

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 2 May 2005

SUBJECT: Sugarloaf Road real estate

ATTACHMENT(S):

1. Assignment of Option to Purchase
2. Resolution (of Hend. Co. Bd. Of Ed.)
3. Draft Memorandum of Understanding
4. Land Purchase Financing Proposal

SUMMARY OF REQUEST:

1) The Henderson County Board of Education has executed an assignment of its interest in the option to purchase certain real estate, approximately 43.45 acres, more or less ("the real estate"), located on Sugarloaf Road, to Henderson County. The acceptance of this option is subject to approval and acceptance by the Henderson County Board of Commissioners.

2) The Board of Education also approved a Resolution seeking the Board's approval of the selection of and payment of fees for services from an architect to design a new school to be located on the real estate.

3) In past financed school construction projects, the Board and the Henderson County Board of Education have entered into a Memorandum of Understanding regarding each board's responsibilities regarding this matter. Attached is such a memorandum drafted by your legal department, largely based on the memorandum used in the Dana School matter.

4) Henderson County solicited bids for the interim financing of the purchase of the real estate. The attached proposal, from First Citizens Bank & Trust Co. was the low bidder on the fixed rate option, as shown on the attached. This proposal is recommended by staff. However, pursuant to N.C. Gen. Stat. §160A-20(g), the proposal cannot be accepted until after a public hearing on at least ten days published notice. At the Board's 20 April 2005 meeting, the Board approved a reimbursement resolution which would allow the purchase costs of the real estate to be reimbursed to the County from the proceeds of any financing for the construction of a school to be built on the site. This financing would cover the interim between the purchase of the real estate and the closing of the construction financing.

SUGGESTED MOTION(S). If the Board of Commissioners is so inclined, the following are proposed:

- 1) I move that the Board accept the assignment of the option, as indicated by the document "Assignment of Option to Purchase" included in the Board's agenda package.
- 2) I move that the Board authorize the Henderson County Board of Education to select an architect for the design of a new elementary school on the real estate described in the "Assignment of Option to Purchase" included in the Board's agenda package, and further to pay reasonable fees for the services of an architect for the design of the school.

- 3) I move that the Board agree to the terms contained in the draft Memorandum of Understanding included in the Board's agenda package.
- 4) I move that the Board set a public hearing on the land purchase financing proposal (included in the Board's agenda package), to be held at 11:00 a.m. on May 18, 2005.

COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:

The County manager supports these proposals. County staff will be present and prepared if requested to give further information on this matter.

Prepared By and Return To: Christopher Z. Campbell, Esq., Roberts & Stevens, P.A., P.O. Box 7647, Asheville, NC 28802.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

ASSIGNMENT OF OPTION
TO PURCHASE

THIS ASSIGNMENT OF OPTION TO PURCHASE is made and entered into this _____ day of April, 2005, by and between THE HENDERSON COUNTY BOARD OF PUBLIC EDUCATION ("Assignor"), the COUNTY OF HENDERSON ("Assignee") and JERRY A. HUMPHREY and wife, MARY HUMPHREY ("Seller") collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, Assignor and Seller entered into that certain Option to Purchase dated March 9, 2005 (the "Option"), and a Memorandum of Option to Purchase was recorded on March 14, 2005 in Deed Book 1219 at Page 243, Henderson County Registry (the "Memorandum of Option"); and,

WHEREAS, Assignor desires to assign to Assignee all of its right, title, interest and obligations in and to said Option and Assignee desires to accept such assignment and succeed to the rights and obligations of Assignor as specified in the Option to acquire the real property of Seller for use by Assignor for school purposes; and,

WHEREAS, Seller desires to indicate its consent to the assignment of the Option from the Assignor to the Assignee.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Assignment. Assignor hereby assigns to Assignee all right, title, interest and obligations of Assignor in and to that certain Option between Assignor and Seller dated March 9, 2005.

2. Acceptance of Option. The Assignee hereby accepts and agrees to be bound by all of the terms and provisions of the Option.

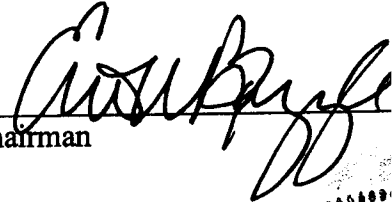
3. Seller Consent. The Seller executes this Agreement for the sole purpose of consenting to the Assignment of the Option from Assignor to Assignee to enable the use of the property by Assignor for school purposes.

4. Ratification of Option. Except as expressly provided herein to accomplish an assignment by Assignor of the Option to Assignee, the Option shall remain in full force and effect in accordance with its express terms between the Seller and the Assignee.

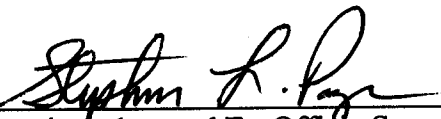
IN WITNESS WHEREOF, the undersigned Parties or their duly authorized representatives have set their hands and seals the day and year first above written.

ASSIGNOR:

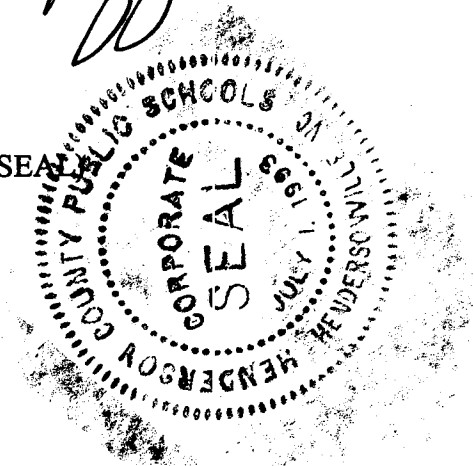
THE HENDERSON COUNTY
BOARD OF PUBLIC EDUCATION

By: 
Chairman

ATTEST:


Superintendent and Ex-Officio Secretary

(CORPORATE SEAL)



ASSIGNEE:

THE COUNTY OF HENDERSON

By: _____

HENDERSON COUNTY
BOARD OF COMMISSIONERS

ATTEST:

(CORPORATE SEAL)

Secretary

SELLER:

Jerry A. Humphrey (SEAL)
JERRY A. HUMPHREY

Mary M. Humphrey (SEAL)
MARY HUMPHREY

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a 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 Superintendent and Ex-Officio Secretary of the **HENDERSON COUNTY BOARD OF PUBLIC EDUCATION**, a body corporate and politic, and that by authority duly given and as the act of the body corporate and politic, the foregoing instrument was signed in its name by its Chairman, sealed with its corporate seal, and attested by himself as its Superintendent and Ex-Officio Secretary.

Witness my hand and official stamp or seal, this 11th day of April, 2005.

Barbara Case Blaine
Notary Public

My Commission Expires:

June 23, 2007

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the State and County aforesaid, certify that _____ personally appeared before me this day and acknowledged that he is _____ Secretary of **THE HENDERSON COUNTY BOARD OF COMMISSIONERS** and that by authority duly given and as the act of the _____, the foregoing instrument was signed in its name by its _____, sealed with its corporate seal and attested by h_ as its _____ Secretary.

Witness my hand and official stamp or seal, this _____ day of April, 2005.

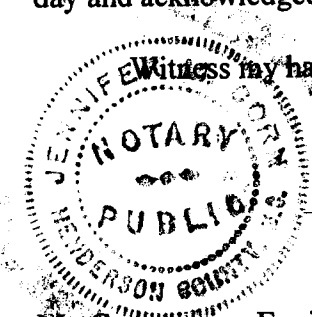
Notary Public

My Commission Expires:

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, a Notary Public of the County and State aforesaid, certify that **JERRY A. HUMPHREY and wife, MARY HUMPHREY**, Sellers, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

Witness my hand and official stamp or seal, this 15th day of April, 2005.



Jennifer M. Corn
Notary Public Jennifer M. CORN

My Commission Expires:
September 4, 2006

RESOLUTION REQUESTING THE HENDERSON COUNTY
BOARD OF COMMISSIONERS TO CONFIRM THEIR
COMMITMENT TO THE CONSTRUCTION OF A NEW ELEMENTARY SCHOOL
AND TO AUTHORIZE THE BOARD OF EDUCATION
TO PROCEED WITH SELECTION OF
AN ARCHITECT

WHEREAS, a critical need exists for the construction of a new elementary school to serve the students of Henderson County; and

WHEREAS, The Henderson County Board of Public Education (the "Board") is committed to seeking funding for the construction of a new elementary school, proceeding immediately with contracts for the design of the additions, and beginning construction of the additions at the earliest possible date; and

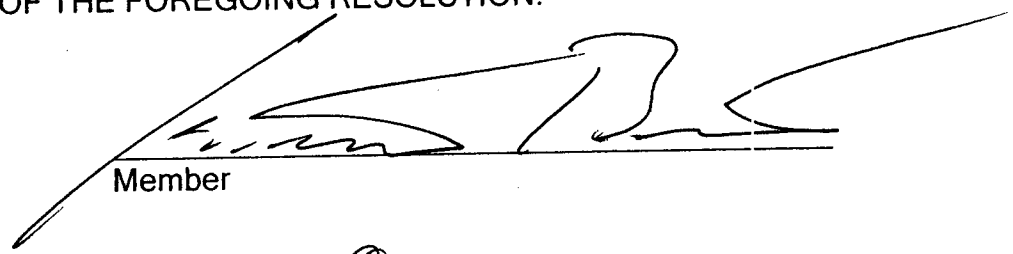
WHEREAS, the Henderson County Board of Commissioners have indicated their commitment to the prompt funding of a new elementary school to be located on the following property:

Being 43.45 acres, more or less, off Sugar Loaf Road in Henderson County, North Carolina as described in a deed recorded in Deed Book 988 at Page 725, Henderson County Registry. The same parcel being identified on the Henderson County tax records as Pin No. 00958955251355 (hereafter "the Sugar Loaf Road Property").

NOW, THEREFORE, BE IT RESOLVED BY THE HENDERSON COUNTY BOARD OF PUBLIC EDUCATION AS FOLLOWS:

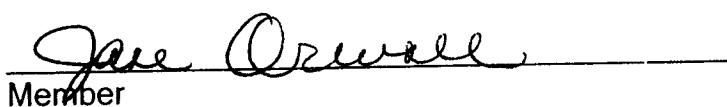
1. The Board of Education requests that the Henderson County Board of Commissioners approve the selection of an architect for the design of a new elementary school on the Sugar Loaf Road Property and that the Board of Commissioners further approve contracting for those architectural services by the Board of Education.
2. The Board of Education requests that the Board of Commissioners approve payment for architectural services for a new elementary school on the Sugar Loaf Road Property from funding which will be made available by the Board of Commissioners to the Board of Education.
3. The Chairman and Superintendent are directed to provide copies of this Resolution to the Chairman of the Board of Commissioners, each Commissioner, the County Manager, and the County Finance Officer.
4. This Resolution shall become effective upon its adoption.

I MOVE THE ADOPTION OF THE FOREGOING RESOLUTION:



Member

SECONDED BY:

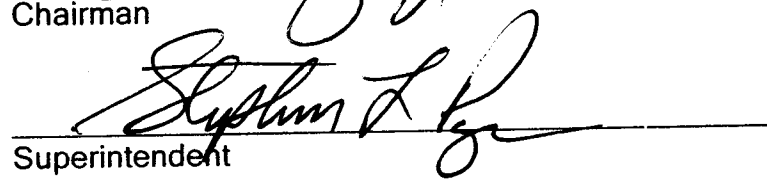


Member

READ, APPROVED, AND ADOPTED THIS
11th DAY OF APRIL, 2005.



Chairman



Superintendent

APPROVED AS TO FORM:



School Board Attorney

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

1. The Henderson County Board of Commissioners and the Henderson County Board of Public Education agree to engage in an installment financing capital outlay plan (hereinafter “Financing Plan”) to purchase and construct facilities for a new elementary school, to be located on or near Sugarloaf Road (hereinafter the “School”), at a total estimated cost not to exceed \$12 million dollars, subject to the approval of the Local Government Commission. It is anticipated that the financing for the School will likely occur as part of a Certificates of Participation issue (hereinafter “COPs issue”).
2. The Henderson County Board of Commissioners will, on behalf of Henderson County, take fee simple title to the real property to be acquired for the construction of the School, and will hold fee simple title to all improvements to be constructed on a portion of the said real property (hereinafter the improvements and the portion of the said real property upon which the improvements are constructed are known as “the School Property”) in order to provide collateral for the COPs Issue.
3. The Henderson County Board of Commissioners will lease the School Property to the Henderson County Board of Public Education for a nominal amount of One Dollar (\$1.00) per year for the same period of time as the amortization period for the COPs Issue, as necessary. The Henderson County Board of Public Education will be responsible for all insurance, maintenance and operation costs for the School. The lease will grant to the Board of Public Education an option to purchase the School Property for the sum of One Dollar (\$1.00) at any time within five years after expiration of the Lease.
4. It is understood that the School Property will be used as collateral for the COPs Issue to obtain funds to be used for the construction contemplated above, and that the School Property will be encumbered 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 Henderson County Board of Commissioners and the Henderson County Board of Public Education at the time of the closing(s) of the financing arrangement(s).
5. The obligation to repay any short term financing and/or the COPs issue by Henderson County will be based on the amortization schedule(s) prepared in conjunction with the approval of the financing arrangement(s). The Henderson County Board of Commissioners will appropriate funds consisting in whole or in part of any of the following sources: the COPs Issue, the annual Article 40 and Article 42 Sales Tax Revenues, Public School Building Capital Funds, State ADM Funds, and General Fund Revenues for repayment under the financing agreement(s). The Henderson County Board of Commissioners and the Henderson County Board of Public Education will continue to discuss the funding plan for the future capital needs of the school system.
6. The Board of County Commissioners will enter into a contract with the Board of Public Education so that the Board of Public Education may serve as its agent with discretion in carrying out duties in the construction of said school facilities 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

- Acquire the School Property; take all actions necessary to prepare the School Property for the Financing Plan, including but not limited to subdividing as necessary, closure of public roads as necessary, easement acquisition as necessary, etc.
- Negotiate financing offers and get preliminary commitment(s).
- Hold a public hearing on the financing agreement(s).
- Secure Local Government Commission approvals as required.
- Provide closing requirements to the lending institution(s) with the assistance of the Board of Public Education.
- Lease property back to the Board of Education.
- Contract with the Board of Education as agent for the County for construction contracts.
- Execute agreements and contracts for the closing(s).

Board of Education

- Plan, design and get firm and accurate estimates of costs for the improvements to be made for the School and/or the School Property.
- Obtain appraisals of the School Property based upon the improvements to be made to the School Property and the School.
- Lease the School Property from Henderson County with option to Henderson County Board of Education to purchase from Henderson County for the sum of One Dollar (\$1.00) within five years of expiration date of Lease.
- Execute agency agreements and conditional assignment agreements with Henderson County on construction contracts as necessary.
- Bid, award and manage construction contracts in accordance with the agency agreement(s) executed.
- Insure, maintain and operate the School before, during and after the improvements have been completed.
- Repurchase the School Property with improvements from Henderson County within five years from the end of the lease term.
- Provide assistance requested by Henderson County 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 County and the lending institution(s) for the School Property, providing certified copies of Board of Public Education minutes if requested by the lending institution(s), providing attorney opinions regarding the obligations of the Board of Public 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 or Henderson County in conjunction with the 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, this the _____ day of _____, 2005.

HENDERSON COUNTY

BY: _____
WILLIAM MOYER, Chairman
Henderson County Board of Commissioners

ATTEST:

(CORPORATE SEAL)

Elizabeth W. Corn, Clerk to the Board

NORTH CAROLINA – HENDERSON COUNTY

I, _____, Notary Public of the County and State aforesaid, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she 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 as its Clerk.

Witness my hand and notarial seal, this, the ____ day of _____, 2004.

Notary Public

My Commission Expires: _____

HENDERSON COUNTY BOARD OF EDUCATION

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

ATTEST:

(CORPORATE SEAL)

Stephen L. Page, Secretary

NORTH CAROLINA – HENDERSON COUNTY

I, _____, Notary Public of the County and State aforesaid, certify that Stephen L. Page personally came before me this day and acknowledged that he is the 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 _____, 2004.

Notary Public

My Commission Expires: _____

DRAFT

April 22, 2005

Non-Bank Qualified

Real Property Installment Purchase Contract Proposal for:

County of Henderson
113 North Main Street
Hendersonville NC 28792
Attn: J. Carey McLelland, Finance Officer

Offered by:

First Citizens Bank & Trust Co.
PO Box 29519
16 E Rowan Street
Raleigh, NC 27626-0519

Type of Contract: An installment purchase contract structure with the County responsible for all expenses related to the use of the facility including taxes, insurance and maintenance.

Description of Project: To finance the purchase of approx. 45 acres of land for a school in Henderson County at a total cost of \$720,000.00.

Financing Terms, Installment Payment and Rate: First Citizens will provide the following payment options:

1. A tax-exempt fixed interest rate of 3.03% for eighteen (18) months with quarterly interest payments. Principal plus accrued interest will be due at maturity.
2. A tax-exempt variable rate at Libor + 1.10 with a floor of 2.72% and a ceiling of 3.20%.

Escrow Funding: Advance funding is available to allocate funding for the Vendors/Contractors before the delivery of equipment or as progress payments on construction projects.

The Bank would pay the proceeds to an escrow and appoint First-Citizens Trust Department as Escrow Agent to invest installment proceeds at money market rates. An escrow advance fee of \$25.00 will be payable with each request for payment form submitted to the Bank for payment. Interest proceeds would be paid to the County monthly, quarterly, semiannually or annually by the Escrow Agent or accumulated in escrow.

Security Interest and Title: In an installment purchase contract, the title rests with the County, which earns equity in the property with each payment that is made. A deed of trust will be taken on the property. The County shall become free and clear owner after paying all payments, or upon repayment.

Non-Appropriation/Early Termination: The County shall exercise its best efforts to obtain annual appropriations to meet fiscal year installment sale payments. The contract may be terminated without penalty, in the event of non-appropriations.

Tax Status: The County is qualified as a governmental entity within the meaning of section 103 (A) of the Internal Revenue Code of 1954, as amended.

North Carolina General Statute: The contract will conform to the requirements of North Carolina General Statute 159, article 8, 160A-20 and be prepared by the County's Bond Counsel.

Prepayment: The County may early terminate the contract by paying the unpaid principal balance plus earned interest per an amortization schedule to be provided by Bank. The principal balance may be prepaid, in full and at any time, at a prepayment price equal to 100% of the principal balance plus 250.00, together with accrued interest to the date of prepayment, upon thirty (30) days prior written notice to the Bank.

Rate Modification/Refinancing: The County may refinance or modify the existing rate on the contract, with a flat fee of \$500.00 or 1% of the outstanding principal balance, whichever is greater. The refinancing or modification may only be made on the annual anniversary date of the contract.

Documents Required:

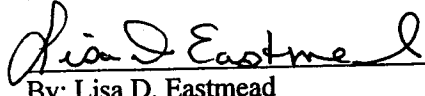
- (1) Installment Sale Finance Contract and attached Exhibits.
- (2) Contract validity opinion prepared by the local counsel.
- (3) Certified copy of minutes approving the transaction.
- (4) Insurance coverage including title insurance, liability and property damage coverage equal at least to replacement value.
- (5) Appraisal. (If required)
- (6) Non-Arbitrage certification letter.
- (7) Audited year-end June 30, 2002, 2003 and 2004 financial statements and budget for fiscal year 2004-2005.
- (8) Environmental Consultant certification of environmental investigation and a report revealing any past or potential impact to environment at the property (if required).
- (9) Security Interest in the property by way of a Deed of Trust and UCC's.
- (10) IRS Form 8038-G.
- (11) Local Government Commission (LGC) approval.

Fees and Expenses to County: All attorney's fees including local counsel, bond counsel and Bank's counsel, stamps, taxes, recording fees, survey, appraisal, environmental impact certification and expenses will be the County's responsibility. An origination fee of \$500.00 is due to the Bank at closing.

Proposal and Conditions: This is a proposal and not a commitment to provide funding. The closing of the transaction must occur on or before June 22, 2005. If the transaction is not closed on or before that date, our obligation to fund the transaction will terminate. If, prior to the closing of the transaction, there is a material adverse change in your financial condition, or if we discover adverse circumstances of which we are currently unaware, we may rescind this proposal and will have no obligation to fund the transaction. Final and full approval is subject to the approval of the Executive Management of First Citizens Bank & Trust Company.

This proposal will expire unless it is accepted in writing and the acceptance is received by the undersigned on or before May 22, 2005.

First-Citizens Bank & Trust Company



By: Lisa D. Eastmead
Public Finance Coordinator
Leasing Department
800-537-6888

The foregoing proposal is accepted and approval of rate and funding is requested:

County of Henderson

By: _____

Title: _____

Date: _____

**New School Land Purchase
Interim Financing Proposals
Summary of Rates Received**

4/22/05

<u>Financial Institution:</u>	<u>Fixed Interest Rate</u>	<u>Variable Interest Rate</u>
RBC Centura	3.69%	3.14%
First Citizens	3.03%	3.20%
BB&T	3.61%	3.35%
Wachovia	3.49%	3.26%
Carolina First	5.00%	4.27%
Bank of America	3.94%	3.99%