

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: February 20, 2019

SUBJECT: Contract Renewal for WCCA – 3rd Party Contracting Services for Apple Country Public Transit

PRESENTER: Janna Peterson, Planner III

ATTACHMENTS: 1. 2019 Renewal Contract
2. 2016 Approved Contract

SUMMARY OF REQUEST:

Federal regulations require a new transit contract and solicitation process every six years. The County, through an RFP process, selected Western Carolina Community Action (WCCA) as the lowest responsive bidder to provide transit service on the urban fixed route and the ADA, demand response, required paratransit service. This contract, originally agreed upon in 2016, is set to expire on June 30, 2019. The contract allows for the County to extend the contract terms for one, three-year period and details the fee schedule for each fiscal year within the extension period (as determined in the 2016 contract (see attached)). If accepted, this renewal would allow the County to continue to operate with the current service provider until June 30, 2022.

WCCA maintains high customer service approval ratings, a low accident rate, and has satisfied all other provisions of its operating agreement with the County. Staff recommends approval of the attached renewal contract that reiterates the billable rates through June 30, 2022.

BOARD ACTION REQUESTED:

Formal action by the Board of Commissioners is necessary to approve extension of the Contract with WCCA for Apple Country Public Transit services.

Suggested Motion: I move that the Board authorize the County Manager to execute the proposed renewal contract, which extends the contract with WCCA through June 30, 2022.

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**HENDERSON COUNTY TRANSIT RENEWAL CONTRACT
AND AMENDMENT**

This Agreement made and entered this the ___ of _____, 2019, by and between **Henderson County**, a body politic and corporate under the laws of the State of North Carolina (hereinafter the "COUNTY") and **Western Carolina Community Action** (hereinafter the "SERVICE PROVIDER"), a nonprofit organization is a renewal of the original agreement signed on June 28, 2016 by the parties.

Witnesseth

WHEREAS the County and the Service Provider have had an agreement for transit services since 28 June, 2016;

WHEREAS the County is desirous to contract with the Service Provider for the continuance of these services; and

WHEREAS the previous agreement allows the County and the Service Provider to renew the agreement;

NOW THEREFORE, for valuable consideration and mutual promises, the adequacy and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **DURATION:** The renewal agreement shall last for three years from July 1, 2019 to June 30, 2022. This reflects the original contract that allowed one three-year renewal. After this renewal, the original contract may not be renewed per Federal Transit Administration (FTA) requirements.
2. **HOURS AND RATE:** The paratransit services cap for FY2020 shall be 1,850 hours at a rate of \$67.28 per hour. The paratransit services cap for FY2021 shall be 1,850 hours at a rate of \$70.27 per hour. The paratransit services cap for FY2022 shall be 1,850 hours at a rate of \$74.30 per hour.
3. **HOURS AND RATE:** The transit services cap for FY2020 shall be 9,180 hours at a rate of \$72.04 per hour. The transit services cap for FY2021 shall be 9,180 hours at a rate of \$74.48 per hour. The transit services cap for FY2022 shall be 9,180 hours at a rate of \$77.07 per hour.
4. **ORIGINAL TERMS:** Except as otherwise stated herein, all terms established in the Original Agreement shall remain in effect for the duration of this Agreement.
5. **EXAMINATION AND RETENTION OF RECORDS.** SERVICE PROVIDER shall maintain all books, records, documents, accounting ledgers, data bases, and similar materials relating to work performed for the COUNTY under this CONTRACT on file for at least three (3) years following the date of final payment to the SERVICE PROVIDER by the COUNTY. All records stored on a computer database must be of an updated format compatible with the COUNTY's software systems. Any duly authorized representative(s) of the COUNTY shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during SERVICE PROVIDER's usual and customary business hours. SERVICE PROVIDER shall provide proper facilities to the COUNTY representative(s) for such access and inspection. Further, any duly authorized representative(s) of the COUNTY shall be permitted to observe and inspect any or all of SERVICE PROVIDER's facilities and activities during SERVICE

PROVIDER's usual and customary business hours for the purposes of evaluating and judging the nature and extent of SERVICE PROVIDER's compliance with the provision of this CONTRACT. In such instances, the COUNTY representative(s) shall not interfere with or disrupt such activities.

The SERVICE PROVIDER shall maintain, and the COUNTY and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the CONTRACT. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the COUNTY office of the SERVICE PROVIDER at all reasonable times for inspection, audit, and reproduction during the term of the CONTRACT, and for three years from the final date of settlement or payment under the CONTRACT.

IN WITNESS WHEREOF, each party has caused this extension to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

On this the ___ day of _____, 2019.

HENDERSON COUNTY

By: _____
Steve Wyatt, County Manager
SERVICE PROVIDER

By: _____
David White, Executive Director, WCCA

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid certify that Steve Wyatt, personally came before me this day and acknowledged that he is the County Manager for Henderson County, a corporation and body politic, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its.

WITNESS my hand and notarial seal this _____ day of _____, 2019.

Notary Public: _____
Print or type name: _____
My Commission Expires: _____

STATE OF NORTH CAROLINA
COUNTY OF _____

I, Notary Public of the County and State aforesaid certify that _____, personally came before me this day and acknowledged that he is the _____ of Western Carolina Community Action (WCCA), a lawful corporation under the regulations of North Carolina, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by himself as its _____.

WITNESS my hand and notarial seal this _____ day of _____, 2019.

Notary Public: _____
Print or type name: _____
My Commission Expires: _____

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act N.C.G.S. 159-28(a)

By: _____

Date: _____

Name (Print): _____
Henderson County Finance Director

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**HENDERSON COUNTY TRANSIT CONTRACT
APPLE COUNTRY TRANSIT**

This Agreement made and entered this the 28th Of June, 2016, by and between **Henderson County**, a body politic and corporate under the laws of the State of North Carolina (hereinafter the "COUNTY") and **Western Carolina Community Action** (hereinafter the "SERVICE PROVIDER"), a nonprofit organization is an agreement by the parties.

WITNESSETH

WHEREAS the County is desirous of providing Henderson County citizens with transit opportunities;

WHEREAS the Service Provider has the ability and expertise to provide transit services; and

WHEREAS the County and the Service Provider would like to work together to provide transit services in Henderson County;

NOW THEREFORE, for valuable consideration and mutual promises, the parties hereto agree as follows:

1. SCOPE OF WORK. The Scope of Work is outlined in the Request For Proposals dated March 9, 2016
2. DURATION. This contract shall be in effect the period of three (3) years of revenue service beginning July 1, 2016 and ending June 30, 2019. Both parties retain the option of renewing the contract for an additional three (3) year period; such an option will be exercised by both parties by written agreement at least one hundred and twenty (120) days prior to June 30, 2019 and depending upon available funds. The Service Provider's original price proposal in the solicitation, offer, and award will remain in effect in the event both parties exercise any options. Any contract renewals shall include all relevant provision of this solicitation.
3. COMPENSATION AND METHOD OF PAYMENT.
 - a. The County shall make payments to the Service Provider within forty-five days (45) after receipt of invoices and all required monthly reports. The monthly payments shall be based on vehicle revenue hours from the preceding month multiplied by the hourly rate set out in Attachment One.
 - b. The County may withhold payment or portions of the payment if the County determines that it has incurred partial liquidated damages which equate to hourly rates proposed by the provider. Partial liquidated damages shall be deducted by the County from monies owed the Service Provider in the subsequent month's invoice following the County's performance evaluation and the County supplying at least ten (10) days prior written notice of the County's intent to deduct liquidated damages, thereby affording the Service Provider an opportunity during said ten day period to provide information to the County challenging the factual basis for such previous month's intended deduction.

4. MAXIMUM PAYMENT. Payments under this Agreement are limited to those specified Attachment One in the WCCA Best and Final Offer (BAFO) submitted by the Service Provider on May 5, 2016. It is expressly understood and agreed to by the Service Provider and the County that in no event will the total compensation and reimbursement, if any, to be paid hereunder exceed the BAFO amount without a written amendment to this Agreement consented to by both parties in writing.
5. TRANSIT VEHICLE REPLACEMENT. The COUNTY will replace transit vehicles by the end of their useful life, as defined in requirements set forth by the Federal Transit Administration.
6. INDEMNIFICATION: Work to be performed as provided herein shall be done by the Service Provider as a separate and independent organization. The County shall not be liable for claims for damages or losses arising out of the performances of the Agreement by the Service Provider, its employees, officers, agents, and the Service Provider shall indemnify and hold harmless, to the extent allowed by law, the County, its officers, employees, and agents from all such claims arising under this Agreement.
7. NOTICES. All notices shall be sent to parties at the following addresses:

For WCCA

David White, Chief Executive
Officer
PO Box 685
Hendersonville, NC 28793-0685

For County of Henderson

Henderson County Planning Dept.
c/o Autumn Radcliff, Senior Planner
100 N. King Street
Hendersonville, North Carolina
28792

8. ASSIGNABILITY. This Agreement is expressly non-assignable without prior written consent and approval by the non-assigning party. The Project may not be continued by a successor to either party without the prior written consent of the non-moving party.
9. MISCELLANEOUS PROVISIONS. The singular of any term used in this Agreement shall include the plural, and the masculine shall include the feminine and vice versa.
10. GOVERNING LAW. The laws of the State of North Carolina shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it.

11. COMPLIANCE WITH APPLICABLE LAWS. The SERVICE PROVIDER shall comply with all applicable federal, state and local laws and regulations relating directly or indirectly to providing transit services.
 - a. All buses and other equipment shall be maintained and operated at all times in compliance with all applicable rules, regulations and codes governing the operation of vehicles of public conveyance of the COUNTY and its municipalities, and those of the State of North Carolina and the United States.
 - b. The COUNTY shall comply with all federal and state laws and regulations applicable to the COUNTY and related directly or indirectly to providing transit services.
11. TIME SCHEDULE. Both parties shall commence with their duties under the Agreement immediately upon the execution of same.
12. DOCUMENTS OF INCORPORATION. This Agreement includes terms and conditions described in the March 2016 Request for Proposals and the May 5, 2016 Best and Final Offer. The foregoing are hereby made part of this Agreement and incorporated herein by reference. In the event that any terms and conditions in these documents are inconsistent, this Agreement represents the final terms and conditions as of the date of execution.
13. SEVERABILITY. If any of the provision contained in this Agreement are held for any reason to be invalid, illegal, or unenforceable in any respect, such as invalidity, illegality or unenforceability will not affect any other provision, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
14. PARTIES TO THIS AGREEMENT. This Agreement gives no rights or benefits to anyone other than the parties to this Agreement.
15. ORIGINAL. A signed copy of this Agreement shall be considered as an original.
16. BREACH, TERMINATION, AND REMEDY.
 - a. Termination for Convenience: the COUNTY may terminate this CONTRACT at any time for any reason upon ninety (90) days written notice to the SERVICE PROVIDER. Any notice to terminate this CONTRACT shall be given by certified mail, return receipt requested. The effective date of termination shall be ninety (90) days from the date of receipt as noted on the return receipt. The SERVICE PROVIDER may terminate this CONTRACT at any time for any reason upon one hundred eighty (180) days written notice to the COUNTY. Any notice to terminate this CONTRACT shall be given by certified mail, return receipt requested. The effective date of termination shall be ninety (90) days from the date of receipt as noted on the return receipt.
 - b. Termination for Cause: Either party may terminate this CONTRACT should either party default in the performance of any of the terms, covenants, obligations, or conditions of this CONTRACT and the non-defaulting party may proceed by following any of the options listed below in the Default section.
 - c. A written request by the COUNTY to the SERVICE PROVIDER, to reduce the level of fixed route service shall not be construed as a partial termination of the contract, unless the weekday scheduled revenue hours for fixed route service are reduced below seventy-five percent (85%) of the initial level.

17. AMENDMENTS. The terms of this Agreement may be amended by the mutual consent in writing by the parties hereto.
18. DEFAULT. Default shall mean a failure to comply with any of the provisions of this Agreement or any applicable County, State, or Federal laws, which do not fall within the force majeure provisions of this Agreement.
- a. In the event of default under this Agreement, non-defaulting party shall send written notice of specific instances of failure to fulfill any of its obligations under the Agreement and, within ten (10) days of the date of notice is sent, such failure has not cured or otherwise remedied to the satisfaction of the non-defaulting party during this ten-day period, then the non-defaulting party may, at its election, terminate the Agreement in whole or in part, for default. Non-defaulting party may give written notice of termination; or
 - b. In the event of default under this Agreement, the non-defaulting party shall have the rights, but not the obligation, to cure such default and to charge the defaulting party for the costs of curing the default against any sums due or which become due to the defaulting party under this Agreement. The non-defaulting party shall use the most economically reasonable method of curing any such defaults; or
 - c. The SERVICE PROVIDER will be in default should the SERVICE PROVIDER become insolvent or unable to pay its debts as they mature or make an assignment for the benefit of creditors or should a bankruptcy petition under the Bankruptcy Code of 1978, as amended, be brought by or against the SERVICE PROVIDER; or
 - d. The SERVICE PROVIDER will be in default should a judgment or order for payment of money no longer subject to appeal or which judgment or order, in the opinion of the COUNTY, would be fruitless to appeal, be entered against the SERVICE PROVIDER by any court or other tribunal which exceeds \$100,000 in amount and (a) such judgment or order shall continue undischarged or unpaid for a period of 30 days and (b) an insurer acceptable to the COUNTY has not acknowledged that such judgment or order is fully covered by a relevant policy of insurance and (c) or the COUNTY is otherwise reasonably satisfied that the SERVICE PROVIDER would be able to satisfy the judgment without affecting its ability to provide those services.
19. FORCE MAJURE. Any delay or failure of performance by either party shall not constitute a default or give rise to any claims for damages if and to the extent the failure is primarily caused by any act, event or condition reasonably beyond that party's control and adversely affecting its ability to perform its obligations including but not limited to:
- a. Acts of God, lightening, earthquake, fire, epidemic, landslide, drought, hurricane, tornado, storm, explosion, failure of utilities, flood, nuclear radiation, or any other act by third parties that interferes with operations.
 - b. Condemnation or other taking by any government body, change in any applicable law, rule, regulation, ordinance, or permit condition not in effect as of the date hereof.
 - c. Any order, judgment, action or determination of any federal or state court, administrative agency or government body.
20. EMERGENCIES. In the event of a declared civil disorder or natural catastrophe, the SERVICE PROVIDER shall direct the employees to operate as ordered by federal, state, and/or the County civil authorities. Compensation shall be based on actual hours of service performed.

21. TURNOVER PROCEDURE. The COUNTY has established a Turnover Procedure for return of Apple Country Transit vehicles and equipment at end of CONTRACT. This Turnover procedure shall be implemented toward the end of the current CONTRACT term and prior to the commencement of the new CONTRACT. At the COUNTY's option, a Turnover Inspection may be implemented with or without a change in SERVICE PROVIDER.
22. COUNTY AND SERVICE PROVIDER-SUPPLIED PROPERTY. The title to capital items provided by the COUNTY shall remain with the COUNTY.
 - a. The title to capital items provided by the COUNTY shall remain with the COUNTY. The SERVICE PROVIDER shall be required to maintain such items utilizing manufacturers' recommended maintenance standards, at a minimum, or those standards provided by the COUNTY, at the COUNTY's sole discretion. Furthermore, the SERVICE PROVIDER shall maintain adequate property control records of all the COUNTY-furnished property in accordance with sound industry practice and as approved by the COUNTY.
 - b. The COUNTY shall have the option, upon the expiration or termination of the CONTRACT, to purchase all or any part of non-revenue equipment not already purchased by the COUNTY and used by the SERVICE PROVIDER in the performance of the work specified in the CONTRACT at a price equal to that portion of the original cost of the equipment which has not yet been amortized as of the date the CONTRACT expires or is terminated. Amortization shall be deemed to be made in accordance with generally accepted accounting principles.
23. MEETINGS. Upon request of the COUNTY, the SERVICE PROVIDER shall, at its own expense, attend public, committee, or board meetings to provide information concerning the transit system. A representative of the SERVICE PROVIDER, shall attend, at a minimum, bi-weekly meetings or as requested with the COUNTY Transit staff at times and locations to be determined.
24. REMOVAL OF EMPLOYEES. Promptly upon the written demand of the COUNTY's Project Coordinator, SERVICE PROVIDER shall remove from activities associated with this CONTRACT any employees whom the COUNTY at its sole discretion considers unsuitable for such work.
25. APPROVAL OF PROCEDURES. The plans submitted in response to this Request for Proposals are hereby incorporated into this CONTRACT by reference. These plans, together with the requirements in the Request for Proposals, shall constitute the SERVICE PROVIDER's operating procedures, policies and practices, and, upon reasonable written request from the COUNTY, the SERVICE PROVIDER shall amend such procedures, policies and practices in accordance therewith. The SERVICE PROVIDER shall request the COUNTY's prior written approval for any change to these plans. Such procedures, policies and practices shall be deemed to include all operators' and other SERVICE PROVIDER's employees' training and orientation and SERVICE PROVIDER's employee performance codes and disciplinary procedures, dress codes, run cuts, timetables and other performance-related procedures or policies.
26. ADVERTISING. At this time, the COUNTY does not permit paid interior or exterior advertising on Apple Country Transit buses. However, the COUNTY shall have the right to determine interior and exterior advertising policies on revenue vehicles. All revenue received from advertising on buses shall be paid to the COUNTY. The SERVICE PROVIDER shall be responsible for the installation of advertising in the buses.

27. ERISA. The SERVICE PROVIDER shall comply with the provisions of the Employee Retirement Income Security Act of 1974, as amended with respect to each of its employee benefit plans. The SERVICE PROVIDER shall supply the COUNTY with such information concerning the status of each of the SERVICE PROVIDER's employee benefit plans, as the COUNTY shall reasonably request.
28. LICENSES, PERMITS, AND FILING FEES. SERVICE PROVIDER is solely responsible for obtaining any licenses or other authorization required by law to perform the services required in this CONTRACT.
- a. The cost of all licenses and permits necessary to operate each bus and other equipment under all such applicable laws and regulation shall be the responsibility of the SERVICE PROVIDER. These permits and licenses shall include, but not limited to, all necessary North Carolina motor vehicle licenses and certificates.
 - b. The SERVICE PROVIDER shall pay all federal, state and local taxes imposed on the SERVICE PROVIDER by reason of the ownership or leasing of any vehicle, equipment, purchase of fuel, inventory or operation of the transit system.
29. PROHIBITED USES. Unless expressly authorized in writing by the COUNTY, the SERVICE PROVIDER shall not use any bus or other equipment, which is part of the Apple Country Transit service other than in connection with the services required to be performed under the CONTRACT. The SERVICE PROVIDER shall not use any such bus or other equipment for any private charters or any purpose other than as may be specifically permitted by the COUNTY and in the COUNTY's sole discretion and under such terms as the COUNTY elects.
30. RISK OF LOSS OR DAMAGE.
- a. The SERVICE PROVIDER shall be responsible for the vehicles, equipment and supplies used in the performance of the services called for under the CONTRACT and shall be responsible for all loss or damage with respect to any such vehicles, equipment and supplies, excepting those losses or damages due to either intentional acts of the COUNTY or the COUNTY's gross negligence.
 - b. The SERVICE PROVIDER will be responsible for all losses and/or damages to buildings, structures, and facilities, whether owned or leased by the COUNTY, used in the performance of this CONTRACT, which are due to the negligence of the SERVICE PROVIDER, its agents, representatives, employees, or subcontractors.
31. INSURANCE. The SERVICE PROVIDER shall procure and maintain, or cause others to procure and maintain, for the duration of the CONTRACT insurance against claims for injuries to persons or damages to property, or theft which may arise from or in connection with the performance of the work hereunder by the SERVICE PROVIDER, its agents, representatives, employees, subcontractors or authorized the COUNTY transit staff, including but not limited to the procuring of insurance against claims for injuries to persons or damages to property including claims that may arise at the COUNTY owned or leased transfer centers, park and ride lots or bus stops, or theft, or property damage of any and all transit vehicles and equipment either owned by the COUNTY, or leased by the COUNTY, or otherwise used by the SERVICE PROVIDER or the COUNTY in connection with the operation of the transit system and the services described in the CONTRACT. The cost of such insurance shall be identifiable as separate items and included in the SERVICE PROVIDER's Cost Proposal:
- a. Minimum Limits of Insurance
SERVICE PROVIDER shall maintain limits no less than:
 - i. General Liability: \$1,000,000 combined single limit per occurrence for

bodily injury, personal injury and property damage. Subject to Policy aggregate limit of \$2,000,000.

- ii. Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury, personal injury and property damage including passenger liability.
- iii. Umbrella Liability: \$15,000,000 per occurrence for bodily injury, personal injury, and property damage in excess of limits required under "i" and "ii" above and "iv" below.
- iv. Workers' Compensation and Employers Liability: Workers Compensation limits as required by the Labor Code of the State of North Carolina and Employers Liability limits of \$500,000 per accident.
- v. All Risk Fire and Extended Coverage for full replacement cost on all equipment, tools, supplies, and contents used in the performance of services under the CONTRACT. The COUNTY (and the City of Asheville in the case of vehicles) will be included as Loss Payees in this coverage for Apple Country Transit – owned equipment, tools, supplies, and contents.
- vi. Automobile Physical Damage coverage, including Collision coverage and Comprehensive coverage, each equal to actual cash value of all vehicles, including the fixed route buses, paratransit vans, and non revenue vehicles operated by SERVICE PROVIDER's employees. Deductible levels shall be determined by the SERVICE PROVIDER based upon SERVICE PROVIDER'S ability to cover deductible payments in the event of a claim. The SERVICE PROVIDER shall be responsible for all damages falling below the deductible. No blanket or per location limit should apply to this coverage under \$10,000,000. The COUNTY will be included as a Loss Payee in this coverage.
- g. Employment Practice Liability: \$1,000,000 each occurrence and aggregate.

b. Deductibles and Self-Insured Retention

Any deductibles or self-insured retentions must be declared to and approved by the COUNTY. At the option of the COUNTY, either, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the deductibles or self-insured retentions as respects the COUNTY, the Board of Directors, their officials, agents, employees, and volunteers; or the SERVICE PROVIDER shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- i. General Liability, Automobile Liability, and Umbrella Liability Coverage
 - a. The COUNTY, its officials, agents, employees, and volunteers shall be covered as insured with respect to liability arising out of activities performed by or on behalf of the SERVICE PROVIDER; products and completed operations of the SERVICE PROVIDER; premises owned, occupied or used by the SERVICE PROVIDER; or vehicles owned, leased, hired or borrowed by the SERVICE PROVIDER. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officials, agents, employees, and volunteers.
 - b. The SERVICE PROVIDER's insurance coverage shall be primary

insurance with respect to the COUNTY, its officials, agents, employees, and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officials, agents, employees, and volunteers shall be in excess of the SERVICE PROVIDER's insurance and shall not contribute with it.

- c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees and volunteers.
- d. The SERVICE PROVIDER's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

ii. Workers' Compensation and Employers Liability Coverage

The insurer shall agree to waive all rights of subrogation against the COUNTY, its officers, officials, employees and volunteers for losses arising from work performed by the SERVICE PROVIDER for the COUNTY.

iii. All Coverage

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to the COUNTY.

a. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A VII or acceptable to the COUNTY.

b. Verification of Coverage

The SERVICE PROVIDER shall furnish the COUNTY with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The policies, certificates and endorsements are to be in a form acceptable to the COUNTY and are to be received and approved by the COUNTY 30 days after award or commencement of any mobilization activity, whichever is earlier. The SERVICE PROVIDER is to commence no activity with regard to performance of the CONTRACT until the required insurance has been obtained. The COUNTY reserves the right to require complete, certified copies of all required insurance policies, at anytime.

c. Subcontractors

The SERVICE PROVIDER shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

d. Rights Reserved

The COUNTY reserves the right to reject any and all insurance proposals, to waive any informality in PROPOSALS and, unless otherwise specified by the PROPOSER, to accept any item in the PROPOSAL. The COUNTY, solely at its option, may purchase any or all of the insurance coverage required in these specifications directly to cover its own and the SERVICE PROVIDER's interests, in lieu of the SERVICE PROVIDER providing such coverage. In such cases, the

COUNTY would delete applicable insurance coverage and cost(s) from its evaluation of PROPOSALS.

e. Claims Information and Loss Runs

The SERVICE PROVIDER shall make available to the COUNTY, through its records or the records of their insurer, information regarding a specific claim. Any loss run information available from the SERVICE PROVIDER or their insurer will be made available to the COUNTY upon their request.

32. LABOR DISPUTES. If the SERVICE PROVIDER has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this CONTRACT, the SERVICE PROVIDER immediately shall give notice, including all relevant information, to the COUNTY Project Coordinator.
33. MINIMUM BUS AVAILABILITY. The SERVICE PROVIDER shall provide a number of vehicles that equal that of the peak service requirement for both the fixed route and paratransit service in operable condition for revenue service in peak periods unless otherwise directed by the COUNTY. No vehicle shall be inoperable for a period longer than 5 business days unless by express written permission by the COUNTY.
34. CONFIDENTIALITY. Any and all reports, information or data of whatever nature provided to, or prepared, generated or assembled by the SERVICE PROVIDER in connection with the performance of the CONTRACT shall not be made available to any individual or organization outside the SERVICE PROVIDER without the prior written approval of the COUNTY, unless such is required by a court process. SERVICE PROVIDER shall promptly notify the COUNTY of any request for such information in a court proceeding.
35. EXAMINATION AND RETENTION OF RECORDS. SERVICE PROVIDER shall maintain all books, records, documents, accounting ledgers, data bases, and similar materials relating to work performed for the COUNTY under this CONTRACT on file for at least three (3) years following the date of final payment to the SERVICE PROVIDER by the COUNTY. All records stored on a computer database must be of an updated format compatible with the COUNTY's software systems. Any duly authorized representative(s) of the COUNTY shall have access to such records for the purpose of inspection, audit, and copying at reasonable times, during SERVICE PROVIDER's usual and customary business hours. SERVICE PROVIDER shall provide proper facilities to the COUNTY representative(s) for such access and inspection. Further, any duly authorized representative(s) of the COUNTY shall be permitted to observe and inspect any or all of SERVICE PROVIDER's facilities and activities during SERVICE PROVIDER's usual and customary business hours for the purposes of evaluating and judging the nature and extent of SERVICE PROVIDER's compliance with the provision of this CONTRACT. In such instances, the COUNTY representative(s) shall not interfere with or disrupt such activities.

The SERVICE PROVIDER shall maintain, and the COUNTY and its representatives shall have the right to examine, all books, records, documents, accounting procedures and practices and other evidence sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and anticipated to be incurred for the performance of the CONTRACT. The materials described above as well as any relevant database and computer tapes or disks containing such information shall be made available at the COUNTY office of the SERVICE PROVIDER at all reasonable times for

inspection, audit, and reproduction during the term of the CONTRACT, and for three years from the final date of settlement or payment under the CONTRACT.

36. FEDERAL REGULATIONS AND REQUIREMENTS.

The SERVICE PROVIDER will comply or implement programs meeting regulations and requirements of the Federal Government. These requirements include:

National Transit Database

The SERVICE PROVIDER will submit to the COUNTY (monthly) information pertaining to the NTD requirements (Section 4).

Should FTA request revisions or explanations for any portion of the annual NTD report, SERVICE PROVIDER will provide data for follow-up report in a timely manner – at least five (5) days prior to FTA deadline. If data is not provided in a timely manner or is inaccurate, SERVICE PROVIDER will reimburse the COUNTY for any costs associated with compiling the data.

Disadvantaged Business Enterprise Program

The SERVICE PROVIDER or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this CONTRACT. The SERVICE PROVIDER shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of US DOT assisted CONTRACTS. Failure by the SERVICE PROVIDER 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 recipient deems appropriate.

The COUNTY has specified a DBE goal of seven percent (7%) for the work to be performed under this CONTRACT. The SERVICE PROVIDER must make good faith efforts to meet this goal throughout the CONTRACT.

Drug and Alcohol Testing

The SERVICE PROVIDER agrees to establish and implement a Drug and Alcohol Testing Program that complies with 49 CFR Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, or the COUNTY, to inspect the facilities and records associated with the implementation of the Drug and Alcohol Testing Program as required under 49 CFR Parts 653 and 654 and review the testing process. The SERVICE PROVIDER agrees further to certify annually its compliance with Parts 653 and 654 before December 31st of every year and to submit the Management Information System (MIS) reports not later than February 15th of every year to the COUNTY. To certify compliance, the SERVICE PROVIDER shall use the Substance Abuse Certifications in the Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements, which is published annually in the Federal Register.

Additional Federal Requirements

Exhibit A outlines additional Federal Transit Administration requirements pertaining to this CONTRACT. These clauses are incorporated into this CONTRACT with the same force and effect as if they were included in the main text of the CONTRACT.

It is understood and agreed that the SERVICE PROVIDER may be obligated by and to the COUNTY for any specifications or documentation required of the COUNTY under these clauses.

37. PERFORMANCE STANDARDS.

The SERVICE PROVIDER will perform all transit services required by the CONTRACT according to the performance standards set forth below. The SERVICE PROVIDER's plans and procedures, submitted with the PROPOSAL, shall incorporate actions necessary to provide service according

to these standards. The performance standards shall apply to the Fixed Route, Paratransit, and the Special Events services.

The COUNTY has developed these standards with which the SERVICE PROVIDER is expected to comply to insure that Apple Country Transit services, employee performance and vehicles meet the COUNTY standards. Failure by the SERVICE PROVIDER to meet these standards could result in the COUNTY assessing an appropriate liquidated damage amount for each incident of non-compliance. The COUNTY has established specific performance standards related to the following:

Vehicle Maintenance

- Operating requirements
- Vehicle cleanliness
- ADA compliance
- Safety Reporting requirements

Vehicle Maintenance Standards

Proper maintenance directly affects operating costs and is closely related to the COUNTY's operating performance standards. The COUNTY maintenance requirements do not refer solely to the task of performing normal preventive maintenance tasks on a specified schedule, but rather that the task is done well and that the operation of the bus and all equipment on board the bus is in fact operable and reliable when in-service. The SERVICE PROVIDER is responsible for performing the following maintenance on a bus by bus basis (fixed route and paratransit buses):

- a. Completing all preventive maintenance inspections within the scheduled interval.
- b. Maintaining the heating systems: The heating systems must be fully operable from November 1 to March 1.
- c. Maintaining the air conditioning systems: The air conditioning system must be fully operable from March 1 to November 1.
- d. Repairing major vehicle body damage (interior or exterior) within twenty-one (21) days of occurrence.
- e. Repairing minor vehicle body damage (interior or exterior) such as scratches or damaged decals within thirty (30) days of occurrence;
- f. Replacing or repairing seat damage within forty-eight (48) hours of occurrence; and,
- g. Repairing ADA required equipment within forty-eight (48) hours of occurrence. This equipment includes:
 - Public address (PA) system
 - Destination sign
 - Stop Request signs
 - Passenger signal tape or buttons
 - Wheelchair lift equipment
 - Wheelchair tie-down and securement equipment; and
 - Required ADA signage and decals
- h. Ensuring that all buses placed in revenue service meet safety standards. This includes the following systems:
 - brakes
 - steering components
 - air conditioning in the period March 1 through November 1
 - heating in the period November 1 through March 1
 - emergency exits/doors/windows
 - two-way radios
 - other conditions required by Federal or State regulations

Operating Standards

The SERVICE PROVIDER shall make every effort to cover scheduled service. The SERVICE PROVIDER is responsible for complying with the following requirements:

The following performance requirements apply to the Fixed Route Bus Operations:

- a. Maintaining on-time performance within zero (0) minutes early and five (5) minutes late of scheduled times, except for in cases of inclement weather or other uncontrollable circumstances.
- b. Completing scheduled trips in their entirety.
- c. Operating routes in accordance with the established routes (operating according to the correct route, serving all designated stops).

The following performance requirements are used in defining operating requirements for Paratransit bus services:

- a. Achieving a level of on-time performance equaling or exceeding ninety five percent (95%) of pick-ups within sixty (60) minutes of the scheduled pick- up time.
- b. Notifying applicants about their eligibility for paratransit service within twenty-one (21) days of receipt of their application.
- c. Maintaining written daily logs, reported by month, which detail telephone communications from registered and potential new clients as per ADA requirements.

Vehicle Cleanliness

SERVICE PROVIDER shall maintain Apple Country Transit vehicles in a clean and neat condition at all times. The SERVICE PROVIDER is responsible for the following:

- a. Daily cleaning of the interior of the vehicles
- b. Regular cleaning of the exterior of the vehicles (washing and or spraying dirt off of vehicles at least every two days)
- c. Major detailed interior cleaning every fourteen (14) days
- d. Quarterly upholstery cleaning

ADA Compliance

SERVICE PROVIDER shall meet the ADA requirements. The SERVICE PROVIDER is responsible for the following:

- a. The use of mobility devices to board passengers;
- b. Properly boarding passengers who are required to stand on the wheelchair lift platform to be lifted into the bus;
- c. Properly securing wheelchair passengers in the wheelchair tie-down positions;
- d. Making the required announcements of stops on the bus PA system;
- e. Daily Testing light,
- f. No bus may depart from maintenance facility without operational lights Safety

Requirements

The SERVICE PROVIDER is responsible for complying with all of the following:

Reporting all passenger or vehicle accidents to the COUNTY promptly within one (1) hour of occurrence and following up with required detailed written accident report within three (3) to five (5) days.

Reporting

Submitting required monthly reports and documentation within ten (10) working days of the end of the month.

Customer Service

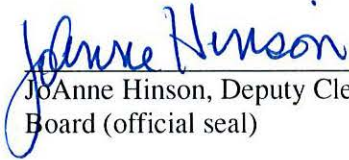
Completing investigation and follow-up response on customer complaints within seven (7) working days of complaint receipt.

38. DISCLAIMERS AND WAIVERS. This Agreement is to be regarded as an agreement for the purposes described in the Preamble clauses and provisions herein. It is the responsibility of each party to seek independent professional advice, to review, and to negotiate any changes prior to execution of this Agreement. County hereby disclaims the use of any contract interpretation principles against it as the drafter of this Agreement, and the Service Provider hereby waives any and all use of said principles in any dispute or action based on the terms of this Agreement.
39. BINDING AGREEMENT. The parties agree that this Agreement is binding on their heirs, assigns, transferees, or successors in obligation or interest, except that, to the extent that performance requires the qualifications set forth above, and if the heirs, assigns, transferees, or successors do not possess such qualifications, then specific performance shall not be required, however all other remedies shall remain in full force and effect.
40. ENTIRE AGREEMENT. This Agreement contains the full, final and exclusive statement of the Agreement between the parties and cannot be amended, altered or changed except by a written instrument signed by the parties hereto.

IN WITNESS WHEREOF, each party has caused this Agreement to be duly executed on the day and year first above written and if corporate, by their duly authorized representative.

On this the 28th day of June, 2016

Attest:



JoAnne Hinson, Deputy Clerk to the
Board (official seal)

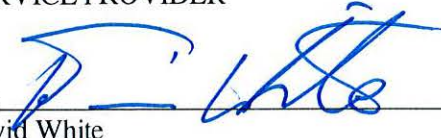


HENDERSON COUNTY

By: 

Steve Wyatt, County Manager
Henderson County Manager

SERVICE PROVIDER

By: 

David White
Executive Director, WCCA, Inc.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid certify that JoAnne Hinson, personally came before me this day and acknowledged that she is the Deputy Clerk to the Henderson County Board of Commissioners, a corporation and body politic, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by the Board of Commissioner's Chairman and attested by herself as its Clerk.

WITNESS my hand and notarial seal this 28th day of June, 2016.

Notary Public: Kathryn L. Finotti
Print or type name: Kathryn L. Finotti
My Commission Expires: 3-23-18

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, Notary Public of the County and State aforesaid certify that David White personally came before me this day and acknowledged that he is the Executive Director of Western Carolina Community Action (WCCA), Inc. a lawful corporation under the regulations of North Carolina, and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by himself as its Executive Director.

WITNESS my hand and notarial seal this 28th day of June, 2016.

Notary Public: Nancy J Berry
Print or type name: Nancy J Berry
My Commission Expires: 12/21/18

PRE-AUDIT CERTIFICATION

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act N.C.G.S. 159-28(a)

By: Carey McLelland
Carey McLelland
Henderson County Finance Director

Date: 4/23/14

Attachment One

**WCCA Proposed Annual Costs and Hourly Rates for Fixed Route Transit
(Best and Final Offer dated May 5, 2016)**

	<u>Year 1</u> <u>FY 2017</u>	<u>Year 2</u> <u>FY2018</u>	<u>Year 3</u> <u>FY2019</u>	<u>Option</u> <u>Year 4</u> <u>FY2020</u>	<u>Option</u> <u>Year 5</u> <u>FY2021</u>	<u>Option</u> <u>Year 6</u> <u>FY2022</u>
Not to Exceed Annual Cost	\$580,160	\$613,565	\$639,459	\$661,331	\$683,750	\$707,520
Service Hours	9,180	9,180	9,180	9,180	9,180	9,180
Hourly Rate	\$63.20	\$66.84	\$69.66	\$72.04	\$74.48	\$77.07

**WCCA Proposed Annual Costs and Hourly Rates for Paratransit Program
(Best and Final Offer dated May 5, 2016)**

	<u>Year 1</u> <u>FY 2017</u>	<u>Year 2</u> <u>FY2018</u>	<u>Year 3</u> <u>FY2019</u>	<u>Option</u> <u>Year 4</u> <u>FY2020</u>	<u>Option</u> <u>Year 5</u> <u>FY2021</u>	<u>Option</u> <u>Year 6</u> <u>FY2022</u>
Not to Exceed Annual Cost	\$107,990	\$115,730	\$119,470	\$124,464	\$130,005	\$137,460
Service Hours	1,850	1,850	1,850	1,850	1,850	1,850
Hourly Rate	\$58.37	\$62.56	\$64.58	\$67.28	\$70.27	\$74.30