



HAYWOOD COUNTY BOARD OF COMMISSIONERS

AGENDA REQUEST

***Must be presented to the County Manager's Office
NO LATER THAN 5 P.M. FRIDAY THE WEEK BEFORE THE MEETING***

DATE OF REQUEST: 7-1-11

FROM: Stephen King

MEETING DATE REQUESTED: July 18, 2011 - Third

Regular meetings: First (1st) Monday of the month at 9:00 am
Third (3rd) Monday of the month at 5:30 pm

SUBJECT:

REQUEST:

(What action are you seeking?)

Approval of Lease renewal for the Mauney Cove Convenience Center site – 5 year from original contract.

BACKGROUND:

(Research and justification of proposal and need; Alternatives evaluated; Legal Basis: Outcome-What will be achieved and how will it be measured?)

IMPLEMENTATION PLAN:

(How and when will staff undertake the action?)

Current lease expires 8/31/11. New lease would take effect 9/1/11 same terms

FINANCIAL IMPACT STATEMENT:

(What is the cost? Where is the money coming from? Optional or mandated?)

\$6,000 annually from rent of land in Fund 24

SUPPORTING ATTACHMENTS: YES X NO HOW MANY? 2

LIST: Letter to owner

new lease agreement

If yes, one ORIGINAL ATTACHMENT, and 14 copies, copied front and back side of pages, stapled and three-hole punched must accompany the agenda request

PowerPoint Presentation: YES _____ NO _____

PERSON MAKING PRESENTATION AT MEETING: Stephen King

TITLE: Director

PHONE NUMBER: 627-8042

E-MAIL: sking@haywoodnc.net

THIS SECTION FOR OFFICE USE ONLY

Received (Date/Time): _____

County Manager / Clerk to the Board Comments: _____

In an effort to save paper, attachments should be copied on both front and back sides.



Stephen King
Solid Waste Director

Haywood County Solid Waste

278 Recycle Rd
Clyde, NC 28721
Telephone: (828) 627-8042
Fax: (828) 627-8137

June 30, 2011

Mr. Bruce Toy
762 Jaqueline Lane
Palm Harbor, FL 34683

Dear Mr. Toy,

Enclosed please find the lease renewal for the Mauney Cove Convenience Center. Please review carefully and let me know if you have any questions. This will go before our Board of Commissioners on July 18th for approval if you have no questions. Per our discussion, this is a continuation of the original lease done by Ms. Mildred Toy.

Thank you

Zondra Robinson
Office Manager

NORTH CAROLINA

LEASE AGREEMENT

HAYWOOD COUNTY

THIS LEASE AGREEMENT, made and entered into this _____ day of _____, 2011 by and between BRUCE TOY, (hereinafter referred to as "Lessor"), and HAYWOOD COUNTY, NORTH CAROLINA, a body politic and corporate, party of the second part (hereinafter referred to as "Lessee"); both of Haywood County, North Carolina.

WITNESSETH:

That for and in consideration of the rental set forth herein, and for other good and valuable consideration, Lessor hereby leases to Lessee and Lessee accepts as Lessee the following described premises situated in Haywood County, North Carolina, and more particularly described as follows:

A portion of the tract of land containing 1.4 acres located on the North side of Mauney Cove Road near the intersection of Mauney Cove Road and Highway 276 being identified on Haywood County Tax Map as parcel #8616-39-3086 and described in exhibits A and B attached hereto. Portion not to extend further up Mauney Cove Road than utility pole located inside tract and no further north than portion of tract that is level. Final determination of exact size of leased area is to be determined by both parties prior to construction. Access to leased area is to be directly from Mauney Cove Road.

TO HAVE AND TO HOLD the said Premises unto the Lessee upon the following terms and conditions:

TERM OF LEASE:

The term of this lease shall be for a period of five (5) years, commencing at 12:01 a.m. on the _____ day of _____ 2011, and shall end at 12:00 midnight on the first day of the sixtieth (60th) month thereafter.

At the expiration of the Lease, Lessee shall surrender the Leased Premises in good condition, excepting reasonable wear and tear. If requested by Lessor, any structures, fixtures and/or foundations that were added to the leased premises by Lessee, are to be removed by

Lessee at Lessee's sole cost and expense, within fifteen (15) days of the lease expiration or termination.

OPTION TO EXTEND:

Lessee shall have an option to extend the lease for an additional period of five (5) years. Notice of election to extend the lease must be given to Lessor in writing not less than ninety (90) days prior to the expiration of the initial five (5) year period.

RENTAL:

The rental to be paid to Lessor for said premises shall be \$500.00 per month (\$6,000.00 annually) payable monthly or annually, in advance of the first day of each anniversary date of the lease agreement. Rental shall accrue from the Commencement Date, and shall be payable to the Lessor, at 762 Jaqueline Lane, Palm Harbor, FL 34683.

USE AND CARE OF PREMISES:

The Leased Premises may be used only for purpose of operating a Manned Household Garbage/Recycling Convenience Center.

All property kept, stored, or maintained with the Premises by Lessee shall be at Lessee's sole risk.

Lessee shall use diligence to keep the same free from loose waste at all times. Lessee shall also keep area surrounding the Leased Premises clear of waste placed or blown there due to operation of the Waste Disposal Center, by cleaning up such waste a reasonable period of time after it is placed or blown there.

Lessee shall procure at its sole expense any permits and licenses required for the transaction of business in the Leased Premises and otherwise comply with all applicable laws, ordinances and governmental regulations.

ALTERATIONS:

Lessee shall not make any alterations, additions or improvements to the Leased Premises without the prior written consent of the Lessor, provided, however, that no permission shall be required for the initial improvement to be made to construct the Manned Household Garbage/Recycling Convenience Center, including any buildings and fencing.

All construction work done by Lessee within the Leased Premises shall be performed in a good and workmanlike manner, in compliance with all governmental requirements. Lessee agrees to indemnify, defend and hold Lessor harmless against any loss, liability, damage or expense (including reasonable attorney's fees) resulting from such work.

LESSOR'S RIGHT OF ACCESS:

Lessor shall have the right to enter upon the Leased Premises during hours during which the facility is open to the public for the purpose of inspecting the same.

UTILITIES:

Lessee is responsible for all utilities.

INSURANCE COVERAGES:

Lessee shall procure and maintain throughout the term of this Lease a policy or policies of insurance, at its sole cost and expense, causing Lessee's fixtures and contents to be insured under standard fire and extended coverage insurance, and liability insurance, insuring both Lessor and Lessee against all claims, demands or causes of actions arising out of or in connection with Lessee's use or occupancy of the Leased Premises, or by the condition of the Leased Premises. The limits of Lessee's liability policy or policies shall be in an amount no less than \$1,000,000 per occurrence and shall be written by insurance companies satisfactory to Lessor licensed to do business in the State of North Carolina.

WAIVER OF LIABILITY; MUTUAL WAIVER OF SUBROGATION:

Lessor shall not be held responsible in any way on account of any construction, repair or reconstruction (including widening) of any private or public roadways, walkways or utility lines.

Lessor shall not be liable to Lessee or to Lessee's employees, agents, or visitors, or to any other person whomsoever, for any injury to person or damage to property in or about the Leased Premises caused by the negligence or misconduct of Lessee, its employees, subtenants, licensees or concessionaires, or of any other person entering the Waste Disposal Center, or arising out of the use of the premises by Lessee and the conduct of its business therein, or arising out of any breach or default by Lessee in the performance of its obligations under the Lease; and Lessee hereby agrees to indemnify, defend and hold Lessor harmless from any loss, expense, cost (including reasonable attorney's fees) or claims arising out of such damage or injury.

DAMAGES BY CASUALTY:

Lessee shall give immediate written notice to the Lessor of any damage caused to the Leased Premises by fire or other casualty.

EMINENT DOMAIN:

All compensation awarded for any taking (or the proceeds of private sale in lieu thereof) of the Leased Premises shall be the property of Lessor, and Lessee hereby assigns its interest in any such award to Lessor; provided, however, that Lessor shall have no interest in any award

made to Lessee for Lessee's moving and relocation expenses or for the loss of Lessee's moveable fixtures and other tangible personal property if a separate award for such items is made to Lessee.

ASSIGNMENT AND SUBLETTING:

Lessee shall not assign or in any manner transfer this Lease or any estate or interest therein, or sublet the Leased Premises or any part thereof, or grant any license, concession or other right of occupancy of any portion of the Leased Premises without prior written consent of Lessor.

DEFAULT BY LESSEE AND REMEDIES:

The following events shall be deemed to be events of default by Lessee under this Lease:

(a) Lessee shall fail to pay any installment of rental or any other obligation under this Lease involving the payment of money and such failure shall continue for a period of ten (10) days after written notice thereof to Lessee; provided, however, that for each calendar year during which Lessor has already given Lessee one written notice of the failure to pay an installment of rental, no further notice shall be required (i.e., the event of default will automatically occur on the seventh day after the date upon which the rental was due).

(b) Lessee shall fail to comply with any term, provision or covenant of this Lease, other than as described in subsection (a) above, and shall not cure such failure within fifteen days after written notice thereof to the Lessee.

TERMINATION:

Lessor or Lessee may terminate this Lease at the end of the original term or at the end of any additional extension period, by giving 90 days advance written notice to the other party, and if Lessee thereafter fails to quit possession, Lessor may, without prejudice to any other remedy which Lessor may have for possession of the Leased Premises, bring an action for Summary Ejectment.

SEVERABILITY:

In the event any term, covenant or condition of this Lease, or any amendments thereto shall to any extent be invalid or unenforceable, the remainder shall not be affected thereby and each term, covenant or condition shall be valid and enforceable to the full extent permitted by law.

SUCCESSORS AND ASSIGNS:

This Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective heirs, legal representatives, successors and permitted assigns, except as

otherwise provided herein.

AUTHORITY OF PARTIES:

Lessee certifies to Lessor that it is authorized to enter into this Lease, and that those persons signing below on its behalf are authorized to do so, and shall promptly upon the request of Lessor provide a resolution to this effect. Lessee hereby confirms its correct legal name as provided herein.

INTERPRETATION:

Although the printed provisions of this Lease were drafted by Lessee, such fact shall not cause this Amendment to be construed either for any party hereto.

FULL FORCE AND EFFECT:

Except as modified hereby, the Lease remains unmodified and in full force and effect.

GOVERNING LAW:

This Lease shall be governed by and construed in accordance with the laws of the State of North Carolina.

EFFECTIVE DATE:

The provisions of this Lease shall be and become effective as of the day and year first above written.

HOLDING OVER:

If Lessee remains in possession of the Leased Premises after the expiration of the Lease Term without Lessor's consent, such occupancy shall be deemed to be an occupancy from week-to-week at a rental equal to 1/4th the monthly Rental and Lessee shall be otherwise subject to all conditions, provisions and obligations of this Lease insofar as the same are applicable to a week-to-week tenancy.

NOTICES:

Whenever any notice is required or permitted in the Lease, such notice shall be in writing, at the following addresses:

LESSOR:

Bruce Toy
762 Jaqueline Lane
Palm Harbor, FL 34683

LESSEE:

Haywood County
Haywood County Courthouse
215 N. Main Street
Waynesville, NC 28786

LAWS:

Lessor and Lessee acknowledge that there are in effect federal, state and county laws, orders, rules, directives and regulations (collectively referred to hereinafter as the "Laws") and that additional Laws may hereafter be enacted or go into effect, relating to or affecting the Leased Premises, concerning the impact on the environment or construction, land use, maintenance and operations of structures, and conduct of business. Subject to the express rights granted to Lessee under the terms of the Lease, Lessee will not cause or permit to be caused, any act or practice, by negligence, omission, or otherwise, that would adversely affect the environment, or knowingly do anything or permit anything to be done that would violate any of the Laws.

MISCELLANEOUS:

Nothing in this Lease shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of computation of rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties other than the relationship of Lessor and Lessee.

This Lease contains the entire agreement between the parties, and no brochures, rendering, information or correspondence shall be deemed to be part of this agreement unless specifically incorporated herein by reference. In addition, no agreement shall be effective to change, modify, or terminate this Lease in whole or in part unless such is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have hereunto set their respective hands and seals,
the day and year first above written.

LESSOR:

(SEAL)
BRUCE TOY

LESSEE:

ATTEST: HAYWOOD COUNTY

By: _____
Marty Stamey MARK SWANGER, Chairman
County Manger/Clerk to Board Haywood County Board of Commissioners

STATE OF NORTH CAROLINA, COUNTY OF HAYWOOD

I, a Notary of said State and County, do hereby certify that BRUCE TOY personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this the _____ day of _____, 2011.

Notary Public

My commission expires:

Printed Name of Notary Public

STATE OF NORTH CAROLINA, COUNTY OF HAYWOOD

I, a Notary of said State and County, do hereby certify that MARTY STAMEY, personally appeared before me this day and acknowledged that he is Clerk to the Board of County Commissioners of Haywood County, a body politic and corporate, and that by authority duly given and as the act of the said Board, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by himself as its Clerk.

WITNESS my hand and official seal this the _____ day of _____, 2011.

Notary Public

My commission expires:

Printed Name of Notary Public