

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 19 March 2008

SUBJECT: Memorandum of Understanding with Board of Education

ATTACHMENT(S): Draft Memorandum of Understanding

SUMMARY OF REQUEST:

The Henderson County Board of Education has requested that this Board enter into a Memorandum of Understanding memorializing the two Boards' agreement regarding the upcoming school financing. As has occurred in previous situations where the real property upon which improvements are to be made is held by the Board of Education, this Memorandum of Understanding contemplates the conveyance of the property to the County, so that the County can pledge the same as collateral for the financing. The Board of Education would lease the property back, and have the right to have the property conveyed back to it upon repayment of the financed amounts.

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

BOARD ACTION REQUESTED:

Approve of the Memorandum of Understanding.

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

I move that the Board enter into the Memorandum of Understanding with the Board of Education, and authorize the Chairman to execute the same on behalf of this Board.

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
HENDERSON COUNTY BOARD OF COMMISSIONERS
AND THE
HENDERSON COUNTY BOARD OF PUBLIC EDUCATION**

DRAFT

1. The Henderson County Board of Commissioners (the "Board of Commissioners") and the Henderson County Board of Public Education (the "Board of Education") agree to engage in an installment financing capital outlay plan pursuant to N.C. Gen Stat. §160A-20 (the "2008 School Construction Financing Plan") to construct facilities and improvements for certain school construction projects (the "School Capital Projects"), at a total estimated cost of up to \$_____, subject to the approval of the North Carolina Local Government Commission.

2. The Board of Education will transfer marketable fee simple title to the Board of Commissioners in all the real property which is the subject of the School Capital Projects, together with all improvements to be constructed or existing thereon (the "Applicable School Properties"), for the sum of One Dollar, as required to provide collateral under the 2008 School Construction Financing Plan.

3. The Board of Commissioners will lease the Applicable School Properties to the Board of Education for the sum of One Dollar per year for a term coterminous with the amortization period under the 2008 School Construction Financing Plan (the "Lease"). The Board of Education will continue to be responsible for all insurance, maintenance and operation costs for the Applicable School Properties. The Lease will grant to the Board of Education an option to repurchase the Applicable School Properties for the sum of One Dollar at any time within five years after expiration of the Lease.

4. It is understood that the Applicable School Properties will be used as collateral under the 2008 School Construction Financing Plan to allow the Board of Commissioners to obtain funds to be used for the construction of the School Capital Projects, and that the Board of Commissioners will encumber the Applicable School Properties through installment financing agreement(s), deed(s) of trust, and/or other financing encumbrance(s). The Lease will be subordinated to such encumbrances either by its terms or by action of the Board of Commissioners and the Board of Education at the time of the closing(s) of the 2008 School Construction Financing Plan.

5. The payment obligations of the Board of Commissioners under the 2008 School Construction Financing Plan shall be as shown on the amortization schedule(s) prepared in conjunction with the 2008 School Construction Financing Plan. The Board of Commissioners will disburse the proceeds received under the 2008 School Construction Financing Plan and will appropriate the necessary funds to meet the payment obligations under the 2008 School Construction Financing Plan.

6. The Board of Commissioners will enter into a contract with the Board of Education appointing the Board of Education as its agent to act, in its discretion, to carry out the duties regarding the construction of the School Capital Projects, as outlined in the North Carolina General Statutes pertaining to public school construction, public works and public building contracts.

Responsibilities of Each Board

Board of Commissioners

- Negotiate financing offers and get preliminary commitment(s).
- Hold a public hearing on the 2008 School Construction Financing Plan, as required by law.
- Secure Local Government Commission approval as required by law.
- Provide closing requirements to the lending institution(s) with the assistance of the Board of Education.
- Enact a Resolution declaring its official intent to reimburse itself, or the Board of Education acting on its behalf, for expenditures incurred in connection with the School Capital Projects prior to the closing of the 2008 School Construction Financing Plan.
- Prior to the closing of the 2008 School Construction Financing Plan and pursuant to the Resolution referenced above, reimburse and/or credit the account of the Board of Education for reasonable and necessary out-of-pocket expenses incurred in connection with the School Capital Projects, including but not limited to, costs for architect's fees, site development, surveys, appraisals, environmental assessments, title examinations (including reasonable attorneys' fees), title insurance, and document preparation costs (including reasonable attorneys' fees).
- Lease the Applicable School Properties back to the Board of Education, with an option for the Board of Education to repurchase the Applicable School Properties from Henderson County for the sum of One Dollar at any time within five years after the expiration of the Lease.
- Appoint the Board of Education as its agent for bidding, awarding, and management of the construction contracts.
- Execute required agreements and contracts for the closing(s).

Board of Education

- Acquire and/or evaluate the Applicable School Properties and take all actions necessary to prepare such properties for the School Capital Projects, including but not limited to, subdividing, closure of public roads, easement acquisition, etc.
- Plan, design and get firm estimates of costs for the improvements to be made to the Applicable School Properties in connection with the School Capital Projects.
- Obtain appraisals of the Applicable School Properties based upon the improvements to be made to such properties in connection with the School Capital Projects.
- Convey the Applicable School Properties with marketable fee simple title to Henderson County.
- Lease the Applicable School Properties from Henderson County, with an option for the Board of Education to repurchase the Applicable School Properties from Henderson County for the sum of One Dollar at any time within five years after the expiration of the Lease.
- Execute agency agreements and conditional assignment agreements with the Board of Commissioners regarding construction contracts as necessary.
- Bid, award and manage construction contracts in accordance with the agency agreement(s) executed.
- Insure, maintain and operate the Applicable School Properties before, during and after the School Capital Projects have been completed.
- Repurchase the Applicable School Properties with improvements from Henderson County for the sum of One Dollar within five years after the expiration of the Lease.
- Provide assistance as requested by the Board of Commissioners in providing the closing requirements for the lending institution(s), including but not limited to, obtaining a Phase I and Phase II environmental assessment if requested by the lending institution, providing a title opinion and title insurance policy satisfactory to the Board of Commissioners and the lending institution(s) for the Applicable School Properties, providing certified copies of Board of Education minutes if requested by the lending institution(s), providing attorney opinions regarding the obligations of the Board of Education as requested by the lending institution(s), and take any other actions or execute any other documents as may reasonably be requested by the lending institution(s) or the Board of Commissioners in conjunction with the 2008 School Construction Financing Plan.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed in the respective corporate name of each by its duly authorized officers and the respective seal of each entity affixed hereunto, all by authority of the duly elected officials of each party, effective as of the last date of execution.

HENDERSON COUNTY

BY: _____
_____, Chairman
Henderson County Board of Commissioners

(CORPORATE SEAL)

ATTEST:

_____, Clerk to the Board

NORTH CAROLINA –HENDERSON COUNTY

I, _____, Notary Public of the County and State aforesaid, certify that _____ personally came before me this day and acknowledged that (s)he is the Clerk to the Henderson County Board of Commissioners, a North Carolina body politic and corporate, and that by authority duly given and as the act of its Board of Commissioners, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal and attested by her/him as its Clerk.

Witness my hand and notarial seal, this, the ____ day of March, 2008.

Notary Public

My Commission Expires:

HENDERSON COUNTY BOARD OF
PUBLIC EDUCATION

BY: _____
Ervin Bazzle, Chairman
Henderson County Board of Public Education

(CORPORATE SEAL)

ATTEST:

Dr. Stephen L. Page, Ex-Officio Secretary

NORTH CAROLINA - HENDERSON COUNTY

I, _____, Notary Public of the County and State aforesaid, certify that Dr. Stephen L. Page personally came before me this day and acknowledged that he is the Ex-Officio Secretary of the Henderson County Board of Public Education, a North Carolina body politic and corporate, and that by authority duly given and as the act of the Board, the foregoing instrument was signed in its name by its Chairperson, sealed with its corporate seal and attested by him as its Secretary.

Witness my hand and notarial seal, this, the ____ day of February, 2008.

Notary Public

My Commission Expires:
