

**RESOLUTION NO. 8 , 2023**

**A RESOLUTION AUTHORIZING AN AGREEMENT WITH THE VINTAGE CLUB  
COMMUNITY ASSOCIATION, INC. TO CONSTRUCT ROADWAY  
IMPROVEMENTS WITHIN THE VINTAGE CLUB SUBDIVISION**

**WHEREAS**, the Vintage Club Subdivision is a private subdivision of streets, open spaces, and privately held lots situated within the City and connected to the public street grid within the City; and

**WHEREAS**, the Vintage Club Community Association, Inc., an Ohio non-profit corporation, is the titled owner of the various streets within the Vintage Club Subdivision, and the Association has requested through its Board of Trustees to Piggy-Back upon the City's 2023 contract for street repairs to allow the City to serve as Contractor to repair and repave certain improved streets within the Vintage Club Subdivision at the sole cost of the Association; and

**WHEREAS**, the City has negotiated the attached Agreement to Construct Roadway Improvements within the Vintage Club Subdivision and to designate an Escrow Agent to receive the cost of such construction work in total in advance, and the Administration has recommended accepting such Agreement in conjunction with accepting Bid Alternates in the City's contract for the 2023 Street Resurfacing Program; and

**WHEREAS**, the Board of Trustees of the Association has approved the Agreement, and has reviewed and approved the Bid Alternates and designated the appropriate Escrow Agent to hold such funds to be paid in advance of commencing construction.

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

**SECTION 1.** The City Manager, for and on behalf of the City as Contractor overseeing the 2023 Street Resurfacing Program, is authorized to enter into the attached Agreement to Construct Roadway Improvements within the Vintage Club Subdivision. Consistent with the terms of the Agreement, the City Manager is authorized to accept the Bid Alternatives preapproved by the Association and to finalize the Escrow Agreement with the Association to fund the total cost of such improvements in advance of commencing the construction work.

**SECTION 2.** The City Manager is authorized to execute such additional documentation as may be necessary to implement the street repairs and to oversee the contract for repairs of these Association subdivision streets.

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

PASSED: March 1 2023

ATTEST: Connie M. Gaylor  
Connie M. Gaylor, Clerk of Council

Craig D. Margolis  
Craig D. Margolis, Mayor

APPROVED AS TO FORM:

Terrence M. Donnellon  
Terrence M. Donnellon, Law Director

**AGREEMENT TO CONSTRUCT ROADWAY IMPROVEMENTS  
WITHIN THE VINTAGE CLUB SUBDIVISION**

WHEREAS, the Vintage Club Subdivision ("Vintage Club Subdivision" or "Subdivision") is a private subdivision of streets, open spaces, and privately held lots situated within the City of Montgomery, Ohio ("City") and connected to the public street grid within the City; and

WHEREAS, the Vintage Club Subdivision community was developed in approximately 2008 when the access streets within the Subdivision, including Vintage Walk, Traditions Turn, Gaslight Lane, and Vintage Club Drive, were platted, engineered and constructed; and

WHEREAS, the Developer of the Subdivision elected not to dedicate such streets as public streets, but such streets were engineered, designed and constructed to support vehicular traffic not only for property owners and their invitees, but for public services including public safety services; and

WHEREAS, the City annually contracts on a rotating basis to repair public roadways within the City through a process of public bidding; and

WHEREAS, The Vintage Club Community Association, Inc., an Ohio non-profit corporation ("Association"), is the titled owner of the various streets within the Vintage Club Subdivision, and the Association has requested through its Board of Trustees to Piggy-Back upon the City's 2023 Street Resurfacing Program to allow the City through its contractor to repair and repave certain improved streets within the Subdivision owned by the Association so that the repaired streets are properly constructed and improved to assure safe travel and public safety access to properties within the Subdivision; and

WHEREAS, the City has developed bid specifications and publicly bid its 2023 Street Resurfacing Program which included Alternate Bids for a portion of the Subdivision streets requested by the Association, which bid specifications including the Alternate Bids are attached hereto as **Schedule 1**; and

WHEREAS, the engineering specifications for such repair work to the Subdivision streets, as prepared by the City consistent with the City's standards for public improvements, have been reviewed and accepted by the Association; and

WHEREAS, based upon these combined specifications, the City has competitively bid the 2023 Street Resurfacing Program including the Alternate Bids, and the City has received a bid from Barrett Paving Materials, Inc., which the City has determined to be the lowest and best pricing for the 2023 Street Resurfacing Program; and

WHEREAS, the cost for the Alternate Bids for the Vintage Club Subdivision work are:

Alternate Bid 3	\$68,055.00
Alternate Bid 4	\$40,258.00

Alternate Bid 5	\$67,063.50
Alternate Bid 6	\$47,235.00
Alternate Bid 7	\$17,992.00; and

WHEREAS, the Association has reviewed the Alternate Bids and has requested the City contract with Barrett Paving Materials, Inc. to accept Alternate Bids 3 through 7 at a total cost of Two Hundred Forty Thousand Six Hundred Three and 50/100 Dollars (\$240,603.50), and to award and manage a contract for such work; and

WHEREAS, in accordance with Chapter 727 of the Ohio Revised Code, the City has a right to assess the cost of street and curb improvements performed by the City against properties benefited by such work; and

WHEREAS, the Association has asked the City to serve as its Contractor and to consider this to be an assessment for the benefit of the property owners within the Subdivision; and

WHEREAS, the Association does not want to impose liability upon the City nor to borrow against the City's credit, but consistent with the process for assessments, the Association agrees to facilitate the immediate payment of such improvements upon acceptance of the City's bid and construction of the Vintage Club Subdivision street improvements.

NOW THEREFORE, with these premises in mind, the City of Montgomery, Ohio, an Ohio municipal corporation, and The Vintage Club Community Association, Inc., an Ohio non-profit corporation, hereby agree as follows:

1. The Association hereby contracts with the City to provide construction services to the Association to repair and repave certain streets within the Vintage Club Subdivision depicted in the **Schedule 1** attached hereto and identified as Alternate Bids 3 through 7 consistent with the cost proposed by Barrett Paving Materials, Inc. The City shall oversee construction and inspection of such construction as a part of the 2023 Street Resurfacing Project. The City shall be responsible to review and accept such work consistent with the Bid Specifications on behalf of both the City and the Association.

2. The Alternate Bids have been received and authorized by the Association embedded within the City's 2023 Street Resurfacing Program contract with Barrett Paving Materials, Inc. Within Five (5) days of the review and acceptance of this Agreement, the Association shall deposit with Barron, Peck, Bennie & Schlemmer Co. LPA as Escrow Agent the total cost of such approved improvements plus a Contingency of Five percent (5%) totaling Two Hundred Fifty Two Thousand Six Hundred Thirty Three and 68/100 Dollars (\$252,633.68), to assure prompt payment for the work as completed. Monies shall be drawn by the City from such Escrow Agent upon notice to the Association consistent with the City's schedule of payments as required under the Bid Specifications. The cost of the Escrow Agent's services shall be deducted from the escrow funds consistent with the terms of a separate Escrow Agreement accepted by both Montgomery and the Association.

3. The City, as necessary, may issue such Change Orders as needed to bring construction into compliance with the Bid Specification standards. The City in its sole discretion may accept such Change Orders, and to the extent such Change Orders apply to work within the Association streets, the Association shall be bound by such Change Order. In the event any Change Order modifies the scope of the work of Alternate Bids 3 through 7 and increases the contract costs for construction of any or all of the Alternate Bids, before the City accepts such Change Order the City shall notify a representative of the Vintage Club to approve such Change Order, which approval shall not be unreasonably withheld, and which approval shall be given in a timely manner so as not to disrupt construction services. To the extent the escrow funds are insufficient to pay the cost of the contract and any Change Orders awarded as a part of the contract and the costs of the Escrow Agent for such escrow funds, the Association shall immediately pay such funds to the Escrow Agent upon notice from the City to the Association so that all funds are readily available to be drawn by the City during and at the close of the construction. Any monies remaining at the end of construction and at the end of the escrow services shall be refunded to the Association.

4. The Association hereby grants an irrevocable license to the City, its Contractor, Barrett Paving Materials, Inc., and its subcontractors, to enter into the Vintage Club Subdivision and to enter upon the streets and common areas held by The Vintage Club Community Association, Inc. for the purposes of performing such construction work. Consistent with the terms of the Bid Specifications, the City and/or its Contractor shall restore any damage to property surrounding the work area caused by performance of the work herein. As a part of this license, the City and its Contractor may store equipment and supplies upon the Association's property during the term of the construction. Consistent with the terms of the Bid Specifications, the City and the Contractor shall keep the Association streets open to traffic throughout the construction process. Any closures necessary shall be limited in time and scope, and the Contractor and/or the City shall provide notice to the Association in advance of such closures to minimize any disruption to access to the private properties within the Subdivision.

5. The Association hereby acknowledges that by Piggy-Backing upon the City's contract, the City is required to publicly award such bid to the lowest and best Contractor, and the discretion to award such bid to the lowest and best Contractor rests solely with the City, which discretion the City has exercised to award such contract to Barrett Paving Materials, Inc. Further, the Association acknowledges that as part of a City funded contract, all work in conjunction with the construction must be paid at Prevailing Wage rates which may increase the actual cost of construction. The Association acknowledges that work upon its streets may not be exempted from Prevailing Wage since it is part of the City's contract.

6. The Association hereby warrants and represents to the City that it has authority to enter into this Agreement and all action has been taken consistent with the terms and conditions of the Homeowner's Association, its Declarations and Covenants, to enable its authorized officers to accept this Agreement and to bind the Association thereto. The Association, at the request of the City, shall provide a copy of the Board Resolution or other enabling documents to evidence such authority. Further, the Association warrants that it has either secured its own engineer to review and establish



its Bid Specifications for this work and/or it accepts the bid and engineering specifications established by the City and waives any claim against the City acting in reliance upon these Bid Specifications.

7. Any dispute between the parties concerning this Agreement or the performance of this Agreement, and any claim against the City and/or Contractor as a result of the performance of this Agreement, shall be governed by the Dispute Resolution mechanisms set forth within the City's Agreement with the Contractor.

8. Any notices required by this Agreement or under the separate Construction Agreement must be in writing and will be deemed sufficiently given if actually received or if hand-delivered or sent by recognized, overnight delivery service or by certified mail, postage prepaid and return receipt requested, addressed to the other party at the address set forth in this Agreement or any addendum to or counterpart of this Agreement, or to such other address as the recipient has previously notified the sender of in writing. All notices will be deemed received upon actual receipt, unless sent by certified mail, in which event such notice will be deemed to have been received when the return receipt is signed or refused. The parties, by notice given hereunder, may designate any further or different addresses to which subsequent notices, certificates, requests or other communications must be sent. The present addresses of the parties follow:

As to the City:

City of Montgomery, Ohio  
10101 Montgomery Road  
Montgomery, Ohio 45242  
Attn: City Manager  
Currently: Brian K. Riblet

With a copy to the  
Director of Law:

Currently: Terrence M. Donnellon  
Donnellon, Donnellon & Miller  
9079 Montgomery Road  
Cincinnati, Ohio 45242

As to the Vintage Club  
Community Association, Inc.:

Vintage Club Community Association,  
Inc.  
c/o Douglas C. Hinger  
4000 Executive Park Drive, Suite 250  
Cincinnati, Ohio 45241

With a copy to:

Amy S. Ferguson, Esquire  
Cuni, Ferguson & LeVay Co. LPA  
10655 Springfield Pike  
Cincinnati, Ohio 45215

9. This Agreement shall be interpreted and enforced consistent with the laws of the State of Ohio. As noted herein, the undersigned represent and warrant that they have full authority to execute this Agreement for and on behalf of their principals.

**The Vintage Club Community  
Association, Inc.,  
an Ohio non-profit corporation**

By: \_\_\_\_\_  
Douglas C. Hinger

Its: \_\_\_\_\_

Date: \_\_\_\_\_

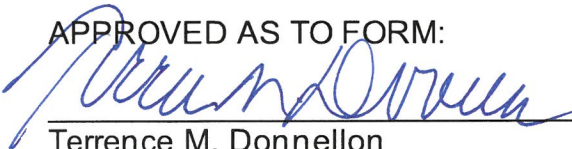
**The City of Montgomery, Ohio,  
an Ohio municipal corporation**

By: \_\_\_\_\_  
Brian K. Riblet

Its: City Manager

Date: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Terrence M. Donnellon  
Director of Law