

ORDINANCE NO. 2020-021

AN ORDINANCE AUTHORIZING THE
CITY MANAGER TO EXECUTE AN AGREEMENT
WITH NEWBERRY CONSTRUCTION, AND
DECLARING AN EMERGENCY

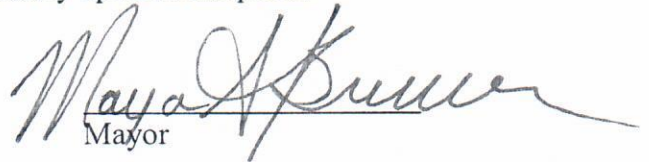
WHEREAS, the City wishes to engage Newberry Construction to perform necessary repairs to the City-owned rail line which includes removing and replacing defective ties and upgrade the rail crossing at Mechanic Street; and

WHEREAS, the total project estimated cost of this project for the 3-year term of the agreement is \$114,025 for year 2020, and unit pricing for years 2021 and 2022;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. That the City Manager be authorized and directed to execute an Agreement between the City of Lebanon and Newberry Construction, in substantially the same form as the agreement attached hereto as "Exhibit 1".

SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon; and, for the further reason, it is necessary to coordinate the project with LM&M's operating schedule, then this Ordinance shall take effect immediately upon its adoption.


Mayor


Passed: February 11, 2020
Attest:



Clerk of Council

Sponsor

Mayor Brewer
Council member

City
Manager


City
Auditor


City
Attorney


AGREEMENT FOR SERVICES
Mechanic St. Rail Crossing Upgrade and Annual Tie Replacement Program

This Agreement for Services (the "Agreement") is entered into by and between the **City of Lebanon, Ohio** ("Lebanon") and **Newberry Construction, Inc.** (the "Contractor").

Lebanon and the Contractor agree as follows:

Section 1. The Work.

1.1. The Contractor shall perform the work described in the contract documents and reasonably inferable by the Contractor as necessary to produce the results intended by the contract documents, for:

**PROJECT: LEBANON RAIL LINE TIE REPLACEMENT AND CROSSING
UPGRADE PROGRAM**

Section 2. Contract Price and Payments.

2.1. Lebanon shall pay the Contractor for performance of this Agreement based on the following unit contract prices as outlined in Contract 20-04 submitted January 31, 2020 by the Contractor:

2.2. The Contract Price shall be paid by Lebanon upon payment request issued by the Contractor and approved by the Deputy City Manager as provided in the contract documents.

2.3. For Contracts which have a length of more than six months only, partial payments may be made to the extent of the delivered cost of approved materials to be incorporated in the work, when delivered on the project or stored in acceptable storage places in the vicinity of the project. Delivered cost shall be evidenced by manufacturer's invoices bearing the statement that all previous invoices have been paid. Information will be required as to the cost of the materials, when such materials will be incorporated in the work and such other information which will be considered for approval of advanced payment. Consideration will only be given to materials for major items of the contract.

Section 3. Time of Performance.

3.1. The Contractor shall complete all work on this project as determined by the City on an annual basis.

3.2. Lebanon's right to recover liquidated damages shall not substitute for any right of recovery for additional costs incurred should the Contractor fail to complete the work.

Section 4. Income Tax Withholding.

4.1. The Contractor agrees to withhold, pay, and stay current with all municipal income taxes due or payable pursuant to the provisions of Chapter 151 of the *Codified Ordinances of the City of Lebanon, Ohio*, for wages, salaries and commissions paid to its employees and further agrees that all of its subcontractors shall be required to agree to withhold any such income taxes due pursuant to Chapter 151 for the work performed pursuant to this Contract.

Section 5. Indemnification and Hold Harmless.

5.1. The Contractor shall indemnify and hold harmless Lebanon and its officers, agents, and employees from and against all claims, damages, losses, and expenses arising out of or resulting from the performance of the work under this Contract, provided that any such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, and is caused in whole or in part by any negligent or willful act or omission of the Contractor and/or its subcontractors or any one directly employed by any of them, or anyone for whose act any of them may be liable. The Contractor shall, at its own expense, defend Lebanon in all litigation,

and shall pay all attorneys' fees, arising out of the litigation of the claim. The indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any of its subcontractors under the Workers' Compensation, disability benefits or other employee acts.

Section 6. Discrimination and Intimidation.

6.1. In the hiring of employees for the performance of the work under this contract or any subcontract, the Contractor and all persons acting on its behalf, shall not, by reason of race, creed, sex, handicap, or color, discriminate against any person in the employment of labor or workers who are qualified and available to perform the work to which the employment relates.

6.2. The Contractor and all persons acting on its behalf shall not, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, creed, sex, handicap, or color.

6.3. The Contractor shall fully comply with any and all policies and procedures of Lebanon relating to discrimination and intimidation and any other applicable laws or regulations relating thereto.

6.4. In the event of any breach of the provisions of this Section against discrimination, the following shall apply:

6.4.1. The contract shall be canceled or terminated and all money to become due hereunder may be forfeited for a second or subsequent violation of the terms of this Section.

Section 7. General.

7.1. The contract documents as defined in the City of Lebanon, Ohio Streets and Highways General Provisions shall embody the entire understanding of the parties and form the basis of the agreement between Lebanon and the Contractor. All of the contract documents shall be considered to be incorporated by reference into this Agreement as if fully rewritten herein.

7.2. The Agreement shall be governed by the laws of the State of Ohio.

7.3. The Agreement shall be binding on the Contractor and Lebanon, their successors and assigns, but the Agreement may not be assigned by the Contractor without the prior written consent of the City Manager.

7.4. It is expressly understood by the Contractor that none of the rights, duties and obligations described in the contract documents shall be valid and enforceable unless the City Auditor of Lebanon certifies that funds have been appropriated for the project and that the amount so appropriated is on deposit or in the process of collection to the credit of the appropriate fund free from any previous or outstanding obligations.

7.5. The Agreement shall become binding and effective upon execution by the City Manager of Lebanon.

7.6 The City reserves the right to terminate this contract at any time at its sole discretion.

Section 8. Contract Documents

8.1. The following documents shall constitute the Contract Documents, shall be incorporated by reference into this Agreement and shall constitute the terms and conditions of the Agreement: the Invitations to Bid; Instruction to Bidders; Lebanon's General Terms and Conditions; Specifications; Performance Bond; and Proposal submitted by Contractor (the "Bid").

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

NEWBERRY CONSTRUCTION

Date: 3/4/2020

By: Robert Newberry
(Signature)

Print Name: Robert Newberry

Title: President

CITY OF LEBANON, OHIO

Date: 3/13/20

By: Scott Brunka
Scott Brunka, City Manager

Approved as to form:

Date: 3/13/20

By: Mark Yurick
Mark Yurick, Esq., City Attorney