

ORDINANCE NO. 2021-064

AN ORDINANCE AUTHORIZING THE CITY
MANAGER TO EXECUTE A CONTRACT WITH DIRT ARTISANS FOR THE DESIGN
AND CONSTRUCTION OF MOUNTAIN BIKE TRAILS AT THE PREMIER HEALTH
ATRIUM MEDICAL CENTER BIKE PARK

WHEREAS, the City wishes to design and construct new mountain bike trails at the Premier Health Atrium Medical Center Bike Park; and

WHEREAS, the City wishes to enter into an agreement with Dirt Artisans; and

WHEREAS, the City recently sent a Request for Qualification for the design and construction of the new mountain bike trails, with Dirt Artisans submitting the only application; and

WHEREAS, the cost analysis for the trail development is \$200,070, of which the NRAC Grant would support \$150,000 of the cost with the remaining \$50,070 being funded by the City out of the General Fund Park Improvement Line.

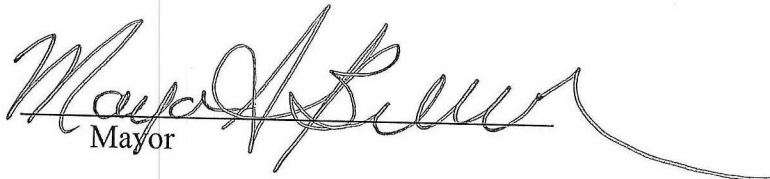
NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lebanon, Ohio:

SECTION 1. That the City Manager be authorized and directed to execute an Agreement between the City of Lebanon and Dirt Artisans, in substantially the same Form as the agreement set forth in 'Exhibit 1'.

SECTION 2. This Ordinance is necessary for the preservation of the public peace, health, safety, morals and welfare of the City of Lebanon, and shall take effect at the earliest date allowed by law.

Passed:

August 10, 2021


Mayor

Attest:


Clerk of Council

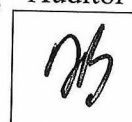
Sponsors:

Brewer, Messer

City
Manager



City
Auditor



City
Attorney



AGREEMENT FOR CONSTRUCTION
Mountain Bike Trail Design & Construction
2021-064

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

Lebanon and the Contractor agree as follows:

Notes in red are from email from 9-20-21 with changes to this agreement.

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: Mountain Bike Trail Design & Construction

Section 2. Contract Price and Payments.

2.1. Lebanon shall pay the Contractor for performance of this Agreement, an amount not to exceed Two hundred thousand and seventy dollars (\$200,070.00), (the "Contract Price"), based upon the Proposal dated **June 14, 2021** submitted by the Contractor, unless otherwise amended by a duly authorized change order by the Parties.

2.2. The Contract Price shall be paid by Lebanon upon payment request issued by the Contractor and approved by the Engineer 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. *Partial Invoicing / payments will be accepted per City of Lebanon, Ohio*

Section 3. Time of Performance.

3.1. ~~Once the Contractor begins construction activities, the Contractor shall have 100 calendar days to complete the project, unless an extension of time is granted by the Engineer. The Contractor shall schedule the work, prosecute the work and complete all work by **May 1, 2022** following receipt of the Notice to Proceed, unless an extension of time is granted by the Engineer.~~

3.2. ~~If the Contractor shall fail to complete the work within the time above specified, Lebanon shall be entitled to retain or recover from the Contractor, as liquidated damages, and not as a penalty, the amounts as set forth in 108.7 of the City of Lebanon, Ohio Engineering Department General Provisions.~~ *Disregard*

3.3. 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. Prevailing Wages.

4.1. The Contractor shall comply with all requirements of Chapter 4115 of the Ohio Revised Code. Prior to payment of each application for payment, all prevailing wage information shall be current and correct.

Section 5. Income Tax Withholding.

5.1. 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

Lebanon Mtn Bike Trails

Scott Brunka <sbrunka@lebanonohio.gov>

Tue, Sep 21, 2021 at 7:04 AM

To: Dirt Artisans <info@dirtartisans.com>, Casey Burdick <cburdick@lebanonohio.gov>

Cc: Diana Lakes <dlakes@lebanonohio.gov>

Hi Sara,

Below are the City's responses to your questions. Thank you.

Scott

From: Dirt Artisans <info@dirtartisans.com>

Sent: Monday, September 20, 2021 7:24 PM

To: Casey Burdick <cburdick@lebanonohio.gov>

Cc: Scott Brunka <sbrunka@lebanonohio.gov>; Diana Lakes <dlakes@lebanonohio.gov>

Subject: Re: Lebanon Mtn Bike Trails

Hello,

We received the agreement for construction in the mail. We are currently reviewing. We have a need for direction pertaining to the following numbered items below.

1. Section 2.3 states we will not be able to invoice for partial payment because the project will be less than 6 months long? We were hoping to set up a payment schedule. Payment 1, after plans are complete and then invoicing every 14 days (preferred) or 30 days (max) during construction. *Partial invoicing / payments will be accepted.*
2. Section 3.1 states we have 100 calendar days to complete the project once the contractor begins construction activities. We are hoping to start construction early winter. We may get shut down a bit for weather yet will be complete by May 31st 2022 as stated in the agreement. As a result of working through the winter, construction duration may be longer than 100 days. *The completion date can be revised to May 31st, 2022*
3. We are struggling to locate the City of Lebanon, Ohio Engineering Department General Provisions referenced in Section 3.2 of the agreement. *Disregard*
4. We are struggling to locate the City of Lebanon, Ohio Streets and Highways General Provisions referenced in Section 8.1 of the agreement. *Disregard*
5. Section 9.1 and 10.1 and the cover letter state a performance bond is required. We are not able to locate where this requirement was stated in the RFQ or any other bid documents. *If the performance bond was not identified in the RFQ then it will not be required for construction*
6. We are unable to locate Lebanon's General Terms and Conditions as referenced in Section 10.1. *Disregard*

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 6. Indemnification and Hold Harmless.

6.1. 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 7. Discrimination and Intimidation.

7.1. 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.

7.2. 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.

7.3. 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.

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

7.4.1. 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 8. General.

8.1. 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. *Disregard*

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

8.3. 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.

8.4. 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.

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

Section 9. Contract Documents

Disregard

~~9.1. 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").~~

Section 10. Order of Preference

Disregard

~~10.1. In the event of a conflict in the terms and conditions of the Contract Documents, the Contract Documents shall be interpreted in the following order of preference:~~
~~This Agreement~~
~~Lebanon's General Terms and Conditions~~
~~Performance Bond~~
~~Invitation to Bid~~
~~Instructions to Bidders~~
~~Specifications~~
~~The Bid~~

*If the performance bond was not identified in the RFQ then it will not be required for construction.
- per City of Lebanon, OH*

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

DIRT ARTISANS

Date: 9/20/2021

By: [Signature]
(Signature)

Print Name: LUIS JACO

Title: President

CITY OF LEBANON, OHIO

Date: 10/5/21

By: [Signature]
Scott C. Brunka, City Manager

Approved as to form:

Date: 10/5/21

By: [Signature]
Mark Yurick, Esq., City Attorney