



REQUEST FOR BOARD ACTION

ITEM NO. 25.

DATE OF MEETING: April 5, 2010

REQUESTED BY: Rick Benton, County Manager

SHORT TITLE: Resolution Approving Interlocal Agreement with Pender County Board of Education for the Heide Trask Auditorium/Gymnasium Project

BACKGROUND: The County owns the real property at the Heide Trask High School, thus an interlocal agreement is necessary for the County to appoint the School Board as its agent to carry out the auditorium/gymnasium project, and for the County to reclaim sales and use taxes that will be earmarked for future school capital projects. Mr. Thurman and the School Board Attorney have prepared a draft Agreement which is attached.

SPECIFIC ACTION REQUESTED: To consider a resolution approving the interlocal agreement between Pender County and the Pender County School Board for the Heide Trask High School Auditorium/Gymnasium project.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.



Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

the attached interlocal agreement between Pender County and the Pender County School Board for the Heide Trask High School Auditorium/Gymnasium project is hereby approved. The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS

YEA VOTES: Tate ___ Blanchard ___ Brown ___ Rivenbark ___ Williams ___

Jimmy T. Tate, Chairman Date

ATTEST Date

**NORTH CAROLINA
PENDER COUNTY**

AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into this ____ day of _____, 2010, by and between Pender County, North Carolina ("the County") and the Pender County Board of Education, a county board of education organized and existing pursuant to N.C. Gen. Stat. §115C *et seq.* ("the School Board").

WHEREAS, the School Board has a substantial need for a new gymnasium and auditorium at Heide Trask High School;

WHEREAS, it is the intent of the County to assist the School Board in obtaining this improvement within the constraints imposed by limited financial resources;

WHEREAS, the School Board seeks to construct a gymnasium and auditorium at Heide Trask High School ("the Construction Project");

WHEREAS, the County owns the real property upon which Heide Trask High School was constructed and holds the campus of Heide Trask High School for the use by the School Board, pursuant to NCGS §153A-158.1;

WHEREAS, the County desires to designate the School Board as its agent to carry out the Construction Project, and the School Board is willing to accept the appointment pursuant to the terms of this Agreement;

WHEREAS, the County is authorized by legislation to reclaim sales and use taxes paid to the State of North Carolina, to acquire real and personal property for the use by the School Board, and to construct, equip, expand, improve, and renovate property for use by the School Board;

WHEREAS, the County intends to claim the sales and use tax refunds on the Construction Project, and appropriate the same to the School Board to serve as an additional source of school construction funding;

WHEREAS, the School Board and the County are authorized to enter into an interlocal agreement and to establish a joint agency pursuant to N.C. Gen. Stat. § 160A-461 *et seq.*

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

- 1. Agency Created.** The County irrevocably appoints the School Board as its sole agent to carry out all phases of the Construction Project. The School Board, as the County's agent, assumes all of the County's rights, duties, and responsibilities regarding the Construction

Project, as set forth in Paragraph 5. Notwithstanding previous arrangements, this Agency shall govern all phases of the Construction Project.

2. **Property Affected.** The school to which this Agreement applies is Heide Trask High School which is located on a tract more fully described on the Property Description Addendum attached hereto (the "Property").

3. **Ownership of Property.** The County shall continue to own the Property during the Construction Project.

4. **Lease.** The County shall continue to hold the portions of the Property constituting the campus of Heide Trask High School for use by the School Board during the Construction Project.

5. **Obligations and Rights of the School Board.**

a. **Board as Agent.** The School Board, as the County's agent, shall be solely responsible for carrying out and maintaining the Construction Project, and the School Board shall have all rights to supervise the Construction Project. The County shall have no supervisory authority for the Construction Project.

b. **Administer Contracts.** The School Board may enter into any purchase order or contract with respect to the Construction Project in the County's name. The School Board shall have exclusive control of the content of such contracts and the School Board may approve and execute all change orders to such contracts. The School Board shall act as the County's designated representative for administering the contracts, and all contracts shall comply with the public procurement laws and any other State laws applicable to either the School Board or the County. The School Board shall ensure that all contractors provide applicable sales and use tax certificates.

c. **Enforce Contracts.** The School Board shall have the right to enforce in its own name or in the County's name such purchase orders, contracts at law or in equity, or change orders entered into in the County's name or the School Board's name for the Construction Project. If any of the Construction Project is under way at the time of the execution of this Agreement, School Board, if it deems necessary to carry out the intent of this Agreement, may assign to the County all contracts for construction and all performance and payment bonds issued in connection with such contracts for construction, and in that event, the School Board may continue to administer such contracts for construction in its own name or in the name of the County and the School Board shall be the beneficiary of all rights or payments from the contractors and/or sureties under such performance bonds.

d. **Insurance and Liability Coverage.** The School Board shall maintain (i) property insurance and (ii) liability coverage through the North Carolina School Boards Trust, on the Property described in Paragraph 2 of this Agreement. Notwithstanding any provision of this

Agreement, the School Board shall retain the sole power to control and direct the application and distribution of insurance proceeds applicable to the Construction Project and affected property.

6. Obligations and Rights of the County.

a. Contracts. In accordance with the School Board's recommendations, the County shall promptly approve and execute all contracts necessary to carry out the Construction Project. The School Board shall have sole authority to approve and execute change orders to any contracts approved and executed by the County, subject to compliance with the counties' purchasing practices.

b. Payments. The School Board shall prepare all requests for payment and forward the same to the County's Finance Officer for review and payment. The School Board shall provide the County with such information in the School Board's possession as the County may request. The County shall promptly make all requested payments.

c. Right to Inspect. The County and their representatives and agents shall have the right to enter upon the Site and inspect the Construction Project from time to time during construction.

7. Sales Tax Refunds. The County shall promptly take all steps to obtain the sales and use tax refund from the State of North Carolina, and further, shall provide the School Board with timely notice of its efforts and receipts. Any sales and use tax refunds received by the County as a result of the construction projects shall be held by the County in the school construction projects funding accounts and shall be used solely for such construction projects. The intent of this Agreement is to provide additional resources for the School Board, and the County shall not supplant annual appropriations that would otherwise be made.

8. Amendment. This Agreement may not be amended without the mutual written consent of both parties.

9. Consideration. The County and the School Board acknowledge that this Agreement is supported by mutual and adequate consideration.

10. Termination of Agency. The Agency created by Paragraph 1 shall terminate six years after substantial completion of the work on the Construction Project. If the North Carolina Legislature restores the ability of local School Boards to receive a full refund of sales taxes, the Agency created by Paragraph 1 shall, at the option of the School Board, terminate and the County shall assign all pending contracts and bonds regarding the Construction Project to the School Board. The termination of the Agency shall not affect the County's obligation to appropriate refunds to the School Board as required by Paragraph 7. Upon the termination of the Agency created by Paragraph 1, the County shall assign to the School Board all warranties pertaining to the Construction Project. In the event that any such warranty is not assignable, or in the event that any cause of action is created in favor of the County against a third party arising out of the Construction Project and such cause of action is not assignable to the School Board,

then the Agency created by Paragraph 1 shall remain insofar as is necessary to allow such warranties or causes of action to be pursued and enforced in the name of the County or in the name of the School Board. All causes of action which arise in favor of the County against a third party arising out of the Construction Project shall be assigned to the School Board upon request of the School Board and the School Board shall be allowed to pursue such causes of action in its own name or in the name of the County.

11. Severability. If any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

In the event any portion of this Agreement is rendered invalid or unenforceable by a court of competent jurisdiction or by an act of the Legislature, or in the event the School Board determines that the County has materially breached the terms of this Agreement, the School Board shall have the right to purchase the Construction Project from the County. The School Board shall notify the County Manager and pay a purchase price of Ten Dollars. Within forty-five (45) days of the receipt of such notice, the County shall execute and deliver all necessary documents conveying to the School Board good and marketable title to the affected School.

12. Governing Law. North Carolina law shall govern this Agreement.

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

[SEAL]
ATTEST:

PENDER COUNTY, NORTH CAROLINA

Clerk Board of Commissioners

By: _____
Chairman, Board of Commissioners

[SEAL]
ATTEST:

PENDER COUNTY BOARD OF EDUCATION

By: _____ Secretary

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

Finance Director
Pender County, North Carolina

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

Finance Director
Pender County Board of Education

STATE OF NORTH CAROLINA; PENDER COUNTY

I, _____, a Notary Public of Said State and
County, do hereby certify that _____ and _____ personally came before me this
day and acknowledged that they are the Chairman and Clerk, respectively, of the Board of
County Commissioners of Pender County, North Carolina, and that by authority duly given and
as the act of Pender County, North Carolina, the foregoing instrument was signed in the
County's name by the Chairman of its Board of Commissioners, sealed with its corporate seal
and attested by such Clerk.

Witness my hand and official seal this _____ day of _____, 2010.

Notary Public

My Commission expires: _____

STATE OF NORTH CAROLINA; PENDER COUNTY

I, _____, a Notary Public of said State and County, do hereby certify that _____, with whom I am personally acquainted, who, being by me duly sworn, says that he is the Secretary of the Pender County Board of Education and that _____ is the Chairman of such Board of Education, the Board described in and which executed the foregoing instrument; that he knows the common seal of said Board; that the seal affixed to the foregoing instrument is said common seal, and the name of the Board was subscribed thereto by the said Chairman; and that said Chairman and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the Board and that the said instrument is the act and deed of said Board.

Witness my hand and official seal this _____ day of _____, 2010.

Notary Public

My Commission expires:

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Property Description Addendum

That certain tract of land described in that Warranty Deed from Nancy Trask Wood (unmarried), and Nell Trask Hooper and husband, Joseph W. Hooper, Jr., to Pender County, recorded in Book 1490 at Page 156 of the Pender County Registry, reference to which is hereby made for a more particular description.