

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 1, 2005

SUBJECT: Improvement Guarantee for Rebecca's Pond

ATTACHMENTS: 1. Application for Improvement Guarantee
2. Draft Performance Guarantee Agreement
3. Cost Estimates

SUMMARY OF REQUEST:

GHC Land Development, LLC, owner of Rebecca's Pond, submitted an application for an improvement guarantee for the Rebecca's Pond major subdivision. Rebecca's Pond is a 24-lot major subdivision located directly off of Crab Creek Road. Rebecca's Pond was conditionally approved by the Planning Board on March 15, 2005. Rebecca's Pond originally began as a minor subdivision in 2003 and an improvement guarantee was posted to cover the cost of the grading and road construction for the minor subdivision.

GHC Land Development, LLC, has submitted a new improvement guarantee application for the Rebecca's Pond major subdivision. The new improvement guarantee is proposed to cover the remaining cost of the improvements not yet completed under the old improvement guarantee for the minor subdivision and all new costs associated with the expansion of the minor subdivision to a major subdivision. The improvement guarantee will cover the costs for the road construction and road shoulder stabilization for Rebecca's Pond major subdivision.

According to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance, where the required improvements have not been completed or in lieu of completing all of the required improvements in order to submit a Final Plat and also prior to Final Plat approval, the developer may post a performance guarantee for the improvements. Section 170-38 of the Henderson County Subdivision Ordinance also states that the installation of the improvements must be completed within two years of the date of approval of the improvement guarantee. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$127,535.00 to cover the cost of the improvements (\$102,028.00) as well as the required twenty-five percent (25%) contingency (\$25,507.00). The proposed completion date for the improvements is July 22, 2006.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers must submit a new irrevocable letter of credit in accordance with the terms of the Agreement. Once the County receives a letter of credit in proper form, the relevant parties must execute the Agreement. At the time that the new Performance Guarantee Agreement is fully executed, the new Agreement will supercede the

prior Agreement and the old irrevocable letter of credit for Rebecca's Pond minor subdivision, should be released.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the new improvement guarantee application for Rebecca's Pond, subject to the developers submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision REBECCA'S POND
Name of Owner GENE & REBECCA CARSWELL
Address 119 WOODHAVEN DR, HENDERSONVILLE NC 28739
Phone: 828 697 0060 or 828 696 0644
Agent GENE H. CARSWELL Phone: 243 6826
Date of Preliminary Plan Approval by Planning Board MARCH 15, 2005
Significant Conditions Imposed: FINISH ROAD IMPROVEMENTS

Type of improvement requested:

- Cash on Deposit (Certified Check)
- Bank Escrow Account
- Irrevocable Letter of Credit
- Surety Performance Bond
- Trust Agreement

Name of bank or bonding company BLUE RIDGE SAVINGS & LOAN

Amount of guarantee (including 25% overhead) \$ _____

Projected completion date WITHIN ONE YEAR

Are cost estimates attached (with quantities and unit costs)? yes no

Have engineering and design work been completed?
 complete partially complete incomplete

I have read and understand all requirements stated in Article V of the Henderson County Subdivision Ordinance regarding subdivision improvement guarantees.

Owner's Signature [Signature] Date 7/22/05
Submitted By [Signature] Date 7/22/05
Received By _____ Date _____



STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this ____ day of _____, 200_, by and between GHC Land Development, LLC, hereinafter referred to as "Developer," and the Henderson County Board of Commissioners, hereinafter referred to as "Board;"

WITNESSETH:

WHEREAS, the Board and the Developer entered into an Agreement on May 19, 2004 (hereinafter "the original Agreement"), concerning an improvement guarantee for a portion of a proposed minor subdivision known as Rebecca's Pond, located in Henderson County, North Carolina; and

WHEREAS, the Developer posted with Henderson County an irrevocable letter of credit in the amount of \$85,269.79 in accordance with the original Agreement; and

WHEREAS, the original Agreement provided that all required improvements were to be completed on or before the September 1, 2005; and

WHEREAS, the developer obtained approval of a Final Plat for the Rebecca's Pond minor subdivision from Henderson County Planning Department Staff and subsequently recorded such Final Plat; and

WHEREAS, Developer submitted an application to expand the existing Rebecca's Pond minor subdivision to a major subdivision on February 14, 2005; and

WHEREAS, The Planning Board conditionally approved the Combined Master Plan and Development Plan for the Rebecca's Pond major subdivision on March 15, 2005; and

WHEREAS, the Developer has requested that the Board of Commissioners approve the posting of a new irrevocable letter of credit to guarantee and secure the completion of said improvements in lieu of completion of all improvements prior to said approval;

IT IS THEREFORE AGREED as follows:

1. The Developer will, on or before the July 22, 2006, complete as required the following improvements to serve lots in Rebecca's Pond: grading of roads, road construction and road shoulder stabilization, as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Rebecca's Pond, as conditionally approved by the Henderson County Planning Board on March 15, 2005, and as shown on the new

- cost estimates submitted by Buford Cook Excavating (dated July 27, 2005) and by Moore & Son Excavating (dated May 30, 2005).
2. The Developer will post with Henderson County an irrevocable letter of credit guaranteeing completion of said improvements by the required date. Said letter of credit must be issued by a bank licensed to do business in North Carolina, in the amount of at least \$127,535.00 (the "Improvement Guarantee"), payable to Henderson County, and having an expiration date not earlier than 60 days after the completion date stated in Paragraph 1, above.
 3. At such time as this Agreement is fully executed and the Developer has filed an irrevocable letter of credit as provided in Paragraph 2, above, this Agreement will supercede the prior Agreement between the Board and the Developer regarding the improvement guarantee for the Rebecca's Pond minor subdivision.
 4. In the event that the required improvements are completed as required, the letter of credit will be released. In the event that the improvements are not completed as required, then the Developer shall be in breach of this Agreement and the Improvement Guarantee and the County shall call the letter of credit and use the funds to complete the required improvements.
 5. The County Manager shall have the authority to approve the release of portions of the Improvement Guarantee as work progresses, provided the amount remaining under the Improvement Guarantee meets or exceeds 125% of the cost of the remaining improvements. The County Manager has the discretion to require the Developer to provide, at the Developer's expense, an independent verification of the remaining work.

IN WITNESS WHEREOF, the Board has, by appropriate action, caused this Agreement to be reviewed for approval by the County Attorney and executed by its Chairman or other authorized member and attested by the Clerk, and the Developer has caused this Agreement to be properly executed, this the ____ day of _____, 200_.

APPROVED AS TO FORM:

County Attorney

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

[OFFICIAL SEAL]

Elizabeth W. Corn, Clerk to the Board

**DEVELOPER:
GHC Land Development, LLC**

BY: _____
Manager

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

I, _____, Notary Public for said County and State, certify that Elizabeth W. Corn personally came before me this day and acknowledged that she is the Clerk to the Board of Commissioners of Henderson County, a municipal corporation and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners, sealed with its corporate seal, and attested by her as its Clerk.

THIS the ____ day of _____, 200_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

STATE OF _____
COUNTY OF _____

I, _____, Notary Public for said State and County certify that _____ Manager of GHC Land Development, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument.

THIS the _____ day of _____, 200_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]

PROPOSAL FROM MOORE & SON EXCAVATING

103 McDowell Road Arden, North Carolina 28704 828-891-8900

SUBMITTED TO: Gene Carswell JOB NAME: Rebecca's Pond 119 woodhaven Dr. Hendersonville, NC 28739

WE HEREBY SUBMIT SPECIFICATIONS AND ESTIMATE FOR THE FOLLOWING GOODS AND/OR SERVICES:

- (1) We propose to pave with 2" of S9.5B superpave asphalt surface mix. Approx. 7000 SY on prepared stone base by others @ \$ 6.65 per SY. Total \$ 46,550.00
(2) We propose to haul, place and condition 6" of ABC stone base on approx. 3,500 LF of roadway. (approx. 7,000 SY @ \$ 5.45 per SY) Total \$ 38,150.00
(3) If ABC stone base is placed by the ton, it will be \$14.68 per ton hauled placed and Conditioned to bring stone base to 6". (approx. 2,600 ton) Total \$ 38,168.00
(4) If Moore & son has to grade and condition ABC stone base placed by others it will be @ \$.65 per SY 7,000 SY) Total \$ 5,250.00

Not included: no soil reports, no rock excavation, no permits or fees, no specification book, no compaction tests, no undercut or replacement of unsuitable soil and no water problem allowance. Any work that is not listed in this proposal will be considered an extra which must be agreed in writing and signed by an authorized representative.

We hereby propose to furnish labor and materials - complete in accordance with the above specifications for the sum of

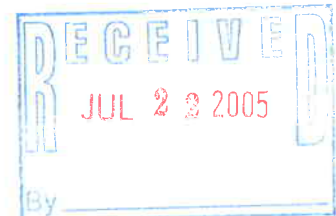
with monthly draws at the end of each month based on a percent of completion to be due and payable by the 10th of the following month. A 1.5% finance charge will be added to any outstanding balance over 30 days. All material is guaranteed as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs, will be executed only upon approval and will become an extra charge over and beyond the estimate. All agreements contingent upon approval and will become an extra charge over and beyond the estimate. All agreements contingent upon weather, accidents, or delays beyond our control. This proposal subject to acceptance within 15 days and is void thereafter at the option of the undersigned.

AUTHORIZED SIGNATURE: [Signature] DATE: 5-30-05

ACCEPTANCE OF PROPOSAL

The above prices, specifications, and conditions are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

AUTHORIZED SIGNATURE: DATE:



Proposal

Page No. _____ of _____ Pages

BUFORD COOK EXCAVATING
180 Longhorn Drive • Canton, NC 28716
828-648-5020

ATTN: Matt Card
Hend. Co. Planning
697-4533

PROPOSAL SUBMITTED TO <i>Gene Caswell</i>		PHONE	DATE <i>7/27/05</i>
STREET <i>Hendersonville</i>		JOB NAME <i>Rebecca's Pond</i>	
CITY, STATE AND ZIP CODE		JOB LOCATION <i>Kanoga Rd</i>	
ARCHITECT	DATE OF PLANS	JOB PHONE	

We hereby submit specifications and estimates for:

Finishing grading on Rebecca's Pond project

<i>haul off Stumps</i>	<i>- 1000.00</i>
<i>Grading & Expansion</i>	<i>- 5500.00</i>
<i>Hydro Seeding</i>	<i>- 3000.00</i>
<i>Finish Grading</i>	<i>- 2000.00</i>
	<i>11,500.00</i>

<i>June Bill</i>	<i>- - 3428.15</i>
<i>July (NOT Billed)</i>	<i>2400.00</i>

total \$17,328.15

We Propose hereby to furnish material and labor — complete in accordance with above specifications, for the sum of:

seventeen thousand three hundred twenty eight & 15/100 Dollars (\$ *17,328.15*)

Payment to be made as follows:

All material is guaranteed to be as specified. All work to be completed in a workmanlike manner according to standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance. Our workers are fully covered by Workmen's Compensation Insurance.

Authorized Signature

Buford Cook

Note: This proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

Signature _____

Date of Acceptance: _____