

**CITY OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2023-23**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO  
ENTER INTO AN AGREEMENT WITH CHOICE ONE ENGINEERING FOR  
CONSULTING ENGINEER SERVICES REQUIRED FOR THE HOBART STREET  
COMMUNITY DEVELOPMENT BLOCK GRANT PROJECT, AND DECLARING  
AN EMERGENCY**

**WHEREAS**, the City has been awarded \$84,788 in Fiscal Year 2023 Community Development Block Grant (CDBG) funds for construction of sidewalk on Hobart Street from Main Street to High Street; and,

**WHEREAS**, the City committed \$22,515 to the Project which included up to \$19,000 for engineering and construction observation; and,

**WHEREAS**, the City has solicited a proposal from Choice One Engineering for consulting engineer for said Project; and,

**WHEREAS**, funds are available in the City's 2023 General Fund budget for consulting engineer services for the Hobart Street Sidewalk Project; and,

**WHEREAS**, immediate action is required to assure design and utility relocation can be completed as soon as possible to expedite the construction of the project, 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 Choice One Engineering for consulting engineer services in the City of South Lebanon required for Hobart Street CDBG Project for the not to exceed amount of \$11,200.

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

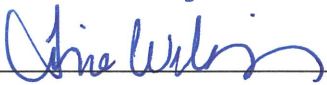
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**Section 3.** That this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the public peace, health, safety and general welfare; and, this Resolution shall be in full 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 1st day of June, 2023.

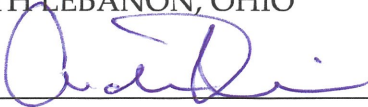
Attest:   
Petrina D. Williams, Fiscal Officer/Clerk

  
James D. Smith, Mayor

Rules Suspended: <u>6</u> / <u>1</u> / 2023 (if applicable)	Effective Date - <u>6</u> / <u>1</u> / 2023
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / / 2023 Second Reading - / / 2023 Third Reading - / / 2023	Effective Date - / / 2023
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

ANDREW P. MEIER  
CITY SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 6 / 1 / 2023

## **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 Glendale0-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 City, 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 design and engineering for the Lebanon Road CDBG 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-A.

### **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 City 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 City 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 \$11,200.00.** 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 3<sup>rd</sup> 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 City 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 City's risk and without liability or legal exposure to Consultant. Any verification or adaptation requested by the City 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. City Administrator  
10 N. High Street  
South Lebanon, OH 45065

Consultant: Choice One Engineering  
Attn. Troy Niese, 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 City 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 City 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 City 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 City 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, to the extent allowed by law, 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. Nothing in this Agreement shall require the Consultant to provide indemnification that would be in violation of the provisions found in Ohio Revised Code § 153.81.

**[the remainder of this page is blank]**

**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. 2023 - 23.

SIGNATURE:  \_\_\_\_\_

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: 6/1/23

SIGNATURE:  \_\_\_\_\_

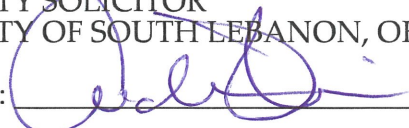
PRINTED NAME: Petrina D. Williams

TITLE: Fiscal Officer

DATE: 6/1/23

APPROVED AS TO FORM:

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

By:  \_\_\_\_\_

Date: 6/1/2023

# Scope of Services

## Project Snapshot

Choice One intends to provide construction plans and an estimate to install sidewalk along the South side of Hobart Avenue from High Street to Main Street.

## Project Details

- See attached exhibit for project area.
- The proposed sidewalk will run along the south side of Hobart Avenue from Main Street to High Street.
- A preliminary estimate was provided by Choice One to the City in 2022 as part of a funding application. The estimated construction cost was around \$88,000.
- Existing fence will be removed and reset as part of this project where necessary.
- Sidewalk will be placed on grade where possible. Storm sewer improvements are not expected to be necessary for this project.
- Electric, gas, cable, etc. will be relocated if necessary prior to construction. Choice One will coordinate with the utility companies during the design on any relocations.
- Maintenance of traffic will be handled by general notes.
- If the project estimate is over \$50,000, it will need to be publicly bid. Choice One can assist the City with public bidding procedures if requested. An "if authorized" price is included in this scope of work.

## 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 based on State Plane coordinates and NAVD 88.
- d. Field reconnaissance and traverse of existing monumentation.
- e. Identify visible features from 10' beyond right-of-way for both sides including utilities and drainage.
- f. Provide roadway cross-sections every 50', at driveways, and other critical areas.
- g. Inventory manholes and catch basins including type of construction, depth, pipe size, and condition.
- h. Locate underground utilities as marked by the appropriate utility companies.
- i. 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.
- j. Provide one (1) foot contour intervals.
- k. Completed topographic survey shall be provided in AutoCAD format.

### 2. Construction Plans

- a. Design construction plans to include:
  - i. Title Sheet
  - ii. General Notes and Details
  - iii. Quantity Summary and Engineer's Estimate
  - iv. Plan and Profile (scale 1" = 20' horizontal, 1" = 5' vertical)
  - v. Cross Section Sheets (scale 1" = 5' horizontal, 1" = 5' vertical)

### 3. Construction Bidding Procedures (if authorized)

- a. Prepare bidding documents for the bidding process to be sold online, for free, or at Choice One's office with the cost to be reimbursed to Choice One 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. Construction Administration Services**

- a. *Construction Administration services listed below will be provided upon request on an hourly basis according to our current Standard Hourly Rate Schedule.*
  - i. Produce additional plans for successful contractor and Client.
  - ii. Attend preconstruction meeting and provide minutes to attendees.
  - iii. Respond to Contractor's questions.
  - iv. Administrate plan interpretation for contractor and Client during construction, as required.
  - v. Attend meetings at the request of the Client with contractor.
  - vi. Review and approve pay requests.
  - vii. Process necessary change orders.
  - viii. Conduct final inspection and provide a punch list.
  - ix. Review site/civil shop drawings.

### Client Responsibilities

- Execute necessary Work Agreements and Easements.
- Provide timely decisions to keep design work on schedule.
- Assist in utility company coordination.
- Provide property access and owner notification along the project route.
- Assist in utility company coordination.

## Compensation & Schedule

### Compensation

#### Lump Sum Fee Schedule

Topographic Survey	\$2,600.00
Construction Plans	\$8,600.00
<b>Total</b>	<b>\$11,200.00</b>
<i>Public Bidding Procedures (if authorized)</i>	\$3,500.00
<i>Construction Administration Services</i>	<i>Hourly Upon Request</i>

### Schedule

Choice One will have the construction plans completed and ready to bid within one hundred and fifty days (150) after receipt of an executed agreement.

This agreement is valid for 60 days prior to being executed by the Client. After 60 days, Choice One reserves the right to modify the fee and schedule, as necessary.



- Legend**
-  Feature 1
  -  Feature 2
  -  Joseph Sallee Roofing
  -  Pentecostal Temple
  -  Rogers Park

sidewalk on south side  
of Hobart Ave between  
Main and High Streets

Google Earth

300 ft

