

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-5**

**A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO
ENTER INTO AN AGREEMENT WITH MCGILL SMITH PUNSHON INC. FOR
CONSULTING ENGINEER SERVICES FOR THE ZOAR ROAD WATER AND
SEWER FEASIBILITY STUDY, AND DECLARING AN EMERGENCY**

WHEREAS, due to the potential for future residential development, the Village desires to study the feasibility of extending water and sanitary sewer service to properties located on Zoar Road east of the Village limits; and,

WHEREAS, McGill Smith Punshon, Inc. has submitted a proposal that includes evaluating the existing Village water and sanitary sewer system, determining necessary upgrades and improvements to serve the study area, and a cost estimate for said improvements; and,

WHEREAS, immediate action is required to expedite said study which is necessary prior to development of the study area, 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 McGill Smith Punshon Inc. for consulting engineer services for required the Zoar Road Water and Sewer Feasibility Study for a not to exceed amount of \$26,100.00, 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 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 18th day of January, 2018.

Attest: Nicole Armstrong
Nicole Armstrong, Fiscal Officer

James D. Smith
James D. Smith, Mayor

Rules Suspended: <u>1/18</u> /2018 (if applicable)	Effective Date – / /2018
Vote - <u>6</u> Yeas ___ Nays	
First Reading – / /2018	Effective Date – / /2018
Second Reading – / /2018	
Third Reading – / /2018	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Date: 1/18/2018



AGREEMENT FOR PROFESSIONAL SERVICES

To

Mr. Jerry Haddix
Village Administrator
Village of South Lebanon (CLIENT)
99 North High Street
South Lebanon, Ohio 45065

For

Zoar Road
Public Sanitary Sewer and Water Feasibility Study
Village of South Lebanon, Ohio

MSP Project No. 06308.08

January 2, 2018

1. SCOPE OF SERVICES BY MCGILL SMITH PUNSHON (MSP):

Determine short term solution to attract the development of a 289-lot subdivision and attempt to integrate it with a long-term solution.

1.1. Phase One Tasks:

- 1.1.1. MSP will obtain available GIS base mapping, road right-of-way records and utility records to create a base map of the proposed design area to be served by public gravity and pressure sanitary sewers as well as public water main.
- 1.1.2. Prepare as-built survey of the inside of the existing pump station wet well including pipe and various float sensors.
- 1.1.3. Determine OEPA design flows based on existing conditions and compare to actual flows.
- 1.1.4. Determine proposed design flows based on the addition of 289 single-family homes.
- 1.1.5. Determine likely upgrades to pump station, force main and downstream gravity mains.

- 1.1.6. Upon review of the above described base map, a representative from MSP will visit the subject area and travel the potential routes of the proposed sanitary sewer and water extension to access existing conditions, visualize the design concept, and obtain an understanding of the potential issues and concerns associated with the design and construction of the potential future sanitary sewer and water extension.
- 1.1.7. Determine the extent of the 289 lots that could served be gravity sewer to the exiting pump station.
- 1.1.8. Determine applicable location of a new pump station to serve the remainder of the 289-lot subdivision.
- 1.1.9. Determine the probable route for water and sanitary sewer mains.
- 1.1.10. If flow metering of the existing lift station is not available, MSP will engage Beckman Environmental Services (BESCO), a local waste water contractor and designer that specializes in lift station construction and design, to supply flow metering of the existing lift station.
- 1.1.11. MSP will review the Village of South Lebanon's current Comprehensive Land Use Plan to determine the intensity of use planned for the drainage area that will be tributary to the proposed sanitary sewer and service area of the proposed water. MSP will then estimate a design flow in ERU's (equivalent residential units) for use in design of the future sanitary sewer system.
- 1.1.12. Based on the above tasks MSP will prepare a concept sanitary sewer and water plan that will show probable routes for each utility and estimate sizes of the future sanitary sewer extension for both gravity and pressure sanitary sewers as well as identified areas where additional public right-of-way and easements may be required.

1.2. Phase Two Task:

- 1.2.1. Upon agreement with South Lebanon as to concept and utilizing the above referenced sanitary sewer and water plans, MSP will prepare an opinion of probable costs to survey, engineer, permit and construct the proposed sanitary sewer infrastructure, water main and associated appurtenances.

2. COMPENSATION:

- 2.1. The Basic Fee for the services as described in Section I. shall be as follows:

Phase One Tasks:	\$ 12,800.00
Lift Station Flow Metering (if necessary)	\$ 4,000.00 - \$6,000.00
Opinion of Probable Cost (dependent on limits of construction)	\$ 4,300.00 - \$7,300.00

Payment to MSP shall be in accordance with our current "Hourly Rate Schedule". The rates shown in that schedule apply for professional services to be provided under this Agreement.

- 2.2. MSP shall invoice CLIENT monthly for the amounts due for professional services rendered and expense incurred. CLIENT shall pay MSP the full amount due within thirty (30) days of receipt of invoice.
- 2.3. All past due amounts shall bear interest at the rate of one and one-quarter percent (1 ¼%) per month compounded monthly. All amounts due MSP shall be paid whether or not CLIENT makes use of the professional services rendered by MSP.
- 2.4. All services requested by the Client in addition to those described in this agreement will be invoiced additionally and compensation for such work shall be paid on a Time & Material basis in accord with our current rate schedule.
- 2.5. In addition to the Basic Fee, MSP shall also be reimbursed for all costs incurred by MSP for travel, long distance telephone communications, printing, deliveries, postage and permit fees in conjunction with the work in accord with our current rate schedule.

3. CLIENTS RESPONSIBILITIES

- 3.1. Provide sanitary sewer flow records and drawings for the pump station including pump and generator performance data and / or specifications.
- 3.2. If applicable, provide water usage records of customers tributary to pump station.
- 3.3. Provide existing force main drawings including pipe material.
- 3.4. Provide downstream sanitary sewer main drawings as needed.
- 3.5. Provide number of bedrooms in proposed homes.
- 3.6. Obtain costs of Easement acquisition, if any.

4. EXCLUSIONS

- 4.1. Exclusions from the scope of services include, but not limited to, the following:
 - 4.1.1. Permitting legwork and fees
 - 4.1.2. Water distribution analysis and modeling
 - 4.1.3. Easement negotiations
 - 4.1.4. Easement documents and legal descriptions
 - 4.1.5. Final construction/improvement plans
 - 4.1.6. Professional Surveying Services.
 - 4.1.7. Inspection Services.
 - 4.1.8. Camera Inspection of infrastructure.

5. GENERAL TERMS

5.1. Client's Responsibility:

MSP shall indicate to the CLIENT the project criteria, reports, surveys, site utility drawings and other information required to render the services specified herein. The CLIENT shall provide such information to MSP as is available. The foregoing information, surveys, reports and drawings shall be furnished at the CLIENT's expense, and MSP shall be entitled to rely upon the accuracy and completeness thereof.

Prompt written notice shall be given by the CLIENT to MSP if the CLIENT becomes aware of any fault or defect in the project or non-conformance with the contract documents.

The CLIENT shall designate a representative authorized to act in his behalf with respect to the project. The CLIENT or his representative shall examine the documents submitted by MSP and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of MSP's work. The Client is responsible for all permit fees and plan review fees charged by governmental agencies.

5.2. Standard of Care:

In providing services under this agreement, MSP will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. MSP will perform its services as expeditiously as is consistent with professional skill and care and the orderly progress of MSP's part of the Project. Regardless of any other term or condition of this Agreement, MSP makes no express or implied warranty of any sort. All warranties, including warranty of merchantability or warranty of fitness for a particular purpose, are expressly disclaimed.

5.3. Consequential Damages:

Notwithstanding any other provision to the contrary, and to the fullest extent permitted by law, neither CLIENT nor MSP shall be liable to the other for any incidental indirect or consequential damages arising out of and/or connected in any way to the Project or this Agreement. This mutual waiver of consequential damages shall include, but not be limited to, loss of use, loss of profit, loss of business or income or any other consequential damages that either party may have incurred from any cause of action whatsoever.

5.4. Indemnifications:

CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold MSP and its subconsultants harmless from and against any and all damage, losses or cost (including reasonable attorney's fees and defense costs) caused in whole

or in part by its acts, errors or omissions and those of anyone for whom they are legally liable. MSP further agrees, subject to Risk Allocation below, to indemnify CLIENT for damages arising from its own negligent acts, errors or omissions.

5.5. Risk Allocations:

In recognition of the relative risks and benefits of the project to both CLIENT and MSP, CLIENT agrees, to the fullest extent permitted by law, to limit MSP's total liability to CLIENT or anyone making claims through CLIENT, for any and all damages or claim expenses (including attorney's fees) arising out of this Agreement, from any and all causes, to the total amount of \$50,000.00 or the amount of MSP's fee, whichever is greater.

5.6. Termination of Services:

This agreement may be terminated upon 10 days written notice by either party should the other fail to perform their obligations hereunder. In the event of termination, CLIENT shall pay MSP for all services rendered to the date of termination, all reimbursable expenses, and reasonable termination expenses.

5.7. Instruments of Service:

All reports, drawings, specifications, field data, calculations, estimates and other documents prepared by MSP for this project shall remain the property of MSP. The CLIENT shall be permitted to retain copies, including reproducible copies of the drawings, specifications and other documents for information and reference in connection with the CLIENT's use and occupancy of the project.

5.8. Ownership of Documents:

All documents produced by MSP under this agreement, including electronic files, shall remain the property of MSP and may not be used by this CLIENT for any other purpose without written consent of MSP. Any such use or reuse shall be at the sole risk of CLIENT who shall defend, indemnify and hold MSP and its sub-consultants harmless from any and all claims and/or damages arising therefrom. Electronic files are not contract documents and cannot be relied upon as identical to contract documents because of changes or errors induced by translation, transmission, or alterations while under the control of others. Use of information contained in the electronic files is at the user's sole risk and without liability to MSP and its sub-consultants.

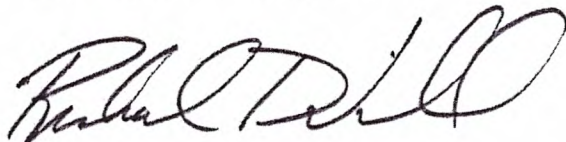
5.9. Defects in Service:

CLIENT shall promptly report to MSP any defects or suspected defects in MSP's services. CLIENT further agrees to impose a similar notification requirement on all contractors in its CLIENT/Contractor contract and shall require all subcontracts at any level to contain a like agreement. Failure by CLIENT and CLIENT'S contractors or subcontractors to notify MSP shall relieve MSP 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.

- 5.10. Construction Activities:
MSP shall not be responsible for the acts or omissions of any person performing any construction work or for instructions given by CLIENT or its representatives to anyone performing any construction work, nor for construction means and methods or job-site safety.
- 5.11. Dispute Resolution:
Any claim or dispute between CLIENT and MSP shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator. If the Parties cannot agree upon a mediator the claim or dispute shall be submitted to the American Arbitration Association (AAA) or medication in accordance with the Construction Arbitration and Mediation Rules of the AAA then in effect.
- 5.12. Relationship of Parties:
All services provided by MSP are for the sole use and benefit of CLIENT. Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either CLIENT or MSP.
- 5.13. Entire Agreement:
This Agreement constitutes the entire agreement between the parties and these Terms & Conditions may only be amended by written agreement by both parties. Should any portion of this Agreement be found to be illegal or unenforceable, such portion shall be deleted and the balance shall remain in effect.
- 5.14. Applicable Law:
The law applicable to this Agreement is the state of the Project location

Respectfully submitted,

McGill Smith Punshon, Inc.



Richard D. Nichols, P.S.
Vice President, Surveying
06308083-CLI-AGR-Zoar Road feasibility

CLIENT
Approved and accepted.



Signature

Mayor

Title

Date

1/18/18

HOURLY RATE SCHEDULE

Principal	\$135-\$180.00/hour
Project Manager	\$90-\$165.00/hour
Registered Engineer	\$120-\$180.00/hour
Registered Architect.....	\$80-\$180.00/hour
Registered Landscape Architect/Planner	\$90-\$130.00/hour
Professional Surveyor	\$85-\$180.00/hour
Designer/Job Captain	\$75-\$110.00/hour
CADD Operator/Technician	\$55-\$95.00/hour
Surveying (Monday through Friday)	
2 Man Crew.....	\$135.00/hour
1 Man Crew.....	\$95.00/hour
Technical Support	\$55-\$125.00/hour

Travel 54.0¢ per mile

Sub-consultants will be invoiced at 1.2 times MSP cost.

Reimbursable expenses such as postage, plots, prints, fees paid, travel expenses, long distance phone calls, e-mail, disk transfers and deliveries will be invoiced at 1.1 times MSP cost.

All invoices are due and payable upon receipt. Interest will be charged after 30 days at one and one quarter percent (1-1/4%) per month.

Effective Date: January 1, 2016