



## Legislation Details (With Text)

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**Title:** Authorization of the Execution of Proposed Amendments to the Landmark Development and Financing Agreement.  
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**Attachments:** 1. 23-0737\_ DRAFT Fourth Amendment to Development Agreement

Date	Ver.	Action By	Action	Result
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## City of Alexandria, Virginia

### MEMORANDUM

**DATE:** FEBRUARY 7, 2023  
**TO:** THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
**FROM:** JAMES F. PARAION, CITY MANAGER /s/

**DOCKET TITLE:**

Authorization of the Execution of Proposed Amendments to the Landmark Development and Financing Agreement.

**ISSUE:** Approval of proposed amendments to the Landmark Development and Financing Agreement (“Development Agreement”).

**RECOMMENDATION:** That City Council authorize the City Manager to execute the proposed amendments to the Landmark Development and Financing Agreement consistent with the attachment to this memorandum.

**BACKGROUND:** The Landmark Redevelopment public-private partnership entails redeveloping the 51-acre Landmark Mall site into a mixed-use town-center type development with new regional Level II Trauma Center Hospital, Cancer Center and at least one medical office building. Following City Council approval and authorization, on July 6, 2021, to execute the Landmark Redevelopment Agreements, the City Manager executed the Development and Financing Agreement between the City, Landmark Land Holdings, LLC (“Developer”), and Inova Health Care Services (collectively “Parties”), on July 30, 2021. The City also funded

the purchase price of \$54 million for a portion of the former Landmark Mall site (Inova Site) to consist of two payments - the first payment of \$21 million was made at the time of property acquisition and the second payment of \$33 million on the land purchase was anticipated to be made December 12, 2022, as long as the Developer posted a performance assurance.

**DISCUSSION:** Through engagement with the surety markets regarding the assurance as required by the Development Agreement, the parties have acknowledged that these instruments are cost prohibitive under the current transaction structure. The proposed amendments (Attachment) to address this issue in the Development Agreement are summarized below:

- The general contractor(s) will issue the performance and payment bond (“Infrastructure Bond”) for the construction agreements(s) of the infrastructure instead of the Developer. The Developer will back stop its funding obligation under the performance and payment bond with a letter of credit, bond, or cash escrow.
- Both the infrastructure bonds and performance assurance can be released as contemplated for Infrastructure Bonds under the Development Agreement.

Concurrently with the delivery of the second installment of the purchase price of the Inova Site, the Developer will enter into an escrow agreement consistent with Exhibit W of the Attachment in an amount equal to the greater of second installment of the Inova Site purchase price, or 114% of Developer’s share of the budgeted hard and soft costs for the public open space (the portion of the infrastructure that has not yet been bid). The Developer may draw down on the performance assurance to pay Developer’s share of the infrastructure upon providing the City (and escrow agent, if applicable) with a draw request pursuant to the terms of the Escrow Agreement.

**FISCAL IMPACT:** The Landmark transaction contemplated a Second Installment Payment of \$33 million for the purchase by IDA of the Inova parcel in the former Landmark Mall, but not before the Developer posted infrastructure bonds and the performance assurance. The Developer cannot perform under the original agreement. The amendment changes represent the City underwriting additional risk when compared to what was originally projected. However, in this unique situation, the escrow funds will also satisfy the full payment obligation of the second installment and the Escrow Agreement as written provides a substantial level of fund control and oversight to the City, thereby greatly mitigating the risk. An escrow account also assures performance as funds will continue to be available to the City should the developer be unable to complete the project. At this time, no additional fiscal impact related to the performance assurance is anticipated.

**ATTACHMENT:** Fourth Amendment to Landmark Mall Development and Financing Agreement

**STAFF:**

Joanna Anderson, City Attorney  
Shawn Lassiter, Assistant City Attorney  
Emily A. Baker, Deputy City Manager  
Kendel Taylor, Deputy City Manager  
Julian Gonsalves, Assistant City Manager for Public-Private Partnerships  
Cassandra Menefee, Risk Manager