

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: December 4, 2006

SUBJECT: N.C. Parks and Recreation Trust Fund (PARTF) Grant Agreement – Edneyville Community Center Project

ATTACHMENTS: Grant/Project Agreement

SUMMARY OF REQUEST:

Attached for the Board's consideration and approval is a grant/project agreement from the N.C. Department of Environment and Natural Resources – Division of Parks and Recreation for the Edneyville Community Center Project. As the Board is probably aware, the scope of the project is to include a community center, walking trail, soccer field and a youth baseball field. Work on the project may not proceed until both parties have executed the contract.

The term of this agreement is for three years with a PARTF grant amount of \$500,000. A dollar-for-dollar local government match is required in the amount of \$500,000. These matching funds have not been appropriated in the current fiscal year budget. However, there will be approximately \$500,000 in one time Medicaid savings this fiscal year due to the State capping the County's cost for one year.

BOARD ACTION REQUESTED:

Staff recommends that the Board of Commissioners consider approving the contract for this project in the Edneyville Community and to consider appropriating the required matching funds in the next fiscal year (FY2008) budget.

Suggested Motion:

I move that the N.C. Parks and Recreation Trust Fund Grant/Project Agreement for the Edneyville Community Center Project be approved authorizing the Chairman to execute the agreement and direct staff to prepare a budget amendment appropriating the required matching funds for this grant project.



North Carolina Department of Environment and Natural Resources
Division of Parks and Recreation

Michael F. Easley, Governor

William G. Ross Jr., Secretary

Lewis R. Ledford, Director

November 6, 2006

Mr. Rick Harris
Director of Parks and Recreation
County of Henderson
801 Glover Street
Hendersonville, NC 28792

Dear Mr. Harris:

Enclosed please find four (4) originals of Contract Number **P07038** between the County of Henderson and the North Carolina Department of Environment and Natural Resources (DENR). In order for the Department to execute these documents, **you must return all four originally-signed and notarized contract documents to the following address:**

Mr. John Poole
Department of Environment and Natural Resources
Division of Parks and Recreation
1615 Mail Service Center
Raleigh, NC 27699-1615

Please be advised that no work to be performed under this contract can take place until **both parties** have executed the contract. *Failure to return the documents for execution by the Department within **45 days** after receipt may result in the Department's withdrawal of the offered contract amendment.*

In addition, please send an email notification to john.poole@ncmail.net referencing the above contract number when these contracts are returned to us. This will assist us in tracking the contract process and expediting the full execution of the contract. Should you have any questions regarding this contract, please contact Mr. John Poole at (919) 715-2662.

Sincerely,

Bayard Alcorn
Manager, Grants and Special Studies Program

Enclosure

cc: Tammy Dodd
Traci Rains

Contract Number: P07038

Grantee's Federal I.D.
566000307

N.C. Parks and Recreation Trust Fund Project Agreement

Grantee: County of Henderson
Project Number: 2006 - 481

Project Title: Edneyville Community Center

Period Covered By This Agreement: December 1, 2006 to November 30, 2009

Project Scope (Description of Project):

Community Center, Walking Trail, Soccer Field, Youth Baseball Field

Project Costs:	PARTF Amount	\$ <u>500,000</u>
	Local Government Match	\$ <u>500,000</u>

Conditions

The North Carolina Department of Environment and Natural Resources (hereinafter called the "Department") and County of Henderson (hereinafter referred to as "Grantee") agree to comply with the terms, promises, conditions, plans, specifications, estimates, procedures, project proposals, maps, and assurances described in the North Carolina Parks and Recreation Trust Fund (PARTF) administrative rules and grant application which are hereby by reference made a part of the PARTF grant contract and which are on file with the Division of Parks and Recreation.

Now, therefore, the parties hereto do mutually agree as follows:

Upon execution of this grant agreement, the Department hereby promises, in consideration of the promises by the Grantee herein, to obligate to the Grantee the grant amount shown above. The Grantee hereby promises to efficiently and effectively manage the funds in accordance with the approved budget, to promptly complete grant assisted activities described above in a diligent and professional manner within the project period, and to monitor and report work performance.

The parties to this contract agree and understand that the payment of the sums specified in this contract is dependent and contingent upon and subject to the appropriation, allocation and availability of funds for this purpose to the Department.

Eligible Project Costs and Fiscal Management

The PARTF grant amount must be matched on at least a dollar-for-dollar basis by the Grantee. To be eligible, project costs must be incurred during the contract period, be documented in the grant application, and described in the project scope of this agreement, and initiated and/or undertaken after execution of this agreement by the Grantee and the Department.

The Grantee agrees to comply with all applicable federal, state and local statutory provisions governing purchasing, construction, land acquisition, fiscal management and the environment including but not limited to the following:

North Carolina Archives and History Act; Prime Agricultural and Forest Lands (N.C. Executive Order #96); North Carolina Executive Order #16; Local Government Budget and Fiscal Control Act (G.S. 159); Formal Contracts, Informal Contracts and Purchasing (G.S. 44A-26, G.S. 58-31 to 58-40, G.S. 87-15, G.S. 133-1.1, G.S. 133-3, G.S. 133 Article 3, G.S. 136-28.4, G.S. 143 Article 3D, G.S. 143-48, and G.S. 143-128 to 143-135); Conflict of Interest (G.S. 14-234); Americans With Disabilities Act of 1990 (P.L. 101-336); N.C. State Building Code; and the North Carolina Environmental Policy Act (G.S. 113A-1 to G.S. 113A-12), Sales Tax Refund (G.S. 105-164.14), and OMB Circular A-87 Cost Principles for Local, State, and Indian Tribal governments.

The Grantee agrees it provides a drug-free workplace in accordance to the requirements of the Drug-Free Workplace Act of 1988, CFR Part 3017.60D.

The Grantee agrees to permit periodic audits and site inspections by the Department to ensure work progress in accordance with the approved project, including a close-out inspection upon project completion. After project completion, the Grantee agrees to conduct grant contract compliance inspections at least once every five years and to submit a Department provided inspection report to the Department.

The Grantee agrees land acquired with PARTF assistance shall be dedicated in perpetuity as a recreation site for the use and benefit of the public, and the dedication will be recorded in the deed of said property. The Grantee agrees to maintain and manage PARTF assisted development/ renovation projects for public recreation use for a minimum period of 25 years after project completion.

The Grantee agrees to operate and maintain the project site so as to appear attractive and inviting to the public, kept in reasonably safe repair and condition, and open for public use at reasonable hours and times of the year, according to the type of facility and area.

The Grantee shall agree to place utility lines developed with PARTF assistance underground.

If the project site is rendered unusable for any reason whatsoever, the Grantee agrees to immediately notify the Department of said conditions and to make repairs, at its own expense, in order to restore use and enjoyment of the project by the public.

The Grantee agrees not to discriminate against any person on the basis of race, sex, color, national origin, age, residency or ability in the use of any property or facility acquired or developed pursuant to this agreement.

The Grantee certifies that it (a) has neither used nor will use any appropriated funds for payment to lobbyists; (b) will disclose the name, address, payment details, and purposes of any agreement with lobbyists whom Grantee or its sub-tier contractor(s) or sub-grantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and will file quarterly updates about the use of lobbyists if material changes occur in their use.

IN WITNESS WHEREOF, the Grantee and the Department have executed this Agreement as of the date entered below.

GRANTEE (Local Government) Name County of Henderson

Grantee Signature (Chief Elected Official)

Typed Name and Title of Chief Elected Official

State of North Carolina, County of Henderson

On this _____ day of _____, 200____, personally appeared before me the said named _____, to me known and known to me to be the person described in and who executed the foregoing instrument, and he (or she) acknowledged that he (she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My commission expires _____, 200____.

(Signature of Notary Public) _____

NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES (DENR)

William G. Ross, Jr., Secretary

Witness: _____
Typed or Printed Name

By _____
DENR Department Head's Signature
or Authorized Agent

Witness: _____
Signature

**Attachment A
General Terms and Conditions
Governmental Entities**

DEFINITIONS

Unless indicated otherwise from the context, the following terms shall have the following meanings in this Contract. All definitions are from 9 NCAC 3M.0102 unless otherwise noted. If the rule or statute that is the source of the definition is changed by the adopting authority, the change shall be incorporated herein.

- (1) "Agency" (as used in the context of the definitions below) means and includes every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subagency of government. For other purposes in this Contract, "Agency" means the entity identified as one of the parties hereto.
- (2) "Audit" means an examination of records or financial accounts to verify their accuracy.
- (3) "Certification of Compliance" means a report provided by the Agency to the Office of the State Auditor that states that the Grantee has met the reporting requirements established by this Subchapter and included a statement of certification by the Agency and copies of the submitted grantee reporting package.
- (4) "Compliance Supplement" refers to the North Carolina State Compliance Supplement, maintained by the State and Local Government Finance Agency within the North Carolina Department of State Treasurer that has been developed in cooperation with agencies to assist the local auditor in identifying program compliance requirements and audit procedures for testing those requirements.
- (5) "Contract" means a legal instrument that is used to reflect a relationship between the agency, grantee, and subgrantee.
- (6) "Fiscal Year" means the annual operating year of the non-State entity.
- (7) "Financial Assistance" means assistance that non-State entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations, and other assistance. Financial assistance does not include amounts received as reimbursement for services rendered to individuals for Medicare and Medicaid patient services.
- (8) "Financial Statement" means a report providing financial statistics relative to a given part of an organization's operations or status.
- (9) "Grant" means financial assistance provided by an agency, grantee, or subgrantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or subgrantee during the performance of the grant.
- (10) "Grantee" has the meaning in G.S. 143-6.2(b): a non-State entity that receives a grant of State funds from a State agency, department, or institution but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission. For other purposes in this Contract, "Grantee" shall mean the entity identified as one of the parties hereto.
- (11) "Grantor" means an entity that provides resources, generally financial, to another entity in order to achieve a specified goal or objective.
- (12) "Non-State Entity" has the meaning in N.C.G.S. 143-6.2(a)(1): A firm, corporation, partnership, association, county, unit of local government, public authority, or any other person, organization, group, or governmental entity that is not a State agency, department, or institution.
- (13) "Public Authority" has the meaning in N.C.G.S. 143-6.2(a)(3): A municipal corporation that is not a unit of local government or a local governmental authority, board, commission, council, or agency that (i) is not a municipal corporation and (ii) operates on an area, regional, or multiunit basis, and the budgeting and accounting systems of

benefits under this Contract is an incidental beneficiary only.

Indemnity

Indemnification: In the event of a claim against either party by a third party arising out of this contract, the party whose actions gave rise to the claim is responsible for the defense of the claim and any resulting liability, provided that a party may not waive the other party's sovereign immunity or similar defenses. The parties agree to consult with each other over the appropriate handling of a claim and, in the event they cannot agree, to consult with the Office of the Attorney General.

Default and Termination

Termination by Mutual Consent: Either party may terminate this agreement upon thirty (30) days notice in writing from the other party. In that event, all finished or unfinished documents and other materials, at the option of the Agency, be submitted to the Agency. If the contract is terminated as provided herein, the Grantee is paid in an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Grantee covered by this agreement; for costs of work performed by subcontractors for the Grantee provided that such subcontracts have been approved as provided herein; or for each full day of services performed where compensation is based on each full day of services performed, less payment of compensation previously made. The Grantee repays to the Agency any compensation the Grantee has received which is in excess of the payment to which he is entitled herein.

Termination for Cause: If, through any cause, the Grantee fails to fulfill in timely and proper manner the obligations under this agreement, the Agency thereupon has the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reason thereof and the effective date thereof. In that event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Grantee, at the option of the Agency, be submitted to the Agency, and the Grantee is entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials. The Grantee is not relieved of liability to the Agency for damages sustained

by the Agency by virtue of any breach of this agreement, and the Agency may withhold payment to the Grantee for the purpose of set off until such time as the exact amount of damages due the Agency from such breach can be determined.

Waiver of Default: Waiver by the Agency of any default or breach in compliance with the terms of this Contract by the Grantee is not a waiver of any subsequent default or breach and is not a modification of the terms of this Contract unless stated to be such in writing, signed by an authorized representative of the Agency and the Grantee and attached to the contract.

Availability of Funds: The parties to this Contract agree and understand that the payment of the sums specified in this Contract is dependent and contingent upon and subject to the appropriation, allocation, and availability of funds for this purpose to the Agency.

Force Majeure: Neither party is in default of its obligations hereunder if and it is prevented from performing such obligations by any act of war, hostile foreign action, nuclear explosion, riot, strikes, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

Survival of Promises: All promises, requirements, terms, conditions, provisions, representations, guarantees, and warranties contained herein shall survive the contract expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statutes of limitation.

Intellectual Property Rights

Copyrights and Ownership of Deliverables: Any and all copyrights resulting from work under this agreement shall belong to the Grantee. The Grantee hereby grants to the North Carolina Department of Environment and Natural Resources a royalty-free, non-exclusive, paid-up license to use, publish and distribute results of work under this agreement for North Carolina State Government purposes only.

Compliance with Applicable Laws

Compliance with Laws: The Grantee understands and agrees that is subject to compliance with all laws, ordinances, codes, rules, regulations, and licensing requirements

Ownership of equipment purchased under this contract rests with the Agency. Upon approval of the Contract Administrator, such equipment may be retained by the Grantee for the time the Grantee continues to provide services begun under this contract.

Travel Expenses: All travel, lodging, and subsistence costs are included in the contract total and no additional payments will be made in excess of the contract amount indicated in above. Contractor must adhere to the travel, lodging and subsistence rates established in the Budget Manual for the State of North Carolina.

Sales/Use Tax Refunds: If eligible, the Grantee and all subgrantees shall: (a) ask the North Carolina Department of Revenue for a refund of all sales and use taxes paid by them in the performance of this Contract, pursuant to G.S. 105-164.14; and (b) exclude all refundable sales and use taxes from all reportable expenditures before the expenses are entered in their reimbursement reports.

Advertising: The Grantee may not use the award of this Contract as a part of any news release or commercial advertising.

Recycled Paper: The Grantee ensures that all publications produced as a result of this contract are printed double-sided on recycled paper.

Sovereign Immunity: The Agency does not waive its sovereign immunity by entering into this contract and fully retains all immunities and defenses provided by law with respect to any action based on this contract.

Gratuities, Kickbacks or Contingency Fee(s): The parties certify and warrant that no gratuities, kickbacks or contingency fee(s) are paid in connection with this contract, nor are any fees, commissions, gifts or other considerations made contingent upon the award of this contract.

Lobbying: The Grantee certifies that it (a) has neither used nor will use any appropriated funds for payments to lobbyist; (b) will disclose the name, address, payment details, and purpose of any agreement with lobbyists whom the Grantee or its subtier contractor(s) or subgrantee(s) will pay with profits or non-appropriated funds on or after December 22, 1989; and (c) will file quarterly updates about the use of lobbyists if material changes occur in their use.

Scope of Work

North Carolina Division of Parks and Recreation
Parks and Recreation Trust Fund – Grants Program for Local Governments

Grantee: County of Henderson

Title of Project: Edneyville Community Center

Project Number: 2006 - 481

Contract Number: P07038

Amount of Grant: \$ 500,000

Amount of Match: \$ 500,000

Contact Person for Project: Rick Harris

Title: Director of Parks and Recreation
County of Henderson

Address:
801 Glover Street
Hendersonville, NC 28792

Telephone: 828-697-4884

Contact email address: rharris@hendersoncountync.org

Scope of Project: Community Center, Walking Trail, Soccer Field, Youth
Baseball Field

Length of Project: 36 months (12/1/2006– 11/30/2009)

Schedule for Reimbursements: Grantee may submit bills quarterly after a significant portion of work has been completed on the project element(s). Not more than 90% of the grant will be reimbursed until the grantee completes the project elements specified in the grant (refer to detailed budget submitted with grant application).

The County of Henderson grant application and support documentation are, by reference, part of the contract. The administrative rules of then N.C. Parks and Recreation Trust Fund are, by reference, a part of the contract.