

Henderson County Planning Department



RFP: Feasibility Study of Apple Country Public Transit

Due Date: Friday, August 5, 2022, at 12:00 PM

Email: jbianculli@hendersoncountync.gov

Proposal Checklist

- Are aware of the proposal opening date and time as indicated on the first page of this proposal.
- All signatures are completed by a company officer or agent who is authorized to enter into contracts and sign proposal documents.
- Have read and understood the “Terms and Conditions” and the “Instructions to Consultants” before submitting a proposal.
- Have read and completely understand all the specifications of this RFP.
- If an addendum to the specifications was issued, it been signed and included in the proposal.
- Included executed copies of the attachments.

Section 1: Purpose & Overview

Henderson County is seeking a qualified consultant to prepare and complete a study of Apple Country Public Transit's three (3) bus routes and propose any recommendations to improve upon its service.

Following the outbreak of COVID-19, ridership on Apple Country Public Transit (ACPT) has seen a significant decrease. The County seeks to increase ridership to pre-COVID levels, while optimizing the level of service to current and potential riders.

The scope of work for the feasibility study will include, but not be limited to, route efficiency, stop safety, stop location, examination of the municipal financial allocation, current service hours and days of service, incorporation of the French Broad River MPO's Regional Transit Feasibility Study recommendations, a ridership survey, and the potential for service in the expanded UZA, based on results of the 2020 Census. Henderson County planning staff will lead a fare-free analysis of all routes, with the support of the winning firm. The winning firm will provide a proposal that details how their study will meet/exceed the scope of work, and that expands on their ability to provide recommendations for improvement.

All recommendations will be informed by a thorough analysis of ridership data, stop inventory, safety evaluation of all stops and locations, and public input.

Section 2: Process and Schedule

Listed below are the dates and times by which stated actions must be taken or completed. The County may determine, in its sole discretion, that it is necessary to change any of these dates and times. Should changes be required, proper notice will be provided to potential consultants. All listed times are Eastern standard times.

Action	Time	Date
Proposal issued	12:00 PM	07/1/2022
Deadline for Questions	12:00 PM	07/15/2022
County Responses	5:00 PM	07/22/2022
Proposals Due	12:00 PM	08/05/2022
Anticipated Award	9:30 AM	09/21/2022

Section 3: Proposal Contact

Any and all questions, concerns and requests for additional information shall be directed to the Planning Department to the attention of Janna Bianculli, Senior Planner at the contact information listed below.

Phone: 828-694-6557

Email: jbianculli@hendersoncountync.gov

Section 4: Proposer/Consultant Questions

The County is not liable for interpretations/misinterpretations or other errors, or omissions made by the Proposer/Consultant in responding to this proposal. The Proposer shall examine this proposal to determine if the County's requirements and terms and conditions are clearly stated. If, after examination of the various requirements and terms and conditions of this proposal, the Proposer believes there are any requirements or terms and conditions which remain unclear or which restrict competition, the Proposer may request, in writing, that the County clarify the requirement(s) and terms(s) and condition(s) specified by the Proposer. The Proposer must provide the Section(s), Subsection(s), Paragraph(s), and page number(s) that identify the requirements or conditions questioned by the Proposer.

Requests for clarification and technical questions to this proposal must be received by the County no later than the date shown above in Section 2, entitled "Proposal Schedule", under Deadline for Questions. The Proposer's failure to request clarification and submit questions by the date in the proposal schedule above shall be considered to constitute the Proposer's acceptance of all County requirements and terms and conditions. The County shall issue addenda reflecting questions and answers to this proposal, if any, and shall be posted to the County's website at <https://www.hendersoncountync.gov/rfps>.

Section 5: Objections to the Specifications

It is not the intent of the proposal specifications to exclude or limit competition or favor any supplier. If there is an objection to any of the specifications or requirements listed herein, the Proposer must notify Janna Bianculli, Senior Planner, in writing, stating and listing the specifications and objections, no later than the date shown above in Section 2, entitled "Proposal Schedule", under Deadline for Questions. If a pre-proposal meeting has been scheduled, any objections must be presented in writing at that time. The objections stated must pertain both to form and substance of the proposal document. Failure to object in accordance with the above procedure shall constitute a waiver on the part of the Proposer to protest the solicitation. All concerns, questions, clarifications, or other correspondence must be directed only to Janna Bianculli, Senior Planner. Information obtained from other sources will not be considered in the evaluation and award of this proposal.

Section 6: Errors in Proposals

Proposers or their authorized representatives are expected to understand the conditions, requirements, and specifications before submitting proposals. Failure to do so will be at the proposer's own risk.

Section 7: Scope of Work

7.1 Current Service

Henderson County's Apple Country Public Transit service currently operates from 6:30 a.m. to 6:30 p. m., Monday through Friday, with the exception of select holidays. The three (3) fixed bus routes operate on a 1-hour cycle, with fares at \$0.75 a ride and service within three municipalities that contribute toward the annual transit budget.

Link to current County information: www.applecountrytransit.com

Link to current service provider information: <https://wncsource.org/wcca-services/apple-country-transportation/>

Note: The County also offers complementary paratransit service but will not be a focus of this study.

7.2 Qualifications

The qualified consultant will have considerable experience working with public entities (including their transportation providers), equal to or greater in size than the County of Henderson, experience in facilitating community engagement meetings, excellent communication and graphic skills, and extensive experience in transit planning.

7.3 Contact & Study Adoption

7.3.1 Henderson County Planning Department staff will serve as the main point of contact for the qualified consultant.

7.3.2 The feasibility study will be subject to approval and adoption by the Henderson County Board of Commissioners.

7.4 Feasibility Study Components

The feasibility study shall be organized based on the consultants' preference, but must include the following components at minimum:

7.4.1 Existing Conditions

7.4.1.A An analysis of the existing system, including all routes and stops, method of operations, level of ridership, level of efficiency, and overall safety.

7.4.1.B An analysis of the existing transfer station, including its location as the primary transfer station location, room for potential improvements such as a large shelter and other amenities.

7.4.1.C Current vehicle capacity and the ability to accommodate increased ridership and use of Compressed Natural Gas (CNG) as a fuel source.

7.4.2 Public Participation

7.4.2.A A ridership survey should be conducted as the primary form of public participation. Meetings with the County, the service provider, and the winning firm should be held periodically for updates and input. Key stakeholders should be directly contacted for feedback.

7.4.3 Recommendations

7.4.3.A An evaluation of costs, benefits, and impacts shall be utilized to provide a series of recommendations, with factors outlined in the scope of work.

7.4.3.B The inventory and analysis weighed against public and stakeholder input, as well as safety concerns. All recommendations should consider and support other relevant plans, including the French Broad River MPO Regional Transit Feasibility Study.

7.4.3.C All recommended route adjustments/changes shall be mapped and delivered in GIS format compatible with existing County systems and shapefiles shall be shared with the County Planning Department.

7.4.3.D Recommendations should be based on each identified item in the scope of work.

7.4.4 Action Plan

7.4.4.A The action plan will include the priority recommendations as gathered from the public planning process and directed by the Henderson County Board of Commissioners.

7.4.4.B The first draft of the action plan should be based on the consultant's recommendations. The final draft will be based on the consultant's recommendations, oversight committee recommendation, and input from other relevant committees. The action plan will also include a strategies component that will include cost estimates, funding sources, and partnership opportunities.

7.4.4.C The action plan should include estimated costs and schedule for implementation.

7.5 Milestone Dates

A schedule of when certain milestones can be accomplished must be included in the proposal. Milestones should include the following: contract approval, staff and stakeholder meetings, first draft completion, reviews, revisions, and approval by the Henderson County Board of Commissioners.

7.6 Deliverables

The following deliverables will be due to the Planning Department at the end of the contract period:

7.6.1 Reproduction

7.6.1.A An electronic copy of final draft.

7.6.1.B Five (5) hard copies of the final feasibility plan document.

7.6.1.C GIS data in ArcGIS format, any maps in PDF format

7.6.2 Final Feasibility Study Report Format

7.6.2.A The plan document shall be well organized, without any spelling or grammatical errors, and the hard copy should be bound by a soft cover.

7.6.2.B Electronic copies of all maps and ArcGIS layers, which can be edited by staff.

7.6.3 Supplemental Feasibility Study Documents

Summary of conclusions and recommendations in addition to the technical report/document plan. This summary should be designed to be read by the elected officials as well as interested citizens who want to know about the plan and its purpose.

7.7 Client Responsibilities

It is understood by Henderson County that staff will assist the consultant in providing certain information and services. The areas of assistance shall include the following project:

7.7.1 Requirements: Provide full information about the requirements of the project.

7.7.2 Information: Provide all available information pertinent to the project including previous studies, plans, maps and other data.

- 7.7.3 Review:** Examine all studies, reports, proposals and/or other documents submitted by the consultant and respond with comments and/or suggestions within a reasonable time so as not to delay the project.
- 7.7.4 Revisions:** Notify consultant whenever there is an awareness of any defect in the project or when there are changes affecting the project.

Section 8: Proposal Requirements

Proposals shall follow the sections outlined below, beginning with a cover letter, which will indicate the appropriate contact person for any potential correspondence. The remainder of the proposal shall include detailed consultant information, project approach and experience, project team, and pricing. The deliverables, compliance, and qualitative information contained within this section will be the methodology for the weight of the evaluation criteria.

- 8.1 Introduction:** A brief description and financial viability of the firm, and its program of services.
- 8.2 Project Approach:** Briefly describe the firm's approach to transit planning, including methods and user involvement. Provide an outline of how your firm would approach this project given an eight-month time frame:
 - 8.1.1 Projected Schedule-detailed.
 - 8.1.2 Description of proposed Project Methodology.
- 8.3 Similar Project Experience:** In detail, outline the previous experience of the firm with similar projects. Include specific project names, a description of the work completed, and the name and telephone number of individuals to contact for references. Identify any projects performed for government agencies (State or local) in the last five years that would indicate your firm's experience with government contracting procedures.
- 8.4 Project Team:** Provide a description of your project team; listing the firm name(s), individuals involved and the role they will perform (principal-in-charge, transportation planner, etc.). Provide a description of the qualifications and experience of the specific individuals that will be involved in this project, including the staff of other professional firms. Identify their experience with similar type projects.

Note: A personnel change cannot be made without prior written notice and approval by Henderson County.

- 8.5 Cost Estimating and Phasing Procedures:** The consultant will be required to perform cost estimates throughout the feasibility planning phases. Describe your firm's approach to and/or method of cost estimating. Describe your firm's method of phasing the development plan.
- 8.6 Collaborative Scope:** Collaboration and unity among the various municipalities, organizations, and any stakeholders involved.
- 8.7 Attachments:** Provide the properly filled out attachments as applicable. This is a federally funded study. All firms and their subconsultants must meet all FTA requirements prior to performing work.

- 8.8 Pricing** Proposal responses should include detailed pricing information including the costs of any subconsultants.

Section 9: Preparation of Proposals

- 9.1 Proposals should be made in accordance with the RFP format provided herein, with all blank spaces in the Appendices properly filled in.
- 9.2 All proposals must be signed by a duly authorized official representing the Consulting Firm. Proposals shall be considered to the greatest extent possible. However, failure to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents, will disqualify the proposal.
- 9.3 If applicable, proposals shall include signed addendum(s) with their proposal submittal acknowledging the modifications made to the proposal document.
- 9.4 All proposals, responses, inquiries, or correspondences relating to or in reference to this RFP, and all reports, charts, displays and other documentation submitted by the Consultant shall become the property of Henderson County when received. The County reserves the right to use the materials, or any ideas submitted in any proposal in response to the RFP.
- 9.5 Costs incurred in the preparation of this Proposal are to be borne by the Consultant, and Henderson County will not contribute in any way to the costs of the preparation.
- 9.6 The contents of each Consultant's Proposal to Henderson County shall remain valid for a minimum of 90 calendar days from the Proposal due date.
- 9.7 This Request for Proposals and the selected Consultant's Proposal, including all representations, warranties and commitments contained in the Proposal and related correspondence shall be contractual obligations included in the written final contract for services contained herein
- 9.8 Henderson County intends to award a contract to a single consultant for all core applications. Consultants are allowed to provide a proposal that includes subcontractors, but the County intends to enter into a single agreement with one Consultant acting as a Prime contractor. The Prime contractor will be responsible for the timeliness, quality, and deliverables provided by any subcontractors under the Prime contractor's agreement. The Prime contractor is also responsible for all subconsultants to adhere to all Federal Transit Administration requirements to the full extent of the law.

Section 10: Submission Requirements

- 10.1 Proposers shall provide (1) electronic copy of the proposal/qualifications with a read receipt on or before **12:00 PM on August 5, 2022**.
- 10.2 Proposals shall be submitted via email to jbianculli@hendersoncountync.gov
- 10.3 Please note proposals not received by the time and date specified above will not be considered.

Section 11: Selection Criteria

Proposals shall be evaluated based upon the matrix below:

Criteria	(a) Weight	(b) Score (1-5)	(a) X (b) Weighted Score
Relevant experience with similar projects, with emphasis on transit feasibility and system improvements.	10%		
Project Approach and Methodology for forming the feasibility plan.	35%		
Qualifications and experience of key project team members who will remain actively involved throughout the entire feasibility planning process.	25%		
Quality of work exhibited in both written and graphic form as well as interviews.	10%		
Experience related to government contracting procedures, especially the FTA.	5%		
References	10%		
Price	5%		
Final Score			

Proposals will be evaluated using a standardized scoring system. Each criteria component will be assigned points ranging from 1 - 5 according to the extent to which the proposed system meets the stated requirements. The points will be assigned as follows:

- 5 points: Fully meets
- 4 points: Meets with minor gaps (no compromise required)
- 3 points: Meets with moderate gaps (some compromise required)
- 2 points: Partially meets with significant gaps (compromise required)
- 1 point: Does not meet

Cost will be calculated with a formula using a ratio method, in which the lowest cost receives the maximum points allowed and other proposals receive a percentage of the points available based on their cost relationship to the lowest. This is determined by applying the following formula:

$$\frac{\text{Lowest Cost}}{\text{Cost being evaluated}} \times \text{Maximum Points Available} = \text{Score}$$

The points for each criteria component will be multiplied by the percentage weight listed above and totaled.

Section 12: Standard of Award

Per 2 CFR 200.320(b)2 the method of award will be based on the most advantageous proposal as defined by the County considering technical merit, past performance, and the ability of the consultant to complete the requirements contained herein in the desired timeframe, and price. Proposals will be reviewed and ranked in order of choice based on the selection criteria listed above. It shall be at the sole discretion of Henderson County to conduct interviews with the highest ranked firms. The County shall not be bound or in any way obligated until both parties have executed a contract. The County reserves the right to delay the award of a contract or to not award a contract.

All responses will be considered to the greatest extent possible. However, failure to respond to any requirements outlined in the RFP, or failure to enclose copies of the required documents, will disqualify the proposal. All submittals must be valid for 90 days from the response deadline. Submissions received after the response deadline will be rejected without exception.

The County reserves the right to reject any or all proposals, waive technicalities and to be the sole judge of suitability of the goods and services for its intended use as allowed by law and further specifically reserves the right to make the award in the best interest of the County.

Section 13: Minority and Disadvantaged Business

Pursuant to General Statutes of North Carolina Sections 143-128 and 143-131 as well as 2 CFR 200.321 of the Uniform Administrative Requirements, the County encourages and provides equal opportunity for Certified Minority and Women- Owned Business Enterprise (MWBE) businesses to participate in all aspects of the County's contracting and procurement programs.

For Disadvantaged Business Enterprise requirements, see Minority Business Participation Guidelines posted under Doing Business with Henderson County at <https://www.hendersoncountync.gov/county/page/doing-business-henderson-county>.

Section 14: Protest Procedures

The "Proposal Protest Procedure" detailed below is provided to ensure fairness to all prospective consultants desiring to compete for business with HENDERSON COUNTY. It specifies the procedure by which a Proposer shall follow to file a protest with HENDERSON COUNTY regarding award of contract in connection with any solicitation issued by HENDERSON COUNTY that involves the use of Federal Transit Administration funds.

GENERAL:

Protest(s) will only be accepted by HENDERSON COUNTY from officers of a business whose direct economic interest would be affected by award of a contract or refusal to award a contract. The Planning Department Director will consider all such protests, whether submitted before or after the award of such a contract. If oral objections are raised and the matter cannot be resolved to the satisfaction of the objector, a written protest shall be required before any further consideration is given. Protest submissions should be concise, logically arranged, and should state clearly the grounds for protest.

All protests must include the following minimal information:

1. Business name, Protestor name, Business address, and Business phone number.
2. Identification of the solicitation in protest by title.
3. A detailed statement of the legal and/or functional ground under protest, including copies of the relevant documents.
4. A brief statement of the relief requested.

All protest documents that are received by HENDERSON COUNTY shall be stamped with the date and time received and logged into a "Protest File".

DEFINITIONS:

For purposes of the Proposal Protest Procedure, the following definitions apply:

1. Days refer to working days of the Federal Government.
2. File or submit refers to the date of receipt by HENDERSON COUNTY or the FTA, (as the case may be).
3. Interested Party means an actual or prospective Proposer or offeror, whose direct economic interest would be affected by a reward of, or a refusal to award, a contract.
4. Proposal includes the term "offer" as used in the context of negotiated procurements as well as the terms "Proposal", "Submission", or other terms generally recognized to apply to a formal submission to a request by a business for selection of goods or services.

Protest Before an Award

Protest before an award must be submitted within the time frames specified for each of the two types of before award protest.

For those protests which are a protest against the allotted time for offer preparation, solicitation content, specification detail, or procedural protest, the time frame during which such protest shall be received shall be limited to three (3) days before the time/date given for the deadline or Request for Proposal due date (including the day of the proposal opening or receipt as day three (3)). If such protests are not logged within the specified time, the participants in the subject solicitation shall be deemed to have waived all rights to protest any procedural or specification item.

If after the submission of offers but *before* the formal award of a contract, any offeror or consultant feels the need to file a protest, such protest must be received within ten (10) days of the scheduled opening of the referenced response.

If "before award" protests are received within the specified time, the Transportation Planner shall request of each Proposer, a certification of timeframe extension to ensure prices to preclude any requirements to re-solicit.

Where a written protest is received against the making of an award, the award shall not be made until five (5) days after the resolution of the protest, unless the Planning Director determines that:

The item(s) being procured is critical to business and in the best interest of the public; or Deliverance or performance will be unduly delayed if there is a failure to award; or

Failure to make prompt award will otherwise cause undue harm to HENDERSON COUNTY or the State or Federal government.

In the event that the award is to be made during the five-day period, or during the pendency of a protest, the Planning Director shall furnish written notification to FTA of the intent to award. FTA reserves the right to not participate in any such award.

If such an award is made, the files will contain full and adequate documentation as to the causes and points dictating such decision. All persons who are party to the solicitation shall be furnished duplicate copies of all pertinent information with confirmation of the award having been made.

Protest(s) After an Award

Protest against award must be filed with the Planning Director of HENDERSON COUNTY within five (5) days immediately following the award. The protest will be accepted and logged, and all parties shall be advised such a protest has been logged. If it appears likely that an award will need to be rescinded or invalidated and a delay in receipt of goods or services shall result that is not prejudicial to HENDERSON COUNTY's interest, a negotiated agreement to suspend performance shall be sought on a no cost basis.

HENDERSON COUNTY shall render, with approval of the County Manager and the Planning Department Director a decision on the protest within fourteen (14) days after the receipt thereof. Notice of that decision will be furnished to all interested parties. If the decision rendered by HENDERSON COUNTY is deemed to be adverse by the protestor, the protestor may then file a protest with the Federal Transportation Administration (FTA).

FTA will review protests in the event of alleged failure of HENDERSON COUNTY to have a written protest procedure or the alleged failure to follow such procedures.

Alleged violations on other grounds are under the jurisdiction of appropriate State or Federal courts, or local or federal regulatory agencies. Any protest involving other matters should be filed in agreement with the directions given in particular regulations.

FTA's remedy for HENDERSON COUNTY's failure to have a written protest procedure or failure to follow such procedure is limited to requiring HENDERSON COUNTY to develop such procedures, if necessary, and to follow such procedures in reviewing the protest at issue, if HENDERSON COUNTY desires FTA financial participation in the contract in question. In instances where HENDERSON COUNTY has awarded to another consultant, or prior to FTA's decision on the protest, FTA may refuse to participate in funding the contract.

Protestors are required to file a protest with FTA not more than five (5) days after the rendering of a decision on the original protest by HENDERSON COUNTY. In instances where the protestor alleges HENDERSON COUNTY failed to make a final determination on the protest, protestors shall file a protest with the FTA not later than five (5) days after the protestor knew or should have known of HENDERSON COUNTY's failure to make a final decision. HENDERSON COUNTY shall not award a contract in the five (5) day period referenced except in accordance with the stipulations as detailed in paragraphs above. After five (5) days, HENDERSON COUNTY shall verify with FTA that no protest is on file for the particular contract in question.

Protests filed with the FTA should be filed with the FTA Regional Office, Region IV with a concurrent copy to HENDERSON COUNTY.

Protest filed with the FTA shall:

1. Include the name and address of the protestor.

2. Identify HENDERSON COUNTY, the project number (if applicable), or the title of the contractor solicitation.
3. Contain a statement of the grounds upon which the protest is filed. This should detail the alleged violation, failure, or oversight, and contain full supporting documentation.
4. Include copies of the local protests previously filed with HENDERSON COUNTY, if applicable and the copy of the decision regarding such protest rendered by HENDERSON COUNTY.

FTA shall notify HENDERSON COUNTY in a timely manner of the receipt of a protest. FTA shall instruct HENDERSON COUNTY to notify the contractor of the protest if an award has been made or, if no award has been made, to notify all interested parties. HENDERSON COUNTY shall instruct all who receive such notice that they may communicate further with FTA directly.

HENDERSON COUNTY shall submit the following information to FTA not later than ten (10) days after receipt of notification of FTA of the protest.

1. A copy of the HENDERSON COUNTY Protest Procedure
2. A description of the process followed concerning the protestor's protest; and
3. Any supporting documentation.

HENDERSON COUNTY shall then supply copies of the submissions to FTA to the protestor.

The protestor may submit to the FTA any comments on HENDERSON COUNTY's submission no later than ten (10) days after receipt of the HENDERSON COUNTY submission by the protestor.

When a protest has been timely filed with HENDERSON COUNTY before the award of a contract, HENDERSON COUNTY shall not make an award prior to five (5) days after the resolution of the protest, or if a protest has been filed with the FTA, during the pendency of that protest, unless HENDERSON COUNTY determines that:

1. The items procured are urgently needed; or
2. Delivery or performance will be unduly delayed by failure to make an award promptly; or
3. Failure to make an award will cause an undue hardship on HENDERSON COUNTY, the State, or the Federal Government.

In the event HENDERSON COUNTY determines that the award must be made in the five (5) day period, HENDERSON COUNTY will notify FTA of that decision prior to making the award. FTA reserves the right to not participate in the funding of any contract awarded under protest pendency or during the five (5) day waiting period.

Upon receipt of the submission, FTA will request further information or a conference among the parties. HENDERSON COUNTY will render a final decision on the protest.

Section 15: FTA Terms & Conditions

15.1 Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be affected and the basis for settlement. (All contracts in excess of \$10,000). When federal funds are expended by Henderson County, Henderson County reserves the right to

immediately terminate any agreement in excess of \$10,000 resulting from this procurement process in the event of a breach or default of the agreement by Consultant, in the event consultant fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in the procurement solicitation, contract, and/or a purchase order; (2) make any payments owed; or (3) otherwise perform in accordance with the contract and/or the procurement solicitation. Henderson County also reserves the right to terminate the contract immediately, with written notice to consultant, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The consultant will be compensated for work performed and accepted and goods accepted by Henderson County as of the termination date if the contract is terminated for convenience of Henderson County. Any award under this procurement process is not exclusive and Henderson County reserves the right to purchase goods and services from other consultants when it is in the best interest of Henderson County.

15.2 Disadvantaged Business Enterprise (DBE)

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future proposals as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency’s written consent; and that, unless the Agency’s consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE. 49 C.F.R. § 26.53(f) (1).

It is the policy of Henderson County and the United States Department of Transportation (“DOT”) that Disadvantaged Business Enterprises (“DBE’s”), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT--assisted contracts.

15.3 No Government Obligation to Third Parties

The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser,

Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

15.4 Federal Changes

49 CFR Part 18 Federal Changes Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

15.5 Civil Rights

The following requirements apply to the underlying contract:

1. Nondiscrimination. In accordance with Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, national origin, sex, disability, or age. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
2. Equal Employment Opportunity (EEO) The Recipient agrees to prohibit, and assures that each Third Party Participant will prohibit, discrimination on the basis of race, color, religion, sex, or national origin, and:
 - A. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.,
 - B. Facilitate compliance with Executive Order 11246, "Equal Employment Opportunity," as amended by Executive Order 11375, "Amending Executive Order 11246, Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note, and as further amended by Executive Order 13672, "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity," July 21, 2014,
 - C. Comply with Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 13.a of the Section 5307 Master Agreement, and
 - D. Follow Federal guidance pertaining to Equal Employment Opportunity laws and regulations, and prohibitions against discrimination on the basis of disability,
 - E. Prohibited Discrimination. As provided by Executive Order 11246, as amended, and as specified by U.S. Department of Labor regulations, to ensure that applicants for employment are employed and employees are treated during employment without discrimination on the basis of their:
 - a. Race, color, religion, national origin, disability, age, sexual origin, gender identity, or status as a parent, and
 - F. Affirmative Action. Take affirmative action that includes, but is not limited to:
 - a. Recruitment advertising, recruitment, and employment,
 - b. Rates of pay and other forms of compensation,

- c. Selection for training, including apprenticeship, and upgrading, and
- d. Transfers, demotions, layoffs, and terminations

3. Promoting Free Speech and Religious Liberty. The Contractor shall ensure that Federal funding is expended in full accordance with the U.S. Constitution, Federal Law, and statutory and public policy requirements: including, but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

15.6 Incorporation of Federal Transit Administration (FTA) Terms

Incorporation of Federal Transit Administration (FTA) Terms - The provisions within include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by DOT, as set forth in the current FTA Circular 4220 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any request which would cause a violation of the FTA terms and conditions.

Section 16: Terms and Conditions

Any proposal submitted to Henderson County shall be deemed to include all the Terms and Conditions shown in the document found online at

https://www.hendersoncountync.gov/sites/default/files/fileattachments/henderson_county/page/42611/terms_and_conditions_02.23.2022.pdf

These Terms and Conditions, which refer to a “purchase order”, shall be deemed to be included in any contract entered into as a result of this Request for Proposals (“RFP”).

Any attempt by a proposed contracting party (the “Proposer”) under the RFP to exclude any of these Terms and Conditions shall cause any Proposal made in response to this RFP to be deemed to be non-responsive (unless Henderson County has notified the Proposer that the funding source for the goods or work sought under this RFP is not federal funds, in which case those provisions under number 15 of the Terms and Conditions (and all subparts thereunder) may be excluded from a Proposal.

Section 17: Contracting

After the firm is selected, the negotiated contract shall incorporate and be in compliance with all provisions within Section 15: FTA Terms and Conditions and Section 16: Terms & Conditions as well as Attachment I: Funding Procedural Requirements Addendum.

In addition, the negotiated contract, and all contracts drafted by the successful firm for purchase, construction, and other services to be provided on this project, shall incorporate, and comply with all Federal Uniform Guidance policies and procedures currently or in the future adopted by the Henderson County Board of Commissioners.

Section 18: Funding Source

The source of funds for this contract is federal funds (Federal Transit Administration Section 5307), therefore the previous federal provisions apply pursuant to 2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II (as applicable). To the extent these provisions apply and conflict with provisions of North Carolina law, these provisions shall control. It shall be the responsibility of the contractor to determine whether these provisions apply.

Section 19: Attachments

Attachment I: Anti-Lobbying Form
Attachment II: Suspension and Debarment Form

ATTACHMENT 1

APPENDIX A, 31 C.F.R. PART 21 – CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit [Standard Form-LLL, “Disclosure Form to Report Lobbying.”](#) in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Consultant, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Consultant understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

Signature of Consultant’s Authorized Official

Name and Title of Consultant’s Authorized Official

Date

ATTACHMENT 2

SUSPENSION AND DEBARMENT FORM

DEBARMENT CERTIFICATION FORM The Consultant certifies that, neither the Consultant firm nor any owner, partner, director, officer, or principal of the Consultant, nor any person in a position with management responsibility or responsibility for the administration of federal funds, nor any subconsultants or suppliers:

- (a) Are presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from covered transactions by any federal or state department/agency:
- (b) Have within a three-year period preceding this certification been convicted of or had a civil judgment rendered against it for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract (federal, state, or local); violation of federal or state antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (b) above; or
- (d) Have within a three-year period preceding this certification had one or more public transactions or contracts (federal, state, or local) terminated for cause or default.
- (e) The Consultant is “Actively” registered with SAMS (Service for Award Management) and has been assigned the following Unique Entity Identification Number: _____.

The Consultant further certifies that it shall not knowingly enter into any transaction with any subconsultant, material supplier, or vendor who is debarred, suspended, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department/agency.

Dated this _____ day of _____, 20 _____

By _____
Authorized Signature for Consultants

Printed Name and Title