

ORDINANCE NO. 2014 - 34

AUTHORIZING THE CITY MANAGER TO EXECUTE CHANGE ORDER #1 TO THE EXISTING CONTRACT BETWEEN THE CITY OF MASON AND BARRETT PAVING MATERIALS, INC., IN THE AMOUNT OF \$110,000 FOR THE 2014 STREET RESURFACING PROGRAM

WHEREAS, the City of Mason entered into a Contract dated March 10, 2014, Ordinance 2014-14, with Barrett Paving Materials, Inc., for The 2014 Street Resurfacing Program; and

WHEREAS, the Contract provides for the payment of an amount not to exceed \$1,484,710.60 for completion of the work specified in the Contract; and

WHEREAS, the City of Mason and Barrett Paving Materials, Inc., now mutually desire to amend the Contract by the execution of a Change Order, which will modify the work specified in the Contract and will increase the payment for completion of the work specified in the Agreement by the amount not to exceed an additional \$110,000; and

WHEREAS, Section 133.05 of the Codified Ordinances of Mason, Ohio, requires that Council approve any change order on an existing contract exceeding \$15,000.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Mason, six members thereto occurring:

Section 1. That the City Manager of the City of Mason is hereby authorized to execute on behalf of the City a Change Order to the Contract with Barrett Paving Materials, Inc. for the increased compensation not to exceed \$110,000 for a total contract of \$1,594,710.60.

Section 2. That the Finance Director of the City of Mason is hereby authorized to increase the amount of compensation payable to Barrett Paving Materials, Inc. under the Contract by the amount not to exceed an additional \$110,000.00 upon satisfactory completion of the work agreed to in the Change Order.

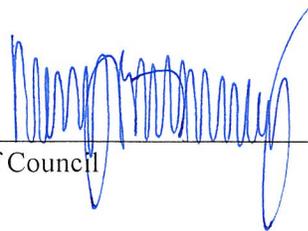
Section 3. That the City Manager is further authorized to execute a Reimbursement Agreement with Greater Cincinnati Water Works substantially in the form of the agreement attached hereto as Exhibit A and incorporated herein by reference.

Passed this 12th day of May, 2014.



Mayor

Attest:



Clerk of Council

EXHIBIT A
THE CITY OF MASON 2014 STREET RESURFACING PROGRAM
REIMBURSEMENT AGREEMENT

This agreement made and entered into by and between the Greater Cincinnati Water Works, hereinafter referred to as GCWW, and the Council of the City of Mason, hereinafter referred to as MASON.

WITNESSETH:

WHEREAS, GCWW and MASON desire to maintain and resurface various streets in the downtown area that GCWW disturbed while installing a new watermain, hereinafter referred to as the PROJECT; and

WHEREAS, Per Ohio Revised Code Sections 302.13 and 307.15, GCWW and MASON desires to enter into a joint agreement to construct the PROJECT; and

NOW THEREFORE, in consideration of the mutual covenants hereinafter contained and the benefit to be derived by the parties from the execution hereof, GCWW consents to the construction of the PROJECT by MASON with the understanding of the following:

1. MASON and GCWW will maintain and resurface various streets in accordance with their respective plans and specifications approved by the council of the City of Mason and GCWW. The City of Mason Engineer will be responsible for overseeing the portion of the PROJECT. The material specifications, project locations and other pertinent information concerning the PROJECT are included in MASON's contract for the PROJECT which is attached hereto and incorporated herein.

2. GCWW's portion of the PROJECT is a not to exceed price of **\$110,000**. The final amount of GCWW's portion of the PROJECT will be determined based upon the bid prices and the "as-built" quantities. MASON shall invoice GCWW for the cost of the PROJECT. MASON hereby agrees that it will not approve any change orders for the PROJECT or any modifications to the approved quantities that would increase the overall cost of the PROJECT related to the improvements to GCWW's portion of the PROJECT without GCWW's prior written consent.

3. Per MASON bidding requirements, successful bidder will provide a contract bid bond with submission of bid and MASON will hold performance bond equal to the contract amount. The performance bond will not be released until work has been completed and accepted by GCWW and MASON. In the event that the Contractor fails to perform the work according to the terms and conditions of the contract and to the satisfaction of GCWW and MASON, MASON hereby agrees that it will use any bond proceeds from the Performance Bond to complete the PROJECT according to the approved specifications.

4. Upon construction of the PROJECT according to the specifications and completion of the contract in accordance with applicable law, GCWW will accept all portions of the PROJECT that are designated as GCWW .

5. All personnel or agents of GCWW and MASON shall, for the purposes of allocation of liability to third parties only, be deemed to be acting under the direction and control of their respective employer or principal and not under the direction and control of any other party to this Contract, and their employer or principal shall assume the risk of any liability to third parties arising from the conduct, acts or omissions of such personnel or agents. In the event of any claim or action arising from any circumstances to which this Contract applies, and whether or not a reservation of rights is made, the parties, as condition of this Contract, shall give their full cooperation to any party defending such a claim or action.

The parties further recognize that (a) the parties are autonomous organizations (b) the parties have independent and separate boards of elected officials and officers responsible to manage their operations and affairs (c) the parties have their own separate assets, (d) the parties are not affiliated and do not have any interest therein, (e) the parties have the right and power to hire, supervise and fire their own employees and contractors, (f) the parties have the function of carrying out and supervising their services under this Contract, and (g) the parties do not control the day-to-day operations and affairs of the other party.

6. This Agreement may only be terminated by either party in the event of a material breach of this Contract, when the material breach remains uncured sixty days after written notice is given to the breaching party specifying the breach. A “material breach” is any failure of either party to fully comply with and perform any and all terms and conditions of the Agreement.

7. All notices required to be given hereunder shall be in writing and shall be sent to the following addresses:

If to GCWW:
Andrew Orth, P.E.
Supervising Engineer
4747 Spring Grove Ave.
Cincinnati, Ohio 45232-1986

If to MASON:
Kurt Seiler, P.E.
City Engineer
6000 Mason-Montgomery Road
Mason, Ohio 45040

8. Whenever the terms “GCWW” and “MASON” are used herein, these terms shall include, without exception, the employees, agents, elected officials, successors, assigns and/or authorized representatives of MASON and GCWW.

9. Neither party shall assign any of its rights or delegate any of its duties under this Contract without written consent of the other. Subject to the above provision, this Contract shall be binding on the successors and assigns of the parties.

10. This Agreement contains the entire Agreement between GCWW and MASON with respect to the subject matter hereof and supersedes all prior written or oral contracts between the parties. No representations, promises, understandings, contracts or otherwise, not herein contained shall be of any force or effect.

11. No modification or amendment of any provisions of the Agreement shall be effective unless made by a written instrument duly executed by the party to be bound thereby, which refers specifically to this Agreement and the amendment of modification being made.

12. Should any judicial officer or tribunal of competent jurisdiction deem any portion of this Agreement unenforceable, the balance of this Agreement shall remain in full force and effect unless revised or terminated pursuant to any other section of this Agreement.

13. No waiver by either party by any breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.

14. This Agreement shall be construed in accordance with, and the legal relations between the parties shall be governed by, the laws of the State of Ohio as applicable to contracts executed and fully performed in the State of Ohio.

15. The signatures of the parties to this Agreement is certification that the funds required for this Agreement will be available as required herein, for each appropriation period through the end of the term of this Agreement.

IN EXECUTION WHEREOF, GCWW has caused this Agreement to be executed on the date stated below by Andrew Orth, P.E., Supervising Engineer, pursuant to Resolution No. _____ and the Mason City Council, pursuant to Ordinance No. _____ have caused this instrument to be executed this ____ day of _____, 2014.

RECOMMENDED BY:
GCWW

BY: _____
NAME: Andrew Orth, P.E.
TITLE: Supervising Engineer
DATE: _____

RECOMMENDED BY:
CITY OF MASON ENGINEER

BY: _____
NAME: Kurt Seiler P.E.
TITLE: City Engineer
DATE: _____

BY: _____
NAME: _____
TITLE: _____
DATE: _____

BY: _____
NAME: Eric Hansen
TITLE: City Manager
DATE: _____