



Navy Hill Development Project Legal Safeguards & Protections

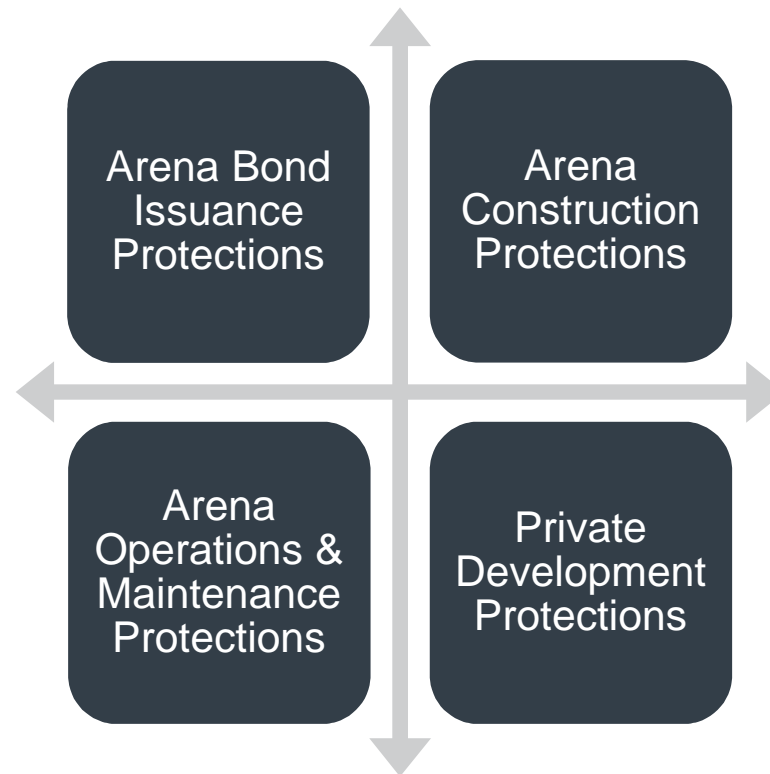
Richmond City Council Work Session, October 28, 2019

**Orrick, Herrington & Sutcliffe, LLP
External Legal Counsel to the City of Richmond, VA**

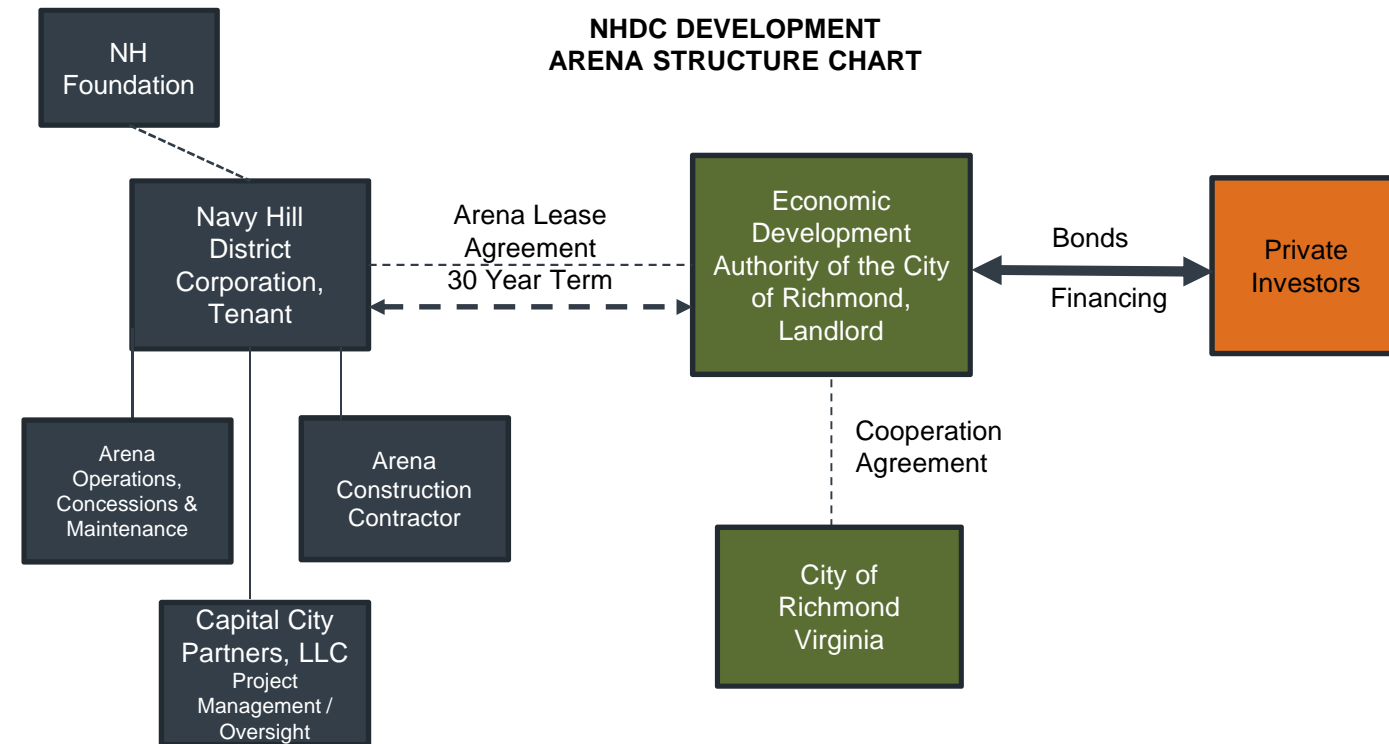
Darrin Glymph, Esq. & Matthew Neuringer, Esq.



Overview of Legal Protections



Arena Contractual Structure



Bond Issuance Protections

Navy Hill Development Project



Arena Bond Issuance Protections



- Conditions Precedent to Bond Issuance – Development Agreement Section 6.1(c)
 - All Performance Security and insurance is in place for the Arena
 - Construction Contractor & Operations & Maintenance Contractor are in place
 - Guaranties are in place
 - Room Block Agreement and other key contracts for the Hotel are in place
 - Demolition and other constructions plan approved
 - Site condition reports have been provided in compliance with the Lease
 - \$15.8 million private development purchase price has been placed into escrow
 - \$150 million private development equity commitments secured under a market standard and firm commitment equity contribution agreement
 - \$290 million in private development debt has been committed through formal term sheets
 - Obligations pertaining to the GRTC and Social Services Office are satisfied
 - \$10 million for Affordable Housing has been demonstrated

Bond Issuance Protections



- Failure to issue the bonds within 180 days of execution of the Arena lease will result in a default under the Development Agreement and the City may terminate the agreements
(Section 4.3 Development Agreement)
- To support repayment of the Bonds NHDC is required to pay all Sponsorship Revenues up to \$2.8 million annually to the EDA for repayment of the bonds
(Section 3.9 Arena Lease)
- Bonds will be issued as special obligation bonds, secured and repaid solely from revenues identified in Navy Hill Fund ordinance and Cooperation Agreement and are non-recourse (without moral or legal obligation) to the EDA and the City.
(Section 6.1(a) Development Agreement)

Construction Protections

Navy Hill Development Project



Arena Construction Protections



- Conditions Precedent to Commencement of Construction (**Arena Lease Section 7.4**)
 - Receipt of Final Construction Documents
 - Construction Contract has been executed
 - Copies of all plans (demolition, health and safety, quality management, risk, etc.)
 - Regulatory Approvals received
 - Insurance
 - Financial Close has been achieved

Arena Construction Protections



- Performance Security (**Section 7.6 Arena Lease**)
 - Guaranty
 - Performance Bond & Payment Bond
 - Retainage
- Payment of Development Management Fee tied to performance
(**Section 6.5 Development Agreement**)

Arena Construction Protections



- Project Schedule (**Section 7.1 Arena Lease**)
 - Substantial Completion Deadline
 - Liquidated Damages
- Design Oversight & Quality Control
 - Landlord Project Monitor – (**Section 7.3 of the Arena Lease**)
 - Submittals – (**Section 7.2 of the Arena Lease**)
 - Benchmark Requirements / Final Construction Documents
- Performance Criteria / Technical Requirements
- Construction Contract Drop-down requirements (step-in rights, limitations, etc.) (**Section 7.13 Arena Lease**)

Construction Requirements



- Unknown Site Conditions (**Definitions & Section 16.2 Arena Lease**)
 - Unknown Site Condition Contingency
 - Allowance / Remedial Plan
- Conditions to Substantial Completion (**Section 7.14 Arena Lease**)
 - Inspection by Landlord Monitor that work is complete in accordance with Benchmark Requirements
 - All required governmental approvals are in effect
 - OM&C Contract and plans are completed and verified by EDA / City
 - City Use Agreement completed and agreed between the Parties
 - Operational manuals provided to EDA for step-in purposes
 - Establishing the Renewal Work Account
- Title to Improvements (**Section 7.11 Arena Lease**)

Operations & Maintenance Protections

Navy Hill Development Project



Operations & Maintenance



- OM&C Plan (**Section 8.1 Arena Lease**)
 - Routine Maintenance
 - Renewal Work
- Renewal Work Reserve Account (**Section 8.4 Arena Lease**)
 - License Fees (\$1m at year 10 and year 20)
 - \$500,000 annual contribution from the Developer net operating income is equal to or greater than \$1 million
 - \$500,000 from City net excess parking revenue (after all City expenses are satisfied for parking during each City fiscal year)
 - Amounts in such account cannot be withdrawn without City approval
- OM&C Contractor cannot be changed without City approval (**Section 8.5 Arena Lease**)
- Handback Requirements (**Article 29 Arena Lease**)
 - Minimum required standard for handback (minimum of 5-year additional useful life)
 - Developer required to assist in transition to new operator

Arena Default Provisions



- Tenant Events of Default (**Article 19 Arena Lease**)
 - Failing to Commence Construction within 8 months of the lease execution
 - Failure to achieve Substantial Completion
 - Impermissible Assignment
 - Insurance, guarantees, performance security no longer in effect
 - Insolvency of Developer or major contractors
 - Major Contractors terminated

City Rights Upon Breach or Termination



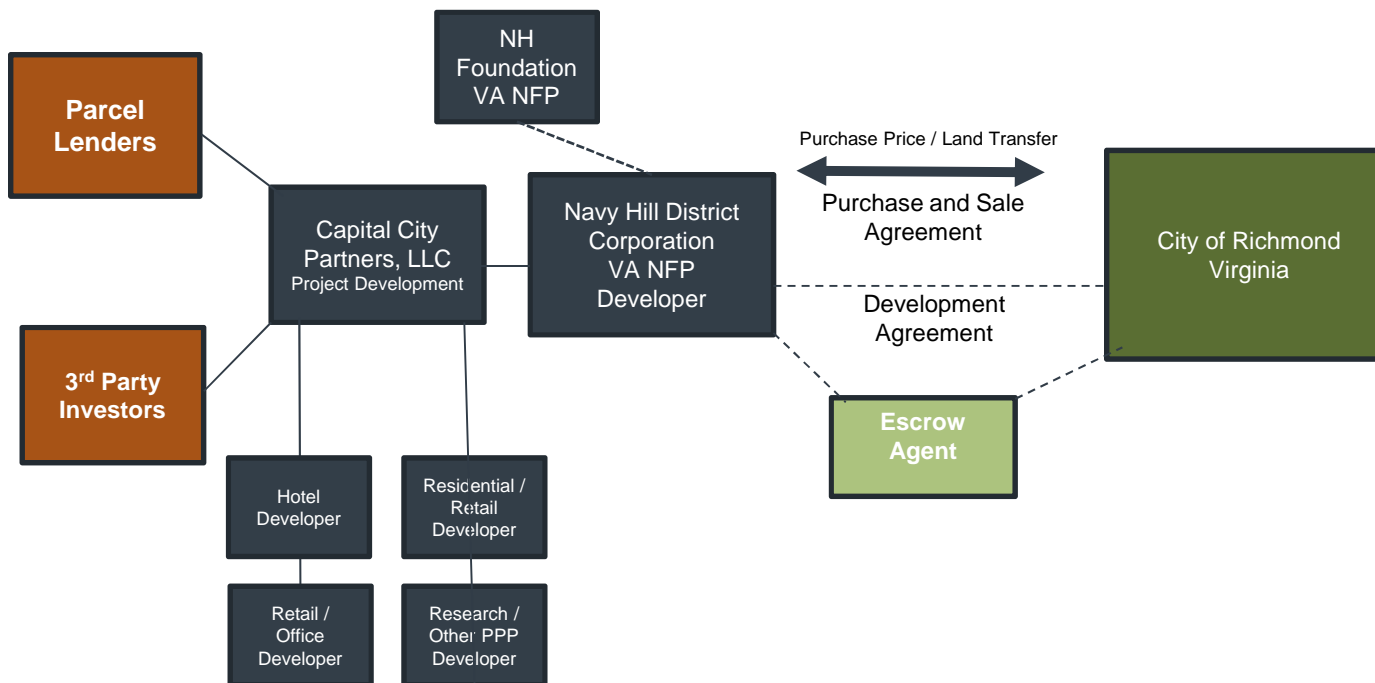
- Audit / Inspection Rights (**Section 37 Arena Lease**)
- Step-in Rights (**Article 18 Arena Lease**)
- Subcontractor Direct Agreement (**Exhibit E Arena Lease**)
- Termination (**Section 20.4 Arena Lease**)
- Surrender of Premises (**Article 29 Arena Lease**)

Private Development Protections

Navy Hill Development Project



Private Development Legal Structure



Private Development Implementation Protections



- Master Plan Implementation – (**Sections 2.2 & 4.8**)
- Conditions to Financial Close – (**Section 6.1(c)**)
- Developer Performance Security / Closing (**Section 4.2 & 3.6**)
- Performance & Payment Bond (**Section 4.3(a) & Exhibit O**)
- Project Schedule / Submittals Schedule (**Section 4.3 & 4.6**)

Private Development Implementation Protections



- Construction & Use Covenants – (**Sections 4.1(a) & Exhibit R**)
- Hotel Use Covenant– (**Exhibit N**)
- Affordable Housing Covenant (**Exhibit M**)
- Project Schedule / Submittals Schedule (**Section 4.3 / 4.6**)
- Project Reporting Manager / Key Personnel (**Section 4.15**)

GRTC & Social Security Office



- **GRTC Requirements** (Section 2.2(g) & Schedule C)
 - Development at NHDC cost
 - Condition to Financial Close on Bonds –
Key Commercial Terms to Lease to be Agreed
 - Lease to be agreed and sent to FTA w/in 12 months
- **Department of Social Services Office** (Section 2.2(i))
 - Must assist City in finding suitable location
 - Condition Precedent to Block I Financial Close
 - City Retains Purchase Price for Block I if DSS not successful

Affordable Housing Commitment & Performance Targets



- 480 Affordable Housing Units required to be constructed (**Section 6.4**)
- \$10 million commitment, where only 280 are directly constructed (**Section 6.4**)
- Equitable Implementation of Affordable Housing Units (**Section 10.2**)
- Emerging Small Business and Minority Business Enterprise \$300 million commitment (**Section 10.3-10.4**)

Events of Default & Recourse



- **Developer Events of Default (Section 11.1)**
 - Non-Payment
 - Failure to timely achieve closing on any Private Development Parcel
 - Commencement of Construction of Private Development or Road Project has not timely commenced
 - Insolvency
 - Breach of the Assignment Provision
 - Breach of Construction or Use Covenants
 - Breach of Memorandum of Development Agreement
- **City Remedies (Section 11.3)**
 - Reversion of Parcels during Construction
 - Equitable enforcement of Hotel or Affordable Housing Covenant
 - Termination

Questions?

