

Contract #284-2014

PART VI

CONTRACT AGREEMENT

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PART VI

CONTRACT AGREEMENT

THIS AGREEMENT, made on the 20th day of November, 2014, by and between **Lexington-Fayette Urban County Government**, acting herein called "OWNER" and **Grant's Excavating, Inc.**, doing business as ~~*(an individual)~~ ~~(a partnership)~~ (a corporation) located in the City of Richmond, County of Madison, and State of Kentucky, hereinafter called "CONTRACTOR."

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of SEVEN HUNDRED FIVE THOUSAND, SIX HUNDRED THIRTY TWO Dollars and FIFTY Cents (\$ 705,632.50) quoted in the proposal by the CONTRACTOR, dated October 23, 2014, hereby agree to commence and complete the construction described as follows:

1. SCOPE OF WORK

The CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and the Special Conditions of the Contract, the Specifications and Contract Documents therefore as prepared by Tetra Tech Inc. for the **Walhampton Stormwater Improvements Project.**

2. TIME OF COMPLETION AND LIQUIDATED DAMAGES

The time period estimated and authorized by the OWNER for the proper execution of the Work by the Contract, in full, is hereby fixed as **ONE HUNDRED EIGHTY (180)** calendar days. The time shall in accordance with the Notice to Proceed provided by OWNER. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT AND CONTRACTOR SHALL BE LIABLE AND RESPONSIBLE FOR DAMAGES SUFFERED BY OWNER AS A RESULT OF THE DELAY CAUSED BY CONTRACTOR.**

Should the contractor fail or refuse to complete the work within the time specified in his Proposal and/or Contract (or extension of time granted by the owner), the Contractor shall pay liquidated damages in an amount of **TWO HUNDRED (\$200) per day.** The amount of liquidated damages shall in no event be considered as a penalty, nor other than an amount agreed upon by the Contractor and the Owner for damages, losses, additional engineering, additional resident representation and other cost that will be sustained by the owner, if the Contractor fails to complete the work within the specified time. Liquidated damages will be applied on a rate per day for each and every calendar day (Sundays and holidays included) beyond the Contract expiration date stipulated in the Contract Documents, considering all time extension granted. **These Liquidated Damages are in addition to any other damages/fees/penalties that are incurred as a result of Consent Decree requirements.**

3. ISSUANCE OF WORK ORDERS

Notice to begin Work will be given in whole or for part of the Work as determined by the OWNER pending the availability of funds. The order of construction will be as determined by the Engineer after consultation with the CONTRACTOR and the OWNER.

4. THE CONTRACT SUM

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, as quoted in the proposal, subject to any additions and deductions, as provided therein.

5. PROGRESS PAYMENTS

The OWNER shall make payments on account of the Contract, as provided in accordance with the General Conditions, as estimated by the Engineer, less the aggregate of previous payments.

6. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due within ninety (90) days after completion of the Work, provided the Work be then fully completed and the Contract fully accepted.

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the Work has been paid.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so certifies, the OWNER shall upon certificate of the ENGINEER, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

7. THE CONTRACT DOCUMENTS

The Advertisement for Bids, Information for Bidders, the General Conditions, Performance and Payment Bonds, Contract Agreement, Special Conditions, Technical Specifications, any and all Addenda, and Proposal, and Plan Drawings form the Contract, and they are fully a part of the Contract as if hereto attached or herein repeated.

8. EXTRA WORK

The OWNER, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such Work shall be executed and paid for in accordance with the General Conditions, which is a part of this Contract.

9. CONSENT DECREE REQUIREMENTS

9.1 OWNER, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 (“CONSENT DECREE”), that requires OWNER to complete numerous projects related to its sanitary sewer system and stormwater management program within specific periods of time.

9.2 TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR is aware that the OWNER is subject to penalties for non-compliance with the CONSENT DECREE deadlines. The CONTRACTOR shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by the OWNER as a result of any delay in, or non-performance of, any of the CONTRACTOR’s obligations or responsibilities under this Contract, or for any other damages suffered by OWNER as a result of such delay or non-performance. This shall specifically include, but shall not be limited to, any penalty, fine, fee, or assessment against the OWNER by the U.S. Department of Justice, U.S. Environmental Protection Agency, and/or the Kentucky Energy and Environment Cabinet related to the Consent Decree.

9.3 The provisions of this Section and the various rates of compensation for CONTRACTOR's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion.

9.4 If delays result by reason of acts of the OWNER or approving agencies, which are beyond the control of the CONTRACTOR, an extension of time for such delay will be considered. If delays occur, the CONTRACTOR shall immediately notify the OWNER, and within five (5) business days from the date of the delay apply in writing to the OWNER for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the PROJECT schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the OWNER of any of its rights in the Agreement. Section 9.6 of this Agreement (Disputes) shall apply in the event the parties cannot agree upon an extension of time.

In the event that the overall delay resulting from the above-described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified herein, the fees to be paid to CONTRACTOR shall be subject to adjustment as agreed upon

by the parties. Section 9.6 of this Agreement shall apply in the event the parties cannot agree upon an adjustment of fee.

9.5 If delays result solely by reason of acts of the CONTRACTOR, the CONTRACTOR shall be held liable for any financial penalties incurred by the OWNER as a result of the delay, including but not limited to those assessed pursuant to the CONSENT DECREE as provided in Section 9.2, above. Section 9.6 of this Agreement (Disputes), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The CONTRACTOR must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will attempt to resolve the delay.

9.6 DISPUTES

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the OWNER's Agent (Charles H. Martin, P.E., Director of Water Quality) and the CONTRACTOR. In the absence of such an agreement, the dispute shall be submitted to the OWNER's Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.

10. THE FOLLOWING IS AN ENUMERATION OF THE SPECIFICATIONS AND DRAWINGS (CONTRACT DOCUMENTS):

SPECIFICATIONS

SECTION NO.	TITLE	PAGES
I	ADVERTISEMENT FOR BIDS	AB-1 thru AB-6
II	INFORMATION TO BIDDERS	IB-1 thru IB-10
III	FORM OF PROPOSAL	P-1 thru P-31
IV	GENERAL CONDITIONS	GC-1 thru GC-112
V	SPECIAL CONDITIONS	SC-1 thru SC-8
VI	CONTRACT AGREEMENT	CA-1 thru CA-8
VII	PERFORMANCE AND PAYMENT BOND	SPB-1 thru PB-7
VIII	PERMITS	PE-1 thru PE 9
IX	ADDENDA	A-1 thru A-37

TECHNICAL SPECIFICATIONS

- DIVISION 1 GENERAL REQUIREMENTS
- DIVISION 2 SITE WORK
- DIVISION 3 CONCRETE

STANDARD DRAWINGS

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

<u>Number</u>	<u>Description</u>
100	STORM SEWER MANHOLE TYPE "A" – CIRCULAR WALLS
101	STORM SEWER MANHOLE TYPE "B" – NON – CIRCULAR WALLS
102	STORM SEWER MANHOLE DETAILS
103	MANHOLES, FRAMES, COVER, AND STEPS
104	STORM SEWER MANHOLE CIRCULAR SLABS 4'-0" & 5'-0" DIAMETER
105	STORM SEWER MANHOLE CIRCULAR SLABS 6'-0" DIAMETER
106	STORM SEWER MANHOLE CIRCULAR SLABS 7'-0" DIAMETER
107	STORM SEWER MANHOLE CIRCULAR SLABS 8'-0" DIAMETER
111	Reinforcement Detail 6' Non-Circular M.H. 8' To 15' Depth, 8" Walls, 12" Slab
114	Reinforcement Detail 7' Non-Circular M.H. 8' To 10' Depth, 8" Walls, 12" Slab
121	SURFACE INLET TYPE "B"
125	CURB BOX INLET TYPE "D"
154-1	PIPE CULVERT HEADWALLS 0° SKEW 30" – 108" PIPE
154-2	Dimensions and Quantities 30"–108" HEADWALLS CIRCULAR PIPE 0° Skew

154-3	Bill of Reinforcement 30"–90" Diameter CIRCULAR PIPE HEADWALLS 0° Skew
200	TRENCHING, LAYING, BACKFILLING AND BEDDING OUTSIDE R/W Limits
201-1	TRENCHING, LAYING, BACKFILLING AND BEDDING Under Street Pavement
211	TYPICAL STANDARD PRECAST CONCRETE MANHOLE For PIPES Up To 24"
213	STANDARD MANHOLE JUNCTION AND WATER STOP DETAILS
214	SEWER MANHOLE ADJUSTMENT GRADE RINGS
216	MANHOLE SIZE STANDARDS And GENERAL NOTES For DEEP MANHOLES
217	DEFLECTION ANGLE CRITERIA FOR SANITARY MANHOLES
220	STANDARD CIRCULAR MANHOLE FRAME & COVER
303	SIDEWALK CONSTRUCTION SPECIFICATIONS
307	RESIDENTIAL ENTRANCE DETAILS
323	PUBLIC IMPROVEMENT SIGN

KENTUCKY TRANSPORTATION CABINET

<u>Number</u>	<u>Description</u>
RDB-280-05	CURB BOX INLET TYPE "B" (DETAIL DRAWING)
RDB-281-02	CURB BOX INLET TYPE "B" (STEEL DRAWING)
RDB-282-03	CURB BOX INLET TYPE "B" (TOP PHASE TABLES)
RDB-283-03	CURB BOX INLET TYPE "B" (DETAIL & BAR CHART FOR 8" LID)
RDB-400-04	BOX INLET RISER
RDB-410-05	BOX INLET PIPE CHAMBER
RDB-420-04	BOX INLET PIPE CHAMBER (ADDITIONAL STEEL)

PLAN DRAWINGS

G-000	COVER SHEET
G-002	GENERAL NOTES AND DETAILS
G-003	KEY MAP
V-101	EXISTING SITE PLAN
C-101	KENLOCK DRIVE PLAN AND PROFILE
C-102	KENLOCK DRIVE PLAN AND PROFILE
C-103	PLAN AND PROFILE
C-104	DRAINAGE PROFILES
C-105	SITE DEMOLITION PLAN
C-106	BASIN SANITARY SEWER PROFILES
C-107	PAVEMENT PLAN
C-501	DETAILS
C-502	DETAILS
C-503	DETAILS
C-504	DETAILS

IN WITNESSETH WHEREOF, the parties hereto have executed this Contract as of the date and year above written.

(Seal)

Lexington-Fayette Urban County Government.
Lexington, Kentucky

(Owner)

ATTEST:

Matthew M. Allen, Deputy
Clerk of the Urban County Council

BY:

Jim Gray
MAYOR

Clerk of the Urban County Council

MAYOR, LFUCG

(Witness)

(Title)

(Seal)

Grants Excavating Inc.

(Contractor)

A. D. Hunt

(Secretary)*

BY:

Allen D. Hunt

Patricia J. Riley
(Witness)

President

(Title)

P.O. Box 298 Richmond, KY

(Address and Zip Code)

40475

IMPORTANT: *Strike out any non-applicable terms.

Secretary of the Owner should attest. If the CONTRACTOR is corporation, Secretary should attest. Give proper title of each person-executing Contract.

A312™ - 2010 Performance Bond

Bond No.: 0184827

CONTRACTOR:

(Name, legal status and address)

Grant's Excavating, Inc.
312 Jason Drive Suite 6
Richmond, KY 40475

SURETY:

Berkley Insurance Company
475 Steamboat Rd.
Greenwich, CT 06830

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

OWNER:

(Name, legal status and address)

Lexington Fayette Urban County Government
200 E. Main St. 3rd Floor Room 338
Lexington, KY 40507

CONSTRUCTION CONTRACT

Date: December 1, 2014

Amount: \$705,632.50

Seven Hundred Five Thousand Six Hundred Thirty Two Dollars and 50/100

Description:

(Name and location)

Walhampton Storm Water Improvement Project.

BOND

Date: December 1, 2014

(Not earlier than Construction Contract Date)

Amount: \$705,632.50

Seven Hundred Five Thousand Six Hundred Thirty Two Dollars and 50/100

Mod:ifications to this Bond:



None



See Section 16

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

Grant's Excavating, Inc.

SURETY

(Corporate Seal)

Berkley Insurance Company
475 Steamboat Rd.
Greenwich, CT 06830

Signature:

Name

Allen D. Grant

and Title:

President

Signature:

Name

Deborah Kay Davis

and Title:

Attorney-in-Fact

(Any additional signatures appear on the last page of this Performance Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)

AGENT or BROKER:

BB&T Insurance Services, Inc.
200 W. Vine Street, Suite 300
Lexington, KY 40507

OWNER'S REPRESENTATIVE:

(Architect, Engineer or other party:)

859-422-3766

Conforms to American Institute of Architects 2010 A312™ Performance Bond

§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner for 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 when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. 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 not waive the Owner's right, if any, subsequently to declare a Contractor Default;
 - .2 the Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety;
- and
- .3 the Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the Consent of the Owner, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 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 a 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 Section 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the 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, make payment to the Owner; or
- .2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven 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 Section 5.4, and the Owner refuses the payment 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.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, 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. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .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.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 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, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 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 a declaration of 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.

§ 12 Notice to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 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 herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **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.

§ 14.2 **Construction Contract.** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner Default.** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 **Contract Documents.** All the documents that comprise the agreement between the Owner and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

(Corporate Seal)

SURETY

(Corporate Seal)

Signature: _____

Signature: _____

Name and Title:

Name and Title:

Address:

Address:

A312™ - 2010 Payment Bond

CONTRACTOR:
(Name, legal status and address)

Grant's Excavating, Inc.
312 Jason Drive Suite 6
Richmond, KY 40475

SURETY:
Berkley Insurance Company
475 Steamboat Rd.
Greenwich, CT 06830

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

OWNER:
(Name, legal status and address)

Lexington Fayette Urban County Government
200 E. Main St. 3rd Floor Room 338
Lexington, KY 40507

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

CONSTRUCTION CONTRACT

Date: December 1, 2014

Amount: \$705,632.50 Seven Hundred Five Thousand Six Hundred Thirty Two Dollars and 50/100

This document combines two separate bonds, a Performance Bond and a Payment Bond, into one form. This is not a single combined Performance and Payment Bond.

Description:
(Name and location)
Walhampton Storm Water Improvement Project.

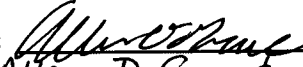
BOND
Date: December 1, 2014
(Not earlier than Construction Contract Date)

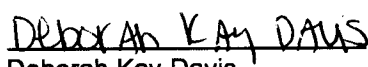
Amount: \$705,632.50 Seven Hundred Five Thousand Six Hundred Thirty Two Dollars and 50/100

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL
Company: *(Corporate Seal)*
Grant's Excavating, Inc.

SURETY
Company: *(Corporate Seal)*
Berkley Insurance Company
475 Steamboat Rd.
Greenwich, CT 06830

Signature: 
Name: Allen D. Grant
and Title: President

Signature: 
Name: Deborah Kay Davis
and Title: Attorney-in-Fact

(Any additional signatures appear on the last page of this Payment Bond.)

(FOR INFORMATION ONLY - Name, address and telephone)
AGENT or BROKER: BB&T Insurance Services, Inc.
200 W. Vine Street, Suite 300
Lexington, KY 40507
859-422-3766
OWNER'S REPRESENTATIVE:
(Architect, Engineer or other party:)

§ 1 The Contractor and 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, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 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 Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.

§ 10 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 the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, 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.

§ 13 Notice and Claims to the Surety, the Owner or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 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 herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date of which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim,
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. 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.

§ 16.3 Construction Contract. The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 Owner Default. Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 Contract Documents. All the documents that comprise the agreement between the Owner and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company:

(Corporate Seal)

SURETY

Company:

(Corporate Seal)

Signature: _____

Name and Title:

Address:

Signature: _____

Name and Title:

Address:

POWER OF ATTORNEY
BERKLEY INSURANCE COMPANY
WILMINGTON, DELAWARE

NOTICE: The warning found elsewhere in this Power of Attorney affects the validity thereof. Please review carefully.

KNOW ALL MEN BY THESE PRESENTS, that BERKLEY INSURANCE COMPANY (the "Company"), a corporation duly organized and existing under the laws of the State of Delaware, having its principal office in Greenwich, CT, has made, constituted and appointed, and does by these presents make, constitute and appoint: Charles G. Peden, Faye J. Miller, Carol B. Hamby, Deborah Kay Davis, Nick Bauer or Heather Martin Reynolds of BB&T Insurance Services, Inc./BB&T Cromwell Insurance of Lexington, KY its true and lawful Attorney-in-Fact, to sign its name as surety only as delineated below and to execute, seal, acknowledge and deliver any and all bonds and undertakings, with the exception of Financial Guaranty Insurance, providing that no single obligation shall exceed Fifty Million and 00/100 U.S. Dollars (U.S.\$50,000,000.00), to the same extent as if such bonds had been duly executed and acknowledged by the regularly elected officers of the Company at its principal office in their own proper persons.

This Power of Attorney shall be construed and enforced in accordance with, and governed by, the laws of the State of Delaware, without giving effect to the principles of conflicts of laws thereof. This Power of Attorney is granted pursuant to the following resolutions which were duly and validly adopted at a meeting of the Board of Directors of the Company held on January 25, 2010:

RESOLVED, that, with respect to the Surety business written by Berkley Surety Group, the Chairman of the Board, Chief Executive Officer, President or any Vice President of the Company, in conjunction with the Secretary or any Assistant Secretary are hereby authorized to execute powers of attorney authorizing and qualifying the attorney-in-fact named therein to execute bonds, undertakings, recognizances, or other suretyship obligations on behalf of the Company, and to affix the corporate seal of the Company to powers of attorney executed pursuant hereto; and said officers may remove any such attorney-in-fact and revoke any power of attorney previously granted; and further

RESOLVED, that such power of attorney limits the acts of those named therein to the bonds, undertakings, recognizances, or other suretyship obligations specifically named therein, and they have no authority to bind the Company except in the manner and to the extent therein stated; and further

RESOLVED, that such power of attorney revokes all previous powers issued on behalf of the attorney-in-fact named; and further

RESOLVED, that the signature of any authorized officer and the seal of the Company may be affixed by facsimile to any power of attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligation of the Company; and such signature and seal when so used shall have the same force and effect as though manually affixed. The Company may continue to use for the purposes herein stated the facsimile signature of any person or persons who shall have been such officer or officers of the Company, notwithstanding the fact that they may have ceased to be such at the time when such instruments shall be issued.

IN WITNESS WHEREOF, the Company has caused these presents to be signed and attested by its appropriate officers and its corporate seal hereunto affixed this 2 day of January, 2014.

Attest:

Berkley Insurance Company

(Seal)

By Ira S. Lederman
Senior Vice President & Secretary

By Jeffrey M. Hafter
Senior Vice President

WARNING: THIS POWER INVALID IF NOT PRINTED ON BLUE "BERKLEY" SECURITY PAPER.

STATE OF CONNECTICUT)

) ss:

COUNTY OF FAIRFIELD)

Sworn to before me, a Notary Public in the State of Connecticut, this 2 day of January, 2014, by Ira S. Lederman and Jeffrey M. Hafter who are sworn to me to be the Senior Vice President and Secretary, and the Senior Vice President, respectively, of Berkley Insurance Company.

Kathleen Corey
KATHLEEN COREY
NOTARY PUBLIC
CONNECTICUT
MY COMMISSION EXPIRES OCTOBER 31, 2017

CERTIFICATE

I, the undersigned, Assistant Secretary of BERKLEY INSURANCE COMPANY, DO HEREBY CERTIFY that the foregoing is a true, correct and complete copy of the original Power of Attorney; that said Power of Attorney has not been revoked or rescinded and that the authority of the Attorney-in-Fact set forth therein, who executed the bond or undertaking to which this Power of Attorney is attached, is in full force and effect as of this date.

Given under my hand and seal of the Company, this 1st day of December, 2014.

(Seal)

Andrew M. Tuma

WARNING: Any unauthorized reproduction or alteration of this document is prohibited. This power of attorney is valid unless seals are readable and the certification seal at the bottom is embossed. The background imprint, warning and confirmation for reversal must be in clear ink.

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER BB&T - Insurance Services of Lexington 200 W Vine Street, Ste 300 Lexington, KY 40507	CONTACT NAME: PHONE (A/C, No, Ext): 859 224-8899		FAX (A/C, No): 8666432260
	E-MAIL ADDRESS:		
INSURED Grants Excavating Inc P.O. Box 298 Richmond, KY 40476	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A : Westfield Insurance Company		24112
	INSURER B : Kentucky Associated Gen. Contra		WCSIF
	INSURER C : Nautilus Insurance Company		17370
	INSURER D :		
	INSURER E :		

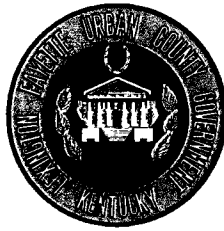
COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	GENERAL LIABILITY			TRA5262058	06/04/2014	06/04/2015	EACH OCCURRENCE	\$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence)	\$500,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person)	\$5,000
	<input checked="" type="checkbox"/> PD Ded:1,000						PERSONAL & ADV INJURY	\$1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	\$2,000,000
<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC				PRODUCTS - COMP/OP AGG	\$2,000,000			
							\$	
A	AUTOMOBILE LIABILITY			TRA5262058	06/04/2014	06/04/2015	COMBINED SINGLE LIMIT (Ea accident)	\$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person)	\$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident)	\$
	<input checked="" type="checkbox"/> HIRED AUTOS	<input checked="" type="checkbox"/> NON-OWNED AUTOS					PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		TRA5262058	06/04/2014	06/04/2015	EACH OCCURRENCE	\$10,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE	\$10,000,000
	DED <input checked="" type="checkbox"/>	RETENTION \$0						\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			15004	01/01/2014	12/31/2014	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS	OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				E.L. EACH ACCIDENT	\$4,000,000
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	\$4,000,000
							E.L. DISEASE - POLICY LIMIT	\$4,000,000
A	Leased/Rented			TRA5262058	06/04/2014	06/04/2015	1,200,000 Ded 5,000	
C	Pollution Liab			CPL201119400	03/20/2014	03/20/2015	2,000,000 Agg	1,000,000 Each Poll

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Lexington Fayette Urban County Government is considered an Additional Insured with respect to General & Auto Liability. This insurance is Primary Non-Contributory. 30 Day Notice of Cancellation applies (except for Non Pay. XCU is not excluded under the CGL coverage.

CERTIFICATE HOLDER Lexington Fayette Urban County Government 200 W Main St Lexington, KY 40507	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 



Lexington-Fayette Urban County Government
DEPARTMENT OF ENVIRONMENTAL QUALITY AND PUBLIC WORKS

Jim Gray
Mayor

David L. Holmes
Commissioner

MEMORANDUM

To: Meredith Nelson
Urban County Council Clerk

From: Benjamin Krebs, P.E., CFM *BK*
Municipal Engineer Sr.
125 Lisle Industrial Ave, Ste 180

Date: December 2, 2014

**Re: Contract Documents for Walhampton Stormwater Improvements Project
Resolution No. 643-2014**

Please find attached; three copies of the Contract Agreement for the Project listed above which has been signed by Grant's Excavating, Inc and three copies of the bonding and insurance documents for this project. Please have these contracts executed and return two copies to me.

If you have any questions, please contact me at x3426.

Thank you.

ATT. (6)