

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: August 1, 2005

SUBJECT: Improvement Guarantee for Willow Brook Falls

ATTACHMENTS:

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

SUMMARY OF REQUEST:

John Thompson agent for Willow Brook Falls, LLC, owner of the project, submitted an application for an improvement guarantee for Willow Brook Falls major subdivision. Willow Brook Falls is a 15-lot major subdivision located off of Willow Road. Willow Brook Falls was conditionally approved by the Planning Board on March 15, 2005. The improvement guarantee is proposed to cover the water distribution system improvements for the 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 \$115,909.25 to cover the cost of the improvements (\$92,725.00) as well as the required twenty-five percent (25%) contingency (\$23,181.25). The proposed completion date for the improvements is July 18, 2007.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developers must submit an 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.

COUNTY MANAGER'S RECOMMENDATION/BOARD ACTION REQUESTED:

I recommend that the Board approve the improvement guarantee application for Willow Brook Falls, 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 WILLOW BROOK FALLS (FILE # 2005-1106)
Name of Owner JOHN H. THOMPSON
Address 452 BUTLER BRIDGE RD. UNIT A-1 FLETCHER, N.C.
Phone: 828-684-7750 28732
Agent JOHN THOMPSON Phone: 828-684-7750
Date of Preliminary Plan Approval by Planning Board MARCH 4, 2005
Significant Conditions Imposed: _____

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 CAROLINA FIRST

Amount of guarantee (including 25% overhead) \$ 115,906.²⁵

Projected completion date 2 YRS.

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.

[Signature]
Owner's Signature

7/18/05
Date

Submitted By _____

Date _____

Received By _____

Date _____

\$250⁰⁰ - 7/18/05 check #1065

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

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

WITNESSETH:

WHEREAS, the Developer is attempting to secure approval of one or more Final Plats for a major subdivision known as Willow Brook Falls, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Planning Board conditionally approved the Combined Master Plan and Development Plan for Willow Brook Falls, under Chapter 170 of the Henderson County Code, which is entitled Subdivision of Land, and;

WHEREAS, Chapter 170 requires the completion of certain improvements prior to Final Plat approval, however Sections 170-38 and 170-39 allow the Board of Commissioners to permit the Developer to post an irrevocable letter of credit with Henderson County to guarantee the completion of said required improvements; and

WHEREAS, the Developer has requested that the Board of Commissioners approve the posting of an 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 July 18, 2007, complete as required the following improvements to serve all lots in the Project: water system construction as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for the Project conditionally approved by the Planning Board on March 15, 2005, and as shown on the attached cost estimates prepared by Hobson Construction Co., Inc., (dated 5/18/05).
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 \$115,909.25 (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. 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.
4. At such time as the County Attorney has reviewed and approved this Agreement and this Agreement is fully executed, and a letter credit in the proper form is posted, then the Board will allow the Final Plat(s) for the Project to be approved by the Subdivision Administrator, provided that all requirements of Chapter 170 of the Henderson County Code are met.
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:
Willow Brook Falls, 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 Willow Brook Falls, LLC, personally came before me this day and acknowledged the due execution of the foregoing instrument on behalf of the company.

THIS the _____ day of _____, 200_.

Notary Public

My Commission Expires: _____

[NOTARIAL SEAL]



HOBSON Construction CO., INC.

SPECIALIZED INDUSTRIAL AND HEAVY CONSTRUCTION

P. O. BOX 250

ARDEN, NORTH CAROLINA 28704

PHONE 684-7141

May 18, 2005

Thompson Properties, Inc.
452 Butler Bridge Road - Unit A-1
Fletcher, North Carolina 28732

Attention: Mr. John H. Thompson

Reference: Willow Brook

Gentlemen:

We are pleased to quote the water system on the above per plans of Davis CivilSolutions as follows:

1.	6" DI Cl 350 Pipe	± 2500'	@ \$20.00	50,000.00
2.	2" PVC SDR 13.5 Pipe	± 1500'	@ \$10.00	15,000.00
3.	Connect to Existing Line	1	@ \$500.00	500.00
4.	6"x6" Tee	7	@ \$250.00	1,750.00
5.	6" Gate Valve & Box	10	@ \$700.00	7,000.00
6.	6" Plug	6	@ \$150.00	900.00
7.	6" Bends	± 10	@ \$200.00	2,000.00
8.	18" Casing Bored Under Road	25'	@ \$125.00	3,125.00
9.	2" Blow Off	4	@ \$600.00	2,400.00
10.	Services to include pipe, meter setter & box, connection to main			
	a. Double Service	7	@ \$600.00	4,200.00
	b. Single Service	1	@ \$450.00	450.00
11.	Fire Hydrants	3	@ \$1,400.00	4,200.00
12.	Air Relief Valves	2	@ \$600.00	1,200.00
				<u>1,200.00</u>
				\$92,725.00

Rock excavation, if required, at \$85.00 per cubic yard.

Please note that we do not include any stone for the roadways. It appears that the new water lines will be under the road.

The above numbers are for pricing only, and we will invoice for actual quantities placed.

Yours truly,

HOBSON CONSTRUCTION CO., INC.


W. H. Hobson

WHH/lmw



Thompson Properties, Inc.

July 27, 2005

Matt, the price brake down for the water line for Willow Brook Falls is as follows:

Project #2005-M06

\$92725.00 or 100% of the cost

- \$23181.25 for 25% contingency for a total of \$115,909.25

Thanks,

John Thompson