

TOWN OF HARWINTON
Excavation Bond Agreement

Name of Applicants: _____

Address of Applicants: _____

Address of Property: _____ Phone: _____
Harwinton, Connecticut

Name of Contractor: _____

Address of Contractor: _____ Phone: _____

Start Date: _____ Completion Date: _____

Bond Amount: _____ Bank Account Number: _____

Name of Bank: _____

Address of Bank: _____

WHEREAS, the Town of Harwinton acting by its Highway Supervisor has issued the above Applicants a permit to excavate within the bounds of the Town's highway, i.e., between the edge of the traveled portion of the highway and the property street line; and

WHEREAS, the excavation is to be in accordance with plans and specifications approved by the Town's Highway Supervisor; and

WHEREAS, the Town, as a condition of permit approval, has required the Applicants to post a performance bond in the above amount to guarantee timely and satisfactory completion of the excavation project by the above completion date;

W I T N E S S E T H:

In consideration of these presents, and as a condition of the Town's approval, the parties agree as follows:

1. The Applicants hereby tender, and the Town hereby accepts, this bond to ensure the Applicants' timely and satisfactory completion of the excavation, together with construction erosion controls, as shown on the plans, and as described in the application as approved by the Town, in the above principal amount.
2. The amount of this bond is based on a written estimate of the cost of the excavation improvements, as prepared by the Applicants and approved by the Town.
3. This bond is secured by a cash savings passbook in the above amount deposited in the above bank (the "depository bank") and the above account (the "account"), either: (a) issued jointly in the names of the Town and the Applicants, or (b) issued to the Applicants and accompanied by a letter from the depository bank acknowledging assignment of the account to the Town, together with such endorsed instruments as are necessary to authorize the Town to draw on the account without need of further authorization from the Applicants or the depository bank.

4. The Applicants shall not assign, transfer or withdraw from the account while this bond is in effect, or until the Town releases the bond in writing. Any interest earned on the account shall remain on deposit and be added to the principal amount and become a part of the bond. The Applicants shall be issued all IRS Form 1099 INTs for the account and shall be responsible for reporting all interest earned to the state and federal taxing authorities and for paying all income taxes thereon as the interest accrues.
5. The Town Treasurer shall hold this bond, the account passbook, and all instruments for accessing the account, and shall be responsible for safeguarding the same. Upon expiration or release of this bond by the Town, the Town Treasurer shall return this bond, together with the passbook, all instruments for accessing the account, and any other documentation to the Applicants. The Town Treasurer shall secure a signed receipt from the Applicants and shall thereupon be discharged of any further responsibility under this bond.
6. In the event the Applicants fail to complete the excavation in a timely and satisfactory manner, or fail to carry out the construction in accordance with the Town Ordinances, the plans, and application documents, or the recommendation and requirements of the Town's Highway Supervisor, the Town shall first give written notice to the Applicants at their last known address, by certified mail return receipt describing the nature of the defect, default, or condition to be corrected or completed; and if the Applicants shall fail to cure, correct, or complete the same within a period of thirty (30) days (or such reasonable extension as the Town may authorize in writing), the Town is thereupon authorized to call this bond and withdraw from the account such monies as are necessary to cure, correct, or complete the same. The Town shall present to the Town Treasurer for payment the itemized statements for labor and material for such work, whether performed by the Town or an outside contractor hired by the Town. The Town Treasurer shall thereupon be authorized to pay the same out of the account, returning to the Applicants any funds remaining in the account upon completion of the work and payment of all bills.
7. In the event of a threatened emergency or dangerous condition caused by the Applicants' defective work, or the failure to complete the same in a timely manner, which emergency or condition poses a threat to the public's health, safety, environment, such as uncontrolled drainage, erosion, siltation, flooding, or risk of damage to Town highways or the public, the Town is authorized, without prior notice to the Applicants, to employ such measures as are necessary to prevent such emergency, abate such dangerous condition and/or to stabilize the situation, and to withdraw from the account such monies necessary for such purpose. The good faith judgment of the Town's officials shall determine what constitutes an emergency or dangerous condition under this provision.
8. This bond authorizes the Town, its officials, officers, employees, agents, and contractors, the right to enter upon the Applicants' property, as shown on the plans, for the purpose of inspecting the progress of the excavation, and in the event of a default, the right of access for the purpose of correcting or completing the excavation, without interference or obstruction from the Applicants, or their employees, agents, contractors, heirs, successors, or assigns. After calling the bond, the Town shall have exclusive possession and control of the work site and the unobstructed right of access to, and from, the same.

9. This bond shall automatically expire upon the earlier of:

- a. The expiration of ONE (1) YEAR from the date of issuance of the permit; or
- b. The Applicants' satisfactory completion of the excavation improvements, as evidenced by the written certification of the Highway Supervisor;

whereupon the Town Treasurer shall be authorized to return to the Applicants the funds remaining in the account, plus accrued interest, if any, less any withdrawals made hereunder by the Town, together with itemized statement for labor and materials, and the account documents.

10. In the event it becomes necessary to extend this bond beyond the maturity date, if any, of the bank account, the Town and the Applicants agree to execute such documents as are required by the depository bank to reinvest the money in a similar account. The Town and the Applicants any agree in writing to extend this bond according to its original terms, or as may be modified, in a writing signed by both parties. Failure to insist on strict performance or to call this bond on any one occasion shall not be deemed to be a waiver of the Town's right to do so at a later time or on a different occasion. In the event of litigation arising under this bond, the prevailing party shall be entitled to receive reasonable attorney fees and costs. The Applicants consent to jurisdiction of the Superior Court for the State of Connecticut as to any litigation arising under this bond, venue for which shall be in the Judicial District of Litchfield.

11. Nothing in this bond shall be construed to relieve the Applicants of the obligation to complete the excavation in accordance with the plans in a timely and satisfactory manner, or to limit in any way the Applicants' liability with respect to such work. Exercise of the Town's rights under this bond shall not constitute waiver or limitation of the Town's recourse to any other legal or equitable rights or remedies, whether by statute or common law, in the event the Applicants fail to complete the excavation in a timely and satisfactory manner.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, this _____ day of _____, 20____.

WITNESSED BY:

THE APPLICANTS:

_____ L.S.

_____ L.S.

ACCEPTANCE OF BOND BY TOWN

WITNESSED BY:

TOWN OF HARWINTON

BY: _____ L.S.

ITS: HIGHWAY SUPERVISOR

DULY AUTHORIZED

Receipt of the Bond by Town Treasurer

WITNESSED BY:

ITS: DULY AUTHORIZED L.S.

Release of Bond

BOND RELEASED BY _____ DATE: _____

WITNESSED BY:

TOWN OF HARWINTON

BY _____ L.S.
ITS: _____
DULY AUTHORIZED

RETURN OF BOND ACKNOWLEDGED BY: _____ DATE: _____

WITNESSED BY:

BY: _____ L.S.