

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Employee Lease Agreement – Tim Sims

DATE: May 9, 2024

RECOMMENDATION

POLICY DISCUSSION

BUDGET INFORMATION:

STATUS REPORT

~~ANNUAL-~~

OTHER

~~CAPITAL-~~

PRESENTED BY: Donnie Hunt

COMMISSION ACTION REQUESTED ON: May 20, 2024

PURPOSE: Seeking approval of an employee lease agreement between the Habersham County Development Authority and Tim Sims to provide Industrial Development Bond Finance administration.

BACKGROUND / HISTORY:

The Development Authority occasionally issues bonds for local industry and economic development purposes. The bonds must be managed to ensure proper compliance and reporting.

FACTS AND ISSUES:

- 1) The Habersham County Development Authority currently has one bond to be managed.
 - 2) Tim Sims will provide bond administration for \$1,500 per bond, per year, to be paid by the Development Authority.
 - 3) Retaining a bond attorney to manage bonds can cost thousands of dollars per bond, per year.
 - 4) The Development Authority approved the employee lease agreement at their regular meeting on May 9, 2024.
-
-

OPTIONS:

- 1) Approve recommendation
 - 2) Deny recommendation
 - 3) Commission defined alternative
-
-

RECOMMENDED SAMPLE MOTION: Motion to approve employee lease agreement between the Habersham County Development Authority and Tim Sims to provide Industrial Development Bond administrative services.

DEPARTMENT:

Prepared by: Patti McLarty

Director: _____

**ADMINISTRATIVE
COMMENTS:**

_____ **DATE:** _____

County Manager

EMPLOYEE LEASE AGREEMENT

An Agreement made on the 1st day of January, 2024, by and between **Habersham County, Georgia**, a subdivision of the State of Georgia, by and through its Board of Commissioners (hereinafter “Lessor”), located at 130 Jacobs Way, Clarkesville, Georgia 30523 and the **Habersham County Development Authority**, an authority organized under the laws of the State of Georgia (hereinafter “Lessee”) located at 130 Jacob’s Way, Clarkesville, Georgia 30523.

WHEREAS, TIM SIMS (“County Employee”) is a full-time employee of Lessor serving as Industrial Development Bond and Finance Administrator for Lessee; and

WHEREAS, Lessee desires to lease said County Employee to serve the Lessee as an Industrial Development Bond Finance Administrator pursuant to the terms and conditions herein contained; and

WHEREAS, Lessee desires to lease said employee to the Lessee on the terms and conditions contained herein.

Now, therefore, for and in consideration of the mutual covenants contained in this agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Lease of Employee; Term of Lease Period

Commencing on the 1st day of January, 2024 Lessee shall lease from Lessor said County Employee in accordance with the terms and conditions set forth herein. This Agreement shall continue in force and effect until December 31, 2024, when it shall automatically renew in accordance with Exhibit “A” unless otherwise terminated by either party.

2. Obligations of Lessor

A. Supplying and Supervising of Personnel

Lessor shall lease County Employee to the Lessee in accordance with Lessee’s expressed needs. Lessor reserves the right to hire or refuse to hire any person making application to Lessor for employment, whether or not referred by Lessee, provided such refusal does not violate Sections 4-A and 4-D of this Agreement.

B. Payroll

Lessor shall be responsible for the payment, processing and issuance of the County Employee’s paychecks. The payroll of the County Employee attributable to the work performed hereunder, including any and all associated taxes, insurance and other expenses shall be reimbursed by the Lessee to Lessor as part of the lease payment as set forth hereinafter (“Payment”).

C. Payroll Taxes

Lessor shall be responsible for withholding and payment of all payroll taxes including income tax, social security tax, unemployment contribution and other payroll taxes as may be required under state and federal laws with respect to the County Employee. As to such payroll taxes, Lessor shall prepare and timely file with the proper governmental agencies or authorities all required returns and reports. Lessor hereby agrees to comply with its obligations stated herein.

D. Workers Compensation Insurance

1. Lessor shall obtain and provide all necessary and legally required workers' compensation insurance for the County Employee and shall manage any worker's compensation claims related to the County Employee. Lessor shall furnish to the Lessee a Certificate of Insurance evidencing the issuance to Lessor and maintenance of Lessor's policies providing such coverage.

2. Lessee shall notify Lessor immediately upon becoming aware of any injury that may result in a worker's compensation claim and agrees to allow Lessor to administer or otherwise manage such claims. Claim administration of such claims shall be the responsibility of Lessor with the Lessee providing assistance as requested by Lessor.

3. Obligations of Lessee

A. Lease Payment

Annually prior to the end of the annual term, Lessee agrees to provide any information not already in Lessor's possession that may be necessary to calculate County Employer's compensation, taxes and benefits. Lessor shall send to the Lessee on an annual basis an invoice for the Lessor of the County Employer's compensation, together with all other expenses allocable to Lessee pursuant to this Agreement. Said initial shall be as set for in Exhibit "A".

B. Liability Insurance

Lessor shall obtain and maintain in full force and effect during the term of the Agreement in limits not less than \$1,000,000 per occurrence, comprehensive general liability, and professional liability insurance with respect to the County Employer.

C. Lessor of Regulatory Compliance

Except as otherwise specified herein, as between Lessor and Lessee, Lessor shall bear the expenses relating to keeping the work environment and equipment in compliance with any and all federal, state, and local laws and regulations.

4. Obligations of Both Parties

A. Regulatory Compliance

Lessor and Lessee shall comply with all federal, state and local employment laws and regulations.

B. Unlawful Acts

Neither party hereto shall require County Employee leased hereunder to do any unlawful act.

C. Withholding Permitted

Lessor shall make or effect any deduction or withholding from the pay of County Employee required or permitted by law as well as for any deduction or withholding to which the County Employee consents by a signed writing which specifies the reason for, date of and amount of such deduction or withholding.

D. Discrimination

The parties agree that as to employment covered by this Agreement, there will be no unlawful discrimination against any employee or applicant on the basis of age, race, creed, religion, sex, color, national origin, handicap, veteran status, actual or perceived disability of employee or applicant or family member thereof or any other similar legally protected status.

E. Cooperation in Defense

The parties agree to cooperate in the defense of any claim brought against either or both of the parties on the basis of the relationship created by the parties hereunder. However, this provision shall in no way alter the responsibilities of each party as otherwise set forth herein.

F. Employee Notification

Upon inception or termination of this Agreement, Lessor and Lessee shall immediately inform the County Employee hereunder of the status of this relationship of the parties hereto.

G. Non-Solicitation and No-Hire Covenant

The Lessee understands and agrees that Lessor will expend significant time and resources in training and supervising the County Employee. In recognition thereof, and to ensure Lessor continues such efforts, the Lessee hereby agrees that during the term of this Agreement, and for a period of two years following the termination of this Agreement pursuant to Section 7-F, that it will not, directly or indirectly, by, as or through any affiliate or related companies, employees, officers, directors, members, or owners, solicit to hire, or in any way engage, contract or hire, the County Employee.

5. County Employee Duties and Obligations

Habersham County Development Authority (HCDA) Bond Administrator

- A. Accounts Payable
- B. Accounts Receivable (monitor payments from HOA billings Patti sends out)
- C. Balance Bank Accounts
- D. Manage the Investments of Funds
- E. Purchasing/Issuance of Bids and manage review process of Bids
- F. Issue Monthly Financials (supposed to be changed to quarterly now)

- G. Prepare for Annual Audit
- H. Monitor and Annually Report on Industrial Development Bonds

6. General Provisions

A. Independent Contractor Relationship

Lessor shall be an independent contractor of Lessee and shall not be its principal, director, agent, master, servant, employer or employee.

B. Third Party Beneficiaries

The parties acknowledge and agree that no parties other than the parties hereto are intended to benefit hereunder.

C. Direction and Control of Employees

With the advice and counsel of the Lessee, Lessor shall have the right to direct, control, discipline, terminate, promote, set wages for, reassign and reward the County Employee. Such actions will be governed by Lessor's Employee Handbook.

D. Limitation of Services

Lessor will only provide those services specified herein and no other services shall be provided or implied, including without limitation, any strategic, operational, or other business-related decisions with regard to Lessee's operations. The Lessee will provide any and all equipment required by the County Employee to perform hereunder.

E. Right to Inspect Premises

Lessor or agents of Lessor shall have the right but not the obligation to inspect the premises of Lessee at mutually agreeable times upon request (but in any event within three business days of such request) to make recommendations pertaining to job safety. It is agreed and understood that Lessor, in either inspecting or not inspecting the Lessee premises for safety purposes, assumes neither liability nor responsibility for any unsafe working condition which may exist. Should Lessee fail to comply with any recommendations pertaining to job safety made by Lessor, such failure shall constitute grounds for immediate termination of this Agreement.

F. Termination

1. Either Lessor or Lessee may immediately terminate this Agreement in the event of breach by the other of any of the terms of this Agreement
2. The obligation of either party to notify, defend and save harmless the other under the terms of this Agreement shall continue after the termination hereof with respect to events occurring prior to such termination.
3. Upon the termination hereof by either party, both parties agree to promptly surrender and return to the other party any and all certificates or binders of insurance previously received from the other party.

7. Severability

The invalidity of any portion of this Agreement will not and shall not be deemed to affect the validity of any other provision. If any provision of this Agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

8. No Waiver

The failure of either party to this Agreement to insist upon the performance of any of the terms and conditions of this Agreement, or the waiver of any breach of any of the terms and conditions of this Agreement, shall not be construed as subsequently waiving any such terms and conditions, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

9. Governing Law

This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Georgia.

10. Notices

Unless herein otherwise provided, any notice provided for or concerning this Agreement shall be in writing and shall be deemed sufficiently given when sent by certified or registered mail if sent to the respective address of each party as set forth at the beginning of this Agreement.

11. Attorney's Fees

In the event that any lawsuit is filed in relation to this Agreement, the unsuccessful party in the action shall pay to the successful party, in addition to all the sums that either party may be called on to pay, a reasonable sum for the successful party's attorney fees.

12. Mandatory Arbitration

Any dispute under this Agreement shall be required to be resolved by binding arbitration of the parties hereto. If the parties cannot agree on an arbitrator, each party shall select one arbitrator and both arbitrators shall then select a third. The third arbitrator so selected shall arbitrate said dispute. The arbitration shall be governed by the rules of the American Arbitration Association then in force and effect.

13. Entire Agreement

This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding upon either party except to the extent incorporated in this Agreement.

14. Modification of Agreement

Any modification of this Agreement or additional obligation assumed by either party in connection with this Agreement shall be binding only if placed in writing and signed by each party or an authorized representative of each party.

15. Assignment of Rights

The rights of each party under this Agreement are personal to that party and may not be

assigned or transferred to any other person, firm, corporation, or other entity without the prior, express, and written consent of the other party.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

17. In this Agreement, any reference to a party includes that party's heirs, executors, administrators, successors and assigns, singular includes plural and masculine includes feminine.

WITNESS our signatures as of the day and date first above stated.

Habersham County Development Authority

By: ~~Secretary~~ ^{Vice Chairman}
Bryan Ferguson
Bryan Ferguson

By: Chairman
Jim Butterworth

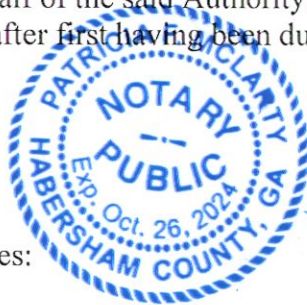
[Signature]

(Signature of Officer)

(Signature of Officer)

**STATE OF GEORGIA
COUNTY OF HABERSHAM**

Personally appeared before me, the undersigned authority in and for the said county and state, on this 1st day of January, 2024, the within named Jim Butterworth, who acknowledged that he is Chairman of Habersham County Development Authority, a Georgia development authority, and that for and on behalf of the said Authority, and as its act and deed he executed the above and foregoing instrument, after first having been duly authorized by said Authority so to do.



My Commission Expires:
10/26/24

Patricia J. McLarty

NOTARY PUBLIC

SIGNATURES CONTINUED ON NEXT PAGE

Habersham County Board of Commissioners

By: County Clerk
Brandalin Carnes

By: Chairman
Ty Akins

(Signature of Officer)

(Signature of Officer)

**STATE OF GEORGIA
COUNTY OF HABERSHAM**

Personally appeared before me, the undersigned authority in and for the said county and state, on this 1st day of January, 2024, the within named Ty Akins, who acknowledged that he is Chairman of Habersham County, Georgia, a subdivision of the State of Georgia, by and through its Board of Commissioners, and that for and on behalf of the said Board of Commissioners, and as its acts and deed he executed the above and foregoing instrument, after first having been duly authorized by said Board of Commissioners for Habersham County, Georgia so to do.

NOTARY PUBLIC

My Commission Expires:

Exhibit "A"

The initial annual lease payment hereunder shall be \$1,500.00. (There is only one Industrial Development Bond pending at present.) Said payment shall be paid within 30 days of the issuance of an invoice as set for in Section 3-A hereof. The terms of this Exhibit "A" may be revised annually without the necessity of reapproval of the lease.

Beginning January 1, 2025, the annual lease payment shall be calculating by multiplying \$1,500.00 by the number of outstanding Industrial Development Bonds, excluding bonds issued to non-profit organizations. The product shall be divided by the number of pay periods in a year with the quotient being remitted to the County Employee in each regular payroll.