis.
- 3. D&C Completion** The CA will include a process for certifying completion of the D&C work and the commencement of operation of the Project and a long stop date by which such completion must occur.

**4. Supervening Events**

Concessionaire to be afforded additional time to perform the D&C work to the extent impacted by customary supervening events that are outside the control of the Parties, such as: force majeure events, discovery of unknown geotechnical or other site conditions, changes in law, adverse court rulings (unrelated to Concessionaire).

Any additional cost of the performance of the D&C work resulting from a supervening event will, depending on the type of supervening event, will be covered by either (i) use of contingency in the Guaranteed Maximum Price (“**GMP**”) of Concessionaire's contract with its D&C contractor, (ii) dedicated Concessionaire reserve fund, (iii) dedicated City reserve funded from project financing or (iv) as a compensation paid by City under the CA.

Supervening Event Risks borne by City:

Unforeseen circumstances:

- Force Majeure
- Hazardous Materials, Archeological, Endangered Species to the extent not identified or reasonably inferred from the studies
- Change in law
- Injunction or restraining order, litigation

Open issues:

- Permitting delays from authorities other than the City,
- Failure of utilities to cooperate

Supervening Event Risks borne by Concessionaire:

- First \$500,000 for most risks, but excluding hazardous materials, litigation, change in law and City caused damages

**D. OPERATIONS AND MAINTENANCE WORK**

**1. General**

Concessionaire shall be responsible for operating and maintaining (i) the New Hillman Garage from D&C work completion and (ii) the Adjacent Parking from Financial Close.

**2. O&M Performance Requirements**

The O&M work performance requirements will be set forth in an annex to the CA, and informed by the standards in the City's existing parking management contracts.

Any O&M work change orders initiated by either Party after execution of the CA will be subject to (i) increases to O&M costs and (ii) limitations on scope changes that could impact revenues available to service financing on a timely basis.

**3. Parking Fee Collection**

The Concessionaire shall be responsible for billing, collection, and receipt of payment of all parking fees with respect to the Parking System. The CA shall contemplate the natural transition from meters to mobile app fare collection for the Adjacent Parking and agreed parameters regarding eligible mobile apps.

- 4. Enforcement** Parking violations enforcement to be the responsibility of Concessionaire (i) from completion, with respect to the New Hillman Garage and (ii) from Financial Close, with respect to the Adjacent Parking.

Parameters for setting violation fines, and application of collected fines, (as established by the City) to be addressed in the CA.
- 5. Multi-use Garage Spaces** At the City's discretion, certain multi-use areas in the garage<sup>3</sup> may be temporarily used for events or other purposes that preclude parking during such time; subject to limitations on such uses that could impact revenues available to (i) cover any additional O&M costs incurred by Concessionaire in connection with such use and (ii) service financing on a timely basis.
- 6. Supervening Events** Concessionaire to be excused performance of the O&M work to the extent impacted by customary supervening events that are outside the control of the Parties and generally not insurable, such as: force majeure events, changes in law, adverse court rulings (unrelated to Concessionaire). Any additional cost of the performance of the O&M work resulting from a supervening event to be covered either (i) through net revenues available under the CA or (ii) as a compensation event under the CA.

**E. PROJECT REVENUES**

- 1. General** All parking fee revenues from the New Hillman Garage and Adjacent Parking from D&C Completion to be deposited in Concessionaire's revenue account (which will be a collateral account pledged to Concessionaire's lenders' collateral agent)<sup>4</sup>.

Funds in the revenue account shall be required to be applied on a monthly basis to Project obligations in a "waterfall" of priorities including, e.g.: Project O&M costs; funding any required reserves; financing cost (senior debt service subordinate loan payments). Funds remaining after application to Project obligations will be released to the City on a periodic basis (anticipated to be not less than quarterly, subject to the agreement of Project lenders).
- 2. Fare Setting** Parking rates will be established by the City in accordance with provisions in the CA, based either on maintaining a minimum debt service coverage ratio, tied to CPI or as recommended by an independent parking consultant. The final methodology will be determined after review of the structure by rating agencies and financing underwriters.

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<sup>3</sup> Multi-use areas assumed to be limited to spaces on first floor immediately adjacent to Gorman St. and top parking deck.

<sup>4</sup> Net parking revenues collected from the Adjacent Parking from Financial Close to D&C Completion to be deposited in account designated by City – i.e. parking revenues from City Dock Parking Area during construction will not form part of revenues used to finance project.

## F. DEFAULT AND TERMINATION

- 1. Default**                      The CA includes defined "Defaults" for each Party.

  - Concessionaire Defaults shall include: failure to complete the D&C work by the long stop date; failure to make any payment under the CA; misrepresentation; insolvency; and material breach.
  - City Defaults shall include: misrepresentation; material breach; failure to make any payment under the CA.

Defaults will be subject to customary cure periods where appropriate (including, in the case of Concessionaire, cure periods available to Concessionaire's lenders to the extent they have "stepped in" and are seeking to cure Concessionaire's Default).
  
- 2. Termination**                      The CA may be terminated early for: (i) an uncured Concessionaire Default (initiated by the City); (ii) an uncured City Default (initiated by Concessionaire); (iii) extended force majeure events or other supervening/uninsurable risk events that make the Project no longer viable (initiated by either party); (iv) a court ruling terminating the CA and (v) at any time by the City for convenience.
  
- 3. Termination Compensation**                      Upon early termination of the CA, compensation will be payable reflecting the value of the asset transferred and the applicable damages relating to the underlying termination event, including as generally described below:

  - Termination compensation for Concessionaire Default: Amount of existing financing liabilities less any cost to complete the New Hillman Garage (pre-D&C Completion) or maintenance rectification costs (post-D&C Completion) incurred by the City.
  - Termination compensation for City Default / Court Ruling: Amount of existing financing liabilities plus subcontractor breakage/demobilization costs plus Concessionaire's reasonable costs incurred for termination. The CA, in certain cases of City Default, may provide for the City to assume the debt and other obligations of Concessionaire so as to complete the project. Terms and conditions of said assumption have not yet been finalized and will be addressed in the final CA.
  - Termination compensation for extended supervening event/uninsurable risk: Amount of existing financing liabilities plus subcontractor breakage/demobilization costs.
  - Termination compensation for convenience: Amount of existing financing liabilities plus any subcontractor breakage costs (none if City assumes construction contract) plus Concessionaire's reasonable costs incurred for termination.

## G. HANDBACK

- 1. General**                      The CA sets forth a procedure commencing prior to the end of the CA term for the Parties to work together to prepare for a seamless handback of the Project to the City at the end of the CA term.