

## RECORD OF ORDINANCES

Ordinance No.: 2020-59

Passed: September 14, 2020

**AN ORDINANCE AUTHORIZING THE MAYOR, ADMINISTRATOR, AND FISCAL OFFICER TO EXECUTE AN AGREEMENT TO EXTEND AND MODIFY THE APRIL 23, 2018 AGREEMENT BETWEEN THE VILLAGE OF WEST LAFAYETTE AND THE COSHOCTON COUNTY BOARD OF COMMISSIONERS, AND DECLARING AN EMERGENCY**

**WHEREAS**, on or about April 23, 2018, the Village of West Lafayette and the Coshocton County Board of Commissioners ("the County") entered into an agreement, with an effective date of April 23, 2018, whereby the Village agreed to maintain and operate the sanitary sewer system owned by the County and known as the Fresno/Pearl Sanitary Sewer System; and

**WHEREAS**, the Village of West Lafayette and the County have determined that the 2018 System Agreement expired on May 31, 2019; and

**WHEREAS**, the Parties wish to extend and modify the 2018 System Agreement.

**NOW, THEREFORE, BE IT ORDAINED** as follows by the Council for the Village of West Lafayette, Ohio:

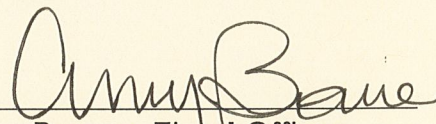
**SECTION I:** Council does hereby approve the Extended and Modified agreement between the Village of West Lafayette and the County, attached hereto, and authorizes the Mayor, Administrator, and Fiscal Officer to execute the Agreement Between the Village of West Lafayette and the Coshocton County Board of Commissioners.

**SECTION II:** This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety, and welfare. The reason for such necessity is that the System Agreement has a retroactive effective date of June 1, 2019, and the Ordinance is necessary to provide full authority for the Fiscal Officer and Administrator and/or Mayor to sign the required agreement. Therefore, this Ordinance shall go into immediate effect upon passage.

PASSED IN COUNCIL THIS 14th DAY OF SEPTEMBER 2020.

  
Stephen R. Bordenkircher, Mayor

ATTEST:

  
Amy Bourne, Fiscal Officer



**AGREEMENT TO EXTEND AND MODIFY**  
**THE APRIL 23, 2018 AGREEMENT**  
**BETWEEN THE VILLAGE OF WEST LAFAYETTE AND**  
**THE COSHOCTON COUNTY BOARD OF COMMISSIONERS**  
**FOR THE MAINTENANCE OF THE FRESNO/PEARL SANITARY SEWER SYSTEM**

This Agreement to extend and modify the April 23, 2018 Agreement between the Village of West Lafayette and the Coshocton County Board Of Commissioners for the maintenance of the Fresno/Pearl Sanitary Sewer System (hereinafter the "Extension Agreement") is made and entered into by and between the Village of West Lafayette, Ohio (hereinafter the "Village") and the Coshocton County Board of Commissioners (hereinafter "County"). For simplicity, the Village and County are sometimes hereinafter individually referred to as a "Party" or collectively referred to as the "Parties."

**RECITALS**

A. On or about April 30, 2018, the Village and County executed an Agreement, with an effective date of April 23, 2018, whereby the Village agreed to maintain and operate the sanitary sewer system owned by the County and known as the Fresno/Pearl Sanitary Sewer System (hereinafter "the System"). Such agreement is hereinafter referred to as the "2018 System Agreement." The 2018 System Agreement is attached hereto as Exhibit A.

B. The term of the 2018 System Agreement was for a period beginning April 23, 2018 and ending May 31, 2019.

C. The Parties wish to extend and modify the 2018 System Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants, promises, terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Incorporation Of 2018 System Agreement**

The Parties agree that this Extension Agreement is supplemental to the 2018 System Agreement and that the 2018 System Agreement is by reference made a part of this Extension Agreement. All the terms, conditions, and provisions of the 2018 System Agreement, unless specifically modified in this Extension Agreement, are incorporated into this Extension Agreement.

**2. Modifications Of 2018 System Agreement**

The 2018 System Agreement is modified in the following respects only:



a. Paragraph "1," titled "Term," of the 2018 System Agreement is modified as follows: The term of the 2018 System Agreement is extended through February 28, 2021. At the expiration of such term, the 2018 System Agreement, if not renewed in writing for an additional fixed period and if not terminated in writing by either party, shall be deemed a month-to-month agreement cancelable by either party on not less than thirty (30) days' written notice.

b. Paragraph "4," titled "Indemnification," of the 2018 System Agreement, is modified by eliminating and striking out from the 2018 System Agreement the entirety of the Paragraph and inserting in its place the following paragraph:

#### 4. LIABILITY AND INSURANCE

- A. Neither Party will indemnify the other for any damages awarded in any civil action arising from any action or omission of either Party's officers, employees, agents, contractors, subcontractors or volunteers acting under this Agreement.
- B. The Parties agree that the Village, in performing its duties set forth in the Agreement, will not be liable or in any way responsible for damage, loss, or expense resulting to the County due to any accidents, mishaps, or injuries, either to person or property, or of any nature to person or property, of any kind arising from any cause whatsoever, except such damage, loss, or expense arising from intentional misconduct or gross negligence of the Village or its employees acting with the scope of their employment. The County waives all rights to make a claim or file suit against the Village for, and relieves the Village from all liability or responsibility of any kind arising from such damage, loss, cost, or expense.
- C. The County shall, at its own expense, provide and keep in full force and effect during the term of this Agreement, property and general liability insurance covering the System. The level of said coverages shall be in accordance with industry norms.
- D. The Village shall, at its own expense, provide and keep in full force and effect during the term of this Agreement, general liability insurance covering its work on the System. The level of said coverage shall be in accordance with industry norms.

This Extension Agreement shall be retroactively effective June 1, 2019.

**The Village of West Lafayette, Ohio**

\_\_\_\_\_  
Stephen Bordenkircher  
Mayor

Date: \_\_\_\_\_

\_\_\_\_\_  
Christopher Menapace  
Administrator

Date: \_\_\_\_\_

\_\_\_\_\_  
Amy Bourne  
Fiscal Officer

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Julie Dreher  
Solicitor, Village of West Lafayette

Date: \_\_\_\_\_

**Coshocton County Board of  
Commissioners**

\_\_\_\_\_  
Dane Shryock  
Commissioner

Date: \_\_\_\_\_

\_\_\_\_\_  
Gary L. Fischer  
Commissioner

Date: \_\_\_\_\_

\_\_\_\_\_  
D. Curtis Lee  
Commissioner

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Jason Given  
Coshocton County Prosecutor

Date: \_\_\_\_\_

**EXHIBIT A**

**2018 System Agreement**



## AGREEMENT

This Agreement is made this 23 day of April, 2018 by and between the Coshocton County Board of Commissioners (hereinafter COUNTY), a political subdivision with its offices located at      Main Street, Coshocton, OH 43812 and the Village of West Lafayette, Ohio (hereinafter VILLAGE), a political subdivision with its offices located at                                     , West Lafayette, OH 43845.

WHEREFORE the parties agree that in order to better serve the public and to clarify roles and responsibilities the VILLAGE hereby agrees to maintain and operate the sanitary sewer system owned by the COUNTY and known as the Fresno/Pearl Sanitary Sewer System (hereinafter "the System").

For the purposes of this Agreement, the term "Maintenance or Maintain" shall be defined as performing the necessary upkeep and repairs to keep the System operating and in compliance with the requirements of Chapter 3745 of the Ohio Administrative Code and the COUNTY.

The terms of this Agreement are as follows:

1. TERM - The term of this Agreement shall be for a period beginning on 23 April 2018 and ending on May 31, 2019, unless terminated earlier by either party with 365 days of written notice to the other.
2. CONSIDERATION -
  - A. The COUNTY shall pay to the VILLAGE the amount of \$200.00 per week for performing the routine maintenance and operation of the System.
  - B. The COUNTY shall pay to the VILLAGE the amount of \$40.00 per hour of work performed during "after-hour" coverage of the System. After-hour shall be defined as any work performed requiring the Village to pay their employee overtime wages.
  - C. In the event of a needed repair or upgrade, the COUNTY shall pay the VILLAGE on a time and materials basis. Prior to commencing any such repair the VILLAGE shall notify the COUNTY in writing of the nature of the problem and the proposed repair or upgrade, as well as the estimated cost of the repair or upgrade. In case of emergency repairs requiring immediate action, the Village will seek verbal approval from the County prior to expending funds.



The VILLAGE is authorized to purchase routine maintenance items, as needed, up to \$100 per month, without prior approval. The VILLAGE will pay for these items and the COUNTY will reimburse the VILLAGE provided the VILLAGE submits receipts to the COUNTY.

- D. For the purposes of customer billing, the COUNTY shall pay the VILLAGE at a rate of \$100 per month.

3. DUTIES OF THE VILLAGE -

- A. The VILLAGE shall operate, maintain, repair and upgrade the System in order to keep the System operational. Any and all work performed by the VILLAGE under this Agreement shall be performed pursuant to the requirements of Chapter 3745 of the Ohio Administrative Code and the COUNTY. Furthermore, the VILLAGE shall operate and maintain the System pursuant to the requirements of Chapter 3745 of the Ohio Administrative Code and the COUNTY.
- B. If any maintenance, repairs or upgrades require the work of an outside contractor, the VILLAGE shall arrange for and coordinate such work at the cost of the COUNTY.
- C. The VILLAGE shall provide customer billing services for all of the customers of the System. Customers shall be billed on a monthly basis. The VILLAGE will provide a report of past due customers. The COUNTY will be responsible for collections.
- D. All work performed by the VILLAGE or its arranged contractors shall be done in a workmanlike manner and in accordance with the requirements set forth in Chapter 3745 of the Ohio Administrative Code.
- E. At all times the VILLAGE, and its employees, agents and representatives, is considered an independent contractor operating on its own volition. At no time shall any of the VILLAGE's employees, agents or representatives be considered the responsibility of the COUNTY.



4. INDEMNIFICATION -

- A. As permitted by law the COUNTY and the VILLAGE each indemnifies the other against and holds the other harmless from any and all costs, demands, damages, suits, expenses, or causes of action (including reasonable attorneys' fees and court costs) which arise out of the intentional, reckless or negligent action or inaction by a party or its employee, agent or representative. This indemnity does not apply to any Claims arising from the gross negligence or intentional misconduct of the Indemnified Party.
  - B. The provisions of this section 4 shall survive the expiration or earlier termination of this Agreement with respect to any events occurring on or before expiration or termination of same whether or not Claims relating thereto are asserted before or after such expiration or termination.
  - C. The COUNTY and the VILLAGE shall keep in full force and effect, during the Term of this Agreement, insurance coverage. The levels of said coverage shall be in accordance with industry norms. All insurance acquired shall be paid by the party so acquiring.
  - D. The VILLAGE acknowledges that the COUNTY'S ability to enter into any indemnification clause is limited and governed by 2005 OHIO OP. ATTY. GEN. 7.
5. NOTICES - Any notice which either party may or is required to give, shall be given by mailing the same, postage prepaid, to the COUNTY at the premises, or the VILLAGE at the address shown above, or at such other places as may be designated by the parties from time to time.
6. SUCCESSORS & ASSIGNS - This Agreement is binding upon and inures to the benefit of the assigns and successors in interest to the parties.
7. ENTIRE AGREEMENT - The foregoing represents the entire Agreement of the parties and shall not be altered, amended or modified unless done so in writing and signed by both parties.



Signed this 30<sup>th</sup> day of April, 2018.

COSHOCTON COUNTY BOARD OF COMMISSIONERS

By: Dane Shryock  
Dane Shryock, Commissioner

By: D. Curtis Lee  
D. Curtis Lee, Commissioner

By: Gary Fischer  
Gary Fischer, Commissioner

THE VILLAGE OF WEST LAFAYETTE, OHIO

By: Steve Baer