

CITY OF STRONGSVILLE, OHIO

ORDINANCE NO. 2024 – 180

By: Mayor Perciak and All Members of Council

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 GREAT LAKES CONSTRUCTION CO., IN CONNECTION WITH THE WESTWOOD LIFT STATION REHABILITATION PROJECT; AUTHORIZING THE MAYOR, PUBLIC SERVICE DIRECTOR AND DIRECTOR OF FINANCE TO RELEASE A PORTION OF THE CURRENT RETAINAGE, AND DECLARING AN EMERGENCY.

WHEREAS, pursuant to Ordinance No. 2022-185, Council authorized the Mayor to enter into a contract with Great Lakes Construction Co. ("Great Lakes") for necessary improvements to the Westwood Lift Station located at 14600 Westwood Drive, in connection with the Westwood Lift Station Rehabilitation Project (the "Project"), in the amount of \$2,634,000.00; and

WHEREAS, by and through Ordinance Nos. 2024-092 and 2024-143, the City, through the Public Service Director, and as recommended by the City's Construction Manager, MS Consultants, Inc., determined it would be in the best interests of the City to approve various Change Order Nos. 1 and 2 to include as a part of the Project certain changes in the work performed on the Project, including a time extension, additional work arising from unforeseen circumstances, extra work performed as requested by the City and other conditions, all required for the Project to continue, in the total amount of \$681,494.53 for such change orders; and

WHEREAS, to date, the City has held as retainage for the entire Project the amount of \$221,715.92, 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 Great Lakes and the City; and

WHEREAS, The City's Construction Manager, MS Consultants, Inc. and the City's Public Service Director have now reviewed Great Lakes' request for payment of a portion of the retainage being held by the City, along with other documentation attached hereto collectively as Exhibit A, including the Affidavit and Certification of Great Lakes 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 \$198,303.92.

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

Section 1. That this 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 a portion of the retainage prior to final contract closeout and formal acceptance of all work on the project.

Section 2. That further, the Mayor, Public Service Director and Director of Finance are hereby authorized and empowered to do whatever is necessary to promptly release a portion of the retainage in the amount of \$198,303.92 to the contractor, Great Lakes, but specifically to continue to hold the remaining retainage in the amount of \$23,412.00, 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 a partial release of the retainage in order to facilitate the contract and project closeout when necessary, 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.

[Signature]
413000
President of Council

Date Passed: 11 18 2024

Approved: [Signature]
Mayor

Date Approved: Nov. 18, 2024

Attest: [Signature]
Clerk of Council

	<u>Yea</u>	<u>Nay</u>
Carbone	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Clark	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kaminski	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kosek	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Roff	<u>Absent</u>	<input type="checkbox"/>
Short	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Spring	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Ord. No. 2024-180 Amended: _____
1st Rdg. 11-18-24 Ref: _____
2nd Rdg. Suspended Ref: _____
3rd Rdg. Suspended Ref: _____

Public Hrg. _____ Ref: _____
Adopted: 11-18-24 Defeated: _____

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS:

**AFFIDAVIT AND CERTIFICATION OF
GREAT LAKES CONSTRUCTION COMPANY**

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

1. That he is and has been Vice President of Great Lakes Construction Company (Great Lakes), which previously entered into a Contract with the City of Strongsville ("City") in connection with the Westwood Lift Station Rehabilitation Project, on or about January 18, 2023.

2. That on or about October 31, 2024, Great Lakes files an Application with the City of Strongsville for release of ninety-eight percent (98%) of the retainage held by the City in connection with work performed under the Contract.

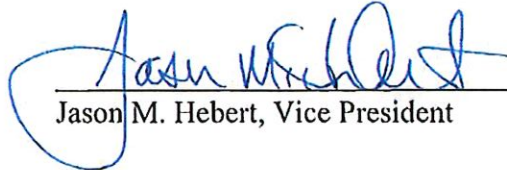
3. The Affiant has been advised by the City that the Application must be submitted to the City's Council for approval and waiver of certain provisions under the City's Ordinances and the Contract between the parties; and therefore, Affiant presents this Affidavit in the support to such Application.

4. That based upon review of Great Lakes records to date, Affiant states that all laborers, materialmen and subcontractors of the company have been paid for work and furnished by them to the company for the Project to the full extend 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, Great Lakes is not aware of any mechanic's lien or other attested accounts having been filed by or presently threatened to be filed by an 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 Great Lakes is 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.

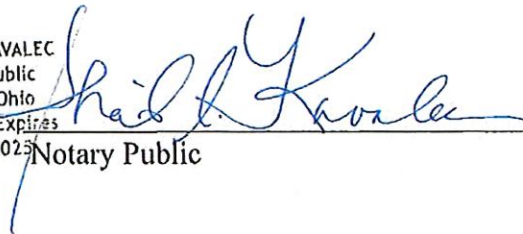
Further Affiant sayeth naught.



Jason M. Hebert, Vice President

2024 SWORN TO BEFORE ME and subscribed in my presence this 8th day of November



SHEILA A KVALEC
Notary Public
State of Ohio
My Comm. Expires
May 3, 2025


Notary Public

**AFFIDAVIT OF CONTRACTOR
OR SUB-CONTRACTOR**

PREVAILING WAGES

I, JEFF TARNOWSKI VP of Finance
(Name of person signing Affidavit) (Title)

of the The Great Lakes Construction Co. 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, Repair and Construction of:

Westwood Lift Station Rehabilitation Project
(Project and Location)

during the following period from 04-01-2024 to 10-31-2024
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]
(SIGNATURE OF THE OFFICER OR AGENT)

SWORN TO and subscribed in my presence this 11th day of November, 2024



SHEILA A KVALEC
Notary Public
State of Ohio
My Comm. Expires
May 3, 2025

[Signature]
(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 COMPANY TO PARTIAL RELEASE OF RETAINAGE

TO (OWNER): City of Strongsville, Ohio

PROJECT: Westwood Lift Station Rehabilitation Project

CONTRACT FOR: Single Prime Contract

CONTRACT DATE: January 18, 2023

accordance with the provisions of the Contract between the Owner and the Contractor, as indicated above, the Liberty Mutual Insurance Company

, Surety Company,
on bond of The Great Lakes Construction Co.
, Contractor,

hereby approves of the partial release of retainage to the Contractor, and agrees that partial release of retainage to the Contractor shall not relieve the Surety Company of any of its obligations to

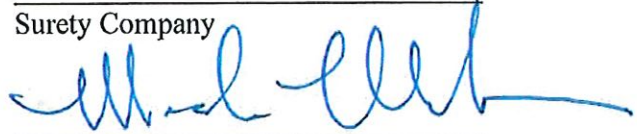
City of Strongsville, Cuyahoga County, Ohio Owner,

as set forth in the said Surety Companies bond.

IN WITNESS WHEREOF,
the Surety Company has hereunto set its hand this

11th day of November, 2024.

Liberty Mutual Insurance Company
Surety Company



Signature of Authorized Representative
Mark Nelson

Attest:

(Seal): *Stech Adams*

Attorney-in-Fact
Title



This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8211900-971184

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Audria Coleman; Evan R. Derr; G. Dale Derr; Kathrine Kreckler; Katie Rose; Kelsey Becker; Liz Talbott; Mark Nelson; Meghan Schraer; Nancy Nemecc; Randal T. Noah; Tammy L. Masterson; Tiffany Gobich

all of the city of Cincinnati state of OH each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 30th day of May, 2024.



Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: David M. Carey

David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

State of PENNSYLVANIA ss
County of MONTGOMERY

On this 30th day of May, 2024 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS: Section 12. Power of Attorney.

Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 11th day of November, 2024.



By: Renee C. Llewellyn

Renee C. Llewellyn, Assistant Secretary