

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: February 3, 2014

SUBJECT: PARTF Grant Contract
Henderson County Athletic and Activity Center

PRESENTER: Marcus A. Jones, PE

ATTACHMENTS: Yes

1. PARTF Grant Contract
2. Budget Amendment for Grant

SUMMARY OF REQUEST:

On Friday January, 24, 2014, Staff received the attached PARTF Grant contract for the Henderson County Athletic and Activities Center; the contract amount is \$500,000. Staff has reviewed the contract and present it to the Board for approval.

Also attached is a budget amendment to account for the grant revenue and reduce the County capital allocation. One additional expense is necessary to comply with the PARTF grant which is the additional of handicap parking. Preliminary engineering estimates the cost of parking to be \$51,000. The preliminary design constructs a separate entrance off South Grove Street accessing the lower field area and connecting a new, small parking area adjacent to the field. This is a similar configurations to the handicap parking at the Edneyville Community Center field. If a Stormwater permit is not required, the stormwater measure line item will not be used as well as a portion of the engineering.

Proposed Project Budget with PARTF Grant:

Line Items approved November 20, 2013		
Medallion Turf Contract		\$321,200
Medallion Change Order for Lighting		\$89,530
Medallion Change Order for Turf Upgrade		\$13,500
Medallion Change Order for Netting		\$26,560
Project Contingency (10%)		\$63,350
Additional Budget Items as required under PARTF Grant		
Handicap Access (PARTF Requirement)		
Engineering	\$7,000	
Construction	\$29,000	
Stormwater Measures (possible permit requirement)	\$15,000	
		\$51,000
Total		\$565,140

PARTF Grant Contract for HCAAC
February 3, 2014
Page 2

BOARD ACTION REQUESTED:

Approve the \$500,000 PARTF Grant contract for the Henderson County Athletic and Activity Center and approve the associated Budget Amendment.

Suggested Motions:

I move that the Board of Commissioners approve the \$500,000 PARTF Grant contract for the Henderson County Athletic and Activity Center and approve the associated Budget Amendment.

STATE OF NORTH CAROLINA

CONTRACTOR'S FEDERAL I.D.

WAKE COUNTY

XXXX 00307

N.C. Parks and Recreation Trust Fund Project Agreement

Grantee: Henderson County

Project Number: 2013 - 762

Project Title: Henderson County Athletics and Activity Center

Period Covered By This Agreement: 2/1/2014 to 1/31/2017

Project Scope (Description of Project): Land acquisition of 9.45 acres and development includes renovation to gymnasium building and classroom building, trail/grounds renovation, parking lot, athletic field with artificial turf and lighting, planning costs and contingency.

Project Costs:	PARTF Amount	\$ <u>500,000</u>
	Local Government Match	\$ <u>3,192,020</u>

Conditions

The North Carolina Department of Environment and Natural Resources (hereinafter called the "Department") and Henderson County (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. In addition, the Department and the Grantee agree to comply with the State of North Carolina's Terms and Conditions as listed in "Attachment A" to this contract.

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.

Section I. Eligible Project Costs and Fiscal Management

1. 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.
2. PARTF assistance for land acquisition will be based on the fair market value of real property or the sales price, whichever is less. Value must be based upon an independent appraisal by a licensed appraiser holding a general or residential certification from the North Carolina Appraisal Board. The Department shall review the appraisal as to content and valuation. Approval of appraised amounts rests with the Department. The Grantee agrees to begin development on PARTF acquired land within five (5) years of the date this contract is signed by the Department and Grantee in order to allow general public access and use.
3. Payment shall be made in accordance with the contract documents as described in the Scope of Work (Attachment B). Payment for work performed will be made upon receipt and approval of invoice(s) from the Grantee documenting the

costs incurred in the performance of work under this contract. Invoices may be submitted to the Contract Administrator quarterly. Final invoices must be received by the Department within forty-five (45) days after the end of the contract period or contract completion, whichever occurs first. Accounting records should be based on generally accepted local government accounting standards and principles. Records shall be retained for a period of five (5) years following project completion, except that records shall be retained beyond five (5) year period if audit findings have not been resolved. All accounting records and supporting documents will clearly show the number of the contract and PARTF project to which they are applicable. The State Auditor shall have access to persons and records as a result of all contracts and grants entered into by state agencies and or political subdivisions in accordance with General Statute 147-64.7.

4. The Grantee agrees to refund to the Department, subsequent to audit of the project’s financial records, and costs disallowed or required to be refunded to the Department on account of audit exceptions.

Section II. Project Execution

1. The Grantee may not deviate from the scope of the project without approval of the Department. When one of the conditions in the contract changes, including but not limited to the project scope, a revised estimate of costs, a deletion or additions of items, or need to extend the contract period, the Grantee must submit in writing a request to the Department for approval.
2. The Grantee shall be considered to be an independent contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or will secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with the Department.
3. In the event the Grantee subcontracts for any or all of the services covered by the contract:
 - a. The Grantee is not relieved of any of the duties and responsibilities provided in this contract;
 - b. The subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and;
 - c. The subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.
4. In accordance with Executive Order 12549, Debarment and Suspension, 7 CR Part 3017, Section 3017.50, the grantee agrees not to subcontract with any vendors debarred or suspended by the State of North Carolina and shall not knowingly enter into any lower tier covered transactions with a person or vendor who is debarred, suspended or declared ineligible.
5. The Grantee shall not substitute key personnel assigned to the performance of this contract without prior approval by the Department’s Contract Administrator. Mr. Tim Hopkin is designated by the Grantee as key personnel for purposes of this contract. The Department designates John Poole, PARTF Grant Program Manager as the Contract Administrator for the contract.

Department Contract Administrator	Grantee Contract Administrator
NC Department of Environment and Natural Resources Division of Parks and Recreation Attention: John Poole, Contract Administrator 1615 Mail Service Center Raleigh, NC 27699-1615 Telephone: 919-707-9304 Email: John.Poole@ncparks.gov	Henderson County Attention Tim Hopkin 801 4th Avenue East Hendersonville, NC 28792 Telephone: 828-697-4884 Email: thopkin@hendersoncountync.org

6. 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.

7. 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.
8. 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 (5) years and to submit a Department provided inspection report to the Department.
9. 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, the dedication will be recorded in the deed of said property and the property may not be converted to other than public recreation use without approval of the Department. The Grantee agrees to maintain and manage PARTF assisted development/ renovation projects for public recreation use for a minimum period of twenty-five (25) years after project completion.
10. 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.
11. The Grantee shall agree to place utility lines developed with PARTF assistance underground.
12. 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.
13. 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.
14. 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,
 - (c) Will file quarterly updates about the use of lobbyists if material changes occur in their use.

Section III. Project Termination and Applicant Eligibility

1. The Grantee may unilaterally rescind this agreement at anytime prior to the expenditure of funds on the project described in this contract.
2. If through any cause, the Grantee fails to fulfill in a timely and proper manner the obligations under this contract, the Department shall thereupon have the right to terminate this contract by giving written notice to the Grantee of such termination and specifying the reasons thereof. In that event, the Grantee shall be entitled to receive just and equitable compensation for any satisfactory work completed 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 contract.
3. Failure by the Grantee to comply with the provisions and conditions set forth in the formal application, PARTF administrative rules and this agreement shall result in the Department declaring the Grantee ineligible for further participation in PARTF, in addition to any other remedies provided by law, until such time as compliance has been obtained to the satisfaction of the Department.

Section IV. Attestation and Execution

N.C.G.S. §133-32 and Executive Order 24 prohibit the offer to, or acceptance by, any State Employee of any gift from anyone with a contract with the State, or from any person seeking to do business with the State. By execution of any response in this procurement, you (Contractor) attest, for your entire organization and its employees or agents, that you are not aware that any such gift has been offered, accepted, or promised by any employees of your organization.

In witness whereof, the Department and the Grantee have executed the Agreement in duplicate originals, one of which is retained by each of the parties.

Henderson County	
Name of Grantee (Local Government)	Signature of Grantee (Chief Elected Official)
Typed or Printed Name of Official	Title of Official

(Notary Public Completes)

State of North Carolina

County of

On this _____ day of _____, 2013, _____

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 (or she) executed the same and being duly sworn by me, made oath that the statements in the foregoing instrument are true.

My commission expires: _____, 20_____.

Signature of Notary Public

(Seal Here)



North Carolina Department of Environment and Natural Resources
John E. Skvarla, III Secretary

By:

Section Chief, NCDENR Division of Purchase and Services

Department Head or Authorized Agent
for Secretary Skvarla

Title

Project Costs

Henderson County Athletics and Activity Center

January 2013

Project Elements (Include specific units - sizes, numbers, lengths, etc. - for each item.)	Unit	Unit Cost	Total Item Cost
Building and/or Renovating Costs			
Classroom Building Renovations (ADA accessibility, etc.)	Lump Sum	\$77,150	\$77,150
Gymnasium Building Renovations (HVAC replacement, roof replacement, etc.)	Lump Sum	\$42,700	\$42,700
Grounds and Pavement Renovations	Lump Sum	\$77,000	\$77,000
Parking Lot – spaces added for 65 cars	Lump Sum	\$130,000	\$130,000
Athletic Field – Artificial Turf	300 x 170 field	\$505,170	\$505,170
Athletic Field - Lighting	Lump Sum	\$130,000	\$130,000
Costs to Develop the Project			\$962,020
Contingency for the Cost of Building / Renovating			
Contingency (not to exceed 5% of the cost to develop the project)	4.2%		\$40,000
Value of Land to be Purchased or Donated			
Land Acquisition	9.45 acres	\$ 281,481	\$2,660,000
Planning and Incidental Land Acquisition Costs			
Construction management, site planning, preliminary design, survey and appraisals, or the cost of preparing the application (not to exceed 20% of the cost of the project) (legal costs, architect, engineers)	3.1%	\$30,000	\$30,000
Total Project Cost			\$3,692,020
Total PARTF Grant Request			\$ 500,000
Total Local Match			\$3,192,020

**General Terms and Conditions
Governmental Entities
May 1, 2011**

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 sub-agency 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 sub-grantee.
- (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 sub-grantee to carry out activities whereby the grantor anticipates no programmatic involvement with the grantee or sub-grantee 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. For purposes of this contract, Grantee also includes other State agencies such as universities.

- (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 which are not fully a part of the budgeting and accounting systems of a unit of local government.
- (14) "Single Audit" means an audit that includes an examination of an organization's financial statements, internal controls, and compliance with the requirements of Federal or State awards.
- (15) "Special Appropriation" means a legislative act authorizing the expenditure of a designated amount of public funds for a specific purpose.
- (16) "State Funds" means any funds appropriated by the North Carolina General Assembly or collected by the State of North Carolina. State funds include federal financial assistance received by the State and transferred or disbursed to non-State entities. Both Federal and State funds maintain their identity as they are sub-granted to other organizations. Pursuant to N.C.G.S. 143-6.2(b), the terms "State grant funds" and "State grants" do not include any payment made by the Medicaid program, the Teachers' and State Employees' Comprehensive Major Medical Plan, or other similar medical programs.
- (17) "Sub-grantee" has the meaning in G.S. 143-6.2(b): a non-State entity that receives a grant of State funds from a grantee or from another sub-grantee but does not include any non-State entity subject to the audit and other reporting requirements of the Local Government Commission.

(18) "Unit of Local Government has the meaning in G.S. 143-6.2(a)(2): A municipal corporation that has the power to levy taxes, including a consolidated city-county as defined by G.S. 160B-2(1), and all boards, agencies, commissions, authorities, and institutions thereof that are not municipal corporations.

Relationships of the Parties

Independent Contractor: The Grantee is and shall be deemed to be an independent contractor in the performance of this Contract and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. The Grantee represents that it has, or shall secure at its own expense, all personnel required in performing the services under this agreement. Such employees shall not be employees of, or have any individual contractual relationship with, the Agency.

Subcontracting: To subcontract work to be performed under this contract which involves the specialized skill or expertise of the Grantee or his employees, the Grantee first obtains prior approval of the Agency Contract Administrator. In the event the Grantee subcontracts for any or all of the services or activities covered by this contract: (a) the Grantee is not relieved of any of the duties and responsibilities provided in this contract; (b) the subcontractor agrees to abide by the standards contained herein or to provide such information as to allow the Grantee to comply with these standards, and; (c) the subcontractor agrees to allow state and federal authorized representatives access to any records pertinent to its role as a subcontractor.

Sub-grantees: The Grantee has the responsibility to ensure that all sub-grantees, if any, provide all information necessary to permit the Grantee to comply with the standards set forth in this Contract.

Assignment: The Grantee may not assign the Grantee's obligations or the Grantee's right to receive payment hereunder. However, upon Grantee's written request approved by the issuing purchasing authority, the Agency may:

- (a) Forward the Grantee's payment check(s) directly to any person or entity designated by the Grantee, or
- (b) Include any person or entity designated by Grantee as a joint payee on the Grantee's payment check(s).

Such approval and action does not obligate the State to anyone other than the Grantee and the Grantee remains responsible for fulfillment of all contract obligations.

Beneficiaries: Except as herein specifically provided otherwise, this Contract insures to the benefit of and is binding upon the parties hereto and their respective successors. It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, are strictly reserved to the Agency and the named Grantee. Nothing contained in this document shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Agency and Grantee that any

third person receiving services or 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, shall 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 that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority.

Equal Employment Opportunity: The Grantee understands and agrees that it is subject to compliance with all federal and State laws relating to equal employment opportunity.

Confidentiality

Confidentiality: As authorized by law, the Grantee keeps confidential any information, data, instruments, documents, studies or reports given to or prepared or assembled by the Grantee under this agreement and does not divulge or make them available to any individual or organization without the prior written approval of the Agency. The Grantee acknowledges that in receiving, storing, processing or otherwise dealing with any confidential information it will safeguard and not further disclose the information except as otherwise provided in this Contract or without the prior written approval of the Agency.

Oversight

Access to Persons and Records: The State Auditor and the using agency's internal auditors shall have access to persons

and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of the contractor during the term of the contract to verify accounts and data affecting fees or performance). The Contractor shall retain all records for a period of three years following completion of the contract or until any audits begun during this period are completed and findings resolved, whichever is later.

Record Retention: The Grantee may not destroy, purge or dispose of records without the express written consent of the Agency. State basic records retention policy requires all grant records to be retained for a minimum of five years or until all audit exceptions have been resolved, whichever is longer. If the contract is subject to Federal policy and regulations, record retention may be longer than five years since records must be retained for a period of three years following submission of the final Federal Financial Status Report, if applicable, or three years following the submission of a revised final Federal Financial Status Report. Also, if any litigation, claim, negotiation, audit, disallowance action, or other action involving this Contract has started before expiration of the five-year retention period described above, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular five-year period described above, whichever is later.

Time Records: The Grantee will maintain records of the time and effort of each employee receiving compensation from this contract, in accordance with the appropriate OMB circular.

Miscellaneous

Choice of Law: The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, are governed by the laws of North Carolina. The Grantee, by signing this Contract, agrees and submits, solely for matters concerning this Contract, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purpose, that the exclusive venue for any legal proceedings shall be Wake County, North Carolina. The place of this Contract and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or tort, relating to the validity, construction, interpretation, and enforcement shall be determined.

Amendment: This Contract may not be amended orally or by performance. Any amendment must be made in written form and executed by duly authorized representatives of the Agency and the Grantee.

Severability: In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall continue to be enforced to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect.

Headings: The Section and Paragraph headings in these General Terms and Conditions are not material parts of the agreement and should not be used to construe the meaning thereof.

Time of the Essence: Time is of the essence in the performance of this Contract.

Care of Property: The Grantee agrees that it is responsible for the proper custody and care of any State owned property furnished him for use in connection with the performance of his contract and will reimburse the State for its loss or damage.

Ownership of equipment purchased under this contract rests with the Agency. Upon approval of the Agency 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 sub-grantees 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 sub-tier contractor(s) or sub-grantee(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.

By Executive Order 24, issued by Governor Perdue, and N.C.

G.S. § 133-32: It is unlawful for any vendor or contractor (i.e. architect, bidder, contractor, construction manager, design professional, engineer, landlord, offeror, seller, subcontractor, supplier, or vendor), to make gifts or to give favors to any State employee of the Governor's Cabinet Agencies (i.e., Administration, Commerce, Correction, Crime Control and Public Safety, Cultural Resources, Environment and Natural Resources, Health and Human Services, Juvenile Justice and Delinquency Prevention, Revenue, Transportation, and the Office of the Governor). This prohibition covers those vendors and contractors who:

- (1) have a contract with a governmental agency; or
- (2) have performed under such a contract within the past year; or
- (3) anticipates bidding on such a contract in the future.

For additional information regarding the specific requirements and exemptions, vendors and contractors are encouraged to review Executive Order 24 and G.S. Sec. 133-32.

Executive Order 24 also encouraged and invited other State Agencies to implement the requirements and prohibitions of the Executive Order to their agencies. Vendors and contractors should contact other State Agencies to determine if those agencies have adopted Executive Order 24."

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: Henderson County Athletics and Activity Center

Project Number: 2013 - 762

Contract Number: 5746

Amount of Grant: \$ 500,000

Amount of Match: \$ 3,192,020

Contact Person for Project: Tim Hopkin

Title: Director of Parks and Recreation
County of Henderson

Address:
801 4th Avenue East
Hendersonville, NC 28792

Telephone: 828-697-4884

Contact email address: thopkin@hendersoncountync.org

Scope of Project: Land acquisition of 9.45 acres and development includes renovation to gymnasium building and classroom building, trail/grounds renovation, parking lot, athletic field with artificial turf and lighting, planning costs and contingency.

Length of Project: 36 months (2/1/2014– 1/31/2017)

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 the N.C. Parks and Recreation Trust Fund are, by reference, a part of the contract.

