

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2017 – 143

By: Mr. Daymut

**AN ORDINANCE WAIVING APPLICATION OF CERTAIN RETAINAGE PAYMENT REQUIREMENTS UNDER STRONGSVILLE CODIFIED ORDINANCES SECTION 210.02 AND PROVISIONS OF THE CONTRACT BETWEEN THE CITY OF STRONGSVILLE AND MARK HAYNES CONSTRUCTION, INC., IN CONNECTION WITH THE 2016 COURTLAND CULVERT REPLACEMENT PROJECT; AUTHORIZING THE MAYOR, CITY ENGINEER AND DIRECTOR OF FINANCE TO RELEASE 50% OF THE CURRENT RETAINAGE, AND DECLARING AN EMERGENCY.**

WHEREAS, pursuant to Ordinance No. 2016-143, Council authorized the Mayor to enter into a contract with Mark Haynes Construction, Inc. ("Haynes") for the 2016 Courtland Culvert Replacement Project, in the amount of \$663,635.00; and

WHEREAS, by and through Ordinance No. 2016-231, the City, as recommended by the City Engineer, determined it would be in the best interests of the City to approve Change Order No. 1 to include as a part of the Project certain additional work requested by the City, and all required for the Project to continue, in the total amount of \$21,238.50; and

WHEREAS, to date, the City has held as retainage for the entire Project the amount of \$67,508.58 arising from said contract in accordance with Strongsville Codified Ordinances ("SCO") Section 210.02; and

WHEREAS, SCO Section 210.02 specifically provides in part, "The Municipality will retain ten percent of the amount of the monthly estimates until final completion and acceptance of all work or delivery of all materials required by the contract. Such amounts will be retained by the Municipality as a guarantee that the contractor will faithfully and completely fulfill and execute all the obligations and conditions imposed by any such contract and to indemnify the Municipality for any damage caused to the Municipality by reason of any failure or breach on the part of the contractor to fulfill such conditions and obligations.", which provision is also part of and governs the contract between Haynes and the City; and

WHEREAS, Council is informed that the project work is substantially completed with the new culvert in use, but remains subject to final adjustments including a punch list and final contract close-out requirements; and

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WHEREAS, the City's Engineer has now reviewed Haynes' request for payment of 50% of the entire retainage being held by the City, along with other documentation attached hereto as Exhibits A, B, C and D, including the Affidavit and Certification of Haynes concerning status of payments to its subcontractors, materialmen and employees, the Affidavit of Compliance with regard to conformance with Prevailing Wages, and the Consent of the Surety to Reduction in or Partial Release of Retainage, and are accordingly recommending approval of the partial release of retainage at this time in the amount of \$33,754.29.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF STRONGSVILLE, COUNTY OF CUYAHOGA AND STATE OF OHIO:

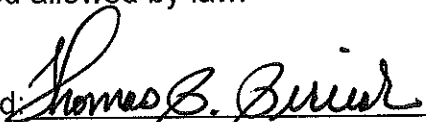
**Section 1.** That the Council finds and determines that under the circumstances, it would be fair, equitable and in the best interests of the City to waive application of certain retainage provisions, in part, as contained in SCO 210.02 and as incorporated into the contract of the parties, in order to permit release of one-half of the retainage prior to final contract closeout and formal acceptance of all work on the project.

**Section 2.** That further the Mayor, City Engineer and Director of Finance are hereby authorized and empowered to do whatever is necessary to promptly release 50% of the retainage in the amount of \$33,754.29 to the contractor, **MARK HAYNES CONSTRUCTION, INC.**, but specifically to continue to hold the remaining 50% of the retainage in the amount of \$33,754.29, consistent with the requirements of SCO 210.02 and the contract, until all final requirements are met in accordance with the contract and law.

**Section 3.** That it is found and determined that all formal actions of this Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council; and that all deliberations of this Council, and any of its committees, that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

**Section 4.** That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, property, health, safety and welfare of the City, and for the further reason that it is immediately necessary to provide for facilitation of final contract and project closeout, safe roads within the City, to avoid potential legal entanglements, and conserve public funds. Therefore, provided this Ordinance receives the affirmative vote of two-thirds of all members elected to Council, it shall take effect and be in force immediately upon its passage and approval by the Mayor; otherwise from and after the earliest period allowed by law.

  
\_\_\_\_\_  
President of Council

Approved:   
\_\_\_\_\_  
Mayor

Date Passed: September 18, 2017

Date Approved: September 19, 2017

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	<u>Yea</u>	<u>Nay</u>
Carbone	<u>✓</u>	<u>      </u>
Daymut	<u>✓</u>	<u>      </u>
DeMio	<u>✓</u>	<u>      </u>
Dooner	<u>✓</u>	<u>      </u>
Schonhut	<u>✓</u>	<u>      </u>
Short	<u>✓</u>	<u>      </u>
Southworth	<u>✓</u>	<u>      </u>

Attest: *Aimee Pientka*  
Clerk of Council

ORD. No. 2017-143. Amended:         
1st Rdg. 09-05-17 Ref: PZE  
2nd Rdg. 09-18-17 Ref:         
3rd Rdg. Suspended Ref:       

Pub Hrg.        Ref:         
Adopted: 09-18-17 Defeated:

Owner: City of Strongsville

Contractor's Name:

**Mark Haynes Construction, Inc.**

Project Name/Address:

3130 State Route 18  
Nonwalk, Ohio 44889

Application Period: Retainage 50%

Application No.: 7

Contractor's Project No.: 2516

Contractor Phone Number: 419-563-2457

Engineer Project No.: 7

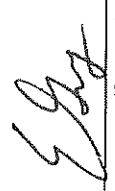
Contractor's Invoice Number: 7

Owner's Contract No.:

Invoice Date: 9/28/2017

Change Order Summary		
Number	Approved Change Orders Additions	Deductions
CO1	\$21,238.50	
<b>TOTALS</b>	\$21,238.50	\$0.00
<b>NET CHANGE BY CHANGE ORDERS</b>		\$21,238.50

**Contractor's Certification**  
 The undersigned Contractor certifies that to the best of its knowledge: (1) all previous progress payments received from Owner on account of Work done under the Contract have been applied on account to discharge Contractor's legitimate obligations incurred in connection with Work covered by prior Applications for Payment; (2) title of all Work, materials and equipment incorporated in said Work or otherwise listed in or covered by this Application for Payment will pass to Owner at time of payment free and clear of all Liens, security interests and encumbrances (except such as are covered by a Bond acceptable to Owner; indemnifying Owner against any such Liens, security interest or encumbrances); and (3) all Work covered by this Application for Payment is in accordance with the Contract Documents and is not defective.

By:  (Contractor) 9/28/2017

Payment Details	
1. ORIGINAL CONTRACT PRICE .....	\$ 663,635.00
2. Net change by Change Orders .....	\$ 21,238.50
3. CURRENT CONTRACT PRICE (Line 1 + 2) .....	\$ 684,873.50
4. TOTAL COMPLETED AND STORED TO DATE (Column F on Progress Estimate) .....	\$ 675,085.84
5. RETAINAGE:	
a. 10% x Work Completed (Column D on Progress Estimate) ...	\$ -
b. 8% x Stored Material (Column E on Progress Estimate) .....	\$ 33,754.29
c. Total Retainage (Line 5a + Line 5b) .....	\$ 33,754.29
6. AMOUNT ELIGIBLE TO DATE (Line 4 - Line 5c) .....	\$ 641,331.55
7. LESS PREVIOUS PAYMENTS (Line 6 from prior Application) .....	\$ 607,577.26
8. AMOUNT DUE THIS APPLICATION .....	\$ 33,754.29
9. BALANCE TO FINISH, PLUS RETAINAGE .....	\$ 33,754.29
(Column G on Progress Estimate + Line 5 above) .....	\$ 33,754.29

Approval Section	
Payment of: \$ _____	(Line 8 or other - attach explanation of other amount)
is recommended by: _____	(Date)
Payment of: \$ _____	(Line 8 or other - attach explanation of other amount)
is approved by: _____	(Date)
is approved by: _____	(Date)
_____	(Funding Agency (if applicable))



STATE OF OHIO )  
 ) SS: AFFIDAVIT AND WAIVER OF LIEN  
COUNTY OF Huron ) (Final Payment)

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS COMPLETION OR MODIFICATION.

Mark Haynes being first duly sworn says that he/she is the President of Mark Haynes Construction, Inc.  
(Authorized Officer)  
(hereinafter referred to as the "Company") and is familiar with the following facts stated herein:

1. The Company performed services; labor, and/or furnished material, machinery, equipment, and fuel (hereinafter referred to as "Work") on a Project for the construction of certain buildings and/or improvements known as Courtland Culvert Replacement property owned by City of Strongsville (hereinafter referred to as "Owner"), and located at Strongsville, Ohio  
(hereinafter called the "Property").

2. The Company has a contract with and has provided Work for City of Strongsville as a Contractor  
(Name of Owner, Contractor, Subcontractor) (Contractor, Subcontractor, Materials, Supplier)

3. All laborers, materialmen and Subcontractors of the company have been paid for Work furnished by them to the Company for the Project to the full extent that sums were due to said parties and for which the Company has previously received payment for Work so furnished by said parties.

4. The total amount invoiced to date (including the current invoice amount) by the Company to City of Strongsville is six Hundred Seventy-Five Thousand Eighty-Five and Eighty-Four Cents Dollars  
(Name of Owner, Contractor, Subcontractor) (\$675,085.84).

The balance currently due and unpaid to the Company (including the current invoice amount) by the Company to Mark Haynes Construction, Inc. is one Hundred Three Thousand Three Hundred Twenty-Six and one cent Dollars (\$103,326.01). Without waiving for mechanic's lien or other purposes the priority of the date that the Company first commenced performing Work for the Project, the Company agrees that upon the payment to it of said current invoice amount, the Company hereby waives and releases: (a) all liens and lien claims and rights against the property and funds of the Owner, and (b) all claims against the Owner with respect to amounts due from the Owner for the Company.

5. The Company represents that it is not aware of any mechanic's lien having been filed by or presently threatened to be filed by any party having provided Work for the Company against the Property or funds of the Owner.

6. The total amount invoiced to date (including the current invoice amount) by the Company is six Hundred Seventy-Five Thousand Eighty-Five and Eighty-Four Cents Dollars (\$675,085.84).

[Signature]  
Individual's Signature

Sworn to before me and subscribed in my presence this 3 day of July, 2017.

[Signature]  
Notary Public



GLORIA J. NISSEN  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires  
March 19, 2018

**AFFIDAVIT OF CONTRACTOR  
OR SUB-CONTRACTOR  
PREVAILING WAGES**

I, Mark Haynes  
(Name of person signing Affidavit)

President  
(Title)

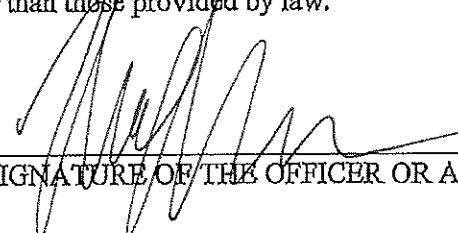
of the Mark Haynes Construction, Inc., do hereby certify that the wages paid to all Employees for the full number of hours worked in connection with the CONTRACT to: the Improvement, Reconstruction and Construction of:

Strongsville - Courtland Culvert Replacement  
(Project and Location)

during the following period from 10-3-16 to 6-30-17

is in accordance with the prevailing wage prescribed by the Contract Document.

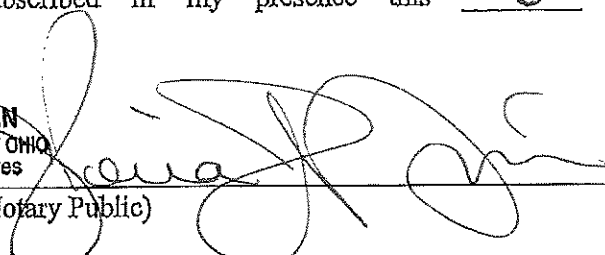
I further certify that no rebates or deductions for any wages due any person have been directly or indirectly made other than those provided by law.

  
\_\_\_\_\_  
(SIGNATURE OF THE OFFICER OR AGENT)

SWORN TO and subscribed in my presence this 3 day of July, 2016.



**GLORIA J. NISSEN**  
NOTARY PUBLIC, STATE OF OHIO  
My Commission Expires  
March 19, 2020

  
\_\_\_\_\_  
(Notary Public)

The above Affidavit must be executed and sworn to by the Officer or Agent or the CONTRACTOR or SUBCONTRACTOR who supervises the payment of Employees, before the Owner will release the Surety and/or make a final payment due under the terms of the CONTRACT.

**CONSENT OF SURETY  
TO REDUCTION IN OR  
PARTIAL RELEASE OF RETAINAGE**

OWNER   
ARCHITECT   
CONTRACTOR   
SURETY   
OTHER

AIA DOCUMENT G707 A

Bond No. SSB0429819

PROJECT:  
(name, address) 2016 Courtland Culvert Replacement

TO (Owner)

[  
City of Strongsville  
16099 Foltz Parkway  
Strongsville, OH 44149  
]

ARCHITECT'S PROJECT NO:

CONTRACT FOR: \$675,085.84

CONTRACT DATE: July 28, 2016

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the  
(here insert name and address of Surety as it appears in the bond.)

RLI Insurance Company  
9100 South Hills Blvd, Suite 350 Broadview Heights, OH 44147

, SURETY,

on bond of (here insert name and address of Contractor as it appears in the bond)

Mark Haynes Construction, Inc.  
3130 State Route 18 Norwalk, OH 44857

, CONTRACTOR,

hereby approves the reduction in or partial release of retainage to the Contractor as follows:

reduce retainage from 10% to 5%

The Surety agrees that such reduction in or partial release of retainage to the Contractor shall not relieve the Surety  
of any of its obligations to (here insert the name and address of Owner)

City of Strongsville  
16099 Foltz Parkway Strongsville, OH 44149

, OWNER,

as set forth in the said Surety's bond.

IN WITNESS WHEREOF,  
the Surety has hereunto set its hand this 29th day of August, 2017

RLI Insurance Company

Surety

Mary Ann Copley  
Signature of Authorized Representative

Mary Ann Copley Attorney-in-Fact

Title Surety Phone No. 440-746-0999

Attest:  
(Seal): Nicole Green

Nicole Green

**EXHIBIT D**



9025 N. Lindbergh Dr. | Peoria, IL 61615  
Phone: (800)645-2402 | Fax: (309)689-2036

# POWER OF ATTORNEY

## RLI Insurance Company

### Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of RLI Insurance Company and Contractors Bonding and Insurance Company, required for the applicable bond.

That RLI Insurance Company and/or Contractors Bonding and Insurance Company, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Bruce W. Lockhart, David J. Black, Jeremy S. Ball, Louis A. Colagrossi, Mark N. Coleman, Mary Ann Copley, Lori A. Proch, Gary E. Roadruck, Stephanie A. Rook, Linka V. Roeser, Kyp L. Ross, Faith A. Studeny, Kathy Van Tassel, Elaine M. McGrath, Teresa Bennett, Sue A. Brandal, jointly or severally

in the City of Richfield, State of Ohio, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and Contractors Bonding and Insurance Company, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, RLI Insurance Company and/or Contractors Bonding and Insurance Company, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 9th day of March, 2017.

State of Illinois }  
County of Peoria } SS



RLI Insurance Company  
Contractors Bonding and Insurance Company

B. W. Davis

Barton W. Davis

Vice President

#### CERTIFICATE

On this 9th day of March, 2017, before me, a Notary Public, personally appeared Barton W. Davis, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the RLI Insurance Company and/or Contractors Bonding and Insurance Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.

I, the undersigned officer of RLI Insurance Company, and/or Contractors Bonding and Insurance Company, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the RLI Insurance Company and/or Contractors Bonding and Insurance Company this 24th day of August, 2017.

Jacqueline M. Bockler  
Jacqueline M. Bockler Notary Public

RLI Insurance Company  
Contractors Bonding and Insurance Company

B. W. Davis

Barton W. Davis

Vice President

