

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2014- 1

A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL OFFICER TO EXECUTE A CONSULTING AGREEMENT WITH THE WARREN COUNTY REGIONAL PLANNING COMMISSION TO COMPLETE A COMPREHENSIVE PLAN FOR THE VILLAGE OF SOUTH LEBANON

WHEREAS, the Village of South Lebanon has never implemented a Comprehensive Plan for establishing public policy in the terms of planning of such elements as transportation, utilities, land use, recreation, housing, etc.; and,

WHEREAS, the Village Council desires to ascertain the community's goals and aspirations to assist it in the development of the community of South Lebanon, and to adopt a Comprehensive Plan as one of its tools for the orderly development of the Village; and,

WHEREAS, the Village Council desires to contract for consulting services with the Warren County Regional Planning Commission to complete a Comprehensive Plan which can be submitted to this Council who will separately and independently determine whether to pass the proposed Comprehensive Plan in the form of legislation.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, at least a majority of all members elected thereto concurring:

Section 1. Approve and authorize the Mayor and Fiscal Officer to execute the Consulting Agreement, a copy of which is attached hereto, with the Warren County Regional Planning Commission to complete a Comprehensive Plan for the Village of South Lebanon.

Section 2. That the Council is acting in its administrative capacity in adopting this Resolution.

Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

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 20th day of February, 2014.

Attest: Sharon Louallen Lionel H. Lawhorn
Sharon Louallen, Fiscal Officer/Clerk Lionel Harold Lawhorn, Mayor

Rules Suspended:	(if applicable)	Effective Date –
Vote - ___ Yeas		
___ Nays		
First Reading – <u>01/24/2014</u>		Effective Date – <u>2/20/2014</u>
Second Reading – <u>2/10/2014</u>		
Third Reading – <u>2/20/2014</u>		
Vote - <u>5</u> Yeas		
___ Nays		

Prepared by and approved as to form:

VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Date: 2/20/14

CERTIFICATE OF POSTING

I, Sharon Louallen, Fiscal Officer of the Village 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 Village as authorized by Section 731.25 of the Ohio Revised Code and Ordinance 98-08 of Village of South Lebanon, Ohio.

2-27-14 [Signature]
Date Sharon Louallen
Fiscal Officer
Village of South Lebanon,
Ohio

**MASTER AGREEMENT
FOR PROFESSIONAL CONSULTING SERVICES**

This MASTER AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES (the "Agreement") made as of the date stated below, between the Village of South Lebanon, Ohio, 99 S. High Street, South Lebanon, OH 45065 (the "Village") and the Warren County Regional Planning Commission, organized under the laws of the State of Ohio as a body of local governmental agencies throughout Warren County organized and operating under the powers and authority set forth in R.C. § 713.21, et seq., whose address is 406 Justice Drive, Lebanon, Ohio 45036 ("Consultant").

The Village desires to engage Consultant to assist in rendering professional services for the preparation of a Village Comprehensive Plan (the "Comprehensive Plan")

The Village 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 Consultant shall perform Basic Services for preparation of the Comprehensive Plan ("the Project"), the scope of which is particularly set forth, defined and identified, in the attachment hereto, and made a part of this Agreement as Exhibit 1.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

- 2.1 If authorized in writing by the Village 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 VILLAGE’S RESPONSIBILITIES

The Village 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 Project in the possession of the Village 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 Village 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. INTENTIONALLY DELETED

3.7. INTENTIONALLY DELETED

3.8. Designate in writing the person or persons to act as the Village'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 Village'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 Village 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 Village, necessary Additional Services as stipulated in accordance with Section 2 of this Agreement or other services as required.

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 Project.

4.2. Upon receipt of a fully executed Agreement from the Village, Consultant shall proceed with the performance of the services called for in Exhibit 1.

4.3. Consultant's services to be rendered thereunto shall be considered complete upon issuance of the final draft of a "reader friendly" Comprehensive Plan including drawings, pictures and maps that accurately depict what is intended or expected. The Comprehensive Plan should be made available to the Village in printed and electronic format (Microsoft Word and PDF).

4.4. If the Village 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 Consultant agrees to provide the Basic Services set forth Exhibit 1 attached hereto to the Village for the Project, for a lump sum fee of TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00).

5.1.2 For Additional Services. The Village shall pay Consultant for Additional Services rendered as agreed upon in writing by the Village and the Consultant.

5.2 Times of Payments.

5.2.1. Consultant shall submit itemized statements for Basic and Additional Services rendered. The Village shall make prompt payments in response to Consultant's itemized statements by mailing via ordinary U.S. mail such payment no later than thirty days from the date of invoice.

5.3 Other Provisions Concerning Payments.

5.3.1. If the Village 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 Village, 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 Village 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. INTENTIONALLY DELETED

5.4 Definitions

5.4.1. INTENTIONALLY DELETED

SECTION 6 - GENERAL CONSIDERATIONS

6.1 Termination.

The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days' written notice by certified mail, return receipt requested, in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

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 Village 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 Village 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 Village 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 Village 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 Village" and "Consultant" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of the Village 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 Village of South Lebanon, Ohio
Attn. Village Administrator
99 S. High Street
South Lebanon, OH 45065

Consultant: Warren County Regional Planning Commission
Attn.: Stan Williams
406 Justice Drive
Lebanon, Ohio 45036

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 Village. 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 automobile liability limit shall be at least \$500,000 per accident for bodily injury and property damage where applicable;

(d) The insurance coverage shall have Ohio stop gap employer's liability with a \$1,000,000 limit;

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

(f) 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 Village 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 Village harmless from loss, claims, expenses, causes of action, costs, damages, and other obligations including but not limited to the Village'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, the Warren County Regional Planning Commission, the Consultant herein, has caused this Agreement to be executed on the date stated below by Stan Williams, its Executive Director, pursuant to a vote of its Executive Committee, authorizing its Staff to so act.

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

APPROVED AS TO FORM:

DAVID P. FORNSHEL
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO

By: _____

Date: _____

VILLAGE:

IN EXECUTION WHEREOF, the Council of the Village 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. 20____-_____.

SIGNATURE: Lionel H. Lawhorn

PRINTED NAME: Lionel H. Lawhorn

TITLE: Mayor

DATE: 02/20/14

SIGNATURE: Sharon Louallen

PRINTED NAME: Sharon Louallen

TITLE: Fiscal Officer

DATE: 2-20-14

APPROVED AS TO FORM:

VILLAGE SOLICITOR
VILLAGE OF SOUTH LEBANON, OHIO

By: Bruce A. Melby

Date: 2/20/14