

REQUEST FOR BOARD ACTION

HENDERSON COUNTY BOARD OF COMMISSIONERS

MEETING DATE: June 4, 2007

SUBJECT: Improvement Guarantee Applications

ATTACHMENTS:

1. Application for Crystal Creek/Crystal Heights Improvement Guarantee
2. Draft Performance Guarantee Agreement for Crystal Creek/Crystal Heights
3. Cost Estimates for Crystal Creek/Crystal Heights
4. Application for Cobblestone Village, Phase II
5. Draft Performance Guarantee Agreement for Cobblestone Village, Phase II
6. Cost Estimates for Cobblestone Village, Phase II

SUMMARY OF REQUEST:

Mr. Dan Ducote, owner and developer, submitted an improvement guarantee application for the Crystal Creek and Crystal Heights major subdivision. Crystal Creek and Crystal Heights is a 36-lot subdivision located off of Patterson Road. The attached improvement guarantee application is proposed to cover road construction which includes paving and installation of a community water system for all lots in Crystal Creek and Crystal Heights. The developer intends to post with the County cash on deposit in the amount of at least \$240,000.00 to cover the cost of the improvements (\$191,329.00) as well as the required twenty-five percent (25%) contingency (\$47,832.00). July 25, 2007 is the proposed completion date for the improvements.

Mr. Brian Ely, owner and developer, submitted an improvement guarantee application for Phase II of the Cobblestone Village major subdivision. Cobblestone Village is a 50-lot major subdivision off of Hwy 225. The subdivision was conditionally approved by the Planning Board on June 20, 2006. The improvement guarantee application is proposed to cover the cost of paving roads within a portion (Phase II) of Cobblestone Village. The Board approved an improvement guarantee application for Phase I on January 2, 2007. The developer intends to post with the County an irrevocable letter of credit in the amount of at least \$74,243.75 to cover the cost of the improvements (\$59,395.00) as well as the required twenty-five percent (25%) contingency (\$14,848.75). The proposed completion date for the improvements is May 1, 2008. Draft performance guarantee agreements are attached for the Board's consideration

BOARD ACTION REQUESTED:

Action by the Board of Commissioners is needed to either grant or deny the improvement guarantee applications for Crystal Creek and Crystal Heights and Cobblestone Village. I recommend that the Board approve the improvement guarantee application and extensions pursuant to Sections 170-38 and 170-39 of the Henderson County Subdivision Ordinance.

Suggested Motion: I move that the Board of Commissioners find and conclude that the request for improvement guarantees complies with the provisions of the Subdivision Ordinance and is approved.

Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES

Name of Subdivision Crystal Creek / Crystal Heights
 Name of Owner Etowah Developers LLC. & H'ville Group Ltd.
 Address PO Box 364 Etowah, N.C. 28729 → DAN Ducote
 Phone: DAN Ducote 891-1000 / Cell # 243-8772

owner DAN Ducote Agent Phone: SAME

Date of Preliminary Plan Approval by Planning Board 9/21/06

Significant Conditions Imposed: NONE Significant

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 NONE / cash on deposit!

Amount of guarantee (including 25% overhead) \$ \$ 240,000.00

Projected completion date July 25th 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.

DAN Ducote
Owner's Signature

6/21/07
Date

Submitted By DAN Ducote

Date 6/21/07

Received By K. Scanlan #1068-250⁰⁰

Date 5/21/07

STATE OF NORTH CAROLINA

PERFORMANCE GUARANTEE AGREEMENT

COUNTY OF HENDERSON

THIS AGREEMENT made and entered into this ____ day of _____, 200_, by and between Etowah Developers, 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 Crystal Creek and Crystal Heights, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, the Henderson County Planning Board conditionally approved the Master Plan and Development Plan for Crystal Creek and Crystal Heights, 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 25, 2007, complete as required the following improvements to serve lots in Crystal Creek and Crystal Heights: road construction which includes paving and construction of the community water system, as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for Crystal Creek and Crystal Heights, as conditionally approved by the Henderson County Planning Board on September 19, 2006, and as shown on the attached cost estimates prepared by Cape Fear Engineering, Inc., (dated May 15, 2007).
2. The Developer will provide with Henderson County for deposit at least \$240,000.00 in cash or certified funds (the "Improvement Guarantee"), with such monies securing and guaranteeing completion of said improvements by the required date stated in Paragraph 1, above.

3. Henderson County will hold the monies in an interest-bearing account with all interest accruing to the Developer upon the condition that all required improvements be completed by the required date. In the event that the required improvements are completed as required, the monies and all accrued interest will be returned to the Developer. 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 monies and all accrued interest shall be forfeited by the Developer and shall be used by Henderson County 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 cash or certified funds are deposited with the County, then the Board will allow the Final Plat(s) for Crystal Creek and Crystal Heights, 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:
Etowah Developers, LLC

BY: _____
Dan Ducote (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 Etowah Developers, 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]**

CAPE FEAR
Engineering, Inc.

May 15, 2007

Mark Corn, PLS
Associated Land Surveyors and Planners
6475 Brevard Road
Etowah, NC 28729

**RE: Crystal Creek
Water & Paving Bids
Opinion of Price**

Dear Mr. Corn:

In my professional opinion, the forwarded bid tabulations (enclosed) for Waterline extension and Paving in the Crystal Creek / Crystal Heights development appear to be adequate for installation of the referenced infrastructure.

With the required contingency of 25%, the bond value of each item should be as follows:

Water:	\$107,829.00	Bid Value
	<u>\$ 26,957.00</u>	25% Contingency
	\$134,786.00	Bond Value
Paving:	\$ 83,500.00	Bid Value
	<u>\$ 20,875.00</u>	25% Contingency
	\$104,375.00	Bond Value

Utilizing these figures, I believe the owner will satisfy the requirements of the local regulatory authority and be in a position to request and receive approval for the development's map for record.

Sincerely,


F. Comer Lyons, P.E.



cc: File
enclosures

Paving Contract

PROPOSAL

BRENT Wix Paving
611 S.R. Matthews drive
Hendersonville N.C. 28792

PROPOSAL NO.	1001
SHEET NO.	
DATE	4/30/07

PROPOSAL SUBMITTED TO:

NAME	Don Pelote Cont.
ADDRESS	PO Box 364
	Etowah, N.C. 28729
PHONE NO.	891-1000 / 243-8772

WORK TO BE PERFORMED AT:

ADDRESS	Big Willow
	Crystal Creek & Crystal Heights
DATE OF PLANS	
ARCHITECT	

We hereby propose to furnish the materials and perform the labor necessary for the completion of _____

Bid to pave roads and
cul-ta-sacs at Big Willow
with 2 inches of asphalt
or more if need on hills
pave 18 feet wide
with 3 20 feet cul-ta-sacs
will be done in curves,
work guaranteed 2 years.

Don
I am trying to work
deal with asphalt
plant. May get
asphalt cheaper if
so will pass deal on
to you.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work, and completed in a substantial workmanlike manner for the sum of _____

Dollars (\$ 83,500.00)

with payments to be made as follows:

Respectfully submitted _____

Any alteration or deviation from above specifications involving extra costs will be executed only upon written order, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

Per _____

Note - This proposal may be withdrawn
by us if not accepted within 30 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. Payments will be made as outlined above.

Signature _____

Signature _____

Date May 1st 2007

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

Quotation

Date: April 24, 2007
Job Number: Crystal Creek Water

TO: Dan Ducote

Water Contract

ITEM NO.	QTY	DESCRIPTION	UNIT	UNIT PRICE	TOTAL
1	1	Tie-in Allowance	LS	1,000.00	1,000.00
2	1200	3" PVC in Rambling Ridge	LF	15.40	18,480.00
3	4660	3" PVC in Crystal Creek	LF	9.40	43,804.00
4	8	3" MJ valves	Ea	610.00	4,880.00
5	3	2" Blowoff with Valve	Ea	815.00	2,445.00
6	1	2" Blowoff without valve	Ea	380.00	380.00
7	200	Fittings	LB	4.40	880.00
8	2	PRV in Vault	Ea	10,200.00	20,400.00
9	12	Tieovers in Rambling Ridge	Ea	220.00	2,640.00
10	5	Dual Stubs Far Side	Ea	805.00	4,025.00
11	9	Dual Stubs Close Side	Ea	615.00	5,535.00
12	3	Single Stubs Far Side	Ea	520.00	1,560.00
13	5	Single stubs Close Side	Ea	360.00	1,800.00

Notes:

1. Final cost determined by actual installation at unit price.
2. Undiggable Rock not included.
3. Rambling Ridge part is unknown just estimate.

Submitted by William Allman, President

Tax rate: _____ %

Subtotal	107,829.00
Tax	
Total	107,829.00

Maximum Price

OK

Wan
4/25/07

<or less>
if job
goes smooth

**Henderson County
APPLICATION FOR IMPROVEMENT GUARANTEES**

Name of Subdivision Cobble Stone Village

Name of Owner Brian Ely

Address 101 Pinnacle Peak Lane, Flat Rock, NC 28731

Phone: (1828) 697-7177

Agent Brian Ely Phone: 699-9111

Date of Preliminary Plan Approval by Planning Board June 2006

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 Mountain 1st

Amount of guarantee (including 25% overhead) \$ 74,243.75

Projected completion date May 1st 2008

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.

Brian Ely
Owner's Signature

5-1-07

Date

Submitted By Brian Ely

Date 5-1-07

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 Mr. Brian Ely, 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 Phase II of a major subdivision known as Cobblestone Village, hereinafter referred to as the "Project," located in Henderson County, North Carolina; and

WHEREAS, Henderson County Planning Board conditionally approved the Master Plan and Development Plan for Cobblestone Village, 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 May 1, 2008, complete as required the following improvements to serve lots in Phase II: paving of roads as required by the Henderson County Subdivision Ordinance, as shown on the Development Plan for the Project conditionally approved by the Planning Board on June 20, 2006 and as shown on the attached cost estimates prepared by Trace and Company dated May 4, 2007 and certified by the engineer for the project, Mr. Thomas McCanless on May 4, 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 \$74,243.75 (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 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:
Mr. Brian Ely

BY: _____

**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 _____ (Brian Ely) 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]

EAS

PROFESSIONALS, INC.
CIVIL & GEOTECHNICAL ENGINEERING • LAND SURVEYING • MATERIALS TESTING

153 Brozzini Ct., Suite C
Greenville, South Carolina 29615
Phone (864) 234-7368
Fax (864) 234-7369

May 4, 2007

Mr. Matt Card
Planner
Henderson County Planning Department
213 First Avenue East
Hendersonville, North Carolina 28792

**Re: Pavement Guarantee
Phases II - Cobblestone Village Subdivision
Flat Rock, North Carolina**

Dear Mr. Card,

We have reviewed the attached cost estimate provided by Trace and Company, Inc., dated May 4, 2007 for the asphalt pavement requirements for Phase II of Cobblestone Village Subdivision. The amount of \$59,395 to perform the amount of work specified appears reasonable to the best of our knowledge.

If you have any questions or need further information, feel free to contact us. Your assistance is greatly appreciated.

Sincerely,



Thomas S. McCanless
Site Development Principal

Cc: Mr. Brian Ely
Flat Rock Valley, LLC

05/04/2007 03:27 0285939499

TRACE AND COMPANY

PAGE 03/03

**TRACE
— AND —
COMPANY**ESTABLISHED 1987
CONCRETE & ASPHALTPO Box 1026 Mt Home, NC 28758
Office: (828) 882-5564 Fax: (828) 883-9499Date: May 4, 2007Brian ElliPhase 2

Trace and Company, hereinafter called the Company, offers to furnish all labor, materials and equipment required for the performance of the following work:

ITEM					
1	Condition existing ABC stone and pave with 2" of asphalt.	7888	SY		\$69,385.00
Note: Price based on 7888 SY Additional setup and paving extra. Excludes survey, testing, or layout.					
Lump Sum:					\$69,385.00

05/04/2007 03:27 9206939499

TRACE AND COMPANY

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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 in the attached, 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. Asphalt depth will be average specified amount.

ACCEPTED:

*Firm Name:

FLAT ROCK VALLEY LLC

Trace and Company

Estimator:

Matthew Lawter

*Authorized By:

Guan Ehy

Date:

5/4/2007

Due to energy crisis we are no longer able to obtain prices and availability of 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 negotiate this contract.

"Should the price of asphalt increase above the stated amount of \$_____ per ton, it will be passed along to the Firm Name and Authorized Signature listed above."

Terms and Conditions

Due to fluctuation in material cost, this quote is good for 30 days.

Payment due within 15 days of receipt of invoice for work performed.

Due to the placement and conditioning of ABC stone on soft or wet sub-grade; soft spots or mud will appear through the stone mat and reflect in the asphalt surface.

Trace and Company can not be held responsible for cracking and or deterioration of the stone base or asphalt surface. Undercut can be performed at owners expense.

Due to the placement, shoveling, raking and hand work in asphalt surface the owner will notice shadowing, pebbles and some minor heat cracks. With traffic and over time it will become unnoticeable. The texture will also vary and become unnoticeable.

Trace and Company suggests 1.5" asphalt overlays in most applications. The liquid asphalt tack applied on drive or roadway will appear on non-overlaid areas but will weather and dissipate over time with automotive traffic and weathering.

The owner is advised that tire marks may appear due to stationary turning of tires on new asphalt surfaces or areas that are exposed to the sun for long amounts of time.

Trace and Company strives to excel in work performance and outstanding finish product.

If you have any questions pertaining to your proposal, contract or information pertaining to your job feel free to give me a call at 692-5664 or (matt@traceandcompany.com)

Thank You, Matthew Lawter.

All past due balances (over 30 days) will incur a late charge of 1.5% per month.
Unless otherwise noted price excludes survey, layout and testing.