

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: August 5, 2024
SUBJECT: Updated lease with Town of Mills River for library
PRESENTER: Charles Russell Burrell
ATTACHMENT(S): Draft updated lease

SUMMARY OF REQUEST:

The Town of Mills River desires a new lease setting out essentially the existing working arrangement for the branch of the Henderson County Public Library housed in Mills River's facilities. The Board will recall that under previous agreements, the Town constructs and maintains the building in which the branch is located, and the County operates the actual library.

Attached is a draft updated lease agreement.

County staff will be present and prepared if requested to give further information on this matter.

BOARD ACTION REQUESTED:

Approval of the draft lease.

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

***I move that the Board approve the draft lease agreement with the
Town of Mills River.***

NORTH CAROLINA

LEASE AGREEMENT

HENDERSON COUNTY

This Lease Agreement (“Lease”) is made and entered into this ___ day of _____, 2024, by and between the Town of Mills River, one of the municipalities of the State of North Carolina (the “Owner”), and Henderson County, one of the counties of the State of North Carolina (the “ Lessee”).

WITNESSETH:

WHEREAS, the Owner owns that certain tract of land and a building (herein the “Premises”) containing space occupied and leased by the Lessee and in which the Lessee operates and maintains a public library, such space being depicted on Exhibit A attached hereto and incorporated herein by reference. The space occupied by Lessee is herein referred to as the “Library Space”; and

WHEREAS, the Lessee desires to continue to occupy and lease the Library Space; and

WHEREAS, the Owner, for and in consideration of the mutual covenants and agreements hereinafter expressed, agrees to permit the Lessee to occupy and enter upon the Property solely for the Lessee’s use during the Term hereof, as defined below, and the Lessee agrees to the terms and conditions relating to the uses hereinafter set forth.

1. Lease. The Owner hereby leases to Lessee, and Lessee hereby leases and takes upon the terms and conditions which hereinafter appear the Library Space. Lessee shall have the exclusive right to occupy and control the Library Space. Lessee shall also have the right to the use of the common areas located within the Premises adjacent to the Library Space during the term of this Lease.

2. Term. The term of this Lease shall commence on the date hereof and shall terminate at 12:01 a.m. on _____, 2029, unless earlier terminated or extended as provided herein. If Lessee has fully complied with all of its obligations provided herein, the term of this lease shall be renewed for successive five (5) years terms until either party give the other written notice of termination at least one (1) year prior to the expiration of the then-current term.

3. Rent. In consideration of the use, occupancy and rent of the Library Space, Lessee shall pay Owner rent in the amount of One (\$1.00) Dollar per lease term, due and payable on the first day of each term.

4. Use of the Library Space. Lessee shall use the Library Space only to maintain and operate a public library. Owner shall have no obligation to provide any equipment, furniture, furnishings or books for Lessee’s operation of a library. The parties shall agree upon the hours of operation of the library. Lessee shall keep the Library Space in a clean and well-maintained condition at all times.

5. Security. Owner shall provide entry to the Premises by key pad and shall provide entry codes to Lessee. Lessee shall not disseminate any entry code to any person unless Owner has agreed. Owner shall also provide a camera security system for the Premises.

The parties acknowledge that Lessee currently operates a library in the Library Space and maintains hours that are different from those maintained by Owner for the Premises. Currently, the library is open after the Owner’s hours of operation on Monday evenings, and Lessee may determine to operate the library on other days outside the Owner’s operating hours. At any time when Lessee keeps the library open to the public outside the Owner’s hours of operation, Lessee shall secure and lock the Premises at the time of closing.

6. Maintenance and Improvements. Lessee shall not make any significant change to the Library Space without the prior approval of Owner, which approval shall not be unreasonably withheld. Significant changes shall include but not be limited to any painting other than routine re-painting of walls and adding or changing the location

of walls. Lessee shall be solely responsible for the costs of all changes, remodeling, painting or decorating within the Library Space.

Except as expressly provided herein, Owner shall provide all routine maintenance and extraordinary and repair of the common areas and the HVAC within the Premises and the roof of the Premises. Lessee shall provide all routine maintenance and repair of the Library Space. Owner shall be responsible for undertaking all extraordinary maintenance and repair of the Library Space, and the parties shall equally share the cost of all such maintenance and repair of the Library Space, except that Lessee shall not be required to pay more than \$5,000.00 in any term year or more than \$15,000.00 during any lease term toward such costs. Notwithstanding anything contained herein to the contrary, in the event the furnace or air conditioning unit which exclusively provides service to the Library Space should be replaced, Lessee shall pay one-half (½) of the costs for the replacement materials and installation.

Owner shall provide for the drive into the Premises, the parking areas and sidewalks to be cleared of snow when necessary. The cost of snow removal shall be equally borne by Owner and Lessee.

7. Insurance. Owner shall have no responsibility to provide any insurance for Lessee's property or use of the Library Space. Lessee shall obtain and maintain general liability insurance to cover all risks arising out of or associated with its use and occupancy of the Library Space, with limits of \$5,000,000.00 per incident, and shall provide for Owner to be an additional insured. Upon request, Lessee shall provide Owner with a copy of its declaration statement reflecting the required coverage.

Lessee shall also obtain and maintain standard hazard insurance covering all of its property located within the Library Space.

8. Utilities. Owner shall provide all usual utilities for Lessee's use in the Library Space except telephone and Internet Service, which Owner shall have no obligation to provide.

9. Common Areas. The Library Space is accessed through a hall that is utilized by Owner and the public. In addition, the Premises includes a meeting room ("Commons Room") and restrooms. The parties shall make due and diligent efforts to jointly utilize these common areas and shall work cooperatively to schedule their use of the common areas around each others' needs. Notwithstanding anything contained herein to the contrary, Owner shall have the first right to use the Commons Room in the event the parties cannot agree. Lessee shall thoroughly clean the restrooms located in the common areas at least twice per week.

10. Indemnity. The Lessee covenants and agrees at its sole cost and expense, to indemnify and hold harmless the Owner against and from any and all claims by or on behalf of any person, firm or corporation arising out of the Lessee's use of the Library Space or from any work or thing done whatsoever in or about the Library Space by the Lessee and further to indemnify and hold the Owner harmless against and from any and all claims arising from any condition in the Premises caused by the Lessee or arising from any breach or default on the part of the Lessee in the performance of any covenant or agreement on the part of the Lessee to be performed pursuant to the terms of this Lease, or arising from any act, omission or negligence of the Lessee or arising from any accident, death, injury or damage whatsoever caused to any person, firm or corporation in or about the Property, and from and against all costs, damages, attorneys fees, expenses and liabilities incurred in or about any such claim, action or proceeding brought thereon; and in case any action or proceeding be brought against the Owner by reason of any such claim, the Lessee covenants to resist and defend any such action or proceeding by counsel satisfactory to the Owner.

The Lessee further covenants and agrees that the Owner shall not be responsible or liable to the Lessee or any person firm or corporation claiming by through or under the Lessee for or by reason of any defect in the Library Space or for any injury or loss or damage to person or property resulting there from, and the Owner shall not be responsible or liable to the Lessee or any person or firm or corporation claiming by through or under Lessee for any death, injury, loss or damage to any persons or to the Library Space caused by or arising from any defect or condition in the Library Space whatsoever, or by or from any death, injury or damage caused by arising or resulting from any death, injury or damage caused by or arising, or resulting from acts of negligence of any occupant, invitee, guest or user of the Library Space.

11. Transfer and Assignment. The right conferred upon the Lessee pursuant to this Lease are strictly personal to Lessee, do not inure to the benefit of any third parties. The Lessee agrees that the Lease is non-transferable and further agrees not to transfer, assign, pledge or encumber his interest in this Lease. The Lessee further acknowledges that the Owner's rights and obligations under this Lease may be mortgaged, assigned or transferred by the Owner to its successors in title or interest, their assigns and the Owner's lenders and/or its lender's trustees. This Lease shall not be recorded without prior written consent of the Owner.

12. Compliance with Laws. The Lessee shall promptly comply with all laws and ordinances, rules regulations, and requirements and directives of all governmental or public authorities and of all their subdivisions applicable to and affecting the Library Space, its use and occupancy thereof, and shall promptly comply with all orders, regulations requirements imposed by any governmental entity.

13. Non-Waiver. The failure of the Owner to enforce strict performance by the Lessee of the conditions and covenants of the Lease or to exercise any election or option, or to resort or have recourse to any remedy herein conferred in any one or more instances, shall not be construed or deemed to be a waiver or a relinquishment then or in the future by the Owner of any such conditions and covenants, options, elections or remedies but the same shall continue in full force and effect.

14. Validity of Agreement. The terms, conditions, covenants and provisions to this Lease shall be deemed to be severable. If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of law, it shall not affect the validity of any other cause or provision herein, but such other clauses or provisions shall remain in full force and effect.

15. Entire Contract. This Lease contains the entire contract between the parties. All other proposals, suggestions, offers, counter-offers, representations, understandings and agreements (if any) of the parties (or either of them), not expressly state in this instrument, are void and unenforceable. This Lease may not be modified or amended except by writing executed by both parties.

16. Governing Law. This Lease shall be governed by and construed under the laws of the State of North Carolina.

Town of Mills River, Owner

By: _____

Henderson County, Lessee

By: _____
