

PERFORMANCE BOND
City of Fishers

Instructions to Contractor:

Surety company executing this bond shall appear on the most current list of "Surety Companies Acceptable on Federal Bonds," as specified in the U.S. Treasury Department Circular 570, as amended, and be authorized to transact business in the State of Indiana.

CONTRACTOR: (Name and Address):

SURETY: (Name and Address of Contractor Place of Business):

OWNER: City of Fishers
One Municipal Drive
Fishers, Indiana 46038

EXCAVATION PERMIT PURSUANT TO CITY OF FISHERS §94.10

Date: _____

Project Location: _____

BOND

Bond Number: _____

Date: _____

Penal Sum: \$ _____

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

"Contractor"

"Surety"

Company: _____

Company: _____

Signature: _____

By: _____

Printed: _____

Printed: _____

Title: _____

Counter-
signed: _____

The above addresses are to be used for giving any required notice. Provide execution by any additional parties, such as joint ventures, if necessary.

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, including interest at the maximum legal rate from date of demand and any attorney fees and court costs incurred by Owner to enforce this instrument for the performance of Contractor's excavation permit, the permit terms and conditions and

requirements under City of Fishers §94.10 - 94.18 ("Excavation Permit"), which are all incorporated herein by reference.

2. If the Contractor performs the Excavation Permit, whether during the original term, and any extensions which may be granted by the Owner, with or without notice to the Surety, and if Contractor shall satisfy all claims and demands incurred under such Excavation Permit, and shall fully indemnify, defend and save harmless the Owner from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense, including attorneys' fees, which the Owner may incur in making good any default, then the Surety and the Contractor shall have no obligation under this Bond; otherwise to remain in full force and effect.

3. The Surety's obligation under this Bond shall arise after

3.1 The Owner 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) calendar 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 shall be held within ten (10) calendar 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 Excavation Permit, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default; and

3.2 The Owner declares a Contractor Default and notifies the Surety.

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.

5. The Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the prior consent of the Owner, to perform and complete the Excavation Permit;

5.2 Undertake to perform and complete the Excavation Permit itself, through its agents or independent contractors; or

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 (7) 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.

7. If the Surety elects to act under Section 5.1 or 5.2, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Excavation Permit. Surety is obligated, without duplication, for

- 7.1 The responsibilities of the Contractor for correction of defective work and completion of the Excavation Permit;
- 7.2 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
8. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Excavation Permit. 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. 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 three (3) years after a declaration of Contractor Default or within three (3) years after the Contractor ceased working or within three (3) years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first.
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 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.