

Industrial Development Authority of the City of Lexington, Virginia

Friday, July 27, 2018, 5:00 p.m.

300 East Washington Street

City Hall Conference Room (Second Floor)

1. Call to Order
2. Consideration of a revised Virginia Horse Center debt refinancing request
3. Adjourn



Industrial Development Authority Agenda Item July 27, 2018

TOPIC:

Virginia Horse Center Debt Refinancing

BACKGROUND:

In October 2017 City staff updated the IDA and City Council regarding the Virginia Horse Center's (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 though 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.

COST(S)/ACCOUNT NUMBER(S):

There is no budget impact upon either the IDA or the City. There is, however, a cash flow impact, as we will be distributing funds to the VHC prior to the collection of those taxes.

MANAGER'S RECOMMENDATION:

Authorize the City Manager to execute the Assignment of Tax Distribution and a revised Memorandum of Agreement, incorporating these changes.



July 20, 2018

Ms. Janice Stroud-Bickes
Assistant to the State Director
Rural Development
United States Department of Agriculture
1606 Santa Rosa Road
Suite 238
Richmond, VA 23229

Dear Janice:

Thank you once again for all of the time that you and Virginia Rural Development staff have taken over the past two years in developing and finalizing a Letter of Conditions and helping us navigate the Debt Service Reserve Fund. As Sandra Thomas mentioned in her email of July 12, 2018, we will be requesting that the Rockbridge Board of Supervisors at its meeting on July 23 approve County staff creating a separate bank account with USDA signatory power for the occupancy tax collections. This account, along with the already existing separate City of Lexington account, will make up the debt service reserve fund. We will also request that the County agree to fund projected occupancy tax for the next six-month period no later than 7/15 and 1/15 annually. Once these two requests have been approved we will always have at least \$604,555 in the two accounts making up the Debt Service Reserve Fund based upon our projections.

I am writing to let you know that in addition to these two matters, we will be requesting that the Board of Supervisors approve Virginia Horse Center's borrowing of \$1.5 million from Cornerstone Bank. This loan will be used to convert the \$750,000 bridge loan to long-term financing and to provide \$750,000 to be used to address deferred maintenance issues.

This is a change from the direction we had been heading of closing a similar loan with USDA. We have made the decision to proceed with Cornerstone rather than USDA. First, the USDA required that we obtain construction financing so we had to get a loan commitment from a commercial banks. Secondly, and more importantly, we found that USDA's requirement that the additional 1% of occupancy tax be extended for the entire life of the loan was not politically achievable at this point in time.



We understand that USDA will have to approve the Cornerstone loan. As soon as we have the County separate bank account in place and funded, we will send you a copy of the Cornerstone loan commitment letter and evidence that the two bank accounts contain at least \$604,555 so that you can confirm that the debt service reserve fund is in place. If you would like to see the loan commitment letter prior to our having the bank account in place please let me know.

I really appreciate the work of you and your staff in getting us to this place. We look forward to continuing our open, working relationship.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Nicholson". The signature is fluid and cursive, with a large initial "J" and "N".

John D. Nicholson
CEO



July 17, 2018

Rockbridge Board of Supervisors
Economic Development Authority
Rockbridge County
150 South Main Street
Lexington, VA 24450

Ladies and Gentlemen:

The Virginia Horse Center (VHC) requests that the Board of Supervisors consider the following two matters at its July 23, 2017 meeting:

1. Debt Service Reserve Fund - Establish a separate County bank account to hold the proceeds from the 3% of occupancy tax earmarked for VHC debt service and that the County fund that account no later than July 15 and January 15 of each year with the projected occupancy tax collections for the six month period beginning July 1 and January 1 annually. At the end of each fiscal year the amounts deposited will be reconciled with actual collections and any deficit/excess will be deposited or withdrawn.
2. Debt - Approve VHC's borrowing of \$1.5 million from Cornerstone Bank as outlined on the attached Commitment Letter.

Background

VHC had a balloon debt payment due in January 2018 to New River Bank. From September 2016 when the amount due was \$769,388 through November 2017 when the amount paid was \$748,938, VHC worked with USDA to close a \$1.55 million loan that would provide funds to cover the balloon payment as well funds for capital improvements. In connection with pursuing this loan VHC worked with City of Lexington Council and IDA and Rockbridge County Board of Supervisors and EDA to extend the additional 1% occupancy tax for a total of 10 years through July 2024.

When VHC could not close the USDA loan to cover the balloon payment, it borrowed \$750,000 from Cornerstone Bank for a period of one year (with the ability to extend for a second year). The proceeds of this loan, which is due on November 17, 2018, were used to make the balloon payment. So in effect VHC delayed the balloon payment by one to two years and continued to work to obtain long-term financing.



One of the reasons that VHC was unable to close a USDA loan was that USDA required VHC to fund fully a \$604,555 (an annual payment) debt service reserve fund required by the original loan documents. Since VHC did not have resources to do this, USDA was requiring that \$604,555 of the loan proceeds be set aside. Not only did this mean limited funds for capital improvements but also that occupancy tax collections would be used to pay debt service on borrowed money that was not being productively used.

Whether VHC negotiated a long-term debt agreement with the USDA or another lender, the issue had to be resolved because the USDA must approve all VHC debt. As a result, City, County and VHC staff continued to work with USDA to define what it would consider a "debt service reserve fund".

Debt Service Reserve Fund

Based upon our discussions with USDA, we are requesting that the County establish a separate bank account in the County's name into which the entire 3% occupancy tax earmarked for VHC debt service be deposited. This account will continue to be under the control of the County but also will have oversight by USDA to ensure that funds are only withdrawn for approved debt service payments.

The City already has a separate account and will grant USDA oversight to the account. These two account combined will be the Debt Service Reserve Fund (DSRF).

The DSRF must maintain a minimum balance of \$604,555. Based upon our projections we are unable to maintain that balance with the current practice of depositing actual occupancy tax collections monthly because the annual USDA debt service payment is due February 15, during the lowest occupancy tax collection months.

In order to maintain the minimum balance required by USDA, City staff suggested that the localities fund the DSRF on or about July 1 and January 1 annually with the projected occupancy tax collections for the six-month period beginning on that date. At the end of each fiscal year the amounts deposited will be reconciled with actual collections and any deficit/excess will be deposited or withdrawn. Based upon this funding mechanism our projections show that the DSRF will be fully funded for the remaining life of the USDA debt.

Debt

While VHC had originally planned to obtain a long-term loan from USDA it now believes that a \$1.5 million loan from Cornerstone is a better option.

First, the USDA loan would require a construction loan from a commercial bank. USDA would fund the \$750,000 to payoff the Cornerstone short-term loan and the \$750,000 for capital improvements only after the capital improvements were complete. This would necessitate VHC obtaining approval from the localities for two loans and would extend the process for at least 18 months if not longer.

Second, the USDA would require that the City and County extend the additional 1% occupancy tax for the entire life of the new loan – 8 years from when construction is complete and the USDA long-term financing is in place. Since we do not know how long construction will take we cannot say with certainty how much longer this would be but probably another 4 to 5 years after the current end date of 2024.

While the USDA Letter of Condition for its loan requires that the City and the County extend the additional 1% of occupancy tax for the entire life of the loan, the Cornerstone loan will be paid in full by the current expiration date of July 2014. As a result, we are not requesting any discussion of extending the additional 1% at this time.

Cornerstone's long-term interest rate of 5.85% is higher than the USDA rate of 3.875%. However, assuming a 24 month construction loan at 6.5%, and then converting to an eight year USDA loan vs the debt in the attached Commitment Letter, we project that VHC will incur less than \$70,000 in additional interest in the 10 year period under the proposed debt. We believe that this increased cost is more than offset by not having to discuss an extension in the additional 1%.

We appreciate the Board of Supervisors' and Economic Development Authority's consideration of our request to finalize a DSRF and to approve this debt. We look forward finally to resolving this debt and to having additional deferred maintenance funds to invest in the facility. Sandra Thomas and I will be at the meeting on July 23 to answer any questions that you have.

Sincerely,

A handwritten signature in black ink that reads "John D. Nicholson". The signature is written in a cursive, slightly slanted style.

John D. Nicholson
CEO



P.O. Box 1561
Lexington, VA 24450
Phone 540.463.2222
Fax 540.463.1160
www.cornerstonebankva.com

June 25, 2018

Virginia Horse Center Foundation
Attn: Mr. John Nicholson
487 Maury River Road
Lexington, VA 24450

Dear Mr. Oare:

CornerStone Bank, N.A. ("Lender") is pleased to offer **Virginia Horse Center Foundation, Inc.** ("Borrower") the following credit facility. This Commitment will become effective upon your acceptance of the terms and conditions outlined in this letter, and your return of an executed copy and a closing in a manner satisfactory to Lender. "Closing", "close", or "closed" as used herein, shall mean the execution, recordation where necessary, delivery to Lender of all documentation required by this commitment letter, and satisfaction of all terms and conditions specified herein in a timely manner.

Commitment Type: Term Loan, the "Commitment."

Amount: \$1,500,000.00

Disbursement of Funds Pay off CornerStone Bank loan number 143008888 with the remaining funds to be held in a deposit account at CornerStone Bank and disbursed with approval by the City of Lexington and the County of Rockbridge authorized representatives at requested intervals.

All disbursements from the deposit account containing disbursed loan funds must be approved for withdrawal or release by a duly authorized agent acting on behalf of the City of Lexington and the County of Rockbridge. An approval from each municipality will be required for all disbursements.

Purpose: Capital Improvements to Facilities particularly in the area of Storm Water Management.

Loan Type: Balloon note based on an initial seven year fixed rate and a 10 year amortization period.

Interest Rate: Fixed at 5.85% through maturity. Interest will be calculated on the basis of a 360 day year based on the actual number of days elapsed.

Fees: A \$2,500 origination fee will be payable at closing.

Repayment Terms: Principal and Interest payable quarterly with principal payments due annually.

Collateral: Collateral 1:
Assignment of Lodging Tax proceeds collected by the City of Lexington and the County of Rockbridge insofar as they exceed the required debt service on a mortgage held by the USDA.

Collateral 2:
Aggregate of 19.624 acres from 5 parcels of land on either side of Route 39 also known in the Rockbridge County property records as Tax Map numbers:

61-A-80F (2.229 acres, Zoned C-1)

61-A-80E (2.256 acres, Zoned A-2)

61-A-80D (2.001 acres, Zoned A-2)
61-A-80A (7.902 acres, Zoned AT)
61-A-80B (5.175 acres Zoned AT)

Financial Reports: The following information will be required:
Quarterly

- Internally prepared financial statements of Borrower within 30 days of quarter-end, to include balance sheet and profit and loss statements, prepared in a form acceptable to Lender.

Annually

- Audited financial statements of Borrower prepared by a Certified Public Accountant and delivered within 120 days of fiscal year end.

Borrower agrees to provide Lender any additional financial information on Borrower as may be requested by Lender from time to time.

Prepayment Premium:

Borrower agrees that all loan fees and other prepaid finance charges are earned fully as of the date of the loan and will not be subject to refund upon early payment (whether voluntary or as a result of default), except as otherwise required by law. Upon prepayment of the Commitment, Lender is entitled to the following prepayment penalty:

If the loan is prepaid in full by a third party lender within the first five (3) years of origination, a prepayment penalty will be assessed based on the following percentages of the outstanding balance:

If prepaid within first 12 months following origination: a 3% penalty will be assessed.
If prepaid during months 12 - 24 following origination: a 2% penalty will be assessed.
If prepaid during months 24 – 36 following origination: a 1% penalty will be assessed.

This prepayment penalty will only be charged in the event the loan is refinanced with another lender. It will not apply to principal curtailments in excess of regularly scheduled amounts.

Additional Documentation And Requirements:

This Commitment is subject to the Lender's review and acceptance of the following:

1. *Executed Assignment of Tax Distribution/Performance Agreement between VHCF, City of Lexington, and Rockbridge County in a form acceptable to Lender. The agreement must stipulate that tax revenue collected by the City and the County will not allocated to any expenditures outside of USDA Debt Service, CornerStone Debt Service, and accumulation of Debt Service Reserves without CornerStone's consent.*
2. *A resolution from the VHCF board authorizing the \$1,500,000 loan and naming authorized signers who can sign the closing documents*

Other Conditions:

This Commitment is subject to the maintenance by Borrower of a condition satisfactory to Lender and the delivery and/or execution of loan, security, and informational documents satisfactory to Lender. Examples of an unsatisfactory condition include, but are not limited to, a material change in management, an adverse change in financial condition, or any default by Borrower on any obligation to Lender or to a third party.

The Borrower shall maintain depository accounts with Lender.

During the term of the Commitment, there shall be no change in control, ownership, or legal structure of Borrower without the prior written consent of Lender.

In no event shall either Borrower or Lender be liable to the other for indirect, special, or consequential damages which may arise out of or are in any way connected with the issuance of this Commitment.

All costs, expenses and fees incurred to close the Commitment and perfect Lender's security interest will be the responsibility of the Borrower, whether or not the transaction contemplated herein closes, unless the failure to close is due solely to Lender's gross negligence or willful misconduct.

In addition to any other defaults normally specified in Lender's documents, to the extent permitted by law, Borrower agrees that a default under this Commitment will also cause a default under any other loan or obligation of the Borrower to Lender and that a default under any other loan or obligation of the Borrower to Lender will cause a default under this Commitment.

All information and representations made by the Borrower to Lender are and will be accurate at closing.

This Commitment shall be governed by the laws of the Commonwealth of Virginia.

This Commitment is for the sole and exclusive benefit of the Borrower and may not be assigned by the Borrower.

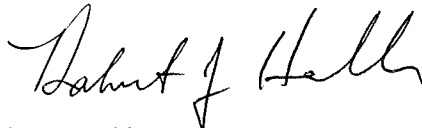
This Commitment and all terms and provisions outlined above shall survive the closing and shall be binding on the Borrower and after such closing.

**Commitment
Modifications:**

No condition or other term of this Commitment may be waived or modified except in writing signed by Borrower and Lender.

Please call me if you have any questions about the terms of this offer. If this Commitment is not accepted with an executed copy received by Lender by July 15th, 2018 and closed by August 15th, 2018, this Commitment shall be null and void at the option of Lender. To acknowledge your acceptance, please sign below and return to me. We look forward to working with you. With kind regards, I remain

Very truly yours,



Robert J. Hobbs
Commercial Lending Officer

Accepted and agreed to this _____ day of _____, 2018.

BORROWER
Virginia Horse Center Foundation

By: _____

Printed Name and Title: _____

ASSIGNMENT OF TAX DISTRIBUTION

THIS ASSIGNMENT is made this _____ day of _____
_____ 2018 by and
between **The Virginia Horse Center** (C-Assignor") and **CornerStone Bank, N.A.**
("Assignee").

WHEREAS, Assignor has executed and delivered to Assignee that certain Promissory Note ("the Note") dated [Date] in the original principal amount of One Million Five Hundred Thousand and no/100 Dollars (\$1,500,000) (the "Note"); and

WHEREAS, Assignor is entitled to receive periodic tax payments (the "Tax Distributions") under that certain arrangement with the City of Lexington, Virginia (the "City") dated [Date] in which Assignor is the intended recipient of the proceeds of a certain lodging and occupancy tax payable to Assignor by the City on a monthly basis; and

WHEREAS, Assignor **desires** to assign to Assignee the balance of the Tax Distributions after deduction of Assignor's obligation to the USDA, up to the sum owed Assignee under the terms of the Note (interest quarterly with principal reduction annually) for application to the unpaid balance of the Note and all renewals, modifications and extensions thereof, and all other indebtedness of Assignor to Assignee (the "Obligations").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee agree as follows:

1. Assignor hereby assigns to Assignee all Assignor's right, title, and interest in the balance of the Tax Distributions after deduction of Assignor's obligation to the USDA, up to the sum owed Assignee under the terms of the Note (interest quarterly with principal reduction annually) for application to the unpaid balance of the Note and all renewals, modifications and extensions thereof, and all other indebtedness of Assignor to Assignee (the obligations).
2. After Assignor receives each Tax Distribution, Assignor will deposit same in a restricted account and on a quarterly basis as contained in the Note, the amount representing the prorated balance after calculating the prorated amount necessary to satisfy the USDA payment which shall remain in said account, pay to Assignee the accrued interest on the Note, or any remaining balance, if any, to reduce the unpaid principal balance of the Note, as appropriate, and the other Obligations under the terms of the Note. It is expressly agreed that Assignor's Note and Obligations shall not be reduced or credited until such time as Assignee receives each final Tax Distribution and deposits same in the restricted account for quarterly distribution. If the City fails or refuses to make a Tax Distribution sufficient to

cover the obligations, Assignee shall receive no payment to reduce the unpaid balance of Note or Obligation. Assignor's duties to Assignee under the Note and Obligations shall not be excused or modified if the City (a) fails or refuses to make a Tax Distribution, or (b) is delinquent in making any Tax Distribution.

3. Assignee shall have no obligation to the City whatsoever other than to accept each quarterly Net Tax Distribution from the restricted account for application-to the indebtedness under the Note. .
4. After the unpaid balance of the Note and any renewals, modifications, or extensions thereof, and after the repayment of all other Obligations and debts of Assignor to Assignee, Assignee agrees to release to Assignor all Assignee's rights created hereby within ten (10) days of the receipt by Assignee from Assignor of such a written request.
5. Assignor agrees to instruct the City to pay the Net Tax Distribution directly to the restricted account for quarterly distributions to be credited against the balance owed by Assignor.
6. This Assignment shall be binding upon and shall inure to the benefit of the parties and their respective successors, assigns, heirs and personal representatives.
7. Assignee's consent to allowing the City to make one or more Tax Distributions to Assignor is not and shall not be deemed to be a waiver of Assignee's right to directly receive all other Tax Distributions.
8. The City agrees and acknowledges that all tax distributions disbursed to Assignor will be used exclusively for debt service associated with the USDA loan and the \$1,500,000 CornerStone loan. Under this assignment, no tax distributions received by Assignor from the City may be used for any other purpose without the consent of CornerStone Bank.

The Virginia Horse Center

ComerStone Bank, N. A.

By: _____

By: _____

Acknowledged:

The City of Lexington, Virginia

By: _____