

CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2021-54

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO AN AGREEMENT WITH CHOICE ONE ENGINEERING FOR
CONSULTING ENGINEER SERVICES FOR THE PAULINE DRIVE
STORMWATER PROJECT**

WHEREAS, City staff has identified a storm water issue in the vicinity of Pauline Avenue and Mary Lane, whereby the current storm sewer pipe runs underneath houses at 584 and 583 Pauline Drive and is collapsing causing flooding onto properties on Pauline Drive and Mary Lane during heavy rain events; and,

WHEREAS, it is the Council's desire to seek funding to correct this storm water issue described above; and,

WHEREAS, Choice One Engineering has submitted a proposal to provide construction plans for the installation of a new storm sewer on Pauline Drive and Claude Avenue, as well as easement descriptions and legal documents needed for relocating the existing storm water pipes between existing properties; and,

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of South Lebanon, at least a majority 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 \$17,675.00.

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 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.


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

Resolution 2021-54 Choice One Engineering Agreement – Pauline Ave Stormwater Project

open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 6 day of January, 2022

Attest: 
Petrina D. Williams, Fiscal Officer


James D. Smith, Mayor

Rules Suspended: / / (if applicable)

Effective Date – / /

Vote - ___ Yeas
___ Nays

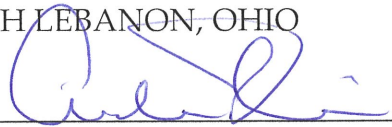
First Reading – 11/18/21
Second Reading – 12/16/21
Third Reading – 1/6/22


Effective Date – 2/6/2022

Vote - 5 Yeas
___ Nays

Prepared by and approved as to form:

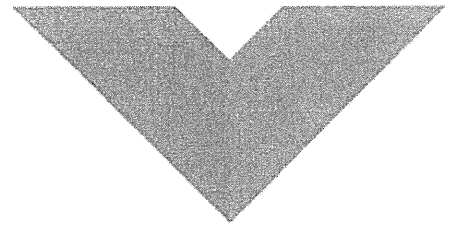
ANDREW P. MEIER
SOLICITOR
SOUTH LEBANON, OHIO

By: 
Date: 1/6/2022



Choice One

Engineering



Date
November 19, 2021

Attention
Jeffery Boylan
Asst. Village Administrator
jboylan@southlebanonohio.org

Address
Village of South Lebanon
10 N. High Street
South Lebanon, OH 45065

Subject
Revised Agreement for Professional Services
Pauline Drive and Claude Avenue Storm Improvements
WAR-SLE-2107

Dear Mr. Boylan:

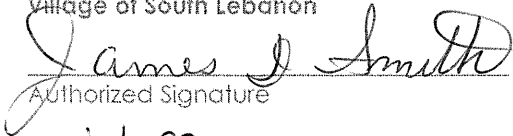
Choice One Engineering Corporation appreciates the opportunity to provide services for the Pauline Drive and Claude Avenue Storm Improvements.

This Agreement is by and between the Village 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 four 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.

Village of South Lebanon



Authorized Signature

11-19-22
Date

Choice One Engineering Corporation



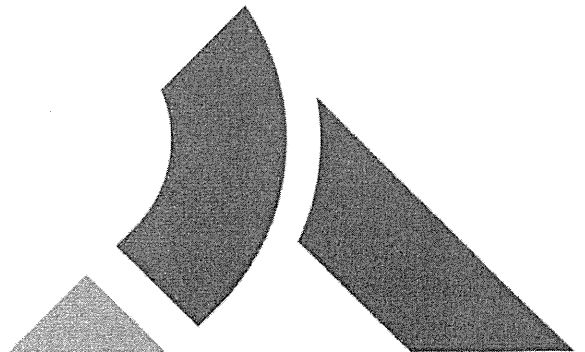
Troy A. Niese, Project Manager

11/19/2021
Date

440 E. Hoewisher Rd
Stoney, OH 45365
513.497.0200 Phone

8956 Glendale Millford Rd., Suite 1
Loveland, OH 45140
513.739.8554 Phone

www.CHOICEONEENGINEERING.com



Scope of Services

Project Snapshot

Choice One intends to provide construction plans for the installation of new storm sewer on Pauline Drive and Claude Avenue in the Village of South Lebanon.

Project Details

- See attached exhibit for project area.
- Storm sewer currently running between 584 and 583 Pauline Drive, as well as other properties to the west, will be re-routed to Pauline Drive, Claude Avenue, and then Mary Lane. The storm water running off the hill from the Union Township Cemetery will be collected in a new catch basin east of 584 Pauline on Township property, re-routed underground between 2 houses, and then run in the street. Length of new storm is approximately 700 feet. Existing tile under houses will be abandoned as part of this project. It will not be removed.
- Easements will be needed on the Township property and on the private home properties. Exact properties where easements are needed will be determined during design, but it is anticipated that 3 total easements will be needed.
- Choice One to provide easement legal descriptions/exhibits. Village to negotiate with property owners, do deed preparation, and record easements.
- Storm sewer will run to the new manhole on Mary Lane that Choice One is designing under a separate contract. This new storm designed as part of the other project is being routed to the existing detention basin just south of 553 Mary Lane. No modifications to the detention basin are anticipated.
- Storm and detention calculations will be done by Choice One to determine if re-routed storm sewer will overwhelm capacity of existing storm sewer that outlets the detention basin.
- Trench repair for where storm sewer is installed will be full-depth asphalt. Storm sewer backfill will be flowable fill.
- Roadway will be closed during construction and open to local traffic only. No detour plan will be provided.
- Electric, gas, cable, etc. will be relocated if necessary prior to construction. Choice One will coordinate with utility companies during design on any relocations.
- Plans for this project plus the project on Mary Lane will be bid as one project. Choice One will handle public bidding procedures for the Village. No inspection included in this contract.
- No construction administration or observation is included in this agreement at this time.

Project Services

1. Topographic Survey

- a. Contact Ohio Utilities Protection Service (OUPS) for underground utility locations.
- b. Perform necessary deed and plat research.
- c. Establish horizontal and vertical survey control for the project area.
- d. Field reconnaissance and traverse of existing monumentation.
- e. Identify visible features from 10' beyond sidewalk for both sides including utilities and drainage.
- f. Locate trees and fences and existing grades in rear of Pauline Drive properties.
- g. Provide roadway cross-sections every 50', at driveways, and other critical areas.
- h. Inventory manholes and catch basins including type of construction, depth, pipe size, and condition.
- i. Locate underground utilities as marked by the appropriate utility companies.
- j. Boundary resolution will not be performed. Existing right-of-way lines will be placed in the drawing utilizing County GIS lines and other readily-available information.

2. Construction Plans

- a. Design construction plans to include:
 - i. Title Sheet
 - ii. Schematic Plan
 - iii. General Notes
 - iv. General Details
 - v. Quantity Summary and Engineer's Estimate
 - vi. Plan and Profile (scale 1" = 20' horizontal, 1" = 5' vertical)
- b. Field walk project area.
- c. Calculate drainage areas for each proposed pipe.
- d. Calculate storm sewer sizing using Warren County storm piping standards.
- e. Pond Pack analysis of existing detention basin to analyze effects of re-routed water.
- f. No construction administration or observation work is included in this scope.

3. Construction Bidding Procedures

- a. Prepare bidding documents for the bidding process to be sold online, for free, or at Choice One Engineering's office with the cost to be reimbursed to Choice One Engineering by contractor's purchase of plans and documents.
- b. Provide assistance in the bidding process including answering questions during the bidding phase from the Client, contractors, and suppliers, including material alternatives and intent of the plans, general notes, and specifications.
- c. Process addenda, if necessary.
- d. Attend bid opening.
- e. Review bids and contractor qualifications.
- f. Prepare bid tabulations.
- g. Check System for Award Management (SAM) database prior to award to ensure contractor is not suspended or debarred.
- h. Check Ohio Auditor of State's website for unresolved findings.
- i. Prepare contracts for successful bidder.
- j. Attend preconstruction meeting.

4. Storm Sewer Easement Preparation (3 easements assumed to be needed)

- a. Prepare a legal description and pictorial exhibit showing new 20' storm sewer easement across the properties east of Pauline Drive where the storm sewer will be re-routed from the cemetery to Pauline Drive.
- b. Negotiations with property owners for easements to be performed by Client.
- c. Deed preparation and recording of the document are not part of this scope.

Client Responsibilities

- Provide timely decisions to keep design work on schedule.
- Provide owner notification along the project route.
- Assist in utility company coordination. Mark water lines with blue paint prior to Choice One topographic survey.

Compensation & Schedule

Compensation

Lump Sum Fee Schedule	
Topographic Survey	\$2,900.00
Construction Plans	\$9,800.00
Construction Bidding Procedures	\$3,100.00
Easement Preparation (3 easements assumed)	\$1,875.00
Total	\$17,675.00

Schedule

Choice One will have the construction plans completed within one hundred (100) days after receipt of an executed Agreement.

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.

2021 Standard Hourly Rate Schedule

PROFESSIONAL SERVICE	HOURLY RATE
Professional Engineer	\$145
Professional Surveyor	\$130
Landscape Architect	\$115
Designer	\$95
Field Surveyor	\$100
Administrative	\$70
Resident Project Representative	\$80

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

Hourly rates may vary from this Standard Hourly Rate Schedule depending on project complexity, professional liability, or other agreements. Work that is required out of our normal working hours requiring overtime compensation may be subject to higher rates.

This Standard Hourly Rate Schedule is reviewed and adjusted at the beginning of each calendar year.

**MASTER AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES**

This MASTER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES (the "Agreement") made as of the date stated below, between the City of South Lebanon, Ohio, 10 N. High Street, South Lebanon, OH 45065 (the "City") and Choice One Engineering, organized under the laws of the State of Ohio as a Corporation, whose address is 8956 Glendale-Milford Road, Suite 1, Loveland, Ohio 45140 ("Consultant").

The City 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 engineering products and/or services (the "Basic Services") relative to construction observation for the Pauline Drive Stormwater Project, 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 City 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.

SECTION 3 – THE CITY’S RESPONSIBILITIES

The City 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 Consultant by providing all available information pertinent to the Basic Services in the possession of the City including any previous reports and any other data relative to the Project.
- 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 City 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. Furnish approvals and permits from all governmental authorities having jurisdiction over the Basic Services and such approvals and consents from others as may be necessary for completion of the Basic Services.
- 3.7. Provide such accounting, insurance counseling and such legal services as may be required for the Basic Services, such legal services as the City 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 City'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 City'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 City 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 City, 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 City, 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 City.
- 4.4. If the City has requested significant modifications or changes in the extent of the Project, 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 \$17,675.00.** The City 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 City.

- 5.1.2. For Additional Services. The City 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 City 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 City Council's regularly scheduled Council Meeting on the 1st and 3rd Thursday of each month.

5.3 Other Provisions Concerning Payments.

- 5.3.1. If the City 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 City, 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 City 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 City 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 on the Project, 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 as part of the Project. They are not intended or represented to be suitable for reuse by the Village or others on extensions of the Project or 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 City 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 City 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 City 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 City 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 City" and "Consultant" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of the City 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 City of South Lebanon, Ohio
Attn. Village Administrator
10 N. High Street
South Lebanon, OH 45065

Consultant: Choice One Engineering
Attn. Nicolas J. Selhorst, P.E.
Address: 8956 Glendale-Milford Road, Suite 1
Address: Loveland, Ohio 45140

6.12 Insurance

Consultant shall carry comprehensive general and professional liability insurance, with no interruption of coverage during the entire term of this Agreement. Consultant further agrees that in the event that its comprehensive general or professional liability policy is maintained on a "claims made" basis, and in the event that this Agreement is terminated, Consultant 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. Consultant 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 City. 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 insurance coverage must have professional liability (i.e. errors and omissions) limit of \$1,000,000 per occurrence.

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

(e) The insurance coverage shall have Ohio stop gap employer's liability with a \$2,000,000 limit;

(f) The Consultant shall name the City, its elected and appointed officials, agents, employees and volunteers as additional insureds to all insurance policies with waiver of subrogation against the City, and shall furnish the City 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 Consultant;

The Consultant 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) Consultant 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 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 City 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 City harmless from loss, claims, expenses, causes of action, costs, damages, and other obligations including but not limited to the City'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, Choice One Engineering, the Consultant herein, has caused this Agreement to be executed on the date stated below by _____ whose title is _____, pursuant to a Resolution or Consent Action authorizing such act.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

CITY:

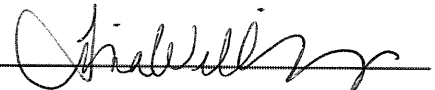
IN EXECUTION WHEREOF, the Council of the City of South Lebanon, Ohio, has caused this Agreement to be executed on the date stated below by its Mayor and its Fiscal Officer, pursuant to Resolution No. 2021 - ____.

SIGNATURE: 

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: 1-6-22

SIGNATURE: 

PRINTED NAME: Petrina D. Williams

TITLE: Fiscal Officer

DATE: 1-6-22

APPROVED AS TO FORM:

ANDREW P. MEIER
VILLAGE SOLICITOR
VILLAGE OF SOUTH LEBANON, OHIO

By: 

Date: 1/7/2022