



REQUEST FOR FORMAL BIDS

PASSENGER WAITING SHELTERS FOR HENDERSON COUNTY PLANNING DEPARTMENT

ISSUED BY: HENDERSON COUNTY PLANNING DEPARTMENT
100 N. KING ST.
HENDERSONVILLE, NC 28792
PHONE: (828) 694-6557
JANNA PETERSON, PLANNER III

BIDS ARE TO BE SEALED AND MAILED TO THE ABOVE ADDRESS OR
DELIVERED TO THE PLANNING DEPARTMENT OFFICE LOCATED
AT THE ADDRESS ABOVE

**NOTE: IF MAIL OR DELIVERY BY ANY OTHER MEANS IS DELAYED BEYOND THE DATE AND
HOUR SET FOR BID OPENING, PROPOSALS WILL NOT BE ACCEPTED.**

**HENDERSON COUNTY, NORTH CAROLINA
PLANNING DEPARTMENT**

**REQUEST FOR FORMAL BIDS AND PROPOSALS FOR
PASSENGER WAITING SHELTERS FOR HENDERSON COUNTY
PLANNING DEPARTMENT**

Pursuant to General Statutes of North Carolina, Section 143-129, as amended, sealed bids and proposals, subject to the conditions and specifications herein, are invited for furnishing the following equipment, materials, services or repair work. **All bids will be received by the Henderson County Planning Department until 3:00 p.m. local time on Friday, January 3, 2020 AT 3:00 PM LOCAL TIME, at which time they will be publicly opened and read.**

TERMS: Net 25 Days
DELIVERY: ASAP - Bidder Specify Best Delivery

HENDERSON COUNTY, N. C.
Janna Peterson, Planner III

POSITIVELY NO BIDS CONSIDERED UNLESS SUBMITTED ON THIS FORM

NOTICE TO BIDDERS: All tax imposed upon any article on which you are bidding shall be shown as separate items and in no case included with price bid. Failure to comply with these conditions will be considered grounds for rejection.

		Passenger Waiting Shelters for Henderson County Planning Department per the attached minimum specifications. Brasco International Inc. Slimline Model SL-0510-C or equal. (Must be approved through NCDOT PEP. See details in Standards) BID SHOULD BE SUBMITTED INCLUSIVE OF SHIPPING/FREIGHT COSTS – FOB HENDERSONVILLE, NC. ADDITIONAL FREIGHT CHARGES WILL NOT BE ALLOWED. <u>BIDDERS PLEASE NOTE:</u> 1. <u>Standards and SPECIFICATIONS-</u> BID PAGES 5 THROUGH 7 2. <u>PROTEST PROCEDURES</u> BID PAGE 8 3. <u>TERMS AND CONDITIONS-</u> BID PAGES 10 THROUGH 12 4. <u>REQUESTS FOR APPROVED EQUALS</u> <u>DEADLINE: January 3, 2020</u> BID PAGE 7			
Company Name		Bid Submitted By (Signature)			
Address		Printed Name and Title			
City State Zip		Email Address			
Telephone No.		Fax No.			
Web Address		Federal Taxpayer ID No.			
Delivery _____ calendar days after receipt of order		Payment Terms: Net _____ Discount: _____ % Net _____			

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GENERAL CONDITIONS

1. All bids and proposals shall be for furnishing apparatus, supplies, materials, equipment and/or work and services in accordance with the applicable plans and specifications prescribed by Henderson County. From the date shown until the date of opening the proposals, the plans and specification of one proposed work and/or a complete, description of the apparatus, supplies, materials or equipment and/or work and services are and will continue to be on file in the Planning Department of Henderson County 100 N. King St. Hendersonville, NC 28792 8:00 am-4:30 pm.
2. The County reserves the right to evaluate all bids especially where there is a wide range in specifications or to reject any and all bids and proposals, and further specifically reserves the right to make the award and/or awards in the best interest of the County.
3. Time, in connection with discount offered, will be computed from date of delivery of the supplies or materials on delivery at destination when final inspection and acceptance are at those points, or from date correct invoice is received if latter is later than the date of delivery. Guaranteed maximum price must be shown in all bids.
4. In case of default of the contractor, the County may procure the articles or services from other sources and hold the contractor responsible for any excess cost occasioned thereby.
5. Payment by County due thirty days after delivery in Hendersonville and inspection unless otherwise specifically provided, subject to any discounts allowed.

BID

In compliance with the above request for bids, and subject to all the conditions thereof, the undersigned offers and agrees, if this bid be accepted within 90 days from the date of the opening, to furnish any or all of the items upon which prices are quoted, at the price set opposite each item, and unless otherwise specified, within 30 days after receipt of order, deliver F.O.B. Hendersonville, NC unless there is a discount note on the bid page.

Bidder: _____ **Address:** _____ **Zip:** _____

By: _____ **Title:** _____

(Authorized to sign bids)

Telephone Number: _____

Date: _____

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MAILING INSTRUCTIONS

1. Bidder to submit a complete, fully executed bid document along with any addenda in a sealed envelope.
2. If mailed, bid should be forwarded by certified U. S. Postal Service. Please address and mark your bid as shown below.

HENDERSON COUNTY PLANNING DEPARTMENT
100 N. KING ST. HENDERSONVILLE, N. C. 28792
BID REQUEST NO. PDTD-01-2019 PASSENGER WAITING SHELTERS
TO BE OPENED 3:00 P.M. LOCAL TIME JANUARY 3, 2020

3. If forwarded other than by U.S. Postal Service, delivery must be made directly to Henderson County, Planning Department, 100 N. King St., Hendersonville, North Carolina 28792. Please ensure Bid is in a Sealed Envelope inside the Courier's Envelope/Box.

1.0 Standards

Henderson County can only accept bids supplying shelters that have been accepted through the NCDOT Product Evaluation Program (PEP) and, at the time of bid submittal, listed on the Approved Products List. Henderson County is not responsible for any additional fees associated with gaining product acceptance through the NCDOT Product Evaluation Program (PEP).



The dimensions used in the following specifications are minimum/nominal sizes. Bidders are to quote using their manufacturing standards which must meet or exceed these minimum standards.

2.0 Scope of Work

Henderson County desires a shelter model similar to the general appearance of the existing shelters, as shown above. Particularly, any proposed shelter design should be of similar size, roof design, and color.

The work specified shall consist of the design, fabrication, and delivery of exterior-grade Passenger Waiting Shelters and shall include structural aluminum frames with glazed rear, side, and roof assemblies, and all required hardware for installation. The shelter frame shall be designed to be stable with or without wall and roof glazing. All connections and glazing containment shall be tamper proof. Shelters are to be modular in design with minimum number of parts for quick and easy installation. Shelter roofs are to be prefabricated for ease of installation and must be shipped complete. Bidders are to provide examples of installation instructions with bids.

3.0 Technical Data

- 3.1 Shelters shall conform to the dimensions indicated and meet the following specifications:
- 3.1.1 Shelter shall be Slimline Series Model SL0510-C (referenced in picture in Section 1), as manufactured by Brasco International, Inc., or “Approved Equal”
- a. Structures shall be constructed of powder coated aluminum.
 - b. Glass shall be ¼” clear tempered safety glass.
 - c. Roof shall be hip style constructed of standing seam powder coated aluminum with 2 ½” fascia/gutter system that is leak proof. Fasteners to assemble the roof shall be concealed.
 - d. Tuber columns shall be 2-1/2” x 2-1/2” x 1/8” aluminum
 - e. Clear height shall be 84 1/8”.
 - f. Front open area shall be 106-1/2”
 - g. Outer dimension shall be 111 1/2” x 30-1/4”.
 - h. Shelter shall include partial length HDPE bench with backrest to ensure a minimum 30” x 48” clear floor area, complying with ADA requirements.
 - i. Wall connections shall be fastened by ¼” internal clip held to tube columns by ¼” x 3/8” galvanized aluminum flat drive rivets.
 - j. Ground clearance shall be a minimum of 8”.
 - k. Lockable schedule holder shall be constructed of piano hinge that matches shelter finish, ¼” clear acrylic polycarbonate and tamper proof lockable fasteners; size must accommodate 3 ft x 4 ft schedule/map. Holder must be capable of being attached to a panel in the rear of the shelter.
 - l. Anchor shoes shall be fastened to ground using a stainless-steel wedge anchor bolt, nut and washers.
 - i. Anchor shoes shall be 4” H x 6” W. Corner anchor shoes shall be 6” x 6” and intermediate anchor shoes shall be 3.5” x 6”. Bottom plate shall be a minimum thickness of .375”.
 - ii. Columns shall be capable of fastening to anchor shoe by means of two (2) domed drive rivets with stainless steel pins.
 - m. The shelter shall be designed to withstand minimum vertical and horizontal wind load of 90 MPH. The Roof shall be designed to withstand minimum dead load of 25 PSF.

4.0 Quality Assurance

- 4.1 Manufacturer shall have a minimum of 5 years’ experience in the design and manufacture of Pre-Fabricated exterior grade shelters.
- 4.2 Shelters shall be structurally engineered.
- 4.3 Manufacturer shall meet the IBC 2012 Code for these shelters and North Carolina State Building Code for Accessibility.
- 4.4 All glazing shall conform to the American National Standards Institute (ANSI) Safety Standard for Architectural Glazing Materials Z79.1-1975.
- 4.5 Shelter shall conform to the standards of the Aluminum Association.

5.0 Requests for Approved Equals

Requests for approved equals shall be supported by complete technical documentation which shall include descriptive literature, assembly instructions, and detail drawings which clearly show dimensions, joining details, alloy, temper, finish, and thickness of all members. Detailed specifications shall also accompany such request.

- A. Shop drawings and product data must be submitted with requests for approved equals.
- B. Requests of approved equals must be submitted no later than 3 p.m., January 3, 2020.
- C. Bidder must submit a statement of certification from the manufacturer that materials meet or exceed the specifications contained in this Request for Bids and Proposals
- D. Bidder may be required to submit finish samples as well as wall and roof glazing samples during the evaluation process.

Any addenda issued as a result of this Request for Approved Equals process will be sent at least 10 days before opening date of bid, even if this requires an extension of the bid opening date. Bidders will be required to sign all addenda and return with their bid packages. Any bids received without signed addenda may be considered non-responsive.

6.0 Warranty

Manufacturer shall provide detailed warranty statement with bid. A minimum one year warranty is required. Manufacturer shall maintain inventory of replacement parts for ten years after delivery of shelter.

7.0 Quantity

Henderson County anticipates the purchase of five (5) shelters from the winning bidder during fiscal year 2020. Henderson County will retain the right to purchase up to ten (10) additional shelters within three (3) years.

PROTEST PROCEDURES

PURPOSE

FTA funding requires a bid protest procedure be in place.

PROCEDURE

Any party which is a prospective bidder, offeror, or contractor that may be aggrieved by the solicitation must submit a written protest within five (5) calendar days prior to the opening of the Request for Bids and Proposal.

Any party which is an actual bidder, offeror, or contractor that may be aggrieved by the award of a contract, must submit a written protest within five (5) days of County transmitting via fax or email the announcement of intent to award.

The protest must be addressed to the Henderson County Planning Department, 100 N. King St., Hendersonville, NC 28792 or emailed to Janna Peterson, Planner III, at jpeterson@hendersoncountync.gov and must include all the following information:

1. Name, address, telephone number, facsimile number and e-mail of the protester.
2. Signature of the protester or authorized agent.
3. The bid name and number.
4. A detailed statement of the legal and factual grounds of protest including copies of relevant documents.
5. Any supporting exhibits, evidence, or documents to substantiate any claims.
6. All information establishing that the protester is an interested party for the purpose of filing a protest.
7. The form of relief requested

After careful consideration of all relevant information, and consultation with the County Attorney, the Planner III or Planning Director shall make a written decision.

Any and all costs incurred by a protesting party in connection with a protest shall be the sole responsibility of the protesting party.

**HENDERSON COUNTY PLANNING DEPARTMENT
TERMS AND CONDITIONS FOR
PASSENGER WAITING SHELTERS**

1. **SUMMARY:** Bidders please note: this request for bids and proposals includes provisions for Henderson County to purchase up to 15 small passenger waiting shelters on an as needed basis through the period of **June 30, 2023** at quoted prices, contingent upon funding. Bids are to be submitted in accordance with the enclosed standards, specifications and Terms and Conditions, all of which require doing all that is necessary, proper, or incidental to the furnishing of the materials identified herein. All things not expressly stated in the attached specifications or Terms and Conditions but involved in carrying them out must be included in bidder's proposal as though they were specifically stated.
2. **PURCHASE OF ADDITIONAL REQUIREMENTS:** The County reserves the right to purchase additional quantities of materials specified herein during the period of firm pricing through June 30, 2023.

Henderson County intends to purchase the quoted: Five (5) small shelters during the first year.

Henderson County requests the option of purchasing up to: 14 small shelters on an as needed basis through the period of June 30, 2023 at quoted prices, contingent upon funding.

2. **NOTICE TO BIDDERS:** All bids are subject to the provisions of the Terms and Conditions specific to this Request for Bid, the Standards and the Specifications. Henderson County objects to and will not evaluate or consider any additional terms and conditions submitted with a bidder response. This applies to any response appearing in or attached to the document as part of the bidder's response. **DO NOT ATTACH ANY ADDITIONAL TERMS AND CONDITIONS**, no Conditional bids will be accepted. By execution and delivery of a proposal, the bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect. It shall be the bidder's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements specified herein.
3. **ISSUING OFFICE:** This bid request is issued by the Henderson County Planning Department, 100 N. King St., Hendersonville, North Carolina 28792. All correspondence and procedural inquiry should be made to this address. Telephone number 828-694-6557, Fax number 828-697-4533.
4. **CLARIFICATIONS/INTERPRETATIONS:** Any and all questions regarding this document must be addressed to the Henderson County Planning Department. Any and all revisions to this document shall be made only by written addendum from the Henderson County Planning Department. Therefore, no oral statements by any person shall modify or otherwise affect the terms, conditions, or specifications stated in this request for bids and proposals. The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from whatever source are of no effect. All Addenda will be posted to the County's Bid Page (<https://www.hendersoncountync.gov/rfps>) and it is the responsibility of each bidder to check the site before submitting your sealed bid.

Technical questions should be directed to Janna Peterson, Planner III, jpeterson@hendersoncountync.gov and will be addressed in an addendum. **Therefore, no oral statements by any person shall modify or otherwise affect the terms, conditions, or specifications stated in this request for bids and proposals.** The bidder is cautioned that the requirements of this bid can be altered only by written addendum and that verbal communications from any source are of no effect.

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5. **MINOR DEVIATIONS/EXCEPTIONS TO SPECIFICATIONS:** Minor deviations from the provisions of these specifications may be considered to permit manufacturers to follow their standard manufacturing processes; however, all proposed minor deviations must be explained in detail and submitted within the “approved equals” process as outlined on Page 7.
 6. Henderson County reserves the right to postpone bid openings for its own convenience
 7. **BID INQUIRIES:** Questions of a general nature (i.e. Can your bid response be faxed? Has your bid been received? Is a bid tabulation available?, etc.) can be answered by any member of our staff. Questions of a more specific nature (regarding Special Terms and Conditions or bid specifications) should be directed to the individual identified on page 1 (ISSUED BY).

Our office hours are Monday through Friday, 8:00 a.m. – 4:30 p.m. Telephone 828-697-4819.

8. **NONCONFORMING TERMS AND CONDITIONS:** A bid response that includes terms and conditions that do not conform to the terms and conditions in this bid document is subject to rejection as non-responsive. Henderson County reserves the right to permit the bidder/vendor to withdraw nonconforming terms and conditions from its bid response prior to a determination by Henderson County of non-responsiveness.
9. **BIDDER SUBMITTALS:** Bidder must furnish all information requested herein including descriptive literature and/or complete specifications covering the products offered. Reference to literature submitted with a previous bid will not satisfy this provision. Bids which do not comply with these requirements will be subject to rejection. All documents submitted should bear the name of the bidder.
10. **PREPARATION OF FORMS:** All bids must be submitted on forms provided. Figures should be written in ink or typewritten. Any changes on the original bid should be made in ink and initialed by the person signing the bid. **NOTE:** If there are discrepancies between unit price quoted and extensions, the unit price will prevail.
11. **EXPENSES INCURRED IN PREPARING BID:** Henderson County accepts no responsibility for any expense incurred by the bidder in the preparation and presentation of a bid. Such expenses shall be borne exclusively by the bidder.
12. **TAX EXEMPTIONS:** Henderson County is not tax exempt from State and Local Sales Tax. Sales tax should not be included in bid prices but may be added as separate items to the invoices.
13. **SUBMITTALS:** Bidders to submit one (1) original bid package and one (1) copy. Packages should be mailed to the Henderson County Planning Department, 100 N. King St., Hendersonville, NC 28792.
14. **VENDOR INFORMATION:** Vendor shall provide a W-9 form at the request of the County.
15. **DELIVERY:** Delivery shall be made F.O.B. Destination (Freight Prepaid and Allowed): At 100 N. King St. Hendersonville, NC 28792 OR an agreed upon location.

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16. **EVALUATION AND SELECTION OF BIDS:** The NC General Statute controlling formal purchases by local governments §143-129 includes selection standards for awards. The provision reads, “All contracts, shall be awarded to the lowest responsible bidder, taking into consideration quality, performance and the time specified in the bids for performance of the contract.”

Henderson County reserves the right to accept or reject any or all bids and proposals and further specifically reserves the right to make the award or awards in the best interest of Henderson County.

There will also be a 2 week time frame to have sealed engineering drawings approved by the permitting offices. “Time is of the Essence” for this process and if approval is not received then the County will move to the next apparent low bidder, etc.

17. **CONTRACT/AWARD:** Pursuant to the laws governing public contracts in North Carolina, the successful bidder’s/vendor’s response to this Request for Bid and any addenda thereto, plus the issuance of a Henderson County Purchase Order for the proposed goods and/or services shall constitute a binding contract. Please note that only NCDOT Approved Products List Shelters will be awarded.
18. **INDEMNIFICATION:** The bidder/vendor covenants to save, defend, keep harmless, and indemnify Henderson County and all of its officers, departments, agencies, agents, and employees from and against all claims, loss, damage, injury, fines, penalties and cost - including court costs and attorney's fees, charges, liability, and exposure, however, caused - resulting from, arising out of, or in any way connected with the bidder’s/vendor’s negligent performance or nonperformance of the terms of the contract.
19. **ASSIGNMENT:** During the performance of the contract, the bidder/vendor shall not assign, transfer, convey, sublet, or otherwise dispose of any award or any or all of its rights, title, or interest therein, without the prior written consent of Henderson County.
20. All bids shall be made firm for no less than ninety (90) days from the date of the bid opening. There will also be a 2 week time frame after notification for the apparent low bidders to become listed on the NCDOT Approved Products List. Time is of the Essence for this process.
21. **INVOICES AND PAYMENTS:** ALL INVOICES AND PACKAGES MUST BEAR THIS PURCHASE ORDER NUMBER. Rejected materials will be returned to the Vendor at the Vendor's risk and expense. Cash discounts will be deducted as provided herein, or in accordance with the terms of your quotation or bid. DISCOUNT PERIOD WILL DATE FROM RECEIPT OF INVOICE OR RECEIPT OF GOODS, WHICHEVER IS LATER. NET PURCHASES WILL BE PAID 30 DAYS FROM DATE OF YOUR INVOICE. The County is exempt from Federal Excise Tax but not State and Local Sales Tax. This tax must be shown as separate items on invoice. SEND INVOICES TO: HENDERSON COUNTY FINANCE DEPARTMENT, 113 NORTH MAIN STREET, HENDERSONVILLE, NC 28792
22. **NC E-VERIFY REQUIREMENTS:** To ensure compliance with the E-Verify requirements per General Statutes of North Carolina, all bidders, including any subcontractors employed by the bidder with 25 or more employees as defined, must comply with E-Verify requirements to contract with governmental units for formal bids. Bidders attest and affirm that they are aware and in full compliance with Article 2 of Chapter 64, (NCGS64-26(a)) relating to the E-Verify requirements by executing and submitting the E-verify Affidavit included in this Invitation for Bids as Attachment E. E-Verify is a Federal program and can be accessed via this link: <http://www.uscis.gov/e-verify/employers>

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23. **PURCHASE ORDER TERMS & CONDITIONS:** Compliance with purchase order terms and conditions. They may be accessed at <https://www.hendersoncountync.gov/county/page/doing-business-henderson-county>
24. **DISADVANTAGED BUSINESS ENTERPRISE REQUIREMENTS:** Please see Minority Business Participation Guidelines posted under Doing Business with Henderson County at <https://www.hendersoncountync.gov/county/page/doing-business-henderson-county>
25. **FEDERAL TRANSIT ADMINISTRATION REQUIRED CLAUSES IN THIRD PARTY CONTRACTS:** The County intends to use federal funds in the acquisition of bus shelters. All FTA Assisted Third Party Contracts and Subcontracts (less than \$150,000) must include the following clauses:
- A. *No Federal Government Commitment of Liability to Third Parties.* Except as the Federal Government expressly consents in writing, the County agrees that:
- a. The Federal Government does not and shall not have any commitment or liability related to the Underlying Agreement, to and Third Party Participant at any tier, or to any other person or entity that is not a party (FTA or the County) to the Underlying Agreement; and
 - b. Notwithstanding that the Federal Government may have concurred in or approved any Solicitation or Third Party Agreement at any tier that may affect the Underlying Agreement, the Federal Government does not and shall not have any commitment of liability to any Third Party Participant or other person that is not a party (FTA or the County) to the Underlying Agreement.
- B. *False of Fraudulent Statements of Claims.*
- a. *Civil Fraud.* The County acknowledges and agrees that:
 - i. Federal laws, regulations, and requirements apply to itself and its Underlying Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, “Program Fraud Civil Remedies,” 49 C.F.R. part 31.
 - ii. By executing the Underlying Agreement, the County certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the County provides to the Federal Government.
 - iii. The Federal Government may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the County presents, submits, or makes available any false, fictitious, or fraudulent information.
 - b. *Criminal Fraud.* The County acknowledges that 49 U.S.C. § 5323(l)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the County provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.
- C. *Access to Third Party Contract Records.* The County agrees to require its Third Party Contractors at each tier to provide:
- a. The U.S. Secretary of Transportation and the Comptroller General of the United States, the state, or their duly authorized representatives, access to all third party contract records (at any tier) as required under 49 U.S.C. § 5325(g); and
 - b. Sufficient access to all third party contract records (at any tier) as needed for compliance with applicable federal laws, regulations, and requirements or to assure proper management of Underlying Agreement as determined by FTA.
- D. *Notice to Third Party Participants.* The County agrees to include notice in each Third Party Agreement that:
- a. Federal requirements that apply to the County or the Award, the accompanying Underlying Agreements, and any Amendments thereto may change due to changes in federal law, regulation, other requirements, or guidance, or changes in the County’s Underlying Agreement including any information incorporated by reference and made part of that Underlying Agreement; and
 - b. Applicable changes to those federal requirements will apply to each Third Party Agreement and parties thereto any tier.

E. *Civil Rights Requirements.* The County agrees that it must comply with applicable federal civil rights laws, regulations, and requirements, and follow applicable federal guidance, except as the Federal Government determines otherwise in writing.

a. *Nondiscrimination in Federal Public Transportation Programs.* The County agrees to, and assures that it and each Third Party Participant will:

i. Prohibit discrimination based on race, color, religion, national origin, sex (including gender identity), disability, or age.

ii. Prohibit the:

1. Exclusion from participation in employment or a business opportunity for reasons identified in 49 U.S.C. § 5332;
2. Denial of program benefits in employment or a business opportunity identified in 49 U.S.C. § 5332; or
3. Discrimination identified in 49 U.S.C. § 5332, including discrimination in employment or a business opportunity identified in 49 U.S.C. § 5332.

iii. Follow:

1. The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance; but
2. FTA does not require an Indian Tribe to comply with FTA program-specific guidelines for Title VI when administering its Underlying Agreement supported with federal assistance under the Tribal Transit Program.

b. *Nondiscrimination – Title VI of the Civil Rights Act.* The County agrees to, and assures that each Third Party Participant will:

i. Prohibit discrimination based on race, color, or national origin,

ii. Comply with:

1. Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
2. U.S. DOT regulations, “Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964,” 49 C.F.R. part 21; and
3. Federal transit law, specifically 49 U.S.C. § 5332; and

iii. Follow:

1. The most recent edition of FTA Circular 4702.1, “Title VI Requirements and Guidelines for Federal Transit Administration Recipients,” to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
2. U.S. DOJ, “Guidelines for the enforcement of Title VI, Civil Rights Act of 1964,” 28 C.F.R. § 50.3; and
3. All other applicable federal guidance that may be issued.

c. *Equal Employment Opportunity.*

i. Federal Requirements and Guidance. The County agrees to, and assures that each Third Party Participant will, prohibit discrimination based on race, color, religion, sex, sexual orientation, gender identity, or national origin, and:

1. Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
2. Facilitate compliance with Executive Order No. 11246, “Equal Employment Opportunity” September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
3. Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement;
4. FTA Circular 4704.1 “Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;” and

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5. Follow other federal guidance pertaining to EEO laws, regulations, and requirements, and prohibitions against discrimination on the basis of disability.
- ii. *Specifics*. The County agrees to, and assures that each Third Party Participant will:
 1. *Affirmative Action*. If required to do so by U.S. DOT regulations (49 C.F.R. part 21) or U.S. Department of Labor regulations (41 C.F.R. chapter 60), 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; but
 2. *Indian Tribe*. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of “Employer;” and
 - iii. *Equal Employment Opportunity Requirements for Construction Activities*. Comply, when undertaking “construction” as recognized by the U.S. Department of Labor (U.S. DOL), with:
 1. U.S. DOL regulations, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” 41 C.F.R. chapter 60; and
 2. Executive Order No. 11246, “Equal Employment Opportunity in Federal Employment,” September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
 - d. *Disadvantaged Business Enterprise*. To the extent authorized by applicable federal laws, regulations, or requirements, the County agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as “Disadvantaged Business Enterprises” (DBEs), in the Underlying Agreement as follows:
 - i. *Statutory and Regulatory Requirements*. The County agrees to comply with:
 1. Section 1101(b) of the FAST Act, 23 U.S.C. § 101 note;
 2. U.S. DOT regulations, “Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs,” 49 C.F.R. part 26; and
 3. Federal transit law, specifically 49 U.S.C. § 5332
 - ii. *Assurance*. As required by 49 C.F.R. § 26.13(a):
 1. *Recipient Assurance*. The County agrees and assures that:
 - a. It must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S.
 - b. It must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - c. Its DBE program, as required under 49 C.F.R. part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - d. Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 2. *Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance*. The Recipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - a. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate based on race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 C.F.R. part 26;

- b. The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 C.F.R. part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - c. Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of this subparagraph 12.e(4)(b) is a material breach of this subagreement, third party contract, or third party subcontract, as applicable; and
 - d. The following remedies, or such other remedy as the Recipient deems appropriate, include, but are not limited to, withholding monthly progress payments, assessing sanctions, liquidated damages, and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsive.
- iii. *Remedies.* Upon notification to the Recipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 C.F.R. part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.
- F. *Incorporation of Federal Transit Administration (FTA) Terms* - The preceding provisions 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 FTA Circular 4220.1F 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 Agreement. The Third Party Contractor shall not perform any act, fail to perform any act, or refuse to comply with any requests which would cause the County to be in violation of the FTA terms and conditions.

26. **UNIFORM GUIDANCE PROVISIONS:**

I. Contracts for more than the simplified acquisition threshold currently set at \$250,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. When federal funds are expended by Henderson County, Henderson County reserves all rights and privileges under the applicable laws and regulations with respect to this procurement in the event of breach of contract by either party.

II. 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 Vendor, in the event vendor 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 vendor, for convenience, if Henderson County believes, in its sole discretion that it is in the best interest of Henderson County to do so. The vendor 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 vendors when it is in the best interest of Henderson County.

- a. **FEDERAL FUNDS:** The source of funds for this contract is federal funds (US Department of Homeland Security, Department of Public Safety, North Carolina Emergency Management), therefore the following 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.
- b. **Equal Employment Opportunity.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- c. **Davis-Bacon Act**, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the **Copeland “Anti-Kickback” Act (40 U.S.C. 3145)**, as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.
- d. **Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).** Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a

standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the

work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

- e. **Rights to Inventions Made Under a Contract or Agreement.** If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- f. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387),** as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- g. **Debarment and Suspension (Executive Orders 12549 and 12689)**—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

Pursuant to Federal Rule (H) above, when federal funds are expended by Henderson County, the vendor certifies that during the term of an award for all contracts by Henderson County resulting from this procurement process, the vendor certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation by any federal department or agency.

- h. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)**—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress,

or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

The offeror, by signing its offer, hereby certifies to the best of his or her knowledge and belief that: No 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 on his or her behalf 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;

If any funds other than Federal appropriated funds (including profit or fee received under a covered Federal transaction) 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 on his or her behalf in connection with this solicitation, the offeror shall complete and submit, with its offer, OMB standard form LLL, Disclosure of Lobbying Activities, to the Contracting Officer; and

He or she will include the language of this certification in all subcontract awards at any tier and require that all recipients of subcontract awards in excess of \$100,000 shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification and disclosure is a prerequisite for making or entering into this contract imposed by section 1352, title 31, United States Code. Any person making an expenditure prohibited under this provision or who fails to file or amend the disclosure form to be filed or amended by this provision, shall be subject to a civil penalty of not less than \$10,000, and not more than \$100,000, for each such failure.

i. Procurement of Recovered Materials CFR § 200.322

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

j. Record Retention Requirements for Contracts Paid with Federal Funds 2 CFR § 200.333

When federal funds are expended by Henderson County for any contract resulting from this procurement process, the vendor certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The vendor further certifies that vendor will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

ATTACHMENT A

CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY and VOLUNTARY EXCLUSION
LOWER TIER COVERED TRANSACTION

(To be submitted with all bids exceeding \$25,000.)

- (1) The prospective lower tier participant (Bidder/Contractor) certifies, by submission of this bid or proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) The prospective Bidder/Contractor also certifies by submission of this bid or proposal that all subcontractors and suppliers (this requirement extends to all subcontracts at all levels) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (3) Where the prospective lower tier participant (Bidder/Contractor) is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this bid or proposal.

The lower tier participant (Bidder/Contractor), certifies or affirms the truthfulness and accuracy of this statement of its certification and disclosure, if any.

SIGNATURE _____

TITLE _____

COMPANY _____

DATE _____

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public _____

My Appointment Expires _____

ATTACHMENT B

TERMS & CONDITIONS

Vendor agrees to comply with all federal, state, and local laws, rules, regulations and ordinances, as applicable. It is further acknowledged that vendor certifies compliance with all provisions, laws, acts, regulations, etc. as specifically noted above in the Terms and Conditions.

Vendor's Name/Company Name: _____

Address, City, State, and Zip Code: _____

Phone Number: _____ Fax Number: _____

Printed Name and Title of Authorized Representative: _____

Email Address: _____

Signature of Authorized Representative: _____

Date: _____