

VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2018-12

A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO  
ENTER INTO AN AGREEMENT WITH KIMBERLY A. LAPENSEE FOR  
PLANNING AND ZONING CONSULTING SERVICES THROUGH DECEMBER 31,  
2018

**WHEREAS**, the Village has experienced an increase in residential and commercial development in calendar year 2017 and this trend is expected to continue through calendar year 2018; and,

**WHEREAS**, Village staff recommends the use of a planning and zoning consultant to assist in the review process of upcoming developments and other planning and zoning issues that may arise throughout the year; and,

**WHEREAS**, Village staff has solicited a proposal from Kimberly A. Lapensee for said services; and,

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

**Section 1.** That the Council authorizes the Mayor and Fiscal Officer to enter into a contract with Kimberly A. Lapensee for consulting services in the Village of South Lebanon for a not to exceed amount of \$10,000.00, as attached hereto.

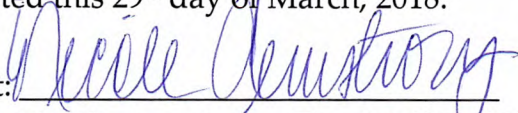
**Section 2.** That the Council is acting in its administrative capacity in adopting this Resolution.

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

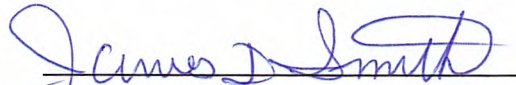
**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 29<sup>th</sup> day of March, 2018.

Attest:



Nicole Armstrong, Fiscal Officer/Clerk

  
James D. Smith, Mayor

Rules Suspended: / /2018 (if applicable)

Effective Date - / /2018

Vote - \_\_\_ Yeas  
      \_\_\_ Nays

First Reading 3 / 1 /2018  
Second Reading 3 / 15 /2018  
Third Reading 3 / 29 /2018

Effective Date - / /2018

Vote - 5 Yeas  
      \_\_\_ Nays

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

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

Date: 3/29 /2018

## **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 Kimberly A. Lapensee, a sole proprietor, whose address is 6525 Kalbfleisch Road, Middletown, Ohio 45042 ("Consultant").

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 The Consultant agrees to provide consulting planning services (the "Basic Services") relative to municipal planning and zoning consulting services for the Village of South Lebanon, 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 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. INTENTIONALLY LEFT BLANK
- 3.2. Assist Consultant by providing all available information pertinent to the Basic Services in the possession of the Village including any previous reports and any other data.
- 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 LEFT BLANK
- 3.7. Provide such accounting, insurance counseling and such legal services as may be required for the Basic Services, such legal services as the Village 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 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. (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 Village, 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 Village.
- 4.4. If the Village has requested significant modifications or changes, 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 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 TEN THOUSAND AND 00/100 DOLLARS (\$10,000.00).** The Village 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 Village.

- 5.1.2 For Additional Services. The Village 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 Village 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 Village 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 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. 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 Village 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 any project consulted by Consultant, 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 related to projects consulted. They are not intended or represented to be suitable for reuse by the Village or others on 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: Kimberly A. Lapensee  
Address: 6515 Kalbfleisch Road  
Address: Middletown, Ohio 45042

**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**, Kimberly A. Lapensee, the Consultant herein, has caused this Agreement to be executed on the date stated below by KIM LAPENSEE whose title is owner/self.

SIGNATURE: Kimberly Lapensee  
PRINTED NAME: KIMBERLY LAPENSEE  
TITLE: Self  
DATE: 4.3.18

**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. 2018 - 12.

SIGNATURE: James D. Smith  
PRINTED NAME: James D. Smith  
TITLE: Mayor  
DATE: 3/30/18

SIGNATURE: Nicole Armstrong  
PRINTED NAME: Nicole Armstrong  
TITLE: Fiscal Officer  
DATE: 3/30/18

APPROVED AS TO FORM:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
VILLAGE OF SOUTH LEBANON, OHIO

By: [Signature]

Date: 3/29/18

## **EXHIBIT "1"**

### **SCOPE OF SERVICES**

- Review plans for commercial and residential developments submitted to the Village and provide assistance to Village staff as needed;
- Review Village Zoning Map and Text Amendments and make recommendations to the Village Planning Commission and Village Council;
- Review applications for variances and conditional uses submitted to the Village Board of Zoning Appeals; and
- Attend Planning Commission, Board of Zoning Appeals, or Village Council meetings, if necessary.

### **HOURLY RATE SCHEDULE**

Kimberly A. Lapensee                      \$50 per hour

All reimbursables such as reproduction, transportation, and project-related expenses will be charged at their cost.