

**MEMORANDUM OF UNDERSTANDING**  
**AGREEMENT FOR CONSULTANT SERVICES**  
**EISENHOWER WEST SMALL AREA PLAN**

THIS AGREEMENT FOR CONSULTANT SERVICES is entered into this 14 day of January, 2014 (the "Agreement") by and between EREH Phase I LLC, a Delaware limited liability company ("Owner") and the City of Alexandria, a municipal corporation of Virginia (the "City").

WHEREAS, the owners of certain properties listed on Exhibit "A", attached hereto, (the "Eisenhower West Owners") and located in the area generally known as Eisenhower West ("Eisenhower West") have agreed to work with one another and the City to provide funding for the consultant services related to the Eisenhower West Small Area Plan. The Eisenhower West Owners have designated the Owner to enter into this Agreement for the sole purpose of providing a single source of funds for the City. The Eisenhower West Owners have entered into a separate agreement to allocate cost sharing between the various property owners;

WHEREAS, in a letter dated May 25<sup>th</sup>, 2013 to the Mayor and City Council the Eisenhower West Owners offered to commit significant resources to the Eisenhower West Small Area Plan planning effort;

WHEREAS, the City and the Eisenhower West Owners share the mutual goal of creating a vision for Eisenhower West with the necessary infrastructure, uses and density that are consistent with similarly situated Metro station areas;

WHEREAS, the City and the Eisenhower West Owners desire to establish milestones for the processing of the Eisenhower West Small Area Plan planning process and payment of consultant services;

WHEREAS, the City has committed \$175,000.00 in the FY2014 budget towards the costs of procuring transportation consultant services necessary for the planning effort and additional funding is needed to complete the full scope of work for the transportation study and to conduct the small area plan study;

WHEREAS, without supplemental funding provided by the Eisenhower West Owners, the City would not be able to complete the planning process in a timely manner;

THEREFORE, in consideration of all the declarations and terms contained herein, the parties hereto agree as follows:

**ARTICLE I**

**SCOPE OF SERVICES**

A. The Owner shall provide funding for the City to engage certain consultants to process, prepare and draft the Eisenhower West Small Area Plan. The going-in mutual goal of the City and the Owner is to identify necessary infrastructure and create a plan for uses and density that are consistent with similarly situated Metro station areas. It is acknowledged by both parties that any plan that is

subsequently adopted by the City is subject to the findings of the consultant studies including constraints and opportunities, as well as is subject to public input, and City policy setting.

B. The City will use the funding provided by the Owner for the purpose of engaging a general planning consultant and subconsultants, and to cover the additional cost of the transportation study performed by the transportation planning consultant as described below. The Eisenhower West Small Area Plan will be a general framework plan, including but not limited to, infrastructure improvements, street framework and hierarchy, block sizes, land use, open space, building height, density, parking recommendations, retail strategy, and general design guidelines. It is not anticipated that rezoning applications or detailed design guidelines will accompany the plan. The consultants will perform the following tasks (the "Services"):

**General Planning:** The City will engage a consultant to analyze the background of the area, site constraints, utilities, the integration of existing uses in the area and other relevant data relating to the fundamental planning of a small area plan (the "General Planning Consultant"). The General Planning Consultant will engage all of the subconsultants necessary to perform the tasks listed below (the sub-consultants and the General Planning Consultant collectively referred to herein as "General Consultants"), with the exception of the transportation study .

**Civic Engagement:** The General Consultants will develop a civic engagement strategy in order to engage the communities both within the Eisenhower West area and in its surrounding neighborhoods. The General Consultants will manage outreach efforts, mailings, and other civic engagement tools. The General Consultants will also be responsible for organizing meetings and facilitating interaction with the community.

**Infrastructure and Environmental Analysis:** The General Consultants will evaluate the infrastructure demands of the Eisenhower West Small Area Plan, including stormwater, energy, district heating and cooling, sewer, and roadway design. They will also develop recommendations and guidelines for sustainable sites and district-wide solutions for stormwater management.

**Market Analysis:** The General Consultants will evaluate the feasibility of the proposed uses in the Eisenhower West Small Area Plan, by reviewing building types, parking and projected rents. The General Consultants will evaluate the local and regional demand and under-met demands for the planned uses. The General Consultants will also identify the need for as well as the structure of possible economic development incentives to attract new uses for the properties within Eisenhower West. The General Consultants will identify and propose solutions for assemblage issues.

**Landowner/Developer Contributions Analysis:** The General Consultants will evaluate the potential increase in value of the respective properties as a result of any future rezoning under the Eisenhower West Small Area Plan. The purpose of the evaluation is to establish an agreed recommendation in the Eisenhower West Small Area Plan for a per square foot monetary developer contribution for all new development in the planning area. The final determination for contribution amount and timing will occur as part of the future rezoning process. The intent of the parties is for the contribution to be collected and used by the City to

fund infrastructure necessary to support the new development and for other community benefits within the planning area. The Owner's agreement to fund this portion of the scope shall not be construed in any way as to their individual or collective agreement that development proffers are necessary or appropriate as part of the planning process or any future rezoning process.

**Transportation Study:** The City will issue a separate Request for Proposals for a transportation consultant to perform a transportation study of the Eisenhower West area ("Transportation Planning Consultant"). The Transportation Planning Consultant will perform an analysis of the expanded area to determine traffic impacts, an analysis of a connector along Clermont, and the alignment of a multimodal bridge outlined in the Landmark/Van Dorn Corridor Plan.

**Coordination:** The Transportation Planning Consultant and the General Planning Consultant will coordinate in the preparation of the Eisenhower West Small Area Plan.

## ARTICLE II

### TARGET DATES

A. The City shall establish an Eisenhower West Steering Committee by December 31, 2013. It is currently intended that this group will have 12 seats, one of which will be for a single representative of the Eisenhower West Owners. The allocation of this seat shall not preclude individual property owners from being included in the Steering Committee. The Eisenhower West Owners will provide input throughout the planning process.

B. The City shall require the General Consultants to meet the following target dates for processing the Eisenhower West Small Area Plan. The Transportation Planning Consultant will complete the transportation study within a timeframe to ensure that the Small Area Plan proceeds according to the targeted dates in the schedule below:

**January 2014:** City and Owner shall have the opportunity to reasonably comment on the summary scope of the Services to be provided by the General Consultants.

**March 2014:** The General Consultants shall be under contract with the City. Public outreach strategy shall be underway and community meetings shall be scheduled.

**June 2014:** *Phase 1: Information Gathering*, is complete. Steering Committee and community meetings are well underway and general planning/specialized analysis work has begun.

**December 2014:** *Phase 2: Options*, is complete. The General Consultants shall have completed the General Planning studies, Environmental Analysis, Market Analysis and the Transportation Planning Consultant shall have completed the Transportation Studies necessary to generating a draft plan and shall have engaged the community in reviewing options and developing the fundamental parameters and framework of the draft plan.

**March 2015:** *Phase 3: Recommendations*, is complete. The General Consultants shall have generated a draft plan to circulate for City, Owner and public comment.

**June 2015:** Final draft Eisenhower West Small Area Plan shall be submitted for public comment and City Council consideration.

- C. The target dates may be amended or extended by mutual consent of the City and Owner.

### ARTICLE III

#### COMPENSATION

A. The Owner shall provide funding to the City for all General Consultants and a portion of the Transportation Planning Consultants in an amount not to exceed \$440,000.00 (hereafter, the "Monetary Payment"). The Owner will pay the City in advance for the consultants' services based upon the consultants' budget, so that no fees are incurred by the City, subject to Section C below.

B. The Monetary Payment shall be payable in one initial installment of \$80,000 directly to the Department of Transportation and Environmental Services and four subsequent equal installments (each, an "Installment") directly to the Department of Planning and Zoning to fund the Services. The payment of each new Installment shall be contingent, at the discretion of the Owner, on the City and consultants having met the performance goals of each of the targeted dates outlined in Article II above. The City will pay the consultants upon completion of their services as agreed upon in their signed contract and scope of services with the City. Installments shall be as follows:

**First Installment:** \$80,000 due to the Department of Transportation and Environmental Services upon selection of a Transportation Planning Consultant.

**Second Installment:** \$90,000 due to the Department of Planning and Zoning upon selection of a General Planning Consultant.

**Third Installment:** \$90,000 due three months after the General Planning Consultant has commenced work and *Phase 1: Information Gathering*, is complete. Steering Committee and community meetings are well underway and general planning/specialized analysis work has begun.

**Fourth Installment:** \$90,000 due six months after the General Planning Consultant has commenced work and *Phase 2: Options*, is underway. The General Consultants shall be working on the General Planning studies, Environmental Analysis, Market Analysis; the Transportation Planning Consultant shall have completed the Transportation Studies necessary. The community will have begun reviewing options to develop the fundamental parameters and framework of the draft plan.

**Fifth Installment:** \$90,000 due nine months after the General Planning Consultant has commenced work, *Phase 2: Options*, is complete, and *Phase 3: Recommendations*, is underway, on target for completion of Draft Plan in March 2015.

C. In the event that the invoice totals for Services rendered during any quarter are more than the Installment for that quarter, then such expenses in excess of Services rendered may be applied by the City to a subsequent Installment payment. In the event that the invoice totals for Services rendered during any quarter are less than the Installment for that quarter, the City may use the remaining funds during any subsequent quarter, provided that any funds remaining after the completion of the Services contemplated herein are refunded to the Owner. Notwithstanding any of these provisions, the City shall be solely responsible for any Service costs that exceed the Monetary Payment.

D. The General Consultants and the Transportation Consultant shall at all times be under the exclusive supervision and control of the Department of Planning & Zoning and the Department of Transportation & Environmental Services. Nothing in this Agreement shall be construed to prevent the Eisenhower West Owners, individually or collectively, from participating in the planning process and presenting their views and opinions to the consultants and City Staff.

E. In the event that the review and processing of the Eisenhower West Small Area Plan is for any reason terminated prior to July 1, 2015, the Monetary Payment paid to City as of the date of such termination shall be used to pay for Services already rendered and any remaining funds shall be returned to the Eisenhower West Owners in proportion to their respective contribution.

F. In the event that the Eisenhower West Small Area Plan has not been completed by July 1, 2015, or if the schedule outlined in Article II is not met, Owner shall have the right to withhold future disbursements or any remaining Installments of the Monetary Payment.

G. The parties hereto acknowledge and agree that there shall be no responsibility for the Owner to pay for work that exceeds the scope of the Services contemplated herein.

#### ARTICLE IV

#### MISCELLANEOUS TERMS

A. This Agreement, or any provision hereof, may not be modified unless agreed to in writing by the Owner and the City.

B. This Agreement shall run with the land and shall be binding on, and inure to the benefit of, the parties hereto, their successors, heirs and personal representatives, and permitted assigns. This Agreement may not be assigned to any party without the express written consent of the other party.

C. This document may be executed in counterparts, which taken together, shall constitute one and the same instrument.

D. The City acknowledges that the owners' funding of consultant services enabling the Eisenhower West Small Area Plan process to begin is a community benefit and the owners shall receive acknowledgement for being an early contributor of the Eisenhower West Small Area planning process.

E. This Agreement shall expire on September 1, 2015.

F. Nothing in this Agreement shall be construed to bind the City to approve the Eisenhower West Small Area Plan or any subsequent development projects.

G. The parties hereto acknowledge and agree that this Agreement does not create a partnership between the Owner and the City and no party shall have any obligation to the other beyond the terms and conditions of this Agreement.

[Remainder of page intentionally blank]

**OWNER:**

EREH PHASE I LLC, a Delaware limited liability company

By: 

Name: Arthur C. Frye

Title: Manager

**CITY:**

CITY OF ALEXANDRIA, VIRGINIA, a municipal corporation of Virginia

By: 

Date: 12/20/13 Christopher P. Sporn  
Deputy City Attorney

Approved as to form:



Assistant City Attorney

EXHIBIT "A"

EISENHOWER WEST OWNERS

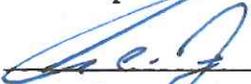
VULCAN LANDS INC, a New Jersey  
corporation, owner of Tax Map: 067.03-  
01-21 and 067.03-01-17

By: Richard W. Roper

Name: RICHARD W. ROPER

Title: VICE PRESIDENT

EREH PHASE I LLC, a Delaware limited liability company,  
owner of Tax Map: 068-04-01-05

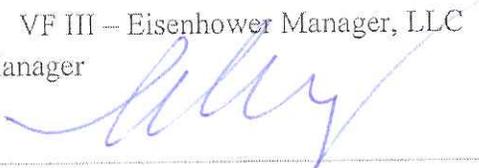
By: 

Name: Arthur C. Frye

Title: Manager

VF III EISENHOWER, LLC, a Delaware limited liability company,  
owner of Tax Map: 077.01-01-09 and 068.03-01-  
11

By: VF III – Eisenhower Manager, LLC  
Its: Manager

By:   
Name: Lawrence D. Horowitz

Title: Manager

METROPOLITAN TRANSFER COMPANY II LLC,  
a Virginia limited liability company, owner of  
Tax Map: 067.03-01-09 and 067.03-01-24

By: George E. L. Barbée

Name: GEORGE E. L. BARBEE

Title: OWNER + MANAGER

*MB*