

August 16, 2024

TO: Mayor and City Council Members

FROM: Brian K. Riblet, City Manager *BKR*

SUBJECT: City Council Work Session of Wednesday, August 21, 2024

As a reminder, City Council is scheduled to meet in Work Session on Wednesday, August 21, 2024 at 6:00 p.m.

Work Session

1. Call to Order
2. Roll Call
3. Special Presentation
4. Guest and Residents
5. Legislation for Consideration this Evening
6. Establishing an Agenda for September 4, 2024 Business Session

Pending Legislation

- a. An Ordinance Repealing Section 33.01 Of The Code Of Ordinances Creating An Investment Committee And Establishing Its Authority—(Mr. Suer-2nd reading) Information has been previously supplied on this Ordinance that, if approved, will repeal Section 33.01 of the Code of Ordinances. With the approval of an Investment Policy, as required by the Ohio Auditor, there is no longer a need for an Investment Committee within the City, and this Ordinance repeals Section 33.01 of the Code of Ordinances appointing an Investment Committee. All investments are controlled by the policy and investments may only be made consistent with the policy. To avoid any confusion, this Section is being repealed. In repealing this Section, we also are repealing the Linked Deposit Program which has been dormant for several years.

Add this Ordinance to the September 4, 2024 Business Session agenda for the second reading. The third reading will be held at the October 2, 2024 Business Session with adoption requested at that meeting.

New Legislation

- a. A Resolution to Adopt Recommendation of the Montgomery Tax Incentive Review Council with Respect to The Compliance of All Tax Increment Financing Districts Within the City of Montgomery—Please find the attached correspondence from Finance Director Maura Gray requesting that City Council consider approving a Resolution that, if adopted, will adopt the recommendation of the Montgomery Tax Incentive Review Council with respect to the compliance of all Tax Increment Financing Districts within the City of Montgomery. The Montgomery Tax Incentive Review Council met on Thursday, August 15, 2024. Ohio law mandates that City Council approve, reject, or remand the decision of the Tax Incentive Review Council relative to the compliance of the tax increment financing districts with their enabling legislation.

Add this Resolution to the September 4, 2024, Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

- b. A Resolution Requesting The County Auditor To Make Tax Advances During The Year 2024 Pursuant To Ohio Revised Code § 321.34—Please find the attached correspondence from Finance Director Maura Gray requesting that City Council approving this Resolution that, if adopted, will authorize the request of advanced payment for taxes from the Hamilton County Auditor. Currently, the City receives these funds in April and September. If the City were to request monthly distributions of these funds in the three months prior to the settlement on the usual settlement dates, this could result in interest income of over \$119,000.00.

Add this Resolution to the September 4, 2024, Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

- c. A Resolution Authorizing The City Manager To Enter Into A Federal Local Let Project Agreement With The Ohio Department Of Transportation For The Project Known As Ham-Us 22-15.22 Montgomery Road Resurfacing Project, Pid No. 115757—Please find attached correspondence from Public Works Director Gary Heitkamp requesting that City Council consider adopting this Resolution that, if approved, will authorize the City Manager to enter into an LPA Federal Local-Let Project Agreement with ODOT for the HAM-US22-15.22 Montgomery Road (Pfeiffer Road to Weller Road) Resurfacing Project, PID #115757.

Add this Resolution to the September 4, 2024, Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

7. Administration Report
8. Law Director Report
9. City Council Member Reports
 - a. Mrs. Bissmeyer
 - b. Mrs. Mills-Reynolds
 - c. Mr. Dobrozsi
 - d. Vice Mayor Naiman
 - e. Mr. Suer
 - f. Mr. Margolis
 - g. Mayor Messer
10. Approval of Minutes- August 7, 2024 Business Session
11. Other Business
12. Executive Session
13. Adjournment

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Executive Assistant/ Clerk of Council
Department Heads
Terry Donnellon, Law Director

August 21, 2024
City Hall
6:00 p.m.

1. Call to Order
2. Roll Call
3. Special Presentation
4. Guests and Residents
5. Legislation for Consideration This Evening
6. Establishing an Agenda for the September 4, 2024 Business Session

Pending Legislation

- a. An Ordinance Repealing Section 33.01 Of The Code Of Ordinances Creating An Investment Committee And Establishing Its Authority—(Mr. Suer-2nd reading)

Add this Ordinance to the September 4, 2024 Business Session agenda for the second reading. The third reading will be held at the October 2, 2024 Business Session with adoption requested at that meeting.

New Legislation

- a. A Resolution to Adopt Recommendation of the Montgomery Tax Incentive Review Council with Respect to The Compliance of All Tax Increment Financing Districts Within the City of Montgomery

Add this Resolution to the September 4, 2024, Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

- b. A Resolution Requesting The County Auditor To Make Tax Advances During The Year 2024 Pursuant To Ohio Revised Code § 321.34

Add this Resolution to the September 4, 2024, Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

- c. A Resolution Authorizing The City Manager To Enter Into A Federal Local Let Project Agreement With The Ohio Department Of Transportation For The Project Known As Ham-Us 22-15.22 Montgomery Road Resurfacing Project, Pid No. 115757

Add this Resolution to the September 4, 2024, Business Session agenda, assign it to a City Council member for reading, and consider adoption of the Resolution that evening.

7. Administration Report
8. Law Director Report
9. City Council Member Reports

- a. Mrs. Bissmeyer
- b. Mrs. Mills-Reynolds
- c. Mr. Dobrozsi
- d. Vice Mayor Naiman
- e. Mr. Suer
- f. Mr. Margolis
- g. Mayor Messer

10. Approval of Minutes- August 7, 2024 Business Session

11. Other Business

12. Executive Session

13. Adjournment

Should you have any questions or concerns regarding this information, please do not hesitate to contact me.

C: Connie Gaylor, Executive Assistant/Clerk of Council
Department Heads,
Terry Donnellon, Law Director

ORDINANCE NO. , 2024

**AN ORDINANCE REPEALING SECTION 33.01 OF THE CODE OF ORDINANCES
CREATING AN INVESTMENT COMMITTEE AND ESTABLISHING ITS AUTHORITY**

WHEREAS, dating to 1974, Council created an Investment Committee comprised of the City Manager, Director of Finance, Director of Law, and two Council Members governing the investment of public funds; and

WHEREAS, Ohio law requires the City Council to adopt an Investment Policy which specifically governs the investment of public funds, and requires such policy to be filed with the Auditor of State and to be endorsed and accepted by all entities conducting investment business with the City; and

WHEREAS, Council believes the structure of the Investment Policy as required by State statute negates the need for Code § 33.01; and

WHEREAS, Section 33.01 further was amended to establish a Linked Deposit Program, which is no longer in use by the City; and

WHEREAS, with the adoption of a formal Investment Policy and the dormancy of the Linked Deposit Program, to avoid any conflict, upon the recommendation of the City Administration, Council believes it is appropriate to repeal Section 33.01 of the Code of Ordinances.

NOW THEREFORE, BE IT ORDAINED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. With the adoption of a formal Investment Policy as required by State law, and with the dormancy of the Linked Deposit Program, Council does hereby repeal § 33.01 of the Code of Ordinances.

SECTION 2. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed.

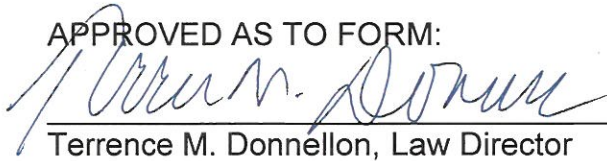
SECTION 3. This Ordinance shall take effect the earliest opportunity as allowable by law.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Ronald G. Messer, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

August 15, 2024

TO: Brian K. Riblet, City Manager

FROM: Maura Gray, Finance Director 

SUBJECT: Approval of Action by Montgomery Tax Incentive Review Council

Request

In accordance with ORC Section 5709.85, it is necessary for City Council to adopt legislation to approve the August 15, 2024 finding of the Montgomery Tax Incentive Review Council. The Tax Incentive Review Council has determined that all current tax increment financing districts are in compliance with the requirements of the legislation that created the districts.

Background

The City of Montgomery Tax Incentive Review Council meets annually to review all existing tax increment financing districts to ensure their compliance with all requirements of the agreements that created the districts. This Tax Incentive Review Council is comprised of one representative from the Hamilton County Auditor's Office, one representative of the Sycamore Community Schools, one representative of the Great Oaks Joint Vocational School District, one Montgomery City Council Member, and the City Manager.

Recommendation

Staff recommends City Council adopt a Resolution to affirm the action of the Montgomery Tax Incentive Review Council relative to the compliance of the current tax increment financing districts follow all standards. The meeting agenda and minutes from the Council's meeting are attached for your review.

City of Montgomery
Tax Incentive Review Council

AGENDA

Thursday, August 15, 2023, at 3:00 p.m.
City Hall Council Chambers

1. Call to order
2. Approval of Minutes of August 23, 2023
3. Review of outstanding tax incentive financing districts operating within the City of Montgomery:
 - a. Montgomery Triangle Development
 - b. Vintage Club Phase One
 - c. Vintage Club Phase Two
 - d. Montgomery Quarter
4. Approval of Annual TIF Financial Report
5. Other Business
6. Adjournment

Montgomery Tax Incentive Review Council
August 15, 2024
Minutes

Present: Beth Weber, Hamilton County Auditor's Office, Chairman
Brian Riblet, Montgomery City Manager
Maura Gray, Montgomery Finance Director
Brian Rabe, Great Oaks
Terry Donnellon, Montgomery Law Director

The meeting of the Montgomery Tax Incentive Review Council was called to order at 3:08 p.m. by Chairman Beth Weber.

The August 22, 2023, meeting minutes were approved as submitted, with a motion by Brian Rabe, seconded by Maura Gray, with all concurring.

The Council reviewed the following TIF Districts in place in the City of Montgomery:

1. Montgomery Triangle Development
2. Vintage Club, Phase One
3. Vintage Club, Phase Two
4. Montgomery Quarter

Brian Rabe made a motion to find all TIF Districts to be in compliance with all requirements of the TIF legislation, and this was seconded by Brian Riblet, with all concurring.

Under Other Business, Brian Riblet discussed the City's progress regarding the Montgomery Quarter and provided an update on Vintage Club. Brian Riblet also discussed the Comprehensive Community Plan currently underway.

Beth Weber thanked the City, on behalf of Auditor Jessica Miranda, for its continued efforts towards driving positive economic development in the City of Montgomery.

There being no further business to discuss, Beth Weber made a motion to adjourn, seconded by Brian Riblet, with all concurring. The Tax Incentive Review Council meeting was adjourned at 3:20 p.m.

Secretary

March 29, 2024

TO: Brian K. Riblet, City Manager

FROM: Maura Gray, Finance Director

SUBJECT: Tax Increment Financing Report FYE 2023

Please find attached a schedule of activities which details the amounts received and spent, both year-to-date and cumulative, for the four Tax Increment Financing projects in the City. The annual reports for the following TIF's have been electronically submitted to the Ohio Department of Development:

- Vintage Club (TIF Value Tax Year 2023 \$137,363,851)
- Vintage Club II (TIF Value Tax Year 2023 \$13,592,500)
- Triangle/Gateway (TIF Value Tax Year 2023 \$5,884,280)
- Montgomery Quarter (TIF Value Tax Year 2023 \$38,849,351)

Total combined TIF value is \$195,689,980. Copies of each report are attached for your information.

An aggregate recap of all activities both year to date and cumulative are presented below:

Amount of service payments and other sources deposited into TIF funds in 2023:

Service Payments	3,167,365
Service Payments and Other Sources	3,291,875

Expenditures of funds from tax increment equivalent funds in 2023:

School Payments & Infrastructure Improvements	3,476,864
Total Expenditures	4,820,043

Please let me know if you would like any additional information.

c: Kevin Chesar, Community Development Director
Connie Gaylor, Administrative Coordinator

City of Montgomery
Summary of Assessed Value of TIF Projects
For Tax Year 2023

		2023	
Project Name	Project #	Total TIF Assessed	
Montgomery Quarter	90270	\$	13,597,273
Total TIF Values (Assessed Values)		\$	13,597,273
Total Value		\$	38,849,351
Vintage Club Phase I	90086	\$	48,077,348
Total TIF Values (Assessed Values)		\$	48,077,348
Total Value		\$	137,363,851
Vintage Club Phase II	90220	\$	4,757,375
Total TIF Values (Assessed Values)		\$	4,757,375
Total Value		\$	13,592,500
Total Value Vintage Club TIF Phase I and II		\$	150,956,351
Triangle/Gateway	90080	\$	278,667
Triangle/Gateway	90108	\$	1,780,832
Total TIF Values (Assessed Values)		\$	2,059,498
Total Value		\$	5,884,280
Total Combined TIF Value		\$	195,689,980



Department of Development

TIFF REPORT – 2023

- 1 and 2. Name of Local Jurisdiction and County: *CITY OF MONTGOMERY Hamilton*
3. Jurisdiction that created the TIF ("County", "Municipal", or "Township"): *Municipal*
4. TIF type ("Parcel TIF or "Incentive District TIF"): *Incentive District TIF*
5. Date Created (mm/dd/yy): *10/19/05*
6. Identify Affected School District(s): *SYCAMORE*
7. Project Information/Name: *TRIANGLE TIF*
8. Type of Project: *Commercial* (C=Commercial, I=Industrial, M=Mixed Use, R=Residential)
9. Type of Public Improvements: *ROADWAY IMPROVEMENTS, PEDESTRIAN WALKWAY, PUBLIC SPACE, GREENSPACE ENHANCEMENT*
10. Exemption %: *100.0* Exemption Term: *20.0*
11. Project Investment:
- | | Real Property | Personal Property (if applicable) |
|------------------------------------|-----------------------|-----------------------------------|
| Projected (at time of legislation) | <i>\$6,500,000.00</i> | _____ |
| Actual (as of 12/31/2023) | <i>\$5,884,280.00</i> | _____ |
12. Employment Information:
- | | Retained | Created |
|------------------------------------|----------|---------|
| Projected (at time of legislation) | _____ | _____ |
| Actual (as of 12/31/2023) | _____ | _____ |
13. Dollar amount of service payments deposited into the TIF's tax increment equivalent fund:
- In Calendar Year 2023 *\$185,779.00* Cumulative (through 12/31/2023) *\$2,464,617.00*
- Year first payment made *2006*
14. Expenditures of money from the tax increment equivalent fund for the public infrastructure associated with the TIF
- In Calendar Year 2023 *\$83,968.00* Cumulative (through 12/31/2023) *\$3,031,595.00*
- Year first expense made *2009*
15. Date of most recent Tax Incentive Review Council (TIRC): *08/23/23*
16. TIRC recommendation (e.g.: compliance, non-compliance, etc.): *COMPLIANCE*

I hereby represent and certify that the foregoing information, to the best of my knowledge, is true, complete, and accurately describes the status of the TIF project as of December 31, 2023.

Maura Gray

Signature of Authorized Representative

Finance Director 3/28/24

Title

Date

Maura Gray

Printed name of Authorized Representative



Department of Development

TIFF REPORT – 2023

- 1 and 2. Name of Local Jurisdiction and County: *CITY OF MONTGOMERY Hamilton*
3. Jurisdiction that created the TIF ("County", "Municipal", or "Township"): *Municipal*
4. TIF type ("Parcel TIF or "Incentive District TIF"): *Incentive District TIF*
5. Date Created (mm/dd/yy): *07/23/14*
6. Identify Affected School District(s): *SYCAMORE*
7. Project Information/Name: *VINTAGE CLUB PH 1 TIF*
8. Type of Project: *Mixed* (C=Commercial, I=Industrial, M=Mixed Use, R=Residential)
9. Type of Public Improvements: *PARKING FACILITIES, GREEN SPACE, ROADWAY IMPROVEMNTS, PUBLIC UTILITIES*
10. Exemption %: *100.0* Exemption Term: *30.0*
11. Project Investment:
- | | Real Property | Personal Property (if applicable) |
|------------------------------------|-------------------------|-----------------------------------|
| Projected (at time of legislation) | <i>\$211,660,825.00</i> | |
| Actual (as of 12/31/2023) | <i>\$137,363,851.00</i> | |
12. Employment Information:
- | | Retained | Created |
|------------------------------------|----------|---------|
| Projected (at time of legislation) | | |
| Actual (as of 12/31/2023) | | |
13. Dollar amount of service payments deposited into the TIF's tax increment equivalent fund:
- In Calendar Year 2023 *\$2,620,781.00* Cumulative (through 12/31/2023) *\$27,293,892.00*
- Year first payment made *2016*
14. Expenditures of money from the tax increment equivalent fund for the public infrastructure associated with the TIF
- In Calendar Year 2023 *\$105,189.00* Cumulative (through 12/31/2023) *\$15,615,656.00*
- Year first expense made *2014*
15. Date of most recent Tax Incentive Review Council (TIRC): *08/23/23*
16. TIRC recommendation (e.g.: compliance, non-compliance, etc.): *COMPLIANCE*

I hereby represent and certify that the foregoing information, to the best of my knowledge, is true, complete, and accurately describes the status of the TIF project as of December 31, 2023.

Maura Gray

Signature of Authorized Representative

Finance Director 3/28/24

Title

Date

Maura Gray

Printed name of Authorized Representative



Department of Development

TIFF REPORT – 2023

- 1 and 2. Name of Local Jurisdiction and County: *CITY OF MONTGOMERY Hamilton*
3. Jurisdiction that created the TIF ("County", "Municipal", or "Township"): *Municipal*
4. TIF type ("Parcel TIF or "Incentive District TIF"): *Incentive District TIF*
5. Date Created (mm/dd/yy): *05/23/18*
6. Identify Affected School District(s): *SYCAMORE*
7. Project Information/Name: *VINTAGE CLUB PH2 NORTH TIF*
8. Type of Project: *Mixed* (C=Commercial, I=Industrial, M=Mixed Use, R=Residential)
9. Type of Public Improvements: *PARKING FACILITIES, GREENSPACE, ROADWAY IMPROVEMNTS, UTILITIES*
10. Exemption %: *100.0* Exemption Term: *30.0*
11. Project Investment:

	Real Property	Personal Property (if applicable)
Projected (at time of legislation)	<i>\$24,154,536.00</i>	_____
Actual (as of 12/31/2023)	<i>\$13,592,500.00</i>	_____
12. Employment Information:

	Retained	Created
Projected (at time of legislation)	_____	_____
Actual (as of 12/31/2023)	_____	_____
13. Dollar amount of service payments deposited into the TIF's tax increment equivalent fund:

In Calendar Year 2023 *\$360,805.00* Cumulative (through 12/31/2023) *\$1,108,366.00*

Year first payment made *2022*
14. Expenditures of money from the tax increment equivalent fund for the public infrastructure associated with the TIF

In Calendar Year 2023 *\$464,776.00* Cumulative (through 12/31/2023) *\$5,132,008.00*

Year first expense made *2018*
15. Date of most recent Tax Incentive Review Council (TIRC): *08/23/23*
16. TIRC recommendation (e.g.: compliance, non-compliance, etc.): *COMPLIANCE*

I hereby represent and certify that the foregoing information, to the best of my knowledge, is true, complete, and accurately describes the status of the TIF project as of December 31, 2023.

Maura Gray
Signature of Authorized Representative

Finance Director *3/28/24*
Title Date

Maura Gray
Printed name of Authorized Representative



Department of Development

TIFF REPORT – 2023

- 1 and 2. Name of Local Jurisdiction and County: *CITY OF MONTGOMERY Hamilton*
3. Jurisdiction that created the TIF ("County", "Municipal", or "Township"): *Municipal*
4. TIF type ("Parcel TIF or "Incentive District TIF"): *Incentive District TIF*
5. Date Created (mm/dd/yy): *08/07/19*
6. Identify Affected School District(s): *SYCAMORE*
7. Project Information/Name: *MONTGOMERY QUARTER PH1 TIF*
8. Type of Project: *Mixed* (C=Commercial, I=Industrial, M=Mixed Use, R=Residential)
9. Type of Public Improvements: *PARKING FACILITIES, GREENSPACE, ROADWAY IMPROVEMENTS, UTILITIES*
10. Exemption %: *100.0* Exemption Term: *30.0*

11. Project Investment:	Real Property	Personal Property (if applicable)
Projected (at time of legislation)	<i>\$65,388,400.00</i>	
Actual (as of 12/31/2023)	<i>\$38,849,351.00</i>	

12. Employment Information:	Retained	Created
Projected (at time of legislation)		
Actual (as of 12/31/2023)		

13. Dollar amount of service payments deposited into the TIF's tax increment equivalent fund:

In Calendar Year 2023 *\$0.00* Cumulative (through 12/31/2023) _____

Year first payment made _____

14. Expenditures of money from the tax increment equivalent fund for the public infrastructure associated with the TIF

In Calendar Year 2023 *\$1,339,813.00* Cumulative (through 12/31/2023) *\$27,443,016.00*

Year first expense made *2020*

15. Date of most recent Tax Incentive Review Council (TIRC): *08/23/23*

16. TIRC recommendation (e.g.: compliance, non-compliance, etc.): *COMPLIANCE*

I hereby represent and certify that the foregoing information, to the best of my knowledge, is true, complete, and accurately describes the status of the TIF project as of December 31, 2023.

Maura Gray

Signature of Authorized Representative

Finance Director 3/29/24

Title

Date

Maura Gray

Printed name of Authorized Representative

City of Montgomery
Annual TIF Report Summary for Fiscal Year 2023
3/29/2024

Fund	TIF Name	Description	Term	Commencement Date	Termination Date	2023 Service Payments	CUMMULATIVE
329	MQ	Montgomery Quarter	30	8/17/2019	8/17/2049		-
4661	TRIANGLE	Subdivision Lots 1,2, &3	20	10/19/2005	10/19/2025	185,779.00	2,464,617.00
331	VC I	Vintage Club Phase I	30	9/6/2006	9/6/2036	2,620,781.00	27,293,892.00
332	VC II	Vintatge Club Phase II	30	5/23/2018	5/23/2048	360,805.00	1,108,366.00
TOTAL						3,167,365.00	30,866,875.00

RESOLUTION NO. , 2024

**A RESOLUTION TO ADOPT THE RECOMMENDATION OF THE
MONTGOMERY TAX INCENTIVE REVIEW COUNCIL WITH RESPECT TO
THE COMPLIANCE OF ALL TAX INCREMENT FINANCING DISTRICTS
WITHIN THE CITY OF MONTGOMERY**

WHEREAS, the Council of the City of Montgomery, Ohio has approved tax increment financing districts to encourage economic development of certain properties within the City limits; and

WHEREAS, the Montgomery Tax Incentive Review Council meets annually to review these districts for compliance with payments in lieu of real estate taxes and other requirements as set forth in the legislation which created the districts; and

WHEREAS, ORC Section 5709.85 requires, annually, that the recommendations of Tax Incentive Review Councils to be adopted by the legislative authority of the political subdivision in which the district is located, and such legislation forwarded to the Ohio Department of Development.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. The Council of the City of Montgomery, Ohio, having received the 2024 report of the Montgomery Tax Incentive Review Council, hereby adopts the recommendation of that Council, a copy of which is attached hereto, with respect to the compliance of each tax increment financing district within the corporate limits of the City of Montgomery.

SECTION 2. This Resolution shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Ronald G. Messer, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

August 9, 2024

TO: Brian K. Riblet, City Manager
FROM: Maura Gray, Finance Director *ma*
SUBJECT: ORC 321.34 Advance Payment of Taxes

Background

The Ohio Revised Code section 321.34 allows for the advance payment of taxes to be drawn on the undivided real estate tax fund of Hamilton County. Forty-three political subdivisions in Hamilton County currently receive advances of paid property taxes. Many of these subdivisions are financially healthy and affluent political subdivisions.

Financial Impact

In June of 2024, our General Operating Account is earning 5.13 percent annual yield. Our last Property Tax Settlement total was just over 7 million dollars. Currently, we receive these funds in April and September. If the city was to request monthly distributions of these funds in the three months prior to the settlement on the usual settlement dates, this could result in interest income of over \$119,000.00.

	ESTIMATED AMOUNT OF ADVANCE	YIELD RATE 5.13%	MONTHLY INTEREST	NUMBER OF MONTHS	ADVANCE YIELD
JAN	2,333,333.33	0.004275	9,975.00	3	29,925.00
FEB	2,333,333.33	0.004275	9,975.00	2	19,950.00
MARCH	2,333,333.33	0.004275	9,975.00	1	9,975.00
	7,000,000.00				\$ 59,850.00

	ESTIMATED AMOUNT OF ADVANCE	YIELD RATE 5.13%	MONTHLY INTEREST	NUMBER OF MONTHS	ADVANCE YIELD
JUNE	2,333,333.33	0.004275	9,975.00	3	29,925.00
JULY	2,333,333.33	0.004275	9,975.00	2	19,950.00
AUGUST	2,333,333.33	0.004275	9,975.00	1	9,975.00
	7,000,000.00				\$ 59,850.00

POTENTIAL ANNUAL YIELD AT 5.13 %					\$ 119,700.00
----------------------------------	--	--	--	--	---------------

Recommendation

Staff presented this information to Financial Planning Committee at the August 5th meeting and they unanimously recommend to City Council, the passage of legislation to request the monthly advance of taxes in accordance with ORC 321.34.

RESOLUTION NO. , 2024

**A RESOLUTION REQUESTING THE COUNTY AUDITOR TO MAKE
TAX ADVANCES DURING THE YEAR 2024 PURSUANT TO
OHIO REVISED CODE § 321.34**

WHEREAS, the Ohio Revised Code does allow a municipal corporation to request payment from the County Auditor funds derived from taxes or other sources payable to the County Treasurer which may be held on account of a local subdivision; and

WHEREAS, Council does desire to make this statutory request for fiscal year 2024 and to authorize payment to the City.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. In accordance with R.C. § 321.34, the County Auditor and the County Treasurer are hereby requested to draw, and to pay the City of Montgomery, Ohio, such funds due in any settlement of fiscal year 2024 derived from taxes or other sources payable to the County Treasurer to the account of the City of Montgomery, and lawfully applicable for the purposes of the current fiscal year. Such payments are to be made from time to time upon the written request to the County Auditor from either Brian K. Riblet, City Manager, or Maura Gray, Director of Finance.

SECTION 2. The Clerk of Council of the City of Montgomery is hereby directed to transmit a certified copy of this Resolution to the Auditor of Hamilton County, Ohio.

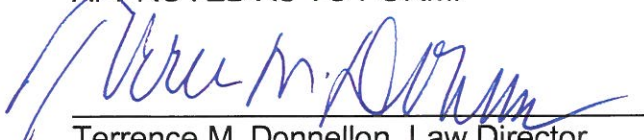
SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Ronald G. Messer, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

August 8, 2024

TO: Brian Riblet, City Manager

FROM: Gary Heitkamp, Public Works Director

SUBJECT: Legislation Request for HAM-US22-15.22 Montgomery Road
(Pfeiffer Road to Weller Road) Resurfacing Project, PID #115757,
LPA Federal Local-Let Project Agreement

Request

It is necessary for City Council to adopt a Resolution authorizing the City Manager to enter into an LPA Federal Local-Let Project Agreement with the Ohio Department of Transportation (ODOT) for the HAM-US22-15.22 Montgomery Road (Pfeiffer Road to Weller Road) Resurfacing Project, PID #115757.

Financial Impact

The LPA Federal Local-Let Project Agreement will allow the City of Montgomery to be the “lead” agency for design, bid, award, and construction of the project that has been approved for Federal funding of up to \$446,984.80. The Federal funding is applicable to the construction and inspection phases of the project. The project will consist of resurfacing Montgomery Road curb-to-curb between Pfeiffer Road and Weller Road, a distance of approximately 0.67 miles.

The amount listed above represents 80% of estimated construction costs associated with the asphalt milling, base repairs, asphalt leveling and surfacing course, and application of thermos-plastic pavement markings. The agreement includes the requirement for the City of Montgomery to be responsible for the remainder, which is estimated to be \$446,984.20, consisting of the 20% match for the Federal funding eligible work items, and 100% of non-Federal funding eligible work items, such as curb, sidewalk, and ADA ramp replacements. The anticipated total construction and inspection cost is \$893,969.00.

Funding for this project is included in the 2025 City of Montgomery Capital Improvement Program (CIP) 410-261-5470 budget.

Background

Staff recently renewed required certification through the Ohio Department of Transportation (ODOT) allowing the City of Montgomery to complete projects “Local-Let”. This allows the City of Montgomery staff to oversee all phases of the project; including project design, bid, award, and construction administration and inspection.

Recommendation

Staff requests City Council to approve this legislation at the September 4, 2024 City Council Business Session. Adoption of this legislation will authorize the City Manager to enter into an LPA Federal Local-Let Project Agreement with ODOT for the HAM-US22-15.22 Montgomery Road (Pfeiffer Road to Weller Road) Resurfacing Project, PID #115757.

Attachment – LPA Federal Local-Let Project Agreement

CFDA 20.205

LPA FEDERAL LOCAL-LET PROJECT AGREEMENT

THIS AGREEMENT is made by and between the State of Ohio, Department of Transportation, (ODOT), 1980 West Broad Street, Columbus, Ohio 43223 and City of Montgomery, 7315 Cornell Road, Montgomery, OH 45242 (LPA).

1. PURPOSE

- 1.1 The National Transportation Act has made available certain Federal funding for use by local public agencies. The Federal Highway Administration (FHWA) designated ODOT as the agency in Ohio to administer FHWA's Federal funding programs.
- 1.2 Section 5501.03 (D) of the **Ohio Revised Code** (ORC) provides that ODOT may coordinate its activities and enter into contracts with other appropriate public authorities to administer the design, qualification of bidders, competitive bid letting, construction, inspection, and acceptance of any projects administered by ODOT, provided the administration of such projects is performed in accordance with all applicable Federal and State laws and regulations with oversight by ODOT.
- 1.3 The FY26 Urban Paving project in the City of Montgomery on a portion of US 22 (Montgomery Rd) (PROJECT) is a transportation activity eligible to receive Federal funding, and which is further defined in the PROJECT scope.
- 1.4 The purpose of this Agreement is to set forth requirements associated with the Federal funds available for the PROJECT and to establish the responsibilities for the local administration of the PROJECT.

2. LEGAL REFERENCES AND COMPLIANCE

- 2.1 This Agreement is authorized and/or governed by the following statutes and/or policies, which are incorporated, by reference, in their entirety:

A. FEDERAL

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 23 CFR 1.33 – Conflicts of Interest
- 23 CFR Part 172 – Procurement, Management and "Administration of Engineering and Design Related Service"
- 23 CFR 630.106 – Authorization to Proceed
- 23 CFR 636.116 – What Organizational Conflict of Interest Requirements Apply to Design-Build Projects?
- 23 CFR Part 645 –Utilities
- 48 CFR Part 31 – Contract Cost Principles and Procedures
- 49 CFR Part 26 –Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs
- 23 USC § 112 – Letting of Contracts
- 40 USC §§ 1101-1104 – "Selection of Architects and Engineers"
- Federal Funding Accountability and Transparency Act (FFATA)

B. STATE

- ORC 102.03
- ORC 153.65 -153.71
- ORC 5501.03(D)
- ORC 2921.42 and 2921.43
- Ohio Administrative Code 4733-35-05

C. ODOT

- ODOT's Manual for Administration of Contracts for Professional Services
- ODOT's Specifications for Consulting Services – 2016 Edition
- ODOT's Consultant Prequalification Requirements and Procedures
- ODOT's Construction and Material Specifications Manual
- ODOT's Construction Administration Manual of Procedures
- ODOT's Local-let Manual of Procedures

2.2 The LPA shall comply with all applicable Federal and State laws, regulations, executive orders, and applicable ODOT manuals and guidelines. This obligation is in addition to compliance with any law, regulation, or executive order specifically referenced in this Agreement.

2.3 The LPA shall have on file a completed and approved Local-let Participation Requirement Review Form (FORM) before the first required submission of the Project's Stage Plan Set. Failure to comply will result in the delay of the Federal Authorization for Construction, until the FORM has been completed and approved. Failure to submit a completed FORM will result in the PROJECT reverting to ODOT-let and the LPA will be prohibited from participating in the Local-let Program until the Form is completed and approved by ODOT.

3. FUNDING

3.1 The total cost for the PROJECT is estimated to be \$ 928,915.00 as set forth in Attachment 1. ODOT shall provide to the LPA 80 percent of the eligible costs, up to a maximum of \$ in Federal funds. This maximum amount reflects the funding limit for the PROJECT set by the applicable Program Manager. Unless otherwise provided, funds through ODOT shall be applied only to the eligible costs associated with the actual construction of the improvements and construction engineering/inspection activities of the PROJECT.

3.2 The LPA shall provide all other financial resources necessary to fully complete the PROJECT, including all 100% Locally funded work, and all cost overruns and contractor claims in excess of the maximum(s) indicated in 3.1 above.

4. PROJECT DEVELOPMENT AND DESIGN

4.1 The LPA and ODOT agree that the LPA is qualified to administer this PROJECT and is in full compliance with all LPA participation requirements.

4.2 The LPA and ODOT agree that the LPA has received funding approval for the PROJECT from the applicable ODOT Program Manager having responsibility for monitoring such projects using the Federal funds involved.

4.3 The LPA shall design and construct the PROJECT in accordance with a recognized set of written design standards. The LPA shall make use of ODOT's Location and Design Manual (L&D), or the appropriate AASHTO publication). Even though the LPA may use its own standards, ODOT may require the LPA to use a design based on the L&D Manual for projects that contain a high crash rate or areas of crash concentrations. Where the LPA has adopted ODOT standards for the PROJECT, the LPA shall be responsible for ensuring that any ODOT standards used for the

PROJECT are current and/or updated. The LPA shall be responsible for informing the District LPA Manager of any changes. ODOT's Office of Local Programs

- 4.4 The LPA shall designate a Project Design Engineer, who is a registered professional engineer to serve as the LPA's principal representative for attending to project responsibilities. If the Project Design Engineer is not an employee of the LPA, the LPA must engage the services of a pre-qualified ODOT consultant, who has been chosen using a Qualification-Based Selection (QBS) process, as required pursuant to ORC 153.65 through 153.71. The pre-qualified list is available on the ODOT website at: www.dot.state.oh.us/DIVISIONS/Engineering/CONSULTANT.
- 4.5 If Federal funds are used for a phase of project development and the LPA executes an agreement with a consultant prior to the receipt of the "Authorization" notification from ODOT, ODOT may terminate this Agreement and cease all Federal funding commitments.
- 4.6 ODOT reserves the right to move this PROJECT into a future sale year if the LPA does not adhere to the established PROJECT schedule, regardless of any funding commitments.

5. ENVIRONMENTAL RESPONSIBILITIES

- 5.1 In the administration of this PROJECT, the LPA shall be responsible for conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing applicable environmental assessment, for clearance responsibilities for the PROJECT pursuant to the National Environmental Policy Act (NEPA) and related regulations, including but not limited to the requirements of the National Historic Preservation Act, and for securing all necessary permits.
- 5.2 If the LPA does not have the qualified staff to perform any or all of the respective environmental responsibilities, the LPA shall hire an ODOT Pre-Qualified Consultant through a QBS process. The pre-qualified list is available on the ODOT web page at ODOT's Office of Contracts. If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and guidelines.
- 5.3 ODOT shall be responsible for the review of all environmental documents and reports and shall complete all needed coordination activities with State and Federal regulatory agencies toward securing environmental clearance.
- 5.4 The LPA shall be responsible for assuring compliance with all commitments made as part of the PROJECT's environmental clearance and/or permit requirements during the construction of the PROJECT.
- 5.5 The LPA shall require its consultant(s), selected to prepare a final environmental document pursuant to the requirements of NEPA, to execute a copy of a disclosure statement specifying that the consultant(s) has no financial or other interest in the outcome of the PROJECT.
- 5.6 The LPA shall submit a Notice of Intent to the Ohio EPA to obtain coverage under the National Pollution Discharge Elimination System (NPDES) Construction General Permit for all projects where the combined Contractor and Project Earth Disturbing Activity (EDA) are one (1) acre or more. If the LPA chooses not to use ODOT's L&D Vol. 2 on Local-let LPA projects, they may use an alternative post-construction Best Management Practice(BMP)criterion with Ohio EPA approval.

6. RIGHT-OF-WAY(R/W)/ UTILITIES/ RAILROAD COORDINATION

- 6.1 All R/W Acquisition activities shall be performed by the LPA in accordance with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970 (Public Law 91-646) as amended

by 49 CFR Part 24 (Uniform Act), any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT.

- 6.2 If existing and newly acquired R/W is required for this PROJECT, the LPA shall certify that all R/W has been acquired in conformity with Federal and State laws, regulations, policies, and guidelines. Per ODOT's Office of Real Estate, any LPA staff who perform real estate functions shall be prequalified. If the LPA does not have the qualified staff to perform any or all of the respective R/W functions, the LPA shall hire an ODOT Pre-qualified Consultant through a QBS process. The LPA shall not hire the same consultant to perform both the appraisal and appraisal review functions. Appraisal review shall be performed by an independent staff or fee reviewer and shall be hired directly by the LPA.
- 6.3 If the LPA hires a pre-qualified consultant, the LPA shall be responsible for monitoring the consultant's activities and ensuring that the consultant is following all Federal and State laws, regulations, policies, and procedures.
- 6.4 All relocation assistance activities shall be performed by the LPA in conformity with Federal and State laws, including the Uniform Act, and any related Federal regulations issued by the FHWA, and any rules, policies, and procedures issued by ODOT. The LPA shall not hire a consultant to perform both the relocation and relocation review functions, nor shall the LPA hire a sub-consultant for Relocation and another sub-consultant for Relocation Review. Relocation Review shall be performed by an independent staff person or independent fee reviewer and shall be hired directly by the LPA.
- 6.5 The LPA shall provide the ODOT District Office with its LPA Certification of Right of Way Control Letter, certifying that all R/W property rights necessary for the PROJECT are under the LPA's control, that all R/W has been cleared of encroachments, and that utility facilities have been appropriately relocated or accounted for so as not to interfere with project construction activities. ODOT shall make use of the LPA's Certification of Right of Way Control Letter, as well as evaluate the LPA's and/or consultant's performance of the project real estate activities under Titles II and III of the Uniform Act, and, as appropriate, certify compliance to the FHWA. The LPA shall be liable to repay to ODOT all Federal funds disbursed to it under this Agreement if the certification of the LPA is found to be in error or otherwise invalid.
- 6.6 In the administration of this PROJECT, the LPA agrees to follow all procedures described in the ODOT Utilities Manual and 23 CFR Part 645. When applicable, the LPA shall enter into a Utility Relocation Agreement with each utility prior to the letting of construction.
- 6.7 The LPA shall submit all subsequent modifications to the design of the PROJECT and/or any disposal of property rights acquired as part of the PROJECT to ODOT and FHWA for approval. Consistent with Sections 6.1 and 6.4 of this Agreement, the LPA shall assure that, if any property acquired for this PROJECT is subsequently sold for less than fair market value, all Title VI requirements are included in the instrument which transfers the property. Consistent with sections 6.1 and 6.4 of this Agreement, the LPA shall assure that if the LPA grants a permit or license for the property acquired for this PROJECT that the license or permit require the licensee or permit holder to adhere to all Title VI requirements.
- 6.8 Unless by prior written agreement, the LPA shall be responsible for any necessary railroad coordination and agreements. The LPA shall comply with the provisions of Title 23 of the Code of Federal Regulations and applicable chapters of the ORC regarding all activities relating to Railroad-Highway projects.
- 6.9 No reimbursable construction costs shall be incurred by the LPA prior to the receipt of the "Authorization to Advertise" notification from ODOT. If such costs are incurred, ODOT may terminate this Agreement and cease all Federal funding commitments.

7. ADVERTISING, SALE, AND AWARD

- 7.1 The LPA **shall not** advertise for bids prior to the receipt of the "Authorization to Advertise" notification from ODOT. Should advertising or work commence prior to the receipt of the "Authorization to Advertise" notification, ODOT shall immediately terminate this Agreement and cease all Federal funding commitments.
- 7.2 Any use of sole source or proprietary bid items must be approved by the applicable ODOT district. All sole source or proprietary bid items should be brought to the attention of the LPA Manager as soon as possible so as not to cause a delay in the plan package submission process. Bid items for traffic signal and highway lighting projects must be in conformance with ODOT's Traffic Engineering Manual.
- 7.3 Once the LPA receives Federal authorization to advertise, the LPA may begin advertising activities. Whenever local advertisement requirements differ from Federal advertisement requirements, the Federal requirements shall prevail. The period between the first legal advertising date and the bid opening date shall be a minimum of 21 calendar days. The LPA shall submit to ODOT any addendum to be issued during the advertisement period that changes estimates or materials. ODOT shall review and approve such addendum for project eligibility. All addenda shall be distributed to all potential bidders prior to opening bids and letting the contracts.
- 7.4 The LPA must incorporate ODOT's LPA Bid Template in its entirety in project bid documents. The template includes-Form FHWA-1273, Required Contract Provisions, a set of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies, which must be included in all contracts as well as appropriate subcontracts and purchase orders.
- 7.5 The LPA shall require the contractor to be enrolled in, and maintain good standing in, the Ohio Bureau of Workers' Compensation Drug-Free Safety Program (DFSP), or a similar program approved by the Bureau of Workers' Compensation, and the LPA must require the same of any of its subcontractors.
- 7.6 Only ODOT pre-qualified contractors are eligible to submit bids for this PROJECT. Pre-qualification status must be in effect/current **at the time of award**. For work types that ODOT does not pre-qualify, the LPA must still select a qualified contractor. Subcontractors are not subject to the pre-qualification requirement, unless otherwise directed by the LPA in the bidding documents. In accordance with FHWA Form 1273, Section VII and 23 CFR 635.116, the prime contractor must perform no less than 30% of the total original contract price. The 30%-prime contractor requirement does not apply to design-build contracts.
- 7.7 In accordance with ORC 153.54, et. seq., the LPA shall require that the selected contractor provide a performance and payment bond in an amount equal to at least 100% of its contract price as security for the faithful performance of its contract. ODOT shall be named an obligee on any bond. If the LPA has 100% locally funded work product within this Agreement, the LPA must allocate the correct percent of the performance and payment bond cost to the 100% locally funded work product.
- 7.8 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is not subject to a finding for recovery under ORC 9.24, that the contractor has taken the appropriate remedial steps required under ORC 9.24, or that the contractor otherwise qualifies under the exceptions to this section. Findings for recovery can be viewed on the Auditor of State's website at <https://ohioauditor.gov/findings.html> . If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.

- 7.9 Before awarding a contract to the selected contractor, the LPA shall verify that the contractor is an active registrant on the Federal System for Award Management (SAM). Pursuant to 48 CFR 9.404, contractors that have an active exclusion on SAM are excluded from receiving Federal contracts, certain subcontracts, and certain Federal financial and nonfinancial assistance and benefits. If the LPA fails to so verify, ODOT may immediately terminate this Agreement and release all Federal funding commitments.
- 7.10 Per ORC 9.75(B), the LPA is prohibited from imposing any geographical hiring preference on any bidder in the LPA's bid documents or on any successful contractor in the LPA's award or contract for the construction of the PROJECT.
- 7.11 After analyzing all bids for completeness, accuracy, and responsiveness, per ORC 153.12, the LPA shall approve the award of the contract in accordance with laws and policies governing the LPA within 60 days after bid opening. Within 45 days of that approval, the LPA shall submit to ODOT notification of the project award by submitting a bid tabulation, a copy of the ordinance or resolution, and direct payment information as required in Attachment 2 of this Agreement, if applicable.
8. CONSTRUCTION CONTRACT ADMINISTRATION
- 8.1 The LPA shall provide and maintain competent and adequate project management covering the supervision and inspection of the development and construction of the PROJECT. The LPA shall bear the responsibility of ensuring that construction conforms to the approved plans, surveys, profiles, cross sections, and material specifications. If a consultant is used for engineering and/or inspection activities, the LPA must use a QBS process as required pursuant to ORC 153.65 through 153.71. Any construction contract administration or engineering costs incurred by the LPA or their consultant prior to the construction contract award date will not be eligible for reimbursement under this Agreement.
- 8.2 The LPA must maintain a project daily diary that is up-to-date and contains the following information: all work performed, list of equipment utilized, project personnel and hours worked, pay quantities, daily weather conditions, special notes and instructions to the contractor, and any unusual events occurring on or adjacent to the PROJECT. Additionally, the LPA is responsible for documenting measurements, calculations, material quality, quantity, and basis for payment; change orders, claims, testing and results, traffic, inspections, plan changes, prevailing wage, EEO and DBE, if applicable. The LPA is responsible for ensuring all materials incorporated into the PROJECT comply with ODOT's Construction and Material Specifications and meet the requirements of Appendix J in the LATP Manual of Procedures.
- 8.3 The LPA shall certify both the quantity and quality of material used, the quality of the work performed, and the amount of construction engineering cost, when applicable, incurred by the LPA for the eligible work on the PROJECT, as well as at the completion of construction. The LPA shall certify that the construction is in accordance with the approved plans, surveys, profiles, cross sections and material specifications or approved amendments thereto.
- 8.4 The Federal-aid Highway Program operates on a reimbursement basis, which requires that costs actually be incurred and paid before a request is made for reimbursement. The LPA shall review and/or approve all invoices prior to payment and prior to requesting reimbursement from ODOT for work performed on the PROJECT. If the LPA is requesting reimbursement, it must provide documentation of payment for the project costs requested. The LPA shall ensure the accuracy of any invoice in both amount and in relation to the progress made on the PROJECT. The LPA must submit to ODOT a written request for either current payment or reimbursement of the Federal/State share of the expenses involved, attaching copies of all source documentation associated with pending invoices or paid costs. To assure prompt payment, the measurement of quantities and the recording for payment should be performed daily as the items of work are completed and accepted.

8.5 ODOT shall pay, or reimburse, the LPA or, at the request of the LPA and with concurrence of ODOT, pay directly to the LPA's construction contractor ("Contractor"), the eligible items of expense in accordance with the cost-sharing provisions of this Agreement. If the LPA requests to have the Contractor paid directly, Attachment 2 to this Agreement shall be completed and submitted with the project bid tabulations, and the Contractor shall be required to establish Electronic Funds Transfer with the State of Ohio (STATE). ODOT shall pay the Contractor or reimburse the LPA within 30 days of receipt of the approved Contractor's invoice from the LPA.

8.6 The LPA shall notify ODOT of the filing of any mechanic's liens against the LPA's Contractor within three (3) business days of receipt of notice of the mechanic's lien. Failure to so notify ODOT or failure to process a mechanic's lien in accordance with the provisions of ORC Chapter 1311 may result in the termination of this Agreement. Upon the receipt of notice of a mechanic's lien, ODOT reserves the right to (1) withhold an amount of money equal to the amount of the mechanic's lien that may be due and owing to either the LPA or the Contractor; (2) terminate direct payment to the affected Contractor; or (3) take both actions, until such time as the mechanic's lien is resolved.

8.7 Payment or reimbursement to the LPA shall be submitted to:

Brian Riblet, City Manager
City of Montgomery
10101 Montgomery Road
Montgomery, OH 45242

8.8 If, for any reason, the LPA contemplates suspending or terminating the contract of the Contractor, it shall first seek ODOT's written approval. Failure to timely notify ODOT of any contemplated suspension or termination, or failure to obtain written approval from ODOT prior to suspension or termination, may result in ODOT terminating this Agreement and ceasing all Federal funding commitments.

8.9 If ODOT approves any suspension or termination of the contract, ODOT reserves the right to amend its funding commitment in paragraph 3.1 and, if necessary, unilaterally modify any other term of this Agreement in order to preserve its Federal mandate. Upon request, the LPA agrees to assign all rights, title, and interests in its contract with the Contractor to ODOT to allow ODOT to direct additional or corrective work, recover damages due to errors or omissions, and to exercise all other contractual rights and remedies afforded by law or equity.

8.10 Any LPA right, claim, interest, and/or right of action, whether contingent or vested, arising out of, or related to any contract entered into by the LPA for the work to be performed by the Contractor on this PROJECT (the Claim(s)), may be subrogated to ODOT, and ODOT shall have all of the LPA's rights in/to the Claim(s) and against any other person(s) or entity(ies) against which such subrogation rights may be enforced. The LPA shall immediately notify ODOT in writing of any Claim(s). The LPA further authorizes ODOT to sue, compromise, or settle any such Claim(s). It is the intent of the parties that ODOT be fully substituted for the LPA and subrogated to all the LPA's rights to recover under such Claim(s). The LPA agrees to cooperate with reasonable requests from ODOT for assistance in pursuing any action on the subrogated Claim(s) including requests for information and/or documents and/or to testify.

8.11 After completion of the PROJECT, and in accordance with 23 USC 116 and applicable provisions of the ORC, the LPA shall maintain the PROJECT to design standards and provide adequate maintenance activities for the PROJECT, unless otherwise agreed to by ODOT. The PROJECT must remain under public ownership and authority for 20 years unless otherwise agreed to by ODOT. If the PROJECT is not being adequately maintained, ODOT shall notify the LPA of any deficiencies, and if the maintenance deficiencies are not corrected within a reasonable amount of time, ODOT may determine that the LPA is no longer eligible for future participation in any federally funded programs.

- 8.12 The LPA must provide the final invoices, and final report (Appendix P located in the Construction Chapter of the LPA Manual) along with all necessary closeout documentation within six (6) months of the physical completion date of the PROJECT. All costs must be submitted within six (6) months of the established completion date. Failure to submit final invoices along with the necessary closeout documentation within the six (6)-month period may result in closeout of the PROJECT and loss of eligibility of any remaining Federal and or State funds.
- 8.13 The LPA shall be responsible for verifying that a C92 GoFormz has been completed by the prime contractor for each subcontractor and material supplier working on the PROJECT, prior to starting work. This requirement will be routinely monitored by the District Construction Monitor to ensure compliance.
- 8.14 The LPA shall be responsible for monitoring all DBE Subcontractors on the project to ensure they are performing a Commercially Useful Function (CUF) as directed in the LATP Manual of Procedures.
- 8.15 The LPA shall be responsible for monitoring payments made by prime contractors and Subcontractors to ensure compliance with the Prompt Payment requirements outlined in Construction and Materials Specifications (C&MS) 107.21.

9. CERTIFICATION AND RECAPTURE OF FUNDS

- 9.1 This Agreement is subject to the determination by ODOT that sufficient funds have been appropriated by the Ohio General Assembly to the STATE for the purpose of this Agreement and to the certification of funds by the Office of Budget and Management, as required by ORC 126.07. If ODOT determines that sufficient funds have not been appropriated for the purpose of this Agreement or if the Office of Budget and Management fails to certify the availability of funds, this Agreement or any renewal thereof will terminate on the date funding expires.
- 9.2 Unless otherwise directed by ODOT, if for any reason the PROJECT is not completed in its entirety or to a degree acceptable to ODOT and FHWA, the LPA shall repay to ODOT an amount equal to the total funds ODOT disbursed on behalf of the PROJECT. In turn, ODOT shall reimburse FHWA an amount equal to the total sum of Federal dollars it has received for the PROJECT. If the LPA has not repaid ODOT in full an amount equal to the total funds ODOT disbursed on behalf of the PROJECT, any funds recovered from the performance and payment bond as required under section 7.7 shall be used to offset the Federal dollars reimbursed to FHWA.

10. NONDISCRIMINATION

- 10.1 In carrying out this Agreement, the LPA shall not discriminate against any employee or applicant for employment because of race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability as that term is defined in the American with Disabilities Act, military status (past, present, or future), or genetic information. The LPA shall ensure that applicants are hired and that employees are treated during employment without regard to their race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- 10.2 The LPA agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, and in all solicitations or advertisements for employees placed by it, state that all qualified applicants shall receive consideration for employment without regard to race, religion, color, sex (including pregnancy, gender identity and sexual orientation), national origin, ancestry, age, disability, military status, or genetic information. The LPA shall incorporate this nondiscrimination requirement within

all of its contracts for any of the work on the PROJECT (other than subcontracts for standard commercial supplies or raw materials) and shall require all of its contractors to incorporate such requirements in all subcontracts for any part of such project work.

- 10.3 The LPA shall not discriminate on the basis of race, color, national origin, or sex in the award of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement and in the fulfillment of DBE-related requirements set forth by ODOT. The LPA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of contracts and subcontracts financed in whole or in part with Federal funds provided in conjunction with this Agreement. ODOT's DBE Program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation ("U.S. DOT"), is incorporated by reference in this agreement. The fulfillment of DBE-related requirements by the LPA is a legal obligation and failure to do so shall be treated as a violation of this Agreement.
- 10.4 During the performance of this contract, the LPA, for itself, its assignees and successors in interest agrees as follows:
- (a) **Compliance with Regulations:** The LPA will comply with the regulations relative to nondiscrimination in Federally assisted programs of the U.S. DOT, 49 CFR Part 21, as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.

In addition, the LPA will comply with the provisions of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FHWA Guidance, and any other Federal, State, and/or local laws, rules and/or regulations (hereinafter referred to as "ADA/504").
 - (b) **Nondiscrimination:** The LPA, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency in the selection and retention of contractors or subcontractors, including procurements of materials and leases of equipment. The LPA will not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations, as well as the ADA/504 regulations.
 - (c) **Solicitations for Contractors or Subcontractors, including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the LPA for work to be performed under a contract or subcontract, including procurements of materials or leases of equipment, each potential contractor, subcontractor, or supplier will be notified by the LPA of the LPA's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex (including pregnancy, gender identification and sexual orientation), age, disability, low-income status or limited English proficiency.
 - (d) **Information and Reports:** The LPA will provide all information and reports required by the Regulations or directives issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the STATE or FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the LPA is in the exclusive possession of another who fails or refuses to furnish this information, the LPA will so certify to the STATE or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

- (e) **Sanctions for Noncompliance:** In the event of the LPA's noncompliance with the nondiscrimination provisions of this contract, the STATE will impose such contract sanctions as it or FHWA may determine to be appropriate, including, but not limited to:
- (1) withholding of payments to the LPA under the contract until the LPA complies, and/or
 - (2) cancellation, termination, or suspension of the contract, in whole or in part.
- (f) **Incorporation of Provisions:** The LPA will include the provisions of paragraphs 10.4 (a) through (e) above in every contract or subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The LPA will take such action with respect to any contractor or subcontractor procurement as the STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the LPA becomes involved in, or is threatened with, litigation with a contractor, subcontractor, or supplier as a result of such direction, the LPA may request the STATE to enter into such litigation to protect the interests of the STATE, and, in addition, the LPA may request the United States to enter into such litigation to protect the interests of the United States.

11. DATA, PATENTS AND COPYRIGHTS - PUBLIC USE

- 11.1 The LPA shall ensure that any designs, specifications, processes, devices, or other intellectual properties specifically devised for the PROJECT by its consultant(s) and/or contractor(s) performing work become the property of the LPA, and that when requested, such designs, specifications, processes, devices or other intellectual properties shall become available to ODOT and FHWA with an unrestricted right to reproduce, distribute, modify, maintain, and use. The LPA's consultant(s) and/or contractor(s) shall not seek or obtain copyrights, patents, or other forms of proprietary protection for such designs, specifications, processes, devices, or other intellectual properties, and in providing them to the PROJECT, shall relinquish any such protections should they exist.
- 11.2 The LPA shall not allow its consultant(s) and/or contractor(s) to utilize within the development of the PROJECT any copyrighted, patented or similarly protected design, specification, process, device or other intellectual property unless the consultant(s) and/or contractor(s) has provided for such use by suitable legal agreement with the owner of such copyright, patent, or similar protection. Consultant(s) and/or contractor(s) making use of such protected items for the PROJECT shall indemnify and save harmless the LPA and any affected third party from any and all claims of infringement on such protections, including any costs, expenses, and damages which it may be obliged to pay by reason of infringement, at any time during the prosecution or after the completion of work on the PROJECT.
- 11.3 In the case of patented pavements or wearing courses where royalties, licensing and proprietary service charges, exacted or to be exacted by the patentees, are published and certified agreements are filed with the LPA, guaranteeing to prospective bidders free unrestricted use of all such proprietary rights and trademarked goods upon payment of such published charges, such patented pavements or wearing courses may be specifically designated in the proposal and competition secured upon the item exclusive of the patent or proprietary charges.

12. TERMINATION; DEFAULT AND BREACH OF CONTRACT

- 12.1 Neglect or failure of the LPA to comply with any of the terms, conditions, or provisions of this Agreement, including misrepresentation of fact, may be an event of default, unless such neglect or failure are the result of natural disasters, strikes, lockouts, acts of public enemies, insurrections, riots, epidemics, civil disturbances, explosions, orders of any kind of governments of the United States or STATE or any of their departments or political subdivisions, or any other cause not reasonably within the LPA's control. If a default has occurred, ODOT may terminate this Agreement

with 30 days written notice, except that if ODOT determines that the default can be remedied, then ODOT and the LPA shall proceed in accordance with sections 12.2 through 12.4 of this Agreement.

- 12.2 If notified by ODOT in writing that it is in violation of any of the terms, conditions, or provisions of this Agreement, and a default has occurred and ODOT determines that the default can be remedied, the LPA shall have 30 days from the date of such notification to remedy the default or, if the remedy will take in excess of 30 days to complete, the LPA shall have 30 days from the date of notification to satisfactorily commence a remedy of the causes preventing its compliance and curing the default situation. Expiration of the 30 days and failure by the LPA to remedy, or to satisfactorily commence the remedy of, the default whether payment of funds has been fully or partially made, shall result in ODOT, at its discretion, declining to make any further payments to the LPA, or in the termination of this Agreement by ODOT. If this Agreement is terminated, the LPA may be liable to repay to ODOT all of the Federal funds disbursed to it under this Agreement.
- 12.3 The LPA, upon receiving a notice of termination from ODOT for default, shall cease work on the terminated activities covered under this Agreement. If so requested by ODOT, the LPA shall assign to ODOT all its rights, title, and interest to any contracts it has with any consultants or contractors. Otherwise, the LPA shall terminate all contracts and other agreements it has entered into relating to such covered activities, take all necessary and appropriate steps to limit disbursements and minimize any remaining costs. At the request of ODOT, the LPA may be required to furnish a report describing the status of PROJECT activities as of the date of its receipt of notice of termination, including results accomplished and other matters as ODOT may require.
- 12.4 No remedy herein conferred upon or reserved by ODOT is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or option accruing to ODOT upon any default by the LPA shall impair any such right or option or shall be construed to be a waiver thereof, but any such right or option may be exercised from time to time and as often as may be deemed expedient by ODOT.
- 12.5 This Agreement and the obligation of the parties herein may be terminated by either party with 30 days written notice to the other party. Upon receipt of any notice of termination, the LPA shall immediately cease all work, terminate all subcontracts relating to such terminated activities, take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish all data results, reports, and other materials describing all work under this contract, including without limitation, results accomplished, conclusions resulting therefrom, and such other matters as ODOT may require.
- 12.6 In the event of termination by either party for convenience, the LPA shall be entitled to compensation, upon submission of a proper invoice, for the work performed prior to receipt of notice of termination, less any funds previously paid by or on behalf of ODOT. ODOT shall not be liable for any further claims, and the claims submitted by the LPA shall not exceed the total amount of consideration stated in this Agreement. In the event of termination, any payments made by ODOT in which services have not been rendered by the LPA shall be returned to ODOT.

13. THIRD PARTIES AND RESPONSIBILITIES FOR CLAIMS

- 13.1 Nothing in this Agreement shall be construed as conferring any legal rights, privileges, or immunities, or imposing any legal duties or obligations, on any person or persons other than the parties named in this Agreement, whether such rights, privileges, immunities, duties, or obligations be regarded as contractual, equitable, or beneficial in nature as to such other person or persons. Nothing in this Agreement shall be construed as creating any legal relations between the Director and any person performing services or supplying any equipment, materials, goods, or supplies for the PROJECT sufficient to impose upon the Director any of the obligations specified in ORC 126.30.

- 13.2 The LPA hereby agrees to accept responsibility for any and all damages or claims for which it is legally liable arising from the actionable negligence of its officers, employees or agents in the performance of the LPA's obligations made or agreed to herein.

14. NOTICE

- 14.1 Notice under this Agreement shall be directed as follows:

If to the LPA:

If to ODOT:

Brian Riblet, City Manager	Tammy Campbell, P.E., Deputy Director
City of Montgomery	Ohio Department of Transportation-D08
10101 Montgomery Road	505 South SR 741
Montgomery, OH 45242	Lebanon, OH 45036
briblet@montgomeryohio.gov	Tammy.campbell@dot.ohio.gov

15. GENERAL PROVISIONS

- 15.1 *Recovery of LPA's allocable project Direct Labor, Fringe Benefits, and/or Indirect Costs:*

To be eligible to recover any costs associated with the LPA's internal labor forces allocable to this PROJECT, the LPA shall make an appropriate selection below: [LPA official must initial the option selected.]



1. No cost recovery of LPA's project direct labor, fringe benefits, or overhead costs.

- (A) The LPA **does not** currently maintain an ODOT approved Federally compliant time-tracking system¹, **and**
(B) The LPA **does not** intend to have a Federally compliant time-tracking system developed, implemented, and approved by ODOT prior to the period of performance of this PROJECT, **and/or**
(C) The LPA **does not** intend to pursue recovery of these project direct labor, fringe benefits, or overhead costs during the period of performance of this PROJECT Agreement.



2. Direct labor plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.²

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
(B) The LPA **does not** currently have, and **does not** intend to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

¹ A "federally compliant time-tracking system" is supported by a system of internal controls and record-keeping that accurately reflects the work performed; which provides reasonable assurance that the time being charged is accurate, allowable, and properly allocated; is incorporated in official records such as payroll records; reasonably reflects the employee's total activity; provides a time or percentage breakdown on all activities, both Federally funded and non-Federally funded for the employee and complies with the LPA's pre-established accounting practices and procedures.

² [Also be sure to read footnote # 1] The De Minimis Indirect Cost Rate is 10 %of modified total direct costs (MTDC) per 2 CFR 200.414. The definition of MTDC is provided in the regulation at 2 CFR 200.68. Any questions regarding the calculation of MTDC for a specific project should be directed to the Office of Local Programs. Further, regardless of whether the LPA subrecipient negotiates overhead rates with ODOT or uses the 10% de minimis rate, LPAs are required to maintain Federally-compliant time-tracking systems. Accordingly, LPAs are permitted to bill for labor costs, and then potentially associated fringe/indirect costs, only if the labor costs are accumulated, tracked, and allocated in accordance with compliant systems. Before an LPA is eligible

☐ 3. **Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the Federal 10% De Minimis Indirect Cost Rate.** ³

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT.

☐ 4. **Direct labor, plus fringe benefits costs calculated using the LPA's ODOT approved Fringe Benefits Rate, plus indirect costs calculated using the LPA's ODOT approved Indirect Cost Rate.** ⁴

- (A) The LPA currently maintains, or intends to develop and implement prior to the period of performance of this PROJECT, an ODOT approved Federally compliant time-tracking system, **and**
(B) The LPA currently has, or intends to negotiate, an ODOT approved fringe benefits rate prior to the period of performance of this PROJECT, **and**
(C) Instead of using the Federal 10% De Minimis Indirect Cost Rate, the LPA currently has, or intends to negotiate, an ODOT approved indirect cost rate prior to the period of performance of this PROJECT.

For any allocable project labor costs to be eligible for reimbursement with Federal and/or State funds, the LPA must maintain compliance with all timekeeping requirements specified in 2 CFR Part 200 and the ODOT LPA Cost Recovery Guidance, including ODOT Questions and Answers and related supplementary guidance, as applicable. Additionally, if the LPA elects to recover fringe and/or indirect costs, the LPA shall maintain compliance with Appendix VII of 2 CFR Part 200 and the LATP Manual of Procedures.

- 15.2 If the LPA decides to change its indirect cost recovery option, the change shall not become effective until this Agreement is amended pursuant to section 15.12 below to reflect the indirect cost recovery option utilized by the LPA on the PROJECT.
- 15.3 **Financial Reporting and Audit Requirements:** One or more phases of this Agreement include a sub award of Federal funds to the LPA. Accordingly, the LPA must comply with the financial reporting and audit requirements of 2 CFR Part 200.

All non-Federal entities, including ODOT's LPA sub-recipients, that have aggregate Federal awards expenditures from all sources of \$750,000 or more in the non-Federal entity's fiscal year must have

to invoice ODOT for and recover the 10% de minimis indirect cost rate on any project, the LPA's time-tracking system and methods for tracking other project costs must be reviewed and approved by the ODOT Office of External Audits. A non-Federal entity that elects to charge the de minimis rate must meet the requirements in 2 CFR 200 Appendix VII Section D, Part 1, paragraph b.

- 3 [Also be sure to read footnotes # 1 and 2] The fringe benefits rate billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the ODOT Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rate for that fiscal year to determine which rate is applicable. Accordingly, the fringe benefits rate applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rate.
- 4 [Also be sure to read footnote # 1] The fringe benefits and indirect cost rates billed to this project must be determined in accordance with the Rate Agreement periodically negotiated with and approved by the Office of External Audits. The fiscal period when the LPA's direct labor costs are paid will be matched with the ODOT approved rates for that fiscal year to determine which rates are applicable. Accordingly, the rates applicable to different fiscal years throughout the period of performance of the project may fluctuate to match changes to the ODOT approved rates.

a Single Audit, or program-specific audit, conducted for that year in accordance with the provisions of 2 CFR Part 200.

Federal and State funds expended to or on behalf of a subrecipient must be recorded in the accounting records of the LPA subrecipient. The LPA is responsible for tracking all project payments throughout the life of the PROJECT in order to ensure an accurate Schedule of Expenditures of Federal Awards (SEFA) is prepared annually for all *Applicable Federal Funds*. *Applicable Federal Funds* are those that are identified with the various project phases of this Agreement as a subaward. *Applicable Federal Funds* include not only those LPA project expenditures that ODOT subsequently reimburses with Federal funds, but also those Federal funds project expenditures that are disbursed directly by ODOT upon the request of the LPA.

The LPA must separately identify each ODOT PID and/or Project and the corresponding expenditures on its SEFA. LPAs are responsible for ensuring expenditures related to this PROJECT are reported when the activity related to the Federal award occurs. Further, the LPA may make this determination consistent with 2 CFR 200.502 and its established accounting method to determine expenditures including accrual, modified accrual or cash basis.

When project expenditures are not accurately reported on the SEFA, the LPA may be required to make corrections to and republish the SEFA to ensure Federal funds are accurately reported in the correct fiscal year. An ODOT request for the restatement of a previously published SEFA will be coordinated with the Ohio Auditor of State.

- 15.4 *Record Retention:* The LPA, when requested at reasonable times and in a reasonable manner, shall make available to the agents, officers, and auditors of ODOT and the United States government, its records and financial statements as necessary relating to the LPA's obligations under this Agreement. All such books, documents, and records shall be kept for a period of at least three (3) years after FHWA approves the LPA's final Federal voucher for reimbursement of project expenses. In the event that an audit-related dispute should arise during this retention period, any such books, documents, and records that are related to the disputed matter shall be preserved for the term of that dispute. The LPA shall require that all contracts and other agreements it enters into for the performance of the PROJECT contain the following specific language:

As the LPA, ODOT or the United States government may legitimately request from time to time, the contractor agrees to make available for inspection and/or reproduction by the LPA, ODOT or United States government, all records, books, and documents of every kind and description that relate to this Agreement.

Nothing contained in this Agreement shall in any way modify the LPA's legal duties and obligations to maintain and/or retain its records under Ohio public records laws.

- 15.5 *Ohio Ethics and Conflict of Interest Laws:* LPA agrees that they are currently in compliance and will continue to adhere to the requirements of Ohio Ethics and Conflict of Interest laws as provided by ORC 102.03, 102.04, 2921.42 and 2921.43 and 23 CFR 1.33.
- 15.6 *State Property Drug-Free Workplace Compliance:* In accordance with applicable State and Federal laws, rules, and policy, the LPA shall make a good faith effort to ensure that its employees and its contractors will not purchase, transfer, use, or possess alcohol or a controlled substance while working on State property.
- 15.7 *Trade:* Pursuant to the federal Export Administration Act and ORC 9.76(B), the LPA and any contractor(s) or sub-contractor(s) shall warrant that they are not boycotting any jurisdiction with whom the United States and the STATE can enjoy open trade, including Israel, and will not do so during the term of this Agreement.

The STATE does not acquire supplies or services that cannot be imported lawfully into the United States. The LPA certifies that it, its contractor(s), subcontractor(s), and any agent of the contractor(s) or its subcontractor(s), acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- 15.8 *Lobbying:* Byrd Anti-Lobbying Amendment, 31 U.S.C. 1352, as amended by the Lobbying Disclosure Act of 1995, PL 104-65 (2 U.S.C. §1601, et seq.). LPA agrees that it will not use any funds for Lobbying, 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S. C. 1352. Each tier shall comply with Federal statutory provisions or the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence congress to a State legislature on legislation or appropriations, except through proper official channels. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier, up to the recipient.
- 15.9 *Debarment.* LPA represents and warrants that it is not debarred from consideration for contract awards by the Director of the Department of Administrative Services, pursuant to either ORC 153.02 or 125.25 or by the Federal Government pursuant to 2 CFR Part 1200 and 2 CFR Part 180.
- 15.10 *Governing Law:* This Agreement and any claims arising out of this Agreement shall be governed by the laws of the STATE. Any provision of this Agreement prohibited by the laws of Ohio shall be deemed void and of no effect. Any litigation arising out of or relating in any way to this Agreement, or the performance thereunder shall be brought only in the courts of Ohio, and the LPA hereby irrevocably consents to such jurisdiction. To the extent that ODOT is a party to any litigation arising out of or relating in any way to this Agreement or the performance thereunder, such an action shall be brought only in a court of competent jurisdiction in Franklin County, Ohio.
- 15.11 *Assignment:* Neither this Agreement nor any rights, duties, or obligations described herein shall be assigned by either party hereto without the prior express written consent of the other party.
- 15.12 *Merger and Modification:* This Agreement and its attachments constitute the entire Agreement between the parties. All prior discussions and understandings between the parties are superseded by this Agreement. Unless otherwise noted herein, this Agreement shall not be altered, modified, or amended except by a written agreement signed by both parties hereto.
- 15.13 *Severability:* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, such holding shall not affect the validity or the ability to enforce the remainder of this Agreement. All provisions of this Agreement shall be deemed severable.
- 15.14 *Signatures:* Any person executing this Agreement in a representative capacity hereby represents that he/she has been duly authorized by his/her principal to execute this Agreement on such principal's behalf.

15.15 *Facsimile Signatures:* Any party hereto may deliver a copy of its counterpart signature page to this Agreement via fax or e-mail. Each party hereto shall be entitled to rely upon a facsimile or electronic signature on any other party delivered in such a manner as if such signature were an original.

The parties hereto have caused this Agreement to be duly executed as of the day and year last written below.

LPA:	STATE OF OHIO OHIO DEPARTMENT OF TRANSPORTATION
By:	By:
Brian Riblet City Manager	Jack Marchbanks Director
Date:	Date:

PROJECT BUDGET – SOURCES AND USES OF FUNDS

Revision Date 11/7/2023

Attachment 2

115757
PID NUMBER

41134
AGREEMENT NUMBER
019463801
CASE NUMBER

DIRECT PAYMENT OF CONTRACTOR

At the direction of the LPA and upon approval of ODOT, payments for work performed under the terms of the Agreement by the LPA's contractor shall be paid directly to the contractor in the pro-rata share of Federal/State participation. The invoice package shall be prepared by the LPA as previously defined in this Agreement and shall indicate that the payment is to be made to the contractor. In addition, the invoice must state the contractor's name, mailing address and OAKS Vendor ID. Separate invoices shall be submitted for payments that are to be made to the contractor and those that are to be made to the LPA.

When ODOT uses Federal funds to make payment to the contractor, all such payments are considered to be expenditures of Federal funds received and also expended by the LPA (sub recipient). Accordingly, the LPA is responsible for tracking the receipts and payments and reporting the payments Federal (Receipts) Expenditures on the Schedule of Expenditures of Federal Awards (SEFA). An LPA that fails to report these funds accurately and timely may be required to restate the SEFA to comply with Federal reporting requirements.

We _____ request that all payments for the Federal/State share of the construction costs of this Agreement performed by _____ be paid directly to _____.

LPA Name:	
Oaks Vendor ID:	
Mailing Address:	Error! Reference source not found.
LPA signature:	

Contractor Name:	Error! Reference source not found.
Oaks Vendor ID:	
Mailing Address:	
ODOT Approval signature:	

RESOLUTION NO. , 2024

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A FEDERAL
LOCAL LET PROJECT AGREEMENT WITH THE OHIO DEPARTMENT OF
TRANSPORTATION FOR THE PROJECT KNOWN AS HAM-US 22-15.22
MONTGOMERY ROAD RESURFACING PROJECT, PID NO. 115757**

WHEREAS, the City of Montgomery and the Ohio Department of Transportation desire to enter into a Federal Local Let Project Agreement which will delineate responsibility for the funding and the administration of the HAM-US 22-15.22 Montgomery Road Resurfacing Project, PID 115757 to resurface Montgomery Road between Pfeiffer and Weller Roads.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Montgomery, Hamilton County, Ohio, that:

SECTION 1. On behalf of the City of Montgomery, the City Manager is hereby authorized to enter into a Federal Local Let Project Agreement for the funding and the administration of the HAM-US 22-15.22 Montgomery Road Resurfacing Project, PID 115757, with the Ohio Department of Transportation to resurface Montgomery Road between Pfeiffer and Weller Roads.

SECTION 2. It is hereby found and determined that all formal actions of the City Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of this City Council, and that any and all deliberations of this City Council and any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all Ohio legal requirements.

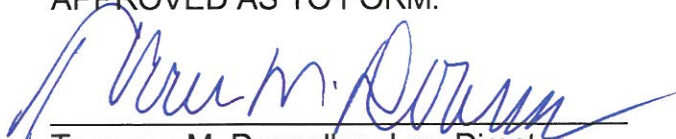
SECTION 3. This Resolution shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Ronald G. Messer, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City of Montgomery
City Council Business Session Minutes
August 7, 2024

Present

Brian Riblet, City Manager
Terry Donnellon, Law Director
Tracy Henao, Asst. City Manager
Greg Vonden Benken, Asst. Police Chief
Maura Gray, Finance Director
Gary Heitkamp, Public Works Director
Matthew Vanderhorst, Communications and Information Service Director
Paul Wright, Fire Chief
Connie Gaylor, Clerk of Council

City Council Members Present

Ron Messer, Mayor
Sasha Naiman, Vice Mayor
Lee Ann Bissmeyer
Chris Dobrozsi
Craig Margolis
Catherine Mills-Reynolds
Ken Suer

City Council convened in Council Chambers at 6:00 p.m. with Mayor Messer presiding.

ROLL CALL

Mayor Messer requested a motion to dispense with the roll call as all council members were present.

Mr. Margolis made the motion to dispense with the roll call. Vice Mayor Naiman seconded. City Council unanimously agreed.

EXECUTIVE SESSION

Mayor Messer requested a motion to adjourn into Executive Session for matters related to pending and imminent litigation.

Mr. Margolis made a motion to adjourn into Executive Session for matters related to pending and imminent litigation. Vice Mayor Naiman seconded.

The roll was called and showed the following vote:

AYE: Bissmeyer, Mills-Reynolds, Dobrozsi, Messer, Naiman, Suer, Margolis (7)

NAY: (0)

City Council adjourned into Executive Session at 6:02 p.m.

City Council reconvened in Public Session at 6:26 p.m.

LEGISLATION FOR CONSIDERATION THIS EVENING

NEW LEGISLATION TO BE ADDED TO THE AGENDA

A Resolution Authorizing Membership In The Ohio Purchasing Council Of Governments

Mayor Messer asked for a motion to add the Resolution to the agenda. Mr. Margolis made a motion to add the Resolution to the agenda. Vice Mayor Naiman seconded. City Council unanimously agreed.

Mayor Messer assigned the legislation to Mr. Suer.

Mr. Suer moved to read the Resolution by title only. Mr. Margolis seconded. City Council unanimously agreed.

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City Council Business Session Minutes

August 7, 2024

Page 2.

Mr. Donnellon explained that, if passed, this Resolution will authorize the City to join the Ohio Purchasing Council of Governments. A Regional Council of Governments operating a cooperative purchasing program allows the City to purchase goods and services without the added cost and inefficiency which can, at times, provide a competitive disadvantage in the public marketplace. This Resolution will authorize the City to join the Ohio Purchasing Council of Governments not only for the anticipated contract for the construction of Weller Park, but for future cost savings and services in the future.

Mr. Suer moved for passage of the Resolution. Mr. Dobrozsi seconded.

The roll was called and showed the following vote:

AYE: Bissmeyer, Mills-Reynolds, Dobrozsi, Messer, Naiman, Suer, Margolis (7)

NAY: (0)

A Resolution Authorizing The City Manager To Enter Into A Contract With Prodigy Construction For Construction Services For Facilities In Weller Park

Mayor Messer asked for a motion to add the Resolution to the agenda. Mrs. Bissmeyer made a motion to add the Resolution to the agenda. Vice Mayor Naiman seconded. City Council unanimously agreed.

Mayor Messer assigned the legislation to Mr. Margolis.

Mr. Margolis moved to read the Resolution by title only. Vice Mayor Naiman seconded.

Mr. Heitkamp explained that, if passed, the Resolution will approve a contract with Prodigy Building Solutions for the design and construction of the Weller Park Pickleball Courts project through the Ohio Purchasing Council of Governments (also referred to as Top C) cooperative purchasing agreement. The total amount requested is \$590,631.00, which is the contract amount of \$580,631.00 plus \$10,000.00 contingency.

Mrs. Mills-Reynolds asked if there would be awnings or areas to provide shade on the courts.

Mr. Heitkamp replied that there are respite areas included in the plans where picnic tables can be placed. He stated that awnings were not included in the plans but that those could be added at any time.

Vice Mayor Naiman asked if there was a process to obtain more input on the design in order to garner the most feedback for these areas.

Mr. Heitkamp explained that in the design specifications there is a size requirement for each court as well as the space needed to separate the courts. He stated that there would not be a lot of extra room to expand in between the courts.

Vice Mayor Naiman asked if community input could be incorporated.

Mr. Heitkamp replied that there is space on the exterior of the courts to add tables and shade covering. He added that Prodigy has done a number of pickleball courts for different municipalities and are very knowledgeable in creating facilities that are very desirable and considered high level courts.

Mr. Suer asked if it were a possibility that construction would begin in September.

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City Council Business Session Minutes

August 7, 2024

Page 3.

Mr. Heitkamp replied that Prodigy has indicated they could get started by September and hopefully done by the end of the year.

Mr. Suer replied that it would be great if they could so a new plan for pickleball could be launched in 2025.

Mr. Margolis stated that it was key that construction began as soon as possible. He stated he felt it would be good to reach out to engaged players to make sure needs are being met.

Mr. Riblet added that the urgency to begin construction was considered and the template for a highly considered facility was already in place. He stated that after construction staff could engage with players for possible tweaks that could be added. He stated he is very confident in Prodigy to create the type of facility that would be the Montgomery standard.

Mr. Heitkamp stated that consideration was also being given to improve the restrooms at Weller Park since there would be an increased number of people in the park.

Mayor Messer stated he felt having benches inside the court area where waiting players could sit as well as place their equipment would be beneficial. He stated that he also seen rollers that could be used to dry the courts after rain.

Mr. Heitkamp stated that those are things that can be purchased outside of the construction and out of the Park Department budget.

Mr. Heitkamp added that there would be no lights on the courts, only in the parking lot which would limit the play to the normal park rules of dawn to dusk.

Mrs. Bissmeyer stated that she had spoken with a Blue Ash resident who spoke about maintenance issues with the nets being moved across the court causing damage to the court surface and asked about the posts being mounted in the pavement.

Mr. Heitkamp replied that Prodigy actually recommends not putting in pavement mounts as it weakens the pavement and causes cracks to expand. He stated they recommend putting the posts on wheels that can be locked into place.

Mr. Margolis moved for passage of the Resolution. Vice Mayor Naiman seconded.

The roll was called and showed the following vote:

AYE: Mills-Reynolds, Dobrozsi, Messer, Naiman, Suer, Margolis, Bissmeyer (7)

NAY: (0)

NEW LEGISLATION

Mayor Messer asked for a motion to accept the agenda and read all legislation by title only since all of the legislation has been made available to the public before the meeting.

Mr. Margolis made the motion to accept the agenda and read all legislation by title only. Vice Mayor Naiman seconded. City Council unanimously agreed.

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City Council Business Session Minutes

August 7, 2024

Page 4.

A Resolution Authorizing The City Manager To Accept The Opioid Settlement And Enter Into The Participation Agreement With Opioid Distributor Kroger Co.

Mr. Suer read the title and moved for passage of the Resolution. Mr. Margolis seconded.

Mr. Donnellon explained that information has been previously supplied on this Resolution that, if passed, will authorize the City Manager to enter into a Participation Agreement and Settlement Agreement as necessary to resolve this litigation with Kroger Company. The City has received the notice of another potential Settlement in the national opioid litigation. This proposed Settlement concerns The Kroger Company with a proposed \$1,200,000,000 Settlement to be paid over several years. The Settlement is contingent upon the sufficient number of states and local communities supporting the Settlement. This is a very similar process to what we have done in the past with other Manufacturers and/or Distributors. Mr. Donnellon added that a red-lined version of the Resolution was placed at each seat to remove a recommendation clause by the Ohio Attorney General as they had not responded to endorse the Resolution. He explained that they had endorsed previous agreements, and he was confident they would, however, they have not returned his messages to confirm that.

The roll was called and showed the following vote:

AYE: Dobrozsi, Messer, Naiman, Suer, Margolis, Bissmeyer, Mills-Reynolds (7)

NAY: (0)

A Resolution Establishing City Contributions To Employee Health Savings Accounts And Health Reimbursement Accounts For Plan Year 2024-2025

Mr. Dobrozsi read the title and moved for passage of the Resolution. Mrs. Mills-Reynolds seconded.

Mr. Dobrozsi explained that information has been previously supplied on this Resolution that, if passed, will continue the City's incentive contribution to employees' Health Savings Accounts (and to Health Reimbursement Accounts for employees who, as a result of being enrolled in Medicare, are no longer eligible for a Health Savings Account) for the period beginning September 1, 2024 through August 31, 2025. The City's contribution to employees' Health Savings Accounts and Health Reimbursement Accounts is recommended to be continued at \$1050 for a family plan and \$750 for a single plan. In addition to the base City incentive contribution, it is recommended that the City continue to match the employee's contribution to his/her Health Savings Account in an amount up to \$700 for employees with family plans and up to \$500 for employees with single plans. Employees cannot make contributions to Health Reimbursement Accounts (HRA's); therefore, no matching employer contribution is recommended for HRA's.

Mr. Dobrozsi asked if there were any updates.

Mr. Riblet replied there were none.

The roll was called and showed the following vote:

AYE: Messer, Naiman, Suer, Margolis, Bissmeyer, Mills-Reynolds, Dobrozsi (7)

NAY: (0)

A Resolution Amending and Restating the Investment Policy for the City of Montgomery

Mr. Suer read the title and moved for passage of the Resolution. Mr. Margolis seconded.

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City Council Business Session Minutes

August 7, 2024

Page 5.

Mr. Suer explained that information has been previously supplied on this Resolution that, if approved, will amend the City's investment policy. This Resolution approves an updated and amended Investment Policy for the City adding an additional category of allowable investment of City funds. The category mirrors what is authorized by the State of Ohio. In amending the policy, we also have given flexibility to the Finance Department to invest in such other funds or intangibles which are authorized by the State of Ohio. This will give the Department flexibility if a new category is added before an updated policy is fully amended. The legislation also clarifies the process for amending the policy in the future.

Mr. Suer asked if there were any updates.

Mr. Donnellon replied there were none.

The roll was called and showed the following vote:

AYE: Naiman, Suer, Margolis, Bissmeyer, Mills-Reynolds, Dobrozsi, Messer (7)

NAY: (0)

An Ordinance Repealing Section 33.01 Of The Code Of Ordinances Creating An Investment Committee And Establishing Its Authority

Mr. Suer read the title and moved for passage of the first reading of the Ordinance. Mr. Margolis seconded.

Mr. Suer explained that information has been previously supplied on this Ordinance that, if approved, will repeal Section 33.01 of the Code of Ordinances. With the approval of an Investment Policy, as required by the Ohio Auditor, there is no longer a need for an Investment Committee within the City, and this Ordinance repeals Section 33.01 of the Code of Ordinances appointing an Investment Committee. All investments are controlled by the policy and investments may only be made consistent with the policy. To avoid any confusion, this Section is being repealed. In repealing this Section, we also are repealing the Linked Deposit Program which has been dormant for several years.

Mr. Suer asked if there were any updates.

Mr. Donnellon replied there were none.

The roll was called and showed the following vote:

AYE: Suer, Margolis, Bissmeyer, Mills-Reynolds, Dobrozsi, Messer, Naiman (7)

NAY: (0)

ADMINISTRATION REPORT

Mr. Riblet gave the following report:

- City Council Work Session is scheduled for August 21, 2024 at 6:00 p.m.
- The Government Affairs Committee will meet on Monday, August 12 at 4:30 p.m.
- The Safety Center Interim Renovation Bid is scheduled for next Tuesday, Aug 13 at 10 am. If the bid opening is successful, we anticipate presenting legislation at the August 21 Work Session to City Council.

These minutes are a draft of the proposed minutes from the City Council meeting. They do not represent the official record of proceedings until formally adopted by the City Council. Formal adoption is noted by signature of the Clerk within the minutes.

City Council Business Session Minutes

August 7, 2024

Page 6.

Events

- There is a Beam Signing at the Montgomery Quarter (MQ) scheduled for Friday, August 9 at 9:30 a.m. for Council and Staff who are available to attend.
- A DORA party will be held this Saturday, August 10 from 6:00-10:00 p.m. at the MQ. Lady Joya will entertain the crowd with rhythm and blues.
- A Top Workplace Celebration is scheduled for next Friday, August 16 from 11:00 a.m. to 2:00 p.m. in Montgomery Park. Be sure to join the fun as we come together to celebrate our incredible team with great food, conversation and some surprises!

MINUTES

Mrs. Bissmeyer moved to approve the July 15, 2024 Special Session and July 24, 2024 Work Session minutes. Vice Mayor Naiman seconded. City Council unanimously agreed.

MAYOR'S COURT REPORT

Mayor Messer requested a motion to disburse the July Mayors Court collections in the amount of \$6,580.

Vice Mayor Naiman made the motion to disburse the July Mayors Court Collections in the amount of \$6,580. Mrs. Bissmeyer seconded. City Council unanimously agreed.

OTHER BUSINESS

There was no other business to discuss.

ADJOURNMENT

Mayor Messer asked if there was any further business to discuss in the Public Session. There being none he asked for a motion to adjourn.

Mr. Margolis moved to adjourn. Mrs. Bissmeyer seconded. City Council unanimously agreed.

City Council adjourned at 6:57 p.m.

Connie Gaylor, Clerk of Council