

**CITY OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2023-36**

**A RESOLUTION AUTHORIZING THE MAYOR AND DIRECTOR OF FINANCE
TO SIGN A PRE-ANNEXATION AGREEMENT WITH BEAVER CREEK SITE
MANAGEMENT, LLC, AND DECLARING AN EMERGENCY**

WHEREAS, Beaver Creek Site Management, LLC is the current owner of two (2) certain properties along Striker Road containing 0.8143 acres in Hamilton Township, Warren County, Ohio, (Sidwell# 16-11-295-017 & 16-11-295-018); and

WHEREAS, Beaver Creek Site Management, LLC is requesting to annex to the City of South Lebanon; and

WHEREAS, immediate action is required to expedite filing of annexation documents with the Warren County Board of Commissioners, and such action 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, at least two-thirds of all members elected thereto concurring:

Section 1. The City Council does hereby authorize the Mayor and Director of Finance to execute the attached Agreement, as approved as to form by the City Law Director, attached hereto and incorporated by reference.

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 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.

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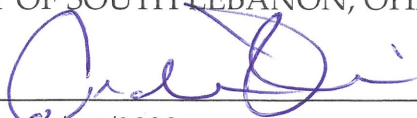
Adopted this 17th day of August, 2023.

Attest: 
Petrina D. Williams, Director of Finance/Clerk 
James D. Smith, Mayor

Rules Suspended: <u>8/17/2023</u> (if applicable)	Effective Date – <u>8/17/2023</u>
Vote - <u>6</u> Yeas <u> </u> Nays	
First Reading – / /2023 Second Reading – / /2023	Effective Date – / /2023
Vote - <u> </u> Yeas <u> </u> Nays	

Prepared by and approved as to form:

ANDREW P. MEIER
LAW DIRECTOR
CITY OF SOUTH LEBANON, OHIO

By: 
Date: 8/17/2023

AGREEMENT

This Agreement is made and entered into on this 17th day of August, 2023, by and between the City of South Lebanon, Ohio, an Ohio municipal corporation (“South Lebanon” or “City”) and Beaver Creek Site Management LLC, an Ohio limited liability company (“the Owner”), for the purpose of providing certain municipal services to real estate owned by Owner and located at Striker Road, Maineville, Ohio 45039 (the “Beaver Creek Site Management LLC Property”), upon its annexation to South Lebanon, which real estate is more particularly described and shown in “Exhibit A” attached hereto.

WHEREAS, the Beaver Creek Site Management LLC Property is approximately 0.8143 acres and is now located in unincorporated Hamilton Township, Warren County, Ohio, being Warren County Auditor’s Parcel Nos. 16-11-295-017 and 16-11-295-018; and

WHEREAS, the Owner seeks to annex to South Lebanon to include these parcels in their development plan of the adjoining property and to provide a secondary entrance on Striker Road; and

NOW, THEREFORE, in consideration of the covenants and agreements herein contained to be performed by the parties hereto, it is agreed by South Lebanon and the Owner as follows:

(1) **Annexation**

(A) The Owner shall petition for annexation of all of the Beaver Creek LLC Property to South Lebanon individually, at their sole cost and expense, or together with other properties at a proportionately shared cost and expense, at such time as South Lebanon may request annexation of all of the Beaver Creek LLC Property. The Owner shall, within thirty (30) days following receipt of any written request for annexation from South Lebanon, cause a petition to be filed with the Warren County Board of Commissioners requesting annexation of their property, together with any other properties desiring to annex to South Lebanon, and will support such petition in any and all proceedings before the Warren County Board of Commissioners as may be necessary to accomplish annexation of all of the Beaver Creek LLC Property to South Lebanon.

(B) The Owner may petition, at their sole cost and expense, for annexation of all of the Beaver Creek LLC Property to South Lebanon at any time they deem annexation appropriate, and South Lebanon will support the petition in any and all proceedings before the Warren County Board of Commissioners and such other actions and/or proceedings as may be necessary to accomplish annexation of all of the Beaver Creek Property to South Lebanon.

(C) South Lebanon may, in its sole discretion and at its own cost, continue to support and/or prosecute the annexation and any other proceedings relating to the annexation beyond the proceedings before the Warren County Board of Commissioners, including any referendum or court proceedings, including mandamus, injunction, and appeal, until the matter is finally determined beyond any right of referendum or appeal. The Owner agrees that they shall continue to sign, support, and prosecute the annexation through the final conclusion of all proceedings,

including any referendum or court proceedings for so long as South Lebanon elects to support the annexation at its cost, fees, and expenses. The Owner may also independently support and defend the annexation at their cost irrespective of whether South Lebanon elects to proceed at its cost, and South Lebanon agrees to continue to support the annexation at Owner's cost.

(D) Owners agree to support the Petition and not remove their name from the Petition so long as their signatures remain effective within the statutory period provided by law before the petition is filed and agree to continue to support the annexation to the City throughout the annexation process after the petition is filed, including any appeal, mandamus or other court action. Owner further agrees to sign and support a new annexation petition, should the initial petition fail or should a new petition become necessary to accomplish the annexation, even if the annexation territory is reconfigured, as long as this Agreement is in effect and South Lebanon pays all expenses connected therewith. Should South Lebanon elect, at any time, to stop paying the costs, fees and expenses associated with any challenges to the annexation, Owner may continue to pursue the annexation, at Owner's expense, and South Lebanon agrees that it will support the annexation for so long as Owner pay all costs, fees and expenses associated with the annexation.

(2) **Commitments by South Lebanon**

(A) Service Resolution. The City agrees that it shall timely enact and file with the Warren County Board of County Commissioners the appropriate ordinance or resolution required by law indicating what services the City will provide to the annexation territory. Services shall be provided to the Property upon the same terms and conditions as are afforded to other properties within the City except as otherwise provided in this Agreement.

(B) Acceptance of Annexation. The City agrees that it is in the interest of the City to have the Property annexed into the City. Upon the approval of the annexation by the Warren County Board of County Commissioners and/or a court of law, and the City municipal clerk's receipt of the record of the annexation proceedings from the clerk of the Warren County Board of County Commissioners, the City shall timely consider and accept the annexation and process it according to law.

(C) Zoning. The Beaver Creek LLC Property (now in Hamilton Township) is currently not subject to zoning through Hamilton Township. South Lebanon agrees that, upon annexation to South Lebanon and upon request of the Owner, staff shall recommend to the Planning Commission the South Lebanon zoning district that most closely resembles the existing use of the Beaver Creek LLC Property. This Agreement is currently subject to Section 15.7.13(1) of the South Lebanon Zoning Code which provides that upon annexation, newly annexed property (the Beaver Creek LLC Property) shall be classified as being in whichever district established by these Regulations most closely resembles the existing uses at the time of the annexation as recommended by the Planning Commission and approved by Council. The parties agree that this Agreement shall remain subject to Section 15.7.13 currently in effect for any rezoning of the Beaver Creek LLC Property upon annexation to South Lebanon, unless otherwise mutually agreed to by the parties in writing.

(3) **Binding Effect**

This Agreement shall be a covenant running with the land and shall inure to the benefit of and be binding upon the Beaver Creek LLC Property and the respective successors and assigns of the parties hereto. This Agreement comprises the complete agreement between the parties. There is no guarantee that the property will be annexed. If a dispute arises, the appropriate courts of Warren County, Ohio shall have jurisdiction to resolve any disputes unless the parties mutually agree in writing to mediate or arbitrate the disputed matter.

(4) **Counterparts**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument.

(5) **Wording**

Any word used in this Agreement shall be construed to mean either singular or plural as indicated by the number of signatures hereto.

(6) **Construction/Entire Agreement**

This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio. This Agreement shall constitute the entire agreement of South Lebanon and the Owner, and no oral, verbal, or implied agreement or understanding shall cancel, modify, or vary the terms of this Agreement. This Agreement may be amended or modified only by a writing executed by the Parties and their duly authorized officers or representatives where applicable.

(7) **Severability.**

If, for any reason, one or more articles, sections, sentences, clauses or parts of this Agreement are held invalid, void or unenforceable by any court of law or duly authorized public body to any extent, such provision shall be enforced to the greatest extent permitted by law. Such determination shall not affect, impair, invalidate or prejudice in any way the validity of the remaining portions of this Agreement in any other instance, which shall be enforced to the greatest extent permitted by law.

(8) **Applicable Law.**

This Agreement shall be governed by, construed, and interpreted in accordance with the ordinances of the City of South Lebanon and the laws of the State of Ohio. The parties hereto further agree that any action, suit or proceeding in respect of or arising out of this Agreement, its validity or performance shall be initiated and prosecuted as to all parties and their heirs, successors and assigns and consent to and submit to the exercise of jurisdiction over its person and the Property by any state court with original jurisdiction and venue in Warren County Ohio having jurisdiction over the subject matter.

(9) **Headings and Captions.**

Headings and captions in this Pre-Annexation Agreement are for the convenience of reference only and shall not limit or affect the meaning hereof.

(10) **Waiver.**

No delay or failure on the part of any party hereto in exercising any right, power, or privilege under this Agreement or under any other instruments given in connection with or pursuant to this Agreement shall impair any such right, power, or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power, or privilege shall preclude the further exercise of such right, power, or privilege, or the exercise of any other right, power or privilege.

(11) **Authority and Effective Date**

The parties represent that each of the undersigned has the authority and capacity to sign on behalf of each of them in the capacity shown below and executed this Agreement in such authorized capacity on date written below. This Agreement is effective on the date last executed.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed the day and year first written above.

WITNESS:

CITY OF SOUTH LEBANON, OHIO

[Signature]
Name Jerry Haddix

[Signature]
James D. Smith

WITNESS:

BEAVER CREEK SITE MANAGEMENT LLC

[Signature]
Name Joseph Farruggia

[Signature]
Edwin Farruggia, SOLE MEMBER

STATE OF OHIO

SS:

COUNTY OF WARREN

This instrument was acknowledged before me by James D. Smith, the Mayor of the City of South Lebanon, on this 17th day of August, 2023.



[Signature]
Amy Butler
Notary Public, State of Ohio
My Commission expires Notary Public
July 18, 2026

STATE OF OHIO

SS:

COUNTY OF Hamilton

This instrument was acknowledged before me by Edwin Farruggia, the sole member of Beaver Creek Site Management LLC, on this 14th day of August, 2023.



Samantha N Knight
Notary Public, State of Ohio
My Commission Expires:
April 19, 2026

[Signature]
Notary Public

EXHIBIT A

Situated in the Township of Hamilton, Warren County, State of Ohio and more particularly described as follows:

Being a part of Military Survey Number 1548. Lot Numbers One (1) and Two (2) of Striker Road Plat, Recorded in Plat Book 91, Pages 43 & 44 of the Warren County Plat Records.