

**CITY OF LEBANON  
CONSULTANT AGREEMENT**

THIS AGREEMENT MADE AT LEBANON, OHIO, on the 14<sup>th</sup> day of **APRIL**, 2015, by and between the City of LEBANON, Ohio, acting by and through its City Manager, duly authorized by Ordinance No. 2015-051, passed by the Council of the City of LEBANON, Ohio, and dated the 14<sup>th</sup> day of **April**, 2015, herein after referred to as the CITY, and Choice One Engineering hereinafter referred to as the CONSULTANT.

WITNESSETH:

WHEREAS, the CITY desires to engage the CONSULTANT to render certain professional services for the 2015 Roadway Design Services - RFQ #15-1800 (North East Street Reconstruction) hereinafter referred to as the PROJECT; and

WHEREAS, the CONSULTANT is willing to provide said service for the considerations and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants, promises, conditions, and terms to be kept and performed, it is agreed between the parties as follows:

SECTION 1. Description of Work.

- A. The CONSULTANT agrees to perform the following work upon authorization by the CITY to prepare final construction plans, specifications and estimated costs for the **North East Street Reconstruction Project** as described in the attached Scope of Services prepared by the CITY dated **February 2015** and the CONSULTANT's proposal dated **March 27, 2015**.
- B. The CONSULTANT shall confer with the CITY at any time during bidding and construction as to the interpretations of the plans, to correct errors or omissions, and to prepare any necessary additional plans or drawings at no additional compensation.
- C. During construction, the CONSULTANT shall review all shop drawings to verify that they conform with the specifications and construction plans, shall direct modifications or corrections found to be necessary, and shall verify the execution of such modifications or corrections.

SECTION 2. Work Schedule and Progress Reports.

The CONSULTANT agrees to submit monthly progress and status reports showing what work has been accomplished. The reports shall be transmitted to the CITY within ten (10) calendar days from the end of the previous month.

SECTION 3. Compensation.

The CITY agrees to compensate the CONSULTANT for the performance of work specified in this Agreement as follows:

- A. The CONSULTANT shall receive a lump sum amount of Fifty Four Thousand Seven Hundred Eighteen and 00/100 Dollars (\$54,718.00) for the professional engineering services to prepare the final construction plans and contract documents.

B. The CITY shall make monthly partial payments to the CONSULTANT, based on the work actually performed, upon receipt of an invoice from the CONSULTANT. The invoice shall include the current billing breakdown of person hours, a history of invoicing and documentation of reimbursable expenses.

C. Reimbursable expenses, including subconsultant costs, shall be the actual miscellaneous out-of-pocket expenses for services provided under this Agreement. No multiplier shall be added to reimbursable expenses.

SECTION 4. Incorporation by Reference.

The following Exhibits are hereby incorporated by reference into the within Agreement and made a part thereof as if the same were rewritten herein.

Exhibit A. The CONSULTANT's proposal dated **March 27, 2015**.

Exhibit B. The Scope of Services (RFQ #15-1800) prepared by the CITY dated **February 2015**.

In the event that the provisions in the CONSULTANT's proposal and this Agreement conflict, this Agreement will control.

SECTION 5. Any significant change in design or alterations of the work authorized by the CITY shall be performed under the terms of a written supplementary agreement.

If at any time the CONSULTANT believes that work directed by the CITY is not covered by this Agreement, the CONSULTANT shall immediately notify the CITY in writing to that effect, giving the estimate of cost for the work in question. The CITY shall not be obligated to compensate the CONSULTANT for work performed without prior approval by the CITY.

If at any time the CONSULTANT believes that work not covered by this Agreement is required to complete the work in this Agreement in a comprehensive, professional manner, the CONSULTANT shall immediately notify the CITY in writing to that effect, giving the estimate of cost for the work in questions. The CITY shall not be obligated to compensate the CONSULTANT for work performed without prior approval by the CITY.

SECTION 6. The CONSULTANT agrees that all designs, calculations, survey data, drawings, flow data, specifications, estimates, and reports prepared for the CITY under the terms of this Agreement shall be furnished to the CITY upon request and delivered to and become the property of the CITY.

SECTION 7. The CONSULTANT shall seal and sign all construction plans, specifications, reports, and information submitted under this Agreement. No acceptance or approval by the CITY shall relieve the CONSULTANT or his subconsultants of their duty to correct any defects, errors or omissions in their plans, specifications and contract documents caused by the negligence of the CONSULTANT or any of its subconsultants or of any of its other professional obligations at its own expense.

SECTION 8. The CONSULTANT shall employ only State of Ohio Registered Professional Engineers and Architects in responsible charge of work on the project.

SECTION 9. The CONSULTANT shall provide, in satisfactory and proper manner as determined by the CITY, all labor, service, materials, equipment, and property necessary to complete the work required by this Agreement. Except as provided herein, it is expressly understood and agreed by the CONSULTANT as a part of this Agreement that no CITY services, materials, equipment, or property shall be used without the express written permission of the City Manager, and that the CONSULTANT shall reimburse the CITY for any and all such services, materials, equipment or property so used.

SECTION 10. The CONSULTANT expressly agrees that no CITY employees shall be used to complete the work contemplated by this Agreement, whether or not said employees are compensated by the CONSULTANT, without the express written permission of the City Manager. The CONSULTANT further understands that any unauthorized use of CITY employees may result in the immediate termination of this Agreement.

SECTION 11. The CONSULTANT shall have access to such pertinent public records as are available to the CITY and applicable to the work to be done under this Agreement at no cost to the CONSULTANT. The CITY does not guarantee the accuracy, completeness, or validity of any of said records. The CONSULTANT shall verify the public records and existing conditions to the extent necessary to assure a complete PROJECT.

The CITY shall, at all reasonable times, have access to the work and drawings of the CONSULTANT for purposes of inspection and review.

SECTION 12. The CONSULTANT agrees that it will make no claim or charge for delays or hindrances from any causes. Compensation for such delays or hindrances shall be by extension of time for such reasonable periods of time as the CITY may decide.

SECTION 13. The CITY and the CONSULTANT each binds itself and its successors, executors, administrators, and assigns to the other party to this Agreement and to the successors, executors, administrators and assigns of such other party in respect to all covenants of this Agreement. Neither the CITY nor the CONSULTANT shall assign, sublet, or transfer its interest to this Agreement without the express written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

SECTION 14. The CITY may terminate this Agreement at any time by written notification to the CONSULTANT by the City Manager. Immediately upon receipt of such notification, the CONSULTANT shall cease all work unless such notification states otherwise.

Compensation due the CONSULTANT in the event of termination shall be as mutually determined by the CITY and the CONSULTANT based upon the usable plans and data submitted or audited cost incurred. The CONSULTANT shall make no claim for additional compensation by reason of such termination.

SECTION 15. The CONSULTANT shall comply with all Federal, State and City laws, statutes, resolutions, ordinances, rules and/or regulations, including the Worker's Compensation Law of the State of Ohio.

SECTION 16. Insurance Requirements.

- A. The CONSULTANT shall take out and maintain during the life of this Agreement at his own expense, such General Liability and Automobile Liability Insurance, as shall protect himself, the CITY, their agents, employees, representatives and subconsultants, from claims for damages for bodily injury, including wrongful death, as well as from claims for property damage which may arise under this contract. The amounts of such insurance shall be no less than the following:
1. Combined Single Limit - General Liability Insurance: In an amount not less than \$1,000,000.
  2. Combined Single Limit - Automobile Liability Insurance: In an amount not less than \$1,000,000. (if applicable).
- B. CONSULTANT shall carry and keep in full force and effect during the life of this Agreement professional liability insurance in an amount no less than Two Million Dollars (\$2,000,000.00) for damages resulting from negligent acts, errors or omissions in the professional services rendered hereunder by CONSULTANT.
- C. CONSULTANT shall furnish the CITY policies showing that the insurance described in Subsections A and B above is in full force and effect prior to the commencement of any work under this Agreement. The insurance policies shall be written with an acceptable company with a Best rating of A- or better or a Standard and Poors rating of BBB or better; authorized and licensed to do business in the State of Ohio; shall be written in a form acceptable to the Director of Law of the City of LEBANON; shall be in force prior to any work of the Consultant being commenced; and shall be kept in effect until all work has been satisfactorily completed as determined by the CITY. Copies, or the originals, as the case may be, of such policies shall be furnished to the City of LEBANON and shall be approved by the City Law Director before work commences. The City of LEBANON shall be named as an additional insured on all general and automobile policies (not professional liability) and all policies shall provide for thirty (30) days written notice of cancellation to the City. Further, the CONSULTANT shall provide the CITY with the additional insured endorsements in a form acceptable to the City of LEBANON Director of Law.
- D. CONSULTANT shall further require the same amount and type of insurance evidenced by policies to the CITY from all subconsultants utilized under this Agreement.

SECTION 17. The CONSULTANT shall provide or cause to be provided at it s own expense to the CITY certificates showing that it and/or its subconsultants are carrying Worker's Compensation.

SECTION 18. The CONSULTANT shall indemnify and hold the CITY, its agents, employees, and representatives harmless from and against any and all liabilities, losses, damages, costs, expenses and disbursements imposed on, asserted against or incurred by the CITY, its agents, employees and representatives to the extent that said liabilities result from the negligent performance of the CONSULTANTS's obligations. The CONSULTANT, as referred to herein, includes its agents, employees, contractors, and subconsultants. Nothing herein shall be construed as attempting to make the CONSULTANT responsible for the negligence of the CITY.

SECTION 19. Equal Employment Opportunity.

During the performance of this Agreement, the CONSULTANT agrees to comply with the Equal Employment Opportunity Policy of the City of LEBANON, Ohio involving public contracts, which is incorporated herein by reference and made a part hereof as if fully written herein.

SECTION 20. Americans with Disabilities Act. All contractors providing or making available governmental services, programs, and activities to the CITY shall, during the performance of such contracts, comply with all applicable provisions of the Americans with Disabilities Act of 200 and any amendments thereto.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed in duplicate the day and year first above written.

Signed and Acknowledged  
in the presence of:

THE CITY OF LEBANON, OHIO

Witness Diana R. Lohs

BY: G.P. Clements  
George P. Clements  
City Manager

Witness Michelle W. Cole

CHOICE ONE ENGINEERING

Witness Brian Salinski

BY: Matthew J. Hojning  
Signature

Witness Rich Jelhorst

Title: Vice President

APPROVED AS TO FORM  
AND CORRECTNESS:

Foy G.P. Clements  
Mark Yurick  
Director of Law  
City of Lebanon  
Per Atty.

Date: 5-6-15

CERTIFICATE OF CITY AUDITOR  
RFQ #15-1800

I hereby certify that payment will be made on invoices issued to the City of LEBANON under the agreement, and that sufficient money is in the treasury or in the process of collection to the credit of the appropriate fund or division to discharge the City's obligation under this agreement as authorized by Ordinance No. 051 2015

  
Sharee' Dick  
City Auditor

5-6-15  
Date