

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** 4 September 2012  
**SUBJECT:** Tourism Development Authority  
**PRESENTER:** David Whitson  
**ATTACHMENT(S):** Agreement

**SUMMARY OF REQUEST:**

The attached agreement has been negotiated with the Henderson Tourism Development Authority. The Authority had its initial meeting 1 September 2012.

At your 6 August meeting, you authorized and empowered staff “to negotiate and execute a contract with the Henderson Tourism Development Authority for its operations for a period not to exceed the balance of Fiscal Year 2013.”

This agreement keeps in effect the budget approved by this Board for the 2013 Fiscal Year, effectively holding both the County and the Authority harmless from the change in its organization.

County staff will be available to present further information on this matter.

**BOARD ACTION REQUESTED:**

None

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

## **INTER-LOCAL AGREEMENT**

This Agreement is made September 1, 2012, pursuant to Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes by and between the Henderson Tourism Development Authority, a public authority under the North Carolina Local Government Budget and Fiscal Control Act ("the Authority"), and the County of Henderson, a body corporate and politic ("the County").

### **FACTUAL BACKGROUND TO AGREEMENT**

1. The Authority was created by North Carolina General Assembly in Session Law 2012-144, effective September 1, 2012.
2. Prior to September 1, 2012, the Henderson County Travel and Tourism Committee ("the Committee") carried out the functions which effective September 1, 2012, are those of the Authority.
3. In carrying out these functions, the Committee had employees and used facilities owned by the County. The Committee's employees were treated for all purposes as employees of the County.
4. The Tourism Development Tax ("Occupancy Tax") in the County is currently five percent (5%) of gross receipts derived from activities defined in Session Law 2012-144 (such gross receipts hereafter "the Gross Occupancy Receipts").
5. By previous agreement between the County and the Committee, one-half percent (½%) of the Gross Occupancy Receipts is paid from the total Occupancy Tax to the County "to defray the costs of the operation of the Historic Courthouse".
6. The Committee's budgeted revenues expenditures for Fiscal Year 2013 ("FY13") are shown on the attachment, Exhibit 1.
7. The County and the Authority wish to cooperate, as stated below, in providing personnel and facilities for the Authority, and in maintaining the efficient operation and transition of the current functions of the Authority (which were formerly carried out by the Committee), and have reached this as an interim agreement in order to do so.
8. It is the desire and intention of the County and the Authority to maintain the revenue projections and continue the budgeted outlays for FY13 shown in Exhibit 1.
9. This contract is permitted as an inter-local agreement under Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes.

### **STATEMENT OF AGREEMENT**

1. Term of Agreement: The initial term of this agreement is from the date hereof through June 30, 2013.
2. Employees: All employees of the Committee shall remain employees of the County, subject to the County's personnel policies, but shall work at the direction of the Executive Director of

the Authority. The Authority will allow no action which would violate the County's policies or applicable law.

3. The Executive Director shall be a County employee, subject to the County's personnel policies, but shall work at the direction of the Authority.

4. One-half percent (½%) of the Gross Occupancy Receipts shall continue to be paid from the Occupancy Tax to the County "to defray the costs of the operation of the Historic Courthouse"

5. The rate of the Occupancy Tax will not be reduced during the term of this agreement.

6. The Authority will use and the County will permit the Authority to use the building owned by the County and up until September 1, 2012, used by the Committee.

7. The Authority will use the facilities and materials which were up until September 1, 2012, used by the Committee.

8. The Authority will ratify and reaffirm all contracts entered into by the Committee with third parties to this Agreement unless such third parties are in breach of such contracts.

9. The Authority will continue to cover the County with its performance licensing contracts with the American Society of Composers, Artists and Publishers ("ASCAP") and Broadcast Music, Inc. ("BMI"), and will refuse to allow any artists with which it contracts to perform works licensed solely by Society of European Stage Authors & Composers ("SESAC") (unless and until the Authority contracts with SESAC for the same).

10. The County will collect the Occupancy Tax on behalf of the Authority, and will provide accounting services for the Authority.

11. The Authority will abide by the FY13 budget of the Committee, such that from the total proceeds of the Occupancy Tax, plus the other revenues shown on the budget of the Committee, Exhibit I hereto, the County and the Authority (through the Finance Officer who, under Session Law 2012-144 is also the Finance Officer of the Authority) will insure payment of the following:

a. To the County, all costs, direct and indirect, of employing the Director and other employees of the Authority, including but not limited to wages, employer taxes, retirement contributions, unemployment taxes, workers compensation insurance and payments, and any other cost as a result of the County's employment of these employees, all as shown on the FY13 budget of the Committee, Exhibit I hereto.

b. To the County, all other line items shown on the FY13 budget of the Committee, Exhibit I hereto, that would have, in the absence of the Session Law creating the Authority, have been paid to or retained by the County as a result of the costs of the operation of the Committee.

c. To third parties who have contracted with the Committee, such amounts as they are entitled up to the amounts shown on the FY13 budget of the Committee, Exhibit I hereto.

d. To the Authority, any remaining funds, for addition to the Authority's fund balance, which result from:

- i. Any vacancy in any budgeted position at the Authority during the period 1 September 2012 to 30 June 2013.
- ii. Any third party expenditures which are included in the FY13 budget of the Committee, Exhibit I hereto, but which are not yet contracted for as of 1 September 2012.

12. It is the intention of the parties and the desire of them that this agreement be in every instance interpreted such that:

- a. The County in its finances neither benefits nor suffers detriment from the establishment of the Authority; and,

- b. That, as compared to the finances of the Committee, and the funds which would have been available to it in the absence of the formation of the Authority, the Authority will neither benefit nor suffer in its finances as a result of its establishment.

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Agreed to and effective this 1<sup>st</sup> day of September, 2012.

COUNTY OF HENDERSON

By: \_\_\_\_\_  
STEVE WYATT, County Manager

HENDERSON TOURISM DEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
DAVID E. NICHOLSON, Chairman

By: \_\_\_\_\_  
KIMBERLY SMITH, Member

By: \_\_\_\_\_  
PHYLLIS ROGERS, Member

By: \_\_\_\_\_  
SELENA EINWECHTER, Member

By: \_\_\_\_\_  
BRENDA RAMER, Member

By: \_\_\_\_\_  
WILLIAM FERGUSON, Member

By: \_\_\_\_\_  
, Member

By: \_\_\_\_\_  
CONNIE BACKLUND, Member

By: \_\_\_\_\_  
BRUCE POPE, Member

**EXHIBIT 1**

		APPROVED
<b>TRAVEL &amp; TOURISM FUND (26)</b>		
264613 401000	FUND BALANCE APPROPRIATED	\$ (110,000)
264613 414000	ADVERTISING REVENUES	\$ (42,000)
264613 433000	OCCUPANCY TAXES	\$ (1,079,081)
264613 433001	T&T-PENALTIES AND INTEREST	\$ (2,000)
264613 477000	T&T-PRODUCT SALES REVENUE	\$ (18,000)
264613 477001	T&T-COMMUNITY EVENTS REVENUE	\$ (46,000)
<b>TOTAL</b>	<b>TRAVEL &amp; TOURISM FUND REVENUES</b>	<b>\$ (1,297,081)</b>
265613 512100	SALARIES AND WAGES - REGULAR	\$ 245,892
265613 512200	SALARIES AND WAGES - OVERTIME	\$ 1,000
265613 512600	SALARIES AND WAGES - TEMPORARY/PART TIME	\$ 10,000
265613 513400	457(B) SUPPLEMENTAL DEFERRED COMPENSATION	\$ 3,585
265613 513500	401(K) SUPPLEMENTAL DEFERRED COMPENSATION	\$ 1,221
265613 518000	FICA	\$ 19,809
265613 518100	RETIREMENT - LGERS	\$ 16,774
265613 518300	MEDICAL INSURANCE	\$ 67,561
265613 518400	DENTAL INSURANCE	\$ 3,599
265613 518500	UNEMPLOYMENT CLAIMS	\$ -
265613 518600	WORKERS COMPENSATION	\$ 2,000
265613 521100	CLEANING AND JANITORIAL SUPPLIES	\$ 3,000
265613 522600	PRINTING AND BINDING	\$ 75,000
265613 523300	PUBLICATIONS	\$ 500
265613 525001	FUEL COSTS	\$ 800
265613 526000	DEPARTMENTAL SUPPLIES	\$ 8,000
265613 526010	COMMUNITY EVENTS	\$ 43,700
265613 526020	DEPARTMENTAL SUPPLIES - NONEXPENDABLE	\$ 3,000
265613 526200	DATA PROCESSING SUPPLIES	\$ 3,000
265613 526201	NON-CAPITAL TECHNOLOGY	\$ 3,400
265613 526500	INVENTORY	\$ 14,500
265613 532100	TELEPHONE AND COMMUNICATIONS	\$ 9,500
265613 532500	POSTAGE	\$ 40,792
265613 534001	ELECTRICITY	\$ 10,250
265613 534002	PROPANE/NATURAL GAS	\$ 2,200
265613 534003	WATER	\$ 2,000
265613 534005	GARBAGE	\$ 2,000
265613 535100	MAINTENANCE AND REPAIR - BUILDINGS AND GROUNDS	\$ 11,750
265613 535200	MAINTENANCE AND REPAIR - EQUIPMENT	\$ 14,000
265613 535300	MAINTENANCE AND REPAIR - VEHICLES	\$ 1,000
265613 537000	ADVERTISING	\$ 300,000
265613 537100	TRAVEL AND STAFF DEVELOPMENT	\$ 3,000
265613 537101	VOLUNTEER EXPENSE	\$ 3,500
265613 539000	CONTRACTED SERVICES	\$ 52,000
265613 547200	DUES AND MEMBERSHIPS	\$ 2,000
265613 547500	RENTAL OF EQUIPMENT	\$ 3,500
265613 547600	INSURANCE AND GENERAL BONDING	\$ 8,500
265613 555000	CAPITAL OUTLAY - BUILDINGS AND IMPROVEMENTS	\$ 100,000
265613 569900	PAYMENTS TO OTHER AGENCIES	\$ 30,000
265613 569901	HERITAGE MUSEUM	\$ 119,000
265613 598011	TRANSFER TO THE GENERAL FUND	\$ 55,748
<b>TOTAL</b>	<b>TRAVEL &amp; TOURISM FUND EXPENDITURES</b>	<b>\$ 1,297,081</b>