

Industrial Development Authority of the City of Lexington, Virginia

Monday, March 26, 2018, 5:00 p.m.

300 East Washington Street

City Hall Community Room (First Floor)

1. Call to Order – Jim Joyner, IDA Vice Chairman
2. Introduction of new IDA Board member – Noah A. Simon, City Manager and IDA Secretary
3. Approval of November 29, 2017 minutes*
4. 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
5. Consideration of an Agreement between the City of Lexington and the Timmons Group for “on-call” economic development services for the City of Lexington – Noah A. Simon, City Manager and IDA Secretary*
6. Adjourn – Jim Joyner, IDA Vice Chairman

Minutes
Industrial Development Authority (IDA)
Of the City of Lexington, VA
Wednesday, November 29, 2017, 5:00 p.m.

IDA:

Present: James Joyner, Vice-Chair
Nick Charles
Anna-Lisa Fitzgerald
Dick Halseth
Bruce Summers

Absent: Jim Devogt, Chair
Buddy Derrick

Also present:

Kendal: Bob Glidden
Mina Tepper
Becky Edmondson

Martha Warthen, Hunton & Williams, LLP.
Sam Darby, Glenn, Feldmann, Darby & Goodlatte

Staff: Noah Simon, Secretary
Gary Swink, Treasurer
Jeremy Boggs, City Attorney

The Industrial Development Authority (IDA) met on November 29, 2017 in the Community Meeting Room of City Hall. Vice-Chair James Joyner called the meeting to order at 5:00 p.m.

Minutes from the Tuesday, October 24, 2017 IDA Meeting

Dick Halseth moved to approve the minutes from the October 24, 2017 Industrial Development Authority meeting as submitted. Nick Charles seconded. The motion carried unanimously (5/0).

Consideration of the Horse Center's loan with Cornerstone Bank
Bruce Summers recused from the Kendal bonds discussion.

Mina Tepper gave an overview of the request and project:

Kendal at Lexington has been planning for some time now an addition to and renovation of its Facility. The "Project" will consist of the acquisition, construction and equipping of an expansion and renovation to the residential and health care facilities of the continuing care retirement community known as "Kendal at Lexington" (collectively, the "Facility") including, but not limited to, (a) 30 new independent living cottages (approximately 76,995 total square feet) consisting of 20 single-family homes and 5 duplex homes and including related covered porches and garages, (b) an expansion (of approximately 2,691 total square feet) and renovation to the existing dining facility and the addition of a second floor exterior patio, (c) an expansion (of approximately 11,305 total square feet) and renovation to the existing Benjamin Borden Health Center, (d) an expansion (of approximately 4,649 total square feet) and renovation to the existing Webster Assisted Living Health Center, (e) the construction of new emergency road access to the Facility, (f) the construction of a new maintenance facility (of approximately 1,538 total square feet) and (g) the lowering of the road at the main entrance.

The Project will be located on the site of the Facility, which is owned by Kendal and located on an 84-acre tract that is generally situated between Enfield Road and Ross Road. The portion of the Facility that consists of the Benjamin Borden Health Center has the address of 170 Kendal Drive, Lexington, Virginia 24450, and is located in Rockbridge County, Virginia (“Rockbridge County”). The remaining portion of the Facility has the address of 160 Kendal Drive, Lexington, Virginia 24450, and is located partially in Rockbridge County and partially in the City of Lexington, Virginia (“City of Lexington”). Kendal’s principal place of business is 160 Kendal Drive, Lexington, Virginia 24450.

Kendal’s underwriters have advised that the transaction be done before the end of this calendar year, and Kendal has advertised a public hearing before the IDA as required by state and federal law. The IDA is conducting the public hearing, and will make a report of the public comments and a recommendation to both the City Council of the City of Lexington and the Board of Supervisors of Rockbridge County, which will take the matter up on December 7 and December 11, respectively. The schedule calls for a publication of a Preliminary Official Statement on December 1 and a sale of the bonds on December 14, 2017.

The Authority is being asked to issue revenue bonds in an aggregate principal amount currently expected not to exceed \$44,000,000 (the “Bonds”), in one or more series. Proceeds of the Bonds are to be used to (1) pay costs of the Project, (2) pay all or a portion of the costs of issuance incurred in connection with the issuance of the Bonds, (3) fund interest on the Bonds prior to, during and up to one year after completion of the Project, (4) fund a debt service reserve fund for the Bonds, and (5) pay working capital and other routine capital expenditures. As usual in transactions of this nature, the Bonds will not constitute a debt or pledge of the faith and credit of the Commonwealth of Virginia, the City of Lexington or Rockbridge County.

Vice-Chair Joyner opened the Public Hearing at 5:07 p.m. Charles Aligood of 506 Calvary Road referenced his letter, which had been distributed to the IDA members at the start of the meeting. Vice-Chair Joyner closed the Public Hearing at 5:09 p.m.

Discussion between members of the IDA and Kendal representatives ensued.

IDA member Dick Halseth moved to approve Kendal’s request to issue the Bonds to finance the Project, and recommend approval of the same to City Council. Nick Charles seconded. Bruce Summers abstained from voting. The motion carried unanimously (4/0).

Adjournment

Dick Halseth made a motion to adjourn the meeting at 5:16 p.m. Anna-Lisa Fitzgerald seconded. Motion carried unanimously

James Joyner, IDA Vice-Chair

Noah A. Simon, Secretary

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

I. INTRODUCTION

A. **Name.** The name of this body shall be the "Industrial Development Authority of the City of Lexington, Virginia" and is sometimes hereinafter referred to as the "Authority."

B. **Purpose.** The Authority shall have all purposes now or hereafter set forth in the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15 .2 of the Code of Virginia, as amended (the "Act").

C. **Powers.** The Authority shall be vested with and may exercise all powers now or hereafter enumerated in the Act, along with that may be incidental thereto or necessary or appropriate to enable it to accomplish its purposes.

D. **Separate Entity.** The Authority shall be a political subdivision of the Commonwealth of Virginia, as provided by the Act, and as such shall be a separate and distinct legal entity from the City of Lexington, Virginia ("Lexington" or the "City").

E. **Gender-neutral interpretation.** Any references to gender-based nouns or pronouns in these Bylaws shall be construed to refer generally to members of either sex.

II. BOARD OF DIRECTORS AND OFFICERS

A. **Board of Directors.** The Authority shall be governed by a Board of Directors in which all powers of the Authority shall be vested.

B. **Default to the Act.** All provisions contained in Article II are derived from Section 4904 Title 15.2 of the Code of Virginia. Any conflict between a provision in Article II and Section 4904 shall be resolved in favor of Section 4904.

C. **Number, Appointment, and Terms of Directors.**

(1) There shall be seven Directors of the Authority who shall be appointed by the City Council of Lexington (the "City Council").

(2) All appointments shall be for a term of four (4) years, except appointments to fill the remainder of an unexpired term created by a vacancy on the Board of Directors.

(3) All terms of office shall be deemed to commence upon the date of the initial appointment to the authority, and thereafter, in accordance with the provisions of Subsection B(2).

(4) If at the end of any term of office of any director a successor thereto has not been appointed, then the director whose term of office has expired shall continue to hold office until his successor is appointed and qualified.

D. **Oath.** Each Director, before entering upon his duties, shall take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia, as amended.

E. **Employment; Residence.** No Director shall be an officer or employee of Lexington. Every Director shall, at the time of his appointment and thereafter, reside in Lexington. When a

Director ceases to be a resident of Lexington, such Director's office shall be vacant and a new Director shall be appointed pursuant to the Act and Section II.F of these Bylaws.

F. **Vacancies.** The City Council shall make any appointments necessary to fill any vacancies upon the Board of Directors, such appointment being for the unexpired term of any Director who shall have resigned or otherwise vacated his office. The City Manager of Lexington shall promptly notify the City Council of any vacancy which may occur on the Board of Directors.

G. **Compensation for Directors.** The Directors shall receive no salary, but the Directors may be compensated such amount per regular, special or committee meeting as may be approved by the City Council not to exceed two hundred dollars (\$200) per meeting, and shall be reimbursed for necessary travel and other expenses incurred in the performance of their duties.

H. **Officers of the Authority.** The Directors shall elect a Chairman, a Vice-Chairman, a Secretary, and a Treasurer of the Authority (collectively, the "Officers"). All officers shall be elected annually at the regular meeting held in September of each year. They shall commence their duties immediately upon election and shall continue in office thereafter until a successor is elected and qualified. The Directors may elect at any regular or special meeting such Officers as may be necessary to fill any vacancy created by resignation, expiration of a term of appointment as a Director, or otherwise, which Officers shall serve for the remaining portion of such Officer's unexpired term.

- (1) The Chairman and Vice-Chairman shall be elected from the membership of the Board. They shall remain full voting members of the Board of Directors after their election.
- (2) The Directors shall elect Lexington's City Manager as Secretary and Lexington's Finance Director as Treasurer. Both the Secretary and the Treasurer shall be ex-officio members without the authority to vote on any business before the Board of Directors.

I. **Duties of Officers.** The duties of Officers of the Authority shall include, but shall not be limited to, the following:

- (1) The Chairman shall preside at all meetings of the Authority; shall be responsible for all correspondence; shall make committee appointments; may appoint members of the Authority as liaison to any other governmental agencies, authorities, and commissions; shall act as a signatory when authorized; and shall have overall responsibility for accomplishment of the Authority's goals and purposes.
- (2) The Vice Chairman shall, in the absence of the Chairman, exercise all of the Chairman's powers and duties. In the event the office of Chairman shall become vacant, the Vice Chairman shall immediately become the Chairman.
- (3) The Secretary shall be responsible for taking detailed minutes of every meeting of the Authority, for providing appropriate notice of meetings to the Directors and Officers of the Authority and all other pertinent parties under Article III, and for preparing and distributing such minutes to all persons as directed by the Board of Directors. The Secretary shall maintain copies of all reports, correspondence, contracts, agreements, indentures, documents, audits, rules and regulations and any other records as may be directed by the Board of Directors. The Secretary also shall be responsible for

preparing and filing all statements, reports and similar matters from time to time required by law to be filed by the Authority with any federal, state or local official.

(4) The Treasurer shall be custodian of all funds of the Authority; shall keep and maintain suitable financial records as may be directed by the Board of Directors; shall arrange for an annual audit of the accounts of the Authority by an independent Certified Public Accountant, subject to the prior approval of the Board of Directors; and shall report to the Directors the results of such annual audit.

(5) In addition to the foregoing powers and duties, each Officer of the Authority may exercise any powers conferred upon such officer by the Act, and all other powers as are customarily exercised by such officer in similar organizations or authorities as may be expedient, necessary or proper to further the lawful purposes of the Authority. During the absence of any Officer, the Board of Directors may designate any member of the Authority to perform the duties of the absent Officer until such Officer's return.

J. **Quorum.** Four members of the Board of Directors shall constitute a quorum of the Board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the members of the Board of Directors (as described in Article III, Section A). No vacancy in the membership of the Board of Directors shall impair the right of a quorum to exercise all the powers and perform all the duties of the Board of Directors.

K. **Employees and Agents.** The Board of Directors shall have the power to employ and pay compensation to such employees and agents, including attorneys, consultants, and bond counsel, as the Board of Directors shall deem necessary in carrying on the business of the Authority.

III. MEETINGS AND HEARINGS

A. **Voting.** Except as otherwise required in these Bylaws or by the Act, voting shall be by a simple majority of those present at any meeting of the board of directors that has been called and conducted in accordance with this Article. No Director shall be allowed to vote by proxy at any meeting of the Authority. If the absence or recusal of any member of the Board of Directors causes a vote to result in a tie, the matter shall be tabled. The same member of the Board who raised the tabled issue can raise the issue again at the same meeting or a subsequent meeting when he or she believes that the matter can be resolved by calling for another vote. However, a raised and tabled issue can only be re-raised once per meeting.

B. **Meetings and Notices.** Except as set forth below, regular meetings of the Board of Directors shall be held at the call of the Chairman at 5:00 P.M. on the third Wednesday of the month, at Lexington City Hall. Special meetings of the Board of Directors may be called by the Chairman or a majority of the Board of Directors. Notice specifying the time and place of any special meeting shall be given to each Director and Officer of the Authority at least 24 hours before such meeting by personally delivering such notice to him or her or by telephoning or mailing such notice to him or her at least 24 hours before the meeting. The presence of any Officer or Director at a special meeting shall be deemed an acknowledgement of the timely receipt of notice thereof or a waiver of any such notice. Special meetings may be held without notice if all of the Directors are present or those not present sign a written waiver of notice

before or after the meeting. All meetings at which formal action is taken shall be open to the public.

C. Public Hearing and Approval; Transmission of Fiscal Impact Statement.

- (1) Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on industrial development bonds, unless otherwise specified by federal law or regulation, the public hearing shall be conducted by the Authority either at its offices or in the General District Court Room of Lexington on a date and at a time selected by the Chairman of the Authority.
- (2) Notice of the hearing shall be given by the Secretary by (1) publishing once a week for two successive weeks in a newspaper published or having general circulation in the locality in which the facility to be financed is to be located and (2) advertising the meeting on the City's website. The notice shall specify the time and place of the hearing and also shall contain (a) the name and address of the Authority; (b) the name and address (principal place of business, if any) of the party seeking financing; (c) maximum dollar amount of financing sought; and (d) the type of business and purpose and specific location, if known, of the facility to be financed. Notwithstanding anything to the contrary contained herein, the hearing shall be scheduled and held not less than six (6) nor more than twenty-one (21) days after the second notice has appeared in the relevant local newspaper.
- (3) If, after the public hearing has been held, the Authority approves the financing, the Chairman shall convey promptly to the City Council a reasonably detailed summary of the comments expressed at the hearing, together with the Authority's recommendation. Such summary and recommendation shall be accompanied by a fiscal impact statement concerning the facility and financing therefor for which approval is sought in the form found in Appendix A of these Bylaws.
- (4) The Chairman shall use his best efforts to transmit said fiscal impact statement, summary and recommendation to the City Council within such time as will permit said City Council to either approve or disapprove the financing within sixty (60) calendar days from the public hearing.

D. Minutes. The Secretary of the Authority shall keep detailed minutes of all meetings and proceedings and all such minutes shall be open to public inspection at all times at the office of the Authority.

E. Closed Sessions. When addressing Authority business not required by law to be discussed in a public forum, any member of the Board of Directors may move to address said business in a closed session. To enter into a closed session, the motion must be seconded and approved by a majority of the Board of Directors. Business discussed in a closed session shall not be included on the minutes of the Authority. Any motion for a closed session shall be made according to the form exhibited in Appendix C.

F. Financial Transactions, Records and Fiscal Year. The Treasurer of the Authority shall keep suitable records of all financial transactions of the Authority and shall arrange to have the same audited following the end of each fiscal year, subject to the approval of the Board of

Directors. Copies of each audit shall be further furnished to the City Council and all such other persons as the Board of Directors may deem appropriate, and shall be open to public inspection at the office of the Industrial Development Authority, at City Hall, 300 East Washington Street, Lexington, Virginia 24450. The fiscal year of the Authority shall begin on July 1 and end on the last day of June next following.

G. **Agenda of Meetings.** The format of all regular meetings of the Board of Directors shall be as follows:

- a. Call to Order.
- b. Reading (if requested by any member), approval and correction of the minutes of the last regular meeting and any special meetings held subsequent to the last regular meeting.
- c. Treasurer's Report.
- d. Chairman's Report.
- e. Committee Reports: Executive Committee, Industrial Advisory Committee, and Special Committees.
- f. Old Business.
- g. New Business.
- h. Adjournment.

IV. **COMMITTEES**

A. **Executive Committee.** The Board of Directors may designate, by resolution adopted by a majority of the Directors, any two or more of the Directors to constitute an Executive Committee. The Executive Committee shall consider on behalf of the Board of Directors, all matters brought to its attention when the Board of Directors is not in session during either a regular or a special meeting. The Executive Committee may act solely in an advisory capacity and shall not exercise any of the powers granted to the Authority of its officers pursuant to these Bylaws or the Act. The Executive Committee shall report to the members of the Authority at the Authority's next regularly scheduled meeting all matters discussed by the Executive Committee.

B. **Special Committees.** The Board of Directors may appoint, from time to time, committees as it may deem necessary and expedient to promote the purposes of the Authority. Such committees shall be advisory only and shall not be empowered to act by or on behalf of the Authority. Members of any special committee shall not be compensated for their services but may be reimbursed for necessary traveling and other expenses incurred while on the business of the Authority.

V. **SEAL OF THE AUTHORITY**

The seal of the Authority shall be a flat faced circular die with the name of the Authority engraved thereon and such other words and figures as may appear thereon, as evidenced by a sample of such seal which appears on the margin of these Bylaws opposite this Section.

VI. CHECKS , NOTES , DRAFTS AND OTHER LEGAL DOCUMENTS

Checks, notes, drafts, and other legal documents shall be signed by such Directors or Officers as specified in the Act, these Bylaws, or as the Board of Directors may, from time to time, authorize. The signature of any such person may be electronic when authorized by the Board of Directors or the Act.

VII. RULES AND REGULATIONS

A. **Rules of Order.** Roberts Rules of Order, newly revised or any subsequent edition thereof, shall govern all matters of procedure not specifically set forth in these Bylaws or the Act.

B. **Rules and Regulations.** The Board of Directors may adopt, amend and alter, from time to time, such rules, regulations, or forms which it may deem necessary or expedient for the management of the affairs of the Authority and which shall not be inconsistent with the Act. The Secretary of the Authority shall maintain current copies of all rules, regulations, and forms adopted by the Authority, which shall be available for public inspection at all times at the office of the Authority.

VIII. AMENDMENT OF THE BYLAWS

These Bylaws may be amended by a majority of the Board of Directors present at any duly constituted meeting, provided written or oral notice of such amendment shall have been given to the Directors and Officers at least 24 hours prior to any such meeting.

APPENDIX A: FISCAL IMPACT STATEMENT FORM

_____ Date: _____

(Name of Applicant)

_____ (Facility)

1. Maximum amount of financing sought	\$
2. Estimated taxable value of the facility's real property to be constructed in the locality	\$
3. Estimated real property tax per year using present tax rates	\$
4. Estimated personal property tax per year using present tax rates	\$
5. Estimated merchants' capital tax per year using present tax rates	\$
6.(a) Estimated dollar value per year of goods that will be purchased from Virginia companies within the locality	\$
6.(b) Estimated dollar value per year of goods that will be purchased from non-Virginia companies within the locality	\$
6.(c) Estimated dollar value per year of services that will be purchased from Virginia companies within the locality	\$
6.(d) Estimated dollar value per year of services that will be purchased from non-Virginia companies within the locality	\$
7. Estimated number of regular employees on year round basis	\$
8. Average annual salary per employee	\$
TOTAL	\$

_____ Signature

_____ Authority Chairman

Industrial Development Authority of the City of Lexington, Virginia

Name of Authority

APPENDIX B: PROCEDURES FOR FINANCIAL ASSISTANCE REQUESTS

1. Prior to consideration of any request for financing assistance, the Authority shall require submission of the following documentation by all applicants:
 - a. Cover letter soliciting an Authority Resolution of Inducement for the use of industrial revenue bonds.
 - b. Background information on the applicant, including but not limited to: a brief history of the applicant; the names of the applicant's chief officers and principal owners; a description of the applicant's market and products or services; records of past sales growth and projected sales; financial statements for the previous three years of operation and current year estimates; and a statement of the relationship of this project to the organization and to its marketing and sales strategy.
 - c. Detailed project outline, including but not limited to; a description of the facilities to be constructed and/or utilized; a schedule of the estimated cost of the project as it relates to the financing sought; an economic valuation analysis; and a detailed explanation of how the bonds will be sold, including all cost connected therewith.
 - d. Statement of benefits to the State of Virginia and to the City of Lexington, including but not limited to: a projection of new employment opportunities created as a result of the project; an estimate of all taxes projected to be paid to the City of Lexington as a result of the facility; and an estimate of all taxes projected to be paid to the State of Virginia as a result of the facility; and a statement of other potential benefits which might accrue to the local economy, including non-monetary benefits.
2. All documentation referred to in Paragraph 1 shall be addressed to the Chairman, Industrial Development Authority of Lexington, Virginia.
3. At the time the application is received, a non-refundable filing fee of \$5,000 is due. A non-refundable closing fee of \$20,000 or 1 percent of the total issuance amount is due at the time the applicant's project is financed through the Authority. The applicant shall be responsible for the cost of advertising legal notices of public hearings, and other costs related to the public hearing as determined by the Authority. The applicant shall also be responsible for the payment of an annual fee. For affordable housing transactions where the Authority or the City is required to conduct ongoing monitoring of the project, the annual fee shall be based on the lesser of: 1) staff's estimate of the costs to be incurred each year in monitoring the project; or 2) one-eighth of one percent of the outstanding principal amount of the bonds. For all other transactions, the annual fee shall be the lesser of: 1) \$5,000 or 2) one-eighth of one percent of the outstanding principal amount of the bonds. Fees shall be made payable to the Industrial Development Authority of the City of Lexington, Virginia. The Authority shall retain

the right to waive all or part of the closing and/or annual fee if the applicant demonstrates to the Authority that financial hardship would result from payment of all or part of the closing fee.

4. Upon receipt of an application for financing assistance, the Authority shall forward all relevant materials to the City Council staff for review. The Authority shall meet to make a recommendation upon an application only after review by the City Council staff has been completed. The Authority shall hold a public meeting to allow for public comment prior to the adoption of an inducement resolution authorizing a proposed project or projects. Notice of this meeting shall be advertised in a newspaper of general circulation in the County fourteen days and again seven days before the public hearing is held. The notice must include the name and address of the Authority, the time and place of the hearing, the name and address of the party seeking financing, the maximum dollar amount of financing sought, the type of business and the proposed location of the facility to be financed. The Authority's recommendation along with accompanying documentation and a detailed summary of the public hearing shall then be forwarded to the City Council for consideration. Final action shall be taken by the Authority only after receipt of a recommendation from the City Council.

5. The Authority shall take into consideration the following factors in reviewing any request for financing assistance:

- a. General Land Use Plan.
- b. Existing Zoning.
- c. Efficient Land Utilization.
- d. Other County Board-adopted Goals, Policies, and Objectives.

6. The Authority shall include in its bond documents and require the applicant to include in its Official Statement the following certifications:

- a. The Official Statement shall meet current financial disclosure guidelines as promulgated by the Government Finance Officers Association; and,
- b. The applicant shall provide ongoing, timely disclosure of annual financial information (including an annual financial audit prepared by an independent auditor using generally accepted accounting principles) and notices of material events to the Authority and to the Municipal Securities Rulemaking Board. The applicant shall bear the burden of compliance with Securities Exchange Commission (SEC) mandates regarding ongoing compliance and reporting obligations, and shall be indemnified to the Authority for any fines resulting from failure to comply with SEC rules.

APPENDIX C: MOTION FOR A CLOSED SESSION

MOTION FOR CLOSED MEETING

I move that Industrial Development Authority of Lexington, Virginia convene in Closed Session in accordance with Section 2.2-3712, of the Code of Virginia, as amended, in order to discuss matters identified as exempt pursuant to Section 2.2-3711, Subsection A, Paragraph [*fill in paragraph number(s)*]. The subject to be addressed shall be [*fill in description from paragraph(s) cited*]

VOTE:

Don Burks	Aye	Nay
Homer "Buddy" Derrick	Aye	Nay
John DeVogt	Aye	Nay
Anna-Lisa Fitzgerald	Aye	Nay
Richard Halseth	Aye	Nay
James Joyner	Aye	Nay

RESOLUTION

WHEREAS, the Industrial Development Authority of the City of Lexington has convened a closed session on this date pursuant to an affirmative vote in accordance with the provisions of the Virginia Freedom of Information Act, specifically Section 2.2-3711, Paragraph [*fill in paragraph number(s)*], to discuss [*fill in description from paragraph(s) cited*]; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by this Authority that such executive meeting was conducted in conformity with Virginia law;

NOW THEREFORE BE IT RESOLVED by the Members of the Board of the Industrial Development Authority of Lexington, Virginia, that the Members hereby certify that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the executive meeting were, heard, discussed or considered by the Authority.

VOTE:

Don Burks	Aye	Nay
Homer "Buddy" Derrick	Aye	Nay
John DeVogt	Aye	Nay
Anna-Lisa Fitzgerald	Aye	Nay
Richard Halseth	Aye	Nay
James Joyner	Aye	Nay

ABSENT DURING VOTE: None

ABSENT DURING MEETING: None

Resolved: January 29, 2015

John DeVogt, Chairman

Clerk



IDA Agenda Item March 26, 2018

TOPIC:

Consideration of the Agreement between the Timmons Group and the City of Lexington for on-call economic development services.

BACKGROUND:

The Timmons Group would assist the City Manager in working on economic development projects including but not limited to vetting projects, proposals and prospects, developing incentives, analyzing property, working on the attraction of commercial/residential clients. The Timmons Group has informally assisted the City Manager on past proposals and conversations and the City Manager could use assistance vetting developers and proposals/concepts.

Services would be task order based and authorized by the City Manager. The cost of each task order should not exceed \$5,000 (there may be an exception based on a project) and funds would come from the IDA. If projects actually materialize, the City Council could consider "reimbursing" the IDA account with a portion of the new revenue so there would always be funds for the IDA for this type of work.

COSTS/ACCOUNT NUMBERS(S):

Funds are available from the IDA. The current balance account balance is approximately \$107,344.

CITY MANAGER'S RECOMMENDATION:

Approve the agreement between the Timmons Group and the City of Lexington and authorize the City Manager to execute the Agreement.



TIMMONS GROUP
YOUR VISION ACHIEVED THROUGH OURS.

1001 Boulders Parkway
Suite 300
Richmond, VA 23225

P 804.200.6500
F 804.560.1016
www.timmons.com

LETTER OF AGREEMENT

Client:	City of Lexington, VA	Date:	February 6, 2018
Contact:	Mr. Noah Simon – City Manager	Principal:	Tim Davey
Address:	300 E. Washington Street Lexington, VA 24450	Project Manager:	Craig Kotarski
		Project Name:	Economic Development

Dear Mr. Simon:

Thank you for the recent conversations and for considering Timmons Group to provide “on-call” economic development services for the City of Lexington. As discussed, we currently provide these unique, small, task-oriented services to other localities in Virginia. We can provide copies of similar contracts to you upon request.

This DRAFT contract proposes to provide “on-call” requested services, complying with professional engineering standards, while being mindful of costs to the Client (the “Client”) named above according to the terms and conditions of this Letter of Agreement (the “Agreement”).

SCOPE AND SCHEDULE OF SERVICES:

Timmons Group will provide the services as detailed on the Scope of Services attached as Exhibit A (the “Scope of Services”). We will provide services in a timely and efficient manner and will keep you informed of the job status and any necessary changes. Any changes required to the Scope of Services must be approved in writing before such changes take effect, and you will be notified by the Project Manager. As of the date first written above, any changes in the Scope of Services caused by governing codes or Client revisions may require a schedule and/or fee change. You will be notified of any such changes in writing by the Project Manager.

PAYMENT SCHEDULE:

FIXED FEE

Timmons Group will prepare a task order proposal for each “on-call” assignment. All terms and conditions of this DRAFT contract will govern business terms of each assignment. Based on our discussions, no individual task order will be larger than \$5,000.

TERMS AND CONDITIONS:

This Agreement shall be controlled by the provisions listed above and the Terms and Conditions attached as Exhibit B. If there is any conflict between the provisions of this Letter of Agreement and the Terms and Conditions, the Terms and Conditions shall control.

REIMBURSEMENTS:

Any services and costs such as submittal fees, printing, courier, mileage and outside consultants not listed in the Scope of Services (“General Reimbursements”) will be invoiced separately in addition to the professional services provided under this Agreement. Reimbursements may include a reasonable handling charge of up to 15% of cost. The Scope of Services may specify a Project Reimbursement Schedule to be attached as Exhibit C if applicable.

LETTER OF AGREEMENT

PAYMENT TERMS:

Unless otherwise provided under the terms of this Agreement, all payments are due upon receipt. Interest shall accrue at the rate of twelve percent (12%) per annum on all unpaid invoices older than thirty (30) days. We reserve the right to stop work on any Client account that becomes sixty (60) days past due and to notify local officials that professional seals should be removed from plans associated with the Client.

We will proceed upon receipt of this signed agreement. Should you have any questions, you can reach Tim Davey at 804-334-9278 or tim.davey@timmons.com

Timmons Group

Date

ACKNOWLEDGED AND ACCEPTED:

On behalf of the Client, this Agreement, including Exhibit A [Scope of Services] and Exhibit B [Terms and Conditions], is accepted and agreed to as of the date written below.

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT A SCOPE OF SERVICES

Scope of Services

Consultant shall be capable of providing the following services at a minimum under this contract as related to site selection and industrial/economic development park development:

1. Planning & site development
 - Feasibility studies & site due diligence
 - Preliminary master planning
 - Phased infrastructure development
 - Site development engineering & design
2. Evaluation of Existing Buildings
 - Feasibility studies for existing buildings
 - Site layout evaluation
 - Structural evaluation
3. Environmental services
 - Environmental site assessments & impact statements
4. Transportation planning & design
 - Transportation planning & traffic studies
 - Roadway planning & design
5. Stormwater Management Planning & design
 - Regional stormwater management programs
 - Stormwater master planning
 - Stormwater basin planning & design
6. Utility planning & design
 - Water system modeling
 - Water & wastewater system planning & design
 - Natural gas planning & design
 - Preliminary Engineering Reports
7. Prospect recruitment & negotiation assistance
 - Recruiting strategy & negotiation services
8. Landscape Architecture Services
 - Landscape architecture planning and design
9. Assistance with Funding Applications to include, but not be limited to:
 - VEDP Grant Applications
 - CDBG
 - Virginia Brownfield Redevelopment Grants

PROJECT REIMBURSEMENT SCHEDULE:

In addition to the Total Fee for the services provided under the Scope of Services above and any General Reimbursements needed, the items and materials listed on the Project Reimbursement Schedule attached as Exhibit C will be invoiced on a monthly basis as applicable. An additional 15% is added to these charges.

EXHIBIT B

TERMS AND CONDITIONS

1. **SCOPE OF SERVICES:** The Scope of Services performed under this Agreement shall be as described in Exhibit A of the Letter of Agreement from TIMMONS GROUP to which these Terms and Conditions are attached. Separate Change Orders signed by authorized representatives of TIMMONS GROUP and the Client may, from time to time, describe additional or different services to be performed under this Agreement, such Change Orders are incorporated by reference herein. These Terms and Conditions shall apply to the Change Orders except to the extent expressly modified by such Change Order. TIMMONS GROUP services with regard to the specific properties covered by this Agreement and subsequent Change Orders, if any, shall hereinafter be referred to as the "Project" or "Projects."
2. **DEFINED TERMS:** Capitalized terms used in this Exhibit B but not defined shall share the meanings ascribed in the Letter of Agreement.
3. **STANDARD OF CARE:** In providing services under this Agreement, TIMMONS GROUP will endeavor to perform in a manner consistent with the degree of skill and care ordinarily exercised by members of the same profession currently practicing under similar circumstances. It is not the intention of TIMMONS GROUP to provide or offers to provide services inconsistent with or contrary to such practices, nor to make any warranty or guaranty, expressed or implied, nor to have any agreement or contract for services subject to provisions of any section of any Uniform Commercial Code. Moreover, it is not the intention of TIMMONS GROUP to accept any terms and conditions offered by the Client in its purchase order, requisition, or notice of authorization to proceed except as set forth herein or as expressly accepted in writing. Written acknowledgement or receipt of the actual performance of services subsequent to receipt of any such purchase order, requisition or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.
4. **CODE COMPLIANCE:** TIMMONS GROUP shall exercise usual and customary professional care in its efforts to comply with all applicable codes, laws, regulations and the policies of regulatory agencies in effect as of the date of the Agreement. Design changes made necessary by newly enacted codes, laws, regulations and the policies of regulatory agencies after the date of this Agreement shall be treated as an additional service subject to an executed Change Order and TIMMONS GROUP shall be entitled to appropriate additional compensation. The Client understands that different officials charged with the enforcement of such codes, laws, regulations and policies of regulatory agencies may have different or inconsistent interpretations of the requirements of such codes, laws, regulations and policies of regulatory agencies, and that TIMMONS GROUP shall not be liable for any damages arising from conflicting interpretations by different officials. In the event of a conflict between the codes, laws, regulations or policies of regulatory agencies which apply to the Project, TIMMONS GROUP shall notify the Client of the nature and impact of such conflict, and the Client agrees to cooperate and work with TIMMONS GROUP in an effort to resolve the conflict.
5. **ELECTRONIC FILES:** Because of the possibility that information and data delivered in an electronic file format may be altered, whether inadvertently or otherwise, TIMMONS GROUP reserves the right to retain the drawings, reports or other forms of electronic data generated and furnished by TIMMONS GROUP as instruments of service. TIMMONS GROUP also reserves the right to retain hard copy originals of all Project documentation which is delivered to the Client in electronic file format, which originals shall govern in the event of any inconsistency between the two. It is also understood that the automated conversion of information and data from the system and format used by TIMMONS GROUP to an alternate system or format may not be able to be accomplished without the introduction of inaccuracies, errors and anomalies. In the event any Project documentation provided to the Client in electronic file format is so converted by the Client,

EXHIBIT B

TERMS AND CONDITIONS

or someone acting on the Client's behalf, Client agrees to assume all risks associated therewith, to remove from copies provided to the Client all identification reflecting the involvement of TIMMONS GROUP in their preparation and to the fullest extent permitted by law, to hold TIMMONS GROUP harmless and indemnify it from and against any claims, liabilities, damages, losses and costs, including but not limited to attorney's fees, arising therefrom or in connection therewith.

6. **GOVERNING LAW:** This Agreement shall be governed according to the laws of the Commonwealth of Virginia.
7. **THIRD PARTY RIGHTS:** This Agreement shall not create any rights or benefits to parties other than the Client and TIMMONS GROUP.
8. **ASSIGNMENT:** This Agreement may not be assigned without the prior written consent of the Client and TIMMONS GROUP, such consent not to be unreasonably withheld.
9. **PROJECT SITE SAFETY:** TIMMONS GROUP's Project site responsibilities are limited solely to the activities of TIMMONS GROUP and TIMMONS GROUP's employees on the Project site. These responsibilities shall not be inferred by any party to mean that TIMMONS GROUP has responsibility for Project site safety. The Client and TIMMONS GROUP agree that Project site safety is the sole and exclusive responsibility of the Project's owners or contractor(s). The parties likewise agree that the Project contractor(s) is solely responsible for Project means, methods, techniques, sequences of operation and procedures, and that TIMMONS GROUP shall have no obligations relating to these contractor(s) duties.
10. **LIMITATION OF LIABILITY:** To the fullest extent permitted by law, except as expressly stated in this Agreement, Timmons Group makes no representations or warranties, express or implied. Notwithstanding any other provision of this Agreement, the maximum liability, in the aggregate, to the Client and anyone claiming by or through the Client, of TIMMONS GROUP and its officers, directors, shareholders, partners, employees, agents and subconsultants, and any of them, for any and all claims, losses, or damages, including attorney's fees, in any way related to or arising from the Project or this Agreement, shall not exceed the total compensation received over the past six calendar months by TIMMONS GROUP under this Agreement, or \$50,000, whichever is greater.
11. **INDEMNIFICATION:** TIMMONS GROUP agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Client, its officers, directors and employees, against all damages, liabilities or costs, including reasonable attorney's fees and defense costs, to the extent caused solely and directly by the negligent performance of professional services by TIMMONS GROUP or its agents under this Agreement. The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless TIMMONS GROUP, its officers, directors, employees and agents, against all damages, costs and liabilities, including reasonable attorney's fees, caused solely by the Client's negligent acts in connection with the Project or that of its Contractor(s), subcontractors or consultants or anyone for whom the Client is legally liable. Neither TIMMONS GROUP nor the Client shall be obligated to indemnify the other party in any manner whatsoever for the other party's own negligence.

EXHIBIT C
PROJECT REIMBURSEMENT SCHEDULE

<u>Resource</u>	<u>Unit Description</u>	<u>Unit Charge</u>
Printing – Plotter Bond B&W	Per Sq. Ft.	\$0.22
Printing – Plotter Bond Color	Per Sq. Ft.	\$0.72
Printing – Small Format B&W	11x17	\$0.16
Printing – Small Format B&W	8.5x14	\$0.08
Printing – Small Format B&W	8.5x11	\$0.08
Printing – Small Format Color	11x17	\$0.80
Printing – Small Format Color	8.5x14	\$0.40
Printing – Small Format Color	8.5x11	\$0.40
Mileage	per mile	\$0.535
Postage	N/A	Cost

* Accounting applies an additional 15% onto all reimbursable charges