

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-52

A RESOLUTION APPROVING AND AUTHORIZING THE ISSUANCE OF A NOTICE OF AWARD TO DONALD W. MAY CONTRACTING, INC. FOR THE CONSTRUCTION OF THE TURTLECREEK ROAD SANITARY SEWER EXTENSION PROJECT AND AUTHORIZING THE MAYOR AND FISCAL OFFICER TO EXECUTE A CONTRACT FOR THE SAID IMPROVEMENT PROJECT AND THEREAFTER ISSUANCE OF A NOTICE TO PROCEED, AND DECLARING AN EMERGENCY

WHEREAS, the Village published invitations to bid for the Turtlecreek Road Sanitary Sewer Extension Project with the bid opening on August 28, 2018; and,

WHEREAS, Donald W. May Contracting, Inc. submitted the apparent low bid with a bid of \$205,261.00; and,

WHEREAS, the Village Administrator, along with the Project Engineer, has reviewed all of the bids submitted and recommends that the contract for this Project be awarded to Donald W. May Contracting, Inc. in the amount of \$205,261.00; and,

WHEREAS, due to the necessity to complete construction of the Project during the current construction season for a planned commercial development, immediate action is required 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 issuance of a Notice of Award to Donald W. May Contracting, Inc. (Contractor) and further authorize the Mayor and Fiscal Officer to execute the Project Contract after approval as to form by the Village Solicitor and execution by the Contractor.

Section 2. Upon full execution of the Project Contract, the Mayor and Fiscal Officer are further authorized to execute and send a Notice to Proceed to the Contractor.

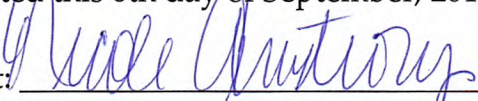
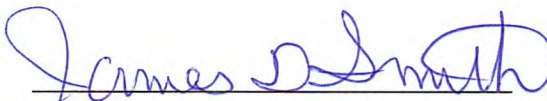
Section 3. That the Council is acting in its administrative capacity in passing this Resolution.

Section 4. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

Section 5. 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.

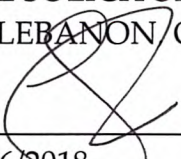
Section 6. That it is found and determined that all formal actions of the Council concerning and relating to passing this Resolution were adopted in an open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Adopted this 6th day of September, 2018.

Attest:  
Nicole Armstrong, Fiscal Officer/Clerk James D. Smith, Mayor

Rules Suspended: <u>9/6</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: 
Date: 9/6/2018

NOTICE OF AWARD

Date of Issuance: September 6, 2018
Owner: Village of South Lebanon
Turtlecreek Road Sanitary Sewer Extension
Project: Project
Bidder: Donald W. May Contracting, Inc.
10375 Burton Road
Bidder's Address: Leesburg, OH 45135

To Bidder:

You are notified that Owner has accepted your Bid dated 9/6/18 for the above Project, and that you are the Successful Bidder and are awarded a Contract for:

Construction of the Turtlecreek Road Sanitary Sewer Extension Project
(Describe Work or alternates awarded.)

The Contract Price of the awarded Contract is \$205,261.00

Three (3) copies of the proposed Contract Documents (except Plans) accompany this Notice of Award.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award.

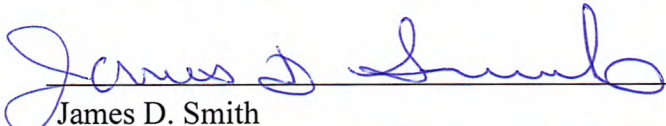
Three (3) counterparts of the Agreement, fully executed by Bidder must be delivered to Village of South Lebanon.

Deliver with the executed Agreements the Contract Security and insurance documentation as specified in the General Conditions and Supplementary Conditions - Article 6.

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid Security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully-executed counterpart of the Agreement.

OWNER: Village of South Lebanon

By: 
[Signature] _____
[Printed name] James D. Smith

Title: Mayor

AGREEMENT

This Agreement is by and between the Village of South Lebanon (Owner), 99 North High Street, South Lebanon, OH 45065 and Donald W. May Contracting, Inc. (Contractor) 10375 Burton Road, Leesburg, OH 45135.

Owner and Contractor, hereby agree as follows:

ARTICLE 1 – WORK

1.01 Contractor shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Installation of gravity sanitary sewer along Turtlecreek Road per bid documents and specifications.

ARTICLE 2 – THE PROJECT

2.02 The Project, of which the Work under the Contract Documents is a part, is generally described as follows:

Village of South Lebanon Turtlecreek Road Sanitary Sewer Extension Project

ARTICLE 3 – ENGINEER

The Project has been designed by Choice One Engineering.

ARTICLE 4 – CONTRACT TIMES

4.01 Time of the Essence

A. All time limits for Milestones, if any, Substantial Completion, and completion and readiness for final payment as stated in the Contract Documents are of the essence of the Contract.

4.02 Contract Times: Dates

A. Bidder agrees that the Work will be complete within sixty (60) days from the date of the “Notice to Proceed”.

Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence as stated in paragraph 4.01 above and that Owner will suffer financial and other losses if the Work is not completed and Milestones not achieved within the times specified in paragraph 4.02 above, plus any extensions thereof allowed in accordance with the Contract. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by Owner if the Work is not completed on time. Accordingly, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty)
1. *Substantial Completion*: Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after the time (as duly adjusted pursuant to the Contract) specified in Paragraph 4.02.A above for Substantial Completion until the Work is substantially complete.
 2. *Completion of Remaining Work*: After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Time (as duly adjusted pursuant to the Contract) for completion and readiness for final payment, Contractor shall pay Owner five hundred dollars (\$500.00) for each calendar day that expires after such until the Work is completed and ready for final payment.
 3. Liquidated damages for failing to timely attain Substantial Completion and final completion are not additive and will not be imposed concurrently.

ARTICLE 5 – CONTRACT PRICE

- 5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined for all work at the prices stated in Contractor's Bid provided within this document.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will indicate the amount of Contractor's fee then payable. Applications for Payment will be processed by Engineer as provided in the General Conditions.

6.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as recommended by Engineer on

or about the 25th day of each month during construction as provided in paragraph 6.02.A.1 a and b below, provided that such Application for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Unit Price Work based on the number of units completed.

1. For Cost of the Work: Progress payments on account of the Cost of the Work will be made. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages in accordance with the Contract:
 - a. 92% Cost of Work completed (with the balance being retainage). If Work has been 50% completed as determined by Engineer, and if the character and progress of the Work have been satisfactory to Owner and Engineer, then as long as the character and progress of the Work remain satisfactory to Owner and Engineer, there will be no additional retainage; and
 - b. 92% percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).

- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 92% of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 100% of the unit price of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

6.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said paragraph.

ARTICLE 7 – INTEREST

- 7.01 All amounts not paid when due as provided in Article 15 of the General Conditions shall bear interest at the rate allowed by law at the place of the Project.

ARTICLE 8 – CONTRACTOR’S REPRESENTATIONS

- 8.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and data and reference items identified in the Contract Documents.
- B. Contractor has visited the Site, conducted a thorough, alert visual examination of the site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all plans of physical conditions relating to existing surface or subsurface structures at the Site if any, that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and plans, and (2) reports and plans relating to Hazardous Environmental Conditions, if any, at or adjacent to the Site that have been identified in the Supplementary Conditions, especially with respect to any Technical Data in such reports and plans.
- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and plans identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

- J.** Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 9 – ACCOUNTING RECORDS

- 9.01** Contractor shall keep such full and detailed accounts of materials incorporated and labor and equipment utilized for the Work consistent with the requirements of Paragraph 13.01.E of the General Conditions and as may be necessary for proper financial management under this Agreement. Subject to prior written notice, Owner shall be afforded reasonable access during normal business hours to all Contractor's records, books, correspondence, instructions, plans, receipts, vouchers, memoranda, and similar data relating to the Cost of the Work and Contractor's fee. Contractor shall preserve all such documents for a period of three years after the final payment by Owner.

ARTICLE 10 – CONTRACT DOCUMENTS

10.01 Contents

- A.** The Contract Documents consist of the following:
- 1.** This Agreement (pages A-2 to A-10, inclusive).
 - 2.** Performance Bond (pages A-11 to A-12, inclusive).
 - 3.** General Conditions (pages 1 to 65, inclusive).
 - 4.** Supplementary Conditions (SC-1 to SC-18, inclusive).
 - 5.** Wage Determination and Payroll Submittal (inclusive).
 - 6.** Specifications as listed in the table of contents on page S-1 (inclusive).
 - 7.** Plans (Not attached, but incorporated by reference) consisting of 3 sheets with each sheet bearing the following general title: Village of South Lebanon Turtlecreek Road Sanitary Sewer Extension Project.
 - 8.** Addenda (numbers _____ to _____, inclusive).
 - 9.** Exhibits to this Agreement (enumerated as follows): **a.** Contractor's Bid (pages B-1 to B-8, inclusive).

10. The following which may be delivered or issued on or after the Effective Date of the Contract.
 - a. Notice to Proceed (inclusive).
 - b. Notice of Commencement (inclusive).
 - c. Certificate of Owner's Attorney (inclusive).
 - d. Certificate of Owner's Financial Officer (inclusive).
 11. The following which must be completed before payment(s) is issued.
 - a. Application for Payment.
 - b. Change Orders.
 - c. Partial Release of Liens and Claims.
 12. The following which must be completed before final payment is issued.
 - a. Application for Payment.
 - b. Change Orders.
 - c. Final Release of Liens and Claims.
 - d. Affidavit - Village Income Tax.
 - e. Affidavit of Compliance, Prevailing Wages.
- B.** The documents listed in paragraph 10.01.A are attached to this agreement (except as expressly noted otherwise above).
- C.** There are no Contract Documents other than those listed above in this Article 10.
- D.** The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 11 – MISCELLANEOUS

11.01 Terms

- A.** Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

11.02 Assignment of Contract

- A.** Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and 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 the Contract Documents.

11.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

11.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

11.05 Campaign Contributions

- A. Contractor hereby certifies that all applicable parties listed in Division (I) of O.R.C. Section 3517.13 are in full compliance with Divisions (I) and (J) or O.R.C. Section 3517.13.

11.06 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 11.06:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish Bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or an arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

11.07 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or “track changes” (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

The most recent date between the two parties will serve as the effective date.

CONTRACTOR: Donald W. May Contracting, Inc.

By: 
[Signature]

[Printed name] DON MAY

Title: PRES.

Witness: 
[Signature]

[Printed name] Jerry Haddix

Signature Date: 9/14/18

Physical Address for giving notices:
10375 Burton Road

Leesburg, OH 45135

Telephone Number: (937) 780-6306

Email Address: dmaycontracting@gmail.com

Federal I.D. Number: 31-1306206

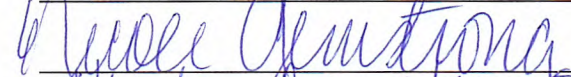
(Signature page continued on next page.)

OWNER: Village of South Lebanon

By: 
[Signature]

[Printed name] James D. Smith

Title: Mayor

Witness: 
[Signature]

[Printed name] Nicole Armstrong

Signature Date: 9/6/18

Physical Address for giving notices:

99 High Street

South Lebanon, Ohio 45065

Telephone Number: 513-494-2296

Email Address: jsmith@southlebanonohio.org

Federal I.D. Number: 31-600-8930

NOTICE TO PROCEED

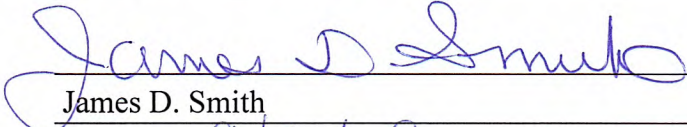
Owner: Village of South Lebanon
Contractor: Donald W. May Contracting, Inc.
Effective Date of Contract: September 6, 2018

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence on the date issued of this notice to proceed.

On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement the date of Completion is sixty (60) days from the date of this Notice.

Before starting any Work at the Site, Contractor must comply with the following:

OWNER: Village of South Lebanon
By: 
[Signature]
[Printed name] James D. Smith
Signature Date: 9/6/18

Physical Address for giving notices:

99 High Street, South Lebanon, Ohio 45065

NOTICE OF COMMENCEMENT OF PUBLIC IMPROVEMENT
SECTION 1311.252 OHIO REVISED CODE

State of Ohio, County of Warren, ss:

Notice is hereby given by the undersigned public authority ("Public Authority") of the commencement of a public improvement ("Project") as follows:

(1) The Project is identified as:

Project Name: Turtlecreek Road Sanitary Sewer Extension Project
Location: South Lebanon, Ohio

(2) The Public Authority responsible for the Project is:

Public Authority: Village of South Lebanon
Address: 99 High Street, South Lebanon, Ohio 45065

(3) All principal contractors on the Project, the trade and Surety of each are as follows:


Principal Contractors Name: Donald W. May Contracting, Inc.
Address: 10375 Burton Road, Leesburg, OH 45135
Trade: General
Surety Name and Address: Nationwide Mutual Ins. Co., 1100 Locust St., Des Moines, IA 50391

The Public Authority first executed a contract with a principal contractor for the Project on:

Date: September 6, 2018

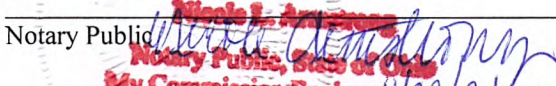
The name & address of the representative of the Public Authority upon whom service may be made for the purposes of serving an affidavit pursuant to Section 1311.26 of the Ohio Revised Code is:

Name: James D. Smith
Address: 99 High Street, South Lebanon, Ohio 45065

Public Authority: Village of South Lebanon
Signature: 
Title: Mayor

The signator of this Notice of Commencement of Public Improvement ("Notice") personally appeared before me on behalf of the Public Authority, a notary public in and for said county, and swore that all the information in the Notice is true as he/she verily believes and further that he/she is fully authorized by the Public Authority to give said notice.

Sworn to before me and subscribed in my presence on this 6th day of September, 2018.

Notary Public 
Notary Public, State of Ohio
My Commission Expires 11/22/2019
Recorded in Warren County

Agreement Forms
A- 14

CERTIFICATE OF OWNER'S ATTORNEY

I, the undersigned, Paul R. Revelson, the duly authorized and acting legal representative of Village of South Lebanon do hereby certify as follows:

I have examined the attached contract(s), surety bonds, insurance, and the manner of execution thereof, and I am of the opinion that each of the aforesaid documents meets the requirements set forth within and have been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Signature: _____



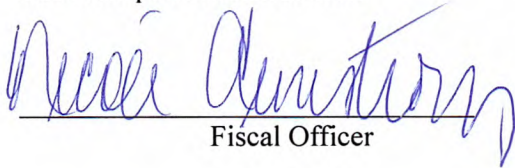
Date: _____

9/6/18

CERTIFICATE OF OWNER'S FINANCIAL OFFICER

WITNESS:

I, Nicole Armstrong, Fiscal Officer, hereby certify that the money to meet this contract has been lawfully appropriated for the purpose of the contract and is in the treasury of Village of South Lebanon, Ohio, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.


Fiscal Officer

