



AGENDA
CHESTERFIELD CITY COUNCIL
SPECIAL MEETING
Chesterfield City Hall
690 Chesterfield Parkway West
Wednesday, February 19, 2020
5:30PM

I. CALL TO ORDER – Mayor Bob Nation

II. ROLL CALL – City Clerk Vickie McGownd

III. APPEAL HEARING

A. Travelers Casualty and Surety Company of America – Appeal of City Code Section 31-02-12.A.5 and A.6.

IV. ADJOURNMENT

***NOTE:** City Council will consider and act upon the matters listed above and such other matters as may be presented at the meeting and determined to be appropriate for discussion at that time.*

***Notice** is hereby given that the City Council may also hold a closed meeting for the purpose of dealing with matters relating to one or more of the following: legal actions, causes of action, litigation or privileged communications between the City's representatives and its attorneys (RSMo 610.021(1) 1994; lease, purchase or sale of real estate (RSMo 610.021(2) 1994; hiring, firing, disciplining or promoting employees with employee groups (RSMo 610.021(3)1994; Preparation, including any discussions or work product, on behalf of a public governmental body or its representatives for negotiations with employee groups (RSMo 610.021(9) 1994; and/or bidding specification (RSMo 610.021(11) 1994.*

PERSONS REQUIRING AN ACCOMMODATION TO ATTEND AND PARTICIPATE IN THE CITY COUNCIL MEETING SHOULD CONTACT CITY CLERK VICKIE MCGOWND AT (636) 537-6716, AT LEAST TWO (2) WORKDAYS PRIOR TO THE MEETING.



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October 11, 2019

Justin Wyse
Director of Planning & Development Services
City of Chesterfield, MO
690 Chesterfield Parkway West
Chesterfield, MO 63017

Re: Travelers Casualty and Surety Company of America

Dear Mr. Wyse,

As a preliminary matter, I would like to thank you and City Attorney Graville for sharing your time during our call earlier this year. I know that I speak for my colleagues when I say that our conversation was both informative and productive. As we communicated in our conversation, the City of Chesterfield's ("City") decision to decline surety bonds written by Travelers Casualty and Surety Company of America (together with its subsidiaries and affiliates, "Travelers") came as a surprise. It was, and continues to be, our sincere belief that Travelers' business dealings with the City have been conducted in good faith and in a manner consistent with the best practices of the surety industry. In the time since our conversation, our Underwriting, Legal, and Government Relations teams have revisited the various contracts that Travelers has bonded over the years for the benefit of the City. I trust that this letter will provide clarity as to Travelers' position and prove useful in connection with our efforts to formally appeal to the City Council to be reinstated as a surety option in accordance with § 31-02-12(A)(5) of the City's Unified Development Code ("UDC").

By way of background, in September 2018, Blake Messer, Account Executive Officer with Travelers' Construction Services group in St. Louis, was notified that the City would no longer accept surety bonds written by Travelers. When Mr. Messer inquired as to the City's reason for this abrupt change, he was notified that Travelers had allegedly violated UDC § 31-02-12(A)(5) and (6) as a result of Travelers refusing to pay a surety bond claim upon the City's formal demand. Two surety bonds (Bond No. 051-SB-SV6997 and Bond No. 104706125, hereinafter, the "Bonds") were identified as the root cause of the issue.

In an effort to better understand the City's position, Travelers reviewed the circumstances that led to the City filing claims under the Bonds. After conducting this review, we determined that Travelers' denials of the City's claims were reasonable under the circumstances because, in each instance, there was a bona fide dispute between the principal on the Bond and the City, as obligee. Where such a dispute arises, Travelers, as a highly-regulated entity, has an obligation to investigate the validity of each party's position. Unlike certain types of banking products, performance bonds are not "pay on demand" instruments. The disputes that led to the claims were complex and required substantial analysis on the part of Travelers. Although the investigation process may

not have been as expedient as the City may have anticipated, these claims were ultimately resolved in good faith and in a manner that gave Travelers no reason to believe that it would be hindered – much less prohibited – from servicing its contractor partners who may be involved in City projects in the future.

Through our communications with your office, we understand that Travelers must formally appeal to the City Council in accordance with UDC § 31-02-12(A)(5) to request that the City accept the posting of Travelers' bonds. We plan to do so. During our conversation earlier this year, you and City Attorney Graville suggested that it would be beneficial if Travelers identified successful City contracts in which Travelers served as surety. To that end, our Underwriting and Claims professionals conducted a thorough examination of our surety files. In doing so, they determined that between December 1998 and September 2018, Travelers issued two hundred ten (210) surety bonds listing the City as obligee. Two hundred ten surety bonds is a substantial number, and one that serves to demonstrate Travelers' stability and commitment to its contractor partners and to the City.

Numbers aside, the more salient point here is that, with the exception of the Bonds that were the root cause of this issue, we have only been able to identify one additional instance where the City had a dispute with Travelers. This dispute involved two bonds that listed Frederich Construction, Inc. as contractor and bond principal and Travelers as surety. In this instance, the City made a claim against both bonds that led to arbitration and, eventually, litigation where Travelers' position in relation to the bonds was ultimately deemed meritorious. In fact, Travelers was even awarded attorneys' fees from the City relating to the claims.¹

For more than 100 years, Travelers has been an established leader in the surety industry. As you know, bonding plays an important role in protecting tax payer dollars, and, as demonstrated by the two hundred ten City contracts that listed Travelers as surety, Travelers has been a critical component of the fabric of your City projects for the better part of three decades. As an independent third party, Travelers helps public owners, developers, and lenders determine which contractor has the ability to perform the contract and meet its payment obligations to its subcontractors and suppliers. If something goes awry and the contractor defaults, Travelers provides the funds necessary to complete the contract and pay the claims of subcontractors and suppliers on the job. In essence, surety bonds significantly increase the likelihood that a public works contract will be completed and that the subcontractors, suppliers, and workers on the project will be paid.

Travelers has a long history, both inside and outside of the City, as a stable presence in surety industry. We truly hope that we can continue to build on what has historically been a strong relationship between Travelers and the City for years to come. Should you have any further questions regarding this matter, please do not hesitate to contact me directly. In the meantime, please accept this letter as a formal petition to the City Council so that we can initiate our appeal in accordance with UDC § 31-02-12(A)(5).

Sincerely,

Jeremy Sauer

¹ *City of Chesterfield v. Frederich Construction Inc.*, 475 S.W.3d 708 (Mo. Ct. App. 2015)