

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2018-19**

**A RESOLUTION APPROVING AND AUTHORIZING MAYOR TO
EXECUTE AN AGREEMENT FOR COST SHARING OF THE STATE ROUTE 22 & 3
SEWER PROJECT WITH GRAND COMMUNITIES, LTD., AND DECLARING AN
EMERGENCY**

WHEREAS, providing utilities is one the functions of local municipal government;
and,

WHEREAS, in order to provide sanitary sewer service and allow for connections to the Village's sanitary sewer system along State Route 22&3, it is necessary for the sanitary sewer line to be extended across property owned by Grand Communities, Ltd. ("Grand") from the Wynstead subdivision to the subject property along State Route 22&3;
and,

WHEREAS, Grand has received a proposal for the portion of the extension that extends through property currently owned by Grand and which is planned to be single family residential development; and

WHEREAS, Grand's lowest proposal was received from D&M Carter LLC for \$140,928.25 (attached hereto as Exhibit A);

WHEREAS, the Village and Grand now desire to enter into the attached Agreement, incorporated herein by reference, to determine what portion of the estimated constructions costs are attributable to each party.

WHEREAS, immediate action is required for the Village to maintain the construction schedule for the project and ensure reimbursement by the developer of the proposed end project 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 to execute the Agreement, a copy of which is attached hereto.

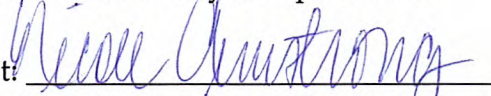
Section 2. That the Council is acting in its administrative capacity in adopting this Resolution.

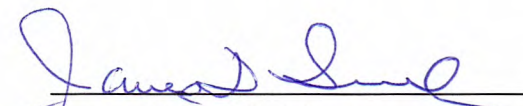
Section 3. That the recitals contained within the Whereas Clauses set forth above are incorporated by reference herein.

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.

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

Adopted this 5th day of April, 2018.

Attest: 
Nicole Armstrong, Fiscal Officer/Clerk


James D. Smith, Mayor

Rules Suspended: 4/5/18 (if applicable)	Effective Date -
Vote - <u>6</u> Yeas ___ Nays	
First Reading - / /2018	Effective Date - / /2018
Second Reading - / /2018	
Third Reading - / /2018	
Vote - ___ Yeas ___ Nays	

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: _____

Date: 04/5/2018

AGREEMENT

This AGREEMENT (hereinafter, this "Agreement") is made as of April ^{5th}, 2018, by and between the **VILLAGE OF SOUTH LEBANON, OHIO**, an Ohio incorporated municipality (the "Village") and **GRAND COMMUNITIES, LLC f/k/a Grand Communities, Ltd.**, a Kentucky limited liability company ("**Grand**"), **their successors and assigns**. The Village and Grand agree as follows:

WHEREAS, the Village is currently completing a sewer extension project along State Route 22 & 3 which requires an extension of the existing sewer system from the Wynstead subdivision to property along State Route 22 & 3; and

WHEREAS, in order to connect to the existing system, Grand has agreed to share costs of the extension with the Village, as the extension benefits Grand; and

WHEREAS, Grand has received a proposal for the portion of the extension that extends through property currently owned by Grand and which is planned to be single family residential development; and

WHEREAS, Grand's lowest proposal was received from D&M Carter LLC for \$140,928.25 (attached hereto as Exhibit A);

WHEREAS, the Village and Grand now desire to enter into this Agreement to determine what portion of the estimated constructions costs as outlined in Exhibit "A" are attributable to each party.

NOW, THEREFORE, in consideration of the promises and the mutual covenants set forth herein, the Village and Grand hereby covenant, warrant, and agree, as follows:

TERMS

1. The Village shall pay the amount of EIGHTY THOUSAND DOLLARS AND 00/100 (\$80,000.00) to Grand for the Village's portion of the estimated construction costs. Payment shall be made to Grand at the completion of Grand's portion of the project.
2. Grand shall pay the amount of SIXTY THOUSAND NINE HUNDRED AND TWENTY-EIGHT DOLLARS AND 25/100 (\$60,928.25) to D&M Carter, LLC for its portion of the estimated construction costs.
3. In the event the construction costs exceed the amount stated in Exhibit A, the parties shall be responsible for their respective portion according to the following allocation: Village - 55% and Grand - 45%.
4. The Village's payment to Grand is conditioned on the completion of the project within sixty (60) days from the start of construction, unless otherwise agreed upon in writing by the parties. Notwithstanding the foregoing, if construction is delayed due to circumstances that are out of Grand's and D&M Carter, LLC's control, each day that construction is delayed due to those circumstances shall not be counted towards the sixty (60) day period.

MISCELLANEOUS PROVISIONS

1. Entire Agreement: This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement and except as expressly provided herein any agreement hereafter made shall be ineffective to change, modify or discharge this Agreement unless such subsequent agreement is in writing and signed by the Parties. All previous contracts, warranties, communications, covenants, commitments, representations or agreements, whether written or oral, between and among the Parties and/or their attorneys, are superseded unless expressly incorporated and made a part of this Agreement.

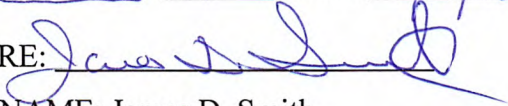
Except as expressly stated herein, the Parties bear no further responsibility whatsoever to each other.

2. Authority to Execute Agreement: Each Party and signatory to this Agreement represents and warrants that the signatory has authority from the Party to execute the Agreement.
3. Subsequent Litigation. If a dispute arises with regard to the interpretation, applicability, construction, meaning, purpose, enforcement, and/or definition of any term or provision in this Agreement, each Party shall bear its own attorney's fees and expenses in any litigation, proceeding, or negotiation related to such dispute. Each Party agrees that any litigation arising out of or related to this Agreement shall be tried to a court without a jury.
4. Significance of Recitals: The recitals at the beginning of this Agreement are intended to be covenants of the Parties, are a material part of this Agreement, and are binding on the Parties.
5. Headings: The headings of the Paragraphs of this Agreement are for convenience only and shall not affect the meaning or construction of the contents of this Agreement.
6. Partial Invalidity. Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein unless the deletion of such provision or provisions would render the completion of the transactions contemplated hereby to be unreasonable.

7. Waiver. Neither any failure nor any delay by any party in exercising any right under this Agreement or any Ancillary Agreement will operate as a waiver of such right, and any waiver of a right must be in writing. Any waiver of a particular default, specific right or remedy, or any single or partial exercise of any right will preclude any other or further exercise of such right or any other right.
8. Governing Law and Venue. This Agreement shall be construed under the laws of the State of Ohio. The parties stipulate hereby to the venue for any and all claims, disputes, interpretations and litigation of any kind arising out of this Agreement and all other matters arising out of or related thereto in any way being exclusively in the Warren County, Ohio Court of Common Pleas (unless both parties mutually agree in writing to alternate dispute resolution), as well as waiving any right to bring or remove such matters in or to any other state or federal court.

VILLAGE :

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, has caused this Agreement to be executed by, James D. Smith, Mayor, on the date stated below, pursuant to Ordinance Resolution # 19, dated 4/5/18, a copy of which is attached hereto.

SIGNATURE: 

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: 4/5/18

Approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
VILLAGE OF SOUTH LEBANON, OHIO

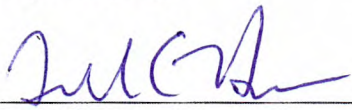


By: Paul R. Revelson, Village Solicitor

Date: 4/5/18

IN EXECUTION WHEREOF, Grand Communities, LLC, f/k/a Grand Communities, Ltd., a Kentucky limited liability company, has caused this Agreement to be executed on the date stated below.

Grand Communities, LLC, f/k/a Grand Communities, Ltd., a Kentucky limited liability company



By: Todd E. Huss

Its: President

Date: 6/6/18



Thursday, March 29, 2018

We are pleased to provide a quote for the - Wynstead Sanitary Sewer Extension REV - I have enclosed our scope of work and associated costs.

SANITARY SYSTEM

	969 LF	8" SANITARY MAIN SDR 26	\$49.45 / LF	\$47,917.05	
* 1,263	1,339 LF	6' LATERALS	\$42.40 / LF	\$56,772.60	\$53,551.20
	5 EA	SANITARY MANHOLES	\$3,490.00 / EA	\$17,450.00	
	29 EA	8" X 6" TEES	\$155.00 / EA	\$4,495.00	
	1 EA	CONNECT TO EXIST MANHOLE	\$1,665.00 / EA	\$1,665.00	
	50 LF	BORE & ENCASE	\$317.00 / LF	\$15,850.00	
			TOTAL:	\$144,158.65	\$140,928.25

* - estimated 6" lateral quantity is actually 1,263 l.f.

PROJECT TOTAL: ~~\$144,158.65~~ \$140,928.25

The above PROJECT TOTAL does not include anything under EPA jurisdiction, engineering, compaction testing, restoration of green area or landscaping, Asphalt or Concrete Pavement or Stone, layout and staking, seeding, sod, building pad stone, relocation of utilities, retaining walls, retaining wall excavation, traffic control, signage, foundation wall excavation, rock excavation (which cannot be removed by a 50,000lb hoe), dewatering, undercutting, lime stabilization, footing excavation, footing backfill, perimeter drains, foundation drains, grease trap, removal of other trades spoils, street cleaning, slurry backfill, as built plans, bonds, permits, tap fees, meter and meter fees, or inspection fees. This price is based on one time mobilization. The above quote is based on Civil plans dated 3/15/2018. PRICE BASED ON NON - PREVAILING WAGE. We have received - addendum for this project. **This proposal is good for 30 days.**

If there are any questions or we can be of any assistance please feel free to contact us. We appreciate the offer to provide you with a quote and we look forward to working with you more in the near future.

Thank you,

Mark Carter
Project Estimator