

**AGENDA**  
**REGULAR MEETING OF VILLAGE COUNCIL**  
**NOVEMBER 3, 2016**  
**6:30 P.M.**

1. Mayor Smith calls the meeting to order
2. Roll Call:  

|                |                 |
|----------------|-----------------|
| Randall Atkins | Bill Madison    |
| James Boerio   | Steve Riley     |
| Sue Johnson    | George Teasdale |
3. Guests: Arik Sherk/Thompson Hine
4. Floor open to the public:
5. New Business:  

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| Emergency Ordinance 2016-16 – TIF Bonds   |
| Emergency Resolution 2016-38 authorizing an addendum to agreement with Choice One |
| Emergency Resolution 2016-39 – Cincinnati Bell Agreement                          |
| Authorization of Invoices   |
6. Old Business:  

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|--|
| Third Reading Resolution 2016-34 authorizing mayor to sign agreement with GRW Inc.       |
| Third Reading Ordinance 2016-13 Personnel Policy Manual                                  |
| Third Reading Resolution 2016-36 authorizing an agreement for snow removal in Stonelake  |
| Second Reading Resolution 2016-37 authorizing agreement with Ross, Sinclair & Associates |
7. Executive Session
8. Communications and reports from Village Officials and Committees
  - a. Mayor
  - b. Fiscal Officer
  - c. Solicitor
  - d. Administrator
  - e. Sgt.
  - f. Council Members
9. Adjournment

## **ORDINANCE NO. 2016-16**

**AN ORDINANCE PROVIDING FOR THE ISSUANCE AND SALE OF NOT TO EXCEED \$6,200,000 OF TAX INCREMENT REVENUE BONDS, SERIES 2016 (RIVERSIDE PROJECT) OF THE VILLAGE OF SOUTH LEBANON, OHIO, UNDER SECTION 5709.40 ET SEQ. OF THE OHIO REVISED CODE FOR THE PURPOSE OF PAYING THE COST OF CERTAIN PUBLIC INFRASTRUCTURE IMPROVEMENTS; AUTHORIZING A PLEDGE OF AND LIEN ON CERTAIN REVENUES TO SECURE SUCH BONDS; AUTHORIZING A PAYING AGENT AGREEMENT; AUTHORIZING A BOND PURCHASE AGREEMENT; AUTHORIZING A TAX REGULATORY AGREEMENT; AND DECLARING AN EMERGENCY.**

**WHEREAS**, Section 5709.40 et seq. of the Ohio Revised Code (the “Act”) authorizes the issuance of Bonds payable from service payments in lieu of taxes to pay the costs of infrastructure improvements; and

**WHEREAS**, pursuant to the Act and Ordinance No. 2005-16, the Council of the Village of South Lebanon, Ohio (the “Village”) the Council of the Village has created Tax Incentive District Number 1 (the “TIF District”); and

**WHEREAS**, the Village and Lebanon Mason, LLC (together with its successors and assigns, the “Owner”) subsequently entered into an Amended and Restated Infrastructure Agreement dated as of October 1, 2016 (as amended from time to time, the “Infrastructure Agreement”), which is incorporated by reference into this ordinance (hereinafter, this “Ordinance”); unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings ascribed to such by the Infrastructure Agreement and the Service Agreement (as hereinafter defined);

**WHEREAS**, pursuant to the Infrastructure Agreement, the Owner has agreed to construct certain public improvements (as more particularly described in the Infrastructure Agreement, the “Public Improvements”) that are needed to facilitate the development of the parcels of real property located within the TIF District, as further described on Exhibit A attached hereto (the “Property”), and the Village has agreed to issue TIF Obligations to pay the Purchase Price for a portion of the Costs of Work paid by the Owner in connection with the construction of the Public Improvements;

**WHEREAS**, to pay the Purchase Price of a portion of the Costs of Work, the Developer has requested the Village to issue TIF Obligations consisting of tax increment financing Bonds (the “Series 2016 Bonds”); and

**WHEREAS**, consistent with its obligations under the Infrastructure Agreement, the Village desires to authorize the issuance of the Series 2016 Bonds, and to further authorize the Paying Agent Agreement (as hereafter defined), the Bond Purchase Agreement (as hereafter defined), the Tax Regulatory Agreement (as hereinafter defined) and appurtenant certificates and

documents necessary for the issuance of the Series 2016 Bonds, and to provide for the security of such Series 2016 Bonds;

**NOW, THEREFORE, BE IT ORDAINED** by the Council of the Village of South Lebanon, State of Ohio, at least two-thirds of all members elected thereto concurring:

**SECTION 1. Definitions.** When used in this Ordinance:

“Act” means Section 5709.40 et seq. of the Ohio Revised Code.

“Bond Account” means the account established in Section 7 hereof

“Bond Purchase Agreement” means an agreement between the Village and the Original Purchaser effecting the sale of the Series 2016 Bonds to the Original Purchaser.

“Certificate of Award” means the Certificate executed by the Fiscal Officer setting forth any terms relating to the issuance of the Series 2016 Bonds which are not specified in this Ordinance.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Cost of Issuance Account” means the account by that name established in Section 6 hereof.

“Eligible Investments” means the investments defined in Section 8 hereof.

“Fiscal Officer” means the Fiscal Officer of the Village.

“Government Obligations” means (a) direct obligations of the United States of America for the full and timely payment of which the full faith and credit of the United States of America is pledged, and (b) obligations issued by a person controlled or supervised by and acting as an instrumentality of the United States of America, the payment of the principal of, premium, if any, and interest on which is fully guaranteed as a full faith and credit obligation of the United States of America (including any securities described in (a) or (b) issued or held in book entry form on the books of the Department of Treasury of the United States of America or Federal Reserve Bank).

“Interest Payment Date” means the dates set forth on the Certificate of Award.

“Investment Letter” means a letter from the Original Purchaser, or any transferee of a Series 2016 Bond, to the Village as described in Section 4 hereof.

“Moody’s” means Moody’s Investors Service, a Delaware corporation, and its successors and assigns.

“Original Purchaser” means the entity designated in the Certificate of Award as the original purchaser of the Series 2016 Bonds or any permitted transferee of the Series 2016 Bonds.

“Owner” means Lebanon Mason, LLC, an Ohio limited liability company, and its successors and assigns, as set forth in the Service Agreement.

“Paying Agent Agreement” means the Agreement Relating to Paying Agency, Registrar and Transfer Agency by and between the Village and the Paying Agent, securing the Series 2016 Bonds, and providing for the registering and transfer procedure for the Series 2016 Bonds, as the same may be amended as provided therein.

“Paying Agent” means any bank or trust company that is appointed paying agent under the terms of the Paying Agent Agreement as referred to in Section 11 hereof.

“Project Account” means the account by that name established in Section 6 hereof.

“Property” shall have the meaning given to such term in the recitals to this Ordinance.

“Public Improvements” shall have the meaning given to such term in the recitals to this Ordinance.

“Rating Service” means either Moody’s or S&P.

“Revenues” means (a) the Service Payments, (b) the money and investments held in the Bond Account, the Costs of Issuance Account and the Project Account, and (c) all income and profit from the investment of the foregoing moneys.

“S&P” means Standard & Poor’s Credit Market Services, a division of The McGraw-Hill Companies, and its successors and assigns.

“Series 2016 Bonds” means the Tax Increment Revenue Bonds, Series 2016 (Riverside Project) authorized by this Ordinance.

“Service Agreement” means the Amended and Restated Service Payment Agreement dated as of October 1, 2016, between the Village and the Owner, as amended from time to time, which is incorporated by reference into this Ordinance.

“Service Payments” means the Service Payments, including Statutory Service Payments and Minimum Service Payments, payable by the Owner pursuant to the provisions of the Service Agreement.

“Tax Regulatory Agreement” means the Tax Regulatory Agreement between the Village and the Paying Agent to assure compliance with the Code with respect to the Series 2016 Bonds.

“TIF Fund” means the Village of South Lebanon Municipal Public Improvement Incentive Tax Equivalent Fund created pursuant to the TIF Ordinance, and includes Incentive District No. 1 Account therein, in which the Service Payments shall be deposited.

“TIF Ordinance” means Ordinance No. 2005-16 adopted by the Council of the Village on December 1, 2005.



“Village” means the Village of South Lebanon, Ohio.

**SECTION 2.** It is necessary to issue and sell and this Council determines that the Series 2016 Bonds shall be issued and sold in an aggregate principal amount of not to exceed \$6,200,000 to provide for the payment of (a) the Purchase Price for a portion of the Costs of Work paid by the Owner in connection with the construction of the Public Improvements, (b) capitalized interest on the Series 2016 Bonds, and (c) costs related to the issuance of the Series 2016 Bonds. The Series 2016 Bonds shall be in the principal amount set forth on the Certificate of Award, dated on the date set forth on the Certificate of Award, or such other date selected by the Fiscal Officer in his or her discretion, and shall mature on the date or dates set forth on the Certificate of Award, or such other date or dates selected by the Fiscal Officer in his or her discretion. The Series 2016 Bonds shall be sold to or through the Original Purchaser for the purchase price set forth in the Certificate of Award, which shall not be less than 99% of the par amount of the Series 2016 Bonds. The Series 2016 Bonds shall bear interest at a rate price set forth in the Certificate of Award not to exceed 7.5% per year (computed on the basis of a 360-day year consisting of twelve 30-day months) payable on each Interest Payment Date and at maturity and until the principal amount is paid or payment is provided for. The principal amount of and the rate of interest on the Series 2016 Bonds, and any premium to be received on the Series 2016 Bonds, shall be determined by the Fiscal Officer in the Certificate of Award in accordance with Section 5 of this Ordinance. The Series 2016 Bonds shall be issued in substantially the same form as attached hereto as Exhibit B.

The proceeds of the Series 2016 Bonds will be disbursed from time to time in accordance with the terms of this Ordinance, the Infrastructure Agreement, the Paying Agent Agreement and the Bond Purchase Agreement. If the total principal amount of the Series 2016 Bonds is not disbursed on or prior to the date specified in the Certificate of Award or such later date as may be agreed to by the Mayor of the Village with the consent of this Council which may be withheld, conditioned or delayed in the sole discretion of this Council (the “Disbursement Termination Date”), (i) the principal amount of the Series 2016 Bonds shall be reduced by the amount of undisbursed proceeds of the Series 2016 Bonds on the date following the Disbursement Termination Date, and (ii) the obligation of the Issuer to make scheduled payments of principal on the principal amount of the Series 2016 Bonds which remain outstanding after any such reduction shall not be affected by such reduction, such reduction operating instead to pay and redeem the principal of this Bond at dates earlier than the originally scheduled principal amortization or payment date or dates set forth in the Certificate of Award, in inverse chronological order.

The Mayor and Fiscal Officer are hereby authorized and directed to execute and deliver a Bond Purchase Agreement with the Original Purchaser, if requested by the Original Purchaser, which shall have terms and conditions not inconsistent with this Ordinance and not substantially adverse to the Village as may be permitted by law and approved by the officers executing the same.

The Mayor and Fiscal Officer are hereby further authorized and directed to execute and deliver a Paying Agent Agreement with the Paying Agent, and such other instruments as may be necessary for the issuance of the Series 2016 Bonds, which shall have terms and conditions not inconsistent with this Ordinance and not substantially adverse to the Village as may be permitted by law and approved by the officers executing the same.

**SECTION 3.** The Series 2016 Bonds may be redeemed in whole or in part at any time. Notice of the call for redemption of the Series 2016 Bonds, specifying the numbers of the Series 2016 Bonds to be redeemed, shall be sent by the Paying Agent by registered mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon the Series 2016 Bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption funds for such redemption shall be on deposit with the Paying Agent and the Village shall direct the Paying Agent in writing to make any notice of call for redemption.

If less than all of the Series 2016 Bonds shall be called for redemption at the option of the Village, those Series 2016 Bonds to be called shall be determined by the Paying Agent by lot, provided, however, that the portion of any Series 2016 Bond to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof.

The Series 2016 Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Series 2016 Bond, any new Series 2016 Bonds issued by the Paying Agent as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Series 2016 Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Series 2016 Bonds.

The principal of, and interest on, the Series 2016 Bonds shall be payable to the registered holders thereof by check or draft of the Paying Agent, and such payment shall be made without deduction for the services of such Paying Agent. At the written request of the registered owner of at least \$100,000 aggregate principal amount of the Series 2016 Bonds received by the Paying Agent at least one business day prior to the corresponding record date, interest accrued on the Series 2016 Bonds will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such owner specified in such request and entered by the Paying Agent on the registration records; provided that interest payable at maturity or upon redemption shall be paid only upon presentation and surrender of such owner's Series 2016 Bonds.

The Series 2016 Bonds shall be designated "Tax Increment Revenue Bonds, Series 2016 (Riverside Project)".

**SECTION 4.** Upon the face of each of the Series 2016 Bonds shall be recited a reference to the Act and this Ordinance. Each of the Series 2016 Bonds shall express upon its face the purpose for which the same is issued and that such Series 2016 Bond is payable solely from the Revenues. The Series 2016 Bonds shall bear the manual or facsimile signatures of the Mayor and the Fiscal Officer of the Village, shall be authenticated manually by the Paying Agent. The Series 2016 Bonds shall be prepared, issued, and delivered to the Original Purchaser under the direction of the appropriate officers of the Village as hereinafter provided. The Original Purchaser shall execute and deliver to the Village an Investment Letter which shall certify that the Original Purchaser is either (i) a "qualified institutional buyer" within the meaning of subsection (a) of Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended or (ii) an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933,

and in either case has otherwise received sufficient information and data to evaluate its purchase of the Series 2016 Bonds. Any permitted transferee of a Series 2016 Bond, shall, in writing, provide the Paying Agent with certain certificates, in substantially the same manner as indicated in the above-referenced Investment Letter. Except as provided in the following paragraph, each of the Series 2016 Bonds shall furthermore bear the following legend: **“Neither this Bond, nor any portion of, rights under or interest in this Bond, shall be sold, assigned or transferred except to a single holder holding the entire outstanding principal amount of the Bonds and only if the Paying Agent shall first have received prior written approval from the Mayor of the Village of South Lebanon, Ohio (with the consent of the Village Council which may be withheld, conditioned or delayed in the sole discretion of the Village Council) and one of the following: (i) a written certificate from the transferee that certifies that the transferee is a “qualified institutional buyer” within the meaning of subsection (a) of Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended; (ii) a written certificate from the transferee that certifies that the transferee is a “accredited investor” within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933; or (iii) a certificate from the Fiscal Officer of the Village of South Lebanon, Ohio to the effect that the restrictions on transfer under the Trust Indenture are no longer in effect.”**

Notwithstanding the foregoing, and as further provided in the Bond Purchase Agreement, beginning in the year immediately following the calendar year in which Service Payments paid under the Service Agreement exceeded the sum of (i) compensation owed from the Service Payments to the School District (defined *infra*) under the School Compensation Agreement (defined *infra*) during such year, and (ii) the debt service due and payable on the Bonds during such calendar year, but no earlier than the calendar year following the Disbursement Termination Date, the holder of the Bonds may submit the Bonds bearing the foregoing legend to the Paying Agent for replacement with Bonds in the same principal amount and tenor bearing the following legend: **“Neither this Bond, nor any portion of, rights under or interest in this Bond, shall be sold, assigned or transferred except to a upon receipt by the Paying Agent of (i) a written certificate from the transferee that certifies that the transferee is a “qualified institutional buyer” within the meaning of subsection (a) of Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended; (ii) a written certificate from the transferee that certifies that the transferee is a “accredited investor” within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933; or (iii) a certificate from the Fiscal Officer of the Village of South Lebanon, Ohio to the effect that the restrictions on transfer are no longer in effect.”**

Further notwithstanding the foregoing, the restrictions on sale, assignment or transfer contained in this paragraph do not apply to any pledge or hypothecation of the Bonds made by the holder of the Bonds to a financial institution; provided, however, the aforementioned restrictions on sale, assignment or transfer will apply to any sale, assignment or transfer made by such financial institution, or successors or assigns, if it becomes the holder of the Bonds as a result of any such pledge or hypothecation.

**SECTION 5.** The Series 2016 Bonds are hereby awarded and shall be delivered to the Original Purchaser upon payment for the Series 2016 Bonds. The Mayor and the Fiscal Officer of

the Village are hereby authorized and directed in the name of and on behalf of the Village to make, execute and deliver the Series 2016 Bonds to the Original Purchaser. The Fiscal Officer is hereby authorized and directed in the name of and on behalf of the Village to execute the Certificate of Award setting forth the terms of the Series 2016 Bonds not set forth in this Ordinance. The Series 2016 Bonds shall be payable solely from the Revenues, including the Service Payments required to be made under the Service Agreement, and shall be secured by a pledge of, and lien on, the Revenues. The pledge of, and lien on, any Service Payments shall be on parity with all other notes and bonds issued by the Village that are payable from the Service Payments. THE SERIES 2016 BONDS ARE NEGOTIABLE INSTRUMENTS BUT DO NOT CONSTITUTE GENERAL OBLIGATIONS OF THE VILLAGE AND THE GENERAL CREDIT AND TAXING POWER OF THE VILLAGE ARE NOT PLEDGED PAYMENT THEREOF, OR ANY PART THEREOF, OR THE INTEREST THEREON, AND THE SERIES 2016 BONDS ARE PAYABLE AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ONLY FROM THE REVENUES.

**SECTION 6.** The proceeds of the sale of the Series 2016 Bonds, plus other lawfully available funds of the Village as set forth in the Certificate of Award, and except for accrued interest, shall be deposited with the Paying Agent and the Village as follows:

(a) The amount to the Village as directed in the Certificate of Award to the account hereby created and designated as the “Cost of Issuance Account”, such Cost of Issuance Account to be held by the Village to be used to pay all costs and items of expense incurred by the Village in connection with the issuance of the Series 2016 Bonds, including without limitation costs of financial and/or feasibility studies and reports; reimbursable expenses payable to the Original Purchaser; costs of financial advisory, bond counsel, counsel to the Original Purchaser and other legal, accounting and management services and services of other consultants and professional and related charges, fees and disbursements; Series 2016 Bond rating fees, if any; costs of issuance; printing and reproduction costs; filing and recording fees; initial fees and charges of the Paying Agent; and costs of preparation, execution, transportation and safekeeping of the Series 2016 Bonds. The Village shall transfer to the Bond Account (to be used to pay interest on the Series 2016 Bonds) any moneys remaining in the Cost of Issuance Account upon determination by the Fiscal Officer of the Village that all the costs described above have been received and paid by the Village.

(b) The amount, representing capitalized interest on the Series 2016 Bonds, as directed in the Certificate of Award, to the account hereby created and designated as the “Bond Account” to be held by the Paying Agent.

(c) The remainder to the account hereby created and designated as the “Project Account”, which Project Account shall be held by the Paying Agent and disbursed in accordance with the Infrastructure Agreement to pay the Purchase Price for a portion of the Costs of Work paid by the Owner in connection with the construction of the Public Improvements. The money in the Project Account shall be invested in Eligible Investments maturing not later than it is needed to pay for the costs of the Public Improvements.

Any accrued interest on the Series 2016 Bonds shall be transferred by the Paying Agent to the Bond Account and shall be applied by such Paying Agent only to the payment of the interest and principal of the Series 2016 Bonds and for no other purpose.

The Bond Account and the Project Account shall be maintained in the custody of the Paying Agent. The Bond Account may be used for the payment of the principal of and interest on the Series 2016 Bonds and, to the extent provided in this Ordinance, for the redemption and the purchase for retirement of Series 2016 Bonds.

Any Series 2016 Bonds purchased for cancellation shall be purchased at a price not exceeding their then prevailing call price, if any, nor exceeding their fair market value.

**SECTION 7.** From and after the date of issuance and delivery of the Series 2016 Bonds the Service Payments shall be set aside and deposited by the Village in the TIF Fund. The TIF Fund shall be administered as follows with the following payments being made in the following order:

FIRST: Pursuant to the Amended and Restated Tax Incentive Agreement dated as of May 15, 2008 (as amended from time to time, the "School Compensation Agreement") with Kings Local School District (the "School District"), the amount of compensation owed to the School District under the School Compensation Agreement shall be paid to the School District.

SECOND: Subject to the parity lien on the Service Payments of all other notes and bonds issued by the Village that are payable from the Service Payments, there shall be paid into the Bond Account on the second business day immediately preceding each Interest Payment Date, an amount equal to the interest due on all outstanding Series 2016 Bonds on the next ensuing Interest Payment Date, and, on the second business day immediately preceding the maturity date, principal payment date or redemption date, as the case may be, of the Series 2016 Bonds, an amount equal to the principal and interest due on such maturity date or redemption date.

THIRD: As provided for in Section 3(d) of the Service Agreement.

The TIF Fund shall be maintained in the custody of the Village.

**SECTION 8.** Moneys in the Project Account, the Costs of Issuance Account and the Bond Account and any subaccount thereof shall be invested by the Agent in the following eligible investments designated in writing by the Original Purchaser, to the extent permitted by Ohio law and in accordance with Section 15 hereof (herein designated "Eligible Investments"):

- (a) Government Obligations;
- (b) Federal Home Loan Mortgage Corporation (FHLMC) and Farm Credit Banks (Federal Land Banks, Federal Intermediate Credit Banks and Banks for Cooperatives) participation certificates and senior debt obligations which bear interest at a fixed rate and are fully amortizing;
- (c) Federal National Mortgage Association's (FNMA) mortgage backed securities and senior debt obligations which bear interest at a fixed rate and are fully amortizing;

(d) Student Loan Marketing Association (Sallie Mae) letter of credit backed issues and senior debt obligations;

(e) Federal funds, certificates of deposits, including those placed by a third party pursuant to an agreement between the Agent and the Lessee, demand deposits, including interest bearing money market accounts, trust deposits, trust account, overnight bank deposits, time deposits and bankers' acceptances (having original maturities of not more than 365 days) of any bank (including the Agent) the short-term bank deposits of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) have been rated, at the time of purchase, "AA" or "A-1" or its equivalent by either Rating Service;

(g) commercial paper (having original maturities of not more than 270 days) rated, at the time of purchase, "A-1" or its equivalent by either Rating Service;

(h) obligations rated, at the time of purchase, "AA" or "A-1" or its equivalent by either Rating Service, or unrated general obligations of any Person which has outstanding other unsecured, uninsured and unguaranteed obligations which are so rated by either Rating Service;

(i) repurchase agreements with any institution, including the Agent or any of its affiliates, the unsecured, uninsured and unguaranteed debt obligations of which (or, in the case of a bank subsidiary in a bank holding company, debt obligations of the bank holding company) are rated, at the time of purchase, "AA" or its equivalent by either Rating Service;

(j) tax-exempt obligations of any state of the United States of America or any political subdivision or other instrumentality of any such state and such obligations are rated, at the time of purchase, in either of the two highest rating categories (i.e., "AA" or higher) of either Rating Service and are not "specified private activity bonds" as defined in Section 57(a)(5)(C) of the Code;

(k) tax-exempt money market funds which are "qualified regulated investment companies" within the meaning of IRS Notice 87-22, and which meet the other requirements of IRS Notice 87-22 and any subsequent regulations necessary to exempt investments in such funds from the definition of "investment property" under Section 148 of the Code whose assets are solely invested in obligations rated, at the time of purchase, in either of the two highest rating categories by either Rating Service;

(l) money market funds (including those for which the Agent or one of its affiliates performs services for a fee, whether as a custodian, transfer agent, investment advisor or otherwise) the assets of which are obligations of or guaranteed by the United States of America (or repurchase agreements fully collateralized by such obligations) and which funds are rated, at the time of purchase, "Am" or "Am-G" or higher by S&P; and

(m) obligations approved in writing by the Original Purchaser which are not unacceptable to the Agent.

**SECTION 9.** Should it be judicially determined by a court having jurisdiction to pass upon the validity of this Ordinance, the Paying Agent Agreement or Series 2016 Bonds herein authorized, that any provision of this Ordinance is beyond the powers of this Council or the

Village, or is otherwise invalid, then such decision shall in no way affect the validity of said Paying Agent Agreement or the validity of the Series 2016 Bonds, or any proceeds related thereto, except as to the particular matters found by such decision to be invalid.

**SECTION 10.** The funds derived from the sale of the Series 2016 Bonds authorized by this Ordinance become and they are hereby set aside and appropriated for the payments as described in this Ordinance.

**SECTION 11.** That sums which are expended from the above appropriations and which are proper charges against and are repaid by any other department, any firm, person or corporation, shall be considered re-appropriated for such original purpose; provided that the total appropriation as increased by any such repayment shall not be exceeded.

**SECTION 12.** The Series 2016 Bonds are being issued pursuant to, and subject to, the Infrastructure Agreement and the Service Agreement and, until the Series 2016 Bonds are refunded by the Bonds or other TIF Obligations, for purposes of the Series 2016 Bonds and the Infrastructure Agreement, the Paying Agent Agreement and this Ordinance shall be the “Trust Indenture”, the Paying Agent shall be the “Trustee”, this Ordinance shall be the “Bond Ordinance” and the Project Account shall be the “Project Fund”.

**SECTION 13.** That the Fiscal Officer of the Village of South Lebanon be and he or she is hereby authorized to draw his or her warrants of the Village Treasury and Depository for payments from any of the foregoing appropriations upon receiving proper approval in accordance with the ordinances of the Village of South Lebanon.

**SECTION 14.** The Mayor and the Fiscal Officer are hereby authorized and directed to execute and deliver a Tax Regulatory Agreement with the Paying Agent, which shall have terms and conditions not inconsistent with this Ordinance and not substantially adverse to the Village as may be permitted by law and approved by the officers executing the same.

**SECTION 15.** This Council, for the Village, hereby covenants that it will restrict the use of the proceeds of the Series 2016 Bonds hereby authorized in such manner and to such extent, if any, and take such other action as may be necessary, after taking into account reasonable expectations at the time the debt is incurred, so that they will not constitute obligations the interest on which is subject to federal income taxation or “arbitrage bonds” under Section 103(b)(2) and 148 of the Code and the regulations prescribed thereunder. The Fiscal Officer or any other officer having responsibility with respect to the issuance of the Series 2016 Bonds is authorized and directed to give an appropriate certificate on behalf of the Village, on the date of delivery of the Series 2016 Bonds, for inclusion in the transcript of proceedings, setting forth the facts, estimates and circumstances and reasonable expectations pertaining to the use of the proceeds thereof and the provisions of said Sections 103(b)(2) and 148 and regulations thereunder.

The Series 2016 Bonds are hereby designated as “qualified tax-exempt obligations” to the extent permitted by Section 265(b) of the Code.

**SECTION 16.** This Council hereby finds and determines that all formal actions relative to the passage of this Ordinance were taken in an open meeting of this Council, and that all deliberations of this Council and of its committees, if any, which resulted in formal action, were

taken in meetings open to the public, in full compliance with applicable legal requirements, including Section 121.22 of the Revised Code.

**SECTION 17.** That this Ordinance is hereby declared to be an emergency measure for the immediate preservation of the public peace, health, safety and welfare of the inhabitants of the Village, and this Council hereby finds that the Village must issue the Series 2016 Bonds and proceed with the construction of certain of the Public Improvements at the earliest possible date to so preserve the public peace, health safety and welfare of the inhabitants of the Village.

**WHEREFORE,** this Ordinance shall be enforced immediately upon its passage.

Adopted this 3rd day of November, 2016.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk

\_\_\_\_\_  
James Smith, Mayor

|  |                                |
|--|--------------------------------|
| Rules Suspended:    /    /2016 (if applicable) | Effective Date –    /    /2016 |
| Vote - ____ Yeas                               |                                |
| ____ Nays                                      |                                |
| First Reading –    /    /2016                  | Effective Date –    /    /2016 |
| Second Reading – n/a                           |                                |
| Third Reading – n/a                            |                                |
| Vote - ____ Yeas                               |                                |
| ____ Nays                                      |                                |



Approved as to form:

VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_  
Date: November 3, 2016

## **CERTIFICATE**

The undersigned, Fiscal Officer of the Village of South Lebanon, County of Warren, Ohio, hereby certifies that the foregoing is a true and correct copy of Ordinance No. 2016-16 adopted by the Council of the Village of South Lebanon, Ohio, on November 3, 2016.

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Fiscal Officer

**EXHIBIT A**

**PROPERTY**

South Lebanon Tax Incentive District No. 1 consists of the following property:

| <u>Owner of Record</u> | <u>Parcel ID #</u> |
|------------------------|--------------------|
| Lebanon Mason, LLC     | 12-01-151-002      |
| Lebanon Mason, LLC     | 12-01-151-006      |
| Lebanon Mason, LLC     | 12-01-151-004      |

See Attached Legal Description

## **LEGAL DESCRIPTION**

### **Tract 1. 42.789 Ac. Sidwell No. 12-01-151-002**

Situated in Sections 1 & 7, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio, and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 63.54 feet to the real point of beginning for this description; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 133.46 feet to an iron pin found; thence continuing along said centerline of said M Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence along a new division line the following seven (7) courses: (1) leaving said south line of said Mason-Morrow-Millgrove Road, with a curve to the right an arc distance of 138.54 feet to an iron pin set; said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; (2) with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; (3) with a curve to the left an arc distance of 991.55 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing of North 82 deg. 20' 26" East, and a chord distance of 984.90 feet; (4) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet; (5) South 64 deg. 32' 14" East a distance of 176.15 feet to an iron pin set; (6) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (7) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48 along a curve to the right an arc distance of 652.11 feet to a point, said curve having a radius of 2183.48 feet, a chord bearing North 11 deg. 28' 40" West and a chord distance of 649.69 feet; thence leaving said west line of said State Route 48, South 67 deg. 02' 20" West a distance of 13.38 feet to a point; thence South 89 deg. 07' 20" West a distance of 542.52 feet to an iron pin set; thence North 32 deg. 52' 40" West a distance of 330.64 feet to the real point of beginning for this description, passing at 280.60 feet to an iron pin found.

Containing in all 42.789 acres (25.229 acres in Section 1 & 17 .560 acres in Section 7), more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27,

2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

**Tract 2. 22.971 Ac. 12-01-151-006**

Situated in Section 1, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road along a new division line, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence continuing along a new division line, with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence continuing along a new division line, with a curve to the left an arc distance of 759.38 feet to an iron pin set at the real point of beginning for this description: said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence continuing along a new division line the following five (5) courses: (1) continuing along said curve to the left an arc distance of 232.16 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing North 73 deg. 32' 01" East and a chord distance of 232.08 feet: (2) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet: (3) South 64 deg. 32' 14" East a distance of 176 .15 feet to an iron pin set: (4) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (5) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48, South 06 deg. 56' 31" West a distance of 168.22 feet to an iron pin found; thence continuing along said west line of said State Route 48, South 48 deg. 45' 05" East a distance of 92.00 feet to an iron pin found; thence leaving said west line of said State Route 48, South 06 deg. 13' 50" East a distance of 50.00 feet to an iron pin found; thence South 09 deg. 13' 10" West a distance of 50.00 feet to an iron pin found; thence South 18 deg. 15' 10" West a distance of 50.00 feet to an iron pin found: thence South 29 deg. 14' 30" West a distance of 65.00 feet to a point: thence South 48 deg. 28' 30" West a distance of 164.00 feet to a point; thence South 35 deg. 48' 30" West a distance of 78.00 feet to a point; thence South 51 deg. 29' 30" West a distance of 214.00 feet to a point: thence South 59 deg. 38' 30" West a distance of 399.08 feet to a point; thence South 64 deg. 31' 30" West a distance of 258.53 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 24.09 feet to an iron pin set; thence along a new division line the following four (4) courses: (1) North 17 deg. 57' 19" West a distance of 445.19 feet to an iron pin set; (2) North 28 deg. 4" 06" East a distance of 97.00

feet to an iron pin set; (3) North 39 deg. 26' 09" West a distance of 252.71 feet to an iron pin set; (4) North 01 deg. 55' 24" West a distance of 437.24 feet to the real point of beginning for this description.

Containing in all 22.971 Acres, more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

Less and Except:

Situated in Section 1, Town 4, Range 3, Union Township, the Village of South Lebanon, Warren County, Ohio and being more particularly described as follows:

Commencing at an existing spike at the centerline intersection of Turtlecreek Road and Mason-Morrow-Millgrove Road; thence along the centerline of said Mason-Morrow-Millgrove Road South 71 deg. 28' 59" West, 63.54 feet to the northeast corner of Tract I as conveyed to MMMilgrove Road LLC, as recorded in O.R. 3897, Page 406 of the Warren County Recorder's Office; thence leaving the centerline of Mason-Morrow-Millgrove Road, along the east line of Tract I of said MMMilgrove Road LLC, Tract I, the following three (3) courses:

1. South 32 deg. 53' 01" East, 330.64 feet;
2. North 89 deg. 06' 59" East, 542.52 feet;
3. North 67 deg. 01' 59" East, 13.38 feet to a point in the west right of way of State Route 48;

Thence along the west right of way of said State Route 48, on a curve deflecting to the left having a radius of 2183.48 feet, an arc length of 652.11, having a central angle of 17 deg. 06' 42", chord of said arc bears. South 11 deg. 29' 01" East, 649.69 feet to the northeast corner of Tract 2 of said MMMilgrove Road LLC; thence along the east line of said MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 06 deg. 56' 10" West, 129.49 feet to a set iron pin and the point of beginning; thence continuing along said MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 6 deg. 56' 10" West, 38.73 feet to an existing concrete monument and South 48 deg. 45' 26" East, 92.00 feet to the northeast corner of a tract conveyed to the State of Ohio Department of Natural Resources as recorded in O.R. 52, Page 842 of the Warren County Recorder's Office referenced by an existing concrete monument at South 3.25 feet and East 3.85 feet; thence along said State of Ohio Department of Natural Resources, the following five (5) courses:

1. South 06 deg. 14' 11" East, 50.00 feet to a point being referenced by an existing concrete monument, South 3.20 feet and East 3.78 feet;

2. South 09 deg. 12' 49" west, 50.00 feet to point being referenced by an existing concrete monument at South 3.27 and East 3.82 feet;
3. South 18 deg. 14' 49" West, 50.00 feet to a point being referenced by an existing concrete monument at South 3.31 and East 3.64 feet;
4. South 29 deg. 14' 09" West, 65.00 feet to a point being referenced by an existing concrete monument at 3.94 feet and 3.14 feet;
5. South 48 deg. 28' 09" West 49.11 feet to a set iron pin;

Thence along new division lines through the lands of the grantor, the following four (4) courses:

1. South 86 deg. 38' 36" West, 199.69 feet to a set iron pin;
2. North 03 deg. 21' 24" West, 250.24 feet to a set MAG nail;
3. North 33 deg. 23' 23" East 103.35 feet to a set iron pin;
4. North 86 deg. 38' 36" East, 179.67 feet to the point of beginning.

Containing 2.0000 acres. Subject to legal highways and easements of record.

The above described parcel being part of those lands conveyed to MM Milgrove Road LLC, as recorded at the Warren County Recorder's Office and is further identified as Auditor's Parcel No. 12011510030.

Monuments referred to set iron pins are 5/8 inch diameter x 30-inch long iron bars with a cap marked "G.J. BERDING P.S. 6880".

The bearings are based on State Plane Coordinate Systems, Ohio South Zone, NAD 83.

Based on a plat of survey prepared by G.J. Berding Surveying, Inc., on October 29, 2009. This description was prepared and reviewed on October 29, 2009. Gerard J. Berding, Registered Surveyor Number 6880.

Leaving a remainder of 20.971 acres for Tract 2, more or less.

### **Tract 3. 47.972 Ac. 12-01-151-004**

Situated in Sections 1 & 7, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road; South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to the real point of beginning for this description, said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a

distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence with a curve to the left an arc distance of 759.38 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence South 01 deg. 55' 24" East a distance of 437.24 feet to an iron pin set; thence South 39 deg. 26' 09" East a distance of 252.71 feet to an iron pin set; thence South 28 deg. 45' 06" West a distance of 97.00 feet to an iron pin set; thence South 17 deg. 57' 19" East a distance of 445.19 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 140.76 feet to an iron pin set; thence North 89 deg. 02' 40" West a distance of 170.25 feet to an iron pin set; thence South 05 deg. 49' 00" West a distance of 87.60 feet to an iron pin set; thence North 84 deg. 51' 00" West a distance of 444.00 feet to an iron pin set; thence North 83 deg. 46' 00" West a distance of 534.12 feet to an iron pin set; thence South 79 deg. 45' 00" West a distance of 612.46 feet to an iron pin set; thence North 06 deg. 18' 40" East a distance of 2158.88 feet to the real point of beginning for this description.

Containing in all 47.972 Acres (17.315 acres in Section 1 & 30.657 Acres in Section 7), more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6649, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.



## EXHIBIT B

### BOND FORM

Neither this Bond, nor any portion of, rights under or interest in this Bond, shall be sold, assigned or transferred except to a single holder holding the entire outstanding principal amount of the Bonds and only if the Paying Agent shall first have received prior written approval from the Mayor of the Village of South Lebanon, Ohio (with the consent of the Village Council which may be withheld, conditioned or delayed in the sole discretion of the Village Council) and one of the following: (a) a written certificate from the transferee that certifies that the transferee is a “qualified institutional buyer” within the meaning of subsection (a) of Rule 144A promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933, as amended; (b) a written certificate from the transferee that certifies that the transferee is an “accredited investor” within the meaning of Rule 501 of Regulation D promulgated by the Securities and Exchange Commission pursuant to the Securities Act of 1933; or (c) a certificate from the Fiscal Officer of the Village of South Lebanon, Ohio to the effect that the restrictions on transfer under the Trust Indenture are no longer in effect.

UNITED STATES OF AMERICA  
STATE OF OHIO  
VILLAGE OF SOUTH LEBANON

No. R-\_\_

CUSIP NO.  
N/A

TAX INCREMENT REVENUE BONDS, SERIES 2016  
(RIVERSIDE PROJECT)

*KNOW ALL MEN BY THESE PRESENTS, that the VILLAGE OF SOUTH LEBANON, OHIO (the “Village”), acknowledges itself to owe and for value received, hereby promises to pay, but only from the Revenues (as defined in the Ordinance referred to herein), to [\_\_\_\_\_] the aggregate sum of*

*[\_\_\_\_\_] AND 00/100 DOLLARS (\$\_\_\_\_\_.00)]*

*or, if less, an amount equal to the proceeds of this Bond disbursed pursuant to the Infrastructure Agreement (as defined in the Ordinance) on and prior to the Disbursement Termination Date (as hereinafter defined), on the dates and in the amounts set forth in Schedule I hereto, with interest thereon from the date hereof at the rate of [\_\_\_\_\_] per centum ([\_\_\_\_\_]%) per annum, payable annually on [\_\_\_\_\_] of each year, commencing on [\_\_\_\_\_, \_\_\_\_]. The principal sum of this Bond and interest thereon are payable in Federal Reserve funds at U.S. Bank National Association, Cincinnati, Ohio, as Paying Agent, upon presentation and surrender of this Bond at maturity, without deduction for exchange, collection or service charges.*

*If the total principal amount of this Bond is not disbursed on or prior to [\_\_\_\_\_, \_\_\_\_] or such later date as may be agreed to by the Mayor of the Village of South Lebanon, Ohio with the consent of the Village Council which may be withheld, conditioned or delayed in the sole discretion of the Village Council (the “Disbursement Termination Date”), (a) the principal amount of this Bond shall be reduced by the amount of undisbursed proceeds of this Bond on the date following the Disbursement Termination Date, and (b) the obligation of the Village to make scheduled payments of principal on the principal amount of this Bond which remains outstanding after any such reduction shall not be affected by such reduction, such*

*reduction operating instead to pay and redeem the principal of this Bond at dates earlier than the originally scheduled principal amortization or payment date or dates set forth on Schedule I hereto, in inverse chronological order.*

*This Bond is subject to redemption prior to maturity in accordance with the terms of the Ordinance.*

*This Bond is issued for the purpose of paying the cost of constructing public infrastructure improvements in the Village and paying related costs, under authority of the general laws of the State of Ohio, and Section 5709.40 et seq. of the Ohio Revised Code, and by virtue of Ordinance No. 2016-16 duly adopted by the Council of said Village on November 3, 2016 (the "Ordinance").*

*AND IT IS HEREBY CERTIFIED AND RECITED, that all acts, conditions and things necessary to be done precedent to and in the issuing of this Bond in order to make it a legal, valid and binding obligation of the Village have been done, have happened and have been performed in regular and due form as required by law; and that no limitation of indebtedness or taxation, either statutory or constitutional, has been exceeded in issuing this Bond.*

*The Village, to pay as debt service on the Bond, has pledged service payments in lieu of taxes (the "Service Payments") to be made by the owner or owners of certain real property located within the Village (the "Owner") pursuant to the terms of a Service Payment Agreement between the Village and the Owner. The Bond are payable solely from the Service Payments and other Revenues pledged to the payment thereof pursuant to the Ordinance, subject to the limitations specified in the Ordinance.*

*This Bond is hereby designated as "qualified tax-exempt obligations" to the extent permitted by Section 265(b) of the Code (as defined in the Ordinance).*

*THIS BOND IS A NEGOTIABLE INSTRUMENT BUT DOES NOT CONSTITUTE A GENERAL OBLIGATION OF THE VILLAGE AND THE GENERAL CREDIT AND TAXING POWER OF THE VILLAGE ARE NOT PLEDGED TO THE PAYMENT THEREOF, OR ANY PART THEREOF, OR THE INTEREST THEREON, AND THIS BOND IS PAYABLE AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ONLY FROM THE REVENUES.*

*IN WITNESS WHEREOF, the Village of South Lebanon, Ohio, has caused this Bond to be signed by its Mayor and Fiscal Officer, as of the [\_\_\_] day of [\_\_\_\_\_, \_\_\_\_], in accordance with Ordinance No. 2016-16.*

By: \_\_\_\_\_  
Mayor  
Date: \_\_\_\_\_, \_\_\_\_

By: \_\_\_\_\_  
Fiscal Officer  
Date: \_\_\_\_\_, \_\_\_\_

*SCHEDULE I*

*\$6,200,000.00*

TAX INCREMENT REVENUE BONDS, SERIES 2016  
(RIVERSIDE PROJECT)

924975

## TAX REGULATORY AGREEMENT

**THIS TAX REGULATORY AGREEMENT** (this “Tax Regulatory Agreement”), is made and dated as of November 1, 2016, by and between the **VILLAGE OF SOUTH LEBANON, OHIO** (the “*Issuer*”), a municipal corporation organized and existing under the laws of the State of Ohio, and **U.S. BANK, NATIONAL ASSOCIATION**, a national banking association, as paying agent (the “*Paying Agent*”) under an Agreement Relating to Paying Agency, Registrar and Transfer Agency, dated as of November 1, 2016 (the “*Paying Agent Agreement*”), and joined by **LEBANON MASON, LLC**, an Ohio limited liability company (the “*Company*”):

### WITNESSETH:

**WHEREAS**, in order to provide for the construction of certain public infrastructure improvements within the territorial boundaries of the Issuer (as more fully set forth in that certain Amended and Restated Infrastructure Agreement dated as of October 1, 2016 (the “*Infrastructure Agreement*”) by and between the Issuer and the Company, the Issuer has determined to issue its \$6,200,000 Tax Increment Financing Revenue Bonds, Series 2016 (Riverside Project) (the “Obligations”), to finance (i) the purchase of the public infrastructure improvements set forth in the Infrastructure Agreement (such public improvements, as more fully set forth in the Infrastructure Agreement from time to time, being hereinafter known as the “*Project*”) located within the Jurisdiction (as hereinafter defined) of the Issuer, and (ii) the costs of issuance of the Obligations; and

**WHEREAS**, this Tax Regulatory Agreement, together with the issuance of the Obligations, has been authorized by the Issuer pursuant to its Ordinance No. 2016-16 (the “*Bond Legislation*”); and,

**WHEREAS**, the Obligations will be issued as “draw-down” bonds within the meaning of Regulations Section 1.150-1(c)(4)(i) of the Income Tax Regulations under Section 150 of the Code (as hereinafter defined): and,

**WHEREAS**, it is necessary for the parties hereto to enter into this Tax Regulatory Agreement in connection with the issuance of the Obligations to assure compliance with the Internal Revenue Code of 1986, as amended (the “*Code*”), with respect to the Federal Tax Status (as hereinafter defined) of the Obligations.

**NOW, THEREFORE**, the parties hereto agree and bind themselves as follows:

[Article I begins on next page.]

## ARTICLE I

### DEFINITIONS

**Section 1.1 Definitions.** In addition to words and terms elsewhere defined in the Bond Legislation and the No-Arbitrage Certificate (defined *infra*) and this Tax Regulatory Agreement, the following words and terms used in this Tax Regulatory Agreement shall have the following meanings, unless some other meaning is plainly intended:

“AMT Bond” means a Qualified Private Activity Bond, other than a Qualified 501(c)(3) Bond, the interest on which is a specific item of tax preference under Section 57(a)(5)(C) of the Code, subject to the federal alternative minimum tax under Section 55 of the Code.

“Applicable Temporary Period” means the temporary investment period available for each particular category of Gross Proceeds of Governmental Obligations, as provided in Treas. Reg. § 1.148-2(e), during which time such Gross Proceeds may be invested in Materially Higher Yielding Investments. The Applicable Temporary Period for amounts in a Capital Acquisition Fund is three (3) years from the Closing Date of the governmental Obligations, the Applicable Temporary Period for any amount deposited in a Bona Fide Debt Service Fund is thirteen (13) months from the date of deposit in such fund, the Applicable Temporary Period for any Investment Proceeds of Governmental Obligations is one (1) year from the date of receipt of such amounts, the Applicable Temporary Period for any Replacement Proceeds of Governmental Obligations is thirty (30) days from the date such amounts become Replacement Proceeds and the Applicable Temporary Period for any Disposition Proceeds of Governmental Obligations will be determined under Treas. Reg. § 1.141-12(a).

“Arbitrage Bond” means any Governmental Obligation that is treated as an arbitrage bond under Sections 103(b)(2) and 148 of the Code.

“Arbitrage Compliance Payment” means any Rebate Payment.

“Available Construction Proceeds (“ACP”)” means the portion of the Proceeds, as specially defined in Section 148(f)(4)(C)(vi) of the Code, of Governmental Obligations allocable to any construction expenditures, as that term is defined in Treas. Reg. § 1.148.7.

“Bona Fide Debt Service Fund” means a fund that is (1) used primarily to achieve a proper matching of revenues with Debt Service within each Bond Year and (2) depleted at least once each Bond Year, except for the Permitted Carryover.

“Bond Counsel” means a nationally recognized bond counsel experienced in municipal finance, particularly in the issuance of Tax-Exempt Bonds.

“Bond Year” means the period commencing on the Closing Date of Governmental Obligations and ending on a date within one year after such Closing Date and then each one year period commencing the day after such date and each anniversary of such date thereafter.

“Cancellation Right” means the right of an Exempt Person to cancel a contract on reasonable notice without penalty or cause.

“Capital Acquisition Fund” means a fund to be used to finance the purchase, construction and acquisition of assets and facilities that qualify as Capital Expenditures.

“Capital Contribution” means any gift or contribution made for the specific purpose of financing the cost of the Project.

“Capital Expenditure” means any expense that is properly depreciable or amortizable or is otherwise treated as a capital expenditure under the Code and, for the purposes of determining eligible Reimbursement Allocations, Costs of Issuance.

“Capitation Fee” means a fixed amount paid per individual covered, so long as the types and quantity of services actually provided to covered individuals varies substantially, which fee may increase automatically, based on a specific objective, external standard unrelated to output or efficiency of the facility being managed. For this purpose, up to twenty percent (20%) of the total fee may consist of an adjustable component to protect the Service Provider from catastrophic loss.

“Change in Use” means any sale, exchange, lease or other disposition of any portion of the Project to any Non-Exempt Person or any use of the Project for a purpose that would not be a Qualified Purpose.

“Closing Date” means the date the issue is issued and paid for, as provided in Treas. Reg. § 1.150-1(b).

“Computation Period” means the period from the Closing Date or the day after any Installment Computation Date through the next Installment Computation Date or through the Final Computation Date, as applicable.

“Conduit Borrower” means any borrower of any Gross Proceeds of Governmental Obligations.

“Construction Expenditure Amount” means the amount of ACP that must be expended by each Target Date, pursuant to Section 148(f)(4)(C)(ii) of the Code. The Construction Expenditure Amount for the First Target Date is ten percent (10%) of ACP, the Construction Expenditure Amount for the Second Target Date is forty-five percent (45%) of ACP, the Construction Expenditure Amount for the Third Target Date is seventy-five percent (75%) of the ACP and the Construction Expenditure Amount for the Fourth Target Date is one hundred percent (100%) of ACP, except that if certain amounts are to be retained for a reasonable business purpose relating to the facilities being financed with the Proceeds of the Governmental Obligations at the Fourth Target Date, ninety-five percent (95%) shall apply instead of one hundred percent (100%). If ninety-five percent (95%) (rather than one hundred percent (100%)) is used at the Fourth Target Date, then one hundred percent (100%) of ACP must be spent by the

Fifth Target Date. For these purposes, a Reimbursement Allocation shall be treated as an expenditure.

“Construction Spending Exception to Rebate” means Treas. Reg. § 1.148-7(e), which provides that Governmental Obligations will be treated as satisfying the rebate requirements of Section 148 of the Code if the Construction Expenditure Amounts are spent by the Target Dates and any Required Rebate owed on Proceeds of such obligations that are not ACP is paid.

“Cost of Issuance” means any expenditure incurred in connection with the issuance of Governmental Obligations, including such costs as underwriters’ spread, rating agency fees, appraisal costs, attorneys’ and accountants’ fees and printing costs, but excluding Qualified Guarantee Fees or expenditures incurred in connection with the acquisition of the facilities financed with the Proceeds of such obligations.

“Debt Service” means the principal and interest payments on obligations.

“Disposition Cash” means the Disposition Proceeds if the consideration for the sale, exchange or other disposition of any Qualified Facilities consists exclusively of cash.

“Disposition Proceeds” means the amounts, including property, received from the sale, exchange or other disposition of any Qualified Facilities, as provided in Treas. Regs. § 1.141-12(c) and 1.145-2.

“18-Month Spending Exception to Rebate” means Treas. Reg. § 1.148-7(d), which provides that Governmental Obligations will be treated as satisfying the rebate requirements of Section 148 of the Code if the Expenditure Amounts are spent by the Expenditure Dates and any Required Rebate owed on Proceeds of such obligations that are not required to be expended to satisfy Treas. Reg. § 1.148-7(d)(3) is paid.

“Eligible Yield-Restricted Proceeds” means any Yield-Restricted Proceeds, as specially described in Treas. Reg. § 1.148-5(c)(3), the Yield on which may be reduced by making Yield Reduction Payments.

“Exempt Person” means any Governmental Entity or any 501(c)(3) Organization, except when such organization is engaged in an Unrelated Trade or Business.

“Expenditure Amount” means the amount of Proceeds of Governmental Obligations that must be expended for Capital Expenditures by each Expenditure Date, pursuant to Treas. Reg. § 1.148-7(d)(1)(i), to satisfy the 18-Month Spending Exception to Rebate. The Expenditure Amount for the First Expenditure Date is fifteen percent (15%) of the Gross Proceeds, as specially modified by Treas. Reg. § 1.148-7(d)(3), of such obligations, the Expenditure Amount for the Second Expenditure Date is sixty percent (60%) of such modified Gross Proceeds, and the Expenditure Amount for the Third Expenditure Date is one hundred percent (100%) of such modified Gross Proceeds, except that if certain amounts are to be retained for a reasonable business purpose relating to the property being financed with the Proceeds of such obligations at the Third Expenditure Date, ninety-five percent (95%) shall apply instead of one hundred percent

(100%). If ninety-five percent (95%)(rather than one hundred percent (100%)) is used at the Third Expenditure Date, then one hundred percent (100%) of such modified Gross Proceeds must be spent by the Fourth Expenditure Date. For these purposes, a Reimbursement Allocation shall be treated as an expenditure.

“Expenditure Date” means each date by which the Expenditure Amounts must be spent, as provided in Treas. Reg. § 1.148-7(d)(1)(i). The First Expenditure Date means the date that is six (6) months after the Closing Date of Governmental obligations, the Second Expenditure Date means the date that is one (1) year after such Closing Date, the Third Expenditure Date means the date that is eighteen (18) months after such Closing Date and the Fourth Expenditure Date means the date that is thirty (30) months after such Closing Date.

“Federal Tax Status” means the classification of any Tax-Exempt Bond as a Governmental Bond.

“Federally-Guaranteed” means having the payment of either the principal of or interest on any portion of Governmental Obligations or any loan made with the Proceeds of any portion of such obligations guaranteed, in whole or in part, directly or indirectly, by the United States, or acquiring any Investment Property that is, directly or indirectly federally-insured, except as otherwise permitted by Section 149(b) of the Code.

“Final Computation Date” means the Redemption Date of Governmental Obligations, but no earlier than eight (8) months after the Closing Date of such obligations, unless the Governmental Issuer and any Conduit Borrower reasonably expect that the 18-Month Spending Exception to Rebate or the Construction Spending Exception to Rebate will apply, in which event, it means the Final Expenditure Date or the Final Target Date, as applicable, if later than the Redemption Date.

“Final Expenditure Date” means the Third or the Fourth Expenditure Date, as may be applicable.

“Final Target Date” means the Fourth or the Fifth Target Date, as may be applicable.

“501(c)(3) Organization” means an organization described in Section 501(c)(3) of the Code and determined by the Internal Revenue Service to be exempt from taxation under Section 501(a) of the Code.

“Future Value” means future value, as defined in Treas. Reg. § 1.148-3(c).

“GIC Computational Base” means the weighted average amount reasonably expected to be deposited each year of the contract.

“Governmental Bond” means any obligation of a Governmental Entity that satisfies the requirements of Section 103 and 141 through 150 of the Code and is not a Private Activity Bond.

“Governmental Entity” means any State and any political subdivision and agency of any State.



“Governmental Issuer” means the Governmental Entity that is the debtor on or issuer of a Governmental Obligation.

“Governmental Obligation” means any debt obligation of a Governmental Entity.

“Governmental Program” means a program of a Governmental Entity that involves the purchase or origination of Program investments, at least ninety-five percent (95%) of the cost of which represents one or more loans to 501(c)(3) Organizations and at least ninety-five percent (95%) of the receipts from which are used to pay debt service on Governmental Obligations issued for the program, or to pay or reimburse administrative expenses or losses directly related to the program or to finance additional Program Investments.

“Gross Proceeds” means Proceeds and Replacement Proceeds, determined pursuant to Treas. Regs. § 1.148-1(b) and -1(c), all until spent.

“Guaranteed Investment Contract” means any Nonpurpose Investment that has specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate, and any agreement to supply investments on two or more future dates (e.g., a forward supply contract).

“Incentive Award” means a one-time single, stated dollar increase in the amount of the Periodic Fixed Fee during the term of a Service Contract, given when either a gross revenue target or a gross expense target (but not both) is met.

“Independent” means not being a shareholder, partner, member, director, trustee, officer or employee of an entity.

“Installment Computation Date” means, generally, the date that is five years after the Closing Date, unless an earlier date is chosen for this purpose, and thereafter, the date that is five years after the preceding Installment Computation Date, until the Final Computation Date.

“Investment Proceeds” means any amounts actually or constructively earned or received from investing the Proceeds in Investment Property.

“Investment Property” means any security (as defined in Section 165(g)(2)(A) or (B) of the Code), obligation (including any Tax-Exempt Bond), annuity contract or other investment-type property.

“Issue Price” means, generally, the initial offering price to the public (not including bond houses and brokers, or similar persons or organizations acting in the capacity of underwriters or wholesalers) at which a substantial amount (at least ten percent (10%) of each maturity) of Governmental Obligations is sold, unless such obligations are sold to one purchaser that intends to hold the obligations for investment and not resale to the general public, and then the Issue Price means the Purchase Price paid by such purchaser.

“Jurisdiction” means the Village of South Lebanon, Ohio in which the Project is located.

“Mandatory Redemption Provision” means a requirement that Governmental Obligations must be redeemed within six months after the occurrence of a Non-Exempt Use of the Proceeds of such obligations or of any facilities financed with the Proceeds of the obligations, provided that, on the Closing Date of the obligations, the Governmental Issuer and the Conduit Borrower of such Proceeds or the user of the Qualified Facilities financed with the Proceeds had Reasonable Use Expectations.

“Materially Higher Yield” means any Yield that is higher than the Yield permitted to be earned under Section 148 of the Code and Treas. Regs. § 1.148-1 through 11.

“Materially Higher Yielding Investment” means Investment Property, including any Purpose Investment, but excluding any Non-AMT Bond or any SLGS, acquired with the Gross Proceeds of Governmental Obligations, on which the Yield is a Materially Higher Yield.

“Minor Portion” means an amount of the Proceeds of Governmental Obligations, other than Proceeds invested in a Reasonably Required Reserve or Replacement Fund or Proceeds invested during an Applicable Temporary Period, not in excess of the lesser of (i) five percent (5%) of the Proceeds of such obligations, or (ii) \$100,000.

“Negative Pledge” means any agreement to maintain an amount at a particular level for the benefit, directly or indirectly, of any holder of Governmental Obligations or any guarantor of the obligations, except that any agreement under which the Governmental Issuer or the Conduit Borrower of the Proceeds of such obligations can grant rights to the funds that are superior to the rights of any holder or guarantor of such obligations that meets the requirements of Treas. Reg. § 1.148-1(c)(3)(ii)(A) or any agreement under which the amount to be maintained is reasonable and may be tested not more often than every six (6) months and that meets the requirements of Treas. Reg. § 1.148-1(c)(3)(ii)(B) shall not be treated as a Negative Pledge.

“Net Proceeds” means Proceeds less amounts thereof deposited in all Reasonably Required Reserve or Replacement Funds, if any.

“Net Sale Proceeds” means Sale Proceeds less amounts thereof deposited in all Reasonably Required Reserve or Replacement Funds, if any, and less the Minor Portion.

“1954 Code” means the Internal Revenue Code of 1954, as amended through August 15, 1986, or as appropriate, to the date a particular debt instrument was issued.

“No-Arbitrage Certificate” means the “Certificate under Sections 103(b)(2) and 148 of the Internal Revenue Code of 1986, as Amended,” given by the Issuer, including certifications given with respect thereto by the Issuer’s financial advisor and the original purchaser of the Obligations.

“Non-AMT Bond” means any Tax-Exempt Bond that is either a Governmental Bond or a Qualified 501(c)(3) Bond.

“Non-Exempt Person” means any Non-Governmental Person, other than an Exempt Person.

“Non-Exempt Use” means the use of any Proceeds of 501(c)(3) Bonds or any facilities financed with such Proceeds by any Non-Exempt Person.

“Non-Governmental Person” means any natural person and any entity, other than a Governmental Entity.

“Nonpurpose Investment” means any Investment Property other than a Purpose Investment.

“Nonqualified Portion” means the portion of Qualified 501(c)(3) Bonds no longer deemed to finance Qualified Facilities after any Change in Use of Qualified Facilities financed with such obligations, provided that the Nonqualified Portion is determined using the highest percentage of Non-Exempt Use in the one year period commencing with the Change in Use.

“Periodic Fixed Fee” means a fixed dollar amount for a specified period of time, which may increase automatically, based on a specific, objective, external standard unrelated to the output or efficiency of the Project.

“Permitted Carryover” means an amount that does not exceed the greater of the earnings on the Bona Fide Debt Service Fund for the immediately preceding Bond Year or one-twelfth of the Debt Service for the immediately preceding Bond Year.

“Permitted Investment” means any Investment Property that may be purchased with the Proceeds of Governmental Obligations pursuant to the terms of the Indenture for such obligations.

“Per-Unit Fee” means a fee for each service performed, provided that the fee is specified in the contract, or is determined by an Independent person or organization or by the Company.

“Pledged Fund” means any amount pledged, directly or indirectly, to pay any Debt Service on Governmental Obligations and which provides reasonable assurance of such amounts being paid even if the Governmental Issuer or the Conduit Borrower of the Proceeds of the obligations or other user of the facilities financed with the Proceeds of such obligations experiences financial difficulties. Pledged Funds include amounts subject to a Negative Pledge.

“Pre-TRA Bond” means any Governmental Obligation of a Governmental Entity the interest on which was excludible from gross income for federal income tax purposes pursuant to Sections 103 or 103A of the 1954 Code.

“Private Activity Bond” means any Governmental Obligation issued by a Governmental Entity if there is more than ten percent (10%) Private Use and more than ten percent (10%) of the principal of or interest on such obligations is secured or to be paid, either directly or indirectly, by any Private User or if more than the lesser of five percent (5%) of the Proceeds of the

obligations or \$5,000,000 is used to make Private Loans, all as described in Section 141(a) of the Code.

“Private Loan” means any loan, directly or indirectly, of any of the Proceeds of Governmental Obligations to any Non-Governmental Person.

“Private Use” means the use of any Proceeds of Governmental Obligations or any facilities financed with such Proceeds by Private Users.

“Private User” means any Non-Governmental Person, other than a natural person not engaged in a trade or business.

“Proceeds” means all Sale Proceeds, Investment Proceeds and Transferred Proceeds of Governmental Obligations.

“Program Investment” means a Purpose Investment under a Governmental Program that does not permit or require the purchase of obligations issued for the Governmental Program by any obligor or Related Person in an amount related to the amount of the Purpose Investment, provided that the Issuer has not waived its right to treat the Purpose Investment as a Program Investment.

“Purchase Price” means fair market value, as provided in Treas. Reg. § 1.148-5(d).

“Purpose Investment” means any Investment Property allocated to the Gross Proceeds of Governmental Obligations acquired in order to carry out the governmental purpose of such obligations, as provided in Treas. Reg. § 1.148-1(b).

“Qualified Administrative Fee” means any reasonable, direct administrative cost, other than a carrying cost, such as a separately stated brokerage or selling commission, but does not include any legal or accounting fee, recordkeeping, custody, or similar cost, or general overhead costs and similar indirect costs of the Issuer or Company.

“Qualified Alternative Use” means use of a portion of a Qualified Facility by any person other than the Exempt Person for which the Qualified Facility was financed with Proceeds of Qualified 501(c)(3) Bonds after a Change in Use in a manner that would qualify under any provision of Sections 103 and 141 through 150 of the Code, provided that all of the requirements of Treas. Reg. § 1.141-12 are satisfied and the acquisition is not financed with the Proceeds of an issue of Tax-Exempt Bonds other than such 501(c)(3) Bonds or Refunding Bonds.

“Qualified Cash Defeasance” means the creation, with Investment Property purchased with the Disposition Cash remaining after being allocated to Other Remedial Actions, of a Yield-Restricted Escrow within ninety (90) days after the sale, exchange or other disposition resulting in a Change in Use of any Qualified Facility financed with the Net Proceeds of Governmental Obligations to defease a pro rata portion of such obligations at the earliest call date available, provided that the Commissioner of the Internal Revenue Service is notified of the establishment

of such escrow within ninety (90) days after its creation, but not if the obligations have become Converted Obligations.

“Qualified Cash Redemption” means the redemption, with the Disposition Cash remaining after being allocated to Qualified Replacements, if any, of a pro rata portion of the Nonqualified Portion of Governmental Obligations within ninety (90) days after the sale, exchange or other disposition resulting in a Change in Use of any Qualified Facility financed with the Net Proceeds of such obligations. Although generally a pro rata portion of each maturity of the obligations must be redeemed, the Governmental Issuer may instead redeem the longest-maturing obligations, determined on a bond-by-bond basis.

“Qualified Defeasance” means (i) the creation, with investment Property of a Yield-Restricted Escrow within ninety (90) days after any Change in Use of any Qualified Facility financed with the Net Proceeds of Governmental Obligations to defease the Nonqualified Portion of such obligations remaining after any Qualified Redemption at the earliest call date available, provided that the Commissioner of the Internal Revenue Service is notified of the establishment of such escrow within ninety (90) days after its creation, but not if such obligations have become Converted Obligations, and (ii) a Qualified Cash Defeasance.

“Qualified Facility” means any property owned and used exclusively by one or more Exempt Persons.

“Qualified 501(c)(3) Bond” means any Qualified Private Activity Bond that satisfies the requirements of Section 145 of the Code.

“Qualified Guarantee Fee” means any expenditure incurred in connection with obtaining a qualified guarantee of Governmental Obligations, within the meaning of Treas. Reg. § 1.148-4(f).

“Qualified Hedge” means a contract entered into primarily to modify the Issuer’s risk of interest rate changes with respect to the Bonds (i.e. an interest rate swap) and which satisfies the requirements of “qualified hedge” under Treas. Reg. § 1.148-4(h).

“Qualified Private Activity Bond” means any Private Activity Bond that satisfies the requirements of Section 141(e) of the Code.

“Qualified Purpose” means the use of the Proceeds of any Tax-Exempt Bonds or of a facility financed with such Proceeds by an Exempt Person, or if the facility is used by a Governmental Entity, for a purpose that would not be Private Use. Payment of Costs of Issuance is not a Qualified Purpose.

“Qualified Redemption” means either (i) the redemption of the Nonqualified Portion of Governmental Obligations within ninety (90) days after the Change in Use of any Qualified Facility financed with the Proceeds of such obligations and (ii) a Qualified Cash Redemption. Although generally a pro rata portion of each maturity of the obligations must be redeemed, the

Governmental Issuer may instead redeem the longest-maturing obligations, determined on a bond-by-bond basis.

“Qualified Replacement” means the purchase, with Disposition Cash, of Replacement Property within two (2) years after the date of any sale, exchange or other disposition resulting in the Change in Use of a Qualified Facility, provided that any remaining Disposition Cash is used for a Qualified Cash Redemption or a Qualified Cash Defeasance.

“Reasonable Use Expectation” means the expectation, reasonably based on the facts known on the Closing Date of Governmental Obligations, that the facilities financed with the Proceeds of such obligations would be used as Qualified facilities for a substantial period before any Non-Exempt Use, provided that neither the Governmental Issuer nor any Exempt Person who is using the facilities financed with the obligations enters into any arrangements with respect to such facilities with any Non-Exempt Person prior to the Closing Date.

“Reasonably Required Reserve or Replacement Fund” means any fund that is pledged as security for or is available for payment of any principal or interest on any Governmental Obligation and is reasonably required by the lender, a State or other governmental or regulatory authority having jurisdiction over the Governmental Issuer, a national bond rating agency, or an underwriter or financial advisor and that satisfies the limitations of Treas. Reg. § 1.148-2(f).

“Rebate Amount” means the excess of the Future Value of “Receipts” over the Future Value of “Payments” (each as defined in the Treasury Regulations) from and for Nonpurpose Investments, pursuant to Treas. Reg. § 1.148-3(b). For this purpose, a “computation credit” of \$1,000, as adjusted annually, shall be treated as a “Payment” made on the last date of each Bond Year during which there are Gross Proceeds of Governmental Obligations invested that are subject to the rebate provisions of Section 148(f) of the Code and Treas. Reg. § 1.148-3.

“Rebate Analyst” means Bond Counsel, a nationally recognized Independent public accounting firm or a firm of recognized skill in calculating Rebate Payments.

“Rebate Fund” means the Rebate Fund created pursuant to the Indenture and described in Subsection 2.09 hereof.

“Rebate Payment” means the amount of Required Rebate that must be remitted to the United States Treasury pursuant to the Code and Treasury Regulations thereunder, plus penalties and interest, if any, and any Yield Reduction Amount owed.

“Redemption Date” means the date on which the last of the principal of and interest on Governmental Obligations has been paid, whether upon maturity, redemption or acceleration thereof.

“Refunding Bond” means any Governmental Obligation the Proceeds of which are used to pay the principal or premium of or the interest on another obligation of the obligor or any Related Person, as provided in Treas. Reg. § 1.150-1(d).

“Reimbursement Allocation” means a written allocation of the Proceeds of Governmental Obligations intended to reimburse a Conduit Borrower for Capital Expenditures that were paid prior to the Closing Date for such obligations, provided that any such allocation is or was made within eighteen (18) months after the later of the date the Capital Expenditure was paid or the date the project was placed in service, but in no event later than three (3) years after the payment date. Any written allocation made within thirty (30) days after the (Closing Date of such obligations shall be treated as if made on such Closing Date.

“Reimbursement Resolution” means a declaration of intent by a Governmental Issuer to finance, or a Conduit Borrower by borrowing funds, facilities that qualify as Capital Expenditures. For this purpose, the issuance of debt to finance specific facilities shall constitute a Reimbursement Resolution, the date of adoption of which shall be no later than the Closing Date of such debt.

“Related Person” means a “related person” within the meaning of Section 147(a)(2) of the Code and a “related party” within the meaning of Treas. Reg. § 1.150- 1(b).

“Remedial Action” means a Qualified Alternative Use, a Qualified Defeasance, a Qualified Redemption and/or a Qualified Replacement, provided that the Remedial Action Conditions are satisfied.

“Remedial Action Conditions” means that (i) either the Governmental Issuer and the Conduit Borrower (a) expected on the Closing Date that there would be no Non-Exempt Use of any facilities financed with the Proceeds of Governmental Obligations or (b) the obligations were subject to a Mandatory Redemption Provision, (ii) the weighted average maturity of such obligations on its Closing Date is not greater than 120 percent of the average reasonably expected economic life of the facilities financed with the Proceeds, (iii) the Non-Exempt Use is granted at fair market value on bona fide, arm’s length terms and (iv) the Proceeds were originally spent for a Qualified Purpose.

“Renewal Option” means a legally enforceable right to renew a contract.

“Replacement Proceeds” means amounts replaced by Proceeds of Governmental Obligations, including any sinking fund, Pledged Fund, reserve or replacement fund, or other funds that would be expected to be used to pay Debt Service on any of such obligations, within the meaning of Treas. Reg. § 1.148-1(c).

“Replacement Property” means any Qualified Facility.

“Required Rebate” means the amount determined by subtracting the Future Value, as of each Computation Date, of all Rebate Payments previously made from (i) on an Installment Computation Date, at least ninety percent (90%) of the Rebate Amount determined as of that date, and (ii) on the Final Computation Date, the Rebate Amount.

“Sale Date” means the first day on which the Governmental Issuer and the original purchasers of Governmental Obligations are bound, in writing, to the sale and purchase of such obligations on specific terms that are not later modified or adjusted.

“Sale Proceeds” means the Issue Price received, or deemed received, by the Governmental Issuer from the sale of Governmental Obligations, including amounts paid or deemed paid as underwriters’ discount, but excluding amounts paid for interest accrued prior to the Closing Date of such obligations.

“Service Contract” means a contract between the Conduit Borrower and a Service Provider under which the Service Provider provides services involving any portion or function of a Qualified Facility financed with Qualified 501(c)(3) Bonds.

“Service Provider” means any Non-Exempt Person that provides management or other services.

“SLGS” means any security that is part of the United States Treasury Obligation State and Local Government Series.

“Spendable Proceeds” means Net Sale Proceeds.

“State” means any state and possession of the United States and the District of Columbia.

“Target Date” means each of the dates by which the Construction Expenditure Amounts must be spent. The First Target Date is six (6) months after the Closing Date of the Governmental Obligations; the Second Target Date is one (1) year after such Closing Date; the Third Target Date is eighteen (18) months after such Closing Date; the Fourth Target Date is two (2) years after such Closing Date and the Fifth Target Date is three (3) years after such Closing Date.

“Tax-Exempt Bond” means (i) any Governmental Obligation the interest on which is excludible from gross income for federal income tax purposes, pursuant to Sections 103 and 150(a)(6) of the Code, (ii) any Pre-TRA Bond, (iii) certain tax-exempt mutual funds, as provided in Treas. Reg. § 1.150-1(b), and (iv) any SLGS.

“Transferred Proceeds” means any Proceeds of a prior issue of Governmental Obligations that become Proceeds of other Governmental Obligations, pursuant to Treas. Reg. § 48-9, following redemption of the obligations of the first issue.

“Treasury Regulation” and “Treas. Reg.” means any Regulation, Proposed Regulation or Temporary Regulation, as may be applicable, issued by the United States Treasury Department pursuant to the Code or the 1954 Code, as appropriate.

“Trustee” means the Trustee and its successors and assigns.

“United States” means the United States of America and any agency or instrumentality thereof.



“United States Treasury Obligation” means any Investment Property that is an obligation of the United States Treasury.

“Unrelated Person” means any person or entity that is not a Related Person and is Independent.

“Unrelated Trade or Business” means a trade or business carried on by a 501 (c)(3) Organization that is unrelated to the exempt purpose of the 501(c)(3) Organization, within the meaning of Section 513 of the Code, and that would give rise to income taxable under Section 511 of the Code.

“Yield” means that discount rate which, when computing the present value of all payments of principal and interest to be paid on an obligation, produces an amount equal to, in the case of Governmental Obligations, their Issue Price and in the case of Investment Property purchased with the Gross Proceeds of Governmental Obligations, its Purchase Price, pursuant to Treas. Regs. § 1.148-4 and -5.

“Yield Reduction Amount” means, on each Installment Computation Date, at least ninety percent (90%) of the excess of the Future Value of “Receipts” over the Future Value of “Payments” (each as defined in the Treasury Regulations) from and for Eligible Yield-Restricted Proceeds invested in Materially Higher Yielding Investments, less the Future Value of any previously paid Yield Reduction Payments and, on the Final Computation Date, one hundred percent (100%) of the excess of the Future Value of “Receipts” over the Future Value of “Payments” (each as defined in the Treasury Regulations) from and for Eligible Yield-Restricted Proceeds invested in Materially Higher Yielding Investments, less the Future Value of any previously paid Yield Reduction Payments.

“Yield Reduction Payment” means any payment of the Yield Reduction Amount made to the United States Treasury pursuant to Treas. Reg. § 1.148-5(c) with respect to Eligible Yield-Restricted Proceeds invested in Materially Higher Yielding Investments.

“Yield-Restricted Escrow” means Investment Property held in an escrow account that, either together, or if Treas. Reg. § 1.148-10(b) applies, individually, may not be a Materially Higher Yielding Investment, pursuant to Treas. Reg. § 1.148-2.

“Yield-Restricted Investment Computational Base” means the initial amount invested in the Investment Property.

“Yield-Restricted Proceeds” means any Gross Proceeds of Governmental Obligations that may not be invested in Materially Higher Yielding Investments, pursuant to Section 148 of the Code.

**Section 1.2 Interpretative Rules.** For all purposes of this Tax Regulatory Agreement, except as otherwise expressly provided or unless the context otherwise requires:

(a) “This Tax Regulatory Agreement” means this instrument as originally executed and as it may from time to time be supplemented, modified or amended pursuant to and in accordance with the applicable provisions hereof.

(b) All references in this instrument to designated “Articles,” “Sections” and other subdivisions are to the designated Articles, Sections and other subdivisions of this instrument as originally executed. The words “herein,” “hereof,” “hereunder” and “herewith” and other words of similar import refer to this Tax Regulatory Agreement as a whole and not to any particular Article, Section or other subdivision.

(c) The terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles (“GAAP”); any calculation made in accordance with GAAP shall be made under GAAP as in effect on the Closing Date or under GAAP in effect at the date of such calculation, as directed by the Issuer, unless the Code requires otherwise.

(e) The terms defined elsewhere in this Tax Regulatory Agreement shall have the meanings therein prescribed for them.

(f) Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

(g) The headings used in this Tax Regulatory Agreement are for convenience of reference only and shall not define or limit the provisions hereof.

**\*\*END OF ARTICLE I\*\***

## ARTICLE II

### REPRESENTATIONS OF THE COMPANY AND THE ISSUER AND ACKNOWLEDGMENTS BY, DIRECTIONS TO AND FROM THE COMPANY, THE ISSUER AND THE TRUSTEE

#### **Section 2.1 Organization and Authority.** The Issuer represents that:

- (a) Name. Its legal name is the Village of South Lebanon, Ohio and it is a municipal corporation duly organized, validly existing and in full force and effect under the laws of the State of Ohio;
- (b) Governmental Entity Status. It is a Governmental Entity and it will continue to maintain this status while any Obligations remain outstanding; and
- (c) Address. Its address is 99 North High Street, South Lebanon, Ohio.

#### **Section 2.2 Separate Issue.**

- (a) Issuer Representation. The Issuer represents that it has not sold any obligations, nor does it expect to sell any obligations, other than the Obligations, within fifteen (15) days before or after the Closing Date pursuant to the same plan of financing for the Project or any related facilities which are payable from substantially the same source of funds as the Obligations, which do not meet the exception under Treas. Reg. 1.150-1(c)(2) or Treas. Reg. 1.150-1(c)(3).

#### **Section 2.3 Use of Bond Proceeds.** The Company represents, and the Issuer acknowledges and agrees, that:

- (a) Project. Except for the payment of Costs of Issuance, all of the Proceeds of the Obligations will be used to pay for the purchase price of the Project located with the Jurisdiction of the Issuer;
- (b) Use of Proceeds of Obligations. Not less than ninety-five percent (95%) of the Net Proceeds of the Obligations will be used to purchase the Project;
- (c) Expenditure Expectations. The Issuer has already or will incur no later than six months after the Obligations Closing Date a substantial binding commitment to expend at least 5% of the Net Sale Proceeds of the Obligations for the Project and acquisition of the Project will commence promptly. The Issuer expects that it will expend at least 85% of the Net Sale Proceeds no later than three years after the Obligations Closing Date. The acquisition of the Project will proceed with due diligence to completion and the Proceeds will be spent on the Project no later than three years after the Obligations Closing Date. The total amount of Sale Proceeds, together with Investment Proceeds, of the Obligations will not exceed the amount

necessary for the Project, including, to the extent permitted, Costs of Issuance and interest during construction.

(d) Reimbursement Allocations. No Reimbursement Allocation will be made with the Proceeds of the Obligations for Capital Expenditures that were paid prior to sixty (60) days before the earlier of the date on which the Issuer or the date on which the Issuer adopted a Reimbursement Resolution authorizing the issuance of debt to finance the Project, except that expenditures for Costs of Issuance, subject to the limitation stated in Section 2.11, paid before the Closing Date, certain preliminary Capital Expenditures not in excess of twenty percent (20%) of the Issue Price of the Obligations, and an amount of Capital Expenditures not in excess of the lesser of five percent (5%) of the issue or \$100,000 may receive a Reimbursement Allocation even if the expenditure was paid more than sixty (60) days prior to the date of adoption of the Reimbursement Resolution described herein and even if the allocation would not otherwise qualify as a Reimbursement Allocation; and,

(e) Prohibited Uses. No portion of the Proceeds of the Obligations will be used to finance any airplane, skybox or other private luxury box, health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

**Section 2.4 Ownership and Use of Project.** The Company represents, and the Issuer acknowledges and agrees, that:

(a) Description of Project. The Project, which is described in the Infrastructure Agreement, consists of public infrastructure improvements that will be usable by the general public;

(b) Ownership of Project. The Project to be financed in part with the Net Proceeds of the Obligations will be owned by the Issuer;

(c) Future Ownership. The Project shall be owned by the Issuer for the entire stated term of the Obligations;

(d) Use of the Project. Not more than five percent (5%) of the use of either the Net Proceeds or the Project will be Non-Exempt Use if more than five percent (5%) of either the principal of or interest on the Obligations is secured or to be paid, either directly or indirectly, by any Non-Exempt Person; and

(e) No Plan to Sell. It does not currently reasonably expect to sell or otherwise dispose of the Project, in whole or in part, prior to the last maturity date of the Obligations.

(f) Service Contracts.

(i) Post-May 15, 1997 Contracts and Modifications. It will not enter into, materially modify or extend (other than pursuant to a Renewal Option existing on May 15, 1997) a Service Contract with any Service Provider to manage, provide services in, or otherwise use the Project, unless:

(A) Reasonable Compensation. The compensation is reasonable for the services rendered by the Service Provider and the Service Contract does not provide for any compensation based, in whole or in part, on a share of net profits from the operation of the Project, and

(B) Compensation Arrangements. The compensation arrangement during each annual period during the term of the Service Contract complies with the terms of Subparagraph (i)(B)(I), (II), (III) or (IV) of this Subsection:

(I) Fixed Fee.

(a) 95% Fixed. At least ninety-five percent (95%) of the consideration for services is based on a Periodic Fixed Fee, which may include an Incentive Award; provided however that the term (including Renewal Options) of such Service Contract does not exceed the lesser of eighty percent (80%) of the expected useful life of the Project or fifteen (15) years;

(b) 80% Fixed. At least eighty percent (80%) of the consideration for services is based on a Periodic Fixed Fee, which may include an Incentive Award; provided, however that the term (including Renewal Options) of such Service Contract does not exceed the lesser of eighty percent (80%) of the expected useful life of the Project or ten (10) years; or

(c) 50% Fixed. At least fifty percent (50%) of the consideration for services is based on a Periodic Fixed Fee; provided, however, that the term (including Renewal Options) of such Service Contract may not exceed five (5) years and the contract includes a Cancellation Right at the end of the third year of the Service Contract;

(II) Capitation Fee.

More than fifty percent (50%) of the consideration for services is based on a Capitation Fee and any remaining consideration is based on a Periodic Fixed Fee; provided, however, that the term (including Renewal Options) of such Service Contract may not exceed five years and the contract must include a Cancellation Right at the end of the third year of the Service Contract;

(III) Per-Unit Fee.

More than fifty percent (50%) of the consideration for services is based on a Per-Unit Fee and any remaining consideration is based on a Periodic Fixed Fee; provided,

however, that the term (including Renewal Options) of such Service Contract may not exceed three years, and the contract must include a Cancellation Right at the end of the second year of the Service Contract; or

(IV) Percentage Fee.

All the consideration for services is a percentage of fees charged or costs incurred (but not both) or is a combination of a percentage of fees charged or costs incurred and Per-Unit Fees; provided, however, that the term (including Renewal Options) of such Service Contract should not exceed two (2) years and the contract includes a Cancellation Right at the end of the first year of the Service Contract; and provided, further, that such Service Contract is one under which the Service Provider primarily provides services to third parties, or the Service Contract is one that involves a facility during an initial startup period for which there have been insufficient operations to establish a reasonable estimate of the amount of the annual gross revenues and expenses, during which time, the consideration may be based on a percentage of gross revenues, adjusted gross revenues or costs;

(C) Control. Not more than twenty percent (20%) of the voting power of the governing body of the Company, in the aggregate, may be vested in the Service Provider or in the Service Provider's directors, officers, shareholders and employees. Additionally, the respective chief executive officers of the Company and the Service Provider and of the governing bodies of the Company and the Service Provider may not serve on the governing body of the other and the Company and the Service Provider may not be members of the same controlled group, as defined in Treas. Reg. § 1.150-1(e) or Related Persons; and

(D) Exception. Any agreements that do not satisfy Subparagraphs (a)(i)-(iii) of this Section or Rev. Proc. 97-13, 1997-5 C.B. 526 may be entered into provided that the Company delivers to the Issuer and the Trustee an opinion of Bond Counsel that to do so would not adversely affect the Federal Tax Status of the Obligations; and

(ii) Pre-May 16, 1997 Contracts. Any Service Contract entered into prior to May 16, 1997 satisfies the provisions of either Rev. Proc. 93-19, 1993-1 C.B. 526 or Paragraph (a) of this Section or the Company will give the Issuer an opinion of Bond Counsel that the existing Service Contract will not adversely affect the Federal Tax Status of the Obligations.

**Section 2.5 Change in Use or User of Project.** The Company represents, and the Issuer acknowledges and agrees, that:

(a) Sales, Exchanges and Other Dispositions. No part of the Project will be sold, exchanged or otherwise disposed of unless the Issuer either obtains an opinion of Bond Counsel that any sale, exchange or other disposition will not constitute a Change

in Use or otherwise adversely affect the Federal Tax Status of the Obligations, or alternatively, satisfies the requirements for a Remedial Action. If the Project is not owned at all times in its entirety by an Exempt Person, no deduction shall be allowed for interest on the Obligations which accrues during the period beginning on the date the portion of the Project is not so owned and ending on the date that portion of the Project is so owned;

(b) Change in Use. It will permit no use of the Project, including any lease, by any person or entity other than itself, unless the Issuer either obtains an opinion of Bond Counsel that such use will not constitute a Change in Use or otherwise adversely affect the Federal Tax Status of the Obligations, or alternatively, satisfies the requirements for a Remedial Action;

(c) Agreement of New User. Prior to the sale, exchange or other disposition of the Project or any other use of the Project by any person or entity other than itself, and assuming that the requirements of the other paragraphs of this Section are satisfied, the Issuer shall require that the new user, in connection with the sale, exchange or other disposition or other use, agree not to use that portion of the Project in any manner which would violate the covenants set forth in this Tax Regulatory Agreement.

**Section 2.6 Maturity Limitation.** The Issuer acknowledges and agrees that the weighted average maturity of the Obligations is 14.4515 years. The Company has determined the weighted average “reasonably expected economic life,” determined as of the later of (a) the Closing Date, or (b) the date on which the Project is placed in service (or expected to be placed in service), of the facilities that comprise the Project, will be [\_\_\_\_\_ years.] The Issuer acknowledges and agrees that, based on the foregoing, the weighted average maturity of the Obligations will not exceed one hundred twenty percent (120%) of the weighted average “reasonably expected economic life” of the Project.

**Section 2.7 Investment Restrictions.** The Issuer and the Paying Agent each acknowledge, that:

(a) General. The Federal Tax Status of the Obligations depends, in part, upon compliance with the limitations relating to investment of the Proceeds of the Obligations, which are imposed by Sections 103(b)(2) and 148 of the Code. The Company agrees to take all actions necessary to comply with these requirements. At no time will any of the Proceeds of the Obligations or other funds of the Company or the Issuer be intentionally used, directly or indirectly, to acquire any Investment Property, the acquisition of which would cause any of the Obligations to be Arbitrage Bonds. All acts and things necessary in order to assure that the requirements of Sections 103(b)(2) and 148 of the Code are met shall be done or not done, as appropriate, including instructing the Trustee in writing to take such action or actions, including making Yield Reduction Payments, as may be necessary to restrict or limit the Yield an Investment Property, and the Trustee will act in accordance with such instructions;

(b) Limitation on Yield. The investment Yield limitations of the Code and Treasury Regulations, and as set forth in the No-Arbitrage Certificate, shall be complied with and at no time will the Gross Proceeds of the Obligations, not including the Minor Portion, but including any Disposition Proceeds, be invested in Materially Higher Yielding Investments, except during an Applicable Temporary Period or as otherwise permitted by the Code and Treasury Regulations thereunder. If any amount of Gross Proceeds of the Obligations is still invested in Materially Higher Yielding Investments after the expiration of the Applicable Temporary Period, Yield Reduction Payments may be owed;

(c) Reasonably Required Reserve or Replacement Fund. All reserve or replacement funds for the Obligations shall be Reasonably Required Reserve or Replacement Funds and not more than ten percent (10%) of the Sale Proceeds will be used to fund such funds. Either no amount on deposit in all Reasonably Required Reserve or Replacement Funds for the Obligations, including any amounts held by any provider of a letter of credit or guarantor under a reimbursement or other similar agreement, shall exceed the least of (i) ten percent (10%) of the stated principal amount of the Obligations, (ii) the maximum annual debt service on the Obligations, or (iii) one hundred twenty-five percent (125%) of average annual debt service on the Obligations, or the amount held in all Reasonably Required Reserve or Replacement Funds in excess of the lowest of these limits shall not be invested in Materially Higher Yielding Investments or, if the amount so invested satisfies Treas. Reg. § 1.148-5(c)(3)(i)(E), appropriate Yield Reduction Payments shall be timely made;

(d) Bona Fide Debt Service Fund. Any amount deposited in a Bona Fide Debt Service Fund will not be invested at a Materially Higher Yield for longer than thirteen (13) months from the date of deposit in such fund;

(e) Hedge Bond Restriction. Not more than fifty percent (50%) of the Sale Proceeds of the Obligations will be invested in any Nonpurpose Investment having a substantially guaranteed Yield for four or more years;

(f) Investment in Federally-Guaranteed Securities. Not more than five percent (5%) of the Proceeds of the Obligations will be used to purchase any Investment Property that is Federally-Guaranteed;

(g) Use of Capital Contributions. Any Capital Contribution will be deposited in a Bona Fide Debt Service Fund and used to pay Debt Service on the Obligations.

**Section 2.8 Purchases of Investment Property and Records.** The Issuer, Company, and the Paying Agent each acknowledge and agree that:

(a) Record Keeping. Failure to maintain the records described in this Tax Regulatory Agreement might result in interest on the Obligations becoming includable in the gross income of the holders of the Obligations for federal income tax purposes and might result in additional Arbitrage Compliance Payments and denial of interest



deductions under Section 150(b)(4) of the Code. The Issuer, the Company, and the Paying Agent each agrees to keep proper records and accounts with respect to the Obligations. Records shall contain complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the Gross Proceeds of the Obligations, including money derived from, pledged to or to be used to make payments on the Obligations and all records relating to the construction, acquisition, use and disposition of the Project, except that the Paying Agent will be required to follow this section only insofar as it has custody of the Proceeds of the Obligations or of Investment Property purchased with such Proceeds, as provided in the Indenture. Therefore, the Issuer, the Company, and the Paying Agent (in each case to the extent they are in possession of such records) each specifically agrees to:

(i) The Project.

(A) Acquisition. Maintain records of all requisitions, disbursements, allocations, applications and payments for the Project made with or allocable to Gross Proceeds of the Obligations.

(B) Use. Maintain all records relating to the Use of the Project, and any sales or disposition contracts, as well as any opinions of Bond Counsel that may be obtained or required under Section 2.5 of this Tax Regulatory Agreement.

(ii) Issuance of the Obligations. Maintain all evidence of the issuance of the Obligations, which shall include this Tax Regulatory Agreement and all attachments, all records evidencing payment of Costs of Issuance, including the source of the payments and a copy of Form 8038-G and proof of mailing or delivery of such form.

(iii) Investment.

(A) In General. Maintain proper books of records and accounts containing complete and correct entries of all transactions relating to the receipt, investment, disbursement, allocation and application of the money related to the Obligations, including money derived from, pledged to or to be used to make payments on the Obligations. The records will specify the account or fund to which each investment (or portion thereof) held by the Paying Agent is to be allocated and will set forth, in the case of every Investment Property, (I) the Purchase Price; (II) identifying information, including par amount, coupon rate and payment dates; (III) the amount received at maturity or the sale price, as the case may be, including accrued interest; (IV) the amounts and dates of any payments made with respect thereto; and (V) the dates of acquisition and disposition, which will be the date of purchase or sale, not the settlement date or maturity date, as applicable.

(B) GIC's. Retain copies of the GIC contract and the bid solicitation, any deviation from specifications that is accepted or amendment to the bids

received, and the reasons for the changes, and every bid submitted, including the name of the person and entity submitting the bid, the time and date of the bid and the bid results.

(C) Treasuries. Retain copies of the bid solicitation form, any deviation from the specifications that is accepted or amendment to the bids received and the reasons for the changes, and every bid submitted, including the name of the person and entity submitting the bid and the cost of the most efficient portfolio of SLGS, unless SLGS were not then available, for Treasuries not purchased directly from the United States Treasury that will be included in a Yield-Restricted Escrow or that are otherwise purchased with Yield- Restricted Proceeds.

(iv) Arbitrage Compliance. Maintain evidence of compliance with Section 148 of the Code, including all records relating to the determination of Yield, including Issue Price, and the determination of Arbitrage Compliance Amounts for the Obligations, any Arbitrage Compliance Payments and any Form 8038-T filed for the Obligations.

(v) Retention. Retain all records described in this Section for at least six years after the Redemption Date of the Obligations and any obligations issued to refund the Obligations.

(vi) Delegation. The Company agrees to maintain all the records required by this Section on behalf of the Issuer.

(b) Investments. Documentation will be retained in accordance with Section 2.8(a) hereof with respect to each Investment Property to establish that all Investment Property has been acquired and disposed of on an established market in arms-length transactions at a price equal to the fair market value and that no amounts have been paid to reduce the Yield on the Investment Property. Such records shall specify the account or fund to which each investment (or portion thereof) held by the Paying Agent is to be allocated and shall set forth, in the case of every investment Property, (i) the Purchase Price, (ii) identifying information, including par amount, coupon rate and payment dates, (iii) the amount received at maturity or the sale price, as the case may be, including accrued interest, (iv) the amounts and dates of any payments made with respect thereto, and (v) the dates of acquisition and disposition, which shall be the date of purchase or sale, not the settlement date, or maturity, as applicable.

(c) Purchases of Investments, Certificates of Deposit, Guaranteed Investment Contracts and United States Treasury Obligations. Certificates of Deposits (“CD’s”), Guaranteed Investment Contracts (“GIC s”) and United States Treasury Obligations (“Treasuries”) will be purchased only if the following requirements, in addition to the requirements of Paragraph (b) of this Section, are satisfied:

(i) Certificate of Deposit. CD’s will be purchased or sold only if:

- (A) Issuer. The CD is issued by a commercial bank;
- (B) Terms. The CD has a fixed interest, a fixed principal payment schedule and a substantial penalty for early withdrawal; and
- (C) Yield. The Yield on the CD is not less than:
  - (I) United States Obligations. The Yield on a reasonably comparable direct obligation of the United States; and
  - (II) Comparable Commercial CD's. The highest Yield published or posted by the seller for comparable CD's offered to the public;
- (ii) Guaranteed Investment Contracts. GIC's will be purchased or sold only if:
  - (A) Competitive Bids. A bona fide solicitation for the GIC with specified terms, in writing, is made to at least three (3) reasonably competitive providers, each with an established industry reputation;
  - (B) Bid Specifications. The bid specifications include all material terms, including the reasonably expected draw-down schedule for the funds being invested, exclusive of amounts in debt service or Reasonably Required Reserve or Replacement Funds, and all terms are commercially reasonable, with a legitimate business purpose other than to increase the Purchase Price or reduce the Yield;
  - (C) No Tie-In. The bid specifications notify the bidders that any bidder will be treated as representing to the Issuer that it has not consulted with any other bidder, that its bid is made without regard to any other agreement, formal or informal, with any person, including the Issuer, and that its bid is genuine and not a mere courtesy bid to enable the Issuer to comply with Treas. Reg. § 1.148-5(d)(6)(iii)(B);
  - (D) No Second Look. All bidders have an equal opportunity to bid and no bidder is given the opportunity to review the bid made by any other bidder;
  - (E) Bids. At least three bids responding to bid solicitations that meet the requirements of Subparagraph (c)(ii)(B) of this Section are received from different providers of GIC's with no material financial interest, directly or indirectly, in the Obligations and at least one of these bids is from a reasonably competitive provider, as described in Subparagraph (c)(ii)(A) of this Section and none are received from any agent conducting the bidding. For this purpose, the financial advisors of the Issuer with respect to the purchase of the GIC and, for fifteen (15)

days after the Closing Date, a lead underwriter in a negotiated underwriting are all deemed to have a material financial interest in the issue;

(F) Highest Yield. The Yield (determined net of broker's fees) on the GIC purchased is the highest Yield of the qualifying bids;

(G) Bidding Fee. The amount of the fee charged by the bidding agent for the GIC that will be treated as a Qualified Administrative Fee in determining the Yield on the GIC is limited to the lesser of (I) a reasonable amount, as described in Treas. Reg. § 1.148-5(e)(2)(i), issued under the Code, or (II) the present value of annual payments equal to .05 percent of the GIC Computational Base. For purposes of determining present value, the taxable discount rate used by the parties to compute the commission shall be used, or if not readily ascertainable, the yield on the GIC or another reasonable taxable discount rate shall be used; and

(H) Administrative Costs. The provider of the GIC certifies the administrative costs incurred in connection with the GIC reasonably expected to be paid to third parties;

(iii) United States Treasury Securities. Treasuries will be purchased only if:

(A) Direct Purchase. The Treasuries are purchased directly from the United States Treasury (such as SLGS);

(B) Investment Not Yield-Restricted. The Treasuries are not purchased for a Yield-Restricted Escrow or are otherwise not required to be Yield-Restricted; or

(C) Yield-Restricted Escrows. The Treasuries will be used for Yield-Restricted Escrows and the purchase complies with the following:

(I) GIC Bid Rules. The Bid meets the requirements of Subparagraphs (c)(ii)(A) and (B) of this Section, except that the bid does not need to specify an expected draw-down schedule;

(II) Cost. The Purchase Price of the Treasuries:

(A) Lowest Cost. Is either the lowest cost bid for the entire portfolio, or the lowest aggregate cost, determined on a security by security basis;

(B) Seller Payments. Includes any payments made by the seller of the Treasuries to the Issuer; and

(C) Comparison to SLGS. Is not greater than the cost of the most efficient portfolio comprised of SLGS determined at the time of the bid submission, unless SLGS are not then available; and

(III) Bidding Fee. The amount of the fee charged by the bidding agent that will be treated as a Qualified Administrative Fee in determining the Yield on Treasuries not purchased directly from the United States Treasury is limited to the lesser of \$37,000 or two-tenths of one percent (0.2%) of the Yield-Restricted Investment Computational Base, or if more, \$4,000, with the total of such fees limited to \$106,000.

**Section 2.9 Arbitrage Rebate Compliance.** The Issuer agrees, at the expense of the Company, to comply with Section 148(f) of the Code and the Treasury Regulations thereunder, and the Paying Agent agrees to follow the written instructions of the Issuer given pursuant to this Section and the Issuer agrees that, although the Obligations will be issued as “draw-down” bonds and it is unlikely that any proceeds of the Obligations will be invested:

(a) Covenant Regarding Rebate of Arbitrage. The provisions of this Section with respect to rebate to the United States Treasury of certain arbitrage earnings will be complied with and all Rebate Payments will be paid to the United States government, as provided in the Code and Treasury Regulations thereunder;

(b) Installment Computation Date. The Issuer will select the initial Installment Computation Date before the date that is five (5) years after the Closing Date and give reasonable notice of such selection to the Trustee and the Servicer;

(c) Administration of Rebate Fund. The Paying Agent will be required to (i) administer the a separate account under the Paying Agent Agreement for the purposes of paying rebate (the “**Rebate Fund**”); (ii) invest all amounts held therein, at the direction of the Issuer, in accordance with the terms of this Tax Regulatory Agreement; (iii) deposit moneys into or transfer moneys out of the Rebate Fund, as set forth Section 2.9 herein; and (iv) remit part or all of the balances in the Rebate Fund to the United States Government, as set forth herein;

(d) Timing and Method of Determination of Rebate Payments. The Paying Agent will determine, on behalf of the Issuer, the Rebate Payments owed, in the following manner:

(i) Collection of Records. No later than ten (10) days after each Installment Computation Date and the Final Computation Date, the Paying Agent will assemble copies of records concerning investments of Gross Proceeds of the Obligations, including any amounts held by any provider of a letter of credit or guarantor under a reimbursement or other similar agreement, so as to enable the Rebate Analyst to track all investments of the Gross Proceeds of the Obligations during the relevant Computation Period and to transmit such information to the

Rebate Analyst within thirty (30) days after each Installment Computation Date and the Final Computation Date. Such records shall comply with the requirements of Section 2.8 hereof.

(ii) Calculation of Rebate Payment. The Paying Agent shall direct a Rebate Analyst chosen by the Issuer to calculate the Rebate Amount, the Required Rebate, the Yield Reduction Amount and the Rebate Payment by a date that is within forty (40) days after each Installment Computation Date and the Final Computation Date. In determining the Rebate Amount:

(A) Debt Service Funds. No amount in any Bona Fide Debt Service Fund shall be included in Gross Proceeds if:

(I) Average Annual Debt Service. The average annual Debt Service on the Obligations does not exceed \$2,500,000,

(II) Annual Earnings. In computing Investment Proceeds for any particular Bond Year, the earnings on all of Bona Fide Debt Service Funds, collectively, during that Bond Year are less than \$100,000; or

(III) Construction Spending Exception Met. One of the exceptions set forth in paragraph (B)(II)(b) below, is met; and

(B) Expenditures Made. Amounts described below need not be included in Gross Proceeds if:

(I) Six Month Exception. All Gross Proceeds, as modified by Treas. Reg. § 1.148-7(c)(3), are expended within six (6) months after the Closing Date, or within twelve (12) months for the amounts described in Section 148(Q)(4)(B)(ii);

(II) Capital Expenditure Exceptions. Unless it would increase the Rebate Amount, either

(a) Eighteen Month Spending Exception. No amount of Gross Proceeds, as modified by Treas. Reg. § 1.148-7(d)(3), need be included in Gross Proceeds of the Obligations for purposes of determining the Rebate Amount, if the Expenditure Amounts are expended by each of the Expenditure Dates; or

(b) Construction Spending Exception. No amount of ACP need be included in Gross Proceeds of the Obligations for purposes of determining the Rebate Amount, if the Construction Expenditure Amounts are expended by each of the Target Dates.

(iii) Submission to Issuer. On or before forty-five (45) days after each Installment Computation Date and the Final Computation Date, the Paying Agent shall submit to the Issuer the calculations of the Rebate Amount, the Required Rebate, the Yield Reduction Amount and the Rebate Payment.

(e) Rebate Payment. After the Rebate Amount, the Required Rebate, the Yield Reduction Amount and the Rebate Payment are submitted to the Issuer, the Paying Agent shall be directed to take the following steps:

(i) Deposit of Rebate Payment. Deposit money, as directed by the Issuer and the terms of the Paying Agent Agreement, which shall total the amount of the Rebate Payment, less the sum of any existing balances in the Rebate Fund, to the Rebate Fund from moneys on hand and available for such purpose under the Paying Agent Agreement or if no moneys are available therein, request in writing an immediate deposit from the Issuer equal to the amount otherwise required to be deposited pursuant to this subparagraph;

(ii) Excess Amounts. If there is no Rebate Payment due and the Rebate Amount is negative, transfer any amount then held in the Rebate Fund as provided in the Paying Agent Agreement or, absent provisions therein, as directed by the Issuer; and

(iii) Payment to United States Treasury. No later than sixty (60) days after each Installment Computation Date and the Final Computation Date, remit an amount equal to the Rebate Payment to the United States Government at the office of the Internal Revenue Service prescribed by the Treasury Regulations or the Commissioner of the Internal Revenue Service. Such remittance shall be accompanied by any form or forms required to be submitted with such remittance, which may include (i) a statement summarizing the determination of the amount required to be paid pursuant to this Section and (ii) Internal Revenue Service Form 8038-T or such other forms as may be required.

**Section 2.10 Security.** The Issuer represents that neither the interest nor the principal of the Obligations is Federally-Guaranteed.

**Section 2.11 Miscellaneous Expectations.** The Company represents that it reasonably expects all of the following facts to be true and accurate within the following periods of time:

(a) Draw-down of Bond Proceeds. All Sale Proceeds shall be advanced within three (3) years of the Closing Date.

**Section 2.12 Information Reporting Requirements.** The Issuer represents that it will execute (based upon factual representations made by the Company) and timely file all information reports (Form 8038-G) required under Section 149(e) of the Code.

**Section 2.13 Amendments to Tax Regulatory Agreement to Comply with Code and Treasury Regulations.** The Issuer, the Company, and the Paying Agent agree, to the extent reasonably possible, to comply with any amendments to the Code or any applicable Treasury Regulations effective retroactively, and the Issuer, the Company, and the Paying Agent each agrees to take all actions necessary to amend this Tax Regulatory Agreement to comply therewith; provided, however, that the Issuer is not required to execute any such amendment that imposes costs, expenses or unreasonable burdens upon the Issuer. No duties or responsibilities of the Paying Agent shall be amended, modified or changed without the written consent of the Paying Agent.

**Section 2.14 Employment of Experts and Bond Counsel Opinion.** The Issuer and the Paying Agent each agrees that:

(a) Reliance on Experts. In performing the duties and obligations described in this Tax Regulatory Agreement, the Paying Agent may employ such other experts, accountants and legal counsel as each deems appropriate, and the reasonable fees and expenses of the Paying Agent and such experts, accountants and legal counsel in connection with this Tax Regulatory Agreement shall be paid pursuant to the terms of the Paying Agent Agreement in the same manner as other expenses of the Paying Agent thereunder. The Paying Agent may conclusively rely on the opinions given it by the Rebate Analyst and such other experts, accountants and legal counsel in performing its duties and obligations and will not be required to confirm, audit, or verify any calculations and findings supplied by such experts, accountants or legal counsel, absent manifest error; and,

(b) Opinion of Counsel. Notwithstanding any provision of this Tax Regulatory Agreement, if the Issuer shall provide to the Paying Agent an opinion of Bond Counsel that any action specified under this Tax Regulatory Agreement is no longer required or that some further or different action is required to maintain or assure the continuation of the Federal Tax Status of the Obligations, the Paying Agent may conclusively rely on such opinion in complying with this Tax Regulatory Agreement, and the covenants hereof upon acceptance by the Paying Agent, shall be deemed to be modified to that extent.

**Section 2.15 General Covenant.** The Issuer, the Company, and the Paying Agent each represents that it will not take any action or omit to take any action or, insofar as it is within the power of such parties, permit another person or entity to take any action or omit to take any action if such action or omission would cause the interest on the Obligations to be includable in the gross income of the holders of the Obligations for federal income tax purposes. The Issuer, the Company, and the Paying Agent each acknowledge that this Tax Regulatory Agreement is entered into for the benefit of the holders of the Obligations.

**Section 2.16 Indemnification.** The Company agrees to indemnify the Issuer and the Paying Agent for any liabilities, costs and expenses paid or incurred by the Issuer or the Paying Agent in complying with its obligations under this Tax Regulatory Agreement, except insofar as



the Issuer or the Paying Agent incurs any such liabilities, costs and expenses as a result of its gross negligence or willful misconduct.

**\*\*END OF ARTICLE II\*\***

The Paying Agent is executing and delivering this Tax Regulatory Agreement solely for the purposes of acknowledging the matters set forth herein, and being bound to undertake the duties and responsibilities set forth with respect to the Paying Agent herein relating to amounts held under the Paying Agent Agreement. With respect to amounts not held under the Paying Agent Agreement, the Paying Agent has made no investigations, makes no representation and undertakes no duties or responsibilities. In acting hereunder, the Paying Agent shall be entitled to the same rights, protections, immunities and indemnities accorded to it under the Paying Agent Agreement.

This Tax Regulatory Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Tax Regulatory Agreement.

**IN WITNESS WHEREOF**, the Issuer, the Company, and the Paying Agent have each caused this Tax Regulatory Agreement to be executed in its own name and on its own behalf by its duly authorized officer, all as of the date first written above.

**ISSUER:**  
VILLAGE OF SOUTH LEBANON, OHIO

**PAYING AGENT:**  
U.S. BANK, NATIONAL ASSOCIATION, as  
Paying Agent

By: \_\_\_\_\_  
James Smith, Mayor

By: \_\_\_\_\_  
Daniel Boyers, Vice President

By: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer

This instrument prepared by:

P. Andrew Spoor, Esq.  
Keating Muething & Klekamp, PLL  
One East 4th St.  
Cincinnati, OH 45202

**COMPANY:**  
LEBANON MASON, LLC, an Ohio limited  
liability company

By: \_\_\_\_\_  
Peter Goffstein, Authorized Agent

**AGREEMENT RELATING TO PAYING AGENCY,  
REGISTRAR AND TRANSFER AGENCY**

**THIS AGREEMENT RELATING TO PAYING AGENCY, REGISTRAR AND TRANSFER AGENCY** (this “Agreement”) is made as of the 1st day of November, 2016, by and between Village of South Lebanon, County of Warren, State of Ohio (the “Village”) and U.S. Bank National Association, Cincinnati, Ohio (the “Agent”), a national banking association duly organized and existing under the laws of the United States, under the following circumstances:

WHEREAS, pursuant to Section 5709.40 et seq. of the Ohio Revised Code (the “Act”) and Ordinance No. 2005-16, the Council of the Village has created Tax Incentive District Number 1 (the “TIF District”); and

WHEREAS, the Village and Lebanon Mason, LLC, an Ohio limited liability company (together with its successors and assigns, the “Owner”) subsequently entered into an Amended and Restated Infrastructure Agreement dated as of October 1, 2016 (as amended from time to time, the “Infrastructure Agreement”); and

WHEREAS, pursuant to the Infrastructure Agreement, the Owner has agreed to construct certain public improvements (as more particularly described in the Infrastructure Agreement, the “Public Improvements”) that are needed to facilitate the development of the parcels of real property located within the TIF District, as further described on Exhibit A attached hereto (the “Property”); and

WHEREAS, pursuant to the Infrastructure Agreement, the Village has agreed to issue TIF Obligations (as defined in the Infrastructure Agreement) to pay the Purchase Price for a portion of the Costs of Work paid by the Owner in connection with the construction of the Public Improvements; and

WHEREAS, to pay the Purchase Price for a portion of the Costs of Work, the Village has authorized the issuance of its Tax Increment Revenue Bonds, Series 2016 (Riverside Project) in the principal amount of \$6,200,000 (the “Bonds”) in Ordinance No. 2016-16 (together with the Certificate of Award referred to therein, the “Bond Legislation”).

**NOW THEREFORE**, the Village and the Agent, each in consideration of the representations, covenants and agreements of the other as set forth herein, mutually represent, covenant and agree as follows:

**ARTICLE I  
TERMS OF BONDS**

**1.1 Definitions.** All capitalized terms not defined herein shall have the meaning given to them in the Bond Legislation and the Infrastructure Agreement.

**1.2     Execution of Bonds; Lien on Service Payments.** The Bonds shall bear the manual or facsimile signatures of the Mayor and the Fiscal Officer of the Village, shall be authenticated manually by the Agent as set forth below. In case any official of the Village, who has signed manually or by facsimile signature any Bond, shall cease to be such officer of the Village before the Bond so signed shall have been actually authenticated, recorded and delivered, such Bond, nevertheless, may be issued, authenticated, recorded and delivered, as though the person who had signed such Bond had not ceased to be an officer of the Village, and, also, any Bond may be signed on behalf of the Village by such person, who at the actual date of execution of such Bonds shall be the proper officer of the Village, although at the date of such Bond such person shall not have been such an officer of the Village.

As security for the payment of the Bonds, subject to the parity lien on the Service Payments of all other Bonds and bonds issued by the Village that are payable from the Service Payments, the Village hereby grants to the Agent a security interest in the Service Payments subordinate to compensation payments to Kings Local School District ("School") pursuant to an Amended and Restated Tax Incentive Agreement made between the Village and the School, dated May 15, 2008, as amended. Upon any Event of Default under this Agreement, the Agent shall have the remedies of a secured party under the Ohio Uniform Commercial Code.

**1.3     Authentication of Bonds.** From time to time, after the execution and delivery of this Agreement, the Village may execute and deliver to the Agent for authentication the Bonds in an amount not in excess of that set forth in the Bond Legislation. Upon the written order of the Village, which shall constitute full authority to the Agent for its action based thereon, the Agent shall from time to time authenticate Bonds and deliver the same to the Village or to such other person as may be specified in such written order.

No Bond shall be valid or obligatory for any purpose or shall be entitled to any right or benefit hereto unless there shall be endorsed thereon a certificate of authentication substantially in the form attached to the Bond Form attached to the Bond Legislation, duly executed by the Agent, and such certificate of the Agent upon any Bond executed in behalf of the Village shall be conclusive evidence, and the only evidence, that the Bonds so authenticated have been duly issued under this Agreement and that the Holder (as defined below) thereof is entitled to the benefit of this Agreement.

**1.4     Initial Form and Delivery.** The Bonds shall initially be numbered from R-1 upwards; provided, however, that in the event of the exchange or transfer of any Bond, any new Bonds issued by the Agent as a result of such exchange or transfer shall be numbered in a manner which will assure that such new Bonds retain the same terms with respect to redemption as were possessed by the exchanged or transferred Bonds.

The principal of, and interest on, the Bonds shall be payable on maturity or upon earlier redemption (each, an "Interest Payment Date") to the registered holders thereof by check or draft of the Agent, and such payment shall be made without deduction for the services of such Agent. At the written request of the Holder of at least \$100,000 aggregate

principal amount of the Bonds received by the Agent at least one business day prior to the corresponding record date, interest accrued on the Bonds will be payable by wire transfer within the continental United States in immediately available funds to the bank account number of such Holder specified in such request and entered by the Agent on the registration records; provided that interest payable at maturity or upon redemption shall be paid only upon presentation and surrender of such Holder's Bonds. Such request for payment by wire transfer is subject to the Agent's internal policies and procedures.

**1.5 Optional Redemption.** The Bonds may be redeemed in whole or in part at any time. Notice of the call for redemption of the Bonds, specifying the numbers of the Bonds to be redeemed, shall be sent by the Agent by registered mail to the registered holders thereof, not less than thirty (30) days nor more than sixty (60) days prior to the date of redemption, upon which date all interest upon the Bonds or portions thereof so called shall cease except those as to which default shall be made, upon presentation, in the payment of the redemption price. Prior to any notice of call for redemption, funds for such redemption shall be on deposit with the Agent and the Village shall direct the Agent in writing to make any notice of call for redemption. If less than all of the Bonds shall be called for redemption at the option of the Village, those Bonds to be called shall be determined by the Agent by lot, provided, however, that the portion of any Bond to be redeemed shall be in the principal amount of \$5,000 or any integral multiple thereof.

**1.6 Dating, Registration, Transfer and Exchange of Bonds.** Each Bond shall be of a single maturity, shall be dated as of the date of its authentication and shall bear interest from the date of its authentication. The Bonds shall bear issuable as fully registered Bonds in denominations of \$100,000 or any integral multiple of \$5,000 in excess thereof. Principal of and premium, if any, on the Bonds will be payable when due to the holders thereof as shown on the Village's Bond registration records (the "Register") maintained by the Agent (each such registered owner, a "Holder"). So long as any of the Bonds remain outstanding, the Agent will cause to be maintained and kept, at the designated office of the Agent, the Register for the aforesaid registration and transfer of Bonds.

Any Bond may be transferred only upon the books kept for the registration and transfer of Bonds, upon surrender thereof at the designated office of the Agent together with an assignment duly executed by the registered holder or duly authorized attorney in such form as shall be satisfactory to the Agent. Upon transfer of any such Bond and on request of the Agent, the Issuer shall execute in the name of the transferee, and the Agent shall authenticate and deliver, a new Bond or Bonds of the same series, of any denomination or denominations permitted by this Agreement and the Bond Legislation, in aggregate principal amount equal to the unmatured and unredeemed principal amount of such Bond, and bearing interest at the same rate and maturing on the same date or dates.

In all cases in which Bonds shall be transferred hereunder, the Issuer shall execute and the Agent shall authenticate and deliver Bonds in accordance with the provisions of this Agreement. Except as otherwise provided in the Bond Legislation, the Village and Agent may make a charge to the transferee for every such exchange or transfer of Bonds sufficient to reimburse them for any tax, fee or other governmental charge required to be paid with respect to such exchange or to reimburse them for all other costs and expenses

incurred in connection with such exchange or transfer, and such charge or charges shall be paid before any such new Bond shall be delivered. Neither the Village nor the Agent shall be required to make any such exchange or transfer of any Bond during the fifteen days next preceding an Interest Payment Date on the Bonds or next preceding any selection of Bonds to be redeemed, or after such Bond has been selected for partial or complete redemption.

Notwithstanding the foregoing, the Bonds shall be subject to the transfer restrictions set forth in the Bond Legislation.

The person in whose name a Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of the principal of and premium, if any, on any such Bond and the interest on any such Bond shall be made only to or upon the order of the registered holder thereof or his duly authorized attorney in such form as shall be satisfactory to the Agent, and neither the Village nor the Agent shall be affected by any notice to the contrary, but such registration may be changed as hereinabove provided. All such payments shall be valid and effective to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid. The Village and the Agent may deem and treat the registered holder of any Bond as the absolute owner of such Bond, as the case may be, whether such Bond shall be overdue or not, for the purpose of receiving payment thereof and for all other purposes whatsoever, and neither the Village nor the Agent shall be affected by any notice to the contrary.

In case any Bond is redeemed in part only, the Village, on or after the redemption date and upon surrender of such Bond, shall cause execution of and the Agent shall authenticate and deliver a new Bond or Bonds in authorized denominations and in aggregate principal amount equal to the unredeemed portion of such Bond.

**1.7 Mutilated, Lost, Stolen or Destroyed Bonds.** In case any Bond shall be mutilated, lost, stolen or destroyed, then upon the production of such mutilated Bond or upon the receipt of evidence satisfactory to the Village and the Agent of the loss, theft or destruction of such Bond, and upon receipt also of indemnity satisfactory to each of them, the Village, in its discretion, may execute, and thereupon the Agent shall authenticate and, after recording as aforesaid, deliver a new Bond in exchange for, and upon cancellation of, the mutilated Bond, or in lieu of the Bond so lost, stolen or destroyed. Any new Bond issued under this Section shall constitute an additional original contractual obligation of the Village, whether or not the Bond alleged to have been destroyed, lost or stolen be at any time enforceable by anyone; and such new Bond shall be entitled to the benefits of this Agreement equally and ratably with all other Bonds hereunder, and any indemnity so given shall likewise be ratably applicable to all the Bonds. The Village and the Agent shall place upon the face of any such new Bond a distinguishing mark or legend plainly showing that it is a duplicate of such mutilated, lost or stolen or destroyed Bond, but such mark or legend shall in no way affect the validity or negotiability of such new Bond. The Village may, at its option, require the payment of a sum sufficient to reimburse it for any legally imposed stamp tax or other governmental charge connected with the issuance of any new Bond, and also a further sum not exceeding the reasonable expense thereof.

**1.8 Tax Covenants.** The Village shall not use or permit the use of any proceeds of the Bonds, directly or indirectly, to purchase any higher yielding investments, as defined in the Internal Revenue Code of 1986, as amended (the “Code”), or to replace funds which were used directly or indirectly to acquire higher yielding investments, and shall not use or permit the use of any Revenues in any manner, and shall not take or permit to be taken or fail to take any other action or actions, which action or failure to act would cause any Bond to be an “arbitrage bond” within the meaning of Sections 103(b)(2) and 148, or “federally guaranteed” within the meaning of Section 149(b), of the Code. In the event that at any time the Village has been informed by accountants or attorneys who are expert in the field of municipal bond tax law that for purposes of this paragraph it is necessary to restrict or limit the yield on or change the investment of any moneys held by the Agent under this Agreement, the Village shall so instruct the Agent in writing, and the Agent shall take such action as specifically directed by the Village to restrict or limit the yield on or change such investment in accordance with such instructions.

The Village shall not use or permit the use of any proceeds of the Bonds, or any other funds of the Village, directly or indirectly, in any manner, and shall not take or permit to be taken any other action or actions, which would result in any of the Bonds being treated as an obligation not described in Section 103(a) of the Code by reason of classification of such Bond as a private activity Bond which is not a qualified Bond within the meaning of Sections 103(b) and 141 of the Code.

Not later than the fifteenth day of the second calendar month after the close of the calendar quarter in which Bonds are issued, the Village shall submit or cause to be submitted to the Secretary of the United States Department of the Treasury a statement concerning the Bonds issued during said calendar quarter as required by Section 149(e) of the Code.

The Village and, as and to the extent specifically directed by the Village, the Agent shall at all times do and perform all acts and things permitted by law and this Agreement which are necessary or desirable in order to assure that interest paid on the Bonds (or on any of them) shall be excluded, to the full extent permitted by law, from federal income taxes and the Village shall take no action that would result in such interest not being excluded, to the full extent permitted by law, from federal income taxes.

The Village shall supplement or amend this Agreement in accordance with Article VII hereof as and to the extent it may determine, with advice of nationally recognized bond counsel, that such supplement or amendment is necessary or desirable in order to assure that interest paid on the Bonds (or any of them) shall be excluded, to the full extent permitted by law, from federal income taxes.

Notwithstanding the foregoing, the Agent shall not be required to take any action which in its judgment diminishes the security of the Holders if the Agent obtains an opinion of nationally recognized bond counsel to the effect that failing to take such action would not jeopardize the exclusion of interest on the Bonds from federal income taxation.

In performing its duties and obligations under this Section 1.8 the Agent may employ such experts, accountants or legal counsel, with prior written consent of the Village, which consent shall not be unreasonably withheld, as the Agent shall deem appropriate, and the Village shall pay the reasonable fees and expenses of the Agent and such other persons in connection with this Section. The Agent may conclusively rely on the opinions given it by such experts, accountants and legal counsel in performing its duties and obligations under this Section, and shall not be required to confirm, audit, or verify any calculations and findings supplied by such experts, accountants or legal counsel, absent manifest error.

Neither the Village, the Village's elected or appointed officials, officers, legal counsel, employees, independent contractors or agents shall be personally liable for any failure to act or mistaken to act in complying with the provisions of this Section 1.8 so long as such failure to act or mistaken act was not an act of willful misconduct.

**1.9 Accounts.** The Bond Account and the Project Account shall, to the extent they are funded, be held in the custody of the Agent and shall be administered as directed by the Village in writing and in accordance with the Bond Legislation and this Agreement. The Cost of Issuance Account shall be held in the custody of the Village and applied in accordance with Section 2.6 hereof.

**1.10 Application of Service Payments.** The Village shall cause Service Payments, including Minimum Service Payments provided for in the Service Agreement, if any, to be deposited in the Bond Account in the amounts and at the times required by Section 7 of the Bond Legislation and this Section 1.10. Funds set aside for the payment of capitalized interest, shall be applied as set forth in the Certificate of Award.

The Village shall pay to the Agent from the Service Payments on deposit in the TIF Fund, to the extent available after the required compensation to the School has been made and subject to the parity lien on the Service Payments of all other Bonds and bonds issued by the Village that are payable from the Service Payments, to pay principal and/or interest on the Bonds when due on each successive interest payment date, or upon maturity or earlier redemption ("Bond Service Charges") no later than the second business day immediately preceding the due date for the payment of such Bond Service Charges. Excess funds on deposit in the Bond Account not needed for debt service may, at the option of the Village, be used to optionally redeem Bonds.

## **ARTICLE II** **ACCOUNTS**

**2.1 General.** Pursuant to the Bond Legislation, there is hereby established the Bond Account, the Cost of Issuance Account and the Project Account. Pursuant to this Agreement, there is hereby established the Interest Subaccount and Principal Subaccount in the Bond Account. The Bond Account, and the subaccounts thereof, and the Project Account shall be maintained in the custody of the Agent and used for the purpose designated hereinafter. Moneys in the Project Account, the Cost of Issuance Account and



the Bond Account, and the subaccounts thereof, shall be invested in the Eligible Investments, to the extent permitted by Ohio law and as provided in the Bond Legislation.

The proceeds of the Bonds will be advanced from time to time to the Agent in accordance with the terms of the Bond Legislation, the Infrastructure Agreement and the Bond Purchase Agreement. Upon receipt, the Agent shall deposit such proceeds into the Project Account, the Cost of Issuance Account and the Interest Subaccount in the Bond Account as provided for herein and as designated in writing by Lebanon Mason BH LLC (together with any permitted transferee of the Bonds, the "Original Purchaser").

**2.2 Project Account.** There will be deposited into the Project Account from the proceeds of the Bonds not deposited in the Interest Subaccount in the Bond Account pursuant to Section 2.3 hereof or in the into the Cost of Issuance Account pursuant to Section 2.6 hereof. Moneys in the Project Account shall be disbursed on the written order of the Authorized Village Representative, in the form of Exhibit B hereto, given by the Authorize Village Representative to the Agent upon receipt by the Authorized Village Representative of a Written Requisition executed by the Authorized Developer Representative pursuant to the Infrastructure Agreement to pay the Purchase Price for a portion of the Costs of Work of the Public Improvements, subject to compliance by the Owner of all conditions thereto in the Infrastructure Agreement. The Agent shall only be responsible for the disbursement of moneys in the Project Account upon receipt of a written order of the Authorized Village Representative in the form of Exhibit B hereto and shall have no responsibility for the truth, accuracy or completeness of the related Written Requisition or any obligation to determine whether the Owner complied with the conditions thereto in the Infrastructure Agreement.

**2.3 Bond Account.**

(a) **Interest Subaccount and Principal Subaccount.** The Interest Subaccount and the Principal Subaccount in the Bond Account, and the moneys and Eligible Investments therein, shall be used solely and exclusively for the payment of interest and principal, respectively, on the Bonds as they become due at stated maturity, by redemption or otherwise, all as provided herein and in the Bond Legislation; provided, that no part thereof shall be used to redeem any Bonds prior to maturity, except at the direction of the Village.

(b) There will be deposited into the Interest Subaccount in the Bond Account from the proceeds of the Bonds the sum of up to \$-0-. That amount, representing capitalized interest on the Bonds, shall be held by the Paying Agent and applied to the payment of interest on the Bonds when due.

(c) Anything herein to the contrary notwithstanding, money available in the Bond Account shall be used in the following order to pay Bond Service Charges with respect to the Bonds when due:

FIRST: Amounts available in the Bond Account;

SECOND: Other Revenues available to the Agent.

The Village authorizes and directs the Agent to cause withdrawal of moneys from the Bond Account which are available for the purpose of paying, and are sufficient to pay, the principal of and interest and any premium on the Bonds as they become due and payable (whether at stated maturity or by redemption), for the purposes of paying such Bond Service Charges when due.

**2.4     [Reserved].**

**2.5     Project Account.** Any moneys and Eligible Investments to the credit of the Project Account or any subaccount thereof shall constitute a part of the Revenues pledged to the Agent as security for the payment of the Bond Service Charges and, except for application thereof to the uses and purposes authorized herein, the Village shall have no interest whatsoever in the moneys or investments in the Project Account or any subaccount thereof. The Agent shall cause to be kept and maintained adequate records pertaining to the Project Account and each subaccount thereof and all disbursements therefrom.

**2.6     Cost of Issuance Account.** There will be deposited into the Cost of Issuance Account from the proceeds of the Series 2012 Bonds the sum of up to \$101,000.00 to be distributed on the Closing Date by the Village to the parties and in the amounts set forth on Exhibit C hereto.

**ARTICLE III**  
**COVENANTS**

**3.1     Covenants of Village.** The Village covenants with the Holders of the Bonds and the Agent as follows:

(a)     Payment of Principal and Interest. The Village will, but without pledging its full faith, credit or taxing power and solely from the sources herein provided, pay, solely from the Service Payments on deposit in the TIF Fund, the principal of and premium, if any, and interest on every Bond on the dates and at the places and in the manner mentioned in the Bonds, according to the true intent and meaning thereof.

(b)     Best Efforts of Village to Perform Service Agreement. The Village covenants and agrees with the Holders of the Bonds to take no action to cause the Service Payments to be terminated or to cause the obligations of the Village under the Service Agreement to be impaired.

(c)     Performance of Covenants, Authority and Actions. The Village will faithfully observe and perform at all times all agreements, covenants, undertakings, stipulations and provisions contained in the Bond Legislation, this Agreement and the Bonds, and in all proceedings of the Council of the Village pertaining to the Bonds; provided that neither the Village's elected or appointed officials, officers, legal counsel, employees, independent contractors nor agents shall be personally liable hereunder. The Village represents and warrants that it is duly authorized by the Constitution and the laws of the State of Ohio, particularly Sections 5709.40 through 5709.43 of the Ohio Revised Code, to issue the Bonds authorized hereby

and to execute this Agreement, and to pledge the Revenues in the manner and to the extent herein and in this Agreement set forth; that all actions on its part for the issuance of the Bonds and execution and delivery of this Agreement, including those preliminary proceedings required by Sections 5709.40 through 5709.43, Ohio Revised Code, have been duly and effectively taken and that the Bonds in the hands of the Holders thereof are and will be legal, valid, and binding special obligations of the Village enforceable according to the terms thereof. All of the obligations and duties of the Village and its officers in its behalf, under the Bonds, the Bond Legislation and this Agreement are hereby established as duties specifically enjoined by law and resulting from an office, trust or station of the Village and its officers within the meaning of Section 2731.01, Ohio Revised Code; provided that neither the Village's elected or appointed officials, officers, legal counsel, employees, independent contractors nor agents shall be personally liable hereunder.

(d) Other Pledges. Except in respect to the compensation payable to the School, the Village has not heretofore made or suffered to exist any pledges of or liens on the Revenues.

(e) Public Records. The Village will cause this Agreement and any amendments or supplements thereto and all necessary financing statements, amendments thereto, continuation statements and instruments of similar character relating to the pledges made by it to secure the Bonds, to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the Holders of the Bonds and the rights of the Agent under this Agreement.

(f) Compliance with Law. The Village shall comply with all laws, rules and regulations of governmental agencies, including the Treasury Department of the United States of America, applicable to the Project, or the Bonds. In particular, but without limiting the generality of the foregoing, the Village shall comply with the requirements of Sections 103 and 141-150 of the Code.

(g) No Additional Superior Lien Bonds. The Village covenants not to issue any other obligations superior in lien on the Revenues to the Bonds secured by this Agreement. The Bonds secured hereby shall have a first lien on the Revenues, subject to the compensation payable to the School, and no other obligation shall be superior to the Bonds secured by this Agreement.

#### **ARTICLE IV**

#### **REMEDIES OF THE AGENT AND HOLDERS**

**4.1 Events of Default Defined.** The following events shall be events of default under this Agreement and the term "Event of Default" shall mean one of the following events:

(a) default shall be made in the payment of any interest on any Bond, when and as the same shall have become due and payable; or

(b) default shall be made in the payment of the principal or premium, if any, of any Bonds, when and as the same shall have become due and payable, whether at maturity, upon redemption or otherwise; or

(c) default shall be made in the making of any payment to the Bond Account in accordance with the provisions of the Bond Legislation and such default shall have continued for a period of thirty (30) days; or

(d) default shall be made in the due performance or observance of any other covenant, condition or agreement on the part of the Village in the Bonds, the Bond Legislation or in this Agreement contained, and such default shall have continued for a period of thirty (30) days after written notice specifying such default and requiring the same to be remedied shall have been given to the Village by the Agent, whose duty it shall be to give such notice at the written request of the holders of at least twenty-five per cent (25%) of principal amount of the Bonds then outstanding.

**4.2 Enforcement and Protection of Rights.** In case of the happening of any event of default, the Agent may, and upon the written request of the holders of at least twenty-five percent (25%) in principal amount of the Bonds then outstanding, and upon being indemnified to its satisfaction, shall take all steps needful to protect and enforce its rights and the rights of the holders of the Bonds, and may take appropriate judicial proceedings by action, suit or otherwise as the Agent, being advised by counsel, shall deem most expedient in the interest of the holders of the Bonds.

**4.3 Remedial Action in Name of Agent.** All rights of action under this Agreement or under any of the Bonds may be enforced by the Agent without possession of any of the Bonds and without production thereof at any trial or other proceeding relative thereto. Any such suit or proceeding instituted by the Agent shall be for the ratable benefit of the holders of the Bonds outstanding hereunder.

**4.4 Waiver of Default.** The Agent, upon the written request of the holders of a majority in principal amount of the Bonds at the time outstanding, shall waive any default hereunder and its consequences, except for a payment default on the Bonds which shall require the consent of all affected holders of the Bonds. In case of any such waiver, or in case any proceedings taken on account of any such default shall have been discontinued or abandoned or determined adversely to the Agent, then and in every such case, the Village, the Agent and the holders of the Bonds shall be restored to their former positions and rights hereunder respectively.

**4.5 Remedial Action by Holders.** In order to promote and protect the equal and ratable rights of every holder of the Bonds, and to avoid multiplicity of suits, no holder of any Bond shall be entitled to institute any suit, action or proceeding at law or in equity to enforce any rights or remedies granted by this Agreement unless

(a) such holder shall have previously given to the Agent written notice of an event of default as hereinbefore provided;

(b) the Holders of at least twenty-five percent (25%) in principal amount of the Bonds then outstanding shall have made written request upon the Agent, and shall have afforded to it a reasonable opportunity to institute such action, suit or proceeding in its own name;

(c) the Agent shall have been offered security and indemnity satisfactory to it against the costs, expenses and liabilities to be incurred by compliance with such request; and

(d) the Agent, for sixty (60) days after receipt of such notification, request and offer of indemnity shall have neglected to institute any such action, suit or proceeding. Such notification, request and offer of indemnity are hereby declared, in every case, at the option of the Agent, to be conditions precedent to any action or cause of action for foreclosure or for the enforcement of any other remedy hereunder; it being understood and intended that no one or more holders of Bonds shall have any right in any manner whatsoever by his or their action to affect, disturb or prejudice the lien of this Agreement or to enforce any right hereunder except in the manner herein provided; and that all proceedings at law or in equity shall be instituted, had and maintained in the manner herein provided and for the equal and ratable benefit of all holders of the outstanding Bonds.

Nothing in this Agreement or in the Bonds contained, however, shall affect the right of the Holder of any Bond to enforce payment thereof by suit and execution at and after the date of maturity of such Bond specified without reference to, or the consent of, either the Agent or the Holder of any other Bond.

**4.6 Remedies to be Cumulative.** No remedy herein conferred upon or reserved to the Agent or to the Holders of the Bonds shall be intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or under the Bonds or the Bond Legislation, now or hereafter existing at law or in equity.

**4.7 Delay, Etc.** No delay or omission of the Agent, or of any Holders of the Bonds, to exercise any right or power accrued upon any default, occurring and continuing as aforesaid, shall impair any such right or power or shall be construed as a waiver of any such default or an acquiescence therein; and every power and remedy given by this Agreement to the Agent or the Holders of the Bonds (subject, however, to the provisions of Section 4.5 hereof) may be exercised from time to time as often as may be deemed expedient by the Agent or by the Holders of the Bonds.

## **ARTICLE V**

### **EVIDENCE OF RIGHTS OF HOLDERS**

**5.1 Notices, Etc.** Any notice, demand, request or other instrument required by this Agreement to be signed or executed by Holders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Holders in person or by their agent or agents duly appointed in writing. As a condition to acting hereunder, the

Agent may, but shall not be required to, demand proof of the execution of any such instrument or the fact that any person claiming to be the holder of any Bond is such holder, and may further require the actual deposit of such Bond with the Agent.

**5.2 Manner of Proof.** Proof of the execution of any such notice, demand, request or other instrument, or of the writing appointing such agent, or of the holding by any person of any Bond, shall be sufficiently made for any purpose of this Agreement and shall be conclusive in favor of the Agent and the Village with regard to any action taken under such notice, demand request or other instrument, if made in the following manner:

(a) The place and date of the execution by any person of any such notice, demand, request or other instrument in writing may be proved by the certificate of any notary or other officer in any jurisdiction authorized to take acknowledgments of deeds to be recorded within such jurisdiction, to the effect that the person who signed such notice, demand, request or other instrument acknowledged to him the execution thereof, or by the affidavit of a witness to such execution.

(b) The fact of the ownership of Bonds shall be proved by the registration books maintained by the Agent.

**5.3 Action Binding Upon Future Holders.** Any action taken or permitted by the Agent at the request or with the consent or acquiescence of any person who is at the time the holder of any Bond shall be conclusive and binding upon all future holders thereof

## **ARTICLE VI** **CONCERNING THE AGENT**

**6.1 General.** The Agent hereby accepts the trusts and assumes the duties herein created and imposed upon it. No provision of this Agreement shall be construed to relieve the Agent from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct, subject to the following express terms and conditions:

(a) Prior to the occurrence of an Event of Default of which the Agent has been notified, and after the cure or waiver of all Events of Default which may have occurred,

(i) the Agent undertakes to perform only those duties which are described specifically in this Agreement, and no duties of the Agent shall be implied; and

(ii) in the absence of bad faith on its part, the Agent may rely conclusively, as to the truth of the statements and the accuracy of the opinions expressed therein, upon certificates or opinions furnished to the Agent and which conform to the requirements of this Agreement. The Agent is under a duty to examine any certificates or opinions, which are



required specifically hereunder to be furnished to it, to determine whether they conform to the requirements of this Agreement.

(b) In case an event of Default has occurred and is continuing hereunder, the Agent shall exercise those rights, remedies and powers vested in it under this Agreement and shall use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) Except for its certificate of authentication upon the Bonds, the Agent shall not be responsible for any recital herein or in the Bonds (which recitals shall be deemed to be made solely by the Village) nor shall the Agent be responsible for the execution, filing, recording, validity, priority or extension of this Agreement or of any supplemental Agreement or for the sufficiency of the security, and, except as otherwise expressly provided in this Agreement, the Agent shall not be responsible for the application of the proceeds of the Bonds and shall not be bound to ascertain or inquire as to the performance or observance of any covenants, condition or agreement on the part of the Village but the Agent may require of the Village full information and advice as to the performance of all such covenants, conditions and agreements.

(d) The Agent may authenticate and deliver the Bonds in accordance with the provisions hereof notwithstanding that this Agreement may not have been filed, registered, or recorded at the time of such authentication or delivery.

(e) Unless specifically notified in writing of any default by the holders of not less than twenty-five percent (25%) in principal amount of the Bonds then outstanding, the Agent shall not be required to take notice of any default hereunder.

(f) Except as otherwise expressly provided in this Agreement, the Agent shall not be under any obligation to take any action towards the execution or enforcement of the trusts hereby created, or to institute, appear in or defend any suit in respect of the Bonds or of this Agreement or of the Revenues unless indemnified, from time to time, to its satisfaction against any expense or liability connected therewith and unless so requested in writing by the holders of a majority in principal amount of the Bonds then outstanding.

(g) Except as otherwise expressly provided in this Agreement, the Agent, in relation to the Revenues and this Agreement, may act upon the opinion or advice of any attorney, appraiser, surveyor, engineer, architect, contractor, accountant or other expert, whether retained or selected by the Agent, the Village or otherwise, and shall be fully protected in any action under this Agreement or the Bonds, taken or suffered to be taken in good faith by it in accordance with any such opinion or advice, and such action so taken or suffered to be taken shall be conclusive and binding upon the Village and upon all holders of the Bonds, and except as otherwise expressly provided in this Agreement the Agent shall be entitled, as to the existence or nonexistence of any fact, to rely upon a certificate of

the Village, signed by its Mayor and/or Fiscal Officer as sufficient evidence of the facts therein contained, and shall also be at liberty to accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient; but, in its discretion, at the reasonable expense of the Village, the Agent in every case may, but shall not be required to, obtain such further evidence as it may deem necessary or advisable.

(h) The Agent shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by persons by whom any such paper or document shall purport to have been signed, sent or delivered.

(i) Except as otherwise expressly provided in this Agreement, wherever herein there is any provision for any security or securities, indemnity or indemnity Bond or surety Bond to be furnished to the Village or to the Agent, the requisite amount, sufficiency, propriety and validity of the same may be determined by the Agent in its sole discretion, and the discretion of the Agent shall be conclusive and binding upon the Village and upon all holders from time to time of the Bonds.

(j) The Agent shall not be answerable for any neglect or default of any expert selected and retained by it, in good faith, pursuant to subsection (e) hereof.

(k) The Agent, in its discretion, is authorized at any time to permit the holder of any Bond to inspect any statement, instrument, opinion or certificate filed with the Agent by the Village or by any person, firm, or corporation acting for the Village.

(l) The Agent may become the owner of Bonds, and may join in any action which any holder of Bonds may be entitled to take, with like effect as though it were not a party to this Agreement. The Agent may act as depositary for, and permit any of its officers or directors to act as a member or members of, or in any other capacity with respect to any committee formed to protect the rights of the holders of the Bonds or to effect or aid in any reorganization growing out of or involving the enforcement of the Bonds or of this Agreement, whether or not any such committee shall represent the holders of a majority in principal amount of the Bonds.

(m) Any moneys received by the Agent under any provision of this Agreement shall be treated by it, until it is required to pay out of the same in conformity herewith, as a general deposit.

(n) The Agent shall be entitled to reasonable compensation (which shall not be limited by any provision of law with regard to the compensation of an Agent of any express trust) for all services by it rendered in the execution of the trusts hereby created and to be reimbursed for all proper outlays of every sort and nature by it incurred in the execution of such trusts.



(o) Except as required by the depositary laws of the State of Ohio and any federal regulation, the Agent shall not be required to give any bond or security with respect to execution of the trusts and powers created by this Agreement.

(p) The Agent shall furnish monthly statements of receipts and disbursements received or made under this Agreement to the Village.

(q) The Agent shall not be bound to recognize any person as a holder of the Bonds until his title to the Bonds which he claims to hold, if disputed, shall have been established to its reasonable satisfaction.

**6.2 Resignation.** The Agent may resign at any time from the trusts hereby created by giving thirty (30) days written notice to the Village. Such resignation shall take effect at the expiration of such thirty (30) days; provided, however, that such resignation shall not become effective until a successor Agent has been appointed and is in place as Agent.

**6.3 Appointment of Successor Agent.** In case the Agent shall resign, or be removed, or be dissolved, or otherwise be or become incapable of acting hereunder, any bank which is a member of the Federal Reserve System may be appointed as successor Agent by the Village, by an instrument executed by order of its council and signed by its Mayor. Upon receipt of notice of resignation, the Village shall thereupon promptly notify by certified mail, prepaid, the registered holders of the Bonds, and shall cause notice of such resignation to be published once in the manner required by law for the publication of ordinances, resolutions and other proceedings of the Village. Like notice shall be given where the Agent is for any reason unable to continue its duties as Agent hereunder. Notwithstanding any other provision of this Agreement, no removal, resignation or termination of the Agent shall take effect until a successor shall be appointed.

**6.4 Merger, Etc.** Any corporation into which the Agent may be merged, or converted, or which it or any successor to it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Agent shall be a party, shall be the successor Agent under this Agreement without the execution or filing of any paper or other act on the part of either of the parties hereto, provided that the corporation resulting from any such merger, conversion or consolidation shall be a bank which is a member of the Federal Reserve System.

**6.5 Successor Agent.** Any successor Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Village an instrument in writing accepting such appointment hereunder, and thereupon such successor Agent, without further act, deed or conveyance, shall become fully vested with all the estate, properties, rights, powers, trusts, duties and obligations of its predecessor; but, nevertheless, such predecessor, on the written request of the Village, or of the successor Agent, shall execute and deliver an instrument or instruments transferring to such successor Agent all the estate, properties, rights, powers and trusts of such predecessor hereunder, and shall duly assign, transfer and deliver all property, securities and moneys held by it as such Agent to its successor. Should any deed, conveyance or instrument in writing from the Village, be

required by any successor Agent for more fully and certainly vesting in such successor Agent, the estate, rights, powers and duties hereby vested in the Agent, the Village, on request, shall duly execute, acknowledge and deliver the same. The resignation of any Agent and appointment of a successor Agent, provided for in this Article VI with respect to such resignation, removal or appointment, shall be filed forthwith for record, at the expense of the Village, in the same office or offices, in which this Agreement shall have been recorded and filed.

**6.6 Authentication of Bonds by Successor Agent.** In case any of the Bonds contemplated to be issued hereunder shall have been authenticated but not delivered, any successor Agent may adopt the certificate of authentication of the original Agent or of any successor to it as Agent hereunder and deliver the said Bonds so authenticated as hereinbefore provided; and in case any of such Bonds shall not have been authenticated, any successor Agent may authenticate such Bonds either in the name of any predecessor or in its own name. In all cases such certificate of authentication shall have the same force and effect as provided in the Bonds or in this Agreement with respect to the certificate of authentication of the Agent.

## **ARTICLE VII**

### **SUPPLEMENTAL AGREEMENTS**

**7.1 Supplemental Agreement Not Requiring Consent of Holders.** The Village and the Agent may without the consent of, or notice to, any of the Holders, enter into Agreements supplemental to this Agreement and financing statements or other instruments evidencing the existence of a lien as shall not, in the opinion of the Village and the Agent, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

(a) To cure any ambiguity, inconsistency or formal defect or omission in this Agreement;

(b) To grant to or confer upon the Agent for the benefit of the Holders any additional rights, remedies, powers, or authority that may lawfully be granted to or conferred upon the Holders or the Agent;

(c) To subject additional revenues to the lien and pledge of this Agreement;

(d) To accept additional security and instruments of further assurance with respect to the Revenues;

(e) To add to the covenants and agreements of the Village contained in this Agreement other covenants and agreements thereafter to be observed for the protection of the Holders, or to surrender or limit any right, power or authority reserved to or conferred upon the Village in this Agreement, including the limitation of rights of redemption so that in certain instances Bonds of different series will be redeemed in some prescribed relationship to one another;

(f) To evidence any succession to the Village and the assumption by such successor of the covenants and agreements of the Village contained in this Agreement and the Bonds;

(g) To assure that interest paid on the Bonds (or any of them) shall be excluded, to the full extent permitted by law, from federal income taxes. The rights granted by this subparagraph (g) shall include, but shall not be limited to the right to supplement or amend this Agreement to comply with all applicable requirements with respect to rebate, as the same may exist from time to time;

(h) To provide for the appointment of one or more paying agents for the Bonds; and

(i) To make any other change to this Agreement which, in the judgment of the Agent, does not adversely affect the interests of the Agent or the Holders of the Bonds.

**7.2 Supplemental Agreements Requiring Consent of Holders.** Exclusive of supplemental Agreements referred to in Section 7.1 hereof and subject to the terms and provisions and limitations contained in this Section, and not otherwise, the Village and the Agent, with the consent of the holders of a majority in aggregate principal amount of the Bonds at the time outstanding may execute supplemental Agreements adding any provisions to or changing in any manner or eliminating any of the provisions of this Agreement or any supplemental Agreement or restricting in any manner the rights of the holders of the Bonds; provided, that nothing in this Section shall permit, or be construed as permitting (a) without the consent of the holder of each Bond so affected (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest or redemption premium thereon or (iii) a reduction in the amount or extension of the time of payment of any mandatory sinking fund requirements, or (b) without the consent of the holders of all Bonds then outstanding (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to such supplemental Agreement.

If at any time the Village shall request the Agent to enter into any such supplemental Agreement for any of the purposes of this Section, the Agent shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such supplemental Agreement to be mailed by first-class mail, postage prepaid, to the Original Purchaser of the Bonds, and to all registered holders of Bonds then outstanding at their addresses as they appear on the registration books herein provided for. The Agent shall not, however, be subject to any liability to any Holder by reason of its failure to mail, or the failure of such Holder to receive, the notice required by this Section, and any such failure shall not affect the validity of such supplemental Agreement when consented to and approved as provided in this Section. Such notice shall briefly set forth the nature of the proposed supplemental Agreement and shall state that copies thereof are on file at the office of the Agent for inspection by all Holders.

If within such period, not exceeding one (1) year, as shall be prescribed by the Village, following the mailing of such notice, the Agent shall receive an instrument or instruments purporting to be executed by the holders of not less than a majority in aggregate principal amount of the Bonds then outstanding which instrument or instruments shall refer to the proposed supplemental Agreement described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice as on file with the Agent, thereupon, but not otherwise, the Agent shall execute such supplemental Agreement in substantially such form, without liability or responsibility to any holder of any Bond, whether or not such holder shall have consented thereto.

Any such consent shall be binding upon the holder of the Bond giving such consent and upon any subsequent holder of such Bond and of any Bond issued in exchange therefor (whether or not such subsequent holder thereof has notice thereof), unless such consent is revoked in writing by the holder of such Bond giving such consent or by a subsequent holder thereof by filing with the Agent, prior to the execution by the Agent of such supplemental Agreement, such revocation. At any time after the holders of the required percentage of Bonds shall have filed their consents to the supplemental Agreement, the Agent shall make and file with the Village a written statement that the holders of such required percentage of Bonds have filed such consents. Such written statement shall be conclusive that such consents have been so filed.

If the holders of the required percentage in aggregate principal amount of the Bonds outstanding shall have consented to and approved the execution thereof as herein provided, no holder of any Bond shall have any right to object to the execution of such supplemental Agreement, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Agent or the Village from executing the same or from taking any action pursuant to the provisions thereof.

## **ARTICLE VIII**

### **SUNDRY PROVISIONS**

**8.1     No Benefit to Third Parties Hereunder.** Except as otherwise expressly provided in this Agreement, nothing in this Agreement or in the Bonds is intended or shall be construed to give to any person other than the parties hereto and the holders of the Bonds any legal or equitable right, remedy or claim under or in respect of this Agreement, or under any covenant, condition or provision herein contained, this Agreement and all of its covenants, conditions and provisions being intended to be and being for the sole, exclusive benefit of the parties hereto and of the holders of the Bonds hereby secured.

**8.2     Definitions.** Whenever in this Agreement reference is made to the Village or to the Agent, such reference shall be held to apply with equal effect to the successor, successors or assigns for the time being of the party referred to. Whenever in this Agreement the words "Bond" or "Holder" are used, they shall be held to include the plural as well as the singular number, unless the context otherwise indicates. The terms "majority" shall signify the majority in principal amount of the Bonds at the time

outstanding, whether so expressed or not, include natural persons, firms; associations, corporations, and partnerships unless the context otherwise indicates. The word “holder” shall be construed to include a person in whose name a Bond is registered.

Whenever any consent or approval of the Agent or the holder of any Bond is provided for hereunder, it is specifically agreed that consent or approval in writing is intended. Any amendment hereof may be made only with the written consent of a majority of the holders of the Bonds then outstanding, except for an amendment which would affect the time or amount of any payment secured hereby or the nature of the security hereunder, which amendment may only be made with the written consent of all of the holders of the Bonds affected by such amendment.

Whenever the words “order of the Village” or “request of the Village” are used in this Agreement, unless otherwise expressly provided, they shall be held and construed to mean a written order or a written request signed by the Mayor and whenever any moneys or Bonds are deliverable by the terms hereof to the Village, such delivery or payment shall be made upon the receipt of such a written request.

Whenever any sums are payable to or by the Village, the Agent, the holder of any Bond, or any other party mentioned herein, pursuant to the terms of this Agreement or of the Bonds, and no place of payment is specifically mentioned, such sums are hereby agreed to be payable at the principal office of the Agent.

**8.3 Partial Invalidity.** The invalidity of any one or more phrases, sentences, clauses, or paragraphs of this Agreement shall not affect the remaining portions of this Agreement, or any part thereof, and in the event that one or more of the phrases, sentences, clauses or paragraphs contained herein should be held to be invalid, this Agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs had not been inserted.

**8.4 Written Notice, Etc.** Any written demand, notice, approval, requisition, certificate, instrument, waiver, designation, direction, nomination, or other communications to be made or executed by the Village under any of the provisions of this Agreement with respect to which no specific provision as to the manner of execution is made herein, shall be deemed sufficiently made or executed by the Mayor.

**8.5 Notices.** It shall be sufficient service or giving of any notice, request, complaint, demand or other paper if the same shall be duly mailed by certified mail, return receipt requested, addressed as follows:

|                    |  |
|--------------------|--|
| If to the Village: | Village of South Lebanon, Ohio<br>99 North High Street<br>South Lebanon, OH 45065<br>Attention: Fiscal Officer |
| With a copy to:    | Arik A. Sherk, Esq.<br>Thompson Hine LLP   |

10050 Innovation Drive  
Suite 400  
Dayton, Ohio 45343

If to the Agent:

U.S. Bank National Association  
425 Walnut Street  
Cincinnati, OH 45202  
Attention: Corporate Trust

The Village and the Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent, but no such notice shall thereby be required to be sent to more than two addresses.

**8.6 Suspension of Mail.** If because of the suspension of delivery of first class mail or, for any other reason, the Agent shall be unable to mail by the required class of mail any notice required to be mailed by the provisions of this Agreement, the Agent shall give such notice in such other manner as in the judgment of the Agent shall most effectively approximate mailing thereof, and the giving of that notice in that manner for all purposes of this Agreement shall be deemed to be in compliance with the requirement for the mailing thereof. Except as otherwise provided herein, the mailing of any notice shall be deemed complete upon deposit of that notice in the mail and the giving of any notice by any other means of delivery shall be deemed complete upon receipt of the notice by the delivery service.

**8.7 Payments due on Sundays and Holidays.** In any case where the date of maturity of interest on or principal of the Bonds or the date fixed for redemption of any Bonds shall be a Sunday or a day on which the Agent is required, or authorized or not prohibited, by law (including executive orders) to close and is closed, then payment of such interest or principal and any redemption premium need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

**8.8 Governing Law.** This Agreement and the Bonds are and shall always be construed to be contracts made under and pursuant to the law of the State of Ohio in force at the time of the date hereof, and all terms, covenants, conditions, and provisions hereof and thereof shall be construed according to such laws.

**8.9 Several Counterparts.** In order to facilitate the recording and or filing of this Agreement, the same to be executed in several counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute but one and the same instrument.

[Signature Page Follows]

**IN WITNESS WHEREOF**, the Council of the Village of South Lebanon, County of Warren and State of Ohio, has caused this Agreement to be executed in the name of the Village by its Mayor and Fiscal Officer. U.S. Bank National Association, Cincinnati, Ohio, as Agent, has caused this Agreement to be executed in its name and by a duly authorized signer, all as of the day and year first above written.

**VILLAGE OF SOUTH LEBANON, OHIO**

By: \_\_\_\_\_  
Mayor

By: \_\_\_\_\_  
Village Fiscal Officer

**U.S. BANK NATIONAL ASSOCIATION,**  
Cincinnati, Ohio, as Agent

By: \_\_\_\_\_

Its: \_\_\_\_\_

**APPROVED AS TO FORM:**

VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_  
Date: November \_\_, 2016

924977

Exhibit A

**PROPERTY**

South Lebanon Tax Incentive District No. 1 consists of the following property:

| <u>Owner of Record</u> | <u>Parcel ID #</u> |
|------------------------|--------------------|
| Lebanon Mason, LLC     | 12-01-151-002      |
| Lebanon Mason, LLC     | 12-01-151-006      |
| Lebanon Mason, LLC     | 12-01-151-004      |

See Attached Legal Description



## **LEGAL DESCRIPTION**

### **Tract 1. 42.789 Ac. Sidwell No. 12-01-151-002**

Situated in Sections 1 & 7, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio, and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 63.54 feet to the real point of beginning for this description; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 133.46 feet to an iron pin found; thence continuing along said centerline of said M Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence along a new division line the following seven (7) courses: (1) leaving said south line of said Mason-Morrow-Millgrove Road, with a curve to the right an arc distance of 138.54 feet to an iron pin set; said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; (2) with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; (3) with a curve to the left an arc distance of 991.55 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing of North 82 deg. 20' 26" East, and a chord distance of 984.90 feet; (4) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet; (5) South 64 deg. 32' 14" East a distance of 176.15 feet to an iron pin set; (6) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (7) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48 along a curve to the right an arc distance of 652.11 feet to a point, said curve having a radius of 2183.48 feet, a chord bearing North 11 deg. 28' 40" West and a chord distance of 649.69 feet; thence leaving said west line of said State Route 48, South 67 deg. 02' 20" West a distance of 13.38 feet to a point; thence South 89 deg. 07' 20" West a distance of 542.52 feet to an iron pin set; thence North 32 deg. 52' 40" West a distance of 330.64 feet to the real point of beginning for this description, passing at 280.60 feet to an iron pin found.

Containing in all 42.789 acres (25.229 acres in Section 1 & 17 .560 acres in Section 7), more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

**Tract 2. 22.971 Ac. 12-01-151-006**

Situated in Section 1, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road, South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to an iron pin found; said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road along a new division line, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence continuing along a new division line, with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence continuing along a new division line, with a curve to the left an arc distance of 759.38 feet to an iron pin set at the real point of beginning for this description: said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence continuing along a new division line the following five (5) courses: (1) continuing along said curve to the left an arc distance of 232.16 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing North 73 deg. 32' 01" East and a chord distance of 232.08 feet: (2) along a curve to the right an arc distance of 304.90 feet to an iron pin set, said curve having a radius of 391.50 feet, a chord bearing South 86 deg. 50' 53" East and a chord distance of 297.25 feet: (3) South 64 deg. 32' 14" East a distance of 176 .15 feet to an iron pin set: (4) South 69 deg. 13' 17" East a distance of 300.16 feet to an iron pin set; (5) North 79 deg. 46' 15" East a distance of 249.36 feet to an iron pin set in the west line of State Route 48; thence along said west line of said State Route 48, South 06 deg. 56' 31" West a distance of 168.22 feet to an iron pin found; thence continuing along said west line of said State Route 48, South 48 deg. 45' 05" East a distance of 92.00 feet to an iron pin found; thence leaving said west line of said State Route 48, South 06 deg. 13' 50" East a distance of 50.00 feet to an iron pin found; thence South 09 deg. 13' 10" West a distance of 50.00 feet to an iron pin found; thence South 18 deg. 15' 10" West a distance of 50.00 feet to an iron pin found: thence South 29 deg. 14' 30" West a distance of 65.00 feet to a point: thence South 48 deg. 28' 30" West a distance of 164.00 feet to a point; thence South 35 deg. 48' 30" West a distance of 78.00 feet to a point; thence South 51 deg. 29' 30" West a distance of 214.00 feet to a point: thence South 59 deg. 38' 30" West a

distance of 399.08 feet to a point; thence South 64 deg. 31' 30" West a distance of 258.53 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 24.09 feet to an iron pin set; thence along a new division line the following four (4) courses: (1) North 17 deg. 57' 19" West a distance of 445.19 feet to an iron pin set; (2) North 28 deg. 4' 06" East a distance of 97.00 feet to an iron pin set; (3) North 39 deg. 26' 09" West a distance of 252.71 feet to an iron pin set; (4) North 01 deg. 55' 24" West a distance of 437.24 feet to the real point of beginning for this description.

Containing in all 22.971 Acres, more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6549, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

Less and Except:

Situated in Section 1, Town 4, Range 3, Union Township, the Village of South Lebanon, Warren County, Ohio and being more particularly described as follows:

Commencing at an existing spike at the centerline intersection of Turtlecreek Road and Mason-Morrow-Millgrove Road; thence along the centerline of said Mason-Morrow-Millgrove Road South 71 deg. 28' 59" West, 63.54 feet to the northeast corner of Tract I as conveyed to MMMilgrove Road LLC, as recorded in O.R. 3897, Page 406 of the Warren County Recorder's Office; thence leaving the centerline of Mason-Morrow-Millgrove Road, along the east line of Tract I of said MMMilgrove Road LLC, Tract I, the following three (3) courses:

1. South 32 deg. 53' 01" East, 330.64 feet;
2. North 89 deg. 06' 59" East, 542.52 feet;
3. North 67 deg. 01' 59" East, 13.38 feet to a point in the west right of way of State Route 48;

Thence along the west right of way of said State Route 48, on a curve deflecting to the left having a radius of 2183.48 feet, an arc length of 652.11, having a central angle of 17 deg. 06' 42", chord of said arc bears. South 11 deg. 29' 01" East, 649.69 feet to the northeast corner of Tract 2 of said MMMilgrove Road LLC; thence along the east line of said MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 06 deg. 56' 10" West, 129.49 feet to a set iron pin and the point of beginning; thence continuing along said MMMilgrove Road LLC, Tract 2, and the west right of way of said State Route 48, South 6 deg. 56' 10" West, 38.73 feet to an existing concrete monument and South 48 deg. 45' 26" East, 92.00 feet to the northeast corner of a tract conveyed to the

State of Ohio Department of Natural Resources as recorded in O.R. 52, Page 842 of the Warren County Recorder's Office referenced by an existing concrete monument at South 3.25 feet and East 3.85 feet; thence along said State of Ohio Department of Natural Resources, the following five (5) courses:

1. South 06 deg. 14' 11" East, 50.00 feet to a point being referenced by an existing concrete monument, South 3.20 feet and East 3.78 feet;
2. South 09 deg. 12' 49" west, 50.00 feet to point being referenced by an existing concrete monument at South 3.27 and East 3.82 feet;
3. South 18 deg. 14' 49" West, 50.00 feet to a point being referenced by an existing concrete monument at South 3.31 and East 3.64 feet;
4. South 29 deg. 14' 09" West, 65.00 feet to a point being referenced by an existing concrete monument at 3.94 feet and 3.14 feet;
5. South 48 deg. 28' 09" West 49.11 feet to a set iron pin;

Thence along new division lines through the lands of the grantor, the following four (4) courses:

1. South 86 deg. 38' 36" West, 199.69 feet to a set iron pin;
2. North 03 deg. 21' 24" West, 250.24 feet to a set MAG nail;
3. North 33 deg. 23' 23" East 103.35 feet to a set iron pin;
4. North 86 deg. 38' 36" East, 179.67 feet to the point of beginning.

Containing 2.0000 acres. Subject to legal highways and easements of record.

The above described parcel being part of those lands conveyed to MMMilgrove Road LLC, as recorded at the Warren County Recorder's Office and is further identified as Auditor's Parcel No. 12011510030.

Monuments referred to set iron pins are 5/8 inch diameter x 30-inch long iron bars with a cap marked "G.J. BERDING P.S. 6880".

The bearings are based on State Plane Coordinate Systems, Ohio South Zone, NAD 83.

Based on a plat of survey prepared by G.J. Berding Surveying, Inc., on October 29, 2009. This description was prepared and reviewed on October 29, 2009. Gerard J. Berding, Registered Surveyor Number 6880.

Leaving a remainder of 20.971 acres for Tract 2, more or less.

**Tract 3. 47.972 Ac. 12-01-151-004**

Situated in Sections 1 & 7, Town 4, Range 3, Village of South Lebanon, County of Warren, State of Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Turtlecreek Road (T-72) and the centerline of Mason-Morrow-Millgrove Road (C-38); thence along said centerline of said Mason-Morrow-Millgrove Road; South 71 deg. 29' 20" West a distance of 197.00 feet to an iron pin found; thence continuing along said centerline of said Mason-Morrow-Millgrove Road, North 84 deg. 37' 30" West a distance of 1609.48 feet to a point; thence leaving said centerline of said Mason-Morrow-Millgrove Road, South 06 deg. 18' 40" West a distance of 30.00 feet to the real point of beginning for this description, said point also being in the south line of said Mason-Morrow-Millgrove Road; thence along said south line of said Mason-Morrow-Millgrove Road, South 84 deg. 37' 30" East a distance of 81.57 feet to an iron pin set; thence leaving said south line of said Mason-Morrow-Millgrove Road, with a curve to the right an arc distance of 138.54 feet to an iron pin set, said curve having a radius of 116.14 feet, a chord bearing of South 10 deg. 49' 23" East and a chord distance of 130.47 feet; thence with a curve to the left an arc distance of 1149.68 feet to an iron pin set, said curve having a radius of 593.23 feet, a chord bearing of South 32 deg. 57' 32" East, a chord distance of 978.02 feet; thence with a curve to the left an arc distance of 759.38 feet to an iron pin set, said curve having a radius of 2470.18 feet, a chord bearing of North 85 deg. 01' 59" East, and a chord distance of 756.40 feet; thence South 01 deg. 55' 24" East a distance of 437.24 feet to an iron pin set; thence South 39 deg. 26' 09" East a distance of 252.71 feet to an iron pin set; thence South 28 deg. 45' 06" West a distance of 97.00 feet to an iron pin set; thence South 17 deg. 57' 19" East a distance of 445.19 feet to an iron pin set; thence South 82 deg. 21' 50" West a distance of 140.76 feet to an iron pin set; thence North 89 deg. 02' 40" West a distance of 170.25 feet to an iron pin set; thence South 05 deg. 49' 00" West a distance of 87.60 feet to an iron pin set; thence North 84 deg. 51' 00" West a distance of 444.00 feet to an iron pin set; thence North 83 deg. 46' 00" West a distance of 534.12 feet to an iron pin set; thence South 79 deg. 45' 00" West a distance of 612.46 feet to an iron pin set; thence North 06 deg. 18' 40" East a distance of 2158.88 feet to the real point of beginning for this description.

Containing in all 47.972 Acres (17.315 acres in Section 1 & 30.657 Acres in Section 7), more or less, subject to all legal highways and easements of record.

Prior Deed Reference: Official Record Volume 3231, page 779 of the Warren County Land Records.

This description is a result of a survey prepared by King Hasselbring & Associates, and written by J. Timothy King, PE-PS Registered Surveyor No. 6649, dated May 21, 2003 and revised June 27, 2005, the survey plat of which is filed in Volume 126, Plat No. 40 of the Warren County Engineer's Record of Land Division.

Exhibit B

**FORM OF DISBURSEMENT DIRECTION**

U.S. Bank National Association  
425 Walnut Street  
Cincinnati, OH 45202  
Attn: Corporate Trust

Re: Village of South Lebanon, Ohio \$6,200,000 Tax Increment Revenue  
Bonds, Series 2016 (Riverside Project)

Pursuant to Section 4.3 of the Amended and Restated Infrastructure Agreement (the “Infrastructure Agreement”) between the Village of South Lebanon, Ohio (the “Village”) and Lebanon Mason, LLC (the “Owner”) dated as of October 1, 2016, as amended, the undersigned Authorized Village Representative does direct U.S. Bank National Association, a national banking association (the “Paying Agent”), as depository of the Project Account created by the Paying Agent Agreement and defined in the Infrastructure Agreement, to pay to the Owner or to the person(s) listed on the Written Requisition attached hereto out of the moneys deposited in the Project Account the aggregate sum of \_\_\_\_\_ to pay such person(s) or to reimburse the Owner in full, as indicated in the Written Requisition, for the advances, payments and expenditures made by it in connection with the items listed in the Written Requisition.

This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

VILLAGE OF SOUTH LEBANON, OHIO

\_\_\_\_\_  
Authorized Village Representative

## WRITTEN REQUISITION

[Completed Written Requisition(s) (in the form of Exhibit C of the Infrastructure Agreement) to be attached to each signed Form of Disbursement Direction]

Exhibit C

**SCHEDULE OF COSTS TO BE PAID UPON CLOSING FROM  
COST OF ISSUANCE ACCOUNT**

| <b><u>PAYEE</u></b>                                     | <b><u>AMOUNT</u></b> |
|---|----------------------|
| Paying Agent Fee, U.S. Bank National Association        | \$ 1,500.00          |
| Financial Advisor Fee, Ross, Sinclair & Associates, LLC | \$ 25,000.00         |
| Thompson Hine, LLP, Issuer Counsel                      | \$ 44,500.00         |
| Keating Muething & Klekamp PLL, Bond Counsel            | \$ 30,000.00         |



November \_\_, 2016

Village of South Lebanon, Ohio  
99 North High Street  
South Lebanon, OH 45065  
Attention: Fiscal Officer

Re: \$6,200,000 Tax Increment Revenue Bonds, Series 2016 (Riverside Project)

Ladies and Gentlemen:

Lebanon Mason BH, LLC, a Delaware limited liability company (the “Purchaser” or “we”), offers to enter into the following Purchase Agreement with Village of South Lebanon, Ohio (the “Issuer” or “you”), which, upon your acceptance of this offer and subject to Paragraph 6 hereof, shall be binding upon both the Issuer and the Purchaser. This offer is made subject to your acceptance of this Purchase Agreement on or before the close of business on the date hereof and, if not so accepted, will be subject to withdrawal by the Purchaser upon notice delivered to your office at any time prior to your acceptance hereof. The above-captioned Bonds (the “Bonds”) are to be issued pursuant to Ordinance No. 2016-16, the Council of the Village of South Lebanon, Ohio (the “Bond Ordinance”). Unless otherwise indicated, each capitalized term contained herein shall have the meaning assigned to it in the Bond Ordinance and the Amended and Restated Infrastructure Agreement dated as of October 1, 2016, between we and you (as amended from time to time, the “Infrastructure Agreement”).

1. Upon the terms and conditions and upon the basis of the representations, warranties and covenants set forth herein, the Purchaser hereby agrees to purchase the Bonds at par or such lesser amount that is equal to the total disbursements of the proceeds of the Bonds made by the Village pursuant to the Infrastructure Agreement for the payment of a portion of the Purchase Price for Costs of Work for the Public Improvements (the “Bond Purchase Price”). We shall pay to the Village, as a condition to each disbursement of the Bonds under the Infrastructure Agreement, an amount equal to each such disbursement, which shall be credited against the payment of the Bond Purchase Price of the Bonds and shall be payable in immediately available funds to the order of the Paying Agent for the account of the Village. If the total principal amount of the Bonds is not disbursed on or prior to October 1, 2019 or such later date as may be agreed to by the Mayor of the Issuer with the consent of the Village Council which may be withheld, conditioned or delayed in the sole discretion of the Village Council (the “Disbursement Termination Date”), (i) the principal amount of the Bonds shall be reduced by the amount of undisbursed proceeds of the Bonds on the date following the Disbursement Termination Date, and (ii) the final aggregate Bond Purchase Price of the Bonds will total 100% of the principal amount of the proceeds of the Bonds that were actually disbursed on or prior to the Disbursement Termination Date.

2. Disbursements of the Bonds shall be deposited as follows: (a) On the Closing Date (defined *infra*), a disbursement of \$101,000.00 shall be made and deposited into the Cost of Issuance Account related to the Series 2016 Bonds, as such account is established under the Bond Ordinance and that certain Agreement Relating to Paying Agency, Registrar and Transfer Agency dated as of November 1, 2016 (“Paying Agent Agreement”), between the Village and U.S. Bank National Association, as paying agent for the Bonds (the “Paying Agent”), (b) on and after the Closing Date, but not later than Disbursement Termination Date, one or more disbursements may be made in

an aggregate principal amount not to exceed \$100,000.00 for deposit into the Interest Subaccount of the Bond Account established under the Bond Ordinance and the Paying Agent Agreement, and (c) on and after the Closing Date, but not later than Disbursement Termination Date, one or more disbursements may be made in an aggregate principal amount not to exceed the balance of the proceeds of the Bonds not disbursed and deposited in accordance with subsections (a) and (b) hereof for deposit into the Project Account established under the Bond Ordinance and the Paying Agent Agreement, all for the purposes set forth in the Bond Ordinance.

3. Simultaneously with the execution of this Purchase Agreement, the Issuer will deliver or cause to be delivered to the Purchaser copies of the Bond Documents (defined *infra*) in substantially final form, duly approved and adopted and to be in full force and effect upon execution and delivery by the parties hereto.

4. The Issuer represents and warrants to and agrees with the Purchaser that it shall so represent and warrant as of the date the Bonds are purchased (such date referred to herein as the "Closing Date") that:

(a) The Issuer is a municipal corporation and political subdivision of the State of Ohio, organized and existing under the Constitution and laws of the State of Ohio, and is duly authorized by the Constitution and laws of the State of Ohio, including particularly and without limitation Section 5709.40 et seq. of the Ohio Revised Code, to execute and issue the Bonds

(b) The Issuer has complied, and reasonably expects, in all respects on the Closing Date to be in compliance with all of the provisions of applicable State law.

(c) The Issuer, prior to the acceptance hereof, has duly adopted the Bond Ordinance, and the Issuer has duly authorized and approved the execution and delivery of this Purchase Agreement and the Paying Agent Agreement (collectively, the "Bond Documents"), as well as the performance of its obligations contained in the Bonds and the consummation by it of all other transactions contemplated hereby.

(d) The Issuer is not in breach of or default under any applicable law or administrative regulation of the State, any department, division, agency or instrumentality thereof, or of the United States or any applicable judgment or decree or any loan agreement, Bond, bond, certificate, agreement or other instrument to which the Issuer is a party or is otherwise subject which breach or default would materially and adversely affect the Issuer or its ability to perform its duties and obligations under the Bond Documents; and the execution and delivery of this Purchase Agreement, the adoption of the Bond Ordinance, the execution of the Bond Documents and the execution and the issuance of the Bonds and compliance with the provisions of each thereof will not conflict materially with or constitute a breach of or default under any applicable law or administrative regulation of the State of Ohio or under any certificate, agreement, or other instrument to which the Issuer is a party or is otherwise subject which breach or default would materially and adversely affect the Issuer, its Bond Documents or its ability to perform its duties and obligations under the Bond Documents.

(e) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction that would constitute a condition precedent to the performance by the Issuer of its obligations hereunder and under the Bond Documents and the Bonds have been, or prior to the Closing Date will have been, obtained.

(f) No litigation is pending or, to the knowledge of the Issuer, threatened in any court in any way affecting the existence of the Issuer or the title of the members of the Issuer to their respective offices or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection or pledge of any revenues pledged or to be pledged under the Bond Documents to pay the principal of and interest on

the Bonds (the “Revenues”), or in any way contesting or affecting the validity or enforceability of the Bonds or any Bond Document, or contesting the powers of the Issuer or its members with respect to the Bonds.

(g) The Issuer will apply, or cause to be applied, the proceeds of the Bonds in accordance with the applicable terms of the Bond Documents.

(h) On the Closing Date, the Purchaser shall receive a copy of each of the following documents, each dated the Closing Date:

(i) a certified copy of the Bond Ordinance;

(ii) a certificate of an authorized officer of the Issuer that the Bond Ordinance is in full force and effect;

(iii) an opinion of bond counsel, Thompson Hine LLP (“Bond Counsel”), dated the Closing Date, to the effect that the Bonds constitute valid and binding special obligations of the Village in accordance with the terms and provisions thereof, payable solely from the Revenues;

(iv) a certificate, dated as of the Closing Date and signed by an authorized officer of the Issuer, to the effect that (A) the representations, warranties and covenants of the Issuer contained herein are true and correct in all material respects on and as of the Closing Date, with the same effect as if made on the date of the delivery of the Bonds by the Issuer; (B) no litigation is pending or, to its knowledge, threatened in any court in any way affecting the existence of the Issuer or the titles of its officers or directors to their respective positions, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or the collection of any revenues or assets of the Issuer pledged or to be pledged to pay the principal of and premium, if any, and interest on the Bonds, or the pledge thereof, or in any way contesting or affecting the validity or enforceability of the Bonds, the Bond Ordinance, the Paying Agent Agreement or this Purchase Agreement, or contesting the powers of the Issuer or its authority with respect to the Bonds, the Bond Ordinance, or this Purchase Agreement; and (C) the Issuer has complied in all material respects with the Bond Ordinance and the terms of the Bonds and satisfied all material conditions on its part to be performed or satisfied at or prior to the delivery of the Bonds;

(v) a cross receipt by the Issuer as to the delivery of the Bonds and the receipt of payment for the Bonds; and

(vi) such additional certificates, instruments or opinions as the Purchaser may deem necessary or desirable.

All certificates, instruments, opinions and documents referred to above and any Bond Ordinances shall be in form and substance satisfactory to Bond Counsel, the Issuer and the Purchaser.

If the obligations of the Purchaser shall be terminated for any reason permitted hereby, neither the Purchaser nor the Issuer shall be under further obligation hereunder.

5. On the Closing Date, the Issuer will deliver to the Purchaser a single Bond in definitive fully registered form duly executed, registered in the name of the Purchaser together with the other documents hereinabove mentioned. Delivery as aforesaid shall be made in Cincinnati, Ohio, for the consideration and payment set forth in Section 1 hereof and such payment shall be made simultaneously therewith. This payment and delivery is herein called the “Closing.”

6. Unless otherwise set forth herein, the representations and agreements in this Purchase Agreement shall survive the delivery of the Bonds hereunder.

7. The Purchaser's obligation hereunder to purchase the Bonds shall be subject to the performance by the Issuer of its obligations hereunder in all material respects at or prior to the Closing and the accuracy in all material respects of the Issuer's representations and warranties contained herein and shall also be subject to the following conditions:

(a) At the time of the Closing, the Bond Ordinance and all related documents of the Issuer with respect to the issuance of the Bonds shall be in full force and effect and shall not have been amended, modified or supplemented, except as may have been agreed to by the undersigned.

(b) The Purchaser may terminate this Purchase Agreement by notification in writing to the Issuer if at any time subsequent to the date hereof and at or prior to the Closing: (i) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission shall be issued or made to the effect that the issuance, offering or sale of the Bonds without registration thereof or obligations of the general character of the Bonds is in violation of any provision of the Securities Act of 1933 or of the Trust Indenture Act of 1939; (ii) in the Congress of the United States, legislation shall be enacted or a bill shall be favorably reported out of committee of either house, or a decision by a court of the United States shall be rendered, or a ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made, to the effect that securities of the issuer or of any similar body are not exempt from the registration, qualification or other requirements of the Securities Act of 1933 or the Trust Indenture Act of 1939; (iii) the United States shall have become engaged in hostilities which have resulted in a declaration of war or a national emergency; (iv) there shall have occurred a general suspension of trading on the New York Stock Exchange; or (v) a general banking moratorium shall have been declared by the United States, State of New York, or State of Ohio authorities.

(c) The Issuer shall perform or have performed in all material respects at or prior to the Closing all of its obligations required under or specified in this Purchase Agreement and the Bond Ordinance to be performed at or prior to the Closing.

8. Purchaser shall pay, on the Closing Date, the cost of the preparation and printing of the Bonds, if any, that are not paid from proceeds of the Bonds, and shall deliver to the Issuer an investment letter in form and content acceptable to the Issuer.

9. The agreements and all representations and warranties herein set forth have been and are made for the benefit of the Purchaser and the Issuer, and no other person shall acquire or have any right under or by virtue of this Purchase Agreement.

10. The Purchaser hereby acknowledges and agrees that:

(a) THE BONDS ARE NEGOTIABLE INSTRUMENTS BUT DO NOT CONSTITUTE GENERAL OBLIGATIONS OF THE ISSUER AND THE GENERAL CREDIT AND TAXING POWER OF THE ISSUER ARE NOT PLEDGED PAYMENT THEREOF, OR ANY PART THEREOF, OR THE INTEREST THEREON, AND THE BONDS ARE PAYABLE AS TO PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ONLY FROM THE REVENUES.

(b) No recourse shall be had for the payment of the Revenues or for any claim based on this Purchase Agreement or the Bonds against any officer of the Issuer or any member of the Council of the Issuer, past, present or future, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitution, statute or otherwise, of officers or members of the Council as such, being released as a condition of and in consideration for the execution of this Purchase Agreement.

(c) Neither the Bonds, nor any portion of, rights under or interest in the Bonds, shall be sold, assigned or transferred except to a single holder holding the entire outstanding principal amount of the Bonds and only if the paying agent for the Bonds shall first have received prior written approval from the Mayor of the Issuer (with the consent of the Village Council, which consent may be withheld, conditioned or delayed in the sole discretion of the Village Council). It is hereby expressly stated, however, that the restrictions on sale, assignment or transfer contained in this paragraph do not apply to any pledge or hypothecation of the Bonds made by the Purchaser to a financial institution, and that the Issuer hereby consents to such a pledge or hypothecation; provided, however, the aforementioned restrictions on sale, assignment or transfer will apply to any sale, assignment or transfer made by such financial institution, or successors or assigns, if it becomes the holder of the Bonds as a result of any such pledge or hypothecation.

[Balance of Page Intentionally Omitted]

11. This Purchase Agreement is the "Bond Purchase Agreement" referred to in the Bond Ordinance and shall become effective upon the execution of the acceptance hereof by an authorized officer of the Issuer and shall be valid and enforceable as of the time of such acceptance.

Respectfully submitted,

LEBANON MASON BH LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACCEPTANCE**

ACCEPTED this \_\_\_\_ day of November, 2016.

VILLAGE OF SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Mayor

By: \_\_\_\_\_

Village Fiscal Officer

**APPROVED AS TO FORM:**

VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: November \_\_\_, 2016

924976

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2016-\_\_\_\_**

**A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL  
OFFICER TO EXECUTE AN ADDENDUM TO AGREEMENT WITH CHOICE ONE  
ENGINEERING FOR ENGINEERING SERVICES RELATIVE TO THE FISCAL  
YEAR 2016 HIGH STREET RECONSTRUCTION PROJECT IN THE VILLAGE OF  
SOUTH LEBANON, AND DECLARING AN EMERGENCY**

**WHEREAS**, the Village passed Resolution No. 2016-18 and entered into an agreement with Choice One Engineering on June 16, 2016 for engineering services for the High Street Reconstruction Project ("initial Agreement"); and,

**WHEREAS**, additional onsite inspection services above and beyond the amount planned in the original agreement are required to complete the project; and,

**WHEREAS**, in accordance with the attached Addendum, Choice One Engineering is requesting an additional \$1,680.00; and,

**WHEREAS**, the Village desires to utilize the additional inspection services of Choice One Engineering to ensure proper completion of the project; and,

**WHEREAS**, immediate action is required to maintain continuous inspection services for the Project, 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 an Addendum with Choice One Engineering, a copy of which is attached hereto, and further authorize the Mayor and Fiscal Officer to execute the Addendum on behalf of the Village.

**Section 2.** That the Council is acting in its administrative capacity in passing this Resolution.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** 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 5.** 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 3<sup>rd</sup> day of November, 2016.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

|  |                          |
|--|--------------------------|
| Rules Suspended: / /2016 (if applicable) | Effective Date – / /2016 |
| Vote - ____ Yeas<br>____ Nays            |                          |
| First Reading – / /2016                  | Effective Date – / /2016 |
| Second Reading – / /2016                 |                          |
| Third Reading– / /2016                   |                          |
| Vote - ____ Yeas<br>____ Nays            |                          |

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_  
Date: \_\_\_\_\_





**Date**

October 28, 2016

**Attention**

Jerry Haddix  
Village Administrator

**Address**

Village of South Lebanon  
99 N. High Street  
South Lebanon, OH 45065

**Subject**

Amendment to Agreement for Professional Services  
High Street Reconstruction – Pike to Forrest  
WAR-SLE-1601

## Dear Mr. Haddix:

The Agreement referred to herein was executed on June 16, 2016 between the Village of South Lebanon, hereinafter referred to as Client and Choice One Engineering Corporation, hereinafter referred to as Choice One.

This Agreement is hereby modified by mutual consent and agreement as followed.

Please execute two original Agreement Amendments, keep one for your files and send one to Choice One.


If you have any questions, please feel free to give us a call.

**Village of South Lebanon**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Date

**Choice One Engineering Corporation**

  
\_\_\_\_\_  
Nicholas J. Selhorst, P.E., Project Manager

10/28/2016

Date

**West Central Ohio**  
440 E. Hoewisher Rd.  
Sidney, OH 45365  
937.497.0200 Phone

**S. Ohio/N. Kentucky**  
203 W. Loveland Ave.  
Loveland, OH 45140  
513.239.8554 Phone

**Eastern Indiana**  
607 N. Meridian St.  
Portland, IN 47371  
260.766.2500 Phone



# Scope of Services

## Project Services

The Scope of Services will be expanded to include the following:

### 2. Construction Supervision

- a. Extend the amount of periodic construction observation by 21 hours.
- b. Initially the contract was to perform periodic construction observation (estimated initially at three times a week for 3 hours a day depending on activity) to review project progress and observe construction as compared to the construction plans. That initial budget has been met so more needs authorized for the last 3 weeks to finish out the project.

# Compensation & Schedule

## Compensation

This amendment of \$1,680.00 to the original compensation schedule is for the additional services described within. The total Agreement compensation schedule will be amended from \$20,890.00 to \$22,570.00.

| Task                     | Additional Fee    | Additional Fees From Previous Amendments | Original Fee       | Total              |
|--------------------------|-------------------|--|--------------------|--------------------|
| Design & Specifications  | \$0.00            | \$0.00                                   | \$15,410.00        | \$15,410.00        |
| Construction Supervision | \$1,680.00        | \$0.00                                   | \$5,480.00         | \$7,160.00         |
| <b>Total</b>             | <b>\$1,680.00</b> | <b>\$0.00</b>                            | <b>\$20,890.00</b> | <b>\$22,570.00</b> |

## Schedule

The above service will commence after receipt of the executed Agreement Amendment and be completed within thirty (30) days.

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2016-34**

**A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL  
OFFICER TO EXECUTE AN AGREEMENT WITH GRW INC. TO PREPARE A  
WATER AND SANITARY SEWER RATE STUDY**

**WHEREAS**, based on a rate study conducted by an independent consultant, the Village Council adopted Ordinance 2012-14 and 2012-17 which set Village water and sanitary sewer rates, respectively, through December 31, 2016, and,

**WHEREAS**, this Village Council desires to conduct a water and sanitary sewer rate study prior to making any changes to the Village's water and sanitary sewer rate structure; and,

**WHEREAS**, Village staff recommends GRW Inc. to perform said study; and,

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

**Section 1.** That the Council approves and authorizes the Mayor and Fiscal Officer to execute an Agreement with GRW, Inc., as attached hereto.

**Section 2.** That the Council is acting in its administrative capacity in adopting this Resolution.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of 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.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

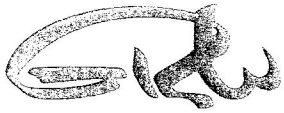
|  |                          |
|--|--------------------------|
| Rules Suspended: / /2016 (if applicable) | Effective Date – / /2016 |
| Vote - ____ Yeas<br>____ Nays            |                          |
| First Reading – / /2016                  | Effective Date – / /2016 |
| Second Reading – / /2016                 |                          |
| Third Reading– / /2016                   |                          |
| Vote - ____ Yeas<br>____ Nays            |                          |

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_\_/\_\_\_\_/2016



GRW | engineering | architecture | geospatial  
801 Corporate Drive | Lexington, KY 40503  
859.223.3999 | [www.grwinc.com](http://www.grwinc.com)

September 23, 2016

Honorable Jim Smith  
Mayor, Village of South Lebanon  
99 North High Street  
South Lebanon, OH 45065

Re: Engineering Services Proposal for Preparation of Separate Water Utility and Wastewater Utility Rate Studies

Dear Mayor Smith,

As we recently discussed with Jerry Haddix, we are pleased to provide this engineering services proposal for the preparation of a Water Utility Rate Study and a Wastewater Utility Rate study for the Village of South Lebanon:

| Task                                  | Proposed Fee |
|---------------------------------------|--------------|
| Prepare Water Utility Rate Study      | \$12,000     |
| Prepare Wastewater Utility Rate Study | \$12,000     |
| Total                                 | \$24,000     |

The proposed rate studies would compile historical utility revenues, expenses and current operating costs. That information along with possible additional capital expenses would be utilized to project future revenue requirements for each utility. We would expect to receive the following historical data from South Lebanon for the past five (5) years (2012 – 2016) including:

- Water Purchased/Wastewater Treatment Purchased (Total Annual)
- Utility Revenues
- Utility Operation and Maintenance Expenses
- Utility Debt Service
- Utility Capital Expenses.

The historical data will be used to project future utility revenues and expenses for the next five years (2017 – 2021). South Lebanon would also furnish any anticipated capital improvements projects over the next five years. We will work together with you and your staff to develop future projections of utility operation and maintenance costs, debt service, capital expenses and required revenues (and associated rates) that would be needed to meet current and future bond coverage requirements.



Please call me if you have any questions concerning this matter.

If this proposal is acceptable to the Village of South Lebanon, please execute and return one (1) copy.

Respectfully yours,

A handwritten signature in cursive script, reading "Bob Smallwood".

Bob Smallwood, P.E.  
Vice President

ACCEPTED BY:

---

Village of South Lebanon

RCS/rb

Enclosure

## **Study Outline Water Utility Rate Study**

1. Purpose of Study
2. Background
3. Existing Water Utility Rate Structure
4. Review of Historical Revenues and Expenses (2012 – 2016)
5. Projected Revenues and Expenses without Rate Adjustment (2017 – 2021)
6. Projected Revenues and Expenses with Rate Adjustment (2017 – 2021)
7. Summary
8. Conclusions

### Appendices:

- Bond Debt Amortization Schedule
- Oakwood Annual Combined Water and Sewer Rate Survey  
(for comparison with other Southwest Ohio utilities)

**Study Outline**  
**Wastewater Utility Rate Study**

1. Purpose of Study
2. Background
3. Existing Wastewater Utility Rate Structure
4. Review of Historical Revenues and Expenses (2012 – 2016)
5. Projected Revenues and Expenses without Rate Adjustment (2017 – 2021)
6. Projected Revenues and Expenses with Rate Adjustment (2017 – 2021)
7. Summary
8. Conclusions

Appendices:

- Bond Debt Amortization Schedule
- Oakwood Annual Combined Water and Sewer Rate Survey  
(for comparison with other Southwest Ohio utilities)



**VILLAGE OF SOUTH LEBANON, OHIO**  
**ORDINANCE NO. 2016-\_\_\_\_**

**AN ORDINANCE AMENDING ORDINANCE NO. 2007-15 IN ITS ENTIRETY  
REGARDING THE TEXT OF THE VILLAGE OF SOUTH LEBANON'S PERSONNEL  
POLICY AND PROCEDURE MANUAL**

**WHEREAS**, with the assistance of human resources consultant, Clemans Nelson & Associates, the Village created and the Council approved Village Ordinance No. 2007-15 on November 20, 2007, placing in effect the first Personnel Policy and Procedure Manual for the Village's employees; and,

**WHEREAS**, Clemans Nelson & Associates recently reviewed and recommended certain text amendments to the Village's Personnel Policy and Procedure Manual in order to comply with new employment laws; and,

**WHEREAS**, the Village's Personnel Committee and this Council have reviewed and approved the recommended changes by Clemans Nelson & Associates, as well as made additional recommendations incorporated by the Village Personnel Committee and Village Staff; and,

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

**Section 1.** That the Council does hereby amend Resolution No. 2007-15 in its entirety, with the attached copy hereto which is incorporated by reference herein being approved as the Village's Personnel Policy and Procedure Manual.

**Section 2.** That the Council is acting in its legislative capacity in adopting this Ordinance.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Ordinance 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      day of      , 2016.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk   James D. Smith, Mayor

|  |                              |
|--|------------------------------|
| Rules Suspended:   /   /2016 (if applicable) | Effective Date –   /   /2016 |
| Vote - ____ Yeas<br>____ Nays                |                              |
| First Reading –   /   /2016                  | Effective Date –   /   /2016 |
| Second Reading –   /   /2016                 |                              |
| Third Reading–   /   /2016                   |                              |
| Vote - ____ Yeas<br>____ Nays                |                              |

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_\_\_

**PERSONNEL POLICY AND  
PROCEDURE MANUAL**

**FOR**

**THE VILLAGE OF  
SOUTH LEBANON**

**2016**

**Prepared By:**

**CLEMANS, NELSON & ASSOCIATES, INC.**

**485 Metro Place South, Suite 200**

**Dublin, Ohio 43017**

**(614) 923-7700 / (800) 282-0787**

**[www.clemansnelson.com](http://www.clemansnelson.com)**

**(Rev. 08/2013)**

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## INTRODUCTION

## SECTION 1.01

Policies are defined as the basic rules which guide administrative action in accomplishing an organization's objectives. Comprehensive and clearly defined policies, which are consistently and fairly administered, are essential to the success of any organization.

This manual contains those policies set forth for employees of the Village of South Lebanon, Ohio. All personnel charged with the responsibility of administering policy must be thoroughly familiar with the contents of this manual. Furthermore, it is essential that these policies be administered in a systematic, fair, and impartial manner.

It is the responsibility of each Village employee to familiarize himself/herself with the policies contained in this manual and to comply with their administration. Employees should address questions of policy interpretation to their department head or other designated personnel. All employees will receive a copy of the manual for their personal use. However, the manuals are the property of the Village and must be returned by the employee whenever his/her employment is terminated, either voluntarily or involuntarily. Employees will also be required to sign a statement acknowledging receipt of the manual and their responsibility in familiarizing themselves with the policies contained in the manual and the return of the manual at the end of their employment.

Undoubtedly, there will be situations which require administrative interpretations of the policies set forth in this manual. An effort must be made to ensure that such decisions are made as objectively and consistently as possible, keeping the general intent of the policy in mind.

As conditions change within the Village, it may be necessary to add, delete, or revise specific policies which have been affected by such change. Amended or supplementary policies will be issued to all employees.

The policies set forth in this manual supersede all previously written and unwritten Village personnel policies. In the event there is a conflict between the policies set forth in this manual and any applicable law, the applicable law will prevail.

**The policies outlined in this manual are presented as a matter of information only, and may be changed at any time by the employer. This manual is not an expressed or implied employment contract. No representative of the employer has the authority to enter into an agreement with any employee that is contrary to the foregoing.**

If any section of this manual or any amendment thereto is held invalid by operation of law or by a court of competent jurisdiction, or compliance with, or enforcement of any section of this manual is restrained by such court, the remainder of the manual and any amendment thereto shall not be affected and shall remain in full force and effect.



**DEFINITIONS / ABBREVIATIONS****SECTION 1.02**

For the purpose of this manual, the following words or phrases shall be defined as outlined below. The only exceptions shall be when a specific word or phrase is redefined for the purpose of a particular policy.

Absent Without Leave: Failure to report for or be at work without any authorization from the employer to be absent.

Active Pay Status: The conditions under which an employee is eligible to receive pay, including time actually worked, vacation time, holidays, and paid sick leave, paid funeral leave, paid military leave, or paid court leave.

ADA: Americans with Disabilities Act.

Appointing Authority: The Village official, or body, who has the power to appoint (hire) or terminate Village employees.

Classification: A group of positions that involve similar job duties and responsibilities; require similar qualifications, and which are properly designated by a common descriptive title indicating the general nature of the work. A classification may include only one (1) position in some circumstances.

Continuous Service: The uninterrupted service of an employee with the Village where no break in service occurs. Illness, injury, or any other legitimate and properly authorized leave shall not constitute a break in service.

Demotion: The act of placing an employee in a job classification that carries a lower rate of pay than that previously held.

Department: A major administrative division of the Village (police, utilities, etc.).

Employer: The Village of South Lebanon, any Village official or other person or body authorized to act on behalf of the Village.

Excused Absence: Absence from work with the approval of the employer (sick leave, vacation, holiday, etc.).

Exempt Employee: A salaried employee determined to be exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act, and who therefore does not have to legally be paid the statutory minimum wage and/or be compensated, at premium rates, for additional hours worked in the work week.

FLSA: Fair Labor Standards Act.

Full-time employee: For purposes of benefit eligibility, a full-time employee shall be defined as an employee whose regular hours of work normally total thirty (30) hours or more in a week.

Incompetence: The lack of ability, qualifications, or fitness of the employee to perform the duties and responsibilities of his/her position.

Instruction and Cautioning: The discussion a supervisor holds with an employee in which he/she counsels the employee about his/her conduct and impresses upon him/her the need for improvement. This level of corrective action is intended to eliminate misunderstandings immediately and set and maintain standards of conduct and performance. A notation of the date, time, and reason for an instruction and cautioning should be kept in the employee's personnel file, in the event the conduct of the employee does not improve and subsequent corrective action is required.

Insubordination: Intentional failure to do things required of an employee. Refusal to obey an order issued by the employee's administrative superior (supervisor).

Intermittent employee: An employee who works on an irregular or "as needed basis."

Intoxication: The condition of a person affected by the immediate use of intoxicating drinks or other substances; the state of one who is under the influence of controlled substances. The effect produced upon the person by drinking intoxicating liquors or ingesting other intoxicating substances to such an extent that the normal condition of the individual is changed and his/her capacity for rational action and conduct is substantially lessened.

Leave of Absence Without Pay: The period of time during which an employee is excused from active service and receives no pay from the Village.

Malfeasance: The commission of some act which is positively unlawful; the doing of an act which is wholly wrongful and unlawful; the doing of an act which a person ought not to perform.

Misfeasance: The improper performance or commission of some act which a person may lawfully do.

Neglect of Duty: Omission or failure to perform a task that can and should be done, or that is required to be done. An absence of care or attention in the doing. A designed failure, refusal or unwillingness to perform one's duty.

Nonfeasance: Non-performance of some act which ought to be performed, the total omission to perform a required duty, or the total neglect of duty.

ORC: Ohio Revised Code.

Organizational Chart: A chart that illustrates the structure of the Village of South Lebanon's organization and the relationships of its legislative body, executive, administrative, supervisory authorities, and employees. See Form EE in Chapter 10.

Part-time employee: For purposes of benefit ineligibility, a part-time employee shall be defined as an employee whose regular hours of work are less than thirty (30) hours in a week.

Pay Period: The seven (7) day period of time during which an employee earns his/her pay from the Village.

Position: The set of job duties and responsibilities performed by an individual employee as assigned by the employer.

Probationary Period: The period of time at the beginning of an original appointment or immediately following a promotion, which constitutes a trial or testing period for the employee.

Promotion: The act of placing an employee in a job classification that carries a higher rate of pay than that previously held.

Proper Authority: The Mayor, Council, Administrator, Department Head or Supervisor, as indicated herein.

Removal: The termination of an employee's employment with the Village.

Seasonal employee: An employee who works a certain regular season or period of the year performing some work or activity limited to that season or period of the year.

Sick Leave Abuse: The use of sick leave for any purpose other than as provided by these policies. Examples include: calling in sick when the employee is able to work; reporting illness in the immediate family when such illness does not exist; reporting off sick to participate in some other activity or to take care of personal business; establishing a pattern of reporting off sick on certain days of the week or following regular days off; failing to follow the rules and regulations regarding use of sick leave and reporting procedures repeatedly.

Supervisor: An individual who has been authorized by the employer or designee to oversee and direct the work of other employee(s).

Suspension: The act of temporarily depriving an employee employment and pay in order to correct the employee's performance or behavior.

Tardiness: Any situation where an employee reports to work after his/her scheduled starting time or fails to return promptly from authorized breaks or lunch periods.

Temporary Employee: An employee who works in a position of a non-permanent nature for a specified period of time.

Village: The Village of South Lebanon, Ohio.

Working Suspension: A form of discipline whereby the employer may require an employee who is suspended to report to work to serve the suspension. An employee serving a suspension in this manner shall continue to be compensated at the employee's regular rate of pay for hours worked. Such disciplinary action shall be recorded in the employee's personnel file in the same manner as other disciplinary actions, and will have the same effect as a suspension without pay for the purpose of recording disciplinary action.

Written Reprimand: This is the written record of corrective action, usually issued after instruction and cautioning has failed to improve an employee's conduct.

**OBJECTIVES****SECTION 1.03**

The Village of South Lebanon recognizes that a personnel system which recruits and retains competent, dependable personnel is indispensable to effective government operations.

The policies and procedures set forth in this manual are designed to:

- A. Promote high morale and foster good working relationships between the employer and employees of the Village.
- B. Enhance the attractiveness of a career with the Village and encourage each of its employees to give his/her best effort to the Village and the public;
- C. Encourage courteous and dependable service to the public;
- D. Provide fair and equal opportunity for qualified persons to enter and progress through Village service based on merit and fitness as determined through objective and practical personnel management methods;
- E. Ensure that all Village operations are conducted in an ethical and legal manner so as to promote the Village's reputation as an efficient and progressive body.

**CONFLICT OF LAW****SECTION 1.04**

If any section or part of this manual or any amendment is invalidated by operation of law or by order of a court of competent jurisdiction, or compliance with or enforcement of any section or part of this manual is restrained by a court, the law or court decision shall prevail. The remainder of this manual and any amendments shall not be affected by the above action and shall remain in full force and effect, unless the context of the manual as a whole indicates that another section should be invalidated as well to conform with the employer's intent.

**EQUAL EMPLOYMENT OPPORTUNITY****SECTION 2.01**

- A. The Village of South Lebanon is an Equal Opportunity Employer. No personnel decisions concerning any term or condition of employment shall be unlawfully based upon race, color, religion, sex, military status, national origin, age, disability, ancestry, genetic history, or any other protected class except where such criteria constitutes a bona fide occupational requirement.
- B. The Village Administrator or designee is the employer's EEO Coordinator. The EEO Coordinator is responsible for providing information regarding antidiscrimination laws to employees and others, and for reviewing and resolving complaints involving alleged discrimination not resolved by the department head.
- C. The EEO Coordinator shall be responsible for formulating, implementing, coordinating, and monitoring all efforts in the area of equal employment opportunity. Department heads and supervisors shall maintain responsibility for their actions in regard to offering equal opportunity to each department employee or job applicant and for attempting to resolve discrimination complaints within their respective departments not personally involving the department head.
- D. No inquiry shall be made as to race, color, religion, sex, military status, national origin, age, disability, ancestry, genetic history of an applicant, except as necessary to gather equal employment opportunity or other statistics that, when compiled, will not identify any specific individual. Disclosure of this information by the employee is a voluntary action on the applicant's part.

**AMERICANS WITH DISABILITIES ACT****SECTION 2.02**

- A. The employer supports the intent and purposes of the Americans with Disabilities Act (ADA), as amended, and will not discriminate against qualified individuals with disabilities because of the disability of such individual in regard to job application procedures, hiring, advancement, discharge, compensation, job training, and other terms, conditions, and privileges of employment.
- B. The EEO Coordinator is responsible for providing information about the ADA to employees and others, and for reviewing and resolving complaints involving alleged discrimination against the disabled.
- C. Accessible Features: The employer shall endeavor to maintain in operable working order all features of facilities and equipment which are for the use, benefit, aid, or service of the public, in a manner which is readily accessible to and usable by persons with disabilities.
- D. Accessible Facilities: Each service, program, and activity shall be operated in a manner that, when viewed in its entirety, shall be readily accessible to and usable by individuals with disabilities.

- E. Accessible Communications: The employer shall ensure that communications with applicants, participants, and members of the public with disabilities are as effective as communications with others.
- F. Information: The employer shall ensure that all interested persons (including those with impaired vision or hearing) can obtain information on the existence and location of accessible services, activities, and facilities.
- G. Fundamental Alteration/Undue Burden: Notwithstanding the above commitments to accessibility, taking action to achieve accessibility is not required when it would result in a fundamental alteration in the nature of a service, program, or activity, or cause undue financial and administrative hardships.
- H. The EEO/ADA Coordinator shall be responsible for:
  - 1. Providing information about the ADA to employees and others.
  - 2. Receiving and resolving complaints involving non-accessibility of services, programs, or facilities and alleged discrimination against disabled individuals.
- I. Complaint/Comment Procedure: Complaints, comments, or questions regarding:
  - 1. Accessibility to any of the Village's programs, services or facilities.
  - 2. Discrimination against individuals with disabilities.
  - 3. The Village's compliance with the ADA; should be filed in accordance with Section 2.5(B).

**DISCRIMINATORY HARASSMENT****SECTION 2.03**

It is the policy of the Village of South Lebanon to maintain an environment free from all forms of discrimination, including gender-based discrimination due to sexual harassment. In order to maintain this environment, discriminatory harassment, whether committed by supervisors, co-workers, or members of the public, is strictly prohibited.

- A. Definition: Discriminatory harassment includes derogatory or vulgar, oral or written communications or actions regarding a person's race, color, sex, religion, military status, national origin, age, disability, ancestry, or genetic history. Sexual harassment, which is a form of sex discrimination, includes, but is not limited to the following:
  - 1. Repeated unwanted and/or offensive sexual flirtations, advances, or propositions.
  - 2. Repeated verbal abuse of a sexual nature or use of sexually degrading words to describe an individual.

3. Graphic or degrading verbal or written comments about an individual, the individual's body, the individual's appearance, or the individual's sexual preference.
4. The display of sexually suggestive objects, pictures, or the display of the same through any media.
5. The implication or threat that an employee's or applicant's employment, assignment, compensation, advancement, career development, or other condition of employment will depend on the employee or applicant's submission to sexual harassment in any form.
6. Any offensive, abusive, or unwanted physical contact.
7. Request for sexual favors.
8. Any other conduct or behavior that may be construed as being sexually degrading or offensive.

B. Responsibility:

1. It is the responsibility of all employees to aid the employer in maintaining a work environment free from discrimination, including sexual harassment. Therefore, it is the responsibility of each employee, including supervision and management, to immediately report any instances of discriminatory harassment to the proper authority (see reporting procedure below). Any employee who observes any conduct that may constitute discriminatory harassment of a co-worker, but fails to report same, may be subject to disciplinary action. Moreover, any employee who receives a complaint alleging conduct which may constitute discriminatory harassment of any Village employee, but fails to report same, may be subject to disciplinary action.
2. It is further the responsibility of each department head or supervisor to ensure that all employees who report to the supervisor are aware of the policy against discriminatory harassment, that they are aware of the complaint and reporting procedures, and that they are aware of the consequences of engaging in discriminatory harassment.
3. It is the responsibility of each department head or supervisor to maintain an environment free from discriminatory harassment. Department heads and supervisors shall familiarize themselves with this Policy, the complaint and reporting procedures, the proper methods of investigating complaints of harassment, and the disciplinary procedures regarding discriminatory harassment.

C. Procedure:

1. Once a complaint of discriminatory harassment has been received, or an instance of discriminatory harassment has been reported, the complaint shall be immediately

forwarded to the proper authority for investigation. This person shall then immediately investigate the matter in accordance with the investigation procedure. The complaining employee and/or the reporting employee will be informed of the results of the investigation.

2. If, after a thorough and prompt investigation, it is determined that discriminatory harassment has occurred, the employee who has been found to have committed discriminatory harassment will immediately be disciplined in accordance with the disciplinary procedure for discriminatory harassment. The complaining and/or reporting employee(s) will be informed of the results of the disciplinary procedure.
3. If, after the investigation, it is determined that no discriminatory harassment occurred, or that there is insufficient evidence to determine whether or not discriminatory harassment has occurred, the complaining employee and/or reporting employee will be informed of the same.
4. The employer will make every effort to keep the complaint confidential, except as required by law and as may be reasonably necessary to successfully complete the investigation.
5. The employer protects, as much as possible, employees involved as part of the investigation, from retaliation.

**MERIT SYSTEM EMPLOYER****SECTION 2.04**

As an entity that receives grants, the Village is committed to the concept of a merit system. Under our merit system, employees and applicants shall be evaluated solely on merit without regard to race, sex, military status, religion, national origin, age, ancestry, disability, genetic history, or any other factor prohibited by law.

**EEO / DISCRIMINATION COMPLAINT PROCEDURE****SECTION 2.05**

- A. Any employee who believes that he/she has been the subject of discrimination or discriminatory harassment, and/or any employee who has witnessed an incident, or incidents of such discrimination or discriminatory harassment, shall report the matter(s) to the proper authority immediately.
- B. Any employee who believes that he/she has been the subject of or witness to discrimination, including sexual harassment, shall immediately report the alleged act(s) to the EEO/ADA Coordinator.
- C. If the EEO/ADA Coordinator is the subject of the complaint, the employee should report the incident to the Mayor. If the Mayor is also the subject of the complaint, the employee should report the incident to Council.



D. The employee alleging discrimination or discriminatory harassment shall complete the Discrimination Complaint form provided for that purpose. The employee should provide the following information:

1. The employee's name.
2. The name of the subject of the complaint.
3. The act(s) complained of.
4. The date(s) of the act(s).
5. Any witnesses to the alleged acts.
6. The remedy the employee is seeking.

This form should be completed by the employee as soon as possible following the alleged act giving rise to the discrimination or harassment complaint.

E. If the employee alleging the discrimination or discriminatory harassment is unwilling to complete the complaint form, the matter should be addressed under the "duty to report" section and the form should be completed by the person(s) to whom the verbal complaint was made. This form should be completed as soon as possible and no later than two (2) days after the date the alleged act of discrimination or harassment was reported.

F. After the Discrimination Complaint form has been completed, the complaint will be promptly investigated by the proper authority.

G. If the investigation reveals that the complaint is valid, prompt action will be taken to end the discrimination and/or harassment immediately.

H. Disability Discrimination - Any person may file a complaint in accordance with the above procedure if the individual believes:

1. An employee has illegally discriminated against the individual under any state or federal anti-discrimination law, including a violation of the ADA or conduct involving sexual harassment.
2. A Village program, service, or facility is not accessible to disabled individuals.

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| <b>DISCRIMINATION DISCIPLINARY PROCEDURE</b> |
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| <b>SECTION 2.06</b> |
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A. All allegations of discrimination and/or discriminatory harassment shall be promptly investigated.

B. Any employee that makes a false statement and/or false accusations during the investigation will be subject to appropriate discipline in accordance with Village policy.

C. When it is determined that there is cause for believing that an act of discrimination or discriminatory harassment has occurred, the following steps will be followed:

1. All complaints alleging illegal discrimination or discriminatory harassment shall be filed on the Discrimination Complaint form. This form shall be filed as soon as possible after the date the alleged discrimination occurred.
2. The EEO/ADA Coordinator or other designated authority shall investigate all complaints and respond to the complainant in writing as soon as possible following completion of the investigation. If the complainant is not satisfied with the initial written response, he/she may file the complaint with Council.
3. The charged party may immediately be suspended with pay or temporarily transferred pending the final resolution of the complaint.
4. If the charged party requests it, a meeting will be held with the charged party's supervisor during which the charge will be explained to the charged party, and the charged party will be given the opportunity to respond to the charge. Alternatively, this response may be in writing and submitted by the charged party to the charged party's supervisor or another person conducting the investigation.
5. Within ten (10) days following the meeting and/or completion of the investigation, a final determination will be made. If it is determined that a prima facie case of discrimination or discriminatory harassment has been established, the charged employee will be verbally notified and disciplinary action will be implemented.
6. Non-employees found to have committed an act of illegal discrimination against an employee will be dealt with appropriately as allowed by law.
7. When reviewing complaints alleging a violation of the ADA by the Village, the EEO Coordinator or other designated investigator will determine whether the complainant is a "qualified person with a disability," whether the Village may have discriminated against the complainant, and, if so, whether the Village can "reasonably accommodate" the complainant or otherwise resolve his/her complaint.

**POSITION VACANCY & ANNOUNCEMENT****SECTION 3.01**

The employer shall normally post, internally in all Village departments, for five (5) consecutive workdays, vacancies which occur or are imminent within the Village, except in those cases where an employee is eligible for reinstatement from layoff to the vacant position.

During the posting period, any employee wishing to be considered for the vacant position shall submit a written notice of interest to the appropriate appointing authority; the employer shall not be obligated to consider any applications submitted after the close of the posting period.

Vacancies in positions above the entry level shall be filled, insofar as practicable, by the promotion of current qualified employees. If no current employee is deemed to be qualified for the vacant position, the job shall be filled through the selection of a qualified outside candidate. Appointments to vacant positions shall be made based solely on the applicant's knowledge, skills, and abilities, educational background, service time with the Village, performance evaluations, examinations scores, if required, and other job-related qualifications.

**EVALUATION OF APPLICANTS****SECTION 3.02**

- A. Appointments to vacant positions in the Village, either by internal promotion or external selection shall be based solely on which applicant best meets the job-related qualifications and possesses the highest knowledge, skills and ability to perform the essential functions of the position as ascertained through job-related selection methods.
- B. A review of all applications, for which Council is the Appointing Authority, shall first be made by the Village Personnel Committee to determine those applicants, for which Council is the Appointing Authority, who possess the minimum, job related qualifications as stated on the position description (e.g., minimum licenses, certifications, experience, etc.).
- C. Upon determination of which applicants meet the minimum job-related qualifications, stated on the position description, the aAppointing Aauthority will consider each applicant's:
  - 1. Knowledge, skill and ability to perform the essential functions of the position.
  - 2. Work experience in positions comparable to the vacant position.
  - 3. Work history (i.e., length of past employment, reasons for leaving, etc.).
  - 4. Work record (i.e., attendance, performance, disciplinary actions, etc.).
  - 5. Application appearance.
  - 6. Education, licensure, certifications.
- D. Otherwise qualified applicants may be eliminated from consideration for a position if the applicant:
  - 1. Makes a false statement of material fact on the employment application or other hiring documents.
  - 2. Has committed or attempted to commit a fraudulent act at any stage of the selection process.

3. Is an alien not legally permitted to work.
4. Has previously been terminated for just cause, except in unusual circumstances to be determined by the employer.

If an applicant is hired and it is subsequently discovered that one (1) or more of the above disqualifying criteria apply, the employee may be disciplined or discharged as provided in this manual.

- E. Once a preferred candidate has been selected, the employer may inquire whether the candidate requires an accommodation to perform the job. The employer will not classify a candidate who requires an accommodation as unqualified because that candidate requires an accommodation. However, if the employer cannot provide a reasonable accommodation, or only an accommodation that would cause undue hardship to the employer, the candidate may be considered unqualified.
- F. The applicant shall not be required to submit to a medical examination until the employer has made a conditional offer of employment to the applicant (See Section 3.3, Medical Examination).
- G. The employer may conduct a background check in accordance with the Fair Credit Reporting Act.
- H. The employer shall maintain a record keeping system reflecting the disposition of all job applicants and any necessary data required by the EEOC or any affirmative action plan. Such records shall be kept in accordance with Section 7.12 of this Policy Manual.

**MEDICAL EXAMINATIONS – APPLICANTS AND EMPLOYEES****SECTION 3.03**

- A. A medical examination by a licensed practitioner may be required prior to appointment to evaluate the selected applicants' physical and/or psychological condition as it relates to the applicants' ability to perform the essential functions of the position for which they are applying. Examinations may include any job related examination determined to be a pre-employment requirement.
- B. For purposes of this policy, a "licensed practitioner" is a physician, psychiatrist, psychologist, or other appropriately licensed mental health professional such as a licensed clinical counselor or licensed independent social worker who is licensed to perform the appropriate examination.
- C. All employees are required to maintain their physical fitness at a level which will permit them to efficiently perform the duties of their position and avoid endangering themselves or those they serve subject to the Americans with Disabilities Act. Incumbents of specified positions may be legally required to submit to periodic medical examinations during employment to ensure their continued ability to perform the essential functions of the incumbent's position.

- D. When a medical examination is required, such requirement shall be included in the vacancy announcement.
- E. No medical examination or drug test will be conducted until the employer has made the applicant a conditional offer of employment.
- F. The employer shall select the licensed practitioner to administer the examination and shall pay the cost. Applicants may obtain, with approval of the employer, a waiver of the medical examination requirement for the following reasons:
  - 1. Verified religious opinion or affiliation, or
  - 2. Reinstatement within one (1) year of separation.
- G. After hire, employees may be legally required to submit to medical examinations for certain purposes during their period of employment with the Village. Such an examination is intended to ensure that the incumbents continue to be physically and mentally able to perform the essential functions of their position with or without an accommodation. Examples include, but are not limited to: examination to certify eligibility for leaves of absence; examination to assess for Workers' Compensation; examination required by Occupational Safety and Health programs etc. A medical examination may also be required to determine an employee's ability to return to work following a medically related leave of absence.
- H. Any time an employee is sent to a licensed practitioner for a medical examination, the following language shall be included in the practitioner's form or as an attachment.

**The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically required by law. To comply with this law, we are asking that you not provide any genetic information when responding to this request. "Genetic Information" as defined by GINA, includes: an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.**

**EMPLOYMENT OF RELATIVES****SECTION 3.04**

For the purpose of this policy, immediate family shall be defined as spouse, child, parent, sibling, grandparent, grandchild, step-child, step-parent, child-in-law, sister-in-law, brother-in-law, parent-in-law, regardless of where they live, or any other person related by blood or by marriage and living in the same household. The Appointing Authority of the Village shall not hire or otherwise employ or affect the employment, compensation or duties of any member of his/her immediate family.

No immediate family member of a Village Council member shall be employed by the Village in any capacity.

If an immediate family member relationship is established after employment, the individuals concerned must report the relationship to the Appointing Authority immediately and may be given the option to decide which one of them will transfer to a different position, if one is available and the employee is qualified, or which one of them will be terminated from employment with the Village. If the employees fail to make a decision within two (2) weeks of the employees' family relationship having been established, the Village Council shall decide.

**IMMIGRATION REFORM AND CONTROL****SECTION 3.05**

A. In General: In accordance with the provisions of the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, the employer has adopted the policy set forth below. The Village intends to comply with any such amendments.

1. The employer or designee shall not knowingly hire or recruit or continue employment of any alien hired after November 6, 1986, without substantiating and documenting that alien's eligibility in accordance with provisions established by this policy.
2. The employer has established an employment verification system and shall retain appropriate records establishing that each employee hired after November 6, 1986, is lawfully authorized to work in the United States as either a U.S. citizen or as a properly "documented alien."
3. As a condition of continued employment, the employer shall verify both the identity and the employment eligibility of all applicants considered for employment by following the steps outlined in (2) below.

B. Pre-Employment Requirement:

1. All applicants to be hired, as a condition of employment, shall be required to complete the biographical information requested by Form I-9 at the Village office.
2. A current I-9 form and instructions are available on-line from the U.S. Citizenship and Immigration Services at [www.uscis.gov](http://www.uscis.gov).

C. Post-Hiring Requirements:

1. Within three (3) business days after the appointment of the applicant, the employer shall physically examine the documentation presented by the employee to ensure that the documents presented appear genuine and related to the individual, then complete the remaining portions of Form I-9 located in the Village Office.

2. The employer shall retain Form I-9 and photocopies of the supporting documentation for three (3) years after the effective date of hire or for one (1) year from the date of the employee's separation from service, whichever is later.
3. Form I-9 and copies of supporting documentation shall not be used for any purpose or provided to any agency or person other than for the purpose of complying with the requirements of the Act.
4. Should an employee be rehired or reinstated by the employer within one (1) year of the date of separation, the employer may use the original I-9 form and supporting documentation for the purpose of complying with the Act.

If an employee's authorization to work expires, the employer must immediately re-verify that the employee is still authorized to work based on the employee's documentation of continuing eligibility or new authority to work. The employer must review the document and verify on the I-9 Form, noting the document's ID number and expiration date.

- D. Anti-Discrimination Policy: It is the intention of the employer not to discriminate in hiring on the basis of national origin and citizenship status except as otherwise provided by law. The employer will not unlawfully discriminate against any citizen or national of the United States or against any alien authorized to work in the job at issue.

**NEW HIRE REPORTING****SECTION 3.06**

- A. Generally: In accordance with ORC §3121.89-3121.8911, the employer shall report certain information about employees who are newly hired, rehired, or who return to work after a separation of employment. This information will be used by the Ohio Department of Job and Family Services (ODJFS) to help locate parents who owe child support, to make adjustments in public assistance benefits, and to identify persons who are fraudulently receiving benefits. In addition, new hire reporting information is available to other state agencies to help detect and prevent erroneous unemployment or workers' compensation payments.
- B. Employee Definition: The statute defines employee as any individual who is employed to provide services to an employer for compensation and includes an individual who provides services to an employer under a contract as an independent contractor and who is an individual, the sole shareholder of a corporation, or the sole member of a limited liability company.
- C. Deadline: Information regarding newly hired, rehired or returning employees shall be submitted within 20 days of the hire or rehire date.
- D. There are a variety of ways to report new hires, including online reporting, electronic reporting, and by mail or fax. These options for reporting are discussed in detail on the Ohio New Hire Reporting Center's website at: [www.oh-newhire.com](http://www.oh-newhire.com).

- E. If the employer prefers to submit the Ohio New Hire Reporting form by mail or fax the employer shall complete and forward the form to the address or fax number contained in the top left-hand corner of the form. A copy of this form is included in this manual or can be obtained from the above listed website.
- F. For questions or technical assistance regarding the new hire reporting process employers can contact the Ohio New Hire Reporting Center at (614) 221-5330 or call the toll-free number (888) 872-1490.



**EMPLOYEE ORIENTATION & TRAINING****SECTION 4.01**

Each new full-time and regular part-time employee shall receive a copy of the Village of South Lebanon's Personnel Policy Manual and a copy of the job description that applies to his/her job. Upon receipt, the employee shall execute Form A [Acknowledgment] to verify receipt of the Personnel Policy Manual. Each department head shall either acquaint or designate another employee to acquaint new employees with personnel policies (i.e., pay, insurance, vacation, sick leave, and other related benefits.) The department head, or designee, shall also be responsible for orienting the new employee with his/her department and job responsibilities. The employee shall sign all acknowledgements, forms and documents required by law or the employer.

Training Evaluation: Each department head shall periodically examine current and proposed training programs to ensure their relevance to both the present and projected staffing needs, and the identified training needs of the employees.

On-the-Job Training (OJT): On-the-job training prepares an employee to effectively perform the responsibilities required of his/her position. It allows the employee to learn his/her job duties, correct procedures, and expected performance levels under the immediate direction of an experienced worker. The conduct of such training is the responsibility of department heads or their designees.

Seminars and Job-Related Training Programs: When the budget permits, employees may be permitted to attend seminars and other job-related training programs at the expense of the Village. The advanced authorization of the employer is required before an employee can attend such a seminar or other related program. The Village will not pay for training when it is taken voluntarily and is not directly related to the employee's job duties in the employee's current position.

**PROMOTION****SECTION 4.02**

- A. When job vacancies occur, current qualified employees shall be given the opportunity to apply for such vacant positions.
- B. Factors to be considered for promotion include, but are not limited to, required training course(s), licensing or certification requirements, other minimum qualifications, annual performance evaluation ratings, and the employee's knowledge, skills and abilities to perform the essential functions of the vacant position.
- C. Employees interested in being considered for a posted vacancy shall complete a "Vacant Position Bid Form HH" and submit it to the official designated on the vacancy posting within the posting period.

**DEMOTION****SECTION 4.03**

- A. A demotion is the assignment of an employee to a position which has a lower level of responsibility, classification and compensation. Demotions generally result from an employee's failure to perform the duties of a position at an acceptable level or as a result

of discipline. Demotions may also be voluntarily requested by an employee or as an accommodation for a qualified employee with a disability who is no longer able to perform the essential functions of the employee's position with or without a reasonable accommodation; but can perform the essential functions of a lower classification with or without a reasonable accommodation. Demoted employees shall be reduced in pay to the corresponding pay step in the pay range for the new classification or to the highest step of the pay range that does not provide an increase in pay, at the discretion of the employer.

- B. Employees who desire to be considered for a posted vacancy in a lower classification shall complete a Vacant Position Bid form and submit it to the official designated on the vacancy posting within the posting period.

**PERFORMANCE EVALUATION****SECTION 4.04**

A written performance evaluation provides the employer with an effective mechanism to measure and communicate levels of job performance to employees. It provides the employee with documented, constructive feedback concerning current job performance. Documented performance evaluation serves as a basis for management decisions regarding training needs, job assignments, promotion, and retention of employees. The work performance of employees shall be evaluated in accordance with established procedures.

Each Village employee shall be evaluated annually by his/her Supervisor. Special evaluations may be conducted if deemed appropriate by the department head.

Each employee shall be provided a copy of his/her performance evaluation immediately following the evaluation and be required to sign an acknowledgment of receipt and be given the opportunity to provide written reply comments. The Supervisor shall discuss the evaluation with the employee and shall counsel the employee regarding any improvement in performance which appears desirable or necessary.

**ETHICS****SECTION 4.05**

All Village employees are expected to maintain the highest possible ethical and moral standards and to perform their duties within the laws of the state of Ohio, and rules, codes of ethics and standard procedures as may be set forth by the Village. Each employee assumes the responsibility to serve the public in an honest, efficient, ethical and professional manner.

Employees shall not:

- a. Use their position for personal gain or engage in any transaction which may be in conflict with the proper discharge of the employee's official duties;
- b. Use or disclose confidential or proprietary information concerning the property, government or affairs of the Village without proper legal authorization;

- c. Solicit or accept anything of value, whether in the form of service, loan, item or promise from any person, firm or corporation interested directly or indirectly in conducting business dealings with the Village;
- d. Accept from any person, firm or corporation doing business with the Village any material or service for the private use or benefit of the employee;
- e. Without written authorization of the appointing authority, engage in or accept private employment or render services for private interests when such employment or service may be perceived as incompatible and may affect the proper performance of the employee's official duties or would tend to impair the employee's independent judgment or action in the performance of the employee's official duties;
- f. While an employee, or for one (1) year thereafter, represent another person before a public agency on any matter in which the employee personally participated as an employee;
- g. Receive or agree to receive outside compensation for services rendered in a matter before any office or department of the Village except as provided in ORC Section 102.04; or
- h. Have a personal interest in a contract with the Village or use their position or authority to secure approval of a public contract in which the employee, a member of the employee's family or a business associate has an interest.
- i. Each employee shall review a copy of the Ohio Revised Code Chapter 102 The Ohio Ethics Law and Related Statutes at the time of hire and sign and return Form Z Ohio Ethics Law Acknowledgement.
- j. An employee that has questions concerning any of the aforementioned rules of ethics with respect to the performance of his/her duties, he/she shall speak with his/her supervisor immediately to receive clarification.

**COMPENSATION****SECTION 5.01**

The Village Council, with assistance from the Village Administrator, will establish an equitable compensation system for employees which will establish both a minimum and maximum rate of pay for each classification within the organization.

The Village Administrator shall make recommendations to Village Council for general increases, and make recommendations on decreases to compensation for employees based on performance evaluations or other applicable objective reasons.

Changes in compensation recommended by the Village Administrator due to promotions, demotions, performance evaluations, etc., will be subject to the approval of Village Council.

**JOB DESCRIPTIONS****SECTION 5.02**

The Village of South Lebanon shall administer job descriptions based on analysis of the duties and responsibilities of positions. Job descriptions will be the basis of this plan and shall include a title, nature of work, examples of duties, including essential functions, other duties and responsibilities, and minimum qualifications.

Each employee shall be provided with a copy of his or her job description. Upon receipt, the employee shall execute Form EE [Acknowledgment] to verify receipt of the employee's position or job description.

Each department head shall be provided with copies of the job descriptions which pertain to his/her department and any amendments thereto. Job description titles shall be used in all personnel and payroll matters.

The duties and responsibilities of each position shall be reviewed periodically for accuracy, and adjustments shall be made to the job descriptions when deemed appropriate by such review.

**PAY PERIOD****SECTION 5.03**

There are normally fifty-two (52) weekly pay periods per year. The pay period starts at 12:01 a.m. on Monday and ends at 12:00 midnight on the following Sunday. Employees will be paid every week on Monday. In the event of unforeseen circumstances a grace period of two days (Wednesday) is provided to allow time to complete payroll.

If a holiday occurs on a Monday on which a payday falls, paychecks will normally be issued on the preceding Friday, except under extenuating circumstances where paychecks would be issued on the following work day. Employees who are scheduled off must submit a Payroll Check Request Form FF to request their check forty-eight (48) hours in advance of their last scheduled day of work.

Department heads are to receive any questions regarding an employee's pay and provide the explanations or make the inquiries necessary to resolve the matter.

The Village has the right to implement a program requiring employees to receive wages through direct deposit.

**OVERTIME****SECTION 5.04**

Overtime is generally discouraged and is for emergency situations only. All overtime must be approved in advance in writing by the appropriate Supervisor or designee by using Form F Overtime Authorization Scheduled overtime, which is subsequently cancelled, shall not entitle the employee to any overtime compensation.

Certain salaried employees of the Village may meet the criteria to be exempted from the overtime provisions of the federal Fair Labor Standards Act (FLSA). If the Village decides to exempt such an employee in accordance with the employee's Job Description the employee shall be notified.

In the event a non-exempt employee is required to work overtime, he/she shall be entitled to payment or compensatory time at one and one-half (1-1/2) times his/her regular hourly rate of pay for all hours actually worked in excess of forty (40) hours in the workweek.

The workweek for purposes of computing overtime shall commence at 12:01 a.m. Monday and continue for seven (7) consecutive days to end at 12:00 midnight the following Sunday.

For purposes of this policy, paid leave time (e.g., sick leave) shall not be considered time worked. However, compensatory time off is counted toward overtime accrual. Compensatory time may be used when it does not unduly burden department operations. Time spent overnight on official Village business shall not be considered time worked for purposes of calculating overtime.

Utilities department employees who test water on the weekends will be provided with three (3) hours pay at the applicable regular or overtime rate, or compensatory time per test for that workweek.

All overtime must have the prior written approval of the employee's supervisor. Any employee working in excess of forty (40) hours in a workweek or in excess of the normal work schedule without prior written approval is subject to discipline. However, unusual circumstances and situations may require employees to work overtime without having prior written authorization. In such instances, a written report specifying the overtime worked shall be submitted for approval to the department head on the workday following the overtime worked.

Each non-exempt employee (e.g., an employee subject to the minimum wage and overtime provisions of the Fair Labor Standards Act) must record his/her own hours of work on time sheets or time cards provided by his/her supervisor. Recording of time by a person other than the employee can result in disciplinary action against both parties. If an employee accidentally punches a wrong time card or makes a mistake in the recording of his/her work time, the error must be brought to the attention of the employee's supervisor immediately. The supervisor will initial the time card or time sheet.

All regular full-time, non-exempt employees are required to take an unpaid thirty (30) minute lunch break during the course of their daily employment. Part-time employees may similarly be required to take an unpaid thirty (30) minute lunch break. Employees should consult with their supervisor as to the times lunch breaks occur. Employees are normally not permitted to work during lunch break unless they receive prior approval of their supervisor. Consistent abuse of this lunch break policy may result in disciplinary action.

An employee who has questions as to whether his/her employment status is "exempt" or "non-exempt," should ask his/her supervisor.

**ON-CALL DUTIES****SECTION 5.05**

From time to time certain employees may be placed in on-call status. An employee placed in on-call status is responsible for being accessible at all times by a Village-provided "On-Call" Cell Phone. The employee must answer or return the call to the Warren County Communications Center within five (5) minutes of the initial call and be able to be onsite within thirty (30) minutes. It shall be the employee's responsibility to assure the cell phone is adequately charged and within reception range. No employee placed in an on-call status, may trade or assign his or her on-call duty with a fellow employee without prior written authorization of the Department Head. An employee placed in on-call status shall comply with all provisions of Chapter 7 [Conduct] of the Village's Personnel Policies and Procedures during the time waiting to respond to a call from duty, including without limitation the prohibitions for use of alcoholic beverages and drugs.

If the employees placed on-call are free to pursue their own activities, and the only stipulation is that they be available for on-call duties, they will not be compensated for time spent waiting to respond to a call to duty. However, if an employee in on-call status is directed to perform job duties, he/she will be compensated from the time he/she leaves his/her home, or other location (up to fifteen [15] minutes), to the time he/she returns to his/her home, or previous location.

The provisions of this policy do not apply to any salaried Village employees who have been designated as overtime exempt in accordance with the federal Fair Labor Standards Act.

**PAYROLL DEDUCTIONS****SECTION 5.06**

Certain deductions are made from an employee's paycheck as required by law, in accordance with employee benefit plans, or as requested by the employee. These deductions are itemized on the employee's pay statement which accompanies the weekly check. Deductions include:

- A. Ohio Public Employees Retirement System (OPERS): This is the employee's contribution to the State's retirement system.
- B. Income Taxes: The federal and state governments require that taxes be withheld from each salary payment. The amount of tax to be withheld is determined from tables furnished to the fiscal officer in the treasury department, and varies according to the amount of salary and number of dependency exemptions. Employees are required to complete withholding

tax statements upon initial employment, and must inform the fiscal officer's office of any dependency changes whenever such occur.

- C. Miscellaneous Deductions: Examples include child support payments, garnishments, United Fund, credit union, employee insurance contributions, possible Village charges for withholding, and other legally required or employer approved deductions. The employer may refuse to make deductions, not required by law, below certain prescribed minimum amounts, or which are not on a regularly scheduled basis, or for other causes which the employer deems not in the best interest of the Village.
- D. Authorization: All requests for payroll deductions must be presented in writing by the employee to the fiscal officer who shall make only those deductions authorized by the Village administrator and/or required by law.

**RETIREMENT PLAN****SECTION 5.07**

Most Village employees are required by law to participate in the Ohio Public Employees Retirement System (OPERS). Eligible employees are required to contribute a percentage of their gross pay, as determined by the Retirement Board. Such amount is then deducted each pay period. This amount is more than matched by a contribution from the Village. The Village's contribution is also determined by the Retirement Board.

These plans are independent of the Federal Social Security System. Information on these retirement plans may be obtained by contacting the Village Fiscal Officer. If employees should have any further questions regarding the benefits available under these plans, they may contact the following:

Public Employees Retirement System  
277 East Town Street  
Columbus, Ohio 43215  
(800) 222-7377

**EXPENSE REIMBURSEMENT****SECTION 5.08**

With prior approval of a Request to Attend Training/Conference (Form ), Village employees and officials shall be reimbursed for expenses incurred while in the authorized service of the Village. These expenses include travel, lodging, meals, seminars, conferences, and registration fees. They do not include entertainment expenses. Expenses shall be reimbursed in the following manner.

- A. Mileage and Parking: Employees shall be reimbursed for actual miles, while on authorized business outside of the Village, at the most current rate per mile as set by the Internal Revenue Service (IRS), when using their own personal vehicle. Such payment is considered to be total reimbursement for all vehicle related expenses (i.e., gas, oil, depreciation, etc.). Mileage reimbursement is payable to only one (1) of two (2) or more employees traveling on the same trip, in the same automobile. Charges incurred for parking at the destination and other highway tolls are reimbursable at the actual amount. Receipts are required.

- B. Meals: Expenses incurred for meals while on official Village business will be reimbursed when travel extends through a normal meal period. A per diem rate will be annually established by council. (Receipts are required. Expenses for alcoholic beverages are not reimbursable.)
- C. Lodging: Expenses covering the cost of a motel or hotel room will be paid when travel requires an overnight stay. (Receipts are required.) The maximum amount that the Village will pay for lodging will be determined in advance of the employee's travel by vote of council.
- D. Registration Fees: Employees authorized to attend conferences, meetings, and/or seminars requiring pre-payment of fees shall submit registration materials to the fiscal officer for payment.
- E. Other Expenses: Any other expense, such as airfare, that an employee may incur while engaged in the authorized service of the Village must be approved in advance of the employee's travel in order for the employee to be eligible for reimbursement. Any benefits, perks, or other rewards earned through air travel shall be used for Village travel only.
- F. Expense reports must be submitted by employees to their Supervisor no later than the last day of the month following the month in which the expense is incurred.

When considering any employee's request for job-related travel, the Village will consider the special needs of an employee with a permanent disability that substantially affects the employee's ability to drive, see, hear, etc. The Village will not deny job-related travel to a qualified employee with a disability merely because of the disability.

## INSURANCE

## SECTION 5.09

Each full time Village employee will have the opportunity to participate in the various insurance programs offered by the Village. Each employee will make a weekly co-payment of 11% of the actual premium cost of the medical and dental insurance programs they select. However, the Village reserves the right to require employees to pay a greater share of the Village's insurance costs. Effective date of all of the insurance programs is the first day of the month following the date of hire.

Health Insurance: Full-time employees who qualify for participation in the program in accordance with any eligibility criteria established by the selected carrier(s), shall be entitled to receive single or family group health insurance coverage as determined and provided by the Village. Health insurance coverage terminates upon the last day of the current month after the employee's last day of employment with the Village, unless the employee begins paying the full cost of monthly premiums in accordance with federal COBRA regulations.

Life Insurance: Full-time employees who qualify for participation, in accordance with any eligibility criteria established by the selected carrier(s), shall be covered by a group life insurance



program. Such coverage shall be determined and provided by the Village. Life insurance coverage terminates upon the last day of the current month after the employee's last day of employment with the Village.

Dental Insurance: Full-time employees who qualify for participation, in accordance with any eligibility criteria established by the selected carrier(s), shall be covered by a group dental insurance program. Such coverage shall be determined and provided by the Village. Dental insurance coverage terminates upon the last day of the current month after the employee's last day of employment with the Village.

Vision Insurance: Full-time employees who qualify for participation, in accordance with any eligibility criteria established by the selected carrier(s), shall be covered by a group vision insurance program. Such coverage shall be determined and provided by the Village. Vision insurance coverage terminates upon the last day of the current month after the employee's last day of employment with the Village.

Council members may participate in the vision insurance program provided they pay the entire premium amount.

For purposes of this policy, "full-time employee" shall be defined as any employee of the Village who is regularly scheduled to work thirty (30) hours or more per week.

## **EXPRESSION OF MILK**

## **SECTION 5.10**

The Village shall provide "reasonable break time for a nonexempt employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk." Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk."

Employers are required to provide a reasonable amount break time to express milk as frequently as needed by the nursing mother. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

A bathroom, even if private, is not a permissible location under the Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public.

**HOLIDAYS****SECTION 6.01**

Full-time employees shall receive the following paid holidays:

|                        |                              |
|------------------------|------------------------------|
| New Year's Day         | Veteran's Day                |
| Martin Luther King Day | Thanksgiving Day             |
| President's Day        | Day after Thanksgiving       |
| Memorial Day           | Christmas Eve Day (full-day) |
| Fourth of July         | Christmas Day                |
| Labor Day              |                              |

If a holiday falls on Sunday, it will be observed on the following Monday; if it falls on Saturday, it will be observed on the preceding Friday. If an employee's work schedule is other than Monday through Friday, he/she shall be entitled to holiday pay for a holiday observed on his/her day off, regardless of the day of the week on which it is observed.

In observance of each authorized holiday, full-time employees will normally be granted the day off from work. Full-time employees shall receive straight time pay for each authorized holiday.

In order to receive the holiday pay an employee must work his/her full scheduled workday on the day immediately preceding the holiday and the full scheduled workday on the day immediately following the holiday, unless he/she is absent from work for previously authorized use of sick leave, vacation or comp time.

Any employee required to work on one of the recognized holidays will receive compensation at one and one-half (1-1/2) time rate for all time worked on the holiday.

**VACATION****SECTION 6.02**

Full-time employees shall receive paid vacation in accordance with the following eligibility guidelines:

|                                |                     |
|--------------------------------|---------------------|
| After 6 months completed       | 1 week vacation     |
| After 1 year completed service | 1 week vacation     |
| 2 to 6 years of service        | 2 weeks vacation    |
| 7 to 14 years of service       | 3 weeks vacation    |
| 15 to 19 years of service      | 4 weeks of vacation |
| 20 years of service and beyond | 5 weeks of vacation |

After the employee's anniversary date all accrued vacation is to be taken on a calendar year (fiscal year) basis. An employee who is employed in December and is unable to utilize their vacation in that initial calendar year of employment, will be permitted to carry those two (2) weeks into the next calendar year (fiscal year). That employee would be permitted four (4) weeks of vacation in the year following their initial employment. When earning additional vacation that additional week is credited on the employee's anniversary date.

Full-time employees will only have prior service with the Village of South Lebanon counted towards leave accrual.

Vacation requests are granted on a "first come, first served" basis. The decision to grant or deny a vacation request shall be made by the department head and shall be based upon operational concerns and considerations.

An employee may carry over up to a maximum of eighty (80) hours of vacation time for a period not to exceed one (1) year. No carry-over of vacation time exceeding two weeks is permitted except employees with a hire date in December. All compensatory time must be used during the calendar year in which it is accrued. Carry-over of comp time is not permitted. Any remaining vacation time will be cashed out.

Vacation leave is earned during the time an employee is in active pay status. No vacation time is earned when the employee is in an unpaid status, nor is additional vacation time earned through the working of overtime.

**SICK LEAVE****SECTION 6.03**

Sick leave for full-time employees shall accumulate at a rate of 2.3 hours for each forty (40) hours worked. The maximum accrued sick leave shall be one hundred eighty (180) days. An employee must be in active pay status which is defined as hours worked and hours spent on paid leave time (vacation, holidays, sick leave, funeral leave, civil leave). However, a full-time employee shall not accrue additional sick leave through the working of overtime.

An employee may request sick leave upon proper notice in writing to his/her department head or other designated individual. Sick leave may be requested for the following reasons:

- A. Illness or injury of the employee or illness or injury of a member of the employee's immediate family when personal attention on the part of the employee is necessary.
- B. Exposure of the employee or a member of his/her immediate family to a contagious disease which would have the potential of jeopardizing the health of the employee or the health of others.
- C. Leave approved in excess of Funeral Leave for death of a member of the employee's immediate family.
- D. Medical or dental appointments that cannot be scheduled during off-duty hours.
- E. Pregnancy, childbirth, and/or related medical conditions of the employee. Male employees may use sick leave to care for the employee's wife and family during and following delivery; however, such paid sick leave shall be limited to five (5) consecutive days, unless there are unusual medical complications. Paid sick leave shall not be used for child care purposes.

For the purposes of this policy "immediate family" shall be defined as spouse, child, and parent.

Due to the diverse nature of Village operations, each department head will establish his/her own procedures and requirements regarding an employee reporting off from work due to illness or injury.

A certificate stating the nature of the illness from a licensed medical practitioner shall be required to justify the use of sick leave if an employee is absent from employment due to a medical appointment. The Village maintains the right to investigate an employee's absence, including the right to request that an employee obtain an absence excuse from a licensed medical practitioner. Altering or falsifying a written, signed excuse shall be grounds for discipline.

Vacation leave may be used for sick leave purposes, at the employee's request and with the approval of the department head, after sick leave is exhausted. Employees who have exhausted all sick leave and vacation leave credits may, at the discretion of the employer, be granted a personal leave of absence without pay for a period not to exceed thirty (30) days.

The fiscal officer's office shall keep written records of sick leave accrued or credited, sick leave taken, and the balance of sick leave for each employee. The fiscal officer will notify the department head if an employee does not have enough sick leave to cover a period of absence.

An employee who receives temporary total Workers' Compensation benefits from the state of Ohio for a work-related injury, shall, if the employee has sick leave available, receive sick leave payment from the Village of South Lebanon for the difference between his/her regular pay and the temporary total Workers' Compensation benefits. This shall continue until the temporary total Workers' Compensation benefits are terminated, or until all available and accrued sick leave is used, whichever is earlier. This provision of this policy does not apply to an employee who is eligible to receive partial or permanent disability benefits from Workers' Compensation.

Employees who retire with OPERS may receive payment for twenty-five percent (25%) of unused sick leave balance up to a maximum payment of 240 hours.

**SICK LEAVE DONATION PROGRAM****SECTION 6.04**

Employees of the Village of South Lebanon may donate sick leave to a fellow employee who is otherwise eligible to accrue and use sick leave. The intent of the Leave Donation Program is to allow employees to voluntarily provide assistance to their coworkers who are in critical need of leave due to the serious illness or injury of the employee or a member of the employee's immediate family.

An employee may receive donated leave, up to the number of hours the employee is scheduled to work each pay period, if the employee who is to receive donated leave:

- a. Or family member as stipulated above has a serious illness or injury.
- b. Has no accrued leave; and

- c. Has applied for all paid leave, workers compensation, or benefits program for which the employee is eligible.

Employees may donate leave if the donating employee:

- a. Voluntarily elects to donate leave and does so with the understanding that donated leave will not be returned.
- b. Donates a minimum of eight (8) hours.
- c. Retains a sick leave balance of at least 80 hours. Donated sick leave shall never be converted to other leave or into a cash benefit.

The Leave Donation Program shall be administered on a pay period-by-pay period basis. Employees using donated leave shall be considered in active pay status and shall accrue leave and be entitled to any benefits to which they would otherwise be entitled. Leave accrued by an employee while using donated leave shall be used, if necessary, in the following pay period before additional donated leave may be received.

Donated leave shall not count toward the probationary period for any employee who receives donated leave during his or her probationary period. Donated leave shall be considered sick leave, but shall never be converted into a cash benefit.

**FUNERAL LEAVE****SECTION 6.05**

A full-time employee shall be permitted, upon the approval of his/her department head, up to three (3) working days of paid funeral leave due to the death of an immediate family member. For the purpose of this policy, "immediate family" shall be defined as current spouse, child, parent, brother, sister, step-brother, step-sister, step-children, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, grandparents-in-law, grandchildren.

The amount of paid funeral leave, not to exceed three (3) working days, that the employee shall be permitted will be determined by his/her department head based upon the employee's responsibility for making funeral arrangements, the geographical location of the funeral, and other relevant factors.

If the employee requires additional time off due to the death of an immediate family member, he/she may request use of sick leave in accordance with Section 5.3 of this manual.

**MILITARY LEAVE****SECTION 6.06**

Military leave and reemployment from military leave is governed by federal law (See 38 U.S.C. 43 et seq. and 20 C.F.R. 1002 et seq.) and Ohio law (See ORC 5903.01, 5903.02, and 5923.05; and O.A.C. 123:1-34-04 and 123:1-34-05).

**JURY DUTY (CIVIL LEAVE)****SECTION 6.07**

If an employee of the Village is called for court jury duty, he/she will be paid his/her regular salary or wage in full during his/her absence from work. The employee shall be required to turn over all monies received from the court to the Village Fiscal Officer.

The employee will be expected to report for work following jury duty, if a reasonable amount of time remains during his/her scheduled workday.

If an employee is required to appear in a court of law for personal reasons, that employee shall be required to take either vacation leave or leave without pay, at the discretion and approval of the department head.

**LEAVE OF ABSENCE WITHOUT PAY****SECTION 6.08**

The Appointing Authority may, upon written request of an employee, grant an employee a leave of absence without pay, as prescribed below.

- A. In order for an employee to be eligible for a leave of absence without pay, he/she must be employed with the Village for at least one (1) year and have at least a "good" overall performance rating.
- B. The maximum duration of a leave of absence without pay shall not exceed thirty (30) days.
- C. The authorization of a leave of absence without pay is a matter of administrative discretion, and each request shall be decided on a case-by-case basis.

When an employee fails to return to work upon the expiration of an authorized leave of absence without pay, he/she shall automatically be considered as having resigned his/her position with the Village.

If it is determined that an employee is abusing the leave of absence and not actually using it for the purpose specified, the employer may cancel the leave and require the employee to report for work.

**FAMILY AND MEDICAL LEAVE****SECTION 6.09**

- A. The Village of South Lebanon is a covered employer as defined under the Family and Medical Leave Act, but employees are not eligible for family and medical leave because the Village employs less than fifty (50) employees.
- B. Eligibility Requirements: Employees of an employer which employs fifty (50) or more employees who have been employed for at least twelve (12) months, and have completed at least 1,250 hours of service with the employer during the previous twelve (12) month period are eligible for Family and Medical Leave.

(Note: The Village of South Lebanon does not currently employ fifty [50] or more employees.)

- C. Exempt Employees: Employees not eligible for Family and Medical Leave include:
1. Elected officials.
  2. The personal staff of elected officials.
  3. Unclassified, policy making appointees.
  4. Immediate legal advisors to elected officials of the legislative branch.
  5. Independent contractors.
- D. The employer shall post the required 8 inch x 11 inch Family and Medical Leave notice with all other required notices of the Fair Labor Standards Act.
- E. At such time that the Village employs fifty (50) or more employees, the Village administrator shall cause a policy to be prepared for review and passage by the Village council to comply with all FMLA regulations.

**ADMINISTRATIVE LEAVE****SECTION 6.10**

- A. A department head with approval of the mayor or Village administrator or designee, is hereby authorized by this policy to place an employee on administrative leave with pay in circumstances where the health or safety of the employee, other employees, or of any person or property entrusted to the employee's care could otherwise be adversely affected.
- B. The department head will provide the employee with notification when he/she is being placed on administrative leave. The length of the leave shall not exceed the length of the situation for which the leave is granted. For example, in a disciplinary situation such leave might extend until the employer completes an investigation of the matter, conducts a pre-disciplinary conference, and takes action or decides not to do so. Compensation for administrative leave shall be equal to the employee's normal straight-time rate of pay.

**DISABILITY ACCOMMODATION / LEAVE AND SEPARATION****SECTION 6.11**

- A. If an employee is disabled and believes he/she is a qualified individual with a disability as defined in the Americans with Disabilities Act (ADA), as amended, and such employee requires an accommodation to perform the essential functions of his/her appointed position, the employee may request the employer provide a reasonable accommodation.
- B. A disabled employee whom the employer cannot or is not required to accommodate, who has exhausted sick leave, may request an unpaid leave of absence pursuant to Section 6.08.
- C. All questions or inquiries concerning disability accommodation, leaves, or separations shall be directed to the Village Administrator.
- D. Accommodation of Disabled Employee: If a disabled employee, as defined in the ADA, requests an accommodation for such disability, the employer will determine whether the

employee can perform the essential functions of the appointed position with some reasonable accommodation. If the employer determines the employee can perform the essential functions, the employer will attempt to provide a reasonable accommodation. If the employer cannot accommodate the disabled employee in the employee's current position, the employer may place the employee in an equal or lower available vacancy for which the employee is qualified. If no such position is available, the employer may place the employee on an appropriate leave of absence.

- E. The following procedure will be followed if an employee claims a disability and requests an accommodation:
1. The employer will determine whether the employee is a qualified individual with a disability as defined in the ADA; if so
  2. The employer will review the job description and essential functions of the position with the employee; and
  3. The employer will ask the employee whether the employee can perform the essential functions of the job with some accommodation.
  4. Upon requesting an accommodation, the employer will ask the employee what accommodation the employee desires and whether any other accommodation would also allow the employee to perform the essential job functions.
    - a. The employer may consider accommodations that are not suggested by the employee.
    - b. The accommodation the employer selects need only be reasonable and allow the employee to perform the essential functions of the position.
- F. Any accommodation made by the employer shall be considered confidential medical information under the employer's policies and procedures regarding personal information.
- G. If the employee states that the essential functions of the job cannot be performed even with an accommodation, the employer may agree with the employee, or may suggest an alternative course of action.
1. The employer may determine that some accommodation will allow the employee to perform the job to the employer's satisfaction.
  2. The employer may evaluate the employee using current performance standards.
  3. The employer may consider demotion to an existing vacancy when no other accommodation is possible, and the employee is able to perform the alternative job in a satisfactory manner without an accommodation.
  4. The employer may consult a medical advisor or other appropriate licensed practitioner for verification.



- H. When deciding whether an accommodation is reasonable, the employer may consider the following options:
1. Allowing use of leave entitlement for treatment.
  2. Allowing flexible hours.
  3. Providing transportation.
  4. Providing reserved parking spaces.
  5. Providing assistance from other employees.
  6. Allowing the employee to use personally owned equipment or aids.
  7. Reassigning job functions, though the employer need not reassign essential functions.
- I. The employer will not allow additional break time nor promote an employee as an accommodation.
- J. Leave of Absence: A disabled employee, who does not qualify for an accommodation and who has exhausted accumulated sick leave, may request and may be granted up to six (6) months leave of absence without pay if the employee can present written evidence from a licensed physician or practitioner of a probable date the employee will return to the employee's position. Such requests shall be in writing, with supporting evidence attached before such leave will be considered. The employee must demonstrate to the employer's satisfaction that the probable length of disability will not exceed six (6) months.
- K. Disability Separation: When an employee has exhausted accumulated sick leave and vacation leave, and the employee is unable or unwilling to admit to personal incapacity, the employee will be ordered to submit to an examination by a licensed practitioner chosen by the employer to determine if the employee is capable of performing the essential functions of the employee's job classification. The cost of the examination will be paid by the employer.

Should the employee be declared physically incapable of performing the essential functions of the employee's job classification by the licensed physician chosen by the employer, or should the employer determine the employee to be unable to perform the essential functions of any vacant position with the employer, either with or without a reasonable accommodation, the employer will assist the employee in making application for disability retirement through the OPERS or OPFPF, and the employee shall be separated from employment with the Village.

Any appointment made to a position vacated due to an unpaid leave of absence shall be on a temporary basis. Any employee appointed to such a position must be made aware of the temporary nature of the position in writing.

- L. Reinstatement: An employee granted a leave of absence due to a disability shall have the right during the period of the unpaid leave to be reinstated to the same or similar position in the employee's job classification. A written request for reinstatement must be submitted, including a physician's statement indicating the employee is able to perform the essential functions of the employee's position and a return to work date.

The employee shall be reinstated within thirty (30) days after making written request and passing a medical examination showing that the employee can perform the essential functions of the position. The employer may require an examination be conducted by a physician designated by the employer with the cost paid by the employer.

An employee who fails to apply for reinstatement or is found unfit for reinstatement shall be deemed permanently separated from service.

**ATTENDANCE****SECTION 7.01**

The employer shall establish daily work schedules and maintain daily employee attendance records. Regular, predictable, and punctual attendance is an essential function of all Village employees. An employee is expected to report to work when scheduled, remain at work during scheduled hours and not leave work until the end of the scheduled workday.

Absences may only be excused as defined in this manual. Absences without proper authorization and approval will result in corrective action.

**USE OF VILLAGE TOOLS & EQUIPMENT****SECTION 7.02**

- A. Tools, supplies and equipment necessary to perform job duties shall be properly used and maintained. All employees shall be held strictly responsible and accountable for equipment personally issued to the employee, in addition to any generally issued departmental equipment, tools, or supplies used by the employee. All employees are responsible for using and maintaining such assets in a safe and proper manner.
- B. Loss, misuse, neglect, theft, and/or abuse of employer assets is strictly prohibited and may result in discipline and/or demand for payment to the employer for the cost to replace or repair such asset(s). Accidents resulting from misuse or abuse of tools may also be cause for disciplinary action.
- C. An employee's use of Village tools, supplies, and equipment is subject to prior approval of the department head. Use of employer assets for other than work purposes is prohibited.
- D. Presence in, or use of, employer facilities (i.e., office, etc.) during non-work hours by employees is prohibited, unless authorized in advance by the Mayor, Village Administrator or designee.
- E. Employees are responsible for reporting any equipment or property damages, including damages caused by the employee. Employees shall report all damages to the employer and/or department head as soon as possible but in no case more than twenty-four (24) hours after the event or, if the event occurs on a holiday or weekend, on the next working day by completing a Report of Property and Equipment Damage Form GG. Damages done to Village equipment or property, other than accidental damage, shall be cause for disciplinary action.

**USE OF VILLAGE VEHICLES****SECTION 7.03**

- A. This policy is for the use of any motor vehicles owned or leased by the Village, if applicable, for the use of the Village or any department, commission, board, office, or agency under its direct supervision. For the purpose of this policy, the term "employee" hereinafter means the persons comprising of the Village, any employee of any department, commission, board, office, or agency under its direct supervision or jurisdiction, using a vehicle provided by the Village.

- B. No person who is not a compensated employee of the Village may operate a Village-owned or leased vehicle unless specifically authorized by the Village administrator. No employee shall use or permit the use of any vehicle or any supplies for it, except in the transaction of public business or work of the Village. Under Ohio law, however, the Village council has the authority to determine the meaning of and the manner of which employees use vehicles owned or leased by the Village for the transaction of public business, work of the Village, or commuting.
- C. The Village recognizes that to efficiently and effectively carry out the transaction of public business or work of the Village, a reasonable amount of related use may have to be conducted in a Village-owned or leased motor vehicle for incidental but closely related business use (i.e., rest and lunch breaks); provided that the employee does not deviate from the route to the next work site.

Village-owned or leased vehicles are not provided as a means of compensation to employees.

Only passengers on official Village business shall be permitted in all Village-owned or leased vehicles except as approved and/or authorized under R.C. 1551.25, (Ride Sharing).

- D. It is not the policy of the Village to provide fleet and/or pool vehicles for the transaction of public business whenever an employee or department head authorizes travel by automobile.

Vehicles owned or leased by the Village shall not be used for commuting to and from work, except as permitted in writing by the Village.

- E. It is recommended that a Village employee operating a Village-owned or leased vehicle drive to a safe location and park the vehicle prior to using a cellular telephone and/or pager. Employees shall not text or check e-mail while operating a Village-owned or leased vehicle in motion. Employees who violate this policy may be subject to disciplinary action.

- F. Smoking is prohibited in all Village-owned or leased vehicles.

- G. All operators and passengers in Village-owned or leased vehicles will comply with the following:

1. Operator's License: All operators of any Village-owned or leased vehicles must have a valid state-issued operator's license, which includes the specific class of vehicle being operated. Suspension of an employee's operator's license will result in a suspension of any and all Village-approved driving privileges. Any employee who is authorized to use a Village-owned or leased vehicle and whose operator's license is suspended, must notify their immediate supervisor of this fact at the earliest of the following: day of suspension or next working day. A department head or supervisor must notify the Village Administrator within the same time limitations.

2. Seat Belts: As required by the Ohio Revised Code, all front seat passengers of a Village-owned or leased vehicle or privately-owned vehicle, while being operated in the transaction of public business or work of the Village, shall wear safety belts at all times while the vehicle is in operation. Rear seat passengers shall also wear safety belts. The vehicle operator is responsible for insuring all passengers wear safety belts. Failure by any employee to comply with this provision must be reported to the appropriate supervisor.
3. Alcohol and other Substances: All employees and/or other persons authorized to use a Village-owned or leased vehicle shall not operate any Village-owned or leased vehicle while under the influence of any alcohol with a prohibited blood alcohol level of 0.04.00 or greater or any controlled substances. Alcoholic beverages, controlled substances, and/or illegal drugs are not to be used or transported in, or on any Village-owned or leased vehicles. Legally prescribed medications are permissible only when their use does not adversely affect the employee's driving ability.
4. Accident Reporting/Traffic Citations: In the event of an automobile accident, the vehicle operator is responsible for contacting the appropriate law enforcement agency immediately, or as soon after the accident as is practical.

All accidents shall be reported to the operator's respective supervisor as immediately as is practical. Accident reports are to be completed and submitted to the supervisor who will report the information to the Village Administrator as soon as possible, but in no event beyond twenty-four (24) hours of the event or, if the event occurs on a holiday or weekend, on the next working day.

All parking, moving violations, penalties, and/or other fines received during the operation of a Village-owned or leased vehicle are the full responsibility of the operator.

Operators of any Village-owned or leased vehicle that establish poor driving records may be directed to attend a defensive driving and/or a driver training course by the Village Administrator and/or by their immediate supervisor if they are to maintain authorization to operate a Village-owned or leased vehicle. The determination of an employee to attend the above-referenced classes shall be in the sole discretion of the Village Administrator and/or their designee.

5. Preventive Maintenance and Service: All Village-owned or leased vehicles shall receive preventative maintenance according to standards established by the Village. All elected department heads who have vehicles assigned to their department are responsible for insuring required maintenance and service is scheduled. Any vehicle operators shall immediately notify their supervisor should they detect any unsafe or hazardous condition in or upon any and all Village-owned or leased vehicles. The supervisor shall, in turn, be responsible to schedule such service.

All Village-owned or leased vehicles shall be fueled in accordance with the policy set forth by the Village Administrator. Village gasoline credit cards shall be used

to purchase gasoline, oil, etc. for all Village-owned or leased vehicles on official Village business only unless other arrangements have been made and approved by the Village Administrator.

All operators of any Village-owned or leased vehicle shall be responsible for the appearance (interior and exterior) of the Village vehicle they are using and/or which has been assigned to them.

6. Insurability: All employees required to drive a Village-owned vehicle, or drive their own vehicle on Village time must be insurable under the Village's Liability Insurance Plan. Any employee deemed uninsurable by such insurance company may be disciplined up to and including termination.
- H. Use of Personal Vehicles for Village Business: All Village employees who are required to, or who choose to use their personal vehicles in the transaction of public business or work of the Village, will be reimbursed on a mileage basis at the authorized Village rate subject to approval by the Village administrator and submission of transaction or public business or work of the Village. All employees who drive must maintain their own liability insurance in accordance with the Village's vehicle insurance policy. The Village may request proof of automobile insurance coverage from each employee.
- I. Record Keeping: All employees, prior to operating a Village-owned or leased vehicle or a personal vehicle in the transaction of Village business or work, shall be given a copy of the Village Vehicle Use policy and acknowledge receipt of the same. The Village Administrator shall maintain these records.
- J. Village-owned vehicles shall not be used for personal use by employees.
- K. External Marking of Village Vehicles:  
  
Vehicles may be unmarked in the interest of the public safety or by the nature of the public business conducted as determined by the Village.
- L. Any employees who fail to comply with the vehicle policies and procedures and/or who misuse or abuse any Village-owned or leased vehicles or equipment may be subjected to disciplinary actions which may include, but is not limited to, the following:
  1. Written notice of the violation.
  2. For recurring traffic violations or accidents, the person may be assigned to attend a defensive driving or driving instruction class.
  3. Loss of driving privileges – not permitted to drive Village-owned or leased motor vehicle.
- M. In those cases where the Village employee's job requires driving a Village-owned or leased vehicle, suspension of the employee's driver's license may result in reassignment or termination of employment.

**DEVICES**

- A. This policy applies to all employees of the Village who are authorized to possess and use a cellular phone, pager, laptop computer, personal computer, or other electronic device purchased and/or provided by the Village.
- B. Employees enjoy no expectation of privacy in these devices which may be audited by the Village with or without notice.
- C. Acquisition and Return of Village Cellular Telephones and Pagers: Once a cellular telephone, pager, or laptop computer has been provided, the recipient shall acknowledge in writing that they have received the equipment and a copy of this policy.

If a Village cellular telephone and/or pager is damaged, lost, or stolen, it must be reported by the employee to their immediate supervisor as soon as possible; the immediate supervisor shall notify the Village Administrator, who will make the necessary arrangements for termination of service and/or arrange a replacement.

When an employee no longer needs a cellular telephone and/or pager, or terminates employment or otherwise loses the authorization to possess or use a Village cellular telephone and/or pager, the employee shall return all Village-provided cellular telephone and/or pager equipment and/or accessories immediately.

- D. Proper and Improper Use: Except for urgent or unanticipated situations where no other form of communication is available, Village cellular telephones and/or pagers are provided for official Village business only. The frequency and duration of such unofficial calls must be kept to a minimum. Text messages shall be considered "calls" regarding this policy and may be audited at any time.

Except as provided for above, a Village cellular telephone and/or pager shall not be used for any of the following:

- 1. Any call made in relation to an employee's personal business.
- 2. Any call made for the purpose of personal entertainment, including, but not limited to, "900" numbers or other pay per call numbers.
- 3. Any general or routine calls made in relation to an employee's personal life.
- 4. Any call of an obscene, threatening, harassing, or otherwise offensive nature that would be illegal, prohibited, or inappropriate as defined by law, or which would be in violation of any other Village policy.
- 5. Accessing social media in violation of Section 7.07, Social Media policy.

Employees are advised that all communications including, but not limited to, voice mails, text messages, pages, and/or e-mail communications, are not confidential and are subject to review for the purpose of enforcing the policies stated herein.

- E. Employees who are provided with a Village cellular phone are not permitted to carry a personal cellular phone with them during working hours. Violation of this policy may result in disciplinary action.
- F. Penalties for Misuse of a Village Cellular Telephone or Pager: Employees who misuse a Village cellular telephone, pager, or laptop computer will be responsible for reimbursement as required; will lose their authorization to possess a Village cellular telephone, pager; and/or laptop computer, and may be subject to disciplinary action up to and including termination.

**CREDIT CARD USE****SECTION 7.05**

All credit cards, credit card accounts and other such charge accounts shall be established by and obtained through the fiscal officer.

The fiscal officer shall maintain current records regarding all such accounts, the number of cards issued and to whom issued and shall keep the mayor and/or designee and council informed of such accounts.

All cards issued to the Village are to be kept secure by the fiscal officer. The fiscal officer will maintain a sign-out /return system for the purpose of tracking credit card usage.

Upon prior authorization, credit cards shall only be used for purchases for official Village business, which shall not include items of personal consumption (e.g., meals, refreshments, etc.).

Upon prior authorization, employees using gas or petroleum credit cards shall use such cards only for purchases related to the maintenance of the vehicle.

**USE OF COMPUTER/INTERNET/ELECTRONIC MAIL****SECTION 7.06**

A. Purpose:

1. The use of Internet, electronic mail, and online services has great potential to enhance the productivity of Village of South Lebanon employees in all departments. At the same time, as in the case with all Village resources made available to employees, abuse is possible. Computer, Internet, and electronic mail usage may be monitored by the system itself or by other personnel at any time. The use of any electronic technology resources of the Village implies acceptance of all current operational policies and procedures.
2. The purpose of this policy is to establish guidelines and minimum requirements governing the acceptable usage of Village-provided Internet, electronic mail, and online services. By establishing and maintaining compliance with this policy, risks and costs to Village of South Lebanon government as a whole can be reduced while the valuable potential of these resource tools are realized. The objectives of this policy are to assure that:



- a. Disruptions to Village government activities from inappropriate use of Village-provided Internet, electronic mail, and online services access are avoided.
  - b. Users are provided guidelines describing their personal responsibilities regarding confidentiality, privacy, and acceptable use of Village-owned Internet, electronic mail, and online services access.
3. The Village of South Lebanon promotes Internet and electronic mail use that enables employees to achieve their various departmental missions and goals, and to improve Village government in general. These resources are intended to assist in the efficient and effective day-to-day operations of Village government.

B. General Standards of Conduct for Internet Use:

1. Any use of Village computers or on-line computer services to facilitate illegal activity is prohibited.
2. Use of the Village's electronic services to access obscene, pornographic, or sexually offensive materials is prohibited, unless such use is authorized as part of a police investigation.
3. Use of the Village's electronic services for political, commercial or for-profit purposes is prohibited. This includes buying, selling and bartering, including, but not limited to, the use of credit cards. Employees must use discretion when using the Village's electronic services for personal use. When proper discretion is not used, disciplinary action will be taken. Employees are cautioned that network communications will be tracked. Employees are encouraged to use reasonable judgment with such use.
4. The use of electronic services to play internet games or shop online.
5. Disruption of electronic services, supporting equipment, or information available on it is prohibited, including, but not limited to, tampering with hardware or software, vandalizing or destroying data, introducing or using computer viruses, attempting to gain access to restricted information or networks, violating copyright laws or installing non-Village-owned software of any kind.
6. The use of electronic services to harass other users or to transmit materials likely to be offensive or objectionable is prohibited.
7. Users of electronic services are to protect themselves and others by not issuing or releasing confidential information, addresses, passwords or telephone numbers, and remembering that on-line computer services are not private.
8. Employees shall not use a code or password, access a file or retrieve any stored information unless authorized to do so. Employees should not attempt to gain access to another employee's messages without the latter's permission. All

computer pass codes or passwords used on the Village's equipment must be provided to the department head. No pass code or password may be used that is unknown to the department head. Any employee who violates this policy or uses electronic services for improper purposes shall be subject to discipline, up to and including discharge.

C. Scope of the Policy:

1. Access to the Internet, electronic mail, and online services is provided for the purpose of encouraging and promoting improved use of technology and information services in the areas of:
  - a. Gathering information and data relevant to Village business.
  - b. Communicating with other users who have related business interests.
  - c. Increasing employee and contractor efficiency by utilizing skills which will enhance overall job performance.
  - d. Encouraging collaboration and resource sharing among other localities, state, and federal agencies.
2. The following Village employees are covered by this policy:
  - a. Full- or part-time employees of the Village.
  - b. Volunteers who are authorized to use Village resources to access the Internet, electronic mail, and online services.
  - c. Village contractors who are authorized to use Village equipment and facilities.

D. Department Responsibility: Appointing authorities or department heads (or designee) will have the final authority in determining whether an employee requires access to the Internet, electronic mail, and online services to accomplish their assigned duties. Departments have the responsibility for:

1. Acquiring Internet, electronic mail, and online service accounts for their personnel who need access to conduct the official business of the Village.
2. Ensuring that all personnel who have access to the Internet, electronic mail, and online services are aware of their responsibilities as outlined in this policy.
3. Assuming the responsibility for making the final determination as to the appropriateness of their employees' use of the Internet, electronic mail, and online services.

- E. User Responsibility: Users should be aware that when access to the Internet, electronic mail, and online services are accomplished using Internet addresses and domain names registered to the Village of South Lebanon, they may be perceived by others to represent the Village. Users shall not use the Internet, electronic mail, or online services for any purpose which would reflect negatively on the Village or its employees.
- F. E-mail:
1. Any message sent or received via a Village e-mail system may be monitored by the employer at any time, with or without prior notification. If the employer discovers any misconduct or criminal activity, the information contained in such e-mail messages may be used to document such conduct, and may be revealed to the appropriate authorities. All e-mail usage shall comply with the employer's policy, and all state and federal laws including those barring discrimination because of race, color, ancestry, gender, religion, military status, genetic information, national origin, age, or disability.
  2. E-mail relevant to the course of business at the Village should be printed and filed in the same manner as written correspondence.
  3. E-mail accounts are to be used only by the authorized owner of the account or another person with the owner's specific authorization.
  4. Subscriptions to unrelated services or news groups are not allowed as they create unnecessary traffic on the e-mail system.
  5. It is permissible to transmit documents via e-mail as attachments. However, transmitting copyrighted material including software, research data and manuscripts without the consent of the copyright holder is strictly prohibited.
  6. Caution should be exercised before opening any attachment to any incoming e-mail. If the e-mail is of unknown origin, or is not business-related, the attachment should not be opened.
  7. The use of personal e-mail is not forbidden, but should be used with common sense and restraint as is the telephone for personal business.
  8. The downloading of files/programs for personal use from the Internet without advance permission is prohibited. Permission must be obtained from the department head or mayor.
- G. Standards of Conduct for E-mail on a Village Electronic System:
1. Do not overuse e-mail by sending courtesy copies of messages to people who do not need them. Similarly, it is not generally necessary to reply to an e-mail just to inform the sender that you have received it.

2. Be careful when forwarding e-mail messages. Use common sense: if you would not forward a copy of a paper memo with the same information, do not forward the e-mail.
3. Global transmission of e-mail is prohibited without the advance written permission of the department head.
4. Be careful what you write. E-mail is not the same as conversation. It is a written record, can be duplicated at will, and may constitute a “public record.”
5. When replying to e-mail, it is often useful to include a portion of the original sender’s message to put your reply into context. It is appropriate to delete unimportant portions of the original message in order to prevent the message from getting too long.
6. If a user discovers defamatory, disparaging or otherwise damaging statements about the Village of South Lebanon on the Internet, the user should inform the appropriate department head to follow-up on that discovery.

H. Security:

1. Electronic message systems may not be secure. Employees should be aware of potential electronic messaging security problems before transmitting private or confidential messages. Disclosure may occur intentionally or inadvertently when an unauthorized user gains access to electronic messages. Disclosure may occur when messages are forwarded to unauthorized users, directed to the wrong recipient, or printed in a common area where others can read them.
2. Use caution when sending classified information. Always display "CONFIDENTIAL" on the subject line when sending confidential information. Confirm that encryption has been enabled before sending confidential or classified information. Be aware that even if you encrypt your data, anything you electronically transmit over the Internet, electronic mail, or online services are subject to interception, reading, and copying by other people.
3. The Internet may not be secure. Employees should take this into account before receiving or transmitting information and messages. Employees should be aware that it is possible to identify visitors to Internet sites (i.e., all Internet browsers furnish a trail to trace all Internet site visits), and should exercise conservative judgment when accessing information on the Internet.

I. Enforcement and Violations:

1. All Village employees using Village equipment to access the Internet, electronic mail, and online services are subject to having activities monitored by system or security personnel.

2. Violation of this policy and its attachments will result in disciplinary action, up to and including termination.

**SOCIAL MEDIA****SECTION 7.07****A. Purpose**

The purpose behind this policy is to make an employee aware of his or her privacy rights and prohibited conduct with respect to an employee's actions and its impact on the employer when using social media sites on and off duty. This policy is also intended to ensure efficient use of employee time and to minimize any distraction from an employee's assigned tasks and duties. It will allow the employer to ensure that employer rules are followed and all employees are treated fair and consistent.

Employees shall remember they are paid by public funds and the public holds them to a high standard of professionalism. The employer has an overriding interest and expectation in deciding what is "spoken" on behalf of the employer. This policy is not meant to infringe on one's right to free speech, rights under R.C. 4117, or any other protected activity.

- B. Scope: All employees will be subject to and held accountable for any conduct outlined in Social Media Policy. This policy works in conjunction with other related personnel policies and procedures (e.g., harassment).
- C. Social Media refers to the use of websites such as, but not limited to, Facebook, Twitter, Instagram, and LinkedIn. For purposes of this policy, Blogs and other internet forums of shall also be covered. Nothing in this policy is meant to prohibit access to any social media website or Blog which may be work-related.
- D. On Duty Conduct – While at work, an employee may only access social media websites, Blogs and/or other internet forums of communication during their lunch or breaks. This includes access from a personal device (e.g., Smartphone, iPhone, etc.) during an employee's compensated hours of work.
- E. On and Off Duty Conduct – An employee enjoys no expectation of privacy to information posted into cyberspace even while off duty. This includes anything posted to a social media website, Blog, or other similar internet forum of communication. Although information may be posted to a "private" webpage, the employee should be aware this information can still be accessed by the public and other sources in a number of ways. Because of this, an employee needs to use "common-sense" when posting comments, photos, opinions, or any other information related to his or her employment. Any social media activity which portrays the employer in a negative light will be evaluated and may result in disciplinary action up to and including termination. Examples of prohibited conduct include, but are not limited, to:
  1. Posting one's photograph while wearing the employer's uniform (or other similar attire, which could be misidentified as the official uniform).

2. Posting pictures, videos, or comments that are insubordinate with respect to the employee's employment.
  3. Posting pictures, videos, or comments that constitute or could be construed as unlawful behavior.
  4. Knowingly or recklessly posting false information about the employer, supervisors, coworkers, public officials, or those who have a relationship with the employer. This also includes disparagement of a fictitious character or computer-generated likeness that resembles the above.
  5. Posting, transmitting, or disseminating any pictures or videos of official training, activities, or work-related assignments without the express permission of a supervisor.
  6. Posting pictures, videos, or comments that are sexual, obscene, violent, offensive, harassing, or pornographic in nature along with any reference to the employer or individual's employment.
- F. Employees shall not imply they are speaking on behalf of the employer unless authorized to do so. Should an employee speak on matters of employment, the employee shall include a disclaimer.
- G. Confidential Information – An employee shall not disclose any work-related confidential or proprietary information on any social media website, Blog, or other internet forum of communication. This can include information that may eventually be obtained through a valid public record's request.
- H. Employees are encouraged to follow the internal complaint procedure and not take to the internet to voice work-related complaints.
- I. Employees found to have violated any part of this policy may be subject to discipline up to and including termination.
- J. Any deviation from the above policy shall be approved by the employer in writing.
- K. Any questions regarding the policy should be directed to the employee's immediate supervisor.
- L. Employees shall take note of the following: DELETE DOES NOT MEAN DELETE. Once something is posted into cyberspace it remains there.

**OUTSIDE EMPLOYMENT****SECTION 7.08**

- A. Under no circumstances shall an employee have other employment which conflicts with the policies, objectives, and operations of the Village of South Lebanon. In addition, an

employee shall not become indebted to a second employer whose interests might be in conflict with those of the Village.

- B. An "employment conflict," as set forth in this policy, exists when a second job impairs the employee's ability to perform the duties of his/her position with the Village. Full-time employment with the Village shall be considered the employee's primary occupation, taking precedence over all other occupations.
- C. Prior to accepting "outside" employment (or becoming self-employed), an employee shall notify his/her supervisor, in writing, of his/her intention to be employed in a secondary job. The supervisor shall confer with the employee to determine whether the "secondary job" presents a conflict with Village policies, objectives, interests, and/or operations.

"Outside" employment, or "moonlighting," shall be a concern to the Village only if it adversely affects job performance.

- D. Two (2) common employment conflicts which may arise are:
1. Time Conflict: defined as when the working hours required of a "secondary" job directly conflict with the scheduled working hours, or when the demands of a "secondary" job prohibit adequate rest, thereby adversely affecting an employee's job performance.
  2. Interest Conflict: defined as when an employee engages in "outside" employment which tends to compromise his/her judgment, actions, and/or job performance.
- E. If, in the opinion of the employer, outside employment is adversely affecting an employee's job performance, he/she may be asked to refrain from such activities as a condition of continued employment. Refusal to conform to such a request shall be cause for corrective action.

## **DRESS AND APPEARANCE**

## **SECTION 7.09**

The Village reserves the right to prescribe appropriate dress and appearance standards which are in the best interest of Village service. The Village general policy merely requires that clothing and overall appearance of employees be in good taste. Employees who work around machinery and equipment must observe sound safety regulations, including the use of appropriate articles of clothing (shoes, goggles, hard hats, and so forth).

Certain Village departments reserve the right to require employees to adhere to more stringent dress and appearance requirements as may be necessary for the performance of the functions of that department (i.e., uniforms, badges, shoes, hair styles, etc.). The Village shall issue uniforms to employees of the Public Works Department which shall include shirts, slacks and work boots. Employees for such departments shall wear such attire at all times.

## **SOLICITATION AND DISTRIBUTION**

## **SECTION 7.10**

In order to maintain an orderly and productive working environment, the Village reserves the right to regulate solicitation and distribution by employees and non-employees.

- A. Employee Solicitation Rule: Any solicitation by an employee of another employee on the premises of the Village of South Lebanon, while either employee is on his/her working time, is prohibited. "Working time" means all the time an employee's duties require that he/she be engaged in work tasks. However, solicitation is permitted during non-working time in non-working areas.
- B. Employee Distribution Rule: Distribution of any type of literature, brochures, goods, etc., during working or non-working time, is prohibited in working areas. Employees may distribute goods and written materials during non-working time in non-working areas, e.g., rest rooms, hallways, and break rooms.
- C. Employee Access Rule: Employees are not permitted access to the interior of Village facilities during their off-duty hours unless authorized by the appropriate department head. Council members may have access to Village facilities after hours in order to conduct Village business.
- D. Non-Employee Solicitation and Distribution Rule: Non-employees are not permitted access to the premises of the Village of South Lebanon, including the interior of the facilities and other working areas, for the purpose of solicitation and/or distribution. This section does not apply to vendors as defined below.
- E. Definitions:

Distribution means an act of distributing goods, materials, and/or written materials.

Non-Working Area means any area on or off the Village's premises not designated as a working area.

Non-Working Time means any time during an employee's workday when the employee is totally relieved of work duties, such as break time and lunch time. Whether an employee is in paid or unpaid status during these times is immaterial to the designation of non-working time.

Off-Duty Hours means any time before or after a work shift.

Solicitation means an act of requesting an individual to purchase goods, materials, or services, or a plea for financial contribution.

Vendor means any individual or group engaged in or desiring to engage in the supply of goods, materials, or services to the Village, which goods, materials, or services are utilized in the conduct of public business.

Working Area means any office, building, or physical location where official Village business is transacted and/or operations are conducted. This includes any public or private area where employees are engaged in work activities.



Working Time means all the time an employee's duties require that he/she be engaged in work tasks, but does not include an employee's own time, such as meal periods, scheduled breaks, and time before or after a work shift.

- F. Violation of this policy may result in corrective action.

**USE AND POSSESSION OF ALCOHOLIC BEVERAGES****SECTION 7.11**

- A. In order to maintain a safe and efficient workplace free of alcohol abuse or the impression of improper alcohol use, it is the policy of the Village of South Lebanon that the use or possession of alcohol during working hours and being under the influence of alcohol with a prohibited blood alcohol level of 0.040.00 or greater. while at work is strictly prohibited. This would include the use of alcohol before reporting to work as well as consumption at meal periods.
- B. Village employees are not permitted to use or possess alcoholic beverages in Village buildings or vehicles. The only exception is when employees possess alcoholic beverages through the official performance of their duties.
- C. The Village reserves the right to require employees to submit to tests for drug or alcohol abuse pursuant to the Drug Free Workplace Policy, Section 7.12, as explained and defined therein. The policy on alcohol testing is incorporated under this policy as if fully written herein.
- D. Any employee who violates this policy will be subject to discipline which may include termination.

**DRUG FREE WORKPLACE****SECTION 7.12**

Notice Upon Hiring: As a condition prior to hiring, a prospective employee will receive a copy of the Village's Drug Free Workplace notice and policy, and will be required to sign a statement which will become a permanent part of the prospective employee's personnel file once he/she is hired by the Village. (See Forms #4 - #7 in the Personnel Forms section of this Manual.)

In addition, as a further condition prior to hiring, all prospective employees will be required to sign a written statement to the effect that:

- A. They understand and support the Village's Drug Free Workplace policy.
- B. They agree to refrain from violating this policy while in the employ of the Village.
- C. They acknowledge in advance that they understand that the penalty for breach can be discharge and agree that it is appropriate when supported by evidence.

Current Distribution of Drug Free Workplace Policy: All current employees will receive a copy of the employer's Drug Free Workplace notice and policy, and will be required to sign a receipt for it, which will become a permanent part of the employees' personnel file.

All current employees will be asked to voluntarily sign a statement supporting the strict enforcement of this policy.

Drug Free Workplace Policy Definitions:

- A. Employee means any person (i.e., management, supervisory, or non-supervisory) who is paid in whole or in part by the Village.
- B. Controlled Substance means any controlled substance contained in Schedules I through V of Section 202 of the Controlled Substance Act (21 USC 812; or as defined in 3719.01 ORC).
- C. Conviction means any finding of guilt, including a plea of nolo contendere (no contest) or the imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal, state, or municipal criminal drug statutes.
- D. Crime Drug Statute means a criminal statute involving manufacture, distribution, dispensation, use, or possession of any controlled substance.

For purposes of this policy all definitions will be consistent with 3719.01 et seq. ORC and ORC Section 2925.01 et seq.

- E. It is the policy of the Village of South Lebanon to maintain a safe and productive workplace free of drugs and free of those individuals who use drugs.
- F. The unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance by any employee which takes place in whole or part in the workplace is strictly prohibited and will result in criminal prosecution and employee discipline which may include termination from employment.
- G. Any employee convicted of any federal or state criminal drug statute for a violation which occurs in the workplace must notify the Village of that fact within five (5) calendar days of the conviction.
- H. Any employee who reports for duty in an altered or impaired condition for any reason which is the result of the illegal use of controlled substances will be subject to discipline. Any decision regarding discipline may be held in abeyance pending the completion by the employee of a drug rehabilitation program.
- I. An employee may be found to use illegal drugs on the basis of any appropriate evidence including, but not limited to:
  - 1. Direct observation.
  - 2. Evidence obtained from a workplace-related arrest or criminal conviction.
  - 3. A verified positive test result.

4. An employee's voluntary admission.

On the first occasion in which an employee has a confirmed positive alcohol or other drug test resulting from reasonable suspicion testing, the employee shall be required to enroll in and successfully complete a substance abuse program certified by the Ohio department of alcohol and drug addiction services.

If an employee is found to have used illegal drugs or refuses to submit to a properly ordered drug test shall be subject to disciplinary action. Such offenses qualify as Group III offenses, warranting disciplinary action, up to and including termination (See Section 8.03, Grounds for Disciplinary Action and Penalties).

- J. Any employee convicted of a workplace-related drug offense, who fails to report the conviction as required by the above, will be:
  1. Terminated from employment.
  2. Barred from future employment with the Village.
  3. Held civilly liable for any loss of federal funds resulting from the failure to report the conviction.

Policy Distribution: The Village will endeavor annually to provide each employee with a package containing:

- A. Information concerning the dangers of drug abuse in the workplace.
- B. A current copy of the Village's Drug Free Workplace notice.
- C. A current copy of the Village's Drug Free Workplace policy.
- D. Information concerning any available drug counseling, rehabilitation, and employee assistance programs.
- E. Information concerning the penalties that will be imposed for the breach of the employer's Drug Free Workplace policy.
- F. Notice to the employee that any work-related conviction of any federal or state criminal drug statute must be reported in writing to the Village within five (5) calendar days after such conviction.
- G. Violation of this policy will result in discipline up to and including termination.

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| <b>CONTACT WITH THE NEWS MEDIA AND VILLAGE RESIDENTS</b> | <b>SECTION 7.13</b> |
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Any employee contacted by the news media (radio, television, newspaper) or a Village resident regarding a story related to Village operations should request that the member of the news media

or resident contact the appropriate department head to discuss the matter. This policy is designed to avoid duplication, assure accuracy, and to protect employees from breaches of confidentiality.

**PERSONNEL FILES****SECTION 7.14**

- A. The Village Fiscal Officer shall maintain official personnel files on all employees of the Village. Such files shall include, but may not be limited to, individual employment data; payroll information; records of deductions; application forms; records pertaining to hiring, promotion, demotion, transfer, layoff, termination, etc. An employee shall have a right of reasonable inspection of his/her official personnel file. Personnel file access is governed by R.C. 149.43 and R.C. Chapter 1347.
- B. Each employee shall be allowed to review the contents of the personnel file(s) pertaining to them. Employees may also request that the employer conduct an investigation to determine if the information in their personnel file is accurate, relevant, timely and complete. This investigation must occur within 90 days of the employee's written request. All information determined by the employer to be inaccurate as a result of such investigation shall be deleted or corrected. If the employer determines the record to be correct, the employee may attach a brief statement of explanation to the file.
- C. Employees requesting to obtain or review information in their personnel file may be required to provide proof of identification. Representatives of employees requesting to obtain or review information shall produce a written release from the employee requesting that the representative review the record. Said release shall be placed in the employee's file.
- D. The employer will monitor the accuracy, relevance, timeliness and completeness of its personnel records, take reasonable precautions to protect information in the system from unauthorized and unlawful modification, destruction, use or disclosure and shall collect, maintain and use only that information necessary and relevant to the employer's functions.
- E. An employee must advise the fiscal officer of any change in name, address, marital status, telephone number, number of exemptions claimed for tax purposes, citizenship, selective service classification, or association with any government military service organization.

**PUBLIC RECORDS****SECTION 7.15**

- A. Public Records Requests: The employer will prepare and make available for inspection and/or copying "public records," as defined in ORC 149.43, upon request of any member of the general public.
  - 1. Public records inspection, release, and retention are subject to the Village's Public Records Policy and will be processed accordingly. The policy is attached in Section 9.16 of the Forms Section.
  - 2. Self Help to Records Prohibited:

- a. No employee may copy or remove any record or writing, even those regarded as “public records,” without first obtaining advanced written permission from the Village Administrator or designee or without going through the process for obtaining public records as outlined below.
  - b. No employee may copy, or use any agency writing, document, or record in any grievance, appeal, or legal action without first obtaining the written permission of the Village Administrator or designee. This particular policy does not apply to matters obtained through formal “discovery” under the Rules of Civil Procedure.
  - c. No employee shall tape, video, or otherwise record any meeting, hearing, or appeal involving the Village or representative of the Village without the advanced written permission of the Village Administrator.
  - d. Except for official agency business, no employee may have any agency writing or document in his/her possession, unless obtained in accordance with this policy.
- B. Penalty for Breach of this Policy: Any employee who is discovered to have violated this policy will be subject to disciplinary action including possible termination of employment. Any former employee who is discovered to have violated this policy by producing unauthorized documents or tape recordings at any grievance, appeal, or civil action against the employer will be barred from reinstatement or reemployment, and may be subject to civil or criminal penalties.
- C. The Village may limit a public records request if it is used for commercial purposes.
1. The Village will transmit by U.S. Mail up to ten (10) records per month, unless the requester certified to the Village in writing that they do not intend to use or forward the requested records, or the information contained in them, for commercial purposes (ORC 149.43 (B)(3)).
  2. Commercial purposes do not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding the operation or activities of government, or non-profit educational research.
  3. An employee who receives a public records request, as such as one stated in this policy, shall immediately forward this request to the Village Administrator.

**USE OF EMPLOYER PROPRIETARY OR CONFIDENTIAL  
INFORMATION****SECTION 7.16**

- A. All information obtained by employees in the course of their employment with the Village and all employer data shall be considered confidential and proprietary. Personal, financial, and business information which employees obtain during the normal course of their

employment shall not be discussed nor disclosed to anyone other than those individuals who have a need to know for legitimate business purposes.

- B. In order to protect against inappropriate use of information or data maintained by the employer, all employees are required to comply with the following regulations:
1. Accessing confidential/proprietary information or data, other than as required for work purposes, is prohibited.
  2. Removal of information or data from the employer's premises without advance approval from the Village Administrator or designee is prohibited.
  3. Discussion of such information with other persons for other than legitimate work related purposes is prohibited.
- C. Using confidential/proprietary information or employer data for any purpose other than as required to complete assigned work tasks, discussing such confidential/proprietary information or data with anyone other than for work purposes, or removal of such information or data from the employer's premises without authorization, will result in discipline of the employee, including possible termination of employment with the Village.
- D. Any employee who has a question regarding the use of confidential/proprietary information or data maintained by the employer, should request clarification of the employer's policy before risking a possible violation of this policy.
- E. Any employee in need of a copy of any records maintained by the employer shall submit a written request to the Village Administrator or designee identifying the specific record and explaining the need for the copy.

**NO EMPLOYEE EXPECTATION OF PRIVACY****SECTION 7.17**

No employee shall have any expectation of privacy regarding any personal information, documents, materials, or other personal items maintained in any employer-provided locker, vehicle, desk, file, computer, cellular telephone, or elsewhere in employer-owned property.

The employer shall have the right to search and review any files, e-mails, web sites, etc., maintained or accessed by the employee on any computer provided by the employer for the employee's use. The employer shall have complete access to any telephone records, cellular telephone logs, or other information maintained on any employer-provided cellular telephone.

Any employer-provided locker, desk, vehicle, or other equipment shall be subject to search at any time by the employer.

**HEALTH AND SAFETY****SECTION 7.18**

It is the goal of the Village of South Lebanon to provide all employees with a safe and healthful work environment. Village department heads believe that safety must always be foremost in the

minds of Village employees. Village department heads do not believe that health and safety practices and procedures should be sacrificed in order to get a task completed faster or more inexpensively.

#### Village Responsibility

The responsibility of the Village is to support department heads in their efforts to provide a safe and healthful workplace, and to provide department heads with the resources necessary to reach this objective. The Village will also take disciplinary measures, or support the disciplinary measures taken by department heads, when an employee violates health and safety rules.

#### Department Head Responsibility

The responsibility of each department head is to provide a safe and healthful workplace, establish and maintain a departmental health and safety program, ensure employees are properly trained, report accidents, provide medical and first aid equipment, ensure that personal protective equipment is available and utilized, provide employees with health and safety information, support lower level supervisors in their health and safety activities, and to evaluate the health and safety performance of lower level supervisors.

#### Supervisory Responsibility\*

The responsibility of supervisors is to properly instruct employees, enforce health and safety regulations, correct unsafe acts and conditions, ensure that only authorized and adequately trained personnel operate equipment, report and investigate accidents/incidents, inspect areas of responsibility for hazards, ensure equipment is properly maintained, and instill safety awareness in employees. When a safety violation is reported, the supervisor (or department head if there is no other supervisor) shall immediately commence an investigation into the incident.

#### Employee Responsibility

The responsibility of all Village employees is to follow safe work procedures, know and comply with applicable regulations, report injury or illness immediately, report any accidents or safety violations, and participate in any Village sponsored health and safety meetings, programs or committees. Any employee questions regarding health and safety should be directed to the employee's department head.

\*Some Village department heads will have both department head and Supervisory responsibilities.

### **WORKPLACE VIOLENCE**

### **SECTION 7.19**

- A. The safety and security of employees, clients, contractors, and the general public are of vital importance to the Village of South Lebanon. Therefore, threats, threatening behavior, or acts of violence made by an employee or anyone else against another person's life, health, well-being, family, or property will not be tolerated. Employees found guilty of violence will be subject to disciplinary action up to and including termination of employment.
- B. The purpose of this policy is to provide guidance to employees of the Village should they encounter a situation that they believe is or could result in an act of violence.

- C. The word “violence” in this policy shall mean an act or behavior that:
1. Is physically assaultive.
  2. A reasonable person would perceive as obsessive (e.g., intensely focused on a grudge, grievance, or romantic interest in another person and likely to result in harm or threats of harm to persons or property).
  3. Consists of a communicated or reasonably perceived threat to harm another individual or in any way endanger the safety of another.
  4. Would be interpreted by a reasonable person as carrying a potential for physical harm to the person.
  5. A reasonable person would perceive as intimidating or menacing.
  6. Involves carrying or displaying weapons, destroying property, or throwing objects in a manner reasonably perceived to be threatening.
  7. Consists of a communicated or reasonably perceived threat to destroy property.
- D. The employer prohibits the following:
1. Any act or threat of violence by an employee against another person’s life, health, well-being, or property.
  2. Any act or threat of violence, including, but not limited to, intimidation, harassment, or coercion.
  3. Any act or threat of violence which endangers the safety of employees, clients, contractors, or the general public.
  4. Any act or threat of violence made directly or indirectly by words, gestures, or symbols.
  5. Use or possession of a weapon on the employer’s premises, on a Village controlled site, or an area that is associated with Village employment except as required in the line of duty (i.e., law enforcement).
- E. The most common situations where workplace violence is likely to occur are as follows:
1. Dealing with the Public: Violent situations could occur in employee contact with the public. While the employer has a strong commitment to client service, we do not intend for employees to be subjected to verbal or physical abuse by the client.
  2. On-the-Job: Situations could occur where relationships between employees, or between an employee and a supervisor, result in strong negative feelings by the individuals involved.



3. Off-the-Job: An employee could become involved in a personal non-criminal dispute with a co-worker, family member, or neighbor during the employee's non-working hours. The employer prohibits any act of violence by an employee towards any other employee while off duty. If the situation escalates, individuals sometimes secure restraining orders from the courts. If an employee requests such a restraining order, the employee should include the work location as well as the employee's place of residence in the order.
- F. The possession or use of dangerous weapons is prohibited on employer property, in employer vehicles, or in any personal vehicle which is used for employer business or is parked on employer property, except as hereinafter provided.
1. A dangerous weapon is defined as:
    - a. A loaded or unloaded firearm.
    - b. A weapon, device, electronic stun weapon, chemical substance, or other material that in the manner it is used, or could ordinarily be used, or is intended to be used, is readily capable of causing serious bodily injury.
  2. Exceptions: Individuals may possess a firearm on employer property if the individual is employed in a law enforcement capacity. Employees, who possess a valid permit to carry a firearm, if a firearm is brought on employer property, must keep the firearm unloaded and in the employee's personal vehicle, which shall be locked.
- G. Any person who makes substantial threats, exhibits threatening behavior, or engages in violent acts on the employer's property shall be removed from the premises as quickly as safety permits and shall remain off the premises pending the outcome of an investigation. The employer will initiate an appropriate response. This response may include, but is not limited to, suspension and/or termination of any business relationship, reassignment of job duties, suspension or termination of employment, and/or criminal prosecution of the person(s) involved.
1. It is a requirement that all employees report any behavior that compromises the employer's ability to maintain a safe work environment. All reports will be investigated immediately and kept confidential, except where there is a legitimate need to know. Even without an actual threat, personnel should also report any behavior they have witnessed which they regard as threatening or violent, when that behavior is job related or might be carried out on a Village controlled site, or is associated with Village employment.
  2. All incidences of suspected or potential violence should be reported to the employee's department head. Employees should not take the position that the incident is too minor to report or that it does not appear to be a "real problem." Employees should not wait until it is too late to be proactive.

3. Supervisor Responsibilities: Department heads are responsible for assessing situations, making decisions on the appropriate response, and responding to reports of or knowledge of violent activities that have occurred in the workplace or that involve an employee of the employer.
4. When any actual, potential, or suspected incident of violence is brought to the attention of the department head, the department head or designee shall evaluate the severity of the situation immediately and have the individual reporting the incident fill out a Workplace Violence Incident Report form. If it is concluded that an actual act of violence has occurred or if there is a likelihood that violence could result, the department head or designee shall:
  - a. Discuss the situation with the employee(s) and attempt to find out what caused the situation.
  - b. Determine what action is to be taken to prevent the situation from occurring again. Such actions may include but not be limited to:
    - (1) Assigning a different employee to the area or job.
    - (2) Talking with the disgruntled citizen or employee(s).
    - (3) Discussing the incident and offering suggestions for appropriate action.
    - (4) Referring the affected employee(s) to professional help or counseling.
    - (5) Disciplining the employee(s), up to and including termination of employment.
5. All employees who apply for, obtain, or are the subject of a restraining order which lists any Village locations as being protected areas, must provide to their department head a copy of the petition and declarations used to seek the order, a copy of any temporary protective or restraining order which is granted, and a copy of any protective or restraining order which is made permanent.

**CONCEALED WEAPONS****SECTION 7.20**

- A. The safety and security of employees, visitors, contractors, and the general public are of vital importance to the employer. Further, carrying a concealed weapon is not part of anyone's job responsibility (except law enforcement officers...); and such activity does not "arise in the course or scope of employment."
- B. More specifically, the employer specifically prohibits employees from engaging in the following activities:
  1. Carrying a firearm or other weapon while on duty, whether or not licensed to do so, (For those employees who leave the employer's facility and travel to perform duties, these employees shall not carry a firearm on their person or in their vehicle.).

2. Possessing a weapon or firearm on any parking area owned, leased, or controlled by the employer, whether or not contained in a vehicle.
3. Displaying a weapon or firearm while on duty. Should an employee display a weapon or firearm, whether in the facility or on the parking lot, such action will be considered a threat and will be prosecuted.
4. Carrying or displaying a weapon or firearm, on- or off-duty, while on strike or picketing.
5. Displaying an empty handgun holster on their person while on duty.

Any violation of the above activities is grounds for immediate discharge.

- C. Law enforcement personnel who are authorized to carry weapons are exempt from this policy.
- D. Any employee who witnesses any prohibited activities as defined in this policy shall immediately report such activity to their immediate supervisor.

**GAMBLING****SECTION 7.21**

The employer does not permit illegal gambling in any form by employees during workdays. For purposes of this policy, the workday includes regular working hours, lunch periods, clean-up time and other breaks. Violation of this policy will be cause for disciplinary action.

**GARNISHMENTS****SECTION 7.22**

- A. A court ordered legal claim against the wages of an employee by a creditor for nonpayment of a debt, served by legal authority, is a garnishment and will be recognized and executed by the employer. Repeated garnishments on the wages of an employee may result in disciplinary action.
- B. Upon receipt of a garnishment for an employee, the following procedure of notification will apply:
  1. The fiscal officer will notify the Village Administrator or designee and the employee's department head of the garnishment order and whether the employee has had any previous garnishment(s) of wages.
  2. The Village Administrator or designee will schedule a conference with the department head and the employee, to discuss the garnishment.
- C. For a first garnishment received for an employee, the following procedure will apply:
  1. The employee will be informed of the potential consequences of further garnishments.

2. The employee will be counseled or referred to an appropriate agency to assist the employee in working out the employee's financial difficulties.
3. For any second or subsequent garnishment received for an employee:
  - a. The Village Administrator or designee and department head will meet with the employee to discuss the continuing problem.
  - b. Depending on the circumstances, repeated garnishments will be cause for disciplinary action.
  - c. Employees who demonstrate a willingness and effort to resolve their financial problems may have discipline held in abeyance

**BULLETIN BOARDS****SECTION 7.23**

- A. Bulletin boards are a means for the employer to provide information to employees. The following are examples of the kind of information that may be posted by employees on employer bulletin boards (with prior approval of the department head):
  1. Employee recreational and social affairs.
  2. Notices of employee meetings.
  3. Non-partisan publications.
- B. No information may be posted on employer bulletin boards that contain:
  1. Personal, scandalous or derogatory attacks upon any employee, public official, governmental agency, organization or group.
  2. Favorable or unfavorable comments or attacks regarding a candidate for public office.

**FRAUD REPORTING****SECTION 7.24**

Complaints or any matter that alleges mismanagement of Village resources or misuse of public money can be made to the auditor of the state of Ohio through the Ohio fraud-reporting system.

Complaints made to the auditor of the state of Ohio through the Ohio fraud-reporting system are anonymous. Complaints may be made in three ways:

- A. File a written complaint by U.S. Mail at:

Ohio Auditor of State's Office  
Special Investigations Unit  
88 East Broad Street

P.O. Box 1140  
Columbus, OH 43215

B. Call the Fraud Hotline:

1-866-FRAUD OH (1-866-372-8364)

C. Online:

<http://www.auditor.gov>

**WHISTLEBLOWER PROTECTION****SECTION 7.25**

- A. If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal audit created under section 126.45 of the Revised Code or file a complaint with the auditor of state's fraud-reporting system under section 117.103 of the Revised Code.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report or complaint with the supervisor, appointing authority, the office of internal audit, or the auditor of state's fraud-reporting system, may report it to a prosecuting attorney, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102, section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission.

- B. Except as otherwise provided in division (C) of this section, no officer or employee in the classified or unclassified civil service shall take any disciplinary action against an employee in the classified or unclassified civil service for making any report or filing a complaint as authorized by division (A) of this section, including, without limitation, doing any of the following:
1. Removing or suspending the employee from employment;
  2. Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;
  3. Transferring or reassigning the employee;
  4. Denying the employee promotion that otherwise would have been received;

5. Reducing the employee in pay or position.
- C. An employee in the classified or unclassified civil service shall make a reasonable effort to determine the accuracy of any information reported under division (A) of this section. The employee is subject to disciplinary action, including suspension or removal, as determined by the employee's appointing authority, for purposely, knowingly, or recklessly reporting false information under division (A) of this section.
- D. If an appointing authority takes any disciplinary or retaliatory action against a classified or unclassified employee as a result of the employee's having filed a report or complaint under division (A) of this section, the employee's sole and exclusive remedy, notwithstanding any other provision of law, is to file an appeal with the State Personnel Board of Review within thirty days after receiving actual notice of the appointing authority's action. If the employee files such an appeal, the State Personnel Board of Review shall immediately notify the employee's appointing authority and shall hear the appeal. SPBR may affirm or disaffirm the action of the appointing authority or may issue any other order as is appropriate. The order of SPBR is appealable in accordance with Chapter 119 of the Revised Code.
- E. As used in this section:
1. "Purposely," "knowingly," and "recklessly" have the same meanings as in section 2901.22 of the Revised Code.
  2. "Appropriate ethics commission" has the same meaning as in section 102.01 of the Revised Code.
  3. "Inspector general" means the inspector general appointed under section 121.48 of the Revised Code.

**DISCIPLINE****SECTION 8.01****GENERALLY**

All employees of the Village serve at the will of the employer. However, to provide for professional and consistent delivery of service, the employer has adopted the following general principles to administer disciplinary actions of employees.

**OFFENSES**

Every employee in the service of the Village shall be expected to exhibit good behavior, and perform efficient and effective service. Any employee of the Village may be disciplined for offenses including without limitation:

**Note: this list is provided only as an example and is not exhaustive.**

- A. Conviction of any criminal offense.
- B. Fighting, threatening or attempting bodily injury to another; stealing, malicious mischief resulting in the injury or destruction of property of other employees of the Village of South Lebanon.
- C. Consumption of alcohol while on the job or during work hours.
- D. Use, or possession, of habit-forming drugs or hallucinogens.
- E. Unethical conduct on Village time.
- F. Insubordination, including but not limited to, refusal or failure to perform work assignments and the use of profane or abusive language to supervisors, employees or officers of the Village, and absence from duty without notice or permission of the supervisor.
- G. Willful neglect in the care or use of Village property and equipment.
- H. Failure to satisfactorily perform the duties for which employed.
- I. Gross or habitual carelessness or recklessness, playing of tricks, jokes or other dangerous pranks upon others. Disregard for safety and comfort of fellow employees.
- J. Engaging in outside employment without notification and approval of the council.
- K. Repeated failure to report to work on time and ready for work.
- L. Incurring costs or obligations in the name of the Village without the authority or prior approval.
- M. Discourteous and/or unprofessional treatment of the public.
- N. Failure to comply with the provisions of this document.
- O. Any violation of Village Work Rules, Regulations or Standard Operation Procedures documents.

**TYPES OF DISCIPLINE**

Disciplinary action shall consist of one or more of the following:

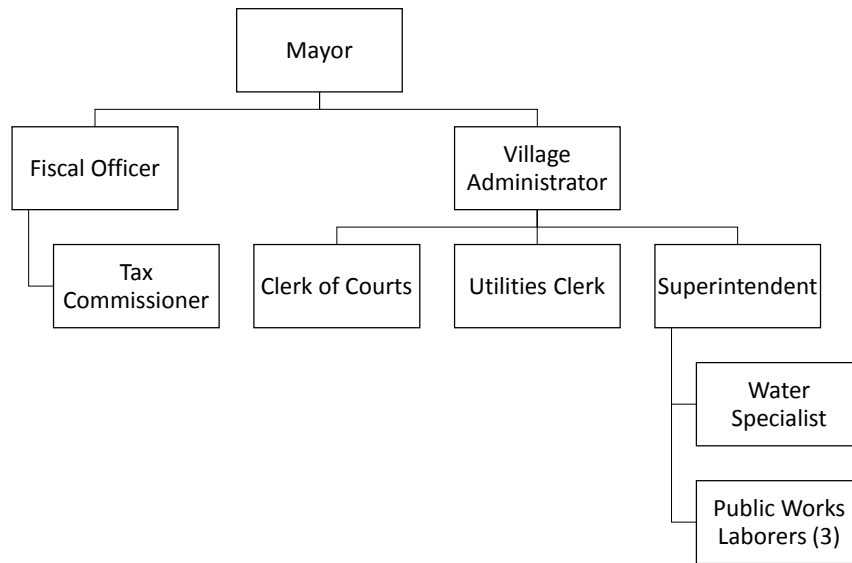
- 1. Verbal warning.
- 2. Written warnings.
- 3. Suspension from duty without pay.

4. Demotion in rank and/or salary.
5. Dismissal.

## DISCIPLINARY PROCEDURES

The discipline of employees shall be vested in accordance with the following chart:

Village of South Lebanon Organizational Chart



Discipline may be progressive in nature and shall be applied based upon one or more of the following factors, including the severity of the offense, past history of the employee and past disciplinary actions against the employee.

### DEPARTMENT HEAD: LIMITED DISCIPLINARY AUTHORITY

Department heads may issue verbal warnings and written warnings to members of their departments and should provide any documentation to the council.

### MAYOR OR COUNCIL: DISCIPLINARY AUTHORITY

The Mayor or Council may enforce appropriate discipline pursuant to the Ohio Revised Code § 733 or other corresponding sections. The Mayor may enforce appropriate discipline, including verbal warnings or written warnings or suspension from duty without pay or demotion in rank and/or salary or dismissal, against employees the Mayor is designated by statute as the employee's appointing authority only after the matter has been referred to and reviewed by the Personnel Committee if the action would result in either: 1) suspension from duty without pay; 2) demotion in rank and/or salary; or, 3) dismissal and approved by Council.



~~The Council may enforce any of the types of appropriate discipline, including verbal warnings, or suspension from duty without pay or demotion in rank and/or salary or dismissal termination dismissal, where appropriate against those employees the Council is designated by statute as the employees's appointing authority only after the matter has been referred to and reviewed by the Personnel Committee if the actions would result in either: 1) suspension from duty without pay; 2) demotion in rank and/or salary; or 3) dismissal and approved by Council., and in accordance with any applicable statutes or local laws.~~

## EMPLOYEE NOTIFICATION

- A. For disciplinary measures that are more severe than a verbal warning, the disciplined employee will be informed in writing of the right to appeal the disciplinary action to council.
- B. The written order will be provided to the employee prior to the effective time of the order for all disciplinary actions.

## APPEAL PROCEDURES

Disciplinary actions need not be deferred pending the possible submission of an appeal.

## EMPLOYEE'S RESPONSIBILITY

Employees, with the exception of department heads, feeling aggrieved by either a suspension of more than three (3) days or a change of status (e.g., dismissal or demotion) may, in writing, appeal the disciplinary action to the council.

- A. The appeal must be filed in writing with the Village Clerk and council within ten (10) days of the employee's receipt date of the written notification of the disciplinary action from the council. If the ten (10) day appeal filing time is exceeded, the council will take no action in the matter. This appeal:
  - 1. Must be signed by the individual who is appealing and include both his or her department and grade therein.
  - 2. Must have attached thereto a copy of the disciplinary order.
- B. The employee will present the written request for an appeal hearing in dispassionate language and shall not vilify the character or motivation of the department head or council. The written request should specify either or both of the following grounds for appeal:
  - 1. There was a failure on the part of a Village official to observe or correctly apply the provisions of the Personnel Policies or the terms of the subject's appointment.
  - 2. There was not a complete consideration of the facts regarding the disciplinary action taken against the appellant.
- C. The appeal hearing request should contain all written material truly relevant to the case.

- D. The council will be provided a copy of all material presented in the request for an appeal hearing when it is filed.
- E. Hearings will normally be closed to the public. However, the appellant may request that it be open.

### COUNCIL RESPONSIBILITY AND AUTHORITY

- A. The council shall set a time for an appeal hearing promptly and should strive to have the hearing date no later than ten (10) days after receiving the request for an appeals hearing.
- B. The council will review all written material submitted to it. If present, the council shall hear the appellant or his or her counsel. If present, the council shall hear the department head or counsel. The council will examine evidence upon the matter that may be pertinent and relevant.
- C. The council may affirm, disaffirm or modify the disciplinary measure taken against the employee.

### COMPLAINT PROCEDURE

### SECTION 8.02

The Village recognizes that within any organization, there will be occasional differences among its employees regarding interpretations of rules or other problems stemming from conditions of employment. In order to provide employees with an orderly process by which to seek resolution of such differences, the Village has established the following complaint procedure.

### COMPLAINT PROCEDURE

Step 1: Any employee having a complaint may lodge his/her complaint verbally with his/her department head. In order for the complaint to be recognized, it must be lodged within five (5) working days from the date the alleged incident which prompted the complaint discovered. Within five (5) working days from the date the employee first presented his/her complaint, the department head will meet with the employee and attempt to resolve the matter.

Step 2: If the complaint is not resolved in Step 1, the employee may pursue the matter by reducing the complaint to writing on Form T and presenting such to the Mayor ~~or~~ Village Administrator ~~or Personnel Committee~~, as appropriate, within five (5) working days of the reply received in Step 1. The Mayor ~~or~~ Village Administrator ~~or Personnel Committee~~ shall, if deemed necessary, meet with the complainant to discuss the matter within five (5) working days of the Mayor's ~~or~~ Village Administrator's, ~~or Personnel Committee's~~ receipt of the written complaint.

Within five (5) working days of the meeting, if such occurs, the ~~mayor~~ Mayor or ~~personnel committee~~ will provide the employee with a written response to his/her complaint. The decision of the mayor ~~or personnel committee~~ will be final and binding.

In the event of extenuating circumstances, a time limit may be extended, by the mutual agreement of both parties, in writing.

Complaints not processed by the employee to the next step of the procedure within the specified time limits, or any written extension thereof, shall be considered resolved on the basis of the decision at the previous step.

Any complaint not answered within the prescribed time limit, or extension thereof, shall be considered to have been answered in the negative and may be advanced by the employee to the next step.

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2016-\_\_\_\_\_**

**A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL  
OFFICER TO EXECUTE AN AGREEMENT WITH STONELAKE AT RIVERS BEND  
HOMEOWNERS ASSOCIATION, INC. FOR SNOW REMOVAL SERVICES**

**WHEREAS**, due to causing a financial hardship on the Homeowners Association, the officers of the Stonelake at Rivers Bend Homeowners Association ("Association") have made a request to the Village to provide snow removal services for the Association; and

**WHEREAS**, the Village has the capacity to provide said services; and

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

**Section 1.** That the Council approves and authorizes the Mayor and Fiscal Officer to execute an Agreement with Stonelake of Rivers Bend Homeowners Association to provide snow removal services, a copy of which is attached hereto.

**Section 2.** That the Council is acting in its administrative capacity in adopting this Resolution.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of 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      day of      , 2016.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk   James D. Smith, Mayor

|                                |                 |                                |
|--------------------------------|-----------------|--------------------------------|
| Rules Suspended:               | (if applicable) | Effective Date –               |
| Vote - ____ Yeas<br>____ Nays  |                 |                                |
| First Reading –    /    /2016  |                 | Effective Date –    /    /2016 |
| Second Reading –    /    /2016 |                 |                                |
| Third Reading –    /    /2016  |                 |                                |
| Vote - ____ Yeas<br>____ Nays  |                 |                                |

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_\_\_

## **AGREEMENT FOR SNOW REMOVAL SERVICES**

This AGREEMENT FOR SNOW REMOVAL SERVICES (the "Agreement") made as of the date stated below, between the Village of South Lebanon, Ohio, 99 S. High Street, South Lebanon, OH 45065 (the "Village") and the Stonelake of Rivers Bend Homeowners Association Inc., an Ohio Corporation ("Stonelake"), whose address is 9916 Windisch Road West Chester, OH 45069;

Stonelake desires to engage Village to assist in snow removal services for the subdivision located in South Lebanon, Ohio, and further described in Plat Book 78, Pages 38 and 39, Warren County, Ohio Recorder's Office (the "Subdivision");

The Village and Stonelake, in consideration of their mutual covenants herein agree, in respect of the performance of snow removal services by the Village and the payment for those services by Stonelake, to the following terms, conditions and obligations.

### **SECTION 1 - BASIC SERVICES OF THE VILLAGE**

- a) The Village shall perform snow removal services for Parkside Drive, Stone Ridge Boulevard, and Lakeview Court contained within the Subdivision. Stonelake acknowledges that the Village first performs snow removal services on Village roadways with heavier traffic and that the streets mentioned herein are not of this nature. Stonelake acknowledges and agrees that the streets mentioned herein shall be treated in the same priority as other streets in similar surrounding subdivisions located in the Village.

### **SECTION 2 - STONELAKE'S RESPONSIBILITIES**

Stonelake shall:

- a) Pay to the Village the sum of \$150.00 per visit for the services provided herein. Stonelake shall make prompt payments in response to the Village's itemized statements by mailing via ordinary U.S. mail such payment no later than ten (10) days from the date of invoice
- b) If Stonelake fails to make any payment due the Village for services and expenses within thirty (30) days after receipt of the Village's itemized statement therefore, the amounts due the Village shall include a charge at the rate of 1% per month from said 30th day, and in addition, the Village may, suspend services under this Agreement until it has been paid in full all amounts due for services and expenses

### **SECTION 3 - PERIOD OF SERVICE**

- a) The Village agrees to provide the services stated herein to Stonelake from the date of execution of this Agreement until April 30, 2017. Upon the expiration of this Agreement, this Agreement shall terminate and the Village shall not be bound to provide any services as mentioned herein.

## **SECTION 4 – GENERAL TERMS**

### **a) Modification or Amendment**

- i. No modification or amendment of any provisions of this Agreement shall be effective unless made by a written instrument, duly executed by the party to be bound thereby, which refers specifically to this Agreement and states that an amendment or modification is being made in the respects as set forth in such amendment.

### **b) Construction**

- i. Should any portion of this Agreement be deemed unenforceable by any administrative or judicial officer or tribunal of competent jurisdiction, the balance of this Agreement shall remain in full force and effect unless revised or terminated pursuant to any other section of this Agreement.

### **c) Waiver**

- i. No waiver by either party of any breach of any provision of this Agreement shall be deemed to be a further or continuing waiver of any breach of any other provision of this Agreement. The failure of either party at any time or times to require performance of any provision of this Agreement shall in no manner affect such party's right to enforce the same at a later time.

### **d) Relationship of Parties**

- i. The parties shall be independent contractors to each other in connection with the performance of their respective obligations under this Agreement.

### **e) Parties**

- i. Whenever the terms "the Village" and "Stonelake" are used herein, these terms shall include without exception the employees, agents, successors, assigns, and/or authorized representatives of the Village and Stonelake.

### **f) Headings**

- i. Paragraph headings in this Agreement are for the purposes of convenience and identification and shall not be used to interpret or construe this Agreement.

### **g) Notices**

- i. All notices required to be given herein shall be in writing and shall be sent certified mail return receipt to the following respective addresses:
- ii. TO: The Village of South Lebanon, Ohio  
Attn. Village Administrator  
99 S. High Street  
South Lebanon, OH 45065

Stonelake:  
Attn.:

**h) Liability**

- i. The Village and Stonelake agree that the Village shall not be held liable for any damage incurred to Stonelake's property during the performance of the services provided herein. Property shall include, but is not limited to, streets contained in the Subdivision, and any personal property of residents in the Subdivision, including but not limited to vehicles, mailboxes, landscaping or yards, or other personal property.
- ii. Stonelake shall indemnify and hold harmless the Village, and its employees, officers, members of council, agents, successors, assigns, and/or authorized representatives from and against any and all liability, penalties, losses, damages, costs and expenses, demands, causes of action, claims or judgments arising from or growing out of any injury to any person or persons or any damage to any property as a result of any services performed by the Village during the Term occasioned in any way as a result of the negligence by the Village or its or Lessee's employees, officers, members of council, agents, successors, assigns, and/or authorized representatives; including all legal costs and charges, including attorneys' fees, incurred in connection with any such matter and the defense of any action arising out of the same.

**SECTION 5 – ENTIRE AGREEMENT**

This Agreement, together with the Exhibits and schedules identified above constitute the entire agreement between the Village and Stonelake, and supersede all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument, signed by all parties.

**SECTION 6 – EXECUTION**

**STONELAKE :**

**IN EXECUTION WHEREOF**, the Stonelake of Rivers Bend Homeowners Association Inc., , has caused this Agreement to be executed on the date stated below by \_\_\_\_\_, whose title is \_\_\_\_\_, pursuant to a Resolution or Consent Action authorizing such act.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_



**VILLAGE:**

**IN EXECUTION WHEREOF**, the Council of the Village of South Lebanon, Ohio, has caused this Agreement to be executed on the date stated below by its Mayor and its Fiscal Officer, pursuant to Resolution No. 2016-\_\_\_\_\_.

SIGNATURE: \_\_\_\_\_

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

PRINTED NAME: Sharon Louallen

TITLE: Fiscal Officer

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
VILLAGE OF SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_\_\_

**VILLAGE OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2016-\_\_\_\_**

**A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL  
OFFICER TO EXECUTE A MUNICIPAL ADVISORY SERVICES AGREEMENT  
WITH ROSS, SINCLAIRE AND ASSOCIATES, LLC RELATIVE TO THE TAX  
INCREMENT FINANCING FOR THE RIVERSIDE DEVELOPMENT**

**WHEREAS**, Ross, Sinclair and Associates, LLC (“RSA”) has submitted an agreement to serve as a “municipal adviser” for the Village (the “Municipal Advisor Agreement”) in connection with the issuance by the Village of tax increment revenue bonds for the Riverside development (the “Bonds”); and,

**WHEREAS**, Thompson Hine LLP, the Village’s bond counsel, has reviewed the Municipal Advisor Agreement and confirmed that this agreement is required by Municipal Securities Rulemaking Board Rule G-42 and provides that RSA will only be entitled to payment of its advisory fee if the Bonds are issued (in which case, RSA’s advisory fee will be paid from Bond proceeds);

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

**Section 1.** That the Council approves and authorizes the Mayor or the Fiscal Officer to execute an Agreement with Ross, Sinclair and Associates, LLC, as attached hereto.

**Section 2.** That the Council is acting in its administrative capacity in adopting this Resolution.

**Section 3.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 4.** That it is found and determined that all formal actions of the Council concerning and relating to the adoption of 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.

Attest: \_\_\_\_\_  
Sharon Louallen, Fiscal Officer/Clerk James D. Smith, Mayor

|  |                              |
|--|------------------------------|
| Rules Suspended:   /   /2016 (if applicable) | Effective Date –   /   /2016 |
| Vote - ____ Yeas<br>____ Nays                |                              |
| First Reading –   /   /2016                  | Effective Date –   /   /2016 |
| Second Reading –   /   /2016                 |                              |
| Third Reading–   /   /2016                   |                              |
| Vote - ____ Yeas<br>____ Nays                |                              |

Prepared by and approved as to form:

PAUL R. REVELSON  
VILLAGE SOLICITOR  
SOUTH LEBANON, OHIO

By: \_\_\_\_\_

Date: \_\_\_\_ / \_\_\_\_ /2016

# Municipal Advisory Services Agreement

This Municipal Advisory Services Agreement (the “Agreement”) is between **ROSS, SINCLAIRE & ASSOCIATES, LLC** (the “Advisor”) and Village of South Lebanon, Ohio (“Client”), who has appointed Advisor to perform the municipal advisory services described herein to and for Client. In consideration of the mutual covenants made in this Agreement, and intending to be legally bound by this Agreement, the Advisor and Client agree as follows:

1. Effective Date. The effective date of this Agreement (the “Effective Date”) is 10/15/16
2. Appointment. Client appoints and retains the adviser as a “municipal adviser” as that term is defined in Section 15B(e)(4)(A)(i) of the Securities Exchange Act of 1934 (the “Act”). The Advisor accepts such appointment and retention, all on the terms and conditions set forth in this Agreement.
3. Municipal Advisory Services. Advisor will provide the services set forth on the attached Schedule A (the “Municipal Advisory Services”). Advisor will provide the Municipal Advisory Services to Client on an as-requested basis by Client; provided, however, that Advisor’s obligations under this Agreement will be expressly limited to the Municipal Advisory Services. Notwithstanding the foregoing, if Client requests Advisor to provide services in connection with a particular municipal issuance-related matter and the parties agree that the services that will be required to be provided in connection therewith differ in scope from the Municipal Advisory Services, the parties will negotiate a mutually agreeable set of services that will be provided by Advisor to Client. Upon the parties’ agreement to a particular set of alternative services, Advisor will deliver to Client an addendum to this Agreement (an “Addendum”). Any such Addendum will set forth the scope of Advisor’s engagement with respect to such municipal issuance-related matter, as well as any alterations to the terms of this Agreement that may have been agreed to by the parties in connection with such alternate services.
4. Representations by Advisor. Advisor represents and warrants as follows:
  - A. It is registered as a municipal advisor pursuant to Section 15B of the Act.
  - B. It has the power and authority to enter into and perform this Agreement.
  - C. In providing the Municipal Advisory Services it has a fiduciary duty to Client pursuant to Section 15B(c)(1) of the Act, as well as a duty of loyalty and a duty of care pursuant to Municipal Securities Rulemaking Board (“MSRB”) Rule G-42.
5. Representations by Client. Client represents and warrants as follows:
  - A. Municipal Entity Client: It is a municipal entity as that term is defined in Section 15B(e)(8) of the Act.

B. The person signing this Agreement on behalf of Client has all necessary authority to do so.

C. The execution of this Agreement and the performance thereof has been duly authorized in accordance with applicable law and is enforceable against Client pursuant to applicable law.

6. Provision of Information by Client. Client will make available to Advisor in connection with its provision of the Municipal Advisory Services, at reasonable times as requested by the Advisor, any information and material pertaining to Client, any prospective financing, bond issuance, or otherwise municipal issuance-related, as well as any other information determined necessary by the Advisor for the provision of the Municipal Advisory Services. Client acknowledges that all opinions and advice given by Advisor pursuant to this Agreement are intended solely for the benefit and use of Client. The Client acknowledges and understands that it will be responsible for the accuracy and completeness of all information provided by Client to Advisor pursuant to this Agreement.

7. Disclosure.

A. Conflicts of Interest. Set forth on the attached Schedule B is disclosure by Advisor of any conflicts of interest relating to Advisor's provision of the Municipal Advisory Services.

B. Disciplinary History. Set forth on the attached Schedule C is a description of any legal events or disciplinary history of Advisor and any relevant Advisor personnel.

C. Acknowledgment of Receipt of Disclosure. Client undertakes to review and consider the disclosure made by Advisor pursuant to this Section 7. Client acknowledges receipt of these disclosures prior to the execution of this Agreement.

8. Limitation on Liability. Advisor undertakes to perform only those duties that are specifically set forth in this Agreement. Both Advisor and Client acknowledge that no other person or entity will have any rights or obligations hereunder except as expressly provided herein. Except for bad faith, intentional misconduct or gross negligence in regard to Advisor's performance of its duties under this Agreement, neither Advisor nor any of its directors, officers, employees and agents will be liable for any acts or omissions or for any loss suffered by Client. Advisor and its directors, officers, employees and agents will be entitled to rely, and will be protected from liability in relying, upon any information or instructions furnished to it (or any of them as individuals) which, after reasonable inquiry by Advisor, is believed in good faith to be accurate and reliable. The parties agree that a good faith and unintentional error or mistake in judgment or discretion by Advisor or any of its directors, officers, employees or agents in the performance of its or their duties under this Agreement will not in and of itself constitute negligence.

9. Indemnification; Sole Remedy. Advisor and Client each hereby agree to indemnify, defend and hold the other harmless from and against any and all losses, claims, damages, expenses, including without limitation, reasonable attorney's fees, costs, liabilities, demands and causes of action (collectively referred to herein as "Damages") which the other may suffer or be subjected to as consequence of any breach of the terms of this Agreement by the indemnifying party. Notwithstanding the foregoing, no party will be liable to the other for Damages suffered by the

other to the extent those Damages are the consequence of: (a) events or conditions beyond the control of the indemnifying party, including without limitation, changes in economic conditions; (b) actions of the indemnifying party which were reasonable based on facts and circumstances existing at the time and known to the indemnifying party at the time the service was provided; or (c) errors made by the indemnifying party due to its reliance on facts and materials provided to the indemnifying party by the indemnified party. Whenever Advisor or Client becomes aware of a claim with respect to which it may be entitled to indemnification hereunder, it will promptly provide written notice to the other, which will include a description of the nature of the claim. If the claim arises from a claim made against the indemnified party by a third party, the indemnifying party will have the right, at its expense, to assume the defense thereof, to employ legal counsel in connection therewith, and to compromise or settle the same, provided that any compromise or settlement by the indemnifying party of such claim will be deemed an admission of liability hereunder. The remedies set forth in this Section 9 will be the sole remedies available to either party against the other in connection with any Damages suffered by it.

10. Fees and Expenses. The compensation of Advisor for the performance of the Municipal Advisory Services under this Agreement and for the payment of expenses is described on the attached Schedule of Fees found on Schedule D. Unless agree to in writing by the parties, Advisor will not receive any other compensation, direct or indirect, for its services under this Agreement.

11. Assignment. This Agreement is not assignable by either party hereto without the prior written consent of the other party.

12. Term of Agreement and Termination. This Agreement will be effective as of the Effective Date and will remain in effect until terminated by either party for any reason upon thirty (30) days' prior written notice to the other party. A termination of this Agreement will not relieve Client of its obligations to pay Advisor for any and all Municipal Advisory Services rendered and expenses incurred prior to the effective date of termination.

13. Notices. Unless otherwise specified herein, all notices, instructions and advice with respect to any matter contemplated by this Agreement will be deemed duly given when received in writing by Advisor at the address specified below or when deposited by first class mail addressed to (or delivered by hand to) Client at the address specified below. Advisor may rely on such notice from any person reasonably believed by it to be genuine and authorized. For purposes of this section and any other notices contemplated in this Agreement, the following addresses will be used until modified in writing:

For Advisor:

Ross, Sinclair and Associates, LLC

DANIEL R BLANK

\_\_\_\_\_  
Attention: \_\_\_\_\_



For Client:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

14. Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to Advisor's provision of Municipal Advisory Services and, except as otherwise provided in this Agreement, can be amended only by a written document signed by the parties.

15. Governing Law; Venue. This Agreement will be construed and the rights and obligations of the parties under this Agreement enforced, in accordance with the laws of the State of Ohio. The venue for resolving any dispute arising out of or relating to this Agreement are the state and federal courts located in Warren County, Ohio.

16. Survival of Provisions. In the event of termination of this Agreement pursuant to Section 12, operation of law or otherwise, the provisions of Section 10, 12 and Schedule D will remain in effect so as to ensure the payment of fees and expenses owed to Advisor, as well the provisions of Sections 8, 9, 13, 14 and 15 as necessary to give effect thereto.

The parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

**Ross, Sinclair and Associates, LLC**

Village of South Lebanon

By: Daniel R Blank

By: \_\_\_\_\_

Printed Name: DANIEL R BLANK

Printed Name: \_\_\_\_\_

Title: Managing Director

Title: \_\_\_\_\_

## **SCHEDULE A MUNICIPAL ADVISORY SERVICES**

Following are the Municipal Advisory Services to be provided by Advisor pursuant to the terms of this Agreement:

A. General Municipal Advisory Services. Unless otherwise agreed to by the parties, in connection with any request for services relative to any financial topic, new project concept planning or other financially related topic or project (each referred to herein as “Project”), Advisor will perform the following services, as applicable:

1. Advise Client on current market conditions, federal, state or other law considerations, and other general information and economic data that might be relevant to any Project.
2. Assist Client in coordinating the activities between various parties to any Project as needed.
3. Assist Client in selecting and, working with, members of a working group to procure services deemed necessary to a Project. Services that may be procured may include, but are not limited to: general counsel; special tax counsel; credit facilities; credit rating; and engineering or design services.
4. Assist with the review of all documents, including but not limited to any governing body resolutions, purchase agreement, and any other relevant documents.
5. Assist Client with other components of a Project as requested and agreed upon.
6. Coordinate with the proper parties and oversee the completion of each Project.

B. Securities Issuance. Unless otherwise agreed to by the parties, in connection with any request for services relative to any new money issuance, refunding of a prior issuance or other financings (each referred to herein as a “Transaction”), the Advisor will perform the following services, as applicable:

1. Provide general financial advice relative to any Transaction.
2. Survey the financial resources of Client to determine its borrowing capacity and analyze existing debt structure as compared to the existing and projected sources of revenues.
3. Assist in the development of a plan or plans for the financing or refinancing of any improvements through the issuance of general bond obligations, loans and/or notes, school bonds, revenue or refunding bonds, or other type of financing alternatives that may be available and appropriate for the particular issuance (“Debt Obligations”).



4. Recommend to Client an amount, the maturity structure, call provisions, pricing, and other terms and conditions of the Debt Obligation.
5. Advise Client on current market conditions, forthcoming bond, loans and note issues, federal, state or other tax law considerations, and other general information and economic data that might normally be expected to influence the interest rates of the financing.
6. Assist Client in the analysis of and the selection of a credit rating firm or firms for the Debt Obligation and further assist in the development and presentation of information to obtain a credit rating or credit ratings for the Debt Obligation.
7. Advise Client on utilizing credit enhancement and provide assistance in seeking such credit enhancement if, in the opinion of Advisor, such credit enhancements would be advantageous to Client.
8. Assist in coordinating the financing activities between various parties to any Transaction as needed.
9. Assist Client in selecting and, working with, members of a working group to procure services deemed necessary to the issuance or post-issuance requirements of the Debt Obligation. Services that may be procured may include, but are not limited to: bond counsel; special tax counsel; disclosure counsel; trustee selection; paying agent selection; credit facilities; underwriter; and printing services.
10. Assist with the review of all financial documents, including but not limited to the preliminary and final offering statement, any governing body resolutions, purchase agreement, and any official notice of sale.
11. Communicate with potential underwriters or investors, as appropriate to any Transaction, to ensure that each is furnished with the information they need to render an independent, informed purchase or investment decision concerning the Client's proposed financing.
12. Coordinate with the proper parties and oversee the closing process so as to ensure the efficient delivery of the Debt Obligations to the applicable purchaser.

C. Continuing Disclosure Services. Upon receipt of written authorization from Client to proceed, Advisor will, based on the information supplied thereby, assist Client in satisfying its obligations for specified Debt Obligations under any applicable continuing disclosure undertaking executed by and requiring Client to provide certain financial information and operating data and timely notices of the occurrence of certain events determined to be significant to investors. Such assistance will include the following for each specified Debt Obligation:

1. Compile, as needed, and file an annual report according to the continuing disclosure undertaking (the "Undertaking") executed by Client pursuant to SEC Rule 15c2-12(b)(5) for the Debt Obligation(s) for submission by Client to the Municipal Securities

Rulemaking Board (MSRB) and the State Information Depository (SID), as applicable. The annual report will generally include:

- a) An annual audited financial statement to be prepared by Client's accountants.
  - b) Updates of certain specified operating and financial data if not included in the annual audited financial statement.
2. Monitor through periodic requests for information, the significant events listed in the Undertaking and assist, as necessary, in the drafting and filing of a significant event notice relative thereto.
  3. Advisor will furnish a receipt of filing for any continuing disclosure filing made within 30 days after its submission to the MSRB.

Client agrees to provide Advisor with accurate information with respect to compiling the annual report in a timely manner and to fully disclose to Advisor any significant events as they occur.

**SCHEDULE B**  
**CONFLICTS OF INTEREST DISCLOSURE**

None

**SCHEDULE C**  
**DISCIPLINARY HISTORY DISCLOSURE**

See attached

**SCHEDULE D**  
**SCHEDULE OF FEES**

Must include the form and basis of direct or indirect compensation

In consideration of the provision of the Municipal Advisory Services, Advisor is to receive the following compensation:

1. \$25,000, and
2. Reimbursement of all direct, out-of-pocket expenses.

Where Municipal Advisory Services are provided in instances where there is no issued Debt Obligation, Advisor will receive as compensation the amount of \$0 and all direct, out-of-pocket expenses.

6404638.1



**Village of South Lebanon**  
**99 N. High Street, South Lebanon, Ohio 45065**  
**513-494-2296      fax: 513-494-1656**  
**[www.southlebanonohio.org](http://www.southlebanonohio.org)**

November 1, 2016

To: Village Council  
From: Paul R. Revelson, Solicitor

Re: Passage of Ordinances

Dear Council,

At the last council meeting, a member of council asked me to review Ohio law and other authorities to ensure council was passing ordinances pursuant to Ohio law. I have attached two references detailing the proper procedure for passing legislation in Ohio.

1. The first attachment is from the Ohio Village Officer's Handbook. It is dated March 2015 and is written by Dave Yost, Auditor of State. I was given this manual by a fellow solicitor from a neighboring community.

Pages 2-4 and 2-5 are provided. These pages detail the three methods of passage of legislation for villages. Passage of an ordinance may occur by three readings of the title only, unless the three readings are dispensed by a vote of  $\frac{3}{4}$  of council (*see* (D)(1)). These ordinances go into effect thirty days after passage (ORC §731.29) and are subject to referendum. Ordinances can also be passed through emergency measures, but require two-thirds approval by council (*see* (D)(7)). The ordinance must list the reasons for the necessity of the emergency. This type of legislation is effective immediately and is not subject to referendum.

2. The second attachment is from the City of Lebanon's September 13, 2016 council meeting. Please see Ordinance 2016-087 regarding an agreement with the Lebanon Police Employees Association, and declaring an emergency. A review of the minutes for the passage of 2016-087 shows a motion and second by councilmembers without a motion to waive three readings. Instead, the ordinance was voted on by all of council immediately because it was identified as an emergency.

It is my opinion that a motion to suspend the three readings pursuant to ORC § 731.17(A)(2) is not required for emergency legislation. Any motion to suspend the three reading rule is unnecessary, and any emergency ordinance or resolution, assuming it details the reasons for the emergency within the title or the body, may be taken to vote without a motion to suspend the three readings.

# OHIO VILLAGE OFFICER'S HANDBOOK

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Dave Yost • Auditor of State

**March 2015**

Chapters 1-5

# Village Officer's Handbook

## CHAPTER TWO: OFFICERS AND EMPLOYEES

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### C. Meetings (Ohio Revised Code Sections 731.46 and 121.22)

1. Village council shall meet as prescribed by ordinance, but not more than once a week. All meetings shall be open to the public.
2. Special meetings may be called by any three village council members or by the mayor, with at least twelve hours notice to each member.
3. Village council shall act only at authorized meetings and according to authorized rules.
4. Village council may adjourn during a public meeting to discuss the following subjects in executive session:
  - a. To consider the appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or to consider the investigation of charges or complaints against such a person, unless asked by such employee or official to be held in public;
  - b. To consider the purchase or sale of property if premature disclosure would give an unfair advantage to a person whose personal private interest is adverse to public interests;
  - c. Attorney conferences concerning pending or imminent court action;
  - d. Prepare for conducting or reviewing employee negotiations and bargaining;
  - e. Matters requiring confidentiality by law; and
  - f. Security arrangements.

NOTE: No actions upon these matters can be made (e.g. rules, resolution, ordinances) unless adopted in a public meeting. The minutes need only reflect the general subject matter of discussion in executive session.

### D. Actions - Village council acts through ordinances and resolutions. The distinction between the two is not always clear. An ordinance is generally required for more permanent and formal matters, and usually requires publication.

1. Passage - Ordinances and resolutions shall be read by title only, on three days, unless a full reading is voted for by a majority, or reading is dispensed with by vote of three-fourths of village council. Voting on passage shall be taken by yeas and nays and journalized. Passage requires at least a majority vote. Action not requiring an ordinance or resolution may be taken by a majority of members present. (Ohio Revised Code Section 731.17)
2. Style of ordinance - This is set forth by State law. (Ohio Revised Code Section 731.18)



# Village Officer's Handbook

## CHAPTER TWO: OFFICERS AND EMPLOYEES

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3. Subject - No ordinance, resolution, or bylaw shall have more than one subject, which shall be clearly stated in its title. (Ohio Revised Code Section 731.19)
4. Amendment - New ordinances, resolutions, or bylaws to amend or revise another in existence must contain the entire ordinance, resolution, or bylaw to be amended or revised and thereby repeal it. (Ohio Revised Code Section 731.19)
5. Authentication and recording - Legislation is authenticated by the signature of the presiding officer and clerk of council. Once passed and signed, legislation shall be recorded by the clerk. (Ohio Revised Code Section 731.20)
6. Publication - A succinct summary of general ordinances and those providing for improvements must be published in a newspaper of general circulation in the municipal corporation. Proof of publication, by affidavit of the proprietor, shall be filed with the clerk. Ordinances may be published in book form when there is a revision of codification. Summaries of ordinances or resolutions and proclamations of elections shall be published once a week for two consecutive weeks or as provided by Ohio Revised Code Section 7.16; notices, not less than two nor more than four consecutive weeks or as provided by Ohio Revised Code Section 7.16; all other matters shall be published once. When no local newspaper is available, the village council may select alternative methods of publication, as by posting in five significant places for fifteen days prior to the effective date thereof. (Ohio Revised Code Sections 731.21 to 731.25)
7. Emergency legislation - Ordinances necessary for the immediate preservation of the public peace, health, or safety go into immediate effect, without publication, but require a two-thirds majority of all council members. Reasons for the necessity must be set forth in the ordinance. (Ohio Revised Code Section 731.30)

### **III. Village Mayor**

The mayor is the chief executive of the village. The mayor supervises the administration of the village and presides at council meetings. The mayor may appoint various village officials. (Ohio Revised Code Section 733.24)

- A. Qualifications, Election, and Term - The mayor must be an elector of the village and is elected to a term of four years. Upon the mayor's permanent absence, the president pro tempore of the village council serves as a successor until a qualified successor can be elected. (Ohio Revised Code Sections 733.24 and 733.25)
- B. Administration Powers and Duties - The mayor shall perform those duties established by village council in its bylaws and ordinances. It is the mayor's duty as chief executive to see that all village laws are enforced. The mayor must also sign various legal instruments as the village council or State law requires. (Ohio Revised Code Section 733.30)

**Abstract**

This legislation declares the intent to reimburse the General Fund, with proceeds from the issuance of a Bond Anticipation Note in 2017, the amount of \$868,000, which is the cost of the recently purchased ladder truck for the Fire Division.

**NEW BUSINESS:**

**1) Ordinance No. 2016-087** An Ordinance Authorizing The City Manager To Execute An Agreement With The Lebanon Police Employees Association And Declaring An Emergency

**Sponsors: Mayor Brewer, Mr. Norris, Mr. Kaiser**

**Abstract**

This legislation will approve a 3-year labor agreement with the Lebanon Police Employee's Association.

**2) Ordinance No. 2016-088** An Ordinance Approving A Release And Separation Agreement With Sharee Dick

**Sponsor: Mayor Brewer**

**Abstract**

This legislation will approve a separation agreement with City Auditor Sharee Dick, outlining the terms and conditions of her retirement, which will become effective on December 31, 2016.

**3) Ordinance No. 2016-089** An Ordinance Establishing A Public Improvement Bond Agency Fund

**Sponsor: Mr. Messer**

**Abstract**

This legislation will establish the Public Improvement Bond Agency Fund to separately account for the receipt and disbursement of public infrastructure project performance bonds.



MINUTES OF: LEBANON CITY COUNCIL

Date: SEPTEMBER 13, 2016

Council of the City of Lebanon met in regular session on September 13, 2016 in the Council Chambers. The meeting was called to order at 7:00 p.m. with the following members present; Messrs: Messer, Kaiser, Aylor, Norris, Dearie, Mrs. Monroe and Mayor Brewer. Also present was City Manager, Pat Clements, City Auditor, Sharee' Dick, and City Attorney, Mark Yurick.

The JROTC Color Guard presented the Colors and everyone said the Pledge of Allegiance. The invocation was given by Mr. Norris.

At this time Mayor Brewer asked for consideration of Council minutes for the August 23rd regular meeting. Motion to adopt the minutes as submitted was made by Mr. Kaiser seconded by Mr. Aylor. Roll call vote to adopt was unanimous in favor. Motion to adopt the September 6th work session minutes was made by Mr. Aylor seconded by Mr. Norris. Roll call vote to adopt the minutes as submitted was unanimous in favor.

Fire Lt. Josh Pirk received his promotion to Fire Captain.

Mayor Brewer read a Proclamations for Prostate Cancer Awareness week and Constitution Week.

**Ordinance No. 2016-084** An Ordinance delegating authority to make Declarations of Official Intent and Allocations with respect to reimbursements of temporary advances during Fiscal Year 2016 made for Capital Improvements and Acquisitions of Fire equipment to be made from subsequent borrowings was read in title only by the City Attorney. This legislation declares the intent to reimburse the General Fund, with proceeds from the issuance of a Bond Anticipation Note in 2017, the amount of \$868,000, which is the cost of the recently purchased ladder truck for the Fire Division. Mr. Clements explained the legislation. Motion to adopt Ordinance No. 2016-084 was made by Mr. Norris seconded by Mr. Aylor. Roll call vote to adopt was unanimous in favor.

**Ordinance No. 2016-087** An Ordinance authorizing the City Manager to execute an agreement with the Lebanon Police Employees Association and declaring an emergency was read in title only by the City Attorney. This legislation will approve a 3-year labor agreement with the Lebanon Police Employee's Association. Mr. Clements explained the legislation. Motion to adopt Ordinance No. 2016-087 was made by Mr. Dearie seconded by Mr. Aylor. Roll call vote to adopt was unanimous in favor.

**AGENDA**  
**WORKSHOP MEETING OF VILLAGE COUNCIL**  
**NOVEMBER 3, 2016**  
**7:00 P.M.**

1. Mayor Smith calls the meeting to order.
2. Roll Call:

|                |                 |
|----------------|-----------------|
| Randall Atkins | Bill Madison    |
| James Boerio   | Steve Riley     |
| Sue Johnson    | George Teasdale |
3. Guests:
4. Floor open to the public:
5. New Business:
6. Old Business:
7. Communications and reports from Village Officials and Committees
  - a. Mayor
  - b. Fiscal Officer
  - c. Solicitor
  - d. Administrator
  - e. Sgt.
  - f. Council Members
8. Adjournment