

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: November 16, 2005

SUBJECT: Sales Tax – Inter-local Agreement

ATTACHMENTS: Yes

SUMMARY OF REQUEST:

During 2004, the Board of Commissioners entered into an agreement with the Village of Flat Rock and the Town of Mills River concerning sales tax. Under the agreement, the Board agreed not to change the distribution formula for sales tax from the Per Capita method to the Ad Valorem Tax method. In exchange for the Board not changing the formula, the municipalities paid Henderson County an annual payment.

At the end of the current fiscal year, the Inter-local Agreement expires. It would be appropriate for the Board to discuss the agreement and determine if it wishes to approach the municipalities with an extension of the agreement or to discuss the change in methods. Should the Board wish to change the method beginning next fiscal year, the State Department of Revenue must be notified by April of 2006.

COUNTY MANAGER RECOMMENDATION/ACTION REQUESTED:

Staff has begun looking at the alternative distribution methods and the financial implication of making the change in distribution methods. We are seeking information from the cities about their tax levies. However, we would like to receive Board direction as staff begins discussion of the development of the Fiscal Year 2006-07 Budget.

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STATE OF NORTH CAROLINA

INTERLOCAL AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT, made and entered this ____ day of _____, 2004, by and between Henderson County, a body politic and corporate, the Town of Mills River, a municipal corporation, and the Village of Flat Rock, a municipal corporation, each having the ability and capacity to contract pursuant to the laws of the State of North Carolina;

WITNESSETH:

WHEREAS, by resolutions of the Henderson County Board of Commissioners, hereinafter "Board of Commissioners", local option sales taxes have been levied in Henderson County pursuant to Articles 39, 40, 42, and 44 of Chapter 105 of the North Carolina General Statutes, collectively hereinafter referred to as "local option sales taxes" or "sales taxes"; and

WHEREAS, N.C.G.S. § 105-472, N.C.G.S. § 105-486, N.C.G.S. § 105-501, and N.C.G.S. § 105-520 grant to the Board of Commissioners the right to choose the method by which the local option sales taxes are distributed between Henderson County and the incorporated municipalities located within Henderson County; and

WHEREAS, on April 23, 1971, the Board of Commissioners by Resolution elected for the Article 39 sales tax to be distributed according to the *per capita* method of distribution as defined in N.C.G.S. § 105-472(b)(1), hereinafter "*per capita* method", and consequently since that time by operation of law all of the local option sales taxes have been distributed according to the *per capita* method; and

WHEREAS, changing to the *ad valorem* method of sales tax distribution as defined in N.C.G.S. § 105-472(b)(2), hereinafter "*ad valorem* method", would result in an estimated increase in sales tax revenue to Henderson County in the amount of \$1,855,464 for fiscal year 2004-2005 (and a corresponding amount for 2005-2006), but would also result in a corresponding loss in sales tax revenues for the municipalities located within Henderson County for fiscal year 2004-2005 (and corresponding amounts for 2005-2006), more particularly an estimated loss of \$11,534 for the City of Hendersonville, an estimated loss of \$209,444 for the Town of Fletcher, an estimated loss of \$509,298 for the Village of Flat Rock, an estimated loss of \$52,131 for the Town of Laurel Park, and an estimated loss of \$1,073,057 for the Town of Mills River; and

WHEREAS, changing to the *ad valorem* method would affect the existing contracts between several volunteer fire departments and several of the municipalities and would therefore impact the provision of fire protection services to the residents of affected municipalities; and

WHEREAS, the Village of Flat Rock and the Town of Mills River currently have few or no *ad valorem* taxes in place, and changing to the *ad valorem* method for fiscal year 2004-2005 could result in a substantial *ad valorem* tax increase for their residents if appreciable sales tax revenues are to be received by them for fiscal years after 2004-2005; and

WHEREAS, allowing for a two-year transition period in which graduated payments are made by the Village of Flat Rock and the Town of Mills River to Henderson County in lieu of the County's changing the sales tax distribution method from the *per capita* method is in the public interest and is beneficial to all of the residents of Henderson County both within and outside of incorporated municipalities and to the volunteer fire departments whose municipal fire service contracts would be affected by a change to the *ad valorem* method in that (1) Henderson County's revenues would increase for the two year period, (2) all municipalities located within Henderson County would retain all or a substantial portion of their sales tax revenues received currently under the *per capita* method; and (3) the volunteer fire departments would have a two year period in which to renegotiate their municipal fire service agreements; and

WHEREAS, North Carolina General Statutes Chapter 160A, Article 20, Part 1, grant to Henderson County and the municipalities the authority to, by contract, enter into an undertaking involving the joint exercise or the contractual exercise by one unit for one or more other units, of any power, function, public enterprise, right, privilege, or immunity of local government;

NOW, THEREFORE THIS AGREEMENT, that for and inconsideration of the mutual promises and other good and valuable consideration as provided for hereinbelow, the parties mutually agree as follows:

1. **AUTHORITY.** This agreement is entered into pursuant to the authority of N.C.G.S. Chapter 160A, Article 20, Part 1, N.C.G.S. § 153A-11, and N.C.G.S. § 160A-11.
2. **TERM.** This agreement shall be in effect from and after the date first stated hereinabove through and including June 30, 2006.
3. **UNDERTAKING.** The parties to this agreement intend to jointly exercise the right of Henderson County to select the method of sales tax distribution granted by N.C.G.S. § 105-472, N.C.G.S. § 105-486, N.C.G.S. § 105-501, and N.C.G.S. § 105-520. To this end, the parties agree that the sales tax distribution method shall remain the *per capita* method for fiscal years 2004-2005, and 2005-2006.
4. **OBLIGATION OF HENDERSON COUNTY.** Henderson County shall not independently exercise the right to select the method of sales tax distribution granted by N.C.G.S. § 105-472, N.C.G.S. § 105-486, N.C.G.S. § 105-501, and N.C.G.S. § 105-520 for fiscal years 2004-2005 and 2005-2006. Henderson County shall be deemed to have fully complied with its obligations under this agreement for fiscal year 2004-2005 if April 30, 2004 passes without Henderson County adopting a resolution to change to the *ad valorem* method for the 2004-2005 fiscal year. Henderson County shall be deemed to have fully complied with its obligations under this agreement for fiscal year 2005-2006 if April 30, 2005 passes without Henderson County adopting a resolution to change to the *ad valorem* method for the 2005-2006 fiscal year.
5. **OBLIGATION OF THE TOWN OF MILLS RIVER.** The Town of Mills River shall pay to Henderson County the amount of \$289,161 for FY 2004-2005, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2004, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2005. The Town of Mills River shall pay to Henderson County the amount of \$433,742 for FY 2005-2006, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2005, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2006. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
6. **OBLIGATION OF THE VILLAGE OF FLAT ROCK.** The Village of Flat Rock shall pay to Henderson County the amount of \$137,243 for FY 2004-2005, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2004, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2005. The Village of Flat Rock shall pay to Henderson County the amount of \$205,864 for FY 2005-2006, to be paid in twelve (12) equal monthly installments, the first installment to be due July 30, 2005, and each successive payment to be due on the last day of each month thereafter, with the last installment to be due June 30, 2006. Payments shall be sent to the attention of the Henderson County Finance Director, 113 North Main Street, Hendersonville, NC 28792.
7. **SALES TAX REVENUES.** The parties agree that each party shall be entitled to retain all sales tax revenues distributed to them by the State of North Carolina Department of Revenue in accordance with the *per capita* method of distribution. The Town of Mills River and the Village of Flat Rock may, in the discretion of each, elect to pay amounts owed to Henderson County pursuant to this agreement from said sales tax revenues or from any other revenues which they may receive.
8. **AMENDMENT OR TERMINATION.** This agreement constitutes the entire agreement of the parties hereto and may not be amended or terminated except by a written instrument, duly approved by resolution of all of the parties.
9. **THIRD PARTY BENEFICIARIES.** There shall be no intended or incidental third party beneficiaries to this agreement.
10. **NOTICE.** Any written notice related to this agreement given by one party to the other parties shall be deemed given if delivered in person, or mailed certified mail, return receipt requested to the person named below:

TO HENDERSON COUNTY: Chairman, Henderson County Board of Commissioners
100 North King Street
Hendersonville, NC, 28792

TO THE TOWN OF MILLS RIVER: Mayor, Town of Mills River
Post Office Box 189
5406 Boyleston Highway, Suite 3
Horse Shoe, NC 28742

TO THE VILLAGE OF FLAT ROCK: Mayor, Village of Flat Rock
G&B Complex
Post Office Box 1288
Flat Rock, NC 28731

9. SEVERABILITY. A determination by any court of competent jurisdiction that any term, phrase, paragraph, covenant or condition of this agreement, is invalid or unenforceable shall not affect the validity or enforceability of the remaining terms, phrases, paragraphs, covenants or conditions of this agreement.

10. NONASSIGNMENT. Neither this agreement, nor the right to payment hereunder, may be assigned by any party.

11. REMEDIES. (a) Breach by County. In the event Henderson County breaches this agreement by unilaterally exercising the right to choose the sales tax distribution method in violation of paragraph 4 of this agreement, then the County shall pay to the other parties the benefit of their bargain under this agreement. (b) Breach by the Town of Mills River: In the event the Town of Mills River breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is due any payment owed under paragraph 5 of this agreement, the Town of Mills River shall pay to the County the benefit of the County's bargain with the Town of Mills River under this agreement. (c) Breach by the Village of Flat Rock: In the event the Village of Flat Rock breaches this agreement by not paying to Henderson County within thirty (30) days of the date it is due any payment owed under paragraph 5 of this agreement, the Village of Flat Rock shall pay to the County the benefit of the County's bargain with the Village of Flat Rock under this agreement.

12. PREPARATION. This agreement shall be deemed to have been prepared equally by the parties hereto and shall not be construed more strictly against any of them.

13. APPLICABLE LAW. The interpretation, enforcement and performance of this agreement shall be governed by the laws of the State of North Carolina.

14. COUNTERPARTS. This agreement may be executed in one or more counterparts and shall become effective when one or more counterparts have been duly ratified by resolution of the governing board of each party and duly executed all of the parties; each counterpart shall be deemed an original but all counterparts shall constitute a single instrument.

IN WITNESS HEREOF, the parties have caused this Agreement to be duly ratified by resolution of their governing boards and have caused this Agreement to be duly executed in their respective names and sealed in triplicate, each to have the force and effect of an original to be effective as of the date first written hereinabove.

ATTEST: (County Seal)

HENDERSON COUNTY

Elizabeth W. Corn, Clerk

BY: _____
Grady Hawkins, Chairman

ATTEST: (Town Seal)

TOWN OF MILLS RIVER

Town Clerk

BY: _____
Roger Snyder, Mayor

ATTEST: (Village Seal)

VILLAGE OF FLAT ROCK

Town Clerk

BY: _____
Ray Shaw, Mayor