

CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2022-12

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO AN AGREEMENT WITH MCGILL SMITH PUNSHON INC. FOR
CONSULTING ENGINEER SERVICES FOR THE RIVER CREEK LOFTS LIFT
STATION PROJECT AND DECLARING AN EMERGENCY**

WHEREAS, various new developments are currently planned in the City along Mason-Morrow-Millgrove Road which require a public sanitary sewer lift station to pump sewage to the City of Lebanon waste water treatment plant; and,

WHEREAS, the City has solicited a proposal from the consulting engineering firm of McGill Smith Punshon, Inc. for the design of said sanitary sewer lift station to serve areas under development; and,

WHEREAS, immediate action is required to expedite the design of the sanitary sewer lift station to ensure that the City can provide sanitary sewer collection 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:

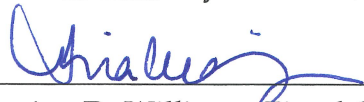
Section 1. That the Council authorizes the Mayor and Fiscal Officer to enter into a contract with McGill Smith Punshon Inc. for consulting engineer services for the River Creek Lofts Lift Station Project for an amount not to exceed \$47,000.00, as attached hereto.

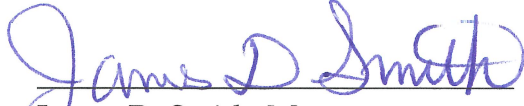
Section 2. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

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 17th day of March, 2022.


Attest: 
Petrina D. Williams, Fiscal Officer


James D. Smith, Mayor

Rules Suspended: <u>3/17/2022</u> (if applicable)	Effective Date <u>3/17/2022</u>
Vote - <u>6</u> Yeas ___ Nays	
First Reading – / /2022	Effective Date – / /2022
Second Reading – / /2022	
Third Reading – / /2022	
Vote - ___ Yeas ___ Nays	

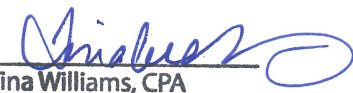
Prepared by and approved as to form:

ANDREW P. MEIER
SOLICITOR
SOUTH LEBANON, OHIO

By: 
Date: 3 / 17 / 2022

CERTIFICATE OF POSTING

I, Tina Williams, CPA, Fiscal Officer of the City of South Lebanon, Ohio do hereby certify I posted a true and accurate copy of this ordinance or resolution, summary of ordinance or resolution, or statement, order, proclamation, notice or report, at five public places within the City as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of the City of South Lebanon, Ohio

3/18/22 
Date Tina Williams, CPA
Fiscal Officer
City of South Lebanon, Ohio



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 Sewer Improvement
River Creek Lofts Lift Station
South Lebanon, Ohio

MSP Project No. 06308.23

March 9, 2022

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

Professional Services associated with the design of the River Creek Lofts Lift Station.

Surveying Services:

- 1.1 Topographic Survey for Design Phase:
 - 1.1.1 Tie into control provided by Thomas Graham and Associates and orient to the South Lebanon River Corridor Sewer Project.
 - 1.1.2 Obtain field elevations throughout the project area sufficient to provide contours at a one-foot interval. Obtain location of buildings, structures, major trees and fences.
 - 1.1.3 Contact United Utilities Protection Service to mark underground utilities and furnish record drawings, if available.

- 1.1.4 Obtain the location of existing visible utilities including fire hydrants, manholes, poles, valves, meters and others.
- 1.1.5 Prepare a topographic survey plat depicting the results of the field survey. Format will be AutoCad Version 2019 as either .DWG or .DXF file.
- 1.1.6 Utilities will be shown on the plat by combining the field locations with record information as obtained from the utility companies and/or others.

Engineering Services:

- 1.2 Design of a pump station on the Lofts Apartments property and sanitary force main that will connect to the proposed 12" force main as shown in the River Corridor Public Sanitary Sewer Extension drawings.
 - 1.2.1 Determine the ultimate area that will be served by the pump station and the anticipated design flows based on existing uses and zoning information.
 - 1.2.2 Perform a subsurface investigation to determine the engineering characteristics of the foundation materials which will include a reconnaissance of the project site, drilling 1-soil boring, performing standard penetration tests, and obtaining samples of the soil retained in the split-spoon sampler. The boring will be drilled to a depth of 30-feet will be performed to gather the required subsurface data. The invert elevation of the wet well is 595.0 and the surface elevation is approximately 620 to 622. Water level observations will be made during, upon completion, and several to twenty-four (24) hours after completion of the boring operations. These readings will be noted on the boring log.
 - 1.2.3 A supplemental laboratory investigation will also be conducted to ascertain additional pertinent engineering characteristics of the foundation materials necessary in analyzing the behavior of the proposed structure. All phases of the laboratory investigation will be 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 subsurface investigation, including our recommendations and substantiating data, will be presented in a written report prepared by a registered professional engineer.
 - 1.2.4 Design and prepare the construction drawings for the pump station, including wet well, valve chamber, electrical, gen set, and other appurtenances including force main, which will be included in with the River Corridor Public Sanitary Sewer Extension drawings, consisting of, plans, profiles, elevations, sections, and miscellaneous details. Bid ready

plans will include a professional engineer stamp and corresponding signature.

- 1.2.5 Provide electrical engineering services to provide power for the subject Pump Station. Existing project specifications and design details will be utilized where appropriate.
- 1.2.6 Coordinate with Duke electric utility to provide an electric service and meter for the pump station.
- 1.2.7 Provide power for two 10 hp pumps at 480 volt, 3 phase. Provide a diesel generator with transfer switch for the pumps. Provide communication path between pump station, either wirelessly or through a conduit path between pump station. Provide a general use receptacle. Outdoor lighting has not been finalized at this time, but we will include the design of one outdoor photocell controlled light fixture on a pole.
- 1.2.8 Distribute final designs to utility companies and local authorities for their review and comment.
- 1.2.9 Preparation of Engineer's estimate of quantities and cost.
- 1.2.10 Attendance at preconstruction conference.
- 1.2.11 Review of shop and other working drawings furnished by Contractor and render an opinion as to conformance to the construction documents.
- 1.2.12 Visit the site at the appropriate times and observe the progress and render an opinion as to conformance of the work pursuant to the construction documents. Prepare a written report of each visit and disseminate to the Owner and General Contractor.
- 1.2.13 Issuance of certificates for progress and approval of final payments to contractors.
- 1.2.14 Conduct a final observation of the site work and render an opinion as to conformance of the work pursuant to the construction documents.

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-seven thousand (\$47,000.00) dollars 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:** Exclusions from the scope of services include, but not limited to, the following:
- 3.1. Security System Design does not include post design or post bid Value Engineering, or material substitutions or studies, energy studies, ASHRAE studies, LEED, Utility Credit submissions, envelope studies – unless otherwise required by state or local code.
 - 3.2. Commissioning, Testing, Construction Management, Scheduling, Budgeting, Pay application review, General contract reviews, Change Order reviews unless the result of Engineering error or omission, punch list “back-check” and Warranty walk-thru.
 - 3.3. Design of fuel oil piping.
 - 3.4. Any services related to stream or wetland evaluations, delineation, impacts, permitting or mitigation.
 - 3.5. Any permitting requiring involvement of the US Army Corps of Engineers.
 - 3.6. Plan review, application, inspection, and permit fees.
 - 3.7. NPDES inspection Flood studies, CLOMR applications, LOMR applications or any other issues requiring FEMA approval or involvements.
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 medication 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.

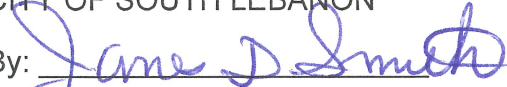
Thank you for your consideration of MSP for this project. Please let us know if you would like to meet and discuss this proposal in greater detail.

Respectfully submitted,
McGill Smith Punshon, Inc.



Richard D. Nichols, P.S.
Vice President, Surveying
06308233-CLI-SCP-River Lofts Lift Station

CITY OF SOUTH LEBANON

By: 

Title: Mayor

Date: 3 / 17 / 2022

Approved as to form:
ANDREW P. MEIER
CITY SOLICITOR
CITY OF SOUTH LEBANON

By: 

Date: 3 / 17 / 2022