

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 1 December 2008
SUBJECT: WCCA/Etowah (formerly library) lease
ATTACHMENT(S): Draft lease

SUMMARY OF REQUEST:

On 17 September 2008, the Board adopted a motion directing the Chairman “to execute a lease with WCCA consistent with the terms discussed during the meeting”

On 23 September 2008, a draft lease was provided to WCCA by email.

During the week of 10-14 November 2008, WCCA responded, providing the attached draft. It is different from the Board’s discussion on 17 September 2008 in that:

- 1) It contains a provision regarding the seeking of sewer service by WCCA, and requiring the County to reimburse WCCA sixty percent (60%) of any expenditures on the sewer installation should WCCA vacate the premises before 20 June 2013.
- 2) It contains a provision allowing WCCA to unilaterally terminate the lease with a 60-day notice in the event of a loss of funding, or with a 90-day notice for any reason.

As these provisions were not a part of the Board’s discussion, the Board must consider whether to modify its agreement.

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

BOARD ACTION REQUESTED:

Determination of the acceptability of the proposed changes to the Board’s decision of 17 September 2008.

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

I move to approve the proposed lease with WCCA for the property in Etowah, North Carolina, formerly used as a public library.

LEASE AGREEMENT

THIS LEASE AGREEMENT IS MADE THIS THE _____ day of November, 2008 (the "Agreement") by and between 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 NORTH 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 _____, 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 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 a term commencing on December 1, 2008, 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.
- (b) Cash rent: Monthly cash rental payments during the term of this Agreement shall be Two Thousand Dollars (\$2,000.00) and shall be due in advance by not later than the fifth (5th) day of each month.

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 two year period commencing at the end of the initial three year term. Rental for this period shall be cash, only, at the same

rate as for the first three years. All other terms and conditions, other than the "In-Kind" rental, shall apply to this two year period.

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 7 hereof.

Section 3. 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 thirty-six children.

Section 4. Utilities. In the event that a sewer line is extended to Leased Premises on or before June 30, 2013 and WCCA does not have use of the building after June 20, 2013, then sixty (60%) percent of the cost expended by WCCA towards the sewer extension shall be promptly paid by the county to WCCA. 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 5. Funding and Other Reasons to Break the Lease. In the event that WCCA should see a loss or a substantial decrease in the More at Four funds needed to serve pre-school children in Henderson County, WCCA will have the option to end this lease with a sixty (60) day notice. WCCA also reserves the right to break the lease for any reason with 90 days notice.

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 loss with respect to such policies. WCCA shall cooperate fully with the County in fining 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. Premises shall be repaired with the insurance monies, and any delay in the use of the premises by WCCA, pending completion of repairs, shall extend the initial lease (or option) by the amount of time use of premises was not available to WCCA because of the repairs.

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 *remises. The County and the Lender shall have the right at all reasonable times to enter upon and inspect the Leased Premises upon giving reasonable notice to WCCA of the County's and the Lender's intent to so enter upon and inspect.

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 imposed by any party against WCCA, and hereby agrees to reimburse the County for any expense incurred by either of them in removing any such encumbrance which WCCA imposes and 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, due to WCCA's improper operations on the Leased Premises, or its failure to comply with the terms of the Agreement. However, no legal fee or other loss for which the County is insured, and recovers insurance benefits, shall be the basis for recovery against WCCA.

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 therein.
- (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 685
Hendersonville NC 28793
Attention: Executive Director

IN WITNESS THEREOF, the parties have hereunto set their hanbds on the day and year above first written.

[SEAL]

COUNTY OF HENDERSON, NORTH
CAROLINA

BY: _____
Chairman of the Board of Commissioners

Attest:

Clerk

[SEAL]

WESTERN CAROLINA COMMUNITY
ACTION

BY: _____
Executive Director

Attest:

Clerk

Corp:WCCA\County-WCCA lease