

FORSYTH COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: JUNE 21, 2018 AGENDA ITEM NUMBER: 16

SUBJECT: RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT BETWEEN FORSYTH COUNTY AND THE STATE OF NORTH CAROLINA, ON BEHALF OF ITS DEPARTMENT OF PUBLIC SAFETY, FOR LEASE OF A 7.55 ACRE PORTION OF COUNTY OWNED PROPERTY LOCATED AT 5580 STURMER PARK CIRCLE, WINSTON-SALEM, N.C. PURSUANT TO THE PROVISIONS OF N.C.G.S. 160A-274 (GENERAL SERVICES DEPARTMENT)

COUNTY MANAGER'S RECOMMENDATION OR COMMENTS: Recommend Approval

SUMMARY OF INFORMATION:

See attached

ATTACHMENTS:- YES NO

SIGNATURE: *J. Dudley Watts, Jr. /ams* DATE: June 19, 2018
COUNTY MANAGER

**RESOLUTION AUTHORIZING EXECUTION OF A LEASE AGREEMENT
BETWEEN FORSYTH COUNTY AND THE STATE OF NORTH CAROLINA,
ON BEHALF OF ITS DEPARTMENT OF PUBLIC SAFETY,
FOR LEASE OF A 7.55 ACRE PORTION OF COUNTY OWNED PROPERTY
LOCATED AT 5580 STURMER PARK CIRCLE, WINSTON-SALEM, N.C.
PURSUANT TO THE PROVISIONS OF N.C.G.S. 160A-274
(GENERAL SERVICES DEPARTMENT)**

WHEREAS, the State of North Carolina, on behalf of its Department of Public Safety, desires to lease a 7.55 acre portion of County owned property known as the Youth Detention Center and the Sturmer House located at 5580 Sturmer Park Circle, Winston-Salem, N.C., for a three-year term at an annual rent of \$1.00 for the purpose of providing treatment and administration of programs regarding public safety and youth crisis control services or similar programs; and

WHEREAS, the County staff reports that the County does not have a need for the property for County purposes during the term of the proposed lease and recommends that the Forsyth County Board of Commissioners authorize execution of the lease; and

WHEREAS, N.C.G.S. 160A-274 authorizes any governmental unit to lease to any other governmental unit any interest in real property upon such terms and conditions as it deems wise, with or without consideration upon action by the governing body of the governing unit;

NOW, THEREFORE, BE IT RESOLVED that the Forsyth County Board of Commissioners hereby determines that the above-described property which is the subject of the proposed Lease Agreement between Forsyth County and the State of North Carolina, on behalf of its Department of Public Safety, will not be needed by the County for County purposes during the term of the proposed three-year lease.

BE IT FURTHER RESOLVED that Forsyth County is hereby authorized to lease the above-described real property to the State of North Carolina, on behalf of its Department of Public Safety, at the consideration provided herein pursuant to the provisions of N.C.G.S. 160A-274.

BE IT FURTHER RESOLVED that the Chairman or County Manager and the Clerk to the Board are hereby authorized to execute, on behalf of Forsyth County, a Lease Agreement of the above-described property with the State of North Carolina, on behalf of its Department of Public Safety, for a three-year term at an annual rent of \$1.00, subject to a pre-audit certificate thereon by the County Chief Financial Officer, if applicable, and approval as to form and legality by the County Attorney.

Adopted this the 21st day of June, 2018.

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF FORSYTH

THIS LEASE AGREEMENT, made and entered into this the ____ day of _____, 2018, by and between, **FORSYTH COUNTY** hereinafter designated as Lessor, and the **STATE OF NORTH CAROLINA**, hereinafter designated as Lessee;

W I T N E S S E T H:

THAT 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 as amended on September 8, 1999 and December 7, 1999, and

WHEREAS, the Department of Administration has delegated to this State agency the authority to execute this lease agreement by a memorandum dated the 18th day of January, 2017 and,

WHEREAS, the parties hereto have mutually agreed to the terms of this lease agreement as hereinafter set out,

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 and subject to the terms and conditions hereinafter set out certain space in the **City of Winston-Salem, County of Forsyth**, North Carolina, more particularly described as follows:

Being 7.55 acres of land and improvements located at 5580 Sturmer Park Circle, Winston-Salem, North Carolina known as the Youth Detention Center and the Sturmer House as further described in Exhibit 1 attached hereto and incorporated herein by reference (hereinafter called the "Premises").

DEPARTMENT OF PUBLIC SAFETY-Division of Adult Corrections and Juvenile Justice

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) years**, commencing on the **1st day of July, 2018** or as soon thereafter as the leased premises are ceded to the Lessee and terminating on the **30th day of June, 2021**.
2. The Lessee shall pay to the Lessor as annual rental for said premises the sum of **\$1.00 Dollar**.

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 as follows:

- A. Heating facilities, air conditioning facilities, electrical facilities, lighting fixtures and sockets, hot and cold water facilities, and toilet facilities provided as is.
- B. Any fire or safety inspection fee and storm water fee will be paid by Lessor.
- C. The number of keys to be provided to Lessee for each lockset shall be reasonably determined by Lessee prior to occupancy, at no cost of Lessee.
- D. The Lessor will provide grounds maintenance at the option of the Lessee, which will include the mowing of all 10.3 acres of land, and all areas of the Bridges Crisis and Assessment Center and the adjacent Sturmer House lawn, once a week during the growing season and as needed during the months of December, January and February. The Lessor will prune all shrubbery 3 times a year and remove all clippings from property. At a minimum, the Lessor will refresh mulch in all mulch areas and beds once per year.
- E. The Lessor will provide grounds maintenance at an hourly rate of \$31.33 billed annually to the Lessee.
- F. Lessee shall pay all utilities and janitorial services.

4. Lessee agrees to the following as part of the consideration for this lease.

- A. Lessee will not spend more than \$25,000 in annual repairs. If any repair exceeds this limit and the County will not agree to repair, the State has the right to terminate the lease with a 6-month written notice or earlier if the repair makes the premises uninhabitable.
- B. The Premises shall be used solely for the purpose of providing treatment and administration of programs regarding public safety and youth crisis control services or similar programs. The Premises shall not be used for any illegal purposes, nor in any manner to create any nuisance or trespass, nor in any manner to vitiate the insurance or increase the rate of insurance on the Premises. In the event Lessee's use of the Premises results in an increase in the rate of insurance on the Premises, Lessee shall pay to Lessor, upon demand and as additional rental, the amount of any such increase. This Lease shall be terminated immediately if the Premises are no longer used for the purpose set forth herein.

5. The Lessee shall have the right during the existence of this lease, with the Lessor's

prior written 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 there from 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.

6. If said premises were 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 the Lessor.
7. 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.
8. Upon completion 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. Lessee, Lessee's employees, agents, contractors or subcontractors shall take no action which may void any manufacturers or installers warranty with relation to the Premises. Lessee shall indemnify and hold Lessor harmless from any liability, claim, demand or cause or action arising on account of Lessee's breach of the provisions of this paragraph.
9. 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.
10. The failure of either party to insist in any instance upon strict performance of any of the terms and conditions herein set forth shall 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.
11. 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.
12. 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 premises 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.
13. The Lessee shall have the right to assign or sublet the premises with the Lessor's written consent. Assignment will be subject to receiving Lessee's written request and shall not be unreasonably withheld, conditioned or delayed.

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 **Lessor at Forsyth County Manager's Office, Attention: J. Dudley Watts, 201 N. Chestnut Street, Winston-Salem, NC 27101** and the Lessee at **NC Department of Public Safety, Division of Adult Corrections and Juvenile Justice, 4021 Mail Service Center, Raleigh, North Carolina, 27699-4021**. 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.

15. Original invoice for actual time worked on Premises is to be forwarded to address as indicated below:

**Juvenile Crisis and Assessment Center Contract Administrator
NC/DPS Division of Adult Correction
Juvenile Justice-Juvenile Community Programs
4212 Mail Service Center
Raleigh, North Carolina, 27699-4212**

16. The State of North Carolina is an immune sovereign and is not ordinarily subject to suit; however, the State has enacted the North Carolina Tort Claims Act, pursuant to which the State may be liable for the torts of its officers and employees, within the terms of the act. Accordingly, the State will be primarily liable for any claims within the coverage of the Tort Claims Act. Notwithstanding anything to the contrary herein, Lessee shall be liable for any damage to the Premises caused by Lessee or Lessee parties.

17. Lessor agrees that the Lessee's decision to self-insure satisfies all insurance requirements of this Lease applicable to Lessee.

18. North Carolina General Statute 132-32 and Executive Order 24 prohibit the offer to, or acceptance by, any employee of Lessee of any gift from anyone with a contract with Lessee, or from any person seeking to do business with Lessee. By execution of this Lease, Lessor attests, for its entire organization, including its employees or agents, that it is not aware that any such gift has been offered, accepted, or promised by any employees of its organization.

19. This lease shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of North Carolina, regardless of conflict of law principles.

[Remainder of page intentionally left blank; signatures on following pages]

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

LESSEE:
STATE OF NORTH CAROLINA

By: _____ (SEAL)
Joanne Rowland,
Director of Purchasing & Logistics

LESSOR:
COUNTY OF FORSYTH

By: _____ (SEAL)
J. Dudley Watts
Forsyth County Manager

STATE OF NORTH CAROLINA COUNTY
OF _____

I, _____, a Notary Public in and for the aforesaid County and the State aforesaid, do certify that **Joanne Rowland**, personally came before me this day and acknowledged that she is the Purchasing Director of the Department of Public Safety, State of North Carolina, and that by authority duly given and as the act of the Department, has signed the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the _____ day of _____, 2018.

Notary Public: _____

Printed Name: _____

My Commission expires _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, _____, a Notary Public in the County and for the State aforesaid, do hereby certify that _____, personally came before me this day and acknowledge the due execution of the foregoing instrument for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the _____ day of _____, 2018

Notary Public: _____

Printed Name: _____

My Commission expires _____

Exhibit 1



May 18, 2018

