

00500
AGREEMENT

THIS AGREEMENT is dated and will be effective on the _____ day of _____ in the year 2021 by and between the City of Lake Worth Beach (hereinafter called Owner) and **B&B Underground Construction, Inc.** (hereinafter called Contractor).

Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK.

Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows: **Potable water and roadway infrastructure improvements.**

The Project, of which the Work under the Contract Documents is a part, shall be referred to as: **Neighborhood Road Program, District 1, Year 4, Project 2.**

ARTICLE 2. ENGINEER

The Project has been designed by **Mock Roos & Associates, Inc.**, who is hereinafter called Engineer and who is to act as Owner's representative, assume all duties and responsibilities and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME.

3.1 The Work will be substantially completed within 210 days from the date when the Contract Time commences to run as provided in paragraph 4.01 of the General Conditions and shall be finally complete and ready for final payment in accordance with paragraph 15.06 of the General Conditions within 240 days from the date when the Contract Time commences to run.

3.2 All time limits for Milestones, if any, Substantial Completion and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

3.3 **LIQUIDATED DAMAGES.** Owner and Contractor recognize that time is of the essence of this Agreement and that Owner will suffer financial loss if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **Five Hundred and 00/100** dollars (\$ **500.00**) for each day that expires after the time specified in paragraph 3.1 for Substantial Completion until the Work is substantially complete. After Substantial Completion if Contractor shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by Owner, Contractor shall pay Owner **Five Hundred and 00/100** dollars (**\$500.00**) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

3.4 In the Owner's sole discretion, a requested extension of time may be denied for delays resulting from normal weather conditions prevailing from normal weather conditions prevailing in the area as defined by the average of the last five (5) years of weather recorded or otherwise established by the Owner.

ARTICLE 4. CONTRACT PRICE.

4.1 Owner shall pay CONTRACTOR for completion of the Work in accordance with the Contract Documents, subject to adjustment as provided therein, in current funds as follows:

A. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

TOTAL OF ALL UNIT PRICES Two Million, Eight Hundred Eighty-one Thousand, Five Hundred Eighty-Seven Dollars and Fifty Cents (\$2,881,587.50)

which is based on the unit price(s) in the Bid Form Unit Price Schedule for Unit Bid Items numbered A-1 to G-3.

ARTICLE 5. PAYMENT PROCEDURES.

Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions.

5.1 PROGRESS PAYMENTS. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer, on or about the 10th day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided elsewhere in the Contract Documents.

5.1.1 Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as Engineer shall determine, or Owner may withhold, in accordance with the General Conditions, less liquidated damages, if any.

90% of Work completed.

90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to Owner as provided in the General Conditions).

95% of the work complete after the Contractor has completed over 50% of the Work.

5.1.2 Upon Substantial Completion, in an amount sufficient to increase total payments to Contractor to 98% of the Contract Price, less such amounts

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as Engineer shall determine, or Owner may withhold, in accordance with the General Conditions, less liquidated damages, if any.

5.2 FINAL PAYMENT. Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, and settlement of all claims, including liquidated damages, if any, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph 15.06.

ARTICLE 6. INTEREST.

6.1 All payments due and not made within the time prescribed by section 218.735, Florida Statutes, shall bear interest at the rate of 1 percent per month in accordance with section 218.735, Florida Statutes, as amended from time to time.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS.

In order to induce Owner to enter into this Agreement Contractor makes the following representations:

7.1 Contractor has examined and carefully studied the Contract Documents and any data and reference items identified in the Contract Documents.

7.2 Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local and Site conditions that may affect cost, progress and performance of the Work.

7.3 Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress and performance of the Work.

7.4 Contractor has studied carefully all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical data in such reports and drawings, and (2) reports and drawings related to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical data in such reports and drawings. Contractor accepts the determination set forth in the Contract Documents of the extent of the technical data contained in such reports and drawings upon which Contractor is entitled to rely, if any.

7.5 Contractor has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports and studies, if any, (in addition to or to supplement those referred to in paragraph 7.4 above) which pertain to the subsurface or physical conditions at or adjacent to the Site or otherwise may affect the cost, progress, performance or furnishing of the Work as Contractor considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by Contractor for such purposes.

7.6 Contractor has reviewed and checked all information and data shown or indicated on the Contract Documents, if any, with respect to existing Underground Facilities at or adjacent to the

Site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by Contractor in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.

7.7 Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress and performance of the work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.

7.8 Contractor has correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents and based on the information and observations referred to above, the Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.

7.9 Contractor has given Engineer written notice of all conflicts, errors or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.

7.10 Contractor acknowledges that the Contract Documents are generally sufficient to indicate and convey an adequate understanding of all terms and conditions for performance and furnishing of the Work.

7.11 Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

7.12 Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.

ARTICLE 8. CONTRACT DOCUMENTS.

The Contract Documents which comprise the entire Agreement between Owner and Contractor concerning the Work consist of the following:

8.1 This Agreement consisting of 10 pages.

8.2 Exhibits to this Agreement identified as:

- a. The Project Manual (pages 1 to 298, inclusive);
- b. Contractor's Bid (pages 1 to 12, inclusive);
- c. Permits (Addendum No. 1, pages 7 to 45, inclusive);
- d. Other: _____

8.3 Performance Bond and Payment Bond consisting of ____ pages (plus Power of Attorney Forms as applicable).

8.4 Notice of Award and Notice to Proceed.

8.5 General Conditions consisting of 65 pages.

8.6 Supplementary Conditions consisting of 7 pages.

8.7 Bid documents as listed in the table of contents of the Project Manual.

8.8 Specifications consisting of 69 pages.

8.9 Drawings not attached hereto but are listed in Section 00860 List of Drawings.

8.10 Addenda numbers 1 to 1, inclusive.

8.11 Contractor's Bid consisting of 11 pages.

8.12 Documentation submitted by Contractor prior to Notice of Award.

8.13 The following which may be delivered or issued after the Effective Date of the Agreement and are not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to the General Conditions.

8.14 The documents listed under Article 8 above are attached to this Agreement (except as expressly noted otherwise above).

8.15 Any other document attached hereto or incorporated herein by the Owner.

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in the General Conditions.

Governing Order of Contract Documents - The Contract Documents include various divisions, sections and conditions which are essential parts for the work to be provided by the Contractor. A requirement occurring in one is as binding as though occurring in all. They are intended to be complementary and to describe and provide for a complete work. In case of discrepancy, the following precedence will govern the interpretation of the Contract Documents prior to award of the contract.

1. Agreement
2. Addenda
3. Instructions to Bidders
4. Special Conditions
5. Supplementary Conditions
6. General Conditions
7. Technical Specifications
8. Details
9. City Standard Details
10. Drawings/Plans
11. Bid Form

After award, Work Change Directives, Change Orders, amendments and revisions to plans and specifications will take precedence over any of the above. In case of discrepancy among technical specifications, drawings and plans, the most restrictive shall govern. Detailed plans shall have precedence over general plans. In the event that any conflicts cannot be resolved by reference to this Governing Order of Contract Documents provision, then City shall resolve the conflict in any manner which is acceptable to City and which comports with the overall intent of the Contract Documents.

ARTICLE 9. MISCELLANEOUS.

9.1 *Terms.* Terms used in this Agreement will have the meanings indicated in the General Conditions.

9.2 *Assignment.* Unless expressly agreed to elsewhere in the Contract documents, no assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.3 *Successors and assigns.* Owner and Contractor each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect of all covenants, agreements and obligations contained in the Contract Documents.

9.4 *Severability.* Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replaced such stricken provision or part thereof with a valid and enforceable provisions that comes as close as possible to expressing the intention of the stricken provision.

9.5 *Public entity crimes.* A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a Bid on a Contract to provide any goods or services to a public entity, may not submit a Bid on a Contract with a public entity for the construction or repair of a public building or public work, may not be awarded or perform Work as a Contractor, Supplier, Subcontractor, or Consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

9.6 *Inspector General.* In accordance with Palm Beach County ordinance number 2011-009, the Contract Documents may be subject to investigation and/or audit by the Palm Beach County Inspector General. Contractor should review such ordinance in order to be aware of its rights and/or obligations under such ordinance and as applicable.

9.7 *Waiver.* Failure of either party to enforce or exercise any right(s) under the Contract Documents shall not be deemed a waiver of either party's right to enforce said right(s) at any time thereafter.

9.8 *Waiver of jury trial.* TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THE CONTRACT DOCUMENTS.

9.9 *Independent Contractor.* The Contractor is, and shall be, in the performance of all Work under the Contract Documents, an Independent Contractor, and not an employee, agent, or servant of the Owner. All persons engaged in any of the Work performed pursuant to the Contract Documents shall at all times and in all places be subject to the Contractor's sole direction, supervision and control.

9.10 *Access and audits.* The Contractor shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the Work for at least five (5) years after final payment is made. The Owner shall have access to such books, records, and documents as required for the purpose of inspection or audit during normal business hours at the Contractor's place of business. Under no circumstances will Contractor be required to disclose any confidential or proprietary information regarding its products and service costs.

9.11 *Preparation.* The Contract Documents shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

9.12 *Public Records Law.* Contractor shall comply with Florida's Public Records Laws, and specifically agrees to:

- a) Keep and maintain public records required by the Owner to perform the service.
- b) Upon request from the Owner's custodian of public records, provide the Owner with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the Contractor does not transfer the records to the Owner.
- d) Upon completion of the contract, transfer, at no cost, to the Owner all public records in possession of the Contractor or keep and maintain public records required by the Owner to perform the service. If the Contractor transfers all public records to the Owner upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the Owner, upon request from the Owner's custodian of public records, in a format that is compatible with the information technology systems of the Owner.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS

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**RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN
OF PUBLIC RECORDS OR DESIGNEE AT: ATTENTION DEBBIE
ANDREA, (561) 586-1660 OR
DANDREA@LAKEWORTHBEACHFL.GOV OR 7 NORTH DIXIE
HIGHWAY, LAKE WORTH BEACH, FL 33460.**

9.13 *Enforcement costs.* If any legal action or other proceeding is brought for the enforcement of the Contract Documents, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of the Contract Documents, the parties agree that each party shall be responsible for its own attorney's fees.

9.14 *Binding authority.* Contractor's representative below has full power, authority and legal right to execute and deliver these Contract Documents and perform all of its obligations under the Contract Documents. By signing the Contract Documents, the representative hereby represents to the Owner that he/she has the authority and full legal power to execute the Contract Documents and any and all documents necessary to effectuate and implement the terms of the Contract Documents on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in the Contract Documents.

9.15 *Assignment of warranties.* Contractor shall assign to Owner all warranties extended to Contractor by material suppliers. If an assignment of warranty requires the material supplier to consent to same, then Contractor shall secure the material supplier's consent to assign said warranties to Owner.

9.16 *Contractor's certifications.* Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract Documents. For the purposes of this paragraph:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract Documents to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract Documents.

9.17 *Construction defects.* PURSUANT TO SECTION 558.005, FLORIDA STATUTES, ANY CLAIMS FOR CONSTRUCTION DEFECTS ARE NOT SUBJECT TO THE NOTICE AND CURE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES.

9.18 *Delays; Contractor's remedies.* NOTWITHSTANDING ANY PROVISION ELSEWHERE IN THE CONTRACT DOCUMENTS, NO CLAIM FOR DAMAGES OR ANY CLAIM OTHER THAN FOR AN EXTENSION OF TIME SHALL BE MADE OR ASSERTED AGAINST OWNER BY REASON OF ANY DELAYS. Contractor shall not be entitled to an increase in the Contract Price or payment or compensation of any kind from Owner for direct, indirect, consequential, impact or other costs, expenses or damages, including, but not limited to, costs of

acceleration or inefficiency, arising because of delay, disruption, interference, or hindrance, be it reasonable or unreasonable, foreseeable or avoidable or unavoidable. Contractor shall be entitled only to extensions of the Contract Time as the sole and exclusive remedy for such resulting delays, in accordance with and the extent specifically provided herein.

9.19 *Termination for failure to provide Public Construction Bond.* If a Public Construction Bond is required under the Construction Documents and the Contractor fails to provide the fully executed Public Construction Bond, including a certified copy of the Public Construction Bond as recorded in the Official Records for Palm Beach County, within fifteen (15) calendar days after the Contractor's and Owner's execution of this Agreement, the Owner may immediately terminate this Agreement upon written notice to the Contractor and the Owner shall have no further obligation to the Contractor under the Contract. In the event of such termination, the Contractor shall also forfeit its bid security to the Owner.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement in four parts. Two counterparts have been delivered to Owner, and one counterpart each to Contractor and Engineer. All portions of the Contract Documents have been signed or identified by Owner and Contractor or by Engineer on their behalf.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST

Deborah M. Andrea, City Clerk

Approved as to form and legal sufficiency:

Approved for Financial Sufficiency:

Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR: B&B Underground Construction, Inc.

By: _____
Print Name: Stephen Decker
Title: President

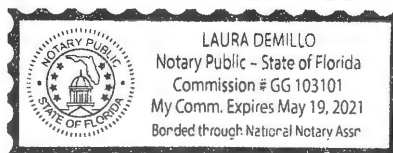
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STATE OF Florida
COUNTY OF Palm Beach

The foregoing instrument was acknowledged before me this 10th day of March, 2020
by Stephen Decker, as President of B+B Und Const, Inc., a
Florida corporation, and who is personally known to me or who has produced the following
_____ as identification.

Notary Public:

Laura Demillo



Construction Performance Bond

Bond Number: 065221X

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable

CONTRACTOR (Name & Address):

B&B Underground Construction, Inc.
4050 Westgate Avenue, Suite 110
West Palm Beach, FL 33409

SURETY (Name & Principal Place of Business):

Westfield Insurance Company
One Park Circle
Westfield Center, OH 44251

OWNER (Name & Address):

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460

CONSTRUCTION CONTRACT**Date****Amount:** \$2,881,587.50**Description (Name & Location):**

Lake Worth Beach-Neighborhood Road Program District 1, Year 4, Project 2

BOND**Date (Not earlier than Construction Contract Date):****Amount:** \$2,881,587.50**Modifications to this Bond Form:****CONTRACTOR AS PRINCIPAL****Company:** B&B Underground Construction, Inc.**SURETY****Company:** Westfield Insurance Company**Signature:** **Name & Title:** Stephen Decker, President**Signature:** **Name & Title:** Arthur K. Broder, Agent & Attorney-in-Fact

EJCDC No. 1910-28A (1984 Edition)

Prepared through the joint efforts of The Surety Association of America, Engineers' Joint Contract Documents Committee, The Associated General Contractor of America, and the American Institute of Architects.

CONSTRUCTION PERFORMANCE BOND**00610-1**

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the owner to pay for labor. Materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference;
2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except to participate in conferences as provided in Subparagraph 3.1.
3. If there is no Owner Default, the Surety's obligation under this Bond shall arise after:
 - 3.1. The Owner has notified the Contractor and Surety at its address described in Paragraph 10 below, that the Owner is considering declaring a Contractor Default and has requested and attempted to arrange a conference with the Contractor and the Surety to be held not later than fifteen days after receipt of such notice to discuss methods of performance the Construction Contract. If the Owner, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall be waive the Owner's right. if any, subsequently to declare a Contractor Default; and
 - 3.2. The Owner has declared a Contractor Default and formally terminated the Contractor's right to complete the contract. Such Contractor Default shall not be declared earlier than twenty days after the Contractor and the Surety have received notice as provided in Subparagraph 3.1; and
 - 3.3. The Owner has agreed to pay the Balance of the Contract Price to the Surety in accordance with the terms of the Construction Contract or to a contractor selected to perform the Construction Contract in accordance with the terms of the contract with the Owner.
4. When the Owner has satisfied the conditions of Paragraph 3. The Surety shall promptly and at the Surety's expense take one of the following actions:
 - 4.1. Arrange for the Contractor with consent of the Owner to perform and complete the Construction Contractor
 - 4.2. Undertake to perform and complete the Construction Contract itself, through its agents or through independent contractors; or
 - 4.3. Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and the contractor selected with the Owner's concurrence to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract and pay to the Owner the amount of damages as described in Paragraph 6 in excess of the Balance of the Contract Price incurred by the Owner resulting from the Contractor's default; or
 - 4.4. Waive its right to perform and complete arrange for completion or obtain a new contractor and with reasonable promptness under circumstances:
 1. After investigation determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined tender payment therefor to the Owner; or
 2. Deny liability in whole or in part and notify the Owner citing reasons therefor.
5. If the Surety does not proceed as provided in Paragraph 4 with reasonable promptness. The Surety shall be deemed to be in default on this Bond fifteen days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Subparagraph 4.4. And the Owner refuses the payment tendered or the Surety has denied liability in whole or in part without further notice the Owner shall be entitled to enforce any remedy available to the Owner.
6. After the Owner has terminated the Contractor's right to complete the Construction Contract and if the Surety elects to act under Subparagraph 4.1. 4.2. or 4.3. above then the responsibilities of the Surety to the Owner shall not be greater than those

of the Contractor under the Construction Contract and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. To the limit of the amount of this Bond but subject to commitment by the Owner of the Balance of the Contract Price to mitigation of costs and damages on the Construction Contract the Surety is obligated without Duplication for:

- 6.1. The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- 6.2. Additional legal including appellate proceedings, design professional and delay costs and expenses resulting from the Contractor's default, and resulting from the actions or failure to act of the Surety under paragraph 4; and
- 6.3. Liquidated damages. Or if no liquidated damages are specified in the Construction Contract actual damages caused by delayed performance or non-performance of the Contractor.
7. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs' executors, administrators or successors.
8. The Surety hereby waives notice of any change including changes of time to the Construction Contract or to related subcontracts, purchase orders and other obligation.
9. Any proceeding, legal or equitable under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
10. Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page.
11. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
12. Definitions.
 - 12.1. Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance to the Contractor of any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled. Reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.
 - 12.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page. Including all Contract Documents and changes thereto.
 - 12.3. Contractor Default: Failure of the Contractor which has neither been remedied nor waived to perform or otherwise to comply with the terms of the Construction Contract.
 - 12.4. Owner Default: Failure of the Owner, which has neither been remedied nor waived to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

This Bond is executed pursuant to Florida Statutes Section 255.05 or Section 713.23, whichever is applicable, and is subject to the notice and time limitation provisions.

(FOR INFORMATION ONLY- Name, Address and Telephone)

AGENT OR BROKER:

Broder & Company
6191 Orange Drive, #6159E, Davie, FL 33314
954-584-3002

OWNER'S REPRESENTATIVE (ENGINEER):

Mock, Ross & Associates, Inc
5720 Corporate Way
West Palm Beach, FL 33407
561-683-3113

CONSTRUCTION PERFORMANCE BOND

00610-2

Construction Payment Bond

Bond Number: 065221X

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable

CONTRACTOR (Name & Address):

B&B Underground Construction, Inc.
4050 Westgate Avenue, Suite 110
West Palm Beach, FL 33409

SURETY (Name & Principal Place of Business):

Westfield Insurance Company
One Park Circle
Westfield Center, OH 44251

OWNER (Name & Address):

City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, FL 33460

CONSTRUCTION CONTRACT**Date**

Amount: \$2,881,587.50

Description (Name & Location):

Lake Worth Beach-Neighborhood Road Program District 1, Year 4, Project 2

BOND**Date (Not earlier than Construction Contract Date):**

Amount: \$2,881,587.50

Modifications to this Bond Form:

The Provisions and Limitations of Section 255.05, Florida Statutes are incorporated herein.

CONTRACTOR AS PRINCIPAL**SURETY**

Company: B&B Underground Construction, Inc. Company: Westfield Insurance Company

Signature: 

Name & Title: Stephen Decker, President

Signature: 

Name & Title: Arthur K. Broder, Agent & Attorney-in-Fact

EICDC No. 1910-28B (1984 Edition)

Prepared through the joint efforts of The Surety Association of America, Engineers' Joint Contract Documents Committee, The Associated General Contractor of America, and the American Institute of Architects, American Subcontractors Association, and the Associated Specialty Contractor

CONSTRUCTION PAYMENT BOND

00620-2

1. The Contractor and the Surety, jointly and severally, bind themselves their heirs, executors, administrators, successors and assigns to the owner to pay for labor.

Materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference.

2. With respect to the Owner, this obligation shall be null and void if the Contractor:
- 2.1. Promptly makes payment, directly or indirectly for all sums due Claimants and
- 2.2. Defends indemnifies and holds harmless the Owner from all claims demands liens or suits by any person or entity who furnished labor, materials or equipment for use in the performance of Construction Contract provided the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 12) of any claims, demands liens or suits to the Contractor and the Surety and provided there is no Owner Default.
3. With respect to Claimants this obligation shall be null and void if the Contractor promptly makes payment directly or indirectly for all sums due.
4. The Surety shall have no obligation to Claimants under this Bond until:
- 4.1 Claimants who are employed by or have a direct contract with the Contractor have given notice to the Surety (at the address described in Paragraph 12) and sent a copy of notice thereof to the Owner stating that a claim is being made under this Bond and with substantial accuracy the amount of the claim (see note one)
- 4.2 Claimants who do not have a direct contract with the Contractor
1. Have furnished written notice to the Contractor and sent a copy or notice thereof, to the Owner within 90 days after having last performed labor or last furnished materials or equipment included in the claim stating with substantial accuracy the amount of the claim and the name of the party to whom the materials were furnished or supplied or for whom the labor was done or performed and
2. Have either received a rejection in whole or in part from the Contractor or not received within 30 days of furnishing the above notice any communication from the Contractor by which the Contractor has indicated the claim will be paid directly or indirectly and
3. Not having been paid within the above 30 days have sent a written notice to the Surety (at address described in Paragraph 12) and sent a copy or notice thereof to the Owner stating that a claim is being made under this Bond and enclosing a copy of the previous written notice furnished to the Contractor
5. If a notice required by Paragraph 4 is given by the Owner to the Contractor or to the Surety that is sufficient compliance.
6. When the Claimant has satisfied the conditions of Paragraph 4 the Surety shall promptly and at the Surety's expense take the following actions:
- 6.1. Send an answer to the Claimant, with a copy to the Owner, within 45 days after receipt of the claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed.
- 6.2 Pay or arrange for payment of any undisputed amounts of this Bond, and the amount of this Bond shall be credited for any payment made in good faith by the Surety.
7. The Surety's total obligation shall not exceed the amount of this Bond and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
8. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims. If any, under any Construction Performance Bond By the Contractor furnishing and the Owner accepting this Bond they agree that all funds earned by

- the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and the Surety under this Bond subject to the Owner's priority to use the funds for the completion of the work.
9. The surety shall not be liable to the Owner Claimants or others for Obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for payment of any costs or expense of any Claimant under this Bond and shall have under this Bond no obligations to make payments to give notice on behalf of or otherwise have obligations to Claimants under this Bond.
10. The Surety hereby waives notice of any change, including changes at time to the Construction Contract or to related subcontracts purchase orders and other obligations.
11. No Suit or actions shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the location in which the work or part of the work is located or after the expiration of 2 year from the date (1) on which the Claimant gave the notice required by Subparagraph 4.1 or Clause 4.2 (iii), or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
12. Notice to the Surety the Owner or the Contractor shall be mailed or delivered to the address shown on the signature page. Actual receipt of notice by Surety the Owner or the Contractor however accomplished shall be sufficient compliance as of the date received at the address shown on the signature page.
13. When this Bond has been furnished to comply with statutory or other legal requirements in the location where the construction was to be performed any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted here from and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. The intent is that this Bond shall be constructed as a statutory bond and not as a common law bond.
14. Upon request by any person or entity appearing to be a potential beneficiary of this Bond the Contractor shall promptly furnish a copy of this Bond or shall permit a copy to be made
15. DEFINITIONS
- 15.1. Claimant: An individual or entity having a direct contract with the Contractor or with a subcontractor to furnish labor, materials or equipment for use in the performance of the Contract. The intent of this Bond shall be to include without limitation in the terms "labor materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor materials or equipment were furnished.
- 15.2. Construction Contract: The agreement between the Owner and the Contractor identified on the signature page, including all Contract Documents and changes thereto.
- 15.3. Owner Default: Failure of the Owner, which has neither been remedied nor waived, to pay the Contractor as required by the Construction Contract or to perform and complete or comply with the other terms thereof.

Note 1: As an additional requirement any claimant, except a laborer, who is not in privity with the Contractor shall, within forty-five days after beginning to furnish labor, materials or supplies, furnish the Contractor with a Notice that he intends to look to the Bond for protection.

This Bond is executed pursuant to Florida Statutes Section 255.05 or Section 713.23, whichever is applicable, and is subject to the notice and time limitation provisions.

(FOR INFORMATION ONLY- Name, Address and Telephone)

AGENT OR BROKER:

Broder & Company
6191 Orange Drive, #6159E, Davie, FL 33314
954-584-3002

OWNER'S REPRESENTATIVE (ENGINEER):

Mock, Ross & Associates, Inc
5720 Corporate Way
West Palm Beach, FL 33407
561-683-3113

CONSTRUCTION PAYMENT BOND

00620-2

General
Power
of Attorney

CERTIFIED COPY

POWER NO. 0992212 00

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
ARTHUR K. BRODER, MICHAEL P. BRODER, JOINTLY OR SEVERALLY

of DAVIE and State of FL its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact, may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary.

Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 9, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 21st day of MARCH A.D., 2014.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By: *Dennis P. Baus*

Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio
County of Medina ss.:

On this 21st day of MARCH A.D., 2014, before me personally came Dennis P. Baus to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



State of Ohio
County of Medina ss.:

David A. Kotnik

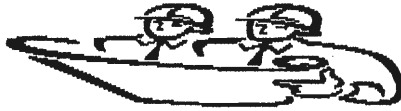
David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this day of



Frank A. Carrino
Frank A. Carrino, Secretary



BRODER & COMPANY

6191 Orange Drive, #6139E
Davie, FL 33314
(954) 584-3000

300 Vinson Place
Saint Johns, FL 32259
(904) 995-8775

3/6/2020

City of Lake Worth Beach

RE: B&B Underground Construction, Inc.
Project: Neighborhood Road Program District 1, Year 4, Project 2
Bond No: 065221X

To Whom It May Concern:

PLEASE ACCEPT THIS LETTER AS OUR CONSENT OF SURETY ON BEHALF OF B&B Underground Construction, Inc., Contractor and Westfield Insurance Company, as Surety for acceptance of The City of Lake Worth Beach to date the above referenced Power of Attorney, Performance and Payment Bond.

Very truly yours,

Arthur K. Broder
Agent & Attorney-in-Fact
Westfield Insurance Company

General
Power
of Attorney

CERTIFIED COPY

POWER NO. 0092212 00

Westfield Insurance Co.
Westfield National Insurance Co.
Ohio Farmers Insurance Co.
Westfield Center, Ohio

Know All Men by These Presents, That WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, corporations, hereinafter referred to individually as a "Company" and collectively as "Companies," duly organized and existing under the laws of the State of Ohio, and having its principal office in Westfield Center, Medina County, Ohio, do by these presents make, constitute and appoint
ARTHUR K. BRODER, MICHAEL P. BRODER, JOINTLY OR SEVERALLY

of DAVIE and State of FL its true and lawful Attorney(s)-in-Fact, with full power and authority hereby conferred in its name, place and stead, to execute, acknowledge and deliver any and all bonds, recognizances, undertakings, or other instruments or contracts of suretyship.

LIMITATION: THIS POWER OF ATTORNEY CANNOT BE USED TO EXECUTE NOTE GUARANTEE, MORTGAGE DEFICIENCY, MORTGAGE GUARANTEE, OR BANK DEPOSITORY BONDS.

and to bind any of the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seal of the applicable Company and duly attested by its Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises. Said appointment is made under and by authority of the following resolution adopted by the Board of Directors of each of the WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY:

"Be It Resolved, that the President, any Senior Executive, any Secretary or any Fidelity & Surety Operations Executive or other Executive shall be and is hereby vested with full power and authority to appoint any one or more suitable persons as Attorney(s)-in-Fact to represent and act for and on behalf of the Company subject to the following provisions:

The Attorney-in-Fact, may be given full power and authority for and in the name of and on behalf of the Company, to execute, acknowledge and deliver, any and all bonds, recognizances, contracts, agreements of indemnity and other conditional or obligatory undertakings and any and all notices and documents canceling or terminating the Company's liability thereunder, and any such instruments so executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed by the President and sealed and attested by the Corporate Secretary."

"Be It Further Resolved, that the signature of any such designated person and the seal of the Company heretofore or hereafter affixed to any power of attorney or any certificate relating thereto by facsimile, and any power of attorney or certificate bearing facsimile signatures or facsimile seal shall be valid and binding upon the Company with respect to any bond or undertaking to which it is attached." (Each adopted at a meeting held on February 8, 2000).

In Witness Whereof, WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY have caused these presents to be signed by their National Surety Leader and Senior Executive and their corporate seals to be hereto affixed this 21st day of MARCH A.D., 2014.

Corporate
Seals
Affixed



WESTFIELD INSURANCE COMPANY
WESTFIELD NATIONAL INSURANCE COMPANY
OHIO FARMERS INSURANCE COMPANY

By: *Dennis P. Baus*

Dennis P. Baus, National Surety Leader and Senior Executive

State of Ohio
County of Medina

ss.:

On this 21st day of MARCH A.D., 2014, before me personally came Dennis P. Baus to me known, who, being by me duly sworn, did depose and say, that he resides in Wooster, Ohio; that he is National Surety Leader and Senior Executive of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, the companies described in and which executed the above instrument; that he knows the seals of said Companies; that the seals affixed to said instrument are such corporate seals; that they were so affixed by order of the Boards of Directors of said Companies; and that he signed his name thereto by like order.

Notarial
Seal
Affixed



State of Ohio
County of Medina

ss.:

David A. Kotnik

David A. Kotnik, Attorney at Law, Notary Public
My Commission Does Not Expire (Sec. 147.03 Ohio Revised Code)

I, Frank A. Carrino, Secretary of WESTFIELD INSURANCE COMPANY, WESTFIELD NATIONAL INSURANCE COMPANY and OHIO FARMERS INSURANCE COMPANY, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney, executed by said Companies, which is still in full force and effect; and furthermore, the resolutions of the Boards of Directors, set out in the Power of Attorney are in full force and effect.

In Witness Whereof, I have hereunto set my hand and affixed the seals of said Companies at Westfield Center, Ohio, this 6th day of March A.D., 2014



Frank A. Carrino
Frank A. Carrino, Secretary