

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: April 3, 2023

SUBJECT: Term sheet of agreement with Greater Asheville Regional Airport Authority

PRESENTER: Charles Russell Burrell

ATTACHMENT(S): Term sheet of agreement

SUMMARY OF REQUEST:

Attached is a term sheet of the proposed agreement with the Greater Asheville Regional Airport Authority ("GARAA"). This is the agreement referenced in your February 6, 2023, agenda ("Agreement with Economic Investment Fund"), and indirectly in your June 15, 2022 ("Ratification of Agreements"). Also attached is a rendering of the proposed agreement in the context of Ferncliff Park.

Approval of the term sheet will allow the project to move forward with seeking Federal Aviation Administration approval (required, as the GARAA properties were acquired with FAA grants).

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

BOARD ACTION REQUESTED:

Approval of the term sheet

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

I move that the Board approve the term sheet for the agreement with Greater Asheville Regional Airport, and direct the staff to move forward with the process.

GREATER ASHEVILLE REGIONAL AIRPORT AUTHORITY (“AUTHORITY”)
and HENDERSON COUNTY, NC (“HENDERSON COUNTY”)
PROPERTY SWAP TERM SHEET

1. Property: The property at issue is as follows:
 - a. The Authority is the owner of three parcels of real estate located within Henderson County (Henderson County Real Estate Identification Numbers: 9926912, 701405, and 700490) (“Authority Parcels”).
 - i. The Authority Parcels are collectively identified as Tracts C-1, C-2, C-3 and the “pink parcel” as shown on the Preliminary Subdivision Plan identified as C-100, prepared by WGLA Engineering as project number 21114, dated 10/2022 (“Plat”).
 - ii. Upon information and belief, the Authority Parcels are currently titled in the name of the Authority, but the City of Asheville, North Carolina is still listed as the owner according to the Henderson County tax records.
 - iii. The Authority Parcels are currently subject to a reverter clause in favor of the City of Asheville, should the Asheville Regional Airport cease to be used for Airport purposes, or should the Authority be dissolved in accordance with North Carolina Session Law 2012-121.
 - b. Henderson County has acquired a parcel of real estate within Henderson County (Henderson County Real Estate Identification Number: 10007823) (“County Parcel”) from Brite Stars, LLC free and clear of any restrictions other than those easements, rights of way and restrictions of record.
 - i. The County Parcel is identified as Tracts A and B on the Plat.
 - ii. The County Parcel is part of the Ferncliff Industrial Park, and is subject to its restrictions and covenants.
 - c. The Plat will be attached to and incorporated into any Purchase Agreement.
 - d. The location and size of each Tract A, B, C-1, C-2, C-3 and the “pink parcel” on the Plat are approximate only.
 - e. Surveys have been commissioned by the Authority and Henderson County to reflect the recombination and subdivision of property in accordance with these terms, and to determine the final acreage of the individual parcels.
 - i. The Authority and Henderson County will each obtain their own survey at their own expense.
2. Purpose: Henderson County and the Authority desire to accomplish the following:
 - a. A land swap whereby the Authority would acquire title to that portion of the County Parcel loosely identified as Tract B (approximately 16.87 acres) as shown the Plat, and Henderson County would acquire title to a portion of the Airport Parcels loosely identified as Tract C-1 (approximately 11.61 acres) and C-2 (approximately 6.08 acres) as shown on the Plat. Tracts C-1 and C-2 must be approximately equivalent in value to Tract B.

- b. Tract B shall be utilized by the Authority for aviation-related industries, which shall expressly include, but shall not be limited to fixed-base operations and aircraft hangers. Tract B shall be subject to the restrictions and covenants of Ferncliff Industrial Park.
 - c. The combination of Tract A with Tract C-1 and C-2 together form an Industrial Tract, which Henderson County shall market for sale through the Economic Investment Fund of Henderson County for industrial development, consistent with all Federal Aviation Administration requirements. Henderson County agrees that no residential development shall be allowed on the combined Industrial Tract or on Tract C-3.
 - d. The division of the County Parcel into two tracts, Tracts A and B, as shown on the Plat, shall include the creation of a roadway extending from the existing road in Ferncliff Industrial Park to the boundary line of Tract C-1, in approximately the location identified on the Plat.
 - e. The encumbrance of Tract A with a perpetual, appurtenant right of way for ingress, egress and regress to and from the existing road in Ferncliff Industrial Park (running between the current GF Linamar facility and the current Suncap Warehouse facility) to and for the benefit of Tracts B, C-1, C-2, C-3, and the "pink parcel".
 - f. The encumbrance of Tracts C-1 and C-2 with a 60' wide exclusive right of way for the benefit of the Authority for the purposes of ingress, egress and regress to and from the "pink parcel" to C-3 at the location approximately identified in the northern boundary of Tracts C-1 and C-2.
 - g. The granting of an irrevocable right of first offer to Henderson County, for a period of up to ten (10) years from the date of closing on the land swap described above, to purchase Tract C-3 from the Authority, at a fair market value per acre (as determined by a then-current appraisal meeting FAA standards, at the sole cost and expense of the Henderson County). This right of first offer, as well as the duration of the right of first offer, are contingent upon approval by the FAA.
 - h. If, in marketing Tract A, Tract C-1, C-2 and C-3 for sale, it is determined by Henderson County that the prospective buyer desires "through the fence" access (that is, access to the airfield by aircraft based on land adjacent to, but not part of, the airport property), and the buyer is part of a large scale economic development opportunity for Henderson County, and the buyer is in an aviation/aeronautical or aviation/aeronautical related industry, the Authority will grant "through the fence" operations to the prospective buyer, if possible. However, any "through the fence" access requested must meet the standards of, and possibly be approved by, the FAA. Under no circumstances can the Authority guaranty that "through the fence" access will be granted to any buyer. Further, "through the fence" access will not be granted for residential use, for private plane access, for an aeronautical business that would compete with an existing on-airport aeronautical service provider, such as an FBO, or in any situation which is otherwise inconsistent with the Authority's Grant Assurances to the FAA.
3. Conditions: The potential land swap is contingent upon the following (each a condition precedent):

- a. The Authority providing satisfactory proof of title to the Authority Parcels without any reverter clause, whether by transaction with the City of Asheville or legislative action, such that a portion of the Authority Parcels can be conveyed free from any restriction other than:
 - i. Those previously imposed, if any, on account of the purchase of the Authority Parcels from the City of Asheville;
 - ii. those imposed by the Federal Aviation Administration;
 - iii. the greenway easement in favor of Conserving Carolina recorded in Book 3087, at Page 536 of the Henderson County Registry; and
 - iv. other easements, rights of way, and other restrictions of record.
- b. Henderson County and the Authority agreeing upon the exact location, acreage and description of Tracts A, B, C-1, C-2, and C-3, so as to make the land swap equal in value, keeping in mind legal and practical access to the parcels prior to the conveyances contemplated herein.
- c. The approval of the land swap, the right of first offer, and the duration of the right of first offer, and a release of Tracts C-1, C-2 and C-3 by the Federal Aviation Administration.
- d. The approval of the land swap by Henderson County's Board of Commissioners and the Authority's Board.
- e. Henderson County providing the Authority an appropriate perpetual, appurtenant right of way for reasonable, easy access over Tract A, for the purpose of ingress, egress and regress to and from the roundabout on Ferncliff Park Drive (running between the GF Linamar facility and the Suncap Warehouse facility) for the benefit of Tract B, Tract C-1, C-2 and C-3 and the "pink parcel", for the uses contemplated above.
 - i. It is anticipated that this access will be along the property line between Tract A and Tract B, as shown on the Plat, and that such access will thereafter extend to Tract B, Tract C-1, C-2 and C-3.
 - ii. The exact location of such access shall be agreed upon by the Authority and Henderson County, and shall not interfere with the Authority's beneficial use of Tract B, C-1, C-2 or C-3 for the purposes contemplated above.
- f. Henderson County, in connection with the NC Department of Transportation, ensuring, that the roadway extending from the existing road in Ferncliff Industrial Park (running between the current GF Linamar facility and the current Suncap Warehouse facility) to and for the benefit of Tracts B, C-1, C-2, C-3, and the "pink parcel" is built within the next two (2) years.
 - 1) The intent is for the road to be built and maintained as a State road.
 - 2) The construction and maintenance of the road (until it becomes a State road) will be at the sole cost and expense of Henderson County.
- g. Henderson County providing the Authority an appropriate 60' wide exclusive right of way for reasonable, easy access over Tracts C-1 and C-2 for the purposes of ingress, egress and regress to and from the "pink parcel" to C-3 at the location approximately identified on the Plat in the northern boundary of Tracts C-1 and C-2.
- h. Tract B being zoned by Henderson County such that the Authority may lawfully use Tract B for the purposes contemplated above.

- i. Tract C-3 being zoned by Henderson County such that the Authority may lawfully use Tract C-3 for non-aeronautical development, including a mixture of industrial and heavy commercial.
- i. The Authority granting to Henderson County an irrevocable right of first offer to purchase Tract C-3, for a period of up to ten (10) years from the date of the closing on the land swap described above, at the then-current fair market value per acre (as determined by an appraisal meeting FAA standards, at the sole cost and expense of Henderson County). This right of first offer, as well as the duration of the right of first offer, are contingent upon approval by the FAA.
 - i. As consideration for the irrevocable right of first offer, Henderson County shall pay the Authority a fee per year, if required by the FAA.
 - ii. Henderson County shall have 90 days from written notification by the Authority of the Authority's intention to sell Tract C-3 or to enter into a long-term lease for Tract C-3, in which to exercise the right of first offer.
- j. Each party receiving good and marketable title at closing with title insurance containing extended coverage deleting or insuring over the standard printed exceptions.
 - i. The cost of the owner's title policy and survey shall be borne by Henderson County and the Authority for the respective tracts received.
- k. Execution of a mutually satisfactory sales/purchase contract.

