

**BOARD OF SUPERVISORS/
ECONOMIC DEVELOPMENT AUTHORITY
T E N T A T I V E
JULY 13, 2016
3:00 P.M.
ROOM 241
COUNTY OFFICE BUILDING**

1. Call to Order.
2. Joint Work Session with Economic Development Authority.
 - a. The Powers, Duties, and Role of the Albemarle County Economic Development Authority. *(Greg Kamptner and Faith McClintic, Director, Economic Development)*
3. **4:00 p.m.** – Recess.



Albemarle County

Executive Summary

File #: 16-452, **Version:** 1

AGENDA DATE: 7/13/2016

TITLE:

The Powers, Duties, and Role of the Albemarle County Economic Development Authority

SUBJECT/PROPOSAL/REQUEST: Consideration of the powers, duties and role of the Economic Development Authority; schedule a public hearing to consider proposed amendments to County Code § 2-600 *et seq.*

ITEM TYPE: Regular Action Item

STAFF CONTACT(S): Foley, Kamptner, McClintic

PRESENTER (S): Greg Kamptner and Faith McClintic

LEGAL REVIEW: Yes

REVIEWED BY: Thomas C. Foley

BACKGROUND: County Code § 2-605 requires that all by-laws, standards, and priorities of the EDA, and any amendments to those documents, be approved by the Board of Supervisors prior to their adoption by the EDA. The EDA's By-laws and Rules and Procedures (Attachments E and F), along with its Fiscal Services Agreement with the County (Attachment G), each include provisions that implement County Code § 2-605 by requiring either Board approval or County agreement before the EDA may act on many matters (e.g., By-laws, Article VIII, Section 1; Rules and Procedures, Section 4.3(c); Fiscal Services Agreement, Section 6).

Since the EDA was created by the Board on May 12, 1976, its primary role has been to serve as a conduit issuer of bonds. More recently, it also has served as a conduit for providing grants to businesses (Route 29 Solutions, and those under the Board's Economic Opportunity Fund in conjunction with State programs) and a loan to a non-profit organization (Lewis & Clark Exploratory Center).

STRATEGIC PLAN: Goal 4: Economic Prosperity: Foster an environment that stimulates diversified job creation, capital investments, and tax revenues that support community goals.

DISCUSSION: The purpose of this work session is to discuss the powers, duties, and role of the EDA and whether the County Code should be amended to lift the restrictions in County Code § 2-605.

Over the past several years, the Board has taken steps to promote economic development. Most recently, on April 1, 2015, the Director of Economic Development joined the County in the newly established Economic Development Office to "lead the County's efforts to foster and encourage best practices in economic development activities that provide for quality job creation and sustainable employment opportunities, increased business tax base, and an improved quality of life for all citizens." *County February 19, 2015 Press Release*. On June 10, 2015, the Board adopted a new Comprehensive Plan, which includes a chapter on Economic Development. The stated goal for economic development in the County is: "Albemarle's economy will be diverse, strong, and sustainable, and retain and benefit County citizens, existing businesses, and new local ventures." *Comprehensive Plan, page 6.1*. The Economic Development Office, with assistance from

other County staff, is currently developing a draft Economic Development Strategic Plan.

By establishing the Economic Development Office, adding an Economic Development chapter to the Comprehensive Plan, and developing an Economic Development Strategic Plan, the Board has recognized the need to plan for and to facilitate economic development. The EDA can play a vital role that can assist the County in achieving its economic development goals and objectives. However, the current constraints in County Code § 2-600 *et seq.*, which are also reflected in the EDA's By-laws and Rules and Procedures, have not kept up with other Board-initiated economic development actions, and the role of the EDA is currently limited by these constraints.

If the Board desires to proceed with amending the County Code, a proposed draft ordinance is included as Attachment A. A memorandum prepared by the County Attorney is included as Attachment B. The memorandum explains the history of the EDA, its legal status as a political subdivision, the general powers of economic development authorities, and tools and practices available to ensure that, if the County Code is amended, the activities of the EDA will remain aligned with the policies, goals, and objectives of the Board. The purposes and powers of economic development authorities conferred by state law are included as Attachment C. A table summarizing the results of an informal survey of other economic development authorities is included as Attachment D. The EDA's By-laws and Rules and Procedures, and its Fiscal Services Agreement with the County, are included as Attachments E, F, and G, respectively.

BUDGET IMPACT: There is no budget impact.

RECOMMENDATION:

Staff recommends that the Board schedule a public hearing for August 3, 2016 on the proposed draft ordinance amending County Code § 2-600 *et seq.* (Attachment A) and provide other direction to staff as it determines to be appropriate.

ATTACHMENTS:

- A - Draft Ordinance Amending County Code § 2-600 *et seq.*
- B - Memorandum by Greg Kamptner, County Attorney, dated July 6, 2016
- C - Copy of Virginia Code §§ 15.2-4901, 15.2-4902, 15.2-4905
- D - Table Summarizing Survey Results from Selected Localities' EDAs
- E - EDA By-laws
- F - EDA Rules and Procedures
- G - Fiscal Services Agreement

ORDINANCE NO. 16-02()

AN ORDINANCE TO AMEND CHAPTER 2, ADMINISTRATION, ARTICLE VI, ECONOMIC DEVELOPMENT AUTHORITY, OF THE CODE OF THE COUNTY OF ALBEMARLE, VIRGINIA

BE IT ORDAINED By the Board of Supervisors of the County of Albemarle, Virginia, that Chapter 2, Administration, Article VI, Economic Development Authority, is hereby amended and reordained as follows:

By Amending and Renaming:

Sec. 2-600 Creation of E~~e~~conomic development authority
Sec. 2-601 ~~Powers and duties generally~~ Powers, duties, and procedures

By Amending and Renumbering:

<u>Old</u>	<u>New</u>	
Sec. 2-604	Sec. 2-602	Board of directors

By Repealing:

Sec. 2-602 Board of supervisors to approve financing
Sec. 2-603 Board of supervisors to approve location
Sec. 2-605 Board of supervisors to approve by-laws, etc.

Chapter 2. Administration

Article VI. Economic Development Authority

Sec. 2-600 Creation of E~~e~~conomic development authority.

There is hereby created pursuant to the Industrial Development and Revenue Bond Act (Virginia Code §§ 15.2-4900 et seq.) a political subdivision of the Commonwealth of Virginia to be known as the “Economic Development Authority of Albemarle County, Virginia,” which is hereinafter; referred to in this article as the “economic development authority.”

(5-12-76, §§ 1, 2; Ord. of 5-4-94; Code 1988, §§ 2-47, 2-48; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08)

State law reference--Va. Code § 15.2-4903.

Sec. 2-601 ~~Powers and duties generally~~ Powers, duties, and procedures.

The economic development authority shall have all ~~such~~ public and corporate powers as are or may from time to time be conferred upon ~~the economic development authorities generally by the provisions of pursuant to the Industrial Development and Revenue Bond Act, Chapter 49 of Title 15.2 (sections 15.2-4900 through 15.2-4920) of the Code of Virginia (Virginia Code § 15.2-4900 et seq.), and shall i~~n the exercise of such its powers, the economic development authority shall perform all applicable duties and comply with all applicable procedures adhere in all respects to the provisions of such required by the Act, including obtaining the prior approval of the board of supervisors when that approval is

required by state or federal law before the economic development authority may act, except as otherwise hereafter expressly provided.

(5-12-76, § 3; 11-1-78; 8-14-80; 12-2-81; 3-16-83; 12-21-83; Ord. of 12-16-92; Ord. of 5-4-94; Code 1988, § 2-49; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08; 5-12-76, § 4; 11-1-78; 8-14-80; Ord. of 5-4-94; Code 1988, § 2-50; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08)

~~State law reference--Va. Code §§ 15.2-4905, 15.2-4906.~~

Sec. 2-602 Board of supervisors to approve financing.

~~No financing of any facility by the economic development authority which requires approval of the board of supervisors pursuant to the Internal Revenue Code of 1986, or the Code of Virginia, as amended, as applicable, shall take place without the prior approval of the board of supervisors.~~

~~(5-12-76, § 4; 11-1-78; 8-14-80; Ord. of 5-4-94; Code 1988, § 2-50; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08)~~

~~State law reference--Va. Code § 15.2-4906.~~

Sec. 2-603 Board of supervisors to approve location.

~~No facility located inside or outside the legal boundaries of the county shall be financed by the economic development authority unless the location of the facility has been approved by the board of supervisors.~~

~~(5-12-76, § 5; 11-1-78; 8-14-80; Ord. of 6-2-93; Ord. of 5-4-94; Code 1988, § 2-51; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08)~~

~~State law reference--Va. Code § 15.2-4905.~~

Sec. 2-604~~2~~ Board of directors.

The economic development authority shall be governed by a board of directors in which all powers of the authority shall be vested, composed of seven (7) members appointed by the board of supervisors as provided by law.

(Ord. of 5-4-94; Code 1988, § 2-52; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08)

~~State law reference--Va. Code § 15.2-4904.~~

Sec. 2-605 Board of supervisors to approve by laws, etc.

All by laws, standards and priorities of the economic development authority of the county shall be approved by the board of supervisors prior to their adoption by the economic development authority. Any revisions or changes of such by laws, standards and priorities shall require the prior approval of the board of supervisors.

~~(5-12-76, § 7; Ord. of 5-4-94; Code 1988, § 2-53; Ord. 98-A(1), 8-5-98; Ord. 08-2(3), 6-4-08, effective 7-1-08)~~

~~State law reference--Va. Code § 15.2-4905(10).~~

I, Travis O. Morris, do hereby certify that the foregoing writing is a true, correct copy of an Ordinance duly adopted by the Board of Supervisors of Albemarle County, Virginia, by a vote of ____ to ____, as recorded below, at a regular meeting held on _____.

Acting Clerk, Board of County Supervisors

	Aye	Nay
Mr. Dill	_____	_____
Ms. Mallek	_____	_____
Ms. McKeel	_____	_____
Ms. Palmer	_____	_____
Mr. Randolph	_____	_____
Mr. Sheffield	_____	_____

COUNTY OF ALBEMARLE



MEMORANDUM

TO: Albemarle County Board of Supervisors
Albemarle County Economic Development Authority

FROM: Greg Kamptner, County Attorney

DATE: July 6, 2016

RE: Albemarle County Economic Development Authority, history, legal status, general powers, tools to accomplish the County's economic development goals, and other issues

This memorandum examines the history of the Albemarle County Economic Development Authority (EDA), its legal status, general powers, the tools available to ensure that it accomplishes the County's economic development goals and objectives, and other issues.

1. The history of the Economic Development Authority

The EDA¹ was created in 1976. The original creating ordinance provided that the EDA's powers were "solely and exclusively" limited to the powers to finance "industrial pollution control facilities" and "industrial plant expansion" for industries located in the County. The ordinance also limited the number of bond issuances "in existence at any one time" to three. Between 1976 and 1992, the County's EDA regulations were amended several times, expanding both the type and number of facilities the EDA could finance.

In 1994, the County's EDA regulations were amended to eliminate the specific types and number of facilities that could be financed and to provide a broader grant of power by referring to the powers conferred upon economic development authorities in the Industrial Development and Revenue Bond Act. Other sections of the County's EDA regulations were also amended at that time. The regulations adopted in 1994 are, in all material respects, the regulations that are in effect today, and are codified in County Code § 2-600 *et seq.*

2. The legal status of the Economic Development Authority

The EDA was established by the Board of Supervisors under the Industrial Development and Revenue Bond Act (Virginia Code § 15.2-4900, *et. seq.*). The EDA is governed by a seven-member board of directors. Virginia Code § 15.2-4904. The directors are appointed by the Board of Supervisors to four year terms. Virginia Code § 15.2-4904.

An economic development authority is a political subdivision. Virginia Code § 15.2-4902. An economic development authority also is a separate and distinct legal entity from the city or county that creates it. *Industrial Development Authority of the City of Chesapeake v. Suther*, 208 Va. 51 (1967). Lastly, an economic development authority is "independent of the [city or county] in its operations, its incurment of debt, and its ownership of property." *Suther*, 208 Va. at 57.

¹ The EDA was originally established as the "Albemarle County Industrial Development Authority," and its name was changed in 2008. Under Virginia Code § 15.2-4903, an authority may be named an "industrial development authority" or an "economic development authority." However named, its powers and duties are the same.

As a public authority, an economic development authority is a limited purpose public corporation, and it has only those powers conferred upon it by the General Assembly. See *Vepco v. Hampton Redevelopment & Housing Authority*, 217 Va. 30 (1976).

3. The enabled powers of the Economic Development Authority

Under Virginia Code § 15.2-4903(A), there are, for lack of a better term, two classes of economic development authorities that may be established by cities and counties under Virginia law:

The governing body of any locality in this Commonwealth is hereby authorized to create by ordinance a political subdivision of the Commonwealth, with such public and corporate powers as are set forth in this chapter. Any such ordinance may limit the type and number of facilities that the authority may otherwise finance under this chapter, which ordinance of limitation may, from time to time, be amended. In the absence of any such limitation, an authority shall have all powers granted under this chapter. (emphasis added)

In short, any economic development authority is either subject to limitations on the type and number of facilities that may be financed or it is not. Until 1994, the EDA was in the former class; since then, it has been in the latter class. The distinction between the two classes is significant, as explained in the following three opinions by the Virginia Attorney General.

- A. Any limitations on an economic development authority imposed by a local governing body under the Industrial Development and Revenue Bond Act are confined to those limitations in Virginia Code § 15.2-4903(A)

In a 1977 opinion², the Virginia Attorney General stated that the “sole source of authority granted the local governing body to impose limits upon the activities of its industrial development authority is [what is now Virginia Code § 15.2-4903(A)].” 1977-78 Va. Op. Att’y Gen. 187 (1977). Therefore, the Attorney General opined that a local governing body’s power to restrict the type and number of facilities that may be financed did not extend to dictating “the terms of financial arrangements made by the Authority, which are, by statute within its province alone.”

In 2015, the Virginia Attorney General was asked whether the Louisa County board of supervisors may limit the Louisa County economic development authority’s power to incur debt by limiting the type and number of economic development authority facilities. The Attorney General stated that the board “may, by ordinance, constructively limit the [economic development authority’s] ability to incur debt by limiting the number and type of facilities that it may finance.” Relying on the 1977 opinion discussed above, the Attorney General also concluded that the board “may not, however, require that the [economic development authority] secure the board’s approval of the amount financed for a particular project.”

- B. A local governing body may impose conditions on any gifts, loans, or advances of funds to an economic development authority

In a 1983 opinion, the Virginia Attorney General concluded that when a board of supervisors gives, loans, or advances funds to an economic development authority under Virginia Code § 15.2-1205³, the board “may condition its advancement of funds to the authority in any way that it chooses, pursuant to the language of [what is now

² Although opinions of the Attorney General are not binding on a court or on a locality, the Virginia Supreme Court has said that an opinion of the Attorney General is “entitled to due consideration” by the courts. *Twietmeyer v. City of Hampton*, 255 Va. 387, 393 (1998). “The legislature is presumed to have had knowledge of the Attorney General’s interpretation of the statutes, and its failure to make corrective amendments evinces legislative acquiescence in the Attorney General’s view.” *Browning-Ferris, Inc. v. Commonwealth*, 225 Va. 157, 161-162. There have been no corrective amendments to Virginia Code § 15.2-4903(A).

³ Virginia Code § 15.2-1205 states: “The governing body of any county may give, lend or advance in any manner that it deems proper funds or other county property, not otherwise specifically allocated or obligated, to any authority created by such governing body pursuant to law.”

Virginia Code § 15.2-1205].” 1983-84 Va. Op. Att’y Gen. 103 (1983).

- C. A local governing body may not expressly require that an economic development authority comply with the locality’s economic development goals

Returning to the 2015 opinion of the Virginia Attorney General discussed in subsection 3(A), the Attorney General also was asked whether the Louisa County board of supervisors could ensure that the activities and projects of Louisa County’s economic development authority would serve the county’s economic development goals. The Attorney General repeated the principle that the governing body’s authority is limited to the type and number of facilities that may be financed, and then concluded that “whether doing so will serve the County’s economic development goals is a matter for the Board to determine. There is no statutory authority to specifically require compliance with economic development goals.” 2015 WL 10438450 (Va. A.G. Jan. 30, 2015).

- 4. Legal and practical tools by which the activities of the Economic Development Authority may remain aligned with the County’s economic development and other policies, goals, and objectives

There are a number of legal and practical tools available to ensure that the activities of the EDA remain aligned with the County’s economic development and other policies, goals, and objectives.

- A. Any activities of the Economic Development Authority must serve a public purpose

The powers of the EDA must “be exercised for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity.” *Industrial Development Authority of City of Richmond v. La France Cleaners & Laundry Corp.*, 216 Va. 277, 279-282 (1975) (holding that, to effectuate the “obvious intention of the Legislature,” the three requirements, though stated in the conjunctive, would be construed in the disjunctive).

These are the public purposes that must be served by the activities of the EDA. A public purpose is essential, because it is only then that an activity of the EDA “constitutes a proper function of government.” *Mayor & Members of City Council of City of Lexington v. Industrial Development Authority of Rockbridge County*, 221 Va. 865, 868-69 (1981).

- B. The Board of Supervisors may impose limitations on the type and number of facilities that may be financed

At any time, the Board of Supervisors may amend County Code § 2-600 et seq. under the authority in Virginia Code § 15.2-4903(A) and limit the type and number of facilities that the EDA may finance. This could curtail the activities of the EDA, as explained in Section 3.

- C. Many Economic Development Authority-related matters are required by state or federal law to be approved by the Board of Supervisors

Many EDA-related matters are required by state or federal law to also be approved by the Board of Supervisors, such as certain bond issues and grant programs.

For example, when federal tax laws require public hearings and public approval as a prerequisite to obtaining a federal tax exemption for the interest paid on industrial development bonds, the public hearing is held by the EDA, but the Board of Supervisors must provide the “public approval” of the financing for any facility recommended by the EDA. Virginia Code § 15.2-4906. The Board provides evidence of public approval by adopting a resolution. Virginia Code § 15.2-4906.

With respect to grants with which the EDA has recently been involved, the Board of Supervisors had to approve and be involved with a grant received from the state under the Commonwealth’s Development Opportunity Fund (COF) (formerly known as the Governor’s Opportunity Fund) (Virginia Code § 2.2-115) because the required local matching funding was provided by the County’s Economic Opportunity Fund. Therefore, the

Board appropriated the matching funding from the County's Economic Opportunity Fund to the EDA and entered into a pass-through agreement with the EDA that established the conditions for providing the matching funding. Grants received under the Governor's Agriculture and Forestry Industries Development Fund (AFID) (Virginia Code § 2.2-303 et seq.) have worked the same way.

Note, however, that COF and AFID grants may be awarded to "political subdivisions" (Virginia Code §§ 2.2-115 and 2.2-304, respectively) such as the EDA. Thus, but for the fact that the matching funding is provided by the Board of Supervisors, the Board would not have to approve participating in COF and AFID grants.

D. The Board of Supervisors may place conditions on gifts, loans, and advances of funds to the Economic Development Authority

When the Board of Supervisors gives, loans, or advances funds to the EDA under its authority in Virginia Code § 15.2-1205, it may impose conditions on the gift, loan, or advance. There is no limitation on the scope of a condition.

The Board has placed conditions on the County funds it has provided to the EDA in the past. For example, when the Board provided funds to the EDA for the EDA to loan to the Lewis and Clark Exploratory Center, one of the conditions it imposed was that the Board had to approve any extension of the deadline to repay the loan.

Conditions may be imposed by the Board in a proactive way that specifies the purpose for which the County funds are to be used. For example, if the County continues to provide the matching funding for COF and AFID grants from the County's Economic Opportunity Fund, the Board could appropriate a block amount of funds from that Fund to the EDA on a periodic basis, and condition the appropriation on the funds being used only to provide matching funding for a COF or AFID grant. This would expedite the grant process, even if the Board may be required to be involved at other steps in the COF or AFID grant process.

E. The County's Comprehensive Plan and the pending County's Economic Development Strategic Plan will provide clear direction

The Board of Supervisors' clear articulation of its economic development goals and objectives in the Comprehensive Plan can guide the activities of the EDA. These economic development policies, goals, and objectives extend beyond the Economic Development chapter in the Comprehensive Plan. Following are some examples from the Comprehensive Plan.

The Growth Management Policy in the Comprehensive Plan is to direct "development into specific, identified areas while conserving the remainder of the County for rural uses, such as agriculture, forestry, resource protection, and others that rely on these uses." Comprehensive Plan, page 3.3. The stated goal of the Policy is to ensure that "Albemarle County's Development Areas will be attractive, vibrant areas for residents and businesses, supported by services, facilities, and infrastructure. Growth will be directed to the Development Areas and the County's Rural Area, with its agricultural, forestal, historic, scenic, and natural resources will be preserved for future generations." Comprehensive Plan, page 3.1.

The County's goal for economic development is stated as follows: "[The County's] economy will be diverse, strong, and sustainable, and retain and benefit County citizens, existing businesses, and new local ventures." Comprehensive Plan, page 6.1. One of the objectives for economic development is to "[p]romote economic development activities that help build on the County's assets while recognizing distinctions between expectations for the Development Areas and the Rural Area." Comprehensive Plan, page 6.5. One of the strategies is to "[e]xplore opportunities to assist with redevelopment of underutilized commercial and industrial zoned properties." Comprehensive Plan, page 6.11.

The goal for the County's Development Areas is for them to be "vibrant active places with attractive neighborhoods, high quality, mixed-use areas, thriving business and industry, all supported by services, infrastructure, and multimodal transportation networks." Comprehensive Plan, page 8.1. Redevelopment is a strategy

that can: (1) “improve and take advantage of existing investment in the Development Areas” (Comprehensive Plan, page 8.23, Strategy 20); and (2) promote “the re-use of buildings or areas to improve the functionality and appearance of underutilized sites.” (Comprehensive Plan, page 8.23)

When it is completed, the County’s Economic Development Strategic Plan will likewise, and more directly, guide the activities and decisions of the EDA.

Lastly, the Board of Supervisors and the EDA may consider entering into a memorandum of understanding that expresses the expectations for economic development arising from the relevant policies, goals, and objectives in the County’s Comprehensive Plan and from the Economic Development Strategic Plan.

- F. Ongoing communications and meetings between the Board of Supervisors and the Economic Development Authority will ensure that the County’s economic development policies, goals, and objectives are implemented

Ongoing communications, either between individual members of the Board of Supervisors and the EDA, or during meetings between the two bodies, will play a significant role in ensuring that the County’s economic development policies, goals, and objectives are being implemented by both the County and the EDA. The meetings will allow the two bodies to receive and discuss new information and ideas from staff at the same time, and allow both bodies to discuss needs and wants, impediments to success, and other issues.

Communications also can be fostered by having one or two Board members attend EDA meetings on a regular basis.

- G. County staff, which also serves as staff to the Economic Development Authority, can ensure that the County’s economic development policies, goals, and objectives are implemented

For now, staff from the County’s Department of Economic Development and the County Attorney’s Office also serve as staff to support the EDA. This staff, at the very least, will play an ongoing role in ensuring that the County’s economic development policies, goals, and objectives are being implemented.

5. Conclusion

The County’s economic development initiatives have been evolving and intensifying over the past several years through various studies, the creation of the Economic Development Office, the inclusion of an Economic Development chapter in the Comprehensive Plan, and the work currently underway to develop an Economic Development Strategic Plan. The ability of the EDA to play a key role in economic development has been constrained, at least in part, by the current County regulations and the EDA’s operating documents, which require virtually everything the EDA does to be first approved by the Board of Supervisors. These constraints hinder the work of the EDA.

These constraints can be removed to allow the EDA to operate nimbly and flexibly in order to better achieve its purposes. At the same time, there are legal and practical tools discussed in Section 4 that are available to ensure that the activities of the EDA remain aligned with the County’s economic development policies, goals, and objectives.

**Excerpts from the Industrial Development and Revenue Bond Act
(Virginia Code § 15.2-4900 *et seq.*)**

§ 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 . . .

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 . . .

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 . . .

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 . . .

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 private, accredited and nonprofit institutions of collegiate education in the Commonwealth whose primary purpose is to provide collegiate or graduate education . . .

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 . . .

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 . . .

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) . . .

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 . . .

. . .

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

§ 15.2-4902. Definitions.

Wherever used in this chapter, unless a different meaning clearly appears in the context:

. . .

"Authority facilities" or "facilities" means any or all (i) medical (including, but not limited to, office and treatment facilities), pollution control or industrial facilities; (ii) facilities for the residence or care of the aged; (iii) multi-state regional or national headquarters offices or operations centers; (iv) facilities for private, accredited and nonprofit institutions of collegiate, elementary, or secondary education . . .; (v) parking facilities, including parking structures; (vi) facilities for use as office space by nonprofit, nonreligious organizations; (vii) facilities for museums and historical education, demonstration and interpretation, together with buildings, structures or other facilities necessary or desirable in connection with the foregoing, for use by nonprofit organizations; (viii) facilities for use by an organization (other than an organization organized and operated exclusively for religious purposes) which is described in § 501(c) (3) . . .; (ix) facilities for use by a locality, the Commonwealth and its agencies, or other governmental organizations . . .; (x) facilities devoted to the staging of equine events and activities (other than racing events); however, such facilities must be owned by a governmental or nonprofit, nonreligious organization and operated by any such governmental or nonprofit, nonreligious organization; (xi) facilities for commercial enterprises that are not enterprise zone facilities (as defined in § 1394 (b) of the Internal Revenue Code of 1986, as amended) . . .; (xii) enterprise zone facilities; and (xiii) facilities used primarily for single or multi-family residences . . .

. . .

§ 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:

. . .

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 . . .

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 . . .

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;

. . .

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;

. . .

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 . . .

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 . . .

. . .

Survey of Select Localities' Economic Development Authorities

Locality ¹	1. Are the priorities of the EDA set by the governing body in a document?	2. Does the EDA provide periodic updates to the governing body and, if so, how and how often?	3. Does the locality serve as the fiscal agent for the EDA and, if so, does the locality establish rules for how the EDA may spend its money?	4. Does the EDA spend money to entertain potential businesses and, if so, what does it spend on are there applicable guidelines?	5. Are public funds used to purchase alcoholic beverages?
Bedford County	The EDA has a strategic plan.	The EDA meets with the Board of Supervisors in a joint meeting at least once per year to discuss the EDA's priorities and challenges. The director of economic development provides a written report to the County administrator to include in his monthly report to the Board of Supervisors.	The County treasurer is the fiscal agent for the EDA and the County's fiscal management director provides the director of economic development with accounting codes and services as needed for various EDA projects, incentives, and grants. There are no rules for how the EDA spends its money, although the EDA seeks consensus from the Board of Supervisors on items of significance.	The EDA occasionally pays for a meal/meeting with a prospect, but most the funds come from the director of economic development's budget.	No; public funds are not used to purchase alcoholic beverages.
Fairfax County	The County provides \$7.5 million funding per year. All priorities, plans, objectives, and measures, are developed through negotiations between EDA's director and the EDA. The plans and strategies are generally held confidential and not available outside of the EDA staff.	EDA staff issues an annual report that is mailed to the Board of Supervisors and the County Executive. The EDA also annually submits the same documents as County agencies as part of the budget process. The EDA does not report to the County Executive or any of the County staff. Other formal reports are not provided to the Board of Supervisors except on special request.	The EDA uses County mechanisms for finance and payroll as well as benefits. The County auditor also includes the EDA in its annual review and reports. The only "rules" for how the funds are spent is provided in the budget document, although the EDA has the ability to allocate funds appropriated to the EDA as it sees fit during the course of the year and the EDA president/CEO has the ability to reallocate funds up to the amount of \$10,000 per action. The EDA does not require any further permission from the Board of Supervisors or County administrative staff to expend funds, regardless of the amount.	The EDA does not spend funds to entertain potential businesses. All of the EDA's funds are spent on pre-approved budget expenses that support the EDA's program, and are monitored by multiple layers of control.	No; public funds are not used to pay for alcoholic beverages.

¹ Arlington County, City of Charlottesville, Chesterfield County, Hanover County, and Prince William County did not respond to the survey.

Survey of Select Localities' Economic Development Authorities

Locality ¹	1. Are the priorities of the EDA set by the governing body in a document?	2. Does the EDA provide periodic updates to the governing body and, if so, how and how often?	3. Does the locality serve as the fiscal agent for the EDA and, if so, does the locality establish rules for how the EDA may spend its money?	4. Does the EDA spend money to entertain potential businesses and, if so, what does it spend on are there applicable guidelines?	5. Are public funds used to purchase alcoholic beverages?
Henrico County	The EDA has a Strategic Planning Committee that develops the Operational Plan, which lists objectives for the EDA.	This is done one-on-one orally between the EDA directors and the members of the Board of Supervisors that appointed them. These meetings are held on a regular and informal basis. There is also an annual update at the holiday dinner with the Board of Supervisors and the County manager each December where the EDA Executive Director makes a presentation highlighting the year's accomplishments. The EDA Executive Director also meets with the County Manager regularly (at least monthly). The Board also receives the EDA's meeting agendas, which includes the prior month's minutes.	The EDA controls its money, but the County approves a budget for EDA appropriations each year. The County's departments with expertise will support the EDA as needed (e.g., the Purchasing Office assists the EDA with procurement matters and Human Resources will help with employment issues).	Expenditures for marketing may include alcohol expenses. There are no written guidelines.	Expenditures for marketing may include alcohol expenses. There are no written guidelines.
Loudoun County	The EDA controls its priorities through internal discussions and strategic retreats. The EDA has a memorandum of understanding that establishes expectations on how the EDA and the County work together.	The EDA has no regular schedule for updating the Board of Supervisors on its activities. However, EDA representatives do appear at Board meetings when it is appropriate. Most of the EDA's interaction with the Board of Supervisors is through County staff.	The EDA is financially independent from the County. The EDA's funding primarily comes from fees charged for bond financing and are not from the public. The EDA passes through public funds to commercial entities as business incentives. These funds are provided by the Board of Supervisors and often match State incentives.	The EDA would likely pay for the entertainment of potential businesses but have not done so to the responder's knowledge. This would require a policy and a vote.	The question of alcohol has not come up. The responder was not certain if it is allowed or not (but see response to question 4).

Survey of Select Localities' Economic Development Authorities

Locality ¹	1. Are the priorities of the EDA set by the governing body in a document?	2. Does the EDA provide periodic updates to the governing body and, if so, how and how often?	3. Does the locality serve as the fiscal agent for the EDA and, if so, does the locality establish rules for how the EDA may spend its money?	4. Does the EDA spend money to entertain potential businesses and, if so, what does it spend on are there applicable guidelines?	5. Are public funds used to purchase alcoholic beverages?
City of Virginia Beach	The EDA reviews the City Council's goals and pursues them as their own. The City Council holds retreats twice a year (maybe three) and establishes its priorities for City projects, and the priorities are reported to the EDA.	Not formally. A summary of every EDA meeting and the minutes of every meeting are provided to members of the City Council. Two members of the City Council attend all EDA meetings as liaisons and can report anything of note at the next City Council meeting.	No. The EDA has its own bank accounts and budget. The EDA determines how to spend its own funds for the most part. However, because any large project undertaken by the EDA will require funding from the City, the City will have approved the project and how the money is used.	Yes, under the City's Economic Investment Program. City Council provides oversight.	City Policy, Section 4.5 provides an exception to City policies restricting the use of alcohol. The exception may be granted by the City Manager for specific economic development purposes.

**BY LAWS OF THE ECONOMIC DEVELOPMENT
AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**

ARTICLE I

Name and Location

Section 1. The name of the Authority shall be "Economic Development Authority of Albemarle County, Virginia".

Section 2. Its principal office shall be located in the City of Charlottesville, Virginia, in the County Office Building.

ARTICLE II

Rules and Regulations, General

Section 1. The Authority shall be governed by, and exercise the powers granted by, the provisions of the "Industrial Development and Revenue Bond Act", Title 15.2 of the Code of Virginia, as amended and as may hereafter be amended, subject to the provisions of that certain Ordinance creating the Authority adopted by the Board of Supervisors of Albemarle County, Virginia, on May 12, 1976, and as such Ordinance may hereafter be amended, such Ordinance being appended hereto and made a part hereof.

Section 2. The Authority may engage legal counsel, bond counsel, financial advisors, trustees and other experts as it deems necessary to assist it in the conduct of its business.

ARTICLE III

Membership

Section 1. The governing body of the Authority shall be the Board of Directors appointed by the Board of Supervisors of Albemarle County.

ARTICLE IV

Officers and Committees

Section 1. The officers of the Authority shall be a Chairman, a Vice-Chairman, a Secretary-Treasurer, all elected by the Directors annually from their membership, and an Assistant Secretary-Treasurer from outside of their membership. The officers shall hold office for terms of one year, or until the next annual meeting and until their successors shall have been duly elected and shall have qualified.

Section 2. The Chairman, or in his absence, the Vice-Chairman, shall preside over all meetings of the Authority. In the absence of both, a temporary presiding officer shall be elected from among the members present.

The Chairman shall exercise general supervision over all of the affairs of the Authority. The Chairman shall appoint all Committees.

Section 3. The Secretary-Treasurer shall keep the minutes of all proceeding and shall keep records of all correspondence and business transactions of the Authority. Minutes of proceedings shall be open to public inspection at all reasonable times. He shall keep the corporate books and have charge of the seal. He shall send notices of meetings by mail or otherwise to members of the Authority as the same may be required, and to others as required by Section 2 of Article V. He shall keep a roll of the members. He shall perform all other duties usually appertaining to the office of a secretary.

Section 4. The Secretary-Treasurer shall be responsible of the keeping of suitable records of all financial transactions of the Authority. Such records shall be audited annually and a copy of each such audit shall be furnished to the Board of Supervisors of Albemarle County and shall be open to public

inspection. Subject to the provisions of the Industrial Development and Revenue Bond Act and all agreements, contracts, and other instruments, including any trust indenture securing bonds of the Authority, made and entered into pursuant thereto, he shall have charge and custody of all funds and be responsible for their investment and deposit in the name of the Authority as authorized by the Authority. In general, he shall perform all the duties incident to office the treasurer and such other duties as from time to time may be assigned by the Authority. The Secretary-Treasurer shall give bond in such sum as may be fixed by the Authority, payable to the Authority, with corporate surety authorized to act as such in the State of Virginia, the premium. On which bond shall be paid as an expense of the Authority. The Secretary-Treasurer shall make disbursement of funds of the Authority under the direction and approval of the Directors, and all checks drawn on deposits of the Authority shall bear his signature as Treasurer, and checks of over \$1,000.00 shall also bear the signature of the Chairman or Vice-Chairman. In his absence or incapacity, his power to sign checks may, at a duly constituted meeting, be delegated by the Directors, to the Assistant Secretary-Treasurer, or to one of the Directors other than the Chairman or Vice-Chairman. Certain of the functions of the Secretary-Treasurer may, at a duly constituted meeting, be delegated by the Directors to the Assistant Secretary-Treasurer.

The Clerk of the Board of Supervisors shall serve as Assistant Secretary-Treasurer, and shall perform such duties of the Secretary-Treasurer set forth herein as are delegated to the Clerk by the Secretary-Treasurer.

Section 5. Contracts, bonds, notes, deeds, conveyances and other formal documents as authorized by the Board of Directors shall be signed on behalf of the Authority by the Chairman and the Secretary-Treasurer or in their absence by two directors who shall be designated officers and approved by the Directors.

Section 6. The Secretary-Treasurer shall arrange for the books and records of the Authority to be kept in appropriate offices and/or vaults of the County Office Building.

ARTICLE V

Meetings of the Directors and Fiscal Year

Section 1. The annual meeting of the Board of Directors shall be the first meeting of the calendar year to be held no later than June 30 of the year, at the County Office Building.

Section 2. Other meetings of the Authority may be called at any time by the Chairman, or in his absence, by the Vice-Chairman or Secretary-Treasurer, or on written request made to the Secretary-Treasurer by a majority of the members of the Board of Directors. Written notice stating the place, date, hour and purpose of each meeting shall be given not less than three days, nor more than ten days, before the date of the meeting, either by mail or by telephone confirmed by mail, to each Director entitled to vote at such meeting and copies of such notice shall be sent to the Chairman of the Board of Supervisors of Albemarle County, the County Executive, and also to any member of the general public, including news media, requesting same. In cases of bona fide emergency, special meetings may be called and the foregoing notice waived by the Directors. A resolution by the Board of Directors that a bona fide emergency exists shall be conclusive proof thereof.

Section 3. Any business of the Authority may be acted upon at any meeting at which a quorum is present, subject to Section 4 of this Article V.

Section 4. Four members of the Board of Directors shall constitute a quorum 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.

Section 5. All meetings shall be open to the public.

Section 6. The fiscal year of the Authority shall begin on July 1 and end on June 30 of the succeeding year.

ARTICLE VI

Order of Business

At any meeting of the Authority the following shall be the order of business.

1. Roll Call.
2. Minutes of previous meeting read and action thereon.
3. Report of the Chairman.
4. Unfinished business.
5. New business.

ARTICLE VII

Voting

Section 1. All Directors appointed to the Board of Directors pursuant to statutory authority are entitled to one (1) vote, and, except as provided in Section 4 of Article V of these by-laws, and Title 15.2 of the Code of Virginia, a simple majority of those present and voting shall be required to adopt any measure.

ARTICLE VIII

Amendments

Section 1. These by-laws may be amended, but no amendment to these by-laws shall be valid unless approved by a majority vote of the Board of Supervisors of Albemarle County, Virginia, present in their respective meetings to which said amendment is presented, and provided further that notice of the proposed amendment is given in the notices of said meetings.

ARTICLE IX

Seal

Section 1. There shall be a seal of the Authority which shall have the words "Economic Development Authority of Albemarle County, Virginia"

ARTICLE X

Miscellaneous

Section 1. All terms referring to gender herein shall be interpreted in a neutral fashion.

Adopted this _____ day of _____, 2009.

CHAIRMAN

ATTEST:

SECRETARY-TREASURER

APPROVED BY:

ATTEST:

**ECONOMIC DEVELOPMENT AUTHORITY OF
ALBEMARLE COUNTY, VIRGINIA**

RULES AND PROCEDURES

ARTICLE I

PURPOSE AND SCOPE

Section 1.1 Purpose. These Rules shall govern the submission of Applications to the Authority, application and administrative fees, consideration of matters to be brought to the attention of the Authority relating to the authorization, issuance and sale of its Bonds, the adoption of Financing Documents, reports to be submitted to the Authority, and such other matters as are contained herein.

Section 1.2 Scope. These Rules supplement the Act. In the event of any conflict between the Act and these Rules, the provisions of the Act shall prevail.

ARTICLE II

DEFINITIONS

Section 2.1 Definitions. As used in these Rules and Procedures, the following terms shall have the meaning as set forth herein, unless the context clearly requires otherwise:

"Act" shall mean the Virginia Industrial Development and Revenue Bond Act, Chapter 49, Title 15.2, Code of Virginia of 1950, as amended.

"Applicant" shall mean any individual, person, firm, corporation, partnership or other entity applying for industrial development revenue bond financing, or for whose benefit the Authority has issued its Bonds, or who requests the Authority to take any action.

"Application" shall mean the Authority's application for industrial development revenue bond financing as in effect from time to time.

"Authority" shall mean the Economic Development Authority of the County of Albemarle, Virginia, a political subdivision of the Commonwealth of Virginia.

"Bonds" shall mean any notes, bonds and other obligations authorized to be issued by the Authority pursuant to the Act.

"Code" shall mean the Code of Virginia of 1950, as amended.

"Financing Documents" shall mean any resolutions, instruments, documents, papers, elections, certificates or financing statements required to be adopted or authorized, executed and delivered by the Authority in connection with the authorization, issuance and sale of its Bonds.

"IRC" shall mean the Internal Revenue Code of 1954, as amended.

"Project" shall mean any land, improvements, machinery, equipment or property financed by the issuance and sale of the Authority's Bonds.

"Rules" shall mean these Rules and Procedures of the Authority, as may be in effect from time to time.

ARTICLE III

GENERAL

Section 3.1 Copies to be Provided Applicants. A copy of these Rules and Procedures shall be furnished by the Authority's administrative agent, the County of Albemarle, by the Clerk of the Board of Supervisors, to each prospective Applicant.

Section 3.2 Compliance with Rules and Procedures. Each Applicant shall comply with these Rules and Procedures in the submission of its Application or any Financing Documents to the Authority and in requesting that the Authority take any action, including the adoption of Financing Documents. Failure to comply with these Rules and Procedures shall constitute sufficient reason for the Authority to refuse to consider any Application, Financing Documents, or any other matter to be brought before the Authority by or on behalf of any Applicant.

Section 3.3 Amendments. These Rules and Procedures may be changed from time to time by the Authority by the vote of a majority of its Directors present at any meeting of the Authority, provided notice of such change shall have been given to each Director before such meeting. These Rules and Procedures may, notwithstanding the foregoing, be amended without prior notice upon the affirmative vote of all Directors of the Authority.

Section 3.4 Preparation and Distribution of Agenda and Minutes.

(a) A preliminary agenda for the Authority's regular meeting shall be prepared and distributed by the Authority's Secretary to Authority members and the Authority's attorney before the Authority's regularly scheduled meeting date. In the case of special meetings of the Authority, the agenda shall be included in the call issued for such meeting. When action is to be taken with reference to a Project or the issuance of Bonds, the agenda shall contain a description of the type, nature and location of the Project, the name of the Applicant and the nature of the action to be taken by the Authority. The agenda for regular meetings of the Authority shall state that it is a preliminary agenda subject to change at or before the Authority's meeting.

(b) Preliminary drafts of the minutes of the Authority's meeting shall, as soon as practicable following the meeting, be mailed or delivered to each officer and Director of the Authority and the Authority's **counsel**. Each preliminary copy of the minutes so distributed shall be marked to indicate that it is a preliminary draft subject to additions or corrections at the Authority's next meeting. The date of approval of the Authority's minutes shall appear at the foot of the last page of the minutes which shall, when approved, be signed by the Assistant Secretary-Treasurer of the Authority.

ARTICLE IV

APPLICATION PROCEDURES, FEES AND REQUIREMENTS

Section 4.1 Applications. Each Applicant shall submit nine (9) fully and accurately completed Applications **to the Clerk of the Board of Supervisors of Albemarle County** at least ten (10) days before the Authority's meeting at which the Application is to be considered. Each Application shall include all requested exhibits. In the event all requested exhibits are not available or not to be made part of the public record, a statement of explanation will be attached to the Application.

Section 4.2 Application Fee. The Authority charges an Application fee of Five Hundred Dollars (\$500.00), payable to the County of Albemarle. The Application fee shall be paid to the Authority's administrative agent, the County of Albemarle, prior to consideration of the inducement resolution to be adopted on behalf of the Applicant. Application fees, upon acceptance by the Authority, are non-refundable. No interest shall be paid on Application fees. The County of Albemarle shall not be required to pay the application fee if it is the Applicant.

Section 4.3 Administrative Fees.

(a) If the Authority issues bonds, including refunding bonds, for the benefit of the Applicant, the financing documents shall include a requirement that the Applicant pay the Authority an annual administrative fee of \$1,000.00 per \$1,000,000.00 of **bonds issued**, or the prorated portion thereof, upon the issuance of bonds and annually thereafter on June 30 each year thereafter until the bonds are paid in full. Except in the case of a refunding, the filing fee shall be applied as a credit against the first annual fee at closing. Bonds issued for the benefit of the County of Albemarle shall not be subject to the annual administrative fee.

(b) The Authority requires reimbursement of its costs and expenses incurred in connection with the issuance and sale of its Bonds and by virtue of its Bonds being outstanding. (See Section 5.2).

(c) **Expenditures of Funds.** **The EDA will expend funds that it receives only to support economic development initiatives that benefit Albemarle County as determined by agreement between the Authority**

and the Board of Supervisors of Albemarle County. All such initiatives shall be developed in consultation with the County Executive, or its designee. The Albemarle County staff will provide support in the administration of the expenditure of such funds by the Authority.

Section 4.4 Transcripts of Proceedings. Each Applicant receiving Bond financing through the Authority shall furnish to the Authority upon the sale and delivery of the Bonds, two (2) complete transcripts of the Financing Documents relating to such Bonds. Bond transcripts shall be hardback bound in library standard quality binders at the cost and expense of the Applicant.

Section 4.5 Bond Validation Proceedings. The Authority may require that before issuance, its Bonds be validated by the Circuit Court of the County of Albemarle, Virginia, pursuant to the requirements of Article 6, Chapter 26, Title 15.2 of the Code. The costs, expenses and fees incurred in connection with any bond validation proceeding required by the Authority, including attorneys' fees, shall be paid by the Applicant.

Section 4.6 Additional Information Required of Applicants.

(a) The Authority may adopt an inducement resolution conditioned upon the subsequent furnishing of certain information satisfactory to the Authority. All required information shall be promptly furnished to the Authority and failure of any Applicant to furnish such information shall constitute a ground for rescission of any inducement resolution adopted pursuant to such conditions.

(b) The Authority may, at its option, require the furnishing of appraisals, evaluations or reports respecting the Project or any portion thereof. The Authority may retain advisors and consultants to advise it regarding any Project or other action which it is requested to undertake by any Applicant. All costs, fees and expenses of such appraisals, reports, consultants and advisors incurred by the Authority after prior notification to the Applicant shall be paid by the Applicant.

(c) **Since** the Authority usually acts based upon information furnished to it solely by the Applicant, the Authority reserves the right to require at any time the furnishing of additional information concerning the Applicant, its financial statements, and any other information deemed relevant by the Authority. In instances where the Applicant has undergone changes in form or management or where the security to be given for payment of the Bonds has changed, the Applicant shall report such changes promptly to the Authority.

ARTICLE V

PROVISIONS TO BE INCORPORATED INTO RESOLUTIONS AND FINANCING DOCUMENTS

Section 5.1 Inducement Resolutions. Each inducement resolution adopted by the Authority shall provide that it shall continue in full force and effect for a period of two (2) years unless specifically extended by the Authority or the Bonds contemplated by the resolution are issued.

Section 5.2 Payment of Authority Expenses. The Financing Documents adopted by the Authority for the benefit of any Applicant shall provide that the Applicant agrees to pay all costs, fees, and expenses incurred by the Authority (including attorneys' fees) in connection with:

- (a) the authorization, issuance and sale of the Authority's Bonds;
- (b) the ownership, occupation, operation or use of the Project being financed, whether owned by the Authority or the Applicant;
- (c) prepayment or redemption of the Authority's Bonds;
- (d) administrative costs and expenses of the Authority, including the fees of attorneys, accountants, engineers, appraisers, or consultants, paid or incurred by the Authority by reason of the Bonds being outstanding or pursuant to requirements of the Financing Documents; and
- (e) such other fees and expenses of the Authority, not directly related to the Project being financed for the Applicant, but attributable to the Authority's financing of industrial or commercial Projects, including without limitation, a share of costs of the Authority's annual audit as required by Title 15.2 of the **Code of Virginia**, determined as follows:

(1) All costs and fees relating to any annual audit and directly attributable to a particular Applicant or Project, shall be charged to such Applicant; and

(2) Any costs and fees of such audit not directly attributable to any Applicant or Project shall be allocated among all Applicants having Bonds outstanding, pro rata, as the amount of Bonds originally issued for such Applicant bears to the total face amount of Bonds issued by the Authority of which any portion of any issue remains outstanding and unpaid.

Section 5.3 Indemnification of the Authority. Each Applicant shall agree to indemnify and save harmless the Authority and its officers, directors, employees and agents (hereinafter the "Indemnitees") from and against all liabilities, obligations, claims, damages, penalties, fines, losses, costs and expenses (hereinafter referred to as "Damages"), including without limitation:

(a) all amounts paid in settlement of any litigation commenced or threatened against the Indemnitees, if such settlement is effected with the written consent of the Applicant;

(b) all expenses reasonably incurred in the investigation of, preparation for or defense of any litigation, proceeding or investigation of any nature whatsoever, commenced or threatened against the Applicant, the Project or the Indemnitees;

(c) any judgments, penalties, fines, damages, assessments, indemnities or contributions; and

(d) the reasonable fees of attorneys, auditors, and consultants; provided that the Damages arise out of:

(i) failure by the Applicant, or its officers, employees, or agents, to comply with the terms of the Financing Documents and any agreements, covenants, obligations, or prohibitions set forth therein;

(ii) any action, suit, claim or demand contesting or affecting the title of the Project;

(iii) any breach of any representation or warranty set forth in the Financing Documents or any certificate delivered pursuant thereto, and any claim that any representation or warranty of the Applicant contains or contained any untrue or misleading statement of fact or omits or omitted to state any material facts necessary to make the statements made therein not misleading in light of the circumstances under which they were made;

(iv) any action, suit, claim, proceeding or investigation of a judicial, legislative, administrative or regulatory nature arising from or in connection with the construction, acquisition, ownership, operation, occupation or use of the Project; or

(v) any suit, action, administrative proceeding, enforcement action, or governmental or private action of any kind whatsoever commenced against the Applicant, the Project or the Indemnitees which might adversely affect the validity or enforceability of the Bonds, the Financing Documents, or the performance by the Applicant or any Indemnitee of any of their respective obligations thereunder.

Section 5.4 Bond Counsel Opinion Required. Before issuing and delivering any of its Bonds, the Authority shall receive an unqualified approving opinion of recognized bond counsel, licensed to practice law in Virginia and approved by the Authority, stating, among other things, that the Bonds have been duly authorized, executed, issued and delivered, that the interest thereon is exempt from Federal income taxation under IRC § 103 (or other applicable provision of law) and taxation by the Commonwealth of Virginia, and that the Bonds are exempt from registration requirements under applicable State and Federal securities laws.

Section 5.5 Covenants to Preserve Tax Exempt Status of Bonds. All Financing Documents presented for approval by the Authority shall contain appropriate covenants of the Applicant designed to insure compliance with the requirements of IRC § 103 to preserve the tax exempt status of interest on the Bonds, including without limitation, "arbitrage" requirements, capital expenditure limitations and reporting requirements.

Section 5.6 Payments in Lieu of Taxes. In event title to the Project is held by any person or entity not subject to real or personal property taxes, the Applicant and any user of the Project, unless

specifically exempted by the Authority, shall enter into an agreement to pay all taxes, levies, assessments, charges or other impositions which may be levied by any taxing authority on the Project as if such Applicant or user held title to the Project or any portion thereof.

ARTICLE VI

REPORTS

Section 6.1 Interim Reports by Applicants. Each Applicant shall file with the Authority a written report describing the status of its proposed financing no later than the last day of the second month after the adoption of an inducement resolution for the Applicant and every three (3) months thereafter until the adoption of any Financing Documents by the Authority. Such written report shall include the proposed purchaser of the Bonds, the proposed terms of the Bonds, the status of Financing Documents, and the current status of the Project. Each Applicant shall promptly notify the Authority of any significant or material changes to any information previously furnished by the Applicant to the Authority.

Section 6.2 Annual Reports of Applicants. Each Applicant, after the issuance and sale of the Authority's Bonds for the benefit of such Applicant, shall annually report to the Authority no later than June 30 the status of the Project, which shall include the outstanding and unpaid balance of Bonds issued for the Project, whether any event of default has occurred under the Financing Documents, and other information relating to the financing of the Project and benefits to the County of Albemarle.

Section 6.3 Reports by Authority Chairman, Directors, etc. At each regular meeting of the Authority, the Chairman, each Director, the Secretary-Treasurer and the Authority's counsel shall report any action taken on behalf of the Authority since the last regular meeting, including as may be applicable, receipt of reports required under Section 4.6. No later than September 1 of each year, the Chairman of the Authority may also report to the Authority on the status, as of the end of the Authority's fiscal year, of each active and outstanding inducement resolution of the Authority and the status of each issue of the Authority's Bonds.

ARTICLE VII

ENFORCEMENT

Section 7.1 Enforcement of Provisions. The Authority may refuse to consider or adopt any inducement resolutions, Financing Documents or any other matters presented for its consideration if the Applicant has failed to comply with the requirements of these **Rules**.

Section 7.2 Repeal of Actions Previously Taken. The Authority may rescind or repeal any inducement resolution previously adopted by it or any other action taken by the Authority because of failure of the Applicant to comply with the provisions of these Rules or because of substantial changes in the management, ownership, Project plan or financial circumstances of the Applicant; provided, however, no inducement resolution or action taken by the Authority shall be repealed or rescinded unless prior written notice of such proposed action shall have been mailed to the Applicant at least three (3) weeks before the date upon which such action is proposed to be taken. Notwithstanding the foregoing, no such action shall be taken by the Authority which will impair or adversely affect the interests of the holders of the Authority's Bonds.

ARTICLE VIII

STATEMENTS OF POLICY

Section 8.1 Construction, Operation and Effect of Rules. These **Rules** are intended as guidelines to promote and insure the orderly and consistent consideration of Applications, Financing Documents, and other matters brought before the Authority. For good cause, application of these **Rules** may be modified and waived upon a case-by-case basis upon the consent of the Authority. Any action taken by the Authority not in conformity with these **Rules** shall, nevertheless, be fully effective as if taken in compliance with these **Rules**. It is, however, the policy of the Authority that each Applicant comply fully and completely with these **Rules**, and failure to comply with these **Rules** may constitute grounds for refusal by the Authority to take any action requested.

Section 8.2 Approval of Inducement Resolution Not to Constitute an Endorsement of Applicant. The purpose of the Authority, as set forth in the Act, is to promote industry and develop trade

by inducing manufacturing, industrial, governmental and commercial enterprises to locate in or remain in the Commonwealth of Virginia. Pursuant to the Act, the Authority's powers shall be exercised for the benefit of the inhabitants of Virginia through the promotion of their safety, health, welfare, convenience or prosperity. Accordingly, the Authority's decision to adopt an inducement resolution or take other action will be based largely upon these factors. Further, the Act prohibits the Authority from operating any enterprise or Project. Since the Authority is a conduit for providing tax-exempt financing to promote the commerce and industry of the Commonwealth of Virginia and the County of Albemarle, and given the express prohibition against operating enterprises or Projects, the Authority believes it is improper for it to inquire into matters relating to the business judgment of the management of any Applicant not relevant to the foregoing factors. The Authority may, however, examine the business decisions and other aspects of management of the Applicant should it deem such matters relevant to the authorization, issuance and sale of its Bonds.

In view of the foregoing limitations, the adoption of an inducement resolution or any other action taken by the Authority is not to be used by any Applicant in any manner whatsoever as an endorsement or approval of the Applicant, its policies or its management.

Section 8.3 Security for Payment of Bonds. The Authority will require a showing that any issue of its Bonds is fully and adequately secured. If the Bonds are secured by a lien upon or security interest in the Project financed with the proceeds of such Bonds, the Authority may require an appraisal of the Project showing that it is valued in an amount sufficient to pay the outstanding principal amount of the Bonds issued to finance such Project.

Section 8.4 Compliance with Rules. These Rules were adopted by the Authority to assist in the orderly and expeditious conduct of its business. As stated in Section 3.2 of these Rules, the Authority has reserved the right to require that any Applicant strictly conform to the requirements of the Rules. Among other things, the Rules require that each Applicant inform the Authority of any new developments or material changes in information which has been submitted to the Authority, either orally or in writing. Matters concerning the structure of the financing, the prospective purchasers of the Bonds, and the security for payment of the Bonds are items of particular interest to the Authority; however, the Authority expects to be kept informed of all material changes to information submitted to it.

By submitting an Application to the Authority, the Applicant agrees to abide by these Rules. Thus, the burden is placed upon the Applicant to review and to comply with these Rules. The principal sanction which may be applied by the Authority against any Applicant for failure to comply with the Rules would be a refusal to take any action requested by the Applicant. Such a refusal might result in embarrassment to or considerable financial expense on the part of the Applicant. To avoid such embarrassment or expense, the Authority urges each Applicant to keep the Authority fully informed of any new developments or material changes to information previously submitted to the Authority, including in particular, changes in the contemplated financing structure or the proposed security for the Bonds. As noted above, the burden is upon the Applicant to convey this information to the Authority in a timely manner. What constitutes "timely" depends upon the circumstances of each case; however, each Applicant is urged to provide all such information before considerable time and expense is incurred upon matters which may prove unacceptable to the Authority. Any such communications should be made directly to the Authority's officers, directors, and counsel.

Notes to Application

1. Applicants are referred to the Authority's Rules and Procedures for provisions governing the submission of the application to the Authority.

2. Applications and all exhibits should be submitted to:

**Clerk of the Board of Supervisors of Albemarle County,
4th Floor, County Office Building, 401 McIntire Road,
Charlottesville, Virginia 22902-4596,**

at least ten (10) days before the meeting at which the application is to be considered.

3. **A \$500.00 application fee for issues less than \$25.0 million or a \$1,000.00 application fee for issues \$25.0 million or greater, made payable to the County of Albemarle, should be submitted to the**

Authority's administrative agency, the County of Albemarle, with the application or at the time the application is considered.

4. Questions concerning the qualification of a project or certain expenses of economic development revenue bond financing or other legal questions relating to the issuance of bonds should be directed to the Authority's **counsel** or to recognized bond counsel.

Readopted: 09-02-2009; Readopted 07-11-2012

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNTY OF
ALBEMARLE, VIRGINIA AND THE ECONOMIC DEVELOPMENT AUTHORITY OF
ALBEMARLE COUNTY, VIRGINIA**

THIS MEMORANDUM OF UNDERSTANDING is entered into this ____ day of September, 2013, by and between the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the “County,” and the **ECONOMIC DEVELOPMENT AUTHORITY OF ALBEMARLE COUNTY, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter referred to as the “EDA.”

WITNESS:

WHEREAS, the EDA desires to acquire fiscal services beginning September 1, 2013; and

WHEREAS, the County is willing to provide those fiscal services.

NOW THEREFORE, in consideration of the mutual premises stated in this Agreement, the Owner and the County agree as follows:

1. **Term.** The term of this Memorandum of Understanding (hereinafter, the “MOU”) shall be for an initial period beginning on September 1, 2013 and ending on June 30, 2014, and shall automatically renew for an additional one (1) year term on the July 1 each year thereafter. Either the County or the EDA may terminate this MOU at any time for any reason whatsoever by giving at least thirty (30) days’ written notice to the other party of its intent to terminate. If the EDA terminates this MOU, the EDA’s obligation to pay the fee for fiscal services provided by the County under Section 3 and the EDA’s obligation to reimburse the County for its costs for having the EDA’s fiscal activity audited under Section 7 shall continue for the entire fiscal year in which the MOU is terminated.

2. **Fiscal services provided by the County.** As fiscal agent for the EDA, the County will receive, account, segregate, maintain and disburse all: (a) revenues of the EDA, including but not limited to any or all fees, including administrative fees described in Section 4.3 of the EDA’s Rules and Procedures, rates, rentals and receipts collected by, payable to or otherwise derived by the EDA from, and all other moneys and income of whatsoever kind or character collected by, payable to or otherwise derived by the EDA in connection with the ownership, leasing or sale of EDA facilities or in connection with any loans made by the EDA; and (b) all other money, grants, contributions and other financial assistance received from a federal, state or local public entity or agency (hereinafter, the revenues referred to in subsection (a) and the types of financial assistance delineated in subsection (b) are collectively referred to as the “EDA Funds”).

3. **Fee for fiscal services provided by the County.** The EDA shall pay the County a fee for the fiscal services provided by the County. The fee shall be one percent (1%) of the EDA Funds received

each fiscal year; provided that any money, grants, contributions and other financial assistance received by the EDA under Section 2(b) shall be subject to the fee for fiscal services only if both the EDA and the County authorize them to be subject to the fee, and further provided that any money received by the EDA from the County where the EDA and the County have entered into a “pass through” agreement shall not be subject to the fee for fiscal services. The fee shall be deducted annually from the EDA Funds account.

4. Interest on EDA Funds in the County’s EDA Funds account. The EDA Funds being held in the County’s EDA Funds account shall accrue interest based on the County’s monthly interest allocation procedure.

5. Appropriation of EDA Funds. Any EDA Funds received by the County shall be subject to appropriation by the Albemarle County Board of Supervisors to the EDA.

6. Disbursement of EDA Funds. As provided in Section 4.3(c) of the EDA’s Rules and Procedures, EDA Funds will be disbursed to the EDA for expenditure upon request by the EDA for economic development initiatives that support Albemarle County. No funds shall be disbursed for any economic development initiative unless there is an agreement between the EDA and the Albemarle County Board of Supervisors for the initiative for which disbursement is requested.

7. Audit of EDA financial activity; reimbursement for audit. All EDA financial activity will be included in the County’s annual audit, beginning with the annual audit for the fiscal year ending June 30, 2013 and for which the County’s costs will be incurred in the following fiscal year. The EDA shall reimburse the County for its costs for having the EDA’s fiscal activity audited as part of the County’s annual audit provided that the amount of the reimbursement shall not exceed one thousand five hundred dollars (\$1,500.00).

8. Miscellaneous. This MOU is subject to the following:

A. Amendment of this MOU. This MOU may be amended, in writing, upon the mutual agreement of the parties.

B. Notice. Any written notice required by this MOU shall be provided to the following officers at the following addresses:

EDA

Chairman
Economic Development Authority
of Albemarle County
Fourth Floor
401 McIntire Road
Charlottesville, VA 22902

County

County Executive
County of Albemarle
401 McIntire Road
Charlottesville, VA 22902

C. Litigation. To the extent that this MOU is determined to be a contract subject to the requirements of the second clause of Virginia Code § 15.2-4905(3), attorney’s fees shall not be recoverable by the prevailing party if this MOU is subject to litigation.

IN WITNESS WHEREOF, the parties hereto have executed this Performance Agreement as of the date first written above.

**COUNTY OF ALBEMARLE,
VIRGINIA**

Thomas C. Foley, County Executive

Date: _____

**ECONOMIC DEVELOPMENT
AUTHORITY OF THE COUNTY OF
ALBEMARLE, VIRGINIA**

John C. Lowry, Chairman

Date: _____

Approved as to Form:

County Attorney Date