

Industrial Development Authority of the City of Lexington, Virginia

Wednesday, January 9, 2019, 5:30 p.m.

City Hall, Second Floor Meeting Room

300 East Washington Street

1. Call to Order – Dick Halseth, IDA Vice Chairman
2. Annual Election of IDA Officers – Josh Elrod, City Attorney
 - a. Election of Chairman
 - b. Election of Vice Chairman
 - c. Election/Appointment of IDA Secretary
 - d. Election/Appointment of IDA Treasurer
3. Approval of Minutes
 - a. IDA meeting, Thursday, June 14, 2018*
 - b. IDA meeting, Monday, June 18, 2018*
 - c. IDA meeting, Friday, July 27, 2018*
 - d. IDA meeting, Wednesday, August 8, 2018*
 - e. IDA meeting, Monday, August 13, 2018*
 - f. IDA meeting, Wednesday, October 17, 2018*
4. Overview of the role, responsibility and functions of the IDA and IDA members – Daniel Lauro, IDA Attorney*
5. Conflict of Interest – Josh Elrod, City Attorney and Daniel Lauro, IDA Attorney*
6. Annual Financial Disclosure Forms – Josh Elrod, City Attorney and Daniel Lauro, IDA Attorney*

7. Role of the IDA in reviewing the Virginia Horse Center financial statements, Daniel Lauro, IDA Attorney and Gary Swink, IDA Treasurer*
8. Discussion and consideration of the Borrowers Term Sheet and Post Issuance Compliance Policy, Daniel Lauro, IDA Attorney*
9. Adjourn –

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Thursday, June 14, 2018, 5:00 p.m.

IDA:

Present: James Joyner, Chair
Buddy Derrick
Anna-Lisa Fitzgerald
Katie Shester
Bruce Summers

Absent: Nick Charles
Dick Halseth

Also present:

Staff: Noah Simon, Secretary
Gary Swink, Treasurer
Josh Elrod, City Attorney
Sandra Thomas, Virginia Horse Center
John Nicholson, Virginia Horse Center
Stephanie Wilkinson, Main Street Lexington
Steve McAllister, Washington & Lee Univ.
E. Loubon, Christian & Barton, L.L.P.

The Industrial Development Authority (IDA) met on June 14, 2018 in the Community Meeting Room of City Hall. Vice-Chair James Joyner called the meeting to order at 4:58 p.m.

Minutes from the Monday, March 26, 2018 IDA Meeting

Buddy Derrick moved to approve the minutes from the March 26, 2018 Industrial Development Authority meeting. B. Summers seconded. The motion carried unanimously (4/0).

Update on the Virginia Horse Center

John Nicholson, Chief Executive Officer of the Virginia Horse Center (VHC), provided the following updates:

- Received favorable comments on the aesthetic improvements that have been made to the facility
- The VHC hosted the Lexington Spring Premier and the Lexington Spring Encore with a new show manager and management team. They were pleased with both shows and J. Nicholson said that the new management team is more responsive to the desires of the management of VHC.
- The Shenandoah Classic is next week and is the fourth largest saddle bred show in the United States
- The Mid-Atlantic Reigning is a new event that will take place in July
- The VHC is still working with the United States Department of Agriculture (USDA)

B. Derrick asked J. Nicholson to show the difference between the shows at the VHC. J. Nicholson explained that the VHC owns the dates for a number of shows and there are a few significant ones; the Lexington Spring Premier, the Lexington Encore, the Lexington National, the Bonnie Blue and the Shenandoah Classic. The VHC manages these shows, receives the entry fees, disburses the prize money and receives the stall fees, while other shows lease the VHC facility and the VHC receives a fee for each ring and stall used.

Sandra Thomas, Chief Financial Officer of the VHC, gave an overview of the April financial statements and highlighted that the May financial statements will show a better reflection of the year and the VHC is performing better than it did last year.

Update on Launch Lex

Stephanie Wilkinson, Executive Director of Main Street Lexington (MSL), provided an update on the LaunchLex program as follows:

- MSL provided an eight week training session to prospective businesses downtown with the goal being to fill empty store fronts downtown and to encourage new businesses
- There were more than thirty applicants for the LaunchLex program, twenty-four business students with twenty completing the program
- There was a panel of judges put in place to evaluate the final business plans and chose the finalists to give their pitch at the competition
- There were 200-300 people in attendance and four contestants were awarded checks to help offset the costs of their businesses and of the four, two are in the phase of starting and the other two should select locations next week
- There are businesses who did not win that are also opening locations downtown

B. Summers said that he was a judge on the panel and it was a real challenge to select winners and that he has never been to such an engaged event. He also added that he was glad to support the program. S. Wilkinson said that MSL had to go through an extensive process to get the grant and one of the things ae very eager to see is that this program is only done once and that this program continues.

Public Hearing on the Resolution of the Industrial Development Authority of the City of Lexington, Virginia Authorizing the Issuance of Educational Facilities Revenue and Refunding Bonds (Washington and Lee University), Series 2018

Steve McAllister, Vice President for Finance and Treasurer at W&L, provided background on the Resolution is as follows:

The University has requested that the Industrial Development Authority of the City of Lexington, Virginia (the (the “Authority”) issue its Educational Facilities Revenue and Refunding Bonds (Washington and Lee University), Series 2018 (the “2018 Bonds”), in an aggregate principal amount not to exceed \$51,250,000, and to loan the proceeds of such 2018 Bonds to the University to assist the University in:

- (a) financing any or all of the following capital improvements, renovations or replacements, all located on the University’s campus in the City of Lexington, Virginia, including: (1) the renovation, construction and equipping of Woods Creek Apartments, including but not limited to an upgrade and/or replacement of the mechanical systems of the three buildings, modification and improvements of exteriors, energy efficiency enhancements, and interior revitalizations, to include

new kitchens and baths and improved furnishings and finishes, and (2) the acquisition, construction and equipping of the Duchossois Athletic and Recreation Center, along with the rebuild of the current Warner Center including but not limited to the renovation and expansion of the existing Fitness Center, new locker rooms, the development and renovation of four sport courts including the competition venue, the development of a new Athletics Hall of Fame, four squash courts, three racquetball courts, and indoor golf simulation and putting spaces (together, the “2018 Project”);

(b) refunding all or a portion of the \$15,000,000 Variable Rate Educational Facilities Revenue Bonds (Washington and Lee University), Series 2015B (the “2015B Bonds”), issued by the Virginia College Building Authority and originally issued to (i) finance various capital improvements at the University, primarily consisting of the construction and equipping of apartment and townhouse-style buildings for student housing, and (ii) pay costs of issuing the 2015B Bonds;

(c) refunding all or a portion of the Authority’s \$15,000,000 Educational Facilities Revenue Bonds (Washington & Lee University), Series 2010 (the “2010 Bonds”), originally issued to (A) finance various capital improvements at the University, including certain (x) projects associated with the University’s Energy Master Plan, (y) various capital projects from the University’s Annual Capital Projects, ranging from small renovations to investments in technology to infrastructure improvements and replacements of furniture and fixtures, and (z) certain renovations and infrastructure improvements, including replacement of the artificial turf athletic field, modifications to DuPont Hall, development of a classroom at Early Fielding, replacement of air handling units at Lewis Hall, modifications to Northen Auditorium, and addressing space needs as the Colonnade is renovated and/or improving the visitor experience at the University, and (B) pay costs of issuance of the 2010 Bonds; and

(d) financing costs of issuance, funded interest, if any, and reserves, if any, with respect to the 2018 Bonds.

The University has advertised a public hearing before the Authority as required by state and federal law for the 2018 Project. The Authority will conduct the public hearing and consider approving the financing on June 14, 2018, and thereafter will make a report of the public comments and its recommendation to the City Council of the City of Lexington on June 21, 2018. It is anticipated that the financing will be completed by the end of July 2018.

As usual in transactions of this nature, the 2018 Bonds will not constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia or the City of Lexington.

- Discussion and consideration by the Industrial Development Authority of the City of Lexington, Virginia on the request from Washington and Lee University (W&L), for the Authority to issue revenue and refunding bonds, and loan the proceeds thereof to the

University for the financing and refinancing of certain Projects defined in the City Manager's report –

B. Summers asked S. McAllister to elaborate how the University sees Lexington benefitting. S. McAllister explained that the athletic facility is used by people within the community and, if approved, this request allows W&L to expand the facility and add a new gym. B. Summers thanked W&L for thinking of the City during this process. Director Swink said that the City benefits by large projects that increase business licenses, sales tax and meals tax.

A. Fitzgerald asked if W&L would be extending the sidewalk from the apartments to around the library. S. McAllister explained that while it is not part of the project, they have it on their radar. A. Fitzgerald asked about public use of the sports facility and if that is something known to the public. S. McAllister said that scheduling is done through athletics and while he does not see them altering the process much, having more space gives them the opportunity for the facilities to be more available.

Eric Loubon of Christian & Barton, L.L.P., serving as bond counsel for W&L, introduced himself and offered his availability for questions or explanations. E. Loubon also stated that the public hearing advertisement was published in the News Gazette for two successive weeks. Director Swink and City Manager Simon said that they have read through the documents and found no issues.

- Public Hearing –

Chair Joyner said that he also read through the documents and noticed a recommendation for approval of the resolution and opened the public hearing at 5:27 p.m., hearing none, Chair Joyner closed the public hearing at 5:28 p.m.

- Vote on the attached resolution and authorization of the Secretary or Assistant Secretary of the Authority to make reports of the public hearing to the City Council of the City of Lexington –

B. Derrick moved to approve Resolution RES2018-06, a Resolution Authorizing the Issuance of Educational Facilities Revenue and Refunding Bonds (Washington and Lee University), Series 2018, by the Industrial Development Authority of the City of Lexington, Virginia and Related Matters. B. Summers seconded K. Shester abstained from voting due to her employment with W&L. The motion passed (4/0).

June 18, 2018 IDA Meeting Overview

City Manager Simon said that the next IDA meeting will take place on June 18, 2018 in the second floor meeting room of City Hall. The IDA will receive a presentation from Daniel Lauro of Botkin and Rose, PLC on roles and responsibilities of the IDA and a discussion on the development of procedures and practices.

Adjournment

B. Summers made a motion to adjourn the meeting at 5:31 p.m. A. Fitzgerald seconded. Motion carried unanimously (5/0).

Dick Halseth, IDA Vice-Chair

Noah A. Simon, Secretary

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Thursday, June 18, 2018, 5:00 p.m.

IDA:

Present: James Joyner, Chair
Nick Charles
Buddy Derrick
Dick Halseth
Katie Shester
Bruce Summers

Also present:

Staff: Noah Simon, Secretary
Gary Swink, Treasurer
Jani Hostetter, Clerk
Daniel Lauro, BotkinRose, PLC

Absent: Anna-Lisa Fitzgerald

The Industrial Development Authority (IDA) met on June 18, 2018 in the Community Meeting Room of City Hall. Chair James Joyner called the meeting to order at 4:58 p.m.

Presentation by Daniel Lauro, BotkinRose, PLC on the role of the IDA and IDA members

Daniel Lauro of BotkinRose, PLC gave a presentation to the IDA on their roles, responsibilities and liabilities as IDA members.

B. Summers asked if there were any IDAs that tried to market their powers outside of their localities. D. Lauro explained that there is not any marketing due to a conduit having to come to their localities IDA or Economic Development Authority (EDA) before reaching out to other localities. He continued by saying that if that locality declines to participate in the conduit financing, then they are able to go to another locality. K. Shester asked if a conduit does not accept the application fee, can they go to another locality. D. Lauro explained that the code states that the conduit has to use their locality with the exception of refinancing. K. Shester asked if the City of Lexington IDA switched from charging a onetime fee to charging an annual fee, could a conduit get a bond through the City and then refinance with another locality. D. Lauro said that situation happens frequently and that it may not be to get out of annual payments, but it may be less expensive.

Adjournment

Chair James Joyner adjourned the meeting at 6:04 p.m.

D. Halseth, IDA Vice-Chair

Noah A. Simon, Secretary

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Friday, July 27, 2018, 5:00 p.m.

IDA:

Present: Dick Halseth, Vice-Chair
Buddy Derrick
Anna-Lisa Fitzgerald
Katie Shester
Bruce Summers

Also present:

Staff: Noah Simon, Secretary
Jani Hostetter, Clerk
Leigh Ann Claywell, Virginia Horse Center

Absent: Nick Charles
James Joyner, Chair

The Industrial Development Authority (IDA) met on July 27, 2018 in the Community Meeting Room of City Hall. Vice-Chair Dick Halseth called the meeting to order at 5:00 p.m.

City Manager Simon said that Tammi Hellwig was appointed by the City Council to serve on the IDA but she has not been sworn in and until that happens, James Joyner's appointment will continue. Once T. Hellwig has been sworn in, J. Joyner's term will end.

Consideration of a revised Virginia Horse Center (VHC) debt refinancing request

Background on the request is as follows:

In October 2017 City staff updated the IDA and City Council regarding the VHC plans to refinance a \$741,900 loan held by New River Bank (NRB). At that time the VHC was planning to take out a temporary loan with Cornerstone Bank to refinance the NRB debt until such time as they could permanently refinance through the USDA. The VHC, at that time had been working with the USDA for well over a year on this refinancing. The VHC has continued to work with USDA even since the temporary Cornerstone financing was secured. The hope was to not only refinance the approximately \$750,000, but to secure an additional amount of debt to use for maintenance projects, namely storm water management. One of the conditions of USDA for any new financing is that the almost \$605,000 required as a debt service reserve (for the original USDA loans) be fully funded before any new loan would be approved.

In order to proceed as the USDA was requesting, the USDA would have required the debt service reserve to be funded from the proceeds of the new loan. This was a non-starter in the eyes of the VHC, as they would have been borrowing funds, and paying interest, for funds to set in an escrow account. City and County staff have been working with the VHC and USDA for a solution. A solution that all parties believe will resolve the issue would require the City to fund our lodging taxes collected on behalf of the VHC in a manner different from the methodology prescribed in the current MOA with the VHC. Currently, lodging taxes distributed to the VHC are placed in a

restricted bank account on a monthly basis as the taxes are collected. The contemplated solution going forward would be for both the County and the City to fund budgeted tax collections on a semi-annual basis in July and January. Any difference between actual collections and the amount already funded would be adjusted in the following year's July payment. This would require a minor modification to the MOA between the City and the VHC. Since the County presently handles their portion of the tax collections differently, they will need to approve a more significant change in their agreement. They have the matter on the agenda for both their EDA and Board of Supervisor meetings and it was approved on Monday, July 23, 2018.

As the VHC has considered their options, they have decided to refinance the debt through a loan from Cornerstone, rather than pursuing financing through the USDA. The rationale for their change in direction is explained in their attached letter to the USDA. Also attached is an "Assignment of Tax Distribution", with the changes noted which Cornerstone will require. A copy of the current MOA among the VHC, the IDA, and the City is attached for your review.

- Discussion and consideration revised Virginia Horse Center debt refinancing request –
B. Derrick recused himself from the consideration of the VHC request due to his position on the VHC Board.

B. Summers asked for clarification on the debt structure of the loan and who the lenders are. Leigh Ann Claywell, Chief Operations Officer of VHC, explained that the lender would be Cornerstone Bank and if they were to borrow from USDA, VHC would have to obtain it on any additional construction on any capital improvements. City Manager Simon said that the current loan through USDA is approximately \$11 million. He also explained that the reason the VHC is pursuing this path is because the terms of the USDA loan would require an extension of the additional tax and requires the full funding of the reserve account.

L. Claywell explained that the City already puts funds in an account that can only be used to pay the debt structure and the VHC has to ask Rockbridge County to do the same to ensure that it is fully funded. D. Halseth asked if there was a balloon on the note with Cornerstone Bank, to which L. Claywell said there was not. K. Shester asked if the reason that the City and IDA would agree to this is because the City does not want to extend the tax agreement, to which L. Claywell confirmed. City Manager Simon explained that the localities do not want to make any commitments to the extension of the additional tax at this time, so this is a way for the VHC to get additional funding/financing that they need for their capital improvements that have been identified as necessary and critical.

D. Halseth asked if the \$750,000 from Cornerstone Bank for improvements is separated into different budgets for each item it will be used for. L. Claywell explained that those items have not been fully identified yet. She continued by saying that with the USDA loan

the VHC had to lay out how they would use the funds and are limited to those items, and with the Cornerstone Bank loan they will not be limited, but will still focus on stormwater management, LED lighting and other items. B. Summers confirmed that the Cornerstone Bank loan does not have a balloon note. L. Claywell confirmed that the loan they are requesting is will not have a balloon note.

B. Summers referred to the language regarding the debt service reserve fund and said that while he supports it, his understanding is that the City would be making an advance to the VHC based on uncollected tax receipts. City Manager Simon said that would be accurate, except what the City is doing is funding that account in advance. B. Summers asked if the City was not funding the account from the tax receipts, specifically associated with the 1% tax, to which City Manager Simon confirmed. City Manager Simon explained that when the tax comes in, it pays back the bucket of money used to do that. B. Summers asked if this would be an advance from the City to the VHC based on uncollected tax receipts, to which City Manager Simon confirmed. City Manager Simon explained that the amount is based on 100% of budgeted collections.

B. Summers asked if the City and the County would be helping the VHC and suggested adding the following language, "in consideration of its agreement to advance uncollected tax payments, the VHC agrees to pay the City \$1 annually." City Manager Simon said that the IDA could recommend that language to City Council. He also explained that if the IDA and City Council approve the request, then staff will amend the agreement the City has so that this particular action is reflected in that agreement, so that if someone goes back and looks at the agreement it is consistent. The IDA discussed the wording of the agreement.

The following two recommendations were sent to City Council by the IDA:

The two recommendations are to add the following language "or words to this effect":

1. "In consideration of the City's agreement to advance uncollected tax proceeds to the VHC, the VHC agrees to compensate the City in the amount of \$1.00 annually."

The idea here is to increase transparency by making it clear that the City is providing VHC with a (uncompensated) new financial benefit, and to establish that the VHC recognizes that this benefit is valuable.

2. "This approval to advance uncollected tax proceeds will expire no later than the currently scheduled July 31, 2024, expiration of the 1 percent occupancy tax."

The idea here is to avoid potential unintended consequences of approving an open-ended loan and cash management practice whose purpose is tied to a specific and time-constrained set of circumstances.

- Vote on the revised Virginia Horse Center debt refinancing request –
B. Summers moved to approve revised Virginia Horse Center debt refinancing request. K. Shester seconded. The motion passed (4/0).
- Vote on the two recommendations to City Council on the revised Virginia Horse Center debt refinancing request –
B. Summers moved to approve the two recommendations to City Council on the revised Virginia Horse Center debt refinancing request. K. Shester seconded. The motion passed (4/0).

Adjournment

Vice-Chair Dick Halseth adjourned the meeting at 5:28 p.m.

Dick Halseth, IDA Vice-Chair

Noah A. Simon, Secretary

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Wednesday, August 8, 2018, 5:00 p.m.

IDA:

Present: Dick Halseth, Vice-Chair
Nick Charles
Buddy Derrick
Tammi Hellwig
Katie Shester
Bruce Summers

Also present:

Staff: Noah Simon, Secretary
Gary Swink, Treasurer
Jani Hostetter, Clerk
Sandra Thomas, Virginia Horse Center
John Nicholson, Virginia Horse center

Absent: Anna-Lisa Fitzgerald

The Industrial Development Authority (IDA) met on August 8, 2018 in the Community Meeting Room of City Hall. Vice-Chair Dick Halseth called the meeting to order at 5:00 p.m.

Vice-Chair Dick Halseth introduced new IDA member Tammi Hellwig. IDA members and City staff introduced themselves and Tammi Hellwig gave a brief introduction of herself.

Consideration of a revised Virginia Horse Center (VHC) debt refinancing request

City Manager Simon provided background on the request is as follows:

It has been requested to attempt to clarify several issues surrounding the City's transfer of lodging taxes through the IDA to the Virginia Horse Center (VHC) and the request associated with their refinancing. Let me begin with a discussion of the VHC's debt structure.

The VHC's debt outstanding to the USDA as of May 31, 2018 (latest interim financial statement) was \$10,128,837. The loan bears interest at 4.125% and is due in annual installments of \$604,555 ending on February 15, 2047. Payments on the loan are made from the lodging taxes collected by the localities.

The original loan documents required the establishment of a debt service reserve that would eventually equal \$604,555. The Commonwealth of Virginia required that this be fully funded from loan proceeds in 2007. Subsequently, former VHC management used these funds to cover operating deficits. In 2015 the VHC entered a "workout agreement" with the USDA, with one of the conditions being that the VHC had until February 15, 2020 to fund the required debt service reserve. This is the provision that is driving the request for the change in the timing of funding of lodging tax collections.

In July 2015 the VHC borrowed \$450,000 from Cornerstone Bank to be used for deferred maintenance projects. The loan was at 6% interest. Principal and interest payments on the loan have been paid from the lodging tax collections. The final payment on this loan was made on June 15, 2018.

The VHC had two loans with New River Valley Bank bearing interest at 5.5%. The outstanding principal at June 30, 2014 was \$826,546. The loans had a balloon payment of approximately \$750,000 due on January 15, 2018. Until his death, a benefactor of the VHC was servicing the debt. The VHC refinanced the debt with Cornerstone Bank on November 15, 2017 with a one-year, (renewable for an additional year), \$750,000 loan, bearing interest at 5%. This loan is being refinanced with the new \$1,500,000 loan from Cornerstone Bank. The new loan will be at a seven year fixed rate of 5.85%, with ten year amortization period, with a “balloon” payment at the end of the seven year period. It is anticipated that the debt service for this loan will be paid out of lodging tax collections.

The VHC also has a \$150,000 loan from a board member, bearing no interest. The purpose of the loan was for working capital. The VHC also has a \$150,000 operating line of credit (LOC) with Cornerstone Bank. As of August 2, 2018 the outstanding balance of the LOC was \$150,000 and bears an interest rate of prime plus 2% (currently 7%). Both of these loans will be repaid with cash that Cornerstone currently holds as security for the \$750,000 loan that will be released once the new \$1.5 million loan is closed. Neither interest nor debt service payment of these two loans will be paid out of lodging taxes.

The City collects two percent lodging tax (as does the County) for the express purpose of servicing the original USDA debt. State statute authorizes this additional lodging tax (over the statutory limit) and extends for the entire duration of the debt until 2047. There is no limit on the amount of the two percent collection. The City’s collection of the two percent amounted to \$137,138.73 in fiscal year 2018. The City also began collecting another one percent tax for the VHC in 2014. Although originally for a shorter period, the City’s current agreement with the VHC to collect the one percent expires in 2024. Between now and 2021, there is no cap on the amount of this one percent. Beginning in 2021, the amount of these collections is capped at \$61,000 annually. For FY 2018 the City collected \$68,569.37 for the one percent. Total collections for the VHC were \$205,708.10.

Presently, the City remits the collections in a particular month to the VHC in the following month-essentially passing through collected taxes on a cash accounting basis. The funds are deposited into a restricted bank account by the VHC. Funds can only be withdrawn from the account with the City’s permission. Authorized expenditures from the account include: “any past due amounts owed to the USDA for the existing debt; the annual debt service payment made to the USDA for the existing debt; replacement of the USDA debt service reserve (if required); and, capital maintenance items for upkeep and improvement of the facilities existing at the time of execution of this agreement (10/28/2015). We get a copy of the bank statement so we can monitor the account.

Previously the County has not been remitting their lodging tax collections directly to the VHC. Instead, they have been remitting their portion (based on lodging tax collections) of debt service directly to the loan provider. The solution reached with the USDA for the funding of the debt service reserve will require the County to set up a restricted bank account and handle their tax collections in a manner similar to the City. The VHC's request is for both the City and County to transfer funds twice a year (July and January) based upon expected (budgeted) collections- essentially changing from the current pass through of cash to an extension of credit, whereby the City would provide cash to VHC based on estimated but uncollected tax proceeds. At the end of the year, actual collections are to be compared to the amounts transferred and any overage or shortfall will be offset in the following July's remittance. Neither the City nor the County will be ensuring that their funding is adequate to always have \$604,555 remaining in the account. That responsibility is incumbent upon the VHC; however, USDA plans to require their approval prior to any withdrawals from the account. The USDA will be able to require the VHC to take remedial actions if sufficient funds aren't available to cover debt service requirements after each required debt repayment.

Projections by the VHC indicate this is the only way the requirement can be met without proceeds of a loan being used for this purpose. This being the case, their request for the funding change is for the duration of the USDA debt (until 2047). The VHC used in their projections, 100% of the amount collected. The VHC does not propose to compensate the City for this accelerated access to cash based on the City's funding VHC's account based on uncollected tax proceeds.

Adopting this change means the City (IDA) would be accepting a certain amount of risk and the loss of use of funds (investment income). The risk would be that if lodging taxes abruptly fell below budgeted levels, the City would pre-fund monies that wouldn't be collected in that fiscal year; however, the shortfall would be offset in the next payment. Additionally, in all likelihood, the City would budget less collections the following year, thereby, lowering the transfer to the VHC even further. I consider this a fairly small risk. In attempting to quantify this risk, let's consider the effect of lodging taxes falling 15% below budgeted levels. The City would, in that case, fund approximately \$30,000 more than we would collect, which would be deducted from the following July's payment. Due to the offset of shortages and transfers being based upon budget, the risk is a short-term one, rather than a long-term risk. As far as the effect upon the loss of potential interest earnings, I estimate this amount to be approximately \$1,000 annually at current interest rates. An additional risk would be that lodging taxes could drop in the future such that sufficient funds weren't available to service the USDA debt plus maintain the required debt service reserve. In that case, political pressure might be brought to bear upon the localities to potentially extend the period of time that they collect the additional one percent of lodging taxes for the VHC. An additional risk is whether the VHC through improved operating results and fund raising effort will be able to meet future capital needs.

Lastly, City staff believe that any long-term plan for the success of the VHC must include a strong, state partnership (in which the state provides funding), a long-term capital program to ensure the viability and

competitiveness of the facility are maintained and a solid plan to increase utilization of the facility to generate necessary revenues.

- Discussion and consideration revised Virginia Horse Center debt refinancing request –
J. Nicholson apologized for any confusion and explained that the entire process has been many years in the making. He said that the management team has discussed efforts to keep the VHC going for many years to come and explained what the funds are used for.

K. Shester asked about the debt service reserve fund and if the VHC puts \$5,000 a month into the fund, is it okay if they have not reached the full \$604,555. S. Thomas provided background on where the VHC is in respect to debt and the approvals of the USDA, Rockbridge County and the certain approvals from the City. She explained that a requirement of the agreement was to fund a debt service reserve fund at \$5,000 a month. S. Thomas said that the past management of the VHC did not follow the rules and used the \$604,555 to fund operations and one of the requirements now is that the debt service reserve fund be fully funded. She said in order for the loan to be approved by USDA, VHC must have \$604,555 in the fund accounts and they must show a way that it will remain that way for the life of the loan (2047). S. Thomas explained what would happen if the City or County changed the way they funded the VHC or the collections were insufficient to keep the VHC at the appropriate level.

K. Shester asked if the VHC uses the debt service reserve fund to pay off the debt. S. Thomas said yes and explained that the USDA is paid annually. K. Shester asked if in the absence of a natural disaster, how the VHC would ever find the account insufficient. S. Thomas said that once the County funds the amount they have already collected, the VHC would have that money, but it continues to accumulate and then in February the VHC will have to pay out the \$604,555. She said that what the City and County collect for occupancy tax goes into the account and what comes out is the USDA payment, the quarterly principle Cornerstone Bank payments and the annual principle Cornerstone Bank payments. Director Swink explained that if collections remained at the current level after the annual payment is made, then the account balance would fall below \$604,555.

B. Summers said that this debt service reserve fund is different from ones he has encountered, because with the VHC fund, transactions are taking place. S. Thomas said that it is a transactional account, but only for USDA payments and the Cornerstone Bank loan. City Manager Simon explained that purpose for their trip to Washington D.C. was to try and convince the USDA to reduce the interest rate on the loan and they would not reduce the rate, but brought forward the idea of getting another loan through them. K. Shester asked for clarification on the revised letter submitted to the IDA and asked what funds would the City advance through 2027. S. Thomas explained that by the statute of the Commonwealth of Virginia, 2% of occupancy tax are designated for debt service funds at VHC and by local ordinance, an additional 1% is designated for debt service funds at VHC. She said that from now until 2024 when the 1% expires, the VHC

is looking for the City and County to advance the budgeted 3% and then after 2024 they would advance the 2% in the statute.

B. Summers said that ideally when establishing a debt reserve, it is just there in the event of something happening beyond the VHCs control. He said that this fund is not exactly that because it is being funded and drawn down on an annual basis. B. Summers asked what other ways the VHC has investigated to fully fund the debt service reserve fund in addition to this one. S. Thomas explained that the VHCs focus in on operations, making themselves competitive and so all of the focus has been on that not setting money aside to not be used. J. Nicholson explained that the original plan was to have a lower interest rate and they explored that and ultimately the plan was rejected by the USDA. B. Summers asked if their focus was on ongoing operations using any available funds to make a success of the VHC and not on establishing a restricted capital account for use of the debt reserve fund. J. Nicholson said that it would be the judgement of the VHC Board and explained that raising money to sustain their operations is not always easy to do.

B. Summers asked that if the City Council agrees to the current request from the VHC, why it needs to be irrevocably approved for 29 years. S. Thomas explained that it is not irrevocable and for the VHC to show projections of the life of the loan they have to have the revised funding. B. Summers asked why the Cornerstone loan is designed as a balloon payment loan. S. Thomas said that Cornerstone Bank is viewing the additional 1% as part of the collateral and the projections show that the VHC is expecting to collect much more in coming years. Director Swink further explained the balloon payment loan through Cornerstone Bank. B. Summers asked what the size of the balloon payment was, to which S. Thomas said that it was \$500,000.

D. Halseth asked how this request was different from the one approved by the IDA a couple weeks ago. City Manager Simon explained that conceptually it is the same thing with more accurate and current information. D. Halseth asked for clarification on if the additional \$7,000 would go to City coffers after the 1% is capped at \$61,000, but the projections show \$68,000. Director Swink explained that the \$61,000 cap kicks in at 2021 and after 2021 the 1% will not exceed \$61,000 anything after that will stay in the City coffers.

City Manager Simon said that it was best to reconvene so the IDA would have more clarity on the request. B. Summers read the two requests from J. Nicholson's August 6, 2018 letter and suggested taking them one by one. Director Swink asked if what is being provided as collateral is what is being provided in those two restricted accounts, to which S. Thomas confirmed. Director Swink said that if the money is not in the restricted account, then it cannot be used as collateral. Discussion ensued between the IDA, City staff and VHC regarding the \$61,000 cap and B. Summers suggested deferring the decision until the IDA gets the specific two requests in writing. B. Derrick reminded the IDA that the IDA has already voted to recommend approval to City Council and the IDA could rescind their approval. City Manager Simon recommended that VHC could clarify the issue with

Cornerstone so that the cap is reflected in the various documents and the IDA could reconvene in person with that item and the resulting action would then be sent to City Council.

D. Halseth confirmed that the IDA would reconvene on August 13, 2018 at 5:00 p.m.

K. Shester said that it was still unclear to her why the promise needed to extend to 2047 and asked if the VHCs projections already account for operations being fully funded. J. Nicholson said yes, but reminded her that it would not happen right away and explained the extension. City Manager Simon said that the 2% occupancy tax would be collected until 2047 and the additional 1% would be collected until 2024 and beginning in 2021, it will be capped at \$61,000.

B. Summers asked what the IDA needs to have an efficient and final meeting and said that he thinks there needs to be two recommendations finalized and clarification from the bank what it is expecting in terms of collateral. City Manager Simon said that the IDA's recommendation has not been forwarded to City Council and suggested rescinding the motion made on July 27, 2018 at the meeting on August 13, 2018. He said that based on the actions the IDA takes on August 13, 2018, he will send the information to City Council. D. Halseth asked that the language be put into a statement so the IDA can make a motion, to which City Manager Simon agreed but said that they may not get the information until Monday.

City Manager Simon read the two motions suggested by B. Summers at the July 27, 2018. K. Shester added two requests for information; the past occupancy tax revenues of the 1% and 2% and the 2016 Memorandum of Understanding. Director Swink suggested language for the Cornerstone agreement for clarification. The IDA agreed on Director Swink's suggestion and provided direction to S. Thomas to pursue that change in language.

Adjournment

Vice-Chair Dick Halseth adjourned the meeting at 6:00 p.m.

Dick Halseth, IDA Vice-Chair

Noah A. Simon, Secretary

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Monday, August 13, 2018, 5:00 p.m.

IDA:

Present: Dick Halseth, Vice-Chair
Nick Charles
Buddy Derrick
Tammi Hellwig
Katie Shester
Bruce Summers

Also present:

Staff: Noah Simon, Secretary
Gary Swink, Treasurer
Josh Elrod, City Attorney
Sandra Thomas, Virginia Horse Center
John Nicholson, Virginia Horse center

Absent: Anna-Lisa Fitzgerald

The Industrial Development Authority (IDA) met on August 13, 2018 in the Community Meeting Room of City Hall. Vice-Chair Dick Halseth called the meeting to order at 5:00 p.m.

Consideration of a revised Virginia Horse Center (VHC) debt refinancing request

The proposed motions are as follows:

1. Rescind actions taken at the July 27th IDA meeting
2. Authorize the City Manager to execute the Assignment of Tax Distribution and a revised Memorandum of Agreement incorporating changes requested by the VHC. Assignment of Lodging Tax Proceeds, as defined below, collected by the City of Lexington and the County of Rockbridge insofar as they exceed the required debt service on a mortgage held by USDA. Lodging Tax Proceeds are defined as that amount that is collected pursuant to the 2% authorized under Section 58.1-3825 of the Code of Virginia applicable to both Rockbridge County and the City of Lexington plus that amount that is collected by the County of Rockbridge pursuant to the additional 1% that is authorized through July 2024 plus that amount that is collected by the City of Lexington pursuant to the additional 1% that is authorized through Fiscal Year 2024 provided that the amount from the City of Lexington for Fiscal Year 2020 through Fiscal Year 2024 is limited to the lesser of actual collections or \$61,000 annually.
3. I move that the Industrial Development Authority of Lexington, in consideration of the City's agreement to advance uncollected tax proceeds to the Virginia Horse Center, the Virginia Horse Center agrees to compensate the City in the amount of \$1.00 annually. (The idea here is to increase transparency by making it clear that the City is providing VHC with

a (uncompensated) new financial benefit, and to establish that the VHC recognizes that this benefit is valuable. – Bruce Summers)

The Memorandum of Agreement Revision is as follows:

Collection and Payment of Funds: An amount equal to the receipts from this additional tax plus the receipts collected from the dedicated tax since the last USDA debt payment will be deposited directly into a restricted bank account (restricted account) twice a year, in July and January based on budgeted lodging tax collections. The difference between the actual collections will be added or subtracted to the next July payment. Such funds will be restricted solely for the uses authorized by this MOA.

Collateral:

Assignment of Lodging Tax Proceeds, as defined below, collected by the City of Lexington and the County of Rockbridge insofar as they exceed the required debt service on a mortgage held by USDA. Lodging Tax Proceeds are defined as that amount that is collected pursuant to the 2% authorized under Section 58.1-3825 of the Code of Virginia applicable to both Rockbridge County and the City of Lexington plus that amount that is collected by the County of Rockbridge pursuant to the additional 1% that is authorized through July 2024 plus that amount that is collected by the City of Lexington pursuant to the additional 1% that is authorized through Fiscal Year 2024 provided that the amount from the City of Lexington for Fiscal Year 2020 through Fiscal Year 2024 is limited to the lesser of actual collections or \$61,000 annually.

- Discussion and consideration revised Virginia Horse Center debt refinancing request – K. Shester asked if the motion had an end date to the prepayment of the 2%, to which City Manager Simon said no. D. Halseth asked if the VHC in the term of the loans, if they had to claim bankruptcy, and are using the 1% and the land as collateral and went bankrupt before 2024, does the City and County still have to collect those taxes. City Manager Simon said that he believes the taxes would no longer be collected. Director Swink and City Attorney Elrod added that unless the City has entered into an agreement in advance, they cannot be bound by the characterization in the letter from Cornerstone Bank and offered to look at the issue more closely.

B. Summers said that the MOA suggests that the City is not obliged to continue to making payments to service the debt of the VHC. K. Shester reminded the IDA that no one from the City is signing the Cornerstone Bank loan. B. Derrick said that the question is whether we want to recommend this to the City Council or not. B. Summers said that for future clarity, he would like for Cornerstone Bank to understand paragraph H in the MOA.

- Vote on the revised Virginia Horse Center debt refinancing request –
K. Shester moved to rescind actions taken at the July 27th IDA meeting. B. Summers seconded. N. Charles and T. Hellwig recused themselves due to being absent at the meeting where the original vote took place. B. Derrick recused himself due being on the VHC Board. The motion passed (3/0).

N. Charles made a motion to approve the following two motions:

Authorize the City Manager to execute the Assignment of Tax Distribution and a revised Memorandum of Agreement incorporating changes requested by the VHC. Assignment of Lodging Tax Proceeds, as defined below, collected by the City of Lexington and the County of Rockbridge insofar as they exceed the required debt service on a mortgage held by USDA. Lodging Tax Proceeds are defined as that amount that is collected pursuant to the 2% authorized under Section 58.1-3825 of the Code of Virginia applicable to both Rockbridge County and the City of Lexington plus that amount that is collected by the County of Rockbridge pursuant to the additional 1% that is authorized through July 2024 plus that amount that is collected by the City of Lexington pursuant to the additional 1% that is authorized through Fiscal Year 2024 provided that the amount from the City of Lexington for Fiscal Year 2020 through Fiscal Year 2024 is limited to the lesser of actual collections or \$61,000 annually.

The Industrial Development Authority of Lexington, in consideration of the City's agreement to advance uncollected tax proceeds to the Virginia Horse Center, the Virginia Horse Center agrees to compensate the City in the amount of \$1.00 annually.

The motion died for a lack of a second.

D. Halseth made a motion to authorize the City Manager to execute the Assignment of Tax Distribution and a revised Memorandum of Agreement incorporating changes requested by the VHC. Assignment of Lodging Tax Proceeds, as defined below, collected by the City of Lexington and the County of Rockbridge insofar as they exceed the required debt service on a mortgage held by USDA. Lodging Tax Proceeds are defined as that amount that is collected pursuant to the 2% authorized under Section 58.1-3825 of the Code of Virginia applicable to both Rockbridge County and the City of Lexington plus that amount that is collected by the County of Rockbridge pursuant to the additional 1% that is authorized through July 2024 plus that amount that is collected by the City of Lexington pursuant to the additional 1% that is authorized through Fiscal Year 2024 provided that the amount from the City of Lexington for Fiscal Year 2020 through Fiscal Year 2024 is limited to the lesser of actual collections or \$61,000 annually.

N. Charles seconded. B. Derrick recused himself due being on the VHC Board. K. Shester said that it is still unclear to her why the motion is needed for the long run, but she will support it. The motion passed (5/0).

D. Halseth moved that the Industrial Development Authority of Lexington, in consideration of the City's agreement to advance uncollected tax proceeds to the Virginia Horse Center, the Virginia Horse Center agrees to compensate the City in the amount of \$1.00 annually.

K. Shester seconded. B. Derrick recused himself due being on the VHC Board. The motion passed (5/0).

Adjournment

Vice-Chair Dick Halseth adjourned the meeting at 5:16 p.m.

Dick Halseth, IDA Vice-Chair

Noah A. Simon, Secretary

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Friday, October 17, 2018, 5:00 p.m.

IDA:

Present: Dick Halseth, Vice-Chair
Felicia Bush
Nick Charles
Tammi Hellwig
Katie Shester
Bruce Summers

Also present:

Staff: Noah Simon, Secretary
Gary Swink, Treasurer
Jani Hostetter, Clerk
J. Elrod, City Attorney
Daniel Lauro, BotkinRose, PLC

Absent: Buddy Derrick

The Industrial Development Authority (IDA) met on October 17, 2018 in the Community Meeting Room of City Hall. Chair Dick Halseth called the meeting to order at 5:00 p.m.

City Manager Simon introduced new IDA member Felicia Bush. IDA members and City staff introduced themselves and Felicia Bush gave a brief introduction of herself.

Consideration of proposal from Daniel R. Lauro, Botkin Rose, PLC as Bond Counsel –

The scope of services is as follows:

As legal counsel to the IDA, I would serve as legal counsel to the IDA when the IDA is acting as a conduit issuer in conduit bond financings. As IDA Counsel in a conduit bond financing, I would be responsible to coordinate legal requirements with the IDA, City, and representatives of the IDA and City, including public notices, public meetings, and governing body approvals, conduct legal due diligence, review documents prepared by the conduit borrower's bond counsel, travel and attend any IDA meetings, if requested, and render our law firm's opinion regarding IDA matters at closing. This includes my availability, whether by phone, electronic correspondence, and/or attendance in person, to the IDA, City, and its representatives to provide guidance and lend expertise during the entire conduit financing process. In addition to conduit financings, I would provide legal services to the IDA on an as-requested basis. For example, such tasks could include drafting a Borrower Term Sheet, drafting Post-Issuance Tax Compliance Procedures, and advising the IDA related to economic development matters, such as grant programs.

The legal fees are as follows:

Our legal counsel services are billed at our normal hourly rates for the attorneys at BotkinRose PLC, which vary in range up to \$295 per hour for all time expended by counsel in connection with the representation, including time traveling to meetings. All rates are subject to periodic increases which generally occur on an annual basis at the start of a new year. In addition, our firm bills for

actual out-of-pocket expenses, such as postage, overnight delivery charges, mileage (if required), and costs of transcripts. My current hourly rate is \$295 per hour.

For work on behalf of the IDA in a conduit financing, it is customary for the conduit borrower to pay the IDA counsel fees, particularly if such a requirement is listed in a Borrower Term Sheet of the IDA. As you requested, I would estimate \$500 or less to draft a Borrower Term Sheet and \$1,500 or less to draft Post-Issuance Tax Compliance Procedures.

- Discussion and consideration on the proposal from Daniel R. Lauro, Botkin Rose, PLC as Bond Counsel –

F. Bush asked who served as bond counsel for the City before. City Manager Simon said that the City Attorneys provide counsel. B. Summers asked D. Lauro if there was a range of fees for his services and if City staff would still sign off on the work being done by D. Lauro. D. Lauro said that Botkin Rose, PLC does not use a flat fee, they give a quote that does not typically exceed \$7,500 and will bill less if necessary and they do provide a detailed invoice. City Manager Simon explained that D. Lauro would not be doing any of the work unless authorized by City staff. Director Swink gave an example of when a bond counsel would have been useful to the City of Lexington.

D. Halseth tabled the vote until after the discussion of policies and procedures.

Authorization to develop IDA policies and procedures for conduit financing and IDA member training –

City Manager Simon explained that the IDA would ask D. Lauro to assist in developing policies and procedures and at the next IDA meeting he would return and lead the IDA in discussion going through those policies and procedures. He also said that in addition to that, D. Lauro would also provide training to members of the IDA on a regular basis. City Manager Simon said that these items do include a fee that would be paid out of the IDA funds.

- Discussion and consideration on the authorization to develop IDA policies and procedures for conduit financing and IDA member training –

D. Halseth asked if some of the policies and procedures were similar to other IDAs. D. Lauro explained that for some of the policies and procedures like the borrower term sheet and the post issuance tax compliance procedures are in a form-like format. D. Halseth asked D. Lauro what his plan of attack would be for processing the policies and procedures. D. Lauro said that it would depend on when the IDA would want him to come back, but he would start the procedures and bring them to the next meeting for the IDA to adopt them, but the borrower term sheet would require some discussion of the IDA to decide on amounts. He said that he can have the borrower term sheet prepared with blank spaces for the amounts the IDA decides on.

D. Halseth asked if D. Lauro would help the IDA and let them know what other IDAs are doing. D. Lauro agreed and said that they may need to consider what they want to do and why in terms of amounts. D. Halseth asked if Rockbridge County has policies and procedures. D. Lauro explained that the County has policies and procedures, but he is unsure if their Economic Development Authority has them. Director Swink gave an example as to why a post issuance compliance policy is important to the City and the IDA. B. Summers suggest that all of the IDA should try and be at the next meeting.

IDA Minutes –

City Manager Simon explained that City staff does keep IDA minutes and all IDA minutes are available in the City Clerk’s office and at some point in the future, will also be online. He also said that due to the frequency of recent meetings, the minutes are a little behind, but will be available for review in advance of the next IDA meeting.

Vote on the proposal from Daniel R. Lauro, Botkin Rose, PLC as Bond Counsel –

B. Summers moved to accept the proposal from Daniel R. Lauro, Botkin Rose, PLC as Bond Counsel. T.Hellwig seconded. F. Bush asked if the City looked at any other firms to compare, to which City Manager Simon said no, because the City has done work them before and their reputation is outstanding. The motion passed (6/0).

Vote on the authorization to develop IDA policies and procedures for conduit financing and IDA member training –

N. Charles moved to authorize the development IDA policies and procedures for conduit financing and IDA member training. B. Summers seconded. The motion passed (6/0).

Launch Lex Update –

City Manager Simon shared that Virginia Governor Ralph Northam came to Lexington and visited the LaunchLex businesses. He said that four business were awarded funds from the pitch completion and an additional three have also opened, totaling in seven new businesses downtown.

T. Hellwig asked if the IDA considers ways to support existing businesses. City Manager Simon said that Main Street Lexington does check in with existing business and have a number of initiatives under way. B. Summers asked what the IDAs contribution to the LaunchLex program, to which City Manager Simon confirmed the IDA contributed \$10,000. D. Halseth asked how much the total project budget was, to which City Manager Simon said \$60,000. D. Halseth suggested investigating ways that the IDA can help out the community with its funds. City Manager Simon said that in future IDA meetings, they will discuss future opportunities for IDA funding. F. Bush asked if the IDA is restricted on what they can fund, to which City Manager Simon said that the primary criteria is for an economic development purpose.

Consider dates for the next IDA meeting –

After discussion, the next IDA meeting will be November 14, 2018 at 4:00 p.m. at a location to be determined. K. Shester, T Hellwig, F. Bush, D. Halseth, N. Charles and B. Summers agreed that they can attend.

Adjournment

Vice-Chair Dick Halseth adjourned the meeting at 5:44 p.m.

Dick Halseth, IDA Vice-Chair

Noah A. Simon, Secretary

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 49. Industrial Development and Revenue Bond Act

§ 15.2-4901. Purpose of chapter

It is the intent of the legislature by the passage of this chapter to authorize the creation of industrial development authorities by the localities in the Commonwealth so that such authorities may acquire, own, lease, and dispose of properties and make loans to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental, nonprofit and commercial enterprises and institutions of higher education to locate in or remain in the Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity. Such authority shall not itself be authorized to operate any such manufacturing, industrial, nonprofit or commercial enterprise or any facility of an institution of higher education.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to pollution control facilities to the end that such authorities may protect and promote the health of the inhabitants of the Commonwealth and the conservation, protection and improvement of its natural resources by exercising such powers for the control or abatement of land, sewer, water, air, noise and general environmental pollution derived from the operation of any industrial or medical facility and to vest such authorities with all powers that may be necessary to enable them to accomplish such purpose, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth, either through the increase of their commerce, or through the promotion of their safety, health, welfare, convenience or prosperity.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to medical facilities and facilities for the residence or care of the aged to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement and improvement of medical facilities and facilities for the residence or care of the aged in order to provide modern and efficient medical services to the inhabitants of the Commonwealth and care of the aged of the Commonwealth in accordance with their special needs and also by assisting in the refinancing of medical facilities and facilities for the residence or care of the aged owned and operated by organizations which are exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code of 1954, as amended, in order to reduce the costs to residents of the Commonwealth of utilizing such facilities and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health and welfare. It is not intended hereby that any such authority shall itself be authorized to operate any such medical facility or facility for the residence or care of the aged.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for use

by organizations (other than institutions organized and operated exclusively for religious purposes) which are described in § 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which are exempt from federal income taxation pursuant to § 501(a) of the Internal Revenue Code of 1954, as amended, to the end that such authorities may protect or promote the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, improvement, financing, and refinancing of such facilities of the aforesaid entities and organizations in order to provide operations, recreational, activity centers, and other facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their safety, health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for accredited nonprofit private institutions of higher education in the Commonwealth whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education to the end that such authorities may protect and promote the health and welfare of the inhabitants of the Commonwealth by assisting in the acquisition, construction, equipping, expansion, enlargement, and improvement of facilities of aforesaid institutions in order to provide improved educational facilities for the use of the inhabitants of the Commonwealth and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such educational facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant industrial development authorities the powers contained herein with respect to facilities for a locality, the Commonwealth and its agencies, and governmental and nonprofit organizations and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall be exercised for the benefit of the inhabitants of the Commonwealth and for the promotion of their health, welfare, convenience or prosperity.

It is further the intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities for museums and historical education, demonstration and interpretation, together with any and all buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations in order to promote tourism and economic development in the Commonwealth, to promote the knowledge of and appreciation by the citizens of the Commonwealth of the historical and cultural development and heritage of the Commonwealth and the United States and to promote thereby their health, welfare, convenience and prosperity. It is not intended hereby that any such authority shall itself be authorized to operate any such facility.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to facilities devoted to the staging of equine events and activities (other than racing) for use by governmental or

nonprofit, nonreligious organizations and operated by such governmental or nonprofit, nonreligious organizations in order to promote the equine industry and equine-related activities (other than racing) which are integral to the Commonwealth's economy and heritage and to promote thereby the safety, health, welfare, convenience, and prosperity of the inhabitants of the Commonwealth.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities the powers contained herein with respect to acquiring, developing, owning and operating an industrial park and any utilities that are intended primarily to serve the park and to issue bonds for such purposes. The bonds may be secured by revenues generated by the industrial park or the utilities being financed or by any other funds of the authority.

It is the further intent of the legislature and shall be the policy of the Commonwealth to grant to industrial development authorities created by one or more municipalities whose housing authorities have not been activated as provided by §§ 36-4 and 36-4.1, in addition to the powers previously or hereafter granted in this chapter, the powers contained herein with respect to facilities used primarily for single or multi-family residences in order to promote safe and affordable housing in the Commonwealth and to benefit thereby the safety, health, welfare and prosperity of the inhabitants of the Commonwealth. It is not intended hereby that any such authority shall itself be authorized to operate any such facility or exercise any powers of eminent domain set forth in § 36-27.

In any instance in this chapter where an industrial development authority may issue bonds through its authority to finance, the authority may also refinance such bonds.

This chapter shall be liberally construed in conformity with these intentions.

1966, c. 651, § 15.1-1375; 1972, c. 783; 1975, c. 489; 1977, c. 619; 1978, cc. 276, 526; 1984, c. 700; 1985, c. 317, § 15.1-1392; 1986, c. 473; 1988, c. 211; 1990, c. 312; 1991, c. 6; 1997, cc. 587, 758, 763; 2002, cc. 680, 725; 2005, c. 928; 2012, c. 498.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia

Title 15.2. Counties, Cities and Towns

Chapter 49. Industrial Development and Revenue Bond Act

§ 15.2-4905. Powers of authority

The authority shall have the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated:

1. To sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties;
2. To adopt and use a corporate seal and to alter the same at pleasure;
3. To enter into contracts; however, any written contract of the authority shall contain provisions addressing the issue of whether attorney's fees shall be recoverable by the prevailing party in the event the contract is subject to litigation;
4. To acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more authority facilities including all real and personal properties which the board of directors of the authority may deem necessary in connection therewith and regardless of whether any such facilities shall then be in existence;
5. To lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration;
6. To sell, exchange, donate, and convey any or all of its facilities or properties whenever its board of directors shall find any such action to be in furtherance of the purposes for which the authority was organized;
7. To issue its bonds for the purpose of carrying out any of its powers including specifically, but without intending to limit any power conferred by this section or this chapter, the issuance of bonds to provide long-term financing of any pollution control facility, whether any such facility was constructed prior to or after the enactment hereof or the receipt of a commitment from an authority to undertake financing pursuant hereto, unless the major part of the proceeds of such bonds will be used to redeem any prior long-term financing of such facility other than financings pursuant to this chapter or any similar law;
8. As security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof or from any loans made by the authority;
9. To employ and pay compensation to such employees and agents, including attorneys, and real estate brokers whether engaged by the authority or otherwise, as the board of directors shall deem necessary in carrying on the business of the authority;
10. To exercise all powers expressly given the authority by the governing body of the locality

which established the authority and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this chapter, deemed expedient for the management of the authority's affairs;

11. To appoint an industrial advisory committee or similar committee or committees to advise the authority, consisting of such number of persons as it may deem advisable. Such persons may be compensated such amount per regular, special, or committee meeting as may be approved by the appointing authority, not to exceed \$50 per meeting day, and may be reimbursed for necessary traveling and other expenses incurred while on the business of the authority;

12. To borrow money and to accept contributions, grants and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the authority facilities, for the payment of principal of any bond of the authority, interest thereon, or other cost incident thereto, or in order to make loans in furtherance of the purposes of this chapter of such money, contributions, grants, and other financial assistance, and to this end the authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed; and

13. To make loans or grants to any person, partnership, association, corporation, business, or governmental entity in furtherance of the purposes of this chapter including for the purposes of promoting economic development, provided that such loans or grants shall be made only from revenues of the authority which have not been pledged or assigned for the payment of any of the authority's bonds, and to enter into such contracts, instruments, and agreements as may be expedient to provide for such loans and any security therefor. An authority may also be permitted to forgive loans or other obligations if it is deemed to further economic development. The word "revenues" as used in this subdivision includes contributions, grants and other financial assistance, as set out in subdivision 12.

The authority shall not have power to operate any facility as a business other than as lessor and shall not have the power to operate any single or multi-family housing facilities. However, the authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (§ 62.1-159 et seq.) of Title 62.1. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

If a locality has created an industrial development authority pursuant to this chapter or any other provision of law, no other such authority, not created by such locality, shall finance facilities, except pollution control facilities, within the boundaries of such locality, unless the governing body of such locality in which the facilities are located or are proposed to be located, concurs with the inducement resolution adopted by the authority, and shows such concurrence in a duly adopted resolution. Notwithstanding the foregoing, nothing contained herein shall be deemed to invalidate or otherwise impair any existing financing by an authority or the financing of any facilities for which application has been made to an authority prior to July 1, 1981.

1966, c. 651, § 15.1-1378; 1970, c. 598; 1972, c. 783; 1973, c. 528; 1981, c. 3; 1991, c. 6; 1993, c. 896; 1994, c. 317; 1997, cc. 587, 758, 763; 1998, c. 728; 2005, c. 575.

The chapters of the acts of assembly referenced in the historical citation at the end of this section

may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Memo

To: Members of the Lexington IDA Board
From: Josh Elrod, City Attorney
Date: January 9, 2019
Subject: Conflict of Interests: Term Sheet

This issue arose in anticipation of the IDA's consideration of new terms for its Borrower Term Sheet. The Borrower Term Sheet includes certain amounts to be charged to all conduit borrowers working through the IDA.

Among the board of the IDA, various members have personal interests (as defined in the Virginia State and Local Government Conflict of Interest Act) by virtue of their employment with institutions (Washington & Lee, VMI and Kendal) who may reasonably be expected to apply for conduit financing in the future, and thereby be affected by the Borrower Term Sheet. This possibility gave rise to the question of whether those members would have a conflict of interest that would preclude their participation in deliberation and voting regarding the Borrower Term Sheet.

Counsel for the IDA researched the issue and consulted with the Virginia Conflict of Interest and Ethics Advisory Council, and obtained a response to a written request for guidance. The inquiry and response are attached to this memo.

Based on our research and guidance, we are advising board members affected by this conflict that they may participate in consideration of the rate sheet under the terms and subject to the conditions set forth in the attached Declaration. Significantly, the Declaration states that the member is "able to participate in the transaction fairly, objectively, and in the public interest" which is a determination that each member must make on their own. If a member concludes that they cannot be impartial in this matter, they must recuse themselves from consideration of the Borrower Term Sheet.

Counsel is available to answer any further questions about this matter.

DECLARATION

This declaration is made pursuant to the Virginia State and Local Government Conflict of Interests Act) §2.2-3100 *et seq.* of the Code of Virginia 1950 as amended (referred to herein as the Act).

I, _____, am a member of the City of Lexington Industrial Development Authority (the IDA herein). I make this declaration pursuant to §2.2-3115(H) of the Code of Virginia 1950 as amended, and state as follows:

- A. The transaction involved is the consideration of the IDA’s Borrower Term Sheet, used in connection with the issuance of bonds. The Borrower Term Sheet that will be considered will require the IDA members to primarily decide:
 - 1. An application fee amount to charge conduit borrowers;
 - 2. An annual administrative fee amount based on a percentage of outstanding principal, including an annual maximum, to charge conduit borrowers.
- B. The nature of my personal interest affected by the transaction is that I am an employee of Washington & Lee University. A member of my immediate family is also an employee at Washington & Lee University. It is reasonably foreseeable that my employer will be a borrower working with the IDA in the future, and therefore will be affected by the determinations in this transaction.
- C. My employer (through whom I have a personal interest in this transaction) is part of a group of three or more similarly situated entities such that I am exempt from this conflict pursuant to § 2.2-3112, subsection B, subdivision i, of Virginia Code 1950 as amended.
- D. Notwithstanding the foregoing, I hereby state that upon due consideration, I represent that I am able to participate in the transaction fairly, objectively, and in the public interest.

NAME

Date

VIRGINIA CONFLICT OF INTEREST AND ETHICS ADVISORY COUNCIL



FINANCIAL DISCLOSURE STATEMENT

Pursuant to subsection B of § 2.2-3114, members of all policy and supervisory boards, commissions, and councils in the executive branch and members of any designated board, commission, or council in the executive branch are required to file this form as a condition to assuming office, and then annually while serving as an officer.

Pursuant to subsections A and B of § 2.2-3115, members of local governing bodies of entities established in any county or city, or part or combination thereof, that have the power to issue bonds or expend funds in excess of \$10,000 in any fiscal year and are not designated to file a Statement of Economic Interests by the governing body of the jurisdiction that appoints them, and nonsalaried citizen members of local boards, commissions, and councils as may be designated by the local governing body, shall file this form as a condition to assuming office, and then annually while serving as an officer.

The filing deadline is February 1 for the prior calendar year. Statements may not be dated or submitted prior to January 1.

You must file this form with the clerk of the appropriate local governing body.

REPORT TO THE BEST OF INFORMATION AND BELIEF Information required on this Statement must be provided on the basis of the best knowledge, information, and belief of the individual filing the Statement as of the date of this report.

As a condition for assuming an office, this form constitutes a report of financial interests at the time of filing.

You must sign and date this form upon completion.

This Financial Disclosure Statement is open for public inspection, as required by § 2.2-3115.

DEFINITIONS AND EXPLANATORY MATERIAL.

“ADVISORY AGENCY” means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

“BUSINESS” means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

“CLOSE FINANCIAL ASSOCIATION” means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual’s business activities and would have access to the necessary records either directly or through the individual. “Close financial association” does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has no communications with the state governmental agency.

“IMMEDIATE FAMILY” means (i) a spouse and (ii) any other person who resides in the same household as the filer, and who is a dependent of the filer.

“OFFICER” means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, “officer” includes members of the judiciary.

“TRUST” If you or a member of your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. For purposes of this definition, "beneficiary" means a person with a vested present or future beneficial interest in a trust but does not include a person with a contingent beneficial interest in a trust.

If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets.

If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

HOWEVER, if you or a member of your immediate family is the beneficiary of a trust that can be revoked without the beneficiaries' consent, do not treat the trust's assets as if you own them.

**VIRGINIA CONFLICT OF INTEREST AND
ETHICS ADVISORY COUNCIL
FINANCIAL DISCLOSURE STATEMENT**

FOR OFFICE USE ONLY	
Date Received:	
Received By:	_____

NAME:	
OFFICE OR POSITION HELD OR TO BE HELD:	
ADDRESS:	
TELEPHONE:	
EMAIL ADDRESS:	
FIRST AND LAST NAMES OF IMMEDIATE FAMILY:	

I. OFFICES, DIRECTORSHIPS, AND EMPLOYMENT

Disclose each business of which you or a member of your immediate family is an officer or director and receives remuneration, benefits, or compensation for such service as an officer or director.

Disclose each employer paying you or a member of your immediate family salary or wages in excess of \$5,000 annually.

DO NOT INCLUDE any salary you receive from the governmental or advisory agency for which you are completing this disclosure statement.

NAME OF BUSINESS OR EMPLOYER	LOCATION OF BUSINESS OR EMPLOYER (CITY OR COUNTY, AND STATE)	POSITION HELD	BY WHOM	Check whether Office or Directorship OR Employment	
				OFFICE OR DIRECTORSHIP	EMPLOYMENT

II. BUSINESS INTERESTS

Disclose each business owned by you or a member of your immediate family, separately or together, with a value in excess of \$5,000 or in which you or a member of your immediate family has an interest with a value in excess of \$5,000.

If the business is owned or operated under a trade, partnership, or corporate name, list that name. If the business is not owned or operated under a trade, partnership, or corporate name, describe the nature of the business.

DO NOT INCLUDE stocks and bonds unless your interest in that business exceeds more than three percent of the total equity of the business.

NAME OF BUSINESS OR NATURE OF BUSINESS	LOCATION OF BUSINESS (CITY OR COUNTY, AND STATE)

III. REAL ESTATE

Disclose all real estate, including rental property, in which you or a member of your immediate family, separately or together, holds an interest valued at more than \$5,000. List each parcel individually. INCLUDE real estate held in trust.

DO NOT INCLUDE your principal residence.

List only the city or county, and state where each real estate is located. **DO NOT LIST any street addresses. No addresses will be redacted from this section.**

If you are completing this disclosure in your capacity as an officer or employee of a local governmental or advisory agency, disclose only the real estate that is located within the county, city, or town in which you serve or within a county, city, or town that is contiguous to the county, city, or town in which you serve.

Disclose the name or names in which the real estate is owned or recorded. If you or a member of your immediate family holds an interest in the real estate but it is owned or recorded in a name other than your name or your immediate family member's name, list that name.

LOCATION OF REAL ESTATE (CITY OR COUNTY, AND STATE)	TYPE OF REAL ESTATE	NAME or NAMES IN WHICH REAL ESTATE IS OWNED OR RECORDED

IV. BUSINESSES TO WHICH SERVICES WERE FURNISHED

Part One

Do not complete this section if you are completing this disclosure statement in your capacity as an officer or employee of a local governmental or advisory agency.

Disclose each business that you represented before any state governmental agency during the prior calendar year for which you received compensation in excess of \$5,000 for such representation.

When calculating the amount of compensation you received from a business, DO NOT INCLUDE any compensation for the performance of other services unrelated to the representation before the state governmental agency. If you have job responsibilities other than those involving such representation, you should prorate your salary to determine the portion attributable to your representation.

DO NOT REPORT any business that you represented before a court or judicial officer or any business where the representation consisted solely of filing mandatory papers and subsequent representation regarding those mandatory papers.

For each business, identify the type of business, the name of the state governmental agency before which you appeared on behalf of the business, and the purpose of the representation.

TYPE OF BUSINESS	NAME OF STATE GOVERNMENTAL AGENCY	PURPOSE OF REPRESENTATION

Part Two

Do not complete this section if you are completing this disclosure statement in your capacity as an officer or employee of a local governmental or advisory agency.

Disclose each business that, to your knowledge, persons with whom you have a close financial association represented before any state governmental agency during the prior calendar year for which compensation in excess of \$5,000 was received for such representation.

DO NOT INCLUDE members of your immediate family when determining with which individuals you have a close financial association, unless you and your immediate family member are employed by or work for the same business or organization.

When calculating the amount of compensation received from a business, DO NOT INCLUDE any compensation for the performance of other services unrelated to the representation before the state governmental agency. If your associate has job responsibilities other than those involving such representation, you should prorate his salary to determine the portion attributable to his representation.

DO NOT REPORT any business that such persons represented before a court or judicial officer or any business where the representation consisted solely of filing mandatory papers and subsequent representation regarding those mandatory papers.

For each business, identify the type of business, the name of the state governmental agency before which you appeared on behalf of the business, and the purpose of the representation.

TYPE OF BUSINESS	NAME OF STATE GOVERNMENTAL AGENCY	PURPOSE OF REPRESENTATION

Part Three

Disclose each business that operates in Virginia to which you furnished services during the prior calendar year pursuant to an agreement between you and such business and for which the total compensation received for such representation was in excess of \$5,000.

For each business, identify the type of business and the type of service rendered. DO NOT INCLUDE any business disclosed in Part One or Part Two of this section.

TYPE OF BUSINESS	TYPE OF SERVICE RENDERED

V. PAYMENTS FOR MEETINGS AND EVENTS

Disclose each source from which you received during the prior calendar year lodging, transportation, money, or any other thing of value with a combined value in excess of \$100 in connection with your attendance at any meeting or other event to which you were invited in your official capacity as a member of the governmental or advisory agency for which you are completing this disclosure statement.

DO NOT REPORT payments or reimbursements you received from the Commonwealth or its political subdivisions. DO NOT REPORT payments or reimbursements you received from a business or employer identified in Section I or II of this disclosure statement.

List the person, association, or other source paying for or providing the lodging, transportation, money, or any other thing of value. Provide a brief description of the meeting or event and list the total value of the payments or reimbursements received in connection with that meeting or event.

SOURCE OF PAYMENT	DESCRIPTION OF EVENT	TOTAL VALUE OF PAYMENTS

I swear or affirm that the information provided on this statement is full, true, and correct to the best of my knowledge.

Signature

Date

Additional Information

You may provide any additional information you wish to be included with your Financial Disclosure Statement on this page. Please note any information you provide on this page will become part of your Financial Disclosure Statement and will be open to the public. You MAY NOT add attachments as a substitute for properly filling out any part of this form.

VIRGINIA CONFLICT OF INTEREST AND ETHICS ADVISORY COUNCIL



DISCLOSURE OF REAL ESTATE HOLDINGS

Pursuant to subsection G of § 2.2-3115, in each county and city and in towns with populations in excess of 3,500, members of planning commissions and boards of zoning appeals, real estate assessors, and all county, city, and town managers or executive officers shall file this form as a condition to assuming office, and then annually while serving as an officer.

The filing deadline is February 1 for the prior calendar year. Statements may not be dated or submitted prior to January 1.

You must file this form with the clerk of the appropriate local governing body.

You may provide any additional comments you wish to include with this disclosure at the end of the form. Please note that any such comments are a part of your filing and will be available to the public. You may not add attachments as a substitute for properly filling out any part of this form.

REPORT TO THE BEST OF INFORMATION AND BELIEF Information required on this Disclosure must be provided on the basis of the best knowledge, information, and belief of the individual filing the Disclosure as of the date of this report.

As a condition for assuming an office, this form constitutes a report of real estate holdings at the time of filing.

You must sign and date this form upon completion.

This Disclosure of Real Estate Holdings is open for public inspection, as required by § 2.2-3115.

Name: _____

Address: _____

Please check one: Officeholder Employee

**Title of Office
or Position
Held:** _____

FOR OFFICE USE ONLY
Date Received:
Received By: _____

Virginia Conflict of Interest and Ethics Advisory Council

DISCLOSURE OF REAL ESTATE HOLDINGS

List all real estate in which you hold an interest. List only that real estate that is located in the county, city, or town in which you are elected, appointed, or employed.

Real Estate Holdings	
Location or Address	Description

List each business in which you own an interest or from which you receive income that has a primary purpose of owning, developing, or deriving compensation through the sale, exchange, or development of real estate in the county, city, or town in which you are elected, appointed, or employed.

Dealings in Real Estate	
Name of Corporation/Partnership Business Association	Address

I do solemnly swear that the information provided on this disclosure is complete, correct, and true.

Signature

Date

Additional Information

You may provide any additional information you wish to be included with your Disclosure of Real Estate Holdings on this page. Please note any information you provide on this page will become part of your Disclosure of Real Estate Holdings and will be open to the public. You MAY NOT add attachments as a substitute for properly filling out any part of this form.



IDA Agenda Item January 9, 2019

TOPIC:

Role of the IDA in reviewing the Virginia Horse Center (VHC) Financials

BACKGROUND:

The IDA has asked staff what role they should have in reviewing the VHC financials. Working with our attorneys, staff has concluded based on the MOU, the VHC will be provided and “presented” to the IDA. There is no fiduciary relationship/responsibility of the IDA created in the MOU or under the IDA Act. The IDA does need to make sure the grant conditions in the MOU are met before it grants funds (granted from the City) to the VHC. Based on this information, in addition to the VHC financials that are shared with the IDA, Gary Swink will provide a brief summary of the VHC finances submitted to the IDA as it relates to whether the MOU grant conditions are met. If the conditions are met, the IDA grants the funds per the MOU. Beyond that, the IDA members do not have to worry about the VHC financials as part of their IDA duties.

Summary of the VHC financials included in this packet:

Daniel Lauro recommended that I provide a brief summary stating whether the Horse Center is meeting the requirements set forth in our agreement with them, as a part of the distribution of the Horse Center’s financials to the IDA. The VHCF is meeting the requirements set forth in that agreement. In terms of the VHCF financial performance, you will note in Sandra Thomas’s comments below that they had an operating loss of \$18,492 for the five months, July through November, a slight improve over the previous year. This is the result of an additional show and increased fund raising results.

Virginia Horse Center Foundation
Balance Sheet
As of November 30, 2018

	Nov 30, 18	Nov 30, 17
ASSETS		
Current Assets		
Checking/Savings	96,367.77	9,239.57
Cash - Unrestricted	1,857,133.87	465,849.41
Restricted Cash		
Total Checking/Savings	1,953,501.64	475,088.98
Accounts Receivable		
1100 · Accounts Receivable	-9,424.90	6,206.12
1105 · Pledges Receivable-Current	91,003.34	145,350.68
Total Accounts Receivable	81,578.44	151,556.80
Other Current Assets		
1106 · Lodging tax receivable	0.00	783,156.68
1200 · Inventory	34,868.00	51,539.00
1250 · Prepaids	5,069.15	5,069.15
Total Other Current Assets	39,937.15	839,764.83
Total Current Assets	2,075,017.23	1,466,410.61
Fixed Assets	17,825,197.57	18,555,372.89
Other Assets		
1400 · Other Assets	4,826.17	1,654.98
1401 · Pledges Receivable - LT	7,998.68	131,433.34
Total Other Assets	12,824.85	133,088.32
TOTAL ASSETS	19,913,039.65	20,154,871.82
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable	142,104.82	127,220.53

Virginia Horse Center Foundation
Balance Sheet
As of November 30, 2018

	Nov 30, 18	Nov 30, 17
Other Current Liabilities		
2002 · Accrued Expenses	8,841.55	8,841.55
2003 · Sales Tax Payable	3,684.59	12,818.73
2004 · County Meals Tax Payable	996.07	200.01
2005 · Occupancy Tax Payable	638.94	225.43
2006 · Accrued Payroll	24,267.00	16,849.00
2008 · Accrued Vacation	72,794.00	58,179.00
2009 · Accrued Interest - USDA	329,768.31	336,735.60
2010 · Accrued Interest - NRB	0.00	304.72
2012 · Deferred Sign Revenue	12,861.84	15,054.22
2013 · Show Deposits	7,354.04	5,800.00
2014 · Current Portion USDA Debt	183,437.47	179,388.72
2022 · Rent Deposits	0.00	600.00
2023 · Mezzanine rent deposits	1,025.00	775.00
2025 · Current Sedgefield Settlement	5,000.00	5,000.00
2026 · Note payable	0.00	150,000.00
2027 · Borrowings under LOC	57,000.00	90,000.00
2028 · Accrued contracted services	0.00	359.64
2032 · Cornerstone N/P - Current	0.00	125,000.00
2033 · Ford Credit Vehicle Loan	41,952.45	24,350.43
2034 · Deferred Revenue - Other	14,676.00	0.00
2035 · Cornerstone - Bridge Loan	0.00	750,000.00
2036 · Cornerstone - Zero Turns	12,905.68	0.00
2037 · Deferred occupancy tax	-27,642.17	0.00
Total Other Current Liabilities	<u>749,560.77</u>	<u>1,780,482.05</u>
Total Current Liabilities	891,665.59	1,907,702.58
Long Term Liabilities		
2100 · USDA Debt	9,945,400.02	10,127,672.67
2104 · Sedgefield Settlement	0.00	5,000.00
2105 · Cornerstone deferred main note	0.00	125,000.00
2106 · Cornerstone \$1.5 M Loan	1,500,000.00	0.00
Total Long Term Liabilities	<u>11,445,400.02</u>	<u>10,257,672.67</u>
Total Liabilities	12,337,065.61	12,165,375.25
Equity	7,575,974.04	7,989,496.57
TOTAL LIABILITIES & EQUITY	<u><u>19,913,039.65</u></u>	<u><u>20,154,871.82</u></u>

VHCF

Income Statement

For the Five Month Period Ended November 30, 2018 and 2017

	<u>YTD 11/30/18</u>	<u>YTD 11/30/17</u>	<u>Change</u> Fav/(Unfav)
Income			
Contributions			
Unrestricted	\$114,907	\$31,419	83,488 A
Restricted	21,086	98,133	(77,047) B
Virginia Hunter Championship	50,695	49,500	1,195 C
Gifts in kind	16,578	21,683	(5,105)
Facility Fee	778,937	700,896	78,041 D
Events & Show Revenue	537,816	608,353	(70,537) E
Food sales	144,681	111,338	33,343
Merchandise	223,023	199,189	23,834
Commissions and Advertising	17,503	18,725	(1,222)
Total Income	<u>1,905,226</u>	<u>1,839,236</u>	<u>65,990</u>
Cost of Goods Sold	182,337	144,419	(37,918) F
Gross Profit	<u>1,722,889</u>	<u>1,694,817</u>	<u>28,072</u>
Operating Expenses			
Facility Operations	636,125	615,510	(20,615) G
Events & Show Operations	734,598	726,684	(7,914)
Management & General	332,625	344,400	11,775
Fund Raising Expenses	38,033	35,689	(2,344)
Total Operating Expenses	<u>1,741,381</u>	<u>1,722,283</u>	<u>(19,098)</u>
Operating Income	<u>(18,492)</u>	<u>(27,466)</u>	<u>8,974</u>
Other Income/(Expense)			
Grants	505,691	531,334	(25,643) H
Depreciation	(254,119)	(261,396)	7,277
Interest Expense	(207,504)	(198,509)	(8,995)
Investment Income	2,430	438	1,992
Other Income	485	295	190
Total Other Income/(Expense)	<u>46,983</u>	<u>72,162</u>	<u>(25,179)</u>
Net Income	<u>\$ 28,491</u>	<u>\$ 44,696</u>	<u>\$ (16,205)</u>

Virginia Horse Center Foundation
Explanations for Variances from Prior Year
For the Five Month Period Ended November 30, 2018

A – Unrestricted contributions – The increase in unrestricted contributions is the result of the generosity of Tom Clarke in early July and November contributions exceeding those of a year ago. In November 2018 cash gifts were \$66,700 vs \$8,722 in November 2017 as a result of Jennifer’s development efforts and response to the Fall appeal coming in earlier than in 2017.

B – Restricted contributions – 2017 restricted gifts includes \$95,784 raised for the master plan. 2018 restricted gifts include \$14,325 for an economic impact study.

C – Virginia Hunter Championship – In February 2018 VHCF took over the accounting and record keeping for VHC. These contributions are restricted for the operation of and prize money for the Championship; however, VHC pays VHCF 10% of all donations to cover our cost of administration. Prior to VHCF taking on its new role, VHCF received some sponsorship dollars for VHC that it then forwarded to the VHC. These amounts were previously included in event & show revenue but have been reclassified here for comparison purposes.

D – Facility Rent – Increase is due to the following:

<u>Show</u>	<u>Variance from 2017</u>	<u>Comment</u>
VADA Finals	\$22,000	Larger show
VRHA Reining Classic	25,800	New show
Lexington National	16,357	Increased # of stalls
Dressage at Lexington	5,800	Impact of change in pricing
National Barrel	6,750	Impact of change in pricing
Va Palomino	1,800	New show
Rockbridge Fair	3,000	Change in event mgmt
4-H Show	(28,500)	Postponed to Dec
Net	\$53,007	

The remainder of the variance is due to small variances for all shows due to number of stalls rented and our move toward pricing where the facility rent is inclusive of security, stable management, etc.

E – Events & Show Revenue – Decrease is primarily the result of the timing of recording prize money credited to show bills for LSP and LSE for producing 1099s at year end ((\$49,578). Adjustments will be made at year end to zero out the impact. The remainder of the decrease is due to the postponement of the VA 4-H State Championship show due to Florence (\$7,300) and the result of our

moving toward pricing where the facility rent is inclusive of security, stable management, etc.

F – Cost of Goods Sold – Increase is due to the timing of shaving deliveries. VHCF does a physical count of inventory only twice a year – Dec 31 and June 30 so at interim dates cost of goods sold reflects what has been delivered during the period. From 7/1-11/30/18, we received 19 shipments of shavings while for the same five month period in 2017 we received only 13.

G – Facility Operations – The majority of the increase is due to the timing of recording the liability for Paid Time Off (PTO) earned but not taken. In 2017 this was recorded in September and then adjusted again in January while in 2018 \$16,000 more was recorded in October. PTO is earned during the busy show season and then is taken during the slower winter and spring months. Increased water and telephone bills caused the remaining increase.

H – Unfavorable income in grants is due to a reduction in shared racing commissions. We expect this to be a timing difference.

Virginia Horse Center Foundation
Profit & Loss
 July through November 2018

Ordinary Income/Expense	Jul - Nov 18	Jul - Nov 17
Income		
6000 · Contributions		
6001 · Contributions	87,865.95	21,468.34
6002.1 · Restricted - Operational	1,761.00	98,132.88
6002.2 · Restricted - Non Operational	19,325.00	0.00
6002.3 · Restricted - VA Hunter Champ	50,695.00	0.00
6005 · Annual Fund Contributions	27,040.60	9,950.75
6006 · Gifts in Kind	16,577.88	21,683.35
Total 6000 · Contributions	203,265.43	151,235.32
6102 · Shared Racing Commission Rev	13,418.77	37,897.82
6103 · Lodging Tax Revenue	492,272.14	493,436.53
6104 · Facility Rent	199,400.00	192,025.00
6105 · Stalls	503,627.50	435,881.25
6106 · Vendors	6,600.00	11,575.00
6107 · Security	4,660.00	21,200.00
6108 · EMT	0.00	11,546.00
6109 · Jumps	7,500.00	6,900.00
6111 · Parking Fees	650.00	0.00
6113 · Mezzanine Rent	1,545.00	1,580.00
6114 · Pultz House Rental	0.00	3,000.00
6115 · Exhibitor Entry Fees	453,796.71	482,447.98
6116 · Sponsorship	39,590.73	87,361.95
6117 · Merchandise Sales	940.00	0.00
6118 · Golf Carts	2,953.88	981.10
6119 · Camping-Elect & Water	71,314.08	65,583.92
6120 · Camping - Dry	2,400.00	2,825.00
6121 · Early Arrivals	5,920.00	5,790.00
6122 · Layovers	1,655.00	2,240.00
6123 · Straw	91.00	314.00
6125 · Shavings	188,705.88	175,028.19
6126 · Feed	1,089.75	1,387.12
6127 · Hay-Timothy	16,380.25	17,955.34
6128 · Ice	5,409.45	6,343.30
6130 · Signs & Advertising	17,502.57	18,725.18
6131 · Stable Management	0.00	3,050.00
6132 · Custodial fees	0.00	2,100.00
6133 · Copies & copier rental	150.00	450.00
6134 · Dumpster fees	4,080.00	3,540.00
6135 · Other show income	16,394.94	22,994.62

Virginia Horse Center Foundation
Profit & Loss
July through November 2018

	Jul - Nov 18	Jul - Nov 17
6136 · Rules credit	-5,000.00	-4,200.00
6137 · NSF clearing	-485.00	-123.57
6150 · Stable Revenue to be allocated	10,406.18	-1,839.33
6200 · Food Sales	144,681.48	111,338.23
Total Income	2,410,915.74	2,370,569.95
Cost of Goods Sold	182,337.02	144,419.41
Gross Profit	2,228,578.72	2,226,150.54
Expense		
66000 · Payroll Expenses	343.94	0.00
7018 · Hospitality - VHC - Internal	577.88	151.93
7019 · Hospitality - VHC Shows (food)	555.77	923.04
7020 · Repair & Maintenance	74,943.31	103,721.99
7050 · Rental	25,093.63	26,169.19
7060 · Fuel	15,023.94	11,182.40
7070 · Supplies	40,072.20	46,437.23
7080 · Uniforms	1,646.72	701.94
7090 · Landfill Fees	5,072.82	5,049.75
7100 · Exterminator	375.00	300.00
7110 · Manure-Trash-Potty	13,560.00	20,585.00
7120 · Contracted Services	304,312.73	309,025.16
7130 · Professional Fees	27,950.00	32,150.00
7200 · Salaries & Wages	571,983.27	559,878.48
7201 · FICA	43,280.44	41,803.89
7203 · SUTA	3,332.99	5,699.82
7204 · Health Insurance	10,729.61	5,803.80
7206 · Dental Insurance	957.58	958.12
7207 · Payroll Processing Fees	2,354.29	2,781.87
7300 · Utilities	118,834.22	106,040.71
7350 · Insurance	24,389.56	22,718.65
7400 · Employee Travel	8,617.36	6,785.68
7420 · Meals & Entertainment	161.01	258.39
7450 · Advertising	4,052.20	566.10
7460 · Signage-Advertising	233.75	941.78
7480 · Association Fees	32,973.50	26,522.00

Virginia Horse Center Foundation
Profit & Loss
July through November 2018

	Jul - Nov 18	Jul - Nov 17
7490 · Prize Money	254,985.79	288,077.28
7495 · Ribbons-Awards	27,376.37	10,920.97
7510 · Show and Judge Travel	53,463.02	37,232.04
7520 · Hospitality - (non food)	700.00	855.38
7521 · F&B internal bill	16,135.18	10,321.23
7522 · Alcohol internal bill	1,396.16	0.00
7530 · Printing	16,514.01	7,054.00
7535 · Subscriptions and dues	3,268.91	1,075.84
7540 · Miscellaneous	7,385.96	2,397.30
7545 · Other expenses	13.64	0.00
7570 · Postage	2,317.75	3,845.54
7580 · Taxes	1,824.70	1,901.33
7590 · Fund Raising Expenses	553.50	176.20
7591 · Cost of bricks	210.00	0.00
7595 · Development Expenses	260.00	1,835.00
7596 · Commissions on advertisings	2,402.01	4,369.50
7597 · Amy Reistrup Memorial	500.00	2,000.00
7600 · NSF	20.00	-35.00
7610 · Bad Debt Expenses	15.00	-7,207.03
7620 · Bank Service Charges	785.05	5,184.84
7630 · Finance Charges	1,157.37	3,499.82
7631 · Credit Card Processing Fees	10,398.15	10,460.82
7635 · Cash Over & Short	-87.99	-155.52
7636 · Late fees	220.93	78.59
7640 · Charitable Contributions	950.00	523.50
7650 · Licenses and Dues	539.50	714.25
7725 · Loan recording costs	6,648.50	0.00
Total Expense	1,741,381.23	1,722,282.80
Net Ordinary Income	487,197.49	503,867.74
Other Income/Expense		
Other Income	2,915.75	867.09
Other Expense		
7700 · Interest	207,503.78	198,508.97
7710 · Depreciation	254,118.85	261,395.80
7715 · Loss on Stock Sale	0.00	134.35
Total Other Expense	461,622.63	460,039.12
Net Other Income	-458,706.88	-459,172.03
Net Income	28,490.61	44,695.71

Virginia Horse Center Foundation
Statements of Cash Flows
For the Five Month Period Ended November 30, 2018 and 2017

	<u>YTD 11/30/18</u>	<u>YTD 11/30/17</u>
OPERATING ACTIVITIES		
Net income	\$ 28,491	\$ 44,696
Adjustments to reconcile net income to net cash provided by operations:		
Depreciation and amortization	255,234	261,396
Decrease (increase) in current assets	409,436	(404,070)
Decrease (increase) in long term pledges	97,668	143,989
(Decrease) increase in current liabilities	(4,866)	(297,225)
Net cash provided by Operating Activities	<u>785,963</u>	<u>(251,214)</u>
INVESTING ACTIVITIES		
Purchase of fixed assets	-	(27,152)
Net cash used by Investing Activities	<u>-</u>	<u>(27,152)</u>
FINANCING ACTIVITIES		
Payment on deferred maintenance loan	-	(125,000)
Proceeds from Cornerstone Loan	1,500,000	750,000
Financing costs capitalized	(2,500)	-
Repayment of bridge loan	(750,000)	-
Proceeds from LOC	77,000	115,000
Repayment of LOC	(170,000)	(25,000)
Repayment of Note Payable	(150,000)	-
Payments on vehicle and equipment loans	(5,252)	(3,391)
Payment on NRB notes	-	(748,938)
Net cash used by Financing Activities	<u>499,248</u>	<u>(37,329)</u>
Net cash decrease for period	1,285,211	(315,695)
Cash beginning of period	668,291	790,784
Cash end of period	<u>\$ 1,953,502</u>	<u>\$ 475,089</u>

VHCF

Profit by Show

7/1/18-11/31/18

	<u>Income</u>	<u>Cost of Goods Sold</u>	<u>Gross Margin</u>	<u>Expense</u>	<u>Net Income</u>
Lexington National (2018) 08/08-12	485,255	1,109	484,146	338,536	145,610
Region 15 (2018) 07/04-08	112,130	117	112,013	-	112,013
VA Dressage Assoc Finals (2018) 10/11-14	79,726	176	79,550	1,322	78,228
Virginia Horse Trials (2018) 11/01-03	70,433	218	70,215	-	70,215
East Arabian Championship (2018) 08/02-05	69,201	-	69,201	210	68,991
VA Horse Show Assoc (2018) 11/08-11	70,548	27	70,521	1,600	68,921
VRHA Reining Classic (2018) 07/18-22	62,146	-	62,146	-	62,146
ASHAV (2018) 09/27-29	53,518	26	53,493	-	53,493
SW VA Hunter Jumper Assoc (2018) 11/16-18	50,507	10	50,497	1,800	48,697
National Barrel/Colonial (2018) 08/16-19	48,043	-	48,043	-	48,043
Dressage at Lexington (2018) 07/13-15	44,120	-	44,120	-	44,120
House Mtn (2018) 07/10-11	54,282	-	54,282	15,355	38,926
VA State Barrels Finals (2018) 09/21-23	20,442	-	20,442	-	20,442
House Mtn (2018) 10/06-07	36,779	61	36,718	16,636	20,083
Andalusion ERAHC (2018) 08/23-26	18,249	-	18,249	-	18,249
VA Starter Horse Trials (2018) 09/29-30	15,976	-	15,976	200	15,776
VPHC Color Classic (2018) 10/19 - 21	15,508	-	15,508	-	15,508
Paso Fino (2018) 07/27-29	15,220	-	15,220	-	15,220
Buck Brannaman Clinic (2018) 10/05-07	12,822	-	12,822	-	12,822
ODRPC Rating (2018) 08/04-05	11,443	-	11,443	400	11,043
Therapeutic Riding (2018) 10/20-21	8,681	-	8,681	-	8,681
Connemara Pony Region III (2018) 07/28-29	8,663	-	8,663	-	8,663
Region IX Vaulting (2018) 06/29-07/01	8,548	-	8,548	-	8,548
VA Young Horse Festival (2018) 08/25	20,319	81	20,238	12,139	8,099
VA Starter Horse Trials (2018) 07/28-29	7,055	-	7,055	-	7,055
Retro Rodeo Barrel (2018) 09/07-09	7,030	-	7,030	-	7,030
Virginia Barrel Classic (2018) 06/01-03	6,225	-	6,225	-	6,225
BLM Wild Horse/Burro Adopt(2018) 10/17-21	5,403	-	5,403	-	5,403
Trimble Ridge Hunter Jump (2018) 09/01-02	4,911	-	4,911	200	4,711
Glenmore Hunt Pony Club (2018) 09/22	4,655	-	4,655	-	4,655
VA Palomino (2018) 09/01-02	4,481	-	4,481	-	4,481
Rockbridge Horse Show (2018) 07/26-28	15,995	25	15,970	11,534	4,436
Trimble Ridge (2018) 10/27	4,436	-	4,436	200	4,236
East Coast Halter Futurity (2018) 09/1-2	4,089	-	4,089	-	4,089
USHJA Emerging Athletes (2018) 07/16-20	3,719	-	3,719	-	3,719
Rockbridge Reg Fair (2018) 09/6-9	3,000	-	3,000	-	3,000
Sallie B Wheeler (2018) 08/25	10,396	-	10,396	10,243	153
Hear The Beat -Therapeutic (2018) 08/19	101	-	101	-	101
VA Hunter Champ (2018) 08/07	54,255	-	54,255	82,233	Does not include \$77,257 (27,978) received in 2017-18

Noah Simon

From: Gary Swink
Sent: Monday, December 31, 2018 2:54 PM
To: Noah Simon
Subject: FW: VHCF November financial statements
Attachments: Nov financial statements.pdf

FYI

Gary Swink
Finance Director/Assistant City Manager
City of Lexington, Va.
(540) 462-3731
gswink@lexingtonva.gov

From: Sandra Thomas [mailto:sgt1@me.com]
Sent: Monday, December 31, 2018 2:51 PM
To: Bobby Hobbs <hobbsb@cornerstonebankva.com>; Gary Swink <gswink@lexingtonva.gov>; Steve Bolster <sbolster@rockbridgecountyva.gov>; David E. Worley <David.Worley@va.usda.gov>
Subject: VHCF November financial statements

All,

Happy New Year. I hope that you have had a joyous holiday season with your family and friends.

Attached are the VHCF financial statements for the five months ended November 30, 2018. We ended the period with an operating loss of \$18,492 vs an operating loss of \$27,466 for 2017. While this is a 33% increase, it is only an improvement of \$8,974. This is the result of increased revenue from facility fees due to the addition of the VRHA Reining Classic with revenue of \$25,800.

2018 unrestricted contributions have almost tripled from the \$31,419 recorded in 2017 as Jennifer has reached out to new people. Restricted contributions have decreased but these are related to two specific projects: the master plan in 2017 and the economic impact study in 2018.

You will note that I have changed the format of the report of profit by shows. I have transposed and collapsed the data and then sorted by most profitable to least profitable. I thought this would be a more meaningful presentation of the data. If you would like for me to send the data in the old format, please let me know.

Please let me know if you have any questions or would like additional detail.

Best wishes for 2019,

Sandra

Sandra G. Thomas

Sandra G. Thomas
434.825.4966
sgt1@me.com

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA

TERM SHEET FOR BORROWERS

Borrowers who utilize the Industrial Development Authority of the City of Lexington, Virginia (the "Authority") for assistance in regard to tax-exempt or taxable obligations shall comply with the terms and conditions set forth below.

1. **Application to the Authority.** Each borrower shall submit a written application request to the Authority to request the Authority's conduit financing assistance. Borrowers shall include all relevant information as may be requested by the Authority, or by counsel to the Authority, in order that the Authority effectively and fairly may evaluate each borrower's request. Any borrower that requires the Authority's consent approval, but does not request the Authority to issue an obligation, shall pay the Authority's legal counsel fees related to such approval.

2. **Non-Refundable Application Fees.** All borrowers, excluding the City of Lexington, shall pay a non-refundable application fee, in the respective amounts set forth below, no later than the first meeting of the Authority related to the requested assistance for financing:

- Governmental and Charitable Borrowers - \$ _____
- Private Activity Borrowers (including manufacturing) - \$ _____

3. **Annual Administrative Fee Schedule.** The annual administrative fee schedule assessment against borrowers shall be the amount equal to one-tenth (1/10) of one percent (1%) of the principal loan, bonds per loan, or bond issue outstanding on the anniversary date of the issuance of the loan or bond; provided, however, the maximum annual administrative assessment per loan or bond issue shall not exceed \$ _____ for any calendar year.

4. **Loan Documentation Requirements.**

- Each borrower that requests any assistance from the Authority shall provide a bound transcript of proceedings (or 3-ring notebook) or an electronic copy of such transcript for the Authority's official records of its actions.
- Each borrower shall covenant in its respective loan (or bond) documentation, as appropriate, to pay the Authority's application fee, annual administrative assessment, and other costs in connection with the financing being undertaken for the benefit of the borrower, including advertising costs, closing costs, and Authority legal counsel fees related to the requested financing.
- Each borrower shall covenant that neither the Commonwealth of Virginia, the City of Lexington, nor the Authority shall be liable for payment on the loan or bond, except as to moneys provided by borrower to the Authority, and that the loan or bond shall not be subject to the taxing powers of the Commonwealth of Virginia, the City of Lexington, or the Authority.

- Each borrower shall covenant to provide the Authority with an annual debt service schedule in order that the Authority can compute the annual administrative assessment amount.
- Each borrower shall agree to comply with the Authority's Post-Issuance Tax Compliance Policy for Tax-Exempt Obligations and shall covenant to monitor its ongoing obligations as part of the closing tax documents, and provide an annual certificate, acceptable to the Authority's legal counsel, regarding the borrower's post-issuance tax compliance.
- Each borrower shall covenant that notices provided by the borrower to any other party in connection with the financing shall be provided also to the Authority at the following address: 300 E. Washington Street, Lexington, Virginia 24450, with a copy to counsel for the Authority at the following address: BotkinRose PLC, Attention: Daniel R. Lauro, 3190 Peoples Drive, Harrisonburg, Virginia 22801.
- The Authority expressly retains the right and absolute discretion to require such other covenants, or any other requirements, as may be advised by legal counsel to the Authority.

Adopted: January 9, 2019

INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF LEXINGTON, VIRGINIA

Post-Issuance Tax Compliance Policy for Tax-Exempt Obligations

Background.

The City Council (the “Council”) of the City of Lexington, Virginia (the “City”) duly established the Industrial Development Authority of the City of Lexington, Virginia (the “Authority”) under the provisions of the Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended, (the “Act”), on April 16, 1987. The Authority continues as a political subdivision without interruption in power, authority, purpose or function in accordance with the provisions of the Act. Further reference is hereby made to the provisions of the Act regarding the various state law requirements that govern the creation and due existence of the Authority and describe the powers of the Authority, including the power to issue bonds and other obligations, under the laws of the Commonwealth of Virginia.

From time to time, the Authority issues tax-exempt obligations (i.e., obligations the interest on which is excludable from gross income for federal income tax purposes pursuant to the Internal Revenue Code of 1986, as amended, and Treasury Regulations and Revenue Rulings thereunder (the “Tax Code”). Over the years, the Authority has served as a “conduit issuer,” and is available at the request of various charitable organizations and manufacturing enterprises that qualify under the Tax Code as allowable beneficiaries of tax-exempt financings (“Conduit Borrowers”).

The Authority has no taxing powers under Virginia law. Typically, principal of, premium if any, and interest on all obligations issued by the Authority have been payable with revenues, money or property that has been pledged to the Authority by its Conduit Borrowers, and then assigned by the Authority to the purchaser of such obligations. Accordingly, the Authority does not issue any obligations (exempt or taxable) for which the Authority, *itself*, is primarily liable for the payment of the principal of and interest thereon. Further, it is not reasonably anticipated, at any time in the future, that the Authority shall accrue substantial funds of its own, or own any real and personal property, or employ any persons, or issue any obligations for which the Authority, itself, shall be primarily liable for the payment thereof.

Statement of Purpose.

In light of all such historical facts and circumstances described above, the Authority now desires to adopt and implement appropriate post-issuance compliance procedures in order to assist the Authority to ensure that its Conduit Borrowers shall covenant to monitor post-issuance compliance of tax-exempt obligations issued by the Authority for the benefit of such Conduit Borrowers. This Policy, therefore, to the fullest extent practicable, shall document existing practices and describe procedures and requirements for the Authority to:

- (i) Obtain appropriate certificates, forms, and legal opinions from or on behalf of its Conduit Borrowers at the time of the Authority’s issuance of any tax-exempt (or

other tax-advantaged) obligations (for convenience, “Bonds”), for the benefit of such Conduit Borrowers;

- (ii) Require all Conduit Borrowers to monitor post-issuance compliance of such Bonds in accordance with the Tax Code requirements; and
- (iii) Provide for an ongoing process for Conduit Borrowers, during the entire term of the Bonds, to demonstrate compliance with the requirements that must be satisfied subsequent to the issuance thereof in order that the interest be, or continue to be, excludable from gross income for federal income tax purposes.

The Authority recognizes that it must require its Conduit Borrowers to assume responsibility for ongoing-monitoring functions and consultation with bond counsel and other experts to advise such borrowers and the Authority with respect to post-issuance compliance with the provisions of the Tax Code, as such requirements may, from time to time, be amended and supplemented.

This Policy is not intended to be exhaustive and further areas may need to be identified from time to time by the Authority, acting upon the advice of bond counsel and/or other experts. In order for the Authority to see to the carrying out of the procedures in this Policy, however, the Authority shall require all Conduit Borrowers of the Authority’s Bonds to approve and agree to the provisions of this Policy.¹ It is reasonably anticipated that such approval and agreement by the Conduit Borrowers of the Authority with respect to ongoing post-issuance compliance during the term of the Bonds (and for any additional period thereafter as may be required under the Tax Code), shall be properly evidenced in a tax certificate or other closing certificate of the Conduit Borrower and delivered to the Authority, for its benefit as issuer thereof, on or before the date of the Authority’s issuance of such Bonds (all as further described herein).

I. General Policies and Procedures.

The Authority has been advised by bond counsel that, as of the date of adoption of this Policy, the post-issuance related tax rules that can affect the status of Bonds under the Tax Code fall essentially into three basic categories:

- Continuance of the legal status of the Conduit Borrowers as organizations described in Section 501(c)(3) of the Tax Code for “qualified 501(c)(3) bonds;”
- Qualified use of proceeds of the Bonds and requirements with respect to property financed or refinanced in whole or in part with the proceeds of Bonds; and
- Arbitrage yield restriction and rebate requirements.

To such end, the policies set forth below relate to the Authority’s procedures to assure general post-issuance compliance by all Conduit Borrowers.

¹ This Policy primarily addresses Bonds issued by the Authority for the benefit of the City’s essential governmental purposes (i.e., exempt governmental obligations) and “qualified 501(c)(3) bonds” issued by the Authority for the benefit of nonprofit organizations.

A. Bond Counsel. It is the policy of the Authority to require all conduit borrowers to retain experienced bond counsel, at the sole cost and expense of such conduit borrower, with respect to the Authority's issuance of any Bonds and to certify to the Authority that such bond counsel (or other appropriate representative of the Conduit Borrowers) has filed the applicable Form 8038 information report with the IRS on a timely basis.

B. Borrower Compliance Designee. The Authority requires each Conduit Borrower to identify an appropriate designee (whether one or more employees or other named agents of the Conduit Borrower, the "Borrower Designee") who shall be generally responsible to monitor post-issuance compliance with respect to the tax-exempt obligation issued by the Authority. The Conduit Borrower should provide for an adequate succession plan to transfer such responsibilities, from time to time as may be necessary, in order for such identified designee of the Conduit Borrower to understand his/her responsibilities with respect to post-issuance compliance during the term of the tax-exempt obligation. The Borrower Designee shall coordinate procedures for appropriate record retention and review of such records in accordance with requirements described by the IRS. Such duties shall include a review of post-issuance compliance procedures and systems on a periodic basis, at least annually, in order for the Conduit Borrowers and the Borrower Designee to remain up to date on post-issuance compliance requirements under the Tax Code. The Authority, within the text of appropriate closing certificates or other written instruments, shall require that the Borrower Designee will coordinate procedures for record retention and review of such records. Such duties shall include a review of post-issuance compliance procedures and systems on a periodic basis, at least annually, in order for the Borrower Designee to remain up to date on post-issuance compliance requirements under the Tax Code.

C. Conduit Borrower Recordkeeping. The Authority requires each Conduit Borrower to maintain hard copies and/or electronic media (as may be allowed by the Internal Revenue Service (IRS) from time to time) of all documents and records with respect to the tax-exempt obligation issued by the Authority at the request, and for the benefit of, such conduit borrower.

D. Private Activity Concerns. It is the policy of the Authority to require its Conduit Borrowers (including their Borrower Designees) to monitor and track compliance with the various private business use rules with respect to the Bond Financed Facilities (for convenience, "Private Use") including the private business use test described in Section 141(b)(1), as modified by Section 145(a)(2)(B) of the Tax Code, the private payment or security test described in Section 141(b)(2), as modified by Section 145(a)(2)(B) of the Tax Code, and any Private Use of the Bond Financed Facilities by parties other than the conduit borrowers. In order to carry out such private activity compliance requirements, the Authority requires its Conduit Borrowers (including their Borrower Designees) to:

- (i) Maintain adequate records to track the facilities financed with the proceeds of the Bonds and the amounts of such expenditures;
- (ii) Maintain records consistent with records as to non-arbitrage compliance that shall track allocations of the proceeds of the Bonds (including principal of and investment earnings thereon) to the expenditures for the Bond

Financed Facilities, including reimbursement of expenditures in connection with a project that were made prior to the issuance date of the Bonds;

- (iii) Maintain records, if need be, that allocate to a project any equity funds of the conduit borrower or funds from sources *other than* the proceeds of the Bonds to pay costs that do not qualify for tax-exempt financing by the Authority;
- (iv) Monitor any Private Use of the Bond Financed Facilities to ensure compliance with any percentage limitations required under the Tax Code, including periodic review by the Borrower Designees during the term of the Bonds in order for the Conduit Borrowers to assure their compliance; and
- (v) Consult with bond counsel regarding Private Use of the Bond Financed Facilities to ensure that Conduit Borrowers shall remain in compliance with any percentage limitations or *de minimis* rules if allowable under the Tax Code.

E. Arbitrage. It is the policy of the Authority to require its Conduit Borrowers to monitor and calculate arbitrage and to comply with specific yield restriction and arbitrage rules and regulations within the meaning of Section 148 of the Tax Code and Treasury Regulations thereunder and related Revenue Rulings. To such end, the Authority requires the Conduit Borrowers (including the Borrower Designees) to be responsible to:

- (i) Coordinate the tracking of expenditures of the proceeds of the Bonds, including the expenditure of investment earnings, in accordance with the provisions of the Tax Code, including the maintenance of a system for tracking investment earnings;
- (ii) Obtain a computation of the yield on the Bonds from the bond counsel, financial advisor, chief financial officer, bond trustee, underwriter or other non-arbitrage agent as may be selected by the Conduit Borrowers;
- (iii) Maintain a procedure for the allocation of proceeds of the Bonds and investment earnings to expenditures, including reimbursement of expenditures made by the Conduit Borrowers or otherwise on their behalf prior to issuance and closing of the Bonds;
- (iv) Monitor compliance with any applicable “temporary period” or “spending exception to rebate of arbitrage” or any other “exception” or “exemption” with respect to arbitrage compliance by the Conduit Borrowers (all within the meaning of the Tax Code), including any requirements, if any, for yield restriction on the investment of such proceeds, if need be;
- (v) Consult with bond counsel *prior to* engaging in any post-issuance transactions affecting the terms of the Bonds, whether such transactions

constitute modifications to the Bonds or any participation in hedging transactions (e.g., interest rate swaps or “cap” arrangements) or any enhancement transactions (e.g., bond insurance or letters of credit), or any arrangements affecting the security for the payment of the Bonds;

- (vi) Procure expert advice and assistance, if need be, to: (i) compute any rebate liability and if rebate shall be due, to file an appropriate Form 8038-T for payment of such rebate liability on a timely basis as required under the Tax Code, and/or (ii) compute and pay any yield restriction payments, if need be, with respect to the Bonds;
- (vii) Procure expert advice and assistance, if need be, to see to the compliance of the investment of any refunding escrow; and
- (viii) In appropriate circumstances where the Authority is permitted as “conduit issuer” to make payments to the United States Department of Treasury (“Treasury”) in lieu of restricting the yield on investments made with bond proceeds at the end of a temporary period, the Authority shall timely submit the Form 8038-T to make the appropriate payments. For such purposes, it is expected that the Conduit Borrowers shall actively participate in all such matters related to arbitrage rebate and yield reduction payments, and further, that the Authority shall act upon advice of bond counsel as to the timely filing(s) of such Form 8038-T with respect to any yield reduction payments, arbitrage rebate payments, penalty in lieu of rebate payments, termination of the election to pay a penalty in lieu of rebate, and penalty for failure to pay arbitrage rebate on time. The Authority shall make any such payments to Treasury solely with funds provided therefor by (or otherwise on behalf of) the Conduit Borrowers. If requested by any Conduit Borrowers, and acting upon advice of bond counsel, the Authority shall take all such actions necessary to file with the IRS a Form 8038-R, *Request for Recovery of Overpayments Under Arbitrage Rebate Provisions* for recovery of overpayment of arbitrage rebate in accordance with the provisions of the Tax Code.

F. Remedial Actions Specific to the Authority and its Conduit Borrowers. It is the policy of the Authority to require the diligence of its Conduit Borrowers in order to take all such “remedial actions” as may be necessary or advisable in order for the Bonds to continue to constitute governmental tax-exempt obligations or “qualified 501(c)(3) bonds” within the meaning of Section 145 of the Tax Code (as applicable). The following procedures relate to “remedial actions” that may be necessary in order to ensure that all *nonqualified* bonds of an issue of Bonds by the Authority shall be remediated, if necessary. In order to carry out such compliance requirements as may be applicable to the Authority and its Conduit Borrowers, the Authority requires its Conduit Borrowers (including their Borrower Designees) to:

- (i) Retain bond counsel to identify any *nonqualified* bonds of an issue of Bonds by the Authority; and

- (ii) Immediately advise the Authority whether any “remedial actions” in connection with an issue of Bonds shall require compliance with any remedial provisions under the Tax Code, such as Treasury Regulations § 1.145-2, which applies § 1.141-12 to “qualified 501(c)(3) bonds” (i.e., for nonprofit organizations such as nursing homes, retirement communities, and colleges).

To such end, the Authority acknowledges that, with the involvement of its Conduit Borrowers, it may take certain “remedial actions” as prescribed in Treasury Regulations (e.g., redemption or defeasance of a portion of the Bonds, alternative use of disposition proceeds, or alternative use of the any property financed with proceeds of the Bonds) in order to cure certain “deliberate actions” by the Authority as “conduit issuer” and/or actions by Conduit Borrowers that, absent such “remedial actions” would cause the Bonds to be taxable bonds or *nonqualified* private activity bonds. Further, the Authority acknowledges that such “remedial actions” may require the Authority, as “conduit issuer” of the Bonds, to provide a notice of defeasance to the IRS. Accordingly, if requested by any Conduit Borrowers, and acting upon advice of bond counsel, the Authority shall take all necessary action in order to satisfy such notice of defeasance requirements. If the Bonds are treated as reissued under federal regulations, the Authority as conduit issuer shall obtain advice of bond counsel and test the reissued Bonds to determine if the interest on the Bonds remains exempt from gross income for federal tax purposes.

G. Reissuance Concerns. In order to assure compliance of the Bonds with the Tax Code, it is the policy of the Authority to require its Conduit Borrowers (including their Borrower Designees) to consult with bond counsel prior to taking any actions to modify the Bonds. The following procedures relate to rules under the Tax Code regarding “reissuance” of the Bonds for tax purposes under the Tax Code (which “reissuance” may constitute a tax realization event or otherwise result in an adverse effect on the exempt status of the Bonds). In order to carry out such compliance requirements, the Authority requires its Conduit Borrowers (including their Borrower Designees) to:

- (i) Identify and consult with bond counsel regarding any post-issuance change to any terms of the Bonds which could potentially be treated as a “reissuance” of such obligation under the Tax Code; and
- (ii) Confirm with bond counsel whether any remedial actions in connection with a “change in use” of any Bond Financed Facilities would be treated as a reissuance under the Tax Code, and if so, request the Authority to take any official action to approve such change prior to giving effect to such change, and file an appropriate new IRS Form 8038 (or other required tax reporting form) with the IRS on the date of giving effect to such change.

To such end, the Authority understands that certain arrangements between a bondholder and the Authority as “conduit issuer” (or arrangements between the bondholders and the Conduit Borrowers) to modify the Bonds, whether directly or indirectly, may cause the Bonds to be treated as new Bonds for federal income tax purposes (“reissued”), which in turn, would require that the Bonds be tested to determine if the interest on the Bonds shall remain exempt from gross income

for federal tax purposes. Accordingly, the Authority shall not take any action to modify the Bonds absent a specific request by any of its Conduit Borrowers and upon further advice of bond counsel. In each case, the Authority, acting upon advice of bond counsel, shall take all such actions required under the Tax Code in order for the Authority, as “conduit issuer” of the Bonds, to approve the “reissued” and modified Bonds and timely file (or cause the timely filing of) a Form 8038 in connection with such modifications to the Bonds. The Authority acknowledges that, under such circumstances, the date of the modification of the Bonds shall be treated as the date of issuance of the modified Bonds in accordance with the Tax Code.

H. Record Retention. It is the policy of the Authority to require its Conduit Borrowers to retain records with respect to the Bonds, including any hard copies (and/or electronic media as may be allowed by the IRS) of all documents and records with respect to the Bonds. In order to carry out such compliance requirements, the Authority requires its Conduit Borrowers (including their Borrower Designees) to maintain:

- (i) Basic records relating to the transaction, including but not limited to any closing papers that demonstrate tax compliance by the Conduit Borrowers as of the date of issuance of the Bonds by the Authority, and further, that evidence the good faith intentions of the Conduit Borrowers to comply with the provisions of the Tax Code and this Policy, throughout the term thereof;
- (ii) Documents that evidence the allocation and expenditure of proceeds of the Bonds (including but not limited to requisitions, invoices, bills, asset lists of the Bond Financed Facilities and other documentation in the normal course of business of such Conduit Borrowers to evidence its acquisition, construction, and/or equipping of such financed assets), on the date of issuance of the Bonds and all other allocations and expenditures of proceeds thereafter;
- (iii) Documentation regarding the types of the Bond Financed Facilities (i.e., whether land acquisition, buildings or structures, equipment) and information with respect to economic life/ useful life of financed assets and depreciation thereof; and
- (iv) Documentation regarding the use of the Bond Financed Facilities by the Conduit Borrowers, including public use and Private Use, if any;
- (v) Documentation regarding the sources of payment and/or security for the Bonds; and
- (vi) Documentation regarding investment of proceeds of the Bonds, including but not limited to purchase and sale of securities, investment contracts, and rebate calculations.

All such records shall be maintained by the Conduit Borrowers in a manner that ensures their complete access to the IRS or any other regulatory or enforcement agency with respect to the Bonds, including hard copies and/or electronic records if such electronic records are maintained

in compliance with applicable requirements under the Tax Code. Further, the Conduit Borrowers shall maintain all material records with respect to the transaction for as long as any of the Bonds remain outstanding, including any refunding of all or any portion of the Bonds, plus three (3) years or any other longer period as may be prescribed by the Tax Code or advised by bond counsel.

I. Annual Certificate. It is the policy of the Authority to require its Conduit Borrowers to submit an Annual Certificate to the Authority (or the designee of the Authority, such as the City) to demonstrate the continuing compliance by the Conduit Borrowers with their monitoring activities with respect to the requirements applicable to the Bonds under this Compliance Policy and applicable law. Such certificate shall be reasonably acceptable, in form and substance, to the Authority's general counsel. The Authority recognizes, and shall inform each of the "Conduit Borrowers" that: (i) the requirements of this Compliance Policy, including the Annual Certificate, are not intended to be exhaustive documentation to ensure the continuous compliance of the Bonds with applicable federal tax requirements, (ii) any guidance provided as of the closing date of any Bonds may not be in accord with subsequent interpretations of the Tax Code, and (iii) additional and ongoing advice from bond counsel regarding post-issuance compliance requirements may be prudent in order to ensure continuing compliance of the Bonds with the rules affecting their exempt status, among other things.

J. Tax Compliance. It is the policy of the Authority to require the Conduit Borrowers to use (or cause to be used) the proceeds of the Bonds in such manner, and to take or refrain from taking all actions as may be necessary to establish and maintain the exclusion of interest on the Bonds from federal gross income under the Tax Code, over the entire stated term of the Bonds. To such end, the Conduit Borrowers shall comply with all of the applicable requirements under the Tax Code during the term of the Bonds and use due diligence to ascertain if any noncompliance has arisen. If, as a result of routine review of the compliance responsibilities set forth herein, or otherwise, any noncompliance with the applicable sections of the Tax Code should arise after issuance of the Bonds, the Conduit Borrowers shall correct such noncompliance within thirty (30) days after the noncompliance is first discovered. In order to carry out such compliance requirements as may be applicable in the event of any proposed change in use of proceeds of the Bonds or use of the Bond Financed Facilities, the Conduit Borrowers shall consult bond counsel to advise the Conduit Borrowers and the Authority regarding any potential consequences or remedial actions that shall be necessary prior to such change in use of proceeds or change in use of the Bond Financed Facilities.

II. Issuance of Tax-Exempt Obligations by the Authority.

The following policies relate to the Authority's procedures with respect to its issuance of tax-exempt obligations:

A. Information Returns. The Authority shall comply with information filing requirements pursuant to Section 149(e) of the Tax Code. On or immediately after the closing date of the Bonds, the Authority shall file with the IRS the Form 8038, *Information Return for Tax-Exempt Private Activity Bond Issues* in connection with the Authority's issuance of the Bonds. In addition, the Authority, acting at the request of a Conduit Borrower and upon advice of bond counsel, shall file a Form 8038-T, *Arbitrage Rebate, Yield Reduction and Penalty in Lieu of*

Arbitrage Rebate. The Authority may request bond counsel in connection with the Bonds to carry out all such filing duties on behalf of the Authority as “conduit issuer” of the Bonds.

B. Public Approval. When required by federal or state law, prior to issuance of the Bonds, the Authority, acting upon the advice of bond counsel, shall hold a public hearing with respect to the Bonds following reasonable public notice in advance of the public hearing in accordance with requisite law, and shall request appropriate approval by the Council as the “applicable elected representative” of the City within the meaning of Section 147 of the Tax Code.

C. Authority’s Fees. The Authority shall provide a copy of its Borrower Term Sheet to the representative of each of the Conduit Borrowers and shall continue to monitor its application and annual fee structure to ensure that the yield on its conduit loans to the Conduit Borrowers shall not exceed the yield on the Bonds by more than the spread permitted under Section 148 of the Tax Code in order to prevent the Bonds from becoming “arbitrage bonds.”

D. Certification as to Use and Investment of Proceeds. The Authority, by its appropriate officer(s), shall certify in good faith to the IRS, pursuant to any tax document, as to the Authority’s reasonable expectations regarding the use and investment of the proceeds of the Bonds in accordance with the Tax Code and based on the facts, circumstances, and estimates represented to the Authority by its Conduit Borrowers, as described above. The Authority shall require its Conduit Borrowers to appoint a Borrower Designee who shall be responsible to receive and retain all relevant books and records with respect to the investment and expenditure of the proceeds of the tax-exempt obligation issued by the Authority for the benefit of such “conduit borrower.”

E. Declaration of Intent to Reimburse. At the request of any Conduit Borrowers, and acting upon advice of bond counsel, the Authority shall adopt an “official declaration of intent” within the meaning of Treasury Regulations § 1.150-2 in order to permit reimbursement financing of expenditures with a portion of the proceeds of the Bonds, with such adoption occurring not later than sixty (60) days after the reimbursed expenditure is paid.

F. Qualified Hedge Arrangements. If/as requested by any Conduit Borrowers, and acting upon advice of bond counsel, the Authority shall identify any qualified hedge on its books and records maintained for the hedged Bonds in the manner and within the time limit required by Treasury Regulations § 1.148-4(h) or other applicable provisions under the Tax Code. For such purposes, the Authority shall rely upon information provided by its Conduit Borrowers and bond counsel in connection with such hedged Bonds in order for the Authority to satisfy all such requirements.

G. Deliberate Actions. The Authority shall not take, or fail to take, “deliberate actions” subsequent to the issue date that causes the Bonds to fail to meet the tax requirements of the Tax Code. Accordingly, for purposes of its compliance with such “deliberate actions” the Authority shall rely upon advice of bond counsel in connection with the Bonds in order to take, or to refrain from taking, any “deliberate actions” with respect to the Bonds.

H. Elections by the Authority. When the Authority is required by the Tax Code or Treasury Regulations to make certain elections as a “conduit issuer,” the Authority, acting at the

request of its Conduit Borrowers and upon advice of bond counsel, shall make such elections with respect to the Bonds in writing and shall retain such written election(s) as part of the bond documents. Reference is hereby made to *Publication 5005* for examples of elections that may apply to the Authority from time to time, as a “conduit issuer” of Bonds.

I. IRS Examination of Conduit Issues. The Authority recognizes that the IRS shall treat the Authority, as “conduit issuer” of the Bonds, as the “taxpayer” in any IRS examination of the Bonds. Accordingly, upon receipt of any letter initiating an examination with respect to any Bonds (or any other notification from the IRS with respect to the Bonds), the Authority immediately shall notify and provide a copy of such letter or other notification to, the Conduit Borrower of the proceeds of such affected Bonds. In addition, at the request of any of its Conduit Borrowers, and acting upon advice of bond counsel (but at the sole cost and expense of the Conduit Borrower), the Authority will cooperate with such Conduit Borrowers in connection with any IRS examination of the Bonds, any closing agreement to resolve noncompliance with respect to the Bonds (as discussed below in Section 14), and/or any private letter ruling request with respect to the Bonds.

J. Requesting Voluntary Closing Agreements (VCAP). The Authority acknowledges that Notice 2008-31, 2008-11 I.R.B. 592 describes the Voluntary Closing Agreement Program (VCAP) and provides remedies for the Authority, as a Conduit Issuer to voluntarily come forward to resolve a violation which cannot be corrected otherwise under the Tax Code, and further, that *Publication 5005* and Section 7.2.3 of the Internal Revenue Manual requires the Authority to be the entity to request and execute any such voluntary closing agreement. For all such purposes related to VCAP, the Authority shall, upon request (but at the sole cost and expense of the Conduit Borrower), cooperate fully with any Conduit Borrowers provided that the Authority shall act in any event only upon advice of bond counsel.

K. Requesting Private Letter Rulings. The Authority acknowledges that certain Revenue Procedures (Rev. Proc. 2012-1 and its successors, and Rev. Proc. 96-16) describe the required procedures under which the Authority, as a “conduit issuer,” can request a private letter ruling from the IRS with respect to any Bonds. For such purposes, the Authority shall cooperate fully with its Conduit Borrowers, upon request, but at the sole cost and expense of the Conduit Borrower), provided that the Authority shall act in any event only upon advice of bond counsel.

ACTION STEPS BY THE AUTHORITY:

The Authority hereby directs its counsel, upon an initial contact by a Conduit Borrower (or other commencement of proceedings in connection with the issuance of a tax-exempt obligation to be issued by the Authority at the request and for the benefit of, a Conduit Borrower), to provide such potential Conduit Borrower and/or bond counsel, a copy of this Policy in order for the Authority, as the proposed “conduit issuer”, to inform its Conduit Borrowers that the Authority shall require such Conduit Borrower to agree to the post-issuance compliance requirements under the Tax Code. For such purposes, legal counsel may also provide any copies of any IRS-published

forms regarding post-issuance compliance and any other published forms, checklists, questionnaires, etc. (as available, if known to such legal counsel, if at all)².

Further, in order to obtain and document the good faith intentions of its Conduit Borrowers, the Authority shall require all Conduit Borrowers either to execute and deliver to the Authority a “*seen and consented to*” type of certification with respect to this Policy and its requirements, or alternatively, to include (or otherwise incorporate) the provisions of this Policy as an attachment to the appropriate Certificate as to Nonarbitrage, Tax Compliance Agreement or other Tax Certificate to be delivered at closing of the tax-exempt obligation. All such actions, and any others as may be practicable under the particular circumstances, shall be undertaken by the Authority in order to require its Conduit Borrowers to monitor their post-issuance compliance with respect the Authority’s issuance of a tax-exempt obligation that is issued at the request or for the benefit of, such Conduit Borrowers.

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²Form 8038-G Information Return for Tax-Exempt Governmental Bond Issues; Form 8038 Information Return for Tax-exempt Private Activity Bond Issues; National Association of Bond Lawyers (NABL) Tax Compliance Checklists (for Governmental Bonds for Capital Projects and 501(c)(3) Bonds); NABL- Government Finance Officers Association (GFOA) Post Issuance Compliance Checklist; IRS Form 14002 Governmental Bond Financings Compliance Check Questionnaire, among others. Additional sample materials may be attached to this Policy from time to time as such materials are published or otherwise publicly available.

ADOPTED on January 9, 2019

**INDUSTRIAL DEVELOPMENT AUTHORITY OF
THE CITY OF LEXINGTON, VIRGINIA**

Chair

[SEAL]

Attest:

Secretary
Industrial Development Authority of the
City of Lexington, Virginia

DRAFT