



Richmond City Council

The Voice of the People

Richmond, Virginia

Office of the Council Chief of Staff

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FROM Meghan Brown, Interim Council Chief of Staff

COPY Cynthia Newbille, President

DATE October 29, 2019

RE: October 28th Navy Hill Work Session – Follow Up Questions

1.) What is the timeline for development of the affordable housing units?

Response:

Block	Construction Start	Construction Completion	Market Rate Units	Affordable Units	Total Units	Aff. Unit % on Block
A1	7/18/2020	3/1/2023	0	0	0	
A2	7/30/2021	3/1/2023	188	42	230	18.26%
A3	7/1/2021	3/1/2023	0	0	0	
B	4/17/2022	10/19/2023	169	44	213	20.65%
C	6/7/2021	4/5/2023	190	23	213	10.7%
D	12/10/2021	12/4/2023	0	0	0	
E	8/29/2021	1/3/2023	65	21	86	24.41%
F	12/11/2020	1/3/2023	0	0	0	
I	6/12/2023	1/11/2025	438	51	489	10.42%
N	8/12/2023	5/10/2025	453	57	510	11.17%
U	6/12/2022	3/10/2024	341	42	383	10.96%
Total			1,844	280	2,124	13.18%

Source – The above table combines the attached NHDC responses previously submitted to the NH Advisory Commission in order to show NHDC's

anticipated construction timeline for each block and the corresponding number of housing units within one table.

2.) How can 15% of affordable units be accommodated within the project development area?

Response:

As shown in Response number 1 above, the 280 affordable units required to be developed directly within the private development parcels constitute 13.18% of the developer's currently planned 2,124 total residential units.

Hypo 1 – Total # of units remains the same, affordable units replace market units to reach 15% of total

Assuming the same number of planned total units (2,124), to increase the percentage from 13.18% to 15% would require increasing the number of affordable units from 280 units to 319 units (in other words, an increase of 39 affordable units from 280 to 319 and a corresponding decrease of 39 market rate units from 1,844 to 1,805).

Hypo 2 – Total # of market rate units remains the same, increase in affordable units to reach 15% of total

Assuming the same number of planned market rate units (1,844), to increase the percentage from 13.18% to 15% would require increasing the number of affordable units from 280 units to 326 units (in other words, an increase of 46 affordable units from 280 to 326 while the market rate units remain at 1,844, resulting in an increase of 46 total units from 2,124 to 2,170).

	Market Rate Units	Affordable Units	Total Units	Aff. Unit %
Current	1,844	280	2,124	13.18%
Hypo # 1	1,805	319	2,124	15.02%
Hypo # 2	1,844	326	2,170	15.02%

***Note - Increasing the 280 unit obligation may affect project feasibility and would require further negotiation with NHDC.

Also, when including both the 280 affordable units within the private development parcels and the 200 additional affordable housing units to be built downtown by BHC, or an equivalent organization utilizing the

developer's \$10M charitable donation, the addition of such 200 units to the equation results in the percentage of affordable units equaling approximately 20.65%.

- 3.) What would be the impact for having the entire 480 affordable units in the development area and also require that the developer provide for the \$10 million for an additional 200 units be developed by the Better Housing Coalition or similar entity?

Response:

Using the same hypothetical structures as response # 2, but inserting 480 units is shown in the table below.

	Market Rate Units	Affordable Units	Total Units	Aff. Unit %
Current	1,844	280	2,124	13.18%
Hypo # 3	1,644	480	2,124	22.6%
Hypo # 4	1,844	480	2,324	20.48%

***Note – As stated in Response # 2, increasing the 280 unit obligation may affect project feasibility and would require further negotiation with NHDC.

Also, when including the hypothetical 480 affordable units within the private development parcels and the 200 additional affordable housing units to be built downtown by BHC or an equivalent organization utilizing the developer's \$10M charitable donation, the addition of such 200 units to the equation results in the percentage of affordable units increasing to approximately 31.33% using hypo 3 (680 affordable out of 2,324 total) and 26.83% in hypo 4 (680 affordable out of 2,524 total).

- 4.) When the documents indicate that something would require "City approval," does that mean the Administration, City Council, or both?

Legal Counsel (City Attorney's Office/Orrick) Response:

Ultimately, the Chief Administrative Officer is responsible for actions required of the City under the Development Agreement and its exhibits. Ord. No. 2019-211, § 2 provides, "the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute such contracts, deeds, and other documents and give such approvals contemplated by the Navy Hill Development Agreement as may be necessary to effectuate the purposes of the Navy Hill Development Agreement and to consummate fully the transactions contemplated by the Navy Hill Development Agreement, provided that

all such contracts, deeds, and other documents first must be approved as to form by the City Attorney.”

Section 2.2 of the Cooperation Agreement provides that the Chief Administrative Officer or an authorized designee of the Chief Administrative Officer (each an “Authorized CAO Designee”) shall be responsible for administering and performing all functions of the EDA (excluding the issuance of the Bonds) and shall have the power to exercise all of the rights of the EDA. Specifically, in connection with the Arena Lease, the Cooperation Agreement states that any approval, notice, direction, findings, consent, request, waiver, or other action by the EDA required under the Arena Lease shall be exercised by the CAO or any Authorized CAO Designee. In addition, Section 2.5 of both the Arena Lease and the Armory Lease provides that the City will be responsible for performing the EDA’s functions as Landlord under each lease and shall have the power to exercise all of the rights of the EDA under each lease and that the Chief Administrative Officer will be the primary officer responsible for administering each lease for the City.

- 5.) It was indicated that in the past Council was told that only the Council could act on behalf of the City. Please provide a legal opinion as to how the Administration can act on the City’s behalf when they are not the governing body of the City.

Legal Counsel (City Attorney’s Office/Orrick) Response:

Section 4.02 of the City Charter, similarly to Va. Code § 15.2-1401, vests all powers of the City in the City Council. However, Ord. No. 2019-211, § 2 delegates to the Chief Administrative Officer the City Council’s power to act on behalf of the City “to execute such contracts, deeds, and other documents and give such approvals contemplated by the Navy Hill Development Agreement as may be necessary to effectuate the purposes of the Navy Hill Development Agreement and to consummate fully the transactions contemplated by the Navy Hill Development Agreement.” With this language, the Chief Administrative Officer is charged with making sure that approvals and ancillary transaction documents conform to the requirements of the Navy Hill Development Agreement and the other transactional documents that the Council would approve by adopting Ord. No. 2019-211.

- 6.) How will the relocation of Social Services be funded? Will a new location need to be purchased or leased? Does Council have to approve the new location?

Response:

Relocation costs could potentially be funded from either or a combination of (1) Social Services' base budget and (2) the balance of funds held by the Advantage Richmond Corporation.

Any new lease for the relocation of DSS would require approval by City Council as the governing body.

Note: Although DSS began the process of searching for a new location in 2017, a location has not yet been identified. Currently, the Advantage Richmond Corporation ("ARC") owns Marshall Plaza and leases space to the City for the use of social services. DSS expenditures under the lease are budgeted in the general fund each year and reimbursed by the Commonwealth at 84.5%.

7.) How will the GRTC Transfer Center be funded? Who will pay for what?

8.) What is the contingency plan for funding the outfit of the GRTC Transfer Station if funding from the Federal government is insufficient? Will GRTC be expecting the City to cover the cost?

Response to Q7 + Q8:

As contemplated by the Development Agreement:

- Pursuant to the Master Plan (Exhibit L), the Developer will be responsible for constructing at its private expense a mixed-use building on Block C containing a minimum of 483,500 square feet (195,500 sf for residential use, 213,000 sf for office use, 10,000 sf for retail use, and 65,000 sf for GRTC Transit Center use) with a minimum capital investment of \$157,286,000.
- The 65,000 square feet of space constructed by the Developer for GRTC to subsequently buildout and use as the GRTC Transit Center (the "Provided Space") will be semi-finished space and must conform with the provisions set forth in Schedule C to the Development Agreement (see below).
- Per Schedule C, GRTC will be responsible for the buildout of/making the necessary improvements to the Provided Space in order to meet GRTC's Transit Center needs.
 - Note – GRTC's responsibility to complete onsite improvements for the transit center is consistent with the provisions set forth in Section 4.3.14 of the original RFP issued by the City in November 2017. Section 4.3.14 of the RFP further indicates that GRTC has identified over \$9 Million in federal funds available for GRTC's use to fund such transit center improvements.

- Development Agreement Section 2.2(g) sets forth a detailed process for the City, GRTC, and the Developer (i) to determine the plans for the Provided Space via a working group, (ii) to come to agreement on the essential terms for GRTC to lease the Provided Space from the Developer, and (3) to work through the FTA process for securing approval of the lease.

Notably, a condition precedent to issuance of the Arena Bonds (i.e., “Financial Close”) is agreement/approval by the City, GRTC, and the Developer on a term sheet for the GRTC lease. As set forth in section 2.2(g)(iii)(B), the term sheet will include specifics as to costs and delineation of costs between the parties to the lease (GRTC and NHDC).

- Nothing in the Development Agreement obligates or contemplates expenditure of City funds for construction of the Transit Center.

Excerpts from Development Agreement

Schedule C - Development Requirements for Block C

Block C will be developed in such a manner as to contain approximately 65,000 square feet of space at ground level (the “Provided Space”) to be utilized as the GRTC Transit Center. Unless otherwise agreed by GRTC, the Provided Space shall be developed in accordance with the following requirements:

- (i) Ingress to and egress from the Provided Space shall be available from both E. Leigh Street and N. 9th Street (unless otherwise directed by GRTC and approved by the City’s Department of Public Works);
- (ii) The Provided Space shall be at least 65,000 square feet, in a configuration approved by GRTC and suitable to operate 12 bus bays or such lesser amount of bays deemed sufficient by GRTC;
- (iii) Clearance/ceiling height of the Provided Space shall be at least 22 feet or such lesser amount deemed sufficient by GRTC;
- (iv) Utilities shall be built into the Provided Space by Developer in accordance with GRTC’s needs;
- (v) The Provided Space as constructed by, and provided to GRTC from, NHDC shall be semi-finished space with the appropriate strength and characteristics to accommodate the intended use; and
- (vi) The Provided Space shall be semi-finished space, and GRTC shall be responsible for completing the buildout of/making the necessary improvements to the Provided Space to complete GRTC’s Transit Center thereon. The space above the ground level on Block C may be developed by the

Developer pursuant to the provisions of this Development Agreement.

Section 2.2(g) - Transit Center

(i) The Developer shall fund, at its sole cost and expense, the design and construction of the Provided Space for the GRTC Transit Center in accordance with the Project Schedule, this Agreement, including Schedule C (Development Requirements for Block C), and the GRTC Lease, and, thereafter, make the Provided Space available to GRTC in accordance with the GRTC Lease.

(ii) The Parties shall establish a working group among the City, the Developer, and the GRTC to agree on a Concept Plan for the Provided Space to be developed by the Developer, at its sole cost and expense, and used as the basis for Closing on Block C (as identified in the Master Plan).

(iii) As a condition precedent to Financial Close, the Developer will negotiate and finalize a term sheet approved by GRTC, the City and the Developer, to serve as the basis for the GRTC Lease. The City's approval of the term sheet shall not be unreasonably withheld, conditioned or delayed. The term sheet will include details on, among other issues: (A) the term of the GRTC Lease, (B) costs or delineation of costs, (C) GRTC's exclusive use of the Provided Space once it is made available to GRTC by the Developer, (D) traffic management, (E) FTA approval, (F) scheduling, (G) GRTC's oversight of the construction of the Provided Space by the Developer and the interface between GRTC's fit-out of the Provided Space once the Provided Space is made available to GRTC by the Developer and the Developer's ongoing construction on such Project Segment, (H) establishing a process for finalizing the facilities services, operational and functional requirements of the Provided Space and (I) other standard terms and conditions, including indemnities and insurance requirements.

(iv) The Developer and GRTC must negotiate and finalize the GRTC Lease in accordance with the Project Schedule for submission to the Federal Transit Administration ("FTA"). The terms of the GRTC Lease shall be substantially consistent with those terms set forth in the term sheet described in (iii) above. If the FTA requires any modifications to the agreed upon form of GRTC Lease, such modifications shall be subject to the approval of GRTC and the Developer, which approval shall not be unreasonably withheld, conditioned or delayed if such modifications are not material or, if material, such modifications are not technically or financially impracticable

to implement. Execution of the GRTC Lease will be a condition precedent to Closing on Block C, unless the sole reason for such condition precedent not being satisfied is GRTC's failure to execute the GRTC Lease.

Excerpt from Original North of Broad RFP issued November 2017

4.3.14 Impact on GRTC Transfer Station

A. The City has increasingly recognized the integral and vital role of transit in development and economic growth. The recent approval of the Pulse BRT is an acknowledgement of Richmond's commitment to transit and connectivity. In recognition of the important role of transit in the project, the Respondent shall include a replacement for the existing bus transfer facility. **The Respondent should provide for the inclusion of a bus transfer facility into the ground floor of a proposed building**, which will subject to detailed coordination with GRTC as facilitated by the City.

B. The bus transfer facility will require approximately 65,000 square feet with a ceiling height of, at least, 22 feet. While the City and GRTC will consider any proposed site for the bus transfer station, sites that provide the best connection to the Pulse BRT and Broad Street will be preferred.

C. The GRTC will be responsible for developing the on-site improvements and already has over \$9 million in federal funding to support that development.

D. The bus transfer facility will be built in accord with Federal Transit Administration (FTA) regulations. It will be the responsibility of GRTC to secure federal approval of the project and to minimize the regulatory impact of that project on the overall development.

(Emphasis added.)

9.) Who will administer the execution of the development agreement on behalf of the City?

Legal Counsel (City Attorney's Office/Orrick) Response:

The Chief Administrative Officer will execute, or sign, the Navy Hill Development Agreement on behalf of the City. However, we understand this question truly to ask who will administer the performance of the Navy Hill Development Agreement on behalf of the City. Ord. No. 2019-211, § 2 provides, "the Chief Administrative Officer, for and on behalf of the City of Richmond, be and is hereby authorized to execute such contracts, deeds, and other documents and give such approvals contemplated by the

Navy Hill Development Agreement as may be necessary to effectuate the purposes of the Navy Hill Development Agreement and to consummate fully the transactions contemplated by the Navy Hill Development Agreement, provided that all such contracts, deeds, and other documents first must be approved as to form by the City Attorney." See also the response to question 4.

- 10.) What is the income threshold for eligibility for affordable housing? Can there be more of an income mix besides just 60% and 80% of AMI?

Response:

The affordable housing units will be designated for households that are making 60% and 80% of the Richmond metro area AMI (Area Median Income) as established by the U.S. Department of Housing and Urban Development (HUD). HUD updates the AMI on an annual basis. The 2019 AMI for the Richmond metro area is \$86,400 for a family of four.

HUD determines a specific AMI for each household of different size. Below is a table for 60% and 80% AMI in 2019 and 2023. For projection purposes, we have assumed an annual inflation rate of 2.5% through 2023. 2023 is the first year when the first apartment units are expected to be delivered.

Year 2019 AMI = \$86,400				
Household size	2019		2023 (Projected)	
	60% AMI	80% AMI	60% AMI	80% AMI
1	\$36,288	\$48,384	\$40,055	\$53,407
2	\$41,472	\$55,296	\$45,777	\$61,036
3	\$46,656	\$62,208	\$51,499	\$68,666
4	\$51,840	\$69,120	\$57,222	\$76,296

Rents for the 60% and 80% AMI units are established by the Virginia Housing Development Authority (VHDA) and the Federal Low-Income Housing Tax Credits (LIHTC) program. Rents are determined by assuming residents will pay no more than 30% of their household income on rent. Utilities are not included in the rent. VHDA and LIHTC assume an occupancy factor (household size) for each unit type i.e., studio, 1-bedroom and 2-bedroom. We have assumed an annual growth rate of 2.5% for these rents to keep up with the projected AMI growth in the Richmond metro area.

PROJECTED 2023 RENTS for Affordable Housing Units			
	Assumed Household Size	60%AMI	80%AMI

Studio	1	\$1,001	\$1,335
1 Bdrm	Up to 2	\$1,073	\$1,431
2 Bdrm	Up to 4	\$1,287	\$1,717

11.) What recourse doe the City have if there is a default after parcels have been transferred? Please provide response for both instances where construction is not yet complete and once construction is complete.

Legal Counsel (City Attorney's Office/Orrick) Response:

Upon conveyance of any private development parcel the portion of the Purchase Price allocated to such respective parcel will be released to the City. Each parcel will be encumbered by a Construction Covenant, Construction Deed of Trust, and as applicable, an Affordable Housing Covenant and Hotel Covenant, each of which will be recorded in the land records. These covenants require, among other things, development of the applicable parcel as obligated by the Development Agreement, the Master Plan and the Purchase and Sale Agreement and each provide the City with remedies in the event such obligations are not met. These remedies are as follows:

Prior to Substantial Completion/Operations – If in connection with the Private Development component of the Project a parcel is conveyed to the Developer and the Developer either (i) fails to timely commence construction in accordance with the Project Schedule, (ii) commences construction but fails to timely complete such project in accordance with the Project Schedule or (iii) fails to construct such project in accordance with the Master Plan, the City will have the followings rights:

- (1) retain the Purchase Price and draw on the full remaining portion of the \$15.8 million performance security;
- (2) revert ownership of the applicable defaulted parcel to the City (subject to lenders' interest) and all improvements, repairs, alterations, and modifications made by the Developer to such parcel;
- (3) obtain a legal transfer of all work product, designs, and intellectual property owned by the Developer for such defaulted parcel(s);
- (4) obtain a legal transfer of all subcontracts, documents, records, leases, concessions, or other contracts and insurances otherwise in place or created by the Developer and the Developer indemnifies the City against all losses suffered or incurred by the City in connection with any breach by the Developer under such transferred documents or agreements;
- (5) terminate the Development Agreement and all future rights of the Developer to close on future parcels that have not yet achieved closing;

- (6) each private development project may have a performance and payment bond guaranteeing full delivery of the construction of such project by a surety. Where the applicable private development's contractor is in default and the Developer has been terminated on a parcel by the City, the City can claim under such performance bond (subject to lenders' interests) to require that the surety completes the applicable project. In this scenario the City can then sell the completed or partially constructed project to a third-party and (subject to lenders' interests) retain the proceeds; and
- (7) exercise all rights and remedies available at law, including claiming under the indemnity clause (Article 7 of the Development Agreement) against the Developer, its affiliates, its Subcontractors, CCP, CCD and any Construction Contractor or OM&C Contractor who has caused losses to the City due to a breach of the Development Agreement.

Following Substantial Completion/Operations – With respect to the Private Development component of the Project, the rights that exist in the Development Agreement and the Armory Lease for a Developer Default following Substantial Completion/commencement of operations are as follows:

- (1) with respect to the Armory, (i) require a remedial plan to be put in place to remedy any such default or breach, (ii) claim against the Developer, the Armory's OM&C Contractor and the OM&C Contractor's Guarantor (where applicable) under the indemnity clause, (ii) (subject to lenders' rights) terminate the Lease and (iii) revert possession and ownership of all Improvements (subject to lenders' rights) made to the Armory;
- (2) with respect to the hotel, require through a hotel covenant filed with the land, that the applicable terms and conditions in the development agreement be satisfied by any owner and user of such parcel, ensuring a long-term high quality hotel and minimum number of rooms. Failure to comply with such covenant will entitle the City to seek specific performance through judicial enforcement action of such requirements;
- (3) with respect to any private development parcel including affordable housing, require through an affordable housing covenant filed with the land, that the applicable terms and conditions in the development agreement be satisfied by any owner and user of such parcel, ensuring long-term compliance with the minimum affordable housing conditions and a minimum number of affordable housing units on such parcel. Failure to comply with such covenants will entitle the City to seek specific performance through judicial enforcement action of such requirements; and

(4) to the extent that any other private development parcel has achieved Substantial Completion / operations and has subsequently defaulted for a failure to be operated or maintained in accordance with the Master Plan, but other parcels have not yet achieved Closing, the City can terminate the Developer's right to close on any such future parcels that have not yet achieved Closing and retain the full purchase price / developer performance security.

12.) Is the City equipped to exercise its City step-in rights for arena in case of default by the developer?

Response:

Yes.

13.) In the grant agreement is indicates that there is a Property Tax Grant and Admissions Tax Grant. Please provide additional explanation of these grants. Is the developer being refunded or "rebated" the amounts they pay in property and admission taxes?

Legal Counsel (City Attorney's Office/Orrick) Response:

The Navy Hill Grant Agreement is attached to the Navy Hill Cooperation Agreement, which is attached to the Navy Hill Development Agreement that is the subject of Ord. No. 2019-211. The Grant Agreement governs the economic development grants to be made to NH District Corporation as part of this transaction. The Grant Agreement provides for two grants:

1. The Property Tax Grant is a payment equal to (i) the real property taxes timely paid by NH District Corporation on the new arena, (ii) the personal property and machinery and tools taxes timely paid by NH District Corporation, and (iii) the assessor area taxes for use of streets timely paid by NH District Corporation. Upon NH District Corporation's request and the Department of Finance's verification that NH District Corporation has paid, the City pays the Property Tax Grant to the EDA, and the EDA pays the Property Tax Grant to NH District Corporation. This is an alternative to NH District Corporation (as a not-for-profit entity) seeking a tax exemption by designation, on which City Code § 26-549 declares a moratorium.
2. The Admissions Tax (Incremental) Grant is a payment equal to admissions tax paid due to activity at the new arena above the current admissions tax rate. This grant will be made only if the City Council increases the admissions tax rate above the current admissions tax rate, and only the portion of admissions tax paid that is above the current admissions tax rate will be used to calculate the grant amount. The current admissions tax is seven percent. If the arena operator collects \$100,000 in ticket sales in a year, it must

pay \$7,000 in admission taxes to the City for that year. If the City Council increases the admissions tax to eight percent, and the arena operator collects \$100,000 in ticket sales in a year, it must pay \$8,000 in admissions taxes to the City for that year. In that case, the Admissions Tax (Incremental) Grant for that year would be \$1,000—the difference between the increased admissions tax and the admissions tax currently in effect. Upon NH District Corporation's request and the Department of Finance's verification that the subject admissions taxes have been timely paid, the City would pay the Admissions Tax (Incremental) Grant to the EDA, and the EDA would pay the Admissions Tax (Incremental) Grant to NH District Corporation. If the admission tax rate remains at seven percent or lower, no Admissions Tax (Incremental) Grant is paid.

ATTACHMENT TO RESPONSE NO. 1 –
RESPONSES TO OCT. 28 COUNCIL WORK SESSION FOLLOW UP QUESTIONS

Source – Previous responses provided to Navy Hill Advisory Commission (Oct. 19, 2019)

4. What are the number of residential units and affordable housing units in each of the parcels?

NHDC RESPONSE

The following table shows the overall number of planned residential units and a breakdown of the affordable units and the market rate units within each Block:

Block	Market Rate Units	Affordable Units	Total
A2	188	42	230
B	169	44	213
C	190	23	213
E	65	21	86
I	438	51	489
N	453	57	510
U	341	42	383
Total	1,844	280	2,124

5. What is the sequencing and timing of the total development?

NHDC RESPONSE

The current timing and sequencing of the total development, as shown in the table below, is predicated on the Council’s approval of the Development Agreement before the end of year 2019.

Block	Construction Start	Construction Completion
A1	7/18/2020	3/1/2023
A2	7/30/2021	3/1/2023
A3	7/1/2021	3/1/2023
B	4/17/2022	10/19/2023
C	6/7/2021	4/5/2023
D	12/10/2021	12/4/2023
E	8/29/2021	1/3/2023
F	12/11/2020	1/3/2023

ATTACHMENT TO RESPONSE NO. 1 –
RESPONSES TO OCT. 28 COUNCIL WORK SESSION FOLLOW UP QUESTIONS

I	6/12/2023	1/11/2025
N	8/12/2023	5/10/2025
U	6/12/2022	3/10/2024