



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of January 22, 2011**

**DATE:** January 3, 2011

**SUBJECT:** (1) Approve the Memorandum of Agreement between the Arlington Mill Limited Partnership (AMLPL) and Arlington County Board for the County to design the residential portion of the County parking garage for the Arlington Mill Community Center, to be located at 909 S. Dinwiddie St., and  
(2) Amend design contract 182-10 for the Arlington Mill Community Center AMCC) to include design of the residential portion of County parking garage proposed as part of future ground lease for the adjacent affordable housing development to be located at 901 S. Dinwiddie St., and  
(3) Approve use of Affordable Housing Investment Funds (AHIF) for design-related costs incurred by the County for construction of the residential portion of the County garage concurrently with AMCC

**C. M. RECOMMENDATION:**

1. Approve the attached Memorandum of Agreement between the Board of Arlington County and AMLP that provides for the County to design the residential portion of the County parking garage concurrently with the AMCC garage and for AMLP to reimburse the County for all additional design costs incurred by the County, and authorize the County Manager or designee to execute the Memorandum of Agreement.
2. Approve an increase of \$190,000 for contract 182-10 for design services with Davis Carter Scott, Ltd. (DCS) to include design of the residential portion of the County parking garage proposed as part of the future ground lease for the affordable housing development at the AMCC site and an increase in contingency of \$20,000 for a total contract authorization of \$1,396,872.
3. Authorize the Purchasing Agent to execute necessary amendments to the contract documents, subject to legal review by the County Attorney.
4. Allocate up to \$270,000 in FY 2011 AHIF for the design-related costs of the residential portion of the County parking garage, proposed as part of the future ground lease for the affordable housing development at the AMCC.

County Manager:

*BMD/mjs*

County Attorney:

*[Signature]* *[Signature]*

Staff: George May, DES; Maureen Markham, CPHD

15.

**ISSUES:**

Approval of the items recommended above will allow for integrated design, permitting, bidding, and construction of the residential portion of the parking garage concurrently with the community center garage. It will also provide up front funding for detailed design of the residential portion of the garage. Design of the community center and residential garages as a single building has many benefits for both the residential developer and the community. Parking garages with shared features, such as the common entry and shared ramp, are reviewed and receive construction permits by the Building Official as a single building.

**SUMMARY:** County staff is proceeding with plans to construct the new Arlington Mill Community Center. In separate action the Arlington Partnership for Affordable Housing (APAH) was selected as the prospective ground lessee to develop the affordable housing residential complex adjacent to the community center. APAH subsequently formed and organized AMPL which will actually finance and construct the affordable housing residential development and enter into the ground lease with the County. An underground parking garage will serve both developments with the residences constructed over a transfer slab that is the roof of both portions of the garage. This is a request for the County to design the garage under the community center and residential development as a single building. The contract with Davis Carter Scott, the Community Center architect, will be amended to include the additional design scope. AHIF funds up to the amount of \$270,000 will be allocated to cover the additional design costs and the costs of additional building permit fees and geotechnical and environmental studies necessary for the residential garage.

**BACKGROUND:** In December, 2009 the County Board authorized proceeding with the public portion of the Arlington Mill Community Center independent of the residential development. In January, 2010 the Board approved the award of the AMCC design contract and in September, 2010 approved the Use Permit Amendment for the community center. The Use Permit includes two levels of underground parking for 140 vehicles. The Use Permit drawings indicate the garage will be expanded to provide residential parking, with both portions of the garages sharing the entry/exit lanes and internal ramp in the community center portion of the garage.

In October, 2010 the County Manager announced that the APAH had been selected as the prospective ground lessee to develop the residential complex adjacent to the community center. APAH subsequently formed and organized AMPL for the purpose of financing and constructing the affordable housing residential complex and serves as the general partner for APAH. AMLP's plans include two levels of underground parking adjacent to the community center parking for an additional 138 vehicles. The four-story residential development will be constructed over a transfer slab that is the roof of both portions of the garage.

**DISCUSSION:** County and AMLP staff recommend having the design developed by the AMCC architect, Davis Carter Scott, to (1) provide a unified design for review by the County Building Official, (2) eliminate redundancies in the design, including stairwells and ventilation shafts that would result from separate designs, and (3) provide the ability to construct both portions of the garage by the AMCC construction contractor. Constructing the garage as a contiguous unit is projected to provide overall construction savings by having the work done by

one contractor. The overall impact to the neighboring community will be reduced because it will avoid a second round of excavation and heavy construction by the residential construction contractor, who would otherwise start work after the community center garage is planned to be complete.

The schematic design of the residential garage has been completed by the AMLP design team and approved by the Columbia Pike Form Base Code Advisory Working Group. Adding the residential garage to the AMCC design will extend the time to complete the construction bidding documents by as much as eight weeks from the current forecast of Feb 17, 2011 to mid-April 2011. The overall construction duration of the community center is not expected to increase if the AMCC contractor constructs the total garage, as this portion of the project is not on the critical path to complete the community center. However, the two month delay in bidding the work is expected to move the AMCC forecast completion date from March, 2013 to May, 2013. The benefits of the AMCC contractor building the residential garage will be a reduced construction duration for the residential units, with less disruption to the community center operations and an earlier completion of the apartment units, as the transfer slab for the units is forecast to be complete prior to the expected summer, 2012 financial closing for the APAH units.

Normally AMLP would not finalize design documents for detailed architecture and engineering services until they receive approval of Low Income Housing Tax Credits (LIHTC), expected in June 2011. To keep an integrated design moving forward with minimal delay to the Community Center project, the County recommends completing the residential garage design up front using AHIF funds, to be later reimbursed by AMLP. This will allow the combined garage design to proceed without use of voter approved bond funds for AMCC.

The attached MOA between the County Board and AMLP covers the design portion of the integrated effort and includes AMLP's commitment to reimburse the County for design-related costs not to exceed \$270,000, unless any greater amount is agreed to by amendment to the MOA. Design-related costs for the residential garage include the architect's design fee, geotechnical tests for the residential garage footprint (to be performed after removal of the existing building) and permitting fees. AMLP commits to reimburse the County no later than the date of the closure of their construction financing for the residential development. A separate memorandum of agreement for the County to construct the garage is planned to be completed prior to requesting Board approval of the AMCC construction contract.

Should APAH fail to secure LIHTC, the County Board will be asked to consider the most appropriate actions at that time: either redesign, or financing the construction of the residential garage portion for a longer period of time with funds other than community center bond proceeds.

**HOUSING COMMISSION:** Staff presented the proposal for the County to design the residential garage concurrently with AMCC using AHIF to the Housing Commission on January 6, 2011; the Commission voted unanimously to support the staff recommendation to the County Board. The Housing Commission committed to send a separate letter to the County Board with its recommendation for this proposal.

**FISCAL IMPACT:** The current balance of FY2011 AHIF/HOME funds is \$17,007,852, in account code 101.495130.91102. Approval of the staff recommendation to allocate up to \$270,000 in AHIF funds for APAH's share of design costs for the Arlington Mill parking garage will result in a remaining FY 2011 balance of \$16,737,852.

Attachment: Memorandum of Agreement between the Arlington County Board and the Arlington Mill Limited Partnership

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## MEMORANDUM OF AGREEMENT

Between

COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA, and  
ARLINGTON MILL LIMITED PARTNERSHIP

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**THIS MEMORANDUM OF AGREEMENT** (this “**Agreement**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 2011, by and between the **County Board of Arlington County, Virginia**, a body politic (the “**County**”) and **Arlington Mill Limited Partnership**, a Virginia limited partnership (“**AMLP**”) (AMLP and the County, each a “**Party**” and collectively the “**Parties**”).

### RECITALS

**WHEREAS**, the County has entered into a contract with Davis, Carter, Scott Ltd. (“**DCS**”) to design the Arlington Mill Community Center (“**AMCC**”) and a two level underground parking structure to accommodate 142 parking spaces (the “**AMCC Garage**”) on a certain parcel of land owned by the County to be known as 909 South Dinwiddie Street; and

**WHEREAS**, in October 2010, the County selected Arlington Partnership for Affordable Housing, Inc. (“**APAH**”) to develop a four-story affordable housing residential complex (“**Residential Development**”), which is to include a two-level underground parking structure to accommodate 138 parking spaces (the “**Residential Garage**”), on a certain parcel of land owned by the County, adjacent to AMCC, to be known as 901 South Dinwiddie Street; and

**WHEREAS**, APAH formed and organized AMLP for the purpose of financing and constructing the Residential Development and currently serves as the general partner for AMLP; and

**WHEREAS**, the Parties have determined that the design and construction of the AMCC Garage and Residential Garage as a single contiguous building or structure (the “**Combined Parking Garage Shell**”) would result in certain efficiencies including (1) eliminating redundant ingress/egress, utility and ventilation features, (2) eliminating potential technical problems and construction and quality control issues, and (3) eliminating disruption to the operation of the AMCC Garage during an otherwise follow-on construction of the Residential Garage by AMPL (construction which would otherwise lag the AMCC construction start by approximately 12 months); and

**WHEREAS**, the County and AMLP have determined that it is in each Party’s respective best interests for the County to design and construct the Combined Parking Garage Shell and for AMLP to reimburse the County for the increased costs associated with the design and construction of the Residential Garage portion of the Combined Parking Garage Shell; and

**WHEREAS**, it is anticipated that AMLP will, no later than March 2011, apply for tax credits from the Virginia Housing Development Authority in order to obtain financing to reimburse the County for the increased costs associated with the design and construction of the Residential Garage portion of the Combined Parking Garage Shell; and

**WHEREAS**, this Agreement describes and defines the mutual understanding of the Parties made with the intention of implementing this Agreement.

**NOW, THEREFORE, IN CONSIDERATION** of the foregoing and the promises, mutual covenants and agreements of the Parties contained herein, and for other good and valuable consideration,

the receipt and sufficiency of which are hereby acknowledged by each Party hereto, the Parties hereby agree as follows:

1. **Recitals Incorporated.** The recitals above are an integral part of this Agreement and set forth the intentions of the Parties and the premises on which the Parties have decided to enter into this Agreement.

2. **Design of the Combined Parking Garage Shell.**

a. The County shall amend its design contract with DCS to include the design of the Combined Parking Garage Shell (the “**Revised Garage Design**”) and preparation of the Combined Parking Garage Shell construction drawings. The design of the Residential Garage portion of the Combined Parking Garage Shell will be based on progress drawings A.018 and A.019 for the Residential Development, dated November 15, 2010, by KGD Architects (“**KGD**”).

b. The Revised Garage Design will include those features necessary to obtain construction permits necessary for the Combined Parking Garage Shell.

c. Those features in the Residential Garage section of the Combined Parking Garage Shell that provide services and infrastructure to the Residential Development (“**Residential Garage Fit-Out Features**”) (i) will be included on the County’s Revised Garage Design to the extent needed for plans review, (ii) must be determined before the County issues an Invitation to Bid (“**ITB**”) for construction of the Combined Parking Garage Shell, and (iii) will be designed and constructed separately by AMLP or its designee.

d. The County will arrange regular review meetings between DCS and the AMLP design team (which may include KGD). During such review meetings, AMLP will be provided the opportunity to review and comment on the Revised Garage Design, progress drawings and specifications, meeting minutes, structural and utility load calculations, testing reports, permit comments, copies of any notices required under the Revised Garage Design, and such other documents relating to the design of the Residential Garage as may be requested by AMLP with reasonable notice to the County. The County will direct DCS to endeavor to provide satisfactory resolution of design questions and the interfaces between the Combined Parking Garage Shell and garage fit-out. Issues on the Revised Garage Design raised by County plan reviewers will also be resolved by DCS following input from the AMLP design team.

e. Upon completion of the construction of the Combined Parking Garage Shell and full reimbursement by AMLP to the County for AMLP Reimbursement Costs (as defined below) and all costs associated with the construction of the of the Residential Garage portion of the Combined Parking Garage Shell, the County shall assign to AMLP its rights and/or responsibilities under the portion of the County’s design contract with DCS relating to the design of the Residential Garage portion of the Combined Parking Garage Shell.

3. **Reimbursement for Design-Related Costs.**

a. AMLP shall reimburse the County for all additional design costs, including, but not limited to, the architect’s design fee to add the Residential Garage to the Combined Parking Garage Shell, the additional site geotechnical and environmental testing required in the Residential Garage portion of the Combined Parking Garage Shell footprint, and the proportional cost of the County’s design permitting fees for the Combined Parking Garage Shell (“**AMLP Reimbursement Costs**”).

b. Subject to the terms of this Agreement, the AMLP Reimbursement Costs shall not exceed \$270,000. The not to exceed price is subject to adjustment for changes proposed by AMLP following preparation of the Revised Garage Design for permit approval. The design fee increase will be based on the additional DCS (and consultant) design hours accepted by the County and AMLP to complete the Combined Parking Garage Shell, including pro-rata hours, based on the added floor areas for the Residential Development portion of the Combined Parking Garage Shell and plans review. The AMLP Reimbursement Costs will accrue without interest based on pro-rated invoices from DCS.

c. The County shall, prior to finalizing the amendment to its design contract with DCS, prepare and provide a detailed cost estimate of the AMLP Reimbursement Costs for AMLP's review and comment.

d. The AMLP Reimbursement Costs shall be paid to the County by AMLP as a lump sum payment no later than the date AMLP closes on its construction financing for the Residential Development. Prior to AMLP's payment of the AMLP Reimbursement Costs, the County will provide to AMLP invoices and/or other applicable billing statements that detail the AMLP Reimbursement Costs.

e. In the event that AMLP or its successors and/or designees do not obtain construction financing, including, but not limited to an allocation of LIHTC, for the Residential Development, AMLP will not be obligated to reimburse the County for AMLP Reimbursement Costs.

#### **4. Construction of the Combined Parking Garage Shell.**

a. Upon completion of the Revised Garage Design, the County will issue an ITB for the construction of AMCC, which will include the Combined Parking Garage Shell construction scope of work. The ITB bid form will be formatted to show a pricing breakout for the construction costs of the Residential Garage, including the pro-rata share of contractor general conditions and other indirect costs.

b. The Parties' rights and responsibilities with respect to the construction of the Residential Garage portion of the Combined Parking Garage Shell and other related issues, including, but not limited to, site work, permitting, and reimbursement by AMLP of the County's related construction costs will be addressed pursuant to the terms of a Memorandum of Agreement regarding the construction of the Combined Parking Garage Shell by and between the Parties.

#### **5. Miscellaneous Terms**

a. **Authorization.** Each Party represents and warrants to the other Party that the Party has full right, power and authority to enter into this Agreement and perform its obligations hereunder. All actions have been taken on the part of the Party, its officers, members and/or shareholders necessary for the authorization, execution and delivery of this Agreement and the performance of all obligations of the Party hereunder. This Agreement constitutes a valid and legally binding obligation of the Party, enforceable in accordance with its terms.

b. **Integration, Entirety, and Amendment.** This Agreement with all attachments and incorporated references is the entire agreement between the Parties and supersedes any prior or contemporaneous agreement or understanding between the Parties regarding this subject matter. The Parties will not be bound by or be liable for any statement, representation, promise, inducement, or understanding of any kind or nature not set forth or provided for in this Agreement. No prior course of dealing, usage of trade, or course of performance is intended by any Party to be used to supplement or

explain any term, condition, or instruction used in this Agreement or to effect any amendment to it. No revision or amendment to this Agreement will be effective unless it is signed by the Parties.

**c. *Governing Law.*** This Agreement and all matters arising from or relating to this Agreement shall be governed by and construed in accordance with Virginia law, without giving effect to Virginia's choice of laws principles.

**d. *Non-Waiver of Rights.*** The failure of any Party to demand strict performance of the terms of or to exercise any right conferred by this Agreement is not intended by the Parties to be construed as a waiver or relinquishment of its right to assert or rely upon any term or right in the future, or as a consent to any continuing or subsequent failure or breach.

**e. *Successors and Assigns.*** This Agreement will be binding on and inure to the benefit of the Parties and their successors and permitted assigns.

**f. *Counterparts.*** This Agreement may be executed in any number of counterparts and by different parties to this Agreement in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have executed and ensealed this Agreement or caused it to be executed and ensealed on its behalf by its duly authorized representatives, the day and year first above written.

**Approved as to form:**

**THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA**, a body politic

\_\_\_\_\_  
County Attorney

By: \_\_\_\_\_(seal)

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ARLINGTON MILL LIMITED PARTNERSHIP.**, a Virginia limited partnership

**By:** Arlington Partnership for Affordable Housing, Inc., a Virginia corporation, its General Partner

By: \_\_\_\_\_(seal)

Name: Nina Janopaul

Title: President / CEO