

## **AGENDA**

### **REGULAR MEETING OF CITY COUNCIL OCTOBER 20, 2022 at 6:00 P.M.**

1. Mayor Smith calls the meeting to order

2. Roll Call:

Linda Allen  
Linda Burke  
Brenda Combs

Maryan Harrison  
Bill Madison  
Rolin Spicer

3. Pledge of Allegiance

4. Guests:

5. Floor open to the public

6. New Business: Emergency Resolution 2022-42, Approval of Grant Agreement with the Ohio Department of Natural Resources relative to the Veterans Park Playground Project

Resolution 2022-43, First Reading, Approval of Agreement with the Warren County Soil & Water Conservation District for Calendar Year 2023

Approval of Invoices

Approval of Solicitor's Invoice

Approval of September 2022 Financial Statements

Approval of Meeting Minutes:  
Regular Meeting – October 4, 2022

7. Old Business: Ordinance 2022-24, Third Reading, creating the honorary position of City Historian and appointing Willard Spicer

8. Communications and reports from City Officials and Committees:

- |                        |                    |
|------------------------|--------------------|
| a. Mayor               | e. Solicitor       |
| b. Fiscal Officer      | f. Sergeant        |
| c. Administrator       | g. Council Members |
| d. Asst. Administrator |                    |

9. Executive Session:

10. Adjournment:



City of South Lebanon  
10 N. High Street, South Lebanon, Ohio 45065  
513-494-2296  
fax: 513-494-1656  
[www.southlebanonohio.org](http://www.southlebanonohio.org)

## MEMORANDUM

**To:** Mayor & City Council

**From:** Jerry Haddix, City Administrator

**Date:** October 17, 2022

**Subject:** Veterans Park Playground ODNR Grant Agreement

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Attached is a resolution and grant agreement with the Ohio Department of Natural Resources (ODNR) for funding for the Veterans Park Playground Project. This is a pass-through grant through the State Capital Budget. The award amount is \$110,000. We will need to proceed with the project as soon as possible to procure the necessary equipment in order to receive it in a timely manner.

Let me know if you have any questions or need additional information.

**CITY OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2022-42**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL  
OFFICER TO EXECUTE A PROJECT GRANT AGREEMENT WITH THE OHIO  
DEPARTMENT OF NATURAL RESOURCES IN THE AMOUNT OF \$110,000.00  
FOR THE VETERANS PARK PLAYGROUND PROJECT IN THE CITY OF SOUTH  
LEBANON, AND DECLARING AN EMERGENCY**

**WHEREAS**, the Council passed Resolution 2021-51 on November 4<sup>th</sup>, 2021, authorizing the submission of a grant application to the Warren County Chamber Alliance's State Capital Budget Prioritization Process Application for funding for the Veterans Park Playground Project-in the City of South Lebanon (the "Project"); and,

**WHEREAS**, the Warren County Chamber Alliance recommended inclusion of the Project into the State's Fiscal Years 2023 and 2024 Capital Budget; and,

**WHEREAS**, funding in the amount of \$110,000 was authorized through Ohio House Bill 687 with the Ohio Department of Natural Resources (ODNR) being designated as the administering agency; and,

**WHEREAS**, as a condition of receiving said funds, a grant agreement is required to be executed by the City, a copy of which is attached hereto; and,

**WHEREAS**, immediate action is required for the City to timely return the properly executed Agreement to ODNR and proceed with the implementation of the Project, and is necessary in order to preserve the public peace, health, safety or welfare of the City.

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

**Section 1.** That the Council approves, and further authorizes the Mayor and Fiscal Officer to execute the attached ODNR Project Agreement for the construction of the Veterans Park Playground Project in the City of South Lebanon.

**Section 2.** That the City Administrator shall return the executed Agreement to ODNR without further delay.

**Resolution No. 2022-42**

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**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 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 20<sup>th</sup> day of October, 2022.

Attest: \_\_\_\_\_

Petrina D. Williams, Fiscal Officer

\_\_\_\_\_  
James D. Smith, Mayor

Rules Suspended:    /    /2022 (if applicable)

Effective Date –    /    /2022

Vote - \_\_\_\_ Yeas

\_\_\_\_ Nays

First Reading –    /    /2022

Effective Date –    /    /2022

Second Reading –    /    /2022

Third Reading–    /    /2022

Vote - \_\_\_\_ Yeas

\_\_\_\_ Nays

Prepared by and approved as to form:

ANDREW P. MEIER

CITY SOLICITOR

SOUTH LEBANON, OHIO

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

Date: \_\_\_\_/\_\_\_\_/2022

**Capital Improvement Community Park, Recreation/Conservation Project  
Pass-Through Grant Agreement  
Ohio Department of Natural Resources**

This Community Recreation/Conservation Project Pass-Through Agreement (hereinafter referred to as the "Agreement") is made and entered into by and between the State of Ohio, Department of Natural Resources, (hereinafter referred to as "State" or "ODNR"), acting by and through its Director, pursuant to Sections 154.17, 154.22 and 1501.01 of the Ohio Revised Code ("R.C.") and House Bill No. 687, 134th General Assembly of the State of Ohio and the City of South Lebanon, an Ohio political subdivision (hereinafter referred to as "Grantee") acting by and through its authorized representative.

**Notices:** All notices, demands, requests, consents, approvals, and other communications required or permitted to be given pursuant to the terms of this Agreement shall be in writing, and shall be deemed to have been properly given when: 1) hand-delivered with delivery acknowledged in writing; 2) sent by U.S. Certified mail, return receipt requested, postage prepaid; 3) sent by overnight delivery service (Fed Ex, UPS, etc.) with receipt; or 4) sent by fax or email, and shall be respectively addressed as follows:

<b>ODNR Contact:</b>  Teresa Goodridge Program Manager Ohio Department of Natural Resources Office of Real Estate & Land Management 2045 Morse Road, Building E-2 Columbus, Ohio 43229 <a href="mailto:Teresa.Goodridge@dnr.ohio.gov">Teresa.Goodridge@dnr.ohio.gov</a>	<b>Grantee Contact:</b>  Jeff Boylan Assistant Administrator City of South Lebanon 10 North High Street South Lebanon, OH 45065 <a href="mailto:jboylan@southlebanonohio.org">jboylan@southlebanonohio.org</a>
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Notices shall be deemed given upon receipt thereof and shall be sent to the addresses appearing above. Notwithstanding the foregoing, notices sent by fax or email shall be effectively given only upon acknowledgment of receipt by the receiving party. The parties designated above shall each have the right to specify as their respective address for purposes of this Agreement any other address upon fifteen (15) days prior written notice thereof, as provided herein, to the other parties listed above. If delivery cannot be made at any address designated for notices, a notice shall be deemed given on the date on which delivery at such address is attempted.

**WHEREAS**, pursuant to House Bill No. 687, the 134th General Assembly of the State of Ohio has appropriated funds in the amount of One Hundred Ten Thousand Dollars (\$110,000.00) to make a grant to the Grantee for the costs associated with the construction of a park and recreation or conservation facility in appropriation item C725E2, more fully described as 'South Lebanon Veteran's Park Playground', (hereinafter referred to as the "Project"). Furthermore, \$2,200.00 of the total Project appropriations will be used by ODNR for the administration of the Project. The Project reference number is **WARR-027C**; and

**WHEREAS**, the General Assembly has identified the Parks and Recreation Improvement Fund (Fund 7035), created and existing under R.C. § 154.22(F), as the fund from which these monies will be disbursed; and

**WHEREAS**, pursuant to R.C. Chap. 154 and Article VIII, Section 2i of the Ohio Constitution, capital facilities lease-appropriation bonds (the "Bonds") have been or will be issued by the Ohio Treasurer of State (the

“Treasurer”) for the purpose of paying the “costs of capital facilities” including acquiring, constructing, reconstructing, rehabilitating, renovating, enlarging and otherwise improving, equipping, and furnishing capital facilities for parks and recreation, all as defined and described in R.C. § 154.01(K). A portion of those Bonds proceeds will be used by ODNR to provide funding to the Grantee for the Project under this Agreement. Because ODNR is funding the Project with proceeds of those Bonds, ODNR requires that the Grantee make certain representations, warranties, and covenants (both affirmative and negative) concerning the Project and use of the grant funds, as more fully described or provided in this Agreement, in order to comply with federal and state laws, regulations, and rules relating to those Bonds and the projects funded with proceeds of those Bonds.

**NOW THEREFORE**, for the purposes of providing the funds to Grantee pursuant to House Bill No. 687 of the 134th General Assembly, the parties hereto covenant and agree as follows:

- 1. Funding Amount.** ODNR agrees to provide the Grantee One Hundred Seven Thousand Eight Hundred Dollars (\$107,800.00), via qualifying advance and reimbursement, to be used toward the total cost of the Project. Two Thousand Two Hundred Dollars (\$2,200.00) of the amount appropriated for the Project will be retained by ODNR to cover administrative costs. In no event shall ODNR’s payment to Grantee exceed One Hundred Seven Thousand Eight Hundred Dollars (\$107,800.00). Funds for this Project have been released by the Controlling Board as of \_\_\_\_\_ and encumbered by Contract Encumbrance Record Number \_\_\_\_\_ and are so certified by the Director of Budget and Management on \_\_\_\_\_. Obligations of the State are subject to the provisions of R.C. § 126.07. Any funds provided under this Agreement that are not spent shall be returned in full to the State.
- 2. Project Description.** The Grantee shall use the grant funds for ‘South Lebanon Veteran’s Park Playground’, a project to renovate the playground at Veteran’s Park in South Lebanon, OH, all as more fully described in Exhibit A attached hereto.
- 3. Effective and Termination Dates.** This Agreement shall commence on the date that it is signed by ODNR (the “Effective Date”) and will, unless otherwise earlier terminated as provided herein, expire on the later of: (i) 15 years from the date of the payment of the final Project reimbursement (or Project acquisition if the Project is solely for the acquisition of real property) (“Project Closeout”); or (ii) the date upon which the latest Bond issuance funding or refinancing of the Project is paid in full (the “Term”). Grantee shall complete the Project on or before June 30th, 2024.
- 4. No Restrictions of Record.** Grantee hereby represents and warrants that there are not now, and there will not be, any restrictions of record or otherwise with respect to the Project, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the property as described in the Boundary Map attached hereto as Exhibit B, on which the Project will be located and developed as a public parks and recreation or conservation facility (the “Property”) except for those restrictions permitted below. Grantee represents that it is the fee simple owner, or has a lease, exclusive easement, or cooperative use agreement with a term longer than the Term hereof, on the Property and that the only restrictions of record, or otherwise, with respect to the Property are: (a) all zoning regulations, restrictions, rules and ordinances, and other laws and regulations now in effect or hereafter adopted by any governmental agencies having jurisdiction over the Property, (b) dedicated public rights-of-way identified on Exhibit B, Boundary Map, and (c) the encumbrances, items, and other matters identified in Exhibit C, Title Encumbrances. Grantee hereby represents and warrants that there are not now, and shall not cause there to be, any restrictions with

respect to the Project or Property, including without limitation, any encumbrances, liens, or other matters, which would interfere with or otherwise impair the use of the Property as a public park, recreation facility, or conservation facility.

5. **Construction Services.** Grantee represents that it will contract for all construction services for the Project and will provide for construction administration. Grantee shall have the full authority to contract with third parties for the design and construction of the Project. Grantee shall secure all necessary permits and licenses for the Project. Grantee warrants that it will cause the Project to be constructed or acquired, as applicable, with all reasonable speed and reasonably adhere to any submitted development timeline. Grantee shall comply with all applicable federal and state requirements relating to the competitive selection of contractors and comply with its own competitive selection policies and procedures. If competitive selection for the Project is not required by law, to the extent reasonably possible as determined by Grantee, Grantee shall employ an open and competitive process in the selection of its contractors. Bid documents designed to be so restrictive to exclude open competitive bidding and bid documents that do not allow for "or equal" provisions may not be acceptable.
6. **Operation, Maintenance, and Upkeep.** Grantee shall be solely responsible for the operation, maintenance, and upkeep of the Project, and shall take all actions reasonably necessary to ensure that the Project is available to the public for the intended parks and recreation or conservation purpose during the Term. Failure to comply with this provision or any other provision of this Agreement may result in demand for repayment of all or a portion of the grant funds paid by ODNR to Grantee under this Agreement. The amount to be repaid will be calculated based on the ratio of (x), the number of months from the event triggering the reimbursement to the final scheduled maturity date of the Bonds, over (y), the total number of months that the Bonds are scheduled to be outstanding. Grantee shall not make any grant repayment unless first consulting with ODNR, and ODNR shall not accept any repayment without first obtaining the approval of the Ohio Public Facilities Commission ("OPFC").
7. **Remittances.** If for any reason funds acquired through this Agreement are required to be paid, repaid, or remitted to the State, they shall be remitted in full by the Grantee within forty-five (45) days of demand to:

Ohio Treasurer of State  
30 East Broad Street, 9th Floor  
Columbus, Ohio 43215

Any such remittance shall include a copy of this Agreement. A copy of the cover letter transmitting the remittance to the Treasurer of State shall be sent simultaneously to ODNR.

8. **Conveyance of Interest in Project to ODNR.** As security for the performance of Grantee's obligations under this Agreement, Grantee hereby conveys to ODNR an interest in the Property, consisting of the right to use and occupy the Property and the facilities funded in whole or in part with grant funds under this Agreement upon default of this Agreement by Grantee. This interest shall remain in effect during the Term of this Agreement. Grantee hereby acknowledges and agrees that ODNR may assign or convey such right to use and occupy such facilities to the OPFC or such other State agency selected by ODNR, and Grantee does hereby consent to such assignment or conveyance. In addition, ODNR

has entered into a lease with OPFC relating to the Bonds and the Project; provided that, so long as Grantee shall not default under this Agreement, such lease shall not affect the Project or the use of the Property. ODNR acknowledges that, absent a default by Grantee, ODNR has no right to use or occupy the Property or Project. ODNR shall have the right during the Term hereof to enter upon the Property during normal business hours for purposes of inspection of the Project for compliance with this Agreement.

9. **Prohibition Against Disposition.** Grantee shall not dispose of all or any part of the Project or Property funded by ODNR through the Term of this Agreement without the prior written consent of ODNR and OPFC. All notices, demands, requests, consents, approvals, and other communications to OPFC shall be addressed as follows:

Ohio Public Facilities Commission  
30 East Broad Street, 34th Floor  
Columbus, Ohio 43215  
Attn: Assistant Secretary

10. **Joint or Cooperative Use Agreement.** If the Property is owned by a separate nonprofit organization and made available to a state agency for its use or benefit, the nonprofit organization must either own, or have a long-term lease (for at least so long as the latest Bond issuance funding or refinancing of the Project have not been paid in full) of, the Property or other capital facility to be improved, renovated, constructed, or acquired and enter into a joint or cooperative use agreement, with and approved by the state agency that meets the requirements of H.B. 687, 134th General Assembly.
11. **Liability; Waiver of Liability.** Grantee shall be solely liable for any and all claims, demands, or causes of action arising from its obligations under this Agreement. Each party to this Agreement must seek its own legal representative and bear its own costs, attorney fees and expenses, in any litigation that may arise from the performance of this Agreement or the Project. It is specifically understood and agreed that ODNR does not indemnify Grantee. Nothing in this Agreement shall be construed to be a waiver of the sovereign immunity of the State of Ohio or the immunity of any of its employees or agents for any purpose. Nothing in this Agreement shall be construed to be a waiver of any immunity of Grantee granted by statute or the immunity of any of its employees or agents for any purpose. In no event shall ODNR be liable for indirect, consequential, incidental, special, liquidated, or punitive damages, or lost profits. On and after the date of this Agreement, Grantee agrees not to seek any determination of liability against ODNR, OPFC, the Treasurer, or any department, agency, or official of the State in the case of claim or suit arising from the Project including the acquisition of the Property or any future condition, construction, operation, maintenance, or use of the Property or facilities which may be developed in relation to the Project. Grantee forever releases and waives any and all claims, demands, and causes of action it may ever possess or assert against ODNR and its employees, agents, officials, and attorneys arising from, or relating to, the Project.
12. **Insurance.**
- a. Adequate Insurance. Unless otherwise agreed to by ODNR in writing, Grantee shall maintain, or cause to be maintained, at no cost to ODNR, commercial general liability insurance and other insurance, including casualty insurance, and if applicable, professional liability insurance, and builder's risk insurance, to insure ODNR, OPFC, the Treasurer, and the State in an amount and



type determined by a qualified risk assessor to be sufficient to cover the full replacement costs of improvements funded, in whole or in part, by the State, and for bodily injury, property damage, personal injury, advertising injury, and employer's liability exposures of Grantee. Unless otherwise agreed to by ODNR in writing, such insurance shall remain in force at all times from the Effective Date hereof through the Term of this Agreement.

- b. Self-Insurance. Instead of providing the general liability and casualty insurance above, Grantee may name ODNR, OPFC, the Treasurer, and the State as additional insureds and/or loss payees, as the coverage requires, under a self-insurance program or joint self-insurance pool created under R.C. §§ 2744.08 or 2744.081, respectively, and operated by or on behalf of Grantee, in order to meet the insurance requirements set forth herein.
13. **Bonded and Insured Employees and Agents.** Prior to any advance (but not reimbursement) payments by ODNR, Grantee will provide ODNR with a document that demonstrates that all employees or agents of Grantee who are responsible for maintaining or disbursing advanced funds acquired through this Agreement will be fully bonded or insured against loss of such funds. The bonding agent or insurer shall be licensed to do business in Ohio. No part of the funds acquired by Grantee through this Agreement shall be spent to obtain that bonding or insurance.
14. **Public Funds Compliance.** Grantee will assure compliance with all applicable federal, state, and local laws and regulations pertaining to handling, management, and accountability in relation to public funds. All funds received by Grantee under this Agreement shall be deposited in one or more financial institutions that fully insure, secure, or otherwise protect the funds from loss through federal deposit insurance and/or other deposit and/or collateralization strategies that protect the funds against loss. If Grantee is a political subdivision of the State, grant funds shall be held in compliance with R.C. Chap. 135.
15. **Reports and Records.** Grantee will keep and make all reports and records associated with the Project funded under this Agreement available to the State Auditor, or the Auditor's designee, ODNR, and OPFC for a period of not less than eighteen (18) years after the date of Project Closeout. These reports and records shall include a description of the Project, a detailed overview of the scope of work, disbursement details (including amount, date, nature/object of expenditure), and vendor information. Grantee acknowledges that the Auditor of State and other departments, agencies, and officials of the State may audit the Project at any time, including before, during, and after completion. Grantee agrees that any costs of audit by the Auditor of State or any other department, agency, or official of the State will be borne exclusively by, and paid solely by, Grantee, and that the funds provided under this Agreement will not be used by Grantee for payment of any audit expenses for any reason at any time.
16. **Restrictions on Expenditures.** Grantee affirmatively states that Grantee is fully aware of the restrictions and guidelines for expending funds granted under this Agreement and intends to comply fully with the same. Grantee will implement appropriate monitoring controls to ensure that funds acquired through this Agreement are expended in accordance with all applicable laws, rules, and requirements.
17. **Determination of Ineligibility.** If it is determined by any audit by the Auditor of State or any department, agency, or official of the State or other agency or entity with legal audit authority that

any Project expense is ineligible, or not properly documented, Grantee will repay that amount in full to the State.

18. **Equal Opportunity Compliance.** If Grantee is a political subdivision, Grantee shall comply with the requirements of R.C. § 125.111 for all contracts for purchases under the Project.
19. **Real Property Acquisition.** All appropriations of real property for the Project by Grantee shall be made pursuant to R.C. §§ 163.01 to 163.22, except as otherwise provided in R.C. Chap. 163.
20. **Prevailing Wage.** Except as provided in R.C. § 4115.04, monies appropriated or reappropriated for the Project shall not be used for the construction of public improvements, as defined in R.C. § 4115.03, unless the mechanics, laborers, or workers engaged therein are paid the prevailing rate of wages prescribed in R.C. § 4115.04. Nothing in this section affects the wages and salaries established for state employees under R.C. Chap. 124, or collective bargaining agreements entered into by the State under R.C. Chap. 4117, while engaged on force account work, nor does this section interfere with the use of inmate and patient labor by the State.
21. **Project Nondiscrimination.** Grantee agrees that any facilities that may be developed now or in the future on the lands comprising the Project will be made available to all persons regardless of race, color, sex, religion, national origin, ancestry, age, military status, handicap, or disability on the same terms and conditions.
22. **Employment Nondiscrimination.** Pursuant to R.C. Chap. 4112, Grantee agrees that Grantee and any person acting on behalf of Grantee or a contractor, shall not discriminate, by reason of race, color, religion, sex, sexual orientation, age, disability, military status as defined in R.C. § 4112.01, national origin, or ancestry against any citizen of this State in the employment of any person qualified and available to perform services relating to the Project. Grantee further agrees that Grantee and any person acting on behalf of Grantee or a contractor shall not, in any manner, discriminate against, intimidate, or retaliate against any employee hired for the performance of services relating to the Project on account of race, color, religion, sex, sexual orientation, age, disability, military status, national origin, or ancestry. If required by R.C. § 125.111(B) and O.A.C § 123: 2-3-02, Grantee shall have a valid Certificate of Compliance (COC) from the Ohio Department of Administrative Services, Equal Opportunity Division demonstrating compliance with affirmative action program requirements.
23. **ODNR Right to Terminate.**
  - a. Breach; Notice. ODNR reserves the right to terminate this Agreement upon written notice to Grantee and to recover any funds distributed by Grantee to contractors or other payees in violation of the terms of this Agreement if Grantee is determined by ODNR to be unable to proceed with the Project, or if Grantee violates any of the terms herein.
  - b. Opportunity to Cure. ODNR, in its sole discretion, may permit Grantee to cure the breach. Such cure period shall be no longer than twenty-one (21) calendar days. Notwithstanding ODNR permitting a period of time to cure the breach or Grantee's cure of the breach, ODNR does not waive any of its rights and remedies provided to ODNR in this Agreement or as may be permitted by law.

**24. Legal, Federal Tax, and Other Compliance.**

- a. Reports of Expenditures. Grantee will assure that monies expended under this Agreement are spent in conformity with the intent and purpose of the appropriation, the limitations on use set forth in the legislation containing the appropriation, and R.C. Chap. 154 and all other laws that apply to the expenditure of monies by Grantee. If Grantee is required to submit an annual financial report to the Auditor of State, in accordance with Auditor of State Bulletin 2015-07, then Grantee shall report the funds it acquires through this Agreement as a separate column identified in a manner consistent with the Project description in appropriation item C725E2. If Grantee is not required to submit the aforementioned report, Grantee shall file an annual detailed expenditure report of all expenditures associated with the Project with the Auditor of State by March 1st every year until all funds provided in this Agreement have been spent. The above reports shall be filed in accordance with Auditor of State Bulletin 2015-07.
- b. Compliance with Employment Laws. Grantee agrees to comply with all applicable federal, state, and local laws and regulations, in the conduct of the Project and acknowledges that its employees are not employees of ODNR with regard to the application of the Ohio Public Employees Retirement law, Fair Labor Standards Act minimum wage and overtime provisions, Federal Insurance Contribution Act, Social Security Act, Federal Unemployment Tax Act, Internal Revenue Code, Ohio revenue and tax laws, Ohio Workers' Compensation Act, and Ohio unemployment compensation law.
- c. Compliance with Law; Preservation of Tax-Exempt Status of Bonds. Grantee agrees to use funds provided under this Agreement in accordance with the Ohio Constitution and any state or federal laws and regulations that may apply. Grantee shall repay ODNR any funds improperly expended. Additionally, Grantee agrees to comply with all requirements within its control necessary to preserve the tax status of all tax-exempt or tax-advantaged bonds, the proceeds of which are used to provide the funding to Grantee set forth in this Agreement. Unless otherwise determined by the OPFC, such requirements include, but are not limited to, ensuring that the funds provided under this Agreement finance capital expenditures (as opposed to operating expenses) and are not used to refund or otherwise refinance existing debt of Grantee. Grantee shall be liable for any payments to the Internal Revenue Service or the U.S. Treasury as penalties or to preserve the tax status of tax-exempt or tax-advantaged bonds, and any other costs, resulting in whole or in part from actions taken by Grantee, including the failure of Grantee to comply with federal income tax laws applicable to such bonds. Grantee agrees to consult with OPFC if the Grantee is uncertain as to what expenditures are eligible to be financed with funds provided under this Agreement.

**25. Relationship of Parties.**

- a. Expenses. Grantee shall be responsible for all of its own business expenses, including, but not limited to, computers, email and internet access, software, phone service, and office space. Grantee will also be responsible for all licenses, permits, employees' wages and salaries, insurance of every type and description, and all business and personal taxes, including income and Social Security taxes and contributions for Workers' Compensation and Unemployment Compensation coverage, if any, unless payment for any such item is specifically provided for herein or in the purchase order.

- b. **No Control Over Means and Methods.** While Grantee shall be required to perform its obligations described hereunder during the term of this Agreement, nothing herein shall be construed to imply, by reason of Grantee's obligations hereunder, that ODNR shall have or may exercise any right of control over Grantee with regard to the means or method of Grantee's performance of its obligations hereunder.
  - c. **Right to Bind.** Except as expressly provided herein, neither party shall have the right to bind or obligate the other party in any manner without the other party's prior written consent.
  - d. **No Agency.** Neither Grantee nor its personnel shall at any time, or for any purpose, be considered as agents, servants, or employees of ODNR or the State of Ohio.
26. **No Finding for Recovery.** Grantee represents and warrants to the ODNR that it is not subject to a finding for recovery under R.C. § 9.24, or that it has taken appropriate remedial steps required under R.C. § 9.24 or otherwise qualifies under that section. Grantee agrees that if this representation or warranty is determined by ODNR to be false, this Agreement shall be void ab initio as between the parties to this Agreement, and any funds paid by the State hereunder immediately shall be repaid in full to the State, or an action for recovery immediately may be commenced by the State for recovery of said funds.
27. **Qualification to Receive Grant.** Grantee affirms that it is a duly authorized federal government agency, municipal corporation, county, or other governmental agency or nonprofit organization, qualified to receive grants under R.C. § 154.22(F). Grantee further affirms that if at any time during the Term of this Agreement, Grantee for any reason becomes disqualified from receiving grants under R.C. § 154.22(F), Grantee will immediately notify ODNR in writing and will immediately cease performance of the Project. Failure to provide such notice in a timely manner shall void this Agreement and may be sufficient cause for the State of Ohio to debar the Grantee from future state grant opportunities as may be permitted by law.
28. **Campaign Contributions.** Grantee hereby certifies that neither it, nor any person described in R.C. § 3517.13 (I) or (J), nor the spouse of any such person, has made, as an individual, within the two previous calendar years, one or more contributions to the governor or the governor's campaign committees totaling in excess of the limitations specified in R.C. § 3517.13.
29. **Ethics Certification.** Grantee, by signature on this document, certifies that it: (i) has reviewed and understands the Ohio ethics and conflict of interest laws as found in R.C. Chap. 102 and in R.C. §§ 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. Grantee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this Agreement and may result in the loss of other contracts or grants with the State.
30. **Certification of Funds / Non-Appropriation.** It is expressly understood and agreed by the parties that none of the rights, duties, and obligations described in this Agreement shall be binding on either party until all relevant statutory provisions of the Ohio Revised Code, including, but not limited to, R.C. § 126.07, have been met, and until such time as all necessary funds are available or encumbered and, when required, such expenditure of funds is approved by the Controlling Board of the State of Ohio, or in the event that grant funds are used, until such time that ODNR gives Contractor written notice that such funds have been made available to ODNR by ODNR's funding source.

31. **Time Is of The Essence.** Time is of the essence in this Agreement.

32. **Miscellaneous.**

- a. Controlling Law. This Agreement and the rights of the parties hereunder shall be governed, construed, and interpreted in accordance with the laws of the state of Ohio. Grantee consents to jurisdiction in a court of proper jurisdiction in Franklin County, Ohio.
- b. Waiver. A waiver by any party of any breach or default by the other party under this Agreement shall not constitute a continuing waiver by such party of any subsequent act in breach of or in default hereunder.
- c. Successors and Assigns. Neither this Agreement nor any rights, duties, or obligations hereunder may be assigned or transferred in whole or in part by Grantee, without the prior written consent of ODNR.
- d. Conflict with Exhibits. In the event of any conflict between the terms and provisions of the body of this Agreement and any exhibit hereto, the terms and provisions of the body of this Agreement shall control.
- e. Headings. The headings in this Agreement have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this Agreement.
- f. Severability. The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially-enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.
- g. Entire Agreement. This Agreement contains the entire agreement between the parties hereto and shall not be modified, amended, or supplemented, or any rights herein waived, unless specifically agreed upon in writing by the parties hereto. This Agreement supersedes any and all previous agreements, whether written or oral, between the parties.
- h. Execution. This Agreement is not binding upon ODNR unless executed in full and is effective as of the last date of signature by ODNR.
- i. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.
- j. Electronic Signatures. Any party hereto may deliver a copy of its counterpart signature page to this Agreement electronically pursuant to R.C. Chap. 1306. Each party hereto shall be entitled to rely upon an electronic signature of any other party delivered in such a manner as if such signature were an original.

**IN TESTIMONY WHEREOF**, Grantee and ODNR have caused this Agreement to be executed by their respective duly authorized officers.

GRANTEE

OHIO DEPARTMENT OF NATURAL RESOURCES

CITY OF SOUTH LEBANON

OFFICE OF REAL ESTATE & LAND MANAGEMENT

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

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

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

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

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

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

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

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

Approved as to from:  
ANDREW P. MEIER  
CITY SOLICITOR  
CITY OF SOUTH LEBANON

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

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

ATTORNEY CERTIFICATION

Community Park, Recreation, or Conservation Project Number: **WARR-027C**

I, \_\_\_\_\_, acting as attorney for the  
Name and Title of Attorney  
\_\_\_\_\_("Grantee"), and for the reliance of the  
Name of Grantee

Ohio Department of Natural Resources, do certify that from my examination of the Capital Improvement Community Park Recreation or Conservation Project, Pass-Through Grant Agreement (the "Agreement") and my knowledge of Grantee's organization, that acceptance of the Agreement by Grantee and the execution thereof by the signing officer has been duly authorized and is proper and in accordance with the laws of the State of Ohio. Grantee is a legally constituted public entity with full authority and legal capacity to perform all obligations and terms of the Agreement. Upon signature by the signing officer, the Agreement, in my opinion, is a legal obligation of Grantee in accordance with the terms thereof, and Grantee possesses the legal authority to fully perform all obligations incurred by Grantee in signing this Agreement. Grantee's acceptance of the Agreement and the signing officer's execution thereof, ☐ has ☐ has not\* been authorized by the governing body of Grantee or has otherwise been authorized by Grantee's charter. (Resolution or Ordinance No. \_\_\_\_\_, dated \_\_\_\_\_, 202\_\_).

\*If "has not" is checked above, please indicate the reason: \_\_\_\_\_

**Attorney for Grantee:**

\_\_\_\_\_  
Attorney Signature

\_\_\_\_\_  
Attorney Printed Name

\_\_\_\_\_  
Attorney Registration No.

\_\_\_\_\_  
Date Signed

Attorney Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## EXHIBIT C TITLE ENCUMBRANCES

### **Encumbrances DO NOT Exist:**

I hereby certify, as an authorized representative of City of South Lebanon ("Grantee"), that there are currently **NO** encumbrances, liens, easements, or restrictions against the Property defined in this Agreement.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

### **Encumbrances DO Exist:**

I hereby certify, as an authorized representative of City of South Lebanon ("Grantee"), that the following encumbrances, liens, easements, or restrictions are the only encumbrances, liens, easements, or restrictions that currently exist against the Property defined in this Agreement (attach an additional page, if needed):

*Example: Easement by and between [Name of Grantee] and \_\_\_\_\_ dated \_\_\_\_\_ and recorded at Official Record # \_\_\_\_\_ (Vol. # \_\_\_\_\_ of Page # \_\_\_\_\_) of [Name of County] County, Ohio.*

1	
2	
3	
4	
5	

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date



## EXHIBIT A

### PROJECT INFORMATION PACKAGE

Forms and requested materials (maps, etc.) on pages 2-13 comprise the 'Project Information Package. Please complete all forms on pages 2-13 and send with all other requested materials on pages 2-13 (only) to the address below. This is the first step in the Project coordination process.

Teresa Goodridge  
ODNR  
Office of Real Estate  
2045 Morse Road, E2  
Columbus, Ohio 43229-6693  
614-265-6396



#### BASIC INFORMATION

Awarded Project Sponsor: City of South Lebanon

Project Sponsor's Address: 10 North High Street  
Street Address 1  
Street Address 2  
South Lebanon, Ohio 45065  
City, State ZIP

Tax Identification Number: 31-6008930

Contact Person: Jeff Boylan Assistant Administrator  
Name Title

Email Address: jboylan@southlebanonohio.org

Phone Number: 513-770-4879

#### Brief Description of Project:

This project will replace the aging playground equipment in our main playground in the heart of the city.



EXHIBIT B

BOUNDARY MAP



Date: 9/1/2022

<b>Cadastral Lines</b>	Corporate Line	Parcel Line	Hardware
all other values	County Line	ROW Unknown Width Line	Subdivision Lot Line
<b>Line Type</b>	Farm Lot Line	Road ROW	Township and Range Line
Auditor's Tract Line	Overpass Line	School Line	Tract Line
Civil Township Line	Subdivision Limit Line	Section Line	VMS Line
			Vacated Road Line

1 inch = 94 feet

Warren County Map

The provider makes no warranty or representation with respect to this information, its quality or suitability for a particular purpose. This information is provided AS IS, and the requester assumes the entire risk as to its quality and suitability. The provider will not be liable for direct, indirect, incidental, or consequential damages resulting from any defect in the information. The provider shall have no liability for any other information, Programs or data used with or combined with the requested information, including the cost of recovering information, programs or data.





City of South Lebanon  
10 N. High Street, South Lebanon, Ohio 45065  
513-494-2296  
fax: 513-494-1656  
[www.southlebanonohio.org](http://www.southlebanonohio.org)

## MEMORANDUM

**To:** Mayor & City Council

**From:** Jerry Haddix, City Administrator

**Date:** October 17, 2022

**Subject:** Warren Co. Soil & Water Conservation District Agreement

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Attached is a resolution and agreement with the Warren County Soil & Water Conservation District (SWCD) for assistance with compliance of stormwater management regulations for calendar year 2023. Attached is the worksheet used to calculate the annual fee for 2023.

Let me know if you have any questions or need additional information.

**CITY OF SOUTH LEBANON, OHIO  
RESOLUTION NO. 2022-43**

**A RESOLUTION APPROVING AND AUTHORIZING THE MAYOR AND FISCAL  
OFFICER TO EXECUTE AN AGREEMENT WITH THE WARREN COUNTY SOIL  
AND WATER CONSERVATION DISTRICT FOR CALENDAR YEAR 2023**

**WHEREAS**, the Warren County Soil & Water Conservation District (WCSWCD) assists the Warren County Engineer's Office in the administration of the Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) small Municipal separate storm sewer system (MS4) permit for unincorporated areas of the County; and,

**WHEREAS**, the City of South Lebanon has elected to join the Warren County Board of Commissioners as a co-permittee for the MS4 permit; and,

**WHEREAS**, the WCSWCD has assisted the City in fulfilling their responsibilities as a MS4 co-permittee with Warren County and would like to continue the agreement with the responsibilities of each party listed in the attached agreement.

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

**Section 1.** Approve and authorize the Mayor and Fiscal Officer to execute an Agreement for calendar year 2023, a copy of which is attached hereto, with the Warren County Soil and Water Conservation District.

**Section 2.** That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

**Section 3.** 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.

**Resolution No. 2022-43**

**Page 2**

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2022.

Attest: \_\_\_\_\_

Petrina D. Williams, Fiscal Officer/Clerk

James D. Smith, Mayor

Rules Suspended:	(if applicable)	Effective Date –
Vote - ____ Yeas ____ Nays		
First Reading – / /2022		Effective Date – / /2022
Second Reading – / /2022		
Third Reading – / /2022		
Vote - ____ Yeas ____ Nays		

Prepared by and approved as to form:

ANDREW P. MEIER  
CITY SOLICITOR  
SOUTH LEBANON, OHIO

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

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

**AGREEMENT BETWEEN  
THE CITY OF SOUTH LEBANON  
AND  
WARREN COUNTY SOIL & WATER CONSERVATION DISTRICT**

This working agreement becomes effective on January 1, 2023. The agreement expires on December 31, 2023. The agreement is subject to the limitations of authorities, resources and policies of the Warren County Soil and Water Conservation District (WCSWCD) and the City of South Lebanon.

The City of South Lebanon has elected to join the Warren County Commissioners as a co-permittee on the EPA National Pollutant Discharge Elimination System (NPDES) Small MS4 (municipal separate storm sewer system) Permit (permit). The purpose of this agreement is to detail services that WCSWCD will provide to assist the City of South Lebanon in meeting the terms of the permit as a co-permittee. WCSWCD works with Warren County Engineer's Office to provide services as required by the permit to the unincorporated areas of Warren County as well as all co-permittee jurisdictions.

The MS4 is responsible for the permit requirements and contracting with the WCSWCD does not guarantee full compliance with the Ohio Environmental Protection Agency permits.

WCSWCD will provide the following services for the City of South Lebanon:

1. Write and update the Stormwater Management Plan (SWMP) for Warren County and its' co-permittees (Clearcreek, Franklin, Hamilton, Turtlecreek, and Union Townships and the Villages of Maineville, Morrow, and City of South Lebanon) as required by the permit. The Stormwater Management Plan (SWMP) will be submitted in accordance with 40 CFR Part 122.32 and Ohio Law. The SWMP document outlines the steps Warren County and its' co-permittees need to take to develop, implement and enforce a stormwater management program designed to reduce the discharge of pollutants to the maximum extent practicable, to protect water quality, and to satisfy the appropriate requirements of the Clean Water Act in accordance with the Ohio EPA Phase II program. The SWMP addresses the six minimum control measures (MCMs) as required by state regulations.
2. The permit contains six minimum control measures (MCMs) that must be met for permit compliance. The six MCMs and WCSWCD's related services are as follows:
  - MCM 1 – Public Education & Outreach: WCSWCD will provide leadership for MCM 1 by providing educational programming opportunities for K-12 students of Warren County through non-traditional educational programming, multi-media outreach and school programming.
  - MCM 2 – Public Involvement & Participation: WCSWCD will provide leadership for MCM 2 by providing educational programming opportunities to Warren County residents through volunteer and participation opportunities at workshops, festivals, and special events/meetings.

- MCM 3 – Illicit Discharge Detection and Elimination: oversee the Illicit Discharge Detection and Elimination (IDDE) program in accordance with permit requirements. The WCSWCD will provide leadership for MCM 3 by,
  - a. Leading the IDDE Advisory committee which includes the City of South Lebanon as a collaborator,
  - b. conducting dry-weather screening of 20 percent of total outfalls so that all outfalls are screened within the 5-year permit term,
  - c. reviewing IDDE points of interest that have been identified by the City of South Lebanon,
  - d. testing of potential illicit discharge water samples will be provided by WCSWCD, WCSWCD will provide pre-communication before any testing is conducted,
  - e. responding to and investigating illicit discharge complaints or reports,
  - f. maintaining the system map by adding new infrastructure and track yearly reported outfalls, and
  - g. collaborating with City of South Lebanon, Warren County prosecutor and Warren County Engineer for program enforcement.
- MCM 4 – Construction Site Storm Water Runoff Control: oversee the Construction Site Storm Water Runoff Control program in accordance with the County, State and Federal applicable erosion and sediment control regulations. WCSWCD will provide leadership for MCM 4 by,
  - a. Collaborating with the City of South Lebanon in reviewing and approving of all active construction by utilizing construction drawings, operation and maintenance documents and SWP3 documents (these documents should be shared for review and approval before pre-construction meetings and earth disturbance is permitted) for all projects greater than one acre in size,
  - b. requiring an earth disturbing application for each construction site before earth disturbance can commence,
  - c. inspecting all active sites in accordance with the OEPA inspection frequency policy,
  - d. issuing Notices of Violation to construction site contractors and developers/owners on behalf of the City of South Lebanon as it's designated agent and copying through email all inspectors and engineers,
  - e. responding to all construction stormwater complaints and tracking the number of complaints, and
  - f. assisting the City of South Lebanon with enforcement actions for non-compliance.
- MCM 5 – Post-Construction: oversee yearly inspections of the stormwater control basins for the post-construction storm water management program in accordance with permit requirements. WCSWCD will provide leadership for MCM 5 by,
  - a. Inspecting 20 percent of all County stormwater control basins so that all basins are inspected once per 5-year permit term,
  - b. updating the County basin map, in conjunction with the County GIS department, with results of basin inspections,

- c. notifying property/basin owners that an inspection has been performed and providing electronic versions of inspection data on the WCSWCD website for basin owners to view and download, and
  - d. providing basin owners with technical assistance for maintenance and repair of stormwater control basins.
- MCM 6 – Good Housekeeping & Pollution Prevention: oversee the pollution prevention and good housekeeping practices for municipal operation program to meet the permit's requirements. WCSWCD will provide leadership for MCM 6 by,
  - a. Providing 1 yearly training for municipal workers,
  - b. providing yearly inspections for municipality owned facilities as outlined in the Stormwater Pollution Prevention Plans (SWPPPs), and
  - c. providing SWPPPs as deemed necessary for municipal facilities.
  - d. Write and update the MS4 annual report for Warren County and its' co-permittees as required by the permit.
- 3. Write and update the MS4 annual report for Warren County and its' co-permittees as required by the permit.

The City of South Lebanon will:

1. Compensate the WCSWCD \$23,352.00 (Please fill in cost) for the services provided.
2. Submit a Notice of Intent (NOI) with the Ohio Environmental Protection Agency requesting coverage under the NPDES Small MS4 Stormwater Permit and request co-permittee status with Warren County Commissioner NPDES Small MS4 Stormwater Permit.
3. Enforce the City of South Lebanon's stormwater regulations, erosion and sediment control regulations and the illicit discharge regulations.
4. Conduct regular and quarterly inspections of the municipal facilities that have Storm Water Pollution Prevention Plans.
5. Provide statistics (waste oil generated, yard waste collected, street sweeping material collected, total salt applied, pesticide and herbicide applied, and fertilizer applied, etc.) by January 17, 2023 for the annual report.

Termination:

This agreement may be terminated at any time by mutual consent of the parties involved or may be terminated by either party by giving 90 days notice in writing to the other.

Warren County Soil and Water Conservation District

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Signature	Title	Date
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City of South Lebanon

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Signature	Title	Date
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Approved as to form:  
 ANDREW P. MEIER  
 CITY SOLICITOR  
 SOUTH LEBANON, OHIO

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



## **2023 Phase II MS4 Program Costs**

**For Co-Permittees to Warren County MS4**

### **City of South Lebanon**

MCM	Description	%	@ \$12 per developed lot	Program Cost
				(Lots)
				1946
MCM 1	Public Education & Outreach	25	\$3.00	\$5,838.00
MCM 2	Public Involvement & Participation	5	\$0.60	\$1,167.50
MCM 3	Illicit Discharge Detection and Elimination	20	\$2.40	\$4,670.40
MCM 4	Construction Site Storm Water Runoff Control	30	\$3.60	\$7,005.50
MCM 5	Post Construction	15	\$1.80	\$3,502.30
MCM 6	Good Housekeeping & Pollution Prevention	5	\$0.60	\$1,167.50
	<b>Total</b>	<b>100</b>	<b>\$12.00</b>	<b>\$23,352.00</b>

\* Village of South Lebanon paid \$20,336.40 for Phase II MS4 services in 2020.

\* Village of South Lebanon paid \$21,096.00 for Phase II MS4 services in 2021.

\* Village of South Lebanon paid \$22,368.00 for Phase II MS4 services in 2022.