

VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2017- 4

A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO AN AGREEMENT WITH CHOICE ONE ENGINEERING FOR CONSULTING ENGINEER SERVICES REQUIRED FOR THE VACATION OF CERTAIN AREAS OF COCHRAN ROAD, AND DECLARING AN EMERGENCY

WHEREAS, the Village Council desires to vacate a portion of Cochran Road; and,

WHEREAS, it is necessary for a vacation plat to be prepared to delineated and describe the right-of-way to be vacated;

WHEREAS, the Village has solicited proposals from several consulting engineering firms for consulting engineer for said Project; and,

WHEREAS, Choice One Engineering was selected by staff as the most qualified and cost-effective; and,

WHEREAS, immediate action is required to expedite the vacation process, 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, 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 Village of South Lebanon required for the Cochran Road vacation for the lump sum fee of \$1,260, as attached hereto.

**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 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 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 5<sup>th</sup> day of January, 2017.

Attest: Sharon Louallen James D. Smith  
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

Rules Suspended: <u>1/15/2017</u> (if applicable)	Effective Date - / / 2017
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / / 2017	Effective Date - / / 2017
Second Reading - / / 2017	
Third Reading - / / 2017	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

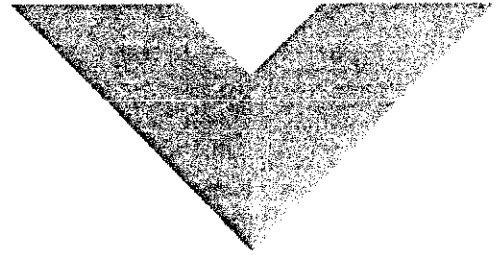
PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: [Signature]

Date: 1/15/2017



# Choice One Engineering



Date  
December 28, 2016

Attention  
Jerry Haddix  
jhaddix@southlebanonohio.org

Address  
Village of South Lebanon  
99 N. High Street  
South Lebanon, OH 45065

Subject  
Agreement for Professional Services  
Homestead and Cochran Vacations  
WAR-SLE-1701

## Dear Mr. Haddix:

Choice One Engineering Corporation appreciates the opportunity to provide services for the Homestead and Cochran Vacations Project.

This Agreement is by and between the Village of South Lebanon, hereinafter referred to as Client, and Choice One Engineering Corporation, hereinafter referred to as Choice One. If everything is acceptable, please execute two originals, keeping one for your files and returning one to Choice One. Choice One will not start work on this Project until the Agreement is signed and received in our office.

This Agreement is subject to the provisions of the following which are attached to and made a part of this Agreement: Scope of Services, Compensation, and Schedule, consisting of 3 pages and Choice One Engineering Corporation Standard Terms & Conditions consisting of three pages.

Authorization by the Client to proceed, whether oral or written, constitutes acceptance of the terms and conditions of this Agreement, without modification, addition, or deletion. Client and Choice One each bind itself and its partners, successors, executors, administrators of this executed Agreement.

### Village of South Lebanon



Authorized Signature

1-5-17  
Date

### Choice One Engineering Corporation



Allen J. Bertke, P.S., Project Manager

12/28/16  
Date

440 E. Florence Blvd.  
Bridgeton, OH 45305  
937.497.8200 - Phone

225 W. Terminal Ave.  
Lexington, OH 45150  
513.219.8564 - Phone

607 N. Main Street  
Portland, OH 4207  
260.767.2600 - Phone

# Scope of Services

## Project Snapshot

Choice One intends to vacate roadway from the cul-de-sac on Homestead Drive to the house drive along Cochran Road per the attached exhibits.

## Project Services

### 1. Homestead Drive Vacation Survey

- a. Prepare a road vacation exhibit of Homestead Drive as shown on the attached exhibit.
- b. Perform field reconnaissance of the existing monumentation.
- c. Perform necessary Research.
- d. Provide Legal description of tract.

### 2. Cochran Road Vacation Survey

- a. Prepare a road vacation exhibit of Cochran Road.
- b. Perform field reconnaissance of the existing monumentation.
- c. Perform necessary Research.
- d. Provide Legal description of tract.

## Additional Services

*We have the skill, experience, and knowledge to provide additional services as listed below. Additional services will be approved by the Client prior to commencement and will be performed on an hourly basis according to our current Standard Hourly Rate Schedule or a mutually negotiated lump sum fee.*

1. Topographic Survey
2. Boundary Survey
3. Easement and Right-of-Way Plats or Descriptions
4. Record Drawings

## Client Responsibilities

- Payment of agency-related fees.
- Provide any available existing plans.
- Provide timely decisions to keep design work on schedule.

# Compensation & Schedule

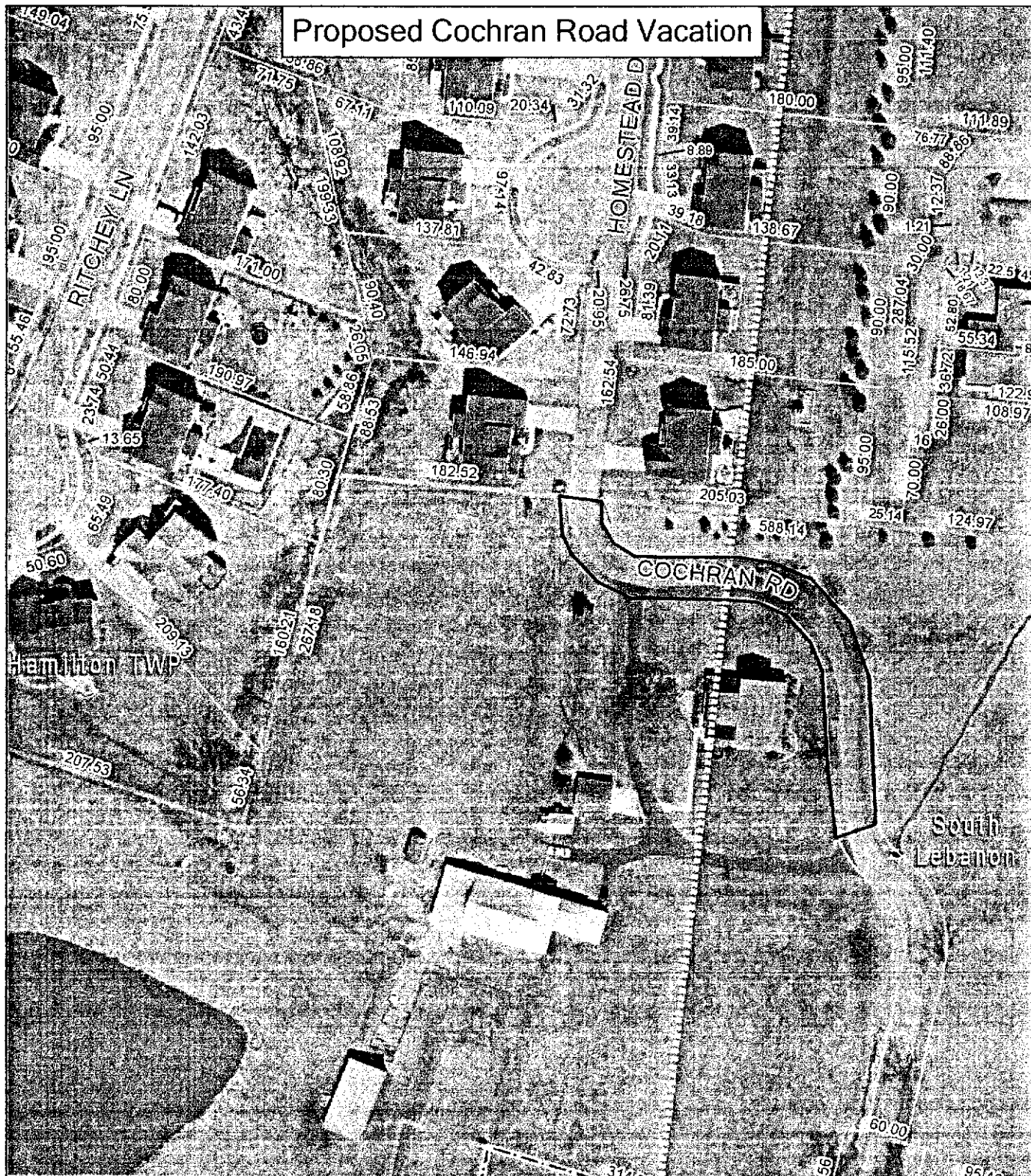
## Compensation

Lump Sum Fee Schedule	
Homestead Drive Vacation Plats	\$520.00
Cochran Road Vacation Plats	\$740.00
<b>Total</b>	<b>\$1,260.00</b>

## Schedule

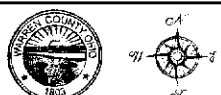
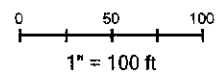
Choice One will have the plats completed and submitted to Warren County within twenty-one (21) days after receipt of an executed agreement.

# Proposed Cochran Road Vacation

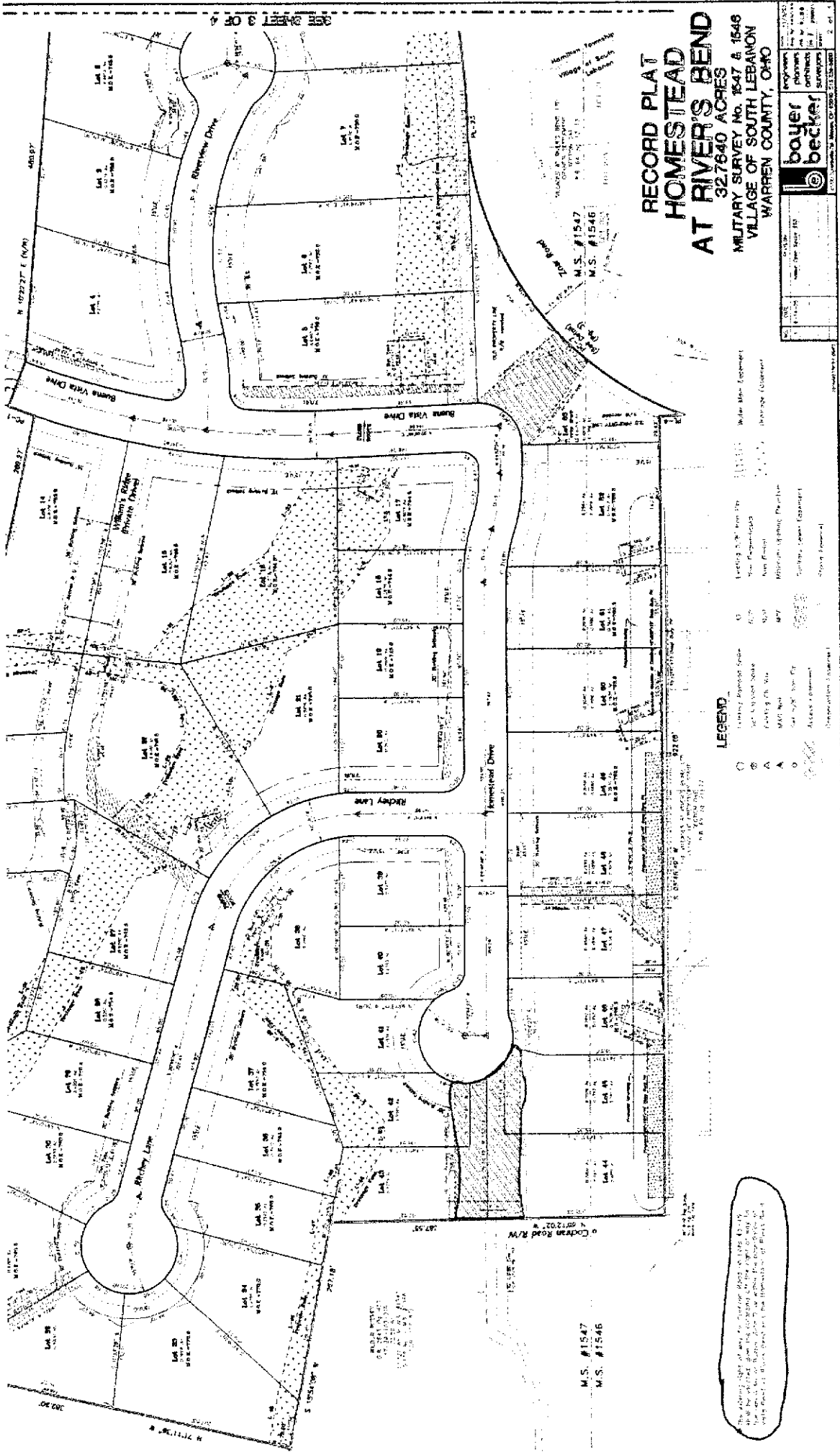


## Warren County Legend

	Interstate		County Boundary		Overpass Line		School Line		Township & Range
	US Route		Auditors Tract Line		Parcel Line		Section Line		Tract Line
	State Route		Civil Township Line		ROW Unknown Width		Subdivision Limit		VMS Line
	Local Road		Corporate Line		Road ROW		Subdivision Lot Line		Vicaded Road Line



This is a product of the Warren County GIS Department. The data depicted here has been developed with extensive cooperation from other county departments as other federal state and local government agencies. Warren County expressly disclaims responsibility for damages or liability that may arise from the use of this map. Any resale of this information is prohibited, except in accordance with a licensing agreement. Copyright 2009 Warren County GIS. Generated: 12/21/2016 3:40:42 PM



**RECORD PLAT  
HOMESTEAD  
AT RIVER'S BEND**  
327840 ACRES  
MILITARY SURVEY No. 1547 & 1546  
VILLAGE OF SOUTH LEBANON  
WARREN COUNTY, OHIO

**boyer becker**  
ENGINEERS, ARCHITECTS, SURVEYORS  
1000 North Main Street, Columbus, Ohio 43261  
Phone: 614-291-1111  
Fax: 614-291-1112  
www.boyerbecker.com

**LEGEND**

- Existing Proposed Road
- Set Back Zone
- Existing Dr. W.
- M.S. No.
- Lot No.
- Access Easement
- Construction Easement
- Water Main Easement
- Sewerage Easement
- Existing 2" x 2" Iron Pipe
- New Proposals
- New Road
- Minimum Right-of-Way
- Utility Easement
- Other Easement

The plat is subject to the provisions of the Ohio Homestead Act, which shall be applied during the construction of the plat. The plat is subject to the provisions of the Ohio Homestead Act, which shall be applied during the construction of the plat.

M.S. #1547  
M.S. #1546

Choice One Engineering Corporation  
Standard Terms & Conditions  
7/26/2015

**Services** Choice One Engineering Corporation (Choice One) will perform services for the Project as set forth in the Choice One agreement and in accordance with these Terms & Conditions. Choice One has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Choice One in performing their services.

**Additional Services** The Client and Choice One acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Choice One will notify the Client of the need for additional services and the Client will pay for such additional services at an hourly rate or as agreed to by the Client and Choice One.

**Project Requirements** The Client will confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they will be furnished to Choice One at Project inception. Choice One will review the Client design standards and may recommend alternate standards considering the standard of care provision.

**Period of Service** Choice One will perform the services for the Project with due and reasonable diligence consistent with normal professional practices according to the Project Schedule. Should Choice One discern that the schedule cannot be met for any reason, Choice One will notify the Client as soon as practically possible.

**Limitation of Liability** In recognition of the relative risks and benefits of the project to both the Client and Choice One, the Client agrees to the fullest extent permitted by law, to limit the liability of Choice One for any and all damages or claim expenses arising out of this agreement, from any and all causes, to \$50,000 or the fee realized by Choice One for the Project, whichever is greater.

**Compensation** In consideration of the services performed by Choice One, the Client will pay Choice One in the manner set forth in the Choice One agreement. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation will be reasonably adjusted for delays or extensions of time beyond the control of Choice One.

**Payment Terms** Choice One will submit monthly invoices for services performed and Client will pay the full invoice amount within thirty (30) calendar days of the invoice date. Invoices will be considered correct if not questioned in writing within ten (10) calendar days of the invoice date. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. No interest will accrue on any contested portion of the billing until mutually resolved. Client will exercise reasonableness in contesting any billing or

portion thereof. Choice One will be entitled to a 1.5% per month administrative charge in the event of payment delay. Client payment to Choice One is not contingent on arrangement of project financing. Invoice payment delayed beyond sixty (60) calendar days will give Choice One the right to suspend services until payments are current. Nonpayment beyond seventy (70) calendar days will be just cause for termination by Choice One.

**Amendment** This Agreement may not be amended except in writing and executed by both Choice One and Client. No alterations or modifications to these Terms and Conditions will be effective unless affirmatively contained in the signed amendment.

**Assignment** Neither party will assign its rights, interests or obligations under the Project without the express written consent of the other party.

**Authorized Representatives** The officer assigned to the Project by Choice One is the only authorized representative to make decisions or commitments on behalf of Choice One. The Client will designate a representative with similar authority.

**Betterment** If, due to Choice One's error or omission, any required item or component of the project is omitted from Choice One's construction documents, Choice One will not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will Choice One be responsible for any cost or expense that provides betterment, upgrade, or enhancement of the project.

**Buried Utilities** Where applicable to the Project, Choice One will conduct research and prepare a plan indicating the locations of underground improvements intended for subsurface penetration with respect to assumed locations of underground improvements. Such services by Choice One will be performed in manner consistent with ordinary standard of care. Client recognizes that the research may not identify all underground improvements and that the information on which Choice One relies may contain errors or may not be complete. The Client agrees to waive all claims and causes of action against Choice One for damages to underground improvements resulting from subsurface penetration locations established by Choice One, except for damages caused by the sole negligence or willful misconduct of Choice One.

**Compliance with Laws** Choice One will perform its services consistent with normal professional practice and endeavor to incorporate laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Choice One will be entitled to additional compensation where additional services are needed to conform to the standard of practice.

**Consequential Damages** Neither the Client nor Choice One will be liable to the other for any consequential damages regardless of the nature or fault.

**Construction Observation, If Applicable** Construction observation will consist of visual observation of materials, equipment, or construction services for the purpose of ascertaining that the service is in general conformance with the Contract Documents. Such observation will not be construed as relieving the parties under contract in any way from their obligations and responsibilities under the Contract Documents. Specifically, observation will not require Choice One to assume responsibilities for the means and methods of construction. The Client has not retained Choice One to make detailed inspections or to provide exhaustive or continuous project review and observation services. Choice One does not guarantee the performance of, and will have no responsibility for, the acts or omissions of any contractor, subcontractor, supplier, or any other entity furnishing materials or performing any services on the project.

**Cost Estimates or Opinions** Choice One may prepare cost estimates or opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Choice One acknowledge that actual costs may vary from the cost estimates or opinions prepared and that Choice One offers no guarantee related to the Project cost.

**Defects in Service** The Client will promptly report to Choice One any defects or suspected defects in service. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor agreement and will require all subcontracts at any level to contain a like provision. Failure by the Client and Client's contractors and subcontractors to notify Choice One will relieve Choice One 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.

**Delays** The services of each task will be considered complete when deliverables for the task have been presented to the Client. Choice One will be entitled to an extension of time and compensation adjustment for any delay beyond Choice One's control.

**Design Without Construction Administration** The Client acknowledges that there could be misinterpretations of Choice One Design Documents during construction, which could lead to errors and subsequent loss or damage. The Client assumes all responsibility for interpretation of the Contract Documents and for construction observation and the Client waives any claims against Choice One that may be in any way connected hereto.

**Dispute Resolution** In the event of a dispute between Choice One and Client arising out of or related to this Agreement, the aggrieved party will notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party will nominate a senior officer of its management to meet to resolve the dispute by direct negotiation. Should such negotiation fail to resolve the dispute, the Client and Choice One agree that all disputes will be submitted to nonbinding mediation unless the parties mutually agree otherwise.

Should such negotiation or mediation fail to resolve the dispute, either party may pursue resolution by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association.

During the pendency of any dispute, the parties will continue diligently to fulfill their respective obligations hereunder.

**Environmental Matters** The Client warrants they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Choice One will be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client will indemnify Choice One from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Choice One.

**Governing Law** The terms of agreement will be governed by the laws of the state where the services are performed provided that nothing contained herein will be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

**Hiring of Personnel** Owner may not directly hire any employee of Choice One. Owner agrees that it shall not, directly or indirectly solicit any employee of the Engineer from accepting employment with Owner, affiliate companies, or competitors of Engineer.

**Information from Other Parties** The Client and Choice One acknowledge that Choice One will rely on information furnished by other parties in performing its services under the Project. Choice One will not be liable for any damages that may be incurred by the Client in the use of third party information.

**Insurance** Choice One will maintain the following insurance and coverage limits during the period of service if such coverage is reasonably available at commercially affordable premium. Upon request, the Client will be named as an additional insured on the Commercial General Liability and Automobile Liability policies.

- Worker's Compensation: As required by applicable state statute
- Commercial General Liability: \$1,000,000 per occurrence (bodily injury including death and property damage) \$2,000,000 aggregate
- Automobile Liability: \$1,000,000 combined single limit for bodily injury and property damage
- Professional Liability: \$1,000,000 per claim and \$2,000,000 aggregate

The Client will make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Choice One will be a named insured on those policies where Choice One may be at risk.



**Ownership of Documents** Documents prepared by Choice One for the Project are instruments of services and will remain the property of Choice One. Final documents of service will be based on the printed copy. If specified in the Choice One agreement, Choice One will furnish the final documents electronically; however, the Client releases Choice One from any liability that may result from documents used in this form. Choice One will be defended and indemnified for reuse of documents for any purpose other than those intended under the Project.

**Permits and Approvals** Choice One will assist the Client in preparing applications and supporting documents as identified in the scope of services for the Client to secure permits and approvals from agencies having jurisdiction over the Project. Assistance in applying for permit applications by Choice One does not guarantee approval of the permits by the jurisdictional regulatory authorities. The Client agrees to pay all application and review fees.

**Severability** Any provision of these terms later held to violate any law will be deemed void and all remaining provisions will continue in force. In such event, the Client and Choice One will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

**Safety** Choice One will be responsible solely for the safety precautions or programs of its employees and no other party. In no event will Choice One be responsible for construction methods, means, techniques or sequences of construction, which are solely the responsibility of the Contractor.

**Site Access** The Client will obtain all necessary approvals for Choice One and subcontractors to access the Project site(s).

**Standard of Care** Services provided by Choice One will be performed with the care and skill ordinarily exercised by members of the same profession practicing under similar circumstances. The standard of care will exclusively be judged as of the time the services are rendered and not according to later standards.

**Survival** All provisions of these terms that allocate responsibility or liability between the Client and Choice One will survive the completion or termination of services for the Project.

**Suspension of Work** The Client may suspend services performed by Choice One with cause upon seven (7) calendar days documented notice. Choice One will submit an invoice for services performed up to the effective date of the work suspension and the Client will pay Choice One all outstanding invoices within fourteen (14) calendar days. Choice One will be entitled to renegotiate the Project schedule and the compensation terms for the Project.

**Termination** The Client or Choice One may terminate services on the Project upon seven (7) calendar days documented notice in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Choice One will submit an invoice for services performed up to the effective date of termination and the Client will pay Choice One all outstanding invoices within fourteen (14) calendar days.

**Time Bar To Legal Action** All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder will be barred and under no circumstances will any such claim be initiated by either party after three (3) years have passed from the date of Choice One's final invoice, unless Choice One's services will be terminated earlier, in which case the date of termination of this Agreement will be used.

**Waiver of Rights** The failure of either party to enforce any provision of these terms and conditions will not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.