

CITY OF OBERLIN, OHIO

ORDINANCE No. 15-14 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO EXECUTE A RELEASE AND ASSIGNMENT AGREEMENT BETWEEN THE CITY OF OBERLIN AND ERIE INSURANCE COMPANY RELATED TO CONTRACT 2013-15 BETWEEN THE CITY OF OBERLIN AND DCH LANDSCAPING, LLC, FOR THE DOWNTOWN SIDEWALK IMPROVEMENTS PROJECT AND DECLARING AN EMERGENCY

WHEREAS pursuant to Ordinance No 13-56 AC CMS, the City of Oberlin entered into an Agreement with DCH Landscaping, LLC ("DCH") to perform the Downtown Sidewalk Improvements Project ("the Contract"); and,

WHEREAS in connection with the Contract, Erie Insurance Company, ("Erie") as surety executed a Performance and Payment Bond ("the Bond") on behalf of DCH as principal and the City, as obligee; and,

WHEREAS DCH performed work pursuant to the Contract; and,

WHEREAS on March 3, 2014, DCH notified the City that it ceased its operations and would not return to complete any work remaining under the Contract; and,

WHEREAS the City of Oberlin made a claim against Erie upon the Bond; and,

WHEREAS the City of Oberlin and Erie have now agreed to resolve all actions and disputes that they may have against each other regarding the Contract and the Bond and Erie will issue to the City the sum of Two Thousand, Nine Hundred and Seventy and 00/100 Dollars (\$2,970.00) as payment for the costs of remedial work necessary to secure the work area but subject to the release of its obligations under the Bond.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, not less than five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized to enter into a Release and Assignment Agreement with Erie Insurance Company in the form attached hereto as **Exhibit A**.

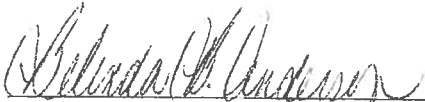
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

SECTION 3. That this ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the citizens of

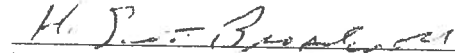
the City of Oberlin, Ohio or to provide for the usual daily operation of a municipal department, to wit: to repay the City for its necessary expense to secure the work area and to release Erie Insurance Company from its obligations under the Bond and thereby ensure the public safety of the citizens of Oberlin and shall take effect immediately upon passage.

PASSED: 1st Reading: April 6, 2015 (E)
2nd Reading: _____
3rd Reading: _____

ATTEST:



BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL



H. SCOTT BROADWELL
PRESIDENT OF COUNCIL

POSTED: 04/07/2015

EFFECTIVE DATE: 04/06/2015

ORIGINAL

RELEASE AND ASSIGNMENT

THIS RELEASE AND ASSIGNMENT (“AGREEMENT”) made and entered into effective the 7th day of April 2015, by and between the City of Oberlin, Ohio (the “City”) and Erie Insurance Company (“Erie”) (collectively the “Parties”):

WITNESSETH:

WHEREAS the City entered into a contract with DCH Landscaping, LLC (“DCH”) for work to be performed for the City of Oberlin Downtown Sidewalk Improvements (“the Project”); and,

WHEREAS in connection with the Contract, Erie as surety executed a Bid Guaranty and Contract Bond (the “Bond”) on behalf of DCH as principal and City, as obligee; and,

WHEREAS DCH performed work pursuant to the Contract, but failed to discharge, in full, its obligations under the Contract; and,

WHEREAS the City incurred damages in the form of its cost to complete and/or correct DCH’s work on the project; and,

WHEREAS, Erie is seeking a release of its obligations under the Bond and an assignment of City’s rights against DCH for payments Erie has issued to City under the Bond.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. City acknowledges receipt of Erie’s payment in the amount of \$2,970.00 for work the City performed.
2. On or about December 4, 2014, the City accepted the Project.
3. The City hereby releases Erie from any and all claims, actions or causes of action arising from or relating to the Project and/or under the Bond.

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4. The City hereby transfers and assigns to Erie, its successors and assigns any and all causes of action that City has or may have against DCH arising out of the contract up to the amount of Erie's payment hereunder, or \$2,970.00.

5. Any notices to be given to Erie under the terms of this Agreement shall be directed to Philip Maher, Erie Insurance Co., P.O. Box 9031, Canton, Ohio 44711.

6. The terms of this Agreement cannot be changed orally. Any amendments shall be in writing, duly signed by the Parties. This Agreement sets forth the complete and entire understanding between the Parties, and is the only consideration for signing this Agreement. This Agreement supersedes any prior discussions or agreements between the Parties. No other promises or agreements of any kind have been made to or with the Parties to cause them to execute this Agreement.

7. In the event that any provision of this Agreement is declared unenforceable by any court, such declaration shall not affect the enforceability of any other provision of this Agreement, it being intended that this Agreement shall be severable and applied as if any such void or unenforceable provision had not been included.

8. This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio.

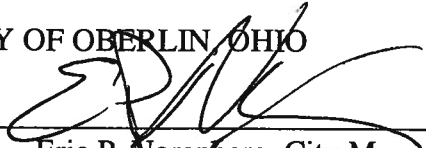
9. This Agreement is expressly conditioned upon City's approval and is not an admission of liability or compromise by any party in the event this condition goes unsatisfied. A copy of City's resolution(s) approving this Agreement is attached hereto and incorporated herein as Exhibit A.

10. This Agreement may be executed in counterparts. Signatures in execution of this Agreement transmitted and received by facsimile or by e-mail of a scanned document in electronic "pdf" shall be binding on the Parties to the same extent as original signatures.

11. The Parties state that they have each carefully read this Agreement, that they know and understand its contents and its legal, binding effect, and that they have signed this Agreement voluntarily, as his/her or its own free act.

IN WITNESS WHEREOF, the Parties have set their hands and seals, on the dates indicated.

Date: 4/7/15

CITY OF OBERLIN, OHIO
By: 
Eric P. Norenberg, City Manager

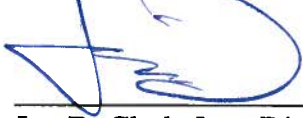
ERIE INSURANCE COMPANY

Date: 4/17/15

By: 
Name:

Its: Commercial Liability Specialist

Approved as to form:



Jon D. Clark, Law Director
City of Oberlin