

ORDINANCE 02-108 AC CMS

AN ORDINANCE AUTHORIZING AN AMENDMENT TO ORDINANCE NO. 02-45 WHICH AUTHORIZED A CONSTRUCTION AGREEMENT WITH CLARK BROTHERS, INC. FOR THE CONSTRUCTION OF THE CLARKWOOD SUBDIVISION III AND DECLARING AN EMERGENCY

WHEREAS, the City Council, through Ordinance No. 02-45, has previously authorized the City Administration to enter into a Subdivision Construction Agreement with Clark Brothers, Inc. for the Construction of the Clarkwood Subdivision III; and

WHEREAS, said Subdivision Construction Agreement was entered into on July 5, 2002 and Clark Brothers, Inc. has proceeded expeditiously to install the public improvements in accordance with the approved improvement plans; and

WHEREAS, Clark Brothers, Inc. has requested in writing an amendment to the Subdivision Construction Agreement in accordance with Section XXII, "Modifications" of said Construction Agreement; and

WHEREAS, said request is consistent with the requirements of Section 1317.03 of the Codified Ordinances.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, 5/7ths of all members elected thereto concurring:

SECTION 1. That Section IX of the Subdivision Construction Agreement dated July 5, 2002 between Clark Brothers, Inc. and the City of Oberlin be modified to reduce the amount of the required Letter of Credit guaranteeing completion of all improvements to the amount of Three Hundred Thirty Thousand and Sixteen and 50/100 Dollars (\$330,016.50).

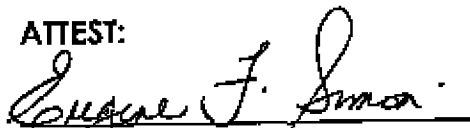
SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal action, were 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 preservation of the public peace, health and safety of the citizens of the City of Oberlin, Ohio to wit:

"to allow for the timely and economical construction of the subdivision".
and shall take effect immediately upon passage.

PASSED:	1st Reading -	October 21, 2002 (5/2 – Rimbert/Verda)
	2nd Reading -	November 4, 2002 (Tabled to November 18, 2002)
	2nd Reading -	November 18, 2002 (6/0 – Emergency)
	3rd Reading -	

ATTEST:


CLERK OF COUNCIL


CHAIR OF COUNCIL

POSTED: November 19, 2002

EFFECTIVE DATE: November 19, 2002



AMENDMENT NO. 1 TO IRREVOCABLE LETTER OF CREDIT NO. SB7684-02

ORIGINAL ISSUE DATE: July 2, 2002

ORIGINAL AMOUNT: USD 660,033.00

DATE: December 20, 2002

Beneficiary:

City of Oberlin
Public Works Department
85 S. Main Street
Oberlin, Ohio 44074

Applicant:

Clark Bros. Inc.
271 S. Pleasant Street
P.O. Box 299
Oberlin, Ohio 44090

Gentlemen:

We hereby amend our Irrevocable Letter of Credit No. SB7684-02 by changing the following:

Decreasing the amount by which draft(s) may be drawn to \$330,016.50 (Three Hundred Thirty Thousand and Sixteen and 50/100).

This Amendment should be attached to and become an integral part of the original credit.

All other terms and conditions of the said Irrevocable Letter of Credit remain unchanged and in full force and effect.

Very truly yours,

FIRSTMERIT BANK, N.A.

By: Christian W. Proentke
Authorized Signature

CITY OF OBERLIN

35 SOUTH MAIN ST. OBERLIN, OH 44074

Public Works Department

November 27, 2002

FirstMerit Bank, N.A.
Attn: Christina Moquette
106 South Main St., TOW13
Akron, OH 44308

RE: Irrevocable Letter of Credit No. SB 7684-02

Dear Ms. Moquette,

On July 2, 2002, FirstMerit Bank, NA opened an Irrevocable Letter of Credit in favor of the City of Oberlin in the amount of Six Hundred and Sixty Thousand and Thirty Three Dollars (\$660,033.00). Said Letter of Credit was submitted to the City of Oberlin guaranteeing Clark Brothers, Inc. shall dutifully perform all of the terms and conditions of the Subdivision Construction Agreement entered into on July 5, 2002 between Clark Brothers, Inc. and the City of Oberlin.

On October 11, 2002, Clark Brothers, Inc. petitioned the City Administration to reduce the amount of the required Irrevocable Letter of Credit by fifty percent (50%) based on work that has been completed to date. In accordance with the terms and conditions of the Subdivision Construction Agreement and the City of Oberlin Planning and Zoning Code, a recommendation was subsequently made to Oberlin City Council to authorize a reduction in the amount of the Letter of Credit to Three Hundred Thirty Thousand and Sixteen and 50/100 Dollars (\$330,016.50). Oberlin City Council approved Ordinance 02-108 on November 18, 2002 (copy enclosed).

This letter is intended to serve as notification to FirstMerit Bank, NA that the Irrevocable Letter of Credit from FirstMerit Bank, NA to the City of Oberlin which guarantees the construction of Clarkwood Subdivision 3 may be reduced as herein described. I'm not entirely sure what the bank's process is but a cancellation notice and a revised Letter of Credit (or other appropriate documentation) can be sent to my attention at the letterhead address. If there are any questions, please call me at (440) 775-7204.

Sincerely,


Jeffrey J. Baumann
Public Works Director

Cc Clark Brothers, Inc.
File

CITY OF OBERLIN

85 SOUTH MAIN ST. OBERLIN, OH 44074

Public Works Department

November 14, 2002

TO: Rob DiSpirito, City Manager

FROM: Jeff Baumann, Public Works Director 

RE: Clarkwood III Subdivision Construction Agreement Amendment

I met today with QCI inspector, Tom Uline in regard to progress at the Clarkwood III Subdivision. Please review the following table of improvements and their relative status:

Improvement	Estimate	% Complete	Value
Storm Sewer	\$103,622	90%	\$93,260
Sanitary Sewer	\$96,620	100%	\$96,620
Water Lines	\$80,218	100%	\$80,218
Site & Pavement	\$259,570	20%	\$51,914
Electric & Phone	\$60,000	10%	\$6,000
Contingency	\$60,003	42%	\$25,000
TOTAL:	\$660,033	53%	\$353,012

Please note that the contingency represents 10% of the Developer's estimated cost of construction. The contingency is required by the Public Works Department to ensure that adequate funds are available for the project. In this instance, the Developer has, in fact, paid out at least \$25,000 to the various contractors because substantial rock was encountered below grade. This increased the cost of excavation work substantially.

Public Works staff is satisfied that the reduction of the amount of the letter of credit by 50% will not impair the City's ability to complete the project in the event of default.

City of *Oberlin*

85 South Main Street, Oberlin, Ohio 44074
(440) 775-1531

November 14, 2002

To: City Council

From: Robert DiSpirito, City Manager *RGD*

Re: Ordinance No. 02-108, Clarkwood III Subdivision

My staff and I are satisfied at this point that Clark Brothers Construction, Inc. has completed at least 50% of the public improvements at Clarkwood III Subdivision. Therefore, as Council was advised previously, we are now prepared to respectfully request final approval on Second Reading of Clark Brothers' written request to amend the City's construction agreement with them.

This item was previously brought to Council on First Reading only in order to introduce the subject and see if there were any questions, knowing that final approval was not being sought by either the City or Clark Brothers at that time. Doing so also permitted Council to have a minimum of two public readings, with the second one coming only *after* the City had certified that at least 50% of the public improvements had by then been made.

Council's approval Monday evening would allow Clark Brothers to secure a release of half of their required irrevocable letter of credit. Please refer to the attached memorandum from Public Works Director Jeff Baumann. He calculates that approximately 53% of the public improvements are complete.

Mr. Jimmy Clark of Clark Brothers Construction, Inc. will be present at the Council meeting along with Mr. Baumann to help answer any questions that you may have. In the meantime, let me know if I can be of service to you regarding this agenda item.

cc: Jeff Baumann, Director of Public Works
Sal Talarico, City Auditor

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