

**VILLAGE OF SOUTH LEBANON, OHIO
RESOLUTION NO. 2019-5**

**A RESOLUTION APPROVING AND FURTHER AUTHORIZING THE MAYOR
AND FISCAL OFFICER TO EXECUTE A WATER AND SANITARY SEWER
SERVICE AGREEMENT WITH WARREN COUNTY AND THE CITY OF LEBANON**

WHEREAS, on February 1st, 2018, the Village Council passed Ordinance No. 2018-2 accepting the annexation of 222.745 acres, known as the "River Corridor Annexation" -into the Village of South Lebanon; and

WHEREAS, at the request of the Village, on behalf of the property owners, the Warren County Commissioners have agreed to provide water and sanitary sewer service to the Village for the Peter's Cartridge Factory and the proposed residential housing development at 727 Grandin Road which were properties included in the River Corridor Annexation; and,

WHEREAS, the City of Lebanon is included as a third party to the Agreement because the City operates the sewer treatment facility within the Designated Management Area (DMA) relative to the Village sanitary sewer system; and

WHEREAS, the Village Council desires to enter into a Water and Sanitary Sewer Service Agreement with Warren County to provide water and sanitary sewer services to these areas.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Village of South Lebanon, Ohio, at least a majority of all members elected thereto concurring:

Section 1. That the Council approves and authorizes the Mayor and Fiscal Officer to execute the Water and Sanitary Sewer Service Agreement 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.

Adopted this 7th day of March, 2019.

Attest:

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

Rules Suspended: / /2019 (if applicable)

Effective Date - / /2019

Vote - ____ Yeas

____ Nays

First Reading - 27 /2019

Effective Date - / /2019

Second Reading - 27 /2019

Third Reading - 37 /2019

Vote - 6 Yeas

____ Nays

Prepared by and approved as to form:

PAUL R. REVELSON
VILLAGE SOLICITOR
SOUTH LEBANON, OHIO

By: [Signature]

Date: 3/7 /2019

Agreement

This AGREEMENT is entered by and between the Board of Commissioners of Warren County, Ohio, a county organized and existing under the laws of the State of Ohio (hereinafter designated as "COUNTY"), and the Village Council of South Lebanon, an Ohio municipal corporation organized and existing under the laws of the State of Ohio (hereinafter designated as the "VILLAGE").

WITNESSETH:

WHEREAS, on November 1, 2017, a Petition for an Expedited Type 2 Annexation was filed with the COUNTY, in accordance with RC 709.023, seeking to annex a total of 222.745 acres from Hamilton Township to the Village of South Lebanon, in Warren County, Ohio, including the following properties ("Properties"):

Property Owner	Property Address	Acreage	Parcel No.
Peters Cartridge Factory Outparcel Holding, LLC 1527 Madison Road, Suite B Cincinnati, OH 45206	1415 Grandin Road Maineville, OH 45039	1.298 acres	16-12-400-012
Peters Cartridge Factory Outparcel Holding, LLC 1527 Madison Road, Suite B Cincinnati, OH 45206	1415 Grandin Road Maineville, OH 45039	0.936 acres	16-12-400-020
Peter's Cartridge Factory, LLC 1527 Madison Road, Suite B Cincinnati, OH 45206	1409 Grandin Road Maineville, OH 45039	12.056 acres	16-12-453-007
Terry L. Irwin, Trustee and Lea F. Irwin, Trustee of the Irwin Family Living Trust dated July 18, 2016 P.O. Box 109 Kanab, UT 84741	727 Grandin Road Maineville, OH 45039	64.25 acres	16-05-100-001

and,

WHEREAS, the COUNTY adopted Res. # 17-1894, on November 28, 2017, approving the annexation of the above referenced Properties from Hamilton Township to the Village of South Lebanon upon finding the Petition, as amended, satisfied the requirements set forth in RC 709.023(E)(1-7); and,

WHEREAS, the VILLAGE passed Ord. #2018-2, on February 1, 2018, accepting the annexation of the aforementioned Properties from Hamilton Township to the Village of South Lebanon; and,

WHEREAS, by virtue of the completion of the annexation, the Properties are within the corporate boundaries of the VILLAGE; and,

WHEREAS, at the time the annexation was accepted by the VILLAGE, the VILLAGE did not, and to date does not, own, operate, or maintain public water or sanitary sewers within close proximity to the Properties; and,

WHEREAS, the VILLAGE requested water and sanitary sewer service for the Properties from the COUNTY on or prior to September 4, 2018; and,

WHEREAS, the COUNTY adopted Res. # 18-1426 on September 11, 2018 to approve and authorize intent to enter into an agreement with the VILLAGE relative to the COUNTY providing water and sanitary sewer service to the Properties and further authorized staff to begin negotiations for a service agreement; and,

WHEREAS, in order for the COUNTY to be allowed to provide all or any part of the Properties with public sanitary sewer service, the COUNTY, the VILLAGE and the CITY must enter into a written agreement for the parties to obtain the approval of the Ohio-Kentucky-Indiana Regional Council on Governments (hereinafter designated as OKI), as the VILLAGE is the Designated Management Agency for wastewater collection and the CITY is the Designated Management Agency for wastewater treatment with the VILLAGE'S corporate limits and they are exclusively responsible for planning and administering sanitary sewer service in all of the area identified by OKI as the Lebanon/South Lebanon Facility Planning Area as specified under applicable provisions of the OKI Regional Water Quality Management Plan per Section 208 of the Federal Clean Water Act (hereinafter designated the Facility Planning Area or "FPA").

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

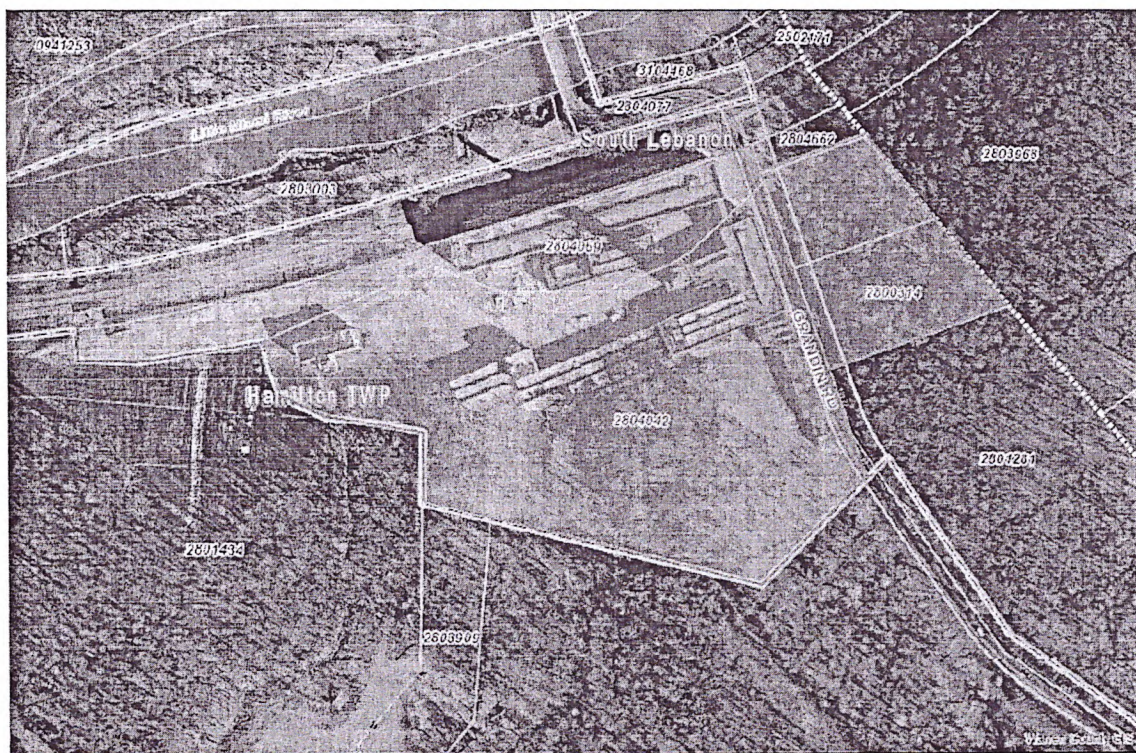
A. The VILLAGE, on its behalf, and on the behalf of its successors and assigns, and any other persons or entities claiming by, through, or under it, agrees:

1) The VILLAGE releases and transfers to the COUNTY, in perpetuity, the exclusive rights and obligations as the Designated Management Agency responsible for planning and administering sanitary sewer service relating to wastewater collection for the FPA consisting of the Properties identified in **Table 1** and depicted in **Figure 1** below.

TABLE 1

See Exhibit "A" attached hereto and incorporated by reference herein.

Village of South Lebanon, Hamilton Township, Warren County, Ohio



2) The VILLAGE requests OKI approve, update and amend its FPA boundaries in the Regional Water Quality Management Plan and Map, to remove the Properties identified in **Table 1** and depicted in **Figure 1** above from the Lebanon/South Lebanon FPA, and add such properties to the Warren County FPA, in perpetuity, thus designating the COUNTY as the Designated Management Agency for the FPA identified in **Table 1** and depicted in **Figure 1** above. The VILLAGE shall cooperate with OKI, as needed, to consummate the foregoing, and further requests that OKI accept and approve this Agreement for such purposes.

3) The VILLAGE acknowledges and understands that the COUNTY shall not be responsible for the construction of sewer improvements to serve the Properties. All sewer improvements to serve the Properties shall be constructed by the owner and/or developer and which shall be constructed in accordance with Warren County rules, regulations, and standards. Once the sewer improvements are constructed, inspected and accepted by the COUNTY, the COUNTY shall own, operate and maintain the sanitary sewers located in the Right-of-Way or dedicated easements, in perpetuity, and any user shall comply with the COUNTY's Water and Sewer Department Rules and Regulations, including without limitation paying connection charges, non-participant charges, system capacity charges, capacity charges, supplemental sanitary sewer connection charges and user rates to the COUNTY as set by the COUNTY.

4) The VILLAGE has or is simultaneously with the execution of this Agreement authorized by ordinance or resolution in accordance with Ohio Revised Code §6117.04, et seq. the release of its exclusive rights to serve the Properties to the COUNTY so that the COUNTY may own, operate and maintain the sanitary sewers, in perpetuity, to serve the Properties, and further that the County may be the exclusive retail sanitary sewer service provider to the Properties in perpetuity.

5) The VILLAGE acknowledges and understands that the COUNTY shall own, operate and maintain the water mains, in perpetuity, and any user shall comply with the COUNTY's Water and Sewer Department Rules and Regulations, including without limitation paying tap-in charges, non-participant charges, capacity charges and user rates to the COUNTY as set by the COUNTY.

6) The VILLAGE has or is simultaneously with the execution of this Agreement authorized by ordinance or resolution in accordance with Ohio Revised Code §6103.03 et seq. that the COUNTY shall own, operate and maintenance the water mains, in perpetuity to serve the Properties, and further that the COUNTY may be the exclusive retail water service provider to the Properties in perpetuity.

B. The CITY, on its behalf, and on the behalf of its successors and assigns, and any other persons or entities claiming by, through, or under it, agrees:

1) The CITY releases and transfers to the COUNTY, in perpetuity, the exclusive rights and obligations as the Designated Management Agency responsible for planning and administering sanitary sewer service relating to wastewater treatment for the FPA consisting of the Properties identified in **Table 1** and depicted in **Figure 1** above.

2) The CITY requests OKI approve, update and amend its FPA boundaries in the Regional Water Quality Management Plan and Map, to remove the Properties identified in **Table 1** and depicted in **Figure 1** above from the Lebanon/South Lebanon FPA, and add such properties to the Warren County FPA, in perpetuity, thus designating the COUNTY as the Designated Management Agency for the FPA identified in **Table 1** and depicted in **Figure 1** above. The

CITY shall cooperate with OKI, as needed, to consummate the foregoing, and further requests that OKI accept and approve this Agreement for such purposes.

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~~2.~~ 3) The CITY acknowledges and understands that the COUNTY shall not be responsible for the construction of sewer improvements to serve the Properties. All sewer improvements to serve the Properties shall be constructed by the owner and/or developer and which shall be constructed in accordance with Warren County rules, regulations, and standards. Once the sewer improvements are constructed, inspected and accepted by the COUNTY, the COUNTY shall own, operate and maintain the sanitary sewers located in the Right-of-Way or dedicated easements, in perpetuity, and any user shall comply with the COUNTY's Water and Sewer Department Rules and Regulations, including without limitation paying connection charges, non-participant charges, system capacity charges, capacity charges, supplemental sanitary sewer connection charges and user rates to the COUNTY as set by the COUNTY.

~~3.~~

~~4.~~ 4) The CITY has or is simultaneously with the execution of this Agreement authorized by ordinance or resolution in accordance with Ohio Revised Code §6117.04, et seq. the release of its exclusive rights to serve the Properties to the COUNTY so that the COUNTY may own, operate and maintain the sanitary sewers, in perpetuity, to serve the Properties, and further that the County may be the exclusive retail sanitary sewer service provider to the Properties in perpetuity.

~~5.~~

C. The COUNTY, on its behalf, and on the behalf of its successors and assigns, and any other persons or entities claiming by, through, or under it, agrees:

1) The COUNTY accepts the release and transfer from the VILLAGE, in perpetuity, the exclusive rights and obligations as the Designated Management Agency responsible for planning and administering sanitary sewer service for the FPA consisting of the Properties identified in **Table 1** and depicted in **Figure 1** above.

2) The COUNTY requests OKI approve, update and amend its FPA boundaries in the Regional Water Quality Management Plan and Map, to remove the Properties identified in **Table 1** and depicted in **Figure 1** above from the Lebanon/South Lebanon FPA, and adding such Properties to the Warren County FPA, in perpetuity, thus designating the COUNTY as the Designated Management Agency for the FPA identified in **Table 1** and depicted in **Figure 1** above. The COUNTY shall cooperate with OKI, as needed, to consummate the foregoing, and further requests that OKI accept and approve this Agreement for such purposes.

3) The COUNTY shall, in perpetuity, be the exclusive retail sanitary sewer service provider for the Properties, identified in **Table 1** and depicted in **Figure 1** above.

4) Within the area released to the COUNTY for retail sanitary sewer service, the COUNTY shall own, operate, and maintain the sanitary sewers. Service to the Properties shall be in accordance with COUNTY rules, regulations, and standards applicable to such service, including without limitation those providing for the provision of sanitary sewer service outside municipal COUNTY boundaries, as such rules, regulations and standards may be modified or amended from time to time.

5) The connection charges, non-participant charges, system capacity charges, capacity charges, supplemental sanitary sewer connection charges and user rates charged to customers shall be collected and paid to the COUNTY as established by the COUNTY, as set forth in the COUNTY'S applicable fee schedules. These fees and user rate schedules shall be subject to adjustment as determined by the COUNTY.

6) The COUNTY acknowledges and agrees that this Agreement is limited to the Properties, and the COUNTY shall not provide sanitary sewer service relating to wastewater collection or treatment to any other parcels within the corporate boundaries of the VILLAGE, unless otherwise existing to date, without the VILLAGE consenting and requesting OKI approve, update and amend its FPA boundaries in the Regional Water Quality Management Plan and Map to reflect the same, and removing such properties from the Lebanon/South Lebanon FPA, and adding such properties to the Warren County FPA, and without further written agreement with the VILLAGE.

7) The COUNTY shall, in perpetuity, be the exclusive retail water service provider for the Properties, identified in **Table 1** and depicted in **Figure 1** above.

8) Within the area released to the COUNTY for retail water service, the COUNTY shall own, operate, and maintain the water mains. Service to the Properties shall be in accordance with COUNTY rules, regulations, and standards applicable to such service, including without limitation those providing for the provision of water service outside municipal COUNTY boundaries, as such rules, regulations and standards may be modified or amended from time to time.

9) The tap-in charges, non-participant charges, capacity charges, supplemental charges and user rates charged to customers shall be collected and paid to the COUNTY as established by the COUNTY, as set forth in the COUNTY'S applicable fee schedules. These fees and user rate schedules shall be subject to adjustment as determined by the COUNTY.

D. Miscellaneous.

1) Entire Agreement of the Parties; Modification. This Agreement supersedes any and all agreements, both oral and written, between the parties, and contains all of the covenants and agreements between the parties with respect to the subject matter herein in any manner whatsoever. Each party acknowledges that no representations, inducements, promises or agreements, written or oral, have been made by either party, or by anyone acting on behalf of either party, that are not embodied in this Agreement. No amendment or modification of this Agreement will be effective unless a writing signed by the party, with accompanying legislation authorizing such act or acts.

2) Assignment. This Agreement shall not be assignable by any of the parties hereto without the written consent of the other party, with accompanying legislation authorizing such act or acts.

3) 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.

4) 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.

5) 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.

5) Effective Date. This Agreement shall be effective upon receipt from OKI of a written acknowledgment approving this Agreement, which shall be attached hereto and made a part hereof.

COUNTY:

IN EXECUTION WHEREOF, the BOARD OF COMMISSIONERS OF WARREN COUNTY, OHIO has caused this agreement to be executed by _____, its President or Vice-President, on the date stated below, pursuant to Resolution # _____, dated _____, a copy of which is attached hereto.

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

SIGNATURE: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

Prepared and approved as to form:

DAVID P. FORNSHELL
PROSECUTING ATTORNEY
WARREN COUNTY, OHIO

By: Bruce A. McGary, Assistant Prosecutor
Date: _____

[continued on next page]

VILLAGE :

IN EXECUTION WHEREOF, the Council of the Village of South Lebanon, has caused this Agreement to be executed by, James D. Smith, Mayor, and Nicole Armstrong, Fiscal Officer, on the date stated below, pursuant to Ordinance # 5, dated March 7, 2019, a copy of which is attached hereto.

SIGNATURE: Nicole Armstrong

PRINTED NAME: Nicole Armstrong

TITLE: Fiscal Officer

DATE: 3/7/19

SIGNATURE: James D. Smith

PRINTED NAME: James D. Smith

TITLE: Mayor

DATE: 3/7/19

Approved as to form:

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

[Signature]
By: Paul R. Revelson, Village Solicitor

Date: 3/7/19

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CITY:

IN EXECUTION WHEREOF, the Lebanon City Council has caused this Agreement to be executed by its City Manager, on the date stated below, pursuant to Ordinance or Resolution #_____, dated _____, a copy of which is attached hereto.

SIGNATURE: _____

PRINTED NAME: Scott Brunka

TITLE: City Manager _____

DATE: _____

Approved as to form:

By: Mark S. Yurick, Law Director

Date: _____

Exhibit A

Property Owner	Property Address	Acreage	Parcel No.
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Terry L. Irwin, Trustee and Lea F. Irwin, Trustee of the Irwin Family Living Trust dated July 18, 2016 P.O. Box 109 Kanab, UT 84741	727 Grandin Road Maineville, OH 45039	64.25 acres	16-05-100-001