Suzanne Long hosted a meeting with the following parties on Friday, November 15, 2019 at 8:30 a.m.:

Arthur Anderson – McGuireWoods LLP
George Martin – McGuireWoods LLP
Jennifer Mullen – Roth Jackson Gibbons Condlin, PLC
John O'Neill – Hunton Andrews Kurth LLP
Leonard Sledge – City of Richmond Department of Economic Development

Via conference call:

Susan Eastridge – Concord Eastridge

Michael Schewel was unable to attend due to a scheduling conflict.

Below are summaries of the questions asked by Suzanne and the responses provided by the various parties to the meeting.

1. Who will own the parcel containing the proposed VCU project?

The Project is designed for the parcel to be privately owned, with VCU as an anchor tenant of the building to be constructed on the parcel. VCU and the proposed parcel owner have undergone extensive negotiations. The proposed parcel owner has agreed to build the facilities to suit VCU and VCU has agreed to pay for a portion of the taxes for this parcel.

VCU has approached the City numerous times to purchase the parcel and the City has denied the request. If VCU were to buy the parcel there would be no tax revenue coming back to the City because VCU is exempt from paying real estate taxes.

VCU has agreed to pay its portion of taxes as a tenant in the proposed building, in part due to their desire to locate facilities in this area where they have been unsuccessful in acquiring the underlying real estate, but also in order to entice the developer entities to undertake the other proposed facilities (e.g. restaurants, residential housing and similar amenities).

2. Could VCU purchase the property from the City or ground lease the property from the City and pay a PILOT (payment in lieu of taxes)?

Although this scenario could unfold, it is highly unlikely because it would be a slippery slope for VCU. It would open the doors to VCU having to strike similar arrangements with regard to many other land holdings throughout the City and/or for any future land purchases.

3. What is the basis for Navy Hill Development Corporation (NHDC) qualifying as a 501c3 for federal tax purposes.

The IRS granted NHDC 501c3 status in May based on its role in the proposed Project, which is to lessen the burdens of government with regard to development of the Navy Hill area.

4. Why is the deal structured so that a 501c3 entity is the developer and not a private entity?

The Arena bonds can only be issued on a tax-exempt basis because the user is a 501c3. The tax-exempt status of the Arena bonds means they can be issued at a lower interest rate and therefore the overall construction costs are lowered.

In addition, this structure is similar to the model used to develop theaters in Richmond. It is a structure that is highly successful and familiar to the City. The model calls for a 501c3 that relies on community leaders committed to these types of services and amenities to serve as the counterparty to the City to develop the facilities. In the theater scenario, the 501c3 counterparty is Richmond Performing Arts Center (RPAC), a limited liability partnership that operates CenterStage and the Landmark Theater.

5. Please explain the corporate structure of NHDC and the relationship of NHDC to the other developer entities.

NH Foundation is a Virginia non-stock corporation. It is not a 501c3. The board of NH Foundation consists of various community leaders who set the policy for the Navy Hill Project. It is an active board, much like RPAC. NH Foundation is the sole member of NHDC. NHDC is a Virginia non-stock corporation and is a 501c3 for federal tax purposes. NHDC has one board member.

NHDC has a series of contracts with Capital City Partners, LLC (CCP) and Capital City Developers, LLC (CCD) regarding the Project, but CCP and CCD are not officers or board members of NHDC. CCP will manage the Arena and Armory projects for NHDC. CCD will contract directly with the various parties (contractor, operator, etc.) for the private development. Michael Hallmark is the main contact for CCP and Susan Eastridge is the main contact for CCD. Michael Hallmark is, among other things, negotiating with the operator for the Arena. Michael worked on the Staples Center development in California. Susan Eastridge is overseeing the private development and has done more than 30 public private partnerships throughout her career.

6. Why is NHDC the counterparty to the City on all of the documents the City is entering into? Why is the City not doing ground leases for these various project components?

The City wanted simplicity and wanted to have one contract. In order to get the public and private portions of the Project under the umbrella of one contract, the counterparty needed to be NHDC. NHDC then entered into a series of back-to-back contracts with CCP and CCD to carry out various project elements.

The reason a master lease was not pursued is because a master lease would contain cross-default provisions, making each party liable for the actions of the other parties. If one party defaults, they are all in default. This is not attractive to developers and is also not feasible from a financing standpoint. In addition, if there were to be a need down the road to make changes to the master lease, all of the parties would have to come together and agree to the terms of the change, which is cumbersome and not practical.

The City also did not use a ground lease structure for the private development because any ground lease would need to be over an extremely long period of time (e.g. 90 years) for the development to be something investors and banks would be willing to finance. That is so far out into the future it is functionally equivalent to transferring the property out of public hands.

7. Given the status of NHDC as a non-stock corporation with very little or no equity, what is the risk that NHDC defaults under one of the documents and there is no money to satisfy NHDC's obligations? Walk me through a default scenario in each of the documents.

NHDC provides for development as a whole, including:

- Design, build and operate Arena
- Cause the Armory to be refurbished and reopen
- Cause development of private development parcels

NHDC caries out the obligation to design, build and operate the Arena through the Development Agreement and the Arena Lease. NHDC has back-to-back contracts with the Arena construction contractor (Clark) and the Arena operator (Spectra), meaning NHDC has contracted with those parties to have those parties perform all of its obligations with regard to building and operating the Arena. NHDC does not have any functional responsibilities under this arrangement. If the construction contractor or the operator default under their agreement with NHDC there are remedies NHDC can seek to make itself whole and allow it to fulfil any obligations under the agreements to which it is a party. Further, if the construction contractor or operator were to walk away from the Project and NHDC and the City needed to find a replacement there are highly negotiated requirements in the contracts that ensure the replacement contracts are on par with the original contracts.

NHDC caries out the obligation to cause the Armory to be refurbished and reopen through the Armory Lease, which contains similar features and protections as the Arena lease.

NHDC carries out its obligation to cause development of the private parcels through the Purchase and Sale Agreement, which has been assigned to CCP per the terms of the agreement. This creates the same back-to-back contract scenario as the Arena Lease and Armory Lease, whereby NHDC does not have any functional responsibilities.

This arrangement is no different than a typical (i) public private arena development, or (ii) public private partnership (P3) where the counterparty is a special purpose vehicle with very little equity.

7. The conditions precedent (CPs) to financial close on the Arena bonds include equity commitments and term sheets related to the private development parcels. How firm are those commitments going to be at the time of the bond closing?

The C, A, F, E and D blocks will be developed at the same time as the Arena construction. The idea is that they function together. The bond investors and the underwriters for the bonds want to see this happen because they want the revenue from the private development to be available to pay the principal and interest on the bonds when it is due (and not late or not at all). In that way, the City's and the bond investors' and underwriters' incentives are aligned.

In terms of the equity commitments, the financing plan for the Project calls for a 40% equity contribution for each private parcel. This is a conservative approach, meaning this is a larger equity contribution than in the case of other similar development projects, and is designed to (i) withstand a potential economic downturn, and (ii) induce debt providers to come to the table. The equity commitments will be structured like any other, typical joint venture development. The equity investors for each private development parcel will enter into an operating agreement with the other investors in that parcel. The operating agreement will contain (i) a commitment on the part of each investor to provide equity for the development of that specific parcel, and (ii) the terms of the return on that investment. This joint venture structure is very standard for a development of this type. They have $88 million in equity in place currently. As each parcel comes online and is ready for construction, there is a requirement in the documents that the equity funding for development of that parcel be 100% funded in order for the developer to get a building permit from the City.

In terms of the term sheets, at financial close on the bonds when the City is evaluating the CPs and whether they have been met, the development will not be far enough along to get binding and fully negotiated term sheets from banks or debt providers. Debt providers will not typically agree to lock in terms for debt more than a year prior to the issuance of the debt. This is one reason the equity commitment for the Project is relatively large (at 40%). The bond investors and underwriters, as well as the debt providers for the private development, will find this feature attractive and will be less concerned that the term sheets are not binding or fully negotiated.