

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** March 19, 2008

**SUBJECT:** Travel and Tourism Capital Project

**ATTACHMENT(S):** Construction Contract  
Summary of Financing Rates Received  
First Citizens Bank Financing Proposal

**SUMMARY OF REQUEST:**

Travel and tourism is planning the renovation of the building it occupies to include a new roof and outside public restrooms. A copy of the construction contract approved by the Travel and Tourism Board is attached. This construction has a contract price of \$379,332. The Travel and Tourism Board Chairman will be present to discuss the project and provide the Board of Commissioners with plans and specifications for the project.

There are not adequate funds available to travel and tourism to complete this project without seriously depleting their fund balance. The Travel and Tourism Board proposes the financing of this project for a period of two (2) years. The financing would be undertaken by Henderson County, as owner of the building. However, expenditures made by the County in repayment of this financing are proposed to be reimbursed to the County from funds controlled by the Travel and Tourism Board (the Room Occupancy Tax). The Travel & Tourism Board has included projected debt service requirements for this financing in their proposed FY2009 budget.

After a request for proposals from various banks was made, the best offer under the circumstances for a loan of such short duration was made by First Citizens Bank (proposal attached). The terms of this offer are to loan the amount of \$273,000, unsecured by collateral, at an interest rate of 3.50 percent. An unsecured loan is recommended for a loan of such short duration because the upfront expense of a secured loan (title examination fees; title insurance; survey; recording fees) would not likely be recouped by lower interest costs over the repayment term.

County staff will be present and prepared if requested to give further information on this matter.

**BOARD ACTION REQUESTED:**

Approval of the project and financing, subject to negotiation of a repayment agreement between the Travel and Tourism Board and the Board of Commissioners.

If the Board is so inclined, the following motion is suggested:

***I move that the Board approve the financing of the Travel and Tourism building renovation project with First Citizens Bank on the terms shown in their proposal and authorizing the Board Chairman, County Manager, Travel & Tourism Chairman and County Staff to take such actions as necessary to complete this transaction, subject to the approval by the Board of Commissioners of a repayment agreement between the Travel and Tourism Board and the Board of Commissioners.***

**AIA DOCUMENT A101-1997****Standard Form of Agreement Between Owner and Contractor**  
*where the basis of payment is a STIPULATED SUM*

**AGREEMENT** made as of the 5th day of February  
in the year 2008  
(In words, indicate day, month and year)

Fifth day of February, Two Thousand Eight  
**BETWEEN** the Owner:  
(Name, address and other information)

Visitor's Center, Henderson County Travel and Tourism  
201 South Main Street  
Hendersonville, NC 28792

and the Contractor:  
(Name, address and other information)

Carolina Specialties Construction LLC  
Post Office Box 825  
Hendersonville, NC 28793

The Project is:  
(Name and location)

New Addition - Visitor's Center, Henderson County Travel and Tourism  
201 South Main Street  
Hendersonville, NC 28792

The Architect is:  
(Name, address and other information)

Stuart Stepp, AIA  
Post Office Box 86  
Flat Rock, NC 28731

The Owner and Contractor agree as follows.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

~~AIA Document A201-1997~~

General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

This document has been approved and endorsed by The Associated General Contractors of America.



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## ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 8.

## ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

## ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

*(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)*

Construction to begin on date of written notice to proceed from Architect.

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic's liens and other security interests, the Owner's time requirement shall be as follows:

3.2 The Contract Time shall be measured from the date of commencement.

3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_ days from the date of commencement, or as follows:

*(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)*

Project to be completed on finish date of May 23, 2008. There will be a \$150.00 a day penalty thereafter.

, subject to adjustments of this Contract Time as provided in the Contract Documents.

*(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)*

Penalty clause will be \$150.00 a day for each calendar day after the finish date of May 23, 2008, that work is not complete.



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#### ARTICLE 4 CONTRACT SUM

4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be **Three Hundred Seventy-Nine Thousand, Three Hundred Thirty-Two** ..... Dollars (\$379,332.00 ), subject to additions and deductions as provided in the Contract Documents.

\* Base Bid \$387,462.00 less (items attached) \$8,130.00 - = \$379,332.00

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

*(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)*

4.3 Unit prices, if any, are as follows:

1. Rock Removal \$180
2. Allow additional \$350/1000 brick allowance and \$17 per bag for colored mortar.

#### ARTICLE 5 PAYMENTS

##### 5.1 PROGRESS PAYMENTS

5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty days after the Architect receives the Application for Payment.

5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.



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(A) Parking Lot on side of Building Deduct \$6,250.00.

(B) Remove trees on side. Deduct \$380.00.

(C) Landscaping Deduct \$1,500.00.

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5.1.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- 1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent ( 10 %). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Subparagraph 7.3.8 of AIA Document A201-1997;
- 2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent ( 10 %);
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of AIA Document A201-1997.

5.1.7 The progress payment amount determined in accordance with Subparagraph 5.1.6 shall be further modified under the following circumstances:

- 1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and (*Subparagraph 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.*)
- 2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Subparagraph 9.10.3 of AIA Document A201-1997.

5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

*(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Clauses 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract Documents, insert here provisions for such reduction or limitation.)*

At 50% completion, retainage to be reduced to 5% upon approval from the Owner.

5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

## 5.2 FINAL PAYMENT

5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when:

- 1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Subparagraph 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- 2 a final Certificate for Payment has been issued by the Architect.



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5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

#### ARTICLE 6 TERMINATION OR SUSPENSION

6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

#### ARTICLE 7 MISCELLANEOUS PROVISIONS

7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

7.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

N/A

*(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)*

7.3 The Owner's representative is:  
*(Name, address and other information)*

Melody Heltman, Director  
201 South Main Street  
Hendersonville, NC 28792  
(828) 693-9708

7.4 The Contractor's representative is:  
*(Name, address and other information)*

Chris Cormier  
Carolina Specialties Construction, LLC  
Post Office Box 825  
Hendersonville, NC 28793  
(828) 697-7184

7.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

7.6 Other provisions:



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## ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS

8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

8.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A101-1997.

8.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997.

8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated November 2007, and are as follows:

Document	Title	Pages
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See attached Exhibit 'A'

8.1.4 The Specifications are those contained in the Project Manual dated as in Subparagraph 8.1.3, and are as follows:

*(Either list the Specifications here or refer to an exhibit attached to this Agreement.)*

Section	Title	Pages
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See attached Exhibit 'A'

8.1.5 The Drawings are as follows, and are dated 12-15-07 unless a different date is shown below:

*(Either list the Drawings here or refer to an exhibit attached to this Agreement.)*

Number	Title	Date
C-1	Cover Sheet	
SP-1	Site Plan	
S-1 - S-3	Structural	
A-1 - A-9	Architectural	
P-1 - P-3	Plumbing	
M-1, M-2	Mechanical	
E-1, E-2	Electrical	



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 Henderson Co. Travel & Tourism  
 201 S. Main Street  
 Hendersonville, NC

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8.1.6 The Addenda, if any, are as follows:

Number	Date	Pages
1	1-14-08	2
2	1-16-08	2

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)*

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER (Signature)

CONTRACTOR (Signature)

CHRIS CORNION

MANAGER/MANAGER

(Printed name and title)

(Printed name and title)

**CAUTION:** You should sign an original AIA document or a licensed reproduction. Originals contain the AIA logo printed in red; licensed reproductions are those produced in accordance with the Instructions to this document.



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# **HENDERSON COUNTY REQUEST FOR FINANCING PROPOSALS**

## **Travel & Tourism Capital Project**

### **Summary of Financing Rates Received**

**February 26, 2008**

<b><u>Financial Institution:</u></b>	<b><u>2-Yr Fixed Interest Rate</u></b>
<b>First Citizens</b>	<b>3.50%</b>
<b>Wachovia</b>	<b>3.99%</b>
<b>Carolina First</b>	<b>5.50%</b>
<b>Mountain 1<sup>st</sup></b>	<b>6.75%</b>

February 26, 2008

**Non-Bank Qualified**

**Installment Purchase Contract Proposal for:**

County of Henderson  
113 North Main Street  
Hendersonville NC 28792  
Attn: J. Carey McLelland, Finance Officer

**Offered by:**

First Citizens Bank & Trust Co.  
PO Box 29519  
16 E Rowan Street  
Raleigh, NC 27626-0519

**Type of Contract:** An installment purchase contract structure with the County responsible for all expenses related to the use of the facility including taxes, insurance and maintenance.

**Description of Project:** To finance the construction of capital improvements to the Travel & Tourism Visitors Center building located at 201 S. Main Street. Total amount will not exceed \$273,000.00.

**Financing Terms, Payments & Rates:** First Citizens will provide the following options:

1. A tax-exempt fixed interest rate of 3.50% for two (2) years with quarterly payments made in arrears of \$35,482.33.
2. A tax-exempt fixed interest rate of 3.56% for three (3) years with quarterly payments made in arrears of \$24,087.46.

**Escrow Funding:** Advance funding is available to allocate funding for the Vendors/Contractors before the delivery of equipment or as progress payments on construction projects. The Bank would pay the proceeds to an escrow and appoint First-Citizens Trust Department as Escrow Agent to invest installment proceeds at money market rates. Interest proceeds would be paid to the County monthly, quarterly, semiannually or annually by the Escrow Agent or accumulated in escrow.

**Security Interest and Title:** This will be unsecured.

**Non-Appropriation/Early Termination:** The County shall exercise its best efforts to obtain annual appropriations to meet fiscal year installment sale payments. The contract may be terminated without penalty, in the event of non-appropriations.

**Tax Status:** The County is qualified as a governmental entity within the meaning of section 103 (A) of the Internal Revenue Code of 1954, as amended.

**Prepayment:** The County may early terminate the contract by paying the unpaid principal balance plus earned interest per an amortization schedule to be provided by Bank. The principal balance may be prepaid, in full and at any time, at a prepayment price equal to 100% of the principal balance plus \$250.00, together with accrued interest to the date of prepayment, upon thirty (30) days prior written notice to the Bank.

**North Carolina General Statute:** The contract will conform to the requirements of North Carolina General Statute 159, article 8, 160A-20.

**Rate Modification/Refinancing:** The County may refinance or modify the existing rate on the contract, with a flat fee of \$500.00 or 1% of the outstanding principal balance, whichever is greater. The refinancing or modification may only be made on the annual anniversary date of the contract.

**Documents Required:**

- (1) Installment Sale Finance Contract and attached Exhibits.
- (2) Contract validity opinion prepared by the local counsel.
- (3) Certified copy of minutes approving the transaction.
- (4) Non-Arbitrage certification letter.
- (5) Audited year-end June 30, 2005, 2006 and 2007 financial statements.
- (6) IRS Form 8038-G.

**Closing Costs: Fees & Expenses:** The following fees and expenses will be due and payable by the borrower to the Bank at the closing: (1) an origination fee in the amount of \$500.00.

**Proposal and Conditions:** This is a proposal and not a commitment to provide funding. The closing of the transaction must occur on or before April 30, 2008. If the transaction is not closed on or before that date, our obligation to fund the transaction will terminate. If, prior to the closing of the transaction, there is a material adverse change in your financial condition, or if we discover adverse circumstances of which we are currently unaware, we may rescind this proposal and will have no obligation to fund the transaction. Final and full approval is subject to the approval of the Executive Management of First Citizens Bank & Trust Company. This proposal will expire unless it is accepted in writing and the acceptance is received by the undersigned on or before March 30, 2008.

**First-Citizens Bank & Trust Company**

\_\_\_\_\_  
By: Michael Wollinger  
Senior Vice President

The foregoing proposal is accepted  
and approval of rate and funding  
is requested:

**County of Henderson**

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_



## HENDERSON COUNTY

### AMORTIZATION SCHEDULE

Current Balance or Original Amount 273,000.00  
Interest Rate 3.50%  
Date of Note 3/15/2008  
Payments per Year 4  
First Payment Due Date 6/15/2008  
# of Payments 8  
**P&I Level Payment Amount 35,482.33**

Pmt No.	Due Date	# Days	Beginning Balance	Rate	Interest	Principal	Ending Balance	Total Payment
1	6/15/2008	90	273,000.00	3.500	2,388.75	33,093.58	239,906.42	35,482.33
2	9/15/2008	90	239,906.42	3.500	2,099.18	33,383.15	206,523.28	35,482.33
3	12/15/2008	90	206,523.28	3.500	1,807.08	33,675.25	172,848.03	35,482.33
4	3/15/2009	90	172,848.03	3.500	1,512.42	33,969.91	138,878.12	35,482.33
5	6/15/2009	90	138,878.12	3.500	1,215.18	34,267.14	104,610.97	35,482.33
6	9/15/2009	90	104,610.97	3.500	915.35	34,566.98	70,043.99	35,482.33
7	12/15/2009	90	70,043.99	3.500	612.88	34,869.44	35,174.55	35,482.33
8	3/15/2010	90	35,174.55	3.500	<u>307.78</u>	<u>35,174.55</u>	0.00	<u>35,482.33</u>
					10,858.62	273,000.00		283,858.62