

**CITY OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2021-55**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO  
ENTER INTO AN AGREEMENT WITH MCGILL SMITH PUNSHON INC. FOR  
CONSULTING ENGINEER SERVICES FOR THE ZOAR ROAD WATERLINE  
PROJECT AND DECLARING AN EMERGENCY**

**WHEREAS**, various new developments are currently planned in the City along Zoar Road which require public water service; and,

**WHEREAS**, per Resolution No. 2021-10, the Village of South Lebanon entered into an agreement with the Warren County Board of Commissioners ("County") to purchase surplus water from the County to serve areas along Zoar Road; and,

**WHEREAS**, a connection to the County water system is required to be constructed prior to commencement of water service to the area shown in said Agreement; and,

**WHEREAS**, the City has solicited a proposal from the consulting engineering firm of McGill Smith Punshon, Inc. for the design of said connection point as well as a waterline extension to serve areas under development; and,

**WHEREAS**, immediate action is required to expedite the design of the connection point and waterline extension to ensure that the City can provide public water to the planned developments in this area 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, Ohio, at least two-thirds of all members elected thereto concurring:


**Section 1.** That the Council authorizes the Mayor and Fiscal Officer to enter into a contract with McGill Smith Punshon Inc. for consulting engineer services for waterline improvements along Zoar Road for an amount not to exceed \$43,500.00, as attached hereto.


**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 the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 2<sup>nd</sup> day of December, 2021.

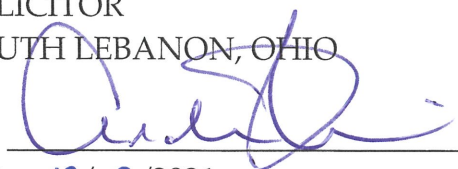
Attest:   
Petrina D. Williams, Fiscal Officer

  
James D. Smith, Mayor

Rules Suspended: <u>12/2/2021</u> (if applicable)	Effective Date - <u>12/2/2021</u>
Vote - <u>6</u> Yeas <u>      </u> Nays	
First Reading - / /2021	Effective Date - / /2021
Second Reading - / /2021	
Third Reading - / /2021	
Vote - <u>      </u> Yeas <u>      </u> Nays	

Prepared by and approved as to form:

ANDREW P. MEIER  
SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 12/2/2021



## AGREEMENT FOR PROFESSIONAL SERVICES

To

Mr. Jerry Haddix  
City Administrator  
City of South Lebanon (CLIENT)  
10 North High Street  
South Lebanon, Ohio 45065

For

City of South Lebanon  
Public Water Project  
Zoar Road  
City of South Lebanon and Warren County, Ohio

**MSP Project No. 06308.22**

November 2, 2021

### 1. SCOPE OF SERVICES BY MCGILL SMITH PUNSHON (MSP):

**Professional Services associated with the design of new public water.**

#### **Surveying Services:**

- 1.1 Boundary and Topographic Survey for Design Phase:
  - 1.1.1 Record Research – Research the public records to obtain the deeds for the subject property, as well as the adjoining parcels. MSP will obtain available survey records, road records and other pertinent information as available. MSP's record research may not disclose easements, covenants and restrictions of record. MSP recommends that the client retain the services of a title abstractor, title insurance company or real estate attorney to search the chain of title for purposes of identifying easements and other encumbrances.
  - 1.1.2 Field Reconnaissance – Field locate the existing monumentation (i.e. pins, stones, nails, etc.) and occupation lines (i.e. fence lines, hedge rows, tree line, etc.)

- 1.1.3 Resolution – Resolve the location of the boundary, in areas as required for the project, by analysis of the field measured distances and angles versus the record (deed) dimensions and angles.
- 1.1.4 Obtain field elevations throughout the designated area sufficient obtain topography with a contour interval of one (1) foot. Obtain location of buildings, structures, major trees and fences.
- 1.1.5 Contact Ohio Utilities Protection Service to mark underground utilities and furnish record drawings, if available.
- 1.1.6 Engage “The Underground Detective” as necessary to enhance underground utility markings not clearly depicted by Ohio Utilities Protection Service.
- 1.1.7 Obtain the location of existing visible utilities including fire hydrants, manholes, poles, valves, meters and others.
- 1.1.8 Prepare a topographic survey plat depicting the results of the field survey. Format will be AutoCad Version 2018 as either .DWG or .DXF file.
- 1.1.9 Utilities will be shown on the plat by combining the field locations with record information as obtained from the utility companies and/or others.

**Design Services 2,000 linear feet of water main:**

- 1.2 Engineering Scope of Services:
  - 1.2.1 Distribute preliminary designs to utility companies and local authorities for comment on existing and proposed utility locations.
  - 1.2.2 Prepare detailed plans including title sheet, plans, profiles, sections, and miscellaneous details for work required for the proposed improvements. Bid ready plans will include a professional engineer stamp and corresponding signature.
  - 1.2.3 Contract Documents (plans, general notes, supplemental specifications to the Warren County standard specifications), to be in a form that may be approved by South Lebanon, the Ohio Environmental Protection Agency and other affected utilities, entitles, and governmental agencies.
  - 1.2.4 Prepare applications required for construction of the project, including but not limited to: Ohio EPA NPDES Notice of Intent, Ohio EPA Permit to Install, County agencies and other permits required by local, city, State, or Federal authorities after design is finalized.
  - 1.2.5 Perform a subsurface investigation to determine the engineering characteristics of the foundation materials which will include a reconnaissance of the project site, drilling 9 soil borings performing

standard penetration tests and obtaining samples of the soil retained in the split-spoon sampler in accordance with ASTM D 1586. The boring depth is planned to be 10 feet or bedrock, whichever encountered first. Water level observations will be made during and upon completion of the boring operations. These readings will be noted on the boring logs.

- 1.2.6 Perform a laboratory investigation and prepare a report. A supplemental laboratory investigation will be conducted to ascertain additional pertinent engineering characteristics conducted in accordance with applicable ASTM Specifications. The results of the field exploration and laboratory testing would be utilized in performing an engineering analysis in the formulation of the recommendations. The results of the foundation investigation, including the recommendations and substantiating data, will be presented in a written letter prepared by a registered professional engineer of the materials necessary in analyzing the behavior relating to the proposed improvements. The phases of the laboratory investigation will be
- 1.2.7 Distribute final designs to utility companies and local authorities for comment on existing and proposed utility locations.
- 1.2.8 Preparation of Engineer's estimate of quantities and cost.
- 1.2.9 Assistance with the preparation of instructions to bidders, bid forms, and assistance in the preparation of contract documents for construction.
- 1.2.10 Assistance in obtaining and analyzing bids and the award of contract.
- 1.2.11 Attendance at pre-construction conference.

## **2. COMPENSATION:**

- 2.1. The Basic Fee for the services as described in Section I. shall be as follows:
  - 2.1.1. Payment to MSP shall be in accordance with our current "Hourly Rate Schedule". The rates shown in that schedule apply for professional services to be provided under this Agreement. We request a budget of Forty-three thousand five hundred dollars (\$43,500.00) for the above-described services which includes reimbursable expenses as described below.
- 2.2. MSP shall invoice CLIENT monthly for the amounts due for professional services rendered and expense incurred. CLIENT shall pay MSP the full amount due within thirty (30) days of receipt of invoice.

- 2.3. All services requested by the Client in addition to those described in this agreement will be invoiced additionally and compensation for such work shall be paid on a Time & Material basis in accord with our current rate schedule.
- 2.4. MSP shall also be reimbursed for all costs incurred by MSP for travel, long distance telephone communications, printing, deliveries, postage and permit fees in conjunction with the work in accord with our current rate schedule.

### 3. EXCLUSIONS

- 3.1. Exclusions from the scope of services include, but not limited to, the following:
  - 3.1.1. Camera Inspection of infrastructure.
  - 3.1.2. Design of watermain booster pumps.
  - 3.1.3. Construction observation, inspection, administration or management services.
  - 3.1.4. Easement acquisition.
  - 3.1.5. Easement Plat and Descriptions.
  - 3.1.6. Construction Layout and Record Drawings
  - 3.1.7. Any services related to stream or wetland, impacts, permitting or mitigation.
  - 3.1.8. Any permitting requiring involvement of the US Army Corps of Engineers.
  - 3.1.9. Geotechnical sampling and testing except as listed above.
  - 3.1.10. Environmental Services including but not limited to wetland / stream reconnaissance and evaluation to determine if wetlands are present as well as other waters of the U.S. (streams).
  - 3.1.11. Plan review, application, inspection, and permit fees.
  - 3.1.12. NPDES inspections.
  - 3.1.13. Flood studies, CLOMR applications, LOMR applications or any other issues requiring FEMA approval or involvement.

### 4. GENERAL TERMS AND CONDITIONS:

- 4.1. **Fee:** The total fee, except stated lump sum, shall be understood to be an estimate, based upon Scope of Service outlined herein. Where the fee arrangement is to be on an hourly basis, the rates shall be those that prevail at the time services are rendered. Reimbursable expenses will be invoiced at of 1.1 times MSP cost. Any change in scope will be discussed prior to additional services being rendered.
- 4.2. **Billings/Payments:** Invoices for services and reimbursable expenses shall be submitted, at MSP's option, either upon completion of the services or on a monthly basis. Invoices shall be payable within 30 days after the invoice date. A service charge of 1.5% (or the maximum legal rate) per month will be applied to

the unpaid balance after 30 days from the invoice date. MSP shall have the right to suspend/terminate services if payment is not received within 60 days after the invoice date and MSP shall have no liability for any resultant delays or damages incurred by CLIENT as a result of such suspension/termination. Retainers shall be credited on the final invoice. CLIENT agrees to pay all costs of collection, including reasonable attorney's fees.

- 4.3. **Standard of Care:** In providing services under this agreement, MSP will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. MSP will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of MSP's part of the Project. Regardless of any other term or condition of this Agreement, MSP makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.
- 4.4. **Consequential Damages:** Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither CLIENT nor MSP shall be liable to the other for any incidental indirect or consequential damages arising out of and/or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.
- 4.5. **Indemnifications:** CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold MSP and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorney's fees and defense costs) caused in whole or in part by its acts, errors or omissions and those of anyone for whom they are legally liable. MSP further agrees, subject to Risk Allocation below, to indemnify CLIENT for damages arising from its own negligent acts, errors or omissions.
- 4.6. **Risk Allocation:** In recognition of the relative risks and benefits of the Project to both CLIENT and MSP, CLIENT agrees, to the fullest extent permitted by law, to limit MSP's total liability to CLIENT or anyone making claims through CLIENT, for any and all damages or claim expenses (including attorney's fees) arising out of this Agreement, from any and all causes, to the total amount of \$50,000.00 or the amount of MSP's fee, whichever is greater.
- 4.7. **Termination of Services:** This agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder.

In the event of termination, CLIENT shall pay MSP for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

- 4.8. **Ownership of Documents:** All documents produced by MSP under this agreement, including electronic files, shall remain the property of MSP and may not be used by this CLIENT for any other purpose without written consent of MSP. Any such use or reuse shall be at the sole risk of CLIENT who shall defend, indemnify and hold MSP and its subconsultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to MSP and its subconsultants.
- 4.9. **Defects in Service:** CLIENT shall promptly report to MSP any defects or suspected defects in MSP's services. CLIENT further agrees to impose a similar notification requirement on all contractors in its CLIENT/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by CLIENT and CLIENT'S contractors or subcontractors to notify MSP shall relieve MSP 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.
- 4.10. **Construction Activities:** MSP shall not be responsible for the acts or omissions of any person performing any construction work or for instructions given by CLIENT or its representatives to anyone performing any construction work, nor for construction means and methods or job-site safety.
- 4.11. **Dispute Resolution:** Any claim or dispute between CLIENT and MSP shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) or mediation in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.
- 4.12. **Relationship of Parties:** All services provided by MSP are for the sole use and benefit of CLIENT. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or MSP.
- 4.13. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and these Terms & Conditions may only be amended by written agreement by both parties. Should any portion of this Agreement be found to be illegal or



unenforceable, such portion shall be deleted and the balance shall remain in effect.

4.14. **Applicable Law:** The law applicable to this Agreement is the state of the Project location.

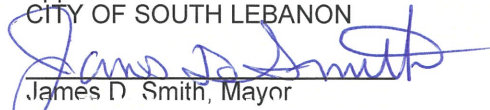
Thank you for your consideration of MSP for this project. Please let us know if you would like to meet and discuss this proposal in greater detail.

Respectfully submitted,  
McGill Smith Punshon, Inc.



Richard D. Nichols, P.S.  
Vice President, Surveying  
06308223-CLI-SCP-ZOAR water improvements Nov 21

Approved:  
CITY OF SOUTH LEBANON

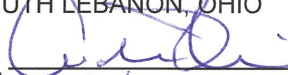


James D. Smith, Mayor



Petrina D. Williams, Fiscal Officer

Approved as to form:  
ANDREW P. MEIER  
SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 12/2/2021