

May 27, 2022

TO: Mayor and City Council Members

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

SUBJECT: City Council Business Session of Wednesday, June 1, 2022

As a reminder, City Council is scheduled to meet in Business Session on Wednesday, June 1, 2022 at 7:00 p.m.

Prior to the meeting, the following Boards and Commission Chairs will provide an update to City Council:

- Greg Brodrick, EAC-6:00
- Aaron Kellenberger, B & T - 6:15
- Gary Blomberg, Board of Tax - 6:30
- Dennis Hirotsu, Planning Commission - 6:45

Business Session

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Guest and Residents
5. Legislation for Consideration this Evening

Pending Legislation

- a. An Ordinance Establishing Schedules of Municipal Compensation—(Mr. Dobrozsi-3rd Reading) Information has been previously supplied on this legislation that, if approved, would establish a new Schedule of Municipal Compensation for non-bargaining unit employees. It is necessary to establish a new Schedule of Municipal Compensation as the current Schedule does not specify any wage rate adjustments for July 2022 or beyond. A new schedule is also needed to provide for title changes to address organizational needs.

Move for passage of the Amended Ordinance

Roll Call Vote

New Legislation

- a. A Resolution Authorizing The City Manager To Contract With Frost Brown Todd, LLC To Provide Special Counsel Services—(Mr. Dobrozsi) Information has been previously supplied on this Resolution that, if approved, would authorize the City Manager to enter into a contract with Frost Brown Todd, LLC to provide special legal services for labor negotiations/labor relations/human resource functions. The work of Frost Brown Todd, LLC has been invaluable in labor negotiations/relations efforts, and it is important that the City maintain this relationship as the City continues it labor and employee relations into the future.

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

- b. A Resolution Accepting A Bid And Authorizing The City Manager To Enter Into A Contract With Barrett Paving Materials, Inc. To Complete The Pfeiffer Road And Deerfield Road Intersection Improvement Project, Ham - CR284 - 1.33, PID # 107130—(Mr. Cappel) Information has been previously supplied on this Resolution that, if approved, would authorize the City Manager to enter into a Contract with Barrett Paving Materials, Inc. to construct the HAM - CR284 - 1.33 Pfeiffer Road at Deerfield Road Intersection Improvement Project, PID #107130 in the amount of \$2,330,000. The amount of the recommendation includes \$87,052.04 in project contingency funding, which is an amount equal to 3.9% of the Base Bid amount.

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

- c. A Resolution Authorizing The City Manager To Enter Into A Contract With Prime CMS, Inc. For Professional Services Related To Construction, Engineering And Inspection Services For The Pfeiffer Road And Deerfield Road Intersection Improvement Project—(Mr. Cappel) Information has been previously supplied on this Resolution that, if approved, would authorize the City Manager to enter into a "Time and Expense (T&E), Not to Exceed" contract with Prime CMS, Inc. to provide construction engineering and inspection services for the HAM- CR284 - 1.33 Pfeiffer Road at Deerfield Road Intersection Improvement Project. The maximum Not to Exceed amount is \$126,942.86, which equates to 5.7% of the Barrett Paving

Materials, Inc. construction contract. Funding for the contract is captured in the 410.261.5470 account.

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

- d. A Resolution Authorizing The City Manager To Negotiate And Execute An Agreement With Traditions VC Developer, LLC To Accommodate Short-Term Coverage For Minimum Service Payments In The Vintage Club-North Project (Mr. Suer) Information has been previously supplied on this Resolution that, if approved, would authorize the City Manager to enter into an Agreement with Traditions VC Developer, LLC to accommodate short-term coverage for the Minimum Service Payments due under the bonds issued by the City to fund public improvements in the project. This is a short-term accommodation and not a forgiveness of the debt. The monies will be repaid by Traditions in installment payments over a period of three years when it is anticipated that additional private improvements in the project will be completed to support debt service.

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

6. Administration Report

7. Minutes-May 18, 2022 Minutes will be presented at the June 22 meeting for consideration.

8. Mayor's Court Report

9. Other Business

10. Executive Session

11. Adjournment

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

C: Connie Gaylor, Administrative Coordinator
Department Heads; Terry Donnellon, Law Director

June 1, 2022
City Hall
7:00 p.m.

1. Call to Order
2. Roll Call
3. Pledge of Allegiance
4. Special Presentation
5. Guest and Residents
6. Legislation for Consideration for this Evening

Pending Legislation

- a. An Ordinance Establishing Schedules of Municipal Compensation—(Mr. Dobrozsi-3rd Reading)

Move for passage of the Amended Ordinance

Roll Call Vote

New Legislation

- a. A Resolution Authorizing The City Manager To Contract With Frost Brown Todd, LLC To Provide Special Counsel Services—(Mr. Dobrozsi)

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

- b. A Resolution Accepting A Bid And Authorizing The City Manager To Enter Into A Contract With Barrett Paving Materials, Inc. To Complete The Pfeiffer Road And Deerfield Road Intersection Improvement Project, Ham - CR284 - 1.33, PID # 107130—(Mr. Cappel)

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

- c. A Resolution Authorizing The City Manager To Enter Into A Contract With Prime CMS, Inc. For Professional Services Related To Construction, Engineering And Inspection Services For The Pfeiffer Road And Deerfield Road Intersection Improvement Project— (Mr. Cappel)

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

- d. A Resolution Authorizing The City Manager To Negotiate And Execute An Agreement With Traditions VC Developer, LLC To Accommodate Short-Term Coverage For Minimum Service Payments In The Vintage Club-North Project — (Mr. Suer)

Move to read the Resolution by title only

Voice Vote

Move for passage of the Resolution

Roll Call Vote

7. Administration Report

8. Approval of Minutes – May 18, 2022 Work Session minutes will be included in the June 22 Work Session packet.

9. Mayor’s Court Report

10. Other Business

11. Executive Session

12. Adjournment

- C: Connie Gaylor, Administrative Coordinator
Department Heads
Terry Donnellon, Law Director

ORDINANCE NO. , 2022

**AN ORDINANCE ESTABLISHING THE
SCHEDULE OF MUNICIPAL COMPENSATION FOR EMPLOYEES**

WHEREAS, Council must establish a Schedule of Municipal Compensation for City employees who are not members of a collective bargaining unit to be effective July 1, 2022 (the first day of the first full pay period in July 2022); and

WHEREAS, the Administration has recommended an increase in compensation for such employees, which is reflected in the Schedule of Municipal Compensation attached hereto; and

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

SECTION 1. Pursuant to requirements of Chapter 34 of the Montgomery Code of Ordinances, the Schedule of Municipal Compensation ("Schedule") is hereby established to govern the annual compensation of municipal employees who are not governed by collective bargaining agreements, which schedule shall be effective on July 1, 2022. The Schedule governing such positions is attached hereto as "Exhibit A" and is hereby made a part of this Ordinance as if fully rewritten herein.

SECTION 2. The Schedule prescribes the basic rates of pay for various classes of employees. Employees will typically be hired at the starting point of the appropriate salary range, but an employee may be placed at a higher location within their pay range at the discretion of the City Manager depending upon their qualifications, experience, and education. Employees may move through their respective salary range based upon work performance as determined through an annual performance review. The amount of the annual merit increase is dependent upon employee performance and funding availability.

SECTION 3. The City Manager is hereby authorized to grant an annual merit bonus, not to exceed two percent (2%) of the base salary of the employee, for full-time employees who have reached the top of their respective pay range. Permanent part-time employees who have reached the top of the pay range may be eligible for a

merit bonus of up to 20 hours of pay at their current hourly rate for exceptional work performance.

SECTION 4. This Ordinance shall be in full force and effect from and after the earliest period allowed by law.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM



Terrence M. Donnellon, Law Director

Full-Time Schedule

Exhibit "A"

Range	Position		Effective first day of first full pay period in July 2022		Effective first day of first full pay period in July 2023	
			Minimum	Maximum	Minimum	Maximum
1	Assistant City Manager	Annual	\$108,825.60	\$155,620.60	\$112,091.20	\$160,289.20
1A	Fire Chief	Annual	\$108,825.60	\$144,726.40	\$112,091.20	\$149,073.60
	Police Chief					
	Public Works Director					
	Director of Finance					
1B	Community Development Director	Annual	\$103,688.00	\$138,236.80	\$106,808.00	\$142,376.00
	Community and Information Services Director					
2	Assistant Fire Chief	Annual	\$99,632.00	\$123,572.80	\$102,627.20	\$127,275.20
	Assistant Police Chief					
	Assistant Public Works Director					
	Human Resources Manager					
	Executive Assistant/Clerk of Council					
3A	Assistant Director of Finance/Tax Commissioner	Annual	\$77,251.20	\$101,192.00	\$79,560.00	\$104,228.80
3B	Communications and Engagement Coordinator	Annual	\$76,044.80	\$99,528.00	\$78,332.80	\$102,523.20
	Recreation Director					
4	City Planner	Annual	\$68,016.00	\$86,985.60	\$70,054.40	\$89,585.60
	Public Works Department Supervisor					
	Tax Commissioner					
5	Construction and Compliance Inspector	Hourly	\$31.49	\$39.68	\$32.44	\$40.87
6	Administrative Coordinator	Hourly	\$29.71	\$37.14	\$30.60	\$38.26
	Assistant to the City Manager					
	Office Manager					
	Senior Finance Specialist					
	Clerk of Court					
7	Recreation Specialist	Hourly	\$27.77	\$34.98	\$28.60	\$36.03
	Customer Service Representative					
	Finance Specialist					

All annual, salaried positions in Ranges 1 through 4 are calculated assuming a 26 pay period annual pay schedule, which is the normal annual pay schedule for the City. In the event that the City experiences a year which has 27 bi-weekly pay periods, the City's wage scale will reflect an increase of an additional 1/26th of the maximum salary for the purpose of meeting payroll for the 27th pay period. For all other years, the minimum and maximum salaries are as published on the pay schedule above.

Part-Time Schedule

Exhibit "A"

Range	Position	Effective first day of first full pay period in July 2022		Effective first day of first full pay period in July 2023	
		Minimum	Maximum	Minimum	Maximum
1A 1B 1C 1D	Special Projects Coordinator Assistant to the City Manager Finance Specialist Customer Service Representative Volunteer Coordinator	\$50.60 \$29.71 \$25.08 \$24.57	\$62.75 \$37.14 \$31.35 \$30.62	\$52.12 \$30.60 \$25.84 \$25.30	\$64.64 \$38.26 \$32.29 \$31.54
2	Firefighter/Paramedic	\$19.12	\$24.37	\$19.69	\$25.10
3	Custodian Firefighter/EMT	\$17.07	\$21.77	\$17.58	\$22.42
4	Intern Seasonal Service Worker	\$14.87	\$18.90	\$15.31	\$19.46
6	Auxiliary Police Officer	\$11.48	\$28.71	\$11.82	\$29.57

RESOLUTION NO. _____, 2022

A RESOLUTION AUTHORIZING THE CITY MANAGER TO CONTRACT WITH FROST BROWN TODD, LLC TO PROVIDE SPECIAL COUNSEL SERVICES

WHEREAS, the City does desire to engage special counsel to assist in negotiating Collective Bargaining Agreements and to handle labor and employment issues; and

WHEREAS, the Law Director and the Administration recommend the City continue to retain the services of Frost Brown Todd, LLC as such special counsel.

NOW THEREFORE, Be It Resolved by the Council of the City of Montgomery, Ohio, that:

SECTION 1. The City Manager is authorized to enter into a contract with Frost Brown Todd, LLC according to the terms in the Letter of Engagement attached to this Resolution and incorporated herein by reference. The Administration is authorized to pay Frost Brown Todd, LLC according to the schedule of fees outlined in the Letter of Engagement for the purposes of providing assistance to the City in labor negotiations.

SECTION 2. This Resolution shall take effect the earliest opportunity as allowable by law.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director



W. Joseph Scholler

Member

513.870.8226 (t)

513.870.0999 (f)

jscholler@fbtlaw.com

May 11, 2022

Mr. Brian Riblet, City Manager
City of Montgomery
10101 Montgomery Road
Montgomery, Ohio 45242

Re: General Labor and Employment

Dear Mr. Riblet:

We are pleased that you have asked Frost Brown Todd to serve as your counsel in this matter. This letter will confirm our discussion with you regarding your engagement of our firm and will describe the basis upon which our firm will provide legal services to you. Accordingly, we submit for your approval the following provisions governing our engagement. If you are in agreement, please sign the enclosed copy of this letter in the space provided below. If you have any questions about these provisions, do not hesitate to call. Again, we are pleased to have the opportunity to serve you.

Client; Scope of Representation. Our client in this matter will be the City of Montgomery (the "City"). We will be engaged to advise the City in connection with general labor and employment matters, including negotiations. You may limit or expand the scope of our representation from time to time, provided that any substantial expansion must be agreed to by us. While we would be interested in assisting you in other matters, unless we are specifically engaged for some other future matter this will confirm that our representation of you is limited to the foregoing matter and will end when it is concluded.

Fees. Our fees are based primarily upon the time expended by our attorneys and paralegals on the engagement, including attorney and paralegal travel time which is charged at regular hourly rates. Attorneys and paralegals have been assigned hourly rates based upon their experience and level of expertise. The rates of those attorneys likely to work on this matter range from \$210.00 in the case of Michael Myers, and \$425.00 in the case of myself. Our hourly rates are reviewed periodically and may be increased from time to time. It may be necessary to add or change attorneys working on your behalf.

Consent to Future Conflicts. You are aware that our firm is a relatively large law firm and represents many other companies and individuals. Some may be direct competitors of yours or otherwise may have business or legal interests that are contrary to your interests. It is therefore possible that during the time we are working for you, an existing or future client may seek our assistance in connection with a transaction, pending or potential litigation, or another matter or proceeding in

Mr. Brian Riblet, City Manager
May 11, 2022
Page 2

which such a client's interests are, or potentially may become, adverse to your interests. This can create situations where work for one client on a matter might preclude us from assisting other clients on unrelated matters.

To avoid the potential for this kind of restriction on our practice, we ask you to agree, and you hereby do agree, that Frost Brown Todd may continue to represent, or may undertake in the future to represent, any existing or future client in any matter (including but not limited to transactions, litigation or other dispute resolution proceedings), even if the interests of that client in the other matter are directly adverse to the interests of the **City of Montgomery**, as long as that other matter is not substantially related to this or our firm's other engagements on behalf of the **City of Montgomery**. We do not, however, intend for you to waive your right to have our firm maintain the confidentiality of client information obtained by us in the course of representing you. Thus, if our representation of another client in a matter is directly adverse to you, our lawyers who have had significant involvement in our work for you will not work on the matter for such other client, and appropriate measures will be taken to assure that proprietary or other confidential information of a non-public nature concerning you which we acquire as a result of representing you will not be made available to lawyers or others in our firm involved in such matter. You are hereby advised, and have had the opportunity, to consult with other counsel about this prospective waiver. You also understand and acknowledge that, in the course of our representation of other clients pursuant to this prospective waiver, we may obtain confidential information of interest to you that we cannot share with you.

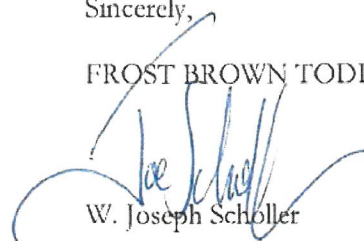
ABA Statement of Policy. We wish to inform the City, and the City acknowledges, that it is our firm's policy to comply strictly with the terms of the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975) in any response that the City requests we make to the City's auditors regarding "loss contingencies" affecting the City.

Additional Standard Terms. Our engagement is also subject to the policies included in the enclosed memorandum.

We appreciate the opportunity to represent you. If these terms of our engagement are acceptable to you, please return a signed copy of this letter to me in the enclosed envelope. Our representation of you will commence upon receipt of the signed engagement letter. We look forward very much to working with you on this matter.

Sincerely,

FROST BROWN TODD LLC



W. Joseph Scholler

Mr. Brian Riblet, City Manager
May 11, 2022
Page 3

The foregoing is understood and accepted:

CITY OF MONTGOMERY

By: _____
Print Name: _____
Print Title: _____

0012283.0551415 4832-2739-7401v16

FROST BROWN TODD LLC

ADDITIONAL TERMS AND CONDITIONS OF CLIENT ENGAGEMENTS

1. Expenses. Expenses we incur on the engagement are charged to the Client's account. Expenses include such items as court costs, charges for computerized research services and hard copy document reproductions, long distance telephone, travel expenses, messenger service charges, overnight mail or delivery charges, extraordinary administrative support, filing fees, fees of court reporters and charges for depositions, fees for expert witnesses and other expenses we incur on your behalf. Our charges for these services reflect our actual out-of-pocket costs based on usage, and in some areas may also include our related administrative expenses.

2. Monthly Statements. Unless a different billing period is agreed upon with the Client, the Firm will render monthly statements indicating the current status of the account as to both fees and expenses. The statements shall be payable upon receipt. If statements are not paid in full within 30 days, we reserve the right to add a late charge of 1% per month of the amount due. If it becomes necessary for the Firm to file suit or to engage a collection agency for the collection of fees or expenses, the Client shall pay all related costs and expenses, including reasonable attorneys' fees.

3. Advance Payments. Any advance payment to be paid by the Client will normally be less than the Firm's ultimate fees and expenses. Such a payment or series of payments is not intended as a limitation upon the Firm's fees and expenses. The Firm may apply the advance payment toward any unpaid fees and expenses, in which event the Client shall make an additional deposit to restore the advance payment to its original level. Additional advance payments must be made within fifteen days of the date the request is made. Any unexpended balance of advance payments will be refunded to the Client, without interest, at the end of this engagement.

4. Litigation Matters. If this engagement involves litigation, the Client may be required to pay the opposing party's trial costs. Such costs include filing fees, witness fees, and fees for depositions and documents used at trial. We will not settle litigated matters without the Client's express consent. We require the Client's active participation in all phases of the case.

5. Insurance coverage. Unless we have been explicitly retained to address insurance coverage issues (as documented in this engagement letter), we have no responsibility or obligation to (a) identify any potentially applicable insurance coverage, (b) provide notice to any carrier, or (c) advise the Client on issues relating to insurance coverage at any point during our representation.

6. Termination. The Client has the right to terminate our representation at any time by notifying us of your intention to do so in writing. We will have the same right, subject to an obligation to give the Client reasonable notice to arrange alternative representation. In the event that either party should elect to terminate our relationship, our fees and expenses incurred up to that point still will be due to us. Upon payment to us of any balance due for fees and expenses, we will return to the Client, or to whomever the Client directs, any property or papers of the Client in our possession.

7. Withdrawal. Under the rules of professional conduct by which we are governed, we

may withdraw from our representation of the Client in the event of, for example: nonpayment of our fees and expenses; misrepresentation or failure to disclose material facts concerning the engagement; action taken by the Client contrary to our advice; and in situations involving a conflict of interest with another client. If such a situation occurs, which we do not expect, we will promptly give the Client written notice of our intention to withdraw.

8. Post-Engagement Services. The Client is engaging our Firm to provide legal services in connection with a specific matter. After completion of that matter, changes may occur in the applicable laws or regulations that could have an impact on the Client's future rights and liabilities. Unless the Client engages us after completion of the matter to provide additional advice on issues arising from the matter, the Firm has no continuing obligation to advise the Client with respect to future legal developments.

9. Retention and Disposition of Documents. At the Client's request, its documents and property will be returned to the Client upon conclusion of our representation in the matter described above, although the firm reserves the right to retain copies of any such documents as it deems appropriate. Our own files pertaining to the matter will be retained by the firm. These firm files include, for example, firm administrative records, time and expense reports, personnel and staffing materials, and credit and accounting records. All documents and property, including those belonging to the Client, that are retained by the firm will be transferred to the person responsible for administering our records retention program. For various reasons, including the minimization of unnecessary storage expenses, and consistent with professional conduct rules, we reserve the right to destroy or otherwise dispose of any such documents or other materials retained by us within a reasonable time after the termination of the engagement without further notice to the Client.

10. Parent/Subsidiary/Affiliate Relationships. The Client may be a subsidiary of a parent organization or may itself have subsidiary or affiliated organizations. The Client agrees that the Firm's representation of the Client in this matter does not give rise to an attorney-client relationship between the Firm and any parent, subsidiary or affiliate of the Client (any of them being referred to as "Affiliate"). The Firm, during the course of its representation of the Client, will not be given any confidential information regarding any of the Client's Affiliates. Accordingly, representation of the Client in this matter will not give rise to any conflict of interest in the event other clients of the Firm are adverse to any of the Client's Affiliates.

11. Consultation with Firm Counsel. From time to time, issues arise that raise questions as to our duties under the professional conduct rules that apply to lawyers. These might include conflict of interest issues, and could even include issues raised because of a dispute between us and a client over the handling of a matter. The firm has several in-house ethics counsel who assist the firm's lawyers in such matters. We believe that it is in our clients' interest, as well as the firm's interest, that in the event that issues arise during a representation about our duties and obligations as lawyers, we receive expert analysis of our obligations. Accordingly, as part of our agreement concerning our representation, the Client agrees that if we determine in our own discretion during the course of the representation that it is either necessary or appropriate to consult with our firm's counsel (either the firm's internal counsel or, if we choose, outside counsel), we have the Client's consent to do so and that our representation of the Client shall not, thereby, waive any attorney-client privilege that the firm may have to protect the confidentiality of our communications with our internal or outside counsel.

12. Retirement Plan Advice. If the Client engages the Firm to provide legal services with respect to a retirement plan that is subject to the Employee Retirement Income Security Act, the Client should be aware that certain “covered service providers” must disclose some very specific information to the Client as a responsible fiduciary before the Client engages those services. While the Firm would not usually be serving as a “covered service provider,” there are some situations in which it might be. A description of the disclosures required in those situations can be located at www.dol.gov/ebsa/newsroom/fs408b2finalreg.html.

13. Authorization. By the Client’s agreement to these terms of our representation, the Client authorizes us to take any and all action we deem advisable on the Client’s behalf on this matter. We will, whenever possible, discuss with the Client in advance any significant actions we intend to take.

RESOLUTION NO. , 2022

A RESOLUTION ACCEPTING A BID AND AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BARRETT PAVING MATERIALS, INC. TO COMPLETE THE PFEIFFER ROAD AND DEERFIELD ROAD INTERSECTION IMPROVEMENT PROJECT, HAM - CR284 - 1.33, PID # 107130

WHEREAS, by Resolution No. 34, 2021, Council authorized the City Manager to enter into an Intergovernmental Agreement with the Hamilton County Transportation Improvement District for the project known as the Pfeiffer Road and Deerfield Road Intersection Improvement Project ("Project"), HAM - CR284 - 1.33, PID # 107130; and

WHEREAS, the City Manager has entered into such Contract and the Administration has taken the necessary steps to acquire appropriate easements/rights-of-way as required by Project guidelines to construct the Project; and

WHEREAS, upon approval of the Hamilton County Engineer and Ohio Department of Transportation, the City did advertise for bids for the construction of the Project and has received a bid from Barrett Paving Materials, Inc., which after review with the City's Engineer has been determined to be the lowest and best bid in response to the advertisement and bid specifications; and

WHEREAS, although the lowest and best bid falls outside of the Engineer's original construction estimate, the City Engineer has reviewed and updated the projected costs, has reviewed the contract, and with the escalating construction costs in the Greater Cincinnati Area, the City Engineer has recommended the Administration now accept the bid and enter into a contract with Barrett Paving Materials, Inc. as the cost of readvertising and rebidding the Project may not result in a lower bid, but may escalate the Project costs; and

WHEREAS, the Administration is now recommending that consistent with the Intergovernmental Agreement, the City should enter into a contract with Barrett Paving

secure appropriate reimbursement.

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

SECTION 1. The City Manager is authorized to enter into an Agreement with Barrett Paving Materials, Inc. in the amount of \$2,330,000, which includes appropriate contingency funds, to construct the Pfeiffer Road and Deerfield Road Intersection Improvement Project, HAM - CR284 - 1.33, PID # 107130, without readvertising and rebidding the work to be able to timely complete the Project within grant guidelines and to control costs in the volatile construction market.

SECTION 2. The City Manager is authorized to execute any and all additional documentation as a necessary component of the Intergovernmental Agreement to meet the terms and conditions of the grant for this construction Project.

SECTION 3. It is 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 the City Council, and that any and all deliberations of the City Council and any and all of its Committees that resulted in such formal action, were in meetings open to the public in compliance with Ohio law.

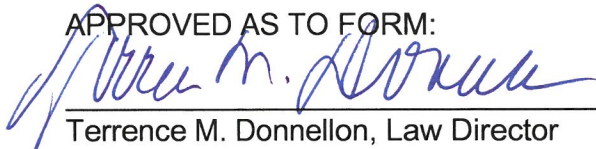
SECTION 4. This Resolution shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director

RESOLUTION NO , 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO
A CONTRACT WITH PRIME CMS, INC. FOR PROFESSIONAL SERVICES
RELATED TO CONSTRUCTION, ENGINEERING AND INSPECTION SERVICES
FOR THE PFEIFFER ROAD AND DEERFIELD ROAD
INTERSECTION IMPROVEMENT PROJECT**

WHEREAS, Section 9.03 of Article IX of the Charter of the City of Montgomery, Ohio, provides the method under which the City Manager shall make certain purchases and enter into contracts on behalf of the City; and

WHEREAS, it is appropriate to provide contract authority for professional services that are generally not subject to competitive bidding but will exceed a total of \$50,000 in a calendar year; and

WHEREAS, the Administration did request Letters of Interest from construction management firms which may be interested in assisting the City in managing public improvements as a part of the anticipated intersection improvements at Pfeiffer Road and Deerfield Road; and

WHEREAS, multiple firms submitted responses which were reviewed by an Evaluation Committee appointed by the City Manager, including the Public Works Director and members of the Public Works Department; and

WHEREAS, Prime CMS, Inc. did submit a Letter of Interest which was reviewed and recommended for approval by the Evaluation Committee; and

WHEREAS, it is the desire of the Council of the City of Montgomery to enter into a contract with Prime CMS, Inc. to perform construction management services, including construction, engineering and inspection services, for the City in conjunction with

the Pfeiffer Road and Deerfield Road Intersection Improvement Project, HAM - CR284 - 1.33, PID # 107130.

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

SECTION 1. The City Manager is hereby authorized to enter into a contract with Prime CMS, Inc. for professional services to be provided to the City of Montgomery for the intersection improvements and related traffic improvements for the Pfeiffer Road and Deerfield Road Intersection Improvement Project, HAM - CR284 - 1.33, PID # 107130, according to the schedule submitted by Prime CMS, Inc., attached hereto as Exhibit "A" and incorporated herein by reference.

SECTION 2. The City Manager is hereby authorized to pay Prime CMS, Inc. according to the rates set forth in said schedule within the anticipated project scope not to exceed \$126,942.86, which includes all necessary subcontractors with a portion to be set-off by grants.

SECTION 3. The City Manager is additionally authorized to seek appropriate grant funding for these services.

SECTION 4. This Resolution shall be in full force and effect from and after its passage.

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellon, Law Director



2022 CONSTRUCTION TESTING SERVICES FEE SCHEDULE

<u>DESCRIPTION</u>	<u>RATE</u>
I. <u>Technical Personnel</u>	
Project Manager PE	\$158.00/hr.
Staff Engineer	\$123.00/hr.
Testing Supervisor	\$75.00/hr.
Field Technician (Soil/Concrete/Asphalt)	\$50.00/hr.
Construction Admin	\$57.00/hr.
II. <u>Soil Testing</u>	
Moisture-Density Relationship ASTM D 698	\$150.00 ea.
Moisture-Density Relationship ASTM D 1557	\$175.00 ea.
Use of Nuclear-Density Meter ASTM D 2922	\$35.00/day
Use of Dynamic Penetrometer	\$100.00/day
Dynamic Penetrometer Lost Points	\$12.00 ea.
California Bearing Ratio ASTM D 1883	\$600.00 ea.
California Bearing Ratio ASTM D 1883 - w/Proctor	\$750.00 ea.
Visual Classification ASTM D 2488	\$8.00 ea.
Particle Size Analysis ASTM D 422*	\$65.00 ea.
Particle Size Analysis w/Hydrometer*	\$100.00 ea.
Moisture Content Determination ASTM D 2216	\$8.00 ea.
Atterberg Limits (Liquid & Plastic) ASTM D 43 18-64	\$65.00 ea.
Specific Gravity ASTM D 854	\$75.00 ea.
Specific Gravity of Coarse Aggregate ASTM C 127	\$75.00 ea.
Organic Content AASHTO T 267	\$40.00 ea.
Shrinkage Limits ASTM D 427	\$150.00 ea.
Unconfined Compressive Strength of Rock (ASTM D 2938)	\$60.00 ea.
Visual Classification of Rock	\$20.00/5 ft.
Ph	\$12.00 ea.

* Bulk Samples > 5 lbs. add \$30.00/test
 ** Recompacted samples add \$50.00/test





**2022 CONSTRUCTION TESTING SERVICES
FEE SCHEDULE**

<u>DESCRIPTION</u>	<u>RATE</u>
III. <u>Concrete Testing</u>	
Compressive Strength Test ASTM C 39.....	\$15.00 ea.
Concrete Cylinder Molds.....	\$2.00 ea.
Use of Concrete Test Equipment.....	\$35.00/day
Compressive Strength Test using "Windsor Probe" ASTM C 803	\$50.00 ea.
Use of Windsor Probe.....	\$100.00/day
Concrete Coring (2-Man Crew) ASTM C 42.....	\$120.00/hr.
Concrete Beams ASTM C 31	\$60.00 ea.
Use of Pavement Coring Equipment	\$100.00/day
IV. <u>Asphalt Testing</u>	
Extraction Test ASTM D 2172 and Gradation	\$300.00 ea.
Marshal Test	\$100.00 ea.
A.C/Gradation	\$220.00/hr.
Viscosity (ASTM D 977).....	\$200.00/hr.
Particle Size Analysis.....	\$75.00 ea.
Asphalt Coring (2-Man Crew) ASTM C 42.....	\$120.00/hr.
Use of Pavement Coring Equipment	\$150.00/day
V. <u>Expenses</u>	
Truck Rate	\$40/Day



RESOLUTION NO. _____, 2022

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE
AND EXECUTE AN AGREEMENT WITH TRADITIONS VC DEVELOPER, LLC
TO ACCOMMODATE SHORT-TERM COVERAGE FOR MINIMUM SERVICE
PAYMENTS IN THE VINTAGE CLUB-NORTH PROJECT**

WHEREAS, Council by Resolution No. 43, 2017, as amended by Resolution No. 5, 2018, authorized the City Manager to execute a Service Agreement governing the Vintage Club-North Project; and

WHEREAS, under the terms of such Service Agreement, certain properties within the Vintage Club-North Project area were pledged to secure Statutory Service Payments for Special Obligation Revenue Bonds, Series 2018, issued by the City to support public improvements necessary for the successful development of the Vintage Club-North Phase II Project; and

WHEREAS, due to unforeseen delays caused in part by the unprecedented pandemic and resulting market changes, the Project development has temporarily slowed down triggering Minimum Service Payment liability under the terms of the Service Agreement; and

WHEREAS, to accommodate Traditions VC Developer, LLC to improve cashflow and the use of capital to revitalize the Project, the Administration has proposed that the City enter into a Forbearance Agreement, a copy of which is attached hereto, to defer a portion of the Minimum Service Payments due from Traditions VC Developer, LLC, and to recover those payments in a more manageable installment plan over a period of three years.

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

SECTION 1. The City Manager is authorized to execute the attached Forbearance Agreement, and any related necessary documents, to accommodate Traditions VC Developer, LLC in the continuing development of the Vintage Club-North Project. It is noted that the Forbearance Agreement is not forgiveness of the debt, nor waiving payment of the debt, but provides for the City to contribute on a short-term basis a portion of the Minimum Service Payments to sustain and revitalize the success of the Project. Consistent with the terms of the Forbearance Agreement, any contributions paid by the City shall be paid and recovered from Traditions VC Developer, LLC in the short-term.

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

PASSED: _____

ATTEST: _____
Connie M. Gaylor, Clerk of Council

Craig D. Margolis, Mayor

APPROVED AS TO FORM:



Terrence M. Donnellan, Law Director

Space above this line for recording information

FORBEARANCE AGREEMENT

This Forbearance Agreement is entered into by and between the **City of Montgomery, Ohio**, an Ohio municipal corporation, 10101 Montgomery Road, Montgomery, Ohio 45242 (the "City") and **Traditions VC Developer, LLC**, an Ohio limited liability company, 4000 Executive Park Drive, Cincinnati, Ohio 45241 ("Traditions").

WHEREAS, the City with Traditions as Developer and Owner, and Hunting Hill, LLC, an Ohio limited liability company, as an Owner, entered into a Service Agreement dated March 21, 2018, pledging certain Statutory Service Payments, as defined within the Service Agreement, arising from real estate owned by Traditions and Hunting Hill, LLC to be developed in an area defined as Vintage Club Phase II within the Service Agreement; and

WHEREAS, the Statutory Service Payments pledged within the Service Agreement were intended to secure repayment of certain Special Obligation Revenue Bonds, Series 2018 (Vintage Club Phase II Project) ("Bonds"), issued by the City to support certain public improvements necessary for the successful development of the Vintage Club Phase II Project; and

WHEREAS, Hunting Hill, LLC has since sold its entire interest in the Vintage Club Phase II property and no longer has any obligations under the Service Agreement, which

obligations, according to the Service Agreement, are now assumed by subsequent Owners; and

WHEREAS, Traditions did pledge to pay Minimum Service Payments, as defined within the Service Agreement, if the amount of the Statutory Service Payments were insufficient during the term of the Service Agreement to meet the Annual Debt Service amounts for the Bonds and the required compensation due Sycamore Community School District; and

WHEREAS, certain outside economic factors have negatively influenced the progressive development of the project, including specifically the devastating impact of the COVID-19 pandemic, which outside economic factors have slowed the construction of Phase II, the result of which is Traditions is now exposed under the Service Agreement to the Minimum Service Payments to secure repayment of the Debt Service for the Bonds; and

WHEREAS, the City previously advanced One Hundred Forty-One Thousand Five Hundred Seventy-Nine Dollars (\$141,579) to fund the Minimum Service Payments due in calendar year 2021; and

WHEREAS, Traditions has asked the City for short-term assistance to share some of the Minimum Service Payment liability for calendar years 2022 and 2023, which period of time shall be considered the Forbearance Period; and

WHEREAS, the purpose of this Forbearance Agreement is to outline certain terms and conditions for Traditions to remain liable for the Minimum Service Payments in accordance with the Service Agreement, but to free up Traditions' assets to continue to develop the Vintage Club Phase II Project. Traditions has projected the project Private Improvements will achieve sustainable value in the near term so that Statutory Service Payments will equal the Minimum Service Payment amount and repayment of the Bond liability will occur without disruption.

NOW THEREFORE, based upon the above premises, and the terms and conditions as outlined herein, the City and Traditions agree as follows:

1. **Defined Terms.** All defined terms outlined herein shall have the same meaning as such defined terms appear in the Service Agreement unless otherwise noted or separately defined in this Forbearance Agreement.

2. **Previous Minimum Service Payment Contribution.** As noted herein, the City has advanced One Hundred Forty One Thousand Five Hundred Seventy Nine Dollars (\$141,579) to fund the Minimum Service Payments to pay a portion of the Minimum Service Payments due in calendar year 2021. With the first half settlement of delinquent taxes received in 2022, the City has recovered One Hundred Twenty Three Thousand Nine Hundred Twenty Two Dollars (\$123,922) of this amount leaving a balance advanced by the City of Seventeen Thousand Six Hundred Fifty Seven Dollars (\$17,657). This Seventeen Thousand Six Hundred Fifty Seven Dollars (\$17,657) will be added to the City's contribution to Minimum Service Payments as defined within and outlined in Paragraph 3 below to be repaid by Traditions to the City. The City agrees that the City will not impose nor collect a late payment penalty from Traditions upon this deferred Minimum Service Payment amount during the term of this Forbearance Agreement so long as Traditions remains current in its payments outlined within this Forbearance Agreement.

3. **Traditions Contribution during Forbearance Period.** Traditions agrees to the following schedule of payments ("Forbearance Payments") to meet in part the Minimum Service Payment liabilities during the Forbearance Period:

June 1, 2022	\$40,000
December 1, 2022	\$54,100
June 1, 2023	\$47,000
December 1, 2023	\$68,500

During the Forbearance Period outlined above, the City shall fund to the Trustee the difference between the Forbearance Payments paid by Traditions as outlined above and the Minimum Service Payment liability according to the schedule for debt Service Payments for the bonds as provided by the Service Agreement. The total amount of the monies paid by the City during this Forbearance Period shall be added to the sum as outlined in Paragraph 2 above, which combined shall be the Deferred Forbearance Liability.

4. **Deferred Forbearance Liability.** The sum of monies as advanced by the City to cover Minimum Service Payments as outlined in Paragraphs 2 and 3 above through December 31, 2023 shall be the Deferred Forbearance Liability. Commencing July 1, 2025, the total sum of the Deferred Forbearance Liability shall be repaid by Traditions to the City in Six (6) equal semi-annual installments payable July 1, 2025, January 1, 2026, July 1, 2026, January 1, 2027, July 1, 2027 and January 1, 2028. So long as Traditions remains current in the payment of the semi-annual installments of the Deferred Forbearance Liability, and so long as Traditions remains current according to the terms of the Service Agreement with Minimum Service Payments, the City will defer action to call upon the Letter of Credit and waive its rights under Section 3(D) of the Service Agreement to impose and collect a late payment charge from Traditions in the amount of Ten Percent (10%) per annum. Should Traditions default in any scheduled installment payment of the Deferred Forbearance Liability, or should Traditions default in the payment of the separate Minimum Service Payment liability under the Service Agreement, the Ten Percent (10%) late payment charge shall be imposed upon all monies then due and owing, and the City reserves its right to then declare Traditions as Developer to be in default of the Service Agreement and to exercise all rights according to the Service Agreement.

If Traditions should sell any portion of the undeveloped land within the Vintage Club II project area, specifically Auditor's parcel 603-0A23-0231, which land secures the payment of the Statutory Service Payments, any unpaid balance of the Deferred Forbearance Liability shall, at the City's option, be due and payable immediately

unless the Purchaser or Transferee, to the City's sole satisfaction, accepts and assumes the Deferred Forbearance Liability.

5. **Deferred Right to Recover Minimum Service Payment.** Under Section 3, Paragraph (C) of the Service Agreement, when the Statutory Service Payments exceed the Minimum Service Amount, the excess amount may be used in part to reimburse Traditions as Developer for any Minimum Service Payment Traditions has paid. While Traditions may recover the Minimum Service Payment, including the Deferred Forbearance Liability, under the terms of Section 3(C) of the Service Agreement, the parties agree that until such time as the accumulated excess Statutory Service Payments exceeds the amount of the Deferred Forbearance Liability to be paid by Traditions as provided herein, Traditions shall not be entitled to recover such Deferred Forbearance Liability as Minimum Service Payments paid by Traditions under the terms of the Service Agreement. Deferring this right of recovery will allow the City to properly accumulate excess Statutory Service Payments within the accounting fund for the Vintage Club Phase II project to support either further improvements in the project area or to accumulate funds to defease the Bonds as is the City's option according to the Service Agreement.

6. **Reaffirmation of Service Agreement.** This Forbearance Agreement is intended to provide temporary relief to Traditions as Developer and Owner under the Service Agreement, and is not intended in any way to relieve Traditions of its liability under the Service Agreement nor to extend the terms and conditions of the Service Agreement in any way. This Forbearance Agreement may be considered as a modification or amendment to the Service Agreement as permitted under Section 24 of the Agreement, and the parties agree that the City shall have right to record this Forbearance Agreement as an amendment to the Service Agreement as may be necessary to secure the City's rights to repayment of the Forbearance Deferred Payments. All other terms and conditions of the Service Agreement which have not been modified herein are hereby ratified and reaffirmed.

CITY OF MONTGOMERY, OHIO,
an Ohio municipal corporation

By: _____

Brian K. Riblet

Its: City Manager

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this ____ day of _____, 2022, personally appeared before me, a Notary Public in and for the State of Ohio, City of Montgomery, Hamilton County, Ohio, by Brian K. Riblet, known to be the City Manager of said City and duly authorized in the premises, who acknowledged the signing and sealing of the said Forbearance Agreement for himself and on behalf of said City, to be his voluntary act and deed, and the voluntary act and deed of said City.

Notary Public

My commission expires: _____

TRADITIONS VC DEVELOPER, LLC,
an Ohio limited liability company

By: _____

Thomas H. Humes

Its: Managing Member

Date: _____

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

On this _____ day of _____, 2022, personally appeared before me, a Notary Public in and for the State of Ohio, Traditions VC Developer, LLC, an Ohio limited liability company, by Thomas H. Humes, known to be the Managing Member of said company and duly authorized in the premises, who acknowledged the signing and sealing of the said Forbearance Agreement for himself and on behalf of said company, to be his voluntary act and deed, and the voluntary act and deed of said company.

Notary Public

My commission expires: _____

APPROVED AS TO FORM:

Terrence M. Donnellon,
Law Director