

RESOLUTION NO. 53-93  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Mark Bersley ON THE  
7th DAY OF September, 1993.

A RESOLUTION AUTHORIZING AND DIRECTING THE CITY  
MANAGER TO ENTER INTO A CONTRACT WITH OHIO FARMERS  
INSURANCE COMPANY RELATING TO THE COMPLETION OF  
THE YANKEE TRACE GOLF COURSE.

WHEREAS, on or about August 31, 1992 the Ohio Farmers Insurance  
Company (OFIC) provided a Performance Bond and Payment Bond to the City of  
Centerville as surety for Irvin Construction Company, Inc. in connection with a  
contract for the construction of Yankee Trace Golf Course; and

WHEREAS, by letter dated July 16, 1993 the City terminated the services  
of Irvin Construction Company and made demand upon OFIC that it undertake the  
completion of performance under said Construction Contract; and

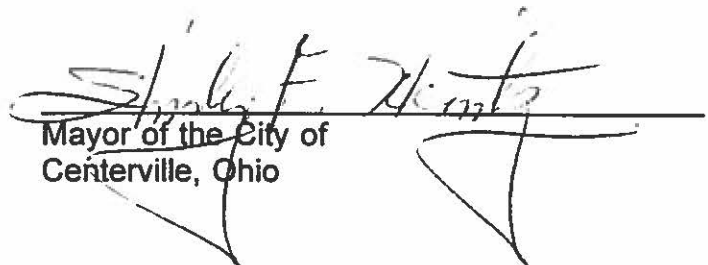
WHEREAS, the parties wish to enter into a Contract governing the terms  
of OFIC's completion of performance under said Contract, a copy of which  
proposed Contract is attached hereto as Exhibit A and incorporated herein;

NOW THEREFORE,

THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

Section 1. That the City Manager is hereby authorized and directed  
to enter into a Contract with OFIC, a copy of which is attached hereto and  
incorporated herein as Exhibit A.

PASSED THIS 7th day of September, 1993.

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

ATTEST:

Marilyn J. Saughel  
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. 53-93, passed by the Council of the City of Centerville, Ohio on the 7th day of September, 1993.

Marilyn J. Saughel  
Clerk of the Council

Approved as to form, consistency  
with existing ordinances, the  
charter & constitutional provisions.

Department of Law  
Robert N. Farquhar  
Municipal Attorney

**AGREEMENT**

THIS AGREEMENT is entered into this 30th day of July, 1993, by and between the City of Centerville, Ohio (Obligee), and the Ohio Farmers Insurance Company (OFIC), an Ohio corporation doing business at One Park Circle, Westfield Center, Ohio 44251-5001.

WHEREAS, OFIC, on or about August 31, 1992, executed a certain Performance Bond and Payment Bond, Bond No. 5670 090, as surety for Irvin Construction Company, Inc. (Principal), in favor of Obligee, with respect to the Contract known as Yankee Trace Golf Course; and

WHEREAS, by letter dated July 16, 1993, Obligee terminated for default the Contract; and

WHEREAS, Obligee has called upon OFIC to complete performance under the Contract; and

WHEREAS, OFIC has received a bid from Midwest Golf, Inc. (Contractor) to complete performance of the Contract in the stead of Principal; and

WHEREAS, Obligee and OFIC have agreed the Contractor shall fulfill and perform the remainder of the referenced Contract.

NOW THEREFORE, Obligee and OFIC mutually agree as follows:

- (1) OFIC shall complete the work according to all the terms and conditions of the Contract. The Contract in its entirety is hereby incorporated into this Agreement. Obligee accepts Contractor to complete the Contract. OFIC will immediately make the necessary arrangements with Contractor to proceed with expeditious completion of all remaining work required under the Contract.
- (2) Obligee will pay to OFIC, in the manner provided by the Contract, the balance of the Contract price unpaid at the time of default, through Change Order No. 7, Two Million, One Hundred Seventy Eight Thousand, Three Hundred Thirty Seven and 89/100 Dollars (\$2,178,337.89), plus any other proceeds payable or to become payable by approved Change Orders in connection with the Contract, including proceeds payable in connection with claims for extra compensation and agrees not to assess against such sum any charges for reprocurement or otherwise due to the termination for default of Principal. OFIC agrees to hold harmless the Obligee from any claim made by Principal that Contract proceeds should not be payable to OFIC.

- (3) Except as stated in this Agreement, neither OFIC nor Obligee waive nor release any rights presently held by them in law or in equity, arising out of or under the said Contract, nor incident thereto. OFIC and Obligee specifically reserve all such rights.
- (4) Without limitation, OFIC shall be subrogated to and shall be the successor contractor to Principal and shall be entitled to all sums due or to become due and otherwise payable to Principal. Obligee assigns to OFIC all rights, title, and interest in and to any claim which Obligee may now have or later acquire against Principal arising out of or by reason of the above Contract.
- (5) Notwithstanding any other provision in this Agreement, OFIC's total liability shall not exceed the penal sum of the above referenced bonds.
- (6) Obligee reserves the right to assert a claim for liquidated damages to the extent allowed by the Contract. OFIC reserves the right to assert any defenses available to the Obligee's claim for liquidated damages.
- (7) The Obligee agrees it shall make available on site, at least once a week until completion, either Gene Bates or a representative of Gene Bates capable of making design decisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Witness:

\_\_\_\_\_

CITY OF CENTERVILLE

By \_\_\_\_\_

Its \_\_\_\_\_

Witness:

\_\_\_\_\_

OHIO FARMERS INSURANCE COMPANY

By \_\_\_\_\_

James M. Walker  
Bond Claim Counsel