

INTERLOCAL AGREEMENT

THIS INTERLOCAL AGREEMENT is dated as of Nov 29, 2004 (as supplemented or amended, the "Agreement"), and is between the **TOWN OF HOLLY SPRINGS, NORTH CAROLINA** (the "Town"), a municipal corporation of the State of North Carolina, and **WAKE COUNTY, NORTH CAROLINA** (the "County"), a public body politic and a political subdivision of the State of North Carolina.

RECITALS:

The County has expressed an interest in constructing a branch of the County library system in Holly Springs. The Town has expressed an intent and desire to provide real estate to the County for the construction of the library, and to otherwise assist the County in this project. The Town and the County have also discussed the Town's desire to combine the library with a cultural center planned by the Town, and the County is agreeable to this combination.

The parties are entering into this Interlocal Agreement to set out the terms and conditions for their working together to construct such a facility in Holly Springs.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

ARTICLE I

TERMS OF PROJECT AGREEMENT

1.1. Agreement To Work Together. The County and the Town agree to work together in good faith and with all due diligence to provide for and carry out the design, construction and operation in Holly Springs of a combination public library (the "Library") and cultural facility (the "Cultural Facility"), both referred to herein jointly as the "Project."

1.2. Agreement To Convey Property.

(a) The Town agrees to convey to the County, and the County agrees to accept from the Town, except as provided in Section 1.2 (b), title to all that certain lot, piece or parcel of ground, situated in Holly Springs, Wake County, North Carolina, more particularly described on Exhibit A (the "Property"). The Property is the intended site of the Project. The Town represents and warrants to the County that the Property is properly zoned for Library purposes.

(b) Notwithstanding the foregoing, the County's performance of its obligations under this Agreement is contingent upon the County's satisfaction as to the suitability and feasibility of the development of the property for the Project. If the County desires to terminate this Agreement because the County deems the Property unsuitable for the construction of the Project, then the County shall notify the Town in writing at which time this Agreement shall become null

and void. If the County does not notify the Town on or before December 31, 2004, this condition shall be deemed waived and the County shall not have the right to terminate the Agreement under this section. Upon such termination the County shall reconvey the property to the Town.

(c) The Town covenants with the County that the Town is seized of and has the right to convey the Property in fee simple, that the Property is free and clear of all liens and encumbrances other than those shown on Exhibit B (the "Existing Encumbrances"), that title to the Property is marketable, and that the Town will forever warrant and defend title to the Property (subject to the Permitted Encumbrances) against the claims of all persons.

(d) Within forty-five days of the execution and delivery of this Agreement by the parties, the Town will deliver to the County Manager, on behalf of the County, a properly executed general warranty deed for the Property in substantially the form of Exhibit C (the "Deed").

(e) As shown in Exhibit C, the Deed will include a clause allowing the Town to re-take title to the Property if the County has not awarded contract(s) for the construction of the Library on the Property by September 1, 2005.

(f) As also shown in Exhibit C, the Deed will contain a clause allowing the Town to re-take title to the Property if at any time up to January 1, 2024, the County uses the Property for any purpose other than public library and related uses.

(g) The Town will pay for the cost of deed preparation and other document preparation by its counsel, deed stamps and all other conveyance or transfer fees, taxes or costs, and its own counsel fees. The County will pay for the recording fees, title insurance premiums, current surveys and environmental evaluations (if desired by the County) and its counsel fees.

(h) If there is a casualty or condemnation of all or any portion of the Property prior to the County's acceptance of the Deed, the County may either (i) continue to closing, with the Town assigning to the County any and all rights for insurance or condemnation awards, or (ii) terminate this Agreement, in which case this Agreement shall be null and void and of no force, effect or obligation on the part of either party.

(i) The provisions of this Agreement, and in particular the provisions of Section 1.1 and 1.4, will survive the delivery of the Deed.

1.3. Agreement to Lease Property Back. After completion of the Cultural Facility and issuance of the Certificate of Occupancy, the Town and the County will execute and deliver to one another a lease of the Cultural Facility in substantially the form of Exhibit D (the "Lease"), which will allow the Town to operate and maintain the Cultural Facility for its purposes for a period no less than 99 years.

1.4. Design, Construction and Operation of the Project.

(a) The current intent of the parties is that the Project will be a facility comprising approximately 19,000 square feet. Approximately 8,000 square feet of the facility will be a public library and 11,000 square feet will serve as a public Cultural Center. The County agrees to furnish and operate the Library, once completed, on substantially the same basis as with other similar facilities in the County library system, including (but not limited to) taking full responsibility for such matters as security, maintenance, staffing during hours of operation, size and nature of print collections and nature of non-print collections, management of the facilities and provision of services. The Town agrees to furnish and operate the Cultural Facility, once completed, including (but not limited to) taking full responsibility for such matters as security, maintenance, staffing during hours of operation, management of the facilities, and provision of services

(b) The Town agrees to provide up to \$50,000 to the County for the County's use in providing for the design of the Library. The parties expect the total design cost for the Library to be approximately \$140,000, the remainder of which will be paid by the County. The County agrees to begin work on the design of the Library within 90 days from the date of execution of this Agreement. Any plans, drawings or other design products prepared for the Project will be jointly owned by the Town and the County. The Town has previously paid the County \$35,000 in anticipation of this Agreement, and agrees to make the following additional payments relating to a portion of the design costs for the Library (\$50,000) :

<u>Payment Date</u>	<u>Amount</u>
October 1, 2004	<u>\$15,000.00</u>
TOTAL	<u>\$50,000.00</u>

It is agreed to by the parties that regardless of the contributions by the Town to the overall Project, the County shall have full discretion as to the design and construction of the Project. Because the Project shall be designed by one architect and bid under a single construction contract, and because the County shall be the contracting agency, the County and the Town agree to work cooperatively regarding matters of design and construction. Provided however that the County will seek and accept input from the Town as to the design and construction of the Cultural Facility.

(c) The County included potential funding for construction, furnishings, equipment and books for the Library in the approximate amount of \$2.8 million as part of a package for the general obligation bond referendum which was approved by the voting citizens of the County in October, 2003.

(d) The Town agrees to provide funding for the Cultural Facility in an amount, time and manner consistent with the County's plans for construction of the Project. The Town agrees to include all necessary funding for the development of the Cultural Facility in its annual Town budget during Fiscal Years 2004-05 and 2005-06. The Town shall provide

the County with funding to cover the full cost associated with the design and construction of the Cultural Facility. The Town shall pay the County for all professional services and construction costs for the Cultural Facility in accordance with the following payment schedule. The schedule of payment of constructions costs is based on an assumption that the County will award the bid to a contractor by July 1, 2005

Professional Services (for Cultural Facility)

<u>Payment Due Date</u>	<u>Amount Due</u>
December 31, 2004	40% of Professional Services.
March 31, 2005	30% of Professional Services
June 30, 2005	<u>30% of Professional Services</u>
TOTAL	100% of Professional Services

Construction Costs (for Cultural Facility)

<u>Payment Due Date</u>	<u>Amount Due</u>
September 30, 2005	30% of Construction Costs
December 31, 2005	30% of Construction Costs
March 31, 2006	30% of Construction Costs
June 30, 2006	<u>10% of Construction Costs</u>
TOTAL	100% of Construction Costs

(e) The Town at its expense will provide certain infrastructure improvements to the Property. Specifically, the Town will realign Ballentine Street running through the Property, and the Town will provide for appropriate public water and sewer utility service, so as not to delay the Project, to the Property in a time consistent with the County's plans for construction of the Library.

(f) Once the Project is operational, the County will have administrative control over the Library, and the Town will have administrative control over the Cultural Facility. The parties will cooperate on matters of mutual concern, including such matters as hours of operation, scheduling events, maintenance of common areas and other matters which may arise. The Town and County agree to enter into a Joint Use Agreement supplementing this Agreement to provide for shared use of specified portions of the Project and set forth the terms and conditions associated with the use, operation and maintenance of the Project for the term of the lease.. A Joint Use Agreement shall be executed by the Town and County on or before the date of issuance of a certificate of compliance for the Project.

(g) The Town will waive certain fees, which would normally be required for the construction of an 8,000 square foot library , and shall pay a pro rata portion of any non-waived fees associated with the construction of the Project, based upon the square footage of the Project building to be used by each party. The fees which will be waived for the library by the Town are as shown on Exhibit E.

ARTICLE II

REPRESENTATIONS, COVENANTS AND WARRANTIES

(a) The County and the Town each represents, covenants and warrants for the other's benefit as follows:

(i) Each party has all necessary power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and this Agreement has been properly authorized by the party's governing body. This Agreement is a valid and binding obligation of each party.

(ii) Neither the execution and delivery of this Agreement, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated by this Agreement, results in a breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(iii) To the knowledge of each party, there is no litigation or other court or administrative proceeding pending or threatened against such party (or against any other person) affecting such party's rights to execute or deliver this Agreement or to comply with its obligations under this Agreement. Neither such party's execution and delivery of this Agreement, nor its compliance with its obligations under this Agreement, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

(iv) No party has dealt with any real estate broker or brokerage firm regarding the transactions contemplated by this Agreement, and no person or firm has a claim for real estate commissions arising out of the sale of the Property.

(b) To the best of the Town's knowledge, there are no disputes concerning the boundaries of the Property or concerning the location of such Property lines and corners.

(c) EXCEPT AS PROVIDED IN SECTION 1.2 HEREIN, THE TOWN MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR A PARTICULAR USE OF THE PROPERTY OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE PROPERTY OR ANY PART THEREOF. In no event will the Town or County be liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Agreement or the existence, furnishing, functioning or use by any of them of any item, product or service provided for herein.

(d) To the extent permitted by law, the Town and the County will and hereby agree to indemnify and save one another harmless against and from all claims, by or on behalf of any

person, firm or other legal entity, arising from this Agreement and attributed to the action or inaction of the respective agents of each party.

ARTICLE III

MISCELLANEOUS

3.1 Authority; Term. The parties are entering into this Agreement pursuant to the statutory authority authorizing interlocal agreements, N.C.G.S. Sections 160A-460 to 464. This Agreement will remain in effect until January 1, 2010, and will remain in effect thereafter until cancelled by either party with at least six months' notice.

3.2 Governing Law. The parties intend that this Agreement will be governed by the law of the State of North Carolina.

3.3 Notices.

(a) Any communication required or permitted by this Agreement must be in writing except as expressly provided otherwise in this Agreement.

(b) Any communication under this Agreement will be sufficiently given and deemed given when delivered by hand, by confirmed facsimile transmission or by Federal Express or similar express delivery service, or on the date shown on a certified mail delivery receipt, when addressed as follows:

(i) If to the Town: Manager, Town of Holly Springs
 Re: Notice Under Interlocal Agreement for Holly
 Springs Library
 Post Office Box 8
 Holly Springs, NC 27540-0008

(ii) If to the County: County Manager, Wake County
 Re: Notice Under Interlocal Agreement for Holly
 Springs Library
 Post Office Box 550
 Raleigh, NC 27602

(c) Any addressee may designate additional or different addresses for communications by notice given under this Section to the other parties.

3.4 Severability. If any provision of this Agreement will be determined to be unenforceable, that will not affect any other provision of this Agreement.

3.5 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between the parties with respect to its general subject matter. This Agreement may not be changed except in writing signed by all the parties.

3.6 Assignments; Binding Effect. No party may sell or assign any interest in or obligation under this Agreement without the prior express written consent of the other party. Subject to the specific provisions of this Agreement, this Agreement will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

3.7 Time. Time is of the essence in this Agreement and each and all of its provisions.

3.8 Further Assurances; Corrective Instruments. The Town and the County agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Property, or for otherwise carrying out the intention of this Agreement.

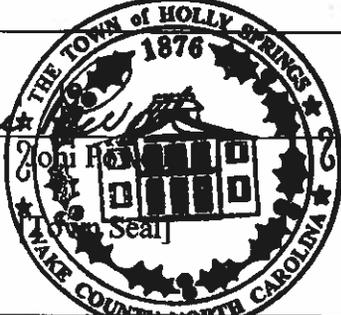
3.9 Liability of Officers and Agents. No officer, agent or employee of any party will be subject to any personal liability or accountability by reason of the execution of this Agreement or any other documents related to the transactions contemplated hereby. Such officers, agents, or employees will be deemed to execute such documents in their official capacities only, and not in their individual capacities. This Section will not relieve any such officer, agent or employee from the performance of any official duty provided by law.

3.10 No Third-Party Beneficiaries. There are no entities which are, or which are intended as, third-party beneficiaries of this Agreement.

3.11 Counterparts. This Agreement may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

<p>TOWN OF HOLLY SPRINGS, NORTH CAROLINA</p> <p>By: <u><i>Richard G. Sears</i></u> Richard G. Sears Mayor</p>	<p>This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p><u><i>Drew Holland</i></u> Drew Holland Finance Officer Town of Holly Springs, North Carolina</p>
<p>ATTEST:</p> <p>By: <u><i>John P. Schifano</i></u> Town Clerk</p> 	<p>This instrument is approved as to form and legal sufficiency.</p> <p><u><i>John P. Schifano</i></u> John P. Schifano Town Attorney</p>
<p>WAKE COUNTY, NORTH CAROLINA</p> <p>By: <u><i>Melinda Canady</i></u> Kenneth M. Gardner Chairman, Board of Commissioners</p>	<p>This instrument has been preaudited in the manner required by The Local Government Budget and Fiscal Control Act.</p> <p><u><i>Melinda Canady</i></u> Melinda Canady Finance Director Wake County, North Carolina</p>
<p>[Seal]</p> <p>ATTEST:</p> <p><u><i>Gwendolyn Reynolds</i></u> Gwendolyn Reynolds Clerk, Board of Commissioners</p> 	<p>This instrument is approved as to form and legal sufficiency.</p> <p><u><i>Michael R. Ferrell</i></u> Michael R. Ferrell County Attorney</p>

Exhibits

- A – Property description
- B – Form of Deed
- C – Survey of Property
- D – Form of Lease
- E – Fees Waived

Exhibit A- Property Description

BEGINNING at a point at an existing iron pipe the following call and distance from N.C.G.S. monument "WELCOME" said monument having N.C. GRID COORDINATES (NAD 83) :N = 691,898.064; E = 2,049,455.724; CF: 0.99879: N 83 Deg 07 Min 50 Sec E a distance of 612.54 by Grid, thence, thence along the following calls and distances: S 00 Deg. 30 Min. 29 Sec. W a distance of 260.61 feet to an Existing Iron Pipe; thence S 01 Deg. 33 Min. 33 Sec. W a distance of 55.38 feet to an Existing Iron Pipe; thence N 89 Deg. 50 Min. 51 Sec. W a distance of 5.04 feet to an Existing Iron Pipe; thence S 10 Deg. 34 Min. 19 Sec. W a distance of 216.43 feet to an Existing Iron Pipe; thence S 88 Deg. 30 Min. 55 Sec. W a distance of 213.14 feet to a Calculated Point; thence N 78 Deg. 09 Min. 57 Sec. W a distance of 329.07 feet to a Calculated Point; thence N 42 Deg. 11 Min. 23 Sec. W a distance of 227.98 feet to an Existing Iron Pipe; thence N 88 Deg. 07 Min. 25 Sec. E a distance of 102.51 feet to an Existing Iron Pipe; thence N 01 Deg. 16 Min. 11 Sec. W a distance of 276.42 feet to an Existing Iron Pipe; thence N 89 Deg. 00 Min. 30 Sec. E a distance of 515.61 feet to an Existing Iron Pipe; thence N 85 Deg. 47 Min. 36 Sec. E a distance of 125.30 feet to The Point and Place of Beginning; said area comprising of approximately 7.232 acres, more or less, as shown as Tract 1 on a map recorded in Book of Maps 2004, Page 2208, Wake County Registry- Save and Except that portion shown as Tract 2.

EXHIBIT C

Prepared By and Return After Recording To:

Tax Lot No. _____
Parcel Identifier No. _____
Verified by: Wake County
on the ____ day of _____, 20____,
by

BRIEF DESCRIPTION FOR THE INDEX

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DEED

THIS DEED made this the ____ day of _____ 2004, by and between

<u>GRANTOR</u>	<u>GRANTEE</u>
TOWN OF HOLLY SPRINGS, NORTH CAROLINA Attn: Town Manager Post Office Box 8 Holly Springs, North Carolina 27540	WAKE COUNTY, NORTH CAROLINA Attn: County Manager Post Office Box 550 Raleigh, NC 27602

The designations Grantor and Grantee as used in this Deed shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter as required by context.

WITNESSETH, that Grantor, for a valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, has and by these presents does grant, bargain, sell and convey unto the Grantee in fee simple, all that certain lot or parcel of land situated in Holly Springs Township, Wake County, North Carolina and more particularly described on Exhibit A attached hereto (the "Property").

TO HAVE AND TO HOLD the aforesaid Property and all privileges and appurtenances thereto belonging to the Grantee in fee simple subject to the following:

(a) This conveyance will be null and void, and the Grantee's ownership of the Property shall revert to the Grantor, if by September 1, 2005, the Grantee County has failed to award contracts for the construction on the Property of a public library and related facilities.

(b) This conveyance will be null and void, and the Grantee's ownership of the Property shall revert to the Grantor, if at any time prior to January 1, 2024, the Grantee makes any use of the Property other than for public library and related purposes.

(c) It is the Grantor's intent by this Deed to transfer fee simple title subject to two conditions subsequent, and the Grantor expressly retains a right to re-enter (also known as a power of termination) upon the occurrence of either of the conditions subsequent.

Title to the property is subject to all easements, rights-of-way and restrictions of record.

[The Grantor acquired the Property by instrument recorded in Book 2466, Page 404, and Book 2677, Page 243, Wake County Registry. A map showing the Property is recorded in Book of Maps 1978, Page 678, Wake County Registry.]

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the Grantor has caused this instrument to be duly signed, sealed and delivered in its name by its duly authorized officers, all as of the day and year first-above written.

[SEAL]

**TOWN OF HOLLY SPRINGS,
NORTH CAROLINA**

ATTEST:

By: _____
Joni Powell
Town Clerk

By: _____
Richard G. Sears
Mayor

**STATE OF NORTH CAROLINA;
WAKE COUNTY**

I, a Notary Public of such County and State, certify that Richard G. Sears and Joni Powell personally came before me this day and acknowledged that they are the Mayor and Clerk, respectively, of the Town of Holly Springs, North Carolina, and that by authority duly given and as the act of such Town, the foregoing instrument was signed in the Town's name by such Town Manager, sealed with its corporate seal and attested by such Clerk.

WITNESS my hand and official stamp or seal, this ____ day of _____, 2004.

My commission expires: _____

Notary Public

- c. "Cultural Facility" – That portion of the Project as identified on Exhibit B, attached hereto.
- d. "Common Space" – Those portions of the Project building as identified on Exhibit B, attached hereto, and the exterior portions of the Project.

2. **Demise.** The County hereby leases the Cultural Facility to the Town, and the Town hereby leases the Cultural Facility from the County, in accordance with the provisions of this Lease, to have and to hold for the Lease Term (as described in paragraph 3). The County covenants that at the time of the execution of this Lease, it is in legal possession of the demised premises, has full right to lease the same for the term aforesaid, and will put the Town in actual possession of the premises upon commencement of the Lease. In the event that this lease agreement is signed and executed prior to the construction and occupancy of the building, or prior to any act or omission that would under the laws of the state of North Carolina forbid the parties to enter into this lease, the parties agree to re-execute this agreement to effectuate the purpose of the lease.

3. **Lease Term.** The Lease Term shall commence on the date this Lease is last executed and delivered between the parties, on or about _____, 20__, and the Town shall have and hold the Cultural Facility for a term of 99 years.

4. **Consideration for Lease.** The consideration for this lease is listed in the precatory language above, together with \$1.00 for the entire lease term, receipt of which is hereby acknowledged by the County and sufficiency of which shall not be questioned by the Parties.

5. **Quiet Enjoyment.** The County agrees that the Town shall have and hold and enjoy continuous, peaceful, uninterrupted and exclusive possession and quiet enjoyment of the entire Cultural Facility during the term of and in accord with the terms of this Lease, without suit, trouble or hindrance from the County. The County will, at the Town's request and the County's cost, join and cooperate fully in any legal action in which the Town asserts its right to such possession and enjoyment.. In addition, the Town may at its own expense join in any legal action affecting its possession and enjoyment of the Cultural Facility and shall be joined (to the extent legally possible and at the Town's expense) in any action affecting its liabilities under this Lease. The parties agree that the demised premises are unique and special to the Town and County. The parties further agree that a remedy for a breach of the covenant of quiet enjoyment of such a unique property and use does not exist at law and therefore, in the event of a breach or a threatened breach of the covenant of quiet enjoyment, the Town shall have the right of injunction against the County.

6. **Maintenance and Repairs.** The Town and the County shall execute, acknowledge and deliver a Joint Use Agreement (“JUA”) as set forth in Paragraph 17 below which shall provide for shared use and maintenance of Common Space. The Town shall have the right at any time and from time to time to sell or dispose of any building furniture, removable equipment or non-structural fixtures which may have become obsolete or unfit for use or which is no longer useful, necessary or profitable in the conduct of the Town's use of the Cultural Facility. County and Town agree that the JUA shall provide that the parties share pro-rata, in the manner prescribed, expenses for repair, maintenance, and life cycle replacement relating to major mechanical, plumbing, electrical, exterior façade, foundation, roof, of the Project during the lease term, as well as use, maintenance and repair of the exterior Common Space. However, interior repairs and alterations shall be the responsibility of the occupying party, except for Common Space, which expenses shall be borne pro rata. Except for maintenance and repair expenses to the interior of the Cultural Facility space itself, the County shall have sole discretion to determine the necessity of all maintenance, repair, of life cycle replacement expenses for the Project and to contract for any such maintenance, repair, or life cycle replacement.

7. **Alterations and Additions.** The Town, shall have the right to make, at its sole cost and expense, any additions, alterations and changes in or to the Cultural Facility it finds necessary, desirable or convenient, upon approval by the County. At or before the expiration or termination of this Lease, the Town shall have the right to remove any and all fixtures that may belong to it or which it may have installed in the premises, except any fixtures that may be so affixed to the building as to become a part of the realty and not removable without causing material damage.

8. **Assignment and Subletting.** The Town shall not be permitted to assign or sublet the Cultural Facility in whole or in part for use in accordance with the provisions of this Lease without prior written approval of the County. Where the Town is required to assign, transfer, or sublet its leasehold interest in conjunction with obtaining third party financing for construction of the Cultural Facility, the County agrees to cooperate and allow such transfer.

9. **Naming Rights.** The Town shall have the rights to assign a name for the Cultural Facility, which shall last for the duration of the lease term, or until such time as the Town in its sole discretion decides to terminate or change the name.

10. **Insurance.** The Town shall carry and maintain, at its sole expense, property damage and public liability insurance for the contents of the Cultural Facility in such amounts as needed. The County shall carry and maintain property damage insurance for the Project, less and except the contents of the Cultural Facility. The Town and County shall pay, pro rata, the costs of such property insurance. All insurance policies shall name both the Town and the County as additional insureds. Each party shall provide the other with proof of insurance upon request.

11. **Indemnification.** To the extent permitted by law, the Town will and hereby agrees to indemnify and save the County harmless against and from all claims, by or on behalf of any person, firm or other legal entity, arising from the operation or management of the

Cultural Facility during the Lease Term, including any arising from (a) any condition of the Property or (b) any negligent act of the Town or of any of its agents, contractors or employees. To the extent permitted by law, the County will and hereby agrees to indemnify and save the Town harmless against and from all claims, by or on behalf of any person, firm or other legal entity, arising from the operation or management of the Cultural Facility during the Lease Term, including any arising from (a) any condition of the Property or (b) any negligent act of the County or of any of its agents, contractors or employees.

12. Damage or Destruction. If, at any time during the term of this Lease, the Project building, or any substantial part thereof, shall be damaged or destroyed by fire or other casualty the County, at its sole option, may repair, replace, restore or abandon all or any portion of the damaged area. If the damaged portion includes the Cultural Facility or any substantial portion thereof the Town, at its sole option, may terminate this Lease or remain as a tenant. If the Town elects to terminate this Lease, it shall notify the County of such intent within 30 days of the damaging event.

If the Town terminates this Lease, the County may use Project building insurance proceeds to repair, replace, or restore only the non-Cultural Facility portion of the Project. Any insurance proceeds not reasonably required for such repair, replacement or restoration, including removal of any damaged portions of the Cultural Facility, shall be returned to Town as compensation for the Town's contribution toward construction of the Project.

If the County elects not to repair, replace or restore the Project building, any insurance proceeds received (excluding those attributable to reimbursement for contents of the non-Cultural Facility portion of the Project building) shall be shared with the Town on a pro rata basis, computed by comparing the contributions of each to the original construction costs of the Project.

13. Cooperation. The Town and the County will cooperate fully together and in good faith in filing any proof of loss or taking any other action under this Lease. In no event will the Town or County voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Property without the other's written consent, which consent shall not be unreasonably withheld.

14. Further Assurances; Corrective Instruments. The County and the Town agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as either may reasonably request to correct any inadequate or incorrect description of the Cultural Facility hereby leased, or intended so to be, or for otherwise carrying out the intention of this Lease.

15. Compliance with Requirements. During the Lease Term, the County and the Town will observe and comply promptly with all current and future orders of all courts having jurisdiction over the Cultural Facility or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies writing policies covering the Cultural Facility or any portion thereof.

16. Joint Use of Shared Facilities. Town, its invitees and licensees, shall have the non-exclusive right to access and use the Common Space in accord with the Joint Use Agreement which shall be developed pursuant to Paragraph 17 of this Lease. The Parties agree that the future Joint Use Agreement may provide for exclusive use of common facilities on a short-term basis by either party, subject to the proper scheduling so that the use does not inhibit the other party's use of the property.

17. Joint Use Agreement. Prior to issuance of a certificate of occupancy for any portion of the Facility the Parties agree to enter into a Joint Use Agreement governing the following: 1) Programming and scheduling of Common Space, 2) Maintenance and repair of Common Space, 3) Maintenance of separate facilities; and, 4) any other item of mutual concern the parties may subsequently identify. Repair, maintenance, and life cycle replacement of structural components as set forth in Paragraph 6 above shall generally be cost shared according to a pro-rata proportion of square footage allocated to each party's use, with the exception that expenses related to Common Space shall be shared equally.

18. Defaults; Remedies on Default. For the purposes of this Lease, the term "Event of Default" shall mean either the Town or the County's breaching or failing to perform or observe any term, condition or covenant of this Lease for a period of 45 days after written notice specifying such failure and requesting that it be remedied has been given to the breaching party by the non-breaching party, unless the non-breaching party agrees in writing to an extension of such time prior to its expiration.

Upon the occurrence and during the continuation of any Event of Default, then the non-breaching party may at its option take one or any combination of the following remedial steps:

- a. Terminate this Lease; and

Take whatever other action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant under this Lease.

No remedy herein conferred upon or reserved to the Town or the County is intended to be exclusive, and every such remedy is cumulative and in addition to every other remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, and any such right and power may be exercised from time to time and as often as may be deemed expedient.

19. Waivers. If any agreement contained herein should be breached by either party and thereafter waived by the non-breaching party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach under this Lease.

20. Notices. Any communication required or permitted by this Lease must be in writing except as expressly provided otherwise in this Lease. Any communication under this Lease will be sufficiently given and deemed given when delivered by hand, by confirmed

facsimile transmission or by Federal Express or similar express delivery service, or on the date shown on a certified mail delivery receipt, when addressed as follows:

- (a) If to the Town: Manager, Town of Holly Springs
 Re: Notice Under Lease for Holly Springs Library
 Post Office Box 8
 Holly Springs, NC 27540-0008

- (b) If to the County: County Manager, Wake County
 Re: Notice Under Lease for Holly Springs Library
 Post Office Box 550
 Raleigh, NC 27602

Any addressee may designate additional or different addresses for communications by notice given under this Section to the other parties.

21. **Binding Effect.** Subject to the specific provisions of this Lease, this Lease will be binding upon and inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

22. **Changes.** This Lease constitutes the entire agreement between the parties with respect to its general subject matter. This Lease may not be changed except in writing signed by all the parties.

23. **Severability.** If any provision of this Lease, other than the requirement for the County to provide quiet enjoyment, is determined to be unenforceable, that will not affect any other provision of this Lease.

24. **Counterparts.** This Lease may be executed in several counterparts, including separate counterparts. Each will be an original, but all of them together constitute the same instrument.

25. **Governing Law.** The parties intend that this Lease will be governed by the law of the State of North Carolina.

26. **No Third-Party Beneficiaries.** There are no entities which are, or which are intended as, third-party beneficiaries of this Lease, however County agrees to allow foreclosure of lease in the event of a default of financing on the part of the town.

27. **Construction.** The rule that the terms of an agreement are to be strictly construed against the drafting party shall have no application to the construction or interpretation of this Lease.

[The remainder of this page has been left blank intentionally.]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their corporate names by their duly authorized officers, all as of the date first above written.

[Seal]

**WAKE COUNTY,
NORTH CAROLINA**

ATTEST:

Gwendolyn I. Reynolds
Clerk, Board of Commissioners

By _____
Kenneth M. Gardner
Chairman, Board of Commissioners

[Seal]

This instrument is approved
as to form and legal sufficiency.

This instrument has been preaudited in the
manner required by the Local Government
Budget and Fiscal Control Act.

Michael R. Ferrell
County Attorney

Melinda Canady
Finance Director
Wake County, North Carolina

ATTEST:

**TOWN OF HOLLY SPRINGS,
NORTH CAROLINA**

Joni Powell
Town Clerk

By _____
Richard G. Sears
Mayor

This instrument is approved
as to form and legal sufficiency.

This instrument has been preaudited in the
manner required by the Local Government
and Fiscal Control Act.

John P. Schifano
Town Attorney

Drew Holland
Town Finance Officer

Exhibit E – Development Fees

**EXHIBIT E - LIBRARY
DEVELOPMENT FEES**

Building Permit Fees

General Permit	\$9,945.00	
Transportation Fee	\$1,000.00	Waived

Utility Fees

Acreage Fee- Wastewater	5,000.00	
Acreage Fee – Water	5,000.00	Waived
Stormwater Fee in Lieu	1,250.00	Waived
Capacity Replacement - Water	2,500.00	
Capacity Replacement - Sewer	2,500.00	
Utility Inspection - Water	200.00	
Utility Inspection - Sewer	200.00	
Utility Inspection - Street	1,200.00	
Utility Inspection - Sidewalk	100.00	
Land Disturbance(Grading) Permit	2,000.00	
Water Tap Fee	3,000.00	Waived
Sewer Tap Fee	3,000.00	Waived
Irrigation Meter Tap Fee	500.00	Waived
New Service Fee/Meter Deposit	150.00	Waived

Planning & Zoning

Development Plan Review for Gateway Corridor	437.50	Waived
Sign Permit (2 signs)	100.00	Waived
Rezoning Fee	500.00	Waived
Recombination Plat	150.00	Waived
Variances (2 @\$350)	700.00	Waived

Parks & Recreation

Fee In Lieu Development Fee	1,692.00	Waived
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Total Fees	\$41,124.50	
Waived Fees	\$17,479.50	
Remaining Fees to be Paid	\$23,645.00	