

ORDINANCE NO. 18-14

CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Paul Gresham ON THE  
20th DAY OF October, 2014.

AN EMERGENCY ORDINANCE AUTHORIZING AND DIRECTING THE CITY MANAGER TO ENTER INTO AN AMENDMENT TO THE CONSTRUCTION MANAGER AT RISK AGREEMENT WITH OBERER CONSTRUCTION MANAGERS, LTD., AND CORNERSTONE DEVELOPERS, LTD. FOR CONSTRUCTION MANAGEMENT SERVICES.

WHEREAS, the City of Centerville (the "City") and Cornerstone Developers, LTD ("Cornerstone") entered into a Development Agreement ("the Development Agreement") dated November 14, 2013 and as amended; and

WHEREAS, the Development Agreement, among other things, memorialized certain understanding relating to the development and construction of the Phase I Interior Public Improvements for the Cornerstone of Centerville construction project (the "Project"); and

WHEREAS, pursuant to the Development Agreement, Cornerstone agreed to arrange for the design and engineering of the Project at Cornerstone's own expense, subject to the review and approval of the City; and

WHEREAS, this Council has determined that it was in the best interest of the City to allow a Construction Manager At Risk Agreement for the purpose of providing construction management services and expediting the construction of the Project in a timely manner; and

WHEREAS, the City passed on June 2, 2014, Emergency Ordinance No. 07-14 and passed on June 16, 2014, Ordinance No.08-14, authorizing the City Manager to enter into the Construction Manager at Risk Agreement; and

WHEREAS, said Construction Manager at Risk Agreement was executed by all parties on or about June 4, 2014; and

WHEREAS, the parties desire to amend the Agreement to delay completion of the installation of landscaping and irrigation for the Project; and

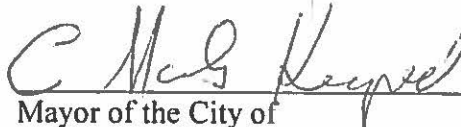
WHEREAS, §3.01 of the Centerville Charter provides: "Except as restricted by this Charter, the Municipality shall have all powers possible for a municipality to have under the Constitution and laws of the State of Ohio, as fully and completely as though they were specifically enumerated in this Charter."; and

WHEREAS, pursuant to § 210.16 of the Codified Ordinances of the City of Centerville, this Council allows contracts for construction management services which are in the best interests of the City.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY ORDAINS:

- Section 1. That the City Manager is authorized and directed to take all necessary steps to execute an Amendment to the agreement substantially similar to the form attached hereto as Exhibit "A" with Oberer Construction Managers, LTD, the Construction Manager and Cornerstone Developers, LTD., the Developer.
- Section 2. This ordinance is hereby declared to be an emergency measure and shall become effective immediately upon passage. An emergency affecting public safety and welfare is hereby declared to exist by virtue of the fact of the immediate necessity to facilitate the construction schedule of the public improvements and a need to modify the Final Completion Date of the Project. Therefore, this ordinance shall become effective immediately upon passage.

PASSED THIS 20<sup>th</sup> day of October, 2014.

  
\_\_\_\_\_  
Mayor of the City of  
Centerville, Ohio

ATTEST:

Debra A. James  
Clerk of Council  
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby certifies the foregoing to be a true and correct copy of Ordinance No. 18-14, passed by the Council of the City of Centerville, Ohio on the 20th day of October, 2014.

Debra A. James  
Clerk of the Council

Approved as to form, consistency with the  
Charter and Constitutional Provisions.  
Department of Law  
Scott A. Liberman  
Municipal Attorney

AMENDMENT TO CONSTRUCTION MANAGER AT RISK AGREEMENT

This Amendment to Construction Manager at Risk Agreement (the "Amendment") is made as of \_\_\_\_\_, 2014, by and among CITY OF CENTERVILLE, OHIO, an Ohio municipal corporation (the "City"), OBERER CONSTRUCTION MANAGERS, LTD., an Ohio limited liability company (the "Construction Manager"), and CORNERSTONE DEVELOPERS, LTD., an Ohio limited liability company ("Developer"), with reference to the Construction Manager at Risk Agreement among the parties dated June 4, 2014 (the "Agreement"). In consideration of the mutual covenants set forth herein, the parties agree as follows:

1. Capitalized terms used in this Amendment shall have the meanings set forth in the Agreement.

2. Notwithstanding the dates of Substantial Completion and Final Completion set forth in Section 5 of the Agreement and in the Schedule attached thereto as Exhibit D, the parties agree that the following elements of the Work may be delayed, without penalty until June 30, 2015: installation of landscaping and irrigation for the areas within the public right-of-way of Feedwire Road, Cornerstone North Blvd., Charles Drive, Dille Drive and the buffer yard areas adjacent to Feedwire Road. Additionally, the parties agree that the installation of landscaping and irrigation for the areas within the public right-of-way of Wilmington Pike and within the buffer yard areas adjacent to Wilmington Pike may be delayed, without penalty, until the later of June 30, 2015 or sixty (60) days after the City's completion of its work relating to the widening of Wilmington Pike (such later date, the "Extended Completion Date"). The Extended Completion Date shall be the date for Final Completion of those items. Section 7(e) shall continue to apply with regards to performance, payment and maintenance bonds, except that, upon completion and payment for all Construction Manager's Work under the Agreement other than the landscaping and irrigation work contemplated herein, such that Construction Manager would otherwise be entitled to a release of the existing payment and performance bonds and assuming the proper maintenance bond is in place, the City shall permit the Construction Manager to substitute payment and performance bonds, or a cash bond, covering only the landscaping and irrigation work. Upon confirmation by the City of such completion and payment of the landscaping and irrigation, the City shall release the performance and payment bond applicable to those items within thirty (30) days thereafter assuming that the required maintenance bond is in place.

3. Except as amended hereby, the Agreement is ratified and confirmed and remains in full force and effect. IN WITNESS WHEREOF, the parties have set their hands effective on the date first written above.

CITY OF CENTERVILLE, OHIO,  
an Ohio municipal corporation

OBERER CONSTRUCTION MANAGERS, LTD.,  
an Ohio limited liability company

By: \_\_\_\_\_  
Greg Horn, City Manager

By: \_\_\_\_\_  
George R. Oberer, Jr., Manager

APPROVED AS TO FORM:

CORNERSTONE DEVELOPERS, LTD., an Ohio  
limited liability company

\_\_\_\_\_  
Scott A. Liberman, Municipal Attorney

By: Oberer Construction Managers, Ltd., an Ohio  
limited liability company, its Operating  
Manager

By: \_\_\_\_\_  
George R. Oberer, Jr., Manager