

AGENDA

REGULAR MEETING OF CITY COUNCIL MAY 19, 2022 at 6:30 P.M.

1. Mayor Smith calls the meeting to order

2. Roll Call:

Linda Allen
Linda Burke
Brenda Combs

Maryan Harrison
Bill Madison
Rolin Spicer

3. Pledge of Allegiance

4. Guests: Bryan Corcoran, Veteran's Memorial Event Update

Richard Bertagna, and Angie Smith, Executive Director of Lebanon Area
Chamber of Commerce

5. Floor open to the public

6. New Business: Emergency Resolution 2022-20, authorizing the Mayor and Fiscal Officer to sign a
pre-annexation agreement with Michael & Kimberly Lenig

Emergency Ordinance 2022-17, maintaining all provisions of Chapter 91 of the
2022 Ohio Basic Code pertaining to fireworks.

Approval of Invoices

Approval of Solicitor's Invoice

Approval of April 2022 Financial Statements

Approval of Meeting Minutes:

Special Meeting – May 2, 2022

Regular Meeting – May 5, 2022

Special Meeting – May 12, 2022

7. Old Business: Emergency Resolution 2022-18, suspending the third reading and approving an
agreement with Choice One Engineering for the development of an Asset
Management Plan for city roadways, curbs, and sidewalks

Ordinance 2022-16, Third Reading, approving zoning map amendment for 4.4565
acres of property located on Mason-Morrow-Millgrove Road

8. Communications and reports from City Officials and Committees:

- | | |
|------------------------|--------------------|
| a. Mayor | e. Solicitor |
| b. Fiscal Officer | f. Sergeant |
| c. Administrator | g. Council Members |
| d. Asst. Administrator | |

9. Executive Session:

10. Adjournment:



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

MEMORANDUM

To: Mayor & Village Council
From: Jerry Haddix, City Administrator
Date: May 16, 2022
Subject: Lenig Pre-Annexation Agreement

Attached is a resolution and pre-annexation agreement with Michael & Kimberly Lenig for their 1.003 acre property located at 556 Mason-Morrow-Millgrove Road located in front of the Church of the Nazarene. The Lenig's are in the process of relocating their company, CC Locatling, LLC to this site. This Agreement would include a free sewer tap to the Lenigs upon annexation.

Let me know if you have any questions or need additional information.

**CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2022-20**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO SIGN
A PRE-ANNEXATION AGREEMENT WITH MICHAEL AND KIMBERLY LENIG,
AND DECLARING AN EMERGENCY**

WHEREAS, Michael and Kimberly Lenig are the current owners of a certain property located at 556 Mason-Morrow-Millgrove Road containing 1.003 acres in Union Township, Warren County, Ohio, (Sidwell# 12-01-126-009); and

WHEREAS, Michael and Kimberly Lenig are requesting to annex to the City of South Lebanon; and

WHEREAS, immediate action is required to expedite filing of annexation documents with the Warren County Board of Commissioners, and such action is necessary in order to preserve the public peace, health, safety or welfare of the City.

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

Section 1. The City Council does hereby authorize the Mayor and Fiscal Officer to execute the attached Agreement, as approved as to form by the City Solicitor, attached hereto and incorporated by reference.

Section 2. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 3. 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 4. 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.

Resolution No. 2022-20

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Adopted this ____ day of _____, 2022.

Attest: _____
Petrina D. Williams, Fiscal Officer/Clerk

James D. Smith, Mayor

Rules Suspended: / /2022 (if applicable)	Effective Date – / /2022
Vote - ____ Yeas ____ Nays	
First Reading – / /2022	Effective Date – / /2022
Second Reading – / /2022	
Third Reading– / /2022	
Vote - ____ Yeas ____ Nays	

Prepared by and approved as to form:

ANDREW P. MEIER
CITY SOLICITOR
SOUTH LEBANON, OHIO

By: _____

Date: ____ / ____ /2022

AGREEMENT

This Agreement is made and entered into on this _____ day of _____, 2022, by and between the City of South Lebanon, Ohio, an Ohio municipal corporation (“South Lebanon” or “City”) and Michael and Kimberly Lenig, husband and wife (“the Owners”), for the purpose of providing certain municipal services to real estate owned by Owners and located at 556 Mason-Morrow-Millgrove Road, South Lebanon, Ohio 45065 (the “Lenig Property”), upon its annexation to South Lebanon, which real estate is more particularly described and shown in “Exhibit A” attached hereto.

WHEREAS, the Lenig Property is approximately 1.003 acres and is now located in unincorporated Union Township, Warren County, Ohio, being Warren County Auditor’s Parcel No. 12-01-126-009; and

WHEREAS, the Owners seek to annex to South Lebanon and obtain sanitary sewer from South Lebanon for the entire Property that is located in close proximity to, but is not currently within, the South Lebanon corporate limits or South Lebanon’s sanitary sewer service area; and

WHEREAS, South Lebanon requires that new users of South Lebanon municipal sanitary sewer and water services be located within the corporate limits of South Lebanon.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained to be performed by the parties hereto, it is agreed by South Lebanon and the Owners as follows:

(1) **Annexation**

(A) The Owners shall petition for annexation of all of the Lenig Property to South Lebanon individually, at their sole cost and expense, or together with other properties at a proportionately shared cost and expense, at such time as South Lebanon may request annexation of all of the Lenig Property. The Owner shall, within thirty (30) days following receipt of any written request for annexation from South Lebanon, cause a petition to be filed with the Warren County Board of Commissioners requesting annexation of their property, together with any other properties desiring to annex to South Lebanon, and will support such petition in any and all proceedings before the Warren County Board of Commissioners as may be necessary to accomplish annexation of all of the Lenig Property to South Lebanon.

(B) The Owners may petition, at their sole cost and expense, for annexation of all of the Lenig Property to South Lebanon at any time they deem annexation appropriate, and South Lebanon will support the petition in any and all proceedings before the Warren County Board of Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation of all of the Lenig Property to South Lebanon.

(C) South Lebanon may, in its sole discretion and at its own cost, continue to support and/or prosecute the annexation and any other proceedings relating to the annexation beyond the proceedings before the Warren County Board of Commissioners, including any referendum or

court proceedings, including mandamus, injunction, and appeal, until the matter is finally determined beyond any right of referendum or appeal. The Owners agrees that they shall continue to sign, support, and prosecute the annexation through the final conclusion of all proceedings, including any referendum or court proceedings for so long as South Lebanon elects to support the annexation at its cost, fees, and expenses. The Owners may also independently support and defend the annexation at their cost irrespective of whether South Lebanon elects to proceed at its cost, and South Lebanon agrees to continue to support the annexation at Owners' cost.

(D) Owners agree to support the Petition and not remove their name from the Petition so long as their signatures remain effective within the statutory period provided by law before the petition is filed and agree to continue to support the annexation to the City throughout the annexation process after the petition is filed, including any appeal, mandamus or other court action. Owners further agree to sign and support a new annexation petition, should the initial petition fail or should a new petition become necessary to accomplish the annexation, even if the annexation territory is reconfigured, as long as this Agreement is in effect and South Lebanon pays all expenses connected therewith. Should South Lebanon elect, at any time, to stop paying the costs, fees and expenses associated with any challenges to the annexation, Owners may continue to pursue the annexation, at Owners' expense, and South Lebanon agrees that it will support the annexation for so long as Owners pay all costs, fees and expenses associated with the annexation.

(2) **Commitments by South Lebanon**

(A) Service Resolution. The City agrees that it shall timely enact and file with the Warren County Board of County Commissioners the appropriate ordinance or resolution required by law indicating what services the City will provide to the annexation territory. Services shall be provided to the Property upon the same terms and conditions as are afforded to other properties within the City except as otherwise provided in this Agreement.

(B) Acceptance of Annexation. The City agrees that it is in the interest of the City to have the Property annexed into the City. Upon the approval of the annexation by the Warren County Board of County Commissioners and/or a court of law, and the City municipal clerk's receipt of the record of the annexation proceedings from the clerk of the Warren County Board of County Commissioners, the City shall timely consider and accept the annexation and process it according to law.

(C) Zoning. The Lenig Property (now in Union Township) is currently zoned B-2 Community Commercial Businesses Zone. South Lebanon agrees that, upon annexation to South Lebanon and upon request of the Owners, staff shall recommend to the Planning Commission the South Lebanon zoning district that is most closely related to the existing Union Township B-2 Community Commercial Businesses zoning of the Lenig Property. This Agreement is currently subject to Section 15.7.13(2) of the South Lebanon Zoning Code now in effect, which provides that upon annexation, newly annexed property (the Lenig Property) shall be classified as being in whichever district established by these Regulations most closely resembles the zoning district that existed in the annexation as recommend by the Planning Commission and approved by Council. The parties agree that this Agreement shall remain subject to Section 15.7.13 currently in effect for the rezoning of the Lenig Property upon annexation to South Lebanon, unless otherwise mutually agreed to by the parties in writing.

(D) Utilities. Upon completion of and acceptance of the annexation of the Lenig Property by City Council beyond any right of referendum or appeal, South Lebanon will make sanitary sewer available to the Lenig Property within a reasonable time and shall waive its fee for one commercial sanitary sewer tap for the Lenig Property for a business use permitted by the South Lebanon Zoning classification on the Lenig Property. The Owners shall be responsible for extending service lines from the City's sanitary sewer line to service its Property and shall pay all other costs and utility fees for sanitary sewer service in South Lebanon as provided and required by city ordinances (except for the payment of the tap fee provided herein).

(3) **Binding Effect**

This Agreement shall be a covenant running with the land and shall inure to the benefit of and be binding upon the Lenig Property and the respective successors and assigns of the parties hereto. This Agreement comprises the complete agreement between the parties. There is no guarantee that the property will be annexed. If a dispute arises, the appropriate courts of Warren County, Ohio shall have jurisdiction to resolve any disputes unless the parties mutually agree in writing to mediate or arbitrate the disputed matter.

(4) **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

(5) **Wording**

Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto.

(6) **Construction/Entire Agreement**

This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio. This Agreement shall constitute the entire agreement of South Lebanon and the Owner, and no oral, verbal, or implied agreement or understanding shall cancel, modify, or vary the terms of this Agreement. This Agreement may be amended or modified only by a writing executed by the Parties and their duly authorized officers or representatives where applicable.

(7) **Severability.**

If, for any reason, one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid, void or unenforceable by any court of law or duly authorized public body to any extent, such provision shall be enforced to the greatest extent permitted by law. Such determination shall not affect, impair, invalidate or prejudice in any way the validity of the remaining portions of this Agreement in any other instance, which shall be enforced to the greatest extent permitted by law.

(8) **Applicable Law.**

This Agreement shall be governed by, construed, and interpreted in accordance with the ordinances of the City of South Lebanon and the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person and the Property by any state court with original jurisdiction and venue in Warren County Ohio having jurisdiction over the subject matter.

(9) **Headings and Captions.**

Headings and captions in this Pre-Annexation Agreement are for the convenience of reference only and shall not limit or affect the meaning hereof.

(10) **Waiver.**

No delay or failure on the part of any party hereto in exercising any right, power, or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power, or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power, or privilege shall preclude the further exercise of such right, power, or privilege, or the exercise of any other right, power or privilege.

(11) **Authority and Effective Date**

The parties represent that each of the undersigned has the authority and capacity to sign on behalf of each of them in the capacity shown below and executed this Agreement in such authorized capacity on date written below. This Agreement is effective on the date last executed.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first written above.

WITNESS:

CITY OF SOUTH LEBANON, OHIO

Name _____

WITNESS:

MICHAEL AND KIMBERLY LENIG

Megan Bodnar
Name Megan Bodnar

Michael Lenig
Michael Lenig
Kimberly Lenig
Kimberly Lenig

STATE OF OHIO

SS:

COUNTY OF WARREN

This instrument was acknowledged before me by _____, the _____ of the City of South Lebanon, on this _____ day of _____, 2022.

Notary Public

STATE OF OHIO

SS:

COUNTY OF Warren

This instrument was acknowledged before me by Michael + Kimberly Lenig, the Owners of Michael and Kimberly Lenig, on this 3 day of May, 2022.



Dorothy R. Clawson
Notary Public

EXHIBIT A

Situated in the Township of Union, Warren County, State of Ohio and more particularly described as follows:

Being a part of Section One Town 4, Range 3, M.R.S. Lot Number One (1) of Barrett Subdivision, Recorded in Plat Book 12, Page 74 of the Warren County Plat Records.



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

MEMORANDUM

To: Mayor & City Council

CC: Andrew Meier, City Solicitor

From: Jerry Haddix, City Administrator

Date: May 16, 2022

Subject: Ordinance No. 2022-17 – Fireworks Regulations

Per the discussion at the last meeting, attached is an ordinance that opts the City of South Lebanon out of the provisions of House Bill 172. Effective July 1, 2022, HB 172 would permit fireworks on certain days of the year. HB 172 gives municipalities the authority to opt out of HB 172.

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

**CITY OF SOUTH LEBANON, OHIO
ORDINANCE NO. 2022-17**

**AN EMERGENCY ORDINANCE ADDRESSING THE PROVISIONS OF
AMENDED SUBSTITUTE HB 172 CONCERNING THE RIGHT OF
MUNICIPALITIES TO RETAIN THE REGULATIONS AND PROHIBITIONS ON
THE POSSESSION, DISCHARGE, IGNITION, AND EXPLODING OF FIREWORKS
THAT EXISTED PRIOR TO THE ENACTMENT OF AMENDED
SUBSTITUTE HB 172.**

WHEREAS, on October 27, 2021, the Ohio General Assembly passed Amended Substitute House Bill 172 ("HB 172") concerning among other things, the regulation, possession, discharge, ignition, and exploding of fireworks in the State of Ohio; and

WHEREAS, Governor DeWine signed HB 172 into law on November 8, 2021; and

WHEREAS, various aspects of HB 172 may, without legislative action by Ohio municipalities and other governmental entities, permit the possession, discharge, ignition, and/or exploding of what are commonly referred to as "fireworks" under certain conditions and on certain days of the year; and

WHEREAS, provisions of HB 172 (including what are now R.C. 3743.45(D) and (E) and R.C. 3743.451(B)) expressly reserves municipalities the home rule authority to retain all or any municipal ordinances that regulate and/or prohibit the possession, discharge, ignition, or exploding of fireworks and to retain all Ordinances that regulate noise, disturbance of the peace, and disorderly conduct; and

WHEREAS, Council of the City of South Lebanon desires to opt out of HB 172 and reaffirm the existing ban on possessing, discharging, igniting, or exploding fireworks as set forth in Chapter 91 of the Ohio Basic Code, attached hereto as Exhibit A; and

WHEREAS, various portions of HB 172 will go into effect on July 1, 2022, including provisions concerning the right to possess, discharge, ignite, and/or explode fireworks, thus making prompt action on this Ordinance an emergency measure in order to preserve the public peace, health, safety, and general welfare of the City.

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

Section 1. That all provisions of the Ohio Basic Code, adopted by the City of South Lebanon as part of Ordinance No. 2022-08, including, but not limited to, Chapter 91, concerning the possession, discharge, ignition, or exploding of fireworks, and all laws that regulate noise, disturbance of the peace, and disorderly conduct, will remain in full force and effect regardless of the permissions granted in HB 172.

Section 2. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 3. That it is found and determined that all formal actions of the Council concerning and relating to passing this Ordinance were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 4. That, because of the upcoming effective date and the dangers posed by the discharge of fireworks in a City such as South Lebanon, this Ordinance is hereby declared to be an emergency measure, in accordance with Section 731.30 of the Ohio Revised Code, for the immediate preservation of the public peace, health, safety and general welfare; and, this Ordinance shall be in full force and effective immediately upon its passage.

Adopted this ____ day of _____, 2022.

Attest: _____
Petrina Williams, Fiscal Officer/Clerk

James D. Smith, Mayor

Ordinance No. 2022-17

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Rules Suspended: / /2022 (if applicable)	Effective Date – / /2022
Vote - ____ Yeas ____ Nays	
First Reading – / /2022	Effective Date – / /2022
Second Reading – / /2022	
Third Reading– / /2022	
Vote - ____ Yeas ____ Nays	

Prepared by and approved as to form:

ANDREW P. MEIER
CITY SOLICITOR
SOUTH LEBANON, OHIO

By: _____

Date: ____ / ____ /2022

CHAPTER 91: FIREWORKS, EXPLOSIVES, FIRE PREVENTION

Section

Fireworks and Explosives

- 91.01 Definitions
- 91.02 Possession, sale, and use of fireworks
- 91.03 Permit to use fireworks
- 91.04 Manufacturing or wholesale sale without a license; prohibitions
- 91.05 Purchasers to comply with law; unauthorized purchases
- 91.06 Exhibition without a license; prohibitions for exhibitions
- 91.07 Unauthorized transportation or shipping
- 91.08 Application of subchapter
- 91.09 Arrest of offender; seizure and forfeiture of fireworks; distribution of fines
- 91.10 Safety requirements for fireworks showroom structures
- 91.11 Storage of explosives
- 91.12 Blasting permit

Fire Prevention

- 91.30 Removal of flammable materials or obstructions
- 91.31 Protective appliances
- 91.32 Compliance with order
- 91.33 Waste receptacles
- 91.34 Hotel to have fire warning device producing visible signal
- 91.35 Fire suppression systems
- 91.36 Violations of State Fire Code prohibited
- 91.37 Posting arson notices in hotels, motels and other places
- 91.38 Negligent burning
- 91.39 Spreading alarm of unfriendly fire
- 91.40 Unvented heaters

Open Burning

- 91.55 Definitions
- 91.56 Relations to other prohibitions
- 91.57 Open burning in restricted areas
- 91.58 Permission and notice to open burn

- 91.99 Penalty

Cross-reference:

Failure to secure dangerous ordnance, see § 137.06
Fire Department, see Chapter 35
Fire Engineer, see § 31.103
License to possess dangerous ordnance, see § 137.10
Vehicles carrying explosives, see § 74.36

Statutory reference:

Fire Marshal, fire safety, see R.C. Chapter 3737
Fireworks, state law provisions, see R.C. Chapter 3743
Ohio Fire Code, see O.A.C. Chapter 1301:7-7
Open burning, see O.A.C. Chapter 3745-19
Power to regulate explosives, see R.C. § 715.60

FIREWORKS AND EXPLOSIVES**§ 91.01 DEFINITIONS.**

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

1.3G FIREWORKS. Display fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.3" in Title 49 of the Code of Federal Regulations.

1.4G FIREWORKS. Consumer fireworks consistent with regulations of the United States Department of Transportation as expressed using the designation "Division 1.4" in Title 49 of the Code of Federal Regulations.

BEER. Has the same meaning as in R.C. § 4301.01.

BOOBY TRAP. A small tube that has a string protruding from both ends that has a friction-sensitive composition and that is ignited by pulling the ends of the string.

CIGARETTE LOAD. A small wooden peg that is coated with a small quantity of explosive composition and that is ignited in a cigarette.

CONTROLLED SUBSTANCE. Has the same meaning as in R.C. § 3719.01.

DISCHARGE SITE. An area immediately surrounding the mortars used to fire aerial shells.

FIREWORKS. Any composition or device prepared for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, except ordinary matches and except as provided in R.C. § 3743.80.

FIREWORKS INCIDENT. Any action or omission that occurs at a fireworks exhibition that results in injury or

death, or a substantial risk of injury or death, to any person, and that involves either of the following:

(1) The handling or other use, or the results of the handling or other use, of fireworks or associated equipment or other materials;

(2) The failure of any person to comply with any applicable requirement imposed by this chapter or R.C. Chapter 3743, or any applicable rule adopted under this chapter or R.C. Chapter 3743.

FIREWORKS INCIDENT SITE. A discharge site or other location at a fireworks exhibition where a fireworks incident occurs, a location where an injury or death associated with a fireworks incident occurs, or a location where evidence of a fireworks incident or an injury or death associated with a fireworks incident is found

FIREWORKS PLANT. All buildings and other structures in which the manufacturing of fireworks, or the storage or sale of manufactured fireworks by a manufacturer, takes place.

HIGHWAY. Any public street, road, alley, way, lane or other public thoroughfare.

INTOXICATING LIQUOR. Has the same meaning as in R.C. § 4301.01.

LICENSED BUILDING. A building on the licensed premises of a licensed manufacturer or wholesaler of fireworks that is approved for occupancy by the building official having jurisdiction.

LICENSED EXHIBITOR OF FIREWORKS or **LICENSED EXHIBITOR.** A person licensed pursuant to R.C. §§ 3743.50 through 3743.55.

LICENSED MANUFACTURER OF FIREWORKS or **LICENSED MANUFACTURER.** A person licensed pursuant to R.C. §§ 3743.02 through 3743.08.

LICENSED PREMISES. The real estate upon which a licensed manufacturer or wholesaler of fireworks conducts business.

LICENSED WHOLESALE OF FIREWORKS or **LICENSED WHOLESALE.** A person licensed pursuant to R.C. §§ 3743.15 through 3743.21.

LIST OF LICENSED EXHIBITORS. The list required by R.C. § 3743.51(C).

LIST OF LICENSED MANUFACTURERS. The list required by R.C. § 3743.03(C).

LIST OF LICENSED WHOLESALE. The list required by R.C. § 3743.16(C).

MANUFACTURING OF FIREWORKS. The making of fireworks from raw materials, none of which in and of themselves constitute fireworks, or the processing of fireworks.

NAVIGABLE WATERS. Any body of water susceptible of being used in its ordinary condition as a highway of commerce over which trade and travel is or may be conducted in the customary modes, but does not include a body of water that is not capable of navigation by barges, tugboats, and other large vessels.

NOVELTIES and **TRICK NOISEMAKERS.**

(1) Devices that produce a small report intended to surprise the user, including but not limited to booby traps, cigarette loads, party poppers, and snappers;

(2) Snakes or glow worms;

(3) Smoke devices;

(4) Trick matches.

PARTY POPPER. A small plastic or paper item that contains not more than 16 milligrams of friction-sensitive explosive composition that is ignited by pulling a string protruding from the item, and from which paper streamers are expelled when the item is ignited.

PROCESSING OF FIREWORKS. The making of fireworks from materials all or part of which in and of themselves constitute fireworks, but does not include the mere packaging or repackaging of fireworks.

RAILROAD. Any railway or railroad that carries freight or passengers for hire, but does not include auxiliary tracks, spurs, and sidings installed and primarily used in serving a mine, quarry or plant.

RETAIL SALE or **SELL AT RETAIL.** A sale of fireworks to a purchaser who intends to use the fireworks and not to resell them.

SMOKE DEVICE. A tube or sphere that contains pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

SNAKE or **GLOW WORM.** A device that consists of a pressed pellet of pyrotechnic composition that produces a large snake-like ash upon burning, which ash expands in length as the pellet burns.

SNAPPER. A small paper-wrapped item that contains a minute quantity of explosive composition coated on small bits of sand and that, when dropped, implodes.

STORAGE LOCATION. A single parcel or contiguous parcels of real estate approved by the Ohio Fire Marshal pursuant to R.C. § 3743.04(I) or R.C. § 3743.17(F) that are separate from a licensed premises containing a retail

showroom, and which parcel or parcels a licensed manufacturer or wholesaler of fireworks may use only for the distribution, possession, and storage of fireworks in accordance with this chapter.

TRICK MATCH. A kitchen or book match that is coated with a small quantity of explosive composition and that, upon ignition, produces a small report or a shower of sparks.

WHOLESALE SALE or SELL AT WHOLESALE. A sale of fireworks to a purchaser who intends to resell the fireworks so purchased.

WIRE SPARKLER. A sparkler consisting of a wire or stick coated with a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition and that contains no more than 100 grams of this mixture.
(R.C. § 3743.01) (Rev. 2022)

§ 91.02 POSSESSION, SALE, AND USE OF FIREWORKS.

(A) No person shall possess fireworks in this municipality or shall possess for sale or sell fireworks in this municipality, except a licensed manufacturer of fireworks as authorized by R.C. §§ 3743.02 through 3743.08, a licensed wholesaler of fireworks as authorized by R.C. §§ 3743.15 through 3743.21, a shipping permit holder as authorized by R.C. § 3743.40, an out-of-state resident as authorized by R.C. § 3743.44, a resident of this state as authorized by R.C. § 3743.45, or a licensed exhibitor of fireworks as authorized by R.C. §§ 3743.50 through 3743.55, or as authorized by any municipal ordinance that is substantially equivalent to any of these statutes, and except as provided in R.C. § 3743.80 or a substantially equivalent municipal ordinance.

(B) Except as provided in R.C. § 3743.80 or a substantially equivalent municipal ordinance, and except for licensed exhibitors of fireworks authorized to conduct a fireworks exhibition pursuant to R.C. §§ 3743.50 through 3743.55 or a substantially equivalent municipal ordinance, no person shall discharge, ignite, or explode any fireworks in this municipality.

(C) No person shall use in a theater or public hall what is technically known as fireworks showers, or a mixture containing potassium chlorate and sulphur.

(D) No person shall sell fireworks of any kind to a person under 18 years of age. No person under 18 years of age shall enter a fireworks sales showroom unless that person is accompanied by a parent, legal guardian, or other responsible adult. No person under 18 years of age shall touch or possess fireworks on a licensed premises without the consent of the licensee. A licensee may eject any person from a licensed premises that is in any way disruptive to the safe operation of the premises.

(E) Except as otherwise provided in R.C. § 3743.44, no person, other than a licensed manufacturer, licensed wholesaler, licensed exhibitor, or shipping permit holder shall possess 1.3G fireworks in this municipality.

(R.C. § 3743.65(A) - (E)) (Rev. 2016) Penalty, see § 91.99

Statutory reference:

Felony offense for disabling a fire suppression system, see R.C. § 3743.65(F)

§ 91.03 PERMIT TO USE FIREWORKS.

(A) An exhibitor of fireworks licensed under R.C. §§ 3743.50 through 3743.55 who wishes to conduct a public fireworks exhibition shall apply for approval to conduct the exhibition to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, having jurisdiction over the premises.

(B) The approval required by division (A) of this section shall be evidenced by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, signing a permit for the exhibition. Any exhibitor of fireworks who wishes to conduct a public fireworks exhibition may obtain a copy of the form from the State Fire Marshal or, if available, from the Fire Chief, a fire prevention officer, the Police Chief or other similar chief law enforcement officer, or a designee of the Police Chief or other similar chief law enforcement officer.

(C) Before a permit is signed and issued to a licensed exhibitor of fireworks, the Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall inspect the premises on which the exhibition will take place and shall determine that, in fact, the applicant for the permit is a licensed exhibitor of fireworks. Each applicant shall show his or her license as an exhibitor of fireworks to the Fire Chief or fire prevention officer.

(D) The Fire Chief or fire prevention officer and the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall give approval to conduct a public fireworks exhibition only if satisfied, based on the inspection, that the premises on which the exhibition will be conducted allow the exhibitor to comply with the rules adopted by the State Fire Marshal pursuant to R.C. § 3743.53(B) and (E) and that the applicant is, in fact, a licensed exhibitor of fireworks. The Fire Chief or fire prevention officer, in consultation with the Police Chief or other similar chief law enforcement officer or with the designee of the Police Chief or other similar chief law enforcement officer, may inspect the premises immediately prior to the exhibition to determine if the exhibitor has complied with the rules, and may revoke a permit for noncompliance with the rules.

(E) If the Legislative Authority has prescribed a fee for the issuance of a permit for a public fireworks exhibition, the Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor pays the requisite fee.

(F) Each exhibitor shall provide an indemnity bond in the amount of at least one million dollars with surety satisfactory to the Fire Chief or fire prevention officer and to the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, conditioned for the payment of all final judgments that may be rendered against the exhibitor on account of injury, death, or loss to person or property emanating from the fireworks exhibitor, or proof of insurance coverage of at least one million dollars for liability arising from injury, death, or loss of persons or property emanating from the fireworks exhibition. The Legislative Authority may require the exhibitor to provide an indemnity bond or proof of insurance coverage in amounts greater than those required by this division. The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or their designee, shall not issue a permit until the exhibitor provides the bond or proof of the insurance coverage required by this division or by the Legislative Authority.

(G) Each permit for a fireworks exhibition issued by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or the designee of the Police Chief or other similar chief law enforcement officer, shall contain a distinct number, designate the municipality, and identify the certified fire safety inspector, Fire Chief, or fire prevention officer who will be present before, during and after the exhibition, where appropriate. A copy of each permit issued shall be forwarded by the Fire Chief or fire prevention officer and by the Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, issuing it to the State Fire Marshal. A permit is not transferable or assignable.

(H) The Fire Chief or fire prevention officer and Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall keep a record of issued permits for fireworks exhibitions. In this list, the Fire Chief, fire prevention officer, Police Chief or other similar chief law enforcement officer, or designee of the Police Chief or other similar chief law enforcement officer, shall list the name of the exhibitor, his or her license number, the premises on which the exhibition will be conducted, the date and time of the exhibition, and the number and political subdivision designation of the permit issued to the exhibitor for the exhibition.

(I) The Legislative Authority shall require that a certified fire safety inspector, Fire Chief or fire prevention officer be present before, during and after the exhibition,

and shall require the certified fire safety inspector, Fire Chief or fire prevention officer to inspect the premises where the exhibition is to take place and determine whether the exhibition is in compliance with this chapter and R.C. Chapter 3743.

(R.C. § 3743.54(B) - (F)) (Rev. 2002) Penalty, see § 91.99

Statutory reference:

Notice of fireworks incident, see R.C. § 3743.541

§ 91.04 MANUFACTURING OR WHOLESALE SALE WITHOUT A LICENSE; PROHIBITIONS.

(A) No licensed manufacturer or licensed wholesaler of fireworks shall knowingly fail to comply with the rules adopted by the State Fire Marshal pursuant to R.C. §§ 3743.05 and 3743.18 or the requirements of R.C. §§ 3743.06 and 3743.19.

(B) No licensed manufacturer or licensed wholesaler of fireworks shall fail to maintain complete inventory, wholesale sale and retail records as required by R.C. §§ 3743.07 and 3743.20, or to permit an inspection of these records or the premises of a fireworks plant or the wholesaler pursuant to R.C. §§ 3743.08 and 3743.21.

(C) No licensed manufacturer or licensed wholesaler of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to R.C. §§ 3743.01(B)(1) and 3743.21(B)(1) within the specified period of time.

(D) No licensed manufacturer or licensed wholesaler of fireworks shall fail to comply with an order of the State Fire Marshal issued pursuant to R.C. §§ 3743.08(B)(2) and 3743.21(B)(2) until the nonconformities are eliminated, corrected or otherwise remedied or the 72 hour period specified in those divisions has expired, whichever occurs first.

(E) No person shall smoke or shall carry a pipe, cigarette, or cigar, or a match, lighter, other flame-producing item, or open flame on, or shall carry a concealed source of ignition into, the premises of a fireworks plant or on the premises of a wholesaler of fireworks, except as smoking is authorized in specified lunchrooms or restrooms by a manufacturer or wholesaler pursuant to R.C. § 3743.06(C) or R.C. § 3743.19(D).

(F) No person shall have possession or control of, or be under the influence of, any intoxicating liquor, beer, or controlled substance while on the premises of the fireworks plant or on the premises of a wholesaler of fireworks.

(R.C. §§ 3743.60(E) - (J), 3743.61(E) - (J)) (Rev. 1998) Penalty, see § 91.99

Statutory reference:

Felony provisions, see R.C. §§ 3743.60(A) through (D) and 3743.61(A) through (D)

§ 91.05 PURCHASERS TO COMPLY WITH LAW; UNAUTHORIZED PURCHASES.

(A) No person who resides in another state and purchases fireworks in this municipality shall obtain possession of the fireworks in this municipality unless the person complies with R.C. § 3743.44.

(B) No person who resides in another state and who purchases fireworks in this municipality shall obtain possession of fireworks in this municipality other than from a licensed manufacturer or wholesaler, or fail, when transporting 1.3G fireworks, to transport them directly out of the state within 72 hours after the time of their purchase. No such person shall give or sell to any other person in this municipality fireworks that the person has acquired in this state.

(C) No person who resides in this state and purchases fireworks in this municipality shall obtain possession of the fireworks in this municipality unless the person complies with R.C. § 3743.45.

(D) No person who resides in this state and who purchases fireworks in this municipality under R.C. § 3743.45 shall obtain possession of the fireworks in this municipality other than from a licensed manufacturer or licensed wholesaler, or fail, when transporting the fireworks, to transport them directly out of the state within 48 hours after the time of their purchase. No such person shall give or sell to any other person in this municipality fireworks that the person has acquired in this state. (R.C. § 3743.63) (Rev. 2016) Penalty, see § 91.99

§ 91.06 EXHIBITION WITHOUT A LICENSE; PROHIBITIONS FOR EXHIBITIONS.

(A) No licensed exhibitor of fireworks shall fail to comply with the applicable requirements of the rules adopted by the State Fire Marshal pursuant to R.C. § 3743.53(B) and (E) or to comply with R.C. § 3743.53(C) and (D).

(B) No licensed exhibitor of fireworks shall conduct a fireworks exhibition unless a permit has been secured for the exhibition pursuant to R.C. § 3743.54 or a substantially equivalent municipal ordinance, or if a permit so secured is revoked by a Fire Chief or fire prevention officer, in consultation with a Police Chief or other similar chief law enforcement officer, or with a designee of a Police Chief or other similar chief law enforcement officer, pursuant to those sections.

(C) No licensed exhibitor of fireworks shall acquire fireworks for use at a fireworks exhibition other than in accordance with R.C. §§ 3743.54 and 3743.55, or a substantially equivalent municipal ordinance.

(D) No licensed exhibitor of fireworks or other person associated with the conduct of a fireworks exhibition shall have possession or control of, or be under the influence of,

any intoxicating liquor, beer, or controlled substance while on the premises on which the exhibition is being conducted.

(E) No licensed exhibitor of fireworks shall permit an employee to assist the licensed exhibitor in conducting fireworks exhibitions unless the employee is registered with the State Fire Marshal under R.C. § 3743.56.

(R.C. § 3743.64(C) - (G)) (Rev. 2002) Penalty, see § 91.99
Statutory reference:

Felony provisions, see R.C. § 3743.64(A), (B), and (H)
Notice of fireworks incident, see R.C. § 3743.541

§ 91.07 UNAUTHORIZED TRANSPORTATION OR SHIPPING.

(A) No person shall transport fireworks in this municipality except in accordance with the rules adopted by the State Fire Marshal pursuant to R.C. § 3743.58.

(B) As used in this division, **FIREWORKS** includes only 1.3G and 1.4G fireworks. No person shall ship fireworks into this municipality by mail, parcel post, or common carrier unless the person possesses a valid shipping permit issued under R.C. § 3743.40, and the fireworks are shipped directly to the holder of a license issued under R.C. § 3743.03, 3743.16 or 3743.51.

(C) No person shall ship fireworks within this municipality by mail, parcel post, or common carrier unless the fireworks are shipped directly to the holder of a license issued under R.C. § 3743.01, 3743.16 or 3743.51. (R.C. § 3743.66) (Rev. 1998) Penalty, see § 91.99

§ 91.08 APPLICATION OF SUBCHAPTER.

This subchapter does not apply to the following:

(A) The manufacture, sale, possession, transportation, storage, or use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, or highway use;

(B) The manufacture, sale, possession, transportation, storage or use of fusees, torpedoes, or other signals necessary for the safe operation of railroads;

(C) The manufacture, sale, possession, transportation, storage or use of blank cartridges in connection with theaters or shows, or in connection with athletics as signals for ceremonial purposes;

(D) The manufacture for, the transportation, storage, possession or use by, or the sale to the armed forces of the United States and the militia of this state of pyrotechnic devices;

(E) The manufacture, sale, possession, transportation, storage or use of toy pistols, toy canes, toy guns, or other devices in which paper or plastic caps containing 0.25 grains

or less of explosive material are used, provided that they are constructed so that a hand cannot come into contact with a cap when it is in place for explosion, or apply to the manufacture, sale, possession, transportation, storage or use of those caps;

(F) The manufacture, sale, possession, transportation, storage or use of novelties and trick noisemakers, auto burglar alarms, or model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models;

(G) The manufacture, sale, possession, transportation, storage or use of wire sparklers.

(H) The conduct of radio-controlled special effect exhibitions that use an explosive black powder charge of not more than one-quarter pound per charge, and that are not connected in any manner to propellant charges; provided, that the exhibition complies with all of the following:

(1) No explosive aerial display is conducted in the exhibition;

(2) The exhibition is separated from spectators by not less than 200 feet;

(3) The person conducting the exhibition complies with regulations of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of the Treasury and the United States Department of Transportation with respect to the storage and transport of the explosive black powder used in the exhibition. (R.C. § 3743.80) (Rev. 2008)

§ 91.09 ARREST OF OFFENDER; SEIZURE AND FORFEITURE OF FIREWORKS; DISTRIBUTION OF FINES.

(A) The Fire Marshal, an assistant fire marshal, or a certified fire safety inspector may arrest, or may cause the arrest of, any person whom he or she finds in the act of violating, or who he or she has reasonable cause to believe has violated, any provision of this subchapter. Any arrest shall be made in accordance with statutory and constitutional provisions governing arrests by law enforcement officers.

(B) If the Fire Marshal, an assistant fire marshal, or certified fire safety inspector has probable cause to believe that fireworks are being manufactured, sold, possessed, transported, or used in violation of this subchapter, he or she may seize the fireworks. Any seizure of fireworks shall be made in accordance with statutory and constitutional provisions governing searches and seizures by law enforcement officers. The Fire Marshal's office or certified fire safety inspector's office shall impound at the site or safely keep seized fireworks pending the time they are no longer needed as evidence. A sample of the seized fireworks is sufficient for evidentiary purposes. The remainder of the seized fireworks may be disposed of pursuant to an order

from a court of competent jurisdiction after notice and a hearing.

(C) Fireworks manufactured, sold, possessed, transported, or used in violation of this subchapter shall be forfeited by the offender. The Fire Marshal's office or certified fire safety inspector's office shall dispose of seized fireworks pursuant to the procedures specified in R.C. §§ 2981.11 to 2981.13 for the disposal of forfeited property by law enforcement agencies, and the Fire Marshal or that office is not liable for claims for the loss of or damages to the seized fireworks.

(D) This section does not affect the authority of peace officers, as defined in R.C. § 2935.01, to make arrests for violations of this subchapter or to seize fireworks manufactured, sold, possessed, transported, or used in violation of this subchapter.

(E) Any fines imposed for a violation of this subchapter relating to the sale, purchase, possession, or discharge of fireworks shall be distributed as set forth in R.C. § 3743.68(D).

(R.C. § 3743.68) (Rev. 2008)

§ 91.10 SAFETY REQUIREMENTS FOR FIREWORKS SHOWROOM STRUCTURES.

(A) (1) Except as described in division (A)(2) of this section, all retail sales of 1.4G fireworks by a licensed manufacturer or wholesaler shall only occur from an approved retail sales showroom on a licensed premises or from a representative sample showroom as described in this section on a licensed premises. For the purposes of this section, a retail sale includes the transfer of the possession of the 1.4G fireworks from the licensed manufacturer or wholesaler to the purchaser of the fireworks.

(2) Sales of 1.4G fireworks to a licensed exhibitor for a properly permitted exhibition shall occur in accordance with the provisions of the Ohio Revised Code and rules adopted by the State Fire Marshal under R.C. Chapter 119. Such rules shall specify, at a minimum, that the licensed exhibitor holds a license under R.C. § 3743.51, that the exhibitor possesses a valid exhibition permit issued in accordance with R.C. § 3743.54, and that the fireworks shipped are to be used at the specifically permitted exhibition.

(B) All wholesale sales of fireworks by a licensed manufacturer or wholesaler shall only occur from a licensed premises to persons who intend to resell the fireworks purchased at wholesale. A wholesale sale by a licensed manufacturer or wholesaler may occur as follows:

(1) The direct sale and shipment of fireworks to a person outside of this state;

(2) From an approved retail sales showroom as described in this section;

(3) From a representative sample showroom as described in this section;

(4) By delivery of wholesale fireworks to a purchaser at a licensed premises outside of a structure or building on that premises. All other portions of the wholesale sales transaction may occur at any location on a licensed premises.

(5) Any other method as described in rules adopted by the Fire Marshal under R.C. Chapter 119.

(C) (1) A licensed manufacturer or wholesaler shall only sell 1.4G fireworks from a representative sample showroom or a retail sales showroom. Each licensed premises shall only contain one sales structure.

(2) A representative sample showroom shall consist of a structure constructed and maintained in accordance with the Nonresidential Building Code adopted under R.C. Chapter 3781 and the Fire Code adopted under R.C. § 3737.82 for a use and occupancy group that permits mercantile sales. A representative sample showroom shall not contain any pyrotechnics, pyrotechnic materials, fireworks, explosives, explosive materials, or any similar hazardous materials or substances. A representative sample showroom shall be used only for the public viewing of fireworks product representations, including paper materials, packaging materials, catalogs, photographs, or other similar product depictions. The delivery of product to a purchaser of fireworks at a licensed premises that has a representative sample structure shall not occur inside any structure on a licensed premises. Such product delivery shall occur on the licensed premises in a manner prescribed by rules adopted by the State Fire Marshal pursuant to R.C. Chapter 119.

(3) If a manufacturer or wholesaler elects to conduct sales from a retail sales showroom, the showroom structures, to which the public may have any access and in which employees are required to work, on all licensed premises, shall comply with the following safety requirements:

(a) A fireworks showroom that is constructed or upon which expansion is undertaken on and after June 30, 1997, shall be equipped with interlinked fire detection, fire suppression, smoke exhaust, and smoke evacuation systems that are approved by the Superintendent of Industrial Compliance in the Department of Commerce.

(b) A fireworks showroom that first begins to operate on or after June 30, 1997, and to which the public has access for retail purposes shall not exceed 5,000 square feet in floor area.

(c) A newly constructed or an existing fireworks showroom structure that exists on September 23, 2008, but that, on or after September 23, 2008, is altered or added to in a manner requiring the submission of plans, drawings, specifications, or data pursuant to R.C.

§ 3791.04, shall comply with a graphic floor plan layout that is approved by the State Fire Marshal and Superintendent of Industrial Compliance showing width of aisles, parallel arrangement of aisles to exits, number of exits per wall, maximum occupancy load, evacuation plan for occupants, height of storage or display of merchandise, and other information as may be required by the State Fire Marshal and Superintendent of Industrial Compliance.

(d) A fireworks showroom structure that exists on June 30, 1997, shall be in compliance on or after June 30, 1997, with floor plans showing occupancy load limits and internal circulation and egress patterns that are approved by the State Fire Marshal and Superintendent of Industrial Compliance, and that are submitted under seal as required by R.C. § 3791.04.

(D) The safety requirements established in division (C) of this section are not subject to any variance, waiver, or exclusion pursuant to this chapter or any applicable building code.

(R.C. § 3743.25) (Rev. 2013) Penalty, see § 91.99

§ 91.11 STORAGE OF EXPLOSIVES.

It shall be unlawful to store at any time within the municipality a quantity of gunpowder or other similar explosive weighing in excess of 100 pounds.

Penalty, see § 91.99

Statutory reference:

Illegal manufacture or processing of explosives, felony provisions, see R.C. § 2923.17

§ 91.12 BLASTING PERMIT.

No person shall cause a blast to occur within the municipality without making application in writing beforehand, setting forth the exact nature of the intended operation, and receiving a permit to blast from the Mayor or other proper municipal officer. The Mayor or other proper municipal officer before granting such permit may require the applicant to provide a bond to indemnify the municipality and all other persons against injury or damages which might result from the proposed blasting.

Penalty, see § 91.99

FIRE PREVENTION

§ 91.30 REMOVAL OF FLAMMABLE MATERIALS OR OBSTRUCTIONS.

Any flammable or combustible materials not arranged or stored in such a manner as to afford reasonable safety against the danger of fire, or any matter stored or arranged in such a manner as to impede or prevent access to, or exit from, any premises in case of fire, shall be ordered by the



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

MEMORANDUM

To: Mayor & City Council
CC: Tina Williams, Fiscal Officer
From: Jeff Boylan, Assistant City Administrator
Date: May 16, 2022
Subject: Resolution 2022-18, Asset Management Plan

Staff has recommended we develop an asset management plan for our city streets, curbs, and sidewalks. This will give us a comprehensive plan on the condition of our streets, curbs, and sidewalks and start making repairs.

Choice One Engineering has given us a quote to do this for \$18,500.00. Staff recommend approving Resolution 2022-18.

Due to time constraints, we need to pass this resolution as an emergency.

**CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2022-18**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO AN AGREEMENT WITH CHOICE ONE ENGINEERING FOR AN
ASSET MANAGEMENT PLAN FOR ROADWAYS, CURBS, AND SIDEWALKS
WITHIN THE CITY AND DECLARING AN EMERGENCY**

WHEREAS, City staff has identified the need to have an asset management plan for the City that will cover the streets, curbs, and sidewalks within the city: and,

WHEREAS, this asset management plan will identify and prioritize the condition of our streets, curbs, and sidewalks allowing staff to focus on what needs repaired first and develop a schedule and seek funding for making these needed repairs; and,

WHEREAS, Choice One Engineering has submitted a proposal to provide an asset management plan for our streets, curbs, and sidewalks; and,

WHEREAS, immediate action is required due to the time constraints of getting this completed for state reporting; and,

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

Section 1. That the Mayor and Fiscal Officer are hereby authorized to execute an Agreement, a copy of which is attached hereto, with Choice One Engineering for a total of \$18,500.00.

Section 2. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 3. 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.

Resolution 2022-18 Asset Management Plan

Adopted this ____ day of _____, 2022.

Attest: _____

Petrina Williams, Fiscal Officer/Clerk

James D. Smith, Mayor

Rules Suspended: / / 2022 (if applicable)

Effective Date – / /2022

Vote - ____ Yeas

____ Nays

First Reading – / / 2022

Effective Date – / /2022

Second Reading – / / 2022

Third Reading– / / 2022

Vote - ____ Yeas

____ Nays

Prepared by and approved as to form:

ANDREW P. MEIER
SOLICITOR
SOUTH LEBANON, OHIO

By: _____

Date: ____/____/____



Date

April 22, 2022

Attention

Jeff Boylan
jboylan@southlebanonohio.org

Address

City of South Lebanon
10 N. High Street
South Lebanon, Ohio 45065

Subject

Agreement for Professional Services
Asset Management Plan - Roadways
WAR-SLE-2204

Dear Mr. Boylan:

Choice One Engineering Corporation appreciates the opportunity to provide services for the Asset Management Plan - Roadways.

This Agreement is by and between the City of South Lebanon, hereinafter referred to as Client, and Choice One Engineering Corporation, hereinafter referred to as Choice One. If everything is acceptable, please execute two originals, keeping one for your files and returning one to Choice One. Choice One will not start work on this Project until the Agreement is signed and received in our office.

This Agreement is subject to the provisions of the following which are attached to and made a part of this Agreement: Scope of Services, Compensation, and Schedule, consisting of three pages and Choice One Engineering Corporation Standard Terms & Conditions consisting of three pages.

Authorization by the Client to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition, or deletion. Client and Choice One each bind itself and its partners, successors, executors, administrators of this executed Agreement.

City of South Lebanon

Authorized Signature

Date

Choice One Engineering Corporation



Troy A. Niese, P.E., Project Manager

4/22/2022
Date

W. Central Ohio/E. Indiana
440 E. Hoewisher Rd.
Sidney, OH 45365
937.497.0200 Phone

S. Ohio/N. Kentucky
8956 Glendale Milford Rd., Suite 1
Loveland, OH 45140
513.239.8554 Phone

www.CHOICEONEENGINEERING.com



Scope of Services

Project Snapshot

Choice One intends to prepare an Asset Management Plan for the roadways, curb, and sidewalk maintained by the City of South Lebanon, Ohio.

Project Details

- All city-maintained roadways, curb and sidewalk will be evaluated to determine the current condition.
- The pavement condition will be rated according to engineering judgement and the Pavement Surface Evaluation and Rating (PASER) Asphalt Roads Manual.
- Curb and sidewalk condition will be rated on a 1-3 rating scale (Good, Fair, Poor).
- Roadway will be broken into segments (north-south, east-west) where appropriate.
- Detailed construction plans are not included in this project.
- The evaluations of structures are not included in this project, the study will just include roadway, curb, and sidewalks.
- A brief report will be prepared after the assets have been rated.
- Roadway, sidewalk, and curb quantities will be estimated utilizing aerial imagery.
- Planning level construction estimates will be completed based on the condition given to the asset.
- One meeting to go over findings is included in this agreement. Any additional meetings will be charged at our standard hourly rate.

Project Services

1. Asset Management Plan

- a. City maintained roadways, curb and sidewalk will be driven and visually inspected to evaluate pavement surface conditions.
- b. Asphalt (roadways) condition will be evaluated utilizing PASER's Asphalt Roads Manual.
- c. Concrete (curb and sidewalk) condition will be evaluated one a 1-3 scale.
- d. Prepare a report which will include findings and recommendations.
- e. A map will be compiled showing the highest priority roadways in need of repair.
- f. Spreadsheets and tables will be provided in electronic format, which will include planning level construction estimates.
- g. Replacement cost will be estimated for each street.

Additional Services

We have the skill, experience, and knowledge to provide additional services as listed below. Additional services will be approved by the Client prior to commencement and will be performed on an hourly basis according to our current Standard Hourly Rate Schedule or a mutually negotiated lump sum fee.

1. Construction Plans
2. Storm Sewer Design
3. Sanitary Sewer Design
4. Waterline Design
5. Traffic Signal Design
6. Landscape Architecture
7. Topographic Survey

Client Responsibilities

- Provide list of City Maintained Road names and any data associated with them, if available.
- Provide map showing updated city limits, if available.
- Execute necessary Work Agreements and Easements.
- Provide timely decisions to keep design work on schedule.

Compensation & Schedule

Compensation

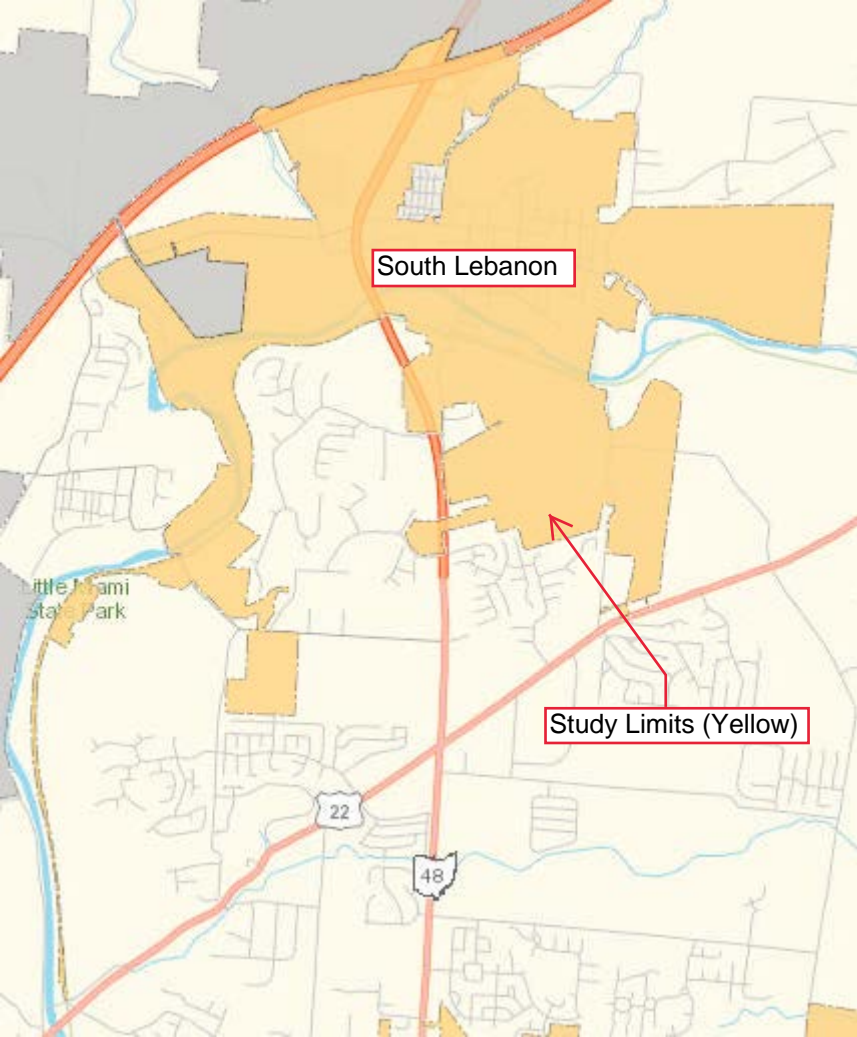
Lump Sum Fee Schedule

Asset Management Plan	\$18,500.00
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Total	\$18,500.00
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Schedule

Choice One will have Asset Management Plan completed within sixty (60) days after receipt of an executed Agreement.



South Lebanon

Little Miami
State Park

Study Limits (Yellow)

Choice One Engineering Corporation
Standard Terms & Conditions

4/17/2018

Services Choice One Engineering Corporation (Choice One) will perform services for the Project as set forth in the Choice One agreement and in accordance with these Terms & Conditions. Choice One has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Choice One in performing their services.

Additional Services The Client and Choice One acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Choice One will notify the Client of the need for additional services and the Client will pay for such additional services at an hourly rate or as agreed to by the Client and Choice One.

Project Requirements The Client will confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they will be furnished to Choice One at Project inception. Choice One will review the Client design standards and may recommend alternate standards considering the standard of care provision.

Period of Service Choice One will perform the services for the Project with due and reasonable diligence consistent with normal professional practices according to the Project Schedule. Should Choice One discern that the schedule cannot be met for any reason, Choice One will notify the Client as soon as practically possible.

Limitation of Liability In recognition of the relative risks and benefits of the project to both the Client and Choice One, the Client agrees to the fullest extent permitted by law, to limit the liability of Choice One for any and all damages or claim expenses arising out of this agreement, from any and all causes, to \$50,000 or the fee realized by Choice One for the Project, whichever is greater.

Compensation In consideration of the services performed by Choice One, the Client will pay Choice One in the manner set forth in the Choice One agreement. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation will be reasonably adjusted for delays or extensions of time beyond the control of Choice One.

Payment Terms Choice One will submit monthly invoices for services performed and Client will pay the full invoice amount within thirty (30) calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) calendar days of the invoice date. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. Client will exercise reasonableness in contesting any billing or portion thereof. Choice One will be entitled to a 1.5% per

month administrative charge in the event of payment delay. Client payment to Choice One is not contingent on arrangement of project financing. Invoice payment delayed beyond sixty (60) calendar days will give Choice One the right to suspend services until payments are current. Nonpayment beyond seventy (70) calendar days will be just cause for termination by Choice One.

Amendment This Agreement may not be amended except in writing and executed by both Choice One and Client. No alterations or modifications to these Terms and Conditions will be effective unless affirmatively contained in the signed amendment.

Assignment Neither party will assign its rights, interests or obligations under the Project without the express written consent of the other party.

Authorized Representatives The officer assigned to the Project by Choice One is the only authorized representative to make decisions or commitments on behalf of Choice One. The Client will designate a representative with similar authority.

Betterment If, due to Choice One's error or omission, any required item or component of the project is omitted from Choice One's construction documents, Choice One will not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will Choice One be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

Buried Utilities Where applicable to the Project, Choice One will conduct research and prepare a plan indicating the locations of underground improvements intended for subsurface penetration with respect to assumed locations of underground improvements. Such services by Choice One will be performed in manner consistent with ordinary standard of care. Client recognizes that the research may not identify all underground improvements and that the information on which Choice One relies may contain errors or may not be complete. The Client agrees to waive all claims and causes of action against Choice One for damages to underground improvements resulting from subsurface penetration locations established by Choice One, except for damages caused by the sole negligence or willful misconduct of Choice One.

Compliance with Laws Choice One will perform its services consistent with normal professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Choice One will be entitled to additional compensation where additional services are needed to conform to the standard of practice.

Consequential Damages Neither the Client nor Choice One will be liable to the other for any consequential damages regardless of the nature or fault.

Construction Observation, If Applicable Construction observation will consist of visual observation of materials, equipment, or construction services for the purpose of ascertaining that the service is in general conformance with the Contract Documents. Such observation will not be construed as relieving the parties under contract in any way from their obligations and responsibilities under the Contract Documents. Specifically, observation will not require Choice One to assume responsibilities for the means and methods of construction. The Client has not retained Choice One to make detailed inspections or to provide exhaustive or continuous project review and observation services. Choice One does not guarantee the performance of, and will have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier, or any other entity furnishing materials or performing any services on the project.

Cost Estimates or Opinions Choice One may prepare cost estimates or opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Choice One acknowledge that actual costs may vary from the cost estimates or opinions prepared and that Choice One offers no guarantee related to the Project cost.

Defects in Service The Client will promptly report to Choice One any defects or suspected defects in service. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor agreement and will require all subcontracts at any level to contain a like provision. Failure by the Client and Client's contractors and subcontractors to notify Choice One will relieve Choice One of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

Delays The services of each task will be considered complete when deliverables for the task have been presented to the Client. Choice One will be entitled to an extension of time and compensation adjustment for any delay beyond Choice One's control.

Design Without Construction Administration The Client acknowledges that there could be misinterpretations of Choice One Design Documents during construction, which could lead to errors and subsequent loss or damage. The Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and the Client waives any claims against Choice One that may be in any way connected hereto.

Dispute Resolution In the event of a dispute between Choice One and Client arising out of or related to this Agreement, the aggrieved party will notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party will nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. Should such negotiation fail to resolve the dispute, the Client and Choice One agree that all disputes will be submitted to nonbinding mediation unless the parties mutually agree otherwise.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution by arbitration in

accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

During the pendency of any dispute, the parties will continue diligently to fulfill their respective obligations hereunder.

Environmental Matters The Client warrants they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Choice One will be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client will indemnify Choice One from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Choice One.

Governing Law The terms of agreement will be governed by the laws of the state where the services are performed provided that nothing contained herein will be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

Hiring of Personnel Client may not directly hire any employee of Choice One. Client agrees that it shall not, directly or indirectly solicit any employee of the Engineer from accepting employment with Client, affiliate companies, or competitors of Engineer.

Information from Other Parties The Client and Choice One acknowledge that Choice One will rely on information furnished by other parties in performing its services under the Project. Choice One will not be liable for any damages that may be incurred by the Client in the use of third party information.

Insurance Choice One will maintain the following insurance and coverage limits during the period of service if such coverage is reasonably available at commercially affordable premium. Upon request, the Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

- Worker's Compensation: As required by applicable state statute
- Commercial General Liability: \$1,000,000 per occurrence (bodily injury including death and property damage) \$2,000,000 aggregate
- Automobile Liability: \$1,000,000 combined single limit for bodily injury and property damage
- Professional Liability: \$2,000,000 per claim and \$2,000,000 aggregate

The Client will make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Choice One will be a named insured on those policies where Choice One may be at risk.

Permits and Approvals Choice One will assist the Client in preparing applications and supporting documents as identified in the scope of services for the Client to secure permits and approvals from agencies having jurisdiction over the Project. Assistance in applying for permit applications by Choice One does not guarantee approval of the permits by the jurisdictional regulatory authorities. The Client agrees to pay all application and review fees.

Reuse of Documents All documents prepared by Choice One pursuant to this Agreement are instruments of service as part of the Project. They are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or any other project. Any reuse without written verification or adaptation by Choice One for the specific purpose intended will be at the Client's risk and without liability or legal exposure to Choice One. Any verification or adaptation requested by the Client to be performed by Choice One will entitle Choice One to further compensation at rates to be agreed upon by the Client and Choice One.

Safety Choice One will be responsible solely for the safety precautions or programs of its employees and no other party. In no event will Choice One be responsible for construction methods, means, techniques or sequences of construction, which are solely the responsibility of the Contractor.

Severability Any provision of these terms later held to violate any law will be deemed void and all remaining provisions will continue in force. In such event, the Client and Choice One will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

Site Access The Client will obtain all necessary approvals for Choice One and subcontractors to access the Project site(s).

Standard of Care Services provided by Choice One will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances. The standard of care will exclusively be judged as of the time the services are rendered and not according to later standards.

Survival All provisions of these terms that allocate responsibility or liability between the Client and Choice One will survive the completion or termination of services for the Project.

Suspension of Work The Client may suspend services performed by Choice One with cause upon seven (7) calendar days documented notice. Choice One will submit an invoice for services performed up to the effective date of the work suspension and the Client will pay Choice One all outstanding invoices within fourteen (14) calendar days. Choice One will be entitled to renegotiate the Project schedule and the compensation terms for the Project.

Termination The Client or Choice One may terminate services on the Project upon seven (7) calendar days documented notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Choice One will submit an invoice for services performed up to the effective date of termination and the Client will pay Choice One all outstanding invoices within fourteen (14) calendar days.

Time Bar To Legal Action All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder will be barred and under no circumstances will any such claim be initiated by either party after three (3) years have passed from the date of Choice One's final invoice, unless Choice One's services will be terminated earlier, in which case the date of termination of this Agreement will be used.

Waiver of Rights The failure of either party to enforce any provision of these terms and conditions will not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.