

## **REQUEST FOR BOARD ACTION**

### **HENDERSON COUNTY BOARD OF COMMISSIONERS**

**MEETING DATE:** April 3, 2006

**SUBJECT:** Improvement Guarantee for the Tradition Subdivision

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

#### **SUMMARY OF REQUEST:**

Ronald Mueller, owner, and Rhodes Development, LLC, developer, submitted a request for an improvement guarantee for the Tradition minor subdivision. Tradition is located on 11.24 acres of land off of NC Hwy 191 (Haywood Road). A total of 10 lots are proposed. The Henderson County Planning Department granted conditional approval of the Development Plan for Tradition on November 3, 2005. The improvement guarantee for the Tradition subdivision is proposed to cover construction of the roads which includes paving and installation of the public water distribution system.

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 and for 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 improvement guarantee approval date. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$115,518.13 to cover the cost of the improvements (\$92,414.50) as well as the required twenty-five percent (25%) contingency (\$23,103.63). March 1, 2007 is the proposed completion date of the improvements.

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 the Tradition subdivision subject to the developer 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 Tradition

Name of Owner Ronald Mueller Family Trust, Ronald Mueller, Trustee

Address 13525 US 19 North, Clearwater, FL 33764

Phone: \_\_\_\_\_

Agent Ty Rhodes Phone: 828-551-7761

Date of Preliminary Plan Approval by Planning Board November 3, 2005

Significant Conditions Imposed: n/a

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 1st

Amount of guarantee (including 25% overhead) \$ 115,518.13

Projected completion date March 1, 2007

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.

Ty Rhodes  
Owner's Signature

10 March 2006  
Date

Submitted By Luther E. Smith & Associates, PA Date 10 March 2006

Received By h Date 3/10/06

Checked 6985 \$250<sup>00</sup>

**STATE OF NORTH CAROLINA**

**PERFORMANCE GUARANTEE AGREEMENT**

**COUNTY OF HENDERSON**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between Rhodes Development, 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 proposed subdivision known as Tradition, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Department conditionally approved the Development Plan for the Tradition subdivision, 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 March 1, 2007, complete as required the following improvements to serve lots in Tradition: construction of the roads which includes paving and installation of the public water distribution system for the entire subdivision as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Tradition, conditionally approved by the Henderson County Planning Department on November 3, 2005, and as shown on the attached contracts submitted by Luther E. Smith & Associates, P. A., and prepared by Steppe Construction, Inc., (dated 3/8/06) and Tarheel Paving & Asphalt Co.
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 \$115,518.13 (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 of credit in the proper form is posted, then the Board will allow the Final Plat(s) for Tradition, to be approved by the Subdivision Administrator, provided that any other requirements of Chapter 170 of the Henderson County Code and/or conditions imposed by the Planning Department have been satisfied.
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:**  
**Rhodes Development, LLC**

**BY:** \_\_\_\_\_  
**Managing Member**

**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 Rhodes 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]**



LUTHER E. SMITH & ASSOCIATES, P.A.

10 March 2006

Judy Francis, Director  
Henderson County Planning Dept.  
101 East Allen Street  
Hendersonville, NC 28792

Re: Improvement Guarantee - Tradition Subdivision

Dear Judy:

Attached is an Improvement Guarantee request for the Tradition subdivision located on NC 191 adjacent to Johnson Farm. This Guarantee covers installation of the water supply system and placement of stone and paving for the road. Please note that the road paving will be a 2 layer process. The initial paving should satisfy the requirements of the Ordinance and has been included in this request.

Please contact me if you require additional information. Mr. Rhodes would like this request placed on the Commissioners Agenda at the earliest date.

Thank you for your attention.

Sincerely,

Luther E. Smith, RLA, ASLA, APA  
Luther E. Smith & Associates, PA

Cc: Ty Rhodes

# TRADITION

## WATER DISTRIBUTION SYSTEM IMPROVEMENTS

### CONSTRUCTION BID

27 February 2006

NO.	ITEM	UNITS	QUANTITY	UNIT PRICE	TOTAL PRICE
1.	Connect to Existing Water-line 24- inch ( AWWA: A.C./CL.50 ) ( 24" X 6" Tapping sleeve w/valve )	LS	1	--	\$ <u>5500</u>
2.	Water line; 6- inch ( AWWA: D.I.P/CL.350 )	LF	50	<u>25</u>	<u>1250</u>
3.	Water line; 6- inch ( AWWA: C900/DR-14 )	LF	900	<u>16.10</u>	<u>14,490</u>
4.	Water line; 2- inch ( AWWA: PVC/SDR-13.5 )	LF	350	<u>10.75</u>	<u>3762.50</u>
5.	Casing; 12- inch steel ( Bored and jacked )	LF	45	<u>125</u>	<u>5625</u>
6.	Fire hydrant ; 3- way ( w/ 6" D.I.P. leg )	EA	2	<u>1500</u>	<u>3000</u>
7.	Gate valve & box; 6- inch	EA	2	<u>1000</u>	<u>2000</u>
8.	Gate valve & box; 2- inch	EA	1	<u>375</u>	<u>375</u>
9.	Fittings ( Cast iron – MJ )	LB	600	<u>3</u>	<u>1800</u>
10.	Air Release Valve ( ARV; 1- inch )	EA	1	<u>1100</u>	<u>1100</u>
11.	Post-flush hydrant ( 2" blow-off )	EA	1	<u>700</u>	<u>700</u>
12.	Water service lateral ( Double; 3/4" X 5/8" )	EA	4	<u>525</u>	<u>2100</u>

TOTAL WATER PROJECT COST .....

\$ 40,902.50

STEPP. CONSTRUCTION.

### ***CONSTRUCTION AGREEMENT/CONTRACT***

This AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between *Rhodes Development, LLC* hereinafter designated as the "OWNER", and *Steppe Construction, Inc.* doing business as a corporation hereinafter designated as the "CONTRACTOR". WITNESSETH: That for and in consideration on the payments and agreements herein after mentioned:

1. The CONTRACTOR will commence and complete the construction of *Tradition Water Distribution System Improvements* hereinafter designated as the "PROJECT".
2. In consideration of the payments to be made as hereinafter provided, the CONTRACTOR agrees, at his own sole cost and expense, to perform all the labor and services and to furnish all the materials, plant and equipment necessary to complete, and to complete in good, substantial, workmanlike and approved manner, the work named under Paragraph 1 hereof, within the time hereinafter specified and in accordance with the terms, conditions and provisions of the Contract and with the instructions, orders and directions of the Engineer made in accordance with this Contract.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within 10 calendar days after the date of the NOTICE TO PROCEED and will complete the same within \_\_\_\_\_ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of *\$40,902.50* or as shown in the BID schedule.
5. The OWNER agrees to pay and the CONTRACTOR agrees to accept as full compensation for all work done, and material furnished, and for material, equipment and supplies sold, and also for all costs and expenses incurred, and loss or damages sustained by reason of the action of the elements or growing out of the nature of the work, or from any unforeseen obstruction of difficulty encountered in the prosecution of the work, and for all risks of every description connected with the work, and for all expenses incurred by, or in consequence of, the suspension or discontinuance of the work as herein specified, and for faithfully completing the work and the whole thereof as herein provided, and for maintaining the work in good condition.



- 6. The OWNER shall pay to CONTRACTOR for the performance of the CONTRACT the amounts determined for the total number of each of the units of work in the attached Bid Schedule completed at the unit price stated. The number of units contained in this schedule is approximate only, and the final payment shall be made for the actual number of units that are incorporated in or made necessary by the work covered by the CONTRACT.
  
- 7. It is hereby understood and mutually agreed, by and between the CONTRACTOR and the OWNER, that the date Beginning, rate of progress and the time for completion of the work to be done hereunder are ESSENTIAL CONDITIONS of this CONTRACT. The CONTRACTOR agrees that said work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure full completion of the work described herein in a reasonable time for the completion of the same, taking into consideration the average climatic range and construction conditions prevailing in this locality.
  
- 8. The term "CONTRACT DOCUMENTS" means and includes the following:
  - A. Advertisement for BIDS
  - B. Information of BIDDERS
  - C. BID
  - D. Construction Agreement/Contract
  - E. General Conditions
  - F. Federal Labor Standards Provisions
  - G. Payment BOND
  - H. Performance BOND
  - I. NOTICE OF AWARD
  - J. NOTICE TO PROCEED
  - K. CHANGE ORDER
  - L. DRAWING prepared by Mountain Engineering - John Jeter Numbered 1 and dated January 20, 2006.
  - M. TECHNICAL SPECIFICATIONS prepared by \_\_\_\_\_ dated \_\_\_\_\_
  
- 9. If the CONTRACTOR shall fail to comply with any of the terms, conditions, provisions or stipulations of this CONTRACT, according to the true intent and meaning thereof, then the OWNER may make use of any or all remedies provided in the CONTRACT and shall have the right and power to proceed in accordance with the provisions thereof.

10. This AGREEMENT shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto executed or caused to be executed by their duly authorized official, this AGREEMENT in four (4) copies each of which shall be deemed an original on the date first above written.

(SEAL)

ATTEST:

\_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

OWNER:

\_\_\_\_\_

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

(SEAL)

ATTEST:

Sabrina Geredon

NAME: Sabrina Geredon

TITLE: Admin. Asst.

CONTRACTOR:

STEPPE CONSTRUCTION, INC.

BY: [Signature]

NAME: MYRON STEPPE

TITLE: PRESIDENT

ADDRESS: 4149 N NC 9 HWY

MILL SPIRNG, NC 28756

# TARHEEL

## PAVING & ASPHALT CO.

1310 North Main Street  
Hendersonville, NC 28792  
(828) 693-8741  
Fax. No. • (828) 693-3680

### PROPOSAL and CONTRACT

Rhodes Dev. Group LLC Attn: Ty Rhodes  
1901 Country Club Road  
Hendersonville, NC 28739  
Phone 828-698-0502(o); 551-7761(m)

DATE March 7, 2006

TARHEEL Paving Company, hereinafter called the Company, offers to furnish all labor, materials and equipment required for the performance of the following described work.

Description of Work and Price: ( RE: Traditions )

1. We propose to grade sub-grade ± 1", then bring ABC type stone level to 6" on area shown, fine grade for proper drainage, wet and condition, then pave with 2" of I-19 Binder type hot mix compacted. Approximately 3,503 s/y stone  
2,952 s/y paving

Total as measured: **\$ 51,512.00**  
Unit Price: **\$ 17.45 per s/y**

2. We propose to remobilize; clean existing binder with air blowers; apply hot tar tac for bonding, and then resurface with 1 1/2" SF9.5A type hot mix compacted. Approximately 2,952 s/y.

Total as measured: **\$ 23,173.00**  
Unit Price: **\$ 7.85 per s/y**

**Notes:**

- A. Price does not include patching any areas of binder damaged during construction.
- B. If backhoe and/or water truck are needed for cleaning, they will be priced extra.
- C. Price on #2 subject to change due to rising costs over construction period.

Unless a lump sum price is to be paid for the foregoing work and is clearly so stated it is understood and agreed that the quantities referred to above are estimates only and that payment shall be made at the stated unit prices on the actual quantities of work performed by the Company as determined upon completion of the work.

If the foregoing meets with your acceptance, kindly sign and return the attached copy of our proposal. Upon its receipt, it is understood the foregoing, including the terms and conditions set forth on the reverse side hereof, will constitute the full and complete agreement between us.

This proposal expires thirty (30) days from the date thereof, but may be accepted at any later date at the sole option of the Company. Net completion, unless otherwise stated all payments are due upon completion. Asphalt depth will be average specified amount. Please read the conditions on the reverse side.

Very truly yours,

ACCEPTED:

Rhodes Dev. Group LLC  
FIRM NAME

BY Ty Rhodes  
NAME AND TITLE

BY [Signature]  
INDIVIDUAL NAME AND TITLE

DATE 3/8/06

# TARHEEL

## PAVING & ASPHALT CO.

BY [Signature]  
Due to the energy crisis we are no longer able to obtain prices or commitments on future deliveries of fuel and materials.  
This contract is based upon current prices and availability of materials.  
In the event we cannot obtain fuel or materials at these prices we reserve the right to cancel or renegotiate this contract.