



Agenda Report

2725 Judge Fran Jamieson
Way
Viera, FL 32940

Consent

F.4.

2/21/2023

Subject:

Adopt Resolution and Release Performance Bond: Bridgewater South at Viera Section 1 Subdivision - District 4
Developer: WCI Communities, LLC and The Viera Company

Fiscal Impact:

None

Dept/Office:

Public Works/Engineering

Requested Action:

In accordance with Section 62-2844(b), it is requested that the Board of County Commissioners adopt the attached Resolution and authorize the Chair to sign the Resolution releasing the Contract and Surety Performance Bond dated September 14, 2021 for the above referenced project.

Summary Explanation and Background:

Bridgewater South at Viera Section 1 subdivision is located within the Viera Development of Regional Impact (DRI), west of Breakers Row Avenue, on Great Belt Circle. The proposed subdivision contains 56 single- family lots on 23.91 acres.

The Bridgewater South at Viera Section 1 subdivision received preliminary plat and final engineering plans on October 7, 2020, and final plat and contract approval on December 8, 2020. The developer posted a Surety Performance Bond for guarantee of the completion of the infrastructure improvements according to the approved plans.

Per Section 62-2809(b)(2), "Construction after final plat recordation: ...the applicant shall provide security required in Section 62-2844 for the performance of such construction..." Section 62-2844(a) states: "An applicant shall be required to secure its performance security of the construction required under this article by a surety bond, letter of credit, savings account, certificate of deposit or execution of a tri-party escrow agreement. Such security shall not be required if a certificate of completion has been issued for all the subdivision improvements prior to final plat recordation." Because the applicant chose to plat the subdivision prior to completion of construction, the applicant entered into Contract with the Board and posted a Surety Performance Bond to guarantee the completion of the infrastructure improvements according to the approved plans.

Per the approved plans, "Asphaltic pavement to be installed in two lifts as follows: Initial construction of a 1 & ¼" S-I and a second lift of ¾" S-III. The Developer will bond the cost for the second lift and complete the second lift within two (2) years or forfeit such bond."

The infrastructure and first lift were completed as of August 12, 2021. On September 14, 2021, the Board released the contract and bond as well as granted contract approval to guarantee the construction of the second lift of asphaltic pavement.

As of January 24, 2023, the second lift of asphaltic pavement has been completed and has passed inspection. We are requesting the Board of County Commissioners adopt the attached Resolution to Release the Contract and Surety Performance Bond back to the Developer.

Reference: 20SD00007, 20FM00006

Contact: Christine Verrett, Special Projects Coordinator III, Extension 58328

Clerk to the Board Instructions:

Please forward the Board action to the Public Works Department and provide 2 originals of the Resolution.



February 22, 2023

MEMORANDUM

TO: Marc Bernath, Public Works Director Attn: Christine Verrett


RE: Item F.4., Resolution and Releasing Performance Bond: Bridgewater South at Viera Section 1 Subdivision, Developer: WCI Communities, LLC and The Viera Company

The Board of County Commissioners, in regular session on February 21, 2023, adopted Resolution No. 23-016, in accordance with Section 62-2844(b), releasing the Contract and Surety Performance Bond dated September 14, 2021, for Bridgewater South at Viera Section 1 Subdivision, Developer: WCI Communities, LLC and The Viera Company. Enclosed are two fully-executed Resolutions.

Your continued cooperation is always appreciated.

Sincerely,

BOARD OF COUNTY COMMISSIONERS
RACHEL M. SADOFF, CLERK


Kimberly Powell, Clerk to the Board

/tr

Encls. (2)

RESOLUTION 23- 016

WHEREAS, the Board of County Commissioners of Brevard County, Florida and WCI Communities, LLC entered into a contract to guarantee the construction of improvements on property commonly known as Bridgewater South Section 1 subdivision.

WHEREAS, by execution of the Contract, the Board of County Commissioners of Brevard County, Florida agreed to accept said improvements for private use at such time as said improvements were satisfactorily completed; and

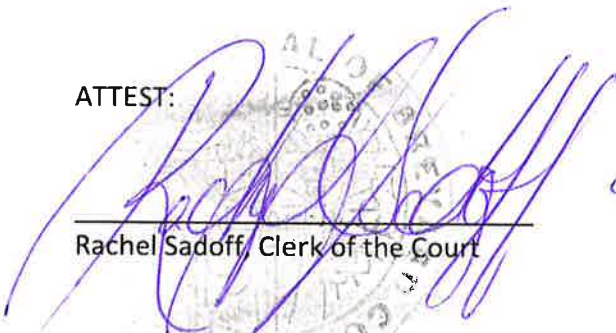
WHEREAS, WCI Communities, LLC completed all of the infrastructure improvements and has requested that the executed contract approved on September 14, 2021 be released and release of all undisbursed funds referenced in the Contract hereinabove described.

NOW, THEREFORE, be it resolved by the Board of County Commissioners of Brevard County, Florida that:

1. The Board of County Commissioners of Brevard County, Florida hereby acknowledges that there is satisfactory completion of all improvements to that certain real property commonly known as Bridgewater South Section 1 subdivision.
2. The Board of County Commissioners of Brevard County, Florida hereby releases the contract and performance bond executed on September 14, 2021.
3. This Resolution shall take effect immediately upon adoption.

DONE, ORDERED, AND ADOPTED in Regular Session the 21st day of February, 2023 .

ATTEST:


Rachel Sadoff, Clerk of the Court

BOARD OF COUNTY COMMISSIONERS
BREVARD COUNTY, FLORIDA

By: 

Rita Pritchett, Chair

As approved by the Board on February 21, 2023

Subdivision No. 20SD00007 / 20FM00006

Project Name Bridgewater South at Viera, Section 1

**Subdivision Infrastructure
Contract**

THIS CONTRACT entered into this 14th day of SEPTEMBER 2021, by and between the Board of County Commissioners of Brevard County, Florida, hereinafter referred to as "COUNTY," and WCI Communities, LLC, hereinafter referred to as "PRINCIPAL."

WITNESSETH:

IN CONSIDERATION of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. The PRINCIPAL agrees to construct the improvements described below:

Construction the 2nd lift of asphalt as per approved plan number 20SD00007 of the Bridgewater South at Viera, Section 1 plat which has been recorded in PB 68, PG93.

2. Principal agrees to construct the improvements strictly in accordance with the plans and specifications on file in the Land Development Division (which construction is hereinafter referred to as the "Work"). Such plans and specifications (hereinafter referred to as the "Plans") are hereby incorporated into this Agreement by reference and made a part hereof. Principal warrants to County that the Work will conform to the requirements of the Plans and other requirements specified in the County's approval of the Work. Principal also warrants to County that the Work will be free from faults and defects. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered to be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this paragraph 2.

If within two (2) years after approval and acceptance of the improvements by County, any Work is found to be defective, Principal shall promptly, without cost to County, either correct such defective Work, or, if it has been rejected by County, remove it from the site and replace it with nondefective Work. If Principal does not promptly comply with the terms of such instructions, County may elect any of the remedies provided for in paragraph 6 herein below. Corrective Work shall be warranted to be free from defects for a period of six (6) months. Any defect in such Work shall be corrected again by Principal promptly upon notice of the defect from County. In the event the maintenance bond given by Principal in connection with County's acceptance of the improvements is extended, the two (2) year warranty period provided for herein shall be extended for a like period.

To the extent assignable, Principal assigns to County all of Principal's warranty rights under its construction contract with the contractor constructing the improvements (including all warranties provided by law of in equity with respect to such construction contract), which warranties may be asserted by County on behalf of Principal in the event Principal fails to perform its warranty obligations hereunder. Where warranties granted hereunder overlap, the more stringent requirement shall control."

3. The PRINCIPAL agrees to complete said construction on or before the ____ day of _____, 20____.

4. In order to guarantee performance of PRINCIPAL'S obligations herein contained, PRINCIPAL shall furnish cash, letter of credit, certificate of deposit or surety bond in a form approved by the COUNTY, in the amount of \$72,066.88. If such bond is a cash bond or a certificate of deposit, said amount shall be deposited with the Board of County Commissioners within five (5) business days of the County's acceptance of this contract. Said bond shall be 125% of the estimated cost of construction, as determined by the Land Development Division. PRINCIPAL shall maintain such records and accounts, including property, personnel, financial records, as are deemed necessary by the COUNTY to ensure proper accounting for all funds expended under the agreement. Said records shall be made available upon request for audit purposes to Brevard County and its auditors.
5. The COUNTY agrees to accept said plat above described for recording in the public records of Brevard County, Florida and to accept the areas depicted thereon as dedicated for public use, including but not limited to streets and parks, at such time as said improvements are satisfactorily completed. Satisfactory completion in accordance with the plans and specifications shall be determined by written approval of the County Development Engineer or designated assistant.
6. In the event, PRINCIPAL fails to complete said improvements within the time prescribed, the COUNTY may elect to take all or any of the following actions:
 - A. Vacate all or part of such recorded plat where improvements have not Been completed in accordance with the plans and specifications,
 - B. Complete the improvements utilizing COUNTY employees and materials and request payment from the bond or the PRINCIPAL,
 - C. Request the surety on said performance bond to complete such improvements, or
 - D. Contract for completion of said improvements.
7. The PRINCIPAL and Surety on said performance bond shall be liable for all costs, expenses, and damages incurred by the COUNTY, including attorney's fees, in the event the PRINCIPAL defaults on this contract.
8. In the performance of this Agreement, the PRINCIPAL shall keep books, records, and accounts of all activities, related to the agreement, in compliance with generally accepted accounting procedures. Books, records and accounts related to the performance of this agreement shall be open to inspection during regular business hours by an authorized representative of the Office and shall be retained by the PRINCIPAL for a period of three years after termination of this agreement. All records, books and accounts related to the performance of this agreement shall be subject to the applicable provisions of the Florida Public Records Act, Chapter 119 of the Florida Statutes.
9. No reports, data, programs or other materials produced, in whole or in part for the benefit and use of the County, under this agreement shall be subject to copyright by PRINCIPAL in the United States or any other country.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST:


Scott Ellis, Clerk of the Court
RACHEL SMOORE

**BOARD OF COUNTY COMMISSIONERS
OF BREVARD COUNTY, FLORIDA**


Rita Pritchett, Chair

As approved by the Board on: Sept, 14, 2021.

WITNESSES:




PRINCIPAL:


WCI Communities, LLC Jeff Alexander, as Authorized Agent

08-13-2021
DATE

State of: FLORIDA

County of: BREVARD

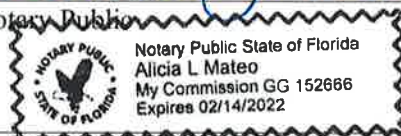
The foregoing instrument was acknowledged before me this 13th day of AUGUST 2021, by JEFF ALEXANDER who is personally known to me or who has produced as identification and who did (did not) take an oath.

My commission expires:

S E A L

Commission Number:


Notary Public



Notary Name printed, typed or stamped

SURETY PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

Bond No. 72BSBIP4310

That we, WCI Communities, LLC, hereinafter referred to as "Owner" and, Hartford Fire Insurance Company, hereinafter referred to as "Surety", are held and firmly bound unto the BOARD OF COUNTY COMMISSIONERS OF BREVARD COUNTY, FLORIDA, hereinafter referred to as "County", in the sum of \$ 72,086.88, for the payment of which we bind ourselves, our heirs, executors, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS, Owner has entered into a contract with the County dated the 14th day of SEPTEMBER, 2021, which contract is made a part hereof by reference.

NOW THEREFORE, the condition of this obligation is such that if Owner shall promptly and faithfully perform said contract and complete the work contemplated therein by March 15, 2022, then this obligation shall be null and void, otherwise it shall remain in full force and effect.

If the Owner shall be declared in default of said contract by the County, the Surety shall have sixty (60) days from the date of said default within which to take whatever action it deems necessary in order to insure performance. If, at the expiration of sixty (60) days from the date of said default, no arrangements have been made by the Owner or surety satisfactory to the County for the completion of said contract, then the County shall have the right to complete said contract and the Owner and Surety jointly and severally, shall pay all costs of completing said contract to the County, including but not limited to engineering, legal and other costs, together with any damages, either direct or consequential, which the County may sustain on account of the Owner's default of said contract. After the expiration of the aforesaid grace period, the County shall have the additional right to contract for the completion of said contract upon which the Owner has defaulted and upon the County's acceptance of the lowest responsible bid for the completion of said contract, the Owner and Surety shall become immediately liable for the amount of said bid and in the event the County is required to commence legal proceedings for the collection thereof, interest shall accrue at the rate of six percent (6%) per annum beginning with the commencement of such legal proceedings. The County, in its discretion, may permit the Surety to complete said contract, in the event of Owner's default.

In the event that the County commences suit for the collection of any sums due hereunder, the obligors and each of them agree to pay all costs incurred by the County, including attorney's fees.

EXECUTED this 28th day of April, 2021

WCI Communities, LLC, a Delaware limited liability company

By: WCI Communities, Inc., Delaware corporation, its sole member

OWNER:



JEFF ALEXANDER, AUTHORIZED AGENT

SURETY: Hartford Fire Insurance Company



Sandra Parker, Attorney-in-fact



POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-12

One Hartford Plaza

Hartford, Connecticut 06155

bond.claims@thehartford.com

call: 888-266-3488 or fax: 860-757-5835

KNOW ALL PERSONS BY THESE PRESENTS THAT:

Agency Code: Marsh

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☒ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of unlimited:**

Sandra Parker

of

Houston, TX

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on August 1, 2009 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



John Gray

John Gray, Assistant Secretary

M. Ross Fisher

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT

COUNTY OF HARTFORD

ss. Hartford

On this 6th day of May, 2015, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

Nora M. Stranko

Nora M. Stranko
Notary Public

My Commission Expires March 31, 2023

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of April 28, 2021
Signed and sealed at the City of Hartford.



Kevin Heckman

Kevin Heckman, Assistant Vice President