

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2021-41**

**A RESOLUTION APPROVING A LICENSE AGREEMENT WITH THE OHIO
DEPARTMENT OF NATURAL RESOURCES RELATIVE TO THE RIVER
CORRIDOR SANITARY SEWER EXTENSION PROJECT AND AUTHORIZING
THE MAYOR TO SIGN SAID AGREEMENT, AND DECLARING AN
EMERGENCY**

WHEREAS, the Village has contracted with McGill Smith Punshon, Inc. (MSP) to design a sanitary sewer project to serve primarily the portion of the Village on the south side of the Little Miami River; and

WHEREAS, as part of this Project, MSP determined that the installation of sanitary sewer mains, both gravity and force mains, within the Ohio Department of Natural Resources (ODNR) Little Miami Bike Trail would be the most effective route to transfer wastewater to the Lebanon Sewer Treatment Plant from this area of the Village; and

WHEREAS, ODNR has reviewed the project plans and has determined that this project is in the public interest to allow the proposed construction along ODNR's property as specified in the project plans; and

WHEREAS, immediate action is required to approve and return the Agreement to the Ohio Department of Natural Resources in order to expedite the approval process with ODNR, 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. That the Village Council approves a License Agreement with the Ohio Department of Natural Resources, and that the Mayor be and is hereby authorized to execute said 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 this Resolution is hereby declared to be an emergency measure in accordance with Ohio Rev. Code § 731.30 for the immediate preservation of the

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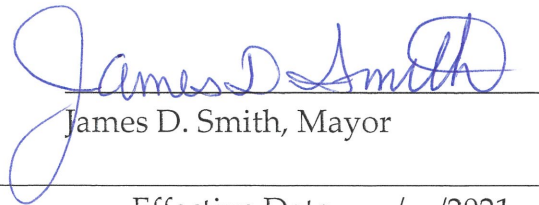
public peace, health, safety and general welfare; and, this Resolution shall be in full force and effective immediately upon its passage.

Section 4. 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 2nd day of September, 2021.

Attest: _____

Petrina D. Williams, Fiscal Officer/Clerk


James D. Smith, Mayor

Rules Suspended: / /2021 (if applicable)	Effective Date – / /2021
Vote - <u>6</u> 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: 9/9/2021

STATE OF OHIO

DEPARTMENT OF NATURAL RESOURCES

PROJECT: SEWER SYSTEM

COUNTY: WARREN

AREA: LITTLE MIAMI SCENIC TRAIL

NUMBER: PKS20-039

LICENSE

WHEREAS, the State of Ohio through the Department of Natural Resources, Divisions of Parks and Watercraft, and Natural Areas and Preserves ("ODNR") by authority of Sections 1546.02 and 1517.02 of the Revised Code of Ohio, has undertaken the administration, management and use of certain lands belonging to the State of Ohio; known as the Little Miami Deerfield Gorge Scenic River Area and Little Miami Scenic State Park; and

WHEREAS, the Village of South Lebanon desires to install, maintain, operate, and inspect a gravity and force main sewer system upon, under, over, and across a portion of said State land; and

WHEREAS, by and in accordance with the authority vested in the Director of the Department of Natural Resources under Section 1501.01 of the Revised Code of Ohio, the Director has determined that the installation, maintenance, operation, and inspection of said gravity and force main sewer system is in the public interest and deems the giving of this License advantageous to the State.

NOW, THEREFORE, this agreement for a right of way License ("License") is made and entered into between the State of Ohio, acting by and through the Director, Department of Natural Resources (the "State" or "ODNR"), and the Village of South Lebanon, whose address is 10 North High Street, South Lebanon, Ohio 45065 ("Licensee").

WITNESSETH: That ODNR for good and valuable consideration as identified in Paragraph 2 of this License and the covenants and agreements hereinafter contained does hereby give unto the Licensee a non-exclusive License for a right of way with the right, privilege and authority to install, maintain, operate, and inspect a gravity and force main sewer system located upon, under, over, and across ODNR owned property known as the Little Miami Scenic State Park and the Little Miami Deerfield Gorge Scenic River Area upon the following terms and conditions:

1. Location of Licensed Area. The License for the right-of-way to install, maintain, operate, and inspect a gravity and force main sewer system shall be operated within a strip of land ten (10) feet in width and approximately ten thousand, two-hundred (10,200) feet in length. The portions of said State land affected by this License are situated in Warren County, Ohio. The exact location of the licensed area is more particularly shown on Exhibit A, attached hereto and made a part hereof.
2. Term and Consideration. The initial term of this License shall be for a period of 25 years beginning on the Effective Date of this License and ending on December 31, 2046 or the anniversary date of the Effective Date, whichever is later. The License may be renewed for 3 additional 25 year terms by Licensee by giving written notice to the State not less than 120 days prior to the end of the then current term.

In consideration for this License Agreement, Licensee agrees to re-pave the hike and bike trail located directly adjacent to the Licensed Area. Additionally, Licensee agrees to provide one complementary sewer and water tap to ODNR.

3. Notice of Entry to ODNR. Prior to entry or any construction or maintenance under this License, the Little Miami Scenic State Park Manager and the Little Miami Deerfield Gorge Scenic River Manager shall be given two (2) business days' notice. This shall not apply in the event of an emergency.
4. Compliance with Laws. Licensee must acquire all local, state and federal permits required for use of this License.
5. 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. 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 to the extent that such doctrines may be applicable to any dispute between the parties.
6. Insurance. The Lessee shall provide proof of liability insurance according to the following provisions.
 - a. In conjunction herewith, The Lessee agrees, at its own cost, to procure and continue in force at all times that this Lease is in effect, in its name, general liability insurance against any and all claims for injuries to persons or damage to property occurring or arising out of The Lessee's obligations set forth herein. Such insurance shall at all times be in an amount not less than One Million Dollars (\$1,000,000) on account of bodily injury to or death of one (1) person, and Two Million Dollars (\$2,000,000) on account of bodily injuries or death of more than one (1) person as a result of any one (1) accident or disaster, and Five Hundred Thousand Dollars (\$500,000) for property damage in any one (1) accident. Such insurance shall be written by a company or companies authorized to engage in the business of general liability insurance in the State of Ohio with an A.M. Best rating of at least "A" or be otherwise approved in writing by the Department.

Any insurance policy required hereunder shall include an endorsement naming the ODNR and the State of Ohio as additional insureds. Prior to the effective date of this Lease, The Lessee shall provide ODNR with (i) a copy of such endorsement and (ii) a certificate reflecting the coverage of the policy, each in a form acceptable to the ODNR as to the limits of coverage. The Lessee shall provide written notice to the ODNR no less than thirty (30) days prior to a cancellation, non-renewal, expiration, or material alteration of the coverage contained in any policy required hereunder, and shall provide to ODNR evidence of continuing coverage of any required policy no less than thirty (30) days prior to its expiration.

7. Construction, Maintenance and Restoration. Licensee shall use open trench construction for the installation of the sewer system within the Licensed Area. Licensee may implement temporary trail closures as necessary for the completion of the installation with the coordination of the Park Manager. Licensee shall furnish, erect, and maintain all the necessary signs, barricades, lighting and fencing as is necessary to ensure public safety during construction. The Licensee may clear a temporary construction right-of-way of all trees, hedges and underbrush from the ground up. This License shall also include any maintenance and repair of the right of way not to exceed 5 feet each way from the centerline of said Licensed Area. The clearing of the temporary right of way shall be the minimum necessary for the installation and repair of said sewer system. Immediately after construction, this area shall be restored, as near as possible to its original condition. Additionally, the adjacent hike and bike trail shall be repaved for the length of the Licensed Area. All construction and restoration for the installation of the herein referenced sewer system shall be completed within 180 days of the initiation of construction. Brush, branches and refuse arising from the Licensee's maintenance and use of said right of way shall be removed from the licensed property and disposed of or destroyed without delay. Herbicides or pesticides may only be used within the prescribed methods approved by ODNR. Burning within the right of way or adjacent land shall be under the supervision of the Chief of the Division of Parks and Watercraft and the Chief of the Division of Natural Areas and Preserves and in accordance with their instructions. The Licensee shall take all reasonable precautions to prevent and suppress all forest fires on the area covered by this License and agrees to comply with the forest fire laws of the State of Ohio.
8. Best Management Practices. Licensee shall implement the best management practices (BMP) outlined within the attached Exhibit B.
9. Damage to the Property. Licensee shall pay ODNR for any damage to the property covered by this License, which results from Licensee's use of the property. Licensee shall fully repair all damage, other than ordinary wear and tear, to fences, roads and trails caused by the Licensee in the enjoyment of this License.
10. Change of Licensee's Address. The Licensee shall immediately give written notification to the Ohio Department of Natural Resources, 2045 Morse Road C-4, Columbus, Ohio 43229 in the event of any change in the Licensee's address.
11. Termination. This License may be terminated by either party upon the breach of any conditions contained herein.
12. Relocation. Since the ownership of land by ODNR is exclusively for the purpose of providing services to the public, should the public interest ever require the use of the herein Licensed land for purposes which would render it either wholly or in part unserviceable for the herein Licensed use, then the Licensee shall move the conflicting portion or portions of the gravity and force main sewer system without cost to ODNR to a location which will not interfere with public use, within six (6) months after notice in writing by ODNR of the necessity to do so.
13. Removal of Property. Upon the termination, in any manner whatsoever, of this License, and in the absence of an agreement to the contrary, the Licensee may, within twelve (12) months, remove all structures and other property which have been placed upon the premises by the Licensee, but upon failure to remove such structures and other property within such period, such

structures shall become the property of ODNR. If at the end of such time the Licensee has not removed such property from the premises, ODNR may remove such property.

14. No Warranty of Title. It is mutually understood and agreed that ODNR does not warrant the title to the lands upon which the licensed property is located, and the rights, privileges, and authority granted herein shall be subject to any easements, rights-of-way, mineral reservations or other rights upon, over, across, or under said lands now outstanding in third persons. It is further understood and agreed that this License shall in no manner limit the right of ODNR, its nominees and assigns, to grant additional licenses of any kind whatsoever across and upon the lands affected by this License, so long as such additional licenses shall not interfere with the rights and privileges herein granted to the Licensee. ODNR also retains to itself, its nominees or assigns, the right to use said lands for its own purposes, so long as such use does not interfere with the rights and privileges herein granted.
15. Nature of Interest. The Licensee understands that this License merely gives Licensee the right to occupy the licensed property and that this License does not grant or convey to the Licensee any interest in the property.
16. Assignment. ODNR reserves the right to assign any or all of its rights or interests under the terms of this License, without the consent of the Licensee, to any individual, corporation, firm or other entity, public or private or any governmental agency, municipal, county, state or federal. The Licensee shall be notified of any such assignment. The Licensee shall have no right to assign this License in whole or in part.
17. Certification of State Funds. Obligations of the State are subject to the provisions of Section 126.07 of the Ohio Revised Code.
18. Nondiscrimination. There shall be no discrimination by Licensee based on gender, race, color, religion, ancestry, national origin, age, military status, handicap or disability, as defined in Ohio Revised Code Section 4112.01.
19. Ethics/Conflicts of Interests Compliance. Licensee, by signature on this document, certifies that Licensee: (i) has reviewed and understands the Ohio Ethics Code and conflict of interest laws as found in Ohio Revised Code Chapter 102 and in Ohio Revised Code Sections 2921.42 and 2921.43, and (ii) will take no action inconsistent with those laws. The Licensee understands that failure to comply with Ohio's ethics and conflict of interest laws is, in itself, grounds for termination of this License and may result in the loss of other contracts or grants with the State of Ohio.
20. Campaign Contributions. The Licensee affirms that, as applicable to it, no party listed in Division (I) or (J) of R. C. Section 3517.13 of the Ohio Revised Code or spouse of such party has made, as an individual, within the two previous calendar years, one or more contributions totaling in excess of \$1,000.00 to the Governor or to his campaign committees.
21. Findings for Recovery. If the potential compensation to Licensee under this License exceeds \$25,000, Licensee warrants that it is not subject to an "unresolved" finding for recovery under R.C. 9.24. If this warranty is found to be false, this License is void ab initio and Licensee shall immediately repay to the ODNR any funds paid under this License.


22. Effective Date. The “Effective Date” of this License is the date that the later of Licensee or ODNR executes this License.
23. Entire Agreement/Waiver. This License states the entire agreement between the parties, and supersedes and replaces all oral and written representations, agreements, memoranda and correspondence between, by or for the parties relating to the premises, and shall be construed in accordance with and governed by the laws of Ohio. No amendment or modification of this License shall be binding unless made by written instrument of equal formality signed by both ODNR and the Licensee. Waiver by either party of performance by the other party of any of the provisions of the License shall not be construed as a waiver of any further right to insist upon full performance of the terms hereof.
24. Severability. In the event that any one or more of the provisions, sections, words, clauses, phrases or sentences contained in this License, or the application thereof in any circumstance is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision, section, word, clause, phrase or sentence in every other respect and of the remaining provisions, sections, words, clauses, phrases or sentences of this License, shall not be in any way impaired, it being the intention of the parties that this License shall be enforceable to the fullest extent permitted by law.
25. Counterparts. This License may be executed in any number of counterparts, each of which is considered an original. This License may be executed by each party upon a separate copy and attached to another copy in order to form one or more counterparts.
26. Headings. The headings in this License have been inserted for convenient reference only and shall not be considered in any questions of interpretation or construction of this License.

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IN WITNESS WHEREOF, ODNR and the Licensee have caused this agreement to be executed by their duly authorized officers.

LICENSEE

Village of South Lebanon

By: 

Name: James D. Smith

Title: Mayor

Date: 9/23/2021

Approved as to form:

By: 

Name: Andrew P. Meier

Title: Village Solicitor

Date: 9/23/2021

By: _____

Name: _____

Title: _____

Date: _____

STATE OF OHIO

DEPARTMENT OF NATURAL RESOURCES

By: _____

Glen Cobb, Chief
Division of Parks and Watercraft
Designee for Mary Mertz, Director

Date: _____

By: _____
Jeff Johnson, Chief
Division of Natural Areas and Preserves
Designee for Mary Mertz, Director

Date: _____

APPROVED:

Dave Yost
Ohio Attorney General

BY: _____
Assistant Attorney General

Date: _____

Document prepared by the Attorney General of the State of Ohio.

Revised 06/09/10

Exhibit A

