Agenda Request Form

Cherokee County School District

Meeting Date	Agenda Item Number
October 18, 2018	H-1

Title

Property Purchase for Future Cherokee County School District (CCSD) Use

Requested Action

School Board Consideration of Approval of Property Purchase for Future Cherokee County School District (CCSD) Use

Summary Explanation and Background

The School Board is requested to approve the purchase (pending favorable soil testing and environmental study results) of approximately 63.60 acres +/- located along the east side of Reinhardt College Parkway (Highway 140) 2.8 miles north of the intersection of Riverstone Parkway and Waleska Road for future use by CCSD. The property cost is $26,000 per acre.

Major System Priority

Addressing Student Population Growth

Financial Impact

$26,000 per acre

Exhibits: (List)

Contract for Sale of Realty and Location Map

Board Action

(For Official School Board Records Only)

Source of Additional Information

Tom Roach, School Board Attorney	770.479.1406
Dr. Brian Hightower, Superintendent	770.479.1871
Bill Sebring, Chief Support Services Officer	770.479.1871

OFFICE OF THE SUPERINTENDENT OF SCHOOLS

Approved in Open Board Meeting on: _____
(Date)

By: _____
(School Board Chairman)

Initialized: 3/3/99
Revised: 2/1/16

CONTRACT FOR SALE OF REALTY

Date: September 27, 2018

The undersigned Purchaser agrees to buy, and the undersigned Seller agrees to sell:

> All that tract or parcel of land lying and being in Land Lot Nos. 136 and 137 of the 14th District, 2nd Section, Cherokee County, Georgia, containing a purported 63.60 acres more particularly described in Exhibit "A" attached hereto and made a part hereof, (the "Property")

including all plants, trees and shrubbery now on the premises.

The purchase price of said Property shall be:

Twenty-six Thousand ($26,000.00) Dollars per acre.

The purchase price shall be based on a per acre price to the nearest one-hundredth of an acre based upon that boundary survey attached hereto as Exhibit "A" or by a new survey that may be obtained by Purchaser in Purchaser's sole discretion. At closing Purchaser shall pay as follows:

ALL CASH AT CLOSING

Purchaser will pay an earnest money deposit of Twenty Thousand ($20,000) dollars to Law Offices of Edwards & Johnson, LLC within 5 days of the execution hereof. The earnest money shall be applied as part payment of the purchase price of said Property at the time sale is consummated.

Seller agrees to furnish good and marketable title to said Property and agrees to convey said Property by warranty deed to Purchaser at time sale is consummated, subject to:
(1) All valid restrictions of record, and; (2) Zoning ordinances affecting the Property.

The Purchaser shall have **Forty-five (45) days** after acceptance of this Contract ("Condition Satisfaction Period") in which to examine title and examine the suitability of the subject Property for the construction of a public elementary school. Purchaser may furnish Seller with a written statement of objections affecting the marketability of said title or the use of the Property as indicated ("Statement of Objections"), if any.

Seller shall have **five (5) consecutive calendar days** after receipt of such written objections, if any, ("Sellers Response Period") to either (i) satisfy such objections; (ii) notify Purchaser in writing that Seller agrees to satisfy such objections at or prior to closing; or (iii) notify Purchaser in writing that Seller either cannot or will not satisfy such objections. Notwithstanding anything contained herein to the contrary, Seller shall satisfy, cure or cause to be released or bonded off of the Property, at or prior to closing (i) all materialmen's and mechanic's liens affecting the Property and arising out of work done for or on behalf of Seller, (ii) lien(s) or the interest of any other person(s) or any other entity(ies) securing a loan to Seller, (iii) any tax liens affecting the Property, and (iv) any judgment lien(s) against Seller which attaches to the Property prior to closing. Seller shall have no obligation to cure any other title objections except (i) matters which Seller causes to be placed on the Property after the date hereof without the written consent of Purchaser; and (ii) those objections which Seller has agreed to satisfy. In the event that Seller does not provide to Purchaser, prior to the expiration of Seller's Response

Period, a written response to a title objection as to which Purchaser has provided timely written notice in the Statement of Objections, Seller shall be deemed to have refused to satisfy the same.

In the event that, prior to the expiration of Seller's Response Period, Seller notifies Purchaser that Seller either cannot or will not satisfy, or is deemed to have refused to satisfy, an objection described in the Statement of Objections, then Purchaser may elect to (i) waive any such objection and proceed to closing; or (ii) terminate this Contract by giving written notice of such termination to Seller, in which case Seller shall return all earnest monies to Purchaser, and all rights and obligations of the parties shall expire and this Contract shall become null and void, except for provisions herein which are specified to survive termination of this Contract. Said election shall be made by Purchaser by giving written notice thereof to Seller no later than **five (5) days** following the expiration of Seller's Response Period. In the event that Purchaser does not provide to Seller, prior to the expiration of said period, a written notice of Purchaser's election, Purchaser shall be deemed to have elected to waive any such objection and proceed to closing. Any matters as to which Purchaser does not make timely objection as hereinabove provided, and any matters waived by Purchaser pursuant to clause (i) of this paragraph, shall be deemed to be "Permitted Title Exceptions".

Seller and Purchaser agree that such papers as may be legally necessary to carry out the terms of this Contract shall be executed and delivered by such parties at time sale is consummated.

Time is of the essence in this contract.

This Contract constitutes the sole and entire agreement between the parties hereto and no modification of this Contract shall be binding unless attached hereto and signed by all parties to this Contract. No representation, promise, or inducement not included in this Contract shall be binding upon any party hereto.

All notices, including demands, required or permitted hereunder shall be in writing and delivered either (1) in person; (2) by a prepaid overnight delivery service; (3) by facsimile transmission; or (4) by the United States Postal Service, postage prepaid, registered or certified return receipt requested. Notice shall be deemed as to have been given as of the date and time it is transmitted if the sending fax produces a written confirmation with the date, time, and telephone number to which the notice was sent. Receipt of notice by the broker representing a party as a client shall be deemed to be notice to that party for all purposes herein.

In the event that the last day for closing falls on a Saturday, Sunday or legal holiday, the last day for closing shall automatically be extended to the next succeeding regular business day. Whenever the last day, for the exercise of any privilege or the discharge of any duty hereunder, shall fall upon a Saturday, Sunday or legal holiday, the party having such privilege or duty shall have until the next succeeding regular business day to exercise such privilege or to discharge such duty.

Separate counterparts of this Contract may be executed by the parties, and any such counterpart(s) into which a full complement of signatures has been inserted, whether or not those signatures are contained on separate signature pages, shall be deemed a valid original hereof. A counterpart bearing a signature sent by facsimile or other electronic transmission or bearing a copy of either an original signature or a facsimile or other electronically transmitted signature shall be deemed to bear a valid original signature.

The following stipulations shall, if conflicting with printed matter, control:

SPECIAL STIPULATIONS

1) Seller shall pay Georgia real estate transfer tax and any brokerage fees or commissions, as outlined in Special Stipulation #20 below.

2) Purchaser shall pay the cost of a title examination, the cost of any due diligence testing, preparation of a General Warranty Deed, title insurance and attorney's fees associated with the closing.

3) Seller shall pay the cost, if any, of any corrective work that may be necessary to provide good marketable title to the Property.

4) Sale shall be closed on or before Fifty-five (55) days from date of contract.

5) Taxes for the current year shall be prorated as of the date of closing.

6) This Contract is subject to and contingent upon approval of the above described tract by the State Department of Education for the construction of a 1200 FTE elementary school. In the event the State Department of Education does not approve said tract then in that event this Contract shall become null and void and all earnest monies paid herein shall be immediately returned to Purchaser.

7) This Contract is subject to and contingent upon an archeological survey of subject tract for Native American or historically significant artifacts. In the event historical artifacts are located on said tract this Contract is voidable at Purchaser's sole discretion. In the event Purchaser chooses to void this Contract, all earnest monies paid herein shall be immediately returned to Purchaser.

8) Seller hereby authorizes Purchaser to enter into and upon said real property for purposes of conducting surveys, engineering studies or any other testing deemed necessary by Purchaser and all agree to hold Seller harmless from all claims, injuries and damages arising out of or related to the exercise of these rights.

9) This Contract is subject to and contingent upon an engineering analysis and site suitability report prepared by a certified engineer designated by Purchaser. Purchaser shall review said analysis and report, and Purchaser shall have absolute discretion in determining whether the Property is suitable for Purchaser's purpose. If Purchaser determines the subject Property is not suitable for Purchaser's purpose, then this Contract shall be cancelled and all earnest monies paid shall be immediately returned to Purchaser.

10) This Contract is subject to approval by Cherokee County (Road and Streets Department) for sight distances and road/highway suitability. If Cherokee County determines that the Property is not suitable for the construction of a 1200 FTE elementary school due to inadequate site distance or county road suitability, this Contract shall be null and void and all earnest monies paid hereunder shall be returned.

11) It is agreed by and between the parties hereto that this sale is negotiated under threat of eminent domain.

12) This Contract is subject to and contingent upon the Cherokee County School System acquiring a sufficient amount of right-of-way to provide adequate access to bus traffic. If Purchaser determines that a sufficient amount of right-of-way cannot be acquired, then this Contract shall be cancelled and the Seller shall immediately return all earnest monies to Purchaser.

13) This Contract is subject to and contingent upon the viability of building a 1200 FTE elementary school on subject Property, as determined to be necessary by the Purchaser. In the event that

Purchaser determines said Property is not suitable for said purposes, then this Contract shall be cancelled and all earnest monies paid shall be immediately returned to Purchaser.

14) This Contract is subject to and contingent upon the Purchaser's determination that sanitary sewerage service or installation of an approved septic system is available at reasonable cost to and upon the subject Property, which sanitary sewerage system or septic system shall be sufficient to support a twelve hundred (1200) FTE elementary school, and which sanitary sewerage system or septic system shall also be acceptable to the Cherokee County Water & Sewerage Authority, Cherokee County and the Purchaser. Said sanitary sewerage system shall be a gravity sewerage system or septic system of a sufficient size and installed at an acceptable location as deemed necessary by the Purchaser. If Purchaser determines that sanitary sewerage service is not available at a reasonable cost or a suitable septic system cannot be installed at a reasonable cost, then this Contract shall be cancelled, and all earnest monies paid shall be immediately returned to Purchaser.

15) This Contract is subject to and contingent upon approval of the Property by the Georgia Department of Transportation. In the event the Georgia Department of Transportation does not approve said tract, then this Contract shall become null and void, and all earnest monies paid herein shall be immediately returned to Purchaser.

16) This Contract is subject to and contingent upon a final vote by the members of the Cherokee County Board of Education to approve the purchase of the Property. In the event that the Board of Education does not vote to approve the purchase of the subject Property, then this Contract shall become null and void, and all earnest monies paid shall be immediately returned to Purchaser.

17) This Contract is subject to and contingent upon the Purchaser's determination that the subject site may be appropriately served with a sufficient amount of water volume and water pressure to support a 1200 FTE elementary school. In the event that Purchaser determines the site is not suitable under the above-stated conditions, then this contract shall become null and void, and all earnest monies shall be immediately returned to the Purchaser.

18) The Parties recognize and understand that the Purchaser is being represented by **Thomas A. Roach, Jr**., of Roach, Caudill & Gunn, LLP, 111 West Main Street, Canton, Georgia 30114 and that the Seller is being represented by **B. Glen Johnson of** Law Offices of Edwards & Johnson, LLC. Except as provided hereinabove, each party shall be responsible for their own attorney's fees

19) Seller may elect to structure the sale of the Property as part of a "deferred like-kind exchange of real property" (a "1031 Exchange" or "1033 Exchange") as governed by Section 1031 of the Internal Revenue Code of 1986, as amended. Accordingly, Purchaser shall cooperate with respect to any such 1031 or 1033 Exchange requested by Seller, provided there is no additional cost or liability to Purchaser.

20) In negotiating this Contract and representing the Seller's interest, **Peter Psareas with EXP Realty("Agent")** has rendered a valuable service and Seller agrees to pay Agent a commission equal to 8% of the final sales price in accordance with the listing agreement dated January 6, 2018 between Seller and Agent. Agent may enforce this Contract to the extent of his commissions due herein only against the Seller. Seller and Agent acknowledge that Purchaser shall have no obligation to pay any brokerage fees or commissions under any circumstances.

21) Seller may lease the property after closing for no more than 60 days at a rental rate of $10 per month. Seller must sign a lease as may be prepared by purchaser in which Seller agrees to indemnify

Purchaser, maintain insurance while in possession of the property, and surrender possession at the end of the term. In the event Seller does lease back the property Seller shall be responsible for any of Purchaser's attorney's fees and cost if they hold over beyond the term.

IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals the day and year first above written.

CHEROKEE COUNTY SCHOOL SYSTEM

BY: _____(SEAL)

ITS: CHIEF SUPPORT SERVICES OFFICER

PURCHASER

Witness

Notary Public
My Commission Expires: 01-03-2021

VELMA J. BROWN NOTARY PUBLIC CHEROKEE COUNTY, GA Exp. Jan. 03, 2021

_____(SEAL)
EXECUTOR OF THE ESTATE OF
WILTON JOHN POPE

SELLER

Witness

Notary Public
My Commission Expires: 5/23/2021

RICHARD R PETTYS JR. NOTARY PUBLIC CHEROKEE COUNTY, GEORGIA MY COMMISSION EXPIRES MAY 23, 2021

_____(SEAL)

AGENT

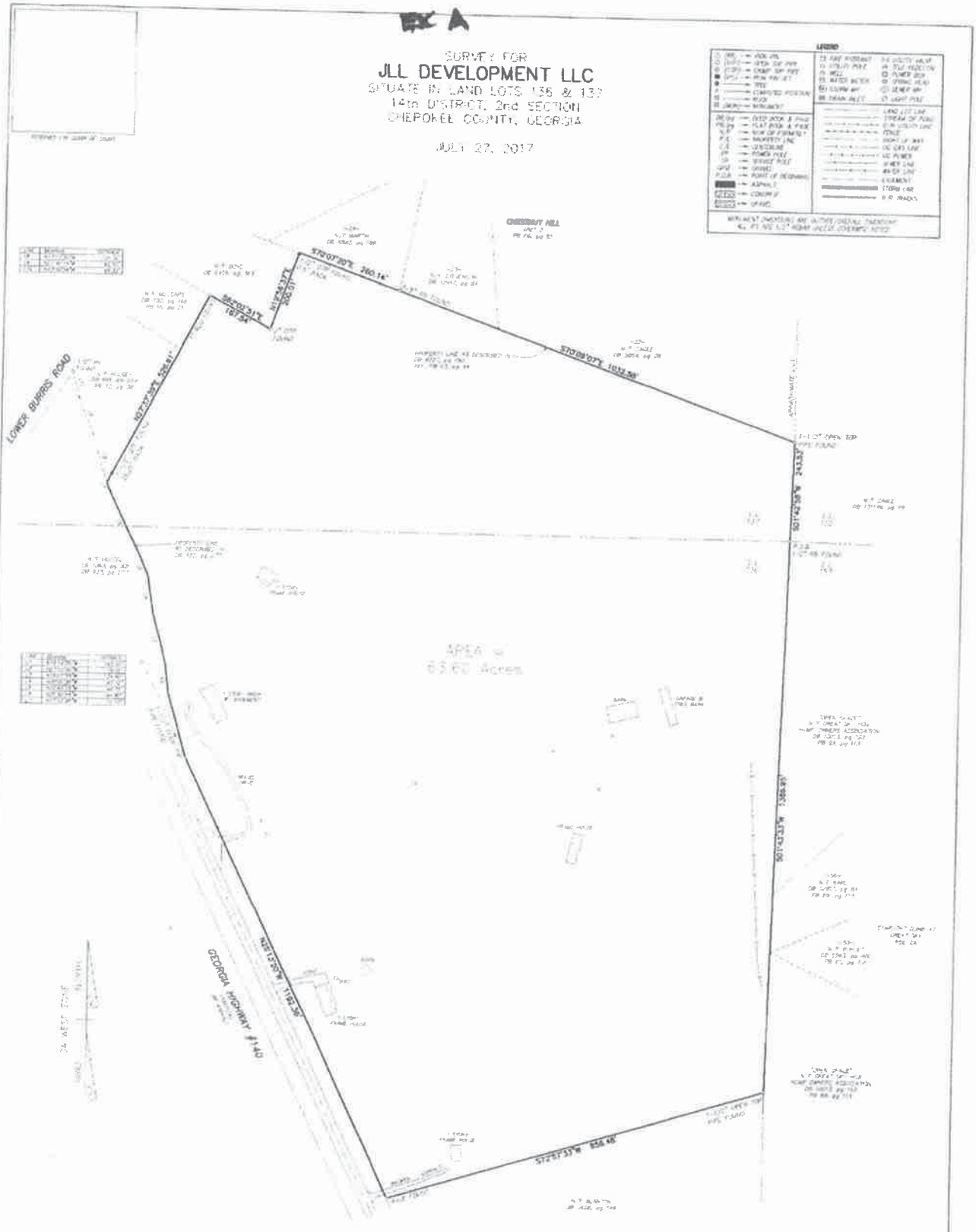
EX A

SURVEY FOR

JLL DEVELOPMENT LLC

SITUATE IN LAND LOTS 136 & 137
14th DISTRICT, 2nd SECTION
CHEROKEE COUNTY, GEORGIA

JULY 27, 2017



GEORGIA SURVEYOR'S CERTIFICATION

DISCLOSURE & NOTICE

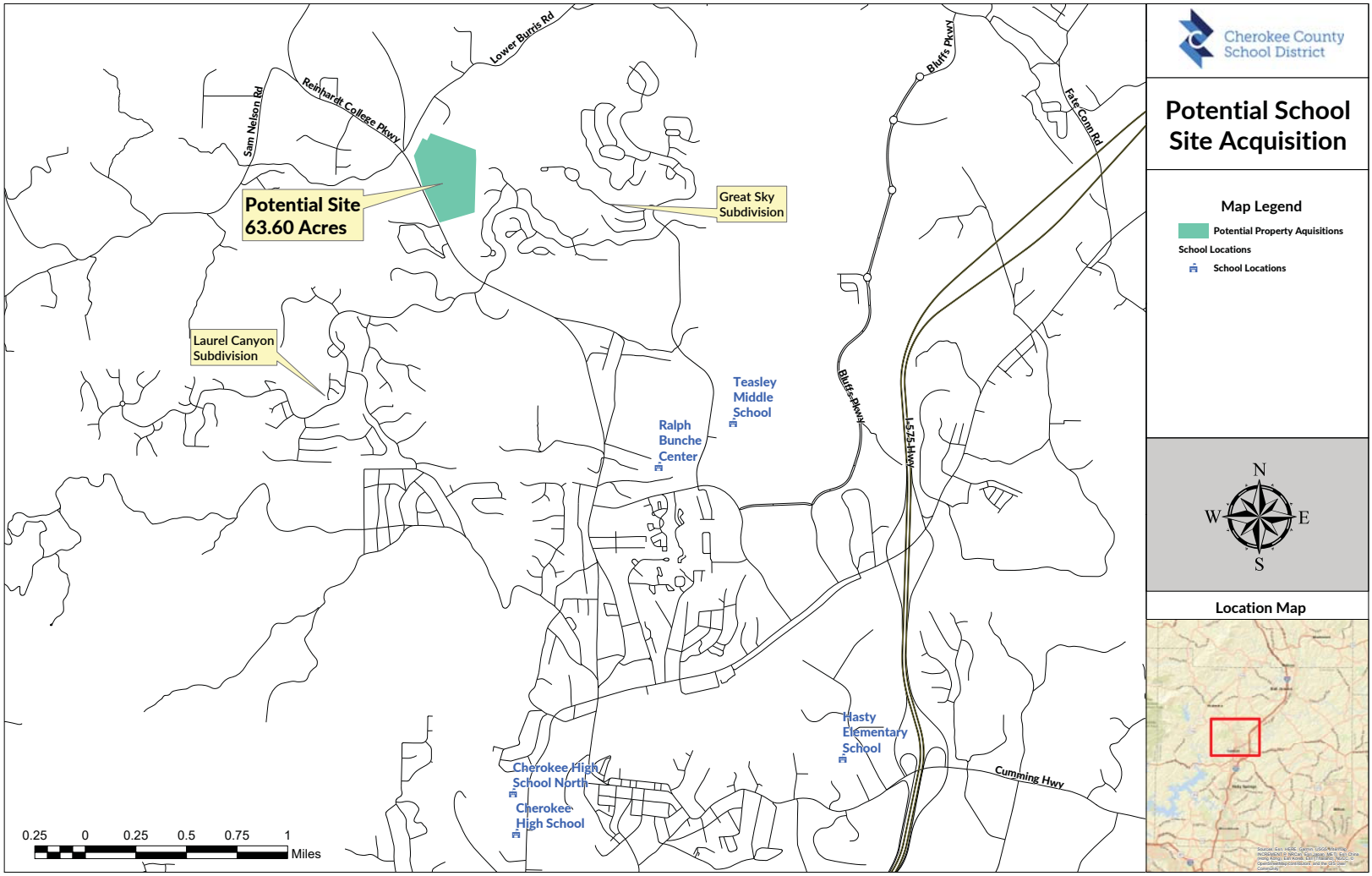
SURVEY DATA:

CLOSURE PRECISION:

FIELD SURVEY:

PREPARED BY
Gordon D. Motley
2775 LOVING ROAD
MORGANTON, GA. 30560
404-771-7117

DRAWN BY GDM JOB CANTON 61



Cherokee County School District

Potential School Site Acquisition

Map Legend

Potential Property Aquisitions

School Locations

School Locations

N

W E

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Location Map