

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2014 – 238

By: Mr. Maloney

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 FABRIZI TRUCKING AND PAVING CO., INC., IN CONNECTION WITH THE PEARL ROAD WIDENING PROJECT PHASE II (CUY-42-0.00); 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. 2013-207, Council authorized the Mayor to enter into a contract with Fabrizi Trucking and Paving Co., Inc. ("Fabrizi") for improvements to a section of Pearl Road in connection with the Pearl Road Widening Project Phase II (Cuy-42-0.00) (the "Project") in the amount of \$7,052,132.40; and

WHEREAS, by and through Ordinance Nos. 2014-040, 2014-078, 2014-131 and 2014-230, the City, through the City Engineer, and as recommended by the City's Construction Manager, CT Consultants, Inc., determined it would be in the best interests of the City to approve various change orders Nos. 1 through 4 to include as a part of the Project certain additional work arising from unforeseen circumstances and other conditions, all required for the Project to continue, in the total amount of \$434,629.45; and

WHEREAS, to date, the City has held as retainage for the entire Project the amount of \$719,926.41 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 Fabrizi and the City; and

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

WHEREAS, The City's Construction Manager, CT Consultants, Inc., and the City's Engineer have now reviewed Fabrizi's request for payment of 50% of the entire retainage being held by the City, along with other documentation attached hereto as Exhibits A, B and C, including the Affidavit and Certification of Fabrizi 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 \$359,963.21.

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 \$359,963.21 to the contractor, Fabrizi Trucking and Paving Co., Inc., but specifically to continue to hold the remaining 50% of the retainage in the amount of \$359,963.20 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.

CITY OF STRONGSVILLE, OHIO

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Michael Daymut
President of Council

Approved: Thomas S. Briner
Mayor

Date Passed: December 15, 2014.

Date Approved: December 16, 2014.

	<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>
Maloney	<u>✓</u>	<u> </u>
Schonhut	<u>✓</u>	<u> </u>
Southworth	<u>✓</u>	<u> </u>

Attest: Christina Meherl
Acting Clerk of Council

ORD. No. 2014-238 Amended:
1st Rdg. 12-15-14. Ref:
2nd Rdg. Suspended. Ref:
3rd Rdg. Suspended. Ref:

Pub Hrg. Ref:
Adopted: 12-15-14. Defeated:

STATE OF OHIO)

) ss. AFFIDAVIT AND CERTIFICATION OF
COUNTY OF CUYAHOGA) FABRIZI TRUCKING & PAVING CO., INC.

Affiant, being first duly sworn, deposes and states the following:

1. That she is and has been Vice President of Fabrizi Trucking & Paving Co., Inc. ("Fabrizi"), which previously entered into a Contract with the City of Strongsville ("City") in connection with the Pearl Road Widening Project, on or about October 13, 2013.

2. That on or about December 1, 2014, Fabrizi filed an Application with the City of Strongsville for release of fifty percent (50%) of the retainage held by the City in connection with work performed under the Contract.

3. That Affiant has been advised by the City that the Application must be submitted to the City's Council for approval and waiver of certain provisions under the City's Ordinances and the Contract between the parties; and therefore, Affiant presents this Affidavit in support of such Application.

4. That based upon review of Fabrizi's records to date, Affiant states that 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.

5. That further, Fabrizi is not aware of any mechanic's lien or other attested accounts having been filed by or presently threatened to be filed by any party having provided work, materials, or labor for the company, whether or not against the property or funds of the City as owner.

6. That Fabrizi is not otherwise aware of any other type of claim having been asserted, filed or presented or otherwise pending against the City of Strongsville, as owner, in connection with the referenced project.

Further Affiant sayeth naught.

Maria Fearer
Maria Fearer, Vice President

SWORN TO BEFORE ME and subscribed in my presence this 3RD day of December, 2014.



Amanda Fabrizi
Notary Public, State of Ohio
My Commission Expires
12-11-17

Amanda Fabrizi
Notary Public

EXHIBIT A



Department of Commerce

Division of Industrial Compliance

Bureau of Wage and Hour Administration
6606 Tussing Road - PO Box 4009
Reynoldsburg, OH 43068-9009
Phone 614-644-2239 | Fax 614-728-8639
TTY/TDD 800-750-0750
www.com.ohio.gov
An Equal Opportunity Employer and Service Provider

John R. Kasich, Governor
Andre T. Porter, Director

Affidavit Of Compliance

PREVAILING WAGES

I, Maria Fearer, Vice President
(Name of person signing affidavit) (Title)

do hereby certify that the wages paid to all employees of

Fabrizi Trucking & Paving Co., Inc.
(Company Name)

for all hours worked on the

Pearl Road Widening Project (CUY-42-0.00) Project in the City of Strongsville
(Project name and location)

project, during the period from 11/18/13 to 12/1/14 are in
(Project Dates)

compliance with prevailing wage requirements of Chapter 4115 of the Ohio Revised Code. I further
certify that no rebates or deductions have been or will be made, directly or indirectly, from any wages
paid in connection with this project, other than those provided bylaw.

Maria Fearer
(Signature of Officer or Agent)

Sworn to and subscribed in my presence this 3rd day of December,
20 14.

Amanda Fabrizi



Amanda Fabrizi
Notary Public, State of Ohio
My Commission Expires
12-11-17

The above affidavit must be executed and sworn to by the officer, or agent, of the contractor or subcontractor who supervises the payment of employees. This affidavit must be submitted to the owner (public authority) before the surety is released or final payment due under the terms of the contract is made.

- ☐ OWNER
☐ ARCHITECT
☐ CONTRACTOR
☐ SURETY
☐ OTHER

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

TO OWNER: (Name and Address)

City of Strongsville

PROJECT: (Name and Address)

Road Widening Construction

CONTRACT DATED:

ARCHITECT'S PROJECT NO:

CONTRACT FOR:

In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the _____
Cincinnati Insurance Company, 6200 S Gilmore, Fairfield OH

(Name and address of the Surety Company)

_____, SURETY
on bond of Fabrizi Trucking & Paving Co., Inc., 389 Columbia Rd., Valley City OH

(Name and address of Contractor)

_____, 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

City of Strongsville and Ohio Department of Transportation (ODOT)

(Name and address of Owner)

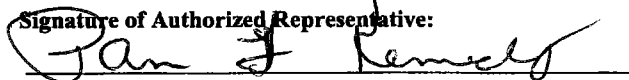
_____, OWNER,
as set forth in said Surety's bond.

IN WITNESS WHEREOF, the Surety has hereunto set its hand on this _____ 1st
day of December, 2014

Surety Company:

Cincinnati Insurance Company

Signature of Authorized Representative:



Printed Name and Title

Pam L. Kennedy, Attorney-In-Fact

THE CINCINNATI INSURANCE COMPANY

Fairfield, Ohio

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That THE CINCINNATI INSURANCE COMPANY, a corporation organized under the laws of the State of Ohio, and having its principal office in the City of Fairfield, Ohio, does hereby constitute and appoint

Robert W. Edgerton; Pam L. Kennedy; Anthony J. Schepis and/or Laura K. Staten

of Independence, Ohio its true and lawful Attorney(s)-in-Fact to sign, execute, seal and deliver on its behalf as Surety, and as its act and deed, any and all bonds, policies, undertakings, or other like instruments, as follows:

Any such obligations in the United States, up to Fifty Million and No/100 Dollars (\$50,000,000.00).

This appointment is made under and by authority of the following resolution passed by the Board of Directors of said Company at a meeting held in the principal office of the Company, a quorum being present and voting, on the 6th day of December, 1958, which resolution is still in effect:

"RESOLVED, that the President or any Vice President be hereby authorized, and empowered to appoint Attorneys-in-Fact of the Company to execute any and all bonds, policies, undertakings, or other like instruments on behalf of the Corporation, and may authorize any officer or any such Attorney-in-Fact to affix the corporate seal; and may with or without cause modify or revoke any such appointment or authority. Any such writings so executed by such Attorneys-in-Fact shall be binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the Company at a meeting duly called and held on the 7th day of December, 1973.

"RESOLVED, that the signature of the President or a Vice President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Secretary or Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power of certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, continue to be valid and binding on the Company."

IN WITNESS WHEREOF, THE CINCINNATI INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President this 10th day of May, 2012.



STATE OF OHIO)
COUNTY OF BUTLER)

ss:
)

THE CINCINNATI INSURANCE COMPANY

Stephen A. Jantz

Vice President

On this 10th day of May, 2012, before me came the above-named Vice President of THE CINCINNATI INSURANCE COMPANY, to me personally known to be the officer described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of said Company and the corporate seal and the signature of the officer were duly affixed and subscribed to said instrument by the authority and direction of said corporation.



Mark J. Muller

MARK J. MULLER, Attorney at Law
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date. Section 147.03 O.R.C.

I, the undersigned Secretary or Assistant Secretary of THE CINCINNATI INSURANCE COMPANY, hereby certify that the above is a true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in full force and effect.

GIVEN under my hand and seal of said Company at Fairfield, Ohio.
this 1st day of December, 2014



BN-1005 (5/12)

Scott R. Bolan

Assistant Secretary



The Cincinnati Insurance Company • The Cincinnati Indemnity Company
The Cincinnati Casualty Company • The Cincinnati Specialty Underwriters Insurance Company
The Cincinnati Life Insurance Company

THE CINCINNATI INSURANCE COMPANY
FINANCIAL STATEMENT
DECEMBER 31, 2013

ASSETS

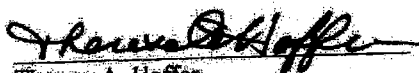
Cash	\$ 274,108,669
Bonds	5,087,496,581
Stocks	3,667,967,387
Agents Balance Receivable	1,374,048,100
All Other Admitted Assets	156,223,019
TOTAL ADMITTED ASSETS	<u>\$10,559,843,756</u>

LIABILITIES

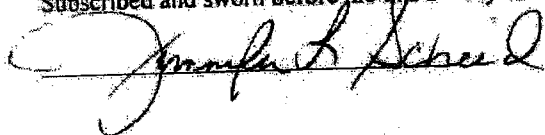
Reserve for Losses and Loss Expense	\$3,795,972,218
Reserve for Unearned Premiums	1,897,422,215
All Other Liabilities	540,778,891
Capital	\$ 3,586,355
Surplus	4,322,084,077
TOTAL LIABILITIES & EQUITY	<u>4,325,670,432</u> <u>\$10,559,843,756</u>

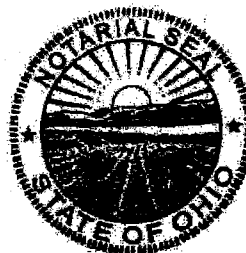
State of Ohio
County of Butler

Theresa A. Hoffer, Treasurer of The Cincinnati Insurance Company, being duly sworn for herself, deposes and says that she is the above described officer of the said company and that the above Financial Statement as of December 31, 2013 is true and correct to the best of her knowledge and belief.


Theresa A. Hoffer
Treasurer

Subscribed and sworn before me this 2nd day of March, 2014.





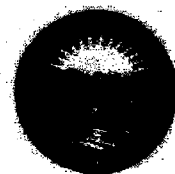
Jennifer L. Scheid
Notary Public, State of Ohio
My Commission Expires 01-16-2016

Office of Risk Assessment
50 West Town Street
Third Floor - Suite 300
Columbus, Ohio 43215
(614) 644-2858
Fax (614) 644-3256
www.insurance.ohio.gov

Ohio Department of Insurance

John R. Kasich - Governor
Mary Taylor - Lt. Governor/Director

Certificate of Compliance



Issued 06/25/2014

Effective 07/01/2014

Expires 06/30/2015

I, Mary Taylor, hereby certify that I am the Lt. Governor/Director of Insurance in the State of Ohio and have supervision of insurance business in said State and as such I hereby certify that

CINCINNATI INSURANCE COMPANY, THE

of Ohio is duly organized under the laws of this State and is authorized to transact the business of insurance under the following section(s) of the Ohio Revised Code:

Section 3929.01 (A)

Accident & Health

Aircraft

Allied Lines

Boiler & Machinery

Burglary & Theft

Commercial Auto - Liability

Commercial Auto - No Fault

Commercial Auto - Phys Damage

Credit

Earthquake

Fidelity

Financial Guaranty

Fire

Glass

Inland Marine

Medical Malpractice

Multiple Peril - Commercial

Multiple Peril - Farmowners

Multiple Peril - Homeowners

Other Liability

Private Passenger Auto - Liab

Private Passenger Auto-Other

Private Passenger-Phys Damage

Surety

Workers Compensation

CINCINNATI INSURANCE COMPANY, THE certified in its annual statement to this Department as of December 31, 2013 that it has admitted assets in the amount of \$10,559,843,756, liabilities in the amount of \$6,234,173,325, and surplus of at least \$4,325,670,432.

IN WITNESS WHEREOF, I have hereunto subscribed my name and caused my seal to be affixed at Columbus, Ohio, this day and date.

Mary Taylor

Mary Taylor, Lt. Governor/Director

