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April 5, 2016

VIA ELECTRONIC MAIL & HAND-DELIVERED

The Honorable Nancy Floreen
Council President, Montgomery County Council
Council Office Building
100 Maryland Avenue, 6th Floor
Rockville, MD 20850
councilmember.floreen@montgomerycountymd.gov

RE: Consultation with Takoma Park on Montgomery College Facilities Master Plan, as Required by 2002 Agreement with Montgomery County

Dear Council President Floreen:

As City Attorney of Takoma Park and one of the participants that negotiated the July 30, 2002 Agreement among the City of Takoma Park, Montgomery County, Montgomery College, and Historic Takoma—I am writing to inform you and the other Councilmembers that the College's Facilities Master Plan was approved without the required consultation with the City of Takoma Park and in direct violation of Sections 3 and 4 of the Agreement (attached).

Because the proposed plans and renovation of the Math and Science building on the Takoma Park campus are based on the Master Plan, I request that the Council postpone approval of funding requests for that project until the required consultation with regard to the Master Plan has taken place.

The Agreement states in part:

“3. Montgomery College agrees that it shall consult with the City of Takoma Park and the local community when making any major or substantial changes or alterations to the existing structures designated...” and “4. The parties agree that this consultation envisioned in the prior paragraph will occur at the earliest practicable stage during the planning for any alteration, construction, or revitalization of the exterior of the existing buildings.”

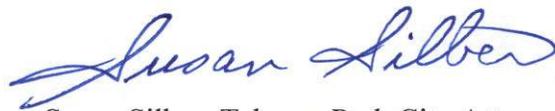
The Agreement is not simply policy guidance but is intended to be enforceable in a court of law: *“8. If any parties fail to fulfill their obligation hereunder, any party to this agreement shall have the right to sue to enforce the terms of this agreement.”*

The 2002 Agreement has no meaning unless it is interpreted by all parties to provide early and specific consultation with the City of Takoma Park on how the College's buildings within Takoma Park will be developed. It is not legally sufficient for the College to bypass a mandated process because the College officials failed to schedule time to do so before meeting the deadline of the Maryland Higher Education Commission.

Although the College has now submitted plans to the Maryland Higher Education Commission, the City continues to want to have the consultation. Your assistance on seeing that consultation occurs, specifically with regard to the Facilities Master Plan at this time, would be greatly appreciated.

Thank you for your action on this matter.

Respectfully,



Susan Silber, Takoma Park City Attorney

Attachment: 2002 Agreement: City of Takoma Park, Montgomery College, Montgomery County, and Historic Takoma, Inc.

Copies – Electronic only

cc: The Honorable Marc Hansen, County Attorney

cc: Montgomery County Council
The Honorable Roger Berliner, Council Vice President
The Honorable Marc Elrich, Councilmember
The Honorable Tom Huckler, Councilmember
The Honorable Sidney Katz, Councilmember
The Honorable George Leventhal, Councilmember
The Honorable Nancy Navarro, Councilmember
The Honorable Craig Rice, Councilmember
The Honorable Hans Reimer, Councilmember

cc: City Council of Takoma Park
The Honorable Kate Stewart, Mayor
The Honorable Peter Kovar, Councilmember
The Honorable Tim Male, Councilmember
The Honorable Rizzy Qureshi, Councilmember
The Honorable Fred Schultz, Councilmember
The Honorable Terry J. Seamens, Councilmember
The Honorable Jarrett Smith, Councilmember

cc: The Maryland Higher Education Commission

The Honorable Jamie B. Raskin
The Honorable Sheila Hixson
The Honorable Will Smith
The Honorable David Moon
The Honorable Isiah Leggett
Dr. DeRionne P. Pollard, President, Montgomery College
Dr. Brad J. Stewart, Provost, Montgomery College Takoma Park/Silver Spring Campus
Ms. Gwen Wright, Montgomery County Planning Department
Ms. Casey Anderson, Chair, Montgomery County Planning Board
Ms. Lorraine Pearsall, Historic Takoma, Inc.

AGREEMENT

THIS AGREEMENT, made this 30th day of July, 2002, by and between the BOARD OF COMMUNITY COLLEGE TRUSTEES OF MONTGOMERY COUNTY (hereinafter referred to as "Montgomery College"), the CITY OF TAKOMA PARK, MARYLAND (hereinafter referred to as "City"), HISTORIC TAKOMA, INC. (hereinafter referred to as "Historic Takoma"), and MONTGOMERY COUNTY, MARYLAND (hereinafter referred to as "Montgomery County"),

WITNESSETH:

WHEREAS, Montgomery College is a community college which is responsible for operating community college facilities in Montgomery County, including the City of Takoma Park and areas of Silver Spring, Maryland; and

WHEREAS, the City of Takoma Park is a municipality located in Montgomery County, Maryland; and

WHEREAS, Historic Takoma is an historic preservation organization which is incorporated and does business in the State of Maryland and the District of Columbia; and

WHEREAS, Montgomery County is a charter county of the State of Maryland and administers the Montgomery County Historic Preservation Ordinance, Montgomery County Code, as amended, Chapter 24A; and

WHEREAS, there was friction in the past between the College and the City of Takoma Park with respect to historic structures within the City of Takoma Park, and the City of Takoma Park and the College wish to avoid such friction in the future and continue their good and unique relationship; and

WHEREAS, to maintain their collaborative relationship, the parties wish to enter into an Agreement whereby Montgomery College voluntarily agrees under these unique circumstances to submit any and all plans for proposed development in the current or future historic preservation district in the City of Takoma Park, as further defined and delineated below, for review by the Montgomery County Historic Preservation Commission and further agrees to be subject to the provisions of the Montgomery County Code, Chapter 24A, for this development and proposed construction.

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants hereinafter contained, the parties hereto do agree, each with the other, as follows:

1. Montgomery College hereby agrees to submit any and all plans for proposed development in the current or future historic preservation district in the City of Takoma Park as now constituted in the City of Takoma Park or henceforth expanded, saving and excepting property now owned by Montgomery College as depicted on Attachment B that is not in the Takoma Park historic district as it is presently defined¹; Montgomery College further agrees to be subject to the provisions of the Montgomery County Code, Chapter 24A, Historic Preservation Ordinance, for all activities henceforth proposed to be conducted by Montgomery College in the historic preservation district of the City of Takoma Park as now constituted in the City of Takoma Park or henceforth expanded, saving and excepting property now owned by Montgomery College as depicted on Attachment B that is not in the Takoma Park historic district as it is presently defined.²

2. Montgomery College agrees to seek and obtain all local permit review within the designated historic district, including but not exclusive to building permits,

¹ NOTE: The property that is presently used by Montgomery College as a child care facility is in the Takoma Park historic district and will be subject to the local historic preservation provisions under this agreement.

² NOTE: The property that is presently used by Montgomery College as a child care facility is in the Takoma Park historic District and will be subject to the local historic preservation provisions under this agreement.

plumbing permits, electrical permits, Fire Code permits, subdivision review, zoning applications, and demolition permits. Such permit review does not alter past and current practices of Montgomery College to be subject to other municipal regulations – such as forestation (trees), police, curb cuts and other regulations in the municipal rights of way, and stormwater management.

3. Montgomery College agrees that it shall consult with the City of Takoma Park and the local community when making any major or substantial changes or alterations to the existing structures designated on Appendix B(“Existing Structures”).

4. The parties agree that this consultation envisioned in the prior paragraph will occur at the earliest practicable stage during the planning for any alteration, construction, or revitalization of the exterior of the existing buildings.

5. The parties agree that they have the authority to enter into this Agreement and to bind all entities in perpetuity for this Agreement.

6. The parties agree that this document may be recorded in the miscellaneous records of Montgomery County, and the City of Takoma Park may publish this agreement as part of or as an appendix to the City Code.

7. If any of the provisions of this Agreement are declared to be invalid by a Court of law, all other provisions shall remain in full force and effect.

8. If any parties fails to fulfill their obligation hereunder, any party to this agreement shall have the right to sue to enforce the terms of this agreement. The breaching party agrees to pay reasonable attorney fees and costs incurred by the other party in the event a final judgment is obtained against the breaching party.

9. Notwithstanding anything contained in this Agreement to the contrary, by entering into this Agreement, Montgomery College does not waive any position that it may take with respect to the jurisdiction of the Montgomery County Historic Preservation Commission to review the activities of Montgomery College or issues of compliance with

or the applicability of the provisions of Chapter 24A, Montgomery County Code, except with respect to activities addressed specifically by this Agreement.

10. Each party shall at any time and from time to time hereafter take any and all steps to execute, acknowledge and deliver to the other party all further instruments and assurances that the other party may reasonably require for the purposes of giving full force and effect to the provisions of this Agreement.

11. The parties have incorporated in this Agreement their entire understanding. No oral statement or prior written matter extrinsic to this Agreement shall have any force or effect. The parties are not relying on any representation or warranties other than those expressly set forth herein.

12. No modification or waiver of any of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement. No waiver of any breach or default hereunder shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

13. Each party hereto declares that they have had independent legal advice by counsel of their own selection or the opportunity to obtain the same; that each fully understands the facts and has been fully informed of all legal rights and liabilities and the advisability of obtaining independent legal counsel; that after such advice and knowledge, each believes the Agreement to be fair and reasonable. This Agreement contains the entire understanding of the parties. There are no representations, warranties, promises, covenants or undertakings other than those expressly set forth herein.

14. This Agreement shall be binding on the parties hereto, their successors in interest and assigns. This Agreement shall be construed under the laws of the State of Maryland.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this day and year first above written.

BOARD OF COMMUNITY COLLEGE
TRUSTEES OF MONTGOMERY COUNTY

By: William E. Campbell

CITY OF TAKOMA PARK, MARYLAND

By: Kathryn H. Porter

HISTORIC TAKOMA, INC.

By: Lorraine Passall

MONTGOMERY COUNTY, MARYLAND

By: William M. Mooney, Jr.
William M. Mooney, Jr.
Assistant Chief Administrative
Officer

APPROVED AS TO FORM AND LEGALITY
OFFICE OF COUNTY ATTORNEY

BY Gileen S. Bwanan

DATE 7/26/2022

STATE OF MARYLAND

SS:

COUNTY OF MONTGOMERY

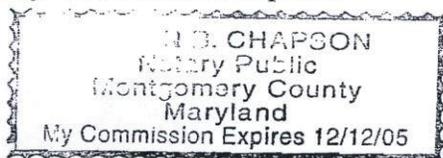
I HEREBY CERTIFY that on this 24th day of July, 2002, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared William K. Campbell, Esq. of the Board of Community College Trustees of Montgomery County, who is authorized to execute this document on behalf of said entity, and who made oath in due form of law that he executed the foregoing Agreement on behalf of the Board of Community College Trustees of Montgomery County for the purposes stated therein.

AS WITNESS my hand and Notarial Seal.

Allen B. Chapson

Notary Public

My Commission expires:



STATE OF MARYLAND

SS:

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 23rd day of July, 2002, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Kathryn H. Porter, Mayor of the City of Takoma Park, Maryland, who is authorized to execute this document on behalf of said entity, and who made oath in due form of law that she executed the foregoing Agreement on behalf of the City of Takoma Park, Maryland, for the purposes stated therein.

AS WITNESS my hand and Notarial Seal.

Jessie Carpenter
Notary Public

My Commission expires: 10-01-04

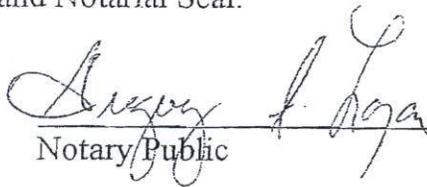
STATE OF MARYLAND

SS:

COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 22nd day of July, 2002, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared KERIANNE J. KARSALL, PRESIDENT of Historic Takoma, Inc., who is authorized to execute this document on behalf of said entity, and who made oath in due form of law that SHE executed the foregoing Agreement on behalf of the Historic Takoma, Inc. for the purposes stated therein.

AS WITNESS my hand and Notarial Seal.


Notary Public

My Commission expires:

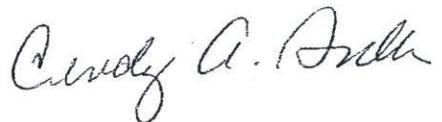
STATE OF MARYLAND

SS:

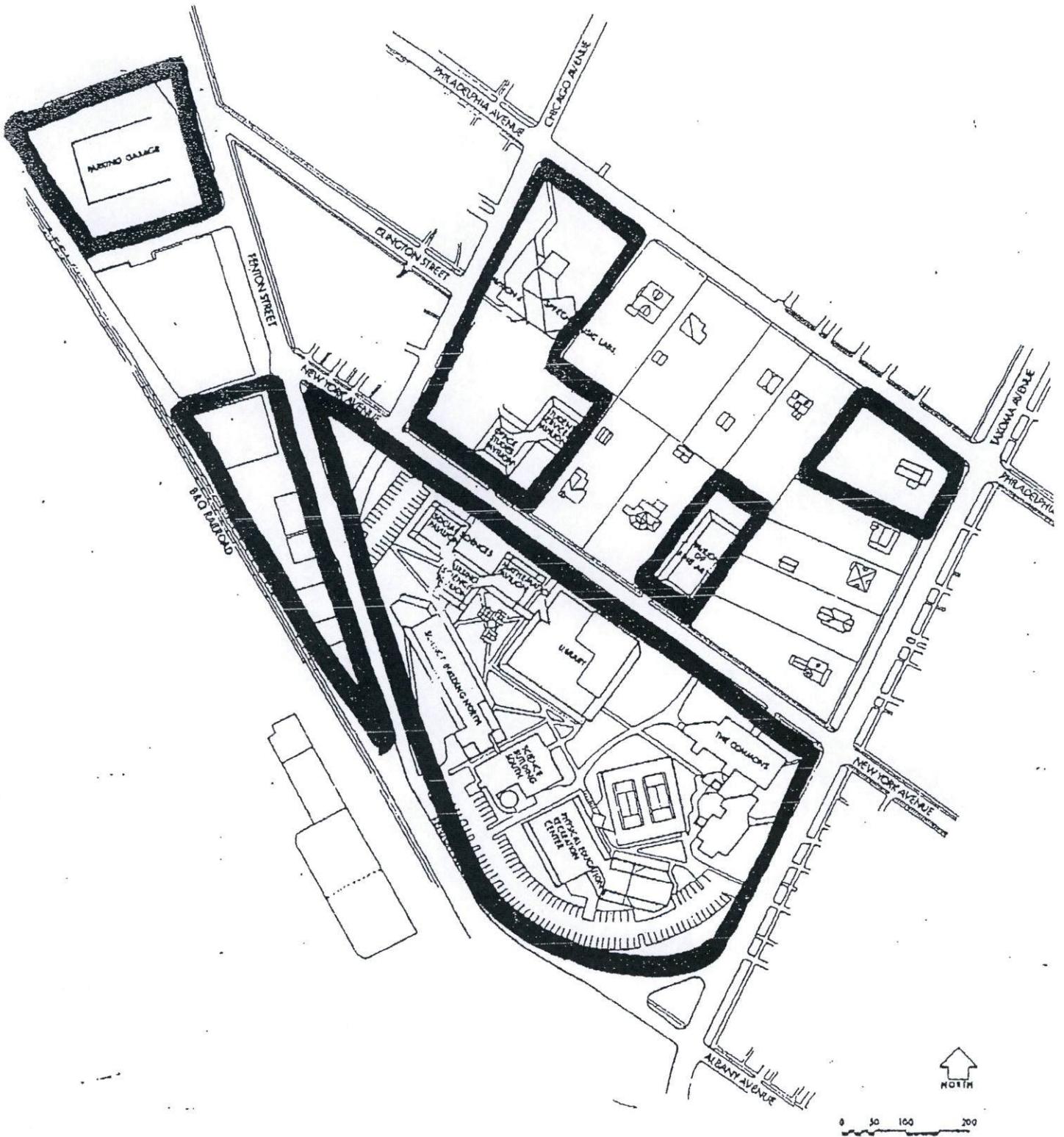
COUNTY OF MONTGOMERY

I HEREBY CERTIFY that on this 31 day of July, 2002, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared William M. Moran, Jr. Asst. CAO of Montgomery County, Maryland, who is authorized to execute this document on behalf of said entity, and who made oath in due form of law that he as Assistant CAO executed the foregoing Agreement on behalf of the Montgomery County, Maryland for the purposes stated therein.

AS WITNESS my hand and Notarial Seal.

Notary Public 

My Commission expires:
CINDY A. SULLIVAN
Notary Public
State of Maryland
My Commission Expires
January 1, 2004



MONTGOMERY COLLEGE TAKOMA PARK CAMPUS · SITE PLAN
 MASTER PLAN

SKIDMORE OWINGS & MERRILL UPDATED MASTER PLAN FEB. 10, 1979

APPENDIX B