

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: September 16, 2009

SUBJECT: Revised Probation and Parole Lease in 1995 Courthouse

ATTACHMENTS: Yes

- 1) Proposed Lease from Department of Corrections
- 2) NC General Statute 15-209, Accommodation for probation offices

SUMMARY OF REQUEST:

A summary of our Lease with Probation and Parole in the 1995 Courthouse follows:

- Current Lease with Department of Corrections (DOC) expired February 2008
- Since February 2008, we have been month to month at \$1080.10 per month for approximately 1,500 sf
- Probation and Parole occupy approximately 7,000 sf with the amount over 1,500 sf provided by the County without compensation
- In June 2009, negotiations on the renewal of the Lease lead to a 4% increase to \$1,123.30 per month and a proposed Lease was signed by the Board and sent to DOC for signature.

Since sending the proposed Lease to DOC, the attached Statute was revised requiring Counties to provide space (at no charge) for all probation officers. This revised Statute does not include management staff; two of the offices under the original lease are management. Therefore, a new Lease has been developed that reflects the space for the two management offices, attached.

The terms of the new Lease are as follows:

- Being 385 sf of office space located at Henderson County Courthouse, 200 N Grove Street, Suite 90
- At a rate of \$280.41 per month
- For a period of 3 years
- Effective October 1, 2012
- Terminating on October 31, 2012

BOARD ACTION REQUESTED:

Approve the attached Lease for Probation and Parole for office space in the 1995 Courthouse.

Suggested Motion:

I move that the Board approve the attached Lease for Probation and Parole for office space in the 1995 Courthouse.

**THIS LEASE DOES NOT BECOME EFFECTIVE UNTIL EXECUTED
BY THE NORTH CAROLINA DEPARTMENT OF CORRECTION**

STATE OF NORTH CAROLINA

LEASE AGREEMENT

THIS LEASE AGREEMENT, made and entered into this the _____ day of _____, 2009, by and between **COUNTY of HENDERSON**, hereinafter designated as Lessor, and the **STATE OF NORTH CAROLINA**, hereinafter designated as Lessee;

WITNESSETH:

WHEREAS, authority to approve and execute this lease agreement was delegated to the Department of Administration by resolution adopted by the Governor and Council of State on the 1st day of September, 1981; and

WHEREAS, the Department of Administration has delegated to this State agency the authority to execute this lease agreement by a memorandum dated the 17th day of April, 1985; and

NOW THEREFORE, in consideration of the rental hereinafter agreed to be paid and the terms and conditions hereinafter set forth, Lessor does hereby let and lease unto Lessee and Lessee hereby takes and leases from Lessor for and during the period of time and subject to the terms and conditions hereinafter set out certain space in the **City of Hendersonville, County of Henderson**, North Carolina, more particularly described as follows:

Being +/- 385 net square feet of office space located at Henderson County Courthouse, 200 N. Grove Street, Suite 90, Hendersonville, Henderson County, North Carolina. (Exhibit A-Floor Plan Attached).

(DEPARTMENT OF CORRECTION)

THE TERMS AND CONDITIONS OF THIS LEASE AGREEMENT ARE AS FOLLOWS:

1. The term of this lease shall be for a period of three **(3) Year** commencing on the **1st day of November, 2009** or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the **31st. day of October 2012.**

2. The Lessee shall pay to the Lessor as rental for said premises the sum of **\$3,364.90** Dollars per annum, which sum shall be paid in equal monthly installments of **\$280.41** Dollars, said rental to be payable within fifteen (15) days from receipt of invoice in triplicate.

The Lessee agrees to pay the aforesaid rental to Lessor at the address specified, or, to such other address as the Lessor may designate by a notice in writing at least fifteen (15) days prior to the due date.

3. Lessor agrees to furnish to the Lessee, as a part of the consideration for this lease, the following services and utilities to the satisfaction of the Lessee.

- A Heating facilities, air conditioning facilities, adequate electrical facilities, adequate lighting fixtures and sockets, hot and cold water facilities, and adequate toilet facilities.
- B. Janitorial services and supplies including maintenance of lawns, parking areas, common areas and disposal of trash.
- C. All utilities except telephone.
- D. Parking as available.
- E. The lessor covenants that the leased premises are generally accessible to persons with disabilities. This shall include access into the premises from the parking areas (where applicable), into the premises via any common areas of the building and access to an accessible restroom.

4. During the lease term, the Lessor shall keep the leased premises in good repair and tenantable condition, to the end that all facilities are kept in an operative condition. Maintenance shall include, but is not limited to furnishing and replacing electrical light fixture ballasts, air conditioning and ventilating equipment filter pads, if applicable, and broken glass. In case Lessor shall, after notice in writing from the Lessee in regard to a specified condition, fail, refuse, or neglect to correct said condition, or in the event of an emergency constituting a hazard to the health or safety of the Lessee's employees, property, or invitees, it shall then be lawful for the Lessee in addition to any other remedy the Lessee may have, to make such repair at its own cost and to deduct the amount thereof from the rent that may then be thereafter become due hereunder. The Lessor reserves the right to enter and inspect the leased premises, at reasonable times, and to make necessary repairs to the premises.

5. It is understood and agreed that Lessor shall, at the beginning of said lease term as hereinabove set forth, have the leased premises in a condition satisfactory to Lessee, including repairs, painting, partitioning, remodeling, plumbing and electrical wiring suitable for the purposes for which the leased premises will be used by Lessee.

6. The Lessee shall have the right during the existence of this lease, with the Lessor's prior consent, to make alterations, attach fixtures and equipment, and erect additions, structures or signs in or upon the leased premises. Such fixtures, additions, structures or signs so placed in or upon or attached to the leased premises under this lease or any prior lease of which this lease is an extension or renewal shall be and remain the property of the Lessee and may be removed therefrom by the Lessee prior to the termination of this lease or any renewal or extension thereof, or within a reasonable time thereafter. The Lessee shall have no duty to remove any improvement or fixture placed by it on the premises or to restore any portion of the premises altered by it. In the event Lessee elects to remove his improvements or fixtures and such removal causes damage or injury to the demised premises, Lessee will repair only to the extent of any such damage or injury.

7. If the said premises be destroyed by fire or other casualty without fault of the Lessee, this lease shall immediately terminate and the rent shall be apportioned to the time of the damage. In case of partial destruction or damage by fire or other casualty without fault of the Lessee, so as to render the premises untenable in whole or in part,

there shall be an apportionment of the rent until the damage has been repaired. During such period of repair, Lessee shall have the right to obtain similar office space at the expense of Lessee or the Lessee may terminate the lease by giving fifteen (15) days written notice to the Lessor.

8. ~~Lessor shall be liable to Lessee for any loss or damages suffered by Lessee~~ which are a direct result of the failure of Lessor to perform an act required by this lease, and provided that Lessor could reasonably have complied with said requirement.

9. Upon termination of this lease, the Lessee will peaceably surrender the leased premises in as good order and condition as when received, reasonable use and wear and damage by fire, war, riots, insurrection, public calamity, by the elements, by act of God, or by circumstances over which Lessee had no control or for which Lessor is responsible pursuant to this lease, excepted.

10. The Lessor agrees that the Lessee, upon keeping and performing the covenants and agreements herein contained, shall at all times during the existence of this lease peaceably and quietly have, hold, and enjoy the leased premises free from the adverse claims of any person.

11. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall not be construed as a waiver of the same in any other instance. No modification of any provision hereof and no cancellation or surrender thereof shall be valid unless in writing and signed and agreed to by both parties.

12. Any hold over after the expiration of the said term or any extension thereof, shall be construed to be a tenancy from month to month, and shall otherwise be on the terms and conditions herein specified, so far as applicable; however, either party shall give not less than sixty (60) days written notice to terminate the tenancy.

13. The parties to this lease agree and understand that the continuation of this lease agreement for the term period set forth herein, or any extension or renewal thereof, is dependent upon and subject to the appropriation, allocation or availability of funds for this purpose to the agency of the Lessee responsible for payment of said rental. The parties to this lease also agree that in the event the agency of the Lessee or that body responsible for the appropriations of said funds, in its sole discretion, determines, in view of its total local office operations that available funding for the payment of rents are insufficient to continue the operation of its local offices on the premise leased herein, it may choose to terminate the lease agreement set forth herein by giving Lessor written notice of said termination, and the lease agreement shall terminate immediately without any further liability to Lessee.

14. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given when made in writing and deposited in the United States mail, certified and postage prepaid and addressed as follows: To the Lessor at **100 King Street, Hendersonville, North Carolina 26792** and the Lessee at **2020 Yonkers Road, 4227 Mail Service Center, Raleigh, North Carolina 27699-4227**. Nothing herein contained shall preclude the giving of such notice by personal service. The address to which notices shall be mailed as aforesaid to either party may be changed by written notice.

IN TESTIMONY WHEREOF, this lease has been executed by the parties hereto, in duplicate originals, as of the date first above written.

STATE OF NORTH CAROLINA

By: _____ (SEAL)
TITLE: Chief Procurement & Budget Officer
Barbara Baker

LESSOR:

_____ (SEAL)
The County of Henderson
Steve Wyatt, County Manager

ATTEST:

Secretary
(CORPORATE SEAL)

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Sandra M. Barnes, a Notary Public in and for the County of Wake and State aforesaid, do hereby certify that **BARBARA BAKER**, personally appeared before me this date and acknowledged the due execution by him of the foregoing instrument as Budget Officer/Chief Procurement Officer of the Department of Correction of the State of North Carolina, for the purposes therein expressed.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2008.

Notary Public

My commission expires November 28, 2009

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that **Steve Wyatt**, personally came before me this day and acknowledged that he is the **County Manager**, and that by authority and given as an act of **Henderson County** and acknowledged the due execution of the foregoing instrument in its name.

WITNESS my hand and Notarial Seal, this the _____ day of _____, 2009.

Notary Public

My Commission Expires:

THE STATE OF NORTH CAROLINA SHALL NOT BE RESPONSIBLE FOR ANY EXPENSES INCURRED BY THE PROPOSER IN THE PREPARATION OF THIS PROPOSAL.

FAXED PROPOSALS ARE NOT ACCEPTABLE.

PROPOSAL TO LEASE TO THE STATE OF NORTH CAROLINA - PO-28

1. NAME OF LESSOR:
County of Henderson

2. LESSOR'S AGENT:
Steve Wyatt, County Manager

INDICATE EACH LESSOR'S BUSINESS CLASSIFICATION AS APPLICABLE:
 A. PROPRIETORSHIP B. PARTNERSHIP C. CORPORATION D. GOVERNMENTAL E. NON-PROFIT
 F. ***(HUB) HISTORICALLY UNDERUTILIZED BUSINESSES G. OTHER:

MAILING ADDRESS: 100 N. King Street
CITY: Hendersonville ZIP: 28792
PHONE: #828-697-4821 FAX#: 828-698-6014

MAILING ADDRESS
CITY: ZIP:
PHONE#: FAX#:
E-MAIL:

3. SPACE LOCATION: (including building name, floors involved & suite or room numbers unless entire floor)
Henderson County Courthouse Suite 90

STREET ADDRESS CITY COUNTY ZIP CODE
200 N. Grove Street, Suite 90, Hendersonville, Henderson County, NC

4. ATTACH FLOOR PLAN TO SCALE SHOWING THE SIZE AND LAYOUT OF SPACE OFFERED)

5. GROSS SQUARE FOOTAGE BEFORE NET USAGE COMPUTED

A. OFFICE +/- 385
B. WAREHOUSE
C. OTHER

6. All proposals must be submitted on the basis of net square footage as defined on reverse side of this sheet and in Specifications (PO-27)

A. DESIRED PROPOSAL (See PO-27 Items VI and XII-A)

TYPE OF SPACE	TOTAL NET SQ. FT.	ANNUAL RENTAL	ANNUAL RENT PER SQ. FT.	UTILITIES	JANITORIAL SERVICES	REQUIRED CLIENTELE PARKING SPACES
OFFICE	385	\$3,364.90	\$8.73	YES	YES	
WAREHOUSE						
OTHER						
TOTALS			XXXX	XXXX	XXXX	XXXX

Lessor will provide () employee parking spaces in above proposal at no additional charge to the State. (See explanation in PO-27 Item VI - Parking)

Comments:

ERRORS BY PROPOSERS IN CALCULATING NET SQUARE FOOTAGE WILL REDUCE THE ANNUAL RENTAL WITHOUT CHANGING THE PROPOSED RATE PER SQUARE FOOT IN THE PROPOSAL

B. OPTIONAL ALTERNATE PROPOSAL NO. 1 (See PO-27 ITEMS VI AND XII-B)
(FOR PROPOSALS NOT INCLUDING UTILITIES AND/OR JANITORIAL SERVICES)

TYPE OF SPACE	TOTAL NET SQ. FT.	ANNUAL RENTAL	ANNUAL RENT PER SQ. FT.	UTILITIES	JANITORIAL SERVICES
OFFICE					
WAREHOUSE					
OTHER					
TOTALS			XXXX	XXXX	XXXX

Lessor will provide () clientele parking spaces and () employee parking spaces

Comments:

7. LEASE TERM: 3YEARS BEGINNING DATE: 10/01/2009

8. RENEWAL OPTIONS, IF ANY: TERMS AND CONDITIONS:

NOTE: RATES THAT INCLUDE INDETERMINABLE PERCENTAGE INCREASES, SUCH AS UNCAPPED CPI INCREASES ETC., ARE NOT ACCEPTABLE DURING EITHER THE INITIAL TERM OR ANY RENEWAL PERIOD(S)

The State of North Carolina supports the use of products and materials having recycled content in renovation and construction. Will the proposed building provide facilities for handling materials to be recycled such as waste paper and cardboard? YES NO

THE PROPOSED BUILDING MUST BE COMPLETELY FREE OF ANY HAZARDOUS ASBESTOS OR HAZARDOUS LEAD PAINT THROUGHOUT THE STATE'S TENANCY.

Is the proposed building free of hazardous asbestos? YES NO

Is the proposed building free of hazardous lead paint? YES NO

DEPARTMENT: Correction DIVISION: DCC
CITY: SQUARE FEET: AGENT:

CUT-OFF FOR RECEIVING PROPOSALS IS 4:00 PM DATE:

LESSOR: Henderson County

9. ADDITIONAL INFORMATION (Including any deviations from furnished specifications)

10. Does this space comply with local and State Building safety and zoning codes specifically including OSHA provisions for the handicapped, and applicable sections of the State Building Code Volumes I-V?

YES

NO

PARTIALLY

EXPLAIN IF OTHER THAN "YES" IS CHECKED ABOVE:

11. This proposal is made in compliance with the specifications furnished by the Department of Correction. I realize that the State reserves the right to reject this proposal for any reason it deems warranted. This proposal is good until 12/30/09. I ACKNOWLEDGE AND FURTHER AFFIRM THAT I am aware of and familiar with the Americans with Disabilities Act of 1990 (42 United States Code, Section 12101 et seq.) and if the above firm is awarded the contract, it will comply with the provisions of said Act.

I AM AWARE THAT THERE WILL BE NO NEGOTIATION OF THE PER SQUARE FOOT PRICE THAT I HAVE PRESENTED IN THIS PROPOSAL. I am further aware that annual per square foot rental rate(s) which include indeterminable percentage increase(s) such as uncapped Consumer Price Index increases etc., are not acceptable during either the initial term or any renewal period(s):

*****HUB HISTORICALLY UNDERUTILIZED BUSINESSES (HUB) CONSIST OF MINORITY, WOMEN AND DISABLED BUSINESS FIRMS THAT ARE AT LEAST FIFTY-ONE PERCENT OWNED AND OPERATED BY AN INDIVIDUAL(S) OF THE AFOREMENTIONED CATEGORIES. ALSO INCLUDED IN THIS CATEGORY ARE DISABLED BUSINESS ENTERPRISES AND NON-PROFIT WORK CENTERS FOR THE BLIND AND SEVERELY DISABLED.**

Printed Name of Lessor

Signature of Lessor

Date

MAILING /DELIVERY INSTRUCTIONS

To be considered this proposal must be received by the State Property Office prior to 4:00 PM on the cutoff. No faxed proposals will be accepted. PHONE: 919-807-4650

Delivery Address If Delivered In Person: Director, State Property Office, Room 4055, Administration Building, 116 West Jones Street, Raleigh, North Carolina

Mailing Address If Sent Through Mail Service: State Property Office, 1321 Mail Service Center, Raleigh, North Carolina 27699-1321

ENVELOPE SHOULD BE MARKED:

- (a) Lease proposal Enclosed
- (b) Cutoff Date for Receiving Proposals
- (c) Name of State Agency involved.

NOTE: Net square footage is a term meaning the area to be leased for occupancy by State Personnel and/or equipment. To determine net square footage:

1. Compute the inside area of the space by measuring from the normal inside finish of exterior walls or the roomside finish of fixed corridor and shaft walls, or the center of tenant separating partitions.

2. Deduct from the Inside area the following:

- *a. Toilets and lounges
- *b. Entrance and elevator lobbies
- *c. Corridors
- d. Stairwells
- e. Elevators and escalator shafts
- f. Building equipment and service areas
- g. Stacks, shafts, and interior columns
- h. Other space not usable for State purposes

*Deduct if space is not for exclusive use by the State. Multiple State leases require a, b, and c to be deducted. The State Property Office may make adjustments for areas deemed excessive for State use.

DEPARTMENT:

DIVISION:

CITY:

SQUARE FEET:

AGENT:

CUT-OFF FOR RECEIVING PROPOSALS IS 4:00 PM

DATE:

FORM (PO-28)

(2005)

identification, or through proof of retirement status, but a State employee's purchases by a State or local governmental employee or retiree may not exceed two thousand five hundred dollars (\$2,500) during any calendar year. Products purchased by State and local governmental employees and retirees under this section may not be resold."

ACCOMMODATIONS FOR PROBATION OFFICES

SECTION 19.19. G.S. 15-209 reads as rewritten:

"§ 15-209. Accommodations for probation officers-offices.

(a) The county commissioners in each county in which a probation officer serves office exists shall provide, in or near the courthouse, suitable office space for such officer. Those probation officers assigned to the county who have probationary caseloads and their administrative support. This requirement does not include management staff of the Department of Correction, nonprobation staff, or other Department of Correction employees.

(b) If a county is unable to provide the space required under subsection (a) of this section for any reason, it may elect to request that the Department of Correction lease space for the probation office and receive reimbursement from the county for the leased space. If a county fails to reimburse the Department for such leased space, the Secretary of Correction may request that the Administrative Office of the Courts transfer the unpaid amount to the Department from the county's court and jail facility fee remittances."

INMATE MEDICAL SERVICES/REQUEST FOR PROPOSALS

SECTION 19.20.(a) The Department of Correction shall obtain medically necessary services for inmates committed to its custody from providers and medical facilities that participate in the provider network of the claims processing contractor for the State Health Plan for Teachers and State Employees (Plan). Providers and facilities under contract with the Plan's claims processor to provide services to covered members of the Plan shall provide medically necessary services to inmates in the Department's custody and shall be paid by the Department through the Plan's claims processor for services provided in an amount equal to the rate paid by the claims processor for Plan beneficiaries for medically necessary services. If the medically necessary services provided are not included in the Plan's reimbursement schedule, the Department may pay the reasonable and customary rate for the services. The requirements of this subsection apply to all medical and facility services provided outside the correctional facility, including hospitalizations, professional services, medical supplies, and other medications provided to any inmate confined in a correctional facility.

SECTION 19.20.(b) The Department of Correction, in consultation with the State Health Plan, shall issue a Request for Proposals (RFP) for a contractor to process claims for medical services provided to inmates in the custody of the Department, to provide medical management services to the Department, and to develop and manage a medical professional and facility provider network to serve the medical needs of inmates. The State Health Plan shall provide the Department with any technical and consultative assistance in developing and evaluating the RFP. The Department shall issue the RFP by April 1, 2010. The Department shall not enter into any long-term contracts for claims processing or health care services before or during the pendency of the RFP process.

SECTION 19.20.(c) The Department of Correction shall consult with the Division of Medical Assistance in the Department of Health and Human Services to develop protocols for prisoners who would otherwise be eligible for Medicaid if they were not incarcerated to access Medicaid while in custody or under extended limits of confinement. The Department may make recommendations to the 2010 Regular Session of the 2009 General Assembly for special purpose facilities designed to house inmates but preserve Medicaid eligibility.

SECTION 19.20.(d) The Department of Correction shall, whenever possible, seek to make use of its own hospitals and health care facilities to provide health care services to inmates. To the extent that the Department of Correction must utilize other facilities and services to provide health care services to inmates, the Department shall, to the extent possible, use community hospitals with unused available capacity or other health care facilities in a region to accomplish that goal. The Department shall work to ensure that care usage is distributed equitably among all hospitals or other appropriate health care facilities in a region, unless doing so would jeopardize the health of the inmate.