

Summary of Proposed Comprehensive Agreement for development of the Laurel Hill Adaptive Reuse Area in accordance with the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended (“PPEA”)

BACKGROUND:

On July 11, 2002, the County acquired approximately 2,323 acres of land located in Fairfax County, Virginia from the United States of America, acting by and through the Administrator of General Services. The property was a portion of the property formerly known as the Lorton Correctional Complex. The County property is now referred to as Laurel Hill. The development of Laurel Hill is governed by, *inter alia*, covenants requiring the County to adaptively reuse certain prison structures as part of any County development of the Laurel Hill Adaptive Reuse Area.

The former prison property has a long community planning history, beginning with the Board’s establishment of citizen advisory committees in 1995 and 1999 to provide recommendations for the reuse of the area, prior to the closing of the prison. A similar committee was established by the Board in 2002, and their recommendations were accepted by the Board in 2004. The Board then appointed a Project Advisory Committee (“PAC”) in 2005 to provide continued community oversight, monitor the planning of the Laurel Hill Adaptive Reuse Area, and to report to the Board its findings and recommendations. In 2007, the County recognized the need to partner with an expert in historic preservation and adaptive reuse to develop a plan for this unique site. Pursuant to a solicitation under the provisions of the PPEA, the Department of Purchasing and Supply Management (“DPSM”) sought qualified developers to prepare a master plan (“Master Plan”) for the Laurel Hill Adaptive Reuse Area and ultimately to develop the site. Alexander, a Madison Wisconsin developer with extensive experience in historic preservation and adaptive reuse, was selected by DPSM as the preferred developer. In accordance with an initial contract under the PPEA, Alexander assisted with the development of the Master Plan. Alexander and County staff, under the guidance of the PAC, worked with the community and other stakeholders for over two years to develop a plan for the site. The Laurel Hill Adaptive Reuse Area Master Plan, with PAC and community stakeholder endorsement, was adopted by the Board on May 11, 2010.

The Board entered into an Interim Agreement with Alexander on November 4, 2011, in accordance with the PPEA (“Interim Agreement”). Under the Interim Agreement Alexander, in collaboration with the County and a residential housing developer, Elm Street Communities, Inc. (“Elm Street”) has pursued engineering, architectural and zoning activities in order to obtain land use entitlements for the Laurel Hill Adaptive Reuse Area. In addition, as contemplated by the Interim Agreement, Alexander and Elm Street have undertaken financial analysis and feasibility studies to determine how the site can be developed consistent with the Master Plan. Finally, as specifically contemplated by the Interim Agreement, staff for the County and Alexander have negotiated a proposed Comprehensive Agreement for the development of the Laurel Hill Adaptive Reuse Area.

In 2012, the Board approved a Comprehensive Plan amendment that reflected the recommendations of the Master Plan.

Summary of the Comprehensive Agreement:

The Comprehensive Agreement will include: (i) the Master Development Agreement, which will govern the development and construction of the Laurel Hill Adaptive Reuse Area including construction of new townhome and single-family detached homes as well as construction of new retail facilities (“New Construction”); (ii) a form of Ground Lease for the Laurel Hill Adaptive Reuse Area, between an affiliate owned and managed by Alexander, as tenant, and the County, as landlord; (iii) a form of deed conveying to Elm Street (or its affiliate) the property on which the New Construction will be located (the portion of Adaptive Reuse Area on which the New Construction is anticipated is referred to herein as the “New Construction Area”); and (iv) a construction easement for the New Construction to permit Elm Street to begin construction of the infrastructure improvements prior to the conveyance of the property by deed.

Each of the agreements that comprise the Comprehensive Agreement addresses various legal components of the development, ownership and use of Laurel Hill, and is summarized herein:

The Master Development Agreement:

The Master Development Agreement will govern the phasing, development and construction of the Laurel Hill Adaptive Reuse Area including the New Construction and describes the responsibilities of Alexander, Elm Street and the County. The developer of the property will be a combination of a special purpose entity owned and controlled by Alexander (“Alexander Developer”) and a special purpose entity owned and controlled by Elm Street (“Elm Street Developer”). Alexander Developer and Elm Street Developer are collectively referred to as the “Developer.” The development and construction of the Laurel Hill Adaptive Reuse Area including the Laurel Hill New Construction is collectively referred to as the “Project.” Generally, Elm Street Developer will be responsible for the development and construction of the infrastructure improvements on the entire Project and for the development and construction of all of the New Construction, and Alexander Developer will be responsible for the development and construction of the adaptive reuse buildings in Laurel Hill Adaptive Reuse Area and all aspects related to the adaptive reuse nature of the Project. The important provisions of the Master Development Agreement are summarized as follows:

- Phasing.

The development of the Project is broken into two phases. The first phase of the Project (“Phase I”) consists of (i) construction of the infrastructure improvements necessary for the rehabilitation and refurbishment of the reformatory buildings, Chapel and Power Plant, (ii) construction of certain infrastructure improvements in the New Construction Area, (iii) rehabilitation and refurbishment of the reformatory buildings into multi-family residential buildings for both market rate and affordable dwelling units in the Laurel Hill Adaptive Reuse Area, (iv) rehabilitation and refurbishment of the Chapel to a “warm-lit” shell for an interim use such as storage facilities during construction of the Project, (v) rehabilitation and refurbishment of the Power Plant to a “warm-lit” shell for an interim use such as storage facilities during construction of the Project, and (vi) development and construction of approximately 107 for-sale market rate residential units in the New Construction Area. Phase I is scheduled to commence in October 2014, but may be delayed for up to an additional one year. The adaptive reuse in the Laurel Hill Adaptive Reuse Area in Phase I is scheduled to be completed by the spring of 2016. The infrastructure improvements for the Laurel Hill New Construction Area in Phase I are scheduled to be completed in the spring of 2016. The completion of the for-sale market rate residential units will be determined generally as market conditions dictate, with an outside scheduled delivery date on the last of such units to be in October 2020.

The second phase of the Project (“Phase II”) consists of (i) construction of the infrastructure improvements necessary for the rehabilitation and refurbishment of the penitentiary buildings and dining hall in the Laurel Hill Adaptive Reuse Area, (ii) construction of certain infrastructure improvements in the New Construction Area, (iii) rehabilitation and refurbishment of the penitentiary buildings in the Laurel Hill Adaptive Reuse Area to a “warm-lit” shell for an interim use such as storage facilities during construction of the Project, (iv) rehabilitation and refurbishment of the walls and towers in the Laurel Hill Adaptive Reuse Area, (v) rehabilitation and refurbishment of the guard quarters in the New Construction Area, (vi) development and construction of approximately 74 for-sale market rate residential units in the New Construction Area, and (vii) development and construction of for-rent commercial buildings in the New Construction Area. Phase II is scheduled to commence in October 2016. The portions of Phase II which involve adaptive reuse in the Laurel Hill Adaptive Reuse Area are scheduled to be completed by October, 2022. The completion of the for-sale market rate residential units will be determined generally as market conditions dictate, with an outside scheduled delivery date on the last of such units to be in October 2022. The for-rent commercial buildings completion date will be determined based on successful leasing of the space.

For any of the Laurel Hill Adaptive Reuse Area buildings to be rehabilitated to a “warm-lit” shell for interim use, upon the leasing (or sale, as identified in the

“Ownership and Conveyance” section below) of such buildings for commercial uses, the buildings will be adapted from the “warm-lit” shell to the intended use for each building. As market conditions will govern the leasing of those buildings, their final conversion is not contemplated by the Project schedule. See “Ownership and Conveyance” below for more details.

- Requirements to Close on each Phase of the Project.

The Project schedule sets forth the Closing for each Phase I and Phase II (each, a “Phase”). Phase I is scheduled to Close in October, 2014. Phase II is scheduled to Close in October, 2016. Closing may be delayed up to one year (excluding incidences of “force majeure”) in the event that the requirements for Closing have not yet occurred.

The Closing on each Phase of the Project shall occur after Developer has obtained (i) all required land use and zoning approvals from the County, (ii) all required approvals from the Virginia Department of Historic Resource (“VDHR”) and the National Park Service (“NPS”) to obtain the historic tax credit awards for each Phase necessary for Developer’s financing of the Project, (iii) approval from the Architectural Review Board for each Phase that is consistent with the approvals of VDHR and NPS to the extent necessary to obtain the historic tax credit awards, (iv) other equity or debt financing necessary to achieve substantial completion of each Phase of the Project, and (v) County approval of its portion of the financing of each Phase of the Project.

In the event that any approval from the ARB would result in either a material increase in costs to the Project or a change to the award of historic tax credits for either Phase of the Project, Developer may request additional financing from the County and the County and Developer will have to agree on modifications to the budget for the Project before Closing occurs.

Developer’s financing plan may also include low-income housing tax credits (“LIHTCs”). In the event LIHTCs are included, the fiscal impact to the County will change as described in Fiscal Impact of Master Development Agreement below.

As part of Developer’s financing, Developer shall obtain payment and performance bonds for the completion of each of the adaptive reuse buildings and structures being rehabilitated and refurbished in each Phase of the Project. Additionally, Developer shall be required to provide bonds for completion of the infrastructure improvements for each Phase prior to entering into a Closing on such Phase.

- Ownership and Conveyance.

Ownership of the Project is generally separated into 4 different types of ownership. The reformatory buildings will be conveyed to Alexander, or an affiliate of Alexander, by long term ground lease with the County remaining as the fee owner (as further described in Ground Lease section below). All of the for-sale market residential units will be conveyed to Elm Street, or an affiliate of Elm Street, by deed (as further described in Deed section below). The penitentiary buildings, Chapel and Power Plant and for-rent commercial buildings will all initially be conveyed by long-term ground lease with the County remaining as the fee owner, provided however, that in certain circumstances (described below), one or more of the foregoing buildings could be conveyed by deed to Developer or an affiliate of Developer. Lastly, the guard quarters will be conveyed as a ground lease to Developer or an affiliate of Developer and upon completion of the infrastructure improvements and the adaptive reuse rehabilitation and reformation, Developer will have a right to have the property conveyed to it in fee. The final intended use of the guard quarters is as a condominium building with multiple residential units which will be for-sale at market rates. In order to ensure that the adaptive reuse of the guard quarters complies with the requirements of VDHR and NPS for historic tax credits, the County will hold a ground lease until completion.

With respect to all other buildings which are a part of the Laurel Hill Adaptive Reuse Area (other than the reformatory buildings), depending on market conditions, Developer may request, in order to make any such building more marketable, that the County convey such building to Developer in fee, to be further conveyed in fee to the end user of such building. Except with respect to the penitentiary buildings and the Power Plant, the County may or may not consent to such conveyance by deed, in its sole discretion.

For the penitentiary buildings and the Power Plant, Developer agrees in the Master Development Agreement to undertake certain minimum marketing obligations for those buildings in order to lease them at market rental terms for commercial uses. If Developer undertakes such marketing efforts and is unable to successfully find a tenant willing to lease the penitentiary buildings or the Power Plant within thirty (30) months (or in certain instances described in the Master Development Agreement, within forty-two (42) months), Developer may elect, at its own risk and expense, to undertake the design and permitting for such buildings as for-sale residential units. Upon completion of permitting of such buildings for residential units, the County shall convey such buildings by deed to Developer.

- Developer Covenants and Completion Guarantees.

The Master Development Agreement provides two additional mechanisms that were negotiated to make Developer accountable for completion of any Phase for which a Closing has occurred. First, the Master Development Agreement provides that, as a

general matter, the Developer shall invest its money in the infrastructure improvements on the Property on a dollar-for-dollar basis with the County. The purpose of this provision is to prevent Developer from spending County funds first without having any “skin in the game.” In the event Developer is not investing its own funds at the times required in the Budget, the County has the right to withhold any funds the County is required to pay until such time as Developer has “caught up” to its dollar-for-dollar obligation.

Second, the County has required that each Alexander Developer and Elm Street Developer provide affiliated entities with sufficient resources to act as guarantors and enter into payment and performance guarantees for the work on any Phase for which a Closing has occurred. Each of their guarantors have to maintain certain financial covenants, which will be periodically reviewed by the County for compliance, to make sure that they have the financial resources to complete their respective portion of any Phase in the event that Alexander Developer or Elm Street Developer (as applicable) is unable or unwilling to complete.

- Defaults and Remedies.

If changes occur to the budget or other material factors change before a Closing of a Phase, the County and Developer can mutually agree to terminate the Master Development Agreement. If a termination occurs hereunder, the County shall pay to Developer up to \$700,000 in expenses actually incurred in connection with obtaining the development approvals for the Project, as originally provided in the Interim Agreement.

If a default occurs by Developer before the Closing of a Phase and Developer does not cure such default within the applicable cure period, the County may terminate Developer’s right to develop and construct such Phase (and any future Phases which have not yet closed), provided however, in the event a Closing has occurred on a previous Phase and the default does not relate to that previous Phase, the County may not terminate the Master Development Agreement with respect to the Phase for which such Closing has occurred. If the County terminates as provided in this paragraph, Developer shall be responsible to reimburse the County any amount of the County’s share of costs actually expended by Developer prior to such termination.

After Closing, if Developer defaults on a Phase and the default is not cured within the applicable cure period, the County shall have the right to terminate the Master Development Agreement with respect to such Phase where the default occurred (and any future Phases where a Closing has not yet occurred) and Developer shall forfeit any amounts expended by Developer in connection with such Phase.

Notwithstanding the preceding paragraph, if a default occurs by either Alexander Developer or Elm Street Developer (but not both), and the non-defaulting party of

Developer elects to continue with the Project, the County may not terminate the Master Development Agreement if the non-defaulting party of Developer cures the defaulting party's default and elects to and is capable of completing the portion of the Phase for which the defaulting party was responsible. In this event, the County may terminate the defaulting party, provided however, the non-defaulting party of Developer will be given up to an additional 12 months to find a new partner to replace the defaulting party that is capable of completing such defaulting party's portion of the Phase of the Project. Additionally, any leasehold mortgagee under a ground lease will have certain cure rights (as those rights will be set forth in such ground lease).

In addition to termination of the Developer (or a defaulting party of Developer), the County may exercise any and all rights it has under the payment and performance bonds required to be obtained by Developer for the Project. The County has also required that Alexander Developer and Elm Street Developer each provide a parent or subsidiary (which has been approved by the County) to execute a payment and performance guaranty for the Project. Each of these foregoing remedies is cumulative and not exclusive.

- Fiscal Impact of Master Development Agreement.

The Board-approved Master Plan estimated the financial gap of the project to be between \$9-\$13 million. The County contribution stands at \$12,765,000. The Developer has delivered a budget ("Budget") for the development and construction of the Project. The Budget contains two scenarios: (i) Developer obtains 4% LIHTCs for the Project ("4% Scenario"); and (ii) Developer obtains 9% LIHTCs for the Project ("9% Scenario"). The current expectation of the Developer is that financing will be pursued under the 4% Scenario, under which the County's fixed price contribution for the County's share of infrastructure of the Project will be \$12,765,000. The County's costs are spread over four years in the following amounts: \$5,000,000 in 2015; \$3,050,000 in FY 2016; \$2,900,000 in FY 2017; and \$1,815,000 in FY 2018. Based on the specific infrastructure improvement a number of funding sources have been identified, including Transportation, Wastewater, Stormwater and the General Fund. The County's \$12,765,000 total infrastructure contribution is allocated as follows: various Transportation funds (\$5,715,000), General Fund (\$4,475,000), Stormwater (\$1,925,000), and Wastewater (\$650,000). The County is recommending the initial \$5,000,000 be included as part of the FY 2014 Carryover package as follows: General Fund (\$2,600,000), Transportation funds (\$1,300,000), Stormwater funds (\$750,000), and Wastewater funds (\$350,000). The Developer does not currently intend to pursue the 9% Scenario because of the uncertainty associated with such tax credits and the fact that commencement of construction of Project would be delayed by about one year until October 2015 because the Developer would not learn if it will be successful in obtaining tax credits until June 2015. If, however, the Developer is unable to close on its financing until next year and it applies for and receives the 9%

LIHTC, the County's fixed price share of infrastructure improvements would be reduced to a total of \$11,908,000. The County consultant, Alvarez and Marsal Real Estate Advisory Services ("Consultant") has thoroughly reviewed the entire budget for the project and the County's cost for infrastructure improvements and determined that expenses are reasonable and appropriate. The Consultant also determined that the Developer's market assumptions, proposed expenses, and profits are also reasonable and appropriate. The County is currently responsible for ongoing maintenance and security at the site. Security is estimated at about \$2.1 million over the next ten years. The County is also required, pursuant to the 2001 Memorandum of Agreement between the County, the U.S. General Services Administration and other stakeholders to maintain the historic site and buildings. That maintenance cost is estimated by Alexander to be about \$8.6 million over a ten year period. Failure to reach an agreement with the developer will require immediate County actions for building stabilization, repair, and maintenance and allows the developer to make a claim against the County of \$700,000, pursuant to the Interim Agreement. The total cost to the County of this claim, along with ongoing site maintenance and security responsibilities, is estimated to be a total of \$11.4 million over a ten year period.

The adaptive reuse project is an opportunity to activate County-owned property and make it income-producing with uses that are endorsed by the Comprehensive Plan and the community.

Ground Lease:

For the reformatory buildings, penitentiary buildings, Power Plant and Chapel (and for the guard quarters until conditions have been met to deed the Property to Developer (see "Master Development Agreement" section above)), the County will enter into separate ground leases for the different buildings (each being a "Ground Lease"). The penitentiary buildings, Power Plant and Chapel are anticipated to be conveyed to an affiliate of Developer by one or more Ground Leases, although they may be transferred to Developer in fee by a Deed if it is determined by the County that so doing will enhance the ability to market and develop those properties (see "Master Development Agreement" section above). The tenant ("Tenant") under each Ground Lease will likely be an entity comprised of an affiliate of Developer and a tax credit investor, although such entity has certain rights under the Ground Lease to assign its interest to an unaffiliated third party during the term.

The form of the Ground Lease for the reformatory buildings and all other buildings that are conveyed by ground lease to Tenant, will be for a term of ninety-nine (99) years. At the end of the term, the land and any improvements thereon will revert back to the County. The County will not charge rent for the Property, it being the intention of the County that the residential and retail improvements on the Property will be a benefit to the County as part of the Master Plan for the Property.

Tenant will be solely responsible for all operation, management, maintenance, repairs and replacements for the Property and all of the improvements thereon leased under a Ground Lease, including without limitation, the obligation to pay real property taxes and any personal property taxes associated therewith. Additionally, Tenant will be responsible for maintaining all insurance on the Property and for any repair, replacement or restoration of any of the improvements on the Property in the event of a casualty. However, due to the historic nature of the buildings on the Property and the restrictive covenants on the Property regarding its historic nature, the ability to rebuild may be limited. If Tenant is unable to rebuild any improvements as a result of the restrictive covenants on the Property, the County, as landlord, may either elect to work with Tenant, at Tenant's cost (subject to insurance proceeds being available) to try and remove the restrictive covenants so that some or all of the improvements can be rebuilt or to have the improvements that were subject to the casualty demolished and removed from the Property and return the Property to "green space". In the latter event, to the extent that insurance proceeds remain after the demolition and removal of the irreparable improvements and payments of any outstanding debt to any mortgagee, all remaining insurance proceeds will be paid to the County in consideration for the loss of its interest in the demolished leasehold improvements.

In connection with the zoning of the Property and the proffers associated therewith, Tenant will be responsible for maintaining at least 44 affordable dwelling units in the reformatory buildings during the term of the Ground Lease and Tenant covenants to comply with the Zoning Ordinance of Fairfax County related to the affordable dwelling units during the term.

If Tenant fails to comply with any provision of the Ground Lease, the County will send notice to Tenant (and its mortgagee) to cure any breaches of the Lease. The Lease provides cure periods for Tenant to cure any breach of the Lease and thereafter provides its mortgagee (and any tax investor) an opportunity to step in and cure such breach by Tenant or replace Tenant, if necessary, under the Lease. If no party elects to cure such breach, the County may, but is not obligated to, cure such breach at Tenant's cost and expense or terminate the Lease and exercise any other remedies the County deems necessary which are available at law or in equity.

Deed:

For any portion of the Property that is being conveyed to Developer in fee (see the "Ownership and Conveyance" section above of the Master Development Agreement description), the Master Development Agreement contains as an exhibit a form of deed ("Deed"). The Deed from the County is without warranty of any kind. The Deed conveying the Property to be conveyed under the Master Development Agreement

subjects the new owner (i.e. Developer) to comply with all existing restrictions on the Property, including without limitation all of the restrictions related to the historic nature of the Property.

Additionally, in order to ensure that the County is getting the benefit of what it bargained for in the Master Development Agreement, the Deed contains a “right of reversion”, which in this instance, means that if Developer does not commence or complete the infrastructure improvements within certain time periods set forth in the Master Development Agreement, the portion of the Property that Developer received by Deed for which the infrastructure improvements were not completed will go back to the County as the fee owner. If Developer does complete the infrastructure improvements, the right of reversion goes away and the Deed (and the portion of the Property related to the Deed) will remain the property of Developer.

Easement:

The Temporary Construction and Access Easement Agreement (“Easement”) is to provide Developer access to a portion of Phase I of the Project at Closing of the Phase, but prior to delivery of a Deed for the New Construction Area portion of Phase I. The purpose of the Easement is to allow Developer to commence construction of certain infrastructure improvements in the New Construction Area of Phase I. Upon completion of such infrastructure improvements, the Phase I portion of the New Construction Area will be conveyed by Deed to Developer in accordance with the Master Development Agreement. Under the Easement, Developer will be required to maintain the same insurance required for construction as it will under the Master Development Agreement for the Property covered by the Easement during construction and to indemnify the County for claims of any costs, expenses, damages, losses or liens against the County or the Project under the same terms and conditions as set forth in the Master Development Agreement.

FISCAL IMPACT:

The County’s fixed price contribution for the County’s share of infrastructure of the Project will be \$12,765,000. The County’s costs are spread over four years in the following amounts: \$5,000,000 in 2015; \$3,050,000 in FY 2016; \$2,900,000 in FY 2017; and \$1,815,000 in FY 2018. Based on the specific infrastructure improvements, a number of funding sources have been identified, including Transportation, Wastewater, Stormwater and the General Fund. The County’s \$12,765,000 total infrastructure contribution is allocated as follows: various Transportation funds (\$5,715,000), General Fund (\$4,475,000), Stormwater (\$1,925,000), and Wastewater (\$650,000). The County is recommending the initial \$5,000,000 be included as part of the FY 2014 Carryover package as follows: General Fund (\$2,600,000), Transportation funds (\$1,300,000), Stormwater funds (\$750,000), and Wastewater funds (\$350,000).