

## **HAYWOOD COUNTY COMMISSIONERS**

**REGULAR MEETING – January 9, 2012**

### **CALL TO ORDER**

Chairman Mark S. Swanger convened the regular meeting of the Haywood County Board of Commissioners at 9:00 a.m. in the Historic Courtroom at the Haywood County Historic Courthouse, Waynesville, North Carolina, with Chairman Mark S. Swanger, Vice-Chairman J.W. “Kirk” Kirkpatrick III, Commissioners L. Kevin Ensley, Michael T. Sorrells and Bill Upton, present. Staff members present were County Manager Marty Stamey, County Attorney Leon M. “Chip” Killian, III, Finance Director Julie Davis, and Public Information Officer David Teague

### **PLEDGE OF ALLEGIANCE**

Chairman Swanger led the pledge of allegiance.

### **INVOCATION**

Commissioner Sorrells offered the invocation.

### **PUBLIC COMMENT SESSION**

Chairman Swanger opened the public comment session. Comments are generally limited to three minutes per individual, unless the speaker is representing a group for which the comment period may be extended to five minutes. No one addressed the board.

Chairman Swanger closed the public comment session.

### **CONSTITUENT CONCERNS**

Commissioner Sorrells thanked Dale Burris, the maintenance staff, and the IT Department for their time, effort, and a great job during the move last week into the new DSS/ Environmental Services/Health Department Building. Commissioner Upton commented that he felt the same way, and thanked County Manager Stamey for taking the staff out to eat.

### **DISCUSSION / ADJUSTMENT / APPROVAL OF CONSENT AGENDA**

There were no adjustments to the agenda.

## **CONSENT AGENDA**

Commissioner Ensley made a motion that the consent agenda as presented be approved. Commissioner Sorrells seconded, and the motion carried unanimously.

- Approval of December 19, 2011 regular meeting minutes with one adjustment by Chairman Swanger – under appointment of TDA Board Members, added to read Lynn Collins instead of just Lynn.
- Budget Amendments:

- A Health Department - \$1,400 – grant from MedWest & Haywood Foundation

Julie Davis, Finance Director, stated that the funds would be used in the adult health and family planning clinics to promote breast health education and cancer awareness for low-income women.

- Animal Services - \$491 – donation for equipment purchases

Julie Davis commented that this is the amount collected this year that is not budgeted; these are contributions and donations that people are making to animal services for specific items that they would like purchased. Ms. Davis stated that these funds are going to be used for equipment, specifically, cat catchers.

HAYWOOD COUNTY  
BUDGET ORDINANCE AMENDMENT  
FISCAL YEAR 2012

PER: \_\_\_\_\_  
JNL: \_\_\_\_\_

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2012.

Section 1. To amend the General Fund, the expenditures are to be charged as follows:

Department	Account Number	Current Budget	Increase (Decrease)	Amended Budget
Health Department				-
Non-Expendable Supp	115110-526900	2,000	1,400	3,400
				-
				-
				-
				-
				-
				-
which will result in a net increase of \$		1,400	in the expenditures of the General Fund.	

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget
Health Dept Grants	110050-451101	-	1,400	1,400
				-
				-
				-
				-

Section 2. Copies of this budget amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 9<sup>th</sup> day of January, 2012.  
  
 \_\_\_\_\_  
 Chairman  
 Haywood County Board of Commissioners

ATTEST  
  
 \_\_\_\_\_  
 Clerk to the Board

Explanation: Mini grant received from Medwest Haywood Foundation. Funds will be used in the Adult Health and Family Planning clinics to promote breast health education for low income women about breast cancer.

HAYWOOD COUNTY  
 BUDGET ORDINANCE AMENDMENT  
 FISCAL YEAR 2011-2012

PER: \_\_\_\_\_  
 JNL: \_\_\_\_\_

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the budget ordinance for the fiscal year ending June 30, 2012.

Section 1. To amend the General Fund, the expenditures are to be charged as follows:

Department	Account Number	Current Budget	Increase (Decrease)	Amended Budget
Animal Services:				
Miscellaneous supplies/traps	114380-529907	600	491	1,091
				-
				-

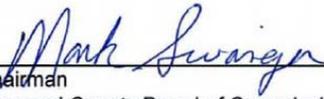
which will result in a net increase (decrease) of \$ 491 in the expenditures of the General Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget
Miscellaneous:		-		-
Donations & contributions - Animal Services	110100-443842	-	491	491
				-
				-
			491	

Section 2. Copies of this budget amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 9th of January 2012.

  
 Chairman  
 Haywood County Board of Commissioners

ATTEST:  
  
 Clerk to the Board

<b>Explanation:</b>
To increase the Animal Services budget for the contribution for equipment - Cat catchers.

## **ADMINISTRATIVE/AGENCY REPORT**

### **Update on Smoky Mountain Center Medicaid Waiver Activities**

No one present at this time representing Smoky Mountain Center. Chairman Swanger stated it would be moved to later in the agenda.

## **NEW BUSINESS**

### **Resolution approving NCDOT Secondary Road Improvement Program for Fiscal Year 2012**

Chairman Swanger commented that at the last board meeting, there was a public hearing for the NCDOT secondary road improvement program, and asked if any of the board members or County Manager Stamey had received any public comments or input. No comments or input had been received.

Vice-Chairman Kirkpatrick made a motion that the Resolution approving the NC DOT secondary road improvement program for fiscal year 2012 be approved. Commissioner Upton seconded, and the motion carried unanimously.

The Board of Commissioners for the County of Haywood, North Carolina, met in regular session in the Historic Courtroom of the Haywood County Courthouse in Waynesville, NC, the usual place of meeting, at 9:00 AM, on January 9, 2012.

**Present:** Chairman Mark S. Swanger, Vice-Chairman J.W. "Kirk" Kirkpatrick III, Commissioners L. Kevin Ensley, Michael T. Sorrells, and Bill Upton, Staff Members County Manager Marty Stamey, County Attorney Leon M. "Chip" Killian III, Finance Director Julie Davis, and Public Information Officer David Teague

**Absent:** None

Chairman Mark S. Swanger, introduced representatives of the Department of Transportation and a resolution recommending a program of total needs for Secondary Road improvements in Haywood County. This program details the proposed expenditure of Secondary Road Funds for the period **Fiscal Year 2012**. The proposed program recommends that the funds be expended in the following manner, **subject to availability of funding, right-of-way, and environmental review:**

<u>ELEMENT</u>	<u>AMOUNT</u>	<u>PERCENT</u>
Secondary Road Improvements (See attached list)		
Highway Fund	\$ 320,093	
Trust Fund	\$ 277,276	
Subtotal	\$ 597,369	92.4%
 Preliminary Engineering		
Surveying and Right of Way Acquisitions		
Highway Fund	\$ 49,039	
Subtotal	\$ 49,039	7.6%
 <b><u>TOTALS</u></b>	 \$ 646,408	 100%

Commissioner L. Kevin Ensley moved that the foregoing resolution and attached program of total needs for Secondary Roads in Haywood County be approved.

Ayes: Five

Noes: None

\*\*\*\*\*

## **Request approval of Haywood Community College Change Orders for Creative Arts Building Construction Project**

Bill Dechant, Director of Campus Development, stated that Change Orders #8 and #12 are potential change orders awaiting formal approval by State Construction Office.

- Change Order #1 – \$1,364

Mr. Dechant commented that Change Order #1 is for the removal of a small amount of unsuitable soil found on site that required repair and the addition of four conduits in the Fire-Riser Room, which will eventually be part of potential Change Order #12. Change Order #1 is the only one approved and signed by the State Construction Office; the other two have been submitted and verbally approved. Julie Davis, Finance Director, stated that the contingency in this particular project is \$627,375; so, these changes orders are using that contingency money which would move it into the line items for the project. Ms. Davis commented that if all three change orders are approved, the Creative Arts Building contingency will still be \$365,198, and this is in addition to the contingency left on the loan of about \$350,000.

Commissioner Upton made a motion that Change Order #1 be approved. Vice-Chairman Kirkpatrick seconded, and the motion carried unanimously.

- Change Order #8 - \$33,912

Mr. Dechant stated that proposed Change Order #8 involves the addition of electronic hardware to seven (7) exterior doors on the building, which would bring all the exterior, publically-accessed doors up to the standards that the whole college is trying to achieve.

Commissioner Sorrells made a motion that Change Order #8 be approved. Vice-Chairman Kirkpatrick seconded, and the motion carried unanimously.

- Change Order #12 - \$226,901

Mr. Dechant said that proposed Change Order #12 involves the addition of a fire pump to drive the sprinkler system and provide sufficient pressure. He commented that both the college and the architect have submitted summary statements to State Construction to review for a dispute resolution on this issue; but regardless, it is needed at this point for the building to be functional for use.

Vice-Chairman Kirkpatrick made a motion that Change Order #12 be approved. Commissioner Upton seconded, and the motion carried unanimously.

- Budget Amendment for HCC Project Change Orders

Julie Davis stated that this budget amendment takes into account the three (3) separate change orders, all coming from contingency in the project, bringing it from \$627,375 down to \$365,198.

Commissioner Sorrells made a motion that the budget amendment as presented be approved. Commissioner Upton seconded, and the motion carried unanimously.

HAYWOOD COUNTY  
CAPITAL PROJECT BUDGET AMENDMENT  
FISCAL YEAR 2011-2012

PER: \_\_\_\_\_  
JNL: \_\_\_\_\_

BE IT ORDAINED by the Board of Commissioners of Haywood County that the following amendment be made to the capital project ordinance for the fiscal year ending June 30, 2012.

Section 1. To amend the Capital Project Fund - Community College construction projects, the expenditures are to be charge as follows:

Line Item	Account Number	Current Budget	Increase (Decrease)	Amended Budget
<b>COMMUNITY COLLEGE PRJS:</b>				
Creative Arts Bldg.				-
C/O - buildings construction	405924-558000-1HCC1	8,397,057	1,364	8,398,421
	405924-558000-1HCC1	8,398,421	33,912	8,432,333
	405924-558000-1HCC1	8,432,333	226,901	8,659,234
Contingency	405922-599100-1HCC1	627,375	(262,177)	365,198

which will result in a net increase of \$ \_\_\_\_\_ in the expenditures of the Capital Project Fund.

To provide the additional revenue for the above, the following revenues will be increased as the money has been received:

Revenue	Acct. No.	Current Budget	Increase (Decrease)	Amended Budget
_____	_____	_____	_____	-
_____	_____	_____	_____	-
_____	_____	_____	_____	-
			-	

Section 2. Copies of this amendment shall be delivered to the Budget Officer and the Finance Officer for their direction.

Adopted this the 9th of January 2012.

  
\_\_\_\_\_  
Chairman  
Haywood County Board of Commissioners

ATTEST:  
  
\_\_\_\_\_  
Clerk to the Board

<b>Explanation:</b>
To allocate the amounts of the three change orders per
HCC request and NC Department of Administration approval.

## **Request to award Padgett & Freeman Architecture the Contract for Design and Engineering for the former Bargains Building**

Dale Burris, Facilities and Maintenance Director, requested that the contract for design and engineering for County offices in the former Bargains Building located on Elmwood Way be awarded to Padgett & Freeman Architecture. Mr. Burris stated that there were five (5) responses to the RFQ, and Padgett & Freeman was one of the two that were interviewed. Chairman Swanger commented that the building would house the Board of Elections, completely freeing up Annex II, and the building could be marketed by the County; the Wellness Clinic, eliminating a \$24,000 a year cost for a lease; and Maple Leaf Adult Daycare, with reimbursements for those costs through the Medicaid program. Commissioner Ensley stated the Bargains Building that is there is only going to deteriorate.

Commissioner Upton made a motion that Padgett & Freeman Architecture be awarded the contract for design and engineering of the former Bargains Building with a contract to be forthcoming. Vice-Chairman Kirkpatrick seconded, and the motion carried unanimously.

## **ADMINISTRATIVE/AGENCY REPORT**

### **Update on Smoky Mountain Center Medicaid Waiver Activities**

Chairman Swanger stated that representatives from Smoky Mountain Center had arrived; and if no objections, he would recognize Brian Ingraham, CEO and Shelly Foreman, Director, Planning & Public Affairs for their update on Medicaid Waiver activities.

Mr. Ingraham presented that they have had numerous accomplishments, challenges, and a significant crisis in the northern region with a provider there; but, still making good progress toward becoming a managed care organization. He commented that their "go-live date" is July 1, 2012; this means that they will be the "bank" for all the state funds and all the Medicaid funds. Mr. Ingraham stated that the goal is to take all the funding sources and funnel them through Smoky Mountain Center in a manner to assure that people are getting the services that they need, and that the funds are managed over time, which creates a better treatment plan and predictability in the Medicaid budget. He is very pleased to have worked out an agreement with the County for the building on East Street, which is a central location for them; all these are major new endeavors, and they will have to increase their staff in order to take on the responsibility of managing all of these funds. Ms. Foreman commented that one of the best things since they began this venture is that, throughout all of the 15 counties, they have provided a series of information sessions, an initial one for local government, and they are continuing to provide information to consumers, families, and providers to help them understand what the waiver is, how Smoky Mountain Center will be implementing it, and what it means to them. Ms. Foreman stated that part of the duty of a public manager of Medicaid is that you have that local responsiveness which would not be there if a private organization were managing it.

### **Mountain Projects Lease Agreement for Senior Center**

Chairman Swanger stated that last year, as reflected in the County Budget, the county partnered with Mountain Projects to manage senior services at the MARC Building. This resulted in a consolidation of senior services. Mr. Swanger commented that the long-time goal of a one-stop facility that can serve almost all senior citizens needs at one location and make seniors and care-givers aware of programs and services that would enhance the quality of life can now be accomplished. This lease agreement would be able to give them a sense of permanency and stability for those organizations that are going to expand resources to locate here. Vice-Chairman Kirkpatrick commented that Haywood County's elderly population is growing, and as part of the 20-year lease with Mountain Projects, the use and occupancy must be exclusively for the purposes associated with the operation of Senior Citizens Resource Center. The County is not necessarily supplying these services, but because the lease is basically \$1 a year, the County is in full support. Attorney Killian stated that there is a provision that permits the use of the building during election time by the Board of Elections.

Vice-Chairman Kirkpatrick made a motion that the lease agreement as reflected in the briefing books be approved. Commissioner Upton seconded, and the motion carried unanimously.

STATE OF NORTH CAROLINA

LEASE AGREEMENT

COUNTY OF HAYWOOD

THIS LEASE AGREEMENT (the "Lease"), made and entered into as of the 9th day of January, 2012 (the "Commencement Date"), by and between HAYWOOD COUNTY, North Carolina, a subdivision of the State of North Carolina and a body politic and corporate (the "Landlord") and MOUNTAIN PROJECTS, INC., a North Carolina non-profit corporation (the "Tenant").

WITNESSETH:

In consideration of the rents to be paid hereunder and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord hereby leases to Tenant, and Tenant leases from Landlord, the premises located at 81 Elmwood Way, Waynesville, North Carolina 28786 known as the MARC Building, as more particularly described on Exhibit "A" attached hereto, together with the entire building located thereon, a joint interest in any and all parking areas, lawn areas and driveways located thereon, and all appurtenances, improvements, and alterations thereto (collectively, the "Leased Premises"), to be occupied and used upon the terms and conditions herein set forth.

**1. Term of Lease.** The initial term of this Lease (the "Initial Term") shall begin on the Commencement Date, and shall terminate at 11:59 P.M., local time on December 31, 2031. Upon the expiration of the Initial Term, Tenant shall have the right to renew this Lease for one (1) additional term of twenty (20) years (the "Renewal Term") upon ninety (90) days written notice to Landlord before the expiration of the Initial Term. If Tenant does not give such written notice of its intent to extend the Initial Term, and Tenant holds over after the expiration of the Initial Term, Tenant shall be considered a tenant at will and either party may terminate such tenancy upon thirty (30) days notice to the other party.

**2. Rental.** As annual rental for the Leased Premises during the Initial Term, Tenant shall pay to Landlord at the office of Landlord designated in Paragraph 16 hereof, an amount equal to ONE DOLLAR (\$1.00) PER YEAR.

Annual rental for the Leased Premises during the Renewal Term shall be as agreed to between the parties.

**3. Utilities.**

Landlord shall furnish or arrange for furnishing, and pay the cost of all necessary utilities to the Leased Premises twenty-four (24) hours a day, seven (7) days a week.

**4. Alterations.**

(a) Tenant may make alterations, improvements or additions in, on or about the Leased Premises, but only after obtaining the prior consent of Landlord.

(b) Tenant shall pay when due all claims for labor or materials furnished to or for Tenant at or for use in the Leased Premises, to prevent the filing of mechanics liens against the leasehold improvements.

(c) Subject to the following sentence, unless Landlord requires their removal, all alterations, improvements and additions which may be made on the Leased Premises, shall become the property of Landlord and remain upon and be surrendered with the Leased Premises at the expiration of this Lease. Notwithstanding anything contained herein to the contrary, however, Tenant's trade fixtures, equipment and other personal property which may be removed from the Leased Premises without substantial damage to the Leased Premises may be removed and retained by Tenant at the expiration or earlier termination of the Lease.

**5. Use and Occupancy.** Tenant agrees that the Leased Premises shall be used exclusively for office and meeting purposes as the Senior Citizen Resource Center, and that no unlawful use of the Leased Premises will be made and that upon the termination of this Lease, Tenant will vacate and surrender possession of the Leased Premises to Landlord.

**6. Insurance; Subrogation.**

(a) Landlord shall at all times maintain and keep in full force at its cost and expense the following insurance coverage with respect to the Leased Premises:

(i) Comprehensive insurance against loss or damage to the Leased Premises by fire and any of the risks covered by insurance of the type now known as "Special Extended Coverage" insurance in an amount equal to the full replacement cost (without depreciation) of the Lease Premises, and with not more than a \$5,000 deductible from the loss payable for any casualty. In addition, the policies of insurance carried in accordance with this paragraph will contain a "Replacement Cost Endorsement" and an "Ordinance or Law Coverage," "Contingent Operation of Laws," or "Enforcement" endorsement;

(ii) During the course of any construction or repair of improvements, builder's risk insurance, completed value, non-reporting form, against "all risks of physical loss", including collapse and transit coverage, covering the total value of work performed and equipment, supplies and materials furnished. Said policy of insurance will contain a "permission to occupy upon completion of work or occupancy" endorsement and an agreed amount endorsement, and

(iii) Comprehensive boiler and machinery insurance covering air tanks, boilers, machinery, pressure vessels and piping, heating, air conditioning, elevator equipment and escalator equipment, if the Leased Premises contain such equipment, and insurance

against loss of occupancy or use arising from any leakage, explosion or other malfunction of any such equipment.

(b) Tenant shall at all times maintain and keep in force at its cost and expense, the following insurance coverage with respect to the Leased Premises:

(i) Comprehensive commercial general liability insurance insuring against all claims arising out of possession, use, leasing, operation, construction or condition of the Leased Premises, including coverage for contractual liability, injury occurring on stairs, elevators and escalators and, if any construction of new improvements occurs after execution of this Lease, completed operations coverage for two years after completion of such construction, all of such broad form liability insurance to be on an "occurrence basis" against claims for personal injury including bodily injury, death and property damage occurring on, in or about the Leased Premises and the adjoining streets, sidewalks, passageways and appurtenances, and all court costs and attorneys fees, such insurance to afford immediate minimum protection to a combined annual single limit of not less than \$2,000,000 per occurrence. Such insurance will cover at least (a) premises and operations, (b) products and completed operations on an "if any" basis, (c) independent contractors, and (d) blanket contractual liability for all written and oral contracts.

(ii) Such insurance on Tenant's personal property as Tenant deems appropriate for Tenant's protection. The Tenant shall not use or permit upon the Leased Premises anything that will invalidate any policy of hazard or extended coverage now or hereafter carried with respect to the Leased Premises.

(c) Landlord and Tenant each hereby releases the other from any and all liability or responsibility to the other or anyone claiming through or under them by way of subrogation or otherwise for any loss of damage to property caused by fire or any other perils insured in policies of insurance covering such property, even if such loss or damage shall have been caused by the fault or negligence of the other party, or anyone for whom such party may be responsible; provided, however, that this release shall be applicable and in force and effect only to the extent that such release shall be lawful at that time.

(d) The policies to be maintained by Landlord and Tenant respectively, shall name the other party hereto as an additional insured, and shall provide that such policy may not be canceled without first giving the other party not less than thirty (30) days prior written notice. Each party shall provide the other party with proof of the insurance coverages required herein, upon request.

7. **Taxes.** Tenant shall pay when due all personal property taxes and assessments of any kind or nature imposed or assessed upon fixtures, equipment, merchandise or other property brought onto the Leased Premises by Tenant. Landlord shall pay when due all real property taxes and assessments of any kind or nature imposed or assessed upon the Leased Premises. Tenant shall be responsible for all other county, State and federal taxes.

**8. Maintenance and Repairs.**

Tenant shall keep in good order, condition and repair the non-structural portions of the Leased Premises.

Landlord shall, at Landlord's sole cost and expense, keep in good order, condition and repair all structural portions of the Leased Premises, including without limitation the heating and air conditioning systems, plate glass, roof, gutters and down spouts, all exterior and interior walls, outside awning and signs on such awnings. Landlord shall pave and maintain the parking and drive areas surrounding the Premises for the use and benefit of Tenant, the 3.921 acre parcel and the adjacent 1.803 acre parcel which are also owned by Landlord.

**9. Casualty.**

If (a) the Leased Premises should be completely destroyed by fire or other casualty, or (b) the Leased Premises should be damaged so that rebuilding cannot in Tenant's sole reasonable judgment be completed within ninety (90) days after such casualty; then, at Landlord's or Tenant's option, this Lease may be terminated by written notice to the other party herein and, in such event, rental shall be abated for the unexpired portion of the Lease, effective as of the date of the casualty.

If following damage or destruction to the Leased Premises by fire or other casualty, this Lease is not terminated pursuant to the preceding paragraph, Landlord shall diligently proceed to rebuild or repair the Leased Premises to the same condition in which it existed prior to the damage. If Tenant's use of the Leased Premises is impaired due to said damage, the rental payable under this Lease during the period of impairment shall be reduced by a percentage equal to the percentage of the Leased Premises that are untenantable following such damage or destruction. In the event that said restoration is not fully complete within ninety (90) days after such casualty, Tenant may terminate this Lease by giving written notice thereof to Landlord, whereupon rent payable hereunder from the date of such casualty shall be abated (and reimbursed to Tenant if it has been prepaid).

**10. Default.**

(a) The occurrence of any one of the following shall constitute a default by Tenant under this Lease: (a) Tenant shall fail to pay any annual installment of rent when due, and such failure is not cured within ten (10) days after Tenant receives written notice thereof from Landlord; or (b) Tenant shall fail to perform or comply with any of the other covenants or conditions of this Lease, and such failure is not cured within thirty (30) days after Tenant receives written notice thereof from Landlord; provided, however, that if the failure to perform or comply cannot reasonably be cured within thirty (30) days, Tenant shall not be in default hereunder if Tenant commences to cure the failure to perform or comply within the thirty (30) day period and diligently and in good faith continues to cure the same thereafter and, provided, further, that if Tenant creates more than three (3) defaults during any twelve (12) month period, Landlord may notify Tenant of any subsequent defaults during such period by any reasonable means. Notices given by Landlord to Tenant under this paragraph shall specify the provisions(s)

of this Lease with which Tenant is not in compliance, and shall demand that Tenant pay the rent or perform or comply with any other provision of this Lease, as the case may be, within the applicable period of time. If Tenant fails to cure any such default with the cure period provided above, Landlord may then at its option, declare this Lease terminated and canceled and take possession of the Leased Premises without prejudice to any other legal remedy it may have on account of such default.

(b) Landlord's failure to comply with its duties and obligations hereunder shall constitute a default by Landlord under this Lease. Landlord shall not be in default hereunder unless and until such failure or default is not cured within thirty (30) days after Landlord receives written notice thereof from Tenant; provided, however, that if the failure to perform or comply cannot reasonably be cured within thirty (30) days, Landlord shall not be in default hereunder if Landlord commences to cure the failure to perform or comply within the thirty (30) day period and diligently and in good faith continues to cure the same thereafter, but in no event shall Landlord's cure period exceed sixty (60) days. Notices given by Tenant to Landlord under this paragraph shall specify the provisions(s) of this Lease with which Landlord is not in compliance and shall demand that Landlord perform or comply with any other provision of this Lease, as the case may be, within the applicable period of time. If Landlord commits a default under this Lease, subject to any applicable cure periods, Tenant shall have the following remedies: (a) Tenant may perform Landlord's obligations hereunder, and offset the reasonable costs and expenses incurred by Tenant in doing so against rent thereafter coming due hereunder; (b) Tenant may sue Landlord for damages suffered by Tenant as a consequence of Landlord's default; and (c) Notwithstanding any other provisions of this Lease, if Landlord's default(s) shall render all or any portion of the Leased Premises untenantable for Tenant's proposed use of the Leased Premises, Tenant shall be entitled to a fair and reasonable rent abatement during the time that all or a portion of the Leased Premises are so rendered unsuitable; and if Landlord's default(s) shall render all or any portion of the Leased Premises untenantable for Tenant's proposed use for a period of thirty (30) days or more after Tenant notifies Landlord of such default(s), Tenant may terminate this Lease and have no further obligation or liability hereunder.

**11. Binding Effect; Assignment and Subletting.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their legal representatives, successors and assignees. Tenant may assign this Lease, in whole or in part, or sublet the Leased Premises, in whole or in part, with Landlord's written consent, which consent shall not be unreasonably withheld, conditioned or delayed provided such assignment or sublease is to an entity that furthers the mission of Tenant to provide services to senior citizens. Consent shall be deemed given upon the giving of written notice from Tenant to Landlord, with no response for a period of thirty (30) days.

**12. Subordination.** The Tenant agrees to subordinate this Lease to any mortgage or deed of trust which Landlord may have placed or may hereafter place on the Leased Premises to render such mortgage or deed of trust superior and prior to this Lease; provided, in all cases that Landlord's mortgagee shall first execute and deliver to Tenant a nondisturbance agreement reasonably satisfactory to Tenant.

**13. Quiet Enjoyment.** Subject to the provisions of Paragraphs 13A and 13B, Landlord covenants and warrants that as long as Tenant is not in default under the terms and conditions of this Lease, it will defend the right of possession to the Leased Premises in Tenant against all parties whomsoever for the entire term hereof. Landlord covenants that Landlord is seized of good and sufficient fee simple title and interest to the Leased Premises and has full authority to enter into and execute this Lease.

**13A. Haywood County Board of Elections.** The Haywood County Board of Elections shall continue to have the right and privilege to use that portion of the Leased Premises that is currently in use for its early voting program, including use of the parking areas. Tenant shall be subject to the direction of the Chairman of the Haywood County Board of Elections as to the intended use of the Leased Premises for such purposes, in similar manner as the practice which is currently in place for other public buildings in the County.

**13B. Use of Leased Premises.** Tenant shall use the Leased Premises exclusively for purposes associated with the operation of the Senior Citizen Resource Center ("Permitted Use"). Failure to use the Leased Premises in this manner shall constitute a Default, and Landlord may thereafter proceed as set forth in Paragraph 10.

**13C. Parking and Driveway.** Lessor shall have the joint use of the driveway, including Elmwood Way, for the use and benefit of Tract 2 and Tract 3 as described on the recorded plat on Exhibit A.

**14. Indemnity.** Landlord and Tenant shall indemnify, defend and save each other harmless from and against all claims, liabilities, loss, damages and causes of action caused by, resulting from or arising out of the other party's (or its employees, contractors, agents, customers, invitees or licensees): (a) failure to comply with applicable law or any term of this Lease, (b) use or occupancy of the Leased Premises, or (c) performance of any work or repairs to the Leased Premises.

**15. Waiver.** The waiver of either party hereto of any breach of any covenant or agreement herein contained shall not be deemed to be a waiver of such covenant or agreement or any subsequent breach of the same or any other covenant or agreement herein contained.

**16. Notices.** Whenever in this Lease it is provided that either Landlord or Tenant may or shall give written notice to the other party, such notice shall be deemed sufficiently given and effective, if hand delivered or if mailed by registered or certified mail in a post paid envelope and addressed as follows:

Landlord: Haywood County  
215 North Main Street  
Waynesville, NC 28786  
Attn: Marty Stamey, County Manager

Tenant: Mountain Projects, Inc.  
81 Elmwood Way  
Waynesville, NC 28786  
Attn: Patsy Dowling, Executive Director

17. **Governing Law.** This Lease shall be construed and enforced in accordance with the laws of the State of North Carolina.

18. **Invalidity of Particular Provisions.** If any term or provision of this Lease shall to any extent be invalid or unenforceable, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

19. **Modification.** This instrument embodies all the agreements between the parties hereto respecting the Leased Premises described in this Lease, and no oral agreements or correspondence shall be held to vary the provision hereof. Any subsequent changes and modifications shall become effective only by written instrument duly executed by Landlord and Tenant.

20. **Memorandum of Lease.** Landlord and Tenant agree that this entire Lease shall not be recorded. However, within ten (10) days after the Commencement Date, Landlord shall prepare a Memorandum of Lease that is acceptable to Tenant, and Landlord and Tenant shall execute and record (to be recorded at Landlord's expense) said Memorandum of this Lease, specifying the Commencement Date and the termination date of this Lease and including a description of the renewal rights granted herein, the right of first refusal granted herein, and such other provisions hereof as either party may mutually agree to incorporate therein which Memorandum of Lease shall be in form sufficient to publish notice and protect the validity of this Lease.

21. **Hazardous Materials.**

(a) Landlord warrants to Tenant, after inquiry and inspection consistent with good commercial practice, that the Leased Premises is, as of the date of this Lease, and will be, as of the Commencement Date, free of hazardous substances (as defined under all applicable environmental laws and regulations), including, without limitation, any underground contamination (whether as a result of migration onto or under the Leased Premises or otherwise), asbestos, PCBs, formaldehyde, or underground fuel tanks. Landlord agrees to comply with all applicable environmental laws, rules and regulations with regard to the Leased Premises, and to remediate or cause to be remediated any contamination that may hereafter occur on the Leased Premises to the extent such remediation is required by state or federal environmental agencies or authorities (other than remediation required solely as a result of contamination caused by Tenant or its agents, employees, contractors or invitees).

(b) Landlord agrees to indemnify and save harmless Tenant from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses (including without limitation reasonable attorneys' fees and expenses of litigation) arising during or after the term of this

Lease from or in connection with the presence or suspected presence (as determined by licensed environmental consultants or appropriate regulatory authorities) of any such hazardous substances in or on the Leased Premises, except to the extent the same are present solely as a result of the acts of Tenant, Tenant's agents, employees, contractors or invitees.

(c) Tenant, at all times during the term of this Lease, agrees to conduct Tenant's business operations from the Leased Premises in compliance with all applicable environmental laws and regulations, and will indemnify and save harmless Landlord from any and all claims, damages, fines, judgments, penalties, costs, liabilities or losses (including without limitation reasonable attorneys' fees and expenses of litigation) arising during or after the Lease term as a result of any action by Tenant, Tenant's agents, employees, contractors or business invitees.

**22. Debt Service.** Landlord acknowledges that the Leased Premises are encumbered by a Deed of Trust in favor of United States of America, dated November 3, 2006, of record in Book 686, Page 1250 Haywood County Registry ("USDA Loan"). Landlord shall make all payments due under the indebtedness which is secured by this deed of trust and shall otherwise perform all covenants and agreements heretofore entered into in connection with the USDA Loan.

**23. Governmental Requirements.** Landlord represents and warrants that on the Commencement Date, the Leased Premises will comply with all applicable federal, state and local laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Leased Premises including without limitation the requirements of Title III of the Americans With Disabilities Act of 1990, as amended. Landlord also warrants to Tenant that the Leased Premises is free from defects in materials and workmanship.

**24. Right of First Refusal.**

(a) In the event at any time during the initial Term or the Renewal Term, Landlord shall receive an offer from a third party to purchase the Leased Premises, and Landlord is willing to accept such offer, Landlord shall first offer to sell the Leased Premises to Tenant at the same price as Landlord is willing to accept from the third-party offeror. Landlord shall notify Tenant in writing of the offer and Tenant shall have ten (10) business days to accept or reject such offer by delivering written notice to Landlord. In the event that Tenant accepts such offer, the parties shall use good faith and best efforts to enter into a binding sales contract setting forth the price and terms and conditions of the sale, which shall in any event provide for a closing no later than forty-five (45) days from the date of Tenant's acceptance of Landlord's offer.

(b) In the event at any time during the Initial Term or the Renewal Term, Landlord ever desires to sell the Leased Premises, but before Landlord shall have received any offer as described in paragraph 24(a) above, Landlord shall first offer to sell the Leased Premises to Tenant at the price that Landlord is prepared to sell the Leased Premises by delivering in writing to Tenant notice of the offer, and Tenant shall have ten (10) business days to accept or reject such offer by delivering written notice to Landlord. In the event that Tenant accepts such offer, the parties shall use good faith and best efforts to enter into a binding sales contract setting forth

the price and terms and conditions of the sale, which shall in any event provide for a closing no later than forty-five (45) days from the date of Tenant's acceptance of Landlord's offer.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed as of the day and year first above written.

**LANDLORD:**

ATTEST:

HAYWOOD COUNTY

\_\_\_\_\_  
**Marty Stamey**  
County Manger/Clerk to Board

By: \_\_\_\_\_  
**Mark S. Swanger, Chairman**  
Haywood County Board of Commissioners

**TENANT:**

**MOUNTAIN PROJECTS, INC.**, a North Carolina Non-Profit Corporation

By: \_\_\_\_\_  
Name: Patsy Dowling  
Its: Executive Director

STATE OF NORTH CAROLINA, COUNTY OF HAYWOOD

I, a Notary of said State and County, do hereby certify that MARTY STAMEY, personally appeared before me this day and acknowledged that he is Clerk to the Board of County Commissioners of Haywood County, a body politic and corporate, and that by authority duly given and as the act of the said Board, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by himself as its Clerk.

WITNESS my hand and official seal this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

My commission expires:  
\_\_\_\_\_

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

\_\_\_\_\_  
Printed Name of Notary Public

STATE OF NORTH CAROLINA, COUNTY OF \_\_\_\_\_

I, a Notary of said State and County, do hereby certify that PATSY DOWLING personally appeared before me this day and acknowledged that she is the Executive Director of Mountain Projects, Inc., a North Carolina non-profit corporation, and that she, as Executive Director, being authorized to do so, executed the foregoing on behalf of said corporation.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2011.

My Commission Expires:

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

\_\_\_\_\_  
[Official Seal]

\_\_\_\_\_  
Printed Name of Notary Public

**EXHIBIT A**

Tract 1, containing 3.168 acres and all improvements located thereon, as described on plat entitled "Haywood County" of record in Plat Cabinet C, Slot 4624, Haywood County Registry.

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**Schedule Interviews for Health Board Members**

Marty Stamey, County Manager, stated that the board members packets contain the applications that were received by 5:00 p.m. last Thursday. Mr. Stamey commented that there is one engineer, Robert Knoedler, who is reapplying; seven others will need to be interviewed for the at-large seats. He recommended that they be interviewed prior to the meeting on January 23, 2012 starting at 3:30 p.m. All agreed.

### **Schedule Board Retreat for Fiscal Year 2012-2013**

Chairman Swanger stated that the Board will schedule its retreat for the fiscal year 2012-2013 to discuss the goals for next year and offer guidance to the staff as to the Board's wishes regarding budget matters. The recommended date and time of February 20, 2012 at 1:00 p.m. at the new facility on Paragon Parkway were agreed upon.

### **CLOSED SESSION**

Vice-Chairman Kirkpatrick made a motion to enter into Closed Session for Approval and/or Release Minutes as provided in G.S. §143-318.11(a)(1) and Attorney/Client Privilege as provided in G.S. §143-318.11(a)(3). Commissioner Upton seconded, and the motion carried unanimously.

The Board returned from closed session.

Commissioner Upton made a motion to approve and release the closed-session minutes of September 19, 2011 regarding, attorney/client privilege, September 19, 2011 regarding attorney/client privilege, November 21, 2011 regarding attorney/client privilege, December 5, 2011 regarding attorney/client privilege. Commissioner Ensley seconded, and the motion carried unanimously.

Commissioner Sorrells made a motion to approve, but not yet release, the closed-session minutes of October 17, 2011 Economic Development, November 21, 2011 attorney/client privilege, December 5, 2011 personnel, December 5, 2011 attorney/client privilege, December 19, 2011 attorney/client privilege, December 19, 2011 attorney/client privilege. Commissioner Ensley seconded, and the motion carried unanimously.

### **ADJOURNMENT**

Commissioner Sorrells made a motion to adjourn the regular Board meeting. Commissioner Ensley seconded, and the motion carried unanimously.

The time of adjournment was 10:32 a.m. The DVD is attached by reference to the minutes.

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CLERK

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CHAIRMAN