

RESOLUTION NO. 32-06  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Robert Corbin ON THE 10<sup>th</sup> DAY OF July, 2006.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO SETTLE CLAIMS WITH AMERICAN MOTORIST INSURANCE COMPANY AS SURETY FOR L.B. ROBINSON, INC. FOR THE PROJECT KNOWN AS CENTERVILLE POLICE HEADQUARTERS.

WHEREAS, L.B. Robinson, Inc. ("Robinson") contracted with the City of Centerville to undertake the construction of the project known as "Centerville Police Headquarters" ("Project"); and

WHEREAS, American Motorist Insurance Company ("Surety"), as surety, issued a bond with Robinson as principal and the City as obligee for the Project ("Bond"); and

WHEREAS, claims and disputes arose between Robinson and the City related to obligations under the contract with Robinson and the Bond for the project; and

WHEREAS, the City submitted a claim to the Surety for work the City claimed was incomplete, defective or non-conforming, and the Surety objected to portions of the Claim; and

WHEREAS, the City and the Surety, after negotiations, reached a settlement of the Claim upon the terms set forth in the proposed Settlement Agreement, attached hereto as Exhibit "A" and incorporated herein; and

WHEREAS, there remains claims against Robinson or Horne & King Architects for specific claims and items set forth in the Settlement Agreement, which are not being released; and

WHEREAS, this Council is of the opinion that the proposed settlement is in the best interests of the citizens of this City.

NOW, THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is authorized to enter into a settlement agreement with American Motorist Insurance Company on behalf of the City upon the terms and conditions set forth in Exhibit "A" attached and incorporated herein.

PASSED THIS 10<sup>th</sup> day of July, 2006.

C. Mark Kengood  
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 Resolution No. 32-06, passed by the Council of the City of Centerville, Ohio on the 10<sup>th</sup> day of July, 2006.

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

## Settlement Agreement

### A. Parties

This Settlement Agreement ("Agreement") is entered effective June 16, 2006 by and between the following parties:

1. City of Centerville ("Centerville"); and
2. American Motorist Insurance Company ("Surety" or "American Motorist").

### B. Recitals

3. L.B. Robinson, Inc. ("Robinson") contracted with Centerville to undertake construction of the project known as "Centerville Police Headquarters" (the "Project").
4. American Motorist, as surety, issued Bond No. 3SM970002 with Robinson as principal and Centerville as obligee for the Project (the "Bond").
5. Claims and disputes arose between the parties related to their obligations under the contract and the Bond for the Project.
6. Specifically, Centerville submitted a claim to Surety for work it claimed was incomplete, defective, or non-conforming, and Surety objected to portions of this claim, denying all liability whatsoever for such portions. The summary of the claim is attached as Exhibit A.
7. On June 16, 2006 after negotiation, the parties reached a settlement of Centerville's claim on the terms and conditions set forth herein, subject to approval by the City Council for Centerville.

### C. Agreement

In consideration of the above and the mutual promises and covenants contained in this Agreement, the parties agree as follows:

7. On or before July 17, 2006, American Motorist shall pay to Centerville the total sum of six hundred thirty nine thousand (\$639,000.00). Such payment shall be made by check payable to the City of Centerville and delivered to the offices of its counsel as follows: Samuel Wampler, Bricker & Eckler LLP, 100 S. Third Street, Columbus, OH 43215.
8. On or before July 17, 2006, American Motorist shall procure an authorized signature from Robinson for the release of retainage presently on deposit in an escrow account

for Robinson's contract on this Project. The full amount of the retainage and interest on the escrow account shall be released and paid to Centerville and Surety waives any right to such amount, including any right of subrogation.

9. American Motorist shall direct Vaughn Interiors to repair the door hinges per Vaughn Interiors' proposal dated 1/3/2006. American Motorist shall settle in full any outstanding compensation due Vaughn Interiors for work performed on the Project. Centerville shall direct the work of Vaughn Interiors as to which option for repair is to be implemented for each hinge.
10. Upon performance of the requirements outlined in Paragraphs 7 through 9 of this agreement, Centerville acknowledges that the Bond shall be exonerated and cancelled and will surrender the Bond to the Surety via certified or other secure mail to counsel for Surety, John J. Petro at 338 South High Street, 2<sup>nd</sup> Floor, Columbus, Ohio 43215.
11. Centerville reserves and does not release any claims Centerville may have against ~~Robinson or Home & King Architects.~~

12. Centerville reserves the right to pursue claims against Robinson and Home & King Architects for any and all discrete items of Centerville's claim not paid for by Surety under this agreement, which include, but are not limited to, the following:

Item	Issue
2	Cabinetry-hinge failures and door alignments
3	Masonry wall
14	As-builts
19	Door frames rusting

13. Except for their obligations and reservations under this Agreement, the parties mutually release each other and their respective officers, agents, employees, sureties and attorneys from and against any and all claims, of any form or nature, known or unknown, asserted or unasserted, arising from, or related in any manner to, the Project or the parties' respective contractual obligations in regard to the Project, including the relationship of surety and obligee. However, the parties reserve and do not release any claims based upon the rights and duties of the parties under this Agreement.
14. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Ohio without regard to its conflict of laws provision. It is the intent of the parties that the laws of the State of Ohio shall govern this Agreement in all respects regardless of the place of execution and performance, the domicile of the parties or the jurisdiction with the most significant contacts. The venue and jurisdiction of any dispute arising out of this Agreement shall be in the Montgomery County Common Pleas Court in Ohio.

15. This Agreement contains all the promises and covenants made by the parties. In executing this Agreement, each party warrants that it is relying solely upon its own judgment and knowledge, and that it is not relying on any statement or representation made by any other party or its representatives or agents.
16. This Agreement shall be binding upon and shall inure to the benefit of the heirs, successors, representatives and assigns of each party.
17. The parties have jointly drafted this Agreement and neither the doctrine of construction against the drafter nor any other similar doctrine shall be applied in construing and interpreting this Agreement.
18. Each individual executing this Agreement for, or on behalf of, any party represents and warrants that he or she has full and complete authority to enter this Agreement and bind such party hereto.
19. This Agreement may be executed in counterparts. Each party agrees that a facsimile copy of its signature to this Agreement shall be treated as an original signature, is acceptable to the other party, and shall bind the party's respective rights and obligations under this Agreement, to the same extent as if such signatures were original signatures.

CITY OF CENIERVILLE

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

AMERICAN MOTORIST INSURANCE COMPANY

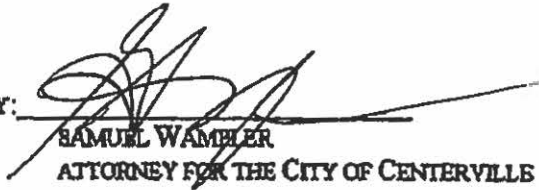
BY: *Ava M. Crespo*

ITS: *Senior Surety Claims Analyst*

APPROVED AS TO FORM:

BRICKER & ECKLER, LLP

BY:



SAMUEL WAMPLER  
ATTORNEY FOR THE CITY OF CENTERVILLE

WILLIAMS & PETRO, LLC

BY:



JOHN J. PETRO  
ATTORNEY FOR AMERICAN MOTORISTS