

AGENDA
SPECIAL MEETING OF VILLAGE COUNCIL
MARCH 29, 2018 at 6:30 P.M.

1. Mayor Smith calls the meeting to order

2. Roll Call:

Linda Allen
James Boerio
Linda Burke

Bryan Corcoran
Bill Madison
Rolin Spicer

3. Guests:

4. Floor open to the public:

5. New Business:

Emergency Ordinance 2018-14 awarding contract to SiteWorx LLC for construction of the Wynstead Subdivision public sanitary sewer extension project

First Reading Resolution 2018-15 entering into agreement with Contract Sweepers to provide street sweeping services in 2018

Authorization of Invoices

6. Old Business:

Third Reading Resolution 2018-12 agreement for planning and zoning consulting services through 2018

7. Executive Session

8. Communications and reports from Village Officials and Committees

- a. Mayor
- b. Fiscal Officer
- c. Solicitor
- d. Administrator
- e. Sgt.
- f. Council Members

9. Adjournment



Village of South Lebanon
99 N. High Street, South Lebanon, Ohio 45065
513-494-2296
fax: 513-494-1656
www.southlebanonohio.org

MEMORANDUM

To: Mayor & Village Council

CC: Nicole Armstrong, Fiscal Officer
Paul Revelson, Village Solicitor

From: Jerry Haddix, Village Administrator

Date: March 27, 2018

Subject: Sanitary Sewer Agreement

On March 13th, the bids were opened for the sanitary sewer extension project to extend sewer from the Wynstead development to the Patel convenience store on Route 22-3. The base bid would run the sewer from the store through Fischer Home's planned Wynstead Section 5 Phase A subdivision and tie in at the end of Section 3 of the development. The alternate bid runs from the store to the edge of the Wynstead development (see attached map). This was added due to the fact that Fischer Homes was pushing up the schedule for the development of this section and it would give us another option when evaluating the bids.

Attached are the bid results from the project bid opening. Siteworx was the clear low bidder. After reviewing the bids and meeting with Fischer Homes, in my opinion, the best alternative is awarding Alternate 1 to Siteworx and Fischer would complete their section. There are construction costs for Fischer that they would not have incurred without this extension. We are working with them to determine a fair sharing of the cost.

This resolution needs to be approved by emergency to meet the Village's obligations in the agreement with Kanta Oil LLC which requires access to sanitary sewer by 6/5/18.

If you have any questions or need additional information, please contact me.

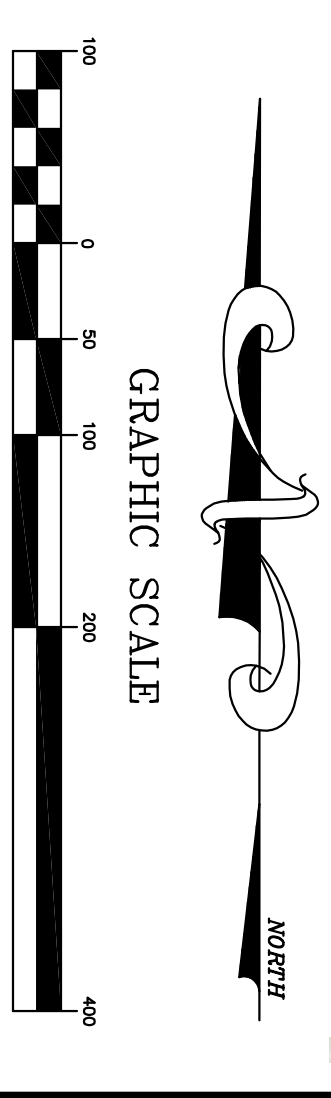
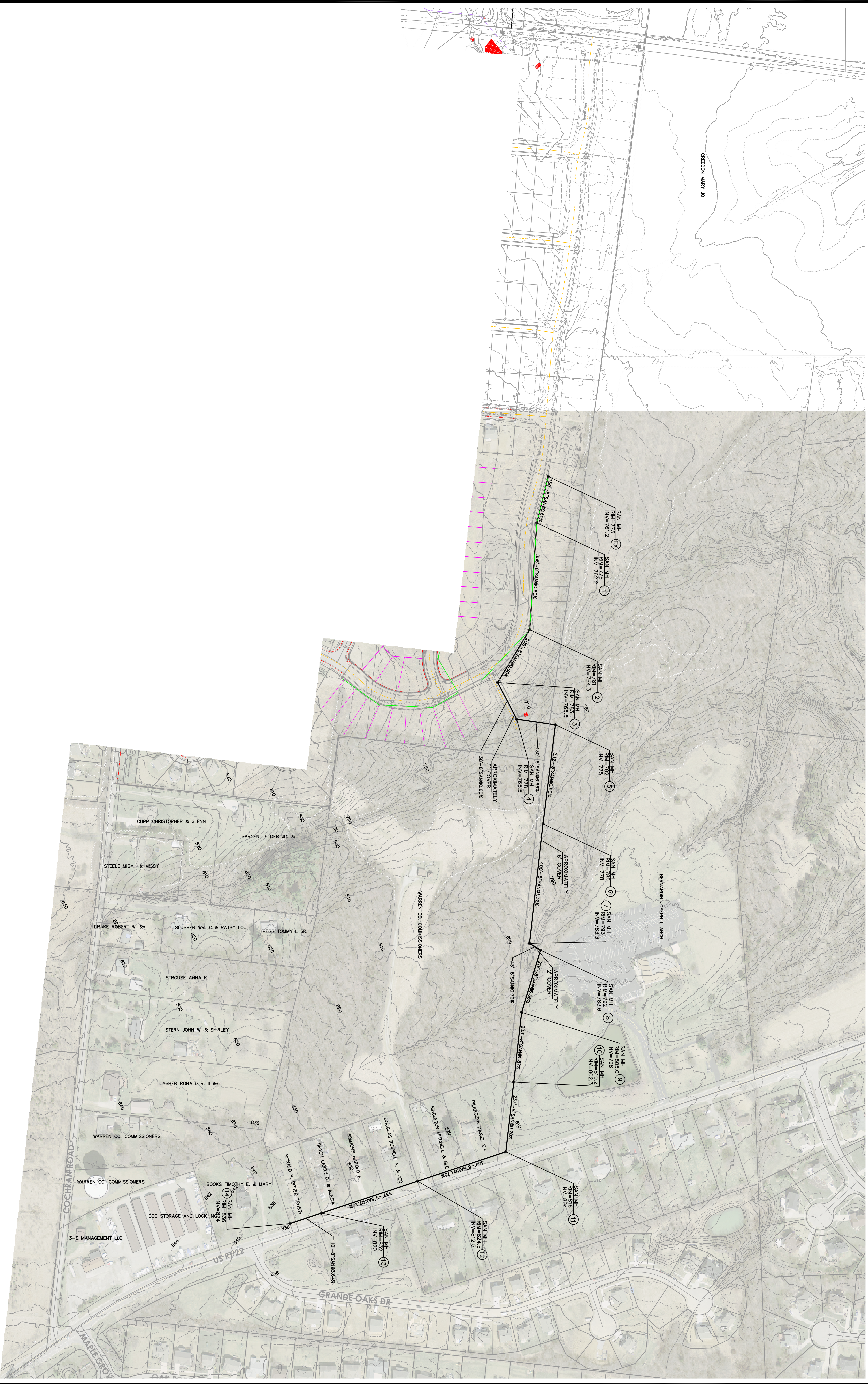
**VILLAGE OF SOUTH LEBANON
WWYNSTEAD SUBDIVISION PUBLIC SANITARY SEWER
EXTENSION PROJECT**

Bid Date: Tuesday, March 13, 2018 at 11:00 AM

Engineer's Estimate: \$691,232

(+10% = \$760,355.20)

| | BASE BID | Alternate 1 |
|--|------------------------|------------------------|
| Siteworx Lebanon, OH | \$311,863.00 | \$169,740.00 |
| Smith & Brown Construction Harrison, OH | \$368,460.00 | \$195,148 |
| Stauffer Site Services Mason, OH | \$539,325.00 | \$246,275.00 |
| Smith Corp Cincinnati, OH | \$556,650.00 corrected | \$296,180.00 corrected |
| Majors Enterprises, Inc. Monroe, OH | \$657,045.00 | \$327,075.00 |



PROPOSED SANITARY SEWER EXTENSION VILLAGE OF SOUTH LEBANON WARREN COUNTY, OHIO



3/00 Park 42 Drive • Suite 190B
Cincinnati, Ohio 45241-2097
Tel 513.759.0004 • Fax 513.563.7099
www.mrcellulosehuntsdon.com

| | | | | | | | |
|--|-----------------|--------|-------------------------------|-------------|----------|-----------|-------|
| Engineers • Architects • Surveyors • Landscape Architects • Planners | | | | | | | |
| Drawn By | JR | Date | 3/20/2017 | Project No. | 06309.06 | Sheet No. | 1/1 |
| Project Mgr | D/S | Scale | 1"=100' | | | | |
| CAD | 06309.06-CHS-00 | X-Ref. | 04WY27-004 WYNSTEAD SECTION 4 | | | File No. | 06309 |

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-____**

A RESOLUTION APPROVING AND AUTHORIZING THE ISSUANCE OF A NOTICE OF AWARD TO SITEWORX LLC FOR THE CONSTRUCTION OF THE WYNSTEAD SUBDIVISION PUBLIC SANITARY SEWER EXTENSION PROJECT AND AUTHORIZING THE MAYOR AND FISCAL OFFICER TO EXECUTE A CONTRACT FOR SAID IMPROVEMENT PROJECT AND THEREAFTER ISSUANCE OF A NOTICE TO PROCEED, AND DECLARING AN EMERGENCY

WHEREAS, the Village published invitations to bid for the Wynstead Subdivision Public Sanitary Sewer Extension Project on February 12, 2018, with the bid opening on March 13, 2018; and,

WHEREAS, Siteworx LLC submitted the apparent low bid with a base bid of \$311,863.00 and an alternate bid of \$169,740.00; and,

WHEREAS, the Village Administrator, along with the Project Engineer, has reviewed all of the bids submitted and recommends that the contract for this Project be awarded to Siteworx LLC for the alternate bid amount of \$169,740.00; and,

WHEREAS, due to the necessity to complete construction to provide sanitary sewer service to the property known as 720 Route 22&3, Morrow, OH 45152, by June 5th, 2018, per the agreement with Kanta Oil LLC, dated June 5th, 2017, immediate action is required and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, at least two-thirds of all members elected thereto concurring:

Section 1. Approve the issuance of a Notice of Award to Siteworx LLC (Contractor) and further authorize the Mayor and Fiscal Officer to execute the Project Contract after approval as to form by the Village Solicitor and execution by the Contractor.

Section 2. Upon full execution of the Project Contract, the Mayor and Fiscal Officer are further authorized to execute and send a Notice to Proceed to the Contractor.

Section 3. That the Council is acting in its administrative capacity in passing this Resolution.

Section 4. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 5. That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

Section 6. That it is found and determined that all formal actions of the Council concerning and relating to passing this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 29th day of March, 2018.

Attest: _____
Nicole Armstrong, Fiscal Officer/Clerk James D. Smith, Mayor

| | |
|--|------------------------------|
| Rules Suspended: / /2018 (if applicable) | Effective Date – / /2018 |
| Vote - ____ Yeas ____ Nays | |
| First Reading – / /2018 | Effective Date – / /2018 |
| Second Reading – / /2018 | |
| Third Reading– / /2018 | |
| Vote - ____ Yeas ____ Nays | |

Prepared by and approved as to form:

PAUL R. REVELSON

VILLAGE SOLICITOR

SOUTH LEBANON, OHIO

By: _____

Date: _____

NOTICE OF AWARD

Date of Issuance: March 29th, 2018

Owner: Village of South Lebanon

Project: Wynstead Subdivision Public Sanitary Sewer Extension Project-

Bidder: Siteworx LLC

Bidder's Address: 3980 Turtlecreek Road,
Lebanon, OH 45036

To Bidder:

You are notified that Owner has accepted your Bid dated 3/13/18 for the above Project, and that you are the Successful Bidder and are awarded a Contract for:

Construction of the Wynstead Subdivision-Public Sanitary Sewer Extension Project – Alternate Bid

(Describe Work or alternates awarded.)

The Contract Price of the awarded Contract is \$169,740.00

Three (3) copies of the proposed Contract Documents (except Plans) accompany this Notice of Award.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award.

Three (3) counterparts of the Agreement, fully executed by Bidder must be delivered to Village of South Lebanon.

Deliver with the executed Agreements the Contract Security and insurance documentation as specified in the General Conditions and Supplementary Conditions - Article 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid Security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully-executed counterpart of the Agreement.

OWNER: Village of South Lebanon

By:

[Signature]

[Printed name]

James D. Smith

Title:

Mayor

AGREEMENT

This Agreement is by and between the Village of South Lebanon (Owner), 99 North High Street, South Lebanon, OH 45065 and Siteworx LLC (Contractor) 3980 Turtlecreek Road, Lebanon, OH 45036.

Owner and Contractor, hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Installation of force main and gravity sanitary sewer along Route 22&3 to the Wynstead Subdivision per bid documents and specifications for the alternate bid.

ARTICLE 2 – THE PROJECT

2.02 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Village of South Lebanon Wynstead Subdivision Public Sanitary Sewer Extension Project

ARTICLE 3 – ENGINEER

The Project has been designed by McGill Smith Punshon, Inc.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

- A.** All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Dates

- A.** Bidder agrees that the Work will be complete within sixty (60) days from the date of the “Notice to Proceed”.

Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration preceding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty)
1. *Substantial Completion*: Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after such until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01** Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined for all work at the prices stated in Contractor's Bid provided within this document.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of Contractor's fee then payable. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer on

or about the 25th day of each month during construction as provided in paragraph 6.02.A.1 a and b below, provided that such Application for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Unit Price Work based on the number of units completed.

1. For Cost of the Work: Progress payments on account of the Cost of the Work will be made. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages in accordance with the Contract:

- a.** 92% Cost of Work completed (with the balance being retainage). If Work has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
- b.** 92% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 92% of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100% of the unit price of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

A. Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph.

ARTICLE 7 – INTEREST

7.01 All amounts not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A.** Contractor has examined and carefully studied the Contract Documents and data and reference items identified in the Contract Documents.
- B.** Contractor has visited the Site, conducted a thorough, alert visual examination of the site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C.** Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D.** Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all plans of physical conditions relating to existing surface or subsurface structures at the Site if any, that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and plans, and (2) reports and plans relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to any Technical Data in such reports and plans.
- E.** Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and plans identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and (3) Contractor's safety precautions and programs.
- F.** Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G.** Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H.** Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- I.** The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- J.** Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – ACCOUNTING RECORDS

- 9.01** Contractor shall keep such full and detailed accounts of materials incorporated and labor and equipment utilized for the Work consistent with the requirements of Paragraph 13.01.E of the General Conditions and as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Contractor's records, books, correspondence, instructions, plans, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 Contents

- A.** The Contract Documents consist of the following:
- 1.** This Agreement (pages A-2 to A-10, inclusive).
 - 2.** Performance Bond (pages A-11 to A-12, inclusive).
 - 3.** General Conditions (pages 1 to 65, inclusive).
 - 4.** Supplementary Conditions (SC-1 to SC-18, inclusive).
 - 5.** Wage Determination and Payroll Submittal (inclusive).
 - 6.** Specifications as listed in the table of contents on page S-1 (inclusive).
 - 7.** Plans (Not attached, but incorporated by reference) consisting of 3 sheets with each sheet bearing the following general title: Village of South Lebanon E. Mason-Morrow-Millgrove Road Sanitary Sewer Project-Re-Bid.
 - 8.** Addenda (numbers __1__ to __1__, inclusive).
 - 9.** Exhibits to this Agreement (enumerated as follows): **a.** Contractor's Bid (pages B-1 to B-8, inclusive).

- 10.** The following which may be delivered or issued on or after the Effective Date of the Contract.
 - a.** Notice to Proceed (inclusive).
 - b.** Notice of Commencement (inclusive).
 - c.** Certificate of Owner's Attorney (inclusive).
 - d.** Certificate of Owner's Financial Officer (inclusive).
 - 11.** The following which must be completed before payment(s) is issued.
 - a.** Application for Payment.
 - b.** Change Orders.
 - c.** Partial Release of Liens and Claims.
 - 12.** The following which must be completed before final payment is issued.
 - a.** Application for Payment.
 - b.** Change Orders.
 - c.** Final Release of Liens and Claims.
 - d.** Affidavit - Village Income Tax.
 - e.** Affidavit of Compliance, Prevailing Wages.
- B.** The documents listed in paragraph 10.01.A are attached to this agreement (except as expressly noted otherwise above).
- C.** There are no Contract Documents other than those listed above in this Article 10.
- D.** The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 Terms

- A.** Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

11.02 Assignment of Contract

- A.** Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

11.03 Successors and Assigns

- A.** Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 Severability

- A.** Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 Campaign Contributions

- A.** Contractor hereby certifies that all applicable parties listed in Division (I) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) and (J) or O.R.C. Section 3517.13.

11.06 Contractor's Certifications

- A.** Contractor certifies that it has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.06:
 - 1.** “corrupt practice” means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2.** “fraudulent practice” means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3.** “collusive practice” means a scheme or an arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4.** “coercive practice” means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.07 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

The most recent date between the two parties will serve as the effective date.

CONTRACTOR: Siteworx LLC

By:

[Signature]

[Printed name]

Title:

Witness:

[Signature]

[Printed name]

Signature Date:

Physical Address for giving notices:

3980 Turtlecreek Road

Lebanon, OH 45036

Telephone Number: (513) 229-0295

Email Address: joes@swxohio.com

Federal I.D. Number: 27-2850156

(Signature page continued on next page.)

OWNER: Village of South Lebanon

By:
[Signature] _____
[Printed name] James D. Smith

Title: Mayor

Witness:
[Signature] _____
[Printed name] _____

Signature Date: _____

Physical Address for giving notices:
99 High Street

South Lebanon, Ohio 45065

Telephone Number: 513-494-2296

Email Address: jsmith@southlebanonohio.org

Federal I.D. Number: 31-600-8930

NOTICE TO PROCEED

Owner: Village of South Lebanon

Contractor: Siteworx LLC.

Effective Date of Contract: March 30, 2018

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence on the date issued of this notice to proceed.

On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Completion is sixty (60) days from the date of this Notice.

Before starting any Work at the Site, Contractor must comply with the following:

OWNER: Village of South Lebanon

By:

[Signature]

[Printed name] James D. Smith

Signature Date: _____

Physical Address for giving notices:

99 High Street, South Lebanon, Ohio 45065

NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT
SECTION 1311.252 OHIO REVISED CODE

State of Ohio, County of Warren, ss:

Notice is hereby given by the undersigned public authority ("Public Authority") of the commencement of a public improvement ("Project") as follows:

(1) The Project is identified as:

Project Name: Wynstead Subdivision Public Sanitary Sewer Extension Project
Location: South Lebanon, Ohio

(2) The Public Authority responsible for the Project is:

Public Authority: Village of South Lebanon
Address: 99 High Street, South Lebanon, Ohio 45065

(3) All principal contractors on the Project, the trade and Surety of each are as follows:

Principal Contractors Name: Siteworx LLC
Address: 3980 Turtlecreek Road, Lebanon, OH 45036
Trade: General
Surety Name and Address: The Guarantee Company of North America
One Towne Square, Ste 1470 Southfield, MI 48076

The Public Authority first executed a contract with a principal contractor for the Project on:

Date: March 29, 2018

The name & address of the representative of the Public Authority upon whom service may be made for the purposes of serving an affidavit pursuant to Section 1311.26 of the Ohio Revised Code is:

Name: James D. Smith
Address: 99 High Street, South Lebanon, Ohio 45065

Public Authority: Village of South Lebanon
Signature: _____
Title: Mayor

The signator of this Notice of Commencement of Public Improvement ("Notice") personally appeared before me on behalf of the Public Authority, a notary public in and for said county, and swore that all the information in the Notice is true as he/she verily believes and further that he/she is fully authorized by the Public Authority to give said notice.

Sworn to before me and subscribed in my presence on this _____ day of _____, _____.

Notary Public

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, __Paul R. Revelson_____, the duly authorized and acting legal representative of Village of South Lebanon do hereby certify as follows:

I have examined the attached contract(s), surety bonds, insurance, and the manner of execution thereof, and I am of the opinion that each of the aforesaid documents meets the requirements set forth within and have been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Signature: _____

Date: _____

CERTIFICATE OF OWNER'S FINANCIAL OFFICER

WITNESS:

I, Nicole Armstrong, Fiscal Officer, hereby certify that the money to meet this contract has been lawfully appropriated for the purpose of the contract and is in the treasury of Village of South Lebanon, Ohio, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

Fiscal Officer

SEAL:

VILLAGE OF SOUTH LEBANON
MEMORANDUM

TO: Mayor and Council
FROM: Jerry Haddix, Village Administrator
RE: Award of 2018 Village Street Sweeping Contract
DATE: March 26, 2018

This memorandum accompanies a resolution authorizing the Mayor and Fiscal Officer to sign a contract with Contract Sweepers and Equipment to perform the street sweeping in the Village in 2018.

Each year the Village solicits proposals for its street sweeping program. The program typically consists of an initial spring cleanup in May followed by six monthly street sweepings between June and November. The sweeping is limited to streets with curbs or curb and gutter only. The Village's Public Works employees provide assistance at the Village's cost to load and haul away the debris collected by the street sweeper and installing "No Parking" signs.

Village staff received street sweeping proposals for the 2018 season from Contract Sweepers and Equipment and DSS Sweeping Service. These are the two companies that have responded to our request for proposals in the past. The prices submitted by each of these firms were as follows:

| | <u>Contract Sweepers</u> | <u>DSS Sweeping</u> |
|------------------------|--------------------------|---------------------|
| Initial Spring Cleanup | \$1,236 | \$1,600 |
| (6) Monthly Sweeps | \$1,100 each | \$1,100 each |

Funds were budgeted for 2018 for street sweeping in the Street Fund. Using the bid prices from Contract Street Sweepers, the total cost of the street sweeping in 2018, excluding the cost of work performed by the Village Public Works Department, is \$7,836 as compared to the bid of DSS at \$8,200.

Recommendation

Staff recommends adopting the Resolution authorizing the execution of a contract with Contract Sweepers and Equipment to provide the Village street sweeping services in 2018.

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-15**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO AN AGREEMENT WITH CONTRACT SWEEPERS AND
EQUIPMENT TO PROVIDE STREET SWEEPING SERVICES IN 2018**

WHEREAS, the Village has solicited proposals for street sweeping services throughout the Village in 2018; and,

WHEREAS, Contract Sweepers and Equipment was recommended by staff as the contractor with the lowest and best price; and,

WHEREAS, funds are available in the Village's 2018 budget for street sweeping services; and,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

Section 1. That the Council authorizes the Mayor and Fiscal Officer to enter into a contract with Contract Street Sweepers and Equipment to provide an initial street sweeping and six (6) additional monthly street sweepings in 2018.

Section 2. That the street sweeping shall be limited to streets with curb and curb and gutter only.

Section 3. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 4. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 5. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this _____ day of April, 2018.

Attest: _____
Nicole Armstrong, Fiscal Officer

James D. Smith, Mayor

| | |
|--|--------------------------|
| Rules Suspended: / /2018 (if applicable) | Effective Date – / /2018 |
| Vote - ____ Yeas ____ Nays | |
| First Reading – / /2018 | Effective Date – / /2018 |
| Second Reading – / /2018 | |
| Third Reading– / /2018 | |
| Vote - ____ Yeas ____ Nays | |

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: _____

Date: ____/____/2018

AGREEMENT FOR SERVICES

This AGREEMENT FOR SERVICES (the "Agreement") made as of the date stated below, between the Village of South Lebanon, Ohio, 99 N. High Street, South Lebanon, OH 45065 (the "Village") and Contract Sweepers & Equipment Co., organized under the laws of the State of Ohio as a Corporation, whose address is 10136 Mosteller Lane, West Chester, Ohio 45069 (the "Company").

The Village desires to engage the Company to render services as described herein.

The Village and the Company, in consideration of their mutual covenants herein agree, in respect of the performance of services by the Company and the payment for those services by the Village, to the following terms, conditions and obligations.

SECTION 1 - BASIC SERVICES OF COMPANY

- 1.1 The Company shall perform Basic Services ("the Services") the scope of which is particularly set forth, defined and identified, in the attachment hereto, and made a part of this Agreement as Exhibit 1.

SECTION 2 - ADDITIONAL SERVICES OF COMPANY

- 2.1 If authorized in writing by the Village and the Company, the Company shall furnish or obtain from others Additional Services of certain types, which are not considered normal or customary Basic Services.

SECTION 3 – THE VILLAGE’S RESPONSIBILITIES

The Village shall:

- 3.1. Provide all criteria and full information for the Project, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist the Company by providing all available information pertinent to the Services in the possession of the Village including any previous reports and any other data relative to the Services.
- 3.3. Furnish Company, as required for performance of the Services, data prepared by or services of others, as applicable.
- 3.4. Arrange for access to and make all provisions for the Company to enter upon public and private property as required for Company to perform the scope of services.
- 3.5. Provide such accounting, insurance counseling and such legal services as may be required for the Services, such legal services as the Village and the Company may require or the Company may reasonably request with regards to legal issues pertaining to the Services.

- 3.6. Designate in writing the person or persons to act as the Village's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the Village's policies and decisions with respect to materials, equipment, elements and systems pertinent to Company's services.
- 3.7. Give prompt written notice to the Company whenever the Village observes or otherwise becomes aware of any development that affects the scope or timing of the Services, or any defect in the work of any third party.
- 3.8. Furnish, or direct the Company to provide, upon approval of the Village, necessary Additional Services as stipulated in accordance with Section 2 of this Agreement or other services as required.
- 3.9. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIOD OF SERVICE

- 4.1. The provisions of this Section 4 and the various rates of compensation for the Services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Services.
- 4.2. Upon receipt of a fully executed Agreement from the Village, Company shall proceed with the performance of the Services called for in Exhibit 1.
- 4.3. The Services shall commence in May and be completed in November. Precise dates for performance of the Services shall be determined by the Village.
- 4.4. If the Village has requested significant modifications or changes in the extent of the Services, the time of performance of the Services and the rates of compensation shall be adjusted appropriately, upon approval of the Village and the Company of a written Schedule and price.

SECTION 5 - PAYMENTS TO CONTRACTOR

5.1 Methods of Payment for Services and Expenses of Company

- 5.1.1. For Services. The Village shall pay the Company for Services rendered under Section 1 as follows:

The Company agrees to provide the Services set forth in Exhibit 1 attached hereto to the Village as follows:

| | |
|---------------------------------------|-------------------|
| Initial Spring Clean Up | \$1,236.00 |
| Six (6) Monthly Sweeps @ \$1,100/each | <u>\$6,798.00</u> |
| TOTAL COST OF SERVICES | \$8,034.00 |

- 5.1.2 For Additional Services. The Village shall pay the Company for Additional Services rendered based on the hourly rates for Services as follows:

| | |
|---|-------------------|
| Additional sweeping due to excessive leaves | \$125.00 per hour |
|---|-------------------|

5.2 Times of Payments.

5.2.1. The Company shall submit itemized statements for Basic and Additional Services rendered. The Village shall make prompt payments in response to the Company's itemized statements by mailing via ordinary U.S. mail such payment no later than five (5) business days after the Village Council's regularly scheduled Council Meeting on the 3rd Thursday of each month.

5.3 Other Provisions Concerning Payments.

5.3.1. If the Village fails to make any payment due the Company for the Services within forty-five (45) days after receipt of Company's itemized statement therefore, the amounts due the Company shall include a charge at the rate of 1% per month from said 45th day, and in addition, the Company may, after giving seven (7) days written notice to the Village, suspend the Services under this Agreement until the Company has been paid in full all amounts due for the Services.

5.3.2. In the event of termination by the Village under paragraph 6.1 upon the completion of any phase of the Services, progress payments due the Company for the Services satisfactorily rendered through such phase shall constitute total payment for such Services.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination.

The obligation to provide the Services under this Agreement may be terminated by either party upon seven (7) days' written notice by certified mail, return receipt requested, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.2 Controlling Law and Venue

This Agreement is to be governed by the law of the State of Ohio. The venue for any disputes hereunder shall exclusively be the Warren County, Ohio Court of Common Pleas.

6.3 Successors and Assigns.

6.3.1 The Village and the Company each binds himself/herself and his/her partners, successors, executors, administrators, assigns and legal representatives to the other party, to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.

6.3.2 Neither the Village nor the Company shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or

responsibility under this Agreement. Nothing contained in this paragraph shall prevent the Company from employing such independent consultants, associates and subcontractors, as the Company may deem appropriate to assist the Company in the performance of the Services hereunder.

6.3.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Village and the Company.

6.4 Modification or Amendment

No modification or amendment of any provisions of this 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 states that an amendment or modification is being made in the respects as set forth in such amendment.

6.5 Construction

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

6.6 Waiver

No waiver by either party of 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.

6.7 Relationship of Parties

The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Agreement.

6.8 Parties

Whenever the terms "the Village" and "the Company" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of the Village and the Company.

6.9 Headings

Paragraph headings in this Agreement are for the purposes of convenience and identification and shall not be used to interpret or construe this Agreement.

6.10 Notices

All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:

TO: The Village of South Lebanon, Ohio
Attn. Village Administrator
99 N. High Street
South Lebanon, OH 45065

Company: Contract Sweepers & Equipment Co.
Attn. Craig Miller, Area Manager
10136 Mosteller Lane
West Chester, Ohio 45069

6.11 Insurance

The Company shall carry comprehensive general and professional liability insurance, with no interruption of coverage during the entire term of this Agreement. The Company further agrees that in the event that its comprehensive general liability policy is maintained on a "claims made" basis, and in the event that this Agreement is terminated, the Company shall continue such policy in effect for the period of any statute or statutes of limitation applicable to claims thereby insured, notwithstanding the termination of the Agreement. The Company shall provide the Village with a certificate of insurance evidencing such coverage, and shall provide thirty (30) days notice of cancellation or non-renewal to the Village. Cancellation or non-renewal of insurance shall be grounds to terminate this Agreement. The insurance shall comply with all of the following provisions:

(a) The insurer shall have an AM Best rating of A- or better, unless otherwise agreed by the Village in writing;

(b) The insurance coverage must have commercial general liability limit of \$1,000,000 per occurrence for bodily injury, personal injury and property damage and the minimum general aggregate shall be \$2,000,000;

(c) The automobile liability limit shall be at least \$500,000 per accident for bodily injury and property damage where applicable;

(d) The insurance coverage shall have Ohio stop gap employer's liability with a \$1,000,000 limit;

(e) The Company shall name the Village, its elected and appointed officials, agents, employees and volunteers as additional insureds to all insurance policies with waiver of subrogation against the Village, and shall furnish the Village with certificates of insurance naming such individuals and entities as additional insureds. The coverage shall be primary to the additional insureds and not contributing with any other insurance or similar protection available to the additional insured's, whether available coverage is primary, contributing or excess, and shall provide the Village with the same coverage and duty to defend as the primary coverage provides for the Company;

(f) The Company shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor; provided that all coverages for subcontractors shall be subject to all requirements stated herein; and

(g) The Company shall carry statutory worker's compensation insurance and statutory employer's liability insurance as required by law and shall provide the Village with certificates of insurance evidencing such coverage simultaneous with the execution of this Agreement.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

7.1 This Agreement is subject to the following special provisions, if any:

7.1.1 None.

7.2. The following Exhibit is attached to and made a part of this Agreement:

Exhibit 1

SECTION 8 – DISPUTE RESOLUTION

Any and all controversies, disputes, disagreements, claims and demands of whatsoever kind or nature arising out of or relating in any way to this Agreement, alleged breaches thereof, and/or the parties' relationship shall: (i) first be submitted to mediation before a mediator mutually agreed upon, and if mediation is not successful, then; (ii) the parties may litigate the dispute subject to the jurisdiction and venue stipulation in Section 6, Paragraph 6.3 herein.

SECTION 9 – FORCE MAJEURE EVENT

In the event that either party is unable to perform any of its obligations under this Agreement or to enjoy any of its benefits because of (or if failure to perform the Services is caused by) natural disaster, action or decrees of governmental bodies (hereinafter referred to as a "Force Majeure Event), the party who has been so effected shall immediately give notice to the other party. Upon receipt of such notice, all obligations under the Agreement shall be immediately suspended. If the period of non-performance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, either party may terminate this Agreement.

SECTION 10 – ENTIRE AGREEMENT

This Agreement, together with the Exhibits and schedules identified above constitute the entire agreement between the Village and the Company, and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by all parties.

SECTION 11 – INDEMNIFICATION

The Company will indemnify and save the Village harmless from loss, claims, expenses, causes of action, costs, damages, and other obligations including but not limited to the Village's reasonable attorney fees, financial or otherwise, to the extent arising from (a) negligent, reckless, and errors or omissions by the Company, its agents, employees, licensees, contractors, or subcontractors; and, (b) the failure of the Company, its agents, employees, licensees, contractors, or subcontractors, to observe the applicable standard of care in providing services pursuant to this Agreement.

SECTION 11 – EXECUTION

COMPANY:

IN EXECUTION WHEREOF, Contract Sweepers & Equipment Co., the Company herein, has caused this Agreement to be executed on the date stated below by Craig Miller, whose title is Area Manager, pursuant to a Resolution or Consent Action authorizing such act.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

VILLAGE:

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, Ohio, has caused this Agreement to be executed on the date stated below by its Mayor and its Fiscal Officer, pursuant to Resolution No. 2018-_____.

SIGNATURE: _____

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: _____

SIGNATURE: _____

PRINTED NAME: Nicole Armstrong

TITLE: Fiscal Officer

DATE: _____

APPROVED AS TO FORM:

PAUL R. REVELSON
VILLAGE SOLICITOR
VILLAGE OF SOUTH LEBANON, OHIO

By: _____

Date: _____

EXHIBIT 1

The Company will provide:

1. Late model two-engine street sweepers in excellent operating condition.
2. Each sweeper will be operated by a competent, trained operator whose sole responsibility is street sweeping.
3. The operators will notify the Village's Public Works Superintendent if excessive amount of leaves is affecting sweeping performance or productivity.
4. Spring clean-up includes removal of salt used by the Village for ice control.
5. Sweeping will be performed on the first Tuesday and Wednesday of each month with the exception of November, unless directed otherwise by the Public Works Superintendent. Final 2018 sweeping will be done in mid to late November.
6. Sweeping will be performed May through November.

The Village shall provide:

1. Use of hydrants and water.
2. Use of a dump truck for the disposal of debris.
3. Leaf removal of approximately 95% of the leaves on streets to be serviced before sweeping commences.
4. Sign posting.

Exclusions:

1. Excessive leaf removal greater than approximately 5% of the leaves on the streets to be serviced.
2. Dump truck for disposal of debris.
3. Sweeping of excess chips from chipping and sealing programs.

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-12**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO AN AGREEMENT WITH KIMBERLY A. LAPENSEE FOR
PLANNING AND ZONING CONSULTING SERVICES THROUGH DECEMBER 31,
2018**

WHEREAS, the Village has experienced an increase in residential and commercial development in calendar year 2017 and this trend is expected to continue through calendar year 2018; and,

WHEREAS, Village staff recommends the use of a planning and zoning consultant to assist in the review process of upcoming developments and other planning and zoning issues that may arise throughout the year; and,

WHEREAS, Village staff has solicited a proposal from Kimberly A. Lapensee for said services; and,

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

Section 1. That the Council authorizes the Mayor and Fiscal Officer to enter into a contract with Kimberly A. Lapensee for consulting services in the Village of South Lebanon for a not to exceed amount of \$10,000.00, as attached hereto.

Section 2. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 4. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 29th day of March, 2018.

Attest: _____
Nicole Armstrong, Fiscal Officer/Clerk

James D. Smith, Mayor

Rules Suspended: / /2018 (if applicable)

Effective Date – / /2018

Vote - ____ Yeas

____ Nays

First Reading – / /2018

Effective Date – / /2018

Second Reading – / /2018

Third Reading– / /2018

Vote - ____ Yeas

____ Nays

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: _____

Date: ____/____/2018

MASTER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

This MASTER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES (the "Agreement") made as of the date stated below, between the Village of South Lebanon, Ohio, 99 S. High Street, South Lebanon, OH 45065 (the "Village") and Kimberly A. Lapensee, a sole proprietor, whose address is 6525 Kalbfleisch Road, Middletown, Ohio 45042 ("Consultant").

The Village and the Consultant in consideration of their mutual covenants herein agree, in respect of the performance of professional consulting services by Consultant and the payment for those services by the Village, to the following terms, conditions and obligations.

SECTION 1 - BASIC SERVICES OF CONSULTANT

- 1.1 The Consultant agrees to provide consulting planning services (the "Basic Services") relative to municipal planning and zoning consulting services for the Village of South Lebanon, all in accordance with the scope of work described in Exhibit 1 herein.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

- 2.1 If authorized in writing by the Village and Consultant, Consultant shall furnish or obtain from others Additional Services of certain types, which are not considered normal or customary Basic Services. Such additional services are particularly set forth, defined and identified, in the attachment hereto, and made a part of this Agreement as Exhibit 1-A.

SECTION 3 – THE VILLAGE’S RESPONSIBILITIES

The Village shall:

- 3.1. INTENTIONALLY LEFT BLANK
- 3.2. Assist Consultant by providing all available information pertinent to the Basic Services in the possession of the Village including any previous reports and any other data.
- 3.3. Furnish Consultant, as required for performance of Consultant's Basic Services, data prepared by or services of others, as applicable.
- 3.4. Arrange for access to and make all provisions for Consultant to enter upon public and private property as required for Consultant to perform the scope of services.

- 3.5. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by Consultant, obtain advice of an attorney, insurance counselor and other Consultants as the Village deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of Consultant.
- 3.6. INTENTIONALLY LEFT BLANK
- 3.7. Provide such accounting, insurance counseling and such legal services as may be required for the Basic Services, such legal services as the Village and Consultant may require or Consultant may reasonably request with regards to legal issues pertaining to the Basic Services.
- 3.8. Designate in writing the person or persons to act as the Village's representative with respect to the services to be rendered under this Agreement. Such person shall have authority to transmit instructions, receive information, interpret and define the Village's policies and decisions with respect to materials, equipment, elements and systems pertinent to Consultant's services.
- 3.9. Give prompt written notice to Consultant whenever the Village observes or otherwise becomes aware of any development that affects the scope or timing of Consultant's services, or any defect in the work of any third party.
- 3.10. Furnish, or direct Consultant to provide, upon approval of the Village, necessary Additional Services as stipulated in accordance with Section 2 of this Agreement or other services as required. (Intentionally Omitted)
- 3.11. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4 - PERIOD OF SERVICE

- 4.1. The provisions of this Section 4 and the various rates of compensation for Consultant's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Basic Services.
- 4.2. Upon receipt of a written notice to proceed from the Village, Consultant shall proceed with the performance of the services called for in a task order to be issued at a future date.
- 4.3. Consultant's services to be rendered thereunto shall be considered complete upon final payment issued by Village.
- 4.4. If the Village has requested significant modifications or changes, the time of performance of Consultant's services and his/her/its various rates of compensation shall be adjusted appropriately, upon approval of the Village and the Consultant of a written Schedule.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services and Expenses of CONSULTANT

- 5.1.1. For Basic Services. The Village shall pay Consultant for Basic Services rendered under Section 1 as follows:

The price for the products and/or services provided herein and the method of payment thereto shall be on a time-and-materials basis in accordance with the hourly rate established in Exhibit "1". **THE TOTAL PRICE FOR THE BASIC SERVICES SHALL NOT EXCEED TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00).** The Village shall not be responsible for the cost of any Basic Services that exceeds the aforementioned not-to-exceed price without prior written authorization from the Village.

- 5.1.2. For Additional Services. The Village shall pay Consultant for Additional Services rendered set forth in Exhibit 1 based on the hourly rates for Professional Consulting Services, as particularly set forth, defined and identified, in the attachment hereto, and made a part of this Agreement as Exhibit 1.

5.2 Times of Payments.

- 5.2.1. Consultant shall submit itemized statements for Basic and Additional Services rendered. The Village shall make prompt payments in response to Consultant's itemized statements by mailing via ordinary U.S. mail such payment no later than five (5) business days after the Village Council's regularly scheduled Council Meeting on the 3rd Thursday of each month.

5.3 Other Provisions Concerning Payments.

- 5.3.1. If the Village fails to make any payment due Consultant for services and expenses within forty-five (45) days after receipt of Consultant's itemized statement therefore, the amounts due Consultant shall include a charge at the rate of 1% per month from said 45th day, and in addition, Consultant may, after giving seven days, written notice to the Village, suspend services under this Agreement until he/she has been paid in full all amounts due for services and expenses.
- 5.3.2. In the event of termination by the Village under paragraph 6.1 upon the completion of any phase of the Basic Services, progress payments due Consultant for all services satisfactorily rendered through such phase shall constitute total payment for such services.
- 5.3.3. Records of Consultant's Salary Costs pertinent to Consultant's compensation under this Agreement will be kept in accordance with generally accepted accounting practices. Copies will be made available to the Village upon request prior to final payment for Consultant's services.

5.4 Definitions

- 5.4.1. The Payroll Costs used as a basis for payment means salaries and wages (basic and incentive) paid to all personnel engaged directly any project consulted by Consultant, including, but not limited to the following; Consultant's architects, surveyors, designers, draftsmen, specification writers, estimators, all other technical personnel, stenographers, typists and clerks; plus the cost of customary and

statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, sick leave, vacation and holiday pay applicable thereto.

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination.

The obligation to provide services under this Agreement may be terminated by either party for no cause upon seven (7) days' written notice by certified mail, return receipt requested.

6.2 Reuse of Documents.

All documents prepared by Consultant pursuant to this Agreement are instruments of service related to projects consulted. They are not intended or represented to be suitable for reuse by the Village or others on any other project. Any reuse without written verification or adaptation by Consultant for the specific purpose intended will be at the Village's risk and without liability or legal exposure to Consultant. Any verification or adaptation requested by the Village to be performed by Consultant will entitle Consultant to further compensation at rates to be agreed upon by the Village and Consultant.

6.3 Controlling Law and Venue

This Agreement is to be governed by the law of the State of Ohio. The venue for any disputes hereunder shall exclusively be the Warren County, Ohio Court of Common Pleas.

6.4 Successors and Assigns.

- 6.4.1. The Village and Consultant each binds himself/herself and his/her partners, successors, executors, administrators, assigns and legal representatives to the other party, to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of this Agreement.
- 6.4.2. Neither the Village nor Consultant shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except as stated in paragraph 6.4.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Consultant from employing such independent consultants, associates and subcontractors, as he/she may deem appropriate to assist him/her in the performance of services hereunder.
- 6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Village and Consultant.

6.5 Modification or Amendment

No modification or amendment of any provisions of this 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 states that an amendment or modification is being made in the respects as set forth in such amendment.

6.6 Construction

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

6.7 Waiver

No waiver by either party of 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.

6.8 Relationship of Parties

The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Agreement.

6.9 Parties

Whenever the terms "the Village" and "Consultant" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of the Village and the Consultant.

6.10 Headings

Paragraph headings in this Agreement are for the purposes of convenience and identification and shall not be used to interpret or construe this Agreement.

6.11 Notices

All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:

TO: The Village of South Lebanon, Ohio
Attn. Village Administrator
99 S. High Street
South Lebanon, OH 45065

Consultant: Kimberly A. Lapensee
Address: 6515 Kalbfleisch Road
Address: Middletown, Ohio 45042

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

7.1 This Agreement is subject to the following special provisions, if any:

7.1.1 None

7.2. The following Exhibits are attached to and made a part of this Agreement:

Exhibit "1"

SECTION 8 – DISPUTE RESOLUTION

Any and all controversies, disputes, disagreements, claims and demands of whatsoever kind or nature arising out of or relating in any way to this Agreement, alleged breaches thereof, and/or the parties' relationship shall: (i) first be submitted to mediation before a mediator mutually agreed upon, and if mediation is not successful, then; (ii) the parties may litigate the dispute subject to the jurisdiction and venue stipulation in Section 6, Paragraph 6.2 herein.

SECTION 9 – ENTIRE AGREEMENT

This Agreement, together with the Exhibits and schedules identified above constitute the entire agreement between the Village and Consultant, and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by all parties.

SECTION 10 – INDEMNIFICATION

Consultant will indemnify and save the Village harmless from loss, claims, expenses, causes of action, costs, damages, and other obligations including but not limited to the Village's reasonable attorney fees, financial or otherwise, to the extent arising from (a) negligent, reckless, and errors or omissions by Consultant, its agents, employees, licensees, contractors, or subcontractors; and, (b) the failure of Consultant, its agents, employees, licensees, contractors, or subcontractors, to observe the applicable standard of care in providing services pursuant to this Agreement

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SECTION 11 – EXECUTION

CONSULTANT:

IN EXECUTION WHEREOF, Kimberly A. Lapensee, the Consultant herein, has caused this Agreement to be executed on the date stated below by _____ whose title is _____.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

VILLAGE:

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, Ohio, has caused this Agreement to be executed on the date stated below by its Mayor and its Fiscal Officer, pursuant to Resolution No. 2018 - ____.

SIGNATURE: _____

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: _____

SIGNATURE: _____

PRINTED NAME: Nicole Armstrong

TITLE: Fiscal Officer

DATE: _____

APPROVED AS TO FORM:

PAUL R. REVELSON
VILLAGE SOLICITOR
VILLAGE OF SOUTH LEBANON, OHIO

By: _____

Date: _____

EXHIBIT “1”

SCOPE OF SERVICES

- Review plans for commercial and residential developments submitted to the Village and provide assistance to Village staff as needed;
- Review Village Zoning Map and Text Amendments and make recommendations to the Village Planning Commission and Village Council;
- Review applications for variances and conditional uses submitted to the Village Board of Zoning Appeals; and
- Attend Planning Commission, Board of Zoning Appeals, or Village Council meetings, if necessary.

HOURLY RATE SCHEDULE

Kimberly A. Lapensee \$50 per hour

All reimbursables such as reproduction, transportation, and project-related expenses will be charged at their cost.