COUNTY AGENDA REQUEST

Department:	Commissioners	Presenter(s):	Chairman Steve Brown
Meeting Date:	Thursday, January 10, 2013	Type of Request:	New Business

Wording for the Agenda:

Consideration of a sub-lease contract between the Fayette County Development Authority and City of Fayetteville, Mainstreet Tourism Association for the space vacated by the Chamber of Commerce on first floor of the Historic County Courthouse.

Background/History/Details:

The County Courthouse, located in the center of downtown Fayetteville, is leased from the County by the Fayette County Development Authority. Through its contract with the Count, the FCDA has the ability to sub-lease additional space within the facility. Income from the lease space is provided to the County. The sub-lease contract with the Chamber of Commerce for first floor space has been in effect since 1997 and generated approximately $20,000 per year in rental income. Recently, the Chamber of Commerce made a decision to relocate to another facility effective January 1, 2013.

Several organizations expressed an interest in moving into the vacated courthouse space including the Fayetteville Main Street Program, the Fayette County Historical Society, the Arts Society, and possibly the Extension Service. Matt Forshee, FCDA Executive Director requested direction from the Board of Commissioners, and to that end, the Board of Commissioners heard the options and gave recommendations during the December 5, 2012 Workshop meeting.

Based on the direction given, the Development Authority is presenting a contract between itself and City of Fayetteville, Mainstreet Tourism Association to sub-lease the vacated first floor of the Historic County Courthouse.

What action are you seeking from the Board of Commissioners?

Direction concerning the sub-lease contract between the Fayette County Development Authority and City of Fayetteville, Mainstreet Tourism Association for the space vacated by the Chamber of Commerce on first floor of the Historic County Courthouse

If this item requires funding, please describe:

Not Applicable.

Has this request been considered within the past two years?	Yes	If so, when?	Wednesday, December 5, 2012
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval			

Staff Notes:

STATE OF GEORGIA

COUNTY OF FAYETTE

LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this _____ day of _____, 2013, by and between the FAYETTE COUNTY DEVELOPMENT AUTHORITY, with a mailing address of 200 Courthouse Square, Fayetteville, Georgia 30214, hereinafter referred to as "Landlord", and the CITY OF FAYETTEVILLE, MAINSTREET TOURISM ASSOCIATION, with a mailing address of 200 Courthouse Square, Fayetteville, Georgia 30214, hereinafter referred to as "Tenant".

I. PREMISES.

Landlord hereby leases and demises to Tenant and Tenant hereby leases and takes from Landlord the following space, hereinafter called "the Premises":

That commercial space containing approximately 2,524 square feet, in a building lease by the Landlord on real property located in Land Lot 123 of the 5th Land District of Fayette County, Georgia. The location of the premises is commonly known as the 1st floor of 200 Courthouse Square, Fayetteville, Fayette County, Georgia.

II. MAINTENANCE

Landlord shall have the responsibility of maintaining the exterior of the premises including landscape as well as mechanical, plumbing, electrical, heating, ventilating and air conditioning systems in the Premises.

Tenant shall promptly repair at its expenses any damage to the Premises caused by bringing into the Premises and property for Tenant's use, or by the installation or removal of such property, regardless of fault or by whom such damage may be caused, unless caused solely by the affirmative acts of negligence of Landlord, its agents or employees. In the event Tenant fails to make such repairs, Landlord may at its option but need not, make same and Tenant agrees to pay the Landlord as additional rent the cost thereof promptly upon demand by Landlord. Tenant shall not overload the electric wiring or utilities serving the Premises or located within the Premises and shall install at Tenant's sole expense, after first obtaining Landlord's written approval, any additional electric wiring which may be required in connection with Tenant's apparatus, equipment or fixtures.

III. Utilities

Landlord shall pay for all electricity, gas, heat, water, sewerage and other utilities to be used in or upon the Premises, other than phone, cable and internet which shall be the Tenant's responsibility. Tenant shall operate the heating and cooling systems in the Premises so as to reasonably heat or cool the same.

IV. LEASE TERM

This Lease Agreement shall be binding upon the parties from the date hereof, it being understood and agreed that the term of this Lease shall commence on the _____ day of _____, 2013, and shall end at midnight on December 31, 2018. The Tenant shall have the option of renewing this Lease Agreement for an additional three (3) five (5) year periods; provided, written notice of the Tenant's intention to renew this Lease is delivered to the Landlord at least sixty (60) days,

but not more than one hundred twenty (120) days, prior to the expiration of the original lease term of any subsequent renewal term.

V. TERMINATION

Unless the tenant exercises his option to renew this Lease, this Lease shall terminate at t he end of the original term hereof without the necessity of any notice from either Landlord or Tenant to terminate same, and Tenant hereby waives notice to vacate the Premises and agrees that Landlord shall be entitled to the summary recovery of possession of the Premises should Tenant hold over to the same extent as if statutory notice had been given. In the event Tenant holds over without the express written consent of Landlord, tenant shall pay double the rental and additional rental herein provided for the duration of such holdover period.

VI. RENT

Tenant's obligation to pay rent and all charges set forth in other portions of this Lease shall commence on the first day of the Lease Term and shall continue on the same day of each successive month thereafter until such term expires. The rent shall be six thousand ($6000) dollars per year which shall be payable in monthly installments of five hundred ($500) dollars each. A schedule of rent is attached as Exhibit "A".

VII. TENANT'S USE OF PREMISES

Tenant shall use the Premises for the development and promotion of downtown Fayetteville and Fayette County with a focus on economic development and tourism. Only functions directed toward the accomplishment of these goals shall be permitted on the Premises. The Landlord agrees to allow the serving, though not the

sale, of alcoholic beverages on the Premises. The Landlord has first priority on the scheduling use of the third floor meeting room at 200 Courthouse Square, Fayetteville, Georgia 30214, but the Tenant shall have first priority immediately after the Landlord for events in furtherance of the stated use of the Premises; said use shall be temporary in duration (less than 1 week) , and shall not include any permanent use such as, but not limited to, storage, office use or permanent displays unless agreed to in writing by the Landlord.

Tenant shall:

(A) Keep the inside of the Premises and all glass, doors and windows of the Premises clean.

(B) Maintain the Premises at Tenant's expense in a clean, orderly, and sanitary condition free of offensive odors, insects, rodents, vermin, and other pests.

(C) Keep rubbish, garbage, trash and other refuse in proper containers in the interior or exterior of the Premises and cause same to be removed on a regular basis at Tenant's expense.

(D) Comply with all laws, ordinances and regulations of the United States, State of Georgia, Fayette county and the City of Fayetteville on any agencies thereof, and further to comply with all recommendations of any public or private agency having authority over insurance rates with respect to the use or occupancy of the Premises.

Tenant shall <u>not:</u>

(A)Permit undue accumulation of garbage, trash, rubbish or other refuse within or without the Premises.

VIII. VISITORS' WELCOME CENTER/MUSEUM/GALLERY

Tenant shall as additional consideration for the benefits derived from the provisions of this Lease operate a Visitors' Welcome Center on behalf of the Landlord along with historical information, photos and/or gallery displays of the historical nature of the Fayette County Courthouse. Tenant shall supply the necessary space, displays, informational material, staff and maintenance to provide visitor and historical information in a convenient location and courteous manner. The purpose of the Visitor's Welcome Center/Museum/Gallery is to provide information relative to Fayetteville and Fayette County in one location for visitors, tourists, citizens, or prospective professional, industrial or commercial business prospects. The Visitors' Welcome Center/Museum/Gallery shall be operated at least six (6) hours per day and five (5) days each week, excluding holidays.

IX. INSPECTION BY LANDLORD

Tenant shall permit Landlord, its agents and employees to enter all parts of the Premises during Tenant's business hours for the purpose of inspecting the same and enforcing any provision hereof.

X. SIGNS AND DISPLAYS

Tenant shall not place, cause or permit to be placed and maintained on the exterior of the Premises any sign, awning, advertising matter or other thing of any kind, and will not place or maintain any decorating, lettering or advertising matter on the glass of any window or door of the Premises without first obtaining Landlord's written approval therefor. Landlord shall permit the maximum signage allowed by local ordinance.

XI. DAMAGES TO PREMISES

Any damage to the Premises attributable to the acts, whether intentional or unintentional, of the Tenant, its officers, agents, contractors, employees, licensees and invitees, shall be promptly corrected by the Tenant at its sole cost and expense. In the event the Tenant fails or refuses to correct such damage, the Landlord may, but is not obligated to, correct such damage at the sole cost and expense of the Tenant. Payment by the Tenant shall be made within fifteen (15) days of written demand by the Landlord, and a failure to pay the same shall constitute a default hereunder.

XII. LOCATION OF EQUIPMENT BY LANDLORD

Landlord shall have the exclusive right to install, maintain, use, repair and replace within the Premises pipes, ducts, conduits, wires and other mechanical equipment servicing the Premises.

XIII. SURRENDER OF PREMISES IN PROPER REPAIR

Tenant shall surrender the Premises at the expiration of the lease term herein or at such other time the Tenant may be required to vacate the Premises pursuant to the provisions hereof, broom clean and in s good condition as when received, excepting depreciation caused by ordinary wear and tear and damage by fire or other casualty covered by insurance.

XIV. INSURANCE

Tenant hereby indemnifies and holds Landlord harmless from and against any and all claims, actions, damages, liabilities and expenses resulting from or connected with any loss of life, personal injury and or damage to personal property,

arising from or out of the occupancy or use by Tenant of the Premises or any part thereof or occasioned wholly or in part by any act or omission of Tenant, its officers, agents, contractors, employees, licensees and invitees. Tenant further indemnifies, releases from liability and holds Landlord harmless from damages, abatement of rent or otherwise for any damages sustained by Tenant or any other person due to the Premises, or appurtenances thereto becoming out of repair, or due to the happening of any accident, including but not limited to any damage caused by fire, water, snow, windstorm, tornado, gas, steam, electric wiring, sprinkler system, chilled water system, plumbing and heating apparatus and from any acts or omissions of co-tenants or other occupants of the Premises. The foregoing to the contrary notwithstanding, in no event shall Tenant be required to indemnify Landlord against losses resulting from affirmative acts of proven negligence solely on the part of Landlord, its agents, contractors or employees, provided that in no event shall Landlord be liable with respect to water damages of any nature whatsoever.

XV. DAMAGE OR DESTRUCTION DUE TO INSURED CASUALTY

In the event the Premises shall be damaged to an extent greater than the amount specified in any deductible provision of Landlord's insurance policies due to fire, the elements, unavoidable accident or other casualty covered in usual policies of fire and extended coverage insurance or otherwise covered by Landlord's insurance, and the cost of repairing such damage shall not equal sixty percent (60%) of the fair replacement value of the premises (not including Tenant's personal property or fixtures) immediately prior to such damage, Landlord shall cause the

damage to the Premises (not including Tenant's personal property or fixtures) to be repaired with due diligence, and this Lease shall continue in full force and effect. If the cost of restoring the Premises (not including Tenant's personal property or fixtures) to their condition prior to damage from the aforementioned causes shall equal or exceed sixty percent (60%) of the fair replacement value immediately prior to such damage, or if the Premises are damaged by a casualty not insured against by Landlord, Landlord shall have the right to terminate this Lease by giving Tenant written notice of its election to do so within sixty (60) days after the date on which the damage occurs, whereupon this Lease shall terminate as of the date on which the damage occurred, and the rent shall be adjusted as of said date. In the event Landlord fails to give such notice, this Lease shall continue, and Landlord shall cause the Premises (not including Tenant's personal property or fixtures) to be repaired and restored with due diligence. The minimum rental shall be abated for the period during which the Premises are unfit for occupancy or for the usual conduct of Tenant's business as a result of such casualty loss.

XVI. TRANSFER OF TENANT'S INTEREST

Tenant shall not transfer or assign this Lease in whole or in part, nor sublet all or any part of the Premises, without first obtaining the written consent of Landlord. Consent by Landlord to any such transfer, assignment or subletting hereunder shall not constitute a waiver of the necessity for such consent to any subsequent transfer, assignment or subletting. Landlord shall not be required to release Tenant from any of the covenants and obligations of Tenant hereunder by reason of Landlord's approval of any assignment or subletting of Tenant. Any

attempt at transfer, assignment or subletting by Tenant by operation of law or otherwise without the express written consent of Landlord shall be void and of no force and effect.

The Tenant further agrees that all rents or other fees collected by the Tenant shall be remitted to the Landlord within 15 days.

XVII. PERFORMANCE BY TENANT

Tenant covenants and agrees to perform all obligations expressed on its part to be performed hereunder, to cease all conduct prohibited hereby immediately upon receipt of written notice from Landlord and to take such actions as are required by Landlord as part of Tenant's performance hereunder in accordance with the provisions of Landlord's notice requiring such actions.

XVIII. TENANT COVENANTS – RENT AND OTHER CHARGES

Tenant covenants and agrees to pay landlord all sums due Landlord for rent, additional rent costs, charges or reimbursements hereunder at the times and in the manner set forth herein without set-off, demand or notice which demand and notice tenant hereby waives.

XIX. REMEDIES OF LANDLORD

In the event of default by Tenant hereunder Landlord may at its option invoke all of the remedies set forth in this paragraph or otherwise available (in law or equity) to Landlord under the laws of the United States or the State of Georgia. In the event Tenant shall not commence and proceed diligently to effectuate any actions requires by Landlord as specified in any notice given Tenant hereunder, to the satisfaction of Landlord, Landlord may at its sole discretion do such things as are

specified in said notice, and tenant hereby grants to Landlord access to the Premises if same is required by Landlord in furtherance thereof. Landlord shall have no liability to Tenant for any loss or damage whatsoever resulting from such entry or such action by Landlord. In the event that Tenant: (A) fails to pay all or any portion of any sum due from Tenant hereunder for rent, costs, charges or reimbursement for sums advanced by Landlord on Tenant's behalf hereunder or pursuant to any exhibit hereto within ten (10) days following notice; (B) fails to cease all conduct prohibited hereby immediately upon receipt of written notice from Landlord; (C) fails to take such actions in accordance with the provisions of written notice from Landlord as are required by Landlord to remedy Tenant's failure to perform any of the terms, covenants and conditions hereof; (D) commits waste to the Premises or removes any improvements or betterments thereto; (E) fails to conduct business in the Premises as required by this Lease or abandons the Premises or the Premises appear to be abandoned; (F) commits an act in violation of the Lease which Landlord has previously notified Tenant to cease more than once in the lease year; (G) is otherwise in default hereunder and shall not have cured such default within ten (10) days following written notice from Landlord; then and in such event, Tenant shall be in default hereunder and Landlord may at its option and without further notice to Tenant, reenter and resume possession of the Premises and declare this Lease and/or Tenant's rights of possession hereunder to be terminated and may thereupon remove all persons and property from the premises, with or without resort to process of any court, either by force or otherwise. Notwithstanding such reentry by Landlord, Tenant hereby releases, indemnifies and holds Landlord

harmless from and against any and all loss or damage which Tenant may incur by reason of the termination of this Lease and/or Tenant's right to possession hereunder. No reentry and/or reletting shall be construed as Landlord's election to terminate this lease unless Landlord has notified Tenant in writing of Landlord's election to so terminate.

In the event that Landlord terminates Tenant's right to possession, but does not terminate this Lease, then Tenant shall pay to Landlord all arrearages in minimum rentals, additional rental, costs, charges and reimbursements due and unpaid. Tenant shall in addition remain liable for all minimum rentals, costs, charges, additional rentals and Landlord reimbursements as reserved herein. Tenant shall pay all such rentals and additional charges as same become due under the terms of this Lease, together with all attorney's fees and other expenses incurred by Landlord in regaining possession.

XX. ASSIGNMENT

The covenants, conditions and agreements herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefits of Tenant and only such assigns of Tenant to whom the assignment by tenant has been consented to by Landlord. Nothing contained in this Lease shall in any manner restrict Landlord's right to assign or encumber this Lease in its sole discretion, and it is further agreed, anything to the contrary herein contained notwithstanding, that in the event Landlord sells its interest in the Premises, Landlord shall be relieved of all further obligations hereunder.

XXI. QUIET ENJOYMENT

Tenant shall, subject to the provisions hereof, peaceably and quietly hold and enjoy the Premises during the term hereof without hindrance or interruption by Landlord so long as Tenant performs and observes all of the terms, covenants and conditions to be performed and observed by Tenant hereunder and pays all sums due from Tenant for rent or reimbursement for sums due Landlord on Tenant's behalf in accordance with the provisions hereof.

XXII. ENTIRE AGREEMENT

This Lease sets forth the entire agreement between the parties concerning the Premises and no subsequent agreement, amendment, change or addition to this Lease shall be binding upon either party unless reduced to writing and signed by each party.

XXIII. ADDRESSES – NOTICES

All notices required or permitted to be given hereunder shall be in writing, delivered in person or sent by registered or certified mail, return receipt requested, to Landlord at 200 courthouse Square, Fayetteville, Georgia 30214 or such other address as Landlord may designate by written notice to Tenant, and to the tenant at the address of the Premises. The time of postmark shall be deemed the time of "receipt" of notices as that term is used herein.

XXIV. CAPTIONS – HEADINGS AND REFERENCES

The Captions, Section Numbers and Article Numbers appearing in this Lease are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such Sections of this Lease, or in any way affect the

Lease. The use of the terms “hereof”, “hereunder” and “herein” shall refer to this Lease as a whole except where noted otherwise. The necessary grammatical changes required to express singular, plural, male, female or neuter as applicable shall be assumed in each case to be fully expressed.

XXV. RELATIONSHIP OF THE PARTIES

This Lease shall in no way create the relationship of employer and employee; master and servant; principal and agent; partnership; or partner or joint venture between Landlord and Tenant. This lease shall not result in the creation of an estate for years in Tenant. Accordingly, Tenant shall have only a usufruct not subject to levy or sale.

XXVI. GEORGIA LAW

The laws of the State of Georgia shall govern the interpretation, the validity, performance and enforcement of this Lease.

XXVII. SEVERABILITY

In the event any term, covenant or condition of this Lease ir the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the reminder of this Lease, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Lease shall be valid and enforceable to the full extent permitted by law.

XXVIII. TIME IS OF THE ESSENCE OF THIS LEASE

Time is of the essence of this lease.

XXIX. REPRESENTATIONS

Tenant acknowledges that neither Landlord nor Landlord's agents, employees or contractors have made any representations or promises with respect to the Premises or this Lease except as expressly set forth herein and that tenant shall have no claim, right or cause of action based on or attributable to any representation or promise allegedly made by Landlord, its agents, employees or contractors which is not expressly set forth herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals to duplicate copies of this Lease Agreement the day and date first above written.

LANDLORD:

FAYETTE COUNTY DEVELOPMENT AUTHORITY

By:_____

Randy Hayes, Chairman

Attest:

_____.

Phil Smelley, Secretary

_____.

NOTARY PUBLIC

*** Signatures continued on next page…….

TENANT:

CITY OF FAYETTEVILLE MAIN STREET TOURISM ASSOCIATION

BY: _____

CAM WILLIAMS, CHAIRMAN

ATTEST:

_____.

SECRETARY

_____.

NOTARY PUBLIC