

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2021-10**

**A RESOLUTION APPROVING AND FURTHER AUTHORIZING THE MAYOR
AND FISCAL OFFICER TO EXECUTE A WATER SERVICE AGREEMENT WITH
WARREN COUNTY RELATING TO THE ZOAR ROAD AREA AND DECLARING
AN EMERGENCY**

WHEREAS, Warren County currently provides retail water service to various areas in Village; and

WHEREAS, the Village desires to purchase surplus water from Warren County to provide water in the Zoar Road area to additional properties currently in the Village; and,

WHEREAS, the Village also desires to purchase water from the County for the areas shown on Exhibit A of the attached Agreement in the event any of these areas are annexed into the Village in the future; and

WHEREAS, the County has agreed to provide water to Village on a wholesale basis; and

WHEREAS, the Village Council desires to enter into a Water Service Agreement with Warren County.

WHEREAS, immediate action is required to submit this resolution to the Warren County Board of Commissioners to expedite action on this request, 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, Ohio, at least two-thirds of all members elected thereto concurring:

Section 1. That the Council approves and authorizes the Mayor and Fiscal Officer to execute the Water Service Agreement as attached hereto.

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

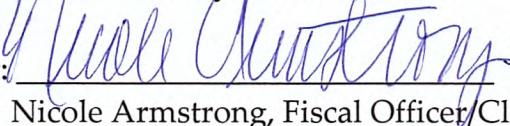
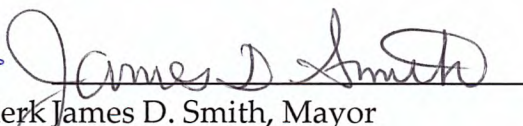
Section 3. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Resolution were adopted in an

open meeting of Council in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

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.

Adopted this 18th day of March, 2021.

Attest:


Nicole Armstrong, Fiscal Officer/Clerk 
James D. Smith, Mayor

Rules Suspended: / /2021 (if applicable)

Effective Date – / /2021

Vote - 6 Yeas
_____ Nays

First Reading – / /2021

Effective Date – / /2021

Second Reading – / /2021

Third Reading – / /2021

Vote - _____ Yeas
_____ Nays

Prepared by and approved as to form:

ANDREW P. MEIER
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: 

Date: 3 / 18 /2021

WATER SERVICE AGREEMENT BETWEEN THE VILLAGE OF SOUTH LEBANON AND WARREN COUNTY

This Water Service Agreement ("Agreement") is entered into by and between WARREN COUNTY, OHIO, acting by and through its legislative authority, the BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO, an Ohio political subdivision organized and duly acting under County form of government in accordance with Title 3, et seq., of the Ohio Revised Code ("County"), and the VILLAGE OF SOUTH LEBANON acting by and through its legislative authority, the SOUTH LEBANON VILLAGE COUNCIL, an Ohio municipal corporation organized and duly acting in accordance with ART. XVIII of the Ohio Constitution and Section VII of the Ohio Revised Code ("South Lebanon").

WITNESSETH

WHEREAS, the County is a regional water supplier capable of supplying surplus water to surrounding communities and jurisdictions; and

WHEREAS, the County is the retail water service provider for areas of South Lebanon south of the Little Miami River; and

WHEREAS, South Lebanon desires to purchase surplus water from the County for additional areas south of the Little Miami River; and

WHEREAS, South Lebanon has the responsibility of providing a safe, clean, adequate supply of water to its citizens and consumers; and

WHEREAS, the County pursuant to sections 307.15 (A)(1). and 6103.20 (A), et seq., of the Ohio Revised Code has the authority to contract for the sale of surplus water to South Lebanon; and South Lebanon, pursuant to sections 303.15 (A)(1) and 717.01 (G), et seq., of the Ohio Revised Code has the power to purchase water from the County; and

WHEREAS, the sale of surplus water by the County to South Lebanon will benefit existing County customers by further spreading and reducing the unit base cost to produce water, and benefit the South Lebanon customers by providing safe reliable drinking water to the residents of South Lebanon.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, South Lebanon and the County do hereby agree as follows:

Section 1 Purpose of the Agreement

The purpose of this agreement is to establish the terms and conditions under which the County will provide wholesale water to South Lebanon during the agreement period. It is expressly understood and agreed by the parties that South Lebanon, in paying the costs and charges set forth herein, is purchasing water and not any County-owned portion of the physical plant, mains, or other property used in providing said water. Nothing herein shall be construed to imply Warren County's ownership of, or responsibility for, the

South Lebanon distribution system including but not limited to improvement, maintenance, repair, or the quality of the water beyond the master meter as required by the Ohio Environmental Protection Agency's regulatory standards, except as may be agreed upon herein or otherwise in writing.

Section 2 Agreement Term

The term of this agreement shall be for a period of forty (40) years commencing upon the date when the last party executes the agreement. The term of the agreement may be extended or modified upon mutual agreement of both parties and as allowed under Section 16.

Section 3 General Supply of Water

The County recognizes that a reliable supply of water to South Lebanon is of primary importance for fire suppression, drinking water, and for the health and safety of its residents. The County pledges to use its reasonable efforts to provide a potable, stable, and adequate supply of water for the South Lebanon Water Service Area as defined in this Agreement. If a disruption of service should occur associated with water main breaks or damage to elevated water tanks or pump stations, the County will repair and remedy the disruption to reestablish service as soon as reasonably possible.

Section 4 Water Service Area

The wholesale water service area, (the "Service Area") shall be limited to the properties delineated on the map attached to this Agreement as "**Exhibit A**". The service area includes properties inside South Lebanon and properties currently located outside of South Lebanon. Properties shall be eligible for wholesale water service upon annexation into South Lebanon. Properties that currently receive retail water service from Warren County shall remain customers of the County until such time that South Lebanon notifies the County in writing of the transfer of annexed customers and the installation of master meters (if necessary) is complete. Both the County and South Lebanon's retail water service boundaries will automatically change upon the transfer of customers.

Expansion and/or modifications to the Service Area may be implemented by mutual consent of South Lebanon and the County through the execution of a written amendment duly authorized by resolution of both parties.

Section 5 Rates, Billing, and Payment

- A. South Lebanon shall pay for wholesale water based on monthly or bimonthly billings as jointly agreed to by the County and South Lebanon. The 2021 rate for wholesale water shall be \$3.90 per thousand gallons of water. This rate is 88% of the current rate paid by County retail customers. The 88% differential factor applicable to wholesale water furnished to South Lebanon shall not change except by an amendment to this Agreement. The wholesale rate shall

automatically increase (without the necessity for an amendment) on the effective date that the County increases the rates to their retail customers. The South Lebanon wholesale rate (per thousand gallons) for the years 2021 to 2023 shall be as follows based on Resolution No. 20-0376 adopted by the Warren County Commissioners on March 3, 2020.

Rate Starting January1	County Retail	South Lebanon Wholesale
2021	\$4.43	\$3.90
2022	\$4.56	\$4.01
2023	\$4.70	\$4.14

The County shall give South Lebanon at last thirty (30) days notice, prior to the effective date, of any rate increase after calendar year 2023.

- B. Bills for water shall be paid by South Lebanon and shall be based upon the amount of water furnished during the preceding billing period as recorded by the master meter(s). The County shall collect the readings from the master meter(s) and prepare bills that include the meter readings and amount of water conveyed through each meter.
- C. Payment shall be made by South Lebanon on or before the due date (typically three weeks) stated on the bill. If such bill is not paid by the due date, a service charge shall be added at a rate charged by the County to its customers per billing period (currently 10 %).

Section 6 Water Tap-In Fees

- A. South Lebanon shall remit to the County a water Tap-In fee for each new South Lebanon water service connection in the Service Area throughout the term of this Agreement. These fees shall be remitted to the County within 30 days of collection. The charge shall apply to all connections of improved properties, whether residential, commercial, institutional, or retail. The proceeds of the Tap-In charges shall be used by the County for the design, construction, and operation of capital improvements necessary for water treatment, distribution, and storage.
- B. The 2021 Tap-In Charge for a single family residential dwelling shall be the \$4,000 fee applicable to County water retail customers and shall be subject to increases as adopted by the County. The collection of fees for multifamily residential and nonresidential properties shall be in accordance with the Warren County Water & Sewer Department Rules and Regulations. The County shall provide no less than sixty (60) days notice, prior to the effective date, to South Lebanon of any changes to the County Tap-In fees.
- C. In addition to the Tap-In charges paid to the County, South Lebanon shall collect from their customers all appropriate fees and charges as established and adopted by South Lebanon's Village Council.

Section 7 South Lebanon Responsibilities

- A. South Lebanon grants the County the exclusive right to provide wholesale water service to the Service Area and agrees to purchase 100% of its water for this area upon execution of this Agreement. No water service shall be supplied to the Service Area by any other provider, public or private, unless permitted to do so by the County due to an emergency condition. An emergency condition shall mean any situation arising from fire, flood, storm, breakdown of a water system or unpotable condition of water in a water system, or a similar water condition causing an immediate threat to life, health or property of the customers served by South Lebanon.
- B. South Lebanon shall be responsible for financing and installation of all master meters and metering vaults for the recording and billing of wholesale water. The initial master meter shall be installed in a dedicated easement near the terminus of the County's existing 8-inch waterline located near Emerald Drive and Zoar Road and additional meters shall be installed as needed to service additional developments. All meters and vaults shall conform to Warren County Water and Sewer design standards.
- C. South Lebanon grants to Warren County the right to use easements, right-of-way, and any property owned by South Lebanon in the construction of any water main required for the distribution of water to the Service Area. Cost for any permits required for the construction of any water main necessary to serve South Lebanon shall be the responsibility of South Lebanon.
- D. South Lebanon shall be responsible for the costs and maintenance for all capital improvements located on the South Lebanon side of the master meter(s). South Lebanon shall retain ownership and operational responsibilities for its water distribution and storage facilities.
- E. South Lebanon shall, throughout the term of this Agreement, allow the County unlimited, unrestricted access to the master meter(s) and vaults, and other appurtenances by which water is supplied by the County for the purpose of maintenance and monitoring County owned equipment.
- F. Once the master meter is installed, South Lebanon shall become the owner and operator of the consecutive public water system and shall maintain compliance with all United States Environmental Protection Agency (USEPA) requirements, Ohio Environmental Protection Agency (OEPA) requirements, and Safe Drinking Water Act requirements for the life of this Agreement.

Section 8 County Responsibilities

- A. Upon the construction and completion of each master meter connection, the County shall provide wholesale water to the point of distribution to South Lebanon that meets all applicable regulatory standards of the United States Environmental Protection Agency (USEPA) requirements, Ohio Environmental

Protection Agency (OEPA) requirements, and Safe Drinking Water Act requirements, including any amendments of new legislation enacted after the execution of this Agreement.

- B. The County shall provide sufficient water pressure at the point of distribution to South Lebanon and capacity to service the Wholesale area. Service will be from the County's elevation 964 pressure zone and will result in service pressures ranging from approximately 150 psi near the Little Miami River to 70 psi along State Route 22.
- C. The County shall be responsible for the costs and maintenance for all capital improvements located on its side of the master meter(s). The County shall retain ownership and operational responsibilities for its water distribution and storage facilities.

Section 9 Breach of Contract

Upon default of a material term of the Agreement including but not limited to failure to pay rates and charges, violation of any material term of this Agreement, law or regulation, the non-defaulting party may terminate this Agreement by giving a 180-day notice; however, during the 180-day notice period, the defaulting party shall have the right to cure any such default. The right-to-cure period may be extended upon mutual agreement in writing and executed by both parties.

Section 10 Master Meters and Vaults

- A. South Lebanon shall be responsible for purchasing and installing the meter vault(s), master meter(s) and all related valves and appurtenances in the vault(s). The location and design of the meter vault(s), piping, and valves (including calibration test port) shall be reviewed and approved by both parties.
- B. With the completion of each vault, the County shall be responsible for owning, maintaining, repairing, and if necessary, replacing the valves and piping on the County's side of the master meter(s), and including the meter.
- C. With the completion of each vault, South Lebanon shall be responsible for owning, maintaining, repairing, and if necessary, replacing the valves and piping on South Lebanon's side of the master meter(s), excluding the meter(s). South Lebanon shall also accept ownership of the meter vault and be responsible for any improvements, maintenance, or repair of the vault(s) including maintaining a dry environment.
- D. The County shall perform an annual calibration test of the master meter(s) and provide all results to South Lebanon. South Lebanon retains the right to have additional master meter calibration testing performed at South Lebanon's cost by South Lebanon staff or a testing company of South Lebanon's choosing. Master meter(s) shall have an accuracy consistent with the manufacturer's standard.

- E. The County shall have the right to install any meter reading or collector equipment necessary to collect master meter readings for the purpose of tracking water consumption.
- F. Should such master meter(s) malfunction, the water usage during the period shall be estimated using historical water usages from similar billing periods.

Section 11 Water User Rates

South Lebanon and the County shall have the sole right to set water user rates for their respective water customers.

Section 12 Successors and Assigns

This Agreement shall be binding on the successors and assigns of the parties. Neither party may assign or otherwise transfer its rights and obligations in this Agreement without the written consent of the other party.

Section 13 Severability

In the event that any portion of this Agreement is declared to be unlawful, invalid, or unconstitutional, such declaration shall not affect, in any manner, the legality of the remaining provisions. Each provision of this Agreement will be and is deemed to be separate and separable from each other provision.

Section 14 Third Party Rights

Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than the County and South Lebanon.

Section 15 Limitations

Neither party shall be liable to the other party for any special, indirect, or consequential damages resulting in any way from the performance of the services provided for herein.

Section 16. Future Modifications

This Agreement may be modified or amended only by written instrument duly authorized and executed by both parties.

Section 17 Controlling Law and Venue.

This Agreement shall be construed under the laws of the State of Ohio. The parties irrevocably consent to the exclusive venue for any disputes or controversies arising out of or relating in any way to this Agreement or the performance thereunder being in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to alternative dispute resolution), and waive any right to bring or remove such matters to any other state or federal court.

Section 18 Notices

Except as may otherwise be provided herein, all notices, demands, requests, and other communications under this Agreement shall be in writing and shall be either personally delivered, mailed, or emailed to the following contacts:

Warren County:	Warren County Sanitary Engineer P.O. Box 530 Lebanon, OH 45036
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South Lebanon:	South Lebanon Administrator 10 N. High Street South Lebanon, OH 45065
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Section 19 Waivers

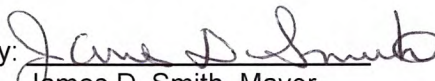
A waiver or any breach of any provision of this Agreement shall not constitute or operate as a waiver of any other breach of such provision or of any other provisions, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision.

Section 20 EXECUTION

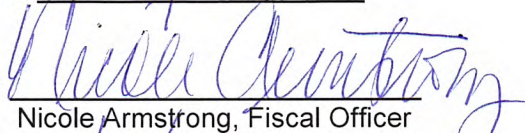
VILLAGE OF SOUTH LEBANON:

IN EXECUTION WHEREOF, the South Lebanon Village Council has caused this Agreement to be executed by James D. Smith, its Mayor, and Nicole Armstrong, its Fiscal Officer, in accordance with section 731.14 of the Revised Code, on the date stated below, pursuant to the accompanying Resolution Number 2021-10, dated Mar. 18, 21 authorizing this Agreement and the said public officials to execute the Agreement on its behalf.

VILLAGE OF SOUTH LEBANON

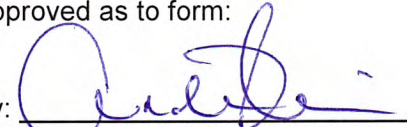
By: 
James D. Smith, Mayor

Date: 3/18/21

By: 
Nicole Armstrong, Fiscal Officer

Date: 3/18/21

Approved as to form:

By: 
Andrew Meier, Esq., Solicitor

Date: 3/18/2021

[continued on next page]

COUNTY:

IN EXECUTION WHEREOF, the Board of Commissioners of Warren County, Ohio has caused this Agreement to be executed by Tiffany Zindel, its County Administrator, , on the date stated below, as duly authorized by Resolution No. _____, dated _____.

**BOARD OF COMMISSIONERS
OF WARREN COUNTY, OHIO**

SIGNATURE: _____

NAME: Tiffany Zindel

TITLE: County Administrator

DATE: _____

Approved as to form:

DAVID P. FORNSHELL
WARREN COUNTY
PROSECUTING ATTORNEY

By: Bruce A. McGary, Asst. Pros.

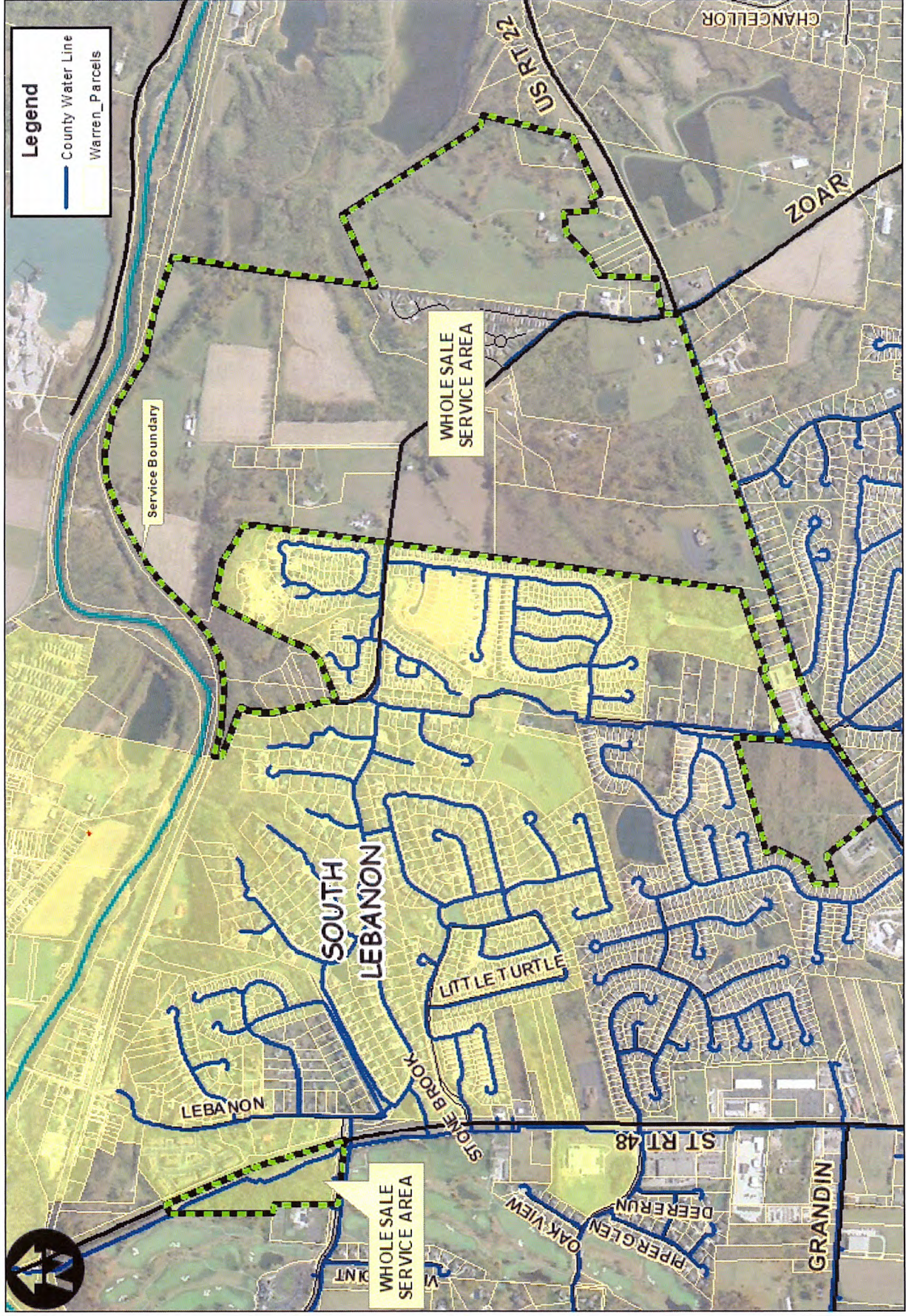


EXHIBIT A
Wholesale Water Service Area

