

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: June 18, 2025

SUBJECT: Grant Award – Berkeley Park Sports Complex

PRESENTER: Bruce Gilliam, Recreation Director
Randall L. Cox, Finance Director

ATTACHMENT: Yes

1. Budget Amendment
2. Grant Award

SUMMARY OF REQUEST:

Henderson County's Recreation Department has been awarded a \$50,000 destination enhancement grant from Henderson County Tourism Development Authority (TDA) for the Berkeley Park Sports Complex. Funds must be used for the development of a multi-sports complex.

The Board is requested to approve and accept the Henderson County TDA grant funds and approve the related budget amendment.

BOARD ACTION REQUESTED:

The Board is requested to approve the attached Grant Award and Budget Amendment as presented.

Suggested Motion:

I move the Board approve the attached Grant Award and Budget Amendment as presented.

GRANT AGREEMENT

This GRANT AGREEMENT (the “Grant Agreement”) is entered into as of the Effective Date between the Henderson County Tourism Development Authority, a public authority pursuant to the laws of North Carolina, (“Grantor”) and Henderson County, a county government pursuant to the laws of North Carolina, (“Grantee”). Each of the Grantor and the Grantee is a “Party” and collectively they are the “Parties”.

WHEREAS, pursuant to the North Carolina Session Law 2013-61, the Grantor provides financial assistance for tourism-related projects designed to increase the use of lodging facilities, meeting facilities or convention facilities in Henderson County and/or to attract tourists or business travelers to Henderson County; and,

WHEREAS, the Grantee has submitted the application attached hereto and incorporated herein as Exhibit A (the “Application”) to the Grantor requesting partial funding for the construction of the Project (as defined below); and,

WHEREAS, the Grantor has determined that the Project is designed to increase the use of lodging facilities, meeting facilities, or convention facilities in Henderson County and/or to attract tourists or business travelers to Henderson County, and therefore wishes to provide partial funding for the Project as described in and subject to the terms and conditions of this Grant Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

ARTICLE I: THE GRANT

1.01 The Project. The Project is described in Exhibit A attached hereto and hereby incorporated herein. The Project is located at a property that (the “Project Property”).

1.02 The Grant. Subject to the terms and conditions set forth herein, the Grantor agrees to make a grant to Grantee in the Amount of \$50,000 to partially fund the Project (the “Grant”). The Grant will be disbursed as described below. The Grant may only be used for capital expenditures. Notwithstanding anything herein to the contrary, the Grantee agrees and acknowledges that all of the Grantor’s obligations under this Grant Agreement, including its obligation to disburse the Grant, are contingent upon the distribution to Grantor from Henderson County of sufficient funds to allow the Grantor to make the Grant.

1.03 Disbursements. The Grant will be disbursed as follows:
The Grant will be disbursed in one (1) disbursement. The disbursement shall be paid within thirty (30) days from the closing date of the Land purchase.

1.04 Term. The term of this Grant Agreement will commence on the Effective

Date and continue for four years after the Completion Date (as noted in the applicable Annual Report and approved by the Grantor) unless terminated earlier according to the terms of this Grant Agreement.

ARTICLE II: REPRESENTATIONS AND WARRANTIES

The Grantee represents and warrants to the Grantor that:

2.01 Existence, Qualification and Power. The Grantee (a) is duly organized, validly existing and in good standing under the laws of its state of formation, and (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and execute, deliver and perform its obligations under this Grant Agreement.

2.02 Authorization; No Contravention. The execution, delivery and performance by the Grantee of this Grant Agreement, has been duly authorized by all necessary action, and does not (a) contravene the terms of the Grantee's organizational documents; (b) conflict with or result in any breach or contravention of, or the creation of any lien under any contract to which the Grantee is a party, including any lease or other agreement related to the Project Property, or any order, injunction, writ or decree of any governmental authority or any arbitral award to which the Grantee is subject; (c) violate any law; or (d) result in any limitations on any licenses, permits or other approvals applicable to the business, operations or properties of the Grantee.

2.03 Binding Effect. This Grant Agreement has been duly executed and delivered by the Grantee. This Grant Agreement constitutes a legal, valid and binding obligation of the Grantee, enforceable against the Grantee in accordance with its terms, except as enforceability may be limited by applicable bankruptcy law or by equitable principles relating to enforceability.

2.04 The Project. The Project will be located at the Project Property in Henderson County, North Carolina. Grantee will be the fee simple owner of the Project Property. No third party consents, including but not limited to the consent of any landlord or other landowner, are required to be obtained by Grantee to commence or complete the Project.

2.05 Disclosure. Neither the Application, nor any accompanying or additional information or materials submitted to the Grantor relating to the Project, including the representations and warranties in this Grant Agreement, contain any material misstatement of fact or omit to state any material fact regarding the Grantee or the Project.

2.06 No Material Adverse Change. Since the date of the Application, there have been no material adverse changes to the Grantee or the Project.

ARTICLE III: AFFIRMATIVE COVENANTS

During the Term of this Grant Agreement, the Grantee must:

3.01 Annual Reports. Deliver Annual Reports to the Grantor via the methods described in Section 6.09 that include:

- (a) The expected or actual Commencement Date;
- (b) The expected or actual Completion Date;
- (c) After the Completion Date, a description of the increase in use of lodging facilities, meeting facilities or convention facilities in Henderson County, or the attraction of tourists or business travelers to Henderson County, as a result of the Project, including measurement techniques where applicable; and
- (d) A certification from the Grantee of the following as of the date of the Annual Report: (i) the representations and warranties of the Grantee contained in this Grant Agreement are true and correct in all material respects; and (ii) there is no Default or Event of Default under this Grant Agreement.

3.02 Notices. Promptly (and in any event within five business days) notify the Grantor in writing via the methods described in Section 6.09 of: (a) the occurrence of any Default or Event of Default; (b) any litigation, lien, demand, claim, notice, investigation or proceeding threatened against or affecting the Grantee and the Project; (c) any loss, damage or destruction related to the Project that may adversely affect the Project as represented by any and all terms of the Grant Agreement; (d) any breach of any contract related to the Project, including the Construction Contract; or (e) anything that could reasonably be expected to have a material adverse effect on the Project or the Grantee's ability to complete the Project. Each such notice must specify any portions of this Grant Agreement which have been breached and must set forth details of the reason for giving the notice and state what action the Grantee has taken and proposes to take with respect thereto.

3.03 Maintenance of Project. Maintain, preserve and protect the Project and obtain building risk insurance.

3.04 Compliance with Laws, Etc. Comply with the requirements of all laws, and obtain and maintain in good standing all required licenses, permits, authorizations and approvals of each governmental authority necessary to the conduct of its business or the Project.

3.05 Books and Records. Maintain and cause any contractors to maintain proper books of record and account, in which full, true and correct entries consistently applied must be made of all financial transactions and matters involving the Project.

3.06 Inspection Rights. Permit representatives and independent contractors of the Grantor to visit and inspect the Project and to discuss the Project and the Grantee's business with the Grantee's directors and officers, all at such reasonable times during normal business hours, upon reasonable advance notice; provided, however, that when a Default or an Event of Default exists the Grantor (or any of its representatives or independent contractors) may do any of the foregoing at any time during normal business

hours and without advance notice.

3.07 Use of Grant. Grant disbursements may only be used for the development of a multi-sport complex. Grant disbursements may not be used for the purchase of the Land, as set forth in the Application.

3.08 Recognition of Grantor. Recognize the Grant made by Grantor by:

(a) Acknowledging the Grantor when announcing sponsors or donors of the Project and in printed or on-site donor lists, fundraising materials and press releases, in all cases as approved in advance by Grantor;

(b) Promptly after the Effective Date and the Completion Date, issuing a press release (approved in advance by Grantor) sharing the details of the Project and acknowledging the Henderson County Tourism Development Authority as having made the Grant and distributing the press release to major media channels in Henderson County and across the Grantee's social media channels; and,

(c) Within ninety (90) days of the Completion Date, creating permanent signage on the Project Property (approved in advance by Grantor) that recognizes the tourism and lodging community and the Henderson County Tourism Development Authority for the Grant.

ARTICLE IV: NEGATIVE COVENANTS

During the Term of this Grant Agreement, Grantee will not:

4.01 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another entity; dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) or all or substantially all of the assets related to the Project; materially change ownership or management; or become a for-profit entity.

4.02 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Grantee on the Effective Date.

4.03 Change in Project. Alter, change, modify, add to or decrease the Project or its scope in any material way without the prior written consent of the Grantor and execution of an amended Exhibit A.

4.04 Defaults. Breach or default or take any action that could lead to a breach or default or termination of this Grant Agreement, any lease or other agreement related to the Project Property, any agreements to be submitted in a Disbursement Report or any other agreements related to the Project.

ARTICLE V: EVENTS OF DEFAULT AND REMEDIES

5.01 Events of Default. The occurrence of any of the following constitutes an Event of Default:

- (a) Grantee breaches or fails to perform or observe any covenant or agreement contained in this Grant Agreement;
- (b) Grantee institutes or consents to the institution of any proceeding under any bankruptcy or insolvency laws, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of the Grantee;
- (c) Grantor reasonably determines in its sole and exclusive judgment: (i) it is unlikely that the Project can be completed or it is unlikely that the Project can be completed without undue delay; (ii) the Project will not be completed in accordance with the description of the Project in Exhibit A; or (iii) the Project has experienced, or is reasonably likely to experience, an event that will have a material adverse effect on the Project or the Grantee's ability to complete the Project;
- (d) Any actual or threatened litigation, liens, demands, claims, notices, investigations or proceedings against or affecting the Grantee or the Project;
- (e) If the multi-sport complex is not under construction within 2 years of effective date; or
- (f) Any loss, damage or destruction related to the Project that may adversely affect the Project as represented by any and all terms of the Grant Agreement.

5.02 Remedies Upon Event of Default. If any Event of Default occurs, the Grantor may, but shall not be required to take, any one or more of the following actions:

- (a) Terminate this Grant Agreement;
- (b) If all or any portion of the Grant Amount has not yet been disbursed, delay all remaining disbursements of the Grant Amount and require the Grantee to present a Project update to the Grantor during its next funding cycle and/or cancel the remaining disbursements and terminate this Grant Agreement;
- (c) If any portion of the Grant Amount has been disbursed, send notice to the Grantee requiring it to repay the amount disbursed to the Grantor within thirty days; and/or
- (d) exercise on behalf of itself all rights and remedies available to it under this Grant Agreement and applicable law; provided, however, that notwithstanding anything herein to the contrary, upon the occurrence of an actual or deemed entry of an order for relief with respect to the Grantee under the Bankruptcy Code of the United States, the obligation of the Grantor to make any remaining disbursements will automatically terminate, without further act of the Grantor.

5.03 Termination. At the end of the Term of this Grant Agreement the Grantor

may require the Grantee to provide to the Grantor copies of all of its records regarding the Grant and the Project.

ARTICLE V: MISCELLANEOUS

6.01 Open Meetings and Public Records. The Grantee acknowledges and agrees that the Grantor is subject to the requirements regarding “public records” under all applicable statutes, regulations and other laws. All information disclosed to the Grantor which is a public record may be disclosed by the Grantor if requested. **GRANTOR IS NOT AND WILL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE RELEASE OF OR USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH GRANTOR.**

6.02 Attorney Costs, Expenses and Taxes. Each of Grantor and Grantee will remain liable for and pay its own fees and expenses, including legal, accounting, taxes, and any other fees, incurred in connection with the Project and this Grant Agreement. In the event of any dispute regarding this Grant Agreement, the prevailing Party will be entitled to recover reasonable attorneys’ fees and other costs incurred, in addition to any relief to which such Party may be entitled.

6.03 Nonliability of Grantor. The relationship between the Grantee and the Grantor is solely that of grantor and grantee. The Grantor does not have any fiduciary relationship with or duty to the Grantee arising out of or in connection with this Grant Agreement. The Grantor does not undertake any responsibility to the Grantee to review or inform the Grantee of any matter in connection with Project. The Grantee agrees that the Grantor will not be liable to the Grantee for any liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (including attorneys’ fees and other reasonable costs) of any kind or nature whatsoever suffered by the Grantee in connection with, arising out of, or in any way related to this Grant Agreement or the Project, or any act, omission or event occurring in connection therewith.

6.04 Indemnification by the Grantee. The Grantee agrees to indemnify and hold harmless the Grantor and its affiliates, directors, officers, employees, counsel, trustees, advisors, and agents from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorneys’ fees and other reasonable costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such indemnitee in any way relating to or arising out of or in connection with this Grant Agreement or the Project.

6.05 Integration; Counterparts; Amendment; Waiver; Severability. This Grant Agreement, including recitals and attached Exhibits, comprises the complete and integrated agreement of the Parties on the subject matter hereof and supersedes all prior agreements, written or oral, on such subject matter. This Grant Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. No amendment, consent or

waiver of any provision of this Grant Agreement, and no consent to any departure by the Grantee therefrom, will be effective unless in writing signed by the Grantor and the Grantee, and any such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No failure by the Grantor to exercise, and no delay by the Grantor in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any provision of this Grant Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Grant Agreement will not be affected or impaired.

6.06 Survival of Representations and Warranties. All representations and warranties made hereunder will survive the execution and delivery of this Grant Agreement.

6.07 Governing Law; Venue. This Grant Agreement will be governed by and construed in accordance with the substantive laws of North Carolina without regard to its conflict of laws provisions. Any legal action, suit or proceeding brought by either Party arising out of this Grant Agreement must be brought in a state or federal court in Henderson County, North Carolina, which will be the sole and exclusive venue for any such action, suit or proceeding.

6.08 Successors and Assigns; No Third Party Rights. The provisions of this Grant Agreement are binding upon and inure to the benefit of the Parties and their permitted successors and assigns; provided, however, that the Grantee may not assign or otherwise transfer the Grant or any of its rights, benefits or obligations hereunder. Nothing herein is intended or may be construed to confer upon or give any person other than the Grantor and the Grantee or their permitted successors and assigns, any legal or equitable rights, remedies or claims under or by reason of this Grant Agreement.

6.09 Notices, Reports, and Other Communications; Consents. All notices, reports, and other communications provided for or required by this Grant Agreement must be in writing and must be sent via a nationally recognized delivery service such as FedEx or UPS, electronically mailed or hand delivered to the applicable address:

if to the Grantor: **Henderson County Tourism Development Authority
201 South Main Street
Hendersonville, NC 28792**

if to the Grantee: **Henderson County Parks and Recreation
708 South Grove St
Hendersonville, NC 28792**

All such notices, reports, and other communications will be deemed to be given or made upon receipt by the relevant Party. Grantor may withhold any requested consent in its sole discretion.

6.10 Further Cooperation. At the request of Grantor, Grantee agrees to cooperate fully, to promptly execute any and all supplementary documents, and to promptly take all additional actions that may be necessary to give full force and effect to the terms of this Grant Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties have caused this Grant Agreement to be duly executed as of the Effective Date.

GRANTOR:

HENDERSON COUNTY TOURISM
DEVELOPMENT AUTHORITY

By: 

Name: Michelle Owens

Title: Executive Director

GRANTEE:

Henderson County Parks and Recreation

By: 
Bruce Gilliam (Apr 28, 2023 15:42 EDT)

Name: Bruce Gilliam

Title: Director He Sanderson County Parks and Rec