

RESOLUTION NO. 25 , 2023

**A RESOLUTION AUTHORIZING A CONTRACT WITH PATENTED
ACQUISITION CORPORATION D/B/A THINK PATENTED FOR DESIGN
AND PRODUCTION SERVICES**

WHEREAS, the City produces a monthly bulletin and an annual calendar providing valuable communication services to the residents of the City of Montgomery; and

WHEREAS, to most effectively deliver such communications, the Administration has requested proposals from various design and publication firms to quote the costs for professional services; and

WHEREAS, after reviewing such proposals, the staff has recommended that the City extend the contract with Patented Acquisition Corporation d/b/a Think Patented, to provide such professional design and publication services which would be exempt from competitive bidding, although the amount of the contract which includes printing would exceed \$50,000 in a calendar year.

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 Master Agreement with Patented Acquisition Corporation d/b/a Think Patented, to extend the current contract for design, production and mailing services for the 2024 monthly bulletin and 2025 annual calendar in an amount not to exceed \$70,000.

SECTION 2. The City Manager is hereby authorized to pay Patented Acquisition Corporation according to the rate set forth within such contract and its attached schedules.

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

PASSED: August 2, 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

PROVIDER OF GOODS AND SERVICES AGREEMENT

City of Montgomery, OH

AND

PATENTED ACQUISITION CORPORATION - D/B/A THINK PATENTED

This Provider of Goods and Services Agreement (the "Agreement") is dated as of the ____ day of July 2023 (the "Effective Date") and is entered into by and between City of Montgomery. (the "Customer"), and Patented Acquisition Corporation *dba* Think Patented ("Think Patented").

WHEREAS, Customer wishes to retain Think Patented, and Think Patented wishes to be so retained, to provide certain services that may include print-on-demand, fulfillment, mailing, conventional printing, or other such printing and data services as may be agreed upon by Customer and Think Patented; and

WHEREAS, Customer and Think Patented desire that this Agreement control all portions of this relationship going forward.

NOW, THEREFORE, in consideration of the recitals set out above and in further consideration of the mutual covenants and agreements set out below, the parties hereby agree as follows:

1. **Services by Think Patented.** The parties agree that Think Patented will provide the goods and services listed on Exhibit "A" (collectively, the "Services"). The Services may be updated from time to time by subsequent written amendment executed by both Customer and Think Patented. Think Patented shall service all Customer locations listed as Exhibit "C" and such list may be amended from time to time by subsequent written amendment that is executed by both Customer and Think Patented. Any new goods and services will be scheduled by a mutually approved amendment to Exhibit B.

2. **Pricing.** Think Patented shall invoice the Customer in the amount of the agreed-upon pricing listed in Exhibit "B". Think Patented agrees to guarantee its prices for labor and overhead for a period of six (6) months. Think Patented's prices may be adjusted to reflect any changes in material costs. Such cost increases will be justified with a letter from the supplier of such materials. At this time Think Patented will also recommend applicable alternative materials to the customer as an alternative.

3. **Invoicing and Payment Terms.** Think Patented shall submit an invoice to Customer, attention Accounts Payable on a monthly basis. Customer shall pay Think Patented invoices with a net thirty (30) day term from the receipt of the monthly consolidated invoice. If Customer fails to pay any sum to be paid by Customer to Think Patented under this Agreement on or before the applicable due date, Customer shall pay Think Patented, upon demand, an amount equal to five percent (5%) of each such delayed payment for each billing period or portion of a billing period such payment is delayed to the extent permitted by law. Customer agrees that this late charge is a reasonable charge to compensate Think Patented for its collection administration and for its loss of the use of funds.

4. **Term and Termination.**

(a) The Term of this Agreement shall begin on the Effective Date and shall continue for one (1) year ("Initial Term"). Upon the conclusion of the Initial Term, and thereafter, this Agreement shall automatically renew for additional one (1) year terms (each a "Renewal Term"), unless either party provides the other party with ninety (90) days advance written notice prior to the end of the then-current term of such party's intent not to renew this Agreement.

(b) If Customer terminates the Agreement at the end of the initial one (1) year term, Customer shall pay Think Patented an amount equal to (i) Think Patented's cost for all inventory and other material in stock (or already on order) that was ordered for the exclusive use or benefit of Customer and (ii) all work in process. During the term of this Agreement, Customer shall pay Think Patented an amount equal to Think Patented's cost for all inventories that become obsolete, and any said payment shall be due and payable within thirty (30) days of Think Patented's determination of obsolescence.

(c) Think Patented may terminate this Agreement immediately upon written notice to Customer upon any one of the following events: (i) Customer fails to make an invoiced payment, including any applicable late charges, within thirty (30) days after notice of failure to pay the original invoiced amount within thirty (30) days of its due date; or (ii) Customer fails to provide the information necessary for Think Patented to reasonably perform the Services, as requested by Customer, within fifteen (15) days of a written request for such information from Think Patented.

(d) Think Patented shall understand and agree that if Customer, through its review and evaluation of contractual performance, determines that the services being performed by Think Patented are unacceptable, Customer shall provide written notice which state the deficiencies. Think Patented shall have thirty (30) working days upon receipt of the notice of deficiency to correct the described deficiency or deficiencies, and/or demonstrate good cause as to why the deficiency cannot be resolved within the specified time period. In either instance, Think Patented shall implement a corrective plan of action and direct a response to CITY OF MONTGOMERY within the thirty (30) day period. If Think Patented does not correct the deficiency, Customer may terminate this Agreement upon giving ninety (90) days written notice to Think Patented and otherwise complying within the terms of this Agreement.

5. **Limitation of Liability.** Think Patented shall not be liable to Customer for any errors or omissions if it (i) was caused by a third party; (ii) resulted from information supplied by a third party or Customer; or (iii) was caused by an act of God, labor stoppage, governmental authority or other act beyond Think Patented's reasonable control. In the event of an error, omission or other default in the Services, Think Patented shall be liable to Customer only for the amount (as determined by Think Patented) by which the value of the item or service was decreased, in no instance to exceed the total amount Customer actually paid for the related Services. In any event Think Patented will not be liable for lost profits or any other consequential damages, including exemplary, incidental, indirect or punitive damages.

6. **Think Patented Warranties and Indemnification.** Think Patented warrants that (i) in carrying out the Services requested by Customer hereunder that it will employ ordinary business practices and the Services will be completed within a reasonable time and in an economical manner consistent with Think Patented's ordinary business practices; and (ii) it will comply with all applicable laws, statutes, ordinances, administrative and executive orders, rules and regulations as they relate to this Agreement and the Services requested by Customer. Think Patented agrees to indemnify, defend and hold Customer harmless against any and all claims and liabilities of any nature, including reasonable attorney fees and other expenses incurred in the defense of any claims, for personal injury, including death, and damage to property arising out of or from the Services requested by Customer, which are provided by Think Patented, to the extent that any such injuries or damages are caused by Think Patented or its employees, agents or subcontractors.

7. **Customer's Warranties and Indemnification.** Customer warrants that (i) it will provide Think Patented with all information necessary to perform the Services and will do so in a timely manner; (ii) all information Customer provides to Think Patented is accurate, not misleading and complies with all applicable laws and licensing requirements; (iii) no item requested by Customer violates the rights of any third party; (iv) Customer is authorized to be and is engaged in the business of providing the products and/or services corresponding with the items that Customer wishes to have provided by Think Patented; and (v) all of the specifications provided by

Customer for the items provided by Think Patented are those it requires and/or those required by the clients to whom Customer may be providing such items. As to items or Services created or provided by Think Patented for or on behalf of Customer, Customer is responsible to review said items or Services and to confirm that they are accurate and that Customer has the right to use and publish any name, address, trade name, trademark, service mark, picture, likeness, logo, reproduction, endorsement, copyrighted or copyrightable item or other content as included in such advertising. Customer will be responsible for any content, graphics, data, and intellectual property that is supplied to Think Patented as part of the 2024 Calendar and December 2023 to November 2024 newsletter. Think Patented assumes no liability in regard to any potential legal issues that could arise from the above content supplied by the City of Montgomery.

8. **Confidentiality.** The terms and conditions of this Agreement shall be and remain absolutely and strictly confidential, and shall not be disclosed by either party to any person for any reason without the written consent of the other party, unless otherwise required by law. Notwithstanding the preceding sentence, either party may (i) disclose the terms and conditions of this Agreement to their respective legal counsel, accountants and business advisors; or (ii) disclose the existence of a business relationship between the parties for marketing purposes.

9. **Notices.** All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to be duly given upon the delivery or mailing hereof, as the case may be, if delivered personally, via facsimile with affirmative confirmation or sent by registered or certified mail, return receipt requested, postage prepaid:

If to Customer: City of Montgomery.
10101 Montgomery Rd.
Montgomery, Ohio 45242
Attention: Matthew Vanderhorst
Telephone: 513-792-8323

If to Think Patented:

Think Patented
Attention: David McNerney
2490 Crosspointe Dr.
Miamisburg, Ohio 45342
Telephone: 937-353-2299

Or to such other address as any of the parties shall have specified by notice to the other.

10. Miscellaneous.

(a) This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any and all prior agreements or understandings between the parties with respect to the subject matter hereof.

(b) No party hereto shall assign its rights or delegate its duties arising under this Agreement without the prior written consent of the other party. Notwithstanding the above, Think Patented may assign its rights and/or delegate its duties arising hereunder, without Customer's consent, to a successor person or entity with the sale of all or substantially all of the Think Patented's assets.

(c) Except as otherwise provided herein, this Agreement may not be amended, modified, altered, or changed in any respect except by subsequent written amendment executed by both Customer and Think Patented .

(d) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

(e) The waiver by either party of any breach of a provision of this Agreement by the other party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement.

(f) Upon termination of this Agreement, Think Patented and Customer shall not have any further obligations, except for (i) obligations accruing prior to the date of termination and (ii) obligations, promises or covenants contained in this Agreement which are expressly made to extend beyond the term of this Agreement, including, without limitation, confidentiality of information, indemnification, and limitation of liability.

(g) All goods and services (including inventory) developed or acquired by Think Patented as a result of work under the Agreement shall become the property of Customer, provided that Think Patented shall retain all rights to (i) any web sites and web pages created by Think Patented, with the exception of the URL, for this Agreement, and (ii) any software or other IP proprietary information developed or procured by Think Patented. No material or reports prepared by Think Patented shall be released to the public without the prior written consent of Customer.

(h) Think Patented shall not be liable for any interruption of the Services or delay or failure to perform under this Agreement if such interruption, delay or failure results from causes beyond its reasonable control, including without limitation any strikes, lockouts or other labor difficulties, acts of any government, riot, insurrection or other hostilities, fire, flood, lightning or other acts of God, or inability to obtain necessary labor, materials or utilities. Upon discovery of such event, Think Patented shall notify Customer in writing of the existence of such event within twenty-four (24) business hours after the beginning of such period and of the termination of such period within twenty-four (24) business hours after it ceases to prevent performance.

(i) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

(j) In the event of a dispute between the parties hereto with respect to the interpretation or enforcement of the terms hereof, the prevailing party shall be entitled to collect from the other, its reasonable costs and attorney's fees, including its costs and fees on appeal. This Agreement shall be governed and construed in accordance with laws of the State of Ohio. Exclusive venue for any actions concerning this Agreement shall be the state and/or federal courts in Montgomery County, Ohio.

IN WITNESS WHEREOF, each of the parties has duly executed this Agreement.

"CUSTOMER"
City of Montgomery

"THINK PATENTED"
PATENTED ACQUISITION
CORPORATION

By: _____

By: _____
David McNerney

Name: _____

Title: _____

Title: President

Date: _____

Date: _____

Approved as to form
Mark M. Doran
Director of Law

Confidential

EXHIBIT A

GOODS & SERVICES

I. Printing Services.

A. Think Patented will supply printing services to Customer. Think Patented will use appropriate printing method for such services. Pricing for printing will be billed based on those provided in Exhibit B. Customer will confirm via email quantity to be printed.

II. Direct Mailing.

A. Customer may request that Think Patented provide direct mailing services for items produced pursuant to the Agreement. Such request must be made at the time an order is placed. The charges for direct mailing services shall be billed based on those provided in Exhibit B and shall not include postage which shall be charged back to Customer at cost. Postage will be due prior to mail date.

III. Design Services.

A. Think Patented shall provide design and composition services when required by Customer. Such services shall be invoiced as outlined in Exhibit "B".

Exhibit B

NEWSLETTER

ITEM	DETAILS	ESTIMATE
Newsletter	<ul style="list-style-type: none"> 1 time original design for layout, features and titles will be provided. Annual recommendations on redesign and special features to refresh the look and effectiveness of the newsletter and build on brand consistency with the City and City website. <p>8-16 pages.</p>	
Newsletter	<ul style="list-style-type: none"> Newsletter layout <i>per issue</i>. Newsletter proofs. Alterations/edits (please note if there is a limited amount, otherwise "unlimited" will be assumed). Purchase and maintain rights to use artwork or stock photos to enhance Publication. Final digital artwork for web posting (PDF). Press ready for printing. 	<p>16 Page \$ 1100.00 Includes 2 rounds of edits Stock photos at \$20.00 ea.</p>
Newsletter Printing	<ul style="list-style-type: none"> Print 5,000. Stock 80# matte. Provide 70# cost. Is aqueous coat included? Stapled. Trimmed. Delivery and coordination with mail house. 	<p>16 page 70# text @ \$ 2,354.00 16 Page 80# text @ \$ 2,522.00</p>
Newsletter Mailing	<ul style="list-style-type: none"> Mail 5,000. Mail processing (sorting, labeling, bundling). Bulk Postage (permit account). Delivery to post office. Overage delivery to Montgomery City Hall. <p>Management of mail house timetable to meet with monthly schedule for timely delivery to all recipients.</p>	<p>\$378.00 /per mailing *Does not Include postage</p>