

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 6 May 2013

SUBJECT: Tourism Development Authority agreement

PRESENTER: David Whitson

ATTACHMENT(S): Yes
1) HCTDA Draft Inter-Local Agreement

SUMMARY OF REQUEST:

Staff has undertaken negotiations with the Tourism Development Authority for a long-term arrangement for the use of the County's facilities. One lease issue and one other issue remain, such that guidance from the Board is required.

- 1) Rent or other allowance for the use of the real estate occupied by the Tourism Development offices (as well as some other personal property.)
- 2) Henderson County Historic Courthouse Corporation (Heritage Museum) funding.

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

BOARD ACTION REQUESTED:

Guidance for staff on negotiation of the final agreement.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

INTER-LOCAL AGREEMENT

This Agreement is effective July 1, 2013, pursuant to Part 1 of Article 20 of Chapter 160A of the North Carolina General Statutes by and between the Henderson Tourism Development Authority (herein after called "HCTDA"), a public authority under the North Carolina Local Government Budget and Fiscal Control Act ("the HCTDA"), and the County of Henderson, a body corporate and politic ("the County").

STATEMENT OF AGREEMENT

1. Term of Agreement and Termination:
 - a. The term of this agreement is from July 1, 2013 through June 30, 2014.
 - b. This agreement shall automatically renew from year to year unless written notice is given to the other party in accord with paragraph 1.c, below. Either party may terminate this agreement at its option, so long as done in accord with paragraph 1.c, below.
 - c. Terminations of this agreement may occur only as of June 30 of each year, and only if either party gives the other notice of its desire to terminate the agreement by not later than December 31 next preceding the June 30 termination.
2. Employees: All employees of the HCTDA shall remain employees of the County, subject to the following:
 - a. The Executive Director of HCTDA shall work at the pleasure and direction of the HCTDA Board,
 - b. All other employees shall work at the pleasure and direction of the HCTDA Executive Director.
 - c. The HCTDA will follow the County's personnel policies, except that in no event shall any employee have the right to an appeal to the County Manager.
 - d. The HCTDA will allow no action that would violate applicable law.
3. The rate of the Occupancy Tax will not be reduced during the term of this agreement.
4. Use of County facilities and financial terms:
 - a. The HCTDA will use the County's real property facilities, located at 201 South Main Street, Hendersonville, North Carolina. It is the intention of the parties that The Exhibit will be recalculated every year by the Finance Officer to adjust for changes in external factors (for example, but not limited to, costs of employee benefits, costs of liability, casualty or other insurance, and other factors), and may include attributed and indirect

costs. It is expressly agreed, however, that the Finance Officer shall not include in any calculations for The Exhibit any rental cost or attribution of depreciation for the facility at 201 South Main Street.

- i. Included in The Exhibit will be a determination of the full cost to the County of the employment of all employees of the HCTDA, including all benefits and other expenses.
- ii. The costs determined in The Exhibit will be in addition to, and not included in, the costs set out in North Carolina Session Law 2012-144 for administering and collecting the Occupancy Tax as noted in paragraph 7, below.

b. The HCTDA will pay to the County, on a monthly basis, all amounts listed under The Exhibit.

5. The HCTDA will use the personal property, vehicle, facilities and materials designated/purchased for support of Henderson County Tourism development and promotion, which shall henceforth be the property of HCTDA.

6. The HCTDA 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 HCTDA contracts with SESAC for the same).

7. The County (through the County Finance Officer who, under Session Law 2012-144 is also the Finance Officer of the HCTDA) will collect the Occupancy Tax on behalf of the HCTDA, and will provide accounting and payroll services for the HCTDA.

8. The fund balance accrued by and for the HCTDA is the property of the HCTDA, though held by the Finance Officer.

9. The Finance Officer, when acting as the Finance Officer of the HCTDA, shall fulfill all responsibilities to the HCTDA as if the Finance Officer had no responsibilities as Finance Officer of the County, and vice versa.

10. 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 Interlocal Agreement between Henderson County and the HCTDA; and,

b. That, the HCTDA funds would neither benefit nor suffer in its finances as a result of the Interlocal Agreement between Henderson County and the HCTDA.

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Effective this 1st day of July, 2013.

COUNTY OF HENDERSON

By: _____
CHARLIE MESSER, Chairman
Henderson County Board of Commissioners

Attest:

TERESA L. WILSON, Clerk to the Board

By: _____
STEVE WYATT, County Manager

HENDERSON TOURISM DEVELOPMENT AUTHORITY

By: _____
DAVID E. NICHOLSON, Chairman

Attest:

KIMBERLY SMITH, Secretary