



## DEVELOPMENT AND FINANCE COMMITTEE

**February 18, 2022**

**10:00 a.m.**

**YouTube Link:** <https://youtu.be/bwAHFZrtDvY>

### Approval of Minutes:

Title	Page
1. <b>Minutes:</b> Approval of Development and Finance Committee Minutes of January 21, 2022	3
2. <b>Minutes:</b> Approval of Development and Finance Committee Closed Session Minutes of January 21, 2022	

### Discussion/Action Items:

Title	Page
1. <b>Hillandale Gateway:</b> Design Update, Approval of a Preliminary Development Plan; Approval to Select a General Contractor and Third Party Construction Manager	10
2. <b>Bond Counsel:</b> Approval of Firm to Serve the Commission as its Bond Counsel in Accordance with RFP #2288	37

### Closing Statement:

Title	Page
Vote to Close Meeting	50

### Closed Session:

Title	Page
<i>The closed committee meeting will be called to order pursuant to Section 3-305(b)(3) and 3-305(b)(13) of the General Provisions Article of the Annotated Code of Maryland</i>	

Date Posted: February 15, 2022

# Minutes

**HOUSING OPPORTUNITIES COMMISSION OF MONTGOMERY COUNTY**

10400 Detrick Avenue  
Kensington, Maryland 20895  
(240) 627-9425

**Development and Finance Committee Minutes**

**January 21, 2022**

For the official record of the Housing Opportunities Commission of Montgomery County, an open meeting of the Development and Finance Committee was conducted via an online platform and teleconference on Friday, January 21, 2022, with moderator functions occurring at 10400 Detrick Avenue, Kensington, Maryland beginning at 10:02 a.m., available for viewing [here](#). Those in attendance were:

**Present**

Jackie Simon, Chair – Development and Finance Committee  
Richard Y. Nelson, Jr. – Commissioner  
Jeffrey Merkowitz – Commissioner

**Also Attending via Online**

Kayrine Brown, Acting Executive Director  
Zachary Marks  
Jennifer Arrington  
Paige Gentry  
Eugenia Pascual  
Charnita Jackson  
Marcus Ervin  
Jay Shepherd  
John Broullire  
Leidi Reyes  
Ellen Goff  
Gio Kavaladze

Aisha Memon, General Counsel  
Timothy Goetzinger  
Kathryn Hollister  
Nathan Bovel  
Christina Autin  
Matt Husman  
Darcel Cox  
Terri Fowler  
Gail Willison  
Paul Vinciguerra  
Hyunsuk Choi

**IT Support**

Aries Cruz

**Commission Support**

Patrice Birdsong, Spec. Asst. to Commission

Commissioner Simon opened the meeting with a welcome and introduction of the Commissioners participating on the Committee.

## **APPROVAL OF MINUTES**

The minutes of the November 19, 2021 Development and Finance Committee were approved upon a motion by Commissioner Nelson and seconded by Commissioner Merkowitz. Affirmative votes were cast by Commissioners Simon, Nelson, and Merkowitz.

## **DISCUSSION ITEMS**

### **1. Paddington Square: Affirmation of Resolution 21-001<sub>PS</sub>, Approval of Dwight Capital, LLC, as Successor Lender of Love Funding Corporation, and Approval to Amend the Bylaws of the Paddington Square Development Corporation**

Jennifer Arrington, Acting Director of Mortgage Finance, provided a presentation on recommending to the full Commission and Board of Directors of Paddington Square Development Corporation the following: Affirm the refinancing plan, as approved in Resolution 21-001<sub>PS</sub>, in accordance with the existing Bylaws of the Paddington Square Development Corporation; Approval of a successor lender; and approval to amend the existing Bylaws of the Corporation to incorporate certain required FHA provisions.

There was discussion among the Commissioners and staff. Staff addressed the logistics of HOC's Board approval versus the approval of the Development Corporation. Staff also affirmed Commissioner Merkowitz's concern on whether this action would not have any impact on HOC's ability to resubordinate the HIF Loan.

With no further questions a motion was made and unanimously approved by Commissioners Nelson and Merkowitz to move the item forward to the full Commission for approval at the February 2, 2022 monthly meeting. Commissioner Simon temporarily stepped away and did not participate in the vote.

### **2. Willow Manor Properties: Approval to Increase DHCA's Share of Construction Period Interim Cash Flow, a Condition for DHCA to Close the Transaction**

Marcus Ervin, Director of Real Estate, introduced Kathryn Hollister, Senior Financial Analyst, who provided a presentation to recommend to the full Commission approval to increasing the share of Retained Cash Flow distributed to repay the County HIF Loan.

A motion was made by Commissioner Nelson and seconded by Commissioner Merkowitz to recommend to the full Commission at the February 2, 2022 monthly meeting. Affirmative votes were cast by Commissioners Simon, Nelson, and Merkowitz.

**3. Westside Shady Grove: Approval to Amend the Development Budget {to Allocate Net Financing Proceeds from Initial Construction Closing}**

Marcus Ervin, Director of Real Estate, provided a presentation to recommend to the full Commission approval to amend the development budget to allocate excess proceeds from the bond issuance to be used to repay interest on the HIF Loan, fund a capitalized interest account for payments on the HIF Loan, and to set aside the remaining funds for a soft cost contingency casing an increase to the closing budget.

A motion was made by Commissioner Nelson and seconded by Commissioner Merkowitz to recommend to the full Commission at the February 2, 2022 monthly meeting. Affirmative votes were cast by Commissioners Simon, Nelson, and Merkowitz. Commissioner Nelson expressed his appreciation of the presentation including a summary of prior Commission actions taken. He stated that this helps refresh the Commissioners memories of what actions have been taken and if necessary can research files.

**4. Upton II: Approval of the Naming and Branding of HOC at the Upton in Accordance with HOC Naming Guidelines**

Christina Autin, Director of Legislative and Public Affairs, provided a presentation to recommend to the full Commission approval of permanent name for the Upton II in Rockville, Maryland to “Residences at The Print Shop”.

There was discussion among the Commissioners and staff regarding other suggested names of the property. During the discussion it was decided to recommended “Residences on the Lane” as the new name of the property.

A motion was made by Commissioner Nelson and seconded by Commissioner Merkowitz to recommend to the full Commission at the February 2, 2022 monthly meeting the suggested renaming of the Upton II to “Residences on the Lane”. Affirmative votes were cast by Commissioners Simon, Nelson, and Merkowitz.

**5. The Metropolitan Apartments: Emergency Procurement to Select SK&A Structural Engineers, PLLC to Evaluate and Execute a Plan to Provide Waterproofing Services for the Green Roof at Metropolitan Apartments**

Zachary Marks, Chief Real Estate Officer, provided a presentation to recommend to the full Commission approval to select Smislova, Kehnemui and Associates as structural engineer to prepare for repairs and evaluation of waterproofing services for the green roof.

There was discussion among the Commissioners and staff. Staff explained that the request is for both the design structure and waterproofing. Commissioner Nelson suggested that there be clarity on defining the emergency.

A unanimous decision to move the recommendation forward to the full Commission at the February 2, 2022 monthly meeting. No formal vote was taken.

Commissioner Simon read the Written Closing Statement. Commissioner Merkowitz seconded the motion, with Commissioners Simon, Nelson, and Merkowitz voting in approval.

Based upon this report and there being no further business to come before this session of the Development and Finance Committee, the Committee adjourned the open session at 10:46 a.m. and reconvened in closed session at 10:50 a.m.

In compliance with Section 3-306(c)(2), General Provisions Article, Maryland Code, the following is a report of the Development and Finance Committee closed session held on January 21, 2022 at approximately 10:50 a.m. via an online platform and teleconference, with moderator functions occurring at 10400 Detrick Avenue, Kensington, MD 20895. The meeting was closed under the authority of Sections 3-305(b)(3), and 3-305(b)(13) to discuss two topics: (1) the acquisition/purchase of (A) the fee simple interest (via a purchase and sale agreement) of three multifamily properties located in Bethesda, Maryland; and (B) the acquisition of three separate multifamily properties (via a purchase and sale agreement or ground lease) located in Bethesda, Maryland (pursuant to Section 3-305(b)(3)); and (2) the confidential commercial and financial terms of HOC's potential purchase of both of the above referenced acquisitions (pursuant to Sections 3-305(b)(13)).

The meeting was closed and the closing statement dated January 21, 2022 was adopted on a motion made by Jackie Simon, seconded by Jeffrey Merkowitz, with Jackie Simon, Richard Y. Nelson, Jr., and Jeffrey Merkowitz voting in favor of the motion. The following persons were present: Jackie Simon, Richard Y. Nelson, Jr., Jeffrey Merkowitz, Kayrine Brown, Aisha Memon, Kathryn Hollister, Timothy Goetzinger, Paige Gentry, Zachary Marks, John Broullire, Gio Kaviladze, Christina Autin, Jennifer Arrington, Gail Willison, Leidi Reyes, and Patrice Birdsong.

In closed session, the Committee discussed the below topics and took the following actions:

1. **Topic:** The potential acquisition/purchase of the fee simple interest (via a purchase and sale agreement) of three multifamily properties located in Bethesda, Maryland

(pursuant to Section 3-305(b)(3)), and the confidential commercial and financial terms of financing the acquisition (pursuant to Section 3-305(b)(13)).

- a. **Action Taken:** Staff requested that the Development and Finance Committee recommend to the full Commission authorization to (i) complete the acquisition of the properties, including assigning the purchase contracts to an HOC special-purpose entity; (ii) use various funding sources for the acquisition; (iii) restrict the cash flow to the properties until closing of construction and/or permanent financing; and (iv) enter into a contract for interim property management services while staff prepares and issues a formal solicitation. A motion was made by Commissioner Nelson, recommending advancing the items to the full Commission meeting on February 2, 2022, with additional clarification on the funding for the transaction. Commissioner Merkowitz seconded the motion, and Commissioners Nelson, Merkowitz, and Simon voted in approval.
2. **Topic:** The potential acquisition/purchase of three other multifamily properties (via a purchase and sale agreement or a ground lease) located in Bethesda, Maryland (pursuant to Section 3-305(b)(3)), and the confidential commercial and financial terms of financing the acquisition (pursuant to Section 3-305(b)(13)).
    - a. **Action Taken:** Per a discussion during a closed session with the Commission held on January 12, 2022, staff was directed to take into consideration the Commission's comments and questions and discuss the results with the Development and Finance Committee. Staff provided a detailed presentation and addressed the Commissions' prior concerns. Staff requested that the Development and Finance Committee recommend to the full Commission authorization to (i) enter into a purchase contract for the properties; (ii) create special-purpose entities to acquire the properties; (iii) make an earnest money deposit; (iv) use various funding sources for the earnest money deposit and acquisition, including selection of a senior lender; and (v) select an initial management company for the properties. A motion was made by Commissioner Nelson, recommending advancing the items to the full Commission meeting on February 2, 2022, with additional clarification on the funding for the transaction. Commissioner Merkowitz seconded the motion, and Commissioners Nelson, Merkowitz, and Simon voted in approval.

The closed session was adjourned at 12:05 p.m. with a motion by Commissioner Merkowitz and seconded by Commissioner Nelson. Affirmative votes by Commissioners Simon, Nelson, and Merkowitz.

Kayrine Brown  
Acting Secretary/Treasurer

/pmb



# Discussion/Action Items

**HILLANDALE GATEWAY: DESIGN UPDATE, APPROVAL OF A  
PRELIMINARY DEVELOPMENT PLAN, APPROVAL TO SELECT CBG  
BUILDING COMPANY AS GENERAL CONTRACTOR, AND APPROVAL TO  
SELECT LAMBIS RANK FOR CONSTRUCTION MANAGEMENT SERVICES**

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**10100, 10110, 10120 AND 10140 NEW HAMPSHIRE AVE, SILVER SPRING, MD**



**KAYRINE BROWN, ACTING EXECUTIVE  
DIRECTOR**

**Kathryn Hollister, Senior Financial Analyst  
Daejauna Donahue, Project Manager  
Marcus Ervin, Director of Real Estate  
Zachary Marks, Chief Real Estate Officer**

**February 18, 2022**  
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# Executive Summary

- Hillandale Gateway **will be a new mixed-use, mixed-income, multigenerational community** located at 10100, 10110 and 10120 New Hampshire Avenue in Silver Spring, MD, on the site of Holly Hall Apartments (“Holly Hall”), a former 96-unit Public Housing community.
- Hillandale Gateway **will include a total of 463 residential units**, of which **a minimum of 30% will be affordable**. Hillandale Gateway will comprise **two residential buildings – one, a 155-unit Net Zero Energy, age-restricted (age 62+) senior building (“AR Building”); the other, a 308-unit Passive House, non-age restricted multifamily building (“NAR Building”)**. In addition to residential units, the site will have a drive-thru Starbucks, above-ground parking garage, commercial/retail/restaurant space, and public and private green space.
- Hillandale Gateway **will be the first major multifamily investment in the East County** in decades and will create its first destination mixed-use community. Hillandale Gateway will also set the bar for innovation and energy efficiency in residential development in the mid-Atlantic.
- HOC is developing Hillandale Gateway as part of a joint venture (“Joint Venture” or “Hillandale Gateway, LLC”) with The Duffie Companies (“Duffie”). Duffie is a third-generation, Montgomery County-based, family-owned real estate owner, developer, and asset manager. Duffie has extensive experience developing high-performance green buildings and is one of the largest real estate owners in the Hillandale submarket of Silver Spring, owning 10140 New Hampshire Ave (the site of the future Starbucks at Hillandale Gateway) and all of the properties along the east side of New Hampshire Avenue directly across from the Hillandale Gateway site.
- The HOC-Duffie development team (“Development Team”) obtained site plan approval and submitted for permits in 2021. **As the Development Team works toward a year-end 2022 closing, it recommends that the Commission approve the following:**
  1. Approval of a Preliminary Development Plan.
    - A preliminary development plan provides the proposed development framework so that staff can proceed with financing applications. Staff will return to the Commission for approval of a Final development and Finance Plan in July 2022.
  2. The selection of CBG Building Company as general contractor (“GC”) for the construction of Hillandale Gateway and approval for the Acting Executive Director to negotiate a contract with CBG Building Company.
    - Staff will return at a later date for approval of the final GC budget and approval to execute a GC contract. No funding is necessary at this time.
  3. The selection of Lambis Rank as the third-party construction manager (“CM”) for Hillandale Gateway and authorization for the Acting Executive Director to execute a contract with the firm.
    - Funding for preconstruction phase CM services will be paid from predevelopment funding previously approved by the Commission. Construction and post construction phase services will be paid from construction financing. No additional funding is necessary at this time.

# Development Highlights

- **Affordability:** Hillandale Gateway will be a contemporary mixed-income development in a location with convenient access to major arterials, services, recreational activities and amenities. Of the 463 units, a minimum of 30% will be affordable.
- **Economic Development:** Hillandale Gateway will bring worthy new amenities and improvements to the Hillandale neighborhood and eastern Montgomery County, and is intended to be the catalyst for achieving broader transformations in Hillandale, attracting the new restaurants, new shops, new residents, new businesses, and new jobs that the White Oak Science Gateway Master Plan specifically seeks to encourage.
- **Sustainability:** Hillandale Gateway will incorporate a variety of methodologies in an effort to set new benchmarks for sustainability and high-performance development in Montgomery County. By using Passive House construction methodologies, the energy consumption of the buildings will be significantly reduced. At the same time, the site will include a renewable energy system (in the form of rooftop solar on both the senior and multifamily building and on the parking garage), which the Development Team anticipates will be sufficient to allow the AR building to become a Zero-Net Energy building – producing as much energy as it consumes. Thus, Hillandale Gateway will promote energy efficiency while supporting the energy needs of its residents.
- **Resiliency:** During periods of grid outage, Hillandale Gateway’s solar plus energy storage will be used to provide a resiliency center for residents and the surrounding neighborhood. Resiliency hubs are designed to provide emergency heating and cooling capability; refrigeration of temperature sensitive medications; plug power for charging of cell phone and computer batteries; certain durable medical equipment, as well as emergency lighting.
- **Public Open Space:** At the entrance of Hillandale Gateway will be a centralized green space (“Central Green”), usable by the public as well as residents, consisting of approximately 17,000 square feet of contiguous open space. This public open space will include an amphitheater and will be a centerpiece and foreground for the development, establishing a focal point for the multi-building project. The site will provide additional open space, walkable sidewalks, a "loop path", streetscaping, a programmable “Festival Street”, landscaping and other site improvements, all of which will be dispersed throughout the entirety of the site.
- **Transportation:** Instead of taking the “pay and go” approach and paying a Local Area Transportation Improvement Program (“LATIP”) fee associated with the development, the Development Team intends to design and construct more than \$1 million in transportation improvements along the frontage of the site on Powder Mill Road. The Development Team has worked closely with MCDOT to design a new bus transit center featuring a pedestrian-friendly drop-off area, bus shelters, restroom facilities for bus drivers, and other related infrastructure improvements.

# Site Plan



## KEY

### Buildings:

1. 155-unit Senior Building "AR"
2. 308-unit Multifamily Building "NAR"
3. Parking Garage
4. Retail Pads
5. Drive-thru Starbucks

### Site:

6. Transit station
7. Open green with amphitheater/event stage
8. Urban plaza and natural area
9. Festival street with removable bollards
10. Flexible lawn space and dining terraces
11. Perimeter loop path

# Exterior Renderings



Looking SW from Intersection of Powder Mill Rd and New Hampshire Ave



New Transit Center on Powder Mill Rd



Dining Terrace and Public Green Space



Festival Street



Retail Pads and Flexible Green Space

# Interior Renderings – NAR Lobby/Leasing



LOBBY LOUNGE



LOBBY LOUNGE



LEASING



ROOFTOP LOUNGE



# Interior Renderings – AR Amenities



COMMON KITCHEN



LOUNGE



THIRD FLOOR COORIDOR

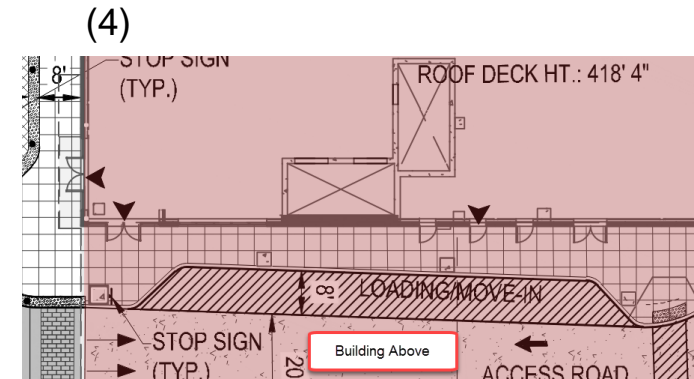
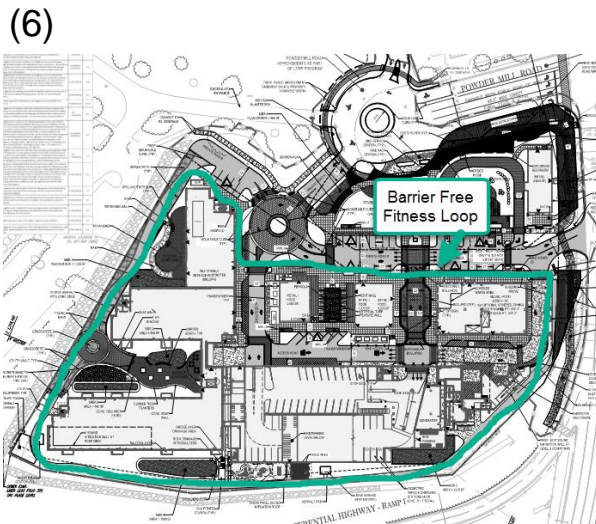
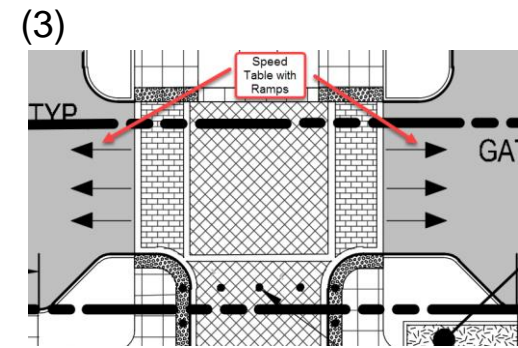
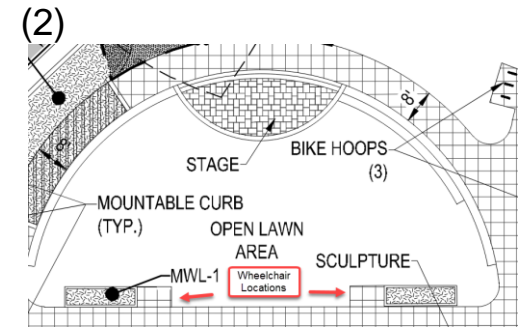
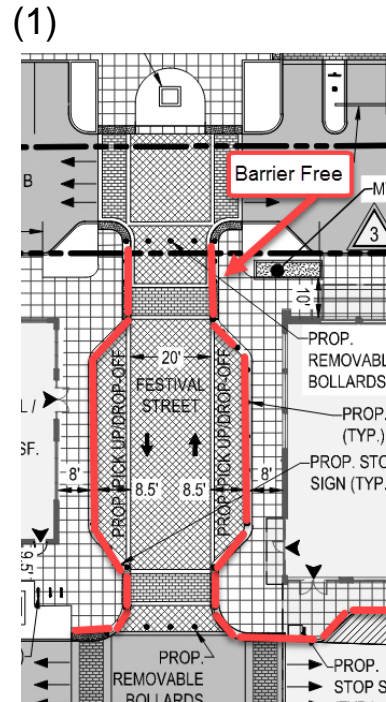


COMPUTER ROOM/COWORKING

# Accessibility – Site Features

**Accessibility features throughout the site include, but are not limited to:**

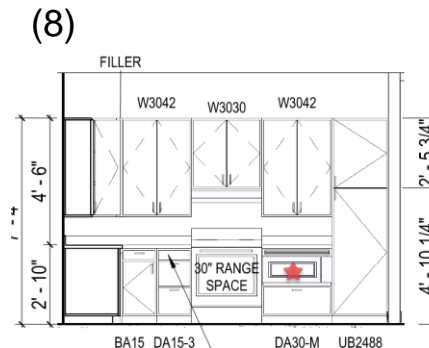
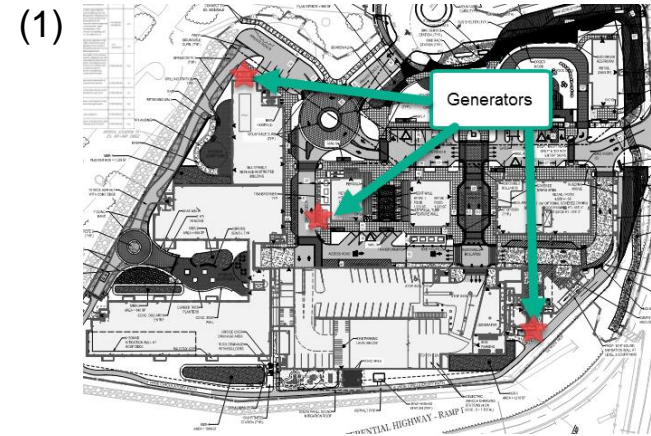
1. Barrier-free, curbless festival street;
2. Designated wheelchair pull-offs at amphitheater;
3. Barrier-free raised grade (speed table) at the primary street crossing;
4. Covered and weather-protected pickup/drop-off entrance at AR Building;
5. Intentional selection of accessible site furnishings;
6. Barrier-free fitness loop surrounding the site
7. Handicap parking motor-court independent of circulation isle in primary garage (not pictured); and
8. Accessible parking spaces above code requirement (not pictured).



# Accessibility, Safety and Resiliency – Building Features

## Accessibility, safety and resiliency features built into the buildings include, but are not limited to:

1. Backup generators to keep critical systems like the elevators, common area lights, and critical systems running in the event of a power outage;
2. Emergency standby power ports within each unit to afford residents device charging capability in the event of power outages (e.g. cell phones, medical devices) (not pictured);
3. Refrigeration to store temperature-critical items like medications, and microwaves provided on emergency power in building common areas (not pictured);
4. Passive House design and construction to ensure a comfortable environment for materially more time than a code-minimum buildings, thereby minimizing the likelihood of needing to relocate in cases of a power outage (not pictured);
5. Common areas (amenity areas, leasing areas etc.) designed to and covered by ADA standards (not pictured);
6. Intentional selection of accessible furnishings in common areas (e.g. accessible outdoor sinks);
7. Inclusion of 28 UFAS units (6% of total); all non-UFAS units are adaptable units that meet Fair Housing Act requirements regarding reach ranges, accessible clearances at all appliances, doorways, etc. (not pictured);
8. Below-counter microwaves to facilitate easier access and eliminate need for reaching over head for hot or heavy items;
9. Induction Ranges with front controls which do not get hot without a pot/pan and do not heat to the level of temperatures as natural gas, thereby minimizing risk of burns and fire;
10. Recessed and/or ceiling mounted lighted in all living rooms and bedrooms to provide for general (vs. task) illumination (not pictured);
11. Handrails in residential hallways in AR Building; blocking provided in NAR Building (not pictured);



# Construction Technologies - Prescient

**Hillandale Gateway will be constructed using Prescient, a design-build prefabricated lightweight steel structural system.** Hillandale Gateway will be the second Prescient construction project in Montgomery County (the first, Pooks Hill, is currently under construction with CBG as the general contractor). Prescient has a number of benefits, including:

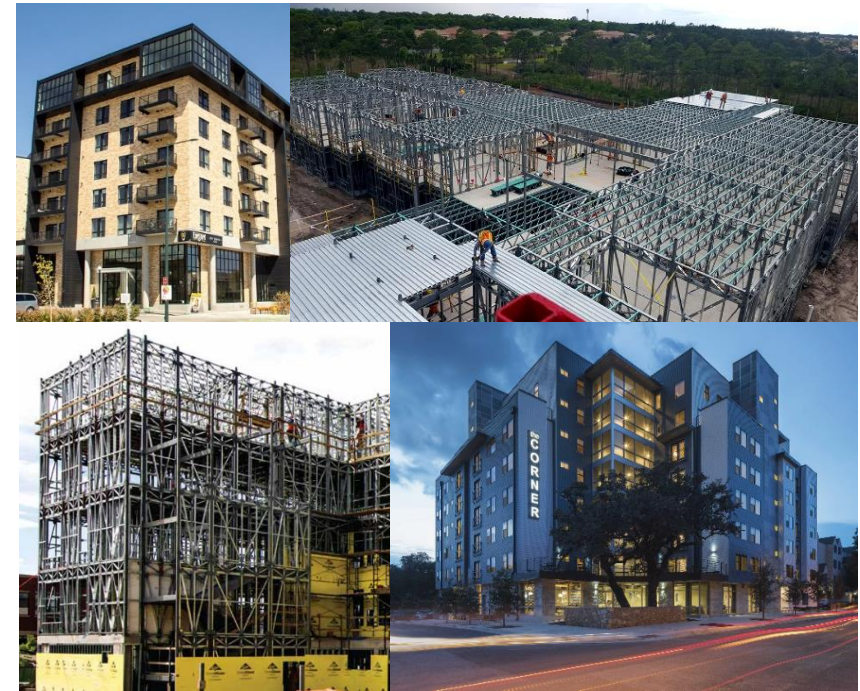
**Speed:** With integrated software, engineering services, pre-manufactured framing system, and on-site assembly process, Prescient enables developments to be built faster and with fewer costly on-site modifications. Not only can the structure be installed faster than competing systems, but aggressive phasing-in of trades can further shorten overall construction durations by months.

**Taller Buildings at a Lower Cost:** Prescient buildings can be built as high as 17 stories tall without incurring the cost and schedule penalties associated with concrete. In the case of Hillandale, the same unit count for a wood-over-podium construction can be achieved on a smaller footprint using Prescient, preserving land for future phases of development—residential, office, or retail—or for open space.

**Quality:** A Prescient structure is a 100% non-combustible steel and fiber cement system that is safer, more durable, dimensionally stable, mold resistant, termite proof, and longer lasting. The structure can also bear more weight allowing for rooftop amenities that would be materially more difficult and costly to provide in a structure made of wood.

**Green:** Prescient components are built using recycled-content steel and are manufactured and installed with less than 1% waste. Up to 9 points can be achieved toward LEED certification simply by using a Prescient structure.

**Quiet:** The Prescient system offers superior STC and IIC sound ratings creating a place where residents want to live.



The key takeaway is that **per-unit construction costs between wood and Prescient are on par because Prescient allows for more density while optimizing construction economy.** The similar per unit cost of Prescient versus wood construction **can have a transformative impact, especially in the area of affordable housing.** Typically, higher densities trigger significantly more expensive building types and result in total costs that cannot be supported by affordable - or market rate - rents. That often leaves unused density on the table, resulting in fewer units, both affordable and market rate. Prescient can also make bonus density (the extra density that is provided to multifamily housing developments with increased levels of affordable housing) more attractive and valuable by providing a financially feasible system that achieves those densities.

# Market Analysis - Target Market

Hillandale Gateway is the perfect place for families and individuals looking for the right mix of urban and suburban living – diverse in terms of ethnicity, age, and economics - with easy access to major area employers including the U.S. Food and Drug Administration (less than 1.5mi from the site), Adventist HealthCare White Oak Medical Center (3.5mi), and Holy Cross Hospital (4.5mi), the Beltway and the D.C. and Baltimore-Metro areas. Whether older Millennials looking to move, Boomers looking to downsize or new job hires of all educational backgrounds, **Hillandale Gateway’s audience is looking forward to a new life stage.** They desire a welcoming place that offers a lifestyle of mobility, convenience and community in an environment that offers both engagement and respite.



- Residents that **don’t want to move far**. These residents are likely moving from within the Hillandale neighborhood, or from elsewhere in Montgomery County or Maryland.
- Residents that **want an easier day-to-day**; residents looking for single-level living, no energy costs, or that don’t want to be responsible for caring for property.
- Residents looking for **a healthy community**, amenities to promote healthy living, and a walkable community.
- Residents looking for living environment where they can **connect with others** and seeking a welcome change from an empty nest.



- Residents will come from near and far, whether they are Millennials looking for places that fit their **evolving life-stage needs** that **provide room to grow** that’s **more affordable** than DC and Bethesda, or out-of-towners moving to the area for the first time for **new career opportunities**.
- Residents that value **environmental progressiveness**.
- Residents looking for **proximity to major health care and life science hubs**.
- Residents looking to improve their **quality of life** with a shorter commute, healthier environment, or lower energy costs.

# Market Analysis - Comps

**Hillandale Gateway** is a pioneering mixed-use project. A contemporary luxury market-rate community is relatively untested in the market area, as is a development that combines general occupancy, senior housing, market rate and affordable units. As much as it could be a risk, it is also a strength, as the variety of occupancy types can hedge risk in any one category. The Development Team believes there will be great acceptance of the product variety. Hillandale Gateway's underwritten **NAR rents average \$2.38/SF (unrestricted) and \$1.75 (restricted)**. **On the AR side, the underwritten rents average \$1.57/SF.**

**Elizabeth House III**  
 Silver Spring  
 \$2.75/SF (unrestricted)  
 \$2.52/SF (overall)  
 (Under Construction)



**Camden Washingtonian**  
 Gaithersburg, \$2.37/SF



**Aventon Crown**  
 Gaithersburg, \$2.53/SF



**Atelier Apartments**  
 Wheaton-Glenmont  
 \$2.22/SF



**Motiva Apartments**  
 Greenbelt  
 \$2.22/SF  
 (Under Construction)



**Alexander House**  
 Silver Spring  
 \$2.66/SF  
 (unrestricted)



**The Pearl**  
 Silver Spring  
 \$2.81/SF



**Monument Village**  
 North College Park  
 \$2.27/SF



**The Lindley**  
 Chevy Chase, \$3.25/SF\*  
 (unrestricted)



**Lync at Alterra**  
 Hyattsville  
 \$2.25/SF



# Preliminary Development and Finance Plan

Staff is seeking Commission approval of a Preliminary Development and Finance Plan, so that it can proceed with the preparation and submission of financing applications. Staff will return to the Commission for approval of a final development and finance plan in July 2022. Staff has analyzed various development and financing scenarios and recommends the following framework:

- Staff proposes financing the residential portion of the AR Building as a separate Low Income Housing Tax Credit (“LIHTC”) transaction; all other site components (AR ground floor retail, parking garage, and two retail pads) will be financed as a single transaction with the NAR Building.
- Site-wide affordability that meets or exceeds Montgomery County’s Housing Production Fund (“HPF”) requirements (20% of units at 50% AMI and 10% of units at 70% AMI), so that the HPF can be used as a construction financing source for the transaction. Staff recommends the affordability mix shown on the right.
  - Overall the site meets HPF requirements with a total of 113 (24%) units restricted to 50% AMI and 27 (6%) units restricted to 70% AMI. All 50%AMI units are located at the AR building and all 70%AMI units are located at the NAR Building.
  - Staff also proposes restricting the non-HPF units at the AR building to 80% AMI, thereby allowing for income averaging to be utilized. Income Averaging provides a number of benefits, primarily:
    - 1) It **deepens the affordability** at the AR building, and at the site overall; and
    - 2) It maximizes LIHTC equity, by allowing all eligible costs (vs. a portion) to be included in basis. This results in a **\$9.5 million increase in LIHTC equity** versus a scenario in which only 96 of the units are affordable (the minimum required by Hillandale Gateway’s approved site plan).
- Staff proposes utilizing private construction loans as the senior construction debt source for the development of the AR and NAR Buildings.
  - Using a non-FHA construction source **saves the development more than \$17M** in Davis Bacon wages.
- Staff proposes an FHA Risk Share permanent loan at conversion.
  - Since more than 20% of the entire development’s units are restricted to 50% AMI, the entire project qualifies for FHA Risk Share financing. This is similar to the Alexander House (a mixed-income, LIHTC and market rate transaction), which was permanently financed with FHA Risk Share/FFB.
- Hillandale Gateway is also a competitive candidate for a number of grants and loans related to high performance, energy efficiency and resiliency, which the Development Team intends to apply for. The development is also eligible for a number of rebates for solar and electric vehicle charging infrastructure, which will provided to the transaction after installation. Staff also
- Staff and the Development Team will continue to analyze and evaluate financing products and strategies, and development cost savings and efficiencies, as it works toward a final development and finance plan.

## Unit & Affordability Mix

AR Building		
AMI TARGET	UNIT COUNT	% OF TOTAL
50%	113	73%
80%	42	27%
	<b>155</b>	<b>100%</b>

NAR Building		
AMI TARGET	UNIT COUNT	% OF TOTAL
70%	27	8%
Market	281	92%
	<b>308</b>	<b>100%</b>

Combined (Site-Wide)		
AMI TARGET	UNIT COUNT	% OF TOTAL
50%	113	24%
70%	27	6%
80%	42	9%
Market%	281	61%
	<b>463</b>	<b>100%</b>

# Sources and Uses – AR Building

## CONSTRUCTION FINANCING

USES OF FUNDS - DEVELOPMENT	AMOUNT	PER UNIT	% OF TOTAL
Construction Contract	\$49,955,254	\$322,292	69.65%
Additional Construction Hard Costs	\$1,179,686	\$7,611	1.64%
Construction Contingency	\$2,556,747	\$16,495	3.56%
Construction Related Costs	\$1,997,524	\$12,887	2.78%
Design & Engineering	\$2,315,754	\$14,940	3.23%
Developers Costs	\$1,790,813	\$11,554	2.50%
Financing Fees & Charges	\$905,000	\$5,839	1.26%
Bond Issuance Costs	\$0	\$0	0.00%
HOC Financing Fee	\$0	\$0	0.00%
Construction Period Interest	\$3,495,930	\$22,554	4.87%
County Loan Interest	\$355,725	\$2,295	0.50%
Capitalized Operating Costs	\$4,971	\$32	0.01%
Guarantees & Reserves	\$500,000	\$3,226	0.70%
Developer Fee	\$6,669,566	\$43,029	9.30%
<b>TOTAL USES OF FUNDS</b>	<b>\$71,726,970</b>	<b>\$462,755</b>	<b>100%</b>

SOURCES OF FUNDS - DEVELOPMENT	AMOUNT	PER UNIT	% OF TOTAL
Senior Construction Loan	\$35,146,216	\$226,750	49.00%
HOC Equity	\$5,000,000	\$32,258	6.97%
Tax Credit Equity	\$25,089,300	\$161,866	34.98%
County Loan	\$10,000,000	\$64,516	13.94%
Energy Efficiency Rebates & Grants	\$0	\$0	0.00%
Deferred Developer Fee	\$0	\$0	0.00%
<b>Funding Gap / (Surplus)</b>	<b>(\$3,508,545)</b>	<b>(\$22,636)</b>	<b>-4.89%</b>
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$71,726,970</b>	<b>\$462,755</b>	<b>100%</b>

## PERMANENT FINANCING

USES OF FUNDS - PERMANENT	AMOUNT	PER UNIT	% OF TOTAL
Construction Contract	\$49,955,254	\$322,292	65.36%
Additional Construction Hard Costs	\$1,179,686	\$7,611	1.54%
Construction Contingency	\$2,556,747	\$16,495	3.34%
Construction Related Costs	\$1,997,524	\$12,887	2.61%
Design & Engineering	\$2,315,754	\$14,940	3.03%
Developers Costs	\$2,370,813	\$15,296	3.10%
Financing Fees & Charges	\$2,747,216	\$17,724	3.59%
Bond Issuance Costs	\$768,347	\$4,957	1.01%
HOC Financing Fee	\$673,488	\$4,345	0.88%
Construction Period Interest	\$3,495,930	\$22,554	4.57%
County Loan Interest	\$355,725	\$2,295	0.47%
Capitalized Operating Costs	\$4,971	\$32	0.01%
Guarantees & Reserves	\$1,344,670	\$8,675	1.76%
Developer Fee	\$6,669,566	\$43,029	8.73%
<b>TOTAL USES OF FUNDS</b>	<b>\$76,435,691</b>	<b>\$493,133</b>	<b>100%</b>

SOURCES OF FUNDS - PERMANENT	AMOUNT	PER UNIT	% OF TOTAL
Permanent Financing	\$33,674,414	\$217,254	44.06%
HOC Equity	\$5,000,000	\$32,258	6.54%
Tax Credit Equity	\$25,089,300	\$161,866	32.82%
County Loan	\$10,000,000	\$64,516	13.08%
Energy Efficiency Rebates & Grants	\$500,000	\$3,226	0.65%
Deferred Developer Fee	\$2,174,424	\$14,029	2.84%
<b>Funding Gap / (Surplus)</b>	<b>(\$2,447)</b>	<b>(\$16)</b>	<b>0.00%</b>
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$76,435,691</b>	<b>\$493,133</b>	<b>100%</b>

- As discussed previously, staff recommends financing the residential portion of the AR Building as a separate LIHTC transaction.
- Sources for construction include: a tax-exempt construction loan, LIHTC equity, County HIF loan, and HOC equity. Staff is projecting a \$3.5M surplus during the construction phase, which could be reduced by delaying a portion of HOC's equity contribution or a portion of the County HIF loan until permanent financing. Deferring part of the County HIF loan would result in some construction-period interest savings.
- Upon stabilization and conversion, the construction loan will be taken out by a permanent FHA Risk Share loan, energy efficiency funding and rebates, and deferred developer fee. The above chart shows a small (\$2K) surplus at permanent financing; any surplus could be used to offset the deferred developer fee.



# Sources and Uses – NAR Building

## CONSTRUCTION FINANCING

USES OF FUNDS - DEVELOPMENT	AMOUNT	PER UNIT	% OF TOTAL
Construction Contract	\$97,496,867	\$316,548	67.77%
Additional Construction Hard Costs	\$4,473,114	\$14,523	3.11%
Construction Contingency	\$5,098,499	\$16,554	3.54%
Construction Related Costs	\$5,972,110	\$19,390	4.15%
Design & Engineering	\$4,963,956	\$16,117	3.45%
Developers Costs	\$4,024,853	\$13,068	2.80%
Financing Fees & Charges	\$1,000,000	\$3,247	0.70%
Bond Issuance Costs	\$0	\$0	0.00%
HOC Financing Fee	\$0	\$0	0.00%
Construction Period Interest	\$6,815,701	\$22,129	4.74%
HPF Loan Interest	\$6,190,674	\$20,100	4.30%
Capitalized Operating Costs	\$989,194	\$3,212	0.69%
Guarantees & Reserves	\$1,000,000	\$3,247	0.70%
Developer Fee	\$5,842,278	\$18,968	4.06%
<b>TOTAL USES OF FUNDS</b>	<b>\$143,867,245</b>	<b>\$467,101</b>	<b>100%</b>

SOURCES OF FUNDS - DEVELOPMENT	AMOUNT	PER UNIT	% OF TOTAL
Senior Construction Loan	\$93,513,709	\$303,616	65.00%
HOC Equity	\$5,950,000	\$19,318	4.14%
County Development Loan	\$35,000,000	\$113,636	24.33%
HOC RELOC	\$9,403,536	\$30,531	6.54%
Permanent Mezz Loan	\$0	\$0	0.00%
<b>Funding Gap / (Surplus)</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00%</b>
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$143,867,245</b>	<b>\$467,101</b>	<b>100%</b>

## PERMANENT FINANCING

USES OF FUNDS - PERMANENT	AMOUNT	PER UNIT	% OF TOTAL
Construction Contract	\$97,496,867	\$316,548	62.49%
Additional Construction Hard Costs	\$4,473,114	\$14,523	2.87%
Construction Contingency	\$5,098,499	\$16,554	3.27%
Construction Related Costs	\$5,972,110	\$19,390	3.83%
Design & Engineering	\$4,963,956	\$16,117	3.18%
Developers Costs	\$4,604,853	\$14,951	2.95%
Financing Fees & Charges	\$6,806,520	\$22,099	4.36%
Bond Issuance Costs	\$500,000	\$1,623	0.32%
HOC Financing Fee	\$2,713,195	\$8,809	1.74%
Construction Period Interest	\$6,815,701	\$22,129	4.37%
HPF Loan Interest	\$6,190,674	\$20,100	3.97%
Capitalized Operating Costs	\$989,194	\$3,212	0.63%
Guarantees & Reserves	\$3,553,527	\$11,537	2.28%
Developer Fee	\$5,842,278	\$18,968	3.74%
<b>TOTAL USES OF FUNDS</b>	<b>\$156,020,486</b>	<b>\$506,560</b>	<b>100%</b>

SOURCES OF FUNDS - PERMANENT	AMOUNT	PER UNIT	% OF TOTAL
Permanent Financing	\$135,659,731	\$440,454	86.95%
HOC Equity	\$5,950,000	\$19,318	3.81%
County Development Loan	\$0	\$0	0.00%
HOC RELOC	\$0	\$0	0.00%
Permanent Mezz Loan	\$14,410,756	\$46,788	9.24%
<b>Funding Gap / (Surplus)</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00%</b>
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$156,020,486</b>	<b>\$506,560</b>	<b>100%</b>

- Staff recommends financing the NAR building and all other site components exclusive of the AR Residential (e.g. AR ground floor retail, parking garage, and two retail pads) as a single transaction.
- Sources for construction include: a private construction loan, HPF, HOC's PNC Real Estate Line of Credit ("RELOC"), HOC equity.
- Upon stabilization and conversion, the construction loan, HPF and RELOC will be taken out by a permanent FHA Risk Share loan and mezzanine debt.
- Increasing the number of 70% AMI units at the NAR Building from 8% (27 units) to 15% (47 units) would result in approximately \$4.23M less permanent debt proceeds, and a corresponding need for additional sources.

# General Contractor RFP and Selection

HOC's Procurement Office issued a Request for Proposal (RFP #2266) for general contracting services for the construction of Hillandale Gateway on June 25, 2021 with a due date of August 27, 2021. The RFP was posted to HOC's website in accordance with HOC's Procurement Policy and was distributed to more than 300 vendors registered in Montgomery County's Central Vendor Registration System ("CVRS"). A pre-proposal meeting and conference was held virtually on July 7, 2021, which seven (7) firms attended. RFP #2266 required the submission of a number of materials, including, but not limited to:

- AIA A305 – Contractor's Qualification Statement
- Detailed construction budget and phasing schedule.
- Letter from surety acknowledging willingness to offer a bond of at least \$250 million.

The scoring team consisting of staff from Maintenance, Asset Management, and Real Estate Divisions, and a representative from Duffie (together, the "GC Scoring Committee") reviewed the responses on October 29, 2021. Proposals were scored on the following five (5) evaluation criteria. The maximum points a proposal could receive is 100.

<b>Contractor Qualification (Maximum 45 Points)</b>	<b>Additional MFD Participation (Maximum 10 Points)</b>	<b>References (Maximum 10 Points)</b>	<b>Financial Strength (Maximum 5 Points)</b>	<b>Price (Maximum 30 Points)</b>
Demonstrated experience with projects involving: i) high-rise residential and mixed-use, ii) similar construction, iii) Passive House, iv) high performance, v) LIHTC.	Commitment to hire above and beyond HOC's minimum MFD subcontracting requirement of 25%. Commitments to 25-30% MFD participation received 5 points; Commitments to 30% or higher received 10 points.	Reference checks were conducted to evaluate and verify past performance regarding on-time completion, change order history, customer service, and quality assurance and control.	Respondents providing proof of payment bond ability for the project from a surety of AM Best class "IX" or higher bearing a minimum AM Best "A" rating received 5 points.	Respondent with the lowest bid reflecting full project scope received 30 points. Respondents submitting higher bids received a 2-point deduction for each 1% that their bid exceeded the lowest bid.

Two (2) contractors, CBG Building Group and Bozzuto Construction Company, submitted proposals for RFP #2266 by the proposal deadline.

## **CBG Building Company (“CBG”)**

CBG is one of the most experienced, and respected, multifamily builders in the country and has construction more than 100,000 housing units since 1993. CBG builds 5,000 homes each year across a diverse portfolio of geographic areas and product types, including luxury, mixed-use, and affordable housing apartments, as well as campus housing, military family communities, and senior living facilities. CBG has extensive experience working on projects using cutting-edge technologies, innovative construction techniques, and the latest building materials, including Prescient. In the past seven years, CBG has constructed more than three million square feet of Prescient work, including completing the design-build system’s tallest and largest projects to date. CBG also has experience in LEED and sustainable construction. CBG was the general contractor for the HOC’s Fenton Silver Spring (900 Thayer).



## **Bozzuto Construction Company (“Bozzuto” )**

Founded in 1988, Bozzuto Construction Company has completed 195 new construction projects, including four (4) million square feet of retail. Bozzuto provides a range of services including preconstruction, general contracting, capital improvements, and virtual technology. Bozzuto provided preconstruction services for Hillandale Gateway. Bozzuto is currently serving as the general contractor for the HOC’s Westside Shady Grove.



# General Contractor RFP and Selection – Scoring

CBG received the highest score of 84. Scores below reflect the average of the individual scores from each member of the GC Scoring Committee. The results from the GC Scoring Committee are summarized below.

Rank	General Contractor	Contractor Qualifications (Maximum 45 Points)	Additional MFD Participation (Maximum 10 Points)	References (Maximum 10 Points)	Financial Strength (Maximum 5 Points)	Price (Maximum 30 Points)	Total (Maximum 100 points)
1	CBG Building Company	42	0	7	5	30	84
2	Bozzuto Construction Company	38	0	8	5	14	65

Contractor Qualifications: CBG received a higher score in this criteria due to their extensive experience in Prescient construction. CBG also demonstrated a greater breadth and depth of experience due to the volume of projects they have constructed due to its reach as a national GC company.

Additional MFD Participation: Both respondents provided a commitment to meet HOC’s 25% MFD subcontractor participation requirement. Bozzuto provided an add alternate to achieve a 28% for MFD participation for \$2,795,000, which would have resulted in five points for this category. However, due to its already higher pricing it would further reduce the scoring for the pricing criteria by an additional four points.

References: Both contractors have experience on HOC projects demonstrating the ability for on time completion, on-budget and quality control. However, Bozzuto scores marginally higher due to superior customer service.

Financial Strength: Both contractors have the ability to meet the bonding requirement reflecting fairly similar scores.

Price: CBG submitted the lowest bid, and as a result, received full points. Bozzuto’s bid was approximately 8% higher than the lowest bid; therefore, their points were reduced by approximately 16 points. A price comparison is provided on the next slide.

# General Contractor RFP and Selection – Price

	CBG	\$/TGSF	\$/ResGSF	\$/NRSF	\$/Unit	Bozzuto	\$/TGSF	\$/ResGSF	\$/NRSF	\$/Unit
A. NAR Building	\$ 77,511,029	\$ 190	\$ 190	\$ 256	\$ 251,659	\$ 77,931,961	\$ 191	\$ 191	\$ 258	\$ 253,026
B. AR Building	\$ 44,594,470	\$ 211	\$ 235	\$ 318	\$ 287,706	\$ 51,774,782	\$ 368	\$ 410	\$ 556	\$ 502,787
C. Parking Garage	\$ 14,091,820	\$ 17	\$ 23	\$ 32	\$ 21,319	\$ 13,970,274	\$ 17	\$ 23	\$ 32	\$ 21,135
D. Commercial	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
E. Sitework (not Included in F, G, H)	\$ 8,791,765	\$ 11	\$ 15	\$ 20	\$ 18,989	\$ 8,930,135	\$ 11	\$ 15	\$ 20	\$ 19,288
F. Transit Station	\$ 417,339	\$ 1	\$ 1	\$ 1	\$ 901	\$ 488,878	\$ 1	\$ 1	\$ 1	\$ 1,056
G. Powder Mill Widening	\$ 383,849	\$ 0	\$ 1	\$ 1	\$ 829	(incl.)	(incl.)	(incl.)	(incl.)	(incl.)
H. Retail Pad	\$ 360,766	\$ 0	\$ 1	\$ 1	\$ 779	\$ 496,092	\$ 1	\$ 1	\$ 1	\$ 1,071
<b>Subtotal</b>	<b>\$ 146,151,038</b>	<b>\$ 176</b>	<b>\$ 243</b>	<b>\$ 330</b>	<b>\$ 315,661</b>	<b>\$ 153,592,122</b>	<b>\$ 185</b>	<b>\$ 256</b>	<b>\$ 347</b>	<b>\$ 331,732</b>
Comply with MFD Requirements	\$ -					\$ 4,419,864	\$ 5	\$ 7	\$ 10	\$ 9,546
<b>Subtotal</b>	<b>\$ 146,151,038</b>	<b>\$ 176</b>	<b>\$ 243</b>	<b>\$ 330</b>	<b>\$ 315,661</b>	<b>\$ 158,011,986</b>	<b>\$ 190</b>	<b>\$ 263</b>	<b>\$ 357</b>	<b>\$ 341,279</b>

**Staff Recommendation:**

CBG received the highest score of 84 points by distinguishing itself regarding the contractor qualifications and price. HOC has previously worked with CBG – most recently at Fenton Silver Spring (900 Thayer). CBG completed the project on time, and budget. CBG is also one of the most experienced GCs in Prescient construction, and is the general contractor for Pooks Hill, Montgomery County’s first Prescient project, which is currently under construction.

# Construction Manager RFP and Selection

HOC's Procurement Office issued a Request for Proposal (RFP #2282) for construction management services for Hillandale Gateway in accordance with HOC's Procurement Policy. RFP #2282 was released on October 13, 2021 with a due date of November 8, 2021. The RFP was posted to HOC's website and distributed to more than 300 vendors registered in the CVRS. A pre-proposal meeting and conference was held virtually on October 20, 2021. Nine firms attended the pre-bid conference.

The scope of work outlined in RFP #2282 included seven (7) months of preconstruction phase services, 34 months of construction phase services and three (3) months of close out services. The scoring team consisting of staff from Maintenance, Asset Management, and Real Estate Divisions, as well as a Duffie representative (together, the "CM Scoring Team") reviewed the responses on December 3 and 10, 2021. Proposals were scored on the following four (4) evaluation criteria. The maximum points a proposal could receive is 100. Although the pricing criteria includes rather prescriptive language that allows a limit the potential scoring, Lambis Rank received the highest score in all the other categories. Even with a different approach, Lambis Rank would still receive the highest score overall including price.

Qualifications (Maximum 50 Points)	Additional MFD Participation (Maximum 10 Points)	References (Maximum 10 Points)	Price (Maximum 30 Points)
<p>Demonstrated experience with projects involving: i) high-rise residential and mixed-use, ii) Passive House construction techniques, iii) high performance construction standards and certifications, iv) LIHTC, v) experience in Montgomery County and the surrounding area.</p>	<p>Commitment to hire above and beyond HOC's minimum MFD subcontracting requirement of 25%. Up to five (5) points were awarded to respondents that are MFD certified, or proposed to train and/or hire MFD persons directly ("Direct MFD Score"). Up to five (5) were awarded to respondents subcontracting beyond HOC's minimum 25% requirement ("MFD Subcontracting Score").</p>	<p>Reference checks were conducted to evaluate and verify past performance regarding ability for on-time completion and change order management.</p>	<p>Lowest priced bid reflecting full project scope: 30 points. For each % that a bid exceeds the lowest full scope bid, that score shall be reduced by 2 points.</p>

# Construction Manager RFP and Selection - Bidders

HOC received three (3) responsive proposals in response to RFP# 2282 by the proposal deadline on November 8, 2021 at 12:00 pm. Firms that submitted responsive proposals are listed below. HOC received one unresponsive proposal that did not meet the RFP requirements and therefore was not scored.

## **Lambis Rank**

The firm is a real estate services and development firm specializing in project management, property management, transaction advisory, financial consulting and investment management. Founders Peter Lambis and Sam Rank have been working together for over 10 years and are committed to integrity, teamwork and creating value for their clients and partners. Prior to starting Lambis Rank, Peter Lambis was Vice-President at JLL. Peter Lambis Rank has served as a CM for Elizabeth House III prior to leaving JLL.



## **Jones Lang LaSalle Incorporated (“JLL”)**

A member of the Fortune 500, JLL is a leading professional services firm that specializes in real estate and investment management. JLL provides a full range of leasing, capital markets, integrated property and facility management, project management, advisory, consulting, valuations and digital solutions services locally, regionally and globally. JLL has served as a CM for Elizabeth House III for HOC. JLL proposed utilizing JDC as a primary subcontractor. JDC has worked on numerous HOC projects, including but not limited to: Willow Manor, Westside Shady Grove, and Fenton Silver Spring.



## **Owner Rep Consulting**

Owner Rep Consulting offers consulting, management and advocacy services for clients and customers seeking to develop and build. The company recognizes and translates the Owner’s needs, and combines those needs with the talents of the Project Team to form an effective partnership. With leadership and experience, Owner Rep Consulting facilitates a professional synergy among design, construction and other support entities of the project. Owner Rep has served as a CM for Bauer Park, Shady Grove, and Georgian Court for HOC.



# Construction Manager RFP and Selection - Scoring

Lambis Rank received the highest score of 93 points. Scores below reflect the average of the individual scores from each member of the GC Scoring Committee. The results of the CM Scoring Committee are summarized below.

Rank	Construction Manager	Qualifications (Maximum 50 Points)	Additional MFD Participation (Maximum 10 Points)	References (Maximum 10 Points)	Price (Maximum 30 Points)	Total (Maximum 100 Points)
1	Lambis Rank	49	5	9	30	93
2	JLL	45	3	9	0	57
3	Owner Rep	37	3	8	0	48

Qualifications: While all three firms have extensive construction management experience, Lambis Rank most effectively demonstrated their experience with projects similar to Hillandale Gateway. JLL included in their proposal many projects that met the criteria, but a significant majority of the projects were in other regions. Lastly, some of Owner's Rep projects included in their proposal did not address the criteria resulting in a lower score.

MFD Participation: Lambis Rank was the only respondent that committed to 30% or higher for MFD subcontractor participation. Both JLL and Owner Rep included 26% MFD subcontractor participation. None of the respondents received points for MFD Direct Hire efforts.

References: All vendors have experience on HOC projects and have demonstrated the ability for on-time completion, on-budget delivery and quality control. However, JLL and Lambis rank tie in this category.

Price: Lambis Rank submitted the lowest price, and as a result, they received full points. The other firms were over 15% higher than Lambis Rank's price, per the RFP scoring criteria, they received zero points. A price comparison is provided on the next slide.



# Construction Manager RFP and Selelection - Price

Price Comparison	Lambis Rank	Owner Rep	*JLL
Pre-Construction (7 months) <ul style="list-style-type: none"> <li>Assist in GC contract negotiation</li> <li>Management of cost estimating</li> </ul>	\$140,000	\$111,330	\$336,000
Construction (34 months) <ul style="list-style-type: none"> <li>Contract administration</li> <li>Oversight of quality assurance</li> <li>Schedule review</li> </ul>	\$1,018,300	\$1,802,493	\$2,322,200
Close-Out (3 months) <ul style="list-style-type: none"> <li>Punch out</li> <li>Turn over</li> </ul>	\$89,850	\$31,809	\$139,500
<b>TOTAL</b>	<b>\$1,248,150</b>	<b>\$1,945,632</b>	<b>\$2,797,700</b>

\*JLL's pricing includes an on site trailer; however, even with the removal of the on site trailer from their pricing, JLL's pricing remains more than twice the amount of Lambis Rank's pricing.

## **Staff's Proposed Selection:**

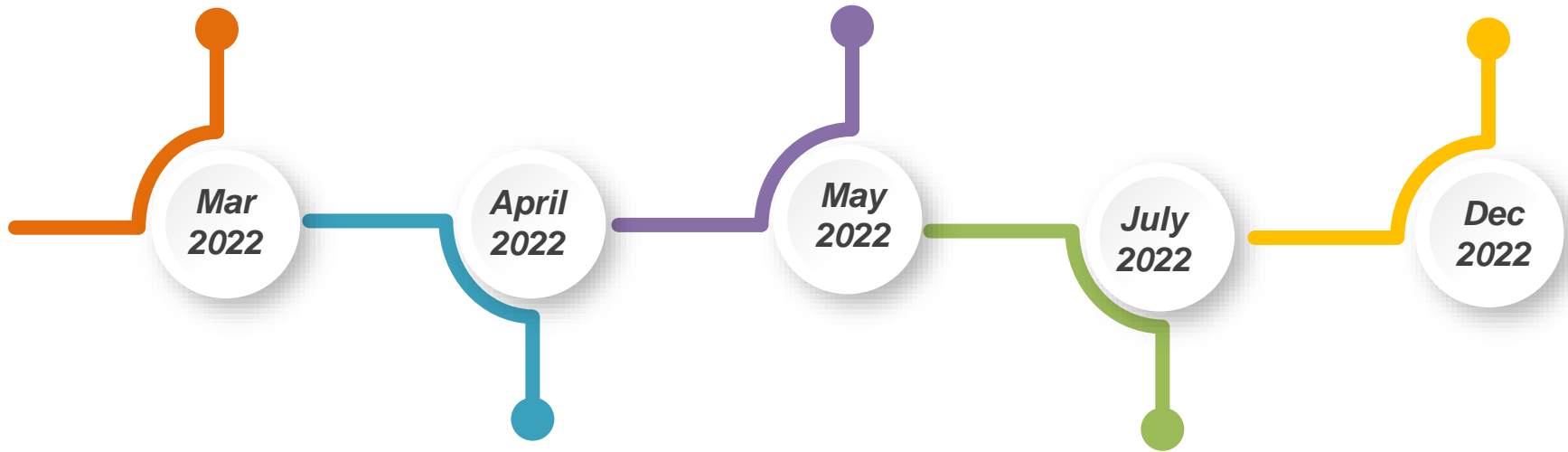
Lambis Rank received the highest score of 93 by distinguishing itself regarding the contractor qualifications, price, and MFD Participation. HOC has previously worked with Lambis Rank – most notably on the Elizabeth House III project. Their involvement has aided the project to remain on schedule and within budget. Peter Lambis was previously the Vice-President of JLL before starting Lambis Rank. Staff recommends the selection of Lambis Rank as the third-party construction manager for Hillandale Gateway and authorization for the Acting Executive Director to execute a contract with the firm.

# Development Timeline

- Present Preliminary Development and Finance Plan to the Commission

- Select LIHTC Syndicator

- Close on LIHTC and Construction Financing



- Submit LIHTC and Financing Applications

- Present Final Development and Financing Plan to Commission; Potential Early Start Agreement and Additional Predevelopment Funding, if needed

# Prior Commission Actions

**RESOLUTION 15-79:** On October 7, 2015, the Commission approved a predevelopment budget to fund the first 15 months of predevelopment activity related to the redevelopment of Holly Hall.

**RESOLUTION 17-18:** On March 1, 2017, Staff provided a Hillandale design update to the Commission and the Commission approved a revised budget for 12 months of predevelopment activity related to the redevelopment of Holly Hall.

**RESOLUTION 19-10:** On January 9, 2019, Staff presented a Hillandale design update to the Commission and the Commission approved a revised budget to fund predevelopment work.

**RESOLUTION 19-56:** On May 8, 2019, the Commission approved the site design and authorized the submission of an application to the Planning Board for Site and Subdivision Plan approval.

**RESOLUTION 20-13:** On February 5, 2020, the Commission approved the redesigned site plan for submission to the Planning Board, a revised predevelopment budget, and CY2020 predevelopment funding.

**RESOLUTION 20-78:** On November 4, 2020, the Commission approved a revised budget to fund predevelopment work through closing of construction financing.

**RESOLUTION No. 21-18:** On February 3, 2021, the Commission approved the demolition of Holly Hall.

# Summary and Recommendations

## Issues for Consideration

Does the Development and Finance Committee wish to join staff's recommendation that the Commission approve:

1. The proposed Preliminary Development and Finance Plan for Hillandale Gateway?
2. The selection of CBG Building Company as general contractor for the construction of the Hillandale Gateway and approval for the Acting Executive Director to negotiate a contract with CBG Building Company?
3. The selection of Lambis Rank as the third-party construction manager for Hillandale Gateway and authorization for the Acting Executive Director to execute a contract with the firm?

## Budget/Fiscal Impact

Approval of these items has no budget or fiscal impact.

## Time Frame

For discussion at the February 18, 2022 meeting of the Development and Finance Committee and action at the March 2, 2022 meeting of the Commission.

## Staff Recommendation and Commission Action Needed

Staff requests that the Development and Finance Committee join its recommendation to the Commission to approve:

1. The proposed Preliminary Development and Finance Plan for Hillandale Gateway.
2. The selection of CBG Building Company as general contractor for the construction of the Hillandale Gateway and approval for the Acting Executive Director to negotiate a contract with CBG Building Company; and
3. The selection of Lambis Rank as the third-party construction manager for Hillandale Gateway and authorization for the Acting Executive Director to execute a contract with the firm.

**MEMORANDUM**

**TO:** Housing Opportunities Commission, Development & Finance Committee

**VIA:** Kayrine V. Brown, Acting Executive Director

**FROM:** Staff: Jennifer H. Arrington Division: Mortgage Finance Ext. 9760

**RE:** **Bond Counsel Contract:** Approval of Firm to Serve the Commission as its Bond Counsel in Accordance with RFP #2288

**DATE:** February 18, 2022

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**STATUS:** Consent  Deliberation  Status Report  Future Action

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**OVERALL GOAL & OBJECTIVE:**

To select a qualified firm to serve the Housing Opportunities Commission of Montgomery County (the “Commission”, “HOC”, “Agency”), as bond counsel for its bond programs, thereby, enabling the Commission to meet its affordable housing goals.

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**BACKGROUND:**

On April 5, 2017, the Housing Opportunities Commission of Montgomery County (the “Commission” or “HOC”) approved the selection of Kutak Rock LLP (“Kutak Rock”) and Ballard Spahr LLP (“Ballard Spahr”) to serve as bond counsel for a new contract term, initially for three (3) years with two (2) additional one-year renewals for a maximum contract term of five (5) years. The contract term commenced on April 10, 2017, and the initial three-year term ended April 9, 2020. The first renewal term was approved by the Commission on January 8, 2020 and the second renewal period was approved by the Commission on January 13, 2021. The second and final renewal period expires on April 9, 2022; therefore, a Request for Proposal (“RFP”) #2288 was issued on October 27, 2021 in order to procure for new bond counsel services. A total of three (3) offerors responded – Kutak Rock, Ballard Spahr and Tiber Hudson LLC.

**Bond Counsel**

Bond counsel to a municipal housing bond issuer, such as HOC, provides legal advice specific to the issuance of tax-exempt bonds or other securities issued to finance its housing programs. Most importantly, it provides legal opinion to the marketplace that addresses among other things: (1) the validity of the bonds and (2) the excludability of interest on the bonds from gross income for federal income tax purposes. Without an accompanying opinion of nationally recognized bond counsel, the bonds are not normally marketable.

The firm that will be selected to represent HOC for the next contract term is expected to participate on the structuring of bond transactions, and prepare, review and assemble documents that serve as the transcript for the issued debt. It will also be expected to provide interpretative services to HOC on an ongoing basis and assist with related covenant and tax compliance matters. HOC’s bond counsel may also assist with continuing disclosure, as well as arbitrage rebate compliance, if requested, including ad hoc

consulting services to address Internal Revenue Service (“IRS”), Securities and Exchange Commission (“SEC”) issues, and other matters that arise from HOC’s financing activities.

Though not mandatory, the firm is expected to be familiar with HOC’s affordable housing goals and mission, thereby, enabling HOC to balance profitability goals with public purpose. A stable bond counsel relationship provides continuity for the issuer, as it experiences staff turnover throughout the years; therefore, the selected firm must possess the breadth, depth and industry presence to enhance its ability to provide related services for HOC to respond to industry changes, market factors, and changes in governing laws.

### **Current Bond Counsel Relationship**

In 2017, both Kutak Rock and Ballard Spahr were awarded the same contract terms (three (3) years, initially, with two (2) additional one-year extensions); however, Kutak Rock was selected as the Commission’s sole bond counsel for the Single Family Mortgage Revenue Bond Resolution (the “1979 Parity Indenture”) and its Single Family Housing Bond Resolution (the “2009 NIBP Parity Indenture”). With respect to multifamily bond issuances, Kutak Rock served as bond counsel for all the Commission’s multifamily bond issuances, while Ballard Spahr initially served as bond counsel for selected stand-alone transactions, as it became experienced with HOC and demonstrated its ability to perform on other transactions.

Kutak Rock has been providing services, as bond counsel or co-bond counsel, to HOC since 1979, and during the last 10 years of that tenure, HOC has issued single family and multifamily housing bonds under its single family and multifamily parity indentures totaling an aggregate principal amount of more than \$1 billion. Notwithstanding Kutak Rock’s experience with the Commission, according to *The Bond Buyer*, the only independent information resource serving the entire municipal finance community, the firm’s volume of work ranks it among the top three (3) bond counsel firms in 2021, which also include Orrick, Herrington & Sutcliffe LLP and Hawkins Delafield & Wood LLP.

Ballard Spahr is a Philadelphia-based law firm of more than 600 lawyers practicing throughout the United States in the areas of litigation, business and finance, intellectual property, public finance, and real estate. Ballard Spahr’s primary area of practice includes its public finance practice specializing in the area of general housing bond finance with its lawyers having served as bond counsel in every form of traditional municipal debt, including tax-exempt, taxable, new money and all forms of financings involving many forms of credit enhancement. This was Ballard Spahr’s first representation, as bond counsel to the Commission, and since its engagement, Ballard Spahr has not represented the Commission on any private developer transaction, as there has only been one (1) traditional private developer transaction that required quick execution. In addition, with the limitation of volume cap and the Commission’s healthy real estate development pipeline, the Commission has been unable to issue bonds for third-party developers.

### **Parity versus Conduit Bond Counsel Representation**

HOC’s single family bond programs operate pursuant to two parity (open) single family Bond Resolutions: the Single Family Mortgage Revenue Bond Resolution (the “1979 Indenture”) was created in 1979 and embodies all of the complexities of 43 years of tax law, industry, and market changes; and the Single Family Housing Bond Resolution (the “2009 NIBP Indenture”), created in 2009 to allow for participation in the U.S. Treasury Initiative for Housing Finance Agencies, is less complex.

The multifamily program operates a little differently, but most of the activities are conducted pursuant to the 1996 Housing Development Bond Resolution (the “1996 Indenture”) and the 2002 Multiple Purpose Bond Resolution (the “Multiple Purpose Indenture”). One older parity indenture—the 1984 indenture—is no longer used for new multifamily issuances and only one (1) series of bonds outstanding. As with the single family parity indentures, the firm selected to represent the Commission as bond counsel for the multifamily programs must be knowledgeable about all of the issues inherent in similar programs.

On July 10, 2019, the Commission approved the creation of a new indenture, the General Trust Indenture (“GTI”), which is a multiple program indenture that authorizes the Commission to issue taxable or tax-exempt bonds or other evidences of indebtedness to finance homeownership programs and rental housing programs, or to finance or reimburse the related Commission’s capital expenditures. The bonds issued under the GTI are revenue bonds, and may be private activity bonds or governmental bonds. The bonds will be secured by rental housing and/or single family home mortgage loans. The GTI authorizes the issuance of new money and refunding bonds. It is a parity indenture, but subordinate bonds are authorized to be issued. Individual bond issues will be via supplemental indentures, which establish funds and accounts as may be necessary for the individual bond issuances.

In addition to the parity indentures, from time to time, HOC has issued bonds that finance private developer transactions on a stand-alone basis. Those may be characterized as conduit issuances. While experience in multifamily parity bond issues is helpful, conduit issuances are different in structure and documentation. Kutak Rock has represented the Commission, as bond counsel, for previous conduit issuances over the years.

In evaluating the proposals submitted by firms to represent HOC as bond counsel for the 2021 procurement, the scoring team did not consider the separate need for a firm experienced in issuing under a parity indenture versus one whose practice is primarily with conduit issuances, based upon the proposals received under RFP #2288 and the limitation of volume cap.

**Procurement**

The Commission’s current procurement policy provides for the selection of a bond counsel firm for an initial three-year term and two additional one-year terms.

On October 27, 2021, RFP #2288 for bond counsel services to the Commission was published and electronically mailed to 32 firms. Three (3) responses were received on the response date of November 23, 2021, and the list of offerors is provided below.

FIRM	LOCATION	COVERAGE	EXISTING HOC RELATIONSHIP
Ballard Spahr LLP	Washington, DC	National	Current RAD and Transaction Counsel Current Bond Counsel (multifamily conduit only)
Kutak Rock LLP	Washington, DC	National	Current Bond Counsel
Tiber Hudson LLC	Washington, DC	National	None

A summary of each firm is included as Exhibit 1. Each firm met the minimum qualifications as noted in RFP #2288, which included the following:

1. Ten (10) years of experience in housing finance by public agencies with a recommended bond team that include persons, who are listed as bond counsel, in the most recent edition of the Bond Buyer's Directory of Municipal Bond Dealers of the United States;
2. Ability to meet HOC's insurance requirements for commercial general liability, umbrella liability, professional/management liability, automobile liability, and worker's compensation;
3. Demonstrated capacity of performing the potential volume and type of services, as required by HOC;
4. Have at least one partner or principal on its bond team that is admitted to practice law before the Court of Appeals of Maryland with offices in Montgomery County or elsewhere in the Washington Metropolitan area; and,
5. The sufficient capacity to produce complex legal documents efficiently and in appropriate formats, along with the capacity to distribute documents to HOC and other parties electronically or through the use of other appropriate technologies.

***Evaluation Consideration***

The evaluation criteria outlined in RFP #2288 are summarized below:

1. Bond Team (Specific Individuals Responsible for Performance of Contract) (40%)
2. Price (20%)
3. General Experience in Public Finance and Related Areas of Law (20%)
4. Minority/Female/Disabled Participation (10%)
5. Presentation (5%)
6. Location of Offices (5%)

Each firm was required to present information on its prior experience, capacity for this engagement, admission to practice before the Court of Appeals in Maryland, use of technology, and any known conflicts of interest from this engagement. In consideration of the Commission's goals of doing business with firms headed by Minority, Female, Disabled persons, points are allocated to firms owned by minorities or where participation in the engagement is by minority persons. Finally, HOC's Section 3, as well as HOC Works requirements were outlined in the RFP.

Interviews were not held for this procurement due to the small size of the respondents; therefore, the score for Presentation (5%) related solely to the clarity, completeness, and responsiveness of the offeror's written proposal, and all respondents were notified of this condition.

A full summary of each proposal is included as Exhibit 2.

***Scoring***

A scoring team of four (4) members from the Commission's Mortgage Finance, Legal, and Real Estate staff, rated the responses. The Commission's Financial Advisor also reviewed each proposal. The resulting scores of the proposals are shown in the table below.



SELECTION CRITERIA	MAX SCORE	BALLARD SPAHR	KUTAK ROCK	TIBER HUDSON
Bond Team	40%	33%	40%	26%
Price	20%	15%	18%	18%
Experience	20%	18%	20%	6%
Minority/Female/Disabled Participation	10%	9%	8%	9%
Presentation	5%	4%	5%	3%
Location	5%	5%	5%	5%
<b>AVERAGE SCORE</b>	<b>100%</b>	<b>84%</b>	<b>95%</b>	<b>67%</b>

Kutak Rock and Ballard Spahr had the highest scores of 95% and 84%, respectively, and are the most qualified for this bond counsel engagement. However, because of Kutak Rock’s long standing relationship with the Commission and knowledge of both its single family and multifamily bond programs; its depth of experience in public and housing finance, tax law, securities law, real estate law; the completeness of its proposal; and, its proposed fees, staff believes that Kutak Rock is best suited for a new contract term.

Tiber Hudson LLC (hereinafter “Tiber Hudson”) is a particularly interesting firm having partners on its team with specialty in innovative financing executions. The firm’s creativity is well documented in the industry; however, its proposal did not include several items requested for the procurement, including but not limited to the HOC Works Opportunity Plan designation.

**Fees:**

Staff reviewed the respective fee proposals for each firm. The RFP requested that the offeror propose its method for determining its fee, whether hourly charges or per bond fee. To analyze the fees provided, the scoring team considered the average hourly rate of the team, as a whole, along with an estimation of each teams’ fees based upon a 100-hour transaction. The summary of fees and reimbursable expenses are provided in the table below.

Ballard Spahr proposed a five (5) member bond team with two (2) partners, two (2) associates and one (1) paralegal. Combined its team’s average hourly rate is \$482. This is reportedly a 15% discount on its current hourly rates. No additional fees were offered, despite Ballard Spahr having an existing contract, which includes not only hourly rates, but a per bond issue fee for HOC’s multifamily parity indentures and stand-alone multifamily conduit issuances. Ballard Spahr also supplied, as requested, an approximate percentage of time each individual is expected to devote to performing services for the Commission. Assuming a 100-hour transaction, and based upon its hourly rates and the division of each team member’s effort proposed, Ballard Spahr’s estimated fee would be \$45,435.

Kutak Rock proposed a nine (9) member bond team with five (5) partners, two (2) attorneys, and one (1) associate. This same team has represented the Commission since 2017, if not longer. Combined its team’s average hourly rate is \$426. Kutak Rock further proposed a flat fee of \$52,000 for HOC’s single family bond issuance under its parity indentures, which is a 0% increase since the 2017 award. For multifamily issuances under the Commission’s parity indentures, the per-transaction fee is \$65,000, an increase of 8% since the 2017 award, yet considered reasonable. Private developer stand-alone issuances would be negotiated at the inception of the transaction. Kutak Rock also supplied, as requested, an approximate percentage of time each individual is expected to devote to performing services for the Commission, unrelated to a bond transaction. Assuming a 100-hour transaction, and based upon the hourly rates and the division of each team member’s effort proposed, Kutak Rock’s estimated fee would be \$42,125.

Tiber Hudson proposed an 11-member bond team, including eight (8) partners, one (1) outside counsel and two (2) associates. Combined its team’s average hourly rate is \$398. This is reportedly a 20% discount on its current hourly rates. Tiber Hudson also indicates a willingness to negotiate a flat fee for certain types of transactions. It further indicated that its proposed team would equally divide responsibilities in performing services for the Commission. Therefore, assuming a 100-hour transaction, and based upon the hourly rates and the division of each team member’s effort proposed, Tiber Hudson’s estimated fee would be \$39,772.

Below is a summary of each offeror’s proposed fees.

PROPOSED FEES	BALLARD SPAHR	KUTAK ROCK	TIBER HUDSON	COMMENTS
Hourly Fee (Average)				
Partners	\$574	\$448	\$414	
Attorneys	N/A	\$438	\$425	
Associates	\$513	\$275	\$325	
Paralegal	\$238	\$180	N/A	
Overall Average Fee	\$482	\$426	\$398	
Team Fee for 100-Hours	\$45,435	\$42,125	\$39,772	
Single Family Parity	N/A	\$52,000	Negotiable	
Multifamily Parity	N/A	\$65,000	Negotiable	HOC-owned or sponsored
Multifamily Stand-alone	N/A	Negotiable	Negotiable	Private developers
Reimbursable Expenses	No costs for messenger, binding, postage under \$25; actual cost over \$25 for items above, all travel and computer-assisted legal research; duplicating \$0.10 per page; color \$0.45 per page	Actual cost for delivery, postage, out of town travel and computer-assisted legal research; duplicating \$0.20 per page	None provided	Reimbursement of reasonable out-of-pocket expenses is expected. Kutak Rock seeks reimbursement for fewer expenses.

**Bond Counsel Selection**

Based upon each offeror’s proposal, the evaluation criteria, and the existing healthy pipeline of the Commission’s real estate development transactions and anticipated financings, staff proposes that Kutak Rock LLP is selected, as the Commission’s bond counsel, for a new contract term. Staff further proposes the contract fee not exceed \$600,000 annually. Any future multifamily conduit engagement will be negotiated with Kutak Rock or by bid.

**ISSUES FOR CONSIDERATION:**

Does the Development & Finance Committee wish to staff recommendation to the Commission to and select Kutak Rock LLP for a new contract term as its bond counsel for both its single family and multifamily bond programs in accordance with RFP #2288?

**PRINCIPALS:**

Housing Opportunities Commission of Montgomery County  
Kutak Rock LLP

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**BUDGET IMPACT:**

There is no impact for the Commission's FY22 or FY23 operating budgets. Bond counsel fees are built into the cost of issuance budget for each issuance and routine hourly costs are included in the Mortgage Finance Division's budget which is funded from annual bond draws.

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**TIME FRAME:**

For discussion at the meeting of the Development and Finance Committee on February 18, 2022 and for formal action at the March 2, 2022 meeting of the Commission.

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**STAFF RECOMMENDATION & COMMISSION ACTION NEEDED:**

Staff recommends that the Development and Finance Committee join its recommendation to the Commission and approve the selection of Kutak Rock LLP, as its bond counsel for both its single family and multifamily parity bond programs. The new contract term shall be three (3) years with two (2) additional one-year extensions in accordance with the Commission's Procurement Policy. Staff further recommends that the annual contract amount shall not exceed \$600,000.

## EXHIBIT 1

### RFP #2288 – Bond Counsel Summaries

#### ***Ballard Spahr LLP (“Ballard Spahr”)***

Ballard Spahr LLP is a Philadelphia-based law firm of more than 600 lawyers practicing throughout the United States in the areas of litigation, business and finance, intellectual property, public finance, and real estate. The firm has a real estate practice encompassing virtually all aspects of real estate finance, conveyancing, construction, and development. The Public Finance practice is ranked in the highest tier nationally *U.S. News and World Report*. Ballard Spahr’s primary area of practice includes its public finance practice specializing in the area of general housing bond finance with its lawyers having served as bond counsel in every form of traditional municipal debt, including tax-exempt, taxable, new money and all forms of financings involving many forms of credit enhancement.

The firm’s national housing practice covers a wide range of state and local agencies, private developers, public and private lenders, tax credit investors and syndicators, underwriters and government sponsored enterprises. The firm also provides advice and counsel on sophisticated tax, securities and regulatory aspects as well as customary real estate, banking, bankruptcy, and other legal disciplines that support its housing practice. The firm reportedly participated in the issuance of more than \$1 trillion in tax-exempt obligations in 50 states, D.C. and American territories. Since 2017, it also has served as bond counsel for 460 transactions other than housing that have totaled \$36 billion to finance governmental, education, healthcare, transportation, utilities and industrial development projects. Its team of lawyers that would cover HOC’s account is admitted to practice in Maryland and would provide coverage from its Washington, D.C. office.

The proposed five (5) member bond team is comprised of four (4) attorneys and one (1) paraprofessional, which will increase efficiency and economy for each transaction. The team is made up of 40% of women and 60% of people of color. Ballard Spahr has indicated that it will engage McKenzie & Associates, a D.C. based minority owned law firm on an as-needed basis on HOC matters, should the need arise.

#### ***Kutak Rock, LLP (“Kutak Rock”)***

Kutak Rock is headquartered in Omaha, Nebraska but has office locations in 15 states and the District of Columbia. The firm reports that it has served as bond counsel in more than 16,000 municipal bond issues in all 50 states, as well as D.C., the Virginia Islands, Guam and Puerto Rico, handled by a group of more than 110 lawyers who devote all or a major part of their practice to public finance. The firm serves as ongoing bond counsel to 24 state Housing Finance Agencies (HFAs) and a number of local HFAs and housing bond issuers, including HOC. Nationally, the firm has been ranked among the top three (3) bond counsel firms for the past five (5) years, participating as bond counsel in more than 3,275 public finance issues having an aggregate principal in excess of \$115 billion. In 2021, *The Bond Buyer*, the only independent information resource serving the entire municipal finance community, ranked Kutak Rock second among the top three (3) bond counsel firms, which also include Orrick, Herrington & Sutcliffe LLP, ranked first, and Hawkins Delafield & Wood LLP, ranked third.

Kutak Rock has represented HOC as bond counsel throughout its 40-year history from its Washington, D.C. office and during the last 10 years of that tenure, HOC has issued single family and multifamily housing bonds having an aggregate principal amount of more than \$1 billion. Notwithstanding Kutak Rock’s experience with HOC, in the past five (5) years Kutak Rock has served as bond counsel or special tax

## EXHIBIT 1

### RFP #2288 – Bond Counsel Summaries

counsel in more than 995 housing finance issues totaling more than \$31.9 billion, including 460 single-family issues and 535 multifamily issues (aggregating more than \$22.7 billion and \$9.2 billion, respectively).

The proposed bond team is comprised of nine (9) attorneys, and the firm is expected to utilize the skills of its paraprofessionals to increase efficiency and economy for each transaction. Of the team members, four (4) are women, two (2) of whom are African American, and five (5) are men, two (2) of whom are Asian. Lead counsel on the HOC team is African American, who has worked with HOC since 2008. Minority lawyers at Kutak Rock have primarily handled and been responsible for representation of HOC since 1990.

#### ***Tiber Hudson LLC (“Tiber Hudson”)***

Tiber Hudson LLC is a full service, minority owned law firm and D.C. certified business enterprise. Its attorneys are licensed and in good standing to practice law in the District of Columbia, Maryland, Virginia, Ohio, New York and South Carolina. The firm provides legal counsel, representation, and consultation in the practice areas of litigation (including representation of administrative agencies, real estate and zoning, government contracting, administrative, corporate procurement, construction, government relations, and transactional including public and private financing. In addition, Tiber Hudson partners are particularly qualified in negotiations of real estate transaction and have demonstrated a keen ability to find creative solutions to complex problems and bring public-private transactions to a close.

Tiber Hudson has a well-established finance practice, and its attorneys have a long history serving as bond counsel to municipal issuers of general obligation bonds and notes to numerous public authorities and industrial development agencies with a combined experience over 100 years. Lawyers in its Public Finance Practice have been involved and served as bond counsel on more than 50 multifamily apartment transactions, involving hundreds of millions of dollars of bonds, thousands of units of affordable housing and hundreds of millions of dollars in tax credit equity and debt with state housing finance agencies over the years. Over the past five (5) years, the firm has pioneered the use of innovative pooled financing structures combining the use of tax-exempt bonds with USDA rural housing programs and other structures and credit enhancements to provide affordable rental housing in a number of states. Tiber Hudson has also served as Lead Counsel, Underwriter’s Counsel, Issuer’s Counsel, Investor’s Counsel, Disclosure Counsel, Borrower’s Counsel and Trustee Counsel.

The proposed bond team is comprised of 11 attorneys of which its lead is an African American male with 20 years of experience. The team also includes two (2) women and one (1) male Asian. Tiber Hudson is amenable to negotiating a flat fee for certain types of HOC transactions and its hourly rates are being offered at approximately 20% below its normal fees.

RFP #2283 - BOND COUNSEL  
 Response Date: 11/23/21  
 Proposal Response Summary

		KUTAK ROCK					BALLARD SPAHR					TIBER HUDSON LLC					
		Locations: DC, GA, IL, CO, NO, CA, MO, AR, MN, OK, NE, PA, VA, AZ, WA, KS					Locations: DC, GA, MD, CO, DE, NV, CA, NJ, NY, PA, AZ,					Locations: DC, MD, NY, SC					
		Attachment Included?			Requirement Met?		Scorecard Reviewer		Attachment Included?			Requirement Met?		Scorecard Reviewer			
		Yes	No	Details	Yes	No	Comments		Yes	No	Details	Yes	No	Comments			
<b>MINIMUM QUALIFICATIONS</b>																	
<b>1. Prior Experience</b>																	
	The offeror must include on its bond team persons who are listed as bond counsel in the most recent edition of the Bond Buyer's (Red Book) Directory of Municipal Bond Dealers of the United States. The offeror must have at least 10 years of experience in housing finance by public agencies.	✓		*Sisera M. Daniel, Partner, Chair of Public Finance, Tax Exempt/Taxable, 18+ yrs, (DC, MD, GA) *Mitchell J. Bragin, Of Counsel, Chair of National Public Finance Tax, Senior Tax Pfr, 46+ yrs, (DC, PA, US Supreme Court) - Jennifer Blunt, of counsel, Public Finance, 25+ yrs (MD, NY, DC) *David S. Lu, Pfr, Public Finance, State/Local Counseling, 21+ yrs, (DC, OH) *Debbie Sinclair Ruskin, Pfr, Public Finance & Securities, 35+ yrs, (DC, FL) - John J. Wagner, Senior Pfr, Head Public Finance, 44+ yrs, (MN, NE, ND) *Neo Tran, Partner, Public Finance/Federal Contracts 13 yrs, (MD, VA, DC) - Marie Wadler, of counsel, Finance/Tax Credits (FL, DC)  Those listed with a * are included in the Red Book.	✓				✓		*Andrew Spicknall, Pfr, lead, Finance, Public Finance, Housing Finance, Real Estate Finance (MD, DC, VA), 10+ years - Marybeth Orsini, Partner, Finance, Public Finance, Tax, Housing (MD, MA, NY, US Tax Court) *Daniel Nunez, Associate, Finance, Public Finance, Real Estate Finance (DC) - Garland Gantt III, Associate, Finance, Housing, Housing Finance (DC) - Camelle Jones Boston, Paralegal  Those listed with a * are included in the Red Book.	✓		Proposal states that Marybeth Orsini is in the Red Book; this is not the case	✓		* Earl Horton, lead, Partner, Finance, Real Estate (DC, MD), 20 yrs * Kent Neumann, Public Finance, Real Estate (DC, CA), 20 yrs * Krista North, Community Development Finance (MD), 20 yrs * Roderick Owens, Real Estate, Public and Private Finance (MD, DC, US Supreme Court), 15 yrs * James Peck, Real Estate Finance, FHA/USDA MF financing, 20 yrs * Robert Kearbey, housing finance (MO, NC, MD, DC), 15 yrs * Matthew Grant, real estate finance, affordable/LIHTC (MD, NY, OH), 10 yrs * Allison King, Sr. Counsel, Public Finance, Real Estate, Housing (SC), 10 yrs * Alex Zeltser, Sr. Associate, Public Finance (MD, DC), 10 yrs - Perry Israel, Tax Law, 40 yrs - Vikrant Bhatia, Public Finance, Real Estate Finance, 10 yrs  Those listed with a * are included in the Red Book.
<b>2. Insurance Requirement</b>																	
	<b>Commercial General Liability</b> - \$1,000,000 per occurrence and \$2,000,000 in the aggregate for bodily injury, personal injury, and broad form property damage, including the following coverages: Contractual Liability, Premises and Operations; Products & Completed Operations; Independent Contractors & Subcontractors; Sexual Molestation and Abuse. Coverage shall be endorsed to apply on a per project or per contract basis. <b>Umbrella Liability</b> - Umbrella/Excess Liability insurance coverage with a limit of liability of at least \$5,000,000. <b>Professional/Management Liability</b> - \$1,000,000 per claim and \$2,000,000 in the aggregate that covers professional errors and omissions, negligent acts, and misconduct or lack of ordinary skill during the term of the Agreement. <b>Automobile Liability</b> - \$1,000,000 combined single limit for bodily injury and property damage coverage per occurrence including the following: owned automobiles, hired automobiles, and non-owned automobiles. <b>Worker's Compensation</b> - Meeting all the statutory requirements of the State of Maryland and with the following minimum Employer's Liability limits: - Bodily Injury by Accident - \$500,000 each accident - Bodily Injury by Disease - \$500,000 policy limits - Bodily Injury by Disease - \$500,000 each employee	✓		Insurance certificate currently on file at HOC	✓				✓		Insurance certificate on file at HOC	✓			✓	Has professional liability insurance of \$2 million for each claim with a deductible of \$5,000. The firm is amenable to security additional insurance, as may be required. Will provide COI upon successful award of contract.	
<b>3. Offeror's Capacity</b>																	
	Each offeror must demonstrate the capacity of performing the potential volume and type of services as required by HOC described in Part 3 below. Offerors are advised to be or to become familiar with the past activities of the HOC and the potential volume and type of work to be performed and the services to be provided. The offeror must be available at all times to render services required under the contract.	✓		Bonds counsel on > 16,000 muni bond issues in all US states and territories. No opinion ever subjected to court action. HOC bond counsel since 1979; in last 10 years, HOC SF and MF have issued more than billion. Ranked top 3 nationally in past five years in 3,275 transactions for more than \$115 billion.	✓				✓		- Participated in \$1 trillion of tax exempt financing in all 50 states. - US News & World Report ranks the Public Finance practice in the highest tier nationally. - Bond Counsel: governmental and private activity bonds, including GO, municipal revenue, special assessment, TIF, BAN, tax revenue, grant, installment purchase, capital lease. - Type: tax-exempt, taxable, new money, refundings, credit enhancements, liquidity support, private placements.	✓			✓	- Prepared to commence immediately. - served as bond counsel on more than 50 multifamily transactions, involving hundreds of millions in bonds, thousands of affordable units and hundreds of million in TE equity and state with state housing finance agencies over the year - Public Finance attorneys involved with Federal and local government agencies, local redevelopment authorities, private real estate developers, investors and lenders	
<b>4. Admission to Practice</b>																	
	At least one member of the bond team must be admitted to practice law before the Court of Appeals of Maryland and such member must be a partner or principal in the firm. The location of an office in Montgomery County or elsewhere in the Washington Metropolitan area will be important but is not mandatory.	✓		Sisera Daniel Neo Tran	✓				✓		Andrew Spicknall Mary Orsini	✓			✓	Lewis Aslow Earle Horton Matthew Grant Eric Jenkins Robert Kearbey Krista North	
<b>5. Technology</b>																	
	Each offeror must demonstrate sufficient capacity to produce complex legal documents efficiently and in appropriate formats, including multiple draft official statements and other disclosure documents (which may contain complex charts of financial and program information), and indentures and other transactional documents. Offerors also must demonstrate the capacity to distribute documents to HOC and other parties electronically or through the use of other appropriate technologies.	✓		Devotes significant resources to remain at forefront of legal services through technology. Ongoing investment in technology systems. Web-based document management system between offices and clients. Secure document exchange via Internet. Dedicated IT department.	✓				✓		Use modern technology to reduce courier costs, document production and printing. Uses online document sharing programs. State of the art hardware and software (dedicated IT staff). Each office has LAN that integrates into WAN. Research: WESTLAW, Lexis, Thomson Reuters, Microsoft.	✓			✓	Uses state-of-the-art technical resources to assist client; uses LAN which provides fully integrated software for data and text; use of fax, computer modem and email, cell phones clients can participate in drafting process without leaving offices; voice mail system and email allow clients to confidentially communicate with firm; availability to extensive library resources, LEXIS/NEKS, CD ROM research capabilities	
<b>REQUIRED INFORMATION</b>																	
<b>A. Offeror Prior Experience</b>																	
<b>1. Public Finance Experience</b>																	
	Describe the offeror's experience in the field of municipal finance during the last five years, with emphasis on single family and multifamily bond issues, including private activity, non-profit, and essential function tax-exempt housing bonds, and taxable bonds.	✓		- Serves as ongoing bond counsel to 24 state HFAs and a number of local HFAs and housing bond issuers; - works in other capacities as well - counsel to issuer, underwriter, credit enhancer, insurer, liquidity provider, bond purchase, sponsor, trustee, developer, special tax counsel, disclosure counsel; - In 2020 ranked by Refinitiv as 2nd in nation for multifamily issues and 1st in single family issues by both number and dollar; - Multifamily - in last 5 years in more than 535 issues with aggregate principal amount of more than \$9.2 billion; structures include new money, refundings, escrow structures, general obligations, pass-through bonds, revenue obligations, advance refundings; Section 8 issues, 501(c)(3) issues, GNMA, Fannie Mae, FHLMC structures, various FHA programs including Risk Sharing Insurance, bond insured and LOC structures, senior/sub/mezzanine structures, RAD issues, LIHTC; - Single Family - in last 5 years in more than 460 SF issues with aggregate principal amount of more than \$22.7 billion; issues involved both SF and home improvement loan programs, stand alone and general resolutions/indentures both whole loan and MBS programs; structures include simple new money fixed rate, refundings and new money/refunding combinations, floating rate bonds and notes, PAC bonds, SF pass through bonds, index rate bonds, COBs, escrow COBs, taxable bonds; credit enhancement provided by GNMA, Fannie Mae, Freddie Mac, USDA, RHA/VA	✓				✓		- Significant housing practice with wide range of services to state and local housing agencies (including CDA and DCHFA), lenders, underwriters and conduit borrowers for both single family and multifamily, private equity funds, venture capital firms, institutional investors. - Services include assisting housing authorities and other clients on issues related to HUD and all FHA programs; advised state agencies on the development, administration, and application of LIHTC programs, counseled public and private companies in real estate matters; advises private and public companies through all stages of development and capital-raising activities; assists with federal and state tax law aspects of public finance transactions including rules related to arbitrage - participated in the issuance of more than \$1 trillion in tax-exempt obligations in 50 states, DC and American territories - Bonds issued include GO, municipal revenue, special assessment, tax increment, taxable, revenue, grant and bond anticipation notes, tax credit bonds, gas prepay bonds, lease-purchase and installment purchase obligations - Involved in tax-exempt, taxable financing, new money issues, all forms of refundings, conduit financings and financings involving every form of credit enhancement and liquidity support	✓			✓	- Regularly serves as project and bond counsel to municipal issuers of GO bonds and notes to public authorities and industrial development agencies - Serves as bond counsel to DCHFA - Experience in municipal and public law issues, special legislation, public and private financing, tax exempt and taxable financings - Attorneys experienced in litigation, acquisition, construction, corporate securities, bankruptcy, real estate law, and familiar with federal and state regulatory and environmental law - served as bond counsel on more than 50 multifamily transactions, involving hundreds of millions in bonds, thousands of affordable units and hundreds of million in TE equity and state with state housing finance agencies over the year - Public Finance attorneys involved with Federal and local government agencies, local redevelopment authorities, private real estate developers, investors and lenders	

RFP #2283 - BOND COUNSEL  
 Response Date: 11/23/21  
 Proposal Response Summary

		KUTAK ROCK Locations: DC, GA, IL, CO, NO, CA, MO, AR, MN, OK, NE, PA, VA, AZ, WA, KS				BALLARD SPAHR Locations: DC, GA, MD, CO, DE, NV, CA, NJ, NY, PA, AZ,				TIBER HUDSON LLC Locations: DC, MD, NY, SC				
		Attachment Included?		Requirement Met?	Scorecard Reviewer Comments	Attachment Included?		Requirement Met?	Scorecard Reviewer Comments	Attachment Included?		Requirement Met?	Scorecard Reviewer Comments	
		Yes	No	Yes		No	Yes	No		Yes	No	Yes		No
<b>2. Offeror must include the following information</b>														
a.	Information relating to each bond issue financing housing for which the offeror acted as bond counsel since 2012. The information should include the issuer, the amount, the type structure and innovative techniques or combinations of techniques, if any. For multifamily, the information should also include the type of ownership of the development (e.g., private, governmental, non-profit) and the use of public private partnerships.	✓		See Appendix B and C Bonds counsel: for \$32 billion in 995 MF and SF housing finance transactions over past 5 years. Other counsel: Issuer, disclosure, underwriter, trustee. Manner Sold: Private placements, negotiated sales. Issuer: More than 24 state and several local HFAs. Ownership: Private, governmental users.	✓		See Appendix A. Participated in more than \$1 trillion of tax-exempt obligations in all states, DC and American territories. Represented every side of the table - borrowers, issuers, underwriters and trustees	✓		✓		Detailed list of bond issues not provided	✓	
b.	Summary information relating to roles (e.g., representing issuers, developers, underwriters, bond purchasers, credit enhancers).	✓		Offeror serves as bond counsel, as well as counsel to issuer, underwriter, credit enhancer, insurer, liquidity provider, bond purchase, sponsor, trustee, developer, special tax counsel, disclosure counsel	✓		As well as bond counsel, serves as counsel to underwriter, special tax trustee, credit support, lender, borrower, issuer, bank and developer	✓		✓		- As well as bond counsel, provides counsel to issuers, developers, owners, banks, underwriters, purchasers, lenders, trustees and public/private borrowers, tax credit investors and syndicators, and disclosure counsel Named #1 firm for underwriters' counsel by Thomson Reuters for 2018, 2019 and 2020	✓	
c.	Summary information relating to acting as bond counsel on bond issues other than housing (e.g. small business, exempt facilities, energy, non-profits, etc.)	✓		Past 5 years, participated as bond counsel in more than 2,275 non-housing issues, \$84.6 billion Related to highway construction projects, mass transit systems, water and sewer projects, higher education institutions, public school districts and charter schools, hospitals and other health care facilities, student loan programs, energy production facilities, manufacturing facilities, public buildings, pollution control projects	✓		Non-housing: since 2017 served as Bond counsel 460 transactions for \$36 billion to finance governmental, education, healthcare, transportation, utilities and industrial development projects	✓		✓		Proposal does not include any mention of non-housing experience	✓	
	Involvement with any creative or innovative techniques or solutions for legal and financing activities related to affordable housing in the last five years. Each offeror should include at least one example of a creative innovative technique or solution to a legal problem used in connection with a financing, and a brief description of the offeror's involvement.	✓		Created separate ownership entities for market rate and low income units, used deep rent skewing for the low income units, dealt with volume cap shortage by using taxable bonds that were convertible into future tax-exempt bonds, and recycled volume cap initially for the construction financing to refund/convert the taxable bonds into tax-exempt bonds	✓		- For Philadelphia Water Department developed financing program to provide incentives to private owners to construct storm water runoff mitigation projects for properties; - for MD Economic Development Corp in financing air cargo facility at BWI, structured transaction by creating an obligated group supported by revenues from facilities owned by affiliates; - for Chicago Housing Authority, assisted in structuring a \$325 million deal of general obligation bonds using Section 8 admin fees and public housing tenant rents to repay debt	✓		✓		Firm has pioneered the use of innovative pooled financing structures combining the use of tax-exempt bonds with USDA rural housing programs and other structures and credit enhancements to provide affordable rental housing in a number of states.	✓	
	A copy of at least one official statement prepared by the firm in connection with its participation as bond counsel or underwriter's counsel.	✓		Provided in Appendix D	✓		See Appendix B; did not include a full OS, only the first 7 pages including cover sheet and TOC	✓		✓		See attachment 2 and 3	✓	
	Membership of the offeror in housing finance agency professional organizations, such as the National Association of Local Housing Finance Agencies (NALHFA).	✓		National Association of Local Housing Finance Agencies National Council of State Housing Agencies National Association of Bond Lawyers National Association of Housing and Redevelopment Officials National Association of REITs National Leasing Association American Bar Association, professional sections incl housing, forum, real estate and tax, urban, state and local government law development	✓		National Council of State Housing Agencies National Association of Bond Lawyers National Association of REITs American College of Bond Lawyers	✓		✓		Proposal does not include any mention of membership in professional organizations; resumes list individual membership to organizations	✓	
<b>B. Related Legal Experience</b>														
1.	Provide a brief description of areas of the law related to public finance in which the offeror has an expertise including, but not limited to, the areas of federal housing law, Maryland real estate law, securities law, tax law, insurance law, bankruptcy and banking law.	✓		1) General Public Finance 2) Tax Law, Arbitrage, Low Income Housing Tax Credit Law 3) Securities 4) Banking, Bankruptcy, and Commercial Lending 5) Real Estate Law 6) Federal Housing	✓		1) Federal Housing Law 2) Real Estate Law 3) Securities Law 4) Tax Law 5) Bankruptcy Law 6) Banking Law	✓		✓		1) Public/Private Finance 2) Real Estate 3) Tax Law	✓	
2.	Attach brief resumes of the attorneys who work in the areas described in B.1. above but only if they will be available to consult with and give advice to HOC during the term of the Contract.	✓		Provided in Appendix A	✓		Provided in Appendix C	✓		✓		See attachment 1; resumes were NOT included for several attorneys listed on the team (missing resumes were Robert Kearbey, Matthew Grant, Perry Israel, Vikram Bhatia) and resumes were included for attorneys NOT listed on the team in proposal	✓	
<b>C. Bond Team (Specific Individuals Responsible for Performance of Contract)</b>														
1.	The identity of the individuals forming the bond team, the areas of law in which each specializes, the number of years of experience in such areas, and the extent to which each participated in the transactions described in subparagraph B.1. above.	✓		-Sisera M. Daniel, Partner, Chair of Public Finance, Tax Exempt/Taxable, 18+ yrs, (DC, MD, GA) - Mitchell J. Bragin, Of Counsel, Chair of National Public Finance Tax, Senior Tax Ptnr, 46+ yrs, (DC, PA, US Supreme Court) - Jennifer Blunt, of counsel, Public Finance, 25+ yrs (MD, NY, DC) - David S. Lu, Ptnr, Public Finance, State/Local Counseling, 21+ yrs, (DC, OH) - Debbie Sinclair Ruskin, Ptnr, Public Finance & Securities, 35+ yrs, (DC, FL) - John J. Wagner, Senior Ptnr, Head Public Finance, 44+ yrs, (MN, NE, ND) - Neo Tran, Partner, Public Finance/Federal Contracts 13 yrs, (MD, VA, DC) - Marie Wadler, of counsel, Finance/Tax Credits (FL, DC) - Max Kaplan, associate, recently passed MD bar, sworn into MD court of Appeals 12/2021	✓		- Andrew Spicknall, Ptnr, lead attorney for SF and MF bond counsel; Public Finance Law, Securities Law, Banking/Bankruptcy/Commercial Lending, Real Estate Law, Federal Housing Law (MD, DC, VA), 10+ years - Marybeth Orsini, Partner, focused on federal tax law with emphasis on TE bonds and tax credit bonds; Public Finance Law, Tax Law, Securities Law, Federal Housing Law (MD, MA, NY, US Tax Court) - Daniel Nunez, Associate, Public Finance Law, Securities Law, Banking/Bankruptcy/Commercial Lending, Real Estate Law (DC) - Garland Gantt III, Associate, Public Finance Law, Securities Law, Real Estate Law (DC) - Camellie Jones Boston, Paralegal, Public Finance Law	✓		- Earl Horton, lead, Partner Finance, Real Estate (DC, MD), 20 yrs - Kent Neumann, Public Finance, Real Estate (DC, CA), 20 yrs - Krista North, Community Development Finance (MD), 20 yrs - Roderick Owens, Real Estate, Public and Private Finance (MD, DC, US Supreme Court), 15 yrs - James Peck, Real Estate Finance, FHA/USDA MF financing, 20 yrs - Robert Kearbey, housing finance (MO, NC, MD, DC), 15 yrs - Matthew Grant, real estate finance, affordable/LHTC (MD, NY, OH), 10 yrs - Allison King, Sr. Counsel, Public Finance, Real Estate, Housing (SC), 10 yrs - Alex Zeltser, Sr. Associate, Finance, Tax (MD, DC), 10 yrs - Perry Israel, Tax Law, 40 yrs - Vikram Bhatia, Public Finance, Real Estate Finance, 10 yrs	✓		2-pronged approach for conflicts - form based or manual approach and software based; if conflict exists, obtains a waiver of the conflict of interest from all clients impacted; will work with HOC should conflict arise; unaware of any existing conflict of interest	✓
2.	Identify any possible conflicts of interest in connection with the representation of existing clients which may arise if selected to serve as HOC bond counsel and how they would be resolved.	✓		Firm reports no open client matter in which HOC is listed as adverse party. Firm reviews any new engagement to ensure no conflict with HOC representation.	✓		Represents developers and lenders who transact business with HOC. Ballard would work with HOC to resolve conflicts.	✓		✓		See C. 1 above - Bond Team	✓	
3.	The courts in which such individuals are admitted to practice, the year of admission and the location of the principal place or places of business.	✓		See C. 1 above - Bond Team	✓		See C. 1 above - Bond Team	✓		✓		See C. 1 above - Bond Team	✓	
4.	The availability of such individuals during the next four years. Note that HOC will not permit substitutions in the bond team without its prior written consent	✓		Provides assurance that all lawyers will make themselves available for the next 4 years	✓		Offered a team that has worked collaboratively for years. No issues expected in next 3 years, seek HOC consent to add to team.	✓		✓		All attorneys acting as bond counsel have availability over the next 4 years	✓	
5.	The planned division of responsibilities among the members of the bond team including an approximate percentage of the time each individual is expected to devote to performing services for HOC. (The total of the percentages should equal 100%.)	✓		-Sisera Daniel, lead bond counsel - 25% - Mitchell Bragin, tax analysis, tax opinion, assist in structuring - 10% - David Lu, tax analysis, tax opinion, assist in structuring, assist with doc drafting and legal research - 10% - Jennifer Blunt, assist in structuring, document drafting and legal research - 25% - Debbie Sinclair Ruskin, assist with structuring and document drafting - 5% - Max Kaplan, assist with document drafting and legal research - 10% - John Wagner, consult on matters re: HUD, FHA, Risk Sharing, structuring issues 5% - Marie Wadler, LHTC matters - 5% - Neo Tran, bankruptcy matters - 5%	✓		- Andrew Spicknall: team lead - 15% - Marybeth Orsini, primary contact for SF - 5% - Daniel Nunez, document drafting, review due diligence, assistance to bond counsel - 35% - Garland Gantt, document drafting, review due diligence, assistance to bond counsel - 20% - Camellie Jones Boston, document prep, coordination of documentation and closings, review due diligence - 25%	✓		Responsibilities will be equally divided; no additional information provided	✓			✓
<b>6. The bond team's expertise in the following areas of law:</b>														
a.	General public finance law (including Maryland public finance law);	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓	
b.	Tax law including the arbitrage regulations and the low income housing tax credits;	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓	
c.	Securities law;	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓	
d.	Banking, bankruptcy, and commercial lending law;	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓	
e.	Real Estate Law including Maryland Real Estate law	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓	
f.	Federal Housing Law.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓		✓		See A.1. (Public Finance Experience), B.1. (Related Legal Experience), and C. 1. (Bond Team) above.	✓	
D.	Use of Para-professionals--The offeror shall detail how it will use para-professionals, permanent law clerks, and law graduates not admitted to practice to promote economy and efficiency in the performance of services and to assure HOC of the lowest possible costs.	✓		Well trained paralegal and law clerks result in economical service; paralegals and law graduates not admitted to practice would be used in initial drafts, research, document coordination and delivery to manage cost though not quality of work.	✓		Practice includes: 10 paralegals, 2 public finance law clerks, 14 legal assistants. Team approach to service delivery.	✓		✓		Support staff include managers, legal secretaries and clerks	✓	

RFP #2283 - BOND COUNSEL  
 Response Date: 11/23/21  
 Proposal Response Summary

		KUTAK ROCK Locations: DC, GA, IL, CO, NO, CA, MO, AR, MN, OK, NE, PA, VA, AZ, WA, KS					BALLARD SPAHR Locations: DC, GA, MD, CO, DE, NV, CA, NJ, NY, PA, AZ,					TIBER HUDSON LLC Locations: DC, MD, NY, SC							
		Attachment Included?			Requirement Met?		Scorecard Reviewer Comments	Attachment Included?			Requirement Met?		Scorecard Reviewer Comments	Attachment Included?			Requirement Met?		Scorecard Reviewer Comments
		Yes	No	Details	Yes	No		Yes	No	Details	Yes	No		Yes	No	Details	Yes	No	
E.	Use of Technology--Describe the offeror's capacity to use technology to promote economy and efficiency in the required services, including a description of the offeror's computer technology, software applications, use of e-mail and other communication technology, and willingness to comply with reasonable requirements of HOC with respect to upgrades and capability.	✓		Devotes significant resources to remain at forefront of legal services through technology. Ongoing investment in technology systems. Web-based document management system between offices and clients. Secure document exchange via Internet. Dedicated IT department.	✓			✓		Reportedly use modern technology to reduce courier costs. State of the art hardware and software (dedicated IT staff). Each office has LAN that integrates into WAN. Research: WESTLAW, Lexis, Thomson Reuters, Microsoft.	✓			✓		Uses state-of-the-art technical resources to assist client; uses LAN which provides fully integrated software for data and text; use of fax, computer modem and email, cell phones clients can participate in drafting process without leaving offices; voice mail system and email allow clients to confidentially communicate with firm; availability to extensive library resources, LEXIS/NEXIS, CD ROM research capabilities			
F.	Other--Any other information which the offeror considers relevant to a fair evaluation of its experience and capabilities.	✓		Intimate involvement with analysis of newly created Consumer Finance Protection Bureau and working with NCSHA to obtain exemption for HFAs. Participated on NCSHA Homeownership Institute panels and conducted training sessions for various HFAs with respect to CFPB rules. Also works with HFA clients that have experienced any cybersecurity breaches.	✓			✓		None offered.	✓			✓		None offered.			
<b>G. Rates and Fees:</b>																			
<b>1. The offeror must submit in the proposal:</b>																			
a. The method proposed for determining its fee, i.e., hourly charges or per bond fee. Whichever method is proposed:		✓		Flat Fee for HOC bond issues and hourly rates for matters unrelated to bond transaction	✓			✓		Offers 15% discount of hourly rates, held through 2024 with a 3% increase for remaining 2 years	✓			✓		Willing to negotiate a flat fee for certain types of HOC transactions; offering 20% discount on hourly rates			
i. The amount to be charged for professional fees under the method designated.				Multifamily bond issues \$65,000 Single Family bond issues \$52,000						Multifamily bond issues N/A Single Family bond issues N/A						Multifamily bond issues Negotiable Single Family bond issues Negotiable			
ii. Any other charges the offeror would make and expenses for which reimbursement would be sought, including the method for determining the charge.		✓		Hourly Rate for other matters: Siera M. Daniel, lead, Partner \$450 25% \$11,250 Mitchell J. Bragin, Sr. Partner \$550 10% \$5,500 Jennifer Blunt, of counsel \$375 25% \$9,375 David S. Lu, Partner \$465 10% \$4,650 Debbie Sinclair Ruskin, Partner \$495 5% \$2,475 John J. Wagner, Sr. Partner \$350 5% \$1,750 Max Kaplan, Associate \$275 10% \$2,750 Neo Tran, Partner \$375 5% \$1,875 Marie Wadler, of counsel \$500 5% \$2,500 Other Associates \$275 Other Paralegals \$180 AVERAGE \$426			Based upon hourly rate and assuming a transaction that took 100 hours, estimated fee for team would be:	✓		Hourly Rate: Andrew Spicknall, lead, Partner \$591 15% \$8,865 Marybeth Orsini, Partner \$557 5% \$2,785 Daniel Nunez, Associate \$489 35% \$17,115 Garland Gant, Associate \$536 20% \$10,720 Carnelle Jones Boston, Paralegal \$238 25% \$5,950 AVERAGE \$482			Based upon hourly rate and assuming a transaction that took 100 hours, estimated fee for team would be:	✓		Hourly Rate (% allocated is an estimate, since work is equally divided; assumption is based on 100 hours for 3 transactions) Earl Horton, Lead, Partner \$425 9.09% \$3,863 Kent Neumann, Partner \$425 9.09% \$3,863 Krista North, Partner \$425 9.09% \$3,863 Roderick Owens, Partner \$425 9.09% \$3,863 James Peck, Partner \$425 9.09% \$3,863 Robert Kearbey, Partner \$425 9.09% \$3,863 Matthew Grant, Partner \$325 9.09% \$2,954 Allison King, Partner \$425 9.09% \$3,863 Alex Zeltser, Associate \$325 9.09% \$2,954 Perry Israel, Outside Tax Counsel \$425 9.09% \$3,863 Vikrant Bhatia, Associate \$325 9.10% \$2,958 AVERAGE \$398			
iii. Regardless of which method of compensation is proposed, the offeror should indicate whether it would accept the other method. If the other is unacceptable, the offeror should state the reasons.		✓		Firm is willing to consider any method of compensation suggested by HOC	✓			✓		No comment included	✓			✓		Willing to negotiate a flat fee for certain types of HOC transactions			
b. Any other method of compensation acceptable to the offeror.		✓		Firm is willing to consider any method of compensation suggested by HOC; multifamily issues involving conduit borrower, proposes a negotiated fee; when requested, has provided discounted rates for discrete matters	✓			✓		No comment included	✓			✓		No comment included			

SELECTION CRITERIA		KUTAK ROCK		BALLARD SPAHR		TIBER HUDSON LLC			
<b>Bond Team (Specific Individuals Responsible for Performance of Contract):</b>									
An evaluation of the qualifications, expertise, general reputation and ability to work with HOC of the individuals who will be responsible for the performance of the services as required by this RFP. Included in this evaluation will be the bond team's expertise in the fields of municipal finance in general and housing financing in particular. The bond team's availability for consultation with or advice to HOC during the next four years will also be evaluated. Each offeror is expected to demonstrate knowledge of HOC's programs and financing methods.	40%	0.00%	See above	40%	0.00%	See above	40%	0.00%	See above
<b>Price</b>	20%	0.00%	See above	20%	0.00%	See above	20%	0.00%	See above
<b>General Experience in Public Finance and Related Areas of Law</b>									
An evaluation of the quality and quantity of the offeror's significant experience and expertise (or its ability to arrange for the provision of such experience and expertise) in the area of public finance and related areas of the law as required by this RFP, with emphasis on prior experience in the issuance of various types of housing bonds, expertise in the tax aspects of municipal finance.	20%	0.00%	See above	20%	0.00%	See above	20%	0.00%	See above
<b>Minority/Female/Disabled Participation</b>									
An evaluation of the extent and quality of the proposed participation by minority owned firms and minority persons in non-minority owned firms. If joint proposals are submitted, an evaluation of the management and cost effectiveness of the joint venture.	10%	0.00%	9 member team with 4 women (2 are African-American), 5 males (2 are Asian). Lead counsel is African American, who has worked with HOC since 2008. Minority lawyers at Kutak have primarily handled and been responsible for representation of HOC since 1990. Firm is willing to serve as co-counsel with any qualified minority law firm of HOC's choosing.	10%	0.00%	Provided a statement in Appendix E; proposed 5 member team with 2 women and 3 men (2 men are of color). Will engage McKenzie & Associates, a DC based minority owned law firm on an as-needed basis on HOC matters	10%	0.00%	Minority owned firm. 11 member team, which include 2 women and 2 men of color; several attorneys listed under the "Rates" section in Tiber's proposal are of color; however, those persons are NOT described as members of the team
<b>Presentation</b>									
An evaluation of the clarity, completeness, and responsiveness of the offeror's written proposal and oral presentation as required by this RFP.	5%	0.00%	HOC has opted not to hold oral presentations; points based solely on written presentation, per section 1.7 of RFP, the HOC Works Form was to be returned; Kutak did submit	5%	0.00%	HOC has opted not to hold oral presentations; points based solely on written presentation, per section 1.7 of RFP, the HOC Works Form was to be returned; Ballard did submit	5%	0.00%	HOC has opted not to hold oral presentations; points based solely on written presentation, per section 1.7 of RFP, the HOC Works Form was to be returned; Tiber did NOT submit
<b>Location</b>									
Location of an office in Montgomery County or elsewhere in the Baltimore, MD and Washington, DC metropolitan area.	5%	0.00%	Has DC office	5%	0.00%	Has DC office	5%	0.00%	Has DC office
		100%	0.00%	100%	0.00%	100%	0.00%		



# Closing Statement

Written Statement for Closing a Meeting (“Closing Statement”)

Date: February 18, 2022

A. Pursuant to Section 3-305(b) and (d) of the General Provisions Article of the Annotated Code of Maryland, I move to adjourn this open session to a closed session only:

- 3.  “To consider the acquisition of real property for a public purpose and matters directly related thereto;” and
- 13.  “To comply with a specific constitutional, statutory, or judicially imposed requirement that prevents public disclosures about a particular proceeding or matter.”

B. For each provision checked above, the topic to be discussed and the reason for discussing that topic in closed session is provided below.

Statutory Citation	Topic	Reason for closed-session discussion
§3-305(b)(3)	The acquisition/purchase of three multifamily properties (via a purchase and sale agreement) located in Bethesda, Maryland.  [NOTE: This item was discussed in previous closed sessions, most recently at a closed Commission meeting on February 2, 2022. This meeting is to continue those discussions and to seek approval to finalize the acquisitions.]	The meeting must be closed in order to protect HOC’s ability to purchase the properties. Public discussion of this item could harm HOC’s ability to bargain and could result in HOC not being able to purchase the properties.
§3-305(b)(13)	The confidential commercial and financial terms of the above referenced acquisition.	Section 4-335 of the Maryland Public Information Act prevents disclosure of confidential commercial or financial information obtained from a third-party. The meeting must be closed to the public in order to protect confidential commercial and financial information provided to HOC from private financial institutions regarding the financing of the above referenced acquisitions. All such information to be discussed is customarily and actually treated as private by the financial institutions, and has been provided to HOC under an assurance of privacy.

C. This statement is made by Jackie Simon, Chair of the Development and Finance Committee.

D. Recorded vote to close the meeting:

- Date: February 18, 2022 Time: \_\_\_\_\_ Location: Zoom (LiveStream on YouTube)
- Motion to close meeting made by: \_\_\_\_\_
- Motion seconded by: \_\_\_\_\_
- Commissioners in favor: \_\_\_\_\_
- Commissioners opposed: \_\_\_\_\_
- Commissioners abstaining: \_\_\_\_\_
- Commissioners absent: \_\_\_\_\_

Officer’s Signature: \_\_\_\_\_

# Closed Session