

ORDINANCE NO. 2018-066

AN ORDINANCE AUTHORIZING THE CITY MANAGER  
TO EXECUTE AN AGREEMENT WITH RACK & BALLAUER EXCAVATING CO. INC.,  
AND DECLARING AN EMERGENCY

WHEREAS, the City wishes to reconstruct South Broadway between Maple Avenue and the south approach of the South Broadway Bridge, and perform other improvements; and

WHEREAS, the City wishes to enter into an agreement with Rack & Ballauer Excavating Co. Inc., to perform the reconstruction project; and

WHEREAS, bids were opened June 27, 2018, with the best bid submitted by Rack & Ballauer Excavating Co. Inc., in the amount of \$2,007,076.56; and

WHEREAS, the City Manager may authorize change orders up to 10% of the bid amount (\$200,700)

WHEREAS, the project will be funded from the OPWC Capital Grant Fund, Water System Improvement Fund, Storm Sewer Improvement Fund and Sanitary Sewer Improvement Fund.

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 Rack & Ballauer Excavating Co. Inc., in substantially the same form as the agreement set forth in "Exhibit 1."

SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety, morals and welfare of the City of Lebanon; and, for the further reason, to allow construction to begin in a timely manner, then this ordinance shall take effect immediately upon its adoption.

  
Mayor

Passed: July 10, 2018  
Attest:

  
Clerk of Council

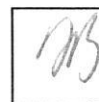
**Sponsor**

Mr. Aylor  
Council member

City  
Manager



City  
Auditor



City  
Attorney



**AGREEMENT FOR CONSTRUCTION**  
**South Broadway Reconstruction**  
**18-06**

This Agreement for Construction (the "Agreement") is entered into by and between the **City of Lebanon, Ohio** ("Lebanon") and **Rack and Ballauer Excavation Co., 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: South Broadway Reconstruction, 18-06**

**Section 2. Contract Price and Payments.**

**2.1.** Lebanon shall pay the Contractor for performance of this Agreement, an amount not to exceed **TWO MILLION, SEVEN THOUSAND, SEVENTY-SIX DOLLARS, AND FIFTY-SIX CENTS (\$2,007,076.56)**, (the "Contract Price"), based upon the Proposal dated **Wednesday, June 27, 2018** 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.

**Section 3. Time of Performance.**

**3.1.** The Contractor shall prosecute the work and complete all work by **Friday, July 12, 2019** 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.

**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 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.

**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**

**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**

**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

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.  
**RACK AND BALLAUER EXCAVATION CO., INC.**

Date: 7/19/18

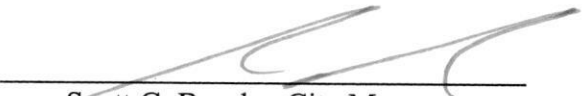
By:   
(Signature)

Print Name: Scott Rack

Title: VP

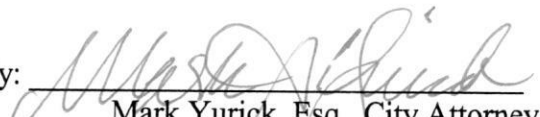
**CITY OF LEBANON, OHIO**

Date: 7/25/18

By:   
Scott C. Brunka, City Manager

Approved as to form:

Date: 7/25/18

By:   
Mark Yurick, Esq., City Attorney