



Henderson County Tourism Development Authority • 201 South Main Street • Hendersonville, NC 28792 • 828.693.9708

October 19, 2022

The Honorable Pete Buttigieg  
Secretary, U.S. Department of Transportation  
1200 New Jersey Avenue, SW  
Washington DC, 20590

Re: FY2022 NSFLTP Grant Application – Ecusta Rail Trail: A Multimodal Gateway to the Pisgah National Forest and the Blue Ridge Parkway

The Henderson County Tourism Development Authority has committed funding to the Ecusta Rail Trail Project through a contract with Henderson County. The Project will provide active transportation connections to the Pisgah National Forest and Blue Ridge Parkway for all.

The Henderson County Tourism Development Authority has committed to a total of \$2.74 million over 5 years in financial support to the project. I have attached a copy of the contract detailing this commitment.

The Henderson County Tourism Development Authority supported this project in part because of its increase in safety, quality of life, and health for area residents.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle Owens", with a long horizontal flourish extending to the right.

Michelle Owens, Executive Director  
Henderson County Tourism Development Authority  
201 South Main Street  
Hendersonville NC 28792

## **GRANT AGREEMENT**

This GRANT AGREEMENT (the "Grant Agreement") is entered into as of the Effective Date between the Henderson County Tourism Development Authority, a public authority pursuant to the laws of North Carolina, ("Grantor") and Henderson County ("Grantee"). Each of the Grantor and the Grantee is a "Party" and collectively they are the "Parties".

**WHEREAS**, pursuant to the North Carolina Session Law 2013-61, the Grantor provides financial assistance for tourism-related projects designed to increase the use of lodging facilities, meeting facilities or convention facilities in Henderson County and/or to attract tourists or business travelers to Henderson County; and,

**WHEREAS**, the Grantee has requested that the Grantor provide partial funding for the construction of Phase One of the Project (as defined below) and specifically as a match required for Phase One of the Project by the North Carolina Department of Transportation; and,

**WHEREAS**, the Grantor has determined that the Project is designed to increase the use of lodging facilities, meeting facilities, or convention facilities in Henderson County and/or to attract tourists or business travelers to Henderson County, and therefore wishes to provide partial funding for the Project as described in and subject to the terms and conditions of this Grant Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein contained, the Parties covenant and agree as follows:

### **ARTICLE I: THE GRANT**

**1.01 The Project.** The Project is the construction of a multi-use greenway in Henderson County along an unused railway corridor that will be part of a greenway that connects Hendersonville, NC and Brevard, NC known as the Ecusta Trail. The Project is located on property in Henderson County that is approximately 12 miles (145 acres) as recorded in the Deed at Book 3764, Page 594 and as more particularly described as: being all of that line of railroad formerly a portion of Norfolk Southern Railway Company which is known as the "TR Line" as shown on those Southern Railway Company Valuation Maps V-49/S1-b, V-49/2 and V-49/3 and portions of Southern Railway Company Valuation Maps V-49/1 and V-49/S1-a, beginning at Mile Post TR-0.7 and running to Mile Post TR-11.91 as shown on said Valuation Maps and also being all of that property depicted as claimed railroad right of way on plats of record at Plat Slides 13361 consecutively through Plat Slides 13475 in the office of the Register of Deeds for Henderson County, North Carolina (the "Project Property"). For purposes of clarity, the Project Property is only located in Henderson County and the Project is defined as only the portion of the Ecusta Trail in Henderson County.

Phase One of the Project consists of the construction as referred to above in that portion of the Project Property located generally to the east of the crossing of line of the railroad referred to above and U.S. Highway 64 in the "Horse Shoe" area of Henderson

County Phase Two of the Project shall be the remainder of the Project not covered by Phase One.

**1.02 The Grant.** Subject to the terms and conditions set forth herein, the Grantor agrees to make a grant to Grantee of at least Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to partially fund the Project (the "Grant") in two equal parts and as further set forth below.

(a) The Parties specifically agree that the first part of the Grant is for the purposes of providing matching funding as required by the North Carolina Department of Transportation for Phase One of the Project.

(b) The Parties specifically further agree that the second part of the Grant is for the purposes of providing matching funding as required by the anticipated North Carolina Department of Transportation for Phase Two of the Project.

(c) The Parties further agree that in any fiscal year, as further set forth below, the amount of the Grant may be increased up to an amount equal to 20% of the occupancy tax collected and disbursed to Grantor for that fiscal year. Notwithstanding anything herein to the contrary, the Grantee agrees and acknowledges that all of the Grantor's obligations under this Grant Agreement, including its obligation to disburse the Grant, are contingent upon the distribution to Grantor from Henderson County of sufficient funds to allow the Grantor to make the Grant.

**1.03 Disbursements.** The Grant will be disbursed as follows:

(a) The Grant will be disbursed annually over five years, the first disbursement to occur within thirty (30) days of the execution of this Grant agreement. Provided funding is available, each disbursement shall be \$500,000, with the option for additional funds to be requested as set forth below.

(b) If during any fiscal year, the Grantee determines that additional funding is needed for the Project, and the Grantor has additional funding to provide to the Project, then within ninety (90) days of the ending of the Grantor's fiscal year, the Grantee, in addition to providing the Annual Report set forth in 3.01, shall provide evidence to the Grantor supporting the need for the additional funding. Upon the provision of such evidence, the Grantor may add funding to the Grant so that the amount provided to Grantee for the fiscal year just ended equals an amount not to exceed 20% of the occupancy tax collected and disbursed to the Grantor for that fiscal year.

(c) Each disbursement is conditioned upon receipt by Grantor of all information required by Grantor and approval by Grantor (in the Grantor's sole discretion) of the information provided. If all conditions described in this Grant Agreement are met, the Grantor will disburse to Grantee on or before thirty days after its receipt of each request and all necessary information. Each disbursement may be made by Grantor by check or by other transfer of funds as may be agreed upon between the Parties.

**1.04 Term.** The term of this Grant Agreement will commence on the Effective Date and continue for four years after the Completion Date (as noted in the applicable

Annual Report and approved by the Grantor) unless terminated earlier according to the terms of this Grant Agreement.

## **ARTICLE II: REPRESENTATIONS AND WARRANTIES**

The Grantee represents and warrants to the Grantor that:

**2.01 Existence, Qualification and Power.** The Grantee has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to own its assets, carry on its business and execute, deliver and perform its obligations under this Grant Agreement.

**2.02 Authorization; No Contravention.** The execution, delivery and performance by the Grantee of this Grant Agreement, has been duly authorized by all necessary action, and does not (a) violate any law; or (b) result in any limitations on any licenses, permits or other approvals applicable to the business, operations or properties of the Grantee.

**2.03 The Project.** The Project consists of two phases and is located at the Project Property in Henderson County, North Carolina. Grantee warrants that it has the full authority of the recipient of the railbanking agreement covering the Project Property that the Project may be constructed upon the Project Property and all third party consents, including but not limited to the consent of any landlord, have been obtained to commence or complete the Project.

**2.04 Disclosure.** No information or materials submitted to the Grantor relating to the Project, including the representations and warranties in this Grant Agreement, contain any material misstatement of fact or omit to state any material fact regarding the Grantee or the Project.

## **ARTICLE III: AFFIRMATIVE COVENANTS**

During the Term of this Grant Agreement, the Grantee must:

**3.01 Annual Reports.** Deliver Annual Reports to the Grantor within 60 days of the end of Grantor's fiscal year that include:

- (a) The expected or actual Commencement Date;
- (b) The expected or actual Completion Date;
- (c) After the Completion Date, a description of the increase in use of lodging facilities, meeting facilities or convention facilities in Henderson County, or the attraction of tourists or business travelers to Henderson County, as a result of the Project, including measurement techniques where applicable; and
- (d) A certification from the Grantee of the following as of the date of the Annual Report: (i) the representations and warranties of the Grantee contained in this Grant Agreement are true and correct in all material respects; and (ii) there is no Default or Event of Default under this Grant Agreement.

**3.02 Notices.** Promptly (and in any event within five business days) notify the Grantor in writing via the methods described in Section 5.09 of: (a) the occurrence of any Default or Event of Default; (b) any litigation, lien, demand, claim, notice, investigation or proceeding threatened against or affecting the Grantee and the Project; (c) any loss, damage or destruction related to the Project that may adversely affect the Project as represented by any and all terms of the Grant Agreement; (d) any breach of any contract related to the Project; or (e) anything that could reasonably be expected to have a material adverse effect on the Project or the Grantee's ability to complete the Project. Each such notice must specify any portions of this Grant Agreement which have been breached and must set forth details of the reason for giving the notice and state what action the Grantee has taken and proposes to take with respect thereto.

**3.03 Maintenance of Project.** Maintain, preserve and protect the Project and obtain building risk insurance.

**3.04 Compliance with Laws, Etc.** Comply with the requirements of all laws, and obtain and maintain in good standing all required licenses, permits, authorizations and approvals of each governmental authority necessary to the conduct of its business or the Project.

**3.05 Books and Records.** Maintain and cause any contractors to maintain proper books of record and account, in which full, true and correct entries consistently applied must be made of all financial transactions and matters involving the Project.

**3.06 Inspection Rights.** Permit representatives and independent contractors of the Grantor to visit and inspect the Project and to discuss the Project and the Grantee's business with the Grantee's directors and officers, all at such reasonable times during normal business hours, upon reasonable advance notice; provided, however, that when a Default or an Event of Default exists the Grantor (or any of its representatives or independent contractors) may do any of the foregoing at any time during normal business hours and without advance notice.

**3.07 Recognition of Grantor.** Recognize the Grant made by Grantor by:

(a) Acknowledging the Grantor when announcing sponsors or donors of the Project and in printed or on-site donor lists, fundraising materials and press releases, in all cases as approved in advance by Grantor;

(b) Within one hundred eighty (180) days of the Completion Date, creating permanent signage on the Project Property (approved in advance by Grantor) that recognizes the tourism and lodging community and the Henderson County Tourism Development Authority for the Grant.

#### **ARTICLE IV: EVENTS OF DEFAULT AND REMEDIES**

**4.01 Events of Default.** The occurrence of any of the following constitutes an Event of Default:

(a) Grantee breaches or fails to perform or observe any covenant or agreement

contained in this Grant Agreement;

(b) Grantor reasonably determines in its sole and exclusive judgment: (i) it is unlikely that the Project can be completed or it is unlikely that the Project can be completed without undue delay; (ii) the Project will not be completed in accordance with the description of the Project set forth herein; or (iii) the Project has experienced, or is reasonably likely to experience, an event that will have a material adverse effect on the Project or the Grantee's ability to complete the Project;

(c) Any actual or threatened litigation, liens, demands, claims, notices, investigations or proceedings against or affecting the Project; or

(d) Any loss, damage or destruction related to the Project that may adversely affect the Project as represented by any and all terms of the Grant Agreement.

**4.02 Remedies Upon Event of Default.** If any Event of Default occurs, the Grantor may, but shall not be required to take, any one or more of the following actions:

(a) Terminate this Grant Agreement;

(b) If all or any portion of the Grant has not yet been disbursed, delay all remaining disbursements of the Grant and require the Grantee to present a Project update to the Grantor during its next funding cycle and/or cancel the remaining disbursements and terminate this Grant Agreement;

(c) If any portion of the Grant has been disbursed, send notice to the Grantee requiring it to repay the amount disbursed to the Grantor within thirty days; and/or

(d) Exercise on behalf of itself all rights and remedies available to it under this Grant Agreement and applicable law.

#### **ARTICLE V: MISCELLANEOUS**

**5.01 Open Meetings and Public Records.** The Grantee acknowledges and agrees that the Grantor is subject to the requirements regarding "public records" under all applicable statutes, regulations and other laws. All information disclosed to the Grantor which is a public record may be disclosed by the Grantor if requested. **GRANTOR IS NOT AND WILL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM THE RELEASE OF OR USE BY OTHERS OF ANY INFORMATION OR OTHER MATERIALS OBTAINED THROUGH GRANTOR.**

**5.02 Attorney Costs, Expenses and Taxes.** Each of Grantor and Grantee will remain liable for and pay its own fees and expenses, including legal, accounting, taxes, and any other fees, incurred in connection with the Project and this Grant Agreement. In the event of any dispute regarding this Grant Agreement, the prevailing Party will be entitled to recover reasonable attorneys' fees and other costs incurred, in addition to any relief to which such Party may be entitled.

**5.03 Nonliability of Grantor.** The relationship between the Grantee and the Grantor is solely that of grantor and grantee. The Grantor does not have any fiduciary relationship with or duty to the Grantee arising out of or in connection with this Grant

Agreement. The Grantor does not undertake any responsibility to the Grantee to review or inform the Grantee of any matter in connection with Project. The Grantee agrees that the Grantor will not be liable to the Grantee for any liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (including attorneys' fees and other reasonable costs) of any kind or nature whatsoever suffered by the Grantee in connection with, arising out of, or in any way related to this Grant Agreement or the Project, or any act, omission or event occurring in connection therewith.

**5.04 Indemnification by the Grantee.** The Grantee agrees to indemnify, defend and hold harmless the Grantor and its affiliates, directors, officers, employees, counsel, trustees, advisors, and agents from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses and disbursements (including attorneys' fees and other reasonable costs) of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against any such indemnitee in any way relating to or arising out of or in connection with this Grant Agreement or the Project.

**5.05 Integration; Counterparts; Amendment; Waiver; Severability.** This Grant Agreement, including recitals, comprises the complete agreement of the Parties on the subject matter hereof and supersedes all prior agreements, written or oral, on such subject matter. This Grant Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. No amendment, consent or waiver of any provision of this Grant Agreement, and no consent to any departure by the Grantee therefrom, will be effective unless in writing signed by the Grantor and the Grantee, and any such waiver or consent will be effective only in the specific instance and for the specific purpose for which given. No failure by the Grantor to exercise, and no delay by the Grantor in exercising, any right, remedy, power or privilege hereunder will operate as a waiver thereof; nor will any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. If any provision of this Grant Agreement is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of this Grant Agreement will not be affected or impaired.

**5.06 Survival of Representations and Warranties.** All representations and warranties made hereunder will survive the execution and delivery of this Grant Agreement.

**5.07 Governing Law; Venue.** This Grant Agreement will be governed by and construed in accordance with the substantive laws of North Carolina without regard to its conflict of laws provisions. Any legal action, suit or proceeding brought by either Party arising out of this Grant Agreement must be brought in a state or federal court in Henderson County, North Carolina, which will be the sole and exclusive venue for any such action, suit or proceeding.

**5.08 Successors and Assigns; No Third Party Rights.** The provisions of this Grant Agreement are binding upon and inure to the benefit of the Parties and their permitted successors and assigns; provided, however, that the Grantee may not assign or otherwise transfer the Grant or any of its rights, benefits or obligations hereunder. Nothing herein is intended or may be construed to confer upon or give any person other than the Grantor and the Grantee or their permitted successors and assigns, any legal or equitable rights, remedies or claims under or by reason of this Grant Agreement.

**5.09 Notices, Reports, and Other Communications; Consents.** All notices, reports, and other communications provided for or required by this Grant Agreement must be in writing and must be sent via a nationally recognized delivery service such as FedEx or UPS, electronically mailed or hand delivered to the applicable address:

if to the Grantor: Henderson County Tourism Development Authority  
201 South Main Street  
Hendersonville, NC 28792

if to the Grantee: Henderson County  
1 Historic Courthouse Square  
Hendersonville, NC 28792

All such notices, reports, and other communications will be deemed to be given or made upon receipt by the relevant Party. Grantor may withhold any requested consent in its sole discretion.

**5.10 Further Cooperation.** At the request of Grantor, Grantee agrees to cooperate fully, to promptly execute any and all supplementary documents, and to promptly take all additional actions that may be necessary to give full force and effect to the terms of this Grant Agreement.

IN WITNESS WHEREOF, the Parties have caused this Grant Agreement to be duly executed as of the Effective Date.

GRANTOR:


HENDERSON COUNTY TOURISM  
DEVELOPMENT AUTHORITY

By: Michelle Owens  
Name: Michelle Owens  
Title: HCTDA Executive Director  
5/6/2022

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GRANTEE:

By:   
Name: JOHN MITCHELL  
Title: COUNTY MANAGER

4895-7300-6859, v. 4

This instrument has been preaudited  
in the manner required by the Local  
Government Budget & Fiscal Control Act  
NC GS 159-28(a)

  
Henderson County Finance Director