



CITY of NOVI CITY COUNCIL

Agenda Item 1

August 26, 2019

SUBJECT: Consideration of a Completion Agreement with Hunter Pasteur Homes Dunhill Park for JSP15-0013, the Dunhill Park Site Condominium development located west of Beck Road and north of Eight Mile Road, and request by the developer for a reduction in the required financial guarantees in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

SUBMITTING DEPARTMENT: Community Development Department

BACKGROUND INFORMATION: City Council is being asked to consider a request from Hunter Pasteur Homes Dunhill Park to approve a Completion Agreement for the Dunhill Park Site Condominium, JSP15-0013 until September 1, 2020. The developer has worked diligently to close out the project as sales have allowed, but is requesting the specified time to complete the work.

Chapter 26.5 of the Novi City Code specifies procedures and required financial guarantees that must be in place if development of a project extends beyond a period of two (2) years. A formal Completion Agreement document outlining the remaining work and timeline for completion is required to be submitted for approval by the City Council. Posting of financial guarantees typically equal to 150% of the value of the outstanding work is also required. The Completion Agreement and financial guarantees protect the residents of Novi from the possible expense if the City had to complete an unfinished project due to developer default or nonperformance.

The Dunhill Park Condominium development is comprised of thirty-one (31) single family home sites established as part of a site condominium. The project is located west of Beck Road and north of Eight Mile Road.

This project is subject to the provisions of Chapter 26.5 of the Novi City Code, and requires a Completion Agreement because the original developer had not completed the site improvements shown on the approved site plan within two (2) years of issuance of the initial permit for any improvements (May 25, 2018) and a twelve (12) month extension (May 25, 2019).

Under the terms of the Completion Agreement specified in Chapter 26.5 of the City Code the required Financial Guarantees for Wetlands, Landscaping and incomplete Site Work are required to be increased from 120% to 150% of the value of the remaining work/repairs. The City currently holds a Performance Guarantee of approximately \$481,065.00. Staff recommends a required amount of \$423,098.50 in view of the additional period of potential deterioration and escalation of material and installation costs during the duration of the agreement which contemplates completion of:

- Planting of one hundred eighty one (181) Woodland replacement trees or contribution to the Tree Fund prior to issuance of the final two (2) Certificates of Occupancy for homes and in all events by September 1, 2020.
- Maintenance and repair of tree protection fencing for the duration of work.
- Installation of seventy five (75) remaining street trees prior to issuance of the final two (2) Certificates of Occupancy for homes and in all events by September 1, 2020.
- The installation of all remaining site landscaping. Most work has been completed and remains under two (2) year maintenance period.
- Maintenance of Soil Erosion and Sedimentation Control permit and measures including stabilization for the duration of the project.
- Ongoing monitoring and maintenance of the Wetland Mitigation as well as submission of annual monitoring reports.
- Repair and completion of all outstanding utility, pavement, curb and other incomplete site work prior to issuance of the final two (2) Certificates of Occupancy for homes and in all events by September 1, 2020.

The Incomplete Site Work amount of \$160,080.00 (\$240,120.00 with the 150% multiplier required by Chapter 26.5) is based on the following future and potential future work to the asphalt streets and concrete curbs:

1. Potential wearing course removal and replacement (100% of road area @ 1.5" = 8,722 syd (square yard) * \$12.00/syd)	\$104,700.00
2. Potential leveling course and base repairs (20% of road area @ 2.5" = 8,722 syd * 20% * \$21.00/syd)	\$36,700.00
3. Potential curb repairs (10% of curb length = 4,670 lft (linear feet) * 10% * \$40.00/lft)	\$18,680.00

Residential projects with roadways and curbs are typically closed out when 90% of the homes are occupied or at four (4) years, whichever comes first. The intent is to make sure the paving surfaces are not deteriorated while balancing the convenience of the residents. Developers have a choice whether to install the wearing course of asphalt at time of initial paving or just prior to closeout. In this case, as with many projects the "final" wearing course of asphalt was installed initially. While this measure protects the base course of pavement and curb edges, it also subjects the final surface to construction traffic and weathering. Any base course repairs then necessitate removal and replacement of both layers of paving. In the event of significant damage and/or deterioration of the wearing course and base course repairs the entire wearing course would need to be milled off and reinstalled. This recently took place not far from this project in Phase 2 of the Tuscan project. Public and private roadways are treated identically with the expectation that future residents deserve their private roads to be inspected and built to public standards as opposed to the possibility of receiving a lesser product.

The developer requested reconsideration of the incomplete site work financial guarantee categories above and based on consultation with the consulting engineer, onsite conditions, damage and deterioration, and progress of home construction, the standard 20% curb replacement was reduced to 10%. Another important point is that The Financial Guarantees are intended to strongly incentivize the developers to complete the work on their sites and protect our residents from economic conditions and material pricing fluctuations. In the event the City has to step in and complete development work, unit prices and overall costs are likely to be significantly higher than current development market paving prices.

The developer has provided the attached letter and pavement repair proposal from Cadillac Asphalt for repairs they feel are needed for the roads in their current condition. The requested total incomplete site work guarantee amount would be \$20,700.00 * 150% = \$31,050.00.

Staff does not support the request as it is contrary to Chapter 26.5 of the City Code and City Policies as well as increases risk to current and future residents and property owners.

RECOMMENDED ACTION : Consideration of a Completion Agreement with Hunter Pasteur Homes Dunhill Park for JSP15-0013, the Dunhill Park Site Condominium development located west of Beck Road and north of Eight Mile Road and confirmation of the standard financial guarantee amounts, in accordance with the requirements of Chapter 26.5 and subject to final approval by the City Attorney and City Manager.

August 14, 2019

Ms. Kate Richardson
Plan Review Engineer
Department of Public Services
Field Services Complex – Engineering Division
26300 Lee BeGole Drive
Novi, MI 48375

**Re: Dunhill Park
Completion Agreement Inspection Reduction**
Novi SP No.: JSP15-0013
SDA Job No.: NV16-226

Dear Ms. Richardson:

Please be advised that our field personnel visited the above referenced site on July 25th, 2019 to verify the status of the site's incomplete pavement items listed on our June 12th, 2019 Completion Agreement Inspection letter. As a result of the walkthrough, we recommend that the Incomplete Site Work Financial Guarantee be decreased to \$240,150. The revised amount is a result of remaining civil site improvement items, listed below, to be completed prior to final acceptance. The financial guarantee amount includes the City of Novi 1.5 multiplier.

Pavement Financial Guarantee

As a response to the aforementioned walk-through, there are some items that have yet to be addressed and are delineated below with corresponding dollar amounts:

Pavement Items

- | | |
|---|-----------|
| 1. Potential wearing course removal and replacement | \$104,700 |
| 2. Potential leveling course and base repairs | \$36,700 |
| 3. Potential curb repairs | \$18,700 |

Total (Subtotal*1.5) \$240,150

SDA recommends the City withhold a minimum amount of **\$240,150** for the potential pavement repairs and remaining incomplete site work items.

Please note that items related to the permits issued for this project are not addressed with this Acceptable for Service approval. The appropriate City staff or consultants will need to address these issues with the City of Novi.

 **SPALDING DeDECKER**
Engineering & Surveying Excellence since 1954

If you have any questions, please do not hesitate to contact us at our office.

Sincerely,

SPALDING DeDECKER



Ted Meadows
Senior Project Manager

cc: Sarah Marchioni, City of Novi – Building Project Coordinator (e-mail)
Angela Sosnowski, City of Novi – Bond Coordinator (e-mail)
Scott Roselle, City of Novi – Water and Sewer Asset Manager (e-mail)
SDA CE Job File

Hunter Pasteur

H O M E S

August 19, 2019

Novi City Council
City of Novi
45175 Ten Mile Road
Novi, MI 48375

RE: Dunhill Park Site Work Financial Guarantee Reduction

Dear Members of the Council:

Hunter Pasteur Homes Dunhill Park LLC respectfully requests the Council to substantially reduce the Site Work related financial guarantee ('FG'), as currently described in the proposed Dunhill Park Completion Agreement.

Hunter Pasteur Homes accepts and acknowledges the estimated cost of completion and ongoing maintenance for items a. – e.¹ as listed in section 3 of the Completion Agreement. We are simply contesting the estimated cost of completion and maintenance noted in Section (3)f, Incomplete Site Work at \$160,080.00. There are three components of the Site Work Category, all of which relate to the overall condition of the asphalt and curb at Dunhill Park: (1) Potential Wearing Course Removal and Replacement; (2) Potential Leveling Course and Base Repairs; and (3) Potential Curb Repairs.

Over the course of the past several months, we have worked with Mr. Auger and Mr. Boulard to address our concerns regarding the proposed Site Work Related FG. For the record, we have appreciated the effort and time spent researching and reviewing our request for reduction. As stated throughout this review process, we acknowledge that City ordinance requires a 90% close out as a precondition for FG relief. That being said, we believe that the aforementioned ordinance speaks specifically to road dedication. I want to clearly state that we are not seeking to dedicate the roads. We are seeking to have our FG related to the asphalt and curb reduced to a reasonable amount, commensurate with the current condition of the road. Furthermore, we understand and appreciate that Novi wants sufficient financial protection should remedial efforts be necessary. That being said, (a) the Dunhill Park road was installed in 2016 (including the wearing course), any significant failure in the road or curb would have been present by now; (b) because we are not asking to dedicate the roads, Hunter Pasteur Homes would remain responsible for the condition of the roads + curbs until the time of dedication. Lastly and equally important, we are only asking for a substantial reduction in the FG, not a complete release.



August 19, 2019
Novi City Council
Page 2

To further support our request, we asked an independent third party, Cadillac Paving, to evaluate and estimate the current cost to repair. On July 31st, 2019, Cadillac presented Hunter Pasteur Homes with a quote to remediate asphalt and curbs at Dunhill Park for \$20,700 (See Attached).

In sum, we believe that a \$160,800 FG for a road that has no signs of failure and currently requires only \$20,700 in repair, places an unfair burden on Hunter Pasteur Homes as the Developer and is quite simply unreasonable. *Therefore, we respectfully request that Council reduces our Site Work related financial guarantee to \$31,050 (\$20,700 * multiplier of 1.5).*

Sincerely,

A handwritten signature in black ink, appearing to read 'Seth Herkowitz', with a long horizontal flourish extending to the right.

Seth Herkowitz
Partner
HP Homes Holding Company, Member of
Hunter Pasteur Homes Dunhill Park LLC

Attachment: Cadillac Paving Proposal

¹ See Page 3 of the Completion Agreement: Street Trees, Woodland and Woodland Fence, Soil Erosion and Sedimentation Control, Wetlands, and Landscaping

Cadillac Asphalt LLC
 51777 West 12 Mile Road
 Wixom, Michigan 48393

Phone: (248) 349-8600 Fax (248) 347-2589

PAVING PROPOSAL

Bid Presented To:

Customer Name Franklin Property	
Address	
City, State, Zip	
Phone	Fax
Jobsite Phone	
Owner Of Real Estate	

For Asphalt Pavement Construction

Job Name Dunn Hill
Address
City, State, Zip
Date of Bid July 31, 2019
Architect-Engineer
No. & Date of Plans

Items of work, specifications, quantities and unit prices:

Safety is our # 1 Goal

UNIT	QTY	Scope of work:	UNIT PRICE	TOTAL
LS	1	Over band cracks	\$ 2,500.00	\$ 2,500.00
SFT	300	Remove and replace damaged asphalt	\$ 15.00	\$ 4,500.00
LFT	5,100	Saw and seal along concrete curbs	\$ 2.00	\$ 10,200.00
LS	1	Remove and replace curb up to 70ft after that charge is \$45.00/LFT	\$ 3,500.00	\$ 3,500.00
			Total	\$ 20,700.00

Notes & Exclusions

Engineering, permits, testing, layout, dues and bonds are excluded
 Final billing based on field installed quantities

We offer to furnish necessary labor and materials to do the above work in accordance with the above specifications and the Terms and Conditions listed on the reverse of this document for the sum of: _____ dollars
 () , or at a unit price of _____ Per _____

Signed _____
 Cadillac Asphalt LLC Representative, Jim Bliss

The prices quoted above may be subject to change if not accepted within 10 days from the date hereof. Final acceptance by Cadillac Asphalt LLC is subject to the approval of the Division Manager and Credit Department.

Acceptance by Customer

We hereby accept this proposal. The specifications and prices are approved and satisfactory. The Terms & Conditions are understood and accepted. Payment will be made in accordance with the terms offered. I further represent that I am authorized to sign this contract.

Accepted by Customer:

 Date Signature (Title)

TERMS & CONDITIONS

- 1) Entirely – This agreement contains the entire agreement of the parties hereto and shall supersede all previous oral & written agreements and all contemporaneous negotiations, commitments and understandings. This agreement may be modified only by written instrument duly executed by each party hereto.
- 2) Thickness – All descriptions of paving thickness in this proposal are referred to as average thickness. Variation in sub-base and technical limitation may result in variation in thickness. We warrant sufficient material will be used on the project to result in the average thickness stated.
- 3) Property Lines – The customer shall establish and designate property lines and shall be obligated to pay for work performed as ordered in the event said work results in trespass on other property. Customer shall also be responsible for any damage caused by the owner of such other property.
- 4) Delays – Contractor shall complete the job within a reasonable time but shall not be liable for delays beyond the control of Contractor. The contractor shall complete the project as weather and schedule permit.
- 5) Permits – Customer shall acquire and pay for any and all permits or assessments if they are required. Upon acceptance, a legal description of the property improvement and/or a notice of Commencement shall be provided to Contractor prior to start of work.
- 6) Wet or Unstable Grade – No materials will be placed on wet or frozen sub grade. A suitable sub grade is a condition precedent to the requirement of performance of this contract.
- 7) Reproduction Cracks – When resurfacing concrete, brick or asphalt pavements, Contractor is not responsible for the reproduction of cracks or expansion joints which occur.
- 8) Minimum Grade – Contractor reserves the right to refuse to construct a pavement unless minimum grades of 1% are possible for surface drainage. If Customer directs construction with less than a minimum grade of 1%, it is understood that waterponding may occur and that no warranty attaches to the work as to satisfactory surface drainage. Depressions over ¼ inch will be filled.
- 9) Underground Structures – It is Customer's responsibility to advise Contractor of the existence and location of all underground structures such as sewers, water and gas line, etc., which might be encountered by Contractor in the performance of its work hereunder. Contractor shall be deemed to have notice of the existence of only those structures specifically referred to in this proposal and of the location thereof as indicated in this proposal. If it develops in the performance of the work that the identity or location of the underground structures varies from those specified herein, any extra cost occasioned thereby in moving, protecting or covering same, or otherwise, shall be paid by Customer.
- 10) Soil Conditions – Should any unusual conditions be encountered not specifically referred to in this proposal, any extra cost in the performance of the work occasioned by such conditions shall be paid by Customer.
- 11) Tree Roots – Contractor shall not be responsible for damage to trees occasioned by the removal of tree roots in preparing the roadbed, nor shall Contractor be obligated to remove damaged or destroyed trees.
- 12) Timely Payment – As stated above, payment in full is due upon completion of the job. Interim billings for partial performance are due and payable thirty (30) days after presentment of said billings. Customer agrees to pay interest at the rate of 1 ½% per month on any amount due Contractor with said interest to start accruing thirty (30) days after presentation to Customer of a billing for work performed and/or expenses incurred by Contractor. This interest is an annual rate of 18%. Contractor may, upon written notice to Customer, terminate this contract when for a period of five (5) days after payment is due, as provided herein, Customer fails to make said payment or payments. On such termination, Contractor may recover from Customer payment for all work completed and for any loss sustained by Contractor for materials, etc., to the extent of actual loss thereon, plus loss on a reasonable profit.
- 13) Unit Prices – The quantities and units stated in this proposal are estimates and unless otherwise stated, this is a unit price proposal. Actual 'as built' quantities shall be paid for at their respective unit prices.
- 14) Acceptance – The paving shall be deemed accepted by Customer at such time as the paving is opened for travel and parking. If for any reason the wearing course is not placed prior to opening to the public, Customer shall be responsible for the cost of repair.
- 15) Hidden Objects – Contractor assumes no responsibility for removing hidden objects encountered during the performance of the work. Any costs incurred by the removal and disposal of such hidden objects shall be borne by Customer and the Contractor shall be reimbursed accordingly. Contractor assumes no responsibility for discovery or removal of materials that may be contaminated or hazardous.
- 16) Zoning Requirement/Other Regulations – Contractor assumes no responsibility for determining whether Customer has the legal right or authority to pave the property as directed. Notwithstanding that such work might be deemed to violate any ordinance, zoning regulation, or other law, Customer shall, nevertheless, be obligated to pay for the work as ordered.
- 17) Stockpiling Materials – Contractor shall be permitted to stockpile materials necessary to the performance of the work, on the Customer's property adjacent to the site of the work, without cost.
- 18) Carports – Asphalt paving must be placed prior to the building of carports or the placing of asphalt curb.
- 19) Force Majeure - Contractor shall not be liable for any failure to perform its obligations where such failure is as a result of Acts of Nature (including fire, flood, earthquake, storm, hurricane or other natural disaster), war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, or lockout. Customer will not have a right to terminate this Agreement in such circumstances.
- 20) Fine Grading - Customer is responsible for fine grading of aggregate base unless otherwise listed as options and is accepted by Customer.

MAINTENANCE GUARANTEE

This pavement is guaranteed against failure due to improper workmanship or materials for a period of (1) year(s) after construction unless otherwise stated herein. Use of a pavement for a purpose other than the disclosed and intended use, or by heavier traffic than disclosed will void this guarantee. It is understood that this guarantee does not cover damage caused by intentional or accidental excavation, fire, flood, gasoline, oil, chemicals, subsurface water, overloading or other misuse. Failure of the Customer to conform to the requirements of timely payment as stipulated in the Terms & Conditions will void this guarantee. This guarantee does not apply to first or intermediate stages of construction. Asphalt bases are not guaranteed. This guarantee starts when the final wearing surface is placed and the pavement structure is brought up to full design strength.