

Board of Public Works and Safety

Agenda Item

Cover Sheet

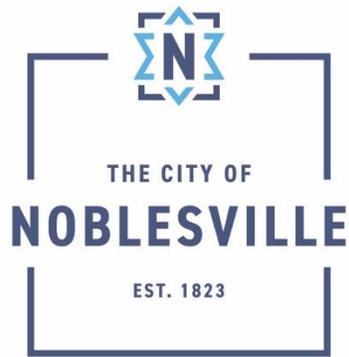
MEETING DATE: March 26, 2024

- Consent Agenda Item
- New Item for Discussion
- Previously Discussed Item
- Miscellaneous

ITEM #: 8

INITIATED BY: David Dale

- Information Attached
- Bring Paperwork from Previous Meeting
- Verbal
- No Paperwork at Time of Packets



TO: Noblesville Board of Public Works and Safety

FROM: David Dale – Facilities Manager

SUBJECT: Board to Consider release of Performance and Payment Bonds for City Hall
Roof Top RTU Replacement Project.

DATE: March 14, 2024

Maintenance Dept. respectfully requests that the Board of Public Works and Safety release the performance and payment bonds related to the City Hall Roof Top RTU Replacement Project. The project is finished, and all phases completed. Therefore, the bonds are not needed.

Thank you.



Letter of Transmittal



WAGNER-MEINERT LLC
Engineers – Contractors

TO: David Dale RE: City Hall Rooftop HVAC
COMPANY: City of Noblesville DATE: August 21, 2023
ADDRESS: 16 S. 10th Street FROM: Tamara Branstetter
Noblesville, IN 46060 CC: File / 231520

WE ARE SENDING YOU:

- Prints Specifications Shop Drawings Submittals
 Contract Change Order Samples Other

<u>Copies</u>	<u>Date</u>	<u>Description</u>
1	08/21/2023	Performance Bond
1	08/21/2023	Payment Bond

These Are Transmitted:

- As Requested For Your Approval For Your Use For Review

Remarks:

7617 FREEDOM WAY ■ FORT WAYNE, IN 46818
TEL: (260) 489-7555 FAX: (260) 489-7473
www.wagner-meinert.com

CITY OF NOBLESVILLE
PERFORMANCE BOND

CONTRACTOR Wagner-Meinert, LLC
7617 Freedom Way
Fort Wayne, IN 46818

SURETY: Argonaut Insurance Company
P.O. Box 469011
San Antonio, TX 78246

OWNER: City of Noblesville
16 S. 10th Street
Noblesville Indiana 46060

CONSTRUCTION CONTRACT

Date: June 26, 2023

Project Description ("Project"): City Hall Rooftop HVAC

BOND

Bond Number: SUR0071384

Date: (Not earlier than Agreement date): August 15, 2023

Penal Sum (100% of Contract Sum): Six Hundred Forty Seven Thousand One Hundred and Thirty Five 00/100 (\$ 647,135.00)

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"

Company: Wagner-Meinert, LLC
Signature: 
Printed: ANDREW T STAUFFER
Title: CONTROLLER

"SURETY"

Company: Argonaut Insurance Company
By: 
Printed: William T Krumm, Attorney-in-Fact
Counter-signed: N/A

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

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns for the performance of the Construction Contract, which is incorporated herein by reference.
2. The conditions of the Surety's obligation hereunder are such that if the Contractor performs the Construction Contract, 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 Construction Contract, 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 interest at the maximum legal rate from date of demand and any attorneys' fees and court costs incurred by Owner to make good any default and to enforce this instrument, 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 with the Contractor and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within seven (7) calendar days after receipt of the Owner's notice, request such a conference. Unless the Owner agrees otherwise, any conference requested shall be held within seven (7) calendar days of the Owner's receipt of Surety's request. If the Owner, Contractor and Surety agree, Contractor shall be allowed a reasonable time to complete the Construction Contract, but such an agreement shall not waive the Owner's right to subsequently maintain a Contractor Default;
 - 3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
 - 3.3 The Owner has agreed to pay the balance of the Contract Sum 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 requirements 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 Construction Contract;
 - 5.2 Undertake to complete the Construction Contract itself, or
 - 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner to complete 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 with the Construction Contract, and pay to the Owner the amount of damages, including attorneys' fees in excess of the balance of the Contract Sum incurred by the Owner as a result of the Contractor default.

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 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, 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. The Surety is obligated, without duplication, for:
 - 7.1 The responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
 - 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
 - 7.3 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 or any combination of both liquidated and actual damages.
8. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract. 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.
9. 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.
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 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. This Bond shall adhere to the requirements of Ind. Code § 36-1-12-14.

[END OF DOCUMENT]

CITY OF NOBLESVILLE
PAYMENT BOND

CONTRACTOR Wagner-Meinert, LLC
7617 Freedom Way
Fort Wayne, IN 46818

SURETY: Argonaut Insurance Company
P.O. BOX 469011
San Antonio, TX 78246

OWNER: City of Noblesville
16 S. 10th Street
Noblesville, Indiana 46060

CONSTRUCTION CONTRACT

Date: June 26, 2023

Project Description ("Project"): City Hall Rooftop HVAC

BOND

Bond Number: SUR0071384

Date: (Not earlier than Agreement date): August 15, 2023

Penal Sum (100% of Contract Sum): Six Hundred Forty Seven Thousand One Hundred and Thirty Five 00/100 (\$ 647,135.00)

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

"CONTRACTOR"

Company: Wagner-Meinert, LLC
Signature: 
Printed: ANDREW T STAUFFER
Title: Contractor

"SURETY"

Company: Argonaut Insurance Company
By: 
Printed: William T Krumm, Attorney-in-Fact
Counter-signed: N/A

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

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, plus interest at the maximum legal rate from date of demand and any attorney fees and court costs incurred by Owner to enforce this instrument.
2. If the Contractor shall promptly make 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. This Bond shall adhere to the requirements of Ind. Code §36-1-12-13.1.
3. The Surety's obligation to the Owner under this Bond shall arise after the Owner has notified the Contractor and the Surety 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. 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.
4. The Surety's obligations to the claimant under this Bond shall arise after claimant has complied with the requirements under applicable Indiana statute.
5. 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, except as specified by Indiana statute.
6. 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.
7. No suit or action shall be commenced by a claimant under this Bond other than in a court of competent jurisdiction in the state and county in which the Project that is the subject of the Construction Contract is located.
8. 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.
9. 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.

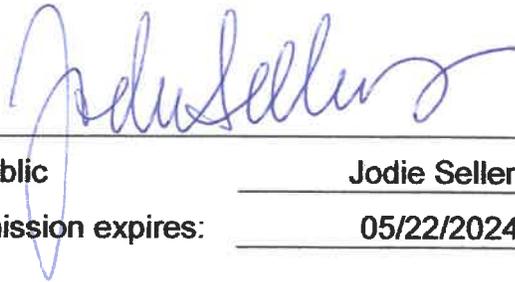
END OF DOCUMENT

SURETY ACKNOWLEDGMENT (ATTY-IN-FACT)

State of Illinois
County of Cook

I, Jodie Sellers, Notary Public of Cook County, in the State of Illinois, do hereby certify that William T. Krumm Attorney-in-Fact, of the Argonaut Insurance Company who is personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered said instrument, for and on behalf of the Argonaut Insurance Company for the uses and purposes therein set forth.

Given under my hand and notarial seal at my office in the City of Rolling Meadows in said County, this 15th day of August, 2023.



Notary Public Jodie Sellers
My Commission expires: 05/22/2024



Argonaut Insurance Company
Deliveries Only: 225 W. Washington, 24th Floor
Chicago, IL 60606

United States Postal Service: P.O. Box 469011, San Antonio, TX 78246

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That the Argonaut Insurance Company, a Corporation duly organized and existing under the laws of the State of Illinois and having its principal office in the County of Cook, Illinois does hereby nominate, constitute and appoint:

William T. Krumm, Sharon A. Foulk, Jodie Sellers, Patrick M. Gallagher, Karen E. Socha, Jon A. Schroeder

Their true and lawful agent(s) and attorney(s)-in-fact, each in their separate capacity if more than one is named above, to make, execute, seal and deliver for and on its behalf as surety, and as its act and deed any and all bonds, contracts, agreements of indemnity and other undertakings in suretyship provided, however, that the penal sum of any one such instrument executed hereunder shall not exceed the sum of:

\$97,550,000.00

This Power of Attorney is granted and is signed and sealed under and by the authority of the following Resolution adopted by the Board of Directors of Argonaut Insurance Company:

"RESOLVED, That the President, Senior Vice President, Vice President, Assistant Vice President, Secretary, Treasurer and each of them hereby is authorized to execute powers of attorney, and such authority can be executed by use of facsimile signature, which may be attested or acknowledged by any officer or attorney, of the Company, qualifying the attorney or attorneys named in the given power of attorney, to execute in behalf of, and acknowledge as the act and deed of the Argonaut Insurance Company, all bond undertakings and contracts of suretyship, and to affix the corporate seal thereto."

IN WITNESS WHEREOF, Argonaut Insurance Company has caused its official seal to be hereunto affixed and these presents to be signed by its duly authorized officer on the 19th day of November, 2021.

Argonaut Insurance Company



by:

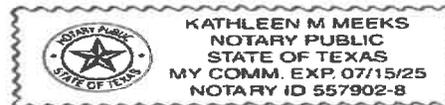
Gary E. Grose

Gary E. Grose, President

STATE OF TEXAS
COUNTY OF HARRIS SS:

On this 19th day of November, 2021 A.D., before me, a Notary Public of the State of Texas, in and for the County of Harris, duly commissioned and qualified, came THE ABOVE OFFICER OF THE COMPANY, to me personally known to be the individual and officer described in, and who executed the preceding instrument, and he acknowledged the execution of same, and being by me duly sworn, deposed and said that he is the officer of the said Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and the said Corporate Seal and his signature as officer were duly affixed and subscribed to the said instrument by the authority and direction of the said corporation, and that Resolution adopted by the Board of Directors of said Company, referred to in the preceding instrument is now in force.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my Official Seal at the County of Harris, the day and year first above written.



Kathleen M. Meeks

(Notary Public)

I, the undersigned Officer of the Argonaut Insurance Company, Illinois Corporation, do hereby certify that the original POWER OF ATTORNEY of which the foregoing is a full, true and correct copy is still in full force and effect and has not been revoked.

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the Seal of said Company, on the

15th day of August, 2023



Austin W. King

Austin W. King, Secretary