

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2014-16**

**A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE AN AGREEMENT WITH DIXON ENGINEERING, INC. FOR CONSULTING SERVICES FOR PREPARING SPECIFICATIONS AND CONTRACT AND BIDDING DOCUMENTS FOR THE REPAIR AND PAINTING OF THE VILLAGE'S 750,000 GALLON WATER TANK, AND DECLARING AN EMERGENCY**

**WHEREAS**, during the June 2, 2014 regular meeting of Council, the Village Administrator reviewed with Council the history of a Long-Term Repainting and Maintenance Contract (Contract) for the Village's 750,000 gallon Water Tank (Water Tank); the Contract's deficiencies, and asked questions of the representative of the assignee of the Contract as to his company's inability to perform given the outdated painting specifications provided in the Contract; and,

**WHEREAS**, the Village Administrator solicited proposals for inspection of the interior of the said Water Tank and for recommendations for repairs and painting; and,

**WHEREAS**, only one proposal was submitted but it appears that the proposal was responsive and from a responsible company, namely: Dixon Engineering, Inc., and that Council desires to enter into an agreement with Dixon Engineering, Inc. for consulting services for preparing specifications, and contract and bidding documents for the repair and painting of the Water Tank; and,

**WHEREAS**, immediate action is required to make needed repairs and repaint the Water Tank to alleviate further deterioration, and such action is necessary in order to preserve the public peace, health, safety or welfare of the Village.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, at least two-thirds of all members elected thereto concurring:

**Section 1.** Approve the Agreement with Dixon Engineering, Inc., a copy of which is attached hereto, and further authorize the Mayor and Fiscal Officer to execute the Agreement on behalf of the Village.

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

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

**Section 4.** 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 5.** That it is found and determined that all formal actions of the Council concerning and relating to passing 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.

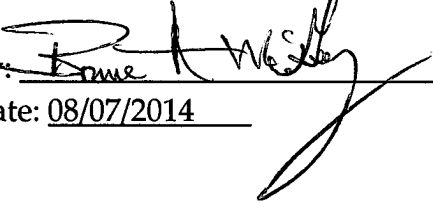
Adopted this 7th day of August, 2014.

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

Rules Suspended: <u>8/7/2014</u> (if applicable)	Effective Date - / /201__
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / /201__	Effective Date - / /201__
Second Reading - / /201__	
Third Reading - / /201__	
Vote - <u>6</u> Yeas ___ Nays	

Prepared by and approved as to form:

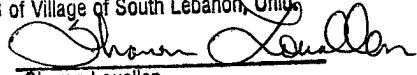
BRUCE A. McGARY  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By:   
Date: 08/07/2014

**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

8-8-14  
Date

  
Sharon Louallen  
Fiscal Officer  
Village of South Lebanon,  
Ohio

**MASTER AGREEMENT  
FOR PROFESSIONAL INTERIOR INSPECTION AND CONSTRUCTION  
SPECIFICATION PREPARATION SERVICES FOR THE 750,000 GALLON  
WATER TOWER**

This MASTER AGREEMENT FOR PROFESSIONAL INTERIOR INSPECTION AND CONSTRUCTION SPECIFICATION PREPARATION SERVICES FOR THE 750,000 GALLON WATER TOWER (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 Dixon Engineering, Inc. organized under the laws of the State of Michigan as a Corporation, whose address is 1104 Third Ave., Lake Odessa, Michigan 48849 ("Consultant").

The Village desires to engage Consultant to assist in rendering professional services.

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 ("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 A.

**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 shall be agreed upon in writing by the Village and the Consultant before commencing the Additional Services.

**SECTION 3 - THE VILLAGE'S RESPONSIBILITIES**

The Village shall:

- 3.1. Provide all criteria and full information for the Project, including objectives and constraints, performance requirements, 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 water tower maintenance and service reports, construction drawings and specifications, water tower service contracts 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. DELETED**

- 3.6. Furnish approvals from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
- 3.7. Provide such accounting, insurance counseling and such legal services as may be required for the Project, such legal services as the Village and Consultant may require or Consultant may reasonably request with regard to legal issues pertaining to the Project.
- 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 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 written notice to proceed from the Village, Consultant shall proceed with the performance of the services called for in Exhibit A.
- 4.3. Consultant's services to be rendered thereunto shall be considered complete upon written acceptance by the Village.
- 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.
- 4.5. The Project shall be completed within a reasonable period of time as agreed upon by the Village and the Consultant.

**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 A attached hereto to the Village for the Project as listed below:

<b>Maintenance Inspection and Report of the 750,000 Gallon Water Tower</b>	<b>\$2,200.00</b>
<b>Construction Specifications for the 750,000 Gallon Water Tower</b>	<b>\$2,500.00</b>
<b>Bidding Assistance, Pre-Construction Meeting, and Shop Review of the 750,000 Gallon Water Tower</b>	<b><u>\$1,000.00</u></b>
<b>TOTAL COST FOR BASIC SERVICES</b>	<b>\$5,700.00</b>

5.1.2 For Additional Services. The Village shall pay Consultant for Additional Services rendered based on Consultant's fees submitted to the Village and agreed upon in writing prior to commencing the Additional Services.

## **5.2 Times of Payments.**

5.2.1. Consultant shall submit itemized invoices for Basic and Additional Services rendered. The Village shall make prompt payments in response to Consultant's itemized invoices by mailing via ordinary U.S. mail such payment no later thirty (30) days of Village's receipt of invoice.

5.2.2. Fifty-percent (50%) of payment for Website Design shall be paid before commencement of Website Design services. Balance due when the new website is accepted by the Village and goes live.

## **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 invoice 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. DELETED**

## **5.4 Definitions**

### **5.4.1. 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.**

Deleted

## **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

Dixon Engineering, Inc.  
Attn.: Earl Strater  
624 Truman Lane, Suite 406  
Bellevue, KY 60543

#### **6.12 Insurance**

Consultant shall carry comprehensive general and public 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 A – Scope of Services.

## **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, Electronic Commerce Link, Inc. the Consultant herein, has caused this Agreement to be executed on the date stated below by Bill Nadler, whose title is President, pursuant to a Resolution or Consent Action authorizing such act.

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


PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

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: 

PRINTED NAME: Lionel H. Lawhorn

TITLE: Mayor

DATE: 8/7/14

SIGNATURE: 

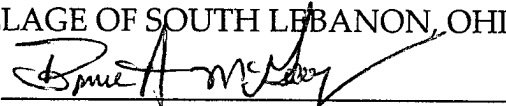
PRINTED NAME: Sharon Louallen

TITLE: Fiscal Officer

DATE: 8-7-14

APPROVED AS TO FORM:

VILLAGE SOLICITOR  
VILLAGE OF SOUTH LEBANON, OHIO

By: 

Date: 8/2/14

## EXHIBIT A SCOPE OF SERVICES

1. Provide a three person inspection team and comply with OSHA requirements for confined space entry. One person shall inspect the tank interior, a second shall be the confined space attendant and the third shall be a ground person responsible for emergency response and communications. Utility personnel shall be required only to provide access to the tank and assist with connection to a source of water for cleaning (for drained inspections). They are not required to remain on site during the inspection.
2. Provide a complete underwater inspection of the interior of the tank.
3. Take all precautions to protect the potable water from contamination during the inspection of the tank, regardless as to what portion of the tank is getting inspected.
4. All services provided under this Agreement shall be performed by certified, licensed personnel qualified to perform the required services in a competent, efficient, and satisfactory manner. All work shall be performed in accordance with current AWWA and NSF standards in a professional manner within the standards of the industry, using proper equipment, methods, and materials.
5. Inspect the tank's interior coating for remaining intactness and anticipated life. Review all interior girders and appurtenances for possible structural damage from icing or corrosion. Analyze the composition of the existing paint coating(s) to insure compatibility with any new coating that are specified under the terms of this Agreement.
6. Review all interior surfaces for corrosion and/or damage, and qualify damage for repairs. All repairs are to be quantified by extrapolation of a measured area. All quantities are estimates (usually high) because corrosion will continue between inspection and repair.
7. Inspect the exterior coating.
8. Review all exterior appurtenances for damage due to corrosion.
9. Review all safety requirements for ladders, cages, etc., interior and exterior.
10. Review all health aspects of the tank, including screening of the vent, overflow pipe, and other possible contamination sources.
11. Review exterior of the exposed foundations.
12. Perform a float inspection to review wet interior roof.
13. Attend and review meeting at the Village of South Lebanon to review the findings of the inspection and the recommendations.
14. Perform all field inspection work during the Village's normal working hours.

15. Prepare a report documenting all items found and recommendations for repair, including budgetary items. The engineering report is to include: conclusions and recommendations, base report digital photographs and descriptions, and a field inspection report.
16. Prepare a report documenting all items found and recommendations for repair, including budgetary items. The engineering report is to include: conclusions and recommendations, base report, digital photographs with descriptions, and a field inspection report.
17. Provide a complete construction specifications documents for all items listed in their inspection report for the use in a bidding documents prepared by the Village. The specifications shall be prepared according to the latest industry standard.
18. The construction specifications will ensure work will be completed to the latest applicable standards, regulations, and guidelines. Specified paint coating materials and application methods shall be compatible with the existing coatings that are not removed.
19. Provide an itemized estimate of cost to perform the recommended work for the purpose of budget preparation.
20. Provide answers to questions that arise during the bidding process regarding the work to be completed. This includes providing information for addendums and /or bid clarifications.
21. Attend a pre-construction meeting with the Village and successful painting contractor prior to the recommended work being performed.
22. Review and approve any and all shop drawings or submittals for the work to be completed to ensure compliance with construction specifications.