

VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2016-41

A RESOLUTION APPROVING AND AUTHORIZING MAYOR AND FISCAL OFFICER TO EXECUTE AMENDMENT NO. 1 TO THE INTERGOVERNMENTAL AGREEMENT WITH THE WARREN COUNTY TRANSPORTATION IMPROVEMENT DISTRICT FOR SERVICES RELATING TO THE CONSTRUCTION THE SOUTH LEBANON – SR 48 IMPROVEMENTS PROJECT (WAR 48-8.80), AND DECLARING AN EMERGENCY

WHEREAS, the Village Council adopted Resolution No. 2012-24, and has requested the Warren County Transportation Improvement District (TID) to administer, facilitate and manage, in coordination and collaboration with the Village, Warren County Engineer's Office (WCEO), ODOT and the Ohio- Kentucky-Indiana (OKI) Regional Council of Governments for the State Route 48 (SR48) Improvements Project (WAR 48-8.80) in the Village of South Lebanon, which includes a road widening from SR 48 and Corwin Nixon Boulevard south to the SR 48 overpass of the Turtle Creek; and,

WHEREAS, the Village Council adopted Resolution No. 2013-42 to enter into an Intergovernmental Agreement (IGA) with the TID which established the terms and obligations relating thereof; and,

WHEREAS, the Village and the TID desires to amend certain terms of said agreement; and

WHEREAS, immediate action is required to allow for the TID to take action at their next regular Board meeting, 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 Amendment No. 1 to the IGA, a copy of which is attached hereto.

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

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

Section 4. That 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 1st day of December, 2016.

Attest: Sharon Louallen James D. Smith
Sharon Louallen, Fiscal Officer James D. Smith, Mayor

Rules Suspended: / /2016 (if applicable)	Effective Date - / /2016
Vote - <u>5</u> Yeas	
<u>1</u> Nays	
<u>1</u> Abstain	
First Reading - / /2016	Effective Date - / /2016
Second Reading - / /2016	
Third Reading - / /2016	
Vote - ____ Yeas	
____ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]
Date: 12/1 /2016

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

By and Between

VILLAGE OF SOUTH LEBANON

And

**THE WARREN COUNTY TRANSPORTATION
IMPROVEMENT DISTRICT**

Dated as of December 2nd, 2016

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT 2013-03 (the "*AMENDMENT*") is dated as of December 2, 2016 and amends certain provisions of the Intergovernmental Agreement 2013-03 by and between THE VILLAGE OF SOUTH LEBANON (the "Village"), a municipal corporation and political subdivision located in Warren County, Ohio, and pursuant to Ohio Revised Code ("ORC") Chapter 715, and THE WARREN COUNTY TRANSPORTATION IMPROVEMENT DISTRICT, a transportation improvement district and a body both corporate and politic created pursuant to ORC Chapter 5540 (the "TID").

Recitals:

A. The Council and the TID have heretofore entered into an Intergovernmental Agreement 2013-03, dated as of December 6, 2013 (the "*AGREEMENT*").

B. The Council entered into the *AGREEMENT* to cooperate with the TID and ODOT in endeavors to facilitate the development and implementation of the *SR48 Improvement Project* as defined in Section 1.01 of the *AGREEMENT*.

C. The TID, in coordination with the Village and ODOT has now completed engineering, design and right of way acquisition and the SR48 Improvements Project is ready to proceed to construction.

D. The Village made application, in December, 2016, to the Ohio Public Works Commission and obtained additional funding in the amount of \$ 628,320 for construction (the "OPWC Funds"), which funding requires a local share funding commitment that the Village has indicated it will provide and deposit with the TID for this purpose in the amount of \$63,513 (the "Local Match Share Construction Funding").

E. The TID further hereby agrees, contingent upon the Village depositing with the TID, on or before December 20, 2016, the Construction Local Match Share (as defined hereafter) to assume certain additional responsibilities to wit: the advertising, bidding, awarding and entering into an acceptable constructions services contract, as determined acceptable by the TID as the contracting party, with the lowest and best qualified bidder (the "Construction Services Contract"), in addition to administering and managing the work thereunder.

F. The TID has requested that certain amendments be made to the *AGREEMENT* to provide for the Village's Local Match Share Construction Funding from the Village to the TID so as to provide the required local cost share required by the TID and necessary to fund the construction of the SR48 Improvements Project, which includes the costs the TID is incurring under the Construction Services Contract.

NOW, THEREFORE, in consideration of the premises and the mutual representations and agreements in this Amendment, the Council and the TID agree as follows:

**ARTICLE 1.
DEFINITION; CONSTRUCTION**

Section 1.1. Unless otherwise defined herein, all words and phrases given a defined meaning in the AGREEMENT will have the same meaning in this Amendment.

**ARTICLE 2.
AMENDMENTS**

Section 2.1 Amendment of Section 1.01. Section 1.01 of the AGREEMENT is hereby amended with the following revised defined terms in the definitions section, as follows:

“Village’s Local Match Share Construction Funding” means the Village’s commitment and explicit agreement to deposit with the TID, on or before December 20, 2016, the amount of \$63,513 required for funding the local match share which, in addition to the OPWC Funding obtained by the Village, is necessary to access the available Congestion Mitigation and Air Quality Improvement federal funds previously allocated to the Project in the amount of \$2,352,000 (“CMAQ Funding”) for the construction funding to complete the SR48 Improvement Project.

“Project Funding” means the total of funds allocated and/or available to fund the engineering, acquisition and construction of the SR48 Improvement Project including but not limited to CMAQ Funding; the OPWC Funds; the TID Funding through the ODOT Division of Jobs & Commerce; and any ODOT program funds.

Section 2.2. Amendment of Section 2.02 (a). Section 2.02 (a) of the AGREEMENT is hereby amended by adding the following revised section:

(a.) The TID explicitly agrees to act as Project Manager for the SR48 Improvements Project, in coordination and collaboration with the Village, as LPA and ODOT, and perform all related responsibilities as thereby required or appropriate, including, but not limited to, the management of consultant services and the related activities required to acquire the real property interests necessary for the SR48 Improvements Project’s right-of-way, up to but not including the filing of any appropriation proceedings that may be required unless otherwise agreed upon and provided for by further actions of the Parties, and the construction and construction engineering services required for the SR48 Improvements Project. Furthermore, the Village and the TID acknowledge and agree that:

- (i) The TID will, contingent upon deposit with the TID of the Village’s Local Match Share Construction Funding on or before December 20, 2016, advertise, bid and award a contract for construction services to a qualified bidder so as to construct the SR48 Improvements Project. Furthermore, the TID will apply the Village’s Local Match Share Construction Funding for the sole purpose of providing the required local share funding to access the available federal grant funding for the construction SR48 Improvements

Project. The Village's Local Match Share Construction Funding shall be deposited and maintained by the TID in such accounts, or with ODOT as appropriate per the LPA agreement, and accounted for as mutually agreed upon and authorized by the Parties and in accordance with all applicable laws, regulations, agreements, covenants, and accepted accounting standards.

- (ii) The Village's Local Match Share Construction Funding constitutes an explicit commitment of Cost Funding by the Village, in the amount of \$63,513.00 for the SR48 Improvements Project; (2) that the TID is relying upon the Village's Local Match Share Construction Funding commitment to facilitate the construction of the SR48 Improvements Project, and for application of Project Funding to Project construction costs, and will utilize the Project Funding solely to pay for required and appropriate costs to construct the SR48 Improvements Project and expenses directly related thereto, in coordination and on behalf of the LPA (which is the Village), ORC Sections 5540.02 (C) and (D) and other related provisions of Chapter 5540 and applicable law.
- (iii) As the LPA, the Village is responsible, per the terms of the LPA agreement it entered into with ODOT, for SR 48 Improvements Project cost overruns above the currently available Project Funding, if there would be any, and funds for such cost overruns shall be provided to the TID within sixty (60) days of written notice advising of same.
- (iv) Upon completion and close out of the Construction Services Contract any remaining funds from the Village's Local Match Share Construction Funding shall be returned by the TID to the Village within sixty (60) days of such close out.

ARTICLE 3. MISCELLANEOUS

Section 3.1. Effect of Amendment. This Amendment (including the recitals hereto, which are by this reference incorporated herein and made a part hereof) sets forth the entire understanding of the parties hereto with respect to the transactions described herein. Other than the changes made to the AGREEMENT pursuant to this Amendment, the AGREEMENT remains unchanged and in full force and effect. This Amendment shall be and become effective as of December 2, 2016.


Section 3.2. Binding Effect. This Amendment and the terms, covenants and conditions hereof shall be binding upon and benefit to the parties hereof and, subject to the prohibitions on assignment set forth in the AGREEMENT, as amended, to their respective administrators, successors and assigns.

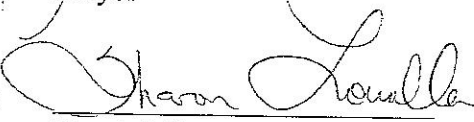
Section 3.3. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. It shall not be necessary in proving this Amendment to produce or account for more than one of those counterparts. The parties hereto further agree that facsimile signatures by the parties hereto shall be binding to the same extent as original signatures.

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered in the name of and on behalf of the TID and the Village, by their duly authorized officers, and by all as of the date first written.

VILLAGE:

**THE VILLAGE OF SOUTH
LEBANON,
WARREN COUNTY, OHIO**

By: 
Mayor

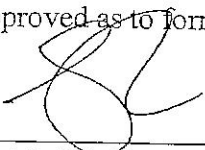
By: 
Fiscal Officer

TID:

**THE WARREN COUNTY
TRANSPORTATION
IMPROVEMENT DISTRICT**

By: _____
Secretary-Treasurer

Approved as to form:




Paul R. Revelson
Village Solicitor

Date: 12/11/16

FISCAL OFFICER'S CERTIFICATE

The undersigned, the Fiscal Officer of the Village of South Lebanon, Warren County, Ohio, hereby certifies that the moneys required (if any) to meet the obligations of the Village of South Lebanon for the year 2016 under the foregoing Intergovernmental Agreement have been lawfully appropriated and are in the treasury of the Village of South Lebanon or are in the process of collection to the credit of an appropriate fund free from any previous encumbrances. Pursuant to ORC § 5705.44, the Fiscal Officer of the Village of South Lebanon covenants that any requirement herein of an expenditure of the Village money in any future fiscal year shall be included in the annual appropriation measure for that future fiscal year as a fixed charge. This Certificate is given in compliance with ORC § 5705.41 and § 5705.44.

Dated: 12-2, 2016



Sharon Lovallen, Fiscal Officer
Village of South Lebanon, Ohio