

# **REQUEST FOR BOARD ACTION**

## **HENDERSON COUNTY**

### **BOARD OF COMMISSIONERS**

**MEETING DATE:** 2 February 2009

**SUBJECT:** Western Carolina Community Action ("WCCA") lease  
(former Etowah Library)

**ATTACHMENT(S):** Draft lease

#### **SUMMARY OF REQUEST:**

Proposed are terms agreed to by WCCA for the long-term lease of the former Etowah branch library building. The Board recently approved a short-term lease of this facility to WCCA. In this lease:

- 1) WCCA has a lease through the end of June, 2011, at a monthly rent of \$2,000.00, plus the expenditure by WCCA of \$50,000 in leasehold improvements on the facility.
- 2) WCCA has the right to renew the lease through June, 2017 (in two, three-year increments) with no increase in rent.
- 3) WCCA can opt out of the lease at its option at any time.
- 4) Under no circumstances would the County reimburse WCCA for any leasehold improvements, including construction necessary to provide sewer service to the building.

County staff will present further information on this matter.

#### **BOARD ACTION REQUESTED:**

Lease approval.

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

***I move that the Board give approval to the proposed lease with WCCA for the former Etowah branch library property.***

**DRAFT**

After recording return to:

Charles Russell Burrell  
Office of the County Attorney for Henderson  
County  
1 Historic Courthouse Square, Suite 5  
Hendersonville, North Carolina 28792

#### **LEASE AGREEMENT**

**THIS LEASE AGREEMENT** made this \_\_\_\_<sup>th</sup> day of February, 2009 (the "Agreement"), by and between the **COUNTY OF HENDERSON, NORTH CAROLINA**, a body politic and corporate and a political subdivision existing under the laws of the State of North Carolina (the "County") and **WESTERN CAROLINA COMMUNITY ACTION**, a non-profit organization existing and operating in Henderson, Polk and Transylvania counties, North Carolina ("WCCA");

#### **WITNESSETH:**

**WHEREAS**, the County owns a certain building and tract located on Brickyard Road in the Etowah area of Henderson County (Henderson County parcel identification number 9529810511, herein the "property" or the "Leased Premises"); and

**WHEREAS**, the property was formerly used as the Etowah branch of the Henderson County Public Library, but is no longer used for such purpose; and

**WHEREAS**, WCCA proposes to use the property to house a high quality pre-school program providing services for approximately for thirty-six children; and

**WHEREAS**, the parties have reached agreement for the use by WCCA of the property, as stated below;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

**Section 1. Lease Term and Rental.** The County does hereby demise and lease the property unto WCCA, to have and to hold for an initial term commencing on February 1, 2009, and ending at 12:00 midnight on the last day of June, 2011. The Rental paid by WCCA shall consist of two components:

(a) In-kind rent: WCCA shall perform approximately Fifty Thousand Dollars (\$50,000.00) worth of leasehold improvements to the Leased Premises, which improvements shall become property of the County upon the expiration of this agreement. WCCA and the County shall agree by subsequent memoranda as to the exact scope of such improvements.

(b) Cash rent. Monthly cash rental payments during the term of this Agreement shall be Two Thousand Dollar (\$2,000.00), and shall be due in advance by not later than the fifth (5<sup>th</sup>) day of each month.

(c) First extension of term. In the event WCCA is not in default of the terms of this lease, WCCA has the right and option to extend this lease for an additional three (3) year period commencing at the end of the initial term set forth above and ending at 12:00 midnight on the last day of June, 2014. Rental for this additional three (3) year period shall be in cash, only, at the same monthly rate as for the initial term. At the end of this additional three (3) year period, the parties shall negotiate in good faith for further extensions of this lease, with appropriate modifications in the monthly cash rental payment.

(d) Second extension of term. In the event WCCA has chosen to extend the term of this lease until 12:00 midnight on the last day of June, 2014, and in the further event that WCCA is not in default of the terms of this lease, WCCA has the right and option to extend this lease for an additional three (3) year period commencing at the end of the initial term set forth above and ending at 12:00 midnight on the last day of June, 2017. Rental for this additional three (3) year period shall be in cash, only, at the same monthly rate as for the initial term.

**Section 2. Quiet Enjoyment.** During the term of this Agreement, WCCA shall peaceably and quietly have, hold and enjoy the Leased Premises without suit or hindrance from the County, except as expressly required or permitted by this Agreement. The provisions of this Section shall be subject to rights granted to the County in Section 8 hereof.

**Section 3. Early Termination by WCCA.**

(a) In the event that WCCA should see a loss or a substantial decrease in the "More at Four" (or substantially similar State program) funds needed to serve pre-school children in Henderson County, WCCA will have the option to end this lease upon sixty (60) day written notice to Henderson County.

(b) WCCA may in its discretion further terminate this lease for any reason upon ninety (90) days written notice to Henderson County.

**Section 4. Use and Maintenance.** During the term of this Agreement, the Leased Premises shall be used solely for the accomplishment of public purposes, specifically the operation of a high quality pre-school program providing services for approximately for thirty-six children.

**Section 5. Utilities.** WCCA shall pay all charges for gas, water, electricity, light, heat, telephone or any other utility service furnished to or used by WCCA in connection with its use of the Leased Premises.

**Section 6. Insurance.** WCCA shall procure and maintain throughout the term of this Agreement, fire, casualty, property damage and theft insurance as required to be maintained by the County pursuant to Article V of the Financing Contract, and shall name the County as additional insureds under any such policy. WCCA shall cooperate fully with the County in filing any proof of loss with respect to such policies. In no event shall WCCA voluntarily settle, nor consent to the settlement of,

any legal proceeding arising out of any insurance claim involving the Leased Premises, without the prior written consent of the County.

**Section 7. Improvements.** WCCA shall construct facilities on the Leased Premises, in addition to those referenced in Section 1(a), above, and from time-to-time, in its sole discretion, and at its own expense, modify or improve said elementary school facilities; provided that no such modification shall materially impair the effective use of or materially decrease the value of the Leased Premises. WCCA may also install items of equipment or other personal property therein.

**Section 8. Access to the Leased Premises.** The County and the Lender shall have the right at all reasonable times to enter upon and inspect the Leased Premises.

**Section 9. Encumbrances.** WCCA shall not create, incur, assume nor suffer to exist any mortgage, pledge, lien, charge or claim with respect to the Leased Premises. WCCA shall promptly, at its own expense, take such action as may be reasonably necessary to duly discharge or remove any such encumbrance, and hereby agrees to reimburse the County for any expense incurred by either of them in removing any such encumbrance which WCCA fails to remove itself within a reasonable time. WCCA may not sublease all or any portion of the Leased Premises.

**Section 10. Indemnification of County.** WCCA, shall defend, indemnify and hold the County harmless against any and all losses, claims, damages or liabilities, joint or several, including attorneys fees and expenses, for which the County may become liable as a result of this Agreement, WCCA's operations on the Leased Premises, or its failure to comply with the terms of this Agreement.

**Section 11. Assignment.** WCCA shall not assign its rights or obligations under this Agreement to any other person, firm or corporation without the prior written consent of the County.

**Section 12. Recording.** This Agreement or a Memorandum of this Agreement shall be recorded in the Office of the Henderson County Register of Deeds.

**Section 13. Miscellaneous.** (a) If any term or provision of this Agreement shall be deemed invalid or unenforceable by the court of competent jurisdiction, the remainder of this Agreement, and any other application of such term or provision, shall not be affected thereby.

(b) Headings in this Agreement are for purposes of reference only and shall not limit nor define any meaning contained thereunder.

(c) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and assigns, during the term hereof and during any extension or renewal hereof.

**Section 14. Notices.** For all purposes hereunder, including specifically provision of any notice required hereby, the parties may be served at the following addresses:

County: Henderson County, North Carolina  
1 Historic Courthouse Square, Suite 5  
Hendersonville, NC 28792  
Attention: County Attorney

WCCA: Western Carolina Community Action  
Post Office Box 665  
Hendersonville, North Carolina 28793

Attention: Executive Director

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**Remainder of this page intentionally left blank**

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

[SEAL]

COUNTY OF HENDERSON, NORTH CAROLINA

BY: \_\_\_\_\_  
Chairman of Board of Commissioners

Attest:

\_\_\_\_\_  
Clerk

[SEAL]

WESTERN CAROLINA COMMUNITY ACTION

BY: \_\_\_\_\_  
Executive Director

Attest:

\_\_\_\_\_  
Secretary

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, \_\_\_\_\_, a Notary Public for said County and State, hereby certify that Elizabeth W. Corn personally appeared before me this day and acknowledged that she is Clerk to the Board of Commissioners for the County of Henderson, North Carolina, and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by its Chairman, sealed with its seal, and attested by herself as its Clerk.

WITNESS my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2008.

[Notary Seal]

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

I, \_\_\_\_\_, a Notary Public for said County and State, hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged that s/he is \_\_\_\_\_ Secretary of Western Carolina Community Action and that by authority duly given and as the act of the Western Carolina Community Action, the foregoing instrument was signed in its name by its Executive Director, sealed with its seal, and attested by himself/herself as its \_\_\_\_\_ Secretary.

WITNESS my hand and notarial seal, this the \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_