

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 3 February 2014
SUBJECT: Final Approval of TDA agreement
PRESENTER: Charles Russell Burrell
ATTACHMENT(S): Draft agreement

SUMMARY OF REQUEST:

Attached you will find an agreement consistent with the Board's discussion of this matter at its January 15, 2014, meeting. This agreement has been approved by the Tourism Development Authority Board at its January 28, 2014, meeting.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the agreement.

If the Board is so inclined, the following motion is suggested:

I move that the Board approve the agreement as presented, and authorize the Chairman and staff to execute it on the County's behalf.

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

INTER-LOCAL AGREEMENT

This Inter-Local Agreement is entered _____ January, 2014, but will be effective 1 July 2014. It is made pursuant to Article 20 of Chapter 160A of the North Carolina General Statutes, and is by and between the Henderson County Tourism Development Authority (“HCTDA”), a public authority under the North Carolina Local Government Budget and Fiscal Control Act, and the County of Henderson, a body corporate and politic (“the County”).

BACKGROUND

1. The parties entered into an Inter-Local Agreement, effective July 1, 2013, but signed August 29, 2013 (“the previous Agreement”).
2. The parties now desire to modify the terms as stated herein, effective 1 July 2014.

STATEMENT OF AGREEMENT

1. Term of Agreement and Termination:
 - a. The term of this agreement is from July 1, 2014 through June 30, 2015.
 - b. This agreement shall automatically renew from year to year in one year installments 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. HCTDA use as its headquarters and will pay to the County as rent the sum of \$90,000 per year for the real property facilities located at 201 South Main Street, Hendersonville, North Carolina.

Regular upkeep and maintenance on such real property facilities will be the responsibility of the HCTDA. However, non-emergent repairs and maintenance of the type and scope normally performed by County maintenance personnel will be performed by such County personnel, with materials to at the cost of the HCTDA.

3A. All of the proceeds of the Room Occupancy Tax collected pursuant to North Carolina Session Law 2013-61 (and its predecessors, and as it may be amended) shall be allocated by HCTDA in accord with the provisions of Session Law 2013-61. HCTDA grant awards to the Henderson County Heritage Museum (Henderson County Historic Courthouse Corporation) shall be wholly in the discretion of HCTDA.

4. Use of other County facilities and financial terms:

a. The Finance Officer will calculate the amount of payment for other costs owed by the HCTDA to the County each month, said calculation to be examined annually, and attached hereto each year as an Exhibit (“the Exhibit”). 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 (collectively, the “personal property”) designated or purchased for support of Henderson County Tourism development and promotion to the extent they are currently used. HCTDA may replace the personal property from its funds as it sees fit and in accord with Session Law 2013-61.

6. The HCTDA will continue pay all the cost 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 of question of interpretation be 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.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

Effective this 1st day of July, 2013.

COUNTY OF HENDERSON

By: _____
Chairman
Henderson County Board of Commissioners

Attest:

TERESA L. WILSON, Clerk to the Board

By: _____
STEVE WYATT, County Manager

HENDERSON TOURISM DEVELOPMENT AUTHORITY

By: _____
Chairman

Attest:

Secretary