

**COOPERATIVE AGREEMENT
BETWEEN
THE CITY OF AVON LAKE AND THE CITY OF AVON
FOR
THE CENTRAL AVON LAKE DRAINAGE PROJECT SEWER EXTENSION, PHASE 2**

THIS COOPERATIVE AGREEMENT (“Agreement”) entered into as of _____, 201__, by and between the **CITY OF AVON LAKE, OHIO** (“Avon Lake”), an Ohio municipal corporation with an office located at 150 Avon Beldon Road, Avon Lake, Ohio 44012, and the **CITY OF AVON, OHIO** (“Avon”), an Ohio municipal corporation with an office located at 36080 Chester Road, Avon, Ohio 44011.

WITNESSETH:

WHEREAS, the Central Avon Lake Drainage Project (the “CALDP”) is a storm sewer system through the central portion of Avon Lake and drains areas between Moore Road and Avon Belden Road;

WHEREAS, Avon Lake intends to construct a second phase extending the CALDP from approximately 900 feet north of Pin Oak Parkway south to the existing retention basin (the “Service Property Retention Basin”) behind the Service Building at 750 Avon Belden Road a total of approximately three thousand two hundred (3,200) feet (the “Project”);

WHEREAS, although the Project will be located entirely within the municipal boundaries of Avon Lake and owned, managed and maintained by Avon Lake, the Project will benefit Avon as well as Avon Lake;

WHEREAS, Avon Lake has or will be entering into an agreement with the State of Ohio, Public Works Commission (the “OPWC”) for financial assistance for the Project (the “OPWC Agreement”), such financial assistance to consist of both a grant from the OPWC (OPWC Project Grant Control No. CI49T) in an amount not to exceed Three Hundred Seventy-

Five Thousand Dollars (\$375,000.00) (the “Grant”) and a ten year no interest loan from the OPWC in an amount not to exceed Three Hundred Seventy-Five Thousand Dollars (\$375,000.00) (OPWC Project Loan Control No. CI50T) (the “Loan”);

WHEREAS, Avon Lake has determined that the cost of the Project including engineering, design, construction, bidding and incidental costs (the “Total Project Costs”) will not exceed Eight Hundred Sixty-Eight Thousand Three Hundred Dollars (\$868,300.00), and that the Total Projects Costs less the proceeds of the Grant (the “Net Project Costs”) will not exceed One Hundred Eighteen Thousand Two Hundred Thirty Dollars (\$118,230.00);

WHEREAS, recognizing the benefits of the Project to Avon and its residents and as an inducement for Avon Lake to construct the Project and enter into the OPWC Agreement, Avon has agreed to pay one-half (1/2) of the Net Projects Costs (“Avon’s Net Project Costs Share”); and

WHEREAS, Avon Lake and Avon have also reached other agreements with respect to the Project and the Service Property Retention Basin that they desire to memorialize in this Agreement;

NOW, THEREFORE, in consideration of the above premises and the mutual covenants hereinafter set forth, and subject to the terms, conditions and provisions hereinafter set forth, Avon Lake and Avon agree as follows:

1. Avon Lake shall prepare or cause to be prepared plans, specifications, contracts and bid packages for the construction of the Project. Avon Lake shall provide Avon with a copy of all such documents.
2. Avon Lake shall subject the Project to competitive bidding in accordance with the procedures mandated by law and Avon Lake’s standard procedures.

3. Avon Lake shall award the contract for construction of the Project in accordance with the procedures mandated by law and Avon Lake's standard procedures.

4. Avon Lake shall be responsible for obtaining all necessary governmental reviews, approvals, licenses and permits for the Project.

5. The Project shall be constructed substantially in accordance with the plans and specifications.

6. Avon Lake shall have the right to execute change orders and modifications to the construction contract without being required to obtain the approval of Avon. However, without the consent of Avon, Avon's Net Project Costs Share shall not exceed Sixty Thousand Dollars (\$60,000.00).

7. Avon shall pay Avon's Net Project Costs Share as follows:

- (a) Avon shall pay to Avon Lake Avon's share of each Loan repayment installment not later than thirty (30) days prior to the due date of such installment.
- (b) Avon shall pay to Avon Lake Avon's Net Project Costs Share within thirty (30) days after Avon Lake presents Avon with an invoice therefor.

8. Avon Lake shall not charge Avon for any of the following:

- (a) a tap-in fee for tapping into the CALDP to serve the Titus, Pitts and Hill Drainage Districts of Avon;
- (b) a fee for the discharge of storm water into the Service Property Retention Basin;
- (c) any of the cost of maintaining, replacing and/or reconstructing the Service Property Retention Basin, the structures for storm sewer discharge from

the Service Property Retention Basin, or the open pipe or concrete vault used to control or regulate the flow of water from the Service Property Retention Basin; or

- (d) any of the cost of maintaining, replacing and/or reconstructing the CALDP after it has been fully constructed.

9. Avon shall not increase the tributary drainage area of stormwater draining into the Service Property Retention Basin beyond that existing as of the date of this executed agreement.

10. Avon Lake shall maintain the retention capacity and general system design parameters of the Service Property Retention Basin prescribed in the Jones and Henry Capacity Analysis of December 2015.

11. Neither this Agreement nor the payments to be made by Avon pursuant to this Agreement shall grant Avon any ownership interest, easement or other interest in the Project, the CALDP or the land occupied by the CALDP.

12. This Agreement may be amended or modified only by a written instrument between the parties duly authorized.

13. This instrument constitutes the entire agreement of the parties with regard to the subject matter hereof, and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions and agreements of the parties. No modification or amendment of this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto. This Agreement shall be subject to and governed by the laws of the State of Ohio.

14. The waiver of any party hereto of a breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the

same or any other provision. No waiver shall be binding unless it is in writing, and no course of dealing, delay or omission in the exercise of any rights shall operate as a waiver.

15. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

16. The undersigned representative of each party hereto hereby represents and warrants that he is the duly authorized officer or agent of such party, that each party has approved this Agreement by appropriate legal and/or legislative action, and that this Agreement constitutes a valid and binding contract and agreement properly undertaken and binding upon each of the parties.

EXECUTED by the parties as of the day and year first above written.

CITY OF AVON LAKE

By: _____
Gregory J. Zilka, Mayor

CITY OF AVON

By: _____
Bryan K. Jensen, Mayor

CERTIFICATE OF LAW DIRECTOR OF AVON LAKE

I hereby certify that I have reviewed and approved the form of the foregoing Agreement this ____ day of _____, 201__.

Abraham Lieberman, Law Director

CERTIFICATE OF LAW DIRECTOR OF AVON

I hereby certify that I have reviewed and approved the form of the foregoing Agreement this ____ day of _____, 201__.

John A. Gasior, Law Director

CERTIFICATION OF FUNDS

I, Steve Presley, Director of Finance of the City of Avon Lake, Ohio hereby certify that the money to meet this Agreement has been lawfully appropriated for the purpose of the Agreement and is in the treasury of the City, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

Date

Director of Finance

CERTIFICATION OF FUNDS

I, Bill Logan, Director of Finance of the City of Avon, Ohio hereby certify that the money to meet this Agreement has been lawfully appropriated for the purpose of the Agreement and is in the treasury of the City, or is in the process of collection to the credit of the appropriate fund free from prior encumbrance.

Date

Director of Finance