

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 19, 2026

SUBJECT: Grant Award – Tourism Development Authority

PRESENTER: Christopher Todd, Assistant County Manager

ATTACHMENTS: Yes – Grant Agreement

SUMMARY OF REQUEST:

The Tourism Development Authority has approved a grant to Henderson County for One Million Six Hundred Seventy-Five Thousand Dollars (\$1,675,000.00) to assist in funding the Henderson County Sports Complex sports lighting. The grant will disperse in equal payments over five years, totaling the full approved grant amount.

BOARD ACTION REQUESTED:

The Board is requested to approve the grant agreement between Henderson County and the Henderson County Tourism Development Authority, to fund the sports lighting as part of the Henderson County Sports Complex project.

Suggested Motion:

I move the Henderson County Board of Commissioners approve the grant agreement between Henderson County and the Henderson County Tourism Development Authority to fund the sports lighting as part of the Henderson County Sports Complex project.

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 (“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 requested that the Grantor provide partial funding for 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 the Berkeley Park Sports Complex. The Project is located on property in Henderson County that is approximately 16.91 acres with the address 69 Balfour Road, Hendersonville, NC 28791 and the tax PIN 9660-50-2876 (REID 10009954) as recorded in the Deed at Book 004206, Page 00036 (the “Project Property”). For purposes of clarity, the Project Property is only located in Henderson County.

1.02 The Grant. Subject to the terms and conditions set forth herein, the Grantor agrees to make a grant to Grantee of One Million Six Hundred Seventy-Five Thousand Dollars (\$1,675,000.00) to partially fund the Project (the “Grant”) in five annual equal parts. The Parties specifically agree that the Grant is to be used for lighting at the Project to allow night-time play at the fields contained at the Project. The Grant may not be used for any other purpose related to the Project without amendment of this Agreement. 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:

(a) The Grant will be disbursed annually over five years, the first disbursement to occur within thirty (30) days of the execution of this Grant agreement. Provided funding is available, each disbursement shall be \$335,000.00.

(b) Each disbursement thereafter is conditioned upon receipt by Grantor of the Annual Report described in Section 3.01 and approval by Grantor (in the Grantor's sole discretion) of the information provided. If all conditions described in this Grant Agreement are met, the Grantor will disburse to Grantee on or before thirty days after its receipt of each Annual Report. Each disbursement may be made by Grantor by check or by other transfer of funds as may be agreed upon between the Parties.

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 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) violate any law; or (b) result in any limitations on any licenses, permits or other approvals applicable to the business, operations or properties of the Grantee.

2.03 The Project. The Project is located at the Project Property in Henderson County, North Carolina. Grantee warrants that it has the full authority over the Project Property, that the Project may be constructed upon the Project Property and all third party consents, including but not limited to the consent of any landlord, have been obtained to commence or complete the Project.

2.04 Disclosure. No 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.

ARTICLE III: AFFIRMATIVE COVENANTS

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

3.01 Annual Reports. Deliver Annual Reports to the Grantor within 60 days of the end of Grantor's fiscal year 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;

(d) A description of the efforts the Grantee is making to book overnight tournaments at the Project, including how Grantee is providing staffing support for the Project, and a listing for the just completed and upcoming fiscal year of those tournaments that have been sought and those that have been booked; and,

(e) 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 5.09 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; 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, including a change in Grantee's resources for the Project's sustainability, including in marketing, booking and maintenance. 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 including maintaining appropriate 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 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) Within one hundred eighty (180) 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: EVENTS OF DEFAULT AND REMEDIES

4.01 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) 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 set forth herein; 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;

(c) Any actual or threatened litigation, liens, demands, claims, notices, investigations or proceedings against or affecting the Project; or

(d) 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.

4.02 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 has not yet been disbursed, delay all remaining disbursements of the Grant and require the Grantee to present a Project update to the Grantor and/or cancel the remaining disbursements and terminate this Grant Agreement;

(c) If any portion of the Grant 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.

ARTICLE V: MISCELLANEOUS

5.01 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.

5.02 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.

5.03 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.

5.04 Indemnification by the Grantee. The Grantee agrees to indemnify, defend 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.

5.05 Integration; Counterparts; Amendment; Waiver; Severability. This Grant Agreement, including recitals, comprises the complete 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.

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

5.07 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.

5.08 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.

5.09 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
 1 Historic Courthouse Square
 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.

5.10 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.

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: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____