

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: September 20, 2006

SUBJECT: Improvement Guarantee for the Preserve on Willow Major Subdivision

ATTACHMENTS:

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

SUMMARY OF REQUEST:

Mr. Luther E. Smith on behalf of Willow Road, LLC, owner, submitted a request for an improvement guarantee for the Preserve on Willow major subdivision. Preserve on Willow is located on approximately 90 acres of land off Willow Road across from Champion Hills. On March 21, 2006 the Henderson County Planning Board and Planning Department granted conditional subdivision approval for the proposed development. The improvement guarantee is proposed to cover the construction of roads and public water service for the entire 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 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 \$514,896.75 to cover the cost of the improvements (\$411,917.40) as well as the required twenty-five percent (25%) contingency (\$102,979.35). September 1, 2007 is the proposed completion date for the improvements.

A draft Performance Guarantee Agreement is attached for the Board's consideration. If the application is approved, the developer 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 Preserve on Willow, subject to the developer submitting to Henderson County an irrevocable letter of credit in accordance with the terms of the draft Performance Guarantee Agreement.



LUTHER E. SMITH & ASSOCIATES, P.A.

30 August 2006

Anthony Starr, Director
Henderson County Planning Dept.
101 East Allen Street
Hendersonville, NC 28792

Re: Improvement Guarantee - Preserve on Willow

Dear Anthony,

Attached is an Improvement Guarantee request for 'Preserve on Willow', a residential subdivision located on Little Willow Circle (SR 1296). This Guarantee covers final construction of the roads including paving and installation of the public water distribution system as follows:

| | |
|--|---------------------|
| 1. Roads - placement of stone & paving | \$165,784.40 |
| 2. Water distribution system | <u>\$246,133.00</u> |
| Total | \$411,917.40 |
| 25% contingency | <u>\$102,979.35</u> |
| Total Guarantee amount | \$514,896.75 |

Please contact me if you require additional information. Mr. Zengage and 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

cc: Ty Rhodes
Jim Zengage



Henderson County APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Preserve on Willow

Name of Owner Willow Road LLC

Address 1120 South Federal Hwy., Ste. 200, Delray Beach, FL 33483

Agent Jim Zengage, Managing Member Phone: 561-278-3100

Agent Ty Rhodes, Managing Member Phone: 828-551-7761

Date of Preliminary Plan Approval by Planning Board March 21, 2006

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 BB & T

Amount of guarantee (including 25% overhead) \$ 514,896.75

Projected completion date September 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 member

August 30, 2006
Date

Submitted By Luther E. Smith & Associates, PA Date August 30, 2006

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 Willow Road, 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 development known as Preserve on Willow, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board and Planning Department conditionally approved the Preserve on Willow 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 the 1st day of September, 2007, complete the construction of roads and public water service as required by the Henderson County Subdivision Ordinance, as shown on the Development Plans for Preserve on Willow, conditionally approved by the Henderson County Planning Board on March 21 2006, and as shown on the attached cost estimates prepared by Mr. Luther E. Smith (signed on August 30, 2006).
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 \$514,896.75 (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 Preserve on Willow 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 Board 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:
Willow Road, 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 Road, 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
Site Contractors, Inc.
 103 McDowell Road
 Arden, North Carolina 28704
 828-891-8900



Submitted To: Willow Road LLC
 1120 S. Federal Hwy., Suite 200
 Delray Beach, Fl 33483

Job Name: Preserve on Willow

We hereby submit specifications and estimate for the following goods and /or services:

Collector Roads

- (1) We propose to place and condition 6" ABC stone base and then pave with 1.5" S9.5B surface mix asphalt. (approx. 8,232 SY @ \$12.65 per SY) **Total \$ 104,134.80**

Residential Roads

- (2) We propose to place and condition 8" ABC stone base and then pave with 1.5" S9.5B surface mix asphalt. (approx. 4,240 SY @ \$ 14.54 per SY) **Total \$ 61,649.60**


Not included: soil reports, rock excavation, permits or fees, specification book, compaction tests, undercut or replacement of unsuitable soil and no water problems 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.

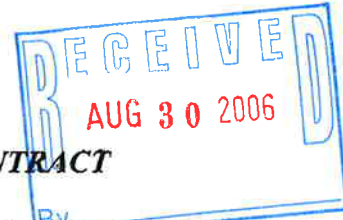
We hereby propose to furnish labor and materials - complete in accordance with the above specifications for the amount stated above. All past due balances (over 30 days) will be subject to a late charge of 1 1/2 % per month (18% per year). All material is guaranteed as specified. All work to be completed 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 are 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:  Date: 8/28/06

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: 8/30/06



CONSTRUCTION AGREEMENT/CONTRACT

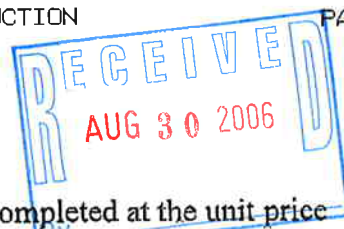
This AGREEMENT, made and entered into this 28th day of August, 2006, by and between Willow Road, LLC, hereinafter designated as the "OWNER", and Steppe Construction, Inc. doing business as a corporation hereinafter designated as the "CONTRACTOR". WITNESSETH: That for and in consideration on the payments and agreements herein after mentioned:

1. The CONTRACTOR will commence and complete the construction of

Preserve on Willow, Hendersonville, NC

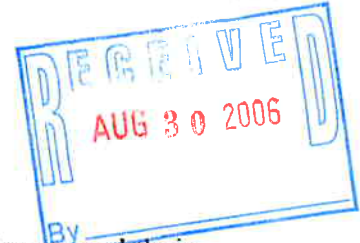
hereinafter designated as the "PROJECT".
2. In consideration of the payments to be made as hereinafter provided, the CONTRACTOR agrees, at his own sole cost and expense, to perform all the labor and services and to furnish all the materials, plant and equipment necessary to complete, and to complete 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 60 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 \$246,133.00 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 or 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.

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.

6. 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.
7. 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 Cavanaugh + Assoc.
- M. Drawings prepared and issued by CAVANAUGH + ASSOC.
 Numbered C-1-C11 and dated 8/8/06
- N. TECHNICAL SPECIFICATIONS prepared by SAME dated 8/8/06
8. 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.



9. 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:

OWNER:

NAME: Debra Vaughan
TITLE: _____

BY: Ty Rhodes
NAME: Ty RHODES
TITLE: MEMBER

(SEAL)

ATTEST:

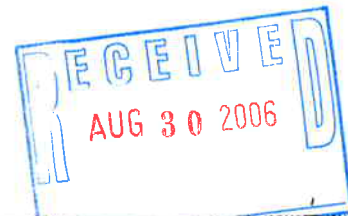
CONTRACTOR:

NAME: Sabrina Gued
TITLE: Admin Asst.

Steppe Construction, Inc.
BY: Myron Steppe
NAME: Myron Steppe
TITLE: President

ADDRESS: 4149 N NC 9 Hwy

Mill Spring, NC 28756



PRESERVE-ON-WILLOW TAKE-OFF

| DESCRIPTION | UNIT | AMT | BY \$ UNIT | TOTAL |
|---|------|------|------------|------------|
| Single branch residential connection (service lateral tap to stub) | EA | 15 | 575 | 8625 |
| Y-Dual branch residential connection (service lateral tap to stub) | EA | 15 | 700 | 10,500 |
| 6" fire hydrant assembly (not including T from main) | EA | 11 | 2350 | 25,850 |
| 6"x6"x6" T | EA | 5 | 275 | 1600 |
| 6"x6"x8" T (8" branch) | EA | 1 | 325 | 325 |
| 8"x8"x6" T (6" branch) | EA | 8 | 325 | 2600 |
| 8"x8"x6" T (6"run) | EA | 1 | 325 | 325 |
| 8"x8"x8" T | EA | 1 | 400 | 400 |
| 6" gate valve and box | EA | 5 | 675 | 3375 |
| 8" gate valve and box | EA | 10 | 875 | 8750 |
| 6" CL-350 DIP | LF | 1128 | 22.25 | 25,098 |
| 8" CL-350 DIP | LF | 5542 | 23.75 | 131,622.50 |
| 22.5 degree fitting | EA | 8 | 250 | 2000 |
| 45 degree fitting | EA | 15 | 275 | 4125 |
| 6" air release valve assembly (tap to box) | EA | 3 | 1400 | 4200 |
| 8" air release valve assembly (tap to box) | EA | 2 | 1400 | 2800 |
| 3" end of line plug | EA | 1 | 700 | 700 |
| Bore and encase 8" DIP in 16" concrete encasement (Willow Mtn. Road) | LF | 30 | 150 | 4500 |
| Pavement repair (5'x22') @ Little Willow Circle | SY | 13 | 50 | 650 |
| 6" water tie-in at existing water line at Little Willow Circle | EA | 1 | 2000 | 2000 |
| 8" water tie-in at existing water line at Willow Mtn Road | EA | 1 | 2000 | 2000 |
| Class A rip rap | CY | 10 | 50 | 500 |
| Filter fabric | SY | 40 | 10 | 400 |
| 4000 psi concrete for thrust block | CY | 12.5 | 175 | 2187.50 |

NOTE:

1. No stone bedding material required for DIP installation.
2. 0.25 CY concrete assumed per fitting requiring thrust block.
3. 22.5 and 45 degree fittings approximated based on the radius of curvature and typical deflections allowed for MJ DIP.
4. As per City of Henderson requirements, residential meter and box to be installed by City when new service connection is requested by the homeowner.
5. No stone or rock removal is assumed to be required by the contractor.
6. Assume roadways within development unpaved.
7. Assumes no rock excavation. Price per CY should be included in contract if rock is encountered.
8. Assumes no clearing of right-of-ways.

Total 246,133.00