

INTERIM AGREEMENT

THIS **INTERIM AGREEMENT** (“Agreement”) is made this 18 day of November, 2020 (“Effective Date”), by and between the **BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia (“County”), and **ALPINE-X LLC**, a Virginia limited liability company (“Developer”; together with the County, the “Parties”).

RECITALS

- R-1. The County is the fee simple owner of an approximately 490-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 14 and further described on Exhibit A (“Parcel 14”) and an adjacent, approximately 418-acre parcel of land located in Fairfax County, Virginia, having Fairfax County Tax Map # 113-1 ((1)), parcel 15 and further described on Exhibit B (“Parcel 15”; together with Parcel 14, the “Property”).
- R-2. The County acquired the Property, together with other property, from the federal government, acting through the General Services Administration (“GSA”) pursuant to that certain Quitclaim Deed dated July 11, 2002, and recorded among the Fairfax County land records in Deed Book 13112, at Page 2169 (the “GSA Master Deed”).
- R-3. The County currently uses Parcel 14 as the I-95 Landfill Complex and has ground leased the majority of Parcel 15 to the Northern Virginia Regional Park Authority (“NVRPA”) for use as a regional park, pursuant to that certain Deed of Ground Lease, dated December 22, 2010 and recorded among the Fairfax County land records in Deed Book 21521 at Page 1147 (as such lease may be amended from time to time, the “NVRPA Lease”).
- R-4. On December 21, 2018, Developer submitted an unsolicited proposal to the County for the redevelopment of portions of the Property (the “Proposal”), pursuant to the Public Private Education Facilities and Infrastructure Act of 2002, Virginia Code Ann. §§ 56-575.1 et seq., as amended (“PPEA”). The Proposal preliminarily named the project “Fairfax Peak” and generally envisioned the construction of an indoor ski facility and related hotel and commercial space, as well as other recreational facilities, such as a wave pool, a ropes course, and zip lines (collectively, the “Project”).
- R-5. In May of 2019, the County formally accepted the Proposal for review. Pursuant to the PPEA, the County then issued a “Request for Competing Proposals” also in May of 2019 (the “RCP”). The RCP sought competing proposals for the development of recreational uses on portions of the Property. The County did not receive any responsive responses to the RCP.
- R-6. The Parties entered into that certain Right of Entry Agreement on May 11, 2020 (“ROE”) to permit the Developer and its contractors to enter onto portions of the Property and to perform certain initial due diligence work on the site.

R-7. The Parties desire to enter into this Agreement to initiate certain additional actions, set forth below, in furtherance of the Proposal and the Project and the negotiations conducted to date. In recognition of the complexity of the Proposal and the Project, the Parties wish to begin these efforts prior to entering into a final Comprehensive Agreement pursuant to the PPEA.

NOW, THEREFORE, in consideration of the mutual promises in this Agreement, and other valuable consideration, the receipt and legal sufficiency of which are acknowledged by the Parties, the Parties agree to the following:

Section 1: Property & Project Area.

- A. Project Area. The development area for the Project will be limited to those portions of the Parcel 14 as described on Exhibit C (the “Project Area”). The Parties may agree in writing to expand the Project Area to the remainder of Parcel 14 and/or – with the consent of NVRPA, to the extent required by the NVRPA Lease – some or all of Parcel 15.
- B. Solar Project. The Developer acknowledges that the County is considering the possibility of developing land adjacent to the Project Area (and/or potentially portions of the Project Area) as a solar power generation facility (the “Solar Project”), as further described in the Landfill Solar Feasibility Memo from HDR Engineering, Inc., dated July 3, 2019 (the “Solar Memo”), and that Developer has received a copy of the Solar Memo from the County. In designing the Project, the Developer will not seek any easements or other rights through the Solar Project area, except as may be specifically approved by the County in writing. In designing the Solar Project, the County reserves the right to locate the Solar Project and/or easements or other rights supporting the Solar Project through the Project Area. The County will provide regular updates on the Solar Project to the Developer and promptly notify the Developer of any potential encroachments of the Solar Project onto the Project Area.
- C. NVRPA Lease. The County has leased a portion of Parcel 15 to NVRPA pursuant to the NVRPA Lease. Developer acknowledges that it has received a copy of the NVRPA Lease and that, except for certain limited development rights retained by the County, it will need to obtain NVRPA’s approval for any portion of the Project to be located on land subject to the NVRPA Lease. The Parties agree to coordinate on outreach to NVRPA regarding the Project.
- D. DEQ Coordination. Developer acknowledges that the Project will require the Virginia Department of Environmental Quality (“DEQ”) to approve a “Major Permit Modification” for the Property. The Parties agree to coordinate on outreach to DEQ regarding the Project.
- E. GSA Master Deed. Developer acknowledges that the Property is subject to the GSA Master Deed. The Parties agree to coordinate on outreach to the applicable entities regarding the Project as may be required by the GSA Master Deed.

Section 2: Exclusive Negotiation Period.

- A. No County Transfer. Except as permitted in Section 2(A)(i) below, the County will neither convey or lease nor agree to convey or lease any portion of the Project Area to a third party before December 31, 2021 (the “Outside Date”), without the prior written consent of the Developer.
- i. Notwithstanding Section 2(A), the County may (a) convey such interests in the Project Area as are reasonably necessary in connection with the Solar Project, as discussed in Section 1(B) above, (b) so long as the term of such agreement is not extended past March 1, 2023, agree to allow the Northern Virginia Radio Control Club (the “Airplane Club”) the use of the runway, “pits area”, and parking area identified in that certain “Memorandum of Agreement-RC Model Aircraft Use at the I-95 Sanitary Landfill”, dated February 23, 2015 (collectively, the “Airplane Area”) for radio controlled airplane uses, and (c) convey such interests in the Project Area as may be reasonably necessary in connection with the operation of the landfill.
 - ii. The County and the Developer may mutually agree to extend the Outside Date for up to one year (i.e., up to December 31, 2022), neither party being under any obligation to do so.
- B. Exclusive Negotiation Period. The County will not negotiate with any third party regarding the development of the Project Area until December 31, 2021. For purposes of this Section 2(B), “the County” means each of Scott Sizer, P3 / Joint-Ventures Policy Coordinator, Office of Economic Initiatives; John Kellas, Deputy Director of Solid Waste Management, Department of Public Works and Environmental Services; and Jose Comayagua, Director, Department of Facilities Management.
- C. The Parties intend to negotiate in good faith to reach subsequent agreements regarding the actual development of the Property. Neither the County nor the Developer, however, is under no obligation to enter into any subsequent agreement. It is anticipated that further development of the Project will involve at least two separate additional agreements. The first agreement, which is anticipated to be an amendment to this Agreement (“Second Interim Agreement”), will address the pursuit of the land use actions for the Project. While land use approvals are pursued under the terms of the Second Interim Agreement, the Parties will negotiate in good faith to reach a Comprehensive Agreement for the actual physical implementation of the redevelopment. The Second Interim Agreement and the Comprehensive Agreement (which may consist of one or more contracts) will be presented to the Board of Supervisors for approval in accordance with the provisions of the PPEA.

Section 3: Developer Diligence Work in Project Area.

- A. ROE. The ROE is attached to this Agreement as Exhibit D and remains in full force and effect in accordance with its terms, except (i) that its term shall be extended to the

Outside Date (as may be extended pursuant to Section 2(A)(ii)), and (ii) in accordance with Section 3(B) of this Agreement.

- B. Coordination with Airplane Club regarding Airplane Area. Notwithstanding anything in the ROE, the Developer will use reasonable efforts to avoid performing Feasibility Studies in the Airplane Area. If the Developer nonetheless determines that it must perform one or more of the Feasibility Studies in the portion of the Airplane Area that is within the Project Area, it will provide the County with at least seven (7) business days' advance notice. The Developer acknowledges that if Developer is required by the ROE to restore any portion of the Airplane Area that is within the Project Area to its pre-existing condition following a Feasibility Study, that the pre-existing condition of such area (e.g., runway) may be different than elsewhere on the Project Area site.

Section 4: Notice.

- A. Except as set forth in Paragraph 3 of the ROE, all notices, demands or other communications sent under this Agreement ("Notice") must be in writing. Notices must be given by (i) personal delivery or (ii) a nationally recognized, next-day courier service, addressed as follows:

If to the County:

Fairfax County Department of Public Works & Environmental Services
12000 Government Center Parkway, Suite 548
Fairfax, VA 22035
Attention: John Kellas, Director of Solid Waste & Recycling
john.kellas@fairfaxcounty.gov

With a copy to:

Fairfax County Facilities Management Department
12000 Government Center Parkway, Suite 424
Fairfax, VA 22035
Attention: Michael Lambert, Assistant Director
michael.lambert@fairfaxcounty.gov

and

Office of the County Attorney
12000 Government Center Parkway, Suite 549
Fairfax, Virginia 22035
Attention: County Attorney
ryan.wolf@fairfaxcounty.gov

If to the Developer:

Niels ten Berge
1308 Vincent Place
McLean, VA 22101
Niels@alpine-X.com

and:

Brad Ryan
1308 Vincent Place
McLean, VA22101
Brad@alpine-X.com

With a copy to:

Cooley LLP
11951 Freedom Drive, Suite 1400
Reston, VA 20190
Attention: Mark C. Looney
mlooney@cooley.com

- B. A Notice given in accordance with this Agreement will be effective upon receipt or refusal by the Party to which it is given.
- C. For convenience, Notices may be sent via email; however, such email Notice will not be considered effective until the original Notice is received by the Party to which it is given pursuant to one of the delivery methods described in Section 11(a) above.
- D. Either Party may change its Notice address from time to time by informing the other Party in writing of such new address.

Section 5: Miscellaneous.

- A. Entire Agreement. This Agreement, together with its Recitals and the attached Exhibits, all of which are incorporated by reference, is the entire agreement between the Parties. The terms of this Agreement may be amended or modified only by a written instrument executed by the Parties.
- B. Severability. If any provision of this Agreement or its application to any party or circumstances is determined by any court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances, other than those as to which it is so determined invalid or unenforceable, will not be affected, and each provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law.
- C. Applicable Law. This Agreement and any dispute, controversy, or proceeding arising out of or relating to this Agreement (whether in contract, tort, common or statutory law, equity

or otherwise) will be governed by Virginia law, without regard to conflict of law principles of Virginia or of any other jurisdiction that would result in the application of laws of any jurisdiction other than Virginia.

- D. Venue. All claims and litigation arising out of or related to this Agreement must be brought and resolved in the courts of the Commonwealth of Virginia located in the County of Fairfax, Virginia, or U.S. District Court for the Eastern District of Virginia, Alexandria Division.
- E. Assignability. The Developer does not have the right to assign this Agreement. An "assignment" for purposes of this Section 5(E) will include any change in the direct or indirect control of the Developer.
- F. Captions; Interpretation. The captions of this Agreement are for reference only and do not describe the intent of this Agreement or otherwise alter the terms of this Agreement. When a reference is made in this Agreement to an Article, a Section, or an Exhibit, such reference is to an Article of, a Section of, or an Exhibit to this Agreement. Whenever the words "include," "includes," or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." The definitions contained in this Agreement are applicable to the singular as well as to the plural forms of such terms and to the masculine, feminine, and non-genders of such terms. Whenever the context requires, any pronouns used in this Agreement include the corresponding masculine, feminine, or non-gender forms.
- G. No Partnership. Nothing contained in this Agreement will be construed to create a partnership or joint venture between the Parties or their successors or permitted assigns.
- H. Time of Essence. Time is of the essence with respect to the performance of the obligations of the Parties under this Agreement.
- I. Counterparts and Distribution. This Agreement may be executed and delivered in any number of counterparts, in the original or by electronic transmission, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.
- J. Waiver. No waiver of any breach of this Agreement will be deemed a waiver of any preceding or succeeding breach under this Agreement or any other agreement. No extension of time for the performance of any obligation or act will be deemed an extension of time for the performance of any other obligation or act.
- K. Business Days. If any date set forth in this Agreement for the performance of any obligations by the Parties or for the delivery of any instrument or notice falls on a Saturday, Sunday, Legal Holiday, or day in which Fairfax County governmental offices are closed, the compliance with such obligations or delivery will be deemed acceptable on the next business day following such Saturday, Sunday, Legal Holiday, or closing. The term "Legal

Holiday” will mean any Fairfax County, Commonwealth of Virginia, or federal holiday on which post offices are closed in Virginia.

- L. Waiver of Jury Trial. The Parties each waive all rights to a trial by jury in any claim, action, proceeding or counterclaim arising out of or in any way connected with this Agreement.

- M. Disclosure of Materials and Studies. Unless approved in writing by the County, the Developer may not sell or give to any individual or organization (exempting the Developer’s consultants, partners, and agents involved in the Project and its design) any information, reports, or other materials given to, prepared or assembled by the Developer or its consultants under this Agreement or otherwise publicize Developer’s role and involvement with the Property. Any public announcement of the proposed Project must be fully coordinated with the County.

- N. Americans with Disabilities Act.
 - 1. Fairfax County Government is fully committed to the Americans with Disabilities Act (ADA) which guarantees non-discrimination and equal access for persons with disabilities in employment, public accommodations, transportation, and all County programs, activities, and services. Fairfax County government contractors, subcontractors, vendors, and suppliers are subject to this ADA policy. The Developer must make the same commitment and the Developer’s execution of this Agreement is an express acknowledgement of the Developer’s commitment and compliance with ADA.

 - 2. Fairfax County is committed to a policy of nondiscrimination in all County programs, services, and activities and will provide reasonable accommodations upon request. Anyone requesting special accommodations should call the Department ADA representative at 703-324-3201 or TTY 1-800-828-1140. Please allow seven working days in advance of the event to make the necessary arrangements.

- O. Authorization to Conduct Business in the Commonwealth. In accordance with mandatory County policy, the Developer shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the *Code of Virginia* or as otherwise required by law. The Developer shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of this Agreement. Fairfax County may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this Section.

- P. Drug Free Workplace. During the performance of this Agreement, the Developer agrees to (i) provide a drug-free workplace for the Developer’s employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or

use of a controlled substance or marijuana is prohibited in the Developer's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Developer that the Developer maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor. For the purposes of this Section, "drug-free workplace" means a site for the performance of work done in conjunction with a specific contract awarded to the Developer in accordance with this Section, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of this Agreement.

- Q. Immigration Reform and Control Act. The Developer agrees that it does not, and shall not during the performance of this Agreement in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- R. Survival. All representations, warranties, and indemnities contained in this Agreement or in any instrument, document, or agreement delivered pursuant to this Agreement will survive termination of this Agreement unless otherwise provided herein.

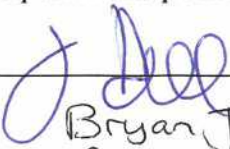
Signatures appear on the following page.

[Signature Page to Interim Agreement – Fairfax Peak]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
a body corporate and politic

By: 
Name: _____
Title: Bryan J. Hill
County Executive

DEVELOPER:

ALPINE-X LLC,
a Virginia limited liability company

By: _____
Name: _____
Title: _____

[Signature Page to Interim Agreement – Fairfax Peak]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

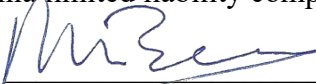
COUNTY:

BOARD OF SUPERVISORS OF FAIRFAX COUNTY, VIRGINIA,
a body corporate and politic

By: _____
Name:
Title:

DEVELOPER:

ALPINE-X LLC,
a Virginia limited liability company

By:  _____
Name: Niels ten Berge
Title: CEO