

Exhibit A to the Development Agreement

Cooperation Agreement

NAVY HILL COOPERATION AGREEMENT

This NAVY HILL COOPERATION AGREEMENT (this “Cooperation Agreement”) is entered into as of the ____ day of _____, 2019, by and between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia, and the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia.

RECITALS

- A. The City seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential and that results in additional taxable value in both the project area and in surrounding properties, and in connection therewith has entered into a development agreement (the “**Development Agreement**”) and associated agreements with the Authority and The NH District Corporation, a Virginia corporation (the “**Developer**”);
- B. The Developer is an “exempt organization,” which for purposes of this Cooperation Agreement means it is (i) described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) exempt from federal income taxation pursuant to section 501(a) of such Internal Revenue Code and (iii) not organized and operated exclusively for religious purposes;
- C. As described in the Development Agreement, the City seeks to replace the existing Richmond Coliseum, the operation of which is no longer economically viable for the City as a result of age, limited seating capacity and operational deficiencies, with a new state-of-the-art arena (the “**Arena**”) which the Developer seeks to design, construct, finance, operate, commercialize, and maintain (the “**Arena Project**”) in accordance with the Arena Lease (as defined below);
- D. The City desires (i) the Authority to undertake certain activities, including the issuance of the Authority's debt obligations, to pay for the construction of the Arena and the defeasance of certain outstanding City bonds issued to finance improvements to the existing Richmond Coliseum, (ii) the Authority to make certain grants to the Developer to promote the economic development of the Development Area (as defined below), and (iii) to contribute financially to these endeavors by the Authority.
- G. The City is authorized by section 15.2-953(B) of the Code of Virginia to make appropriations of money to the Authority for the purpose of promoting economic development.

- E. The Arena Project qualifies as “authority facilities” as defined by section 15.2-4902 of the Code of Virginia, and the Authority is authorized by the Industrial Development and Revenue Bond Act, title 15.2, chapter 49 of the Code of Virginia, and other laws to perform the activities contemplated in this Cooperation Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which both parties hereto acknowledge, and in consideration of the mutual covenants hereinafter set forth, the City and the Authority agree as follows:

ARTICLE I.

1.0 Preliminary Provisions.

- 1.1 **Purpose.** The purpose of this Cooperation Agreement is to enable the City and the Authority to work together to make possible, through the transactions described herein, the construction of the Arena.
- 1.2 **Incorporation of Recitals and Exhibits.** The foregoing recitals are true and correct and are incorporated herein by reference. The following Exhibits to this Cooperation Agreement are attached hereto and incorporated by reference herein:
 - A. Exhibit A (“Development Area Parcels”).
 - B. Exhibit B (“Grant Agreement”).
- 1.3 **Definitions.** Capitalized terms used, but not defined in this Cooperation Agreement shall have the meaning ascribed to them in the Development Agreement, as the context requires. Words, terms and phrases used in this Cooperation Agreement have the meanings ascribed to them by this section below, unless the context clearly indicates that another meaning is intended.

Act. “*Act*” means the Industrial Development and Revenue Bond Act, Va. Code Ann. §§ 15.2-4900—15.2-4920, as that law may be amended or recodified in the future.

Admissions Tax (Incremental) Grant. “*Admissions Tax (Incremental) Grant*” means the grant described in section 5.3 of this Cooperation Agreement.

Arena Lease. “*Arena Lease*” means the fully-executed Deed of Ground Lease to be entered into by and between the Authority and the Developer for the Arena site, which Deed of Ground Lease shall be in substantially the form attached as Exhibit B-1 to the Development Agreement.

Armory Lease. “*Armory Lease*” means the fully-executed Deed of Ground Lease to be entered into by and between the Authority and the Developer for the site of the historic Blues Armory building, which Deed of Ground Lease shall be substantially in the form attached as Exhibit B-2 to the Development Agreement.

Authority. “*Authority*” means the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia.

Baseline Real Estate Value. “*Baseline Real Estate Value*” means the amount of real estate taxes that could have been levied by the City pursuant to Chapter 26, Article V of the Code of the City of Richmond (2015), as amended, on real estate in the Increment Financing Area based on the 2020 Proposed Assessment of such real estate in the Increment Financing Area provided in the 2020 Notice of General Reassessment for each parcel of real estate in the Increment Financing Area; provided, however, that if any real estate in the Increment Financing Area was exempt from real estate taxes in the Tax Year commencing January 1, 2019, the Baseline Real Estate Value of such real estate shall equal \$0.

Bond Repayment Fund. “*Bond Repayment Fund*” means a set of funds and accounts established by the Authority pursuant to section 3.2 of this Cooperation Agreement and held by the Authority or the Trustee as prescribed in the Indenture to provide for and secure the payment of the debt service of the Bonds and related purposes and may include, without limitation, a revenue fund, an administrative expense fund, bond or debt service funds, and debt service reserve funds to be funded from the proceeds of the Bonds.

Bonds. “*Bonds*” means obligations, both taxable and tax-exempt, issued by the Authority under the Act for the purposes set forth and as described in section 3.0 of this Cooperation Agreement and includes any obligations issued, if the Authority is allowed to do so by Section 3.5, to refund or refinance any outstanding Bonds.

Chief Administrative Officer. “*Chief Administrative Officer*” means the Chief Administrative Officer of the City of Richmond, Virginia.

City. “*City*” means the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia.

City Code. “*City Code*” means the Code of the City of Richmond (2015), as that Code may be amended or recodified in the future.

City Incremental Revenues. “*City Incremental Revenues*” means the following incremental revenues generated within the Development Area and the Increment Financing Area:

- (1) The amount of real estate taxes levied pursuant to Chapter 26, Article V of the Code of the City of Richmond (2015), as amended, on real estate in the Increment Financing Area by the City in each Tax Year beginning with the Tax Year commencing January 1, 2020, that exceeds the Baseline Real Estate

Value, less the amount of any grants funded by the City where the grant amount is based on the amount of real estate taxes paid for real estate located in the Increment Financing Area.

(2) The amount of meals taxes levied pursuant to Chapter 26, Article VIII of the Code of the City of Richmond (2015), as amended, at a rate of six percent on meals purchased in the Development Area in each Tax Year beginning with the Tax Year commencing January 1, 2020, that exceeds the amount of such meals taxes levied at a rate of six percent on meals purchased in the Development Area in the Tax Year commencing January 1, 2019, which, for purposes of the Navy Hill Funding Ordinance, is assumed to be \$0.00. It is the intent of the Navy Hill Funding Ordinance that no part of the additional meals tax levy for which section 2 of Ordinance No. 2018-017, adopted February 12, 2018, be included when calculating meals taxes to be contributed to the Navy Hill Fund.

(3) The amount of Virginia retail sales and use taxes attributable to the Development Area remitted by the Commonwealth of Virginia to the City in each Tax Year beginning with the Tax Year commencing January 1, 2020, that exceeds the amount of Virginia retail sales and use taxes attributable to the Development Area remitted by the Commonwealth of Virginia to the City for the Tax Year commencing January 1, 2019, which, for purposes of the Navy Hill Funding Ordinance, is assumed to be \$0.00.

(4) The amount of transient lodging tax levied pursuant to Chapter 26, Article X of the Code of the City of Richmond (2015), as amended, in each Fiscal Year beginning with the Fiscal Year commencing on July 1, 2020, on any hotel constructed in the Development Area that the City receives in an amount not to exceed those Residual Tax Payment Fund distributions made in accordance with the provisions set forth in sections 3 (“Residual Tax Payment Fund”), 4 (“First Distribution of Residual Fund Moneys”), 5 (“Second Distribution of Residual Fund Moneys”), and 6 (“Due To, Due From” Payment Obligations”) of an Interlocal Agreement dated February 1, 2000, and approved by Ordinance No. 99-301-287, adopted September 27, 1999, and as authorized by section 508 (“Residual Account”) of an Indenture of Trust entered into by the Greater Richmond Convention Center Authority and dated February 1, 2000.

(5) The amount of license taxes levied pursuant to Chapter 26, Article XV of the Code of the City of Richmond (2015), as amended, that is attributable to the Development Area in each Tax Year beginning with the Tax Year commencing January 1, 2020, that exceeds the amount of such license taxes levied that is attributable to the Development Area for the Tax Year commencing January 1, 2019, which, for purposes of the Navy Hill Funding Ordinance, is assumed to be \$0.00.

(6) The amount of admission taxes levied pursuant to Chapter 26, Article IX of the Code of the City of Richmond (2015), as amended, in the Development Area in each Tax Year beginning with the Tax Year commencing

January 1, 2020, that exceeds the amount of such admission taxes levied in the Development Area for the Tax Year commencing January 1, 2019, which, for purposes of the Navy Hill Funding Ordinance, is assumed to be \$0.00, less the amount of any grants funded by the City where the grant amount is based on the amount of admissions tax paid for admissions to any arena located in the Development Area following an increase in the admissions tax rate.

(7) The amount of Net Parking Revenues, up to a maximum of \$2,500,000.00 per Fiscal Year, from (i) parking meters located in the Increment Financing Area for each Fiscal Year beginning with the Fiscal Year commencing July 1, 2020, that exceeds the amount of Net Parking Revenues from parking meters located in the Increment Financing Area for the Fiscal Year commencing July 1, 2019, and (ii) the following City-owned off-street parking facilities beginning with the Fiscal Year commencing July 1, 2020, that exceeds the amount of Net Parking Revenues from such City-owned off-street parking facilities for the Fiscal Year commencing July 1, 2019:

- a. The 5th and Marshall Street Garage;
- b. The 7th and Marshall Street Garage;
- c. The 5th and Broad Street Lot;
- d. The 7th and Grace Street Garage;
- e. The Coliseum Garage; and
- f. The 8th and Clay Street Lot.

Cooperation Agreement. “*Cooperation Agreement*” means this Navy Hill Cooperation Agreement.

Developer. “*Developer*” means The NH District Corporation, a Virginia corporation.

Development Agreement. “*Development Agreement*” means the fully-executed Navy Hill Development Agreement between the City, and the Developer.

Development Area. “*Development Area*” means the parcels of real estate identified by street address and tax parcel number on the document labeled Exhibit A, entitled “Development Area Parcels,” and attached to the Navy Hill Funding Ordinance and as Exhibit A to this Cooperation Agreement..

Early Repayment Fund. “*Early Repayment Fund*” means the redemption fund or turbo redemption fund established by the Authority pursuant to section 3.2 of this Cooperation Agreement and held by the Authority or the Trustee for the

purpose of redeeming all or a portion of the Bonds prior to their maturity as prescribed in the Indenture.

Fiscal Year. “*Fiscal Year*” means a fiscal year as defined in section 6.01 of the Charter of the City of Richmond (2019), as amended.

Ground Lease. “*Ground Lease*” means, collectively, the Arena Lease and the Armory Lease.

Grant Agreement. “*Grant Agreement*” means the fully-executed Grant Agreement in the form of Exhibit B (“Grant Agreement”) to this Cooperation Agreement.

Grant Revenues. “*Grant Revenues*” shall mean the revenues paid to the City pursuant to section 5.2 and 5.3 of this Cooperation Agreement.

Increment Financing Area. “*Increment Financing Area*” means all parcels of real estate located in the area bounded by North 1st Street on the west, Interstate 64/95 on the north, North 10th Street on the east, and East Byrd Street on the south.

Indenture. “*Indenture*” means the indenture of trust for the Bonds.

Navy Hill Fund Ordinance. “*Navy Hill Fund Ordinance*” means Ordinance No. 20__ - ____, adopted _____, 20__.

Net Parking Revenues. “*Net Parking Revenues*” means the revenues derived solely from parking meters of the City located within the Increment Financing Area and from the City-owned off-street parking facilities listed above in section 1(c)(7) of the definition of “City Incremental Revenues”, less the City’s costs and expenses incurred during any fiscal year for the management, maintenance, administration, sales, or operation of the City’s parking system.

Pledged Revenues. “*Pledged Revenues*” means the City Incremental Revenues, excluding the Renewal Work Parking Revenues, pledged by the City, pursuant to this Cooperation Agreement, to satisfy the Authority’s Bond repayment obligations.

Property Tax Grant. “*Property Tax Grant*” means the grant described in section 5.2 of this Cooperation Agreement

Renewal Work Account. “*Renewal Work Account*” means the account by such name established and maintained by the Developer as prescribed by section 8.4 of the Arena Lease.

Renewal Work Parking Revenues. “*Renewal Work Parking Revenues*” means that portion of the City Incremental Revenues that are generated from parking revenues and pledged by the City, pursuant to this Cooperation Agreement, for deposit into the Renewal Work Account pursuant to section 3.4.

Stabilization Fund. “*Stabilization Fund*” means a fund established by the Authority pursuant to section 3.2 of this Cooperation Agreement and held by the Trustee for the purpose of paying debt service on the Bonds on the date such debt service is due when insufficient funds for that purpose are available in the Bond Repayment Fund.

Tax Year. “*Tax Year*” means a tax year as defined in section 6.01 of the Charter of the City of Richmond (2019), as amended.

Trustee. “*Trustee*” means the trustee identified in the Indenture as the party responsible for enforcing the terms of the Indenture on behalf of the holders of the Bonds.

- 1.4 **Duration.** This Cooperation Agreement will be in force and effect beginning on the date written first above and shall expire when all obligations have been performed and all rights have been fully exercised by both the City and the Authority, but no earlier than the first date on which no Bonds remain outstanding under the Indenture.

ARTICLE II.

2.0 Assistance of the Authority in Furtherance of City’s Economic Development Goals

- 2.1 The City and the Authority desire the Authority to assist in the Arena Project by issuing such bonded indebtedness as may be necessary to finance the Arena Project and by entering into the Ground Lease with the Developer.
- 2.2 It is the intent of the City and the Authority that the Ground Lease will be administered at no cost to or liability upon the Authority beyond the amount of the Pledged Revenues. To that end, the Chief Administrative Officer or an authorized designee of Chief Administrative Officer (each an “Authorized CAO Designee”) shall be responsible for administering and performing all functions of the Authority (excluding the issuance of the Bonds) and shall have the power to exercise all of the rights of the Authority. Specifically, in connection with the Arena Lease executed by the Authority, any approval, notice, direction, findings, consent, request, waiver, or other action by the Authority required under the Arena Lease, shall be exercised by the CAO or any Authorized CAO Designee.¹
- 2.3 No later than the satisfaction of all conditions precedent to issuance of the Bonds under the Financing Documents (as defined in the Development Agreement) by the Developer, the Authority and the City, (i) the City shall convey the real property that is the subject of the Arena Lease to the Authority, and (ii) the City shall acquire the real property that is the subject of the Armory Lease and convey such property

¹ NTD: Are there any minor administrative obligations that the EDA will be able to take-on itself?

to the Authority. To enable the Authority to make the representations set forth in section 28.1 of the Arena Lease and section 28.1 of the Armory Lease, the City, at the time it conveys the real property, shall procure and pay for title insurance policies for the real property that is the subject of each of those leases in the Authority's name with a title insurer selected by the City and acceptable to the Authority. Upon the City's request after the expiration or earlier termination of the Arena Lease, the Authority promptly will convey the real property that is the subject of the Arena Lease to the City. Upon the City's request after the expiration or earlier termination of the Armory Lease, the Authority promptly will convey the real property that is the subject of the Armory Lease to the City.

ARTICLE III.

3.0 Bonds.

3.1 Issuance

A. Upon satisfaction of all conditions precedent to issuance of the Bonds under the Financing Documents (as defined in the Development Agreement) by the Developer, the Authority and the City, the Authority shall issue the Bonds pursuant to the Act for the purposes of financing all or part of the costs of the Arena Project.

B. The Authority shall select the Trustee, determine the form and content of the Indenture and the other Financing Documents to which it is a party, and schedule the issuance of the Bonds in a manner that does not conflict with this Cooperation Agreement and in coordination with the City. The Authority shall ensure that the Indenture is written in a manner to minimize the interest on the Bonds and the amount of time required to pay off the Bonds.

C. The City shall cooperate with the Authority in obtaining an allocation of the "state ceiling" of the Commonwealth of Virginia under Chapter 50 of Title 15.2 of the Code of Virginia if requested by the Authority to allow the Bonds to be issued on a tax-exempt basis to the maximum extent permitted by the Internal Revenue Code of 1986.

3.2 Repayment. The Authority shall establish the Bond Repayment Fund, the Stabilization Fund, and the Early Repayment Fund in accordance with the Indenture. Subject to section 6.0 of this Cooperation Agreement, the Authority shall apply the Pledged Revenues received pursuant to section 4.0 of this Cooperation Agreement to the Bond Repayment Fund, the Stabilization Fund, and the Early Repayment Fund in accordance with this Cooperation Agreement and the Indenture.

- 3.3 **Disposition of Pledged Revenues.** For each Fiscal Year beginning with the Fiscal Year commencing July 1, 2020, the Authority shall apply all Pledged Revenues received pursuant to section 4.0 of this Cooperation Agreement as follows:
- A. First, the Authority shall apply such Pledged Revenues to the requirements of the Bond Repayment Fund as specified in the Indenture.
 - B. If any amounts remain after the requirements of subsection (A) have been satisfied, the Authority shall apply those remaining Pledged Revenues to the Stabilization Fund until the Stabilization Fund contains an amount equal to the maximum annual debt service on the Bonds outstanding under the Indenture.
 - C. If any amounts remain after the requirement of subsection (B) has been satisfied, the Authority shall deposit 50 percent of those Pledged Revenues into the Early Repayment Fund and pay the remaining 50 percent of those Pledged Revenues to the City for its general fund. Although a future City Council cannot be obligated to make such an appropriation, the City intends that the first \$10,000,000.00 of the monies received by the City pursuant to this subsection (C) be appropriated for the provision or maintenance of affordable housing in the Increment Financing Area.
 - D. If any funds remain after \$10,000,000.00 has been paid to the City pursuant to subsection (C), the Authority shall deposit 50 percent of those funds into the Early Repayment Fund and pay the remaining 50 percent of those funds to the City for its general fund.
- 3.4 **Disposition of Renewal Work Parking Revenues.** From the revenues described in subsection G of the definition of “*City Incremental Revenues*,” the first \$500,000 shall be applied to make the deposit to the Renewal Work Account required under section 8.4 of the Arena Lease. For each Fiscal Year beginning with the Fiscal Year commencing July 1, 2020, the Authority shall deposit all Renewal Work Parking Revenues received pursuant to section 4.0 of this Cooperation Agreement into the Renewal Work Account.
- 3.5 **Restrictions on Refunding, Refinancing, and Similar Actions with Respect to Bonds.** Notwithstanding any provision of this Cooperation Agreement to the contrary, under no circumstances shall the Authority cause or permit any refunding, refinancing, or other action with respect to the Bonds at any time after the issuance of the Bonds that results in a later maturity date for the Bonds (or any refunding or refinancing thereof) than the maturity date fixed at the time of the issuance of the Bonds without the prior approval of the City Council of the City of Richmond by resolution. Any failure, neglect, or refusal by the Authority to comply with this restriction shall constitute a material default by the Authority under this Cooperation Agreement, and all obligations by the City to pay the Pledged

Revenues or any other sum of money shall be null and void immediately upon such default.

ARTICLE IV.

4.0 Revenue Sources for Bond Repayment and Renewal Work Account Funding.

- 4.1 **City Incremental Revenues.** To assist in the repayment of the Bonds and the funding of the Renewal Work Account, the City pledges and assigns all of its right, title and interest in the City Incremental Revenues to the Authority. It is the intent of the City to appropriate annually, to the Authority, the City Incremental Revenues in an amount of money equal to the Pledged Revenues and the Renewal Work Parking Revenues.
- 4.2 **Authority Use of Pledged Revenues.** The Authority shall use all Pledged Revenues received by the Authority pursuant to this Cooperation Agreement, for repayment of the Bonds and the other purposes described in section 3.3 of this Cooperation Agreement.
- 4.3 **Authority Use of Renewal Work Parking Revenues.** The Authority shall deposit all Renewal Work Parking Revenues received by the Authority pursuant to this Cooperation Agreement into the Renewal Work Account as described in section 3.4 of this Cooperation Agreement.
- 4.4 **Timing of Payments of City Incremental Revenues.** Subject to the limitations of section 6.1 of this Cooperation Agreement, the City agrees to transfer to the Authority the City Incremental Revenues described in (i) paragraphs A., B., C., E. and F. of the definition of “*City Incremental Revenues*” by no later than March 1 following the end of the Tax Year in which such revenues are received, (ii) paragraph D. of the definition of “*City Incremental Revenues*” by no later than December 1 following the end of the Fiscal Year in which such revenues are received and (iii) paragraph G. of the definition of “*City Incremental Revenues*” within 60 days following the end of the Fiscal Year in which such revenues are received.

ARTICLE V.

5.0 Grants to Developer.

- 5.1 **Grant Agreement Required.** The Authority shall not pay any grant unless the Authority and the Developer have entered into a Grant Agreement therefor. The Grant Agreement shall be in the form of Exhibit B (“Grant Agreement”) to this Cooperation Agreement.
- 5.2 **Property Tax Grant.** The Property Tax Grant is an annual grant in an amount equal to the amount of the Recipient’s payment of (i) real property taxes levied by the City

pursuant to Section 58.1-3200 et seq. of the Virginia Code on and timely paid by the Developer, whether based on the City's assessment of the Developer's fee interest or leasehold interest in the Arena or the Armory, or both, as applicable, (ii) personal property taxes and machinery and tools taxes levied by the City pursuant to Section 58.1-3500 et seq. of the Virginia Code on and timely paid by the Developer, and (iii) assessor area taxes for use of streets imposed by the City pursuant to Section 24-64 of the City Code on and timely paid by the Developer. The City's Director of Finance shall calculate the amount of such taxes assessed, levied, and timely paid by the Developer within 30 calendar days following written notice by the Developer that the Developer has paid the second installment of such taxes. Subject to section 6.1 of this Cooperation Agreement, the City shall furnish the Authority with funds in the amount so calculated and, subject to section 6.2.1 of this Cooperation Agreement, the Authority shall pay the Property Tax Grant to the Developer in accordance with the Grant Agreement.

- 5.3 **Admissions Tax (Incremental) Grant.** The Admissions Tax (Incremental) Grant is an annual grant in an amount equal to the incremental amount of admissions tax paid for admissions to the Arena pursuant to Chapter 26, Article IX of the City Code, as that statute may be amended from time to time, that is attributable to any increase in the admissions tax rate beyond the rate that applies to the Arena for the Tax Year commencing July 1, 2019. The City's Director of Finance shall calculate the amount of admissions taxes assessed, levied, and timely paid on admission to the Arena within 30 days following the end of the Fiscal Year in which such taxes were received. Subject to section 6.1 of this Cooperation Agreement, the City shall furnish the Authority with funds in the amount so calculated within 60 days following the end of the Fiscal Year in which such taxes were received, and subject to section 6.2.1 of this Cooperation Agreement, the Authority shall deposit the Admissions Tax (Incremental) Grant in the Renewal Work Account in accordance with the Arena Lease.
- 5.4 **Disposition of Rent from Ground Lease after Grant.** Within 30 calendar days after the end of each Fiscal Year, the Authority shall pay to the City the rent received for that Fiscal Year.

ARTICLE VI.

6.0 Availability of Funds.

6.1 City's Obligations Subject to Appropriations; Collections.

A. All payments and other performances by the City and the Authority under this Cooperation Agreement are limited to the amount of the City Incremental Revenues received by the City and subject to approval by the City Council and annual or periodic appropriations therefor by the City Council. It is understood and agreed between the City and the Authority that the City shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purposes of performing this Cooperation Agreement. Under no circumstances shall the City's total liability under this Cooperation Agreement exceed the total amount of the City Incremental Revenues received and appropriated by the City Council for the City's performance of this Cooperation Agreement. For so long as this Cooperation Agreement remains in effect, the Chief Administrative Officer shall request that the Mayor include in the Mayor's proposed current expense budget for the general operation of the City government to be submitted to City Council for each Fiscal Year a recommendation to appropriate the City Incremental Revenues and the Grant Revenues received by the City to fulfill the City's obligations under Sections 4.0 and 5.0 of this Cooperation Agreement. If the Mayor does not included such recommendation in Mayor's proposed current expense budget, the Chief Administrative Officer shall give notice thereof to the Authority as soon as possible after the Mayor has submitted such proposed budget to the City Council.

B. Throughout the term of this Cooperation Agreement, the Chief Administrative Officer shall deliver to the Authority within 10 days after adoption of the annual budget submitted to the City Council for each Fiscal Year, but not later than the first day of the Fiscal Year, a certificate stating whether the City Council has included in its annual budget the payments to the Authority described in sections 4.0 and 5.0 of this Cooperation Agreement. If, by 15 days after the beginning of the Fiscal Year, the City Council has not appropriated to the Authority an amount equal to the payments described in sections 4.0 and 5.0 of this Cooperation Agreement to be levied or collected during such Fiscal Year, the Chief Administrative Officer shall give written notice to the City Council setting forth the consequences of the failure to appropriate, including the possible effects upon the Authority's ability to pay debt service due on the Bonds and to fulfill its obligations under the Grant Agreement and shall request the Mayor to submit to the City Council, as promptly as practicable, a request for an amendment to the budget of the then-current Fiscal Year and an additional appropriation that will provide sufficient moneys to cover such difference.

C. If at any time during any Fiscal Year, the aggregate amount of any category of the revenues described in sections 4.0 and 5.0 of this Cooperation Agreement exceeds the aggregate amount budgeted and appropriated by City Council for such Fiscal Year, then the Chief Administrative Officer shall request the Mayor to submit to the City Council, as promptly as practicable, a request for an amendment to the budget of the then-current Fiscal Year and an additional appropriation that will provide sufficient moneys to cover such difference. The Chief Administrative Officer shall deliver to the Authority within 60 days after making such a request of the Mayor a certificate stating whether the Mayor has recommended and the City Council has taken action to provide to the Authority an amount equal to the excess amount of such revenues collected over the amount budgeted.

D. While recognizing that it is not empowered to make any binding commitment beyond the current Fiscal Year to make any payments to the Authority pursuant to this Cooperation Agreement, the City hereby expresses the intent of the Mayor and the City Council at the time this Cooperation Agreement is executed to take all necessary actions, including making annual or supplemental appropriations, to transfer such payments to the Authority.

E. Notwithstanding that the City may have budgeted and appropriated to the Authority a certain amount (as may be revised pursuant to subsection C. above) in a particular Fiscal Year, if the actual amount of the revenues described in sections 4.0 and 5.0 above collected by the City is less than the amount budgeted and appropriated, the City shall be obligated to pay to the Authority only such lesser amount.

F. The City's customary tax and parking revenue payment enforcement proceedings shall apply to the collection of any delinquent payment of the City Incremental Revenues. The City shall pursue the collection of delinquent payments of City Incremental Revenues with the same diligence it employs in the collection of the City's tax and parking revenues generally. The City agrees that it will provide notice to the Authority of any legal proceedings and other collection remedies to be instituted for the collection of delinquent payments of any City Incremental Revenues. The parties understand and agree that the City's ordinary discretion in this regard allows it to decide not to expend resources to collect de minimis outstanding amounts. The Authority agrees to cooperate with the City in any such enforcement actions.

6.2 Limitations on Authority's Obligations.

6.2.1 Authority's Obligations Subject to Availability of Funds. The Authority's obligation to undertake and perform the activities required of the Authority herein is specifically conditioned on the availability of funds for the Authority to perform the Authority's obligations hereunder. The Authority shall not be required to expend funds the Authority derives from sources other than those provided for by or described in this Cooperation Agreement for the performance of the Authority's

obligations under this Cooperation Agreement. The Authority's obligation to undertake the activities herein is specifically conditioned upon the City providing funding on a timely basis; provided, however, the City's obligation is subject to appropriation by the City Council and availability of funds.

6.2.2 **Authority's Liability.** It is the intent of the parties not to impose upon the Authority any responsibility other than what may be required to consummate the transactions contemplated by and perform the obligations specified in this Cooperation Agreement. Accordingly, the Authority does not assume any responsibility or liability whatsoever except as specifically stated herein. Should any liability accrue to the Authority which is not specifically addressed in this Cooperation Agreement, the Authority shall not be required to expend funds the Authority derives from sources other than those provided for by this Cooperation Agreement to discharge such liability. If a lawsuit involving the subject matter of this Cooperation Agreement is filed or expected to be filed against the Authority, the Authority shall immediately notify the City Attorney and Chief Administrative Officer.

6.2.3 **No Bond Required.** The Authority shall not be required to furnish the City with a fidelity bond covering all officers or employees of the Authority capable of authorizing disbursements of funds or handling funds received from the City or any other party or disbursed by the Authority to any other party pursuant to this Cooperation Agreement.

6.3 **No Pledge of Full Faith and Credit.** Notwithstanding any other provision of this Cooperation Agreement to the contrary, no provision of this Cooperation Agreement shall be construed or interpreted:

A. As creating a pledge of the faith and credit of the City or the Authority within the meaning of any constitutional debt limitation;

B. As a delegation of governmental powers by either the City or the Authority;

C. As a lending of the credit of the City or the Authority within the meaning of the Constitution of Virginia;

D. To directly or indirectly obligate the City or the Authority (i) for any Fiscal Year in which this Cooperation Agreement is in effect or (ii) to make any payments beyond those appropriated in the sole discretion of the City, except from the Authority's revenues actually received pursuant to the Ground Lease;

E. To pledge or create a lien on any class or source of the monies of the City or the Authority except of the Authority's revenues actually received pursuant to the Ground Lease; or

F. To restrict, to any extent prohibited by law, any action or right of action on the part of any future Mayor, City Council, or Board of Directors of the Authority.

- 6.4 **No Pledge of Moral Obligation.** Notwithstanding any other provision of this Cooperation Agreement to the contrary, under no circumstances shall any provision of this Cooperation Agreement be construed or interpreted as a moral obligation or other implied pledge of support by the City or the Authority beyond the monies actually received by the Authority as described in Sections 4.1, 5.2 and 5.3 for the Authority's performance under this Cooperation Agreement.

ARTICLE VII.

7.0 Miscellaneous Provisions.

- 7.1 **Audit.** Pursuant to section 2-187(c) of the City Code, the Authority shall be subject to periodic audits by the City Auditor, at the City's expense, on demand and without notice of its finances and expenditures under this Cooperation Agreement. In addition, the Authority shall afford the City access to all records relating to its expenditures under this Cooperation Agreement, wherever located, for such examination and audit by the City as the City may desire. The Authority shall afford the City the opportunity to make copies of any records that the City has the rights under this Cooperation Agreement to access, examine, and audit.
- 7.2 **Captions.** This Cooperation Agreement includes the captions, headings and titles appearing herein for convenience only, and such captions, headings and titles do not affect the construal, interpretation, or meaning of this Cooperation Agreement or in any way define, limit, extend, or describe the scope or intent of any provisions of this Cooperation Agreement.
- 7.3 **Counterparts.** This Cooperation Agreement may be executed by the City and the Authority in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Cooperation Agreement.
- 7.4 **Entire Agreement.** This Cooperation Agreement contains the entire understanding between the City and the Authority and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the City and the Authority relating to the subject matter of this Cooperation Agreement that are not fully expressed in this Cooperation Agreement.

- 7.5 **Governing Law and Forum Choice.** All issues and questions concerning the construction, enforcement, interpretation and validity of this Cooperation Agreement, or the rights and obligations of the City and the Authority in connection with this Cooperation Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims and causes of action arising out of or in connection with this Cooperation Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event or any litigation or other proceeding arising from this Cooperation Agreement.
- 7.6 **Modifications.** This Cooperation Agreement may be amended, modified and supplemented only in a manner consistent with the Navy Hill Fund Ordinance and only by the written consent of both the City and the Authority preceded by all formalities and approvals required as prerequisites to the signature by each party of this Cooperation Agreement.
- 7.7 **Interpretation:** This Cooperation Agreement shall be interpreted and construed in a manner consistent with, and conforming to, the interpretation and construction of the Navy Hill Funding Ordinance by the City officials administering the Navy Hill Funding Ordinance. In the event of an actual conflict in the interpretation of the meaning of provisions contained in the Cooperation Agreement and the Navy Hill Funding Ordinance, the provisions of the Navy Hill Funding Ordinance shall control.
- 7.8 **No Assignment.** This Cooperation Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no event may this Cooperation Agreement or any of the rights, benefits, duties or obligations of the parties hereto be assigned, transferred, or otherwise disposed of without the prior written consent of the other, which consent neither party shall be obligated to give. Notwithstanding the foregoing, under the Indenture the Authority may (i) pledge all or part of the Pledged Revenues it receives under this Cooperation Agreement to secure the payment of the debt service on the Bonds, (ii) agree to limit its ability to agree to amendments, modifications and supplements to this Cooperation Agreement without the consent of the owners of the Bonds and (iii) assign to the Trustee the Authority's rights to enforce the City's obligations under this Cooperation Agreement, including the City's obligations under Section 6.1F, to the extent permitted by law.
- 7.9 **No Individual Liability.** No director, officer, employee or agent of the City or the Authority shall be personally liable to another party hereto or any successor in interest

in the event of any default or breach under this Cooperation Agreement or on any obligation incurred under the terms of this Cooperation Agreement.

7.10 **No Third-Party Beneficiaries.** Notwithstanding any provision of this Cooperation Agreement, the City and the Authority hereby agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Cooperation Agreement; (ii) the provisions of this Cooperation Agreement are not intended to be for the benefit of any individual or entity other than the City or the Authority; (iii) no individual or entity shall obtain any right to make any claim against the City or the Authority under the provisions of this Cooperation Agreement; and (iv) no provision of this Cooperation Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors and sub-licensors, regardless of whether such individual or entity is named in this Cooperation Agreement.

7.11 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Cooperation Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service or by registered or certified U. S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the Authority:

Chairman
Economic Development Authority of the City of Richmond, Virginia
2401 West Leigh Street
Richmond, Virginia 23230

with a copy to:

General Counsel
Economic Development Authority of the City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201

Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

Either party may change any of its address information given above by giving notice in writing stating its new address to the other party.

- 7.12 **Public Records.** The City and the Authority acknowledge and agree that this Cooperation Agreement and any other records furnished, prepared by or in the possession of the City or the Authority may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the City and the Authority have executed this Cooperation Agreement as of the day and year written first above.

CITY OF RICHMOND, VIRGINIA
a municipal corporation and political subdivision of
the Commonwealth of Virginia

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

City Attorney

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**
a political subdivision of the Commonwealth of
Virginia

By: _____
Chairman

APPROVED AS TO FORM:

General Counsel

118707647.1

Grant Agreement

NAVY HILL GRANT AGREEMENT

This NAVY HILL GRANT AGREEMENT is entered into as of the _____ day of _____, 2019, by and between the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia (the “City”), the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia (the “Authority”), and The NH District Corporation, a Virginia nonstock corporation (the “Recipient”).

RECITALS

- A. The City seeks to revitalize the downtown community through the development of an identified project area that is currently not utilized to its full market potential, and that results in additional taxable value in both the project area and in surrounding properties, and in connection therewith has entered into a development agreement (the “Development Agreement”) and associated agreements with the Authority and The NH District Corporation, a Virginia corporation (the “Recipient”);
- B. The Recipient is an “exempt organization,” which for purposes of this Cooperation Agreement means it is (i) described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, (ii) exempt from federal income taxation pursuant to section 501(a) of such Internal Revenue Code and (iii) not organized and operated exclusively for religious purposes;
- C. As described in the Development Agreement and the other necessary documents to effect the mixed-use redevelopment, including the design, financing, construction, operation, commercialization and maintenance, the Recipient will be responsible for the design and construction of a new arena to replace the Richmond Coliseum, the rehabilitation and programming of the historic Blues Armory building, and the construction of certain related road projects.
- D. The City is authorized by Section 15.2-953 of the Virginia Code and other laws, and the Authority is authorized by the Industrial Development and Revenue Bond Act, contained in Title 15.2, Chapter 49 of the Virginia Code, and other laws to perform the activities contemplated in this Grant Agreement.
- E. The City, the Authority, and the Recipient now desire through this Grant Agreement to provide for incentives in the forms of the below-defined Property Tax Grant and the Admissions Tax (Incremental) Grant to the Recipient in consideration of the anticipated stimulation of additional economic activity and the anticipated increase in tax revenue to be generated by the aforementioned mixed-use redevelopment.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which all parties hereto acknowledge, and in consideration of the mutual covenants hereinafter set forth, the City, the Authority, and the Recipient, as defined below, agree as follows:

1.0 **Preliminary Provisions.**

1.1 **Purpose.** The purpose of this Grant Agreement is to provide for the payment of grants to the Recipient as inducements for the development, construction, and operation by the Recipient of the public and private components of the mixed-used redevelopment contemplated by the Development Agreement.

1.2 **Definitions.** Words, terms, and phrases used in this Grant Agreement have the meanings ascribed to them by this Section below unless the context clearly indicates that another meaning is intended.

Admissions Tax (Incremental) Grant. “*Admissions Tax (Incremental) Grant*” means the payment of money by the City to the Authority and deposit by the Authority into the Renewal Work Account in accordance with the Arena Lease pursuant to Section 2.1.2 below (“Amount of Admissions Tax (Incremental) Grant”).

Authority. “*Authority*” means the Economic Development Authority of the City of Richmond, Virginia, a political subdivision of the Commonwealth of Virginia.

Arena. “*Arena*” means the new, state-of-the-art arena that the Recipient will design, construct, finance, operate, commercialize, and maintain, all as more fully described in the Arena Lease.

Arena Lease. “*Arena Lease*” means the fully executed Deed of Ground Lease (Arena) between the Authority and the Recipient in the form of Exhibit B-1 to the Development Agreement.

Chief Administrative Officer. “*Chief Administrative Officer*” means the Chief Administrative Officer of the City of Richmond, Virginia.

City. “*City*” means the City of Richmond, Virginia, a municipal corporation and political subdivision of the Commonwealth of Virginia.

City Code. “*City Code*” means the Code of the City of Richmond (2015), as that Code may be amended or recodified in the future.

Cooperation Agreement. “*Cooperation Agreement*” means the fully executed Navy Hill Cooperation Agreement between the Authority and the City in the form of Exhibit A (“Cooperation Agreement”) to the Development Agreement.

Development Agreement. “*Development Agreement*” means the fully executed Navy Hill Development Agreement between the City and the Recipient.

Facility. “*Facility*” means the Arena at all times that the Arena Lease is in effect.

Grant Agreement. “*Grant Agreement*” means this fully executed Grant Agreement.

Property Tax Grant. “*Property Tax Grant*” means a payment of money by the City to the Authority and by the Authority to the Recipient pursuant to Section 2.1.1 below (“Amount of Property Tax Grant”).

Recipient. “*Recipient*” means The NH District Corporation, a Virginia nonstock corporation.

Renewal Work Account. “*Renewal Work Account*” means the account by such name established and maintained by the Developer as prescribed by section 8.4 of the Arena Lease.

Tax Year. “*Tax Year*” means a tax year as defined in section 6.01 of the Charter of the City of Richmond (2019), as amended. [*Consistent with term used in Cooperation Agreement.*]

Virginia Code. “*Virginia Code*” means the Code of Virginia (1950), as that Code may be amended or recodified in the future.

1.3 **Duration.** This Grant Agreement will be in force and effect concurrently with the effective date of the Development Agreement, but in no case earlier than the date written first above, and shall expire when all obligations have been performed and all rights have been fully exercised by the City, the Authority, and the Recipient.

2.0 **Grant.**

2.1 **Types of Grants.**

2.1.1 **Amount of Property Tax Grant.** In any year while the Arena Lease is in effect, the City shall, through the Authority and subject to section 6.1 of the Cooperation Agreement, section 2.3 of this Grant Agreement, and the satisfaction of the conditions set forth in this Grant Agreement, provide the Property Tax Grant to the Recipient. The amount of the Property Tax Grant in any such year shall be equal to the amount of the Recipient’s payment of (i) real property taxes levied by the City pursuant to Section 58.1-3200 et seq. of the Virginia Code on and timely paid by the Recipient, whether based on the City’s assessment of the Recipient’s fee interest or leasehold interest in the Facility, or both, as applicable, (ii) personal property taxes and machinery and tools taxes levied by the City pursuant to Section 58.1-3500 et seq. of the Virginia Code on and timely paid by the Recipient, and (iii) assessor area taxes for use of streets imposed by the City pursuant to Section 24-64 of the City Code on and timely paid by the Recipient.

2.1.2 **Amount of Admissions Tax (Incremental) Grant.** The Admissions Tax (Incremental) Grant is an annual grant in an amount equal to the incremental amount of admissions tax paid for admissions to the Arena pursuant to Chapter 26, Article IX of the City Code, as that ordinance may be amended from time to time, that is attributable to any increase in the admissions tax rate beyond the rate that applies to the Arena for the Tax Year commencing January 1, 2019. The City’s Director of Finance shall calculate the amount of admissions taxes assessed, levied, and timely paid to the City on admission to the Arena within 30 days following the end of the Fiscal Year in which such taxes were

received. Subject to section 6.1 of the Cooperation Agreement, section 2.3 of this Grant Agreement, and the satisfaction of the conditions set forth in this Grant Agreement, the City shall furnish the Authority with funds in the amount so calculated within 60 days following the end of the Fiscal Year in which such taxes were received, and subject to section 6.2.1 of the Cooperation Agreement, the Authority shall deposit the Admissions Tax (Incremental) Grant in the Renewal Work Account in accordance with the Arena Lease.

2.2 Disbursement of Grant.

2.2.1 Request for Payment of Grant.

- A. As a prerequisite to any obligation by the City and the Authority to pay the Property Tax Grant or the Admissions Tax (Incremental) Grant, the Recipient must request payment of the Property Tax Grant or the Admissions Tax (Incremental) Grant consistent with this Grant Agreement.
- B. The Recipient may request payment of the Property Tax Grant and the Admissions Tax (Incremental) Grant for a Tax Year, either or both, once (i) the Recipient has received or had to submit assessments, applications, coupons, returns, or tax bills applicable to a Tax Year of greater than \$0.00 for any of the taxes described in Section 2.1 and (ii) the Recipient has ensured that the City timely has received full payment of the Recipient's taxes for that Tax Year based on the assessments, applications, coupons, returns, or tax bills for such taxes.
- C. The Recipient shall request payment of the Property Tax Grant and the Admissions Tax (Incremental) Grant, either or both, for that Tax Year only by submitting a written request to the City asking that the Property Tax Grant and the Admissions Tax (Incremental) Grant, either or both, be paid for that Tax Year and including all of the following:
 - 1. A copy of each assessment for that Tax Year;
 - 2. A copy of each application, coupon, return, or tax bill submitted or received for that Tax Year; and
 - 3. Evidence from the Recipient's bank or other payor that the City received payment for each such tax bill.

2.2.2 Procedure Upon Receipt of Request. After the City receives the Recipient's written request pursuant to Section 2.2.1(C), the City will determine whether the City has received the requisite tax payments for that Tax Year. If the City determines that the City has received the requisite tax payments for that Tax Year, the City, subject to any required City Council action, including any necessary budget amendment or appropriation of funds, then will request the Authority to provide the Recipient with or deposit into the Renewal Work Account the annual installments of the Property Tax Grant and the Admissions Tax (Incremental) Grant determined in accordance with and subject to the limits contained herein, and shall provide funds to the Authority sufficient for the Authority to provide the

annual installment of the Property Tax Grant to the Recipient and deposit the Admissions Tax (Incremental) Grant into the Renewal Work Account, as applicable. Upon receipt of such funds from the City, the Authority will promptly pay the Property Tax Grant to the Recipient and deposit the Admissions Tax (Incremental) Grant into the Renewal Work Account, as applicable.

2.2.3 Procedure Upon Refund of Taxes Paid. Should the Recipient pay any tax described in section 2.1 and later receive a refund from the City of all or any portion of the tax so paid:

- A. Any grant the calculation of which is based in whole or in part on that tax shall be reduced by the amount of such refund, including any interest the City has paid on the refunded amount;
- B. If the Authority has not yet paid the grant to the Recipient or into the Renewal Work Account, as applicable, the Authority shall deduct the amount of such refund, including any interest the City has paid on the refunded amount, from the amount paid to the Recipient or into the Renewal Work Account, as applicable, and promptly remit that deducted amount to the City; and
- C. If the Authority has already paid the grant to the Recipient or into the Renewal Work Account, as applicable:
 - 1. The Recipient shall pay the City, either from its own funds or from the Renewal Work Account, as applicable, the amount of such refund, including any interest the City has paid on the refunded amount; or
 - 2. If the Recipient has not paid the City as set forth in subsection (C)(1) of this section by the time the Authority makes its next payment to either the Recipient or the Renewal Work Account pursuant to this Grant Agreement, the Authority shall deduct from that next payment the amount of such refund, including any interest the City has paid on the refunded amount, and promptly remit that deducted amount to the City.
- D. The Recipient, for itself or for the Renewal Work Account, shall not have any claim or entitlement to any amount that the Recipient pays the City or that the Authority deducts and remits to the City in accordance with this section, and the Authority, the City, and the Recipient shall proceed under this Grant Agreement in all respects as though the Recipient neither owed nor paid taxes in the amount of the taxes refunded, including any interest the City has paid on the refunded amount.

2.3 Subject to Appropriations. All payments and other performances by the City and the Authority under this Grant Agreement are subject to approval by the City Council and annual or periodic appropriations therefor by the City Council. It is understood and agreed between the City, the Authority, and the Recipient that the City and the Authority shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purposes of performing this Grant Agreement. Under no circumstances

shall the City's total liability under this Grant Agreement exceed the total amount of the funds appropriated by the City Council for the City's performance of this Grant Agreement.

3.0 Miscellaneous Provisions.

3.1 Captions. This Grant Agreement includes the captions, headings, and titles appearing herein for convenience only, and such captions, headings, and titles do not affect the construal, interpretation, or meaning of this Grant Agreement or in any way define, limit, extend, or describe the scope or intent of any provisions of this Grant Agreement.

3.2 Counterparts. This Grant Agreement may be executed by the City, the Authority, and the Recipient in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same Grant Agreement.

3.3 Entire Agreement. This Grant Agreement contains the entire understanding between the City, the Authority, and the Recipient and supersedes any prior understandings and written or oral agreements between them respecting this subject matter. There are no representations, agreements, arrangements, or understandings, oral or written, between the City, the Authority, and the Recipient relating to the subject matter of this Grant Agreement that are not fully expressed in this Grant Agreement.

3.4 Governing Law and Forum Choice. All issues and questions concerning the construction, enforcement, interpretation, and validity of this Grant Agreement, or the rights and obligations of the City, the Authority, or the Recipient in connection with this Grant Agreement, shall be governed by, and construed and interpreted in accordance with, the laws of the Commonwealth of Virginia, without giving effect to any choice of law or conflict of laws rules or provisions, whether of the Commonwealth of Virginia or any other jurisdiction, that would cause the application of the laws of any jurisdiction other than those of the Commonwealth of Virginia. Any and all disputes, claims, and causes of action arising out of or in connection with this Grant Agreement, or any performances made hereunder, shall be brought, and any judicial proceeding shall take place, only in the Circuit Court of the City of Richmond, Virginia. Each party shall be responsible for its own attorneys' fees in the event of any litigation or other proceeding arising from this Grant Agreement.

3.5 Modifications. This Grant Agreement may be amended, modified, and supplemented only by the written consent of the City, the Authority, and the Recipient preceded by all formalities required as prerequisites to the signature by each party of this Grant Agreement.

3.6 No Agency, Joint Venture, or Other Relationship. Neither the execution of this Grant Agreement nor the performance of any act or acts pursuant to the provisions of this Grant Agreement shall be deemed to have the effect of creating between the City, the Authority, and the Recipient, or any of them, any relationship of principal and agent, partnership, or relationship other than the relationship established by this Grant Agreement.

3.7 No Assignment. This Grant Agreement shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto; provided, however, that in no

event may this Grant Agreement or any of the rights, benefits, duties, or obligations of the parties hereto be assigned, transferred, or otherwise disposed of without the prior written consent of the other parties, which consent no party shall be obligated to give.

- 3.8 **No Individual Liability.** No director, officer, employee, or agent of the City, the Authority, or the Recipient shall be personally liable to another party hereto or any successor in interest in the event of any default or breach under this Grant Agreement or on any obligation incurred under the terms of this Grant Agreement.
- 3.9 **No Third-Party Beneficiaries.** Notwithstanding any other provision of this Grant Agreement, the City, the Authority, and the Recipient hereby agree that: (i) no individual or entity shall be considered, deemed, or otherwise recognized to be a third-party beneficiary of this Grant Agreement; (ii) the provisions of this Grant Agreement are not intended to be for the benefit of any individual or entity other than the City, the Authority, and the Recipient; (iii) no individual or entity shall obtain any right to make any claim against the City, the Authority, and the Recipient under the provisions of this Grant Agreement; and (iv) no provision of this Grant Agreement shall be construed or interpreted to confer third-party beneficiary status on any individual or entity. For purposes of this section, the phrase “individual or entity” means any individual or entity, including, but not limited to, individuals, contractors, subcontractors, vendors, sub-vendors, assignees, licensors, and sub-licensors, regardless of whether such individual or entity is named in this Grant Agreement.
- 3.10 **No Waiver.** The failure of the City, the Authority, or the Recipient to insist upon the strict performance of any provision of this Grant Agreement shall not be deemed to be a waiver of the right to insist upon the strict performance of such provision or of any other provision of this Grant Agreement at any time. The waiver of any breach of this Grant Agreement shall not constitute a waiver of a subsequent breach.
- 3.11 **Notices.** All notices, offers, consents, or other communications required or permitted to be given pursuant to this Grant Agreement shall be in writing and shall be considered as properly given or made if delivered personally, by messenger, by recognized overnight courier service, or by registered or certified U.S. mail with return receipt requested, and addressed to the address of the intended recipient at the following addresses:

A. To the Authority:

Chairman
Economic Development Authority of the City of Richmond, Virginia
2401 West Leigh Street
Richmond, Virginia 23230

with a copy to:

General Counsel
Economic Development Authority of the City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

B. To the City:

Chief Administrative Officer
City of Richmond, Virginia
900 East Broad Street, Suite 201
Richmond, Virginia 23219

with a copy to:

City Attorney
City of Richmond, Virginia
900 East Broad Street, Suite 400
Richmond, Virginia 23219

C. To the Recipient:

The NH District Corporation
PO Box 280
Richmond, Virginia 23218
Attention: President

with a copy to:

Hunton Andrews Kurth LLP
951 East Byrd Street
Richmond, Virginia 23219
Attention: John D. O'Neill, Jr.

Each party may change any of its address information given above by giving notice in writing stating its new address to the other parties.

- 3.12 **Public Records.** The City, the Authority, and the Recipient acknowledge and agree that this Grant Agreement and any other records furnished, prepared by, or in the possession of the Authority or the City may be subject to the retention and disposition requirements of the Virginia Public Records Act and the public disclosure requirements of the Virginia Freedom of Information Act.
- 3.13 **Audit by City Auditor.** The Recipient acknowledges that the Grant is funded by an appropriation by the City Council of the City of Richmond, Virginia. To the extent required by Section 2-187 of the City Code, the Recipient shall be subject to periodic audits by the City Auditor on demand and without notice of its finances and expenditures of the Grant. In addition, the Recipient shall afford the City access to all records relating to the expenditure of monies from the Grant, wherever located, for such examination and audit by the City as the City may desire. The Recipient shall afford the City the opportunity to make copies of any records that the City has the rights under this section to access, examine, and audit.

IN WITNESS WHEREOF, the City and the Authority have executed this Cooperation Agreement as of the day and year written first above.

CITY OF RICHMOND, VIRGINIA
a municipal corporation and political subdivision of
the Commonwealth of Virginia

By: _____
Chief Administrative Officer

APPROVED AS TO FORM:

City Attorney

**ECONOMIC DEVELOPMENT AUTHORITY
OF THE CITY OF RICHMOND, VIRGINIA**
a political subdivision of the Commonwealth of
Virginia

By: _____
Chairman

APPROVED AS TO FORM:

City Counsel

THE NH DISTRICT CORPORATION
a Virginia nonstock corporation

By: _____

Title: _____