

## **REQUEST FOR BOARD ACTION**

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

**MEETING DATE:** July 19, 2006

**SUBJECT:** Improvement Guarantee for the Deer Meadow Subdivision

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

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

Mr. Bob Scheiderich with Southern Pride of WNC Inc., owner and developer, submitted an application for an improvement guarantee for a subdivision titled Deer Meadow. The project site for Deer Meadow is located on 47 acres of land off General Hill Road. A total of 50 lots are proposed. The Henderson County Planning Board granted conditional approval of a Combined Master Plan and Development Plan on January 17, 2006. The improvement guarantee for Deer Meadow is proposed to cover erosion control, drainage, construction of the roads which includes paving and installation of the public water 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 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 \$556,788.75 to cover the cost of the improvements (\$445,431.00) as well as the required twenty-five percent (25%) contingency (\$111,357.75). June 30, 2008 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 Deer Meadow 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.

## APPENDIX 8

**Henderson County**  
**APPLICATION FOR IMPROVEMENT GUARANTEES**

Name of Subdivision Deer Meadow  
 Name of Owner Southern Pride of WNC Inc.  
 Address 1194 Sweeten Creek Rd.  
Asheville NC 28803 Phone: 828-277-5840  
 Agent \_\_\_\_\_ Phone: \_\_\_\_\_  
 Date of Preliminary Plan Approval by Planning Board Nov. 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) \$ 557,967.4 (see cost estimates) mc  
7/7/06

Projected completion date 6/30/08

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.

Robert F. Schaderch  
 Owner's Signature

6/22/06  
 Date

Submitted By \_\_\_\_\_

Date \_\_\_\_\_

Received By mc

Date 8/22/06

\$250.00 fee paid

6/22/06



**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

**PERFORMANCE GUARANTEE AGREEMENT**

**THIS AGREEMENT** made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, by and between Southern Pride of WNC Inc., 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 Deer Meadow, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

**WHEREAS**, the Henderson County Planning Board conditionally approved a Combined Master Plan and Development Plan for the project, 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 June 30, 2008 complete as required the following improvements to serve lots in Deer Meadow: erosion control, drainage, construction of the roads which includes paving and installation of the public water system as required by the Henderson County Subdivision Ordinance, as shown on the Combined Master Plan and Development Plan for Deer Meadow as conditionally approved by the Henderson County Planning Board on January 17, 2006 and as shown on the attached cost estimates prepared by Paul Patterson, PE, (signed and sealed on June 22, 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 \$556,788.75 (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 proper form is posted, then the Board will allow the Final Plat(s) for Deer Meadow, 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:**  
**Southern Pride of WNC, Inc.**

**BY:** \_\_\_\_\_  
**President**

**ATTESTED BY:**

**[CORPORATE SEAL]**

\_\_\_\_\_  
**Secretary/Assistant Secretary**

**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 \_\_\_\_\_, 2006.

\_\_\_\_\_  
**Notary Public**

**My Commission Expires:** \_\_\_\_\_

**[NOTARIAL SEAL]**

**STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON**

I, \_\_\_\_\_, Notary Public for said State and County certify that \_\_\_\_\_ came before me this day and acknowledged that he/she is the Secretary/Assistant Secretary of Southern Pride of WNC, Inc., and that by authority duly given and as the act of the corporation the foregoing instrument was signed in its name by its President/Vice President, sealed with its corporate seal, and attested by himself/herself as its Secretary/Assistant Secretary.

**THIS** the \_\_\_\_\_ day of \_\_\_\_\_, 2006.

\_\_\_\_\_  
**Notary Public**

# PATTERSON & PATTERSON

**PAUL PATTERSON**

**WILLIAM PATTERSON**

PROFESSIONAL ENGINEER/LAND SURVEYOR

PROFESSIONAL LAND SURVEYOR

P.O. BOX 1189

HENDERSONVILLE, NC 28793-1189

1-828-692-6629 (TEL & FAX)

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## Memorandum

To: Matt Card, Planner @ Henderson County Planning Department  
From: Paul Patterson, P.E./P.L.S.  
Date: June 22, 2006  
Re: Bond for Deer Meadow Subdivision

Mr. Card,

I have attached herewith copies of the estimated costs for infrastructure improvements for the Deer Meadow Subdivision. The proposed infrastructure improvements include Erosion Control, Road Grading, Storm Drainage, Roadway Paving (including stone base), and Water Main Installation. These estimates were based on recent bids provided to the Southern Pride of WNC, Inc., developers of the proposed subdivision. This utility work will be bonded, via a letter of credit from Carolina First, in order to record a plat for said Deer Meadow Subdivision. The estimates are as follows:

ITEM	ESTIMATED COST
Erosion Control	\$ 79,000.00
Road Grading & Storm Drainage	\$ 72,200.00
Paving (with stone base)	\$ 154,057.00
Water Installation	\$ 140,174.00
Subtotal:	\$ 445,431.00
25% Contingency:	\$ 111,357.75
Bond Amount:	\$ 556,788.75

I believe that this fulfills the requirements for infrastructure improvements for Deer Meadow Subdivision. Should you have any question and/or comments, please do not hesitate to call. Thanks in advance for your assistance in this matter.

Sincerely,



Paul Patterson, PE/PLS

Cc: File 05-12-67-ENG  
Bob Scheiderich @ Southern Pride of WNC, Inc.



**DEER MEADOW SUBDIVISION**  
(TABULATED ESTIMATE)

Item Description:	Cost
Grading & Storm Drainage (Estimate by Atkins Grading & Excavating, Inc.)	\$72,200.00
Erosion Control (Estimate by Atkins Grading & Excavating, Inc.)	\$79,000.00
Pavement (including ABC) (Estimate by R & L Paving)	\$154,057.00
Water Main Extension (Estimate by Harry's Ditching Service, Inc.)	\$140,174.00
Subtotal:	\$445,431.00
25% Contingency	\$111,357.75
<b>TOTAL ESTIMATED CONSTRUCTION BOND:</b>	<b>\$556,788.75</b>

\*\* All Estimates as shown hereon were taken from actual estimates provided to Southern Pride of WNC, Inc. by the contractors listed above.





**Proposal**

**R & L PAVING CO.**  
2 Tamarac Circle  
ASHEVILLE, NORTH CAROLINA 28806  
(828) 254-8016

PROPOSAL SUBMITTED TO <i>Southern Pride of WNC, Inc.</i>	DATE <i>June 20, 06</i>
ADDRESS <i>1194 Sweeten Creek Rd.</i>	FIGURE <i>2007-5840</i>
<i>Asheville, N.C. 28803</i>	DATE OF PLANT
JOB NAME AND LOCATION <i>Deer Meadow Hendersonville</i>	APPROXIMATE JOB PRICE <i>2007-5841</i>

We hereby submit specifications and estimates, subject to all terms and conditions set forth on both sides, as follows:

*Fine grade approximately 3,800 sq. yds.  
Place an average 1 1/2" ABC Stone  
Compacted. Have an average 2" 9.58  
asphalt Compacted.*

*For 18' wide - \$147,765.00  
(116.29 sq. yd.)*

*For 20' wide - \$154,057.00  
(127.50 sq. yd.)*

*Clarifications: Permits, Test, Staking  
layout, bonds by others.  
Approximate plus or minus. Unit price  
will prevail*

(Read Reverse Side)

We propose hereby to furnish material and labor -- complete in accordance with above specifications,  
for the sum of: \_\_\_\_\_ dollars (\$ \_\_\_\_\_)

*in full on completion*

NOTE: This proposal may be withdrawn by us if  
not accepted within *100* days.

Authorized  
Signature

*[Signature]*

**Accepted:** 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



**Harry's Ditching Service, Inc.**  
**15 Flat Hill Lane**  
**Penrose, NC 28766**  
**828-692-5206**

June 16, 2006

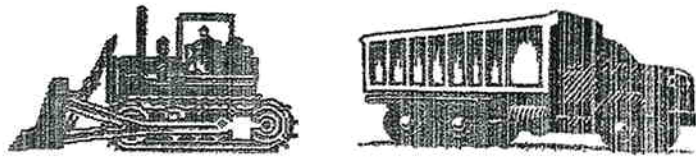
Material Quote Request  
Hendersonville Specs  
Deer Meadow

4500 LF	6" C-900 DR-14
320 LF	6" DIP
11 Ea	6" MJ Valve
1 Ea	6x6 Tap Sleeve
1 Ea	6" Tap Valve
12 Ea	Valve Box
3 Ea	Fire Hydrant
3 Ea	Air Valve Assembly
17 Ea	6x1 Saddle
15 Ea	6x3/4 Saddle
17 Ea	1" Corp
15 Ea	3/4 Corp
17 Ea	1x3/4 Wye
49 Ea	3/4" L-84
49 Ea	3/4" Curb Stop
480 LF	1" Copper
780 LF	3/4" copper

Thanks,  
Bill Allman

\$ 140,174





**ATKINS GRADING & EXCAVATING, INC.**  
PO Box 798 Micaville, NC 28755  
(828) 284-2155 \* Fax (828) 675-5751  
Email: [atkinsgrading@hotmail.com](mailto:atkinsgrading@hotmail.com)

Project Bid: Southern Pride  
Deer Meadow Subdivision

Date: June 19, 2006

Estimated Cost: \$151,200.00

Atkins Grading & Excavating, Inc. appreciates the opportunity to submit this bid for Deer Meadow Subdivision for 5400 foot of roadway. The cost of \$151,200.00 is based on \$28.00 per foot and includes the following services:

- 18 foot wide roadway
- culverts
- erosion control
- temporary seeding
- ditching

The above cost also includes mobilization and demobilization of equipment, use of equipment and equipment operator's labor. The cost of required permits and obtaining of said permits are the responsibility of Southern Pride.

Additional costs may be incurred due to unforeseen site conditions. We will contact you immediately to discuss additional costs if site conditions are encountered that deviate from what is expected.

Equipment and employees are fully insured. Verification of coverage will be provided upon request.

Please contact me should you have any questions. Thank you for the opportunity to submit this cost estimate for the Deer Meadow Subdivision.

**ATKINS GRADING & EXCAVATING, INC**

Blake Atkins, President

