

Date: October 1, 2024

To: The Honorable Luke E. Torian
Chair, Virginia House Appropriations Committee

The Honorable L. Louise Lucas
Chair, Virginia Senate Finance and Appropriations Committee

From: Marlon F. Levy, M.D., MBA
Interim Chief Executive Officer, Virginia Commonwealth University (VCU) Health System
Authority, and Interim Senior Vice President for Health Sciences, VCU

Re: Item C-14.B., 2024 Appropriations Act

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Introduction

Item C-14.B. of the 2024 Appropriations Act directs the VCU Health System Authority (“**VCUHSA**”) to pursue termination of payments to be made by the VCUHSA to the City of Richmond (“**City**”) under the terms of a development agreement between the City and Capital City Partners, LLC (“**CCP**”). The directive reads:

B. Virginia Commonwealth University Health System Authority shall pursue to terminate payments to be made by the Authority to the City of Richmond under the terms of a Multi-Party Agreement dated July 15, 2021.¹ No later than October 1, 2024, the Authority shall provide a report to the Chairs of the House Appropriations and Senate Finance and Appropriations Committees as to the feasibility and/or the status of the termination of such agreement.

Background

The City entered into the March 30, 2021 Development Agreement (“**CCP Agreement**”) with CCP in order to secure CCP’s commitment to the following: (i) the construction of an office tower, at a cost of no less than \$325,000,000.00; (ii) the creation of certain construction jobs by CCP; and (iii) CCP’s provision of certain job benefits during the construction of the building. CCP agreed to construct the building and to provide these other benefits in exchange for the City’s agreement to convey the property (on which the building would be constructed) to CCP for \$3,520,456.00. That property is commonly known as the Public Safety Building land located at 500 North 10th Street (“**Property**”).

¹ The Development Agreement by and between the City and CCP is dated March 30, 2021. VCUHSA assumes that the Appropriations Act intended to reference the March 30, 2021 Development Agreement.

The CCP Agreement also obligated CCP to ensure that the building generated a certain amount of tax revenue to the City. The required amount of real estate property tax revenue is set forth in Exhibit G to the CCP Agreement. In the event the City collected less real estate property taxes than stipulated in Exhibit G, then CCP had to make up the difference (“**Tax Deficiency Payment**”). Article 9 of the CCP Agreement imposed the following obligations on CCP:

- Section 9.1 states that upon conveyance of the Property to CCP, the Property shall be subject to taxation.
- Section 9.2, titled “In-Lieu Of Payments,” states that if the Property or portions of the Property or improvements are not subject to taxation for any reason, CCP shall pay to the City annually an amount equal to what the real estate taxes would be if the entire Property and improvements were subject to taxation at regular tax rates.
- Section 9.3, titled “Real Estate Tax Revenues; Guaranty of Payment,” states that CCP anticipates that the “real estate revenues the City receives” will be no less than the amounts shown on Exhibit G of the Development Agreement—the “Anticipated Minimum Real Estate Tax Revenues.” A copy of Exhibit G to the CCP Agreement is attached hereto as **Exhibit 1**.
- Section 9.3 further specifies the date by which the payments will be paid and states that on June 5th of each year, CCP will pay the City “an amount equal to the amount by which the Anticipated Minimum Real Estate Tax Revenues exceed the Actual Tax Revenues, if any.”
- Section 9.3 also provides that as a condition precedent to closing, “[CCP] shall delegate to VCUHSA, and VCUHSA shall fully assume, [CCP’s] obligation contained in this section 9.3...” The closing referenced is the closing between CCP and the City for the City’s conveyance of the Property to CCP.
- Section 9.3 references a form agreement, called a “Delegation and Assumption Agreement,” between CCP and VCUHSA that CCP was required to get VCUHSA to sign. CCP obtained VCUHSA’s signature to the required form Delegation and Assumption Agreement.
- Section 9.4 states that Sections 9.1, 9.2, and 9.3 of the CCP Agreement do not apply to public right-of-way or on any land donated to and accepted by the City, provided that the City is fee simple owner of such land.

After the City and CCP closed their deal, CCP was unable to meet the performance requirements contained in the CCP Agreement. CCP was not able to provide the parking required for the office tower and the soils on the City’s land could not support the planned office tower at the estimated budget cost. As a result, the City declared CCP to be in default.

As now well-publicized, CCP was not able to construct the building on time and on budget. CCP’s building did not materialize to provide the benefits the City sought and the property tax revenue the City wanted. Thus, the Property reverted back to City ownership.

VCUHSA also demolished the old Public Safety Building. This demolition work was recently completed. With the Property now ready for use, the media reported that the Greater Richmond Transit Company (“**GRTC**”) has now selected the Property as its primary choice for a new GRTC bus transfer station.² Notably, use of the Property as a bus transfer station will not generate real estate taxes for the City.

² See “GRTC selects former Public Safety Building site for new bus transfer station,” Richmond Biz Sense, August 30, 2024, available at <https://richmondbizsense.com/2024/08/30/grtc-selects-former-public-safety-building-site-for-new-bus-transfer-station/>.

Actions Taken

In December of 2023, VCUHSA reached out to the City in an effort to resolve the dispute between them as to whether VCUHSA has an obligation to pay the Tax Deficiency Payment. Since that time, VCUHSA has participated in at least five (5) separate meetings with the City's Administration leadership on this topic. (This does not include numerous other meetings related to the issues that arose during demolition of the building, etc.) These meetings occurred on the following dates:

- December 5, 2023,
- December 20, 2023,
- February 5, 2024 (during the 2024 Regular General Assembly session),
- June 3, 2024, and
- June 13, 2024.

Over the course of these five (5) meetings and in a conversation between legal counsel for both City and VCUHSA, VCUHSA worked in good faith to understand the City's position with respect to the Tax Deficiency Payment and to propose solutions that would be acceptable to both parties. One of those proposals was the sale of the Property to VCUHSA. Unfortunately, the City and VCUHSA were unable to reach an agreement.

On June 4, 2024, VCUHSA informed the City that VCUHSA would not be making a Tax Deficiency Payment on June 5, 2024 given the instruction in the budget provision that "Virginia Commonwealth University Health System Authority shall pursue to terminate payments to be made by the Authority to the City of Richmond...."

On June 12, 2024, the City delivered a default notice to VCUHSA.

Status

The City's position remains that VCUHSA is obligated to make the Tax Deficiency Payment. The City asserts that without most of the value being paid, City Council will not approve any agreement related to the Tax Deficiency Payment. VCUHSA's position remains that it is not obligated to pay the Tax Deficiency Payment. VCUHSA's statutory mission is to provide care to the City's most vulnerable citizens, not to subsidize government revenue because of CCP's failure to create a revenue-generating project. The City has already received significant value from the Property, including approximately \$3,500,000.00 in cash from CCP and \$4,200,190 in savings from VCUHSA's demolition of the building.

VCUHSA staff is available to answer any questions that staff or members may have.

cc: Anne Oman, Staff Director, Virginia House Appropriations Committee
April Kees, Staff Director, Virginia Senate Finance & Appropriations Committee
Andrea Peeks, Analyst, Virginia House Appropriations Committee
Tyler Williams, Analyst, Virginia Senate Finance & Appropriations Committee